

1 DEFINITIONS

- 1.1 "Company" means Asckey Data Services Limited.
- 1.2 "Owner" means Healthcare Facilities Consortium.
- 1.3 "Client" means the person, firm, company or other organisation commissioning an Eclipse-*fm*® system.
- 1.4 "Eclipse-*fm*® System" means a facilities management system based upon a licensed computer application of the Eclipse-*fm*® product family, as defined by the product variant name, the number of licensed users and the basis of operation.
- 1.5 "Product Variant" means all products prefaced by Eclipse-*fm*® or WIMS.
- 1.6 "Basis of Operation" means whether a system is either hosted on a computer server owned by, managed by and located within the Company's computer environment or installed on hardware within the Client's own site.
- 1.7 "Services" means those services associated with provision of an Eclipse-*fm*® System, including, but not limited to, data migration (feasibility, analysis and execution), application customisation, software build, installation, site reviews, technical support, training and, in certain circumstances, additional dial-in remote system support.
- 1.8 "Supply" means the provision of an Eclipse-*fm*® System together with its associated services.
- 1.9 "Effective Date of Supply" means the date upon which the Eclipse-*fm*® system is installed and available to the Client.
- 1.10 "Annual Eclipse-*fm*® Licence Fee" means the agreed annual charge for the selected Eclipse-*fm*® System, payable annually in advance and covering system use and updates to Product Variant.
- 1.11 "Fees" mean the charges for Services performed, based on ruling day-rates and prices, as applicable.
- 1.12 "Contract" means the agreement between the Client and the Company consisting of the following documents (or their equivalents), which can be read as a whole: Project Brief, Specifications (Functional and Technical), Instruction to Proceed, Hosting Service Level Agreement and these Terms and Conditions.
- 1.13 "Variation" means a change to the Supply in the original Contract.
- 1.14 "Intellectual Property Rights" means all and any of the following, namely patents, designs, registered designs (and applications for any of the same) copyright, design right, inventions, improvements, discoveries, techniques, know-how and any other intellectual property rights.
- 1.15 "Core Code" means the source library of computer programming code developed by the Company as part of the tools of its trade in respect of conducting a systems development business.
- 1.16 "Third Party Component" means an item of software written by a third party purchased by the Company to be supplied in turn to the Client as a part of the total system developed.
- 1.17 "Run Time Licence" means a licence granting the holder the right to use a software item but conferring no entitlement to outright ownership or right to access, amend or further develop the item.
- 1.18 "Confidential Information" means all information confidential to the Client whether relating to the Client's business, customers, clients, suppliers or otherwise but excluding information now or at any time hereafter becoming generally known or accessible to the general public (unless due to the default of the Company hereunder) and information obtained by the Company from a third party free of restrictions on use or disclosure.

2 COMPANY'S OBLIGATIONS

- 2.1 The Company will provide the Supply to the Client in accordance with the Contract. For the avoidance of doubt nothing in this Contract shall be construed as restricting or prohibiting the Company from at any time providing services (whether or not similar to the Supply) to any third party.
- 2.2 Without prejudice to any other obligation of confidentiality from time to time subsisting between the Client and the Company the Company hereby undertakes (subject to the Client's written consent) not at any time hereafter to disclose any Confidential Information to any third party nor to use any Confidential Information save (in either case) as may be reasonably necessary for the purposes

of providing the Supply hereunder or as may be required under a court order or lawful order of a government authority.

- 2.3 The Company will use all reasonable endeavours to provide the Supply to the Client within the estimated timings provided but all timings agreed to by the Company are business estimates only (but given in good faith) and the Company will not be liable for any loss, injury, damage or expenses arising directly or indirectly from any delay and time will not and can not ever be of the essence in respect of the Company's performance of its obligations hereunder

3 VARIATION

- 3.1 The Contract may only be varied by a written and agreed Variation, which may be raised by either party, using the agreed documentation.
- 3.2 The party requesting a Variation should do so promptly whenever the need for a Variation is identified.
- 3.3 Each Variation shall be supported by a statement of the reason for the Variation, a description of the work involved, a quotation for any changes in fees and a statement of its impact upon any aspect of the Contract or Supply, all of which must be completed within 14 days of the date of the request.

4 INVOICING & PAYMENT

- 4.1 Unless pre-agreed otherwise, an invoice for Fees will be raised each month in respect of the value of work performed in that month.
- 4.2 For the Annual Eclipse-*fm*® Licence Fee and any additional dial-in remote support, an invoice will be raised upon the Effective Date of Supply for full annual charge and annually thereafter upon the anniversary date.
- 4.3 Car travel costs at a rate of 45p per mile and all other business expenses necessarily incurred in the performance of the Supply will be payable by the Client and may be added to any fee invoice or invoiced separately if appropriate.
- 4.4 All invoices must be settled by the Client within 30 days of the date in invoice. Any disputed item must be notified to the Company by the Client within 14 days.
- 4.5 Without prejudice to any other contractual right, the Company reserves the right to charge interest on overdue invoices at a rate of 3% above Bank of England Base Rate, compounded monthly until settlement.

5 FORCE MAJEURE

- 5.1 Neither party shall be liable to the other under this Agreement, nor deemed in breach of this Agreement, for failure to carry out its provisions to the extent that such failure is caused by any cause beyond the parties' respective reasonable control including without limitation fire, war, riot, sabotage, sickness or industrial action. The Client or the Company (as the case may be) shall promptly inform the other party of the existence of such conditions of force majeure. In the event that such conditions of force majeure continue or are expected to continue for more than 2 months the parties shall consult together in order to find a mutually acceptable solution.

6 INTELLECTUAL PROPERTY RIGHTS

- 6.1 Each party acknowledges the existence of the other's intellectual property at the commencement of this Contract and neither party obtains any right to the other's intellectual property by entering into this contract.
- 6.2 The Owner shall retain ownership of and all intellectual property rights in the Core Code, for the Product Variant and any additions or improvements.
- 6.3 The Company shall retain intellectual property rights in any reusable new or improved technique, program component, sub-routine or method that adds to the Company's know-how or other intellectual property that arises in the performing of the Supply. This includes any special customisation requested by the Client and the Company reserves the right to include such customisation in a later version of the standard products.
- 6.4 Subject to the Client first paying to the Company all sums payable to the Company hereunder, the Client shall obtain an annually renewable Run Time Licence for its use of the whole Eclipse-*fm*® System, including Third Party Components, subject to all the terms and conditions attaching to these items.

## Standard Terms and Conditions for the Supply of Eclipse-*fm*® Systems

- 6.5 The Company shall not infringe the Intellectual Property Rights of any third party and shall indemnify the Client against all claims, costs and expenses that the Client may suffer as a result of any such infringement.
- 7 **LIABILITY**
- 7.1 The Company will perform the Services on behalf of the Owner with reasonable skill and care and will supply the System on the basis that it is not required for any special purpose different from the purposes specified as requirements by the Client. It is the Client's responsibility to satisfy itself that the Services and the System are suitable for its requirements.
- 7.2 Subject to the warranty given in clause 7.1 and as otherwise expressed herein all warranties and conditions, express or implied by law or otherwise with respect to the Supply are hereby excluded and the Company shall not be liable to the Client for any loss or damage whatsoever (including without prejudice to the generality of the foregoing any liability in contract, negligence or any other tort for any indirect, consequential or economic loss or for loss of profit or opportunity of any kind) arising directly or indirectly in connection with the Supply or otherwise except insofar as any exclusion or limitation of the Company's liability hereunder is prohibited void or unenforceable by law.
- 7.3 The Client shall indemnify and hold harmless the Company from and against all costs, claims, demands and expenses accruing to the Company arising out of any claim or cause of action with respect to any loss of or damage to any property or any personal injury or death of any person which is occasioned whether directly or indirectly by any act or omission (whether negligent or not) on the part of the Client, its agents or employees (including without limitation in respect of the use of the System by the Client).
- 7.4 The Client is solely responsible for the use, application and effect of the System in the Client's operational environment, including but not limited to all supporting procedures, processes, audits, checks, internal controls, ensuring of the actual and timely performance of all maintenance and other tasks within the area of application, business continuity and contingency systems.
- 8 **TERMINATION**
- 8.1 After the Effective Date of Supply, either party has the right to terminate the Contract at any anniversary date of the Effective Date of Supply by giving 3 months' written notice prior to the anniversary date.
- 8.2 Up to the Effective Date of Supply, the Client may terminate the Contract by giving 4 weeks' written notice to the Company.
- 8.3 Either party may terminate forthwith if the other party adopts a resolution for its winding up (unless the same be part of a solvent reconstruction or amalgamation) or if any petition is presented for the appointment of an administrator or a receiver or to wind up the other party or a receiver or an administrative receiver is appointed in respect of any part of the other party's undertaking or assets or if the other party suffers any other action in consequence of debt or if the other party is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (or any re-enactment or further enactment thereof) or if the other party makes or attempts to make any arrangement or composition with or for the benefit of its creditors or ceases to carry on business or if any event analogous to any of the foregoing under any foreign jurisdiction occurs.
- 8.4 Either party may terminate if the other party is in breach of this Contract and fails in the case of a breach capable of remedy to remedy the same or in the case of a breach not capable of remedy to pay reasonable compensation in either case within 14 days of a written notice requiring the defaulting party to remedy such breach or (as the case may be) pay such reasonable compensation (which shall be specified in such notice).
- 9 **CONSEQUENCES OF TERMINATION**
- 9.1 If the Contract is terminated under 8.2 above, then the Client will pay the Company for all Fees for Services and expenses that are due up to the date of termination and will compensate the Company for all non-cancellable financial commitments made by the Company in relation to the contract.
- 9.2 If the Contract is terminated other than under 8.2 above, then the Client will pay the Company for all Annual Eclipse-*fm*® Licence Fees, Fees for Services and expenses that are due up to the date of termination and will compensate the Company for all non-cancellable financial commitments made by the Company in relation to the contract. Furthermore, unless otherwise agreed in writing at the time, all licences to use the System and any aspect of its embedded Intellectual Property will be revoked and the Client will uninstall all components of the System residing on its own computer hardware and destroy any copies on any other media.
- 10 **CLIENT RESPONSIBILITY FOR TESTING**
- 10.1 The Client will have responsibility for conducting its own testing of any custom component in accordance with its own test standards and plans in order to accept the item delivered.
- 10.2 The Client will report its test findings back to the Company in a timely manner and in an agreed format.
- 10.3 On any occasion when there is no report back to the Company within 28 days of the delivery date, the custom component delivered will be deemed accepted by the Client. Thereafter, the Client will be charged and will pay additional fees in respect of further amendments to the custom component.
- 11 **SUBCONTRACTING**
- 11.1 The Company shall have the right to subcontract any part of the Contract to a subcontractor of its choosing.
- 11.2 The Company shall remain responsible for the acts and omissions of any of its subcontractors.
- 11.3 The Company will ensure that its subcontractors sign a confidentiality agreement that is wholly consistent with the Company's confidentiality undertaking to the Client.
- 12 **DATA PROTECTION**
- 12.1 By entering into this Contract, the Client agrees that any "personal data", as defined by the Data Protection Act 1998 provided to the Company pursuant to this Contract may be processed by the Company for the following purposes:
- Administration and provisioning of the Services, including support and billing of the Services;
  - To identify and inform the Client, whether by mail, facsimile, electronic mail or other means of communication of additional services and products available from the Company that may be of interest.
- 12.2 By entering into this Contract, the Client represents and warrants that it has drawn the attention of its employees and agents to this clause and has obtained informed and express consent from them to the processing of their data as outlined in clause 12.1.
- 12.3 If the Client, its employees or agents do not wish to receive further information from the Company, then a request to this effect should be sent to the Company's Company Secretary.
- 13 **MISCELLANEOUS**
- 13.1 Neither party shall be deemed by virtue of this Contract to be an agent or the partner of the other and each party will make clear in all dealings with third parties that it has no authority to make representations on behalf of the other or to bind the other contractually with any third party.
- 13.2 If any of the terms of this Contract are held to be void or unenforceable by any reason of law they shall be void or unenforceable to that extent only and no further and all other terms shall remain valid and fully enforceable.
- 13.3 The Client shall not have any right of set off.
- 13.4 No indulgence granted by either party to the other in relation to any term hereof shall be deemed a waiver of such term or prejudice the later enforcement of that or any other term hereof.
- 13.5 The Contract shall be governed by and interpreted in accordance with English Law and shall be subject to the exclusive jurisdiction of the English courts.
- 13.6 The headings in this Contract are for convenience only and shall not affect its interpretation
- 14 **CLIENT SUPPORT**
- 14.1 See Eclipse-*fm*® Support & Licence Agreement.