DATED

Between

Activeplan Consulting Limited

and

"Client Name"

STANDARD SERVICE AGREEMENT

THIS AGREEMENT is made the day of 2022

BETWEEN:

(1) Activeplan Consulting Limited a company registered in England under number 06810529 whose registered office is at Northgate House, North Gate, New Basford, Nottingham NG7 7BQ ("the Service Provider") and

(2) "Client Name" whose address is ?????????????????? ("the Client")

WHEREAS:

(1) The Service Provider provides software services to business clients. The Service Provider has reasonable skill, knowledge and experience in that field.

(2) The Client wishes to engage the Service Provider to provide the services set out in this Agreement, subject to the terms and conditions of this Agreement.

(3) The Service Provider agrees to provide the services set out in this Agreement to the Client, subject to the terms and conditions of this Agreement.

IT IS AGREED as follows:

1. **Definitions and Interpretation**

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

"Business Day"	means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in England;
"Commencement Date"	means the date on which provision of the Services shall commence, as set out in sub-Clause 9.1;
"Confidential Information"	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with this Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
"Fees"	means any and all sums due under this Agreement from the Client to the Service Provider, as specified in Schedule 2;
"Services"	means the services to be provided by the Service Provider to the Client in accordance with Clause 2, as fully defined in Schedule 1, and subject to the terms and conditions of this Agreement; and

"Term"	means the term of this Agreement as set out in Clause 9.

1.2 Unless the context otherwise requires, each reference in this Agreement to:

1.2.1 "writing", and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;

1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

1.2.3 "this Agreement" is a reference to this Agreement and each of the Schedules as amended or supplemented at the relevant time;

1.2.4 a Schedule is a schedule to this Agreement; and

1.2.5 a Clause or paragraph is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule.

1.2.6 a "Party" or the "Parties" refer to the parties to this Agreement.

1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.

1.4 Words imparting the singular number shall include the plural and vice versa.

1.5 References to any gender shall include the other gender.

1.6 References to persons shall include corporations.

2. Provision of the Services

2.1 With effect from the Commencement Date, the Service Provider shall, throughout the Term of this Agreement, provide the Services to the Client.

2.2 The Service Provider shall provide the Services with reasonable skill and care, commensurate with prevailing standards in the software services sector in the United Kingdom.

2.3 The Service Provider shall act in accordance with all reasonable instructions given to it by the Client provided such instructions are compatible with the specification of Services provided in Schedule 1.

2.4 The Service Provider shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Services.

2.5 The Service Provider may, in relation to certain specified matters related to the Services, act on the Client's behalf. Such matters shall not be set out in this Agreement but shall be agreed between the Parties as they arise from time to time.

2.6 The Service Provider shall use all reasonable endeavours to accommodate any reasonable changes in the Services that may be requested by the Client, subject to the Client's acceptance of any related reasonable changes to the Fees that may be due as a result of such changes.

3. Client's Obligations

3.1 The Client shall use all reasonable endeavours to provide all pertinent information to the Service Provider that is necessary for the Service Provider's provision of the Services.

3.2 The Client may, from time to time, issue reasonable instructions to the Service Provider in relation to the Service Provider's provision of the Services. Any such instructions should be compatible with the specification of the Services provided in Schedule 1.

3.3 In the event that the Service Provider requires the decision, approval, consent or any other communication from the Client in order to continue with the provision of the Services or any part thereof at any time, the Client shall provide the same in a reasonable and timely manner.

3.4 If any consents, licences or other permissions are needed from any third parties such as landlords, planning authorities, local authorities or similar, it shall be the Client's responsibility to obtain the same in advance of the provision of the Services (or the relevant part thereof).

3.5 If the nature of the Services requires that the Service Provider has access to the Client's premises or any other location, access to which is lawfully controlled by the Client, the Client shall ensure that the Service Provider has access to the same at the times to be agreed between the Service Provider and the Client as required.

3.6 Any delay in the provision of the Services resulting from the Client's failure or delay in complying with any of the provisions of this Clause 3 shall not be the responsibility or fault of the Service Provider.

4. Fees and Payment

4.1 The Client shall pay the Fees to the Service Provider in accordance with the provisions of Schedule 2 and this Clause 4.

4.2 The Service Provider shall invoice the Client for Fees due in accordance with the provisions of Schedule 2.

4.3 All payments required to be made pursuant to this Agreement by either Party shall be made within 28 Business Days of receipt by that Party of the relevant invoice.

4.4 All payments required to be made pursuant to this Agreement by either Party shall be made in sterling in cleared funds to such bank in England as the receiving Party may from time to time nominate, without any set-off, withholding or deduction except such amount (if any) of tax as that Party is required to deduct or withhold by law.

4.5 Where any payment pursuant to this Agreement is required to be made on a day that is not a Business Day, it may be made on the next following Business Day.

4.6 Without prejudice to sub-Clause 9.4.1, any sums which remain unpaid following the expiry of the period set out in sub-Clause 4.3 shall incur interest on a daily basis at 4% above the base rate of Barclays Bank PLC from time to time until payment is made in full of any such outstanding sums.

5. Liability, Indemnity and Insurance

5.1 The Service Provider shall ensure that it has in place at all times suitable and valid insurance that shall include public liability insurance.

5.2 In the event that the Service Provider fails to perform the Services with reasonable care and skill it shall carry out any and all necessary remedial action at no additional cost to the Client.

5.3 The Service Provider's total liability for any loss or damage caused as a result of its negligence or breach of this Agreement shall be limited to the amount of fees charged for such work in respect of which the negligence or breach of agreement has arisen.

5.4 The Service Provider shall not be liable for any loss or damage suffered by the Client which results from the Client's failure to follow any instructions given by the Service Provider.

5.5 Nothing in this Agreement shall limit or exclude the Service Provider's liability for death or personal injury.

5.6 Subject to sub-Clause 5.2 the Service Provider shall indemnify the Client against any costs, liability, damages, loss, claims or proceedings arising out of the Service Provider's provision of the Services or any breach of this Agreement.

5.7 The Client shall indemnify the Service Provider against any costs, liability, damages, loss, claims or proceedings arising from loss or damage to any equipment (including that belonging to any third parties appointed by the Service Provider) caused by the Client or its agents or employees.

5.8 Neither Party shall be liable to the other or be deemed to be in breach of this Agreement by reason of any delay in performing, or any failure to perform, any of that Party's obligations if the delay or failure is due to any cause beyond that Party's reasonable control.

6. Guarantee

6.1 The Service Provider guarantees that the product of all Services provided shall be free from any and all defects during the currency of this agreement.

6.2 If any defects in the product of the Services appear during the currency of this agreement the Service Provider shall rectify any and all such defects at no cost to the Client.

7. Confidentiality

7.1 Each Party undertakes that, except as provided by sub-Clause 7.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of this Agreement and for one year after its termination:

7.1.1 keep confidential all Confidential Information;

7.1.2 not disclose any Confidential Information to any other party;

7.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of this Agreement;

7.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and

7.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 7.1.1 to 7.1.4 above.

7.2 Either Party may:

7.2.1 disclose any Confidential Information to:

7.2.1.1 any sub-contractor or supplier of that Party;

7.2.1.2 any governmental or other authority or regulatory body; or

7.2.1.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;

to such extent only as is necessary for the purposes contemplated by this Agreement (including, but not limited to, the provision of the Services), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under sub-Clause 7.2.1.2 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of this Clause 7, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and

7.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of this Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information that is not public knowledge.

7.3 The provisions of this Clause 7 shall continue in force in accordance with their terms, notwithstanding the termination of this Agreement for any reason.

8. Force Majeure

8.1 No Party to this Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

8.2 In the event that a Party to this Agreement cannot perform their obligations hereunder as a result of force majeure for a continuous period of 28 days, the other Party may at its discretion terminate this Agreement by written notice at the end of that period. In the event of such termination, the Parties shall agree upon a fair and reasonable payment for all Services provided up to the date of termination. Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of this Agreement.

9. Term and Termination

9.1 This Agreement came into force on ???????? and shall continue for a Term of five years from that date, to and including ??????, subject to the provisions of this Clause 9 and Schedule 1 to this agreement.

9.2 Either Party shall have the right, subject to the agreement and consent of the other Party and exercisable by giving not less than 28 days written notice to the other at any time prior to the expiry of the Term specified in sub-Clause 9.1 (or any further period to which this Agreement has been extended pursuant to this provision) to extend this Agreement for a further period. The period of extension and terms shall be agreed between the parties prior to expiry of the written notice referred to above.

9.3 Either Party may terminate this Agreement by giving to the other not less than 3 months written notice, to expire on or at any time after one year (or any further period to which this Agreement has been extended pursuant to provision 9.2 above).

9.4 Either Party may immediately terminate this Agreement by giving written notice to the other Party if:

9.4.1 any sum owing to that Party by the other Party under any of the provisions of this Agreement is not paid within 28 Business Days of the due date for payment;

9.4.2 the other Party commits any other breach of any of the provisions of this Agreement and, if the breach is capable of remedy, fails to remedy it within 28 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;

9.4.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;

9.4.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);

9.4.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under this Agreement);

9.4.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;

9.4.7 that other Party ceases, or threatens to cease, to carry on business; or

9.4.8 control of that other Party is acquired by any person or connected persons not having control of that other Party on the date of this Agreement. For the purposes of this Clause 9, “control” and “connected persons” shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.

9.5 For the purposes of sub-Clause 9.4.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in

all respects.

9.6 The rights to terminate this Agreement given by this Clause 9 shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

10. Effects of Termination

Upon the termination of this Agreement for any reason:

10.1 any sum owing by either Party to the other under any of the provisions of this Agreement shall become immediately due and payable;

10.2 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of this Agreement shall remain in full force and effect;

10.3 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of this Agreement which existed at or before the date of termination;

10.4 subject as provided in this Clause 10 and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and

10.5 each Party shall (except to the extent referred to in Clause 7) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.

11. No Waiver

No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

12. Further Assurance

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of this Agreement into full force and effect.

13. Costs

Subject to any provisions to the contrary each Party to this Agreement shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of this Agreement.

14. Set-Off

Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under this Agreement or any other agreement at any time.

15. **Assignment and Sub-Contracting**

15.1 Subject to sub-Clause 15.2 this Agreement is personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder without the written consent of the other Party, such consent not to be unreasonably withheld.

15.2 The Service Provider shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of this Agreement, be deemed to be an act or omission of the Service Provider.

16. **Time**

16.1 The Parties agree that all times and dates referred to in this Agreement shall be of the essence of this Agreement.

17. **Relationship of the Parties**

Nothing in this Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.

18. **Non-Solicitation**

18.1 Neither Party shall, for the Term of this Agreement and for a period of one year after its termination or expiry (or the termination or expiry of any extension to this agreement pursuant to paragraph 9.2), employ or contract the services of any person who is or was employed or otherwise engaged by the other Party at any time in relation to this Agreement without the express written consent of that Party.

18.2 Neither Party shall, for the term of this Agreement and for a period of one year after its termination or expiry (or the termination or expiry of any extension to this agreement pursuant to paragraph 9.2), solicit or entice away from the other Party any customer or client where any such solicitation or enticement would cause damage to the business of that Party without the express written consent of that Party.

19. **Third Party Rights**

19.1 No part of this Agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

19.2 Subject to this Clause 19 this Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.

20. **Notices**

20.1 All notices under this Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

20.2 Notices shall be deemed to have been duly given:

20.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

20.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or

20.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

20.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

21. **Entire Agreement**

21.1 This Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

21.2 Each Party acknowledges that, in entering into this Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in this Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

22. **Counterparts**

This Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

23. **Severance**

In the event that one or more of the provisions of this Agreement is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

24. **Dispute Resolution**

24.1 The Parties shall attempt to resolve any dispute arising out of or relating to this Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.

24.2 If negotiations under sub-Clause 24.1 do not resolve the matter within 56

days of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution ("ADR") procedure.

24.3 If the ADR procedure under sub-Clause 24.2 does not resolve the matter within 56 days of the initiation of that procedure, or if either Party will not participate in the ADR procedure, the dispute may be referred to arbitration by either Party.

24.4 The seat of the arbitration under sub-Clause 24.3 shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed between the Parties. In the event that the Parties are unable to agree on the arbitrator(s) or the Rules for Arbitration, either Party may, upon giving written notice to the other Party, apply to the President or Deputy President for the time being of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be required.

24.5 Nothing in this Clause 24 shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief.

24.6 The Parties hereby agree that the decision and outcome of the final method of dispute resolution under this Clause 24 shall not be final and binding on both Parties.

25. **Law and Jurisdiction**

25.1 This Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

25.2 Subject to the provisions of Clause 24, any dispute, controversy, proceedings or claim between the Parties relating to this Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

IN WITNESS WHEREOF this Agreement has been duly executed the day and year first before written

SIGNED by

for and on behalf of **Activeplan Consulting Limited**

SIGNED by
[name and title of person signing for "Client Name"***]***
for and on behalf of

SCHEDULE 1

Specification of Services

The Services shall be provided on the terms as set out in ?????????.

Annual Charges

The Service Provider will provide a Cloud service for the Project and Asset Information Modelling solutions and support thereto:-

Enhancements

The Service Provider will continue to enhance its applications, informed by requests from clients, market developments and general technical requirements and such enhancements will be provided at no additional fee from the Service Provider's general inclusive development fund.

Specific aspects of development, which in the opinion of the Service Provider are not constituted under this description, will be subject to a costed proposal for the Client's consideration.

Data Engineering

Where labour is required to interprete, transform, coordinate and load new data e.g. reverse-engineering the O&M/Asset data into a coordinated format the Client can use, this will be treated as a discrete project and the resources required planned and costed.

Hosting

Hosting will be provided for 24 hours per day, 365 days per year.

Hosting Uptime

Hosting will be subject to 99.5% availability.

Support
A Helpdesk will be available from Monday to Friday from 9.00 am to 5.00 pm excluding Public Holidays (in England).

SCHEDULE 2

Fees and Payment

Annual Charge

Payment for the annual charge shall be invoiced in advance of the 1st of April of each year. Payment of the respective annual invoices shall be made within 28 business days of the invoice date, pursuant to paragraph 4.3.

It is agreed between the parties that:-

- The annual charge for is a fixed fee of £????? plus VAT at the prevailing rate.