

ARQUELLA SERVICES

TERMS AND CONDITIONS

INTRODUCTION

These terms and conditions together with the Order Forms entered into by the parties from time to time and any other documents referred to or incorporated into these terms and conditions or any such Order Forms (collectively referred to as the “**Agreement**”) set out the entire terms and conditions upon which Arquella has agreed to provide the Customer with the Services.

IT IS AGREED THAT:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words have the following meanings:

- (a) **Charges** means the charges as detailed in the Order Form.
- (b) **Claim** means a third party claim against the Customer or Arquella as described in Clauses 7.2 and 8.6.
- (c) **Commencement Date** means the date on which the Order Form is executed by the last party to sign.
- (d) **Control** means:
 - (i) the voting rights attaching to 25% or more of the voting shares in the Customer; and/or
 - (ii) the power to direct or cause the direction and management of the policies of the Customer in accordance with the acquirer's wishes, whether as a result of the ownership of shares, control of the board of directors, contract or any powers conferred by the articles of association or other constitutional documents of the Customer.
- (e) **Controller** shall have the same meaning as under the GDPR.
- (f) **Customer** means the customer to which Arquella has agreed to provide the Services in accordance with this Agreement who is as detailed on the Order Form.
- (g) **Customer Data** means any data provided by the Customer which is uploaded to or processed via the Software.
- (h) **Customer Personal Data** means any Personal Data within the Customer Data.
- (i) **Data Protection Laws** means all applicable laws which govern the use of data relating to identified or identifiable individuals, including the Data Protection Act 2018, the Privacy and Electronic Communications Regulations

2003 and the GDPR (and any laws implementing it), as amended or replaced from time to time and to the extent applicable to a party.

- (j) **Data Subject** shall have the same meaning as under the GDPR.
- (k) **Force Majeure** means in relation to either party, any circumstance beyond the reasonable control of that party including any act of God, war, riot, explosion, abnormal, unusual or extreme weather conditions, loss of utilities, fire, flood, failure or breakdown of telecommunications systems or network infrastructure, malicious network attacks, strike, lock out or industrial dispute, fuel shortages and/or governmental or regulatory authority action.
- (l) **GDPR** means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 as amended and incorporated into UK law under the UK European Union (Withdrawal) Act 2018.
- (m) **Hardware** means the hardware described in the Order Form.
- (n) **Intellectual Property Rights** means patents, trade marks, service marks, trade names, registered and unregistered designs, trade or business names, copyright (including rights in software), database rights, design rights, rights in confidential information and any other intellectual property rights whatsoever irrespective of whether such intellectual property rights have been registered or not which may subsist in any part of the world.
- (o) **Location(s)** means the location or locations described in the Order Form.
- (p) **Minimum System Requirements** means any minimum system requirements notified by Arquella to the Customer from time to time including, without limitation, those described in the Order Form.
- (q) **Order Form(s)** means the order forms which are agreed by the Customer and Arquella from time to time.
- (r) **Permitted Purpose(s)** means any specific or limited purposes for which the Customer is permitted to use the Services for under this Agreement as detailed on the Order Form.
- (s) **Personal Data** shall have the same meaning as under the GDPR.
- (t) **Processor** shall have the same meaning as under the GDPR.
- (u) **Software** means the software described in the Order Form.
- (v) **Specification** means the specification for the Software and Hardware as set out in the Order Form
- (w) **Arquella** means Arquella Ltd, a company incorporated in England and Wales with company number 11206238 and whose registered office is at Arquella, Momentum House Church Lane, Dinnington, Sheffield, South Yorkshire, England, S25 2RG.
- (x) **Services** means the provision of the Hardware and the Software, as described in this Agreement and the Order Form.

- (y) **Term** means the term described in the Order Form.
- (z) **Year** means the period of twelve months beginning on the Commencement Date and each subsequent period of twelve months thereafter beginning on each anniversary of the Commencement Date.

1.2 In this Agreement: headings are inserted for convenience only and shall not affect the construction or interpretation; references to Clauses are to the Clauses of these terms and conditions; words denoting the singular shall include the plural and vice versa; words denoting any gender shall include all genders; any reference to any law, statute, statutory provision, statutory instrument, directive, subordinate legislation, code of practice or guideline shall be construed as a reference to the same as may be amended, consolidated, modified, extended, re-enacted or replaced from time to time; and use of words such as "include", "including" and "in particular" shall not limit the generality of any preceding or following words which are not intended to be exhaustive.

2 TERM

2.1 This Agreement shall come into force on the Commencement Date and, subject at all times to earlier termination in accordance with its provisions, shall remain in force for the Term.

3 PROVISION OF SOFTWARE

3.1 In consideration for payment of the Charges by the Customer in accordance with this Agreement, Arquella hereby grants to the Customer a non-exclusive and non-transferable licence to access and use the Software in accordance with the terms and conditions of this Agreement, for the term of this Agreement only and only for the Permitted Purpose.

3.2 For the avoidance of doubt, other than the limited licence to use the Software which is granted to the Customer under this Agreement, the Customer shall not acquire any right or title in or to any Intellectual Property Rights in or capable of subsisting in the Software.

3.3 The Customer shall maintain in strict confidence at all times any user names, access codes or other authorisations which may be provided or allocated to it by Arquella and/or via the Software from time to time together with any associated passwords (and, where the Customer is responsible for setting its own password shall ensure that those are sufficiently robust in accordance with generally accepted password security recommendations in the IT industry from time to time) and shall not disclose the same to any other person.

3.4 The Customer shall immediately inform Arquella of any actual or suspected loss, theft, publication or disclosure of any of its usernames, access codes, other authorisations or passwords for the Software and/or of any actual or suspected unauthorised access to or use of the Software using the same of which the Customer becomes aware.

3.5 The Customer shall not:

- (a) use or attempt to use the Software for any illegal or unlawful purpose;

- (b) use or attempt to use the Software in any way which disrupts, restricts or interferes with the provision of the Software by Arquella and/or its availability to and use by other users authorised by Arquella;
- (c) access or attempt to access any part of the Software which the Customer is not authorised to access and/or any data which is held on or accessible via the Software other than the Customer Data and any data which is made publicly available by Arquella to all users on or via the Software; and/or
- (d) reverse engineer, decompile, copy, distribute, disseminate, sub-licence, modify, translate, scan and/or adapt any software or other code or script which forms part of or is accessible via the Software.

3.6 The licence granted to the Customer to use the Software is personal and other than those individual employees of the Customer who the Customer authorises from time to time to access and use the Software on its behalf (the “**Authorised Users**”) (and for whose acts and omissions the Customer shall be liable to Arquella for under this Agreement as if those were the acts or omissions of the Customer itself) the Customer shall not permit any other person to access and use the Software, whether or not in return for payment.

3.7 In relation to the Authorised Users, the Customer undertakes that:

- (a) the maximum number of Authorised Users that it authorises to access and use the Software shall not exceed any maximum users agreed with Arquella from time to time including, without limitation, in the Order Form;
- (b) it will not allow any Authorised User’s account to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Software;
- (c) if an Authorised User ceases to be an employee of the Customer, then the Customer shall promptly ensure that the Authorised User no longer has any right to access or use the Software;
- (d) it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 7 days of the Supplier’s written request at any time or times;
- (e) it shall permit the Supplier or the Supplier’s designated auditor to audit the Software in order to establish the name and password of each Authorised User and the Customer’s compliance with this Clause 3.7. Each such audit may be conducted no more than once per Year, at the Supplier’s expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer’s normal conduct of business;
- (f) if any of the audits referred to in Clause 3.7(e) reveal that, or the Supplier otherwise becomes aware that:
 - (i) any password has been provided to an individual who is not an Authorised User, then without prejudice to the Supplier’s other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual; or

- (ii) the Customer has underpaid the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in the Order Form.

3.8 Subject to Clause 3.11(a), Arquella warrants that the Software will conform in all material respects to the Specification but does not warrant that the Customer's access to and use of the Software will be uninterrupted or free from errors and bugs. If the Customer notifies Arquella in writing of any defect or fault in the Software in consequence of which it fails to conform in all material respects to the Specification and such defect or fault does not result from any failure or delay by the Customer to comply with any of its obligations under this Agreement then the Customer's sole and exclusive remedy with respect to the failure of the Software to comply with this warranty is for Arquella to (at its option) do one of the following:

- (a) modify or amend the Software as soon as reasonably practicable so that it does conform in all material respects to the Specification; or
- (b) terminate this Agreement immediately by notice in writing to the Customer and refund any Charges paid by the Customer in advance with respect to the unexpired term of this Agreement,

PROVIDED THAT in either case the Customer provides all information that may be necessary to assist Arquella in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable Arquella to re-create the defect or fault in question.

3.9 Arquella shall be entitled to temporarily suspend access to the Software as may be necessary from time to time including without limitation where it is necessary to carry out maintenance and upgrade work, in the event of any actual or suspected security breach and in the event of any other emergency. Arquella shall endeavour to provide the Customer with as much notice of any suspension of the Software as is reasonably possible in the circumstances.

3.10 The Customer shall be solely responsible for ensuring at its own expense that its IT systems meet at all times the Minimum System Requirements.

3.11 Where the Services include the provision of third party software:

- (a) the Customer shall only be entitled to such warranty or other benefit as Arquella has received from the licensor of the third party software; and
- (b) the Customer shall ensure that it fully complies with the terms and conditions of all applicable third party software licences.

4 PROVISION OF HARDWARE

4.1 In consideration for payment of the Charges by the Customer in accordance with this Agreement, Arquella shall sell the Hardware to the Customer.

4.2 Risk of loss or damage occurring to Hardware shall pass from Arquella to the Customer upon completion of delivery of the Hardware in question.

4.3 Ownership of any Hardware delivered to the Customer shall not pass from Arquella to the Customer unless and until Arquella has received from the Customer in full in cleared funds the Charges.

- 4.4 Until title to any Hardware has passed to the Customer, the Customer shall: (a) hold the Hardware on a fiduciary basis as Arquella's bailee; (b) store the Hardware separately from any other items held by the Customer so that they remain readily identifiable as Arquella's property; (c) not remove, deface or obscure any markings on the Hardware or their packaging which identifies the Hardware as Arquella's property; and (d) maintain the Hardware in a safe and satisfactory condition and keep them insured against all usual risks but, the Customer may use any Hardware in the ordinary course of its business.
- 4.5 The Customer's right of possession of any Hardware in respect of which title has not passed to it shall immediately end in the event that the Customer suffers any insolvency event. In such circumstances, the Customer shall:
- (a) notify Arquella immediately; warranty
 - (b) inform any receiver, manager, administrative receiver or similar who may be appointed with respect to any assets of the Customer that the Hardware belongs to Arquella and are not assets belonging to the Customer; and
 - (c) allow Arquella or its authorised representatives on request access to any premises where any Hardware may be stored (or in the case of any premises not under the control of the Customer, shall procure that such access is granted for Arquella or its authorised representatives) for the purposes of recovering the Hardware.
- 4.6 Arquella shall use its reasonable endeavours to deliver the Hardware to the Locations on the date and at the time agreed with the Customer although time of delivery and installation shall not be of the essence.
- 4.7 Subject to Clauses 4.8, 4.9 and 4.10, Arquella warrants that the Hardware will conform in all material respects to the Specification and be free from material defects in design, material and workmanship for the Term. If the Customer notifies Arquella in writing of any failure of any Hardware to comply with the warranty contained in this Clause 4.7 and this failure does not result from any failure or delay by the Customer to comply with any of its obligations under this Agreement then Arquella shall (at its option) as soon as reasonably practicable either repair or replace the Hardware. This constitutes the Customer's sole and exclusive remedy with respect to the failure of the Hardware to comply with this warranty.
- 4.8 Where Hardware is manufactured by a third party, the Customer shall only be entitled to such warranty or other benefit as Arquella has received from the manufacturer in relation to the Hardware.
- 4.9 The Customer acknowledges and agrees that the Hardware is not intended to be used in conjunction with any software other than the Software ("**Third-Party Software**"). The Customer shall not be liable for any losses, liabilities, claims, damages, costs or expenses of whatever nature incurred by the Customer in connection with the use of the Hardware in conjunction with any Third-Party Software.
- 4.10 The Customer acknowledges that Arquella shall not be responsible for any loss of or damage to the Hardware arising out of or in connection with any negligence, misuse, mishandling of the Hardware or otherwise caused by the Customer or its officers, employees, agents, contractors and/or any third party for whom Arquella is not responsible. The Customer shall indemnify Arquella on demand against the same and against all losses, liabilities, claims, damages, costs or expenses of whatever

nature otherwise arising out of or in connection with any failure by the Customer to comply with this Agreement.

5 CHANGES TO THE SERVICES

- 5.1 Arquella shall be entitled from time to time without the consent of the Customer to introduce new functionality and/or to make changes to the Services.

6 CHARGES

- 6.1 In consideration for Arquella making the Services available to the Customer in accordance with this Agreement, the Customer shall pay to Arquella the Charges.
- 6.2 The Charges are subject to a site survey at the Location being carried out by Arquella and, if the site visit reveals that the information provided by the Customer to allow Arquella to calculate the Charges is incorrect or incomplete, then Arquella reserves the right to amend the Charges to cover any additional Services required by the Customer.
- 6.3 Arquella reserves the right to increase the Charges once during each Year to reflect percentage increases in the Consumer Prices Index during the previous Year by giving 30 days notice to the Customer.
- 6.4 Unless otherwise agreed by the parties:
- (a) Arquella shall raise an invoice for the Initial Charges on or after the date of delivery of the Hardware, which shall be payable immediately by the Customer; and
 - (b) the Customer shall pay the Subsequent Charges in advance to the bank account nominated in writing by Arquella.
- 6.5 Any invoices other than those specified in Clause 6.4 shall be paid by the Customer within 14 days of receipt into a single bank account as nominated in writing from time to time by Arquella.
- 6.6 Unless otherwise agreed by Arquella, the invoices specified in Clauses 6.4 and 6.5 shall be payable by direct debit. The Customer agrees to complete a direct debit form in the form specified by Arquella on request. If the bank account subject to the direct debit changes or contains insufficient funds, then the Customer shall promptly notify Arquella and update the direct debit. If the direct debit payment fails for any reason, the Customer acknowledges that Arquella may make one or more additional attempts to collect the Charges owed. The Customer shall reimburse Arquella for any charges incurred by Arquella due to the Customer's failure to pay the Charges in accordance with Clauses 6.4 – 6.6 (inclusive).
- 6.7 Without prejudice to any other rights or remedies available to it, in the event that payment of any Charges is overdue, Arquella shall be entitled to suspend without liability and without notice the Customer's right of access to the Software and the Hardware (including without limitation by activating any remote shutdown capability installed within the Hardware).
- 6.8 The Charges and any other amounts which may become payable from time to time by one party to the other under this Agreement are stated as exclusive of VAT which if applicable, shall be payable in addition by the party making payment at the

applicable rate in force from time to time (subject to the provision of a valid VAT invoice by the party receiving the payment in question).

- 6.9 The Charges and any other amounts which may become payable from time to time by one party to the other under this Agreement shall be paid by the applicable party in full in accordance with the terms of this Agreement without set off, deduction or withholding on any account.

7 ARQUELLA'S INTELLECTUAL PROPERTY RIGHTS AND BRAND

- 7.1 Arquella confirms that it is the owner of all Intellectual Property Rights in or capable of subsisting in the Services and/or that it holds the necessary authority from any applicable third party owner of any such Intellectual Property Rights to grant the limited licence to use the Services to the Customer under this Agreement.
- 7.2 Arquella undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that its use of the Services in accordance with the terms of this Agreement infringes the UK Intellectual Property Rights of a third party and Arquella shall be responsible for any reasonable and fully mitigated direct losses and expenses incurred by or awarded against the Customer as a direct result of or in connection with any such valid Claim which is made (subject to Clause 11). This Clause 7.2 shall not apply where the Claim in question is attributable to any development of, modification to or maintenance of the Software or Hardware by or on the behalf of the Customer without the prior written consent of Arquella and/or any breach by the Customer of any of its obligations under this Agreement.
- 7.3 If any third party makes a Claim, or notifies an intention to make a Claim against the Customer, Arquella's obligations under Clause 7.2 are conditional upon the Customer:
- (a) as soon as reasonably possible giving written notice of the Claim to Arquella specifying the nature of the Claim in reasonable detail;
 - (b) not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of Arquella;
 - (c) giving Arquella and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable Arquella and its professional advisers to examine them and to take copies (at Arquella's expense) for the purpose of assessing the Claim; and
 - (d) subject to Arquella providing reasonable security against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as Arquella may reasonably request to avoid, dispute, compromise or defend the Claim.
- 7.4 If any Claim is made, or in Arquella's reasonable opinion is likely to be made, against the Customer, Arquella may at its sole option and expense:
- (a) procure for the Customer the right to continue using the Services in accordance with the terms of this Agreement;

- (b) modify the Services in accordance with Clause 5 so that it ceases to be infringing; or
- (c) terminate this Agreement immediately by notice in writing to the Customer and refund any Charges paid by the Customer in advance with respect to the unexpired term of this Agreement.

7.5 This Clause 7 constitutes the Customer's exclusive remedy and Arquella's only liability in respect of any claim or allegation that the Services infringe the Intellectual Property Rights of any third party and for the avoidance of doubt, Arquella's liability under this Clause 7 is subject to Clause 11.

8 CUSTOMER DATA

8.1 Ownership of all Customer Data including any Intellectual Property Rights in any Customer Data shall at all times remain vested in the Customer notwithstanding the uploading, collection or use of any such Customer Data onto or via the Software.

8.2 The Customer hereby grants to Arquella a non-exclusive, non-transferable, royalty-free licence to use and process the Customer Data for the term of this Agreement for the purposes of providing the Customer with the Services and otherwise as may be reasonably necessary to enable Arquella to discharge its obligations and exercise the rights granted to it under this Agreement.

8.3 Arquella is granted a non-exclusive, royalty-free, transferable, sub-licensable, irrevocable and perpetual licence to use the Customer Data (including any Customer Personal Data) in anonymised form for any purpose including, without limitation, for internal business purposes, the advancement and improvement of care delivery, to improve its products and services, and for analysis, research and reporting purposes.

8.4 The Customer confirms that it is the owner of all Intellectual Property Rights in or capable of subsisting in the Customer Data and/or that it holds the necessary authority from any applicable third party owner of any such Intellectual Property Rights to grant the licence to use the Customer Data to Arquella under Clause 8.2 of this Agreement.

8.5 The Customer undertakes at its own expense to defend Arquella or, at its option, settle any claim or action brought against Arquella alleging that its use of the Customer Data in accordance with the terms of this Agreement infringes the UK Intellectual Property Rights of a third party and the Customer shall be responsible for any reasonable and fully mitigated direct losses and expenses incurred by or awarded against Arquella as a direct result of or in connection with any such valid Claim which is made (subject to Clause 11).

8.6 If any third party makes a Claim, or notifies an intention to make a Claim against Arquella, the Customer's obligations under Clause 8.4 are conditional upon Arquella:

- (a) as soon as reasonably possible giving written notice of the Claim to the Customer specifying the nature of the Claim in reasonable detail;
- (b) not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Customer;
- (c) giving the Customer and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets,

accounts, documents and records within the power or control of Arquella, so as to enable the Customer and its professional advisers to examine them and to take copies (at the Customer's expense) for the purpose of assessing the Claim; and

- (d) subject to the Customer providing reasonable security against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as the Customer may reasonably request to avoid, dispute, compromise or defend the Claim.

8.7 The Customer shall ensure that any Customer Data which it uploads, collects or uses onto or via the Software:

- (a) is complete, accurate and up-to date;
- (b) is not unlawful, defamatory, obscene, offensive, hateful, inflammatory, promoting sexually explicit material, intimidating, discriminatory, violent, deceitful or in breach of any Intellectual Property Rights belonging to any third party; and
- (c) does not contain any virus, worm, Trojan horse or other components which may be harmful to or disrupt the Software.

8.8 Without prejudice to any of the other rights and remedies of Arquella, the Customer acknowledges that Arquella shall not be liable for any failure or delay in complying with any of its obligations under this Agreement nor for any error or omission in the provision of the Services to the extent that any such failure, delay, error or omission is caused as a result of any failure by the Customer to comply with its obligations under Clause 8.7.

9 DATA PROTECTION

9.1 Where Arquella processes Personal Data pursuant to this Agreement, the parties agree that it is a matter of fact and law whether Arquella will process that Personal Data as a Controller or Processor. Nevertheless, the parties envisage that Arquella will process the Customer Personal Data in its capacity as a Processor.

9.2 The subject matter, duration, nature, purpose and legal basis of processing and the personal data categories and data subject types in respect of which Arquella may undertake processing are set out at [\[LINK\]](#).

9.3 The Customer shall ensure that the Personal Data has been collected and will be provided to Arquella in accordance with Data Protection Laws and that Arquella's use of the Personal Data in accordance with this Agreement (including, without limitation, in accordance with Clause 8.3) shall not breach Data Protection Laws. This shall include, without limitation:

- (a) providing all data subjects with a privacy notice containing the content required by Data Protection Laws; and
- (b) obtaining all necessary consents from data subjects which are required by Data Protection Laws.

9.4 Where Arquella processes Customer Personal Data as a Processor, Arquella shall:

- (a) only process the Personal Data in accordance with the Customer's written instructions from time to time, unless otherwise required by applicable law, in which case, Arquella shall (to the extent permitted by law) inform the Customer of that legal requirement before carrying out the processing. The Customer hereby instructs Arquella to process the Personal Data to the extent necessary to provide the Services;
- (b) take all appropriate technical and organisational measures to ensure a level of security for the Personal Data which is appropriate to the risks to individuals that may result from the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Personal Data;
- (c) not engage or authorise a sub-processor to process the Personal Data unless:
 - (i) Arquella has obtained the Customer's prior consent, which shall not be unreasonably withheld or delayed. The Customer hereby consents to the appointment of the sub-processors (the "**Approved Sub-Processors**"). If the Approved Sub-Processors change during the Term, then Arquella shall notify the Customer by updating the list, thereby giving the Customer the opportunity to object to such changes; and
 - (ii) the proposed sub-processor has entered into a contract with Arquella which imposes obligations on the sub-processor which are reasonably equivalent to those imposed on Arquella in this Clause 9.4.

For the avoidance of doubt, Arquella shall remain liable for the acts and omissions of its sub-processors as if they were Arquella's own.

- (d) not transfer any Personal Data to outside the EU and the UK without the implementation of such measures and the conclusion of all necessary documents as are required to enable the Customer to comply with Data Protection Laws in relation to such transfer;
- (e) provide reasonable assistance to enable the Customer to fulfil its obligations to respond to any requests from data subjects in accordance with Data Protection Laws and to enable the Customer to comply with its obligations under Articles 32 – 36 (Security, Breach Notifications, Data Protection Impact Assessments, Prior Consultation) of the GDPR;
- (f) upon expiration or termination of this Agreement, at the Customer's choice, either return to the Customer or erase the Personal Data in its possession or control unless Arquella is required to retain Personal Data in order to comply with applicable laws;
- (g) make available to the Customer the information which is reasonably necessary to enable the Customer to verify that Arquella is in compliance with this Clause 9.4;
- (h) permit the Customer (either itself or through third party auditors appointed by the Customer, subject to any third party auditors being subject to appropriate confidentiality obligations) to audit Arquella's compliance with this Clause 9.4. The Customer may only exercise its right to audit under this Clause 9.4(h) once in each Year of this Agreement and the Customer and Arquella must agree the scope, date and time of any such audit in advance. The Customer

must give at least 30 days' prior written notice to exercise its right to audit under this Clause 9.4(h); and

- (i) ensure that all of Arquella's personnel who are authorised to access the Personal Data are bound by appropriate confidentiality obligations when accessing the Personal Data.

10 TERMINATION

10.1 Without prejudice to any other rights or remedies available to it, either party may terminate this Agreement at any time by giving written notice to the other if any of the following events occur:

- (a) the other party commits any material breach of this Agreement and either:
 - (i) that breach is not capable of remedy; or
 - (ii) that breach is capable of remedy, but the defaulting party fails to remedy it within 30 days of receiving a written notice from the first party containing full particulars of the material breach and requiring it to be remedied;
- (b) the other party becomes bankrupt or goes into liquidation (whether voluntary or compulsory), becomes insolvent, is dissolved, compounds with its creditors or has a receiver, administrative receiver or administrator appointed over the whole or any part of its assets or a petition is presented, or a meeting is convened for the purpose of considering a resolution, for the making of an administrative order, the winding-up, bankruptcy or dissolution of that party or the other party suffers any similar process in any jurisdiction outside of England and Wales; and/or
- (c) the other party ceases or threatens to cease carrying on its business, operations or activities.

10.2 Upon termination or expiry of this Agreement for any reason all rights granted to the Customer under this Agreement shall cease and the Customer shall:

- (a) cease all use of and access to the Services and all other activities authorised under this Agreement and if requested to do so by Arquella certify to Arquella in writing via a senior officer of the Customer that it has done so; and
- (b) immediately pay to Arquella without need for demand any sums due or accrued to Arquella from the Customer under this Agreement (including any Charges) which are unpaid.

10.3 Termination or expiry of this Agreement on whatever basis shall be without prejudice to any rights or obligations of either party which have accrued prior to the date of termination and shall not affect the continuing in or coming into force of any provision of this Agreement which, whether expressly or by implication, is to continue in or come into force following expiry or termination.

11 LIMITATION OF LIABILITY

11.1 Neither party seeks to limit or exclude in any way its liability for death or personal injury caused by negligence; for fraud or fraudulent misrepresentation; for any breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of

the Supply of Goods and Services Act 1982; and/or for any other matter or liability which cannot be lawfully limited or excluded. Each provision of this Agreement shall be read as subject to this Clause 11.1 and no provision of this Agreement is intended to nor shall be interpreted as seeking to limit or exclude any of the foregoing types of liability.

- 11.2 Subject at all times to Clauses 11.1 and 11.3, the maximum liability of Arquella to the Customer for all claims under or in connection with this Agreement howsoever arising shall be limited in aggregate to the value of the Charges actually paid by the Customer to Arquella under this Agreement.
- 11.3 Arquella shall not be liable for: loss of business; loss of use; loss of profit; loss of anticipated profit; loss of contracts; loss of revenues; loss or damage to goodwill or brand; loss of anticipated savings; loss of data or use of data; product recall costs; damage to reputation; and/or consequential, special or indirect loss or damage in any case, regardless of whether or not Arquella was aware (or ought reasonably to have been aware) of the risk that such loss or damage might occur.
- 11.4 For the avoidance of doubt, Clause 11.3 shall not act so as to limit or exclude the right of Arquella to recover any overdue or unpaid Charges or other amounts owing from the Customer to Arquella under this Agreement from time to time.
- 11.5 Neither party shall be liable to the other for any failure or delay in complying with its obligations under this Agreement where such delay or failure is reasonably attributable to an event of Force Majeure provided that the obligation of the Customer to pay the Charges in accordance with Clause 6 shall not be affected by the occurrence of any event of Force Majeure.
- 11.6 The Customer accepts responsibility for the selection of the Services to achieve its intended results and acknowledges that the Services have not been developed to meet the individual requirements of the Customer.
- 11.7 The Services do not include the provision of any back-up, disaster recovery or business continuity services and to the extent that any Customer Data is stored or hosted by Arquella in connection with the Services then the Customer shall back-up such Customer Data itself at frequencies which are appropriate to enable it to recover such Customer Data with minimal impact on its business.
- 11.8 The Customer acknowledges that all of the information and content provided through the Services is for informational purposes only and, whilst it may provide helpful information, it is not intended to replace the relationship with any health care professionals or substitute the provision of care or medical advice. The Customer assumes full risk and responsibility for its use of the information and content obtained through the Services. Arquella shall not be liable if the Customer delays or disregards the provision of care or seeking professional medical advice because of something it has viewed or accessed via the Services.
- 11.9 Although Arquella makes reasonable efforts to update the information and content provided through the Services, Arquella makes no representations, warranties or guarantees, whether express or implied, that such information and content is accurate, complete or up to date. The Services may not provide consistent and accurate information and content at all times.
- 11.10 This Agreement sets out the full extent of Arquella's obligations and liabilities in respect of the design, development, testing, delivery and provision of the Services. All conditions, warranties or other terms concerning the same which might otherwise

be implied into this Agreement or any collateral contract (whether by statute or otherwise) are hereby expressly excluded.

12 CONFIDENTIALITY

- 12.1 Each party shall, during the term of this Agreement and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of this Agreement) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any information of a confidential nature (including, without limitation, trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its affiliates or group companies, unless that information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this Agreement, or subsequently comes lawfully into the possession of such party from a third party. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.
- 12.2 The terms of this Agreement are confidential and may not be disclosed by the Customer without the prior written consent of Arquella.

13 GENERAL

- 13.1 Any notices to be served on either party by the other shall be in writing and sent by pre-paid registered post to the address of the other party as set out in Clause 1.1(w) (in the case of Arquella) and in the Order Form (in the case of the Customer) or such other address as is notified in writing by that party from time to time. Such notice shall be deemed to have been received by the addressee 72 hours after posting provided applicable evidence of posting is retained and produced on request.
- 13.2 Whilst the parties may make operational communications concerning this Agreement via email, formal notice may not be served via email.
- 13.3 The parties are with respect to each other independent contractors and nothing in this Agreement and no actions taken by the parties under it shall be deemed to constitute any agency, partnership, association, joint venture or other co-operative enterprise between the parties.
- 13.4 This Agreement together with any documents referred to or incorporated into it in accordance with its terms represents the entire agreement between the parties relating to its subject matter and supersedes all previous presentations made and/or agreements, negotiations and discussions between the parties relating to the same.
- 13.5 The Customer shall notify Arquella without undue delay if the Customer is subject to a change of Control.
- 13.6 The Customer may not sub-licence, assign, transfer, novate, charge or sub-contract the performance of any of its rights and/or obligations under this Agreement without the prior written consent of Arquella. The Customer acknowledges and agrees that any breach by it of the restrictions imposed on it under this Clause 13.5 shall constitute a material breach of this Agreement which is not capable of remedy.
- 13.7 Subject to Clause 9.4(c) Arquella may at any time by written notice to the Customer sub-licence, assign, transfer, novate, charge or sub-contract the performance of any of its rights and/or obligations under this Agreement but in the case of any

sub-contracting shall remain primarily liable to Arquella for the acts or omissions of any of its sub-contractors as if those were the acts or omissions of Arquella itself under this Agreement.

- 13.8 If any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, the remaining provisions shall remain in full force and effect.
- 13.9 The failure to exercise or delay in exercising any right or remedy under this Agreement shall not be regarded as a waiver of such right or remedy, or a waiver of other rights or remedies. No single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or any other right or remedy.
- 13.10 A person who is not a party to this Agreement shall have no right to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 13.11 This Agreement shall be governed by English law and, save in respect of the enforcement of any judgment, the parties agree to submit to the exclusive jurisdiction of the English courts.