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## **SOFTWARE LICENCE AND TECHNICAL SUPPORT AGREEMENT**

SOLLIS CLARITY™

**Sollis Clarity** | Health Analytics

The Sollis Partnership Ltd

and

[CUSTOMER NAME]

July 2020



**THIS AGREEMENT** is made on the [DATE]

**BETWEEN:**

- (1) **THE SOLLIS PARTNERSHIP LIMITED** (registered number 03612679) whose registered office is at 2<sup>nd</sup> Floor, Millfield, Dorking Road, Tadworth, Surrey, KT20 7TD ("**Sollis**");
- (2) **[CUSTOMER]** whose registered office is at **[CUSTOMER ADDRESS]** (the "**Customer**");

**RECITAL**

Sollis has agreed to grant the Customer a non-exclusive licence to use the computer software programs and associated documentation listed in the Schedule and to provide certain services to the Customer in respect of delivery technical support and training upon the terms and conditions of this Agreement

**OPERATIVE PROVISIONS**

**1 DEFINITIONS**

- 1.1 In this Agreement including the Schedules hereto the following words shall have the following meanings:

**"Additional Charges"**

Sollis' rates from time to time for work undertaken on a time and materials basis together with all expenses reasonably incurred;

**"Customer Tasks"**

means the tasks to be undertaken by the Customer for Sollis to be able to configure, deliver and install the Software in a timely manner;

**"Delivery Date"**

the estimated date for the delivery of the Licensed Software Materials to the Site;

**"Designated Equipment"**

means the machine(s) to be provided by the Customer which comply in all respects with the requirements;

**"Effective Date"**

means [DATE];

**"Implementation Services"**

the implementation services to be provided by Sollis;

**"Installation Tests"**

means Sollis' standard installation and test procedures for the Software;

**"Intellectual Property"**

means all inventions, patents, utility models, designs (both registered or unregistered and including rights relating to semi-conductor topographies), database rights, copyright and trade marks (both registered and unregistered), together with all rights to the grant of and applications for the same and including all similar or analogous rights and all other rights in the nature of intellectual and industrial property throughout the world and all future rights of such nature;

**“Licence Fee”**

the annual fee for the licence and Services as the same may be varied in accordance with clause 4.4 below;

**“Licensed Software Materials”**

means the Software and the Program Documentation;

**“New Release”**

means any improved or completed version of the Software or Program Documentation from time to time issued by Sollis pursuant to clause 6 below but which does not constitute a New Version;

**“New Version”**

means a significant new version of the Software which contains such significant different or new functionality compared with previous versions as to be generally accepted in the marketplace as constituting a separate product and is publically marketed by Sollis as such;

**“Parties”**

means Sollis and the Customer collectively and “Party” means either of them and their permitted assignees;

**“Program Documentation”**

the instruction manuals user guides and other to be made available by Sollis at its discretion in either printed or machine readable form to the Customer;

**“Services”**

the provision of Technical Support and training services in accordance with respectively clauses 6 and 16 below;

**“Site”**

the address for delivery of the Licensed Software Materials specified by the Customer;

**“Software”**

the software programs in object code form identified by title and reference number including any Update of the same and any new version that may be licensed to the Customer;

**“Technical Support”**

the provision of such categories of technical support in accordance with clause 6 of this Agreement;

**“Use”**

the copying or transmission of the Software (or where in machine readable form) the Program Documentation into the Designated Equipment for the processing of the instructions contained in the Software (or as the case may be) the Program Documentation;

**“Year”**

means a period of twelve months during the term of this Agreement commencing on **[DATE]** and ending on **[DATE]** the following year SAVE THAT the first Year of this Agreement commences on the Effective Date and ends on **[DATE]** and the last Year of this Agreement shall run from the commencement of that Year until the date of termination of this Agreement.

## 1.2 Construction

- 1.2.1 In this Agreement, unless otherwise specified or the context otherwise requires:
- (a) words importing the singular only shall include the plural and vice versa;
  - (b) words importing the whole shall be treated as including a reference to any part;
  - (c) reference to this Agreement or to any other document is a reference to this Agreement or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time as permitted by the provisions of this Agreement; and
  - (d) reference to any legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept, state of affairs or thing shall in respect of any jurisdiction other than England be deemed to include that which most closely approximates in that jurisdiction to the English legal term.
- 1.2.2 Any phrase in this Agreement introduced by the term “include”, “including”, “in particular” or similar expression will be construed as illustrative and will not limit the sense of the words preceding that term.
- 1.2.3 Headings used in this Agreement are for reference only and shall not affect its construction or interpretation.

## 1.3 Other references

In this Agreement a reference to:

- 1.3.1 “**this Agreement**” means this agreement and all Schedules and other attachments and recitals to this agreement;
- 1.3.2 “**business day**” means a day, other than a Saturday or a Sunday, on which banks are open for business in London;
- 1.3.3 “**person**” includes any individual, firm, company, corporation, body corporate, government, state or agency of state, trust or foundation, or any association, partnership or unincorporated body of two or more of the foregoing (whether or not having separate legal personality and wherever incorporated or established); and
- 1.3.4 “**written**” or “**in writing**” includes faxes and any non-transitory form of visible reproduction of words and email but not text messaging via mobile phone.

## 2 DURATION

Subject to the provisions for earlier termination contained in this Agreement, this Agreement will come into effect on the Effective Date and will continue unless and until terminated by either party on not less than three (3) months’ notice in writing to the other, such notice to expire on any anniversary of the Effective Date.

## 3 GRANT OF LICENCE AND PROVISION OF SERVICES

- 3.1 In consideration of the payment by the Customer from time to time of the Licence Fee in accordance with clause 4 below Sollis hereby:
- 3.1.1 grants to the Customer a non-exclusive licence to Use the Software (and where appropriate the Program Documentation) upon the Designated Equipment and to possess and refer to the Program Documentation; and
  - 3.1.2 undertakes to the Customer to provide the Services upon the terms and conditions of this Agreement using reasonable care and skill.

## **4 LICENCE FEE**

- 4.1 The Licence Fee shall include the cost of:
- 4.1.1 the delivery of the Licensed Software Materials and any New Release thereof to the Site; and
  - 4.1.2 the provision of the Services.
- 4.2 The Licence Fee shall not include value added tax which shall be payable by the Customer in the manner and at the rate from time to time prescribed by law.
- 4.3 The Licence Fee (together with value added tax thereon) shall be levied by Sollis in accordance with the terms agreed. Licence fees are due quarterly in advance. Fees shall be payable by the Customer within thirty (30) days of receipt of Sollis' invoice.
- 4.4 Sollis shall be entitled to vary the Licence Fee in respect of any Year of this Agreement with the exception of the first year, by giving not less than ninety (90) days' notice thereof to the Customer SAVE THAT the percentage increase in the Licence Fee shall not exceed the percentage increase in the Retail Prices Index in the twelve (12) months prior to the date of the notice.
- These assumptions are:
- 4.4.1 that the resident populations served by those GP practices is not materially different to the populations set out in the contract; and
  - 4.4.2 that the basis of the estimates for GP Data Extraction subsequent years remain valid.
- 4.5 If payment of an invoice is not made in full by the due date and there is no bona fide dispute in relation to the whole of the amount unpaid, Sollis shall, without prejudice to any other rights or remedies, have the right to:
- 4.5.1 suspend the Licence by notice in writing until all sums due are paid;
  - 4.5.2 suspend any Services being undertaken and work under any other agreements with the Customer; and
  - 4.5.3 charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of three per cent (3%) per annum above the Barclays Bank plc base rate from time to time (or such other bank as Sollis may from time to time specify), until payment. In the alternative Sollis may claim interest at its discretion under the Late Payment of Commencement Debts (Interest) Act 1998.

## **5 DELIVERY**

- 5.1 Sollis shall use all reasonable endeavours to deliver one copy of each of the Software and the Program Documentation to the Site on the Delivery Date or as soon thereafter as is possible provided that time shall not be of the essence with respect to this obligation.
- 5.2 The Customer agrees to:
- 5.2.1 perform the Customer Tasks in a timely manner;
  - 5.2.2 provide properly competent and qualified personnel with respect to its obligations under this Agreement;
  - 5.2.3 promptly perform any acts reasonably requested of it by Sollis;
  - 5.2.4 ensure that the Designated Equipment is installed at the Site and ready for use on or before the Delivery Date; and

- 5.2.5 ensure that the Designated Equipment is in good working order and suitable for the purposes for which it is used and that it conforms to all relevant United Kingdom standards or requirements.
- 5.3 If, as a result of any act or omission by the Customer or its agents (howsoever caused) which is not directly and wholly caused by Sollis (including without limitation the provision of any incorrect or inadequate information or data by the Customer or a delay in or non-performance of the Customer Tasks), Sollis is prevented or delayed from performing any of its obligations under this Agreement or the cost of performance increases, then:
- 5.3.1 the Delivery Date will be extended for a reasonable period;
- 5.3.2 the Customer shall pay at Sollis' standard time and materials rates for any additional time spent and materials and computer time used by the Sollis with respect to any delays or extra work caused by the act or omission of the Customer; and
- 5.3.3 Sollis may recover all other reasonable costs, loss or damage from the Customer which it sustains as a direct result of the act or omission.
- 5.4 The Customer agrees to provide Sollis free of charge during the Customer's normal working hours, or such other hours as Sollis may reasonably request, all information, facilities and services reasonably required by Sollis to prepare and test the Software including, without limitation, use of a telephone, computer runs, core dumps, print-outs, data preparation, office accommodation, typing, photocopying. Such assistance may require full, safe and uninterrupted access to the Software in person and remotely with adequate system privileges as reasonably required by Sollis, and, if requested by Sollis, such access shall be outside the Customer's normal business hours. Such assistance may be requested where the Software cannot be properly evaluated or tested at Sollis' premises, due to features specific to the Customer's operational use of the Software.

## **6 TECHNICAL SUPPORT**

- 6.1 With effect from the Signature Date and for the duration of this Agreement Sollis shall provide Technical Support in respect of the Software within the Response Periods and Resolution Periods.
- 6.2 Technical Support shall not include the diagnosis and rectification of any fault resulting from:
- 6.2.1 the improper use operation or neglect of either the Licensed Software Materials or the Designated Equipment;
- 6.2.2 the modification of the Licensed Software or their merger (in whole or in part) with any other software;
- 6.2.3 the use of the Software on equipment other than the Designated Equipment;
- 6.2.4 the failure by the Customer to implement recommendations in respect of or solutions to faults previously advised by Sollis;
- 6.2.5 any repair adjustment alteration or modification of the Software by any person other than Sollis without Sollis' prior consent;
- 6.2.6 any breach by the Customer of any of its obligations under any maintenance agreement in respect of the Designated Equipment;
- 6.2.7 the Customer's failure to install and Use upon the Designated Equipment in substitution for the previous release any New Release of the Software within seven (7) days of receipt of the same; or
- 6.2.8 the use of the Software for a purpose for which it was not designed.

- 6.3 For so long as Sollis is providing the Services the Customer shall co-operate with Sollis in all matters relating to the Services and provide, for Sollis, its agents, sub-contractors and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as requested by Sollis.
- 6.4 In order to enable Sollis' support personnel to perform diagnostic and remedial work, the Customer shall ensure that the Designated Equipment includes industry standard remote access facilities. This will normally be via the NHS network (N3/HSCN) utilising Remote Desktop (RDP) access to each supported Server. (Sollis have found that the use of VPN type connections over the public internet do not provide adequate access but is prepared to discuss such alternatives to the use of N3/HSCN where these can be proven sufficient). If such facilities are not available, Sollis reserves the right to levy Additional Charges to reflect the increased levels of work to be carried out by Sollis.
- 6.5 Sollis shall upon request by the Customer provide Technical Support notwithstanding that the fault results from any of the circumstances described in clauses 6.2 to 6.4 above. Sollis shall in such circumstances be entitled to levy Additional Charges in the manner set out in clause 7.6 below.
- 6.6 Without prejudice to clause 6.5 above Sollis shall be entitled to levy reasonable Additional Charges in the manner set out in clause 6.7 below if Technical Support is provided in circumstances where any reasonably skilled and competent data processing operator would have judged the Customer's request to have been unnecessary.
- 6.7 Additional Charges shall be levied by Sollis monthly in arrears and shall be payable by the Customer (together with value added tax thereon) within thirty (30) days of receipt of an invoice therefore.

## **7 PROPERTY AND CONFIDENTIALITY IN THE LICENSED SOFTWARE MATERIALS**

- 7.1 The Licensed Software Materials contain confidential information of Sollis and all copyright trademarks and other intellectual property rights in the Licensed Software Materials are the exclusive property of Sollis.
- 7.2 The Customer shall not:
- 7.2.1 save as provided in clause 8 below copy the whole or any part of the Licensed Software Materials;
  - 7.2.2 modify merge or combine the whole or any part of the Licensed Software Materials with any other software or documentation;
  - 7.2.3 assign transfer sell lease rent charge or otherwise deal in or encumber the Licensed Software Materials nor use on behalf of or make available the same to any third party; or
  - 7.2.4 reverse compile the whole or any part of the Licensed Software Materials from object code into source code.
- 7.3 The Customer shall:
- 7.3.1 keep confidential the Licensed Software Materials and limit access to the same to those of its employees agents and sub-contractors who either have a need to know or who are engaged in the Use of the Software (including where appropriate the Program Documentation);
  - 7.3.2 reproduce on any copy of the Licensed Software Materials Sollis' copyright and trade mark notices;
  - 7.3.3 maintain an up-to-date record of the number of copies of the Licensed Software Materials and their location and upon request forthwith produce such record to Sollis; and

7.3.4 without prejudice to the foregoing take all such other steps as shall from time to time be necessary to protect the confidential information and intellectual property rights of Sollis in the Licensed Software Materials.

7.4 The Customer shall inform all relevant employees agents and sub-contractors that the Licensed Software Materials constitute confidential information of Sollis and that all intellectual property rights therein are the property of Sollis and the Customer shall take all such steps as shall be necessary to ensure compliance by its employees agents and sub-contractors with the provisions of this clause 7.

## **8 COPYING OF THE LICENSED SOFTWARE MATERIALS**

8.1 The Customer shall be entitled to make one back-up copy of the Software. Any such copy shall in all respects be subject to the terms and conditions of this Agreement and shall be deemed to form part of the Software.

8.2 The Customer shall not be entitled to copy in whole or in part the Program Documentation.

## **9 USE ON NON-DESIGNATED EQUIPMENT AND RELOCATION OF THE DESIGNATED EQUIPMENT**

9.1 If the Designated Equipment is for any reason inoperable the Customer shall be entitled without extra charge to use the Software upon such alternative machine as Sollis shall approve (such approval not to be unreasonably withheld) until such time as the Designated Equipment once more becomes operable.

9.2 The Licence shall not be entitled to replace the Designated Equipment without the prior consent of Sollis (such consent not to be unreasonably withheld).

9.3 If the Customer shall move the Designated Equipment from the Site to a new location then without prejudice to the provisions of clause 4.4 above Sollis shall be entitled to make such reasonable increase to the Licence Fee as shall be necessary to take account of any increased costs that it shall incur in providing Technical Support at the new location.

## **10 WARRANTY**

10.1 Subject to the exceptions set out in clause 6.2 above and the limitations upon its liability in clause 11 below Sollis warrants that:

10.1.1 its title to and property in the Licensed Software Materials is free and unencumbered and that it has the right power and authority to license the same upon the terms and conditions of this Agreement;

10.1.2 the media upon which the Licensed Software Materials are stored will for a period of thirty (30) days from the Effective Date be free from defects in materials design and workmanship; and

10.1.3 it will perform the Services with reasonable care and skill.

10.2 Sollis shall not have any liability under clause 10.1 to the extent that the alleged breach of warranty arises from:

10.2.1 use of the Software

- (a) in combination with software or hardware not supplied or authorised in writing by Sollis;
- (b) if they have not been installed by Sollis;
- (c) other than in accordance with the latest version of the Program Documentation supplied to the Customer; or
- (d) other than in compliance with this Agreement;



- 10.2.2 the repair, adjustment, alteration or modification of the Software or their merger (in whole or in part) with any other software unless carried out by Sollis;
- 10.2.3 any matter for which the Customer is responsible under clause 7.2;
- 10.2.4 failure of any hardware, software networks, communications systems or other equipment not supplied by Sollis;
- 10.2.5 failure by the Customer to implement recommendations previously advised by Sollis in respect of or solutions to faults;
- 10.2.6 use of a release of the Software other than (A) the latest release or (B) the release immediately preceding the latest release, provided such immediately preceding release was installed not less than 12 months prior to the date of the claim; or
- 10.2.7 any information or other matter supplied by the Customer to Sollis;
- 10.3 If Sollis receives written notice from the Customer of any breach of the warranties, Sollis shall at its own expense and within a reasonable time after receiving such notice, at its option:
  - 10.3.1 remedy the defect or error in question;
  - 10.3.2 provide a work around or instructions which circumvent the defect or error;
  - 10.3.3 (in the case of breach of warranty relating to Services) supply conforming services, or
  - 10.3.4 terminate this Agreement immediately on written notice in respect of the Software and refund the Licence Fee and other charges paid less a reasonable charge for use of the Software to the date of termination.
- 10.4 Sollis shall have no obligation to remedy a breach of warranty until the Customer provides at its own cost all information that may be necessary or desirable to assist Sollis in resolving the defect or fault, including sufficient information to recreate the defect or error.
- 10.5 Sollis shall have no liability or obligations for breach of warranty unless it has received written notice of the breach no later than thirty days after the date on which the Customer first became aware or could reasonably have been expected to become aware of the breach.
- 11 DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY**
  - 11.1 Nothing in this Agreement shall limit the liability of Sollis to the Customer for death or personal injury resulting from its negligence (as defined in the Unfair Contract Terms Act 1977) or for fraudulent misrepresentation or for any liability which cannot be excluded by law.
  - 11.2 Subject to clause 10.1, the following provisions set out the limitations on the liability of Sollis (including any liability for the acts and omissions of its respective employees, agents and sub-contractors) to the Customer with respect to:
    - 11.2.1 any breach of its contractual obligations arising under this Agreement; and
    - 11.2.2 any representation, statement, act or omission given, made or carried out under or in connection with this Agreement (whether such liability arises in contract, tort, negligence, misrepresentation, breach of statutory duty or otherwise howsoever).
  - 11.3 It is the Customer's responsibility to ensure that the Software and Services are suitable for its requirements. In particular, Sollis expressly disclaims all warranties of merchantability, satisfactory quality or fitness for a particular purpose or that use of the Software or any part will result in any economic advantage, increase in profits or reduction in costs. Sollis expressly disclaims all warranties that (i) the Software or any part will be error-free, (ii) the Software will operate without interruption or will be compatible with any other software or hardware, (iii) information and materials located or obtained through use of the Software are timely, accurate, relevant or complete.

- 11.4 Except as expressly set forth in this Agreement, all conditions, warranties and representations expressed or implied by statute, common law or otherwise with respect to the Software and Services are excluded to the fullest extent permitted by law and in no event shall Sollis be liable for any negligence or tortious loss or for any of the following losses or damage (whether such losses or damage were foreseen, foreseeable, known or otherwise and whether or not Sollis is advised of the possibility of loss, liability, damage or expense):
- 11.4.1 loss of revenue;
  - 11.4.2 loss of actual or anticipated profits (including for loss of profits on contracts);
  - 11.4.3 loss of the use of money;
  - 11.4.4 loss of anticipated savings;
  - 11.4.5 loss of business;
  - 11.4.6 loss of operating time or loss of use;
  - 11.4.7 loss of opportunity;
  - 11.4.8 loss of goodwill;
  - 11.4.9 loss of reputation;
  - 11.4.10 loss of, damage to or corruption of data; or
  - 11.4.11 any indirect or consequential loss or damage howsoever caused (including, for the avoidance of doubt, where such loss or damage is of the type specified in clauses 11.4.1 to 11.4.10).

Direct financial and other loss not excluded by this clause is accepted by Sollis up to the limits set out in clause 11.5.

- 11.5 Except as stated in clause 11.1, the aggregate liability of Sollis to the Customer (including liability for all damages, costs and expenses) with respect to all claims arising from or in connection with this Agreement shall be limited to an amount not exceeding 100% of the sums paid by the Customer in the twelve months immediately preceding the date of any claim.
- 11.6 Unless waived in writing by Sollis, no claim, regardless of form, arising out of or pertaining to this Agreement may be brought by the Customer unless the Customer has provided to Sollis written notice of the claim within ninety days of the date on which the Customer first became aware or could reasonably have been expected to become aware of the cause of action.
- 11.7 The Parties hereby expressly acknowledge and agree that having taken independent legal advice, the limitations upon the liability of Sollis in this clause 11 are in all respects fair and reasonable, reflect a duly considered allocation of risk between the Parties and are reflected in the charges paid under this Agreement.

## **12 INTELLECTUAL PROPERTY RIGHTS INDEMNITY**

- 12.1 Sollis will indemnify and hold harmless the Customer 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 normal operation possession or use of Licensed Software Materials by the Customer infringes the patent, copyright, registered design or trade mark rights of said third party (an "Intellectual Property Infringement") provided that the Customer:
- 12.1.1 gives notice to Sollis of any Intellectual Property Infringement forthwith upon becoming aware of the same;
  - 12.1.2 gives Sollis the sole conduct of the defence to any claim or action in respect of an Intellectual Property Infringement and does not at any time admit liability or

otherwise attempt to settle or compromise the said claim or action except upon the express instructions of Sollis; and

- 12.1.3 acts in accordance with the reasonable instructions of Sollis and gives to Sollis such assistance as it shall reasonably require in respect of the conduct of the said defence including without prejudice to the generality of the foregoing the filing of all pleadings and other court process and the provision of all relevant documents.
- 12.2 Sollis shall reimburse the Customer its reasonable costs incurred in complying with the Provisions of clause 12.1 above.
- 12.3 Sollis shall have no liability to the Customer in respect of an Intellectual Property Infringement if the same results from any breach of the Customer's obligations under this Agreement.
- 12.4 In the event of an Intellectual Property Infringement Sollis shall be entitled to its own expense and option either to:
  - 12.4.1 procure the right for the Customer to continue using the Licensed Software Materials; or
  - 12.4.2 make such alterations modifications or adjustments to the Licensed Software Materials that they become non-infringing without incurring a material diminution in performance or function; or
  - 12.4.3 replace the Licensed Software Materials with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or function.
- 12.5 If Sollis in its reasonable judgement is not able to exercise any of the options set out at clauses 12.4.1, 12.4.2 or 12.4.3 above within ninety (90) days of the date it received notice of the Intellectual Property Infringement then the Customer without prejudice to the other rights or remedies it may have hereunder or at law shall be entitled to terminate this Agreement by thirty (30) days' notice upon Sollis. Upon any such termination the provisions of clause 18.3 below shall apply.
- 12.6 The provisions of clause 11 above shall not apply to this clause 12.

### **13 RISK IN THE LICENSED SOFTWARE MATERIALS**

Risk in the media on which Licensed Software Materials are recorded will pass to the Customer on delivery. If subsequently the media on which Licensed Software Materials are recorded are (in whole or in part) destroyed damaged or lost Sollis will upon request replace the same subject to the Customer paying its then prevailing charges.

### **14 CONFIDENTIALITY**

- 14.1 Each Party shall use the Confidential Information of the other Party disclosed to it (by whoever disclosed) only for the proper performance of its duties under the Agreement and shall not without the disclosing Party's written consent disclose or permit the disclosure of the Confidential Information except in confidence for the proper performance of its duties under the Agreement to those of its employees, officers and professional advisers who need to have access to it.
- 14.2 Each Party shall take all reasonable precautions (and at least as great as those it takes to safeguard its own confidential information) to safeguard every part of the Confidential Information.
- 14.3 The provisions of clause 14.1 shall not apply to Confidential Information that:
  - 14.3.1 the receiving Party can prove was known to the receiving Party or in its possession before that information was acquired from, or from some person on behalf of, the disclosing Party;

- 14.3.2 is in or enters the public domain through no wrongful default of the receiving Party or any person on its behalf, provided that this clause 14.3.2 shall only apply from the date that the relevant Confidential Information enters the public domain;
- 14.3.3 the receiving Party receives from a third party without similar obligations of confidence in circumstances where the third party did not obtain that information as a result of a breach of an obligation of confidence; or
- 14.3.4 is required to be disclosed by any applicable law or by order of any Court of competent jurisdiction or any government body, agency or regulatory body, to the extent of the required disclosure.
- 14.4 Within three (3) days of receipt of a request to do so made at any time and in any event if the Agreement is terminated, the receiving Party shall promptly return or destroy (at the option of the disclosing Party) all Confidential Information of the disclosing Party.
- 14.5 The restrictions contained in this clause shall continue to apply after the termination of this Agreement without limit in time.

## **15 DATA PROTECTION**

### **15.1 Properly notified**

Each Party warrants that it is properly notified under the Data Protection Act 2018 and General Data Protection Regulation (EU) 2016/679 as referenced in this Act – identified from this point forward as the Data Protection Legislation - to the extent required for the processing of Personal Data required in the performance of this Agreement.

### **15.2 Compliance**

The Parties agree to comply with the relevant provisions of the Data Protection legislation and any directions issued by the Information Commissioner in its processing of such Personal Data.

## **16 TRAINING**

- 16.1 Sollis shall provide to the Customer commencing upon **[DATE]** the training services to be included in the Licence Fee.
- 16.2 Any additional training services requested by the License shall be provided by Sollis for Additional Charges levied on the basis set out in clause 6.7 above.

## **17 CUSTOMER'S REPRESENTATIVES**

The Customer shall communicate to Sollis upon the date hereof the identity of the person(s) or the department within its undertaking at the Site who shall act as the sole contact point and channel of communication for the provision by Sollis of the Services during the currency of this Agreement. The Customer shall forthwith inform Sollis of any change in the identity of any such person(s) or department.

Sollis shall also provide an account manager. The role of the Sollis account manager is to act as the customer management interface between **[CUSTOMER]** and Sollis and to ensure that each is represented in their best light to the other. By its nature this will involve a degree of product information exchange as well as business acumen to be successful. The account manager will also be responsible for the commercial management of the account.

## **18 TERMINATION**

- 18.1 This Agreement may be terminated:
- 18.1.1 by Sollis with immediate effect by written notice if the Customer fails to make any payment on the due date therefore (save where such payment is the subject of a bona fide dispute) and following notice of such breach fails to remedy the breach within a period of ten (10) business days of receipt of a written notice to do so from Sollis;

18.1.2 forthwith by either party if the other commits any material breach of any term of this Agreement (other than one falling within 18.1.1 above) and which (in the case of a breach capable of being remedied) shall not have been remedied within thirty (30) days of a written request to remedy the same;

18.1.3 immediately by either party on written notice:

- (a) if the other party is dissolved or struck off the register of companies maintained by the Companies Registration Office or a winding up order is made against the other party or a meeting is convened, resolution passed or any step taken by the other party with a view to the winding-up of the other party except for the purpose of a solvent reconstruction, reorganisation, merger or consolidation;
- (b) if a receiver (including fixed charge or court appointed), administrative receiver, manager, insolvency practitioner or similar officer shall be appointed over the whole or a substantial part of the undertaking, property or assets of the other party;
- (c) if the other party is unable to pay its debts or is insolvent as defined in section 123 of the Insolvency Act 1986;
- (d) if the other party enters into (or proposes to enter into) a composition, scheme of arrangement or voluntary arrangement with any of its creditors or otherwise or a moratorium is agreed imposed or declared in respect of or affecting all or a material part of (or of a particular type of) the debts of the other party;
- (e) if notice of intention to appoint an administrator is given by any person (including the other party's directors, the other party or any qualifying floating charge holder as defined in the Insolvency Act 1986) or any step is taken by any person with a view to placing the other party into administration as defined by the Insolvency Act 1986; or
- (f) if any event or circumstance occurs which under the law of any relevant jurisdiction has an analogous or equivalent effect to any of the events listed in the above sub-conditions in relation to the other party; or

18.2 Any termination of this Agreement pursuant to this clause shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party not the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

18.3 On termination of this Agreement for any reason:-

18.3.1 the Customer shall immediately pay to Sollis all of Sollis' outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted including any Additional Charges, Sollis may submit an invoice, which shall be payable immediately on receipt; and

18.3.2 the Customer shall destroy all copies of the Licensed Software Materials in its possession and a duly authorised officer of the Customer shall certify in writing to Sollis that the Customer has complied with such obligation.

## 19 FORCE MAJEURE

Sollis 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 Sollis or any other party), failure of a utility service or transport 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.

## **20 DISPUTE RESOLUTION**

The parties undertake to attempt to resolve any dispute between the parties relating to this Agreement by negotiation between senior executives of the parties. If any such dispute shall arise which is not to be remedied by injunctive relief (which shall be deemed to be the case if no proceedings are commenced which include an application for such relief by either party within 7 days after formal notice of such a dispute having arisen being given by one party to the other or if such relief being sought is not diligently pursued thereafter) then for the period of 14 days after the expiry of such 7 day period, or after any order of the Court declining injunctive relief becomes final, either party may elect in its sole discretion to refer the matter of such dispute (and the parties hereby agree irrevocably to submit upon such election) to resolution by an Alternative Dispute Resolution procedure as adopted by a suitably qualified mediator in London appointed by the senior executive officer for the time being of the Centre for Dispute Resolution on the application of that party. Subject to the foregoing the forum for the settling of any dispute under this Agreement shall be the Courts of England and the parties hereby irrevocably submit to the dispute resolution procedure set out in this provision and the exclusive jurisdiction of the Courts of England.

## **21 WAIVERS**

21.1.1 Except as otherwise stated in this Agreement, the rights and remedies of each Party under this Agreement:-

- (a) are in addition to and not exclusive of any other rights or remedies under this Agreement or the general law; and
- (b) may be waived only in writing and specifically.

21.1.2 Delay in exercising or non-exercise of any right under this Agreement is not a waiver of that or any other right;

21.1.3 Partial exercise of any right under this Agreement shall not preclude any further or other exercise of that right or any other right under this Agreement;

21.1.4 Waiver of a breach of any term of this Agreement shall not operate as a waiver of breach of any other term or any subsequent breach of that term.

## **22 NOTICES**

22.1.1 All notices between the Parties with respect to this Agreement shall be in writing and signed by or on behalf of the Party giving it.

22.1.2 Any notice referred in clause 22.1.1 may be served:

- (a) by delivering it by hand;
- (b) by first class pre-paid post or recorded delivery; or
- (c) by fax, provided that a copy is also sent by post as set out in clause 22.1.1(b).

to the address of the addressee given at the start of this Agreement or such other address as the addressee may from time to time have notified for the purpose of this clause.

22.1.3 Notices shall be deemed to have been received:

- (a) if delivered by hand, on the day of delivery;
- (b) if sent by first class pre-paid post or recorded delivery, two business days after posting, exclusive of the day of posting;
- (c) if sent by fax, at the time of transmission unless sent after normal office hours in the place of receipt in which case it shall be deemed to have been received on the next business day in the place of receipt (provided that a copy has also been sent by post as set out in clause 22.1.2(b)).

22.1.4 Any notice or communication given under this Agreement shall not be validly served if sent by electronic mail or by text messaging via mobile phone.

## **23 INVALIDITY AND SEVERABILITY**

23.1 If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:

23.1.1 the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or

23.1.2 the legality, validity or enforceability in any other jurisdiction of that or any other provision of this Agreement.

23.2 Whilst the Parties consider the provisions contained in this Agreement reasonable, having taken independent legal advice, if any one or more of the provisions are adjudged alone or together to be illegal, invalid or unenforceable, the Parties shall negotiate in good faith to modify any such provisions so that to the greatest extent possible they achieve the same effect as would have been achieved by the invalid or unenforceable provisions.

## **24 ENTIRE AGREEMENT**

24.1 Sollis shall not be liable to the Customer for loss arising from or in connection with any representations agreements statements or undertakings made prior to the date of execution of this Agreement other than those representations agreements statements or undertakings confirmed by a duly authorised representative of Sollis in writing or expressly incorporated or referred to in this Agreement. Notwithstanding the above this clause shall not exclude any liability which either party would otherwise have to the other or any right which either of them may have to rescind this Agreement in respect of any statements made fraudulently by the other prior to the execution of this Agreement or any rights which either of them may have in respect of fraudulent concealment by the other.

24.2 The Customer accepts that the Licensed Software Materials were not designed and produced to its individual requirements and that it was responsible for their selection.

## **25 COUNTERPARTS**

### **25.1 Execution in counterparts**

This Agreement may be signed in any number of counterparts and by the parties on separate counterparts, but shall not be effective until each party has signed at least one counterpart.

### **25.2 One Agreement**

Each counterpart shall be treated as an original of this Agreement but all counterparts shall together constitute one and the same agreement.

## **26 ASSIGNMENT**

26.1 The Customer shall not be entitled to assign this Agreement nor any of its rights or obligations hereunder nor sub-license the use (in whole or in part) of the Licensed Software Materials without the prior consent of Sollis.

**27      GOVERNING LAW**

This Agreement and any dispute or claim arising out of or in connection with it (including any non-contractual claims or disputes) shall be governed by and construed in accordance with the laws of England.

**28      JURISDICTION**

In relation to any legal action or proceedings (a) arising out of or in connection with this Agreement or its implementation or effect or (b) relating to any non-contractual obligations arising out of or in connection with this Agreement, each of the Parties irrevocably submits to the exclusive jurisdiction of the English courts and waives any objection to proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum.



## TECHNICAL SUPPORT

### 1 Helpdesk Procedures/Policies

- 1.1 Prior to contacting Sollis' Customer Helpdesk for assistance relating to a Software maintenance issue the Customer should discuss the issue with those of its staff who have received training on the Software. Should these discussions fail to resolve the issue Sollis' Customer helpdesk can be contacted during the following hours of business:

Table 1

**Helpdesk Hours of Business**

| Contact Method  | Operational Days                                      | Operational Times |
|---|---|-------------------|
| Telephone   | Monday to Friday (Excluding Bank and Public Holidays) | 9:00am to 5:00pm  |
| Email<br><a href="mailto:helpdesk@sollis.co.uk">helpdesk@sollis.co.uk</a> | Monday to Friday                                      | 9:00am to 5:00pm  |
| Website   | Monday to Friday                                      | 9:00am to 5:00pm  |

- 1.2 Any contact made by a customer to the Sollis helpdesk will be verified before an incident is logged. Once logged a call ID will be assigned and the customer will be informed of any changes to the call. Procedures for the use of Sollis helpdesk will be covered in implantation.
- 1.3 Each call will be given a priority according to the impact on the Customer's business and the severity of the problem as shown in the table set out in paragraph 2.1 below. The call is then assigned to a member of Sollis' staff who will take responsibility for investigating the fault. The status and priority of the call will be visible from the Sollis Support website and can be monitored by the customer. At this time the clock is running.
- 1.4 Once the call is in the system it will be monitored and escalation e-mails sent to senior managers if a resolution has not been affected within the allowable time limit (shown in the table set out in paragraph 2.1 below). If a resolution cannot be affected by the currently assigned member of staff then this will be escalated up the management line.
- 1.5 Whenever Sollis' staff have updates to the call (either interim or resolution) the Customer will be informed. All updates and notes pertaining to the call are logged within the system against that call, so a call history can easily be produced illustrating all efforts made to resolve it.
- 1.6 Customers will have visibility of their own site calls via the a web based portal.

## **2 Problem/Issue Management**

- 2.1 Sollis will endeavour to always respond to the Customer as soon as possible (where necessary) to assure them that their call is being processed. Calls are assigned priorities, and these priorities dictate the maximum allowable Response Period and also the maximum Resolution Period for any problem. These priorities are as follows:

Table 2

### **Resolution Period – Priority Levels**

**Critical – resolved with 4 hours**

**High – resolved within 1 day**

**Medium – resolved within 3 days**

**Low – resolved within 15 days**

**Non- urgent - (information) – resolved and closed within 30 days**

Examples of typical “Critical”, “High”, “Medium” and “Low” priority levels are described at later in this document.

## **2.2 Procedures specified under the Contract**

### **2.2.1 Escalation Procedures**

- (a) Support calls are escalated in two different ways:
  - (i) automatically whenever the time limit for the requisite Response Period or Resolution Period has been exceeded; and
  - (ii) manually when Sollis feels the problem requires higher visibility;
  - (iii) Escalation Level 1 – Product Manager. This escalation will occur if the Resolution Period is exceeded;
  - (iv) Escalation Level 2 – Company Director. This escalation will occur if double the Resolution Period is exceeded as described at Table 2 above (i.e. if a “Critical” priority goes beyond 2 days without resolution, then the matter will be escalated to a company director. If an “Informational” matter goes beyond 4 weeks without resolution then similarly the matter will be escalated to a company director).

### **2.2.2 Fault Reporting Procedures**

- (a) Sollis and the Customer will identify contact personnel within the Customer organisation. These personnel are also entered on to the Sollis support system. When a call is made, it should be the Customer contact who initiates it. Should further details from or updates to the Customer be required, then this may well be to a different Customer user, but the initial contact should be made via a recognised contact.
- (b) Once the call has been resolved, the Customer will be notified by the Sollis.

### **2.2.3 Exclusions and Chargeable Incidents**

Sollis will always attempt to assist the Customer where the Customer is experiencing difficulties, but reserves the right to provide engineering response on

a chargeable basis where the scope of the work is outside of the responsibilities covered by this Agreement.

### 3 Customer Undertakings

Sollis is only able to provide the Services as detailed within this Agreement with the co-operation and assistance of the Customer. The Customer therefore is obliged to:

- Provide a Customer contact as the main point of contact for Sollis
- Follow reasonable guidelines issued by Sollis in respect to the use of the Software on the Designated Equipment
- Support timings can only be met if the N3\HSCN support connection is available. It is the Customer's responsibility to make sure that firewalls and permissions are set correctly to allow this to happen.
- Provide alternative phone numbers or methods of contact and timings of availability of the Customer contact.
- Provide full details of the problem when reporting a call and respond to any reasonable request for additional information which may be requested by Sollis' personnel
- Keep backup copies of data in line with Sollis' (and if applicable, NHS IG recommendations)
- Ensure that the Customer's staff (particularly the Customer contact(s)) are adequately trained in the use of the Software and have an appropriate level of I.T. Literacy
- Pay any fees and charges due promptly and within the credit terms notified by Sollis
- When required, allow Sollis' staff prompt and unrestricted access to the Software on the Designated Equipment and provide all reasonable assistance to Sollis' staff
- When agreed by the Customer and where necessary for support, provide data to Sollis.
- Adhere to all other procedures as set out within this Schedule.

### 4 New Software Releases

*Application software enhancements necessitated by **minor** upgrades to the Software, to cover Customer and server operating software (e.g. Microsoft Windows and Microsoft SQL Server) are **included** in the price of this Agreement.*

This Agreement covers all bug fixes, so should a bug fix result in a minor upgrade then this upgrade will be covered by this Agreement. In addition, minor system upgrades performed by Sollis in agreement with the Customer may be included, but this would obviously depend on the scope of the upgrade. Significant New Releases would normally be specified by the client and therefore would be charged for. Therefore the work involved in producing a New Release would not be covered by this Agreement (although this may be indirectly via the Request for Change budget managed by the Sollis User Group).

Whilst Sollis itself is continually looking at means of advancing the product (on-going development) Sollis places a strong emphasis on Customers informing the evolution process as this is one method of ensuring that the Customer receives a solution to their exact requirement, and not simply a best fit solution. It is our experience that this approach is the most cost effective way of enhancing the product as by this approach the Customer does not pay for unwanted features and functionality.

New Releases of Sollis' Software may incorporate permanent fixes to previously reported faults although Sollis cannot guarantee that all low priority problems will be dealt with. A "Fix" will rectify a number of deficiencies identified in earlier releases of the Software and may be issued by Sollis as a work around or patch. In these instances the Software or patch as appropriate will be provided at no additional charge to the support charges paid by the Customer. A New Release may, however, also introduce significant additional functionality that Sollis wishes to package as a separate module or release.

### 5 Software Upgrades

Sollis is committed to a programme of regular upgrades and enhancements which are included as part of the Licence Fee.

Existing customers are always offered the same version of Software as new customers.

New Releases are typically made on a six-monthly basis. A quarterly release may be made if urgent changes or bug fixes are required.

## **6 Customer Feedback**

Sollis engages with customers regularly and provides web based interactive meetings or face to face events on a regular basis depending on customer requirements.

## **7 Third-party Data Warehouse / Contract Management Systems**

Sollis will not be held responsible for the quality of any third-party system.

Sollis will not fund, through the user group or otherwise, changes to Sollis Clarity, interface or third-party system, where such changes have already been developed or would logically be developed in Sollis Clarity.

Sollis will act in a reasonable manner both in terms of charging for the additional work outlined above and in terms of delivery timescales.

## **8 Release from Responsibility - Third Party Software**

Sollis will be excluded from the responsibility of supporting the Software in the following circumstances:

- 8.1 A third party changed the Software without consultation with Sollis.
- 8.2 A third party installed or amended third party software which had a direct or indirect effect on the Sollis software.
- 8.3 A third party installed the Software on equipment which is not the Designated Equipment or hardware which has previously been approved by Sollis in writing.
- 8.4 A third party installed the Software rather than Sollis.

## Descriptions of ‘typical’ priorities

| Priority Level  | Examples   | General SLA timescales | Incident Owner behaviours  |
|-----------------|--|------------------------|--|
| <b>Critical</b> | Complete loss of function, IG breach, business critical process unable to run to schedule. | resolve within 4 hours | Immediate management escalation, Sollis' Technical Director notified immediately, Sollis' Managing Director after 3 hours if not resolved.             |
| <b>High</b>     | A module is not working, e.g. importing not working  | resolve within 1 day   | Immediate escalation to Product Manager or Product Development Manager. If call not resolved within 4 hours, escalation to Sollis' Technical Director. |
| <b>Medium</b>   | Data extraction queries not available  | resolve within 5 days  | If unresolved after 4 days, escalation to Product Manager or Product Development Manager.  |
| <b>Low</b>      | Cosmetic, e.g. spelling mistake, formatting  | resolve within 10 days | Escalation to Product Manager or Product Development Manager after 8 days  |

## SIGNATORIES TO THE AGREEMENT

Signed for and on behalf of **THE SOLLIS PARTNERSHIP LIMITED** (“Sollis”)

|                                    |  |
|------------------------------------|--|
| <b>NAME (PRINT)</b><br>NIGEL SLONE |  |
| <b>TITLE</b><br>MANAGING DIRECTOR  |  |
| <b>SIGNATURE</b>                   |  |

**DATE** ..... [DATE]

Signed as a Deed by **[CUSTOMER]**

|                     |  |
|---------------------|--|
| <b>NAME (PRINT)</b> |  |
| <b>TITLE</b>        |  |
| <b>SIGNATURE</b>    |  |

**DATE** ..... [DATE]