

AGREEMENT FOR THE SUPPLY OF SERVICES

DATED

<Date>

PARTIES

1. **LOVIS WORLDWIDE LIMITED** a company incorporated in England and Wales with registered company number **08870054** and whose registered address is 16 Great Queen Street, Covent Garden, London, WC2B 5AH, United Kingdom ("**LOVIS**"); and
2. **<Legal Name>** a company incorporated in <Country> with tax identification number <TaxID> and whose registered address is <Address> (the "**Client**").

IMPORTANT

Please read this agreement (the "**Agreement**") carefully before attempting to use any Services (as defined below) made available. This Agreement constitutes a legally binding agreement between the Client, which you declare to be authorised to bind, and LOVIS.

This Agreement was last updated on 1 August 2018.

1. Definitions

In this agreement the following terms have the following meanings:

"**Activation Fee**" means the fee payable: (i) as a one-time charge for each Concurrent User for initial activation of the Services; and (ii) on an increase in the number of Concurrent Users, as applicable, and as further detailed in Schedule 2 (in all its letters);

"**Affiliate**" means any business entity from time to time controlling, controlled by, or under common control with the Client;

"**Agreement**" means this agreement together with its schedules;

"**Business Day**" means a day (other than a Saturday or a Sunday or a Bank Holiday in the territory where the Client is resident);

"**Agreement Month**" means the period that begins the twenty-sixth day of any month and ends the twenty-fifth day of the immediately subsequent month;

"**Client Administrator**" means the individual within the Client organisation who is appointed by the Client to deal with Support requests raised by users of the Services;

"**Concurrent Users**" means the number of concurrent users who can access the Services simultaneously, across the Database(s);

"**Confidential Information**" has the meaning as set out in clause 8.1;

"**Content**" means data, information and any other content provided or captured by the Client or its Personnel to be input into and/or processed by the Services;

"**Contract Year**" has the meaning as set out in clause 11.3;

"**Critical Support**" means the critical support provided to the Client, as further detailed in clause 2.3;

"**Database**" means the database provided as part of the Services and which contains all information provided or captured by the Client or Affiliate, as applicable. The Client and each Affiliate of the Client will have their own separate Database;

"**Documentation**" means the documents and manuals as may be made available to the Client by LOVIS from time to time;

"**LOVIS EOS**" or "**EOS**" means the enterprise operating system business applications software and systems, including any Updates thereto;

"Effective Date" means the date which is the earlier of: (i) the date of acceptance of the terms of this Agreement by the Client; or (ii) the date on which the Client first makes use of the Services;

"Excluded Services" has the meaning as set out in clause 2.7;

"Fees" means the Activation Fee, the Services Fee and Reactivation Fees;

"Good Industry Practice" means the exercise of that degree of professionalism, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a reasonably skilled and experienced person engaged in the provision of services similar to or the same as the Services, Support or Critical Support;

"Insolvency Event" means where a party ceases or threatens to cease to carry on business, becomes insolvent within the meaning of section 123 of the Insolvency Act 1986, has an administrator, receiver, administrative receiver or manager appointed over the whole or any part of its assets, enters into any composition with creditors generally, or has an order made or resolution passed for it to be wound up or undergoes any similar or equivalent process in any jurisdiction;

"Intellectual Property Rights" means all copyright, patent rights, trade or service marks, design rights, rights in or relating to databases, rights in computer software, rights in or relating to confidential information or any other intellectual property rights (registered or unregistered) throughout the world, including all rights of reversion and rights to any applications and pending registrations;

"Knowledge Database" means the knowledge database maintained by LOVIS into which Documentation and any other information and documentation relating to Support and Critical Support cases is added;

"Malicious Code" means any software, device, 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, device or data, or which may prevent, impair or otherwise adversely affect access to or the security or operation of any programme or data, including the reliability of any programme or data, or adversely affect the user experience, including, but not limited to worms, trojan horses, spyware and viruses;

"Measurement Period" has the meaning as set out in Schedule 1;

"Personal Data" has the meaning as set out in clause 8.2;

"Personnel" means the employees, agents, clients and contractors of the Client or any other person who accesses or makes use of the Services, Support or Critical Support on the Client's behalf;

"Reactivation Fee" means the fee payable to resume provision of the Services following a period of suspension in accordance with clause 12.2, as further detailed in Schedule 2 (in all its letters);

"Retail Price Index" means the Retail Price Index published by the Office for National Statistics or its successor from time to time;

"Service Availability" means the period of time that the Services are actually available to the Client;

"Service Availability Target" has the meaning as set out in Schedule 1;

"Service Levels" means the performance levels to be achieved by LOVIS in respect of the Services as detailed in Schedule 1;

"Service Credits" means a service credit that may be applied to the Fees, in accordance with Schedule 1;

"Services" means the provision of the EOS which is to be provided by LOVIS to the Client under this Agreement. The Services do not include any Excluded Services;

"Services Fee" means the monthly fee payable for the Services, as further detailed in Schedule 2 (in all its letters);

"Support" means the general support provided to the Client, as further detailed in clause 2.4;

"**Support Website**" means the LOVIS support website located at <http://lovis.support>; and

"**Updates**" means a release of the EOS made by LOVIS which corrects faults, adds functionality or otherwise amends or upgrades the EOS.

- 1.1 The headings in this Agreement are inserted for convenience only and shall not affect its construction or interpretation.
- 1.2 Words importing the singular include the plural and vice versa.
- 1.3 Words importing a gender shall include all genders.
- 1.4 Reference to any statute, statutory provision or statutory instrument includes a reference to that statute, statutory provision or statutory instrument together with all rules and regulations made under them as from time to time amended, consolidated or re-enacted.
- 1.5 All references in this Agreement to clauses, and Schedules are to the clauses and Schedules to this Agreement, unless otherwise stated.

2. Provision of Services

- 2.1 Subject to clause 2.2, LOVIS hereby grants the Client a non-exclusive, non-transferable access and use the Services and Documentation, in accordance with the terms of this Agreement, solely for the Client's business operations.
- 2.2 Access to and use of the Services is limited to the number of Concurrent Users and Databases specified in Schedule 2 (in all its letters).
- 2.3 LOVIS shall provide the following Critical Support to the Client. Where the Client is unable to access the Services it may call the emergency hotline number published on the LOVIS Support Website, which is available 24 hours a day, 7 days a week. Critical Support is only to be used when the reason that the Client cannot access the Services is not due to the act or omission of the Client. Forgotten or incorrect user names or passwords do not warrant use of Critical Support.
- 2.4 LOVIS shall provide Support to the Client. Support shall include general use and operating support for use of the Services. Support shall be accessed as follows:
 - (a) A user of the Services shall open a support request internally with the Client Administrator.
 - (b) The Client Administrator shall open a support case at the LOVIS Support Website.
 - (c) LOVIS shall report to the Client Administrator on such open cases once every 24 hours.
 - (d) A particular support case is deemed closed when either LOVIS sends an answer to the Client Administrator or requests further information in respect of a support request.
 - (e) The Client Administrator shall have access to the LOVIS Knowledge Database which it may use to assist it with user queries before opening a support case.
- 2.5 Support and Critical Support are provided at no additional cost to the Client unless otherwise agreed between the parties in writing.
- 2.6 LOVIS shall provide the Services in accordance with the Services Levels detailed in Schedule 1.
- 2.7 The Services shall not include any of the following:
 - (a) bespoke development of any software comprising the Services or any development specifically tailored to the Client;
 - (b) tailored or bespoke analysis or programming;
 - (c) development or provision of reports or system output information; and
 - (d) installation, configuration, implementation and/or management (2.7(a)-(d) shall be referred to as the "**Excluded Services**").

- 2.8 Excluded Services shall only be provided to the Client where separately agreed in writing between LOVIS and the Client. The scope, cost and any other detail relating to any such Excluded Services shall be agreed in writing between the parties before any such Excluded Services are provided. Any Intellectual Property Rights that are developed or that arise as part of the Excluded Services shall be owned by LOVIS.
- 2.9 LOVIS shall provide the Client with updated versions of Documentation whenever such Documentation is updated to consider any Update.

3. Term

- 3.1 This Agreement shall commence on the Effective Date and shall continue thereafter unless terminated in accordance with clause 13 below.

4. Payment

- 4.1 In consideration of LOVIS providing the Services, Support and Critical Support, the Client shall pay the Fees in accordance with this clause 4 and Schedule 2 (in all its letters).
- 4.2 On acceptance of the terms of this Agreement by the Client, the following amounts shall immediately be payable by the Client:
- (a) the Activation Fee;
 - (b) the Service Fee payable for the agreement month in which the Agreement is executed, on a pro-rata basis; and
 - (c) the Service Fee payable for the following full agreement month.
- 4.3 Each subsequent calendar month's Service Fee payment made by The Client shall be cleared in LOVIS bank account before or on the twenty-fifth day of the preceding calendar month.
- 4.4 For example, if the Effective Date of the Agreement is 15 January:
- (a) payments due under clause 4.2 on 15 January shall be:
 - (i) the applicable Activation Fee;
 - (ii) a prorated portion of the Service Fee payable in respect of 15 to 25 January; and
 - (iii) the Service Fee payable in respect of February, from the 26 January to the 25 February;
 - (b) payments due under clause 4.3 shall be:
 - (i) the Service Fee payable in respect of March before or on the twenty-fifth day of February; and
 - (ii) the Service Fee payable in respect of each subsequent agreement month before or on the twenty-fifth of the preceding calendar month.
- 4.5 The provision of Services under this Agreement shall not commence until all payments due under clause 4.2 have been received by LOVIS.
- 4.6 The Client may request that LOVIS increase the number of Concurrent Users that the Client has. Where the Client wishes to increase the number of Concurrent Users, it shall pay the applicable Activation Fee to LOVIS before such additional Concurrent Users are made available. An increase in the number of Concurrent Users shall also increase the Services Fee by the applicable per Concurrent User amount.
- 4.7 Fees shall be paid to the account details as indicated on the corresponding invoice. Any change on bank account will be notified to the Client 7 days in advance.
- 4.8 Service Credits shall be dealt with in accordance with the process set out in Schedule 1.

- 4.9 LOVIS may charge interest on all sums outstanding beyond the date on which they are due for payment under this Agreement. Interest may be charged on that basis from the date payment was due until the date of payment (including after any judgement has been obtained) at the rate of 3% per annum above the base rate of the Bank of England (or such other rate as may apply in any other applicable territory).
- 4.10 The amounts specified in Schedule 2 (in all its letters) do not include VAT or any other taxes on supplies and the Client will pay these to LOVIS as well as the amounts concerned.
- 4.11 LOVIS may increase its Fees no more than once in any 12-month period during the term, provided that any such annual increase will be limited to the increase in Retail Price Index plus 1% over the period of 12 months immediately prior to the date of increase.

5. Intellectual Property

- 5.1 All Intellectual Property Rights in and relating to the Services and Documentation shall belong to LOVIS and/or its licensors. The Client shall have no rights in or to the Services and Documentation (including any Intellectual Property Rights therein) other than the right to use them in accordance with the terms of this Agreement.
- 5.2 During the course of use of the Services, the Client may provide suggestions to LOVIS for improvement of the Services. The parties do not anticipate that the Client's suggestions will be protected by Intellectual Property Rights, but to the extent (if any) that they are, any Intellectual Property Rights will vest in and be owned absolutely by LOVIS. The Client agrees to assign to LOVIS on request without payment or other consideration, by way of a written document as required by LOVIS and executed on behalf of the Client, all Intellectual Property Rights that may be owned by the Client in such suggestions. Where and for such time as that written document has not been properly executed on behalf of the Client, the Client hereby grants to LOVIS a non-exclusive, worldwide, royalty-free licence to use, develop, modify, promote, sell and otherwise exploit such suggestions, and the right to sub-license any of those rights.

6. Acceptable Use Policy

- 6.1 The Client shall (and shall procure that its Personnel shall):
- (a) only use the Services and Documentation for lawful purposes;
 - (b) not upload any Content which is illegal or unlawful; and
 - (c) not upload any Content which infringes the Intellectual Property Rights of any third party or for which the Client does not have the necessary approvals.
- 6.2 The Client shall not use the Services, Support and/or Critical Support for any third party other than its Affiliates without the prior written consent of LOVIS.
- 6.3 The Client shall not access, store, transmit, load or distribute any Malicious Code or executable program during the course of its use of the Services and Documentation.
- 6.4 The Client shall indemnify and hold LOVIS harmless against all liabilities, losses, demands, damages, charges, costs, claims and expenses resulting from a breach by the Client or its Personnel of the provisions of this clause 6.

7. Client's Obligations

- 7.1 The Client shall ensure that its Personnel use the Services and Documentation in accordance with the terms of this Agreement. The Client shall be responsible for any Personnel's breach of this Agreement.
- 7.2 The Client shall be responsible for:
- (a) procuring and maintaining all network connections and telecommunications links to LOVIS' data centres and networks as are necessary in order for the Client to receive the Services; and

- (b) all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet.
- 7.3 The Client shall further ensure that its network and systems comply with the relevant specifications provided by LOVIS from time to time so as to enable the Client to receive the Services, Support and Critical Support.
- 7.4 The Client shall:
- (a) provide LOVIS with:
 - (i) all necessary co-operation in relation to this Agreement; and
 - (ii) all necessary access to such information and facilities as may be required by LOVIS;in order to enable LOVIS to provide the Services, Support and Critical Support including but not limited to Content, Personal Data (as defined below), security access information and configuration services;
 - (b) provide to LOVIS and keep current all required contact details related to any applicable Personnel (including name, title, email and phone number) so as to enable the Client to receive the Services, Support and Critical Support; and
 - (c) document any failures and problems in receiving the Services (including logs, copies of error screens and description of the problem) to enable LOVIS to effectively provide the Support and Critical Support.
- 7.5 The Client shall not:
- (a) except as expressly permitted by this Agreement or to the extent otherwise expressly permitted by applicable law:
 - (i) copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services;
 - (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 Documentation; or
 - (c) subject to clause 14.6, license, sell, rent, lease, transfer, assign, distribute, display or disclose the Services and Documentation.
- 7.6 The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or Documentation and, in the event of any such unauthorised access or use, promptly notify LOVIS.

8. Confidentiality and Data Protection

- 8.1 Each party will keep confidential any information which the other supplies to it in connection with this Agreement. Confidential information will include the Services, Documentation and Content; all information marked as being confidential; and any other information which might reasonably be assumed to be confidential ("**Confidential Information**"). The obligations as to confidentiality in this Agreement will not apply to any information which:
- (a) is available to the public other than because of any breach of this Agreement;
 - (b) is, when it is supplied, already known to whomever it is disclosed to in circumstances in which they are not prevented from disclosing it to others;
 - (c) is independently obtained by whomever it is disclosed to in circumstances in which they are not prevented from disclosing it to others;

- (d) is trivial or obvious; or
 - (e) is required to be disclosed by law or by any court or tribunal with proper authority to order its disclosure (but only to the extent of such requirements).
- 8.2 In relation to all "**Personal Data**" (as defined in the Data Protection Act 1998, which also defines "**Processing**", "**Processor**" and "**Controller**") provided or disclosed by the Client under this Agreement:
- (a) the Client will identify it clearly as such, when this is not obvious, and disclose it to LOVIS only when reasonably necessary;
 - (b) the Client acknowledges that it is the data Controller of such data, and that LOVIS is only acting on the Client's behalf as the data Processor;
 - (c) the Client acknowledges that it has obtained any necessary consents from its Personnel where Personal Data of the Personnel is passed on to LOVIS under this Agreement.
 - (d) LOVIS:
 - (i) will comply with the Client's reasonable instructions relating to the security and confidentiality of the Personal Data, and will in any event keep it reasonably confidential and secure from disclosure to unauthorised third parties; and
 - (ii) will Process that Personal Data only in accordance with the instructions of the Client received via the Support Website.
- 8.3 Each party:
- (a) will obtain and maintain all appropriate registrations and consents under the Data Protection Act 1998 in order to allow that party to perform its obligations under this Agreement;
 - (b) will Process Personal Data in accordance with the Data Protection Act 1998; and
 - (c) will use reasonable efforts to make sure that no act or omission by it or its Personnel results in a breach of the obligations of either party under the Data Protection Act 1998.

9. Warranties

- 9.1 Each party warrants that, as at the date of this Agreement:
- (a) it has full capacity and authority to enter into and perform its obligations under this Agreement;
 - (b) this Agreement is executed by a duly authorised representative of that party; and
 - (c) there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Agreement.
- 9.2 LOVIS warrants that:
- (a) its obligations under this Agreement will be performed in accordance with Good Industry Practice;
 - (b) it has all the rights in relation to the Services and Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement; and
 - (c) its provision of the Services will not infringe the Intellectual Property Rights of any third party in the United Kingdom.

- 9.3 Apart from the terms set out above in this clause 9, no conditions, warranties or other terms apply to the Services, Support and Critical Support or their supply under this Agreement. In particular, no implied conditions, warranties or other terms relating to satisfactory quality or fitness for any purpose will apply to anything supplied under this Agreement. LOVIS does not give or enter into any condition, warranty or other term to the effect that the Services, Support or Critical Support will be entirely free from defects, continuously available or that their operation will be entirely error free.
- 9.4 LOVIS 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 Client acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

10. Indemnity

- 10.1 LOVIS will indemnify the Client against any loss or damage suffered or incurred by the Client as a result of any claim by a third party that the use or possession by the Client in accordance with this agreement of the Services infringes the Intellectual Property Rights of any third party. In order for this indemnity to apply:
- (a) the Client must tell LOVIS as soon as the Client becomes aware of a claim and give LOVIS as much information as the Client can in relation to it;
 - (b) the Client must not make any admissions in relation to the claim without obtaining LOVIS' permission first; and
 - (c) if LOVIS asks the Client to do so, the Client must let LOVIS take over dealing with the claim on the Client's behalf.
- 10.2 This indemnity will not apply to any claim:
- (a) that arises in relation to any changes to the Services which have not been made by LOVIS or any combination or use of the Services with anything else where that combination or use has not been approved by LOVIS; or
 - (b) relating to any Intellectual Property Rights subsisting outside the area of permitted use under this Agreement.
- 10.3 In the defence or settlement of any claim, LOVIS may procure the right for the Client to continue using the Services replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on two Business Days' notice to the Client without any additional liability or obligation to pay liquidated damages or other additional costs to the Client.
- 10.4 The Client will indemnify LOVIS against any loss or damage suffered or incurred by LOVIS as a result of breach of the Client's obligations in this Agreement. Without limiting this, where the Client permits a third party to use the Services (or uses it itself to a greater extent than this Agreement permits), the Client will be liable to pay LOVIS for such additional use at the rates evident from Schedule 2 (in all its letters) or if this is not clear then LOVIS's standard rates as may be applicable from time to time for equivalent authorised use.

11. Liability

- 11.1 Neither party's liability:
- (a) for death or personal injury caused by its negligence or the negligence of its employees or agents;
 - (b) for fraud or fraudulent misrepresentation;
 - (c) for any claims that are subject to indemnification in accordance with clause 6.3 (Acceptable Use Policy) and clause 10.4 (Indemnity);

- (d) for any failure to pay any amount properly due under this Agreement; and
 - (e) for any liability which cannot legally be excluded or limited under English law, is excluded or limited by this Agreement, even if any other term of this Agreement would otherwise suggest that this might be the case.
- 11.2 Subject to clause 11.1, LOVIS shall not be liable to the Client (whether such liability arises as a result of any breach of contract, tort (including negligence), breach of statutory duty, misrepresentation or for any other reason) for any:
- (a) loss of profits;
 - (b) loss of sales, turnover, revenue or business;
 - (c) loss of customers or contracts;
 - (d) loss of or damage to reputation or goodwill;
 - (e) loss of any hardware, software or data; or
 - (f) indirect, consequential or special loss.
- 11.3 Subject to clauses 11.1 and 11.2, the aggregate liability of LOVIS arising out of this Agreement, (and whether such liability arises as a result of any breach of contract, tort (including negligence), breach of statutory duty, misrepresentation or for any other reason) shall be limited, in relation to any Contract Year, to the total amounts actually paid by the Client under this Agreement in respect of the relevant Contract Year, and provided that, for the purposes of this clause 11.3: (i) if more than one claim arises from the same event or series of connected events, then all such claims shall be treated as one, which will be treated as having arisen on the date on which the first relevant claim arose and (ii) "**Contract Year**" means the relevant period of twelve months starting on the Effective Date or an anniversary thereof (as appropriate).

12. Suspension of Services

- 12.1 LOVIS may suspend provision of the Services and/or Support and/or Critical Support without liability if:
- (a) the Client is in breach of its obligations to pay the Fees under this Agreement. Breach of the obligation to pay the Fees shall occur where, if at the first minute of the twenty-sixth day of each calendar month, the Client has not paid the applicable Service Fee due; or
 - (b) LOVIS reasonably believes that the Services and/or Support and/or Critical Support are being used in breach of this Agreement. The Client will be notified prior to the suspension.
- 12.2 Where the Services and/or Support and/or Critical Support have been suspended in accordance with clause 12 above, such Services and/or Support and/or Critical Support shall only be reactivated when:
- (a) the relevant missed or failed payment has been made and is available in LOVIS' account; and
 - (b) the applicable Reactivation Fee has been paid, in accordance with the payment terms at clause 4.
- 12.3 The Reactivation Fee is payable each and every time that the Services are suspended in accordance with the terms of this Agreement. There is no limit to the number of Reactivation Fees that may apply.

13. Termination

- 13.1 Either party may terminate this Agreement with immediate effect (without prejudice to any other right or remedy available) on written notice to the other party if that party:

- (a) is in material breach of any of its obligations under this Agreement and, in the case of a breach capable of remedy, has not remedied such breach within 10 Business Days (and for the purposes of this clause 13.2(a), in order for it to be possible to remedy a breach it must be possible to take steps so as to put the other party into the same position which (save as to the date) it would have been in if the breach had never occurred); or
 - (b) suffers an Insolvency Event.
- 13.2 The Client may terminate this Agreement on not less than 90 days' written notice to LOVIS. Such notice will be deemed given from the Client where it is given via the LOVIS Support Website.
- 13.3 LOVIS may terminate this Agreement on not less than 90 days' written notice to the Client. Such notice will be deemed given from LOVIS where it is given via the Client's Administrator email account.
- 13.4 LOVIS may immediately terminate this Agreement on written notice to the Client if:
 - (a) the Client fails to pay any Fees due hereunder within 30 days of the applicable due date; or
 - (b) the Client is in breach of clause 14.6.
- 13.5 On termination or expiry of this Agreement for any reason:
 - (a) all access and use set out in this Agreement shall immediately terminate;
 - (b) the Client shall immediately stop using the Services, Support and Critical Support;
 - (c) LOVIS shall immediately prevent further access by the Client;
 - (d) provided that the Client is not in arrears of any Fees due hereunder, LOVIS shall deliver to the Client a current back-up of all Content held in all Database(s) in a format that allows the Client to access such Content held on such Database(s); and
 - (e) both parties shall immediately return to the other party, or at that other party's request, destroy, all Confidential Information in its possession.
- 13.6 Following the termination of this Agreement, the following shall survive termination: clauses 4, 5, 8, 10, 11, 13, 14 and 15.

14. Miscellaneous

- 14.1 This Agreement sets out the entire agreement and understanding of the parties in respect of the Services, Support and Critical Support and supersedes all prior oral or written agreements and understandings on the matter. Any other terms or conditions that the Client attempts to impose on LOVIS shall not apply. Neither party shall be bound by or be liable for any alleged representation, promise, inducement or statement of intention not included in this Agreement, except where fraudulently or negligently made.
- 14.2 The waiver of one breach or default hereunder shall not constitute the waiver of any subsequent breach or default. Any failure by either party to enforce any provision herein shall not be deemed a waiver of such provision, and any such provision shall be and remain in full force and effect.
- 14.3 LOVIS may from time to time update the terms of this Agreement by posting any such updated terms on its website. Continued use of the Services, Support and/or Critical Support following any such update shall indicate the Client's acceptance to any such updated terms. It is the responsibility of the Client to check for any updates to the Agreement.
- 14.4 Should any of the provisions of this Agreement be invalid, such invalidity will not affect the remaining provisions herein. The parties agree that they will replace an invalid provision with a new provision which closely approximates the lawful intent of the invalid provision.

- 14.5 Each party shall, at all times, comply with all applicable laws, statutes, regulations and codes in relation to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and each party shall not (and warrants that it has not done so prior to the date of signing of this Agreement) engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010.
- 14.6 The Client shall not assign any of its rights, or delegate any of its duties or obligations under this Agreement without the prior written consent of LOVIS. This Agreement may be assigned by LOVIS in its sole discretion.
- 14.7 Neither party shall be deemed in default of this Agreement if failure or delay in performance is caused by an act of God, fire, earthquake, meteor, flood, severe weather conditions (including solar activity affecting telecommunications), material shortage or unavailability of transportation, government ordinance, laws, regulations or restrictions, war or civil disorder, or any other cause beyond the reasonable control of such party.
- 14.8 A person who is not a party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 as amended from time to time.
- 14.9 Neither party shall (except with the prior written consent of the other party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other party any person employed or engaged by such other party in the provision of the Services at any time during the term of this Agreement or for a further period of 12 months after the termination or expiry of this agreement other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the other party.
- 14.10 Nothing in this Agreement shall be construed to constitute a partnership or agency between the parties and neither party is authorised to bind the other or to incur liabilities or make representations on its behalf.
- 14.11 All notices and consents relating to this Agreement must be in writing. Notices by hand or by mail must be sent to the registered address of the recipient or such other address as notified by the relevant party in accordance with this Agreement. Notices shall be sent via the Support Website, by email, by hand or by first class recorded delivery or registered post or other form of certified or registered mail (and sent by air mail if posted to or from a place outside the United Kingdom) and shall be treated as having been delivered:
- (a) if sent via the Support Website, two days after the date of posting to the Support Website;
 - (b) if sent by hand, when delivered;
 - (c) if sent by email, when received at a server located in any office of the recipient; and
 - (d) if sent by registered mail, two days after the date of posting (or, if sent by air mail, seven days after the date of posting).
- 14.12 The parties agree that, in the event of a dispute or alleged breach of this Agreement, they will work together in good faith, first to try to resolve the matter internally by escalating it to higher levels of management and, then if necessary, to use a mutually agreed alternative dispute resolution technique prior to resorting to litigation. This clause shall not prevent any party from commencing proceedings before any court of competent jurisdiction where interim, injunctive or declaratory relief is required.

15. Law and jurisdiction

- 15.1 This Agreement (and any question about its subsistence, effect or termination) is to be interpreted in accordance with the law of England.
- 15.2 Subject to clause 15.3, the courts of England shall have non-exclusive jurisdiction to settle any dispute between the parties to this Agreement, whether arising in connection with this Agreement or otherwise.

- 15.3 A party may bring proceedings in the courts of any state other than England for the purpose of seeking:
- (a) an injunction, order or other non-monetary relief (or its equivalent in such other state); or
 - (b) any relief or remedy which, if it (or its equivalent) were granted by the courts of England, would not be enforceable in such other state.

SIGNED for and on behalf of the parties on <Date>:

Signed for and on behalf of
LOVIS Worldwide Limited by:

Signed for and on behalf of
<Name> by:

.....
(signature)

.....
(signature)

.....
(print name)

.....
(print name)

.....
(position)

.....
(position)

SCHEDULE 1

Service Levels

1. Availability of the Services

- 1.1 LOVIS' performance targets aim to achieve the Service Availability Target as a minimum against Services in terms of the percentage time available over a Measurement Period.
- 1.2 Service Availability will be calculated on the following basis: the Service Availability calculation shall only include periods of unavailability where the cause of any failure is the sole and direct responsibility of LOVIS and/or its suppliers or vendors. The Service Availability calculations shall not include scheduled maintenance time (LOVIS will provide the Client with reasonable notice of such scheduled maintenance) and emergency maintenance time (LOVIS will use its reasonable endeavours to provide notice of such emergency maintenance time); and
- 1.3 LOVIS shall use all reasonable endeavours to achieve a Service Availability Target of 99%.
- 1.4 A backup of all the information contained in the Client's Databases and file folders will be performed every day by LOVIS at a defined time. In the event of any loss of information due to either party's cause, LOVIS will restore the most recent backup upon requested by the Client through the Support Website.
- 1.5 Exclusions
 - (a) The Service Availability criteria will not apply where an incident is due to it being:
 - (i) a cause beyond LOVIS' reasonable control;
 - (ii) a suspension of the Services in accordance with this Agreement;
 - (iii) caused by any alternation or modification to the Services which has not been carried out by LOVIS;
 - (iv) a fault on the Client's network or own equipment configuration;
 - (v) an incident caused within the Client's own infrastructures or configuration of said infrastructures causing the suspension of the Services and/or hardware failure;
 - (vi) a complete hardware failure requiring replacement, where LOVIS does not own/or is not directly responsible for the hardware replacement;
 - (vii) a fault/bug in the Client's software such as firmware, operating system, infrastructure software or the Client's own infrastructures or configuration of said infrastructures causing suspension of the Services and/or hardware failure;
 - (viii) incidents caused by any third party, where the third party is not appointed or under the direct control of LOVIS;
 - (ix) any incidents caused by the Client's own management of the Services;
 - (x) downtime caused by a third party not appointed by or under the direct control of LOVIS; downtime due to force majeure or other reasons not within the responsibility of LOVIS;
 - (xi) third party network issues or suspensions; or
 - (xii) downtime caused by the Client accessing the Services over the Internet, where the downtime is directly attributable to the public network itself.
- 1.6 Service Credits

- (a) If LOVIS fails to achieve a Service Availability Target of 99% over the Measurement Period and so long as none of 1.5 above applies, LOVIS shall provide a Service Credit to the Client according to the following formula: Monthly Service Fee payment * (99% - actual calculated yearly Service Availability)
- (b) Any applicable Service Credit shall be applied to the next Service Fee due from the Client. The Client shall be entitled to deduct such Service Credit from such Service Fee where LOVIS has notified the Client in writing of the applicability of such Service Credit.
- (c) Service Credits are the Client's sole remedy and LOVIS' sole liability where there is any failure to achieve a Service Availability Target of 99%.

1.7 For the purposes of this Agreement, "**Measurement Period**" shall be:

- (a) the previous 12 month period from any given point in time ("Prior 12 Months"), calculated in accordance with the following;
 - (i) the first Prior 12 Months shall be reviewed on the first anniversary of the Effective Date;
 - (ii) on the first of every month thereafter, Service Availability over the Prior 12 Months shall be reviewed, and a Service Credit shall be payable if, in the applicable Prior 12 Months, LOVIS fails to achieve a Service Availability Target of 99%;
 - (iii) if a Service Credit is payable, Service Availability shall next be reviewed 12 months after the month in which LOVIS failed to achieve a Service Availability Target of 99%, when the monthly review of Service Availability as set out in 1.6(a)(ii) above shall resume.

SCHEDULE 2 (A)

<Name>

<Date>

Fees

	Subscription	Total
Concurrent Users	<Users>	
Activation Fee per Concurrent User	<Activation Net><CUR>	
Activation Fee	<Activation><CUR>	<Activation><CUR>
Services Fee per Concurrent User per Month	<Rent Net><CUR>	
Services Fee per Month	<Rent><CUR>	<Rent><CUR>
Reactivation Fee per Event	25% of the Monthly Services Fee	

Databases

Databases	<Databases>
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Effective Date

Effective Date	<Effective Date>
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