



Iconic Legacy Turnkey PMS Terms & Conditions



Iconic PMS Terms & Conditions Of Sale & Supply

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Completion Date: the estimated date specified in the Order Acknowledgement by which we are to provide the System, installed, tested and accepted.

Confidential Information: information of commercial value which has been kept confidential by the party from whom the information originates, and which has not come into the public domain during the term of this agreement in breach of any obligation of confidence.

Consumables: means the consumable items purchased via the Software in accordance with clause 15.

Contract: means the agreement covering the provision of Support Services which will apply from the Support Commencement Date and is set out in clause 10.

Data Controller, Data Subject, Process (and Processed), Personal Data: shall have the same meaning as set out in the General Data Protection Regulation 2016.

Data Protection Legislation: all applicable data protection legislation and regulations.

Defect: an error in the Supported Software or Hardware that causes the System to fail to operate substantially in accordance with Technical Specification.

Hardware: the core computer system hardware and ancillary network equipment used by you (supplied by us and identified in the Sales Order as being included in a Wysdom annual maintenance contract) to operate the Licensed Software and other items of stock or equipment listed in the Sales Order (or any agreed written changes thereto). NOTE: **Hardware** may at times include **Capital Equipment** which is additional to the core computer system, including but not exclusively digital x-ray, cameras, autoclaves & other dental related products which may be covered by a separate maintenance and support Contract by Wysdom or under the equipment manufacturer's warranty.

Installation Date: the estimated date by which we shall begin the installation of the Hardware and Software.

Licensed Software: the Wysdom Software and all subsequent amendments and updates to or new versions of such software.

Licensed Users: your employees and agents who use the Licensed Software, up to the maximum number specified in Sales Order.

Modified Software: the standard software programs proprietary to us and/or third parties which has been modified for inclusion in the System.

New Release: a new release of all or any part of the Supported Software suitable for use by you in which previously identified faults have been remedied, or to which any modification, enhancement, revision or

update has been made, or to which a further function or functions have been added.

Order Acknowledgement: the document sent to you upon receipt of the signed Sales Order confirming the making of a binding contract upon these terms and conditions.

Price: the aggregate price and payments for the Hardware, the Software, the Services, the license fee for the Licensed Software and the Support Services specified in the Sales Order.

Sales Order means the sales order form upon which are listed the Hardware, Software, and the Services (installation and training services and Support Services) that we intend to supply and provide including the Price which you will be asked to sign if you intend to place an order.

Services: the services to be provided by us as specified in the Sales Order.

Site: the location(s) at which the System is to be installed as specified in the Sales Order.

Software: the Licensed Software, the Modified Software and the Third-Party Software

Support Commencement Date: the day after the Completion Date.

Support Services: the maintenance services renewable annually to be provided by us under the Contract.

Supported Software: the Licensed Software and the Modified Software programs and all subsequent amendments and updates to and New Releases of such programs. This does not include Third-Party Software.

System: the system consisting of the Hardware and the Software.

Technical Specification: means the functions offered by the Licensed Software as set out in our technical information sheet and in particular its method of recording, storing and processing certain types of data when correctly configured and operated with the Modified Software and the Third-Party Software on the Hardware.

Third-Party Software: the software programs proprietary to third parties, listed in the Sales Order, which are to be provided to you without modification.

We, our or us refers to Wysdom Dental Technologies Limited a limited company registered in Scotland under number SC114467 and whose registered office is at: 272 Bath Street, Glasgow, G2 4JR

Work: all the works, duties and obligations to be carried out by us pursuant to this agreement.

You, your: refers to the person, limited liability partnership or company placing the order for the System as identified in the Sales Order. If you enter into this agreement on behalf of a business, you warrant that you

- have the authority to contractually bind that business and the business will be our customer in the context of the agreement.
- 1.2 A reference to one gender includes a reference to the other gender. Words in the singular include the plural and vice versa.
- 1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.4 Except where a contrary intention appears, a reference to a clause, schedule or annex is a reference to a clause of, or schedule or annex to, this agreement.
- 1.5 Clause and schedule headings do not affect the interpretation of this agreement.
- 1.6 **Writing** or **written** includes e-mails and similar forms of electronic communication.

2. TERMS OF AGREEMENT

- 2.1 We shall supply:
- (a) the Hardware (see clause 7);
 - (b) the Services (see clause 8);
 - (c) the Software (see clause 9); and
 - (d) the Support Services (see clause 10)
- for the Price as specified in Sales Order.
- 2.2 The supply and Price are subject to the terms and conditions set out in this agreement.
- 2.3 The Sales Order, and the Order Acknowledgement form an integral part of this agreement and any reference to **this agreement** means this agreement together with the Sales Order and the Order Acknowledgement and any such amendments in writing as may subsequently be agreed between the parties.

3. BASIS OF SALE

- 3.1 Any quotation (normally provided in the form of an unsigned Sales Order) is valid for a period of 30 days only, and we may withdraw it at any time by notice to you.
- 3.2 A Sales Order signed by you or on your behalf shall be deemed to be an offer by you subject to these terms and conditions. You must ensure that the Sales Order is complete and accurate.
- 3.3 A binding contract shall not come into existence unless and until we send you a written Order Acknowledgement, or in the event no Order Acknowledgement is sent, two working days after we have agreed with you the Installation Date (whichever occurs earlier).
- 3.4 You may not cancel this agreement once a binding contract has come into existence in accordance with clause 3.3 above except with our written agreement, and, without prejudice to our right to forfeit your deposit (see clause 6.2), in any event you must indemnify us in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses we have incurred prior

- to and as a result of cancellation.
- 3.5 Once our Support Services have commenced, these will continue in force on a rolling 12-month basis, on the same terms and conditions as set out in this agreement (with the exception of the price), unless and until the Contract is terminated in accordance with clause 20 below.

4. QUANTITY AND DESCRIPTION

- 4.1 The quantity and description of the Hardware, Software, Services and Support Services shall be as set out in Sales Order.
- 4.2 Except for the Technical Specification, all samples, drawings, descriptive matter, and advertising that we have issued, and any descriptions or illustrations contained in our catalogues or brochures are issued or published for illustrative purposes only and they do not form part of this agreement.
- 4.3 Any typographical, clerical or other manifest error or omission in any sales literature, Sales Order, price list, Order Acknowledgement, invoice or other document or information we have issued may be corrected without any liability on our part.
- 4.4 We reserve the right (but do not assume the obligation) to make any changes in the Technical Specification of the Licensed Software which are required to conform with any applicable legislation rule or guidance issued by any responsible government body or governing organisation relevant to the field of work for which the Licensed Software may be used.
- 4.5 Our employees, contractors and agents are not authorised to make any contractually binding representations concerning the Hardware, the Software, the Services or the Support Services. In entering into the agreement, you acknowledge that you do not rely on, and waive any claim for breach of, any such representations which have not been confirmed in writing by one of our directors. However, nothing in these conditions limits our liability for fraudulent misrepresentation.

5. THE PRICE AND DEPOSIT

- 5.1 The Price is set out in the Sales Order.
- 5.2 Unless otherwise explicitly agreed you must pay a deposit of 25% of the Price inclusive of the VAT. Unless the deposit is refunded by us because your Sales Order is not accepted, then, without prejudice to any other right we have, the deposit will be forfeited if, after receiving written notice from us, you fail to honour your obligations to facilitate the supply and installation of the System or you fail or refuse to accept the System within a reasonable time of receiving that notice. This deposit payment will be applied in part satisfaction of the Price if you honour your obligations under this agreement and will be applied in partial satisfaction of any claim under clause 3.4.
- 5.3 We reserve the right, by giving you notice at any time

before the Installation Date, to increase the price of the Hardware or Third-Party Software to reflect any increase in the cost to us which is due to any factor beyond our control (including any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour, materials or other costs of manufacture).

6. PAYMENT

- 6.1 Time for payment of the Price shall be of the essence of the agreement.
- 6.2 The deposit is due and payable when you sign and send us the Sales Order. The balance of the Price is payable a minimum of 14 days before the Installation Date. Without prejudice to any other right that we may have whether under this agreement or by law, we shall be entitled to suspend the Works if the balance of the Price is not paid on time.
- 6.3 The license fee for the use of the Licensed Software and Hardware and the fee for the Support Services (including the points at which they are payable) are set out in the Sales Order.
- 6.4 The charge for the Support Services for the first year after the Support Commencement Date shall be set out in the Sales Order. We may increase the annual charge at any anniversary of the Support Commencement Date.
- 6.5 If we or our authorised agent visits the Site to investigate a failure of the System, **which proves in our reasonable opinion not to have been caused by a Defect**, we shall be entitled to charge you for the time spent on such visit on a time-and- materials basis at our standard rates then in force.
- 6.6 Your attention is drawn to the fact that the Licensed Software incorporates an electronic device that will restrict the operational functionality of the System unless the license fee for the Licensed Software and the annual maintenance charge is paid on time. You will still be able to use the System to access all data recorded to the date the device is activated but will not be able to add or process any new data until the sums due are paid with interest calculated in accordance with clause 6.7.
- 6.7 In respect to any sum that may be due from you under the agreement, we may charge interest on the amount outstanding from the due date to the date of receipt (whether or not after judgment), at the rate of 8% per annum above the base lending rate from time to time of Barclays Bank Plc (whichever is the greater), accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment, in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

7. THE HARDWARE

- 7.1 We shall supply all items of Hardware, together with all related documentation.
- 7.2 We shall normally provide all cabling and other equipment needed for the installation of the Hardware

- 7.3 Our obligations to supply equipment to connect or interface with any of your existing hardware or equipment is subject to us being satisfied whether by a prior survey and/or testing prior to or subsequent to the installation of our Hardware (or a combination of both) that your hardware is compatible and its connection to our Hardware will not adversely affect or compromise the proper and efficient operation of our Hardware or its reliability.
- 7.4 We will use reasonable endeavours to offer any different item of hardware in substitution for any corresponding item of Hardware in the Sales Order where the substitute item contains new technology or has better performance characteristics than such Hardware. When and if we can make the offer, we shall tell you of any change to the Price which would result from such substitution.
- 7.5 Following installation of each item of Hardware, we shall carry out the appropriate tests to that item.
- 7.6 If any item of the Hardware fails to pass the tests then we shall have 14 days in which to remedy the deficiency, and the relevant test(s) shall be repeated within a reasonable time thereafter.
- 7.7 The following warranties are in addition to warranties given in other parts of this agreement:
 - (a) We warrant that the Hardware will be new (except where otherwise specified in Sales Order) and of satisfactory quality; and
 - (b) As far as we are able, we will pass on to you the benefits of any manufacturer's warranties.
 - (c) Warranties supported by a manufacturer normally cover the Hardware for a period of one year and we purchase additional extended cover for year two and three when available. This means that some of your Hardware may fall under one of the following support structures:
 - (i) Manufacturer's return to base warranty;
 - (ii) Manufacturer's exchange warranty;
 - (iii) Wysdom replacement warranty;
 You will be advised at the time of quotation which warranty applies to each piece of equipment. This means that you may have to deal with the manufacturer's own support service at times.

8. THE SERVICES

- 8.1 We agree to:
 - (a) deliver and install the Hardware and Software at the Site;
 - (b) integrate the Hardware and Software to form or expand the System;
 - (c) provide training as specified in the Sales Order.
- 8.2 We will endeavour to deliver the items of Hardware and/or Software to the Site on the agreed date however, unless we have expressly agreed otherwise in writing, we

- will have no obligation to do so or to complete our Services by a specified date. Time will not be of the essence in the performance of our Services.
- 8.3 If any delivery is delayed at your request of, or because of your acts or omissions, and we can demonstrate that the delay has resulted in an increase in cost to us of carrying out our obligations under this agreement, we may at our sole discretion increase the Price by an amount not exceeding any such demonstrable cost. We may invoice you for any additional monies that become payable in this way, within 30 days of demonstrating the increase in costs.
- 8.4 You acknowledge that to use the System effectively requires adequate broadband, which is your responsibility to provide. We cannot be held responsible for delays or inability to use the System where this is due to such causes beyond our control. If your broadband service is not adequate to allow for regular, reliable completion of cloud backups we cannot be held responsible for any data loss that may occur. Our cloud backup service will send you email confirmation of backups. If you receive any error notifications or fail to receive emails at all you should report this to us via our support facility immediately.
- 8.5 We undertake to provide the training as to the use of the System for the period set out in the Sales Order, but we have no obligation to provide training on the use of any Third-Party Software except in so far as such training is necessary for the proper use or operation of the System.
- 8.6 Any additional training you require shall be provided at our standard rates then in force.
- 8.7 Training shall be carried out at the Site or as may otherwise be agreed with you.
- 9. THE SOFTWARE**
- 9.1 We shall supply you with such information and assistance as may be necessary to enable you to prepare the Site for the installation of the relevant items of Hardware and Software.
- 9.2 If appropriate, you shall, at your own expense, prepare the Site in accordance with the information provided in advance and confirm to us that the Site is ready. We reserve the right to inspect the Site and specify, within a reasonable time prior to the Installation Date, any corrections or modifications required. If we do not inspect the Site prior to the Installation Date, you shall still be liable for remedying any deficiency in the Site preparation that is discovered when the installation begins.
- 9.3 You shall co-operate with us in any manner that we may reasonably require in order to carry out the Work, including, but not limited to, provision of information and data, making available suitably qualified employees and contractors, provision of access to the Site for our employees and contractors and provision of supplies that we reasonably require, such as power and computer consumables.
- 9.4 You shall be responsible for ensuring that each item of your own hardware and software which has been agreed will be integrated into the System:
- (a) is of the required specification; and
 - (b) is installed and is in working order and available to us no later than the Installation Date; and
 - (c) that you have the appropriate licences to use the software and that it may be integrated into the System.
- 9.5 Acceptance of the System shall be deemed to have occurred on your use of the System in the course of your business.
- 9.6 If and in so far as we are satisfied that it is possible to transfer or convert your existing data so that it can be read and processed by the System ("migration"), you shall, in sufficient time to permit us to meet all our obligations under this agreement, give us access to your data to be migrated to the System as part of the Services. We shall use reasonable efforts to ensure the accurate migration of such data but give no warranties as to the completeness or accuracy of such migration. You shall be responsible for checking the accuracy and completeness of the migrated data and shall promptly give us sufficient details of any inaccuracies or omissions in order to permit us to correct such inaccuracy or omission. If such data includes Personal Data, we agree to process that data only in accordance with the provisions of clause 19 of this agreement.
- 9.7 The Licensed Software (that you are authorised to use under the terms of the software licence set out in clause 13), and the terms of use of any Third-Party Software and any Modified Software proprietary to third parties shall be available to view either in hard copy or on the CD on which it is provided or on the website of the software owner from whom the software was downloaded and you agree to be bound by such licence terms.
- 9.8 We will use reasonable endeavours to offer you any different item of Third-Party software in substitution for any corresponding item of Third-Party Software where the substitute item contains new technology or has better performance characteristics than such Third-Party Software. As part of the offer, we shall tell you of any change in the Price which would result from such substitution.
- 10. SUPPORT SERVICES**
- 10.1 We shall ensure that support is available by telephone and e-mail during normal working hours (9am to 5.30pm UK time Monday to Thursday and 9am to 5pm on Fridays, except for bank holidays in England) to provide you with assistance in respect of Supported Software Issues, Supported Hardware Issues; and providing advice on the use of the Supported Software.
- 10.2 We shall use reasonable endeavours to correct Defects notified to us in a timely manner appropriate to the seriousness of the circumstances in accordance with the following procedure:

- (a) A critical equipment failure (i.e. a failure of the server and/or network switch equipment supplied as part of the Hardware that renders the remainder of the System unusable) should be advised to us by telephone to the **support number** provided by us. We will use reasonable endeavours to respond immediately within the stated normal working hours stated above.
 - (b) A non-critical equipment failure (i.e. a failure of part of the System, for example a workstation, printer, or other ancillary piece of the equipment supplied as part of the Hardware that does not render the remainder of the System unusable), should be advised to us by telephone on the **support number** provided by us or by email to the support email address supplied by us. We will use reasonable endeavours to respond within 24 hours.
 - (c) In the case of Defects other than those specified in clause 10.2(a) and clause 10.2(b), we shall start work on correcting the Defect as soon as our workload allows and shall use commercially reasonable efforts to correct the Defect.
- You must ensure that you and your staff follow the Wysdom Operating Procedures as required by clause 13.7 and we reserve our rights to charge for remedying Defects that arise from your failure to follow the Procedure.
- 10.3 You shall appoint authorised personnel to perform software updates with our consent and shall inform us of their identity. Permitted updates include, but are not limited to, routine updates, patches, driver updates and service packs.
 - 10.4 Support does not include updates to new versions of Third-Party Software or operating software unless supplied free of charge by the manufacturer/developer.
 - 10.5 Anti-virus software is charged in addition to the Price on an annual per computer basis. You MUST use the anti-virus we recommend and use on all our installations. If you change it you are not covered by Wysdom support and correcting system failures will be chargeable. You acknowledge that if you use outdated Hardware with an unsupported operating system, your System will be particularly vulnerable and the anti-virus software may be less effective. We will endeavour to keep such Hardware in operation, however, we cannot guarantee this will be possible and we reserve the right to charge for our time spent in doing so.
 - 10.6 If and in so far as any Hardware is covered by a manufacturer's warranty (see clause 7.7), we reserve the right to have the Defect dealt with under and in accordance with the terms of that warranty and the below provisions shall apply.
 - 10.7 We shall maintain the Hardware to the standards specified by the relevant manufacturers. Only official parts (that is, those produced or recommended by the manufacturer of that particular piece of Equipment) shall be used for maintenance and repair work.
 - 10.8 All parts (and for the avoidance of doubt this does not include consumables) which may require replacement shall be replaced free of charge by us provided that such replacement is necessitated by nothing more than normal wear and tear. We reserve the right to charge you for the parts and labour costs associated with the repair or replacement of any of the Equipment that arises from any act or omission of you, your employees or agents or any Third-Party authorised by you and in attendance at the Site.
 - 10.9 We may work at times with third-party support companies for on-site visits when required and their engineers always work under our supervision.
 - 10.10 You should only install official consumables. Our Support Service will not cover failures of the hardware due to the installation and use of un-approved third-party manufactured consumables. If this is discovered, you will be charged for our support services and any necessary hardware or software replacement.
 - 10.11 If a piece of equipment is deemed beyond economical repair – normally after a minimum of three years use – you will be responsible for the cost of its replacement. Equipment over three years of age may be uneconomical to repair due to parts availability, depending on the product life cycle. Equipment over five years of age will be supported operationally but automatically be considered uneconomical for repair should it have a hardware failure and will need to be replaced at your expense. We will however still supply loan equipment on a temporary basis where possible.
 - 10.12 **Loan Equipment** may (subject to availability) be supplied if part of your system has a failure that cannot be repaired or restored on-site. Loan equipment is only supplied on a short-term basis until your hardware is either repaired and returned or replaced with new - depending on the circumstances. It is your responsibility to ensure loan equipment is returned in a similar condition to when it sent and any damage to it will be chargeable. Ownership in all loan equipment will remain with Wysdom at all times.
 - 10.13 During the term of the Contract, you shall not, without our prior written approval, allow any person other than your authorised representative(s) or our representative to modify, repair or maintain any part of the Supported Software.
 - 10.14 You shall permit us to have online access to the Supported Software at all times (and not only for the purpose of carrying out remote diagnostics and correction of Defects). You shall, at your own expense, provide and maintain the equipment necessary to enable such online access. Our online access is limited to the Supported Software and we shall not access your data without your consent and then only if it is necessary to correct the Defect or test the performance of Supported Software.
 - 10.15 You shall allow us such access to the Site as is necessary to carry out our obligations under the Contract.

- 10.16 You shall comply as soon as reasonably practicable with all our reasonable requests for information or assistance to diagnose and correct Defects.
- 10.17 Operating Systems (OS) have a limited lifespan and may become unsupported by the developer - Microsoft - and this means they may become vulnerable for hacks and viruses or driver failures. Advance notice of many months or years is made public and we will also advise you if you have equipment using the OS. Upgrading the OS will be at your expense and depending on the age of your equipment it may not be economical to upgrade and will require replacement. NHS rules state that dentists may not use computers with an unsupported OS so you must comply with by upgrading or replacing the hardware accordingly. We will therefore **not support computers that do not have a supported OS** and will remove them from the next maintenance schedule - no refunds will be made for current cover.
- 10.18 Broadband routers supplied and maintained by us are configured to work specifically with the NHS system for your country. If this is replaced incorrectly your connectivity to the NHS will no longer work. If you decide to change your broadband provider, you **MUST** inform us prior to the changeover and provide us with the credentials for the new service. We will then arrange to update the router accordingly. **DO NOT REPLACE THE EXISTING ROUTER** with one supplied by the new provider as this will mean that claim submissions will not work. Failure to inform us may result in additional support from us that will be chargeable.
- CLOUD BACK-UP SERVICES**
- 10.19 We charge for cloud-backup services on an annual basis. If you require additional cloud storage space to accommodate your back-up needs part-way through the term of the agreement, we will charge for this on a pro-rata basis up to the next renewal date.
- 10.20 You must notify us of any systems you run and maintain on your Hardware in order for us to include these within the services to be backed up. Once we are notified of such systems we shall include these in the regular automatic back ups. Where we do not receive notification of such systems we cannot be held responsible for any data loss that may occur.
- 10.21 Our cloud backup service will send you email confirmation of backups. If you receive any error notifications or fail to receive emails at all you should report this to us via our support facility immediately.
- 10.22 Any changes to systems, Hardware or Software, must be reported to us immediately in order to re-confirm and/or add appropriate files within your backup setup, should this not be the case we shall have no liability for such **NON-WYSDOM SUPPLIED HARDWARE**
We do not advise adding any hardware to your supported system without verifying its suitability and compatibility with technical support at Wysdom. If you choose at any time to replace a piece of hardware from a source other than Wysdom we may - at our sole discretion - add it to

your system for an agreed setup fee and add it to your maintenance contract **for support purposes only**; we will not replace and/or repair it should it fail as the Warranty contract is between you and your supplier. If we cannot satisfactorily support it we will advise you accordingly and we will not be responsible for connecting it and/or maintaining it under any circumstances.

10.23 **CAPITAL EQUIPMENT**

If you are purchasing Capital Equipment other than or in addition to core PMS computers and related network items from us, then the following terms apply:

- (a) The swap-out, replacement and loan elements of the core computer system annual maintenance contract **do not apply** to Capital Equipment.
- (b) We will act in a liaison capacity during the warranty period for all equipment supplied by us to facilitate the repair or replacement to full working service. This does not necessarily include on-site visits by Wysdom staff, which may be chargeable if requested by you.
- (c) After the equipment warranty period expires, we may offer to add a similar 'liaison' service to your Wysdom annual maintenance contract to facilitate the repair of faulty equipment to full working service. This will not include the costs of labour, replacement parts or software which may be required, which will be chargeable to you, OR
- (d) We may offer you a contract for annual inspection and/or servicing as required under the manufacturer's warranty terms or after the warranty expires at additional agreed costs. The terms of this additional service vary from product to product and may come under additional legislative requirements, therefore a detailed schedule will be advised to you prior to a contract being agreed.

11. LIMITED WARRANTY AS TO SYSTEM

11.1 We warrant that:

- (a) Elements of the System are proprietary to us and we have the right to license all rights in and to the System to you. The sole remedies for breach of this warranty are set out in this clause 11; and
- (b) the System at the Completion Date, and for six months after that date, will perform in accordance with the Technical Specification. The sole remedy for breach of the warranty under this clause 11.1(b) shall be the correction of Defects by us within a reasonable time from notification by you of the Defect constituting such breach.

11.2 The above warranties are in lieu of all other express or implied warranties or conditions including, but not limited to, implied warranties or conditions of satisfactory quality and fitness for a particular purpose. We specifically deny any implied or express representation that the System will be fit:

- (a) to operate in conjunction with any other hardware items or software products other than with those

- hardware items and software products that are identified by us as being compatible with the System; or
- (b) to operate uninterrupted or error-free.
- 11.3 If you, your employee, your agent or a Third-Party on your behalf: -
- (a) installs or uses new or additional software (including updates to existing software in use with your own hardware when the System was installed) on the Hardware, or
- (b) installs or uses new or additional hardware to be used with the System, or
- (c) alters, re-configures, installs or re-installs the whole or part of the Hardware or the Software, and these actions have not been authorised by us such that the System fails to work in accordance with the Technical Specification or at all whether immediately or in due course, then all of our warranties and support obligations shall be null and void.
- 11.4 You acknowledge that the System will be subject to the limitations of external systems to which the System connects, in particular but not exclusively, the NHS claims systems. As such, the System may need to be updated and/or replaced to respond to the changing demands of third-parties.
- 11.5 Subject to clause 11.8, we shall defend, hold harmless and indemnify you against all loss, damage, claims, liabilities, fees, costs and expenses arising out of any action brought against you based on a claim that the System infringes any intellectual property right of any Third-Party, provided that:
- (a) We are notified promptly in writing of any such claim; and
- (b) You make no admission or settlement of such claim without our prior written consent; and
- (c) We have sole control of the defence and any negotiations for compromise; and
- (d) You provide, at our expense, such assistance as we reasonably require.
- 11.6 If the System becomes or, in the opinion of qualified legal counsel, is likely to become, the subject of any such claim, you will permit us:
- (a) to replace all or part of the System with functionally equivalent hardware and / or software without any charge to you; and/or
- (b) to modify the System as necessary to avoid such claim, provided that the System (as amended) functions in substantially the same way as the System before modification; and/or
- (c) to procure for you a licence from the relevant complainant to continue using the System.
- 11.7 If the System is determined in a court of law to be infringing and we are unable after commercially reasonable efforts to procure for you the right to continue using the System, or to provide you with a functionally equivalent non-infringing System, this agreement and any licence to use the Software shall be

- terminated.
- 11.8 We shall have no liability for any claim of intellectual property infringement:
- (a) caused by your use of the System in combination with software not supplied or approved in writing by us; or
- (b) resulting from any unauthorised modification of the System; or
- (c) based on use of any version of the System other than the latest version supplied by us, if such claim could have been avoided by the use of such supplied version.

12. VARIATIONS

- 12.1 You may, by giving us written notice at any time during the term of this agreement, request a change to the System, the Services and/or the Support Services. In this event, if we are able to make the requested changes, then as soon as reasonably practicable after receipt of such notice, we shall prepare a written estimate of any change in the Price as a result, and of any effect that the requested change would have on any dates we have provided to you. Within 14 working days of receipt of this written estimate, you shall inform us in writing of whether or not you wish the requested change to be made.
- 12.2 If you wish for us to provide you with additional Hardware, Software, Services or other products part-way through the term of the agreement, we will charge for these on a pro-rata basis up to the next renewal date.
- 12.3 Any variation of the agreement shall be in writing and signed by or on behalf of all parties.

13. COPYRIGHT

- 13.1 The copyright and other intellectual property rights of whatever nature in the Licensed Software and any documentation relating thereto are and shall remain our property and we reserve the right to grant a licence to use the Licensed Software to any other person at our sole discretion.
- 13.2 In consideration for the payment of the license fee described in the Sales Order, we grant you the non-exclusive, non-transferable right to use the Licensed Software on the Hardware in the course of your business subject to the terms of this agreement. You acquire no rights in or to the Licensed Software or the documentation other than those expressly granted by this agreement.
- 13.3 We shall provide you from time to time copies of any documentation containing sufficient up-to-date information for the proper use and maintenance of the System. You may make such further copies of the documentation as are reasonably necessary for the use and maintenance of the System and for training your personnel in use of the System.
- 13.4 You may make such copies of the Licensed Software as are reasonably necessary for use in accordance with this

- Licence and for the purposes of backup and security. You have no right to make, or authorise the making of, any other copies of the Licensed Software.
- 13.5 The Licensed Software may be used only by Licensed Users at the Site except as follows:
- (a) if you transfer the whole of your business permanently to another site, the Licensed Software may be used at the new site by the Licensed Users, provided that we are informed in writing of the change of site before use of the Licensed Software begins at the new site;
 - (b) this Licence may, with our prior written consent, be extended to additional Licensed Users, provided that any appropriate additional fee is paid prior to such use;
 - (c) if the Hardware becomes inoperable for any reason, the Licensed Software may be temporarily used on backup equipment until the Hardware is repaired, and you may use the Licensed Software for the purpose of testing whether any such backup equipment is suitable for use while the Hardware is inoperable;
 - (d) if the Site becomes temporarily unusable due to flood, fire or similar damage, the Licensed Software may be used at an alternative site until the Site is again usable, provided that you give us notice of such alternative site; and
 - (e) the Licensed Software may be run on any replacement for all or any part of the Hardware where such replacement has been supplied by us or we have given written permission in advance for such replacement to be made.
- 13.6 You may not make adaptations or variations of the Licensed Software without our prior consent.
- 13.7 You may not disassemble, decompile, reverse translate or in any other manner decode the Licensed Software except as permitted by law. You may only operate the software in accordance with the Wysdom ICONIC Operating Procedures (and the training) that we shall provide on installation of the System and as updated by us from time to time (such updates may be made available on our website).
- 13.8 We shall at all times own all copies of all or any part of the Licensed Software. You shall place on each copy of all or any part of the Licensed Software a clearly visible label indicating that the copy is our property. You shall keep all copies of the Licensed Software in a secure place when not in use and shall at all times keep all such copies in your possession or control.
- 13.9 You shall use reasonable endeavours to prevent any violation of our proprietary rights in the Licensed Software and shall promptly report to us any such violation that comes to your attention. In particular, you shall:
- (a) not sub-license, rent, lend, assign or transfer in any other way the Licence or the Licensed Software to anyone else without our prior written consent. If

we consent to you transferring the Licence to anyone else (if, for example, you sell your business), we reserve the right to charge for this;

- (b) ensure that each Licensed User, before starting to use the Licensed Software, is made aware that the Licensed Software is proprietary to us and that it may only be used and copied in accordance with this Licence;
- (c) not permit third parties to have access to the Licensed Software without our prior written consent (we may require that such Third-Party executes a written confidentiality agreement before being given access to the Licensed Software);
- (d) not give access to the Licensed Software through any network of computers to users who are not your employees or agents.

14. SMS TEXTING

14.1 If you use the built-in SMS facility to contact your patients, you will need to purchase text credits from us. You will normally be required to set up a Standing Order for a regular monthly amount of credits and this can be increased as required. Please note:

- (a) Credits purchased and applied to your account cannot be refunded under any circumstances and;
- (b) A standard SMS text has a maximum of one hundred and sixty characters (160). If you send messages of more than this maximum you will be charged more than one text credit per message; i.e. the credits charged will be based on the multiple of the standard characters limit of 160.

15. ORDERING CONSUMABLES

15.1 You can use the Software to purchase Consumables. To do so, you will need to add items to your basket and enter an approved identification number in order to verify and confirm the order. Once the order has been verified and confirmed, the order can only be cancelled if you agree to pay for any costs incurred by us, such as re-stocking fees.

15.2 Payment must be made in accordance with the agreed payment terms. Title to and risk in the Consumables will be subject to clause 16.

15.3 It is your responsibility to inspect the Consumables on delivery. If you cannot do so, you must mark the delivery or other note as "not examined". We will not be responsible for any damage or shortages that would have been apparent on reasonable careful inspection.

15.4 In any event, you must notify us in writing within 24 hours of delivery of any alleged damage, defects or shortages so we can investigate with the delivery company. If you wish to return Consumables to us, you must notify us in advance. Any returns must be in their original condition (as delivered) and you will bear the cost of returning the items.

16. RISK AND OWNERSHIP

- 16.1 The Hardware shall be at our risk until delivery to you at the Site. The Consumables shall be at our risk until they have been delivered to you.
- 16.2 It is your responsibility to inspect the Hardware on delivery. If you cannot do so, you must mark the delivery or other note as "not examined". We will not be responsible for any damage or shortages that would have been apparent on reasonable careful inspection.
- 16.3 In any event, you must notify us in writing within 24 hours of delivery of any alleged damage, defects or shortages so we can investigate with the delivery company.
- 16.4 Ownership of the Hardware shall pass to you (or to those through whom the acquisition of the same is being financed, if appropriate) on the later of the Completion Date, or when we have received in full in cleared funds all sums due to us in respect of:
 - (a) the Hardware, the Software, the Services and that part of the license fee for the Licensed Software and Support Services due at the Completion Date in respect of the System supplied under the Sales Order; and
 - (b) all other sums which are or which become due to us at the Completion Date other than under this agreement.
- 16.5 Ownership of the Consumables shall pass to you once we have received payment in full in cleared funds for the total order of the Consumables.
- 16.6 Until ownership of the Hardware and/or Consumables has passed, you shall:
 - (a) hold the Hardware and/or Consumables on a fiduciary basis as our bailee;
 - (b) store the Hardware and/or Consumables (at no cost to us) in satisfactory conditions and separately from all your other equipment or that of a Third-Party, so that it remains readily identifiable as our property;
 - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Hardware and/or Consumables; and
 - (d) keep the Hardware and/or Consumables insured on our behalf for its full price against all risks to our reasonable satisfaction and hold the proceeds of such insurance on trust for us and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 16.7 You hereby grant us, our agents and employees an irrevocable licence at any time to enter any premises where the Hardware and/or Consumables are or may be stored in order to inspect them, or where your right to possession has terminated, to remove them. All costs incurred by us in repossessing the Hardware and/or Consumables shall be borne by you.
- 16.8 On termination of the agreement for any reason, our rights under this clause remain in effect.

17. CONFIDENTIALITY

- 17.1 Both parties will treat as confidential all Confidential Information supplied to the other party under the

- agreement including, but not limited to, information contained or embodied in the System or any documentation or other information supplied during the performance of this agreement. Neither party shall divulge any such Confidential Information to any person except to their own employees and/or sub-contractors and then only to those who need to know the same. Both parties shall ensure that its employees and sub-contractors are aware of, and comply with, the provisions of this clause 17.
- 17.2 The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of the Licence granted by clause 13 or this agreement.
- 17.3 The Licensed Software and the documentation in which it is referred to contain valuable trade secrets. You shall at all times keep the Licensed Software and documentation confidential and shall not permit the same to be used, copied, disclosed or disposed of except in accordance with this agreement.
- 17.4 The provisions of this clause 17 shall not apply to information which is already public knowledge or becomes so at a future date (other than by breach of this agreement).

18. LIMITATION OF LIABILITY

- 18.1 Without prejudice to any specific limitation set out elsewhere in this agreement, and subject to clause 18.2, our entire liability under this agreement (including any collateral contract that is found to exist in connection therewith), for loss of or damage caused by our negligence, whether by our officers, employees, contractors or agents, shall be limited to the amount of the Price paid in the preceding 12 month period. We shall not be liable for indirect, special or consequential damages resulting from use of the System.
- 18.2 The exclusions in this clause 18 shall apply to the fullest extent permissible at law, but we do not exclude liability for death or personal injury caused by our negligence, or that of our officers, employees, contractors or agents for fraud or any other liability which may not be excluded by law.
- 18.3 Our obligations under the contract are subject to, and contingent on, the proper use and care by you of the Supported Software, and do not cover any part of the Supported Software which has been modified by anyone other than us, except with our express prior written permission.
- 18.4 We shall have no liability to rectify any particular Defect if attempts to rectify such Defect (other than normal recovery or diagnostic procedures) have been made by your personnel or third parties without our permission.
- 18.5 We do not warrant or guarantee that we will be able to rectify all Defects, nor that any Defect which does not materially affect your operations using the Supported Software will be corrected, prior to the issue of the next New Release.

19. DATA PROTECTION

- 19.1 We acknowledge that we may be required to view and Process the Personal Data including sensitive personal data of a Data Subject (whose data has been acquired by you) in the course of providing our Services. The Personal Data may need to be Processed by persons employed by us to perform our obligations under the agreement together with our agents, suppliers and sub-contractors:
- (a) on the System at the Site or our premises;
 - (b) remotely from our premises or elsewhere;
 - (c) on our or our sub-contractor's equipment having been transferred (whether electronically or otherwise).
- 19.2 We shall:
- (a) Ensure that we appoint a Data Controller and that we are registered with the Information Commissioner;
 - (b) Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services;
 - (c) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - (d) take reasonable steps to ensure the reliability of any of our staff who have access to the Personal Data;
 - (e) transfer the Personal Data to our sub-contractors or affiliates for the provision of the Services only after taking reasonable steps to be satisfied that the sub-contractor has registered with the Information Commissioner and appointed a Data Controller itself (where applicable) and implemented appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure and that these measures are appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - (f) ensure that all our staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause;
 - (g) not Process Personal Data outside the European Economic Area without your prior written consent and, where you consent to a transfer, to comply with the obligations of a Data Controller under the

Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and any reasonable instructions notified to us by you;

- (h) report any breaches of the Data Protection Legislation relating to a Data Subject's Personal Data to you;
- (i) comply at all times with the Data Protection Legislation and shall not perform our obligations under this agreement in such a way as to cause you to breach any of your applicable obligations under the Data Protection Legislation; and
- (j) Immediately and permanently destroy the Personal Data of a Data Subject that is not required for the purposes of providing the Services or required to be kept in accordance with the Data Protection Legislation.

19.3 You agree and warrant to us: -

- (a) That you have appointed a Data Controller and are registered with the Information Commissioner; and
- (b) That, in relation to Personal Data stored on the Equipment, you have the right to permit us to view and Process that Personnel Data to the extent necessary to allow us to provide the Services under this agreement.

20. TERMINATION

20.1 As stated in clause 3.5 above, the Contract for Support Services will commence on the Support Commencement Date and will continue in force, on a rolling 12-month basis, until it is terminated in accordance with this clause 20. Either party may terminate the Contract for Support Services by giving the other party **not less than 3 months' written notice before the end of the current term** (i.e. before the 12-month period automatically renews), and termination will take effect only at the end of the notice period.

20.2 If you exercise your rights under this clause, you shall remain liable for the full annual Support Services fee to the next annual renewal date even though you will have no right to use the Licensed Software beyond the expiry of your notice under clause 20.1. Similarly, hardware support will no longer be provided after the notice period has been served.

PLEASE NOTE that all locally installed software has particular system and setup requirements that may cause other already installed software and services to fail. If you allow installation of a competitor system on Wysdom-supplied hardware during your notice period and after which Wysdom supplied hardware and/or software or ancillary services of any kind do fail, we can no longer be held liable for support of your system or any loss incurred. You are therefore strongly advised to regularly check to ensure that all Wysdom supplied services still function at all times prior to termination.

20.3 If you choose to move to another Practice Management System provider, you must give notice as under clause

- 20.1. If you do not notify us of your intentions and arrange to install a competitor system on Wysdom-supplied equipment it may conflict with a) the Wysdom software b) backup provisioning c) anti-virus software d) ancillary services. Our support will cease with immediate effect as we cannot support the system when a third-party has accessed and amended settings to work with their newly installed software.
- 20.4 Under clauses 20.2 and 20.3 we will accept no responsibility for failures of the Wysdom software, backups or antivirus and all further support by us to reinstate services will be solely at Wysdom's discretion and chargeable as it does not come under our general support contract obligations even though you may still be liable for further maintenance charges in accordance with clause 20.1.
- 20.5 On termination of the Licence, the System will revert to a view-only mode where you may view your data but not edit it. Hardware & software support, Cloud backup and Anti-Virus services will cease immediately, and existing backups will be deleted. It is your responsibility to make suitable provision for continued access to your data.
- 20.6 If access to the view-only system fails, or you wish to be able to edit or manage data and/or finalise NHS transmissions after termination, or you find that data has not been transferred satisfactorily by your new provider and you require further assistance you must arrange for continued use of the system on a per user basis and for a minimum period of three months. Cloud backup and Anti-Virus services will also be mandatory. Hardware support and maintenance will however not be available within this contract.
- 20.7 Either party may terminate this agreement immediately by written notice to the other party if:
- (a) the other party commits a material or persistent breach of any of its obligations under this agreement and (in the case of a breach capable of being remedied) does not remedy such breach within 30 days of receiving from the other party written notice of the breach and a request to remedy the breach; or
 - (b) any distress or execution is levied on the other party's property or if the other party has a receiver, administrator, administrative receiver or manager appointed over the whole or any part of its assets, becomes insolvent, compounds or makes any arrangement with its creditors, commits any act of bankruptcy, is wound up or goes into liquidation, or if the other party suffers any analogous proceedings under foreign law.
- 20.8 Either party may terminate this agreement in accordance with the provisions contained in clause 22 (force majeure).
- 20.9 Clauses 13.1, 13.9, 17, 20.4 and 20.5 shall survive termination of this agreement. Any termination of this

agreement (however caused) shall not affect any other accrued rights or liabilities of either party, nor shall it affect the coming into force or the continuance in force of any provision of this agreement which is expressly or by implication intended to come into or continue in force on or after such termination, except that we shall not be liable for any loss, claims, damage, fees, liabilities, costs or expenses, whether direct, indirect, financial, economic, consequential (including without limitation loss of profit, loss of goodwill, loss of sale revenue, loss of contract and loss of opportunity) or otherwise, that you suffer as a direct or indirect result of such termination.

21. ASSIGNMENT

- 21.1 You shall not assign, or grant any security interest over, any of your rights or obligations under this agreement, without our prior written consent.
- 21.2 We may assign, or grant any security interest over, any of our rights or obligations under this agreement

22. FORCE MAJEURE

- 22.1 Neither party shall be liable for any delay in meeting, or failure to meet, its obligations under this agreement due to any cause outside its reasonable control including (without limitation) acts of God, war, riot, malicious acts of damage, fire, governmental acts, failure of electricity supply, strike, lock-out or labour dispute or apprehension thereof (whether or not the settlement of the matter is at the discretion of the party in question).
- 22.2 If any delaying event under clause 22.1 continues in existence for a period of 180 days or more, either party may give the other party 30 days' written notice of its intention to terminate this agreement unless, in the meantime, the delaying event has ended and work under this agreement has resumed. We shall be entitled to payment on a time and materials basis for all work done prior to termination, provided that we take all reasonable steps to mitigate the amount due.

23. NOTICES

Any notice given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or e-mail to the address or e-mail address specified in the Sales Order, or to such other address as a party may from time to time notify to the other party. A notice delivered by hand is deemed to have been served when delivered. A correctly addressed notice sent by post is deemed to have been delivered 48 hours after the time of despatch. A notice sent by e-mail is deemed to have been delivered on the date of transmission. In proving the service of the notice, it shall be sufficient to prove:

- (a) in the case of a letter, that such letter was properly delivered or stamped, addressed and placed in the post (as the case may be); and
- (b) in the case of an e-mail, that the same was duly despatched to the current e-mail address of the

addressee and no indication of non-delivery was received by the sender.

24. WAIVER

- 24.1 A waiver of any right under this agreement is only effective if it is in writing and signed by the waiving party, and it applies only to the person to whom the waiver is addressed and the circumstances for which it is given.
- 24.2 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

25. SEVERANCE

- 25.1 If any provision of this agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 25.2 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.

26. THIRD-PARTY RIGHTS

This agreement, and the documents referred to in it, is made for the benefit of the parties to them and their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

27. ENTIRE AGREEMENT

The parties agree that this agreement and any documents identified in it constitutes the complete and exclusive statement of the agreement between them with respect to the subject matter of this agreement, which supersedes all proposals, oral or written, and all other communications between them relating to it.

28. GOVERNING LAW

This agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).