

Master Services Agreement

THIS AGREEMENT is dated [date] BETWEEN:

- (1) **ENDPOINT AUTOMATION SERVICES LIMITED**, a company incorporated in Scotland with registered number SC492994 with its registered office at Abercorn House, 79 Renfrew Rd, Paisley PA3 4DA ("**Supplier**"); and
- (2) **[INSERT]**, a company incorporated in England and Wales with registered number [insert] with its registered office at [insert address] (the "**Customer**"), each a "**party**" and together the "**parties**".

OPERATIVE PROVISIONS 1. DEFINITIONS AND INTERPRETATION

1.1 In this agreement and in each Statement of Work, the following definitions shall apply unless the context otherwise requires:

agreement these terms, the schedules and each Statement of Work;

Acceptance

the determination by the Customer in accordance with schedule 1 or in the Statement of Work that a Deliverable satisfies the relevant Acceptance Criteria, and the words **Accept** and **Accepted** shall be construed accordingly

Acceptance Certificate

a written confirmation of Acceptance to be issued by the Customer in accordance with schedule 1

Acceptance Criteria

the acceptance criteria for a Deliverable as set out in a Statement of Work or (if not set out in the Statement of Work) criteria that demonstrate that the Deliverable complied with the requirement of the Statement of Work;

Acceptance Tests

user acceptance tests to be undertaken by the Customer to determine whether a Deliverable operates in all material respects in accordance with the Acceptance Criteria;

Assumption

an assumption applicable to the provision of Services and Deliverables as stated in the relevant Statement of Work;

Customer Affiliate any of the Customer's subsidiary companies from time to time and "subsidiary" shall have the meaning given to it by Section 1159 and Schedule 6 of the Companies Act 2006

Customer IPR

means all Intellectual Property Rights and other proprietary rights in: (a) any software, documentation, information, databases or other materials provided to Supplier by or on behalf of the Customer for the purpose of carrying out the Services; and (b) all records and reports, files, documents, correspondence and other information (in whatever form) relating to the Customer which are provided to Supplier from time to time by or on behalf of the Customer for the purpose of carrying out the Services

Deliverables any items described as such in a Statement of Work and a **Documentary Deliverable** is a Deliverable that is a document and a **System Deliverable** is a Deliverable that is software or configuration of software;

Dependency

A dependency applicable to the provision of Services and Deliverables as stated in the relevant Statement of Work;

Fees

Any fees payable by the Customer in respect of the Services and the Deliverables;

Force Majeure Event

Has the meaning given to it in clause 16;

Intellectual Property Rights

Any and all intellectual property rights including patents, trademarks, design rights, copyright, rights in databases, domain names, topography rights, know-how, look and feel, rights in confidential information and all similar rights (whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world) together with the right to apply for registration of and/or register such rights and any and all goodwill relating or attached thereto and all extensions and renewals thereof;

Licence Term

The term for which any licence for Supplier Software is granted, as stated in the relevant Statement of Work;

Relief Event

Any of the following: (a) any failure by the Customer to ensure that: (i) the Dependencies are performed; or (ii) that any Assumption is met; (b) any failure by the Customer to comply with its obligations under the agreement; and (c) any Assumption proving to be incorrect;

Services

The services described in the Statement of Work;

Specification

The specification or requirements for a Deliverable as described in the Statement of Work;

Statement of Work

an order for Services and/or Deliverables, either in the standard format provided by Supplier or in any such other format as Supplier may accept;

Supplier IPR

means, excluding the Customer IPR, all Intellectual Property Rights: (a) in the Deliverables; or (b) in any methodologies, processes, software, designs, development tools, information or materials developed or made available or used by Supplier in connection with the Services, which are assigned or licensed to or created by or on behalf of Supplier whether created prior to, separately from or in the course of providing the Services;

Supplier Software any software or software configuration provided as a Deliverable; and

Third Party Software any software and ancillary technologies and services (such as but not limited to associated hosting services) in which the Intellectual Property Rights are owned by a person other than Supplier.

- 1.2 Headings are included for convenience only and shall not affect the construction or interpretation of this agreement.
- 1.3 Any reference to a clause or schedule shall (unless expressly provided otherwise) be a reference to a clause of or schedule to these terms. Schedules shall have the same force and effect as if set out in the body of these terms.

- 1.4 Any reference to the singular shall include the plural and vice versa and any reference to one gender shall include all genders including the neuter gender.
- 1.5 Any reference to a person shall, unless the context otherwise requires, include individuals, partnerships, companies and all other legal persons.
- 1.6 The words **include, includes, including** and **included** and like words and expressions will be construed without limitation unless inconsistent with the context.
- 1.7 Any reference to a notice or other communication being in writing shall be satisfied by that notice or communication being sent by email, provided this is permitted by and done in accordance with clause 17 where applicable. A reference to a signature shall include an electronic signature, such as a scanned or typed signature.
- 1.8 Business days (**Business Days**) shall be all days other than Saturdays, Sundays and public holidays in England and working hours shall be 9am to 5pm UK time on working days.

2. **BASIS OF AGREEMENT**

- 2.1 Following Customer expressing a requirement for Services and/or Deliverables Supplier will prepare and submit to the Customer a draft Statement of Work. A draft Statement of Work shall remain valid for 30 days from its date of submission.
- 2.2 If the Customer wishes to proceed with the draft Statement of Work (with any amendments that may be agreed by the parties) Supplier shall prepare a final Statement of Work for execution.
- 2.3 Once executed a Statement of Work shall constitute a binding contract between the parties under the terms and conditions of this agreement.
- 2.4 A Statement of Work shall not take effect unless signed and delivered by an authorised signatory of each party.
- 2.5 Any work performed by Supplier before the date of this agreement or in respect of a Statement of Work, before the Statement of Work is signed shall be governed by the terms and conditions of this agreement and/or the relevant Statement of Work.
- 2.6 To the extent of any conflict between such provisions and these terms, the provisions set out in these terms shall take precedence, save where a term set out in a Statement of Work is expressly stated to override these terms. For the avoidance of doubt however any provisions set out in a Statement of Work only affect that Statement of Work and not any other contracts that may be formed between the parties.

3. **SERVICES**

- 3.1 Supplier shall be responsible for the provision of the employees and consultants who provide the Services. In the event that any individuals become unavailable due to (for example) accident, illness, termination of employment or reallocation to another task, Supplier shall use reasonable endeavours to provide a suitable replacement.
- 3.2 Any timescales set out for the performance of Services are for indicative purposes only but Supplier shall nonetheless use its reasonable endeavours to meet such timescales.
- 3.3 The Services shall be provided to substantially conform to any specification set out in (or attached to) the relevant Statement of Work. Where no specification is included in or with the Statement of Work Supplier shall draft a specification that it considers appropriate and shall send it to the Customer for comments then make any revisions as it considers appropriate following receipt of any such comments.
- 3.4 Where the Services include support, the Customer shall nominate one or more employees as **"Representatives"** the individuals who may file support requests with Supplier and communicate with Supplier regarding such requests. The names of the initial contacts shall be provided to Supplier prior to commencement of the support Services and may be updated from time to time on written notice to Supplier. Schedule 2 shall have effect to the extent that a Statement of Work provides for the provision of a support service by Supplier in respect of Third Party Software.

3.5 The Customer acknowledges that where the services include any hosting or similar services this may be contracted to a third-party provider, such as to a data centre or cloud hosting provider. Supplier's liability in respect of any loss, damage, cost or expense caused to the Customer as a result of the acts or omissions of the third-party provider shall be limited to the amount that Supplier is able to recover from the third party provider.

3.6 Changes to the Services and/or Deliverables shall be affected through the process set out in schedule 3.

3.7 Acceptance of the Deliverables shall be affected through the process set out in schedule 1.

4. THIRD PARTY SOFTWARE

4.1 Where any software (other than Supplier Software) is required by the Customer in connection with a Statement of Work, for example to use in conjunction with Deliverables supplied by Supplier, it is the Customer's responsibility to obtain such Third Party Software and to enter into such licences or other agreements as may be required, and Supplier shall not be required to provide any licences, support, consultancy, training or other services in respect of such Third Party Software except to the extent explicitly stated in the Statement of Work.

4.2 The Customer shall indemnify and hold Supplier harmless against any loss, damage, cost or expense (including legal expenses on a solicitor-own client basis) against any claim by a third party arising out of or in connection with the use (or alleged use) of the Third Party Software by the Supplier, including any failure or alleged failure of the Customer to obtain the necessary licences or other rights required to use the Third Party Software or any breach or alleged breach by the Customer of the relevant licence terms.

4.3 Supplier shall not be liable for any delay or failure to provide any of the Services arising out of or in connection with the failure of the Customer to obtain any necessary licences of Third-Party Software or to comply with the terms of such licence or problems or defects with the Third-Party Software.

5. WARRANTIES

5.1 Supplier warrants that any Services provided under a Statement of Work will be provided with reasonable skill and care and substantially in conformance with any specification set out in a Statement of Work. In the event that any Services fail to conform to this warranty the Customer's sole remedy shall be (at Supplier's discretion) (a) re-performance of the defective Services or (b) a refund of the Fees paid in respect of the affected part of the Services.

5.2 Supplier warrants that the functionality of any Supplier Software will substantively conform to the Documentation for a period of 60 days from the date of delivery of the relevant Supplier Software. In the event that the Supplier Software fails to conform to this warranty the Customer's sole remedy shall be (a) for Supplier to fix the non-conformity within a reasonable timescale of it being reported to Supplier and (b) if Supplier is unable to fix the non-conformity for the Customer to return the Supplier Software to Supplier and Supplier to refund any Fees paid in respect of that software on a pro rata basis for the unexpired part of the Licence Term.

5.3 The Customer warrants that any and all information and documentation provided by it in relation to any services procured under this agreement is true, complete and accurate.

6. ASSISTANCE AND COOPERATION

6.1 To enable Supplier to provide the Deliverables and perform its other obligations under a Statement of Work, the Customer agrees to provide on reasonable request unrestricted access to its premises, any information or documentation that Supplier may reasonably request and the full co-operation of its employees, directors, consultants and advisers. Supplier shall not be responsible for any delay caused as a result of the Customer's failure to comply with this clause 6.1.

6.2 The Customer shall take responsibility for the health and safety of any individual attending its premises on behalf of Supplier, including ensuring that they are made aware of any relevant policies and procedures and that they are not placed in danger in any manner, and the Customer shall indemnify and hold Supplier harmless from and against all costs, claims, damages, liabilities, loss and demands relating to or arising from or in connection with any

claim brought against Supplier arising out of the death, personal injury or other loss suffered by an individual attending at the Customer's premises, save where this was as a result of Supplier's or that individual's negligence.

- 6.3 The Customer agrees that, unless requested otherwise, it shall only provide copies of documentation to Supplier and shall maintain the originals, such that it shall suffer no loss if the documentation is lost or damaged. Where it is expressly requested to provide originals it shall make a copy prior to providing them such that if the documentation were lost or damaged the only loss would be the replacement cost of that documentation, which shall accordingly be Supplier's sole liability in such circumstances.
- 6.4 Each party shall nominate representatives to deal with the day to day operation and management of this agreement and each Statement of Work ("**Contract Managers**").
- 6.5 Each party may change the identity of any of its Contract Managers at any time and each Contract Managers may appoint a suitable deputy or alternate to perform some or all of the Contract Managers' functions in their absence. Both parties agree to act reasonably to minimize the number of changes or appointments made to avoid disruption to or inefficiency in communication on the project. Each party shall provide reasonable advance notice to the other in writing of any change or appointment of a deputy or alternate.
- 6.6 The parties shall agree a programme of regular meeting between the Contract Managers to manage the operation of this agreement (including past and future performance, performance measures and targets, potential efficiencies and economies and the parties' strategic objectives and potential for future services & programmes). Further governance details may appear in a Statement of Work.

7. **RELIEF EVENTS**

- 7.1 Subject to clause 7.3, if Supplier fails to comply with any of its obligations under this agreement as a result of a Relief Event then Supplier shall not be in breach of this agreement and shall be granted an extension of time for performance of its obligations under this agreement equal to the period of delay and such additional time as is proportionate and reasonable to offset the impact of such Relief Event.
- 7.2 If Supplier becomes aware of a Relief Event, and that Relief Event has or is likely to have a material detrimental effect on Supplier's ability to comply with its obligations under this agreement, it shall provide the Customer with notice of that Relief Event, its consequences, and whether it believes there is likely to be a cost implication or delay due to such failure as soon as reasonably practicable.
- 7.3 Supplier shall use reasonable endeavours to mitigate the impact of a Relief Event.
- 7.4 Supplier may charge the Customer for any additional fees, costs and expenses that are incurred as a result of any Relief Event. If Supplier anticipates incurring additional fees, costs or expenses as a result of a Relief Event then it shall include this within its notification under clause 7.2.

8. **INTELLECTUAL PROPERTY RIGHTS**

- 8.1 All Supplier IPR is owned by Supplier or its licensors and shall remain vested in Supplier or its licensors.
- 8.2 Subject always to Supplier's obligations under clauses 11 and 13 nothing in this agreement shall prevent Supplier from using any know how, ideas or concepts acquired before or during the performance of a Statement of Work.
- 8.3 Supplier grants to the Customer with effect from the date of delivery (or otherwise making available) of the Deliverables within which any Supplier IPR is contained a non-exclusive, worldwide, non-terminable, royalty free (other than payment of any amounts due by the Customer to Supplier under this Agreement, including Fees) licence to use such Supplier IPR for the Customer's and the Customer Affiliates' internal business purposes. The licences to the Supplier IPR shall endure:
 - 8.3.1 on a perpetual basis in respect of such Supplier IPR as is incorporated within any

Deliverable or without which any Deliverable could not be used; and

- 8.3.2 for the duration of the relevant Services under the relevant Statement of Work in respect of any other Supplier IPR made available to the Customer in connection with the Services where these are used by Supplier in the delivery of the Services (and in any event for no longer than the Term) and solely to the extent necessary for the Customer to receive the benefit of the Services under this Agreement.
- 8.4 The Customer may sub-license the rights granted under clause 8.3 to any Customer Affiliate for its internal business purposes provided that such sub-licence shall only continue for as long as that entity remains a majority owned subsidiary of the Customer and thereafter for a period of not more than 12 months in respect of any Customer Affiliate that has ceased to be a member of the Customer Group
- 8.5 The Customer shall not sub-license, assign or otherwise transfer the use of the whole or any part of the Supplier IPR except as set out in this Agreement.
- 8.6 The licences under clause 8.3, include the right to use and modify the Deliverables for the internal business purposes of the Customer and any Customer Affiliate sub-licensed in accordance with clause 8.4.
- 8.7 All Customer IPR is owned by the Customer or its licensors and shall remain vested in the Customer or its licensors.
- 8.8 The Customer hereby grants to Supplier, or shall procure the grant of, a non-exclusive, worldwide, royalty free, non-transferable, licence to use the Customer IPR solely to the extent necessary and for as long as is necessary in order for Supplier to provide the Services. This licence shall be subject to such limitations as the Customer may notify to Supplier from time to time. Supplier may sub-license its right to use the Customer IPR to sub-contractors solely to the extent necessary and for as long as is necessary in order for such sub-contractors to provide their services to Supplier in connection with the Services.
- 8.9 Supplier will indemnify the Customer against any losses, damages, claims, costs and expenses suffered or incurred by or awarded against the Customer as a result of any claim (a **Claim**) that a Deliverable or receipt of any Services or use of the Supplier Software or the Documentation infringes any Intellectual Property Rights subsisting in the United Kingdom and belonging to a third party.
- 8.10 To obtain the benefit of the indemnity set out in clause 8.9:
 - 8.10.1 the Customer must promptly notify Supplier if it receives notice of any Claim or has reason to suspect that a Claim may be brought;
 - 8.10.2 following such notice the Customer must allow Supplier to take full conduct of such Claim, including any negotiations and including the right to settle the Claim on such terms as Supplier sees fit and shall, at Supplier's reasonable expense, provide all such co-operation as Supplier may request; and
 - 8.10.3 the Customer must not make any admission, concession or other statement regarding the Claim to any party, other than to acknowledge receipt of documentation and to confirm (where applicable) that Supplier has conduct of the Claim.
- 8.11 The Customer shall not be entitled to rely on the indemnity set out at clause 8.9 where the Claim arose (wholly or partially) out of or in connection with:
 - 8.11.1 the Customer using the Services, Deliverables, Supplier Software or Documentation (as applicable) (a) in a way other than permitted by a Statement of Work, (b) in a manner that they knew or suspected may give rise to a Claim, (c) in a negligent manner or (d) following the suspension, withdrawal or cancellation of such Services, Supplier Software or Documentation in accordance with clause 8.12;
 - 8.11.2 the Customer's use of outdated Supplier Software; or

- 8.11.3 any content that the Customer asked Supplier to include or use in the provision of the Deliverables.
- 8.12 Without prejudice to the indemnity set out at clause 8.9, where Supplier becomes aware of any claim or potential claim that the Services, Supplier Software or Documentation infringes any Intellectual Property Rights of any third party, whether or not this constitutes or may constitute a Claim falling within the scope of clause 8.9, Supplier may at its option:
- 8.12.1 suspend the Services (or the affected parts) or suspend the licence to use the Supplier Software (or the affected part);
- 8.12.2 withdraw the Documentation;
- 8.12.3 modify the Services, Supplier Software or the Documentation to remedy the infringement; and/or
- 8.12.4 obtain (at its own cost) the right for the Customer to continue using the Services, Supplier Software or Documentation; and/or
- 8.12.5 terminate any Statement of Work (or the affected part of a Statement of Work).
- 8.13 Where the provision of any Services or a licence is suspended or terminated pursuant to clause 8.12, Supplier shall make a pro rata refund to the Customer calculated by Supplier (acting reasonably) based on the proportion of the Services or Supplier Software and the period over which it was not received.
- 8.14 The provisions of this clause 8 constitute the Customer's sole and exclusive remedy for any loss, damage, cost or expense caused by a claim falling within the scope of clause 8.9.
- 9. FEES**
- 9.1 The Customer shall pay the Fees to Supplier as specified in the Statement of Work, and except as otherwise stated in a Statement of Work the provisions of this clause 9 shall apply.
- 9.2 Save where and to the extent that a Fee for Services is agreed in advance, Services shall be charged at Supplier's then applicable day rates. Details of these rates are available from Supplier on request if they are not included in the relevant Statement of Work.
- 9.3 Fees for Services shall be invoiced in accordance with the terms of the Statement of Work, save where charges are on a time and materials basis, in which case they shall be invoiced by Supplier as stated in the Statement of Work or monthly in arrears.
- 9.4 Where and to the extent that Services are provided from any location other than Supplier's own premises, the Customer shall be responsible for all and any reasonable expenses incurred by Supplier in providing the Services including travel, lodging, meals, and miscellaneous out of pocket expenses.
- 9.5 Unless otherwise stated in a Statement of Work, any licence Fees for Supplier Software are payable in advance. The Customer shall pay the Fee for the initial term by the licence start date and shall pay the Fee for each renewal prior to the first day of such renewal term.
- 9.6 All invoices are payable within 30 days of the date of the invoice unless otherwise agreed.
- 9.7 All Fees are exclusive of VAT which is chargeable in addition at the prevailing rate. VAT shall also be payable on expenses and delivery charges where applicable.
- 9.8 The Customer agrees to carefully check any invoice received and to raise any dispute regarding its content within 21 days of the invoice date, such notice to confirm the amount disputed and the reason(s) for the dispute. Invoices will be deemed to have been properly submitted and due for payment where an invoice has not been disputed within 21 days of the invoice date.
- 9.9 Notwithstanding the fact that a dispute may have been raised in accordance with clause 9.8 the Customer shall pay to Supplier any undisputed amount(s) as these undisputed amounts become due. The parties shall in good faith attempt to resolve the dispute as to the unpaid amount and, where it is agreed (or ordered by a court) that a further amount is payable, the Customer shall immediately pay this to Supplier.

- 9.10 If Customer does not pay any Fees by the due date, Supplier shall be entitled to charge interest at the rate of 4% above the base rate for the time being of Barclays Bank plc.
- 9.11 All amounts due under this Agreement shall be paid by the Customer to Supplier in full without any set-off, counterclaim, deduction or withholding.
- 9.12 Unless otherwise agreed in a Statement of Work, Supplier shall be entitled to increase the amount of any time-based rates or recurring fees set out in a Statement of Work on each anniversary of the date of a Statement of Work by a percentage not exceeding the percentage increase in retail prices index (all items) (as published by UK National Statistics) or the most nearly equivalent successor index over the preceding 12 month period.

10. **TERM AND TERMINATION**

- 10.1 The commencement date and term of any Statement of Work shall be as set out in the relevant Statement of Work.
- 10.2 Either party may choose not to renew an auto-renewing Statement of Work by serving written notice on the other not less than 30 days prior to the final day of the current term, and in such case the Statement of Work shall not renew and shall instead terminate on the final day of the term.
- 10.3 Supplier may terminate a Statement of Work immediately on written notice if the Customer:
- 10.3.1 commits an irremediable material breach of any of this agreement as it relates to the Statement of Work, persistently commits remediable breaches or commits any remediable material breach and fails to remedy it within 30 days of receipt of notice of the breach requiring remedy of the same;
 - 10.3.2 fails to pay any amount due to Supplier as it falls due (under that or any other any Statement of Work); or
 - 10.3.3 makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of any distrait, execution, event of insolvency or event of bankruptcy or any other similar process or event, whether in the United Kingdom or elsewhere.
- 10.4 Customer may terminate a Statement of Work immediately on written notice if the Supplier:
- 10.4.1 commits an irremediable material breach of any of this agreement as it relates to the Statement of Work, persistently commits remediable breaches or commits any remediable material breach and fails to remedy it within 30 days of receipt of notice of the breach requiring remedy of the same;
 - 10.4.2 makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of any distrait, execution, event of insolvency or event of bankruptcy or any other similar process or event, whether in the United Kingdom or elsewhere.
- 10.5 Subject to clause 10.6, in the event of termination of a Statement of Work for any reason:
- 10.5.1 any Fees already paid shall be non-refundable;
 - 10.5.2 any amounts invoiced under the terminated Statement of Work (or in respect of the terminated Deliverables) as at the date of termination shall become immediately due and payable;
 - 10.5.3 Supplier may invoice for any Deliverables provided up until the date of termination and any expenses incurred, and those invoices shall be immediately due and payable; and

- 10.5.4 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.
- 10.6 Nothing in clause 10.5 shall require the Customer to pay any Fees, or prevent the Customer from receiving a reimbursement of any Fees, where it is entitled to remission from or refund of those Fees pursuant to clauses 5.1, 5.2 or 8.13.
- 10.7 Where a Statement of Work grants a licence of Supplier Software, or a relevant part of a Statement of Work, is terminated, the Customer shall immediately cease to use the Supplier Software and shall at Supplier's option either return it (and the Documentation) to Supplier or delete and destroy all copies of the affected Supplier Software and Documentation.
- 10.8 The termination of a Statement of Work shall not affect the continuation of any terms which are expressly or implicitly intended to survive termination, including clauses 1, 7, 10, 11, 13, 15, 17 and 18, or the continuation of any other Statements of Work.
- 11. CONFIDENTIALITY**
- 11.1 Each party undertakes that it shall not at any time disclose to any third party any confidential information (being any and all know-how, documentation and information, whether commercial, financial, technical, operational or otherwise relating to the business, affairs, customers, suppliers or methods of one party and disclosed to or otherwise obtained by the other party in connection with a Statement of Work), nor use such information for any purpose other than to exercise its rights and perform its obligations under a Statement of Work, except as otherwise permitted by the Statement of Work or with the prior written consent of the other party.
- 11.2 The provisions of this clause 11 shall not apply to any confidential information that the receiving party can demonstrate:
- 11.2.1 is in the public domain in substantially the same combination as that in which it was disclosed to the receiving party other than as a result of a breach of this agreement or any other obligations of confidentiality;
- 11.2.2 is or was lawfully received from a third party not under an obligation of confidentiality with respect to it;
- 11.2.3 is required to be disclosed under operation of law, by court order or by any regulatory body of competent jurisdiction (but then only to the extent and for the purpose required); or
- 11.2.4 was developed independently of and without reference to confidential information disclosed by the other party,
- provided always that, except where it is prohibited from doing so by law or court order, a party wishing to rely on an exception contained in this clause 11.2 shall provide the other with at least ten (10) days' written notice of its intention to do so, such notice specifying details of the exception to be relied upon and the information concerned.
- 11.3 Each party shall be entitled to divulge the other party's confidential information to its employees, agents, directors, officers, authorised sub-contractors, professional advisors and consultants who have a need to know the same in connection with a Statement of Work, provided that the receiving party shall ensure that such persons are aware of, and shall procure that such persons comply with, these obligations as to confidentiality.
- 11.4 Nothing in this clause 11 shall prevent Supplier from using any general know-how or experience (which is not specific to the Customer) which it may gain as a result of or in connection with performing its obligations under a Statement of Work.
- 11.5 Where the Customer is a public authority which is subject to the Freedom of Information Act 2000 (the **FOIA**):
- 11.5.1 the Customer shall promptly inform Supplier if it receives a request under the

FOIA (a **Request**) which may lead to it disclosing Supplier's confidential information (unless prohibited to do so by law);

11.5.2 where and to the extent that Supplier requests that it does so, the Customer shall use all reasonable endeavours to avoid disclosing Supplier's commercially sensitive information, including relying on any exceptions provided for by the

FOIA, it being acknowledged that the provisions of this clause 11.5.2 do not override the Customer's duties under the FOIA; and

11.5.3 subject to clauses 11.5.1 and 11.5.2, the Customer may make any disclosures it is required to make by the FOIA notwithstanding the other provisions of this clause 11; and

11.5.4 Supplier shall (at the Customer's expense) provide all such assistance in complying with the Request as the Customer may reasonably request.]

12. **INSURANCE**

12.1 During the term of this agreement Supplier shall affect with an insurance office of good repute and shall maintain and shall not in any way invalidate policies of insurance (under which claims may be made for a period of not less than six (6) years following termination of this agreement) in respect of:

12.1.1 professional indemnity insurance policy - limit: £2 million per annum;

12.1.2 public liability insurance policy - limit: £2 million per claim; and

12.1.3 employee liability – limit as required by law.

13. **DATA PROTECTION**

13.1 Each party agrees that, in the performance of its respective obligations under the agreement, it shall comply with the provisions of the General Data Protection Regulation (GDPR), together with the Data Protection Act 2018 and any other law applicable to the protection of personal data in effect from time to time (together, **Data Protection Legislation**), in each case to the extent it applies to each of them. Where used in this clause 13, the expressions **data subject**, **personal data**, **personal data breach** and **process** bear their respective meanings given in Data Protection Legislation.

13.2 Supplier is expected to process personal data on Customer's behalf for the purposes of performing the Services and otherwise fulfilling its obligations under this agreement. The types of personal data that Supplier is expected to process on Customer's behalf include those stated in a Statement of Work and include name, address, email address, telephone number, information regarding trading and billing history, service and usage history, user IDs and passwords, answers to security questions (such as town/county of birth, mother's maiden name, father's name etc), employment history, job title, business address, department etc., employee number, business email addresses. business telephone/fax/mobile numbers relating to employees, customers and potential customers of Customer.

13.3 Where Supplier processes personal data on Customer's behalf under or in connection with this agreement, it shall do so only in accordance with the terms of this agreement and Customer's documented instructions (unless otherwise required by law or a regulatory body in which case Supplier shall, where permitted, inform Customer of that legal requirement before processing).

13.4 Customer warrants that:

13.4.1 it shall only provide (or procure the provision of) personal data to Supplier where such personal data has been lawfully obtained and where Customer is lawfully entitled to provide (or procure the provision of) that personal data to Supplier for the intended purpose and means of processing; and

13.4.2 any instructions given to Supplier in accordance with clause 13.3 shall be compliant with applicable Data Protection Legislation, be within the scope of Supplier's obligations under this agreement and shall not (if properly performed) place either Supplier or Customer in breach of their respective obligations under Data Protection Legislation,

and Customer shall indemnify, keep indemnified and hold Supplier harmless against all claims, demands, penalties, fines, actions, costs, expenses, losses and damages suffered or incurred by or awarded against Supplier arising from or in connection with any breach by Customer of this clause 13.4.

13.5 Where Supplier processes any personal data on Customer's behalf under or in connection with this agreement it shall:

13.5.1 other than as permitted by Chapter 5 of the GDPR, not transfer or allow the transfer of such personal data outside the United Kingdom or European Economic Area unless: (a) it is necessary to provide the Services; (b) as stated in a Statement of Work; or (c) Customer provides its written consent;

13.5.2 ensure that any persons authorised to process the personal data are subject to a duty of confidence in respect of such processing;

13.5.3 implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, in compliance with the obligations imposed on Supplier by article 32 of the GDPR;

13.5.4 notify Customer without undue delay on becoming aware of a personal data breach and cooperate with Customer to resolve such issue; and

13.5.5 at Customer's expense, provide such assistance as Customer may reasonably require to assist it to comply with its obligations to keep that personal data secure, allow it to inform a regulatory authority or data subject of a personal data breach, conduct a data protection impact assessment, consult with a regulatory authority regarding the relevant processing activities and/or respond to requests made by data subjects pursuant to Data Protection Legislation.

13.6 Customer authorises Supplier to engage sub-processors from time to time provided that Supplier shall notify Customer of any intended changes concerning the addition or replacement of other sub-processors and shall impose upon any sub-processor (and procure any sub-processor's compliance with) the terms of this clause 13 as if the processing being carried out by the sub-processor was being carried out by Supplier (and Supplier shall be liable for the acts and omissions of such sub-processors as if they were Supplier's own acts and omissions).

13.7 From time to time during the term of this agreement Supplier shall (upon written request from Customer):

13.7.1 provide details in writing of its data processing activities carried out on Customer's behalf; and

13.7.2 on reasonable notice allow Customer (or its appointed auditor) to audit its compliance with these terms, subject to any reasonable requirements or restrictions that Supplier may impose to safeguard the personal data it holds on behalf of other clients and/or avoid unreasonable disruption to Supplier's business.

13.8 Supplier shall process personal data on Customer's behalf only during the term of this agreement (and following termination to the extent required to perform any post termination obligations). On the termination or expiry of any part of the Services or this agreement as a whole, Supplier shall either delete or return all personal data processed on Customer's behalf in connection with the applicable Services, and delete any copies (except to the extent retention is required by law or for record-keeping purposes).

13.9 For the avoidance of doubt, nothing in this clause 13 or otherwise in this agreement relieves either party of its own direct responsibilities and liabilities under Data Protection Legislation.

14. **ANTI-BRIBERY**

14.1 Supplier shall comply with all applicable laws relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**) and shall have and shall maintain in place throughout the term of any Statement of Work its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate.

14.2 Supplier shall:

14.2.1 promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by Supplier in connection with the performance of a Statement of Work; and

14.2.2 from time to time upon the Customer's request certify to the Customer in writing signed by an officer of Supplier, compliance with this clause 14 by Supplier and all persons associated with it under clause 14.3. Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request.

14.3 Supplier shall ensure that any person associated with Supplier who is performing services in connection with a Statement of Work does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on Supplier in this clause 14 (**Relevant Terms**). Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms.

14.4 For the purpose of this clause 14, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 14 a person associated with Supplier includes but is not limited to any subcontractor of Supplier.

15. **LIABILITY**

15.1 The express terms set out this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.

15.2 Save as provided by clause 15.3 below:

15.2.1 each party's total aggregate liability in respect of all causes of action arising out of or in connection with a breaches of clause 13 shall be limited to £250,000 in aggregate.

15.2.2 except as stated in clause 15.2.1, neither party's total aggregate liability in respect of all causes of action arising out of or in connection with a Statement of Work (whether for breach of contract, strict liability, tort (including negligence), misrepresentation or otherwise) shall exceed the greater of £50,000 and the total Fees paid under the Statement of Work;

15.2.3 neither party shall be liable for any claim arising out of or in connection with a Statement of Work to the extent that it relates to loss of profits, goodwill, business opportunity or anticipated savings, loss of data lost, corrupted or unusable data (except for cost of restoration of data to the latest backup of the relevant system, subject to the Customer having in place and maintaining regular back-ups of such system in accordance with good commercial practice, to the extent such loss or corruption of data is caused by Supplier and specifically excluding any liability for such costs in the event of system failure), injury to reputation, or indirect, consequential or special loss or damage regardless of the form of action (whether for breach of contract, strict liability, tort (including negligence), misrepresentation

or otherwise) and regardless of whether that party knew or had reason to know of the possibility of the loss or damage in question; and

15.2.4 neither party shall not be liable for any delay in or failure to comply with its obligations to the extent that such failure results from the actions or omissions of the other.

15.3 Nothing this Agreement shall limit or exclude either party's liability:

15.3.1 under the indemnity in clause 8.9

15.3.2 for breach of clause 11;

15.3.3 to pay the Fees;

15.3.4 for death or personal injury caused by its negligence;

15.3.5 for fraud or fraudulent misrepresentation;

15.3.6 for breach of the obligations arising from section 12 of the Sale of Goods Act 1979 and/or section 2 of the Sale of Goods and Services Act 1982; and/or

15.3.7 for any other loss or damage the exclusion or limitation of which is prohibited by English law.

16. **FORCE MAJEURE**

16.1 Supplier shall not be liable or responsible for any failure to perform, or delay in performance of, any of its obligations under a Statement of Work that is caused by events outside its reasonable control (a **Force Majeure Event**).

16.2 A Force Majeure Event includes any act, event, non-happening, omission or accident beyond Supplier's reasonable control and includes in particular (without limitation) terrorist attack, war, fire, malicious damage, epidemic, storm, flood or other natural disaster or adverse weather conditions, strikes, lock-outs, other industrial action or other shortage of available staff, impossibility of the use of public or private telecommunications networks, or interruption or failure of utility service, malicious activity against Supplier's computer systems such as unauthorised access, computer virus or denial of service attack, other illegal or unlawful actions of third parties or non-performance by suppliers, subcontractors or agents and the acts, decrees, legislation, regulations, policy or restrictions of any government or public authority.

16.3 Where the Force Majeure Event affects Services, the Customer's right to receive such Services is deemed to be suspended for the period that the Force Majeure Event continues, and Supplier shall have an extension of time for performance for the duration of that period. Supplier shall use its reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which its obligations under a Statement of Work may be performed despite the Force Majeure Event.

17. **NOTICES**

17.1 Each notice given under or in relation to a Statement of Work must be in writing, must clearly state the full corporate name of the Customer and must be either delivered by hand or sent by pre-paid first class post to the recipient's nominated address, or sent by email to the recipient's nominated email address.

17.2 Supplier's nominated address for notices is Suite 3.0.1, Abercorn House, 79 Renfrew Rd, Paisley PA3 4DA, and its nominated email address is support@easuk.co.uk. In either case the communication must be marked for the attention of the customer's Supplier account manager.

17.3 The Customer's nominated postal address and email address for notices shall be deemed to be as set out in the most recent Statement of Work submitted to and accepted by Supplier.

17.4 Each party may update its nominated contact details by notice to the other from time to time.

17.5 A notice shall be deemed to have been received:

- 17.5.1 in the case of a delivery made in person, when delivered;
- 17.5.2 in the case of first-class post, two working days after posting; and
- 17.5.3 in the case of email, at the time of sending if between 9am and 4:30pm on a working day, at 9am on that day if sent before 9am on a working day or otherwise at 9am on the next working day (provided in each case that no email delivery failure notification is received).
- 17.6 This clause 17 does not apply to the service of legal proceedings or other documents in any legal action.
18. **DISPUTES**
- 18.1 The parties will deal with disputes arising under or in connection with this agreement and/or any Statement of Work in accordance with this clause but nothing in this clause will prevent either party from seeking injunctive or similar relief or commencing court proceedings at any time.
- 18.2 Except where stated to the contrary in a Statement of Work, each party will refer any dispute that arises under or in connection with this agreement and/or any Statement of Work in accordance with the relevant Statement of Work, or if not set out on the relevant Statement of Work:

	Customer	Supplier
Level One		
Level Two		
Level Three		

Where the timescales for dispute resolution under this agreement or the relevant Statement of Work are as follows:

Referral To	Method	No. of days from dispute arising
Level One Representatives	Telephone or face-to-face meeting	7 (seven) working days
Level Two Representatives	Face-to-face meeting	14 (fourteen) working days
Level Three Representatives	Face-to-face meeting	14 (fourteen) working days

- 18.3 If any dispute has not been settled or a course of action for its settlement agreed within the time scales set out in clause 18.2, the parties may attempt to settle it by mediation in accordance with the CEDR (Centre for Effective Dispute Resolution) Model Mediation Procedure. Unless otherwise agreed between the parties in writing, the mediator will be appointed by CEDR. To initiate the mediation a party must give written notice to the other party/parties to the dispute requesting mediation (the "**ADR Notice**"). A copy of the ADR Notice should also be sent to CEDR Solve. Subject to any constraints imposed by CEDR the mediation will start not later than ten (10) days after the date of the ADR Notice.
19. **GENERAL**
- 19.1 These terms and the Statement of Work constitutes the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges and accepts that, in entering into a Statement of Work, it has not relied upon any representation, undertaking or promise except as set out in these terms or a Statement of Work.

- 19.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these terms or a Statement of Work. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in a Statement of Work.
- 19.3 The failure or delay of either party to enforce or to exercise, at any time or for any period of time, any term of or any right, power or privilege arising pursuant to a Statement of Work does not constitute and shall not be construed as a waiver of such term or right, remedy, power or privilege and shall in no way affect either party's right later to enforce or exercise it, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.
- 19.4 The invalidity or unenforceability of any provision of or any part of a provision of or any right arising pursuant to a Statement of Work shall not in any way affect the remaining provisions or rights, which shall be construed as if such invalid or unenforceable part did not exist.
- 19.5 A party may not assign, transfer or otherwise part with a Statement of Work or any right or obligation under it without the other party's prior written consent.
- 19.6 Supplier shall have the right to sub-contract the provision of any of the Services but remains responsible for the Services so subcontracted.
- 19.7 This agreement and each Statement of Work may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. No counterpart shall be effective until each party has executed at least one counterpart.
- 19.8 Nothing in this agreement shall confer any rights upon any person who is not a party to this agreement, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 19.9 This agreement (including any associated non-contractual disputes or claims) is governed by English law and the parties hereby accept the exclusive jurisdiction of the English courts in relation to any dispute arising under or in connection with each Statement of Work.

SCHEDULE 1 - ACCEPTANCE

1. DOCUMENTARY DELIVERABLES

- 1.1 Where Supplier produces documentary Deliverables, the following Acceptance process shall apply:
- 1.2 Supplier will present the Customer with a version of the documentary Deliverable for its review
- 1.3 Following presentation, the Customer will review the documentary Deliverable and notify Supplier in writing with comments of whether it accepts the documentary Deliverable as meeting the requirements of the agreement, the relevant Statement of Work and the Acceptance Criteria.
- 1.4 If any of the documentary Deliverables is demonstrated by the Customer not to be in compliance with the Acceptance Criteria the Customer will describe such non-compliance to Supplier in reasonable detail within five (5) Business Days of receiving a documentary Deliverable. Within ten (10) Business Days (or such other time period as may be agreed upon in writing by the parties) after receipt of that description, Supplier will, at no additional cost to the Customer, render the revised documentary Deliverables. If Customer does not report any non-compliance within such period the documentary Deliverables shall be deemed accepted.
- 1.5 The Customer will not unreasonably withhold or delay Acceptance of any documentary Deliverable.

2. SYSTEM DELIVERABLES

- 2.1 System Deliverables shall be subject to the Acceptance Tests in this Schedule and the Statement of Work.
- 2.2 Acceptance Tests shall be performed by the Customer in relation to each System Deliverable. Supplier will provide reasonable assistance in accordance with the relevant Statement of Work and as otherwise agreed in advance with the Customer.
- 2.3 The Customer shall at all times be responsible for the provision of data and sample datasets for the purposes of conducting Acceptance Testing (including any requirements detailed in the relevant Statement of Work).
- 2.4 In good time prior to the planned date for the Acceptance Tests, the Customer shall prepare test scenarios, scripts and data as reasonably required to test whether a system Deliverable meets the Specification.
- 2.5 The Customer shall perform the applicable Acceptance Tests promptly following notification to the Customer by Supplier that the system Deliverable is ready for Acceptance Testing. Supplier shall provide such assistance and co-operation as the Customer may reasonably require for such purpose and shall be entitled to observe the Acceptance Tests and to see the results of the Acceptance Tests.
- 2.6 If the Acceptance Tests are passed, the Customer shall promptly confirm that the relevant System Deliverable has passed the Acceptance Tests by signing an Acceptance Certificate. In any event, the Customer shall have Accepted the system Deliverable.
- 2.7 If the Acceptance Tests are not passed, the Customer shall notify Supplier in writing as soon as reasonably practicable of any incident in relation to the Acceptance Tests and identifying the failure conditions, supplying details of the incident and the parties shall agree the priority of the incident for resolution purposes.
- 2.8 The Customer shall, as soon as reasonably practicable upon Supplier resubmitting the relevant System Deliverable, then repeat the Acceptance Tests by working through the test scripts which have previously failed and by carrying out regression testing, where appropriate. Paragraphs 2.6 and 2.7 shall apply to any subsequent repeat tests in the same way as they apply to the initial Acceptance Tests.
- 2.9 If, within six (6) weeks of commencing Acceptance Testing, the System Deliverables have failed to pass Acceptance Tests (each such system Deliverable being a **Re-test Deliverable**) and such Re-test Deliverables have: (a) been subject to two (2) failed cycles of Acceptance

Testing; (b) on each occasion Supplier has been informed by the Customer of the relevant failures; and (c) the failures have been escalated for resolution by Supplier who have been given a reasonable opportunity to remedy such failures, such period not to exceed 14 days, then (provided the reason for such failure(s) is not due to: (i) a fault in the Customer systems or deficiency in any Customer-supplied materials over which Supplier has no control) the Customer may, without prejudice to its other rights and remedies:

- (a) Accept the Re-test Deliverables conditional upon any defects or errors being corrected or suitable and sufficiently permanent workarounds implemented within a reasonable time by issue of a conditional acceptance certificate ("**Conditional Acceptance**");
- (b) Accept the Re-test Deliverables on an "as is" basis subject to an agreed and proportionate reduction in the relevant Fees; or
- (c) reject the Re-test Deliverables and terminate the relevant Statement of Work.

SCHEDULE 2 - HELPDESK

3. HELPDESK AND FAULTS

3.1 Supplier shall make a first line application defect support help-desk available to Customer during 0900-1700 on working days to support the application that is referenced in the relevant Statement of Work ("**Application**"). Please note, unless otherwise defined in the relevant Statement of Work, Schedule 2, does not refer to Configuration Support and is solely Application Support of these applications in which Supplier has procured the relevant licences on behalf of the Customer. The level of support is to be defined within the relevant Statement of Work.

3.2 In the event of any actual or suspected fault with the Application ("**Incident**"), Customer shall, as soon as is reasonably practicable, report to Supplier accordingly via support contacts made available by Supplier from time to time.

3.3 Customer will use reasonable endeavours to provide the following information when a problem is first reported (where relevant):

- symptoms of the problem;
- details of any tests carried out in attempting to localise the problem;
- whether affected services can be taken out of service for testing, if necessary.

3.4 Supplier shall use its reasonable endeavours to respond to Incidents in accordance with the response time scales set out below.

3.5 Supplier shall use reasonable endeavours to resolve Incidents (such that the relevant functionality or service is then available to Customer or there is a workaround reasonably satisfactory to Customer) by the resolution time scales set out in the table below (or as soon as reasonably practicable thereafter).

Priority Definition	Response Time	Resolution Time
Priority 1 is where there is a fault in the core functionality of the Application and Customer's processing activities that use the Application are ceased or are severely impacted.	4 working hours	1 working day
Priority 2 is where there is a fault in the non-core functionality of the Application and Customer's processing activities that use the Application are impacted.	2 Business Day	5 Business Day
Priority 3 is where there is a fault that is not Priority 1 or Priority 2 but there is a functional restriction in the Application.	3 Business Day	15 Business Day
Priority 4 is a Fault that is not Priority 1, 2 or 3.	5 Business Day	15 Business Day

3.6 The Incident priority level will be determined in accordance with the table above at the point Customer logs the Incident with Supplier.

3.7 Incidents that are referred to the Third-Party Software supplier for resolution shall cease to be considered in accordance with the above table.

SCHEDULE 3 – CHANGE CONTROL PROCEDURE

1. Where the Customer or Supplier considers that any change to the Services and/or Deliverables is required (**Change**), the Customer or Supplier may at any time request or recommend such Change in accordance with the procedures set out below.
2. Both parties shall use all reasonable endeavours to give as much notice as possible to the other of any such Change or recommendation.
3. Neither the Customer nor Supplier shall unreasonably withhold its agreement to any Change. However, neither party shall be obliged to accept such change or recommendation.
4. Until such time as the Change is agreed, the Customer and Supplier shall, unless otherwise agreed in writing by the Customer, continue with the Services as if the Change or recommendation giving rise to such amendment had not been requested or recommended. Both parties shall use reasonable endeavours to ensure any such amendment is agreed within seven (7) Business Days.
5. Any discussions which may take place between the Customer and Supplier on a change before the authorisation of an amendment shall be without prejudice to the rights of either party.
6. Supplier shall provide the Customer with information regarding the impact of the Change requested or proposed including the impact on the timing of implementation, the amount payable by way of Charges and any other relevant matter.
7. No amendment shall be valid until such amendment is authorised in writing by a document signed by the duly authorised representatives of both parties. Such written authorisation shall constitute a variation to this Agreement and be deemed to be part of this Agreement.

THIS AGREEMENT has been signed on behalf of the parties by their duly authorised representatives on the date written above.

Signed:	Signed:
[Name]	[Name]
[Title]	[Title]
Duly authorised, for and on behalf of ENDPOINT AUTOMATION SERVICES LIMITED	Duly authorised, for and on behalf of [Customer name]
Date: _____ 2020	Date: _____ 2020