

Dated

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(1) EST Solutions Ltd

- and -

(2) [INSERT NAME]

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**SOFTWARE AS A SERVICE AGREEMENT**

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**BETWEEN:**

- (1) **EST Solutions Ltd (trading as “e Street”)**( a company incorporated in the United Kingdom under company number 8054704) and whose registered address is at 3rd Floor 137 Euston Road, Kings Cross, London NW1 2AA (“**EST**”); and(2) **[INSERT HERE]** (a company incorporated in **[COUNTRY]** under company number **[NUMBER]** whose registered office is at **[ADDRESS]** (the “Customer”).

**RECITALS:**

- 1. EST has developed a series of modules and enhancements (the “**EST Enhancements**”) to open source applications known as
  - a. Alfresco, developed by Alfresco Software, Inc. (“**Alfresco Software**”).
  - b. Ofbiz developed by Apache Foundation (“Ofbiz Software”).
  - c. Mule developed by MuleSoft (“Mule Software”).
  - d. Jasper Reports developed by Jaspersoft Corporation (“Jasper Reports”),
 together the “**Open Source Software**”.

EST wishes to make the digital platform configured by the Open Source Software and the EST Enhancements (together, the “**Software**”) available to the Customer as a service hosted by EST (the “**Service**”), together with implementation and support on the terms set out in this Agreement.

**IT IS AGREED AS FOLLOWS:**

**1 DEFINITIONS**

- 1.1 In this Agreement the following terms have the meanings ascribed to them:
 

“Acceptance Tests”	has the meaning set out in clause 3.5.
“Additional Services”	means those services listed in Appendix 1, paragraph 5.
“Agreement”	means this agreement together with any schedules and appendices hereto.
“Business Hours”	means the hours of 8:30am to 5:30pm in the United Kingdom Monday to Friday excluding public holidays, unless specified otherwise in Appendix 2.
“Commencement Date”	means the date specified in Appendix 1.
“Customer’s Content”	means any information, data, meta data, materials, content or works (including, but not limited to, personal information) that is supplied or used by or through the Customer or any User pursuant to this Agreement.
“Fees”	means the fees payable to EST by the Customer under this agreement as detailed in Appendix 3.
“Initial Term”	means the initial period specified in Appendix 1.

“Intellectual Property Rights”	means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the “intellectual property rights” referred to above include without limitation copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, patents, utility models, semiconductor topography rights, rights in designs and any information provided to the Customer through its use of the Service).
“Material Fault”	means a fault which is significant enough to prevent the completion of the event for which that element of the Software was designed to achieve.
“Service Hours”	means the availability of the Service, as further detailed in Appendix 2.
“Service Level Agreement”	means the agreement set out in Appendix 2.
“Support Services”	means the services listed in Appendix 1, paragraph 4.
“Upgrade”	means new versions of, and updates to, the Service .
“User”	means the employees and sub-contractors of the Customer together with any of the Customer’s clients or customers who utilise the Service pursuant to the Customer’s ordinary business, and/or as further defined in Appendix 1.
”Virus”	means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
“Year”	means each period of twelve (12) consecutive months during the term of this Agreement, with the first Year commencing on the Commencement Date, and with each subsequent Year commencing on the anniversary of the Commencement Date

1.2 Clause, schedule and appendix headings shall not affect the interpretation of this Agreement.

1.3 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular; and a reference to one gender shall include a reference to the other genders.

1.4 A reference to a statute or statutory provision is a reference to it as amended,

extended or re-enacted from time to time provided that, as between the parties, no such amendment, extension or re-enactment shall apply for the purposes of this Agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party.

- 1.5 A reference to a statute or statutory provision shall include any sub-ordinate legislation made from time to time under that statute or statutory provision.
- 1.6 Writing or written includes faxes but not e-mail.
- 1.7 Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.8 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

## 2 BASIS OF USE AND GENERAL OBLIGATIONS

- 2.1 EST agrees, in consideration of the payment of the Fees by the Customer, to make the Service available to the Customer and the Users from the Commencement Date until the end of the Initial Term (or any extensions agreed by the parties under this Agreement) for the management of parking related to its own personal and internal business use only, solely in [name of local authority area] and subject to any further restrictions, if any, which are specified in Appendix 1 (the "Permitted Use").

The Customer may not use the Service for any other purpose.

- 2.2 Where the parties have agreed a trial period then the use of the Service shall be subject to the limitations contained above, and also that such trial use shall be limited to no more than 30 days and the Customer may not use the Service in a production or live environment. As use of the Service within the trial period is intended for evaluation and testing purposes only, the Customer agrees that EST shall have no liability whatsoever in respect of Customer's use thereof which EST hereby excludes to the fullest extent permitted by law.
- 2.3 During the term of this agreement, EST may from time to time and at its sole discretion, apply Upgrades, which may require the cessation or interruption of the Service. EST shall give the Customer prior written notice of any Upgrade. EST shall use commercially reasonable endeavours to carry out any Upgrades outside of Business Hours. EST shall not be liable to the Customer for any cessation, interruption or degradation in performance of the Service as a result of any Upgrade.
- 2.4 The Customer shall use all reasonable efforts to ensure it informs those who use any communications system included in the Service that such communications transmitted through such system may be intercepted (as a function of the Service or pursuant to applicable laws), indicate the purpose of such interception, and ensure that the necessary consents are obtained. The Customer shall hold EST harmless from any claims from itself or the Users relating to such interception.
- 2.5 For the avoidance of doubt, the Customer has no right to access the object code or source code of the EST Enhancements or other software owned by EST utilised in the provision of the Service, either during or after the term.

## 3 IMPLEMENTATION OF THE SERVICE

- 3.1 As soon as reasonably practicable following execution of this Agreement by both parties or as agreed, if specified, on the Commencement Date and in accordance

with the implementation plan in Appendix 4 as varied from time to time and as agreed by EST and the Customer, EST will make the Service available to the Customer and, where Additional Services are specified in Appendix 1, shall endeavour to provide the same within that agreed period or in accordance with Appendix 4.

- 3.2 EST will, during the term of this Agreement, provide the Support Services in accordance with the Service Level Agreement and in accordance with the terms of this Agreement.
- 3.3 EST shall have no obligations under this Agreement to provide Support Services in respect of any fault or error caused by:
  - 3.3.1 the improper use of the Service;
  - 3.3.2 the use of the Service otherwise than in accordance with EST's instructions;  
or
  - 3.3.3 the use of 3<sup>rd</sup> party software not compatible with the Service.
- 3.4 Whilst EST will provide the Support Services which includes initial configuration of the basic Service, the Customer shall be required to promptly provide any further configuration information it requires and for checking the initial configuration to ensure it meets its requirements. The Customer will also be responsible for the timely delivery of the Customer's Content (if any) and for the configuration of its networks and computer systems so that the Service can be accessed and used by itself and the Users. Any Additional Services that may be required, shall be agreed between the parties and specified in Appendix 1, paragraph 5, together with any associated costs which will be set out in Appendix 3.
- 3.5 After installation and/or commissioning of the Service the Customer agrees to conduct such reasonable tests as are capable of demonstrating the proper functioning of the Service within a reasonable period (the "**Acceptance Tests**"). The Acceptance Tests shall not be deemed to have failed for any faults which are not Material Faults. The Customer will be deemed to accept the Service immediately after the successful conclusion of the Acceptance Tests and the Customer will, if required by EST, provide written confirmation of this. If the Customer commences use of the Service other than in a test or evaluation environment then it shall be deemed to have accepted the Service.
- 3.6 If the Service fails the Acceptance Tests and such failure is caused by a Material Fault, then EST shall use commercially reasonable endeavours to make those amendments, fixes and patches as are required and shall re-submit the Service to the Acceptance Tests.

#### 4 **ACCESS APPLICATION**

- 4.1 In this Agreement "Access Application" means a software program provided by EST to the Customer for installation on handheld units owned by the Customer in order to facilitate the Customer's access to and use of the Service, and "Authorised User" means those employees, agents, and independent contractors of the Customer who are authorised by the Customer to use the Service as specified in Appendix 1. If such Appendix does not specify a "user figure", or contain any other reference to the number of users, then the number of authorised users shall be deemed to be the total number of persons that actually have access to the Services and who fall into the category of employee, agent or independent contractor of the Customer.
- 4.2 Where an Access Application is required by the Customer to utilise the Service or

any part of it, EST will as soon as is reasonably practicable following the Commencement Date deliver to the Customer a copy or copies of the Access Application, or make the Access Application available for download onto the handheld units to Authorised Users.

- 4.3 EST grants to the Customer, on and subject to the terms and conditions of this agreement, [and to the terms of any end user licence agreement included with the Access Application] a revocable, non-exclusive, non-transferable licence to allow Authorised Users to use the Access Application for the Permitted Purpose on the handheld units only.
- 4.4 The Customer must not:
- 4.4.1 copy or reproduce the Access Application or any part of the Access Application other than in accordance with the licence granted in this clause 4;
  - 4.4.2 sell, resell, rent, lease, loan, supply, distribute, redistribute, publish or republish the Access Application or any part of the Access Application;
  - 4.4.3 modify, alter, adapt, translate or edit, or create derivative works of, the Access Application or any part of the Access Application;
  - 4.4.4 reverse engineer, decompiles, disassemble the Access Application or any part of the Access Application (except as mandated by applicable law);
  - 4.4.5 use the Access Application other than in accordance with any accompanying documentation; or
  - 4.4.6 circumvent or remove, or attempt to circumvent or remove the technological measure applied to the Access Application for the purposes of preventing unauthorised use.
- 4.5 The Customer warrants that it shall not access, store, introduce, distribute or transmit any Virus during the course of its use of the Access Application.
- 4.6 All Intellectual Property Rights in the Access Application are the property of EST.
- 4.7 The Customer shall be responsible for the security of the Customer's copies of the Access Application, and will use all reasonable endeavours to ensure that access to the Application is restricted to the Authorised Users.

## 5 CUSTOMER'S CONTENT AND DATA OWNERSHIP

- 5.1 EST agrees that Customer's Content shall at all times be the property of the Customer or its licensors as the case may be, and will be used by EST only for the purposes of providing the Service or any other services to be performed by EST under or in connection with this Agreement. EST will not use or disclose Customer's Content other than to discharge its obligations under this Agreement save where the Customer's Content is already known to EST or publicly available.
- 5.2 The Customer shall notify EST immediately if it becomes aware of any unauthorised access to or use of the Service by any person. The Customer will permit EST to check the use of the Service by the Customer and the Users to ensure that it complies with this Agreement, at all reasonable times and to assess the provision of the Service.
- 5.3 The Customer agrees that it may be necessary at times for EST to access the Customer's Content in order to respond to any technical problems and/or queries raised by the Customer, and to ensure the proper working of its systems.
- 5.4 The Customer warrants to EST that the Customer's Content will not:

- 5.4.1 breach any laws, statutes, regulations or legally-binding codes;
- 5.4.2 infringe any person's Intellectual Property Rights or other legal rights; or
- 5.4.3 give rise to any cause of action against EST.
- 5.5 EST shall not be responsible for any loss, destruction, alteration or disclosure of Customer's Content, including any loss, destruction, alteration or disclosure of Customer's Content caused by any third party (except those third parties sub-contracted by EST to perform its obligations under this Agreement).
- 5.6 The Customer must not:
  - 5.6.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the EST Enhancements or other software owned by EST utilised in the provision of the Service in any form or media or by any means;
  - 5.6.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the EST Enhancements or other software owned by EST utilised in the provision of the Service;
  - 5.6.3 access all or any part of the Service in order to build a product or service which competes with the Service;
  - 5.6.4 use the Service in any way that causes, or may cause, damage to the Service, or impairment of the availability or accessibility of the Service or any part thereof; or
  - 5.6.5 alter, re-engineer, adapt or edit the Service or any software utilised in the provision of the Service.
- 5.7 The Customer warrants that it shall not access, store, introduce, distribute or transmit any Virus during the course of its use of the Service.
- 5.8 The Customer must ensure that its network and systems comply with the relevant specifications provided by EST from time to time.

## 6 PAYMENT TERMS AND DELIVERY

- 6.1 The Customer agrees to pay the Fees in accordance with any payment schedule or terms specified in Appendix 3. If no terms are specified in Appendix 3, Fees are payable monthly, or such other period as is agreed between the parties in advance. All Fees shall in any event be paid within 30 days of the date of the invoice to which it relates. VAT and any other taxes, withholding taxes, duties or levies shall be paid in addition by the Customer at the then prevailing rate prescribed by law where necessary.
- 6.2 If any sum due from the Customer is not paid by the due date then EST reserves the right, without prejudice to any other right or remedy it may have, to charge interest on any unpaid monies due at the rate stipulated by The Late Payment of Commercial Debts (Interest) Act 1998 as amended from time to time from the date the payment became due until it is paid.
- 6.3 Notwithstanding the above provision for late payment, EST may at its option, without prejudice to any other remedy it may have and in addition thereto, at any time after payment has become due, temporarily suspend this Agreement and/or the Customer's right to use the Service, until such time as the payment is made in full.

## 7 WARRANTIES

- 7.1 EST warrants that:
- 7.1.1 the services which EST itself provides shall be performed with due care and skill,
  - 7.1.2 EST will use reasonable endeavors to provide access to the Service during the Service Hours;
  - 7.1.3 it is the owner of all Intellectual Property Rights in or has the right to use the EST Enhancements and to provide the Service;
  - 7.1.4 there are no limitations, legal or otherwise, that prevent it from providing the Service in accordance with the terms of this Agreement; and
  - 7.1.5 during the Initial Term and any Renewal Period(s) the Service (except that portion of the Service which relates to the Open Source Software) will provide the facilities and functions, and will materially perform, as described in Appendix 1 as at the date of this Agreement, when used properly and in accordance with all instructions and guidance (if any) given from time to time by EST.
- 7.2 The Customer acknowledges that complex software is never wholly free from defects, delivery failures, errors and bugs, and EST therefore gives no warranty or representation that the Service will be wholly free from such defects, delays, delivery failures, errors and bugs.
- 7.3 Notwithstanding the forgoing Clause 7.1, EST:
- 7.3.1 does not warrant or represent that the Service will be compatible with any application, program, or software other than those applications, programs and software (if any) specifically identified as compatible by EST in writing;
  - 7.3.2 does not warrant or represent that the Customer's use of the Service will be uninterrupted or error-free; and
  - 7.3.3 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Service may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 7.4 Save as provided in Clause 7.1, the Service is provided on an "as is" basis, and EST does not warrant or represent that the Service and/or any information obtained by the Customer through the Service will meet the Customer's requirements.
- 7.5 EST accepts no liability or responsibility whatsoever in relation to (i) any use made of the Service by the Customer (other than the Permitted Use), (ii) the Customer's Content or, (iii) any other data obtained or processed via its use of the Service.
- 7.6 EST shall have no liability or obligation under the warranty given in Clause 7.1 above unless it has received written notice from the Customer of any non-conformance with the warranty within 60 days from the date on which it becomes apparent or ought to have become apparent.
- 7.7 The warranty at Clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Service contrary to EST's instructions, or modification or alteration of the Service by any party other than EST or EST's duly authorised contractors or agents.



- 7.8 The Customer acknowledges that the Service is based on Open Source Software, which is reflected in the Fees; therefore EST excludes to the fullest extent possible in law any warranties liability or responsibility, and does not provide any indemnities for the Open Source Software and any other open source software used or made available under this Agreement and such software is provided on an “as is” basis. If any material fault arises in the Open Source Software, or other open source software used under this agreement EST may (but is not obliged to) work with the Customer to correct or mitigate the effects. The Customer acknowledges and agrees that this is fair and reasonable and is reflected in the Fees paid.
- 7.9 If EST is found to be in breach of the warranty at Clause 7.1, EST will, at its expense, use commercially reasonable endeavours to correct any such non-conformance within a reasonable time after being notified of a breach. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the warranties in Clause 7.1.
- 7.10 The above constitutes the only warranty provided by EST in respect of the Service. The obligations and liabilities of EST in this Agreement are in place of, and the Customer accordingly waives, in so far as it is permitted to do so by law, all other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this agreement or any collateral contract, whether by statute, common law or otherwise, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

## 8 LIMITS OF LIABILITY

- 8.1 Nothing in this Agreement limits or excludes EST's liability for death or personal injury resulting from its negligence, EST's fraud or for any other losses which cannot, by law, be limited or excluded.
- 8.2 Subject to clause 8.1 above, EST shall not be liable for any loss (whether direct or indirect) of profits, business or anticipated savings, any loss or corruption of any data, database or software, or for any indirect, special, or consequential loss or damage whatsoever, whether or not EST has been notified of the possibility of such losses.
- 8.3 Subject to clause 8.1 above and 8.2 above, EST's total liability in aggregate under or in connection with this Agreement, whether arising in contract, tort (including negligence) or otherwise, shall be limited to the Recurring Annual Fee as set out in Appendix 3, paid by Customer in respect of the Service in the twelve months preceding the date the claim arose, or in respect of any claim occurring in the first 12 months, EST's total liability will be no more than the value of the Recurring Annual Fee, as set out in Appendix 3, for the Service in the first 12 months from the date of this agreement.
- 8.4 Each of the categories of loss specified in clause 8.2 shall be regarded as separate and distinct categories such that each shall be evaluated and applied individually and where any of them are held to be unenforceable then the remainder shall nonetheless be deemed to apply.
- 8.5 Subject to the overall aggregate liability of EST under clause 8.3, and subject to clauses 8.1 and 8.2 above, EST's total liability for any losses arising due to breach of the Service Level Agreement in any Year, shall be limited to no more than a pro rata amount of the Recurring Annual Fee (as set out in Appendix 3) for the Service paid to EST in the quarter in which the breach of the SLA took place.

9 **CUSTOMER'S INDEMNITY**

- 9.1 The Customer agrees to fully indemnify EST from and against any loss directly suffered or incurred by or awarded against EST arising out of, any use of the Service that is not the Permitted Purpose, the Customer's Content, the Customer's breach of this agreement, and/or the negligence of the Customer and/or any User. EST shall:
- 9.1.1 notify the Customer as soon as it becomes aware of a matter or claim which may give rise to an indemnity;
  - 9.1.2 provide to the Customer reasonable assistance in relation to the relevant matter or claim;
  - 9.1.3 allow the Customer to defend and settle the relevant matter or claim; and
  - 9.1.4 mitigate its losses.

10 **INTELLECTUAL PROPERTY INDEMNITY**

- 10.1 EST shall indemnify the Customer on demand against its reasonable and direct, in each case, costs, claims, demands, expenses and liabilities arising out of or in connection with any claim that the normal use of the EST Enhancements infringe the Intellectual Property Rights of a third party, provided that:
- 10.1.1 the Customer does not admit liability, settle or in any other way prejudice EST's defence of any such claim;
  - 10.1.2 the infringement is not caused by or contributed to by the Customer's acts other than through use of the EST Enhancements in accordance with this Agreement;
  - 10.1.3 EST is promptly notified in writing of the details of the claim;
  - 10.1.4 the Customer gives EST all reasonable assistance in connection therewith; and
  - 10.1.5 EST shall have sole conduct and control of the relevant dispute/proceedings, and its settlement or compromise.
- 10.2 If the Customer's normal use of the EST Enhancements is held by a court of competent jurisdiction to constitute an infringement of a third party's Intellectual Property Rights then EST may at its own expense:
- 10.2.1 procure for the Customer the right to continue using the same;
  - 10.2.2 modify or replace the same so as to avoid the infringement; or
  - 10.2.3 if clauses 10.2.1 or 10.2.2 above cannot be accomplished on terms commercially reasonable to EST, refund the Fees pro rata from the date that this clause 10.2 shall apply, in full and final settlement of any claims whereupon this Agreement shall terminate forthwith.
- 10.3 The foregoing states the entire liability of EST with respect to infringement or alleged infringement of any third party rights of any kind whatsoever.

11 **TERMINATION**

- 11.1 This Agreement shall continue for the Initial Term with an option to extend for a further period of [INSERT NUMBER] months and thereafter for consecutive twelve month periods (each additional period being a "Renewal Period") unless either party, for any reason, gives the other party 180 days' notice of termination, effective

following the Initial Term only but sooner if mutually agreed between the parties.

- 11.2 Either party may terminate this Agreement forthwith on giving notice in writing to the other party if the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, shall have failed within 30 days after the receipt of a request in writing from the first party to do so, to remedy the breach.
- 11.3 EST may terminate this Agreement with immediate effect by giving written notice to the Customer if the Customer:
  - 11.3.1 fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
  - 11.3.2 commits a material breach of this agreement and fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - 11.3.3 repeatedly breaches any of the terms of this agreement in such a manner to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement; or
  - 11.3.4 commits a material breach of this Agreement which is not capable of being remedied.
- 11.4 If the Customer becomes subject to any of the events listed in clause 11.5, EST may terminate this Agreement with immediate effect by giving written notice to the Customer.
- 11.5 For the purposes of clause 11.4, the relevant events are:
  - 11.5.1 the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - 11.5.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
  - 11.5.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
  - 11.5.4 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
  - 11.5.5 the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
  - 11.5.6 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
  - 11.5.7 a creditor or encumbrancer of the Customer attaches or takes possession of,

or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

- 11.5.8 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.5.1 to clause 11.5.7 (inclusive); or
  - 11.5.9 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business.
- 11.6 The Customer agrees that it will not at any time recreate or attempt to recreate the components of the Service provided by the EST Enhancements, nor permit nor assist any third party to do so.
- 11.7 Termination of this Agreement howsoever caused shall not affect any rights of action or remedy of either party under this Agreement which may have accrued up to the date of termination.
- 11.8 On termination for any reason:
- 11.8.1 all rights granted to the Customer under this Agreement shall cease;
  - 11.8.2 the Customer shall cease all activities authorised by this Agreement (including but not limited to use of the Service and the Access Application); and
  - 11.8.3 the Customer shall immediately pay to EST any sums due to EST under this Agreement.
- 11.9 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.

## 12 DATA PROTECTION AND PRIVACY

- 12.1 In this Agreement, “**Data Protection Legislation**” shall mean: (i) UK Data Protection Legislation; and (ii) (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy. “**UK Data Protection Legislation**” means any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.
- 12.2 For the purposes of the provision of the Service, the Customer is the [Data Controller] and EST is the [Data Processor].
- 12.3 Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures shall be as defined in the Data Protection Legislation.
- 12.4 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this Clause 12, “**Applicable Laws**” means (for so long as and to the extent that they apply to this agreement) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and “**Domestic UK Law**” means the UK Data Protection Legislation and any other law that applies in the UK.

- 12.5 Without prejudice to the generality of Clause 12.4, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to EST for the duration and purposes of this agreement.
- 12.6 Without prejudice to the generality of Clause 12.4, EST shall, in relation to any Personal Data processed in connection with the performance by EST of its obligations under this agreement:
  - 12.6.1 process that Personal Data only on the documented written instructions of the Customer unless EST is required by Applicable Laws to otherwise process that Personal Data. Where EST is relying on Applicable Laws as the basis for processing Personal Data, EST shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit EST from so notifying the Customer;
  - 12.6.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
  - 12.6.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
  - 12.6.4 not transfer any Personal Data outside of the European Economic Area unless:
    - 12.6.4.1 the Customer or EST has provided appropriate safeguards in relation to the transfer;
    - 12.6.4.2 the data subject has enforceable rights and effective legal remedies;
    - 12.6.4.3 EST complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
    - 12.6.4.4 EST complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
  - 12.6.5 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - 12.6.6 notify the Customer without undue delay on becoming aware of a Personal Data Breach;
  - 12.6.7 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
  - 12.6.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 12.

- 12.7 The Customer hereby consents to the Provider appointing any third party-processors of Personal Data as required for the provision of the Service under this agreement, and to the transfer of Personal Data out of the EEA (in accordance with the terms of this clause 12) to those third-party processors. EST confirms that it has entered or, (as the case may be) will enter into, with the third-party processors, a written agreement incorporating terms which are substantially similar to those set out in this clause 12. As between the Customer and EST, EST shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 12.7.

13 **ANCILLIARY PROVISIONS**

- 13.1 **SEVERABILITY:** Where any provision of this Agreement is deemed unenforceable, then the offending part shall to the extent legally possible be deemed excised from this Agreement and replaced by equivalent provisions and this Agreement shall continue with the same effect to the fullest extent possible.
- 13.2 **WAIVER:** No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.
- 13.3 **ASSIGNMENT:** The Customer may not assign this Agreement or any benefits or interests arising under this Agreement without the prior written consent of EST, such consent not to be unreasonably withheld. Should the Customer purport to assign this Agreement in contravention of this clause then EST may in its sole option terminate this Agreement forthwith without prejudice to any other rights it may have in respect thereof.
- 13.4 **NOTICES:** Any notice required to be given under this Agreement by either party must be in writing and presented in the English language, and may be delivered either personally, by email or by first class recorded delivery post in the country where the recipient is principally located and in the case of post will be deemed to have been received 3 working days after the date of posting in the country of receipt. Notices delivered by email shall be deemed to have been received the following working day after transmission. Notices will be delivered to the principal place of business of either party, to any other address or any email address notified in writing by either party to the other for the purpose of receiving notices after the date of this Agreement. In any event notice shall have been deemed to have been given after actual receipt of the same by the Company Secretary of either party (or equivalent thereof).
- 13.5 **DISPUTE RESOLUTION**
- 13.5.1 If there is a dispute between the parties in connection with this Agreement, except as otherwise provided for in this Agreement, then within ten business days of a party giving the other notice of the dispute under this clause 13.5, a representative of each party must meet and use all reasonable endeavours acting in good faith to resolve the dispute.
- 13.5.2 If the dispute is not resolved within 30 days of notification under clause 13.5.1 the parties may (but are not obliged to) agree to submit the dispute for mediation by an independent Party acceptable to both parties. The costs of such mediation will be met equally by the parties.
- 13.5.3 A Party must not start court proceedings in relation to a dispute until it has made reasonable endeavours to meet the requirements of clause 13.5.1 and

13.5.2.

- 13.5.4 Notwithstanding clause 13.5.1, 13.5.2 and 13.5.3, neither party is prevented from applying to a court at any stage for urgent injunctive or other relief subject always to EST providing continuity of service to the Customer in compliance with the Terms of this agreement and the Customer paying any amounts due in accordance with this Agreement.
- 13.6 **FORCE MAJEURE:** Neither party shall be liable for any delay in performance or failure to perform its obligations (other than a payment obligation) under this Agreement due to any cause outside its reasonable control. Such delay or failure shall not constitute a breach of this Agreement and the time for performance of the affected obligation shall be extended by such period as is reasonable.
- 13.7 **PRECEDENT:** If there is any inconsistency or conflict between the provisions of the main part of this agreement and any appendices and/or schedules then the former shall take precedence unless it is clearly intended otherwise.
- 13.8 **THIRD PARTY RIGHTS:** Any third party who is not a party to this Agreement, including any Users, shall have no rights under the Contracts (Rights of Third Parties) Act 1999.
- 13.9 **GOVERNING LAW AND JURISDICTION:** This Agreement shall be governed by English Law and the parties submit to the exclusive jurisdiction of the English Courts.
- 13.10 **PUBLICITY AND MARKETING:** EST may disclose to third parties that the Customer is a user of the Service, and shall be entitled to include such fact in its marketing and publicity materials. Where EST wishes to include any additional information (in addition to the fact that the Customer is a user of the Service) in any such materials, or to use any trade mark of the Customer, it shall first obtain the Customer's prior written approval (not to be unreasonably withheld or delayed).
- 13.11 **AUDIT RIGHTS:** EST shall have the right, at the Customer's cost and expense, during normal business hours, to audit the appropriate records of the Customer to verify the Customer's compliance with the terms of this Agreement.

**SIGNED** as an Agreement on the date specified.

**Signed** by an authorised signatory  
for and on behalf of  
EST Ltd  
by

}

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Date)

**Signed by an authorised signatory**  
for and on behalf of [INSERT  
CUSTOMER NAME]



\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Date)



**APPENDIX 1**  
**Service Provision**

**1. Service Provision**

1.1 The Service includes the provision of a digital platform provided on a software as a service basis hosted on equipment based at EST's premises, as further described here:

[INSERT DETAILS OF MODULES PROVIDED AND SPECIFICATION OF THE SERVICE]

**2. Initial Term**

The service is provided for an initial period of [INSERT] months from the Commencement Date.

**3. Commencement Date**

Commencement Date for this Agreement shall be [[insert date] / the date of this Agreement].

**4. Support Services**

[list support services here e.g. installation, configuration, maintenance, helpdesk]

**5. Additional Services**

[list additional services here e.g. like those below]

Project Management
System Installation
System Configuration
On Site Training
Go Live Support
Training for Hand Held Computers

**6. [Usage Restrictions][OPTIONAL CLAUSE]**

The Customer's use of the Service is restricted as follows:

[List restrictions here]

Appendix 2  
**Service level Agreement**

**1. Introduction**

- 1.2 In this Schedule, unless otherwise defined, all capitalised terms shall have the meaning given to them in the Main Agreement (here meaning the agreement to which this schedule relates).
- 1.3 References to paragraphs are to the paragraphs of this schedule, unless otherwise stated.

**2. Service Availability**

- 2.2 EST shall use reasonable endeavours to ensure that the Service is available [98]% of the time, except as provided below (“**Uptime Commitment**”). Availability will be calculated per calendar quarter, from the downtime in that quarter excluding:
- 2.2.1 any planned downtime as described in paragraph 3;
  - 2.2.2 any unplanned downtime caused by emergency maintenance;
  - 2.2.3 any period of downtime lasting less than 15 minutes;
  - 2.2.4 any unavailability caused by a Force Majeure event as defined in the Main Agreement;
  - 2.2.5 any unavailability caused by an internet service provider;
  - 2.2.6 any unavailability caused by the Open Source Software used in the provision of the Service; or
  - 2.2.7 any unavailability caused by an Upgrade being implemented at a time mutually agreed between the parties.
- 2.3 For any partial calendar quarter during which the Customer subscribes to this Service, availability will be calculated based on the entire calendar quarter.

**3. Scheduled Maintenance**

- 3.1 EST may suspend access to the Service in order to carry out scheduled maintenance, such maintenance to be carried out outside Business Hours where reasonably possible.
- 3.2 EST will use reasonable endeavours to give to the Customer at least [x] days' written notice of scheduled maintenance, including full details of the expected Service downtime.
- 3.3 Service downtime during scheduled maintenance carried out by EST in accordance with this Paragraph 3 shall not be counted as downtime for the purposes of Paragraph 2.

**4. Support Helpdesk**

- 4.1 EST will make available, during Business Hours, a telephone and email helpdesk facility for the purposes of:
- 4.1.1 assisting the Customer with the configuration and set up of the Service.
  - 4.1.2 assisting the Customer with the proper use of the Service; and/or
  - 4.1.3 determining the causes of errors and fixing errors in the Service.
- 4.2 The Customer must make all requests for Support Services through the helpdesk.

## 5. Response

5.1 EST will use reasonable endeavours to respond to requests for Support Services made through the helpdesk and will use reasonable endeavours to resolve issues raised by the Customer in accordance with the timescales in the table below:

Description	Service Levels		
Response	Response shall be provided and the Client provided with regular updates for each Incident within the following periods measured from the time of notification of the Incident.		
	All time frames are based upon the normal Support Desk working hours.		
	Updates can be provided to suit operational requirements for certain incidents		
	Priority	Target Initial update timescale	Target Resolution Timeframe
	1	Within 1 hour	Within 4 hours
2	Within 4 hours	Within 2 days	
3	Within 2 days	Within 1 week	
4	Within 5 days	Within 3 weeks	

5.2 All Support Services will be provided remotely unless expressly agreed otherwise by EST.

Appendix 3  
**Fees and charges**

**1. Fees**

The Fees payable under this agreement shall be the aggregate of the basic fees, the fees for Additional Services, and the fees for any other services provided to the Customer by EST under or in connection with this Agreement.

**Basic fees:**

<b>Initial Fee</b>	
<b>Recurring Annual Fee</b>	
<b>Initial Support Fee</b>	
<b>Recurring Annual Support Fee</b>	
<b>[Support Services Fee]</b>	
<b>[Access Application Fee]</b>	
<b>Total</b>	
<b>Less agreed discounts</b>	

**Fees for Additional Services**

The following additional services are being provided, below are details and their respective costs

<b>Additional Services</b>	<b>Days</b>	<b>Daily Rate</b>	<b>Total Cost</b>
Project Management			
System Installation			

System Configuration			
Training & Go Live Support			
Course setup			
On Site Training			
Go Live Support			
Training for Hand Held Computers			
<b>INSERT DETAILS</b>			
<b>INSERT DETAILS</b>			
		<b>TOTAL</b>	
<b>Agreed Total Discount</b>			

**Fees for any other services:**

Other services to be provided by EST at the Customer's request shall be charged monthly in arrears on a time and materials basis, using EST's standard rates from time to time.

**APPENDIX 4**  
**Project & implementation Plan**

**1. To be agreed.**

## **Appendix 5**

### Processing, Personal Data, and Data Subjects

#### **1. Processing by the Provider**

**1.1 Scope:**

**1.2 Nature:**

**1.3 Purpose of processing:**

**1.4 Duration of the processing:**

#### **2. Types of personal data**

[list here]

#### **3. Categories of data subject**

[list here]