





CareDirector License Agreement

 caredirector	CareWorks Confidential Documentation		
	CareDirector License Agreement		28 June 2018

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THIS AGREEMENT is made on > <date>

BETWEEN:

- (1) **CAREWORKS LIMITED**, a company incorporated under the laws of Ireland (registration number 262153) and having its registered office at Unit 5B Sandyford Business Centre, Blackthorn Road, Sandyford Industrial Estate, Dublin 18, D18 EK46 Ireland ("**CareWorks**"); and
- (2) [] ("**Licensee**")

INTRODUCTION

- (A) CareWorks is the owner of the Software.
- (B) CareWorks wishes to grant to the Licensee a non-exclusive non-transferable licence to use the Software, subject to the terms and conditions of this Agreement.
- (C) On signature of this agreement, the licensee, [NAME OF PROCURING BODY], is entitled to the following licences:

Licence Description	Licence Type	Number of licences
CareDirector vx.x	User Licence	
CareDirector vx.x Enterprise Server	Server Licence	
CareDirector vx.x Full User Annual Support Plus Upgrade Protection Licence	Annual Support Licence	

IT IS HEREBY AGREED AS FOLLOWS:


1. INTERPRETATION

1.1 Definitions

In this Agreement, the following expressions will have the following meanings:


'Annual Licence Fee' the sum of [] per annum;

"Business" [insert definition of customer's business];

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‘Business Day’	a day (other than a Saturday or Sunday or public holiday on which banks are open for business in [] ¹ ;
“Fees”	the Initial Licence Fee [and the Annual Licence Fee];
‘Initial Licence Fee’	the sum of [];
“Licence”	the licence for the Software granted by CareWorks to the Licensee in accordance with the terms of this Agreement;
“Modification”	release of the Software which corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version;
“New Release”	any new version of the Software which from time to time is publicly marketed and offered for purchase by the CareWorks in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product;
“Service Level Agreement”	the service level agreement to be entered into between the Licensee and CareWorks on the execution of this Agreement as attached at Schedule 3;
‘Software’	the software detailed in Schedule 1;
“Specification”	the specification agreed by the parties in respect of the Software;
“Term”	the Initial Term as defined in Clause 7 as extended in accordance with Clause 7;
“Use”	the right to load, execute, store, transmit,

¹ Relevant country

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display, and (for the foregoing purposes only) copy the Software for the purposes of the Business; and


“Users”

the users detailed in Schedule 2.

1.2 Interpretation Generally

In this Agreement:

- 1.2.1 any reference to any statute, statutory provision or to any order or regulation shall be construed as a reference to that statute, provision, order or regulation as extended, modified, replaced or re-enacted from time to time (whether before or after the date of this Agreement) and all statutory instruments, regulations and orders from time to time made there under or deriving validity there from (whether before or after the date of this Agreement);
- 1.2.2 words denoting any gender include all genders and words denoting the singular include the plural and vice versa;
- 1.2.3 all references to recitals, clauses, paragraphs and schedules are to recitals in, clauses and paragraphs of and schedules to this Agreement;
- 1.2.4 headings are for convenience only and shall not affect the interpretation of this Agreement;
- 1.2.5 words such as “hereunder”, “hereto”, “hereof” and “herein” and other words commencing with “here” shall unless the context clearly indicates to the contrary refer to the whole of this Agreement and not to any particular section, clause or paragraph hereof;
- 1.2.6 in construing this Agreement general words introduced by the word “other” shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things and general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words and any reference to the word “include” or “including” is to be construed without limitation;
- 1.2.7 any reference to “Agreement” or any other document or to any specified provision of this Agreement or any other document is to this Agreement, that document or that provision as in force for the time being and as amended from time to time in accordance with the terms of this Agreement or that document;

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1.2.8 any reference to a person shall be construed as a reference to any individual, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing; and

1.2.9 any reference to a person includes his successors, personal representatives and permitted assigns;

1.4 The contents of the Schedules form an integral part of this Agreement and shall have as full effect as if they were incorporated in the body of this Agreement and the expressions “this Agreement” and “the Agreement” as used in any of the Schedules shall mean this Agreement and any reference to “this Agreement” shall be deemed to include the Schedules.

2. GRANT OF LICENSE

2.1 In consideration for the payment of the Fees by the Licensee, CareWorks grants to the Licensee a non-exclusive, non-transferable licence for the Term for the Use to:

2.1.1 install and/or use one instance of the Software only in a live environment on a single server to be used by the Users on a per user basis and not a concurrent basis; and


2.2 The Licensee and the Users shall be entitled to the use of the Software for the Use only (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Licensee).

2.3 Each User is permitted to use the Software, using a pc, laptop or tablet device irrespective of device location, to access the Software on the Licensee’s server on which the Software is installed in accordance with Clause 2.1 above.

2.4 The Licensee and the Users may not use the Software other than as specified in Clause 2.3 without the prior written consent of CareWorks and the Licensee acknowledges that additional fees may be payable on any change of use approved by CareWorks.

2.5 The conditions attaching to the grant of the License are in addition to the conditions contained in any third-party software required to be used in conjunction with the Software.

2.6 The Licensee shall permit CareWorks to inspect and have access to any premises, and to the computer equipment located there, at or on which the Software is being kept or used, and any records kept pursuant to this Agreement, for the purposes of ensuring that the Licensee is complying with the terms of this Agreement, provided that CareWorks provides reasonable advance notice to the Licensee of such inspections, which shall take place at reasonable times.

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3. VERSION RELEASES & UPGRADES


- 3.1 The Software is licenced according to version number. The Licensee is entitled to use the current and preceding versions of Software. Preceding versions of the Software are subject to the software maintenance charges as provided for in the Service Level Agreement.
- 3.2 Periodically, Modifications may be made. The Licensee shall be entitled to the Modifications if the necessary 'Annual Support plus Upgrade Protection' Agreement has been entered into by it with CareWorks.
- 3.3 CareWorks shall inform the Licensee of New Releases and shall offer the New Releases on the terms at which they are generally available to CareWorks customers.

4. INTELLECTUAL PROPERTY

- 4.1 All copyright, trademarks and all other intellectual property rights in and to the Software, and any Modification or New Release, are and shall remain the exclusive property of CareWorks.
- 4.2 Nothing in this Agreement shall confer any rights in or to the Software, and any Modification or New Release, on the Licensee other than the right to use it in accordance with the terms of this License.

5. LICENSEE'S OBLIGATIONS

- 5.1 Save as otherwise expressly set out herein and as otherwise expressly permitted by law, the Licensee shall not and shall procure that none of its employees, agents or contractors shall not:
 - 5.1.1 make any temporary or permanent reproduction by any means and in any form, in whole or in part, of the Software;
 - 5.1.2 make any translation, adaptation, arrangement or any other alteration of the Software;
 - 5.1.3 make any form of distribution to the public of the Software, in whole or in part, or of copies thereof;
 - 5.1.4 make any communication, display or performance to the public of the Software;
 - 5.1.5 disseminate, sell, give away, hire, lease, offer or expose for sale or distribute the Software, or another product wholly or partially derived from any of the foregoing;

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- 5.1.6 sublicense, assign, transfer, sell, lease, rent, charge or otherwise deal in or encumber the Software or use the Software on behalf of any third party, or make available the same to any third party without the prior written consent of CareWorks;
- 5.1.7 copy, adapt, reverse engineer or decompile the whole or any part of the Software; or
- 5.1.8 remove or alter any copyright or other proprietary notice from the Software.


6. CONSIDERATION

- 6.1 In consideration of the grant by CareWorks to the Licensee of the licence in clause 2.1, the Licensee shall pay CareWorks the Fee.
- 6.2 The Initial Licence Fee or Annual Support Fee shall be payable by the Licensee to CareWorks on the execution of this Agreement.
- 6.3 The Annual Licence Fee shall be payable within 30 days of the date of the CareWorks invoice in respect thereof. Each invoice for Annual Licence Fees shall be issued on execution and annually on the anniversary of the execution of this Agreement.
- 6.4 CareWorks reserves the right to charge the Licensee interest in respect of the late payment of any sum due under this Agreement (as well after as before judgment) at the rate of 5% per annum from the due date therefore until payment.
- 6.5 CareWorks reserves the right to increase the Annual Licence Fee. Any increase will not exceed the current years []² consumer price index unless otherwise agreed by both parties.
- 6.6 Save as far as otherwise expressly provided, all amounts stated in this Agreement are expressed exclusive of applicable sales tax], and any applicable sales tax arising in respect of any supply made hereunder shall on the issue of a valid tax invoice in respect of same, be paid to the party making such supply by the party to whom it is made in addition to any other consideration payable therefore.


7. TERM AND TERMINATION

- 7.1 Subject to the provisions of clause 7.3 below, this Agreement shall commence on **>DATE** and shall continue for a period of [X] years (the “Initial Term”).

² Relevant country to be inserted.


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- 7.2 Subject to the provisions of Clause 7.3 below, on the expiry of the Initial Term, the term of the Agreement shall continue, unless terminated by either party giving to the other party at least six months' notice in writing.
- 7.3 CareWorks may immediately terminate this Agreement if the Licensee breaches any of the terms of this Agreement and either that breach is incapable of remedy or the Licensee fails to remedy such a breach within fifteen days of receipt of written notice from CareWorks requiring it to remedy that breach.
- 7.4 Either party shall be entitled to terminate this Agreement without prejudice to its other remedies forthwith by notice in writing to the other, if:- the other party is unable to pay its debts as they fall due; (ii) enters into compulsory or voluntary liquidation (other than for the purpose of a bona fide reconstruction or amalgamation); (iii) compounds with or convenes a meeting of its creditors; (iv) has a receiver or manager or administrative receiver or an administrator or examiner appointed over its assets; (v) ceases for any reason to carry on business; or (vi) takes or suffers any similar action or proceedings in any jurisdiction to those referred to in Clauses (i) to (vi) inclusive which in the opinion of the party giving notice, means that the other party may be unable to pay its debts as they fall due.
- 7.5 Termination of this Agreement for whatever reason shall not affect the accrued rights of the parties arising in any way out of this Agreement as at the date of termination, and in particular but without limitation, the right to recover damages from the other.
- 7.6 On Termination:
- 7.6.1 all rights granted to the Licensee under this Agreement shall cease;
- 7.6.2 the Licensee shall cease all activities authorised by this Agreement;
- 7.6.3 the Licensee shall immediately pay to CareWorks any sums due to CareWorks under this licence; **and**
- 7.6.4 the Licensee shall immediately destroy or return to CareWorks (at CareWorks' option) all copies of the Software and documentation relating to such Software then in its possession, custody or control and, in the case of destruction, certify to CareWorks that it has done so
- 7.7 In the event of the termination of this Agreement, no refund or credit will be offered by CareWorks or sought by you in relation to any fees paid by the Licensee to CareWorks.
- 7.8 All provisions of this Agreement which in order to give effect to their meaning need to survive its termination shall remain in full force and effect thereafter.

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8. WARRANTIES

- 8.1 CareWorks warrants that it has the right, power and authority to licence the same upon the terms and conditions of this Agreement.
- 8.2 CareWorks warrants that the Software will conform in all material respects to the Specification for a period of 90 days from the date of this licence (Warranty Period). If, within the Warranty Period, the Licensee notifies CareWorks in writing of any defect or fault in the Software in consequence of which it fails to conform in all material respects to the Specification, and such defect or fault does not result from the Licensee, or anyone acting with the authority of the Licensee, having amended the Software or used it outside the terms of this Agreement or for a purpose or in a context other than the Use or for a use or in a context for which it was not designed or in combination with any other software or hardware not provided or approved by CareWorks, CareWorks shall, at CareWorks' option, do one of the following:
- (a) repair the Software; or
 - (b) replace the Software; or
 - (c) terminate this licence immediately by notice in writing to the Licensee and refund any of the Fee paid by the Licensee as at the date of termination (less a reasonable sum in respect of the Licensee's use of the Software to the date of termination) on return of the Software and all copies thereof,
- provided the Licensee provides all the information that may be necessary to assist CareWorks in resolving the defect or fault, including sufficient information to enable CareWorks to re-create the defect or fault.
- 8.3 CareWorks does not warrant that the use of the Software will be uninterrupted or error-free.
- 8.4 The Licensee accepts responsibility for the selection of the Software to achieve its intended results.
- 8.5 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.
- 8.6 Except as expressly stated in this Agreement:
- (a) CareWorks' liability, whether under this Agreement or any collateral contract, for loss of or damage to the Licensee's tangible property caused by the negligence of CareWorks, its officers, employees, contractors or agents, shall not exceed the Fee paid by the Licensee to CareWorks pursuant to this Agreement;


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- (b) CareWorks shall have no liability for any losses or damages which may be suffered by the Licensee (or any person claiming under or through the Licensee), whether the same are suffered directly or indirectly or are special, immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
- (i) special damage even though CareWorks was aware of the circumstances in which such special damage could arise;
 - (ii) loss of profits;
 - (iii) loss of anticipated savings;
 - (iv) loss of business opportunity;
 - (v) loss of goodwill; and
 - (vi) loss of data.
- (c) the Licensee agrees that, in entering into this Agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this licence or (if it did rely on any representations, whether written or oral, not expressly set out in this licence) that it shall have no remedy in respect of such representations and (in either case) CareWorks shall have no liability otherwise than pursuant to the express terms of this Agreement.


8.7 The exclusions in Clause 10 shall apply to the fullest extent permissible at law.

8.8 CareWorks shall have no liability to remedy a breach of warranty where such breach arises as a result of any of the following circumstances:

- 8.8.1 any use of the Software by the Licensee other than in accordance with the terms of this Agreement;
- 8.8.2 the improper use, operation or neglect of the Software;
- 8.8.3 failure by the Licensee to implement the reasonable recommendations of CareWorks including in respect of, or solutions to, faults previously advised to CareWorks;
- 8.8.4 any repair, adjustment, alternation or modification of the Software;
- 8.8.5 the merger (in whole or in part) with any other software;
- 8.8.6 any breach by the Licensee of any of its obligations under any maintenance agreement in respect of its computer system;

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- 8.8.7 the use by the Licensee of the Software by a person other than CareWorks for a purpose for which it was not designed; or
- 8.8.8 the use of the Software with any third-party hardware or software products or services even if CareWorks has recommended, referred or introduced the Licensee to such hardware, software products or services.
- 8.9 CareWorks will indemnify the Licensee and hold the Licensee harmless against any damages (including costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action that the Licensee's possession and/or use of the Software pursuant to and in accordance with the terms and conditions of this Agreement infringes the copyright, trademark rights or other intellectual property rights of a third party (an "Intellectual Property Infringement") provided that the Licensee:
- 8.9.1 gives notice in writing to CareWorks of any Intellectual Property Infringement forthwith on becoming aware of same;
- 8.9.2 does not at any time admit liability or otherwise settle, compromise the said claim or action except upon the express written instructions of CareWorks
- 8.9.3 gives CareWorks the sole conduct of the defence to any claim or action in respect of an Intellectual Property Infringement and; and
- 8.9.4 acts in accordance with the reasonable instructions of CareWorks and give to CareWorks such assistance as it shall reasonably require in respect of the conduct of the said defence, including the filing of all pleadings and other court process and the provision of all relevant documents.
- 8.10 If an Intellectual Property Infringement is made, or in CareWorks' reasonable opinion is likely to be made, against the Licensee, CareWorks may at its sole option and expense:
- (a) procure for the Licensee the right to continue using the Software (or any part thereof) in accordance with the terms of this Agreement; or
- (b) modify the Software so that it ceases to be infringing; or
- (c) replace the Software with non-infringing software; or
- (d) terminate this Agreement immediately by notice in writing to the Licensee and refund any of the Fee paid by the Licensee as at the date of termination (less a reasonable sum in respect of the Licensee's use of the Software to the date of termination) on return of the Software and all copies thereof.
- 8.11 CareWorks shall have no liability to the Licensee in respect of an Intellectual Property Infringement if the same results from:

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8.11.1 any use of the Software by the Licensee other than in accordance with the terms of this Agreement;

8.11.2 use of the Software for a purpose for which it was not designed;

8.11.3 breach by the Licensee of its obligations under this Agreement;

8.11.4 alteration, modification, adjustment or enhancement made by the Licensee to the Software; or

8.11.5 any combination, connection, operation or use of the Software with any other equipment, software.

9. ASSIGNMENT

9.1 This Agreement is not assignable (in whole or in part) by the Licensee


9.2 CareWorks shall be entitled to assign and transfer all or any of its rights and obligations under this Agreement and such assignee or transferee shall be entitled to enforce such rights and obligations against the Licensee as if it were named in this Agreement.

10. FORCE MAJEURE

10.1 For the purposes of this Agreement, the expression "**Force Majeure**" shall mean an event which is beyond the control of an affected party and which such party could not anticipate or mitigate by means of insurance, contingency planning or any other prudent business means. Any event will only be considered Force Majeure if it is not attributable to the wilful act, neglect, default or other failure to take reasonable precautions of the affected party, its agents, employees or contractors. Industrial dispute or action shall not give rise to an event of Force Majeure.

10.2 No party shall in any circumstances be liable to the other for any loss of any kind whatsoever, including, but not limited to, any damages, whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.


10.3 If any party shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any failure or delay on its part, it shall with immediate effect notify the other party by the most expeditious method then available and shall inform the other party of the period for which it is estimated that such failure or delay shall continue.

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- 10.4 It is expressly agreed that any failure by CareWorks to perform, or any delay by CareWorks in performing, its liabilities, obligations and responsibilities under this Agreement which results from any failure or delay in the performance of its obligations by any person with which CareWorks shall have entered into any contract, supply arrangement, sub-contract or otherwise, shall be regarded as a failure or delay due to Force Majeure only in the event that such person shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement, sub-contract or otherwise as a result of circumstances of Force Majeure.
- 10.5 In the event of any event of Force Majeure subsisting for a period of 3 months or more:
- 10.5.1 the Licensee may, forthwith by notice to CareWorks, terminate the Agreement with immediate effect without any cost or liability whatsoever;
- 10.5.2 CareWorks may, forthwith by notice to the Licensee, terminate this Agreement and be discharged without further liability or obligations under this Agreement.
- 10.6 Nothing in this Agreement shall be taken as preventing the Council from using any alternative facilities to meet its business needs during the continuance of Force Majeure.

11. WAIVER, RELEASE AND REMEDIES

- 11.1 A waiver by CareWorks of any breach by the Licensee of any of the terms, provisions or conditions of this Agreement or the acquiescence of CareWorks in any act (whether commission or omission) of the Licensee which but for such acquiescence would be such a breach will not constitute a general waiver of such term, provision or condition or an acquiescence to any subsequent contrary act.
- 11.2 Any remedy or right conferred upon CareWorks for breach of this Agreement shall be in addition to and without prejudice to all other rights and remedies available to it whether pursuant to this Agreement or provided for by law.
- 11.3 No failure or delay by CareWorks in exercising any claim, remedy, right, power or privilege under this Agreement will operate as a waiver nor will a single or partial exercise of any claim, remedy, right, power or privilege preclude any further exercise of such or any other claim, right, power or privilege.
- 11.4 Any liability of the Licensee to CareWorks under this Agreement may in whole or in part be released, varied, postponed, compounded or compromised by CareWorks in its absolute discretion as regards the Licensee.

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12. COUNTERPARTS

- 12.1 This Agreement may be executed in either number of counterparts and by the parties on separate counterparts each of which when executed and delivered shall constitute an original and all such counterparts together constituting but one and the same agreement.

13. NOTICES

- 13.1 Any notice or other communication to the Licensee (whether required or permitted to be given under or in connection with this Agreement) will be in writing and will (at the option of the party giving the notice) be:

13.1.1 delivered by hand;

13.1.2 sent by fax;


13.1.3 sent by prepaid post; or

13.1.4 sent by e-mail to the address, fax number or email address set out in this Agreement for such party, or to such other address or facsimile number as is from time to time notified to the party giving the notice in compliance with the provisions of this clause 14:-

Party	Fax No	E-mail Address
CareWorks	+ 44 (0) 2890 242585	
The Licensee	>	>

Any notice or communication referred to in clause will be deemed to have been served:

- 13.2. if delivered by hand, on delivery:
- 13.2.1 if sent by fax, when the sender's fax machine issues confirmation that the relevant pages have been transmitted to the recipient's fax machine;
- 13.2.2 if sent by prepaid post, 48 (forty-eight) hours after posting; and
- 13.2.3 if sent by email on the expiration of 12 hours after despatch unless notice of non-delivery is received by the sender.
- 13.3 Each person giving a notice or making a communication hereunder by fax or email shall promptly confirm such notice or communication by post to the person to whom such notice or communication was addressed but the absence of any such confirmation will not affect the validity of any such notice or communication or the time upon which it is deemed to have been served.

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14. VARIATION

- 14.1 No variation of this Agreement will be valid unless it is in writing and signed by or on behalf of each of the parties.

15. FURTHER ASSURANCE

- 15.1 At the request of CareWorks from time to time, the Licensee shall (and shall procure that any other necessary person will) at its own cost and expense execute and do all such documents, acts and things as may be required subsequent to execution of this Agreement to implement this Agreement.

16. ANNOUNCEMENT

- 16.1 No announcement or disclosure regarding all or any part of the transactions contemplated by this Agreement will be made by any of the parties without the prior written approval of the other parties save for any such announcement as is required to be made under any applicable law in which case the announcement shall be made only after consultation with the other parties and after the other parties have, where practicable, been given the opportunity to approve such announcement.

17. WHOLE AGREEMENT


- 17.1 This Agreement together with any documents referred to in this Agreement contains the whole agreement between the parties relating to the transactions provided for in this Agreement and supersedes, cancels and replaces any and all previous agreements between such parties in respect of such matters. Each of the parties acknowledges that in entering into this Agreement it has not relied on any representations or warranties except for those contained in this Agreement and the documents referred to in this Agreement.

18. SEVERABILITY

- 18.1 Each of the provisions of this Agreement is separate and severable and enforceable. Accordingly, if at any time any provision is adjudged by any court of competent jurisdiction to be void or unenforceable the validity, legality or enforceability of the remaining provisions and of that provision in any other jurisdiction shall not in any way be affected or impaired.


19. COSTS

- 19.1 Each party shall bear any costs, fees or expenses incurred by it in connection with negotiating, preparing and entering into this Agreement.

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20. GOVERNING LAW AND JURISDICTION

20.1 This Agreement shall be governed by and construed in accordance with the laws of []. Each of the parties agrees for the benefit of the Licensee (without prejudice to the right of the Licensee to take proceedings in relation to this Agreement before any other court of competent jurisdiction) that the courts of [] shall have jurisdiction to hear and determine any suit, action or proceedings that may arise out of or in connection with this Agreement and for such purposes irrevocably submits to the jurisdiction of such courts.

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SCHEDULE 1

SOFTWARE

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SCHEDULE 2

USERS

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SCHEDULE 3

SERVICE LEVEL AGREEMENT

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SIGNED by >

on behalf of CAREWORKS

Position held:

SIGNED by >

on behalf of []

Position held: