

PART B – SUBSCRIPTION TERMS AND CONDITIONS

1. INTERPRETATION

1.1 In this Agreement the following words and phrases will have the following meanings:

‘Agreement’	the Software Subscription Agreement comprising these Subscription Terms and Conditions and the Subscription Details;
‘Applicable Law’	means any law, statute, regulation, byelaw or subordinate legislation in force from time to time which a party is subject and/or in any jurisdiction which the party operates;
‘Appropriate Safeguards’	means such legally enforceable mechanism(s) for transfers of Personal Data as may be permitted under Data Protection Legislation from time to time;
‘Authorised Users’	the Customer’s employees, agents and contractors authorised to use the Services in accordance with this Agreement for the purposes of the Customer’s business carried on at the Customer Location;
‘Business Day’	any day which is not a Saturday, Sunday or public holiday in England;
‘Confidential Information’	any proprietary information belonging to either party including technical information and data, trade secrets or know-how, past, present or future research information, product plans, products, services, markets, customer lists and customers, users or potential users of any such information created or used in the provision of the Services, developments, inventions, processes, formulae, technology, designs, drawings, and other business and finance information and any and all information derived or obtained from any such information, and any other information clearly designated as being confidential (whether or not it is marked as confidential) or which ought reasonably to be considered to be confidential or which is identified as Confidential Information in clause 9.5;
‘Customer Data’	the data inputted into the information fields of the Software by the Customer, Authorised Users, or LNT Software on the Customer’s behalf for the purpose of using the Services or facilitating the Customer’s use of the Services;
‘Customer Location’	the location specified in section 3 of the Subscription Details;
‘Data Controller’	has the meaning given to that term (or to the term ‘controller’) in

	Data Protection Legislation;
'Data Processor'	has the meaning given to that term (or to the term 'processor') in Data Protection Legislation;
'Data Protection Legislation'	means as applicable and binding on the Customer, LNT Software and/or the Services: (a) in the United Kingdom: (i) the Data Protection Act 1998 and any laws or regulations implementing Directive 95/46/EC (Data Protection Directive); and/or (ii) the GDPR, and/or any corresponding or equivalent national laws or regulations; (b) in member states of the European Union: the Data Protection Directive or the GDPR, once applicable, and all relevant members' state laws or regulation giving effect to or corresponding with any of them; and (c) any Applicable Laws replacing, amending, extending, re-enacting or consolidating any of the above Data Protection Legislation from time to time;
'Data Protection Losses'	means all liabilities, including all: (a) costs (including legal costs), claims, demands, actions, settlements, interest charges, procedures, expenses, losses and damages (including relating to material or non-material damage); and (b) to the extent permitted by Applicable Law: (i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority; (ii) compensation which is ordered by a Supervisory Authority to be paid to a Data Subject; and (iii) the reasonable costs of compliance with investigations by a Supervisory Authority.
'Data Subject'	has the meaning given to that term in Data Protection Legislation;
'Data Subject Request'	means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Legislation;
'Documentation'	the documentation, specified in the Subscription Particulars, made available to the Customer by LNT Software online via www.LNTSoftware.com or such other web address notified by LNT Software to the Customer from time to time which sets out

	a description of the Services and the user instructions for the Services;
‘GDPR’	means the General Data Protection Regulation (EU) 2016/679;
‘Effective Date’	the date specified as such in the Subscription Details;
‘Fees’	the fees payable by the Customer to LNT Software for the Services, as set out in section 5 of the Subscription Details;
‘Intellectual Property Rights’	patents, inventions, know-how, trade secrets and other confidential information, registered designs, copyrights, database rights, Internet domain names, design rights, rights affording equivalent protection to copyright, database rights and design rights, topography rights, trade marks, business names, trade names, moral rights, registration of or an application to register any of the aforesaid items, and rights in the nature of any of the aforesaid items in any country, rights in the nature of unfair competition rights and rights to sue for passing off;
‘Normal Business Hours’	09.00 am to 17.00 pm local UK time, on each Business Day;
‘Number of Registered Beds’	the maximum number of service users that the registered provider is allowed to accommodate at the Customer Location as registered with The Care Quality Commission from time to time;
‘Personal Data’	has the meaning given to that term in Data Protection Legislation;
‘Personal Data Breach’	means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Personal Data processed in connection with this Agreement;
‘Processing’	has the meanings given to that term in Data Protection Legislation (and related terms such as ‘process’ have corresponding meanings);
‘Protected Data’	means any Customer Data which is Personal Data received from or on behalf of the Customer in connection with LNT Software’s obligations under this Agreement;
‘Services’	the subscription services provided by LNT Software to the Customer under this Agreement via the Site, as more particularly described in the Documentation;
‘Site’	the site address notified to the Customer by LNT Software at the time of installation or any other site from which the Service is made available to the Customer from time to time;
‘Software’	the software made available by LNT Software to the Customer as part of the Services;

‘Sub-Processor’	means another Data Processor engaged by LNT Software for carrying out processing activities in respect of the Protected Data on behalf of the Customer;
‘Subscription Details’	the details set out in Part A of this Agreement;
‘Subscription Fees’	the subscription fees payable by the Customer to LNT Software for the Services, as set out in the Subscription Details;
‘Subscription Period’	the period, specified as such in the Subscription Details, during which the Customer will be entitled to receive the Services;
‘Supervisory Authority’	means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Legislation.
‘Support Services Policy’	LNT Software’s policy for providing support in relation to the Services as made available at www.LNTSoftware.com or such other website address as may be notified to the Customer from time to time; and
‘Virus’	any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses time-bombs, keystroke loggers, spyware, adware and other similar things or devices.

- 1.2 The headings contained in this Agreement are for convenience of reference only and shall not affect its interpretation or construction.
- 1.3 Unless the context otherwise requires words denoting the singular shall include the plural and vice versa, references to any gender shall include all other genders and references to persons shall include natural persons, bodies corporate, unincorporated associations, governments, states, trusts and partnerships, in each case whether or not having a separate legal personality.
- 1.4 The words and phrases “including” and “in particular” shall be without limitation to the generality of any preceding words and any preceding words shall not be construed as being limited to a particular class where a wider interpretation of those words and phrases is possible.
- 1.5 Any reference to “writing” or “written” includes faxes and email.

- 1.6 References to any statute, enactment, order, regulation or other similar instrument shall be construed as references to the same as amended by or as contained in any subsequent re-enactment, modification or statutory extension thereof.
- 1.7 References to a law includes all subordinate legislation made under that law.
- 1.8 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.
- 1.9 References to this Agreement includes its schedules and appendices.

2. LICENCE

- 2.1 Subject to payment of the Fees, and the Customer's compliance with the provisions of this Agreement, LNT Software hereby grants to the Customer a non-exclusive, non-transferable right to use and to permit the Authorised Users to use the Services and the Documentation during the Subscription Period solely for the Customer's internal business operations.
- 2.2 The Customer shall not access or use, or use or attempt to access or use the Software, the Services or the Site:
- (a) in any way which interferes with, damages or disrupts, or might reasonably be expected to interfere with, damage or disrupt the Services, the Software, the Site, or any equipment, network or other software used in the provision of the Service;
 - (b) in any way which is unlawful, illegal or fraudulent, or has any unlawful, illegal or fraudulent purpose or effect;
 - (c) to transmit, or procure the sending of, any unsolicited or unauthorised advertising or promotional material or any other form of similar solicitation;
 - (d) knowingly to store, transmit or upload any data or material that contains any Virus;
 - (e) knowingly to store, transmit or upload any data or material which
 - (1) advocates, promotes or assists violence, any other illegal or unlawful activity;
 - (2) is obscene or depicts sexually explicit images;
 - (3) is offensive, hateful, defamatory or inflammatory;
 - (4) is threatening, abusive or which invades another's privacy, or causes needless anxiety or annoyance;
 - (5) advocates or promotes discrimination based on race, sex, religion, nationality, disability, sexual orientation or age;
 - (6) infringes any copyright, database right, trade mark or other proprietary right of any other person;
 - (7) is fraudulent or misleading;
 - (8) is made in breach of any legal duty owed to a third party, such as a contractual duty or a duty of confidence;

(9) causes damage or injury to any person or property;

and LNT Software reserves the right, without liability to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

2.3 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - (1) and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (2) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- (c) undertake or attempt the measurement or monitoring of any aspect or attribute of the Services for the collection of commercial or technical intelligence, or comparison with any other service; or
- (d) use the Services and/or Documentation to provide services to third parties; or
- (e) subject to clause 18.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software, the Services and/or Documentation available to any third party except the Authorised Users or in any other way seek to exploit the Software, the Services or Documentation on any commercial basis; or
- (f) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; or
- (g) make the Software, the Services or any Documentation available in any form other than as provided to the Customer by LNT Software

3. SERVICES

- 3.1 LNT Software shall, during the Subscription Period, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.
- 3.2 LNT Software shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
 - (a) planned maintenance provided that LNT Software has used reasonable endeavours to give the Customer at least 4 Normal Business Hours' notice in advance; and
 - (b) unscheduled maintenance provided that LNT Software provides as much notice as reasonably practicable in advance.
- 3.3 Notice pursuant to Clause 3.2 may be provided by LNT Software to the Customer's

email address as set out in the Subscription Details.

- 3.4 LNT Software will, as part of the Services and at no additional cost to the Customer, provide the Customer with LNT Software's standard customer support services during Normal Business Hours in accordance with LNT Software's then-current Support Services Policy in effect at the time that the Services are provided. LNT Software may amend the Support Services Policy in its sole and absolute discretion from time to time. Where a Customer requires excessive use of LNT Software's standard customer support services due to a lack of training, LNT Software reserves the right to withdraw support until such time as the required training has been booked and paid for.

4. CUSTOMER DATA

- 4.1 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 4.2 LNT Software shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy available at www.LNTSoftware.com or such other website address as may be notified to the Customer from time to time, as such document may be amended by LNT Software from time to time in its sole discretion (the "Back-Up Policy"). In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for LNT Software to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by LNT Software in accordance with the archiving procedure described in the Back-Up Policy. LNT Software shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by LNT Software to perform services related to Customer Data maintenance and back-up).
- 4.3 LNT Software shall, in providing the Services, comply with its Security Policy relating to the security of the Customer Data available at www.LNTSoftware.com or such other website address as may be notified to the Customer from time to time, as such document may be amended by LNT Software from time to time in its sole discretion.
- 4.4 The parties agree, for the purpose of the Protected Data, the Customer shall be the Data Controller and LNT Software shall be the Data Processor.
- 4.5 LNT Software shall process Protected Data in compliance with the obligations of Data Processors under Data Protection Legislation in respect of the performance of its obligations under this Agreement and the terms of this Agreement.
- 4.6 The Customer shall comply with Data Protection Legislation in connection with the Processing of Protected Data, the Services and the exercise of its respective rights and obligations under this Agreement, including maintaining all relevant regulatory registrations and notifications as required under Data Protection Legislation and the terms of this Agreement and take appropriate technical and organisational measures against unauthorised or unlawful Processing of the Protected Data or its accidental loss, destruction or damage.

- 4.7 The Customer warrants, represents and undertakes that all Personal Data sourced by the Customer for use in connection with the Services shall comply in all respects, including in terms of its collection, storage and Processing with Data Protection Legislation and all instructions given by the Customer in respect of Personal Data are in accordance with Data Protection Legislation.
- 4.8 When Processing Protected Data received from or on behalf of the Customer or otherwise obtained in connection with the performance of the LNT Software's obligations under this Agreement LNT Software shall:
- (a) process the Protected Data only on and in accordance with the Customer's documented instructions as set out in this clause and Appendix 1 (Data Processing Details) as updated from time to time by the written agreement of the parties (Processing Instructions) or if the Applicable Law requires it to process Protected Data otherwise than in accordance with the Customer's instructions LNT Software shall notify the Customer of any such requirement (unless the legal requirement prohibits this);
 - (b) inform the Customer if LNT Software becomes aware of an instruction that may infringe Data Protection Legislation (without prejudice to clauses 4.6 and 4.7) and to the extent permitted by law LNT Software shall have no liability however so arising for any losses, costs, expenses or liabilities in connection with Processing in accordance with the Customer's instructions, once the Customer has received such information;
 - (c) taking into account the nature of the Processing, implement and maintain at its cost and expense as appropriate the technical and organisational measures in relation to the Processing of Protected Data by LNT Software and assisting the Customer in its obligations to respond to Data Subject Requests in so far as this is possible and reasonable;
 - (d) not engage any Sub-Processor for carrying out any Processing activities in respect of the Protected Data without the Customer's written authorisation (not to be unreasonably withheld, conditioned or delayed) and shall ensure that any such Sub-Processor engaged enters into a written contract containing materially the same obligations under this clause 4;
 - (e) ensure that all persons authorised by it or by any Sub-Processor to process Protected Data are subject to an obligation to keep the Protected Data confidential (except where disclosure is required in accordance with Applicable Law, in which case LNT Software shall notify the Customer before disclosure);
 - (f) promptly refer all Data Subject Requests it receives to the Customer and provide such reasonable assistance as the Customer reasonably requires (taking into account the nature of Processing and the information available to the LNT Software) in ensuring compliance with the Customer's obligations under Data Protection Legislation with reference to security of Processing, data protection impact assessments, prior consultation with a Supervisory Authority high risk processing, and notifications to the Supervisory Authority and/or communications to Data Subjects by the Customer in response to any Personal Data Breach, provided the Customer shall pay LNT Software's charges for providing the assistance;
 - (g) maintain written records of all categories of Processing activities carried out on behalf of the Customer;

- (h) make available to the Customer such information as is reasonably necessary to demonstrate LNT Software's compliance with the obligations of Data Processing under Data Protection Legislation and allow for audits (i.e. a review or inspection of such information to the extent reasonably necessary) by the Customer for this purpose, subject to the Customer:
 - (1) giving reasonable prior notice, ensuring all information obtained, including but not limited to LNT Software's Intellectual Property Rights, is kept strictly confidential (save as otherwise required by Applicable Law);
 - (2) ensuring the audit/inspection is undertaken during normal business hours with minimal disruption to LNT Software's (or Sub-Processors') business; and
 - (3) paying LNT Software's reasonable costs in connection with this;
 - (i) notify the Customer of any Personal Data Breach without undue delay and provide the Customer with details of the Personal Data Breach;
 - (j) delete or return all Protected Data to the Customer, at the Customer's written request, in such form as the Customer reasonably requests within a reasonable time at the earlier of:
 - (1) the end of the provision of the relevant Services related to Processing; or
 - (2) once Processing by LNT Software of any Protected Data is no longer required for LNT Software's performance of its obligations under the Contract;and delete existing copies (unless storage of any data is required by Applicable Law in which case LNT Software shall notify the Customer).
- 4.9 The Customer acknowledges that once Protected Data is deleted it is irretrievable and that such deletion may affect the accuracy of subsequent reports that would have included the Protected Data had it not been deleted.
- 4.10 The Customer agrees that it is the Customer's responsibility to inform LNT Software of which named individuals or categories of individuals are authorised on behalf of the Customer to request the deletion or return of Protected Data in accordance with clause 4.8(j) and that LNT Software shall not be liable for the deletion of such data at the request of individuals on behalf of the Customer who are not duly authorised.
- 4.11 The Customer agrees that LNT Software may transfer Protected Data to countries outside the European Economic Area provided all transfers by LNT Software of Protected Data shall be effected by way of Appropriate Safeguards and in accordance with Data Protection Legislation.
- 4.12 The Customer shall indemnify and keep indemnified LNT Software in respect of all Data Protection Losses suffered or incurred by LNT Software or any Sub-Processor arising from or in connection with any:
- (a) non-compliance by the Customer with the Data Protection Legislation;
 - (b) Processing carried out by LNT Software or any Sub-Processor pursuant to any Processing Instructions that infringes any Data Protection Legislation; or
 - (c) breach by the Customer of any of its obligations under this Schedule.

- 4.13 If a party receives a compensation claim from a person relating to the Processing of Protected Data, it shall promptly provide the other party with notice and full details of such claim and the party with conduct of the action shall make no admission of liability nor agree any settlement without prior written consent of the other party and shall consult fully with the other party in relation to any such action.

5. LNT SOFTWARE'S OBLIGATIONS

- 5.1 LNT Software undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 5.2 The undertaking at clause 5.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to LNT Software's instructions, or modification or alteration of the Services by any party other than LNT Software or LNT Software's duly authorised contractors or agents. If the Services do not conform to the foregoing undertaking, LNT Software will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 5.1. Notwithstanding the foregoing, LNT Software:
- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; nor that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
 - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 5.3 LNT Software warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

6. CUSTOMER'S OBLIGATIONS

- 6.1 The Customer shall:
- (a) provide LNT Software with:
 - (1) all necessary co-operation in relation to this Agreement; and
 - (2) all necessary access to such information as may reasonably be required by LNT Software,in order to render the Services, including but not limited to Customer Data, security access information and configuration services;
 - (b) comply with all applicable laws and regulations with respect to its activities under this Agreement;
 - (c) carry out all other Customer responsibilities set out in this Agreement in a timely and

efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, LNT Software may adjust any agreed timetable or delivery schedule as reasonably necessary;

- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
- (e) manage their Users' login details and set appropriate access permissions for their Users;
- (f) obtain and shall maintain all necessary licences, consents, and permissions necessary for LNT Software, its contractors and agents to perform their obligations under this Agreement, including the Services;
- (g) ensure that its network and systems comply with the relevant specifications provided by LNT Software from time to time; and
- (h) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to LNT Software's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

6.2 The Customer shall use all reasonable endeavours (including the use of reasonable technical and organisational security measures) to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify LNT Software.

7. FEES AND PAYMENT

7.1 The Customer shall in consideration of the Services pay the Fees as applicable from time to time in accordance with this clause 7 and the Subscription Details.

7.2 The Customer will pay all invoices:

- (a) in full and without deduction or set-off, in clear funds within 30 days of the date of each invoice; and
- (b) to the bank account nominated by LNT Software.

7.3 If sums due under this Agreement are not paid in full by the due date:

- (a) LNT Software may, without limiting its other rights, charge interest on such sums at 5% a year above the base rate of the Bank of England from time to time in force, and;
- (b) interest will accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

7.4 If the Customer fails to pay an invoice, in accordance with clause 7.2, within 30 days of the date of the invoice, LNT Software reserves the right to provide the Customer with 7 days' notice of disconnection of the Services. Failure to make payment within the 7 days' notice period will result in the Services being disconnected on expiry of the 7 day notice period.

- 7.5 The Services will remain disconnected until all invoices due under clause 7.2 are paid in full together with any interest accrued in accordance with clause 7.3.
- 7.6 If subsequent to any suspension of the Services in accordance with this clause 7.4 the Customer requests that the Services be restored, LNT Software will be entitled to charge a reconnection fee of £250, or such other sum as LNT Software deem reasonable, to reconnect the Services.
- 7.7 If any invoices remain outstanding and are not paid in full in accordance with this Agreement, LNT Software shall be entitled without prejudice to any right:
- (a) to terminate this Agreement under clause 12; and/or
 - (b) to engage debt collectors to pursue outstanding invoices.
- 7.8 The Customer shall also be liable to pay all costs, fees, disbursements and charges including legal fees and costs reasonably incurred by LNT Software in the recovery of any unpaid invoices regardless of the value of the claim.
- 7.9 All amounts and Fees stated or referred to in this Agreement:
- (a) shall be payable in advance in pounds sterling by direct debit;
 - (b) are exclusive of value added tax, which shall be added to LNT Software's invoice(s) and payable at the rate and in the manner prescribed by law;
 - (c) are non-refundable, and the Customer's failure to make use of the Services or any part thereof will not entitle the Customer to any refund of such Fees.
- 7.10 No payment will be effective unless and until received by LNT Software in cleared funds.
- 7.11 LNT Software shall be entitled to increase the Subscription Fees with effect from 1 April each year upon not less than thirty (30) days' prior notice to the Customer.
- 7.12 The Customer will not be entitled to access or use the Service without first
- (a) providing correct identification and contact details as specified in the Subscription Form; and
 - (b) paying all applicable Fees.
- 7.13 The Customer will notify LNT Software of any change to its identification and contact details as soon as reasonably practicable, and in any event within 28 days.
- 7.14 The Customer shall promptly inform LNT Software of any changes to the Number of Registered Beds.
- 7.15 LNT Software may make reviews at intervals it deems appropriate of the Number of Registered Beds and a review will be undertaken by LNT Software if there is a change to the number of Sites using the Software. Any changes to the Number of Registered Beds will be charged for retrospectively from the date of the change in accordance with this clause 7.

- 7.16 If the Customer is not licenced to provide beds and, therefore, cannot provide a Number of Registered Beds, a bed rated figure will be agreed between the parties based on projected usage to calculate the Fees.
- 7.17 If the Customer requires their database to be amended by the removal or separation of Data, LNT Software shall be entitled to charge for the work required at a rate equal to the then current rate for one day's on-site training.

8. PROPRIETARY RIGHTS

- 8.1 The Customer acknowledges and agrees that LNT Software and/or its licensors own all Intellectual Property Rights in the Software, the Services and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Software, the Services or the Documentation.
- 8.2 LNT Software confirms that it has all the rights in relation to the Software, the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.
- 8.3 LNT Software shall be granted a perpetual irrevocable royalty-free, worldwide license to use or incorporate into the Services, the Software, the Site or the Documentation any proposals, requests, or ideas in respect of the Services ("Customer Input") provided by or for the Customer, and to use or incorporate any Customer Input in products or services made available from time to time by LNT Software or its affiliates to their customers at large.

9. CONFIDENTIALITY

- 9.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the receiving party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - (d) can be shown by written evidence to have been independently developed by the receiving party; or
 - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 9.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, shall not make the other's Confidential Information available to any

third party, or use the other's Confidential Information for any purpose other than the proper discharge of its obligations under this Agreement.

- 9.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 9.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party which is not a contractor of that party or otherwise under that party's direction or control.
- 9.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Software and/or the Services, constitute LNT Software's Confidential Information.
- 9.6 LNT Software acknowledges that the Customer Data is the Confidential Information of the Customer.
- 9.7 The provisions of this clause 9 shall survive termination of this Agreement, however arising.

10. INDEMNITY

- 10.1 LNT Software shall, subject to clause 10.3, defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services, the Software or the Documentation in accordance with this Agreement infringes any United Kingdom patent effective as of the Effective Date, or any copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
 - (a) LNT Software is given prompt notice of any such claim;
 - (b) LNT Software is given sole authority to defend or settle the claim; and
 - (c) the Customer provides LNT Software (at LNT Software's expense) with all co-operation reasonably required for the defence and settlement of such claim.
- 10.2 In the defence or settlement of any claim, LNT Software may procure the right for the Customer to continue using the Services, replace or modify the infringing Services, the Software or the Documentation so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 7 Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 10.3 In no event shall LNT Software, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
 - (a) a modification of the Services, the Software or the Documentation not made by or on behalf of LNT Software; or
 - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by LNT Software; or

- (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from LNT Software or any appropriate authority; or
 - (d) the combination of the Service with any other service, software, or system not provided by LNT Software.
- 10.4 The foregoing states the Customer's sole and exclusive rights and remedies, and LNT Software's (including LNT Software's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.
- 10.5 The Customer shall defend, indemnify and hold harmless LNT Software against claims, actions, proceedings, losses, damages, expenses and costs (including court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:
- (a) the Customer is given prompt notice of any such claim;
 - (b) LNT Software provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - (c) the Customer is given sole authority to defend or settle the claim.

11. LIMITATION OF LIABILITY

- 11.1 This clause 11 prevails over all other clauses in this Agreement.
- 11.2 Subject to the provisions of clause 11.4 this clause 11 sets out the entire financial liability of LNT Software (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- (a) any breach of this Agreement;
 - (b) any use made by the Customer of the Services, Software and Documentation or any part of them; and
 - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 11.3 Except as expressly and specifically provided in this Agreement:
- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. LNT Software shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to LNT Software by the Customer in connection with the Services, or any actions taken by LNT Software at the Customer's direction;
 - (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
 - (c) the Services and the Documentation are provided to the Customer on an "as is" basis.

- 11.4 Nothing in this Agreement excludes the liability of LNT Software:
- (a) for death or personal injury caused by LNT Software's negligence; or
 - (b) for fraud or fraudulent misrepresentation.
- 11.5 The liability of LNT Software in respect of loss or damage to tangible property of the Customer caused by its negligence shall not exceed one million (1,000,000) pounds.
- 11.6 Subject to clauses 11.3, 11.4 and 11.5:
- (a) LNT Software shall not be liable whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
 - (b) LNT Software's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Fees paid during the 12 months immediately preceding the date on which the claim arose.
- 11.7 LNT Software shall not be liable for any deletion, destruction, damage, or other loss of Customer Data
- (a) not attributable to any act or omission on the part of LNT Software Limited or any person acting on its behalf; or
 - (b) on termination or suspension of the Customer's access to the Service in accordance with clause 12.

12. TERM AND TERMINATION

- 12.1 This Agreement shall come into force on the Effective Date, shall continue in force until terminated by the Customer on 30 days' notice in writing in advance and by LNT Software on 6 months' notice in writing in advance.
- 12.2 Without prejudice to any other rights or remedies to which the parties may be entitled, LNT Software may terminate this Agreement on 7 days' notice without liability if any Fees are not paid when due.
- 12.3 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement without liability to the other if:
- (a) the other party commits a material breach of any of the provisions of this Agreement and, in the case of a breach capable of remedy, fails to remedy the breach within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied; or
 - (b) upon the other party passing a resolution for winding-up or having a petition to wind up presented against it or going into liquidation, whether voluntary or compulsory (save for the purposes of amalgamation or reconstruction where the amalgamated or reconstructed company agrees to adhere to this Agreement) or suffering a winding-up

- order being made against it or going into administration; or
- (c) the other party proposes a voluntary arrangement within the meaning of Section 1 or Section 253 of the Insolvency Act 1986, or an interim order is made in relation to the Supplier under Section 252 of the Insolvency Act 1986, or any other steps are taken or negotiations commenced by that party or any of its creditors with a view to proposing any kind of composition, compromise or arrangement involving the other party and any of its creditors;
 - (d) a receiver or administrative receiver or administrator is appointed or an encumbrancer takes possession of the undertaking or assets (or any part thereof) of the other party; or
 - (e) the other party is unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986 or any statutory re-enactment or modification thereof) or ceases to or threatens to cease to carry on its business or enters into a composition with its creditors; or
 - (f) the other party takes or suffers any action similar or analogous to the events described in clauses 12.2 (b), (c), (d) or (e) in any jurisdiction in consequence of debt; or
 - (g) the other party ceases, or threatens to cease, to trade.
- 12.4 LNT Software shall be entitled to terminate this Agreement with immediate effect if the Customer undergoes a change of Control which LNT Software considers at its discretion to be detrimental to LNT Software's commercial interests. For the purposes of this clause 12.3, "Control" shall have the meaning given it by Section 1124 of the Corporation Taxes Act 2010.
- 12.5 On termination of this Agreement for any reason:
- (a) all licences granted under this Agreement shall immediately terminate;
 - (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
 - (c) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced; and
 - (d) LNT Software may destroy or otherwise dispose of any of the Customer Data in its possession unless LNT Software receives, no later than fourteen (14) days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. LNT Software shall use reasonable commercial endeavours to deliver the back-up to the Customer within thirty (30) days of its receipt of such a written request, provided that the Customer has, at that time, paid all Fees and charges outstanding at and resulting from termination (whether or not due at the date of termination).
- 12.6 If this Agreement is terminated for any reason prior to expiry of the Subscription Period, the Customer will pay to LNT Software all Subscription Fees due up to the date of termination and those payable for the full Subscription Period under this Agreement within fourteen (14) days from the date of termination.

- 12.7 LNT Software shall in respect of any material breach of this Agreement by the Customer be entitled to take whatever action it considers appropriate including any or all of the following:
- (a) issue of a warning to the Customer;
 - (b) immediate, temporary or permanent withdrawal of the Customer's right to use the Service;
 - (c) immediate, temporary or permanent removal of any data, posting or other material uploaded to the Site by the Customer;
 - (d) legal proceedings against the Customer for reimbursement on an indemnity basis (including, but not limited to, reasonable administrative and legal costs) of all costs incurred by LNT Software resulting from the breach.

13. VARIATION

- 13.1 LNT Software reserves the right to change these Terms or any policy or procedure relating to the Service (a "**Variation**") at any time, provided that any such Variation will only have effect from the date 14 days after LNT Software serves notice thereof on the Customer in accordance with clause 21.
- 13.2 Any continued use of the Service by the Customer more than 14 days after notification of any Variation in accordance with clause 13.1 will constitute the Customer's consent to such Variation. If the Customer does not consent to the Variation then notice must be served on LNT Software to terminate this Agreement within 14 days after notification of any Variation and clause 12.6 shall not apply.

14. FORCE MAJEURE

- 14.1 Neither LNT Software nor any of its employees, agents or sub-contractors shall be deemed in breach of this Agreement or under any liability whatsoever to the Customer for any failure or delay in performing the Services or any obligation under this Agreement resulting from circumstances beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of LNT Software or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.
- 14.2 LNT Software will not be liable for any defect in or failure of any product or services not provided by or on behalf of LNT Software (a "Third Party Default"), and shall not be liable for any delay to or interruption or failure of the Service to the extent that such delay, interruption or failure is attributable to a Third Party Default.

15. WAIVER

- 15.1 No waiver by any party of any breach or non-fulfilment by any other party of any

provisions of this Agreement shall be deemed to be a waiver of any subsequent or other breach of that or any other provision and no failure to exercise or delay in exercising any right or remedy under this Agreement shall constitute a waiver of that right or remedy. No single or partial exercise of any such right, power or remedy shall preclude or impair any other or further exercise of it or the exercise of any other right, power or remedy provided by law or under this Agreement.

- 15.2 Any waiver of any right, power or remedy under this Agreement must be in writing and may be given subject to any conditions thought fit by the grantor. Unless otherwise expressly stated, any waiver shall be effective only in the instance and only for the purpose for which it is given.

16. SEVERANCE

- 16.1 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 16.2 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.

17. ENTIRE AGREEMENT

- 17.1 This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 17.2 Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

18. ASSIGNMENT

- 18.1 The Customer shall not, without the prior written consent of LNT Software, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 18.2 LNT Software may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

19. NO PARTNERSHIP OR AGENCY

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

any obligation or liability and the exercise of any right or power).

20. THIRD PARTY RIGHTS

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

21. NOTICES

- 21.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Subscription Details, or such other address as may have been notified by that party for such purposes, or sent by PDF document attached to the email address as set out in the Subscription Details.
- 21.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time of receipt.
- 21.3 LNT Software may notify the Customer of any Variation made in accordance with clause 13 by notices sent by means of the Service or posted on the Site.

22. DISPUTE RESOLUTION

- 22.1 Except as otherwise provided, in the event of any dispute arising out of or in relation to this Agreement, the parties must first use their respective best endeavours to consult and negotiate with each other in good faith and, recognising their mutual interests, attempt to reach a settlement of the dispute satisfactory to both parties. To such end the parties must within 10 Business Days of a dispute arising convene a meeting between their authorised representatives and any other relevant members of management having regard to the matter under discussion (together, **Appointed Persons**) to attempt to resolve the dispute.
- 22.2 If the Appointed Persons agree upon a settlement of the dispute, they will sign a statement setting out its terms and the parties will ensure that it is fully and promptly carried out. If the Appointed Persons do not reach such a settlement within 10 Business Days of the meeting convened in accordance with clause 22.1, the parties will refer the dispute to mediation before having recourse to litigation. The mediation shall be conducted in accordance with an Alternative Dispute Resolution procedure recommended by the Centre for Effective Dispute Resolution, London (the "ADR Procedure").
- 22.3 If the matter has not been resolved by the ADR Procedure within 30 Business Days of the initiation of that procedure, or if either party will not participate in the ADR Procedure, the dispute shall be decided by the English Courts in accordance with

clause 25.

23. GENERAL

The Customer hereby acknowledges that:

- (a) LNT Software's obligations under this Agreement accord with the Customer's expectations and are fair and reasonable;
- (b) some limitation of liability is to be expected; and
- (c) the limitations of liability are fair and reasonable in the light of the Fees to be paid and the nature of the Services supplied.

24. GOVERNING LAW AND JURISDICTION

- 24.1 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.
- 24.2 The parties irrevocably agree that the courts of England 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).

APPENDIX 1

DATA PROCESSING DETAILS

1. SUBJECT-MATTER OF PROCESSING:

Any Protected Data input by the Customer into the Software.

2. DURATION OF THE PROCESSING:

Subscription Period of this Agreement.

3. NATURE AND PURPOSE OF THE PROCESSING:

Provision of software for the performance of LNT Software's obligations under this Agreement.

4. TYPE OF PERSONAL DATA:

Data in relation to data subjects including (but not limited to):

- Name(s)
- Postal address(es)
- E-mail address(es)
- Telephone number(s)
- Fax number(s)
- Bank account details
- Gender
- Sexual orientation
- Age
- Date of birth
- Photo(s)
- Marital status
- Care type
- Medical information
- Care information
- Details of death
- Details of hospital admission
- Religion
- Ethnicity
- Nationality

- NHS number
- Employment details
- DBS and right to work details
- Professional registration details
- Qualifications

5. CATEGORIES OF DATA SUBJECTS:

- Customer residents
- Customer residents' relatives
- Customer residents' next of kin
- Customer residents' emergency contacts
- Customer residents' professional contacts
- Customer prospective residents
- Customer enquirers
- Customer employees
- Customer employees' next of kin
- Customer employees' referees
- Customer employees' emergency contacts
- Customer job applicants
- Customer suppliers

6. PROCESSING INSTRUCTIONS

LNT Software to have the following security measures in place:

- adherence with LNT Software's data protection policy;
- adherence with LNT Software's security/back-up policy;
- staff training as and when required;
- internal audits of processing activities as and when required;
- controlled access to LNT Software's premises.