Private & Confidential

DATED ??

SMARTGATE SOLUTIONS LIMITED (1)

and

[ ] (2)

SOFTWARE AS A SERVICE AGREEMENT

3volution
10 South Parade
Leeds
LS1 5QS

Contents

Clause

1. Interpretation 1
2. User subscriptions 4
3. Additional user site subscriptions 6
4. Services 7
5. Data Protection 7
6. Supplier's obligations 8
7. Customer's obligations 9
8. Charges and payment 10
9. Proprietary rights 11
10. Confidentiality 11
11. Warranties 12
12. Limitation of liability 13
13. Term and termination 15
14. Force majeure 17
15. Conflict 18
16. Variation 18
17. Waiver 18
18. Rights and remedies 18
19. Severance 18
20. Entire agreement 19
21. Assignment 19
22. No partnership or agency 19
23. Third party rights 19
24. Notices 20
25. Governing law and Jurisdiction 21

Authorised signatories: 27

Response and resolution times 29

Periodic review 29

Schedule

Schedule 1 Software and Specification 22

Schedule 2 Subscription Fees 23

Schedule 3 Support and Maintenance Subscription Services 24

Schedule 4 Processing details 30

THIS AGREEMENT is dated 2018

Parties

(1) **SMARTGATE SOLUTIONS LIMITED** incorporated and registered in England and Wales with company number 08335617 whose registered office is at No 1 Leeds, 26 Whitehall Road, Leeds LS12 1BE (the "**Supplier**").

(2) [ ] incorporated and registered in England and Wales with company number **[ ]** whose registered office is at [ ] (the "**Customer**").

Background

(A) The Supplier has developed and is the owner of Radar a software platform used for health and social care regulatory compliance.

(B) The Customer wishes to use the Supplier's service in its business operations.

(C) The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's services subject to the terms and conditions of this Agreement.

Agreed terms

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this Agreement:

"**Business Day**" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

"**Confidential Information**" means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 10.5;

"**Data Protection**" means the data inputted by the Customer, its users, or the Supplier on the Customer's behalf for the purpose of using the Subscription Services or facilitating the Customer's use of the Subscription Services;

"**Data Controller**", "**Data Processor**", "**Personal Data**" and "**Processing**" shall have the meanings given to them in the Data Protection Legislation;

"**Data Protection Legislation**" means all applicable laws and regulations relating to data protection, privacy and information security including (without limitation) the General Data Protection Regulation ("GDPR") (EU2016/679) and any national laws implementing, amending or replacing as applicable from time to time;

"**Effective Date**" means the date of this Agreement;

"**Fees**" means the Subscription Fees and Implementation Fees payable by the Customer to the Supplier for the User and/or Site Subscriptions, as set out in Schedule 2;

"**Implementation Fees**" means the fees for Implementation Services as set out in Schedule 2;

"**Implementation Services**" means any implementation, configuration and data services provided by the Supplier;

"**Initial Subscription Term**" means the initial term of this Agreement as set out in **Error! Reference source not found.**;

"**Maintenance Services**" means the maintenance and support services provided by the Supplier as further detailed in Schedule 3;

"**Normal Business Hours**" 9.00 am to 5.00 pm local UK time, each Business Day;

"**Renewal Period**" means the period described in clause 13.1;

"**Services**" means the Subscription Services, Maintenance Services and/or Implementation Services (as applicable);

"**Software**" means the online software applications provided by the Supplier as part of the Subscription Services as outlined in Schedule 1;

"**Specification**" means any specification of the Software as outlined in Schedule 1;

"**Subscription Fees**" means the subscription fees payable by the Customer to the Supplier for the User and/or Site Subscriptions, as set out in Schedule 2;

"**Subscription Services**" means the subscription services provided by the Supplier to the Customer under this Agreement ;

"**Subscription Term**" has the meaning given in clause 13.1 (being the Initial Subscription Term together with any subsequent Renewal Periods);

"**User and/or Site Subscriptions**" means the user subscriptions and/or site subscription purchased by the Customer pursuant to clause 8.1 and Schedule 2 which entitle users to access and use the Subscription Services in accordance with this Agreement;

"**Virus**" means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.

1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.

1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.

1.9 A reference to writing or written includes fax but not e-mail.

1.10 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

2. User subscriptions

2.1 Subject to the Customer purchasing the User and/or Site Subscriptions in accordance with clause 3.3 and clause 8.1, complying with the restrictions set out in this clause 2 and the other terms and conditions of this Agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right to use the Subscription Services during the Subscription Term solely for the Customer's internal business operations.

2.2 The Customer undertakes that:

(a) it shall not exceed the number of User and/or Site Subscriptions it has purchased from time to time; and

(b) it will not allow or suffer any User Subscription to be used by more than one individual user unless it has been reassigned in its entirety to another individual user, in which case the prior user shall no longer have any right to access or use the Subscription Services.

2.3 If an audit by the Supplier reveals that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with Schedule 2 within 10 Business Days of the date of the relevant audit.

2.4 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Subscription Services that:

(a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

(b) facilitates illegal activity;

(c) depicts sexually explicit images;

(d) promotes unlawful violence;

(e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

(f) in a manner that is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

2.5 The Customer shall not:

(a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:

(i) and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or documentation provided by the Supplier (as applicable) in any form or media or by any means;

(ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;

(b) access all or any part of the Subscription Services and any documentation provided by the Supplier in order to build a product or service which competes with the Subscription Services;

(c) use the Subscription Services to provide services to third parties;

(d) subject to clause 21.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Subscription Services and/or documentation provided by the Supplier available to any third party, or

(e) attempt to obtain, or assist third parties in obtaining, access to the Subscription Services , other than as provided under this clause 2.

2.6 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Subscription Services and, in the event of any such unauthorised access or use, promptly notify the Supplier.

2.7 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

3. <u>Additional user site subscriptions</u>

3.1 Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Subscription Term, purchase additional User and/or Site Subscriptions in excess of the number set out in Schedule 2 and the Supplier shall grant access to the Subscription Services to such additional users and/or Sites in accordance with the provisions of this Agreement.

3.2 If the Customer wishes to purchase additional User and/or Site Subscriptions, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional User and/or Site Subscriptions and respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld).

3.3 If the Supplier approves the Customer's request to purchase additional User and/or Site Subscriptions, the Customer shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional User and/or Site Subscriptions as set out in Schedule 2 and, if such additional User and/or Site Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-

rated for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

4. Services

4.1 The Supplier shall, during the Subscription Term, provide the Subscription Services to the Customer on and subject to the terms of this Agreement.

4.2 The Supplier will provide the Maintenance Services during Normal Business Hours in accordance with Schedule 3. The Supplier may in its sole discretion amend the support services policy from time to time. The Customer may purchase enhanced support services separately at the Supplier's then current rates.

4.3 The Supplier may provide the Implementation Services as detailed in Schedule 3 or as agreed between the parties in writing at a later stage. Any such additional Implementation Services will be deemed to form part of this Agreement and all the terms of this Agreement will apply to such additional services.

5. Data Protection

5.1 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and the Supplier is the Data Processor. Schedule 4 sets out the nature, scope and purpose of processing, the duration of processing and the types of Personal Data.

5.2 Each party shall comply with its obligations under the Data Protection Legislation in respect of the Personal Data that it processes.

5.3 The Supplier shall process Personal Data only in accordance with the Customer's written instructions and for the purposes authorised by the Customer.

5.4 The Customer warrants that all of the Personal Data to be processed by the Supplier complies with the Data Protection Legislation and in particular that:

(a) the Customer has a lawful basis to transfer the Personal Data to the Supplier; and

(b) any Processing, in accordance with this Agreement, shall not be a breach of the Data Protection Legislation.

5.5 Each party agrees to indemnify and keep indemnified the other against all direct losses, damages, costs, claims incurred by the indemnified party as a result of a breach of the Data Protection Legislation by the indemnifying party.

6. Supplier's obligations

6.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

6.2 The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, the Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1. Notwithstanding the foregoing, the Supplier:

(a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and

(b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

6.3 This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

6.4 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

7. Customer's obligations

7.1 The Customer shall:

(a) provide the Supplier with:

(i) all necessary co-operation in relation to this Agreement; and

(ii) all necessary access to such information as may be required by the Supplier;

in order to provide the Services, including but not limited to Data Protection, security access information and configuration services;

(b) comply with all applicable laws and regulations with respect to its activities under this Agreement;

(c) carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;

(d) ensure that the users use the Subscription Services in accordance with the terms and conditions of this Agreement and shall be responsible for any user's breach of this Agreement;

(e) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and

(f) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

8. Charges and payment

8.1 The Customer shall pay the Fees to the Supplier for the Services in accordance with this clause 8 and Schedule 2.

8.2 The Customer shall on the Effective Date provide to the Supplier valid, up-to-date approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:

(a) its approved purchase order information to the Supplier, the Supplier shall invoice the Customer:

(i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and

(ii) subject to clause 13.1, at least 30 days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period,

and the Customer shall pay each invoice within 30 days after the date of such invoice.

8.3 If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:

(a) the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Subscription Services and the Supplier shall be under no obligation to provide any or all of the Subscription Services while the invoice(s) concerned remain unpaid; and

(b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of Barclays Bank plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

8.4 All amounts and fees stated or referred to in this Agreement:

(a) shall be payable in pounds sterling;

(b) are, subject to clause 11.3(c), non-cancellable and non-refundable;

(c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

8.5 The Supplier shall be entitled to increase the Subscription Fees, at the start of each Renewal Period by giving 90 days' prior notice to the Customer and Schedule 2 shall be deemed to have been amended accordingly.

9. Proprietary rights

9.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Subscription Services and to any documentation provided to the Customer. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Subscription Services or the documentation.

10. Confidentiality

10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:

(a) is or becomes publicly known other than through any act or omission of the receiving party;

(b) was in the other party's lawful possession before the disclosure;

(c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

(d) is independently developed by the receiving party, which independent development can be shown by written evidence; or

(e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

10.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

10.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

10.5 The Customer acknowledges that details of the Subscription Services, and the results of any performance tests of the Subscription Services, constitute the Supplier's Confidential Information.

10.6 The Supplier acknowledges that the Data Protection is the Confidential Information of the Customer.

10.7 This clause 10 shall survive termination of this Agreement, however arising.

10.8 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

11. Warranties

11.1 Smartgate warrants that the Services will be provided using reasonable skill and care.

11.2 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

11.3 If, within the 120 days from the Effective Date, the Customer notifies Smartgate in writing of any defect or fault in the Services in consequence of which it fails to conform in a material respect to the Specification, and such defect or fault does not

result from the Customer, or anyone acting with the authority of the Customer, having amended the Services or used it outside the terms of this Agreement for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by Smartgate, Smartgate shall, at it's option, do one of the following:

(a) repair the Services;

(b) replace the Services; or

(c) terminate this Agreement immediately by notice in writing to the Customer and refund any of the Subscription Fees paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Services to the date of termination), provided the Customer provides all the information that may be necessary to assist Smartgate in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable Smartgate to re-create the defect or fault.

11.4 The Customer accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Customer.

12. Limitation of liability

12.1 This clause 11 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

(a) arising under or in connection with this Agreement;

(b) in respect of any use made by the Customer of the Services or any part of them; and

(c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

12.2 Except as expressly and specifically provided in this Agreement:

(a) the Customer assumes sole responsibility for results obtained from the use of the Subscription Services by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Subscription Services, or any actions taken by the Supplier at the Customer's direction; and

(b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement.

12.3 Nothing in this Agreement excludes the liability of the Supplier:

(a) for death or personal injury caused by the Supplier's negligence; or

(b) for fraud or fraudulent misrepresentation.

12.4 Subject to clause 12.2 and clause 12.3:

(a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits; loss of business; depletion of goodwill and/or similar losses or loss or corruption of data or information; or pure economic loss, or for any special, indirect or consequential loss; costs; damages; charges or expenses however arising under this Agreement; and

(b) the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Subscription Fees paid for the User and/or Site Subscriptions during the 12 months immediately preceding the date on which the claim arose.

13. Term and termination

13.1 This Agreement shall, unless otherwise terminated as provided in this clause 13, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this Agreement shall be automatically renewed for successive periods of 12 months (each a "**Renewal Period**"), unless:

(a) either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

(b) otherwise terminated in accordance with the provisions of this Agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

13.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

(a) the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;

(b) the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

(c) the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;

(d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts

or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

(e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;

(h) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

(i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

(j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

(k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2(d) to clause 13.2(j) (inclusive); or

(l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

13.3 On termination of this Agreement for any reason:

(a) all licences and access rights granted under this Agreement shall immediately terminate;

(b) each party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other party;

(c) the Supplier may destroy or otherwise dispose of any of the Data Protection in its possession unless the Supplier receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Data Protection. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Data Protection; and

(d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination shall not be affected or prejudiced.

14. Force majeure

14.1 The Supplier shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of

God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

15. Conflict

15.1 If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.

16. Variation

16.1 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17. Waiver

17.1 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18. Rights and remedies

18.1 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

19. Severance

19.1 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

19.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

20. Entire agreement

20.1 This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

20.2 Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

21. Assignment

21.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

21.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

22. No partnership or agency

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

23. Third party rights

This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

24. Notices

24.1 Any notice to be given under this Agreement must be in writing, may be delivered to the other party or parties by any of the methods set out in the left hand column below, and will be deemed to be received on the corresponding day set out in the right hand column:

Method of service	**Deemed day of receipt**
By hand or courier	the day of delivery
By pre-paid first class post	the second Business Day after posting
By recorded delivery post	the next Business Day after posting
By email	the day of sending, provided the sender receives notice of error-free transmission, or if sent after 16.00 (recipient's local time) on the next Business Day

The parties' respective representatives for the receipt of notices are, until changed by notice given in accordance with this clause, as follows:

For Smartgate Solutions Limited

Name: Paul Johnson

Address: No 1 Leeds, 26 Whitehall Road,
Leeds LS12 1BE

Email: paul@smartgatesolutions.co.uk

This clause does not apply to email as a form of service of any proceedings or any documents in any legal action, or where applicable, any arbitration or other method of dispute resolution.

25. Governing law and Jurisdiction

25.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

25.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement has been entered into on the date stated at the beginning of it.

Schedule 1 Software and Specification

Initial Subscription Term:

- [ ]

Modules:

- [ ]

Specification:

- [ ]

Schedule 2 Subscription Fees

1. Subscription Fees

   The Subscription Fees shall amount to a total of £[AMOUNT], based on [NUMBER] User and/or Site Subscriptions at £[AMOUNT] per User Subscription.

2. [Additional User Subscription Fees

   Additional User and/or Site Subscriptions may be purchased by the Customer in accordance with clause 3 at £[AMOUNT] per User Subscription.]

3. Implementation Fees

   One off implementation fee of £[ ] shall be payable upon the effective date. (Includes training)

   Payment Schedule

   [ ]

Schedule 3 Support and Maintenance Subscription Services

1. Scope of Maintenance Services

Smartgate agrees to provide the Customer with the following services:

(a) to provide the Maintenance Services using reasonable skill and care;

(b) to respond to difficulties in using the Software and endeavour to resolve those difficulties by adhering to the Service Level Agreement as set out in paragraph 7;

(i)

(b) provide alterations to the Software as agreed with the Customer;

(c) where agreed, provide training at the Customer's expense and request charged at Smartgate’s standard day rate;

(d) where agreed, provide further documentation at the Customer's expense and request charged at Smartgate’s standard day rate;

(e) where agreed, provide consultancy at the Customer's expense and request charged at Smartgate’s standard day rate;

(f) ensure that Software supplied by Smartgate are reasonably tested and virus checked before delivery; and

(g) endeavour to cause minimum interference and inconvenience to the business of the Customer consistent with achieving Smartgate's obligations under this Agreement.

The Customer agrees to:

(h) report all unresolved difficulties, faults and discrepancies with the Software as soon as practical to Smartgate using the procedure specified in Annex 1;

(i) provide Smartgate with reasonable and prompt remote access to equipment associated with the operation of the Software;

(j) provide suitable personnel, trained in computer operation and with adequate knowledge of the Customer's operations and the Customer's computer systems, to assist with diagnosis and rectification;

(k) update all copies of documentation with amendments or copies of amendments provided by Smartgate promptly following delivery;

(l) accept full responsibility for security of all data;

(m) accept full responsibility for checking that all Software supplied are virus free;

(n) provide such information and data as may be required by Smartgate for diagnostic purposes;

(o) provide reasonable access to premises and resources as may be required by Smartgate for Smartgate to fulfil its obligations to the Customer;

(p) provide all reasonable assistance as may be required by Smartgate in the pursuance of its obligations under this Agreement;

(q) reimburse Smartgate in accordance with their standard rate of £75 per hour for Maintenance Services provided and for visits to the site made at the request of the Customer for the express purpose of diagnosis of difficulties which:

(i) prove not to be faults of the Software; or

(ii) cannot be reproduced during the visit; or

(iii) are duplications of previously rectified faults;

and rectification of faults in the Software which:

(iv) cannot be diagnosed because the Customer has not complied with the conditions of this Agreement; or

(v) arise from non-compliance with the recommended procedures and practices contained within any documentation provided by Smartgate and Smartgate's training courses (if applicable).

2. Maintenance Services Term

(a) Where Smartgate agrees to provide Maintenance Services to the Customer and unless otherwise agreed between the parties in writing, the Maintenance Services shall commence on the Effective Date and shall continue until termination of this Agreement.

3. Availability

(a) The Subscription Services will be available for 99% of the time in any 3 month period and the hosting services will be provided by Smartgate using reasonable skill and care except for:

(i) planned maintenance. Smartgate will give the Customer notice and will undertake outside Normal Business; and

(ii) unscheduled maintenance performed outside Normal Business Hours due to emergency situations.

4. Software Faults

(a) Most faults will be capable of being fixed rapidly by a support engineer. Occasionally a fault may require a software change. In such cases it is important that such fixes are tested prior to being deployed in a live environment by following a recognised software development process. Such faults requiring development will be rapidly progressed but will be excluded from the fault SLA.

(b) The hosting services assume “fair usage” of the hosted products. Where excessive usage occurs then Smartgate retains the right to levy additional charges for excessive bandwidth use etc.

(c) The Supplier will be liable for any direct or indirect costs arising from any data loss whereby;

(i) A fault of the software directly affects the data loss

(ii) Negligence by the company directly affecting the data loss

.

5. Reporting Procedure

(a) The Customer's Technical Representatives specified below shall provide a single point of contact between the Customer and Smartgate. A suitable alternative person shall be nominated when the Technical Representative is absent.

(b) All difficulties will be reported to a suitably informed and nominated Customer Technical Representative who will ensure that the conditions of this Agreement are satisfied prior to communication with Smartgate.

(c) The information required for diagnosis by Smartgate shall be specified by Smartgate within any program documentation.

(d) Communication of difficulties shall be by telephone, facsimile, or email, details of which shall be specified by Smartgate within the program documentation.

(e) Smartgate shall maintain a record of reported difficulties.

(f) Smartgate shall provide the Customer with a formal response to reported difficulties, which shall contain results of diagnosis, and where appropriate, estimated or actual rectification dates.

(g) When a bug or issue has been satisfactorily resolved or rectified, the Customer shall acknowledge such to Smartgate.

Authorised signatories:

For Smartgate: Paul Johnson CEO

For The Customer: [ ] [ ]

Technical representatives and contact numbers:

Smartgate Solutions Ltd: Lee Williams Technical Director

Phone	+44 (0) 330 223 2740
Email	support@radarhealthcare.net
Address	Smartgate Solutions Ltd, No. 1 Leeds, 26 Whitehall Road, Leeds, LS12 1BE

6. Service Level Agreement

Introduction

This document contains the proposed SLA model and model for incident/problem classification as part of the Maintenance Services for Radar.
Cosmetic and aesthetic defects will be handled through agreement at the periodic review meetings.

Prioritisation of incidents

Each incident or problem that occurs is assigned a prioritisation according to the following:

Priority	Description	Type of response
P1	Total system failure or failure of a critical function which is required on a daily basis, or a function which may not be used on a daily basis but fails at a critical time. No work around exists in the system.	Immediate action
P2	Same as P1 but a work around exists in the system.	Immediate action
P3	Other functional failures.	Plan for correction as soon as possible
P4	The system or software does not comply with the specified and agreed requirements but this doesn't have a significant impact on the business function to be carried out.	Plan for correction as soon as possible

Response and resolution times

The required response and resolution times are as follows during the hours between 9.00am and 5.00pm UK time (Monday to Friday) excluding bank and public holidays ("**Working Day**").

Priority	Response	Resolution	Frequency of Progress Update reports
P1	Within 1hr	Within 4 elapsed hours	Every hour
P2	Within 1hr	Within 8 elapsed hours	Every hour
P3	Within 90 mins	Within 3 Business Days	Every half day
P4	Within 2 hours	Within 2 elapsed months	Every elapsed month

Outside of the 'Working Day', The Licensee will be provided with:

Telephone reporting service with a Smartgate representative available to talk the Customer's IT staff through fault finding, with any issues unable to be resolved there and then being escalated to Technical Support for immediate attention during normal working hours

All calls to Radar out of office hours are made only by the Customer's Technical Representatives only after internal IT systems and systems feeding into Radar have been declared failure-free.

Following investigation of faults that are reported and are not as a result of failure of Radar Healthcare, a fee of £75.00 per hour / part hour will be charged to cover the investigation costs.

Periodic review

A meeting will be held periodically to review the defects in advance and progress of resolution and response times. The frequency of these meetings will be agreed in advance by the parties based on the volume and criticality of the defects.

Schedule 4 Processing details

Subject Matter / Purpose of the Processing

The Data Processor provides a software system for use by the Data Controller which is populated with Personal Data solely by the Data Controller and/or its authorised representatives. The Data Processor only has access to the Personal Data which is placed in the system by the Data Controller.

Processing Operations

The Personal Data processed by the Data Processor will be subject to the following basic Processing activities:
Holding, transferring and amending Personal Data solely as instructed by the Data Controller further to the Agreement or in writing.

Data Subjects

The Personal Data Processed by the Data Processor concern the following categories of the data subjects:
Customers and prospects of the Data Controller.

Categories of Data

The Data Controller is solely responsible for deciding what Personal Data the Data Processor may access and this could be anything which falls within the definition of Personal Data as defined in the GDPR and may include special category data if inputted by the Data Controller.

Signed by **PAUL JOHNSON**	.....
for and on behalf of **SMARTGATE SOLUTIONS LIMITED**	Director
Signed by **[ ]**	.....
for and on behalf of **[ ]**	Director