

# Agreement for the Supply and Maintenance of a Further, Higher and Adult Education Student Management Information Solution, including any modules thereof.

## Order Form

### 1. Customer Details

| Customer Location                                                                                                        | Customer Primary Contact |                  |
|--------------------------------------------------------------------------------------------------------------------------|--------------------------|------------------|
| <<Customer Name>><br><<Address Line 1>><br><<Address Line 2>><br><<City>><br><<County>><br><<Postcode>> (the "Customer") | Name                     | <<Contact Name>> |
|                                                                                                                          | Telephone                | <<Telephone>>    |
|                                                                                                                          | Email                    | <<Email>>        |

### 2. Agreement Details

|                |                                                                                                                      |
|----------------|----------------------------------------------------------------------------------------------------------------------|
| Agreement No.  | <<0000AM/NB>>                                                                                                        |
| Effective Date | <<dd/mmm/yy>>                                                                                                        |
| Term           | From the Effective Date until <<dd/mmm/yy>> unless the Agreement is terminated earlier in accordance with its terms. |

### 3. Supplied Software, Software Maintenance & Hosted Software Services

| Item | Description | Charge   | Period |
|------|-------------|----------|--------|
| 1    | <<Item 1>>  | £ 00,000 | Annum  |
| 2    | <<Item 1>>  | £ 00,000 | Annum  |
| 3    | <<Item 1>>  | £ 00,000 | Annum  |
| 4    | <<Item 1>>  | £ 00,000 | Annum  |

### 4. Payment Details

| Item | Term                                                                                       |
|------|--------------------------------------------------------------------------------------------|
| 1    | As per the Payment Schedule below.                                                         |
| 2    | Annual Charges shall be increased in accordance with clause 9 of the Terms and Conditions. |

## 5. Payment Schedule

| Period  | <<dd/mm/yy>><br><<dd/mm/yy>> | <<dd/mm/yy>><br><<dd/mm/yy>> | <<dd/mm/yy>><br><<dd/mm/yy>> |
|---------|------------------------------|------------------------------|------------------------------|
| Invoice | <<dd/mm/yy>>                 | <<dd/mm/yy>>                 | <<dd/mm/yy>>                 |
| 1       | £ 00,000                     | £ 00,000                     | £ 00,000                     |
| 2       | £ 00,000                     | £ 00,000                     | £ 00,000                     |
| 3       | £ 00,000                     | £ 00,000                     | £ 00,000                     |
| 4       | £ 00,000                     | £ 00,000                     | £ 00,000                     |

## 6. Additional Terms

| Note | Term                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1    | Notwithstanding prior termination or expiry of the Agreement the Customer shall pay all the above Charges due as per the payment schedule above and the Customer irrevocably agrees to make such payments.                                                                                                                                                                                                                                                                      |
| 2    | This Order Form, the Terms and Conditions and any Schedules shall constitute the Agreement.                                                                                                                                                                                                                                                                                                                                                                                     |
| 3    | If there is any conflict between: (i) the Terms and Conditions; and (ii) this Order Form, then the Terms and Conditions shall prevail save to the extent that it is expressly stated in this Order Form that the Terms and Conditions are being varied by this Order Form. Any term used in this Order Form but not defined in this Order Form shall, to the extent it is defined in the Terms and Conditions, have the meaning given to that term in the Terms and Conditions. |
| 4    | In accordance with the United Kingdom's VAT legislation, specifically the Value Added Tax Act 1994 and any subsequent amendments, our Charges do not include VAT. VAT will be charged separately at the prevailing rate, currently 20% (subject to change in accordance with government regulations) and added to the final invoice for the provision of goods and/or services.                                                                                                 |
| 4    | For the purposes of clarity, Section 16 (Data Protection) of the Agreement applies to all Software supplied by ESS to the Customer under this Order Form and any other Agreements between the parties. Any earlier versions of data protection terms or related clauses previously in place are hereby superseded and replaced by the provisions of Section 16 of the Agreement.                                                                                                |

## 7. Signature

|                                                                      |                                            |
|----------------------------------------------------------------------|--------------------------------------------|
| Signed by:                                                           | Signed by: <<Customer Signatory>>          |
| Role:                                                                | Role: <<Customer Signatory Role>>          |
| For and on behalf of:<br><b>Education Software Solutions Limited</b> | For and on behalf of:<br><<Customer Name>> |
| Date:                                                                | Date: <<Customer Signature Date>>          |

## **Agreement for the Supply and Maintenance of a Further, Higher and Adult Education Student Management Information Solution, including any modules thereof.**

### **Terms & Conditions**

#### **Introduction**

- (A) ESS is a provider of further, higher, and adult education student management information solutions for educational establishments.
- (B) The Customer now wishes ESS to provide it with the software and services set out in the Agreement.

#### **Definitions**

In the Agreement the following words and phrases have the following meanings:

**Account Details** means the username and password issued to each User;

**Additional Services** means any services in addition to the Services set out in the Order Form that ESS agrees to provide to the Customer pursuant to the Customer's written request, subject to the Customer paying ESS's additional Charges for those additional services, calculated in accordance with the Standard Scale of Charges unless otherwise agreed between the parties in writing;

**Agreement** means the Order Form, these Terms and Conditions and the Schedules;

**Annual Reconciliation** means a detailed statement of all accumulated credits to the Customer. These credits shall be paid by offsetting the total accumulated credit amount against the next annual invoice for fees payable under this Agreement.

**Approved Equipment** means any hardware or other equipment that meets the minimum specifications as detailed in the Software Documentation, on which ESS may approve the installation of the Supplied Software (if any);

**Charges** means the charges to be paid by the Customer to ESS pursuant to Clause 9 in respect of any part of the System or the Services as set out in the Order Form and/or otherwise calculated in accordance with the terms of the Agreement;

**Confidential Information** means all information (whether written, oral or in electronic form) concerning the business, finances, technology and/or affairs of a party that the other party obtains or receives as a result of the discussions leading up to or the entering into or the performance of the Agreement;

**Contract Year** means any 12-month period commencing either on: (i) the earlier of the date of the Agreement and the Effective Date; or (ii) an anniversary of that date;

**Effective Date** means the Effective Date set out in the Order Form;

**ESS** means Education Software Solutions Ltd, a company incorporated in England and Wales with company number 12595779 whose registered office is at 11 Kingsley Lodge, 13 New Cavendish Street, London, W1G 9UG England;

**Exit Plan** means a mutually agreed-upon written plan, as detailed in Schedule H - Exit Plan, outlining the steps, responsibilities, and timelines for the orderly transition and cessation of services, including the return or destruction of materials upon termination or expiry of this Agreement.

**Helpdesk Services** means the services provided by ESS's helpdesks as specified in Clause 6 and the Service Level Agreement;

**Hosted Software Services Support** means the support services provided by ESS to the Customer for the Software when hosted on ESS-managed infrastructure, covering maintenance, updates, and assistance with issues impacting system availability and performance, as specified in Section 5 of this Agreement and further detailed in Schedule F – Hosting Services Service Level Agreement.

**Implementation Services** means the services specified in Clause 8 and specified in Schedule I – Implementation Services.

**Intellectual Property Rights** means all patents, rights to inventions, copyright and related rights, moral rights, database rights, semiconductor topography rights, supplementary protection certificates, petty patents, utility models, rights in designs, trade marks, service marks, trade names, domain names, rights in goodwill, rights in undisclosed or information (such as know-how, trade secrets and inventions (whether patentable or not)), and other similar or equivalent rights or forms of protection (whether registered or unregistered) and all applications (or rights to apply) for, and for renewals and extensions of, such rights as may now or in the future exist anywhere in the world;

**Location** means the Customer's office(s) at which the Supplied Software is to be installed by the Customer pursuant to the terms of the Agreement, as set out in the Order Form;

**Media** means any media on which ESS supplies Software and the Software Documentation to the Customer;

**New Release** means a new release or version of the Software supplied to the Customer incorporating enhancements and up-dates of the Software;

**Order Form** means the order form attached to these Terms and Conditions, which contains, amongst other things, details of the Customer, the Software, the Services and the Charges;

**ParentPay Group** means ESS and each "Group Undertaking" of ESS as defined in the Companies Act 2006;

**Person Day** means six (6) hours of one person's time during a Working Day unless otherwise agreed in writing;

**Public Authority** means a contracting authority as defined in The Public Contracts Regulations 2015;

**Schedule** means a Schedule of these Terms and Conditions;

**Service Levels** means the Service Levels set out in Schedule C;

**Services** means the services set out in the Supplied Software Licences, Software Services & Hosted Software Services Support section of the Order Form;

**Software** means the software specified in the Supplied Software Licences, Software Services & Hosted Software Services Support section of the Order Form including any New Release and, unless otherwise agreed, any additional software and services purchased by the Customer after the date of the Agreement;

**Software Documentation** means the specifications, user instructions and other literature related to the Software supplied to the Customer, as may be amended by ESS from time to time;

**Software Services** means Software provided on an on-premises basis and hosted by or on behalf of the Customer, and related software support services as described in Clause 4;

**Standard Scale of Charges** means ESS's standard charging rates provided to the Customer from time to time;

**Supplied Software Licence** means the licence of the Supplied Software granted by ESS in Clause 3;

**Software Maintenance** means the services specified in Clause 6 and the Software Maintenance details section of the Order Form;

**System** means the Supplied Software, Software Services and (where applicable) any Software Documentation and Media;

**Term** means the Term as set out in the Order Form;

**Terms and Conditions** means these ESS terms and conditions;

**Third Party** means any individual, company, organisation or other entity that is not a party to these Terms and Conditions between the Supplier (providing any of Software, Services, Software Services) and the Customer (purchasing any of Software, Services, Software Services)

**Third Party Terms** means terms and conditions of a Third Party;

**UK GDPR** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data as implemented into UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018;

**User** means a student of the Customer or their parent, or teacher or other authorised person who is working for the Customer or Customer's associated organisations, in each case who the Customer has granted access to the Software in accordance with the terms of the Agreement;

**Working Day** means between 9.00 am and 5.30 pm on any day other than a Saturday, Sunday or public or bank holiday in the United Kingdom;

- 1.1 these Terms and Conditions, the Order Form and Schedules form part of the Agreement;
- 1.2 references to Clauses are references to Clauses of these Terms and Conditions;
- 1.3 any reference to persons includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, governmental or state agencies, foundations and trusts (in each case whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists);
- 1.4 a reference to a statute or statutory provision is a reference to that statute or statutory provision and to all orders, regulations, instruments or other subordinate legislation made under the relevant statute, and any reference to a statute, statutory provision, subordinate legislation, code or guideline (legislation) is a reference to such legislation as amended and in force from time to time and to any legislation which re-enacts or consolidates (with or without modification) any such legislation;
- 1.5 any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 1.6 if there is any conflict or ambiguity then the following order of decreasing precedence shall apply: (i) these Terms and Conditions; (ii) the Schedules; (iii) the Order Form; and (iv) any other documents referred to in the Agreement; and
- 1.7 technical expressions relating to computers and/or software programs shall have the meanings commonly attributed to them in the computer and information technology industry.

## **2. Term**

- 2.1 The Agreement shall commence on the date of execution of the Order Form and, unless it is terminated earlier in accordance with these Terms and Conditions, shall remain in force until the last day of the Term, at which time the Agreement shall automatically terminate.

## **3. Supplied Software licence and Software restrictions**

- 3.1 Subject to the Customer at all times complying with the terms and conditions of the Agreement, including paying the Charges to ESS in accordance with such terms and conditions, if Supplied Software is set out in the Order Form:
  - 3.1.1 ESS grants to the Customer a limited, non-exclusive, non-transferable right to access, and allow Users to access, and use the Supplied Software on the Approved Equipment at the Location in accordance with this Agreement from the Effective Date until the date of termination of the Agreement solely for the purposes set out in the Software Documentation and in accordance with ESS's requirements notified to the Customer from time to time;
  - 3.1.2 subject to the terms of the Agreement, ESS will supply to the Customer one copy of the object code of the Supplied Software and one copy of the Software Documentation for the Supplied Software for the Term;
  - 3.1.3 use of the Supplied Software by the Customer and Users shall be restricted to:
    - (i) use on the Approved Equipment at the Location;
    - (ii) in accordance with the Software Documentation;
    - (iii) the restrictions under this Clause 3;
    - (iv) processing Customer data and strictly for the Customer's own internal purposes as envisaged by the Agreement only; and
    - (v) any other reasonable instructions notified to the Customer by ESS from time to time;

- 3.1.4 the Customer may make one backup copy of any Supplied Software supplied by ESS as may be necessary for its lawful use and operational security. Such copy shall be the property of ESS. The Customer shall record location of the copy of the Supplied Software, ensure that the copy clearly bears ESS's proprietary notice and prevent unauthorised copying; and
- 3.1.5 subject to the Customer complying with the terms of the Agreement, ESS warrants that the Supplied Software will, during the period between the Effective Date and the earlier of the commencement of any Software Maintenance or two (2) months from the Effective Date, when properly used on Approved Equipment, provide the facilities and functions set out in the Software Documentation applicable to the Supplied Software. ESS shall, during this period, use its reasonable endeavours to remedy any material defect in the Supplied Software notified to it by the Customer in writing within a reasonable time and without charge to the Customer.
- 3.2 Except as expressly stated in this Clause 3, the Customer has no right (and shall not permit any Third Party) to copy, adapt, reverse engineer, decompile, disassemble, modify or make error corrections to the System in whole or in part, except as permitted by law.
- 3.3 The Customer shall not, without the prior written consent of ESS, permit any Third Party to use the System.
- 3.4 The Customer shall not use the Software to host systems or services for any Third Party.
- 3.5 The Customer shall notify ESS immediately in writing if the Customer becomes aware of any unauthorised use of the whole or any part of the System by any person.
- 3.6 The Customer shall effect and maintain adequate security measures to safeguard the System from access or use by any unauthorised person.
- 3.7 The Customer shall not, without the prior written consent of ESS, combine the Software with other software and/or data. The Customer shall indemnify ESS against any loss, damage, claim, liability and/or costs and/or expenses (including legal costs and expenses) suffered or incurred by ESS or any other member of the ParentPay Group, which arises out of or in connection with result from a claim (threatened or actual) that the use of the Software, in combination with such other software and/or data, infringes the rights of any Third Party and any services which are required to be provided by ESS as a result of such combination shall be deemed to be Additional Services. Upon termination or expiry of the Agreement, the Customer shall, at its own cost, completely remove the Software from such combined work.
- 3.8 The Customer is solely responsible for selecting the Software to achieve the Customer's intended results.
- 3.9 The Customer shall not, without the prior written consent of ESS, permit any Third Party to take responsibility for the normal operation of the Software as envisaged by the Agreement. If the Customer enters into an arrangement with a Third Party for the provision such normal operation ESS reserves the right to terminate the Agreement by giving three (3) months' notice in writing.
- 3.10 The Customer shall not, without the prior written consent of ESS, enter into any arrangements with Third Party suppliers for the provision of Consultancy & Training services related to the Software supplied.

#### **4. Software Services**

If Software Services are set out in the Order Form:

- 4.1 subject to the Customer at all times complying with the terms and conditions of the Agreement, including paying the Charges to ESS in accordance with such terms and conditions, ESS hereby grants to the Customer the right to permit the Users at the Locations to use the Software Services during the Term solely for the Customer's internal business operations. ESS will supply the Customer with logon and password details for the number of Users of the Software Services specified in the Order Form for the Term and for the Charges specified therein and otherwise subject to the terms of the Agreement;

- 4.2 the Customer shall:
- (a) in order to enable ESS to provide the Software Services, grant ESS the right to use the personal data set out in Schedule A for the purposes set out in Schedule A;
  - (b) ensure that the Users use the Software Services and the Software Documentation in accordance with the terms and conditions of the Agreement and shall be responsible and liable for any User's failure to use the Software Services and the Software Documentation in accordance with such terms and conditions;
  - (c) obtain and shall maintain all necessary licences, consents, and permissions necessary to enable it to receive the benefit of the Software Services and Software Services Support;
  - (d) ensure that the Location's network and systems comply with the relevant specifications provided by ESS from time to time; and
  - (e) be solely responsible for procuring and maintaining the Location's network connections and telecommunications links from its systems to ESS's data centres, and for all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet;
- 4.3 the Customer shall not and shall procure that its Users shall not:
- 4.3.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
- a) and except to the extent expressly permitted under the Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the System in any form or media or by any means; or
  - b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- 4.3.2 access all or any part of the Software Services and/or System in order to build a product or service which competes with the Software Services and/or the System; or
- 4.3.3 use the Software Services and/or System to provide services to a Third Party; or
- 4.3.4 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit or otherwise make the Software Services and/or the System available to any Third Party except the Users; or
- 4.3.5 attempt to obtain, or assist a Third Party in obtaining, access to the Software Services and/or the System, other than as provided under this Clause 4;
- 4.4 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software Services and/or the System and, in the event of any such unauthorised access or use, promptly notify ESS.
- 4.5 The Customer acknowledges and agrees that ESS and/or its licensors own all Intellectual Property Rights in the Software Services and the System. Except as expressly stated herein, the Agreement does not grant the Customer any rights to, or in, (inter alia) patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software Services and/or the System.
- 4.6 ESS reserves the right to amend the Software Services and/or the System at any time by giving the Customer no less than 30 days written notice provided that the changes to the Software Services and/or the System are not materially detrimental to the Customer and do not degrade the quality, functions or features of the Software Services and/or the System.

## **5. Hosted Software Services Support**

If Hosted Software Services Support is set out in the Order Form:

- 5.1 ESS undertakes that the Hosted Software Services Support will be performed with reasonable skill and care;
- 5.2 ESS shall, during the Term, provide the Software Services and make available the Software Documentation to the Customer on and subject to the terms of the Agreement;
- 5.3 If the Software is hosted by ESS, then ESS shall use commercially reasonable endeavours to make the Software Services available 24 hours a day, seven days a week, except for:
  - 5.3.1 planned maintenance and upgrades. In the event of an ESS instigated maintenance or software upgrade on the server platforms, ESS will inform its customers prior to the upgrade. Notification of planned maintenance and major feature upgrades will be made to customers; and
  - 5.3.2 issues that relate to security or are degrading system use which will typically be resolved via a hotfix. Hotfixes will be performed only when the risk of implementing the fix is less than the risk of not implementing it or when the benefits of the fix outweigh the risk of any related service or usage degradation. A released feature that is not working as expected may be addressed by a hotfix – meeting the same criteria as above;
- 5.4 the obligations at Clause 5.3 shall not apply to the extent of any non-conformance which is caused by use of the Software Services contrary to ESS's instructions, or modification or alteration of the Software Services by any party other than ESS or ESS's duly authorised contractors or agents;
- 5.5 ESS will use all commercially reasonable endeavours to correct any non-conformance of the Software Services with the applicable Software Documentation promptly or provide the Customer with an alternative means of accomplishing such conformance. Such correction constitutes the Customer's sole and exclusive remedy for any such non-conformance.
- 5.6 ESS reserves the right to amend the Hosted Software Services Support at any time by giving the Customer no less than 30 days written notice of the changes provided that the changes to the Hosted Software Services Support is not materially detrimental to the Customer and does not degrade the quality, functions or features of the Hosted Software Services Support.

## **6. Software Maintenance**

- 6.1 Subject to the Customer at all times complying with the terms and conditions of the Agreement, including paying the Charges to ESS in accordance with such terms and conditions, ESS shall provide Software Maintenance in respect of the Software, for the period(s) and at the Charges specified in the Order Form.
- 6.2 ESS agrees to provide the Customer with Software Maintenance including
  - (i) Helpdesk Services for technical advice and the diagnosis and correction of intrinsic errors in the Software and;
  - (ii) the development and provision of New Releases. The Customer shall be deemed to have accepted a New Release unless any material reason for non-acceptance is notified in writing to ESS within one (1) month of delivery.
- 6.3 ESS shall provide the Helpdesk Services by telephone, internet, post, electronic mail or any other means as may be introduced by ESS.
- 6.4 The Helpdesk Services will be available, unless otherwise specified, between 9.00 am and 5.30 pm (UK Time) on Working Days.
- 6.5 The Customer shall:
  - 6.5.1 install New Releases and corrections within one (1) month of delivery;
  - 6.5.2 not permit anyone other than ESS to provide any Software Maintenance;

- 6.5.3 report suspected errors promptly to ESS and co-operate in efforts to provide a remedy including making skilled staff and necessary facilities (such as, but not limited to, telecommunications facilities) available to ESS free of charge;
- 6.5.4 following the delivery of corrections or technical improvements, test the same before using the Software as so modified for the processing of live data;
- 6.5.5 provide an ESS approved VPN connection for the purpose of ESS providing error diagnosis and correction services remotely;
- 6.5.6 make back-ups of data on the System at reasonable intervals to enable the recovery of such data;
- 6.5.7 ensure that a fully trained member of its staff will review the nature of all calls for technical advice prior to placing a problem with ESS.
- 6.6 Software Maintenance shall not include services in respect of:
  - 6.6.1 any defects or errors resulting from modifications to the System by any person other than ESS;
  - 6.6.2 any version of the System other than the most recent New Release and the immediately preceding New Release;
  - 6.6.3 incorrect or improper use of the System or operational error;
  - 6.6.4 any defects or errors caused by the use of the System on or in relation to hardware or equipment, which is not Approved Equipment;
  - 6.6.5 technical advice to consultants or advisors appointed by the Customer; or
  - 6.6.6 loss or damage to the Customer's data.
- 6.7 The Customer acknowledges that certain software items specified in the System have not been produced by ESS and that ESS is reliant on the availability of technical support and other assistance from the Third Party suppliers of such items. ESS will make reasonable endeavours to obtain such technical support and assistance. ESS will not be responsible for any error or failure by such Third Party suppliers.
- 6.8 The Customer shall be solely responsible for all security management, access control and user configuration of the System.

## **7. Title and risk**

- 7.1 Title to the System shall remain in ESS's ownership and shall not pass to the Customer in any circumstances.
- 7.2 Risk in any part of the System shall pass to the Customer upon delivery at the Location or any other place specified by the Customer and agreed by ESS for delivery.

## **8. Implementation Services**

- 8.1 ESS shall provide Implementation Services where such services are specified in the Order Form, such Implementation Services to be provided as specified in the Order Form, for the number of Person Days and at the Charges specified therein. Unless otherwise agreed in writing, ESS gives no representations or warranties as to the results which will be achieved from the Implementation Services.
- 8.2 The Customer and ESS will, as soon as reasonably possible after signing the Agreement, agree a procedure for monitoring the progress of the Implementation Services. This shall include, amongst other matters, regular review meetings attended by representatives of the parties authorised to make decisions with respect to the delivery of the Implementation Services.
- 8.3 Any Implementation Services carried out for part of a Person Day shall be charged as a whole Person Day.
- 8.4 For the avoidance of doubt ESS is not responsible for the coordination or interface of the agreed project plan with any other procurement, project or programme of work. Should the Customer reasonably request additional resources (project management, consultancy, training etc) ESS shall make such Additional Services available.

- 8.5 Where an interface to a Third Party product is to be supplied by ESS as set out in the Agreement, the Customer will ensure that the Third Party
- (i) co-operates with ESS,
  - (ii) provides reasonable information required by ESS and
  - (iii) adheres to timescales reasonably required by ESS.

The Customer agrees that ESS shall not be responsible for any delays or inaccuracies introduced to the project through the actions or omissions of any Third Party and further agrees to pay any additional costs incurred by ESS as a result of such action or omission.

## **9. Charges and Payment Terms**

- 9.1 The Customer shall pay the Charges (together with value added tax thereon at the prevailing rate) to ESS within thirty (30) days of the date of invoice unless otherwise specified in the Order Form at the times specified in the Order Form.
- 9.2 Without prejudice to any other right and remedies of ESS, if the Customer has not made payment by the due date:
- 9.2.1 ESS shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid;
  - 9.2.2 ESS shall (at its discretion) be entitled to charge interest which shall accrue on a daily basis at an annual rate of 3% (three per cent) above the base rate from time to time of Barclays Bank Plc compounded quarterly, commencing on the due date and continuing until fully paid, whether before or after judgement; and
  - 9.2.3 ESS reserves the right to repossess any part of the System and the Customer irrevocably agrees to allow ESS to enter upon the premises concerned for such purpose.
- 9.3 On each anniversary of the date of the Agreement and at any other agreed date, all Charges payable shall be increased in accordance with:
- 9.3.1 save as set out in the Order Form, the percentage change in the Retail Prices Index or such other index substituted from time to time by the Office for National Statistics or its successors over the previous 12 months; and
  - 9.3.2 a percentage in line with increases in the third-party list prices.
- 9.4 The parties acknowledge that the Charges have been calculated taking into account the recoverability or otherwise of the related input VAT. The parties agree that if a ruling or appellate body decision or change in HMRC practice results in a VAT liability for all or part of the services or Software provided herein that differs from these assumptions, to the extent that ESS's VAT recovery on costs attributable to the provision of the Services is reduced or improved as a result of the ruling, decision or change in HMRC practise, the charges (exclusive of any VAT) will be increased or reduced (as applicable) with effect from the date that the ruling, decision or change in HMRC practise has effect.
- 9.5 ESS reserves the right to:
- 9.5.1 charge for any software amendment that is necessary as a result of a legislative change or is a change requested on a regional basis only or is a change that will require a major rewrite of ESS software;
  - 9.5.2 charge for the provision of any additional services required as a result of the failure by the Customer to meet its obligations as set out in the Agreement;
  - 9.5.3 charge additional Charges if the Customer terminates Software Maintenance and subsequently requests the reinstatement of Software Maintenance; and

- 9.5.4 charge additional charges if the geographic boundaries of the Customer change from those in place at the date of contract signature or in the event of any local government reorganisation affecting the Customer. The Customer shall promptly inform ESS of any proposed boundary change or reorganisation.
- 9.6 Limitation on Credit Notes Issuance:
- 9.6.1 Should the Customer be entitled to credits the value of these credits will be recorded and retained to be settled at the Annual Reconciliation.
- 9.6.2 At the end of each contract year, the Supplier will provide an Annual Reconciliation of all accumulated credits to the Customer. These credits shall be paid by offsetting the total accumulated credit amount against the next annual invoice for fees payable under this Agreement.
- 9.6.3 Any disputes concerning the calculation or applicability of credits shall be resolved according to the dispute resolution process outlined in Clause 4.6 of this Agreement.

## **10. Termination and suspension**

- 10.1 The Customer may terminate the Agreement with immediate effect by giving prior written notice of such termination to ESS if ESS commits a material breach of any of the terms of the Agreement and either that breach is not capable of remedy or, if the breach is capable of remedy, ESS fails to remedy that breach within 30 days of being notified of the breach by the Customer.
- 10.2 ESS may terminate the Agreement (in whole or in part), by giving prior written notice to the Customer, immediately or on the date set out in such notice at any time on or after the occurrence of any of the following events:
- (a) the Customer commits a material breach of any of the terms of the Agreement and either that breach is not capable of remedy or, if the breach is capable of remedy, the Customer fails to remedy that breach within 30 days of being notified of the breach by ESS; or
  - (b) the Customer is in breach of Clause 9.1.
- 10.3 Either party may terminate this Agreement (in whole or in part), by giving prior written notice to the other party, immediately or on the date set out in such notice at any time on or after the occurrence of any of the following events:
- (i) a receiver, liquidator or administrator is appointed for that other party or that other party passes a resolution for the appointment of a liquidator (other than (in any such case) a voluntary winding-up of a solvent company for the purposes of amalgamation or reconstruction);
  - (ii) an order is made for the appointment of an administrator to manage the affairs, business and property of that other party or notice of intention to appoint an administrator is given by that other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986);
  - (iii) that other party takes steps to enter into a company voluntary arrangement, a scheme of arrangement under Part 26 Companies Act 2006 or any analogous compromise or arrangement (whether formal or informal) with any of its creditors (other than (in any such case) a voluntary winding-up of a solvent company for the purposes of amalgamation or reconstruction);
  - (iv) any substantial part of the assets of that other party is the object of attachment, sequestration or other type of comparable proceeding; (v) that other party is unable or admits in writing its inability to pay its debts as they fall due; or
  - (vi) that other party suffers or takes any similar or analogous action in any jurisdiction in consequence of debt.
- 10.4 ESS may terminate the Agreement in whole or in part by giving notice in writing to the Customer if the United Kingdom Government announces the repeal of or any changes to any legislation or the withdrawal of proposed legislation in connection with which any part of the System or any Services provided hereunder were designed or

intended to assist the Customer in fulfilling its own statutory obligations or those of its clients, such termination to be effective on the date on which such repeal, change or withdrawal takes effect.

- 10.5 Where the termination of the Agreement by ESS results from a breach of the Agreement by the Customer, ESS shall be entitled to retain all the Charges paid to ESS by the Customer up to and including the date of termination and the Customer shall pay to ESS all Charges set out in the Order Form and any other Charges agreed in writing between the parties that have not been received by ESS prior to such termination.
- 10.6 ESS reserves the right to suspend the Supplied Software Licence or the provision of any Services provided by ESS under the Agreement in circumstances otherwise entitling it to terminate the Agreement. Such suspension shall not be deemed to represent a waiver of ESS's right to terminate the Agreement.
- 10.7 Immediately upon the termination or expiry of the Agreement, and in accordance with an agreed Exit Plan, the Customer shall return to ESS the Supplied Software, Software Documentation and Media including any authorised modifications thereof made by the Customer and all copies of the whole or any part thereof or, if requested by ESS, destroy or erase the same and certify in writing to ESS that they have been destroyed or erased.
- 10.8 ESS reserves the right to terminate Software Maintenance of any third-party item listed on the Software Licence Schedule of the Order Form should such Third Party cease to provide software maintenance services on which ESS relies to provide services under Clause 6.
- 10.9 ESS may terminate the Agreement on not less than 12 months prior written notice without incurring any liability if an in-scope Software product is no longer made available by ESS or ESS no longer provide support.
- 10.10 Clauses 1, 7.1, 9, 10, 11, 15 and 17 to 24 (inclusive) shall survive termination of the Agreement as shall any other provision of the Agreement which by its nature is intended to survive such termination.

## **11. Liability and indemnity**

- 11.1 ESS shall not exclude or restrict its liability
- (i) for death or personal injury caused by negligence;
  - (ii) fraud or fraudulent misrepresentation; or
  - (iii) any other liability which may not be excluded by law.
- 11.2 Subject to Clauses 11.1 and save in respect of any liability under Clause 15.2, the total aggregate liability of ESS arising under or in connection with the Agreement (whether in contract, tort, including negligence, under indemnity, statute or otherwise) during each Contract Year shall be limited to the Charges paid by the Customer to ESS in respect of that Contract Year.
- 11.3 Subject to Clause 11.1, ESS shall not be liable (whether in contract, tort, including negligence, under indemnity, statute or otherwise) for any:
- (a) loss of profits, loss of business, loss of goodwill, loss of anticipated savings and/or similar losses or loss or corruption of data or information; or
  - (b) special, indirect or consequential loss, costs or damages.
- 11.4 During the Term, ESS shall maintain in force with a reputable insurance company or companies public and product liability, professional indemnity and employers' liability insurance and ESS shall upon written demand produce to the Customer sufficient written evidence of the existence and maintenance of such cover.
- 11.5 The Customer shall indemnify and hold ESS harmless from any against any loss, damage, claim, liability and/or costs and/or expenses (including legal costs and expenses) suffered or incurred by ESS or any other member of the ParentPay Group, which arises out of or in connection with any claim (threatened or actual) caused by or arising from any breach Clauses 3 or 4 and from any unauthorised modification or misuse of the Software and/or Services or Software Documentation by the Customer, its servants, agents or sub-contractors.

- 11.6 All dates supplied by ESS for the delivery of the System or the provision of the Services shall be treated as approximate only. ESS shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.
- 11.7 ESS 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 Services and the System may be subject to limitations, delays and other problems inherent in the use of such communications facilities. In the event of any attributable to the Customer, ESS may adjust any agreed timetable or delivery schedule as reasonably necessary.

## **12 Warranties**

- 12.1 ESS warrants that:
- 12.1.1 it will at all times supply the System and Services by appropriately qualified and trained personnel; and
- 12.1.2 It has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations to provide the Software Services and Hosted Software Services Support.
- 12.2 ESS does not warrant that the use of the Software will be uninterrupted or error-free or the information obtained by the Customer through the Software Services will meet the Customer's requirements.
- 12.3 Save as expressly specified in the Agreement, all other terms, conditions, warranties, representations, or guarantees which might have effect between the parties or be implied or incorporated into the Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including, without limitation, the express or implied conditions, warranties or other terms relating to the use of reasonable skill and care, or the performance, satisfactory quality or fitness for purpose of any part of the System or provision of Services.
- 12.4 The Customer warrants that:
- 12.4.1 it has obtained and shall maintain all necessary licenses, permissions and consents required by it to enter into the Agreement and receive the benefit of the Services;
- 12.4.2 it shall comply with all applicable laws and regulations with respect to its activities under the Agreement
- 12.4.3 it shall provide ESS with
- (i) all necessary co-operation in relation to the Agreement and
- (ii) all necessary access to such information as may be reasonably requested by ESS;
- 12.4.4 any information provided to ESS is accurate and complete;
- 12.4.3 it shall ensure that all personnel assigned by it to provide assistance to ESS in providing the System, and/or Services shall have the requisite skill, qualification and experience to perform the tasks assigned to them;
- 12.4.4 it shall carry out all Customer responsibilities set out in the Agreement or in any of the Schedules in a timely and efficient manner;
- 12.4.5 it shall only use the System and/or Services for the purposes set out and to the limits set out in the Agreement;
- 12.4.6 it shall, and procure that its employees, contractors, users, agents and representatives use the System and/or Services in accordance with the terms of the Agreement and shall be responsible for any of its employees, contractors, users, agents and representatives breach of the Agreement;
- 12.4.7 in the event of a security breach, or suspected breach of security, involving ESS's software or system delivering the Software and/or Service, the Customer will inform ESS immediately. The Customer acknowledges that ESS reserves the right to investigate security incidents and confirms that, should such an investigation be necessary, the Customer will provide any necessary support, which may include the supply of relevant logs.
- 12.5 Furthermore, the Customer warrants that it shall:

- 12.5.1 assist with ESS's reasonable investigation of any service outages or security problems relating to the Services;  
and
- 12.5.2 give reasonable written notice to ESS of any significant change which it expects to make in the average monthly volume of transactions of data by use of the System and/or Services.
- 12.6 The Customer must not, and must procure that its employees, contractors, users, agents and representatives do not, use the System, and/or Services:
  - 12.6.1 to send, receive, access or disseminate any material which is offensive, abusive, indecent, obscene, menacing, fraudulent;
  - 12.6.2 to send or receive any material which contains any viruses or other computer programs intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any information;
  - 12.6.3 to cause annoyance, inconvenience or needless anxiety;
  - 12.6.4 in breach of instructions given by ESS, other than in conformance with any and all user policies of any networks to which it is connected via the System and/or Services; and/or
  - 12.6.5 to gain access to or disseminate any information over the Internet (where the System and/or Services include access to the Internet) where ESS reasonably believes such access or dissemination would breach any of the terms of this Clause 12.6.
- 12.7 If the Customer fails to comply with Clauses 12.5 and 12.6 ESS may remove or block access to any relevant material or suspend access to the System and/or Services and may refuse to restore the System and/or Services until it receives an acceptable assurance from the Customer that there will be no such further breach.
- 12.8 For the avoidance of doubt ESS has no obligation to the Customer to monitor, and will have no liability for, the contents of any communications transmitted by virtue of the Services.
- 12.9 The Customer acknowledges that ESS does not control the transfer of data over the internet and that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities. ESS shall not be responsible for any delays, delivery failures or other damage resulting from such problems.
- 12.10 The Customer acknowledges that ESS uses Third Party software to provide the Software Services. The Customer hereby agrees to comply with the relevant Third Party provider's terms ("Third Party Terms") and acceptable use policy in accordance with Schedule D – Third Party Terms. These Third-Party Terms are incorporated into this Agreement by reference and shall apply only to the extent applicable to the Customer's use of the relevant third-party components, features, or functionalities.
- 12.11 The Customer shall indemnify and hold ESS harmless against any loss or damage which it may suffer or incur as a result of the Customer's breach if any Third Party Terms or the acceptable use policy howsoever arising.
- 12.12 ESS may treat the Customer's breach of any Third Party Terms as a breach of the Agreement.
- 12.13 The acceptable use policy is attached as Schedule B.

### **13. Consents**

- 13.1 The Customer shall be solely responsible for and liable in respect of any obligation upon it to obtain any government or other consent or licence for the use of any part of the System.

### **14. Supply to a Public Authority**

- 14.1 The provisions of this Clause 14 shall apply only to the supply of the System or Services to a Public Authority.
- 14.2 The Customer shall be entitled to terminate the Agreement and to recover from ESS, subject to Clause 14, the amount of any direct loss resulting from such determination if ESS has offered, given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having

done or forborne to do any action in relation to the obtaining or execution of the Agreement or any other agreement with the Customer or for showing or forbearing to show favour or disfavour to any person in relation to the Agreement or any other agreement with the Customer or if any like acts shall have been done by any person employed by it or acting on its behalf (with the knowledge of ESS) or if in relation to any agreement with the Customer, ESS or any person employed by it or acting on its behalf shall have committed any offence under The Bribery Act 2010 or shall have given any fee or reward the receipt of which is an offence under subsection (2) of Section 117 of the Local Government Act 1972.

- 14.3 ESS shall indemnify the Customer against all claims and proceedings made or brought against the Customer in respect of any breach referred to in Clause 14.2 provided that such breach was entirely due to ESS or to one within its control or influence and that the Customer mitigates all losses suffered in connection with this indemnity.

## **15. Intellectual Property Rights**

- 15.1 No Intellectual Property Rights of whatever nature in respect of any part of the System or any matter related to the Services shall vest or be deemed to vest in the Customer. The Customer acknowledges and agrees that all Intellectual Property Rights:
- (a) subsisting in the System or the Services or any part of them from time to time; and/or
  - (b) created by or on behalf of ESS or its Third Party licensors in carrying out its obligations or exercising its rights under or in connection with the Agreement, shall at all times vest in and be owned by ESS and/or its Third Party licensors.
- 15.2 ESS, at its own expense, will defend and indemnify the Customer against any reasonable costs and expenses arising out of any claim that any part of the System or the Services infringe Intellectual Property Rights of a Third Party. For the avoidance of doubt, the indemnity in this Clause 15.2 shall not apply where the claim in question is attributable to possession or use of the System or Services by the Customer other than in accordance with the terms of the Agreement, use of the System or Services in combination with any hardware or software not supplied or specified by ESS if the infringement would have been avoided by the use of the System or Services not so combined, or use of a non-current release of the System. If any Third Party makes a claim, or notifies an intention to make a claim against the Customer, ESS's obligations under this clause are conditional on the Customer:
- 15.2.1 as soon as reasonably practicable, giving written notice of the claim to ESS, specifying the nature of the claim in reasonable detail;
  - 15.2.2 not making any admission of liability, agreement or compromise in relation to the claim without the prior written consent of ESS (such consent not be unreasonably conditioned, withheld or delayed);
  - 15.2.3 Giving ESS and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable ESS and its professional advisers to examine them and to take copies (at ESS's expense) for the purpose of assessing the claim; and
  - 15.2.4 Subject to ESS providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as ESS may reasonably request to avoid, dispute, compromise or defend the claim.
- 15.3 Where a Third Party Intellectual Property Rights claim is pending or has arisen ESS may at its sole discretion either secure the Customer's right to use the System or Services or modify it to remove the infringement or (where the infringement cannot be remedied) terminate the Agreement forthwith, recover the System and repay a reasonable proportion of the moneys received hereunder.
- 15.4 ESS shall, however, at all times use reasonable endeavours to provide the Customer with fully operational and functionally equivalent Software.

- 15.5 This clause 15 constitutes the Customer's exclusive remedy and ESS's only liability in respect of claims of infringement or alleged infringement by the Software of the intellectual property rights of any Third Party.

## **16. Data Protection**

- 16.1 Within this Clause the terms controller, data subject, personal data, personal data breach, process ("processed" to be construed accordingly) and processor shall have the same meanings as in the UK GDPR. With respect to the parties' rights and obligations under the Agreement, the parties acknowledge that in relation to any personal data, the Customer is a controller and ESS is a processor.
- 16.2 The parties acknowledge their respective obligations under the UK GDPR and shall give each other such assistance as is reasonable to enable each other to comply with such obligations, however, for the avoidance of doubt the Customer agrees that where ESS has satisfied a contractual obligation under the Agreement, then such satisfaction of the contractual obligation is deemed to satisfy the same or similar requirement under the UK GDPR.
- 16.3 The Customer warrants, represents and undertakes to ESS that:
- 16.3.1 the means by which personal data is acquired and the processing of personal data by the controller shall be lawful;
- 16.3.2 any instruction given to ESS in relation to the processing of the personal data shall be lawful;
- 16.3.3 it is solely responsible for the accuracy of the personal data;
- 16.3.4 if processing by the processor involves any "special" or "sensitive" categories of personal data (as defined under UK GDPR), it has collected such personal data in accordance with UK GDPR;
- 16.3.5 it shall ensure that data subjects receive a privacy notice compliant with UK GDPR; and
- 16.3.6 it shall respond in a reasonable time and to the extent reasonably practicable to enquiries by data subjects regarding the processing of the personal data by the Customer, and to give appropriate instructions to ESS in a timely manner.
- 16.4 The parties confirm that Schedule A contains the necessary information in relation to the subject matter and duration of the processing; the nature and purpose of the processing; the type of personal data; the categories of data subjects; the obligations and rights of the Customer.
- 16.5 Where ESS processes personal data under or in connection with the Agreement, ESS shall:
- 16.5.1 save as required otherwise by law, only process such personal data as is necessary to perform its obligations under the Agreement, and only in accordance with the Customer's documented instructions;
- 16.5.2 put in place appropriate technical and organisational measures to meet its own obligations under the UK GDPR and which the Customer agrees are appropriate measures;
- 16.5.3 ensure ESS staff who will have access to personal data are subject to appropriate confidentiality obligations.
- 16.5.4 be entitled to engage sub-processors to process personal data subject to ESS ensuring that equivalent requirements to those set out in this clause are imposed on any sub-processor(s), ESS remaining fully liable to the Customer for the performance of the sub-processor's obligations and where applicable, providing to the Customer reasonable prior notice of any addition, removal or replacement of any such sub-processors;
- 16.5.5 not process or transfer personal data outside the European Economic Area ("EEA") without the prior documented consent of the Customer (which consent shall not be unreasonably withheld or delayed) except in either or both of the following circumstances:
- 16.5.5.1 for the purposes of developing, testing, implementing, supporting or providing the Software and/or Services as appropriate where the data is processed or transferred by a member of the ParentPay Group; and
- 16.5.5.2 where such transfer is strictly necessary to maintain the integrity or security of the platform or service. For example, cloud based denial-of-service mitigation platforms;

- 16.5.6 have in place the appropriate technical and organisational security measures to protect the personal data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access. The Customer confirms that it has reviewed those security measures and concluded that they are appropriate;
- 16.5.7 notify the Customer without undue delay after becoming aware of any personal data breach involving personal data, taking into account the nature of processing and the information available to ESS;
- 16.5.8 take appropriate technical and organisational measures, insofar as is possible, to assist the Customer in responding to requests for data subjects for access to or rectification, erasure or portability of personal data or for restriction of processing or objections to processing of personal data (but ESS will not itself respond to any such data subject request except on written instructions from the Customer). Furthermore, ESS will, upon the request of the Customer, provide assistance to the Customer relating to Customer's security; impact assessment; data breach reporting requirements; and data protection or data privacy authority consultation obligations under the UK GDPR taking into account the information available to ESS. ESS may charge the Customer its reasonable costs (or the rates otherwise agreed between the parties) for its time spent and expenses incurred in providing the Customer with co-operation and assistance as required by this Clause;
- 16.5.9 make available to the Customer such information as the Customer reasonably requests and ESS is reasonably able to provide, and, permit and contribute to such audits, including inspections, conducted by the Customer (or the Customer's appointed auditors), as is necessary to demonstrate ESS's compliance with the UK GDPR. The Customer will give reasonable notice of any audit and will be fully liable for any associated costs (including those of ESS); and
- 16.5.10 save as may be required by law, and unless otherwise agreed in the Exit Plan, at the Customer's cost and option either delete or return the personal data to the Customer on expiry or termination of the Agreement provided always that nothing in this Clause shall oblige ESS to provide assistance which does not relate directly to the Services performed pursuant to the Agreement.
- 16.6 ESS shall inform the Customer in writing if, in ESS's opinion, an instruction from the Customer infringes the UK GDPR but only in relation to a breach of General Data Protection Regulation ((EU 2016/679)) and/or other Union or Member State data protection provisions and not jurisdictions outside of these areas. However, the Customer acknowledges that:
  - 16.6.1 any information ESS provides is not legal advice or guidance in any way whatsoever, and that ESS makes no warranty or representation regarding the information (express or implied);
  - 16.6.2 this Clause shall not relieve the Customer of its obligation to ensure that all instructions to ESS comply with all applicable legislation, including all UK GDPR; and
  - 16.6.3 ESS may charge the Customer its reasonable costs (or the rates otherwise agreed between the parties) for its time spent and expenses incurred in providing the Customer with co-operation and assistance as required by this Clause.
- 16.7 In order to fulfil any UK government (which will include the Senedd or the Scottish Parliament for the purposes of this clause) requests made in accordance with UK GDPR, ESS may release data to the UK government or any party authorised by the UK government on receipt of a lawful written request from the same but where practicable ESS shall remove any data fields which enable anyone to identify an individual data subject using such data.
- 16.8 Notwithstanding anything to the contrary in the Agreement, if any of the following occur:
  - 16.8.1 any changes/modifications to the UK GDPR (including in connection with the withdrawal of the United Kingdom from the European Union and/or the EEA) including the requirement to amend, update, modify or replace any systems ESS use to process the personal data;
  - 16.8.2 any new, clarified or amended guidance or policies issued by a supervisory authority; or,

16.8.3 any direction or instruction issued by a supervisory authority (whether relating to the Customer or ESS in respect of the Services (including any processing of the personal data) then any increased effort or costs incurred by ESS in association with the aforementioned shall be additionally chargeable to the Customer.

16.9 The Customer shall indemnify and keep indemnified ESS against any liability, fines, claims, demands, expenses and costs (including legal fees) arising as a result of any breach of the UK GDPR by the Customer, or ESS acting in accordance with any instruction, policy or procedure of the Customer.

## **17. Restriction**

17.1 Neither party shall at any time prior to or within twelve (12) months of termination or expiry of the Agreement solicit the employment of any person who is employed by the other in the course of providing, assisting or developing the Services, unless first agreed between the parties.

## **18. Force Majeure**

18.1 ESS shall not have any liability to the Customer if it is prevented from or delayed in performing its obligations under this Agreement due to acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, disease, epidemic and pandemic, or default of suppliers or sub-contractors.

## **19. Confidentiality**

19.1 Each party shall hold in confidence all Confidential Information of the other party.

19.2 Neither party shall disclose to any Third Party, without the prior express written permission of the other party, any Confidential Information in relation to that other party.

19.3 The provisions of Clauses 19.1 and 19.2 shall not apply to any information which:

(a) is or becomes public knowledge other than by breach of this Clause;

(b) is already in the possession of a party without restriction in relation to disclosure before the date of its receipt from the other party; or

(c) is received from a Third Party (who, for the avoidance of doubt, is not a member of the receiving party's group) who lawfully acquired or developed it and who is under no obligation restricting its disclosure.

19.4 A party may disclose Confidential Information in relation to the other party:

(a) to those of its officers, employees, professional advisers, agents or sub-contractors as may be reasonably necessary for the purpose of fulfilling its obligations under the Agreement or, in the case of professional advisors, for use in their professional capacity, provided that before any such disclosure that party shall make such officers, employees, professional advisers, agents or sub-contractors aware of its obligations of confidentiality under the Agreement and shall at all times procure compliance by those persons with them; or

(b) where such disclosure is required by any law, court order or regulatory authority.

19.5 Without prejudice to the other rights of the disclosing party, in the event of an unauthorised disclosure or use of its Confidential Information occurring directly or indirectly through disclosure made to the receiving party, the receiving party shall (as soon as it becomes aware of the same) notify the disclosing party of such unauthorised

disclosure and use all reasonable endeavours to assist the disclosing party in recovering and preventing the use of, dissemination, sale or other disposal of such Confidential Information.

- 19.6 The Customer acknowledges and agrees that ESS and the ParentPay Group shall be entitled to refer to the Customer and its relationship with ESS in marketing materials and on ESS's and the ParentPay Group's websites.

## **20. Notices**

- 20.1 Any notice to be served to the Customer under the Agreement shall be in writing to the address for the party as detailed in the Order Form or ESS's portal. Any notice to be served to ESS under the Agreement shall be in writing to the following address: Head of Legal and Contracts, Education Software Solutions Limited, 11 Kingsley Lodge, 13 New Cavendish Street, London W1G 9UG.

## **21. General**

- 21.1 Save as set out in Clause 19.6, no press or other public statement shall be made in respect of the Agreement without the prior written consent of the other party (consent not to be unreasonably withheld).
- 21.2 Subject to clause 22.15, no variation of the Agreement shall be binding unless made in writing and executed by the parties.
- 21.3 The Agreement together with any documents referred to in the Agreement contains the entire agreement and understanding of the parties relating to the subject matter of the Agreement and supersedes all prior agreements, understandings, representations (whether negligent or innocent) or arrangements (oral or written).
- 21.4 Each party acknowledges and agrees that it has not relied on any representation made by the other party or any arrangement, understanding or agreement (whether negligent, innocent, written or oral) with the other party that is not expressly set out or referred to in the Agreement.
- 21.5 The parties respectively shall ensure that there are done and executed all acts, documents and other things as may reasonably be required for securing each of the rights and obligations of the parties under the Agreement.
- 21.6 The Agreement may be entered into in any number of counterparts each of which shall be deemed to be an original and which together shall comprise the Agreement.
- 21.7 Save as provided in the Agreement, the Customer shall not be entitled to sub-licence, assign or otherwise transfer its rights or obligations under the Agreement without the prior written consent of ESS (not to be unreasonably withheld). ESS is entitled to assign or otherwise transfer its rights or obligations under the Agreement to any other member of the ParentPay Group for the purposes of corporate restructuring or amalgamation
- 21.8 The Agreement shall be binding on and shall continue for the benefit of the successors and permitted assigns (as the case may be) of each of the parties hereto.
- 21.9 No whole or partial failure to exercise and no delay in exercising any right hereunder shall operate as a final waiver thereof unless expressed as such in writing.
- 21.10 The rights and remedies provided in the Agreement are cumulative and not exclusive of any rights or remedies otherwise provided by law.
- 21.11 The parties do not intend any Third Party to have the right to enforce any provision of the Agreement under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 21.12 The Customer agrees to provide ESS, without charge, all computer time, resources, accommodation, skilled staff and telecommunications as reasonably required by ESS in the provision of the Services.

- 21.13 If any part of the Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions shall not be prejudiced.
- 21.14 In addition to execution or amendment in writing by handwritten signature, the parties hereby agree that the Agreement and any variations thereto may be executed by:
- (a) an electronic or digital signature; or
  - (b) payment of an invoice by the Customer.
- 21.15 Any references herein to "in writing" shall include all the above methods of execution. The parties agree that: any electronic signatures appearing on the Agreement, or evidence of payment of the invoice has the same legal status as handwritten signatures for the purposes of validity, enforceability and admissibility.

## **22 Freedom of Information**

- 22.1 "Confidential Information" in this Clause means commercially sensitive information (including, without limitation, information relating to ESS's business, products, services and pricing of a confidential nature which ESS discloses to the Customer whether before, during or after the period of the Agreement.
- 22.2 If the Customer receives a request under the Freedom of Information Act 2000 (the "Act") which relates to any of the Confidential Information the Customer shall consult ESS and consider ESS's representations concerning the said request.
- 22.3 In reaching a decision on disclosure the Customer shall take into account its obligations under the Agreement and the representations made in connection with the request by ESS but the decision of the Customer, acting always in accordance with the Act, shall be final.

## **23 Right to Audit**

- 23.1 In relation to the Software and/or Services, no more often than once in any 12-month period, ESS may, at its expense, upon reasonable notice and during business hours, audit the number of copies of the Software and Customer's compliance with the applicable usage limitations set forth by the Agreement. In relation to the Software and/or Services, ESS at its own expense may continually monitor and audit the number of copies and usage to determine whether the number of copies and/or usage are outside of the numbers and/or limits set in the Order Form or ESS's portal. The auditors shall protect the confidentiality of the Customer's information and abide by the Customer's reasonable security regulations. If the use of the Software and or/Services are found to be greater than that for which the Customer is entitled under the Agreement, the Customer shall pay any additional amounts due based upon the prices as applicable at the time.

## **24 Law and Jurisdiction**

- 24.1 This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England and Wales in respect of the same.

## Agreement for the Supply and Maintenance of a Further, Higher and Adult Education Student Management Information Solution, including any modules thereof.

### Schedule A – Personal Data

| Processing Activity Subject Matter            | Nature and Purpose of the Processing Activity                                                                                                                                                                                                                                               | Duration of the Processing Activity                                                                                                                                                                                         | Type of Personal Data Processed *                                                                                                                                                                 | Categories of Data Subjects                                                                                                | Obligations and Rights of the Customer                                                      |
|-----------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| Support                                       | Storage of customer contact data relating to support incidents and queries                                                                                                                                                                                                                  | Information relating to support incidents is to be held within ServiceNow for 6 years + current year.<br><br>This information does not include screenshots or data files.                                                   | Typically, the information required would be, but not limited to:<br><ul style="list-style-type: none"><li>Contact name</li><li>Telephone number</li><li>Position</li><li>Email address</li></ul> | May include but not limited to:<br><ul style="list-style-type: none"><li>Support provider</li><li>Customer staff</li></ul> | Clause 16 of the Terms and Conditions refers to the obligations and rights of the Customer. |
| Conversion and implementation and offboarding | Storage of customer data for conversion or implementation or offboarding purposes.                                                                                                                                                                                                          | Customer data files will be destroyed within:<br><ul style="list-style-type: none"><li>180 days of the Customer go-live for data conversion work.</li><li>180 days of the agreement end date for offboarding work</li></ul> | May include but not limited to:<br><ul style="list-style-type: none"><li>Name, date of birth, gender, ethnicity, nationality, religion</li><li>Address, telephone and email details</li></ul>     | May include but not limited to:<br><ul style="list-style-type: none"><li>Students</li><li>Customer staff</li></ul>         | Clause 16 of the Terms and Conditions refers to the obligations and rights of the Customer. |
| Hosting (where applicable)                    | Storage of customer data for the provision of any Hosted service, and associated backup/data recovery processes.                                                                                                                                                                            | Customer data will be deleted within a maximum of 60 days after termination of a contract. During the first 28 days of this period customers can request a copy of their data.                                              | May include but not limited to:<br><ul style="list-style-type: none"><li>Name, date of birth, gender, ethnicity, nationality, religion</li><li>Address, telephone and email details</li></ul>     | May include but not limited to:<br><ul style="list-style-type: none"><li>Students</li><li>Customer staff</li></ul>         | Clause 16 of the Terms and Conditions refers to the obligations and rights of the Customer. |
| DevOps                                        | Review and implementation of the storage structures, indexing and partitioning to review live performance processes and archiving policies. This review may involve 3rd Parties.<br><br>Customer data will be indexed, potentially moved between partitioning tables and storage locations. | The reviews will occur regularly, any temporary movement and storage of data will be removed at the end of the review process                                                                                               | May include but not limited to:<br><ul style="list-style-type: none"><li>Name, date of birth, gender, ethnicity, nationality, religion</li><li>Address, telephone, and email details</li></ul>    | May include but not limited to:<br><ul style="list-style-type: none"><li>Students</li><li>Customer staff</li></ul>         | Clause 16 of the Terms and Conditions refers to the obligations and rights of the Customer. |

\* Due to the customisable nature of UNIT-e, CEDAR and Pathways that allows customers to define the type of Personal Data and content the exemplar list is only an example and is not, therefore, exhaustive.

## Approved Non-EEA Sub-Processors

| Destination(s) / Location(s) | Recipient(s)                                                                                                                                         | Conditions for Transfer |
|------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| India                        | ESS (India) whose registered office is at:<br><br>6th Floor<br>Pentagon P-2<br>Magarpatta City<br>Hadapsar<br>Pune<br>Maharashtra<br>411013<br>India | None                    |

## **Agreement for the Supply and Maintenance of a Further, Higher and Adult Education Student Management Information Solution, including any modules thereof.**

### **Schedule B – Acceptable Use Policy**

#### **1. Introduction**

- 1.1 This Acceptable Use Policy (the "Policy") is incorporated into, and forms part of, the Agreement for the Supply and Maintenance of a Further, Higher and Adult Education Student Management Information Solution (the "Agreement") entered into between the Customer and ESS.
- 1.2 Capitalised terms used in this Policy, unless otherwise defined herein, shall have the meaning ascribed to them in the Agreement. In the event of a conflict between this Policy and the Agreement, the provisions of this Policy shall prevail, subject always to applicable law.
- 1.3 The Customer's use of ESS Supplied Software, Software Maintenance & Hosted Software Services (the "Services"), or any use by persons authorised by the Customer, is subject to this Policy, and by using the Services, the Customer agrees to comply with it.

#### **2. Scope of Use**

- 2.1 The Supplied Software Licence permits an unlimited number of Back-Office Administration Users, defined as personnel authorised to access the client/server applications directly on the Customer's network or via a virtual private network or remote desktop protocol for administrative purposes. Exceeding this limit without ESS's prior written approval is prohibited and may result in additional charges or adjustments to the Licence terms.
- 2.2 If licensed under this Agreement, the Pathways: Applications module licences up to [xxx] applicants per annum. Usage exceeding this limit requires ESS's prior written consent and may incur additional charges or necessitate amendments to the Licence.

#### **3. Acceptable Use**

- 3.1 The Customer shall, and shall procure that all authorised Users, use the Services strictly in accordance with the Agreement and this Policy.
- 3.2 The Customer and the Customer's Users shall not:
  - 3.2.1 Upload personal data beyond what is reasonably necessary for the operation of the Services, including data uploaded as part of student applications.
  - 3.2.2 Infringe ESS's intellectual property rights or those of any third party.
  - 3.2.3 Use the Services for unlawful, harmful, defamatory, or otherwise inappropriate purposes, or for the transmission of malicious software.
  - 3.2.4 Breach applicable law or regulations in connection with the Customer's use of the Services.
- 3.3 ESS shall not be liable for any content uploaded to the Services by the Customer or the Customer's Users.
- 3.4 ESS reserve the right to remove any non-compliant content, and the Customer shall cooperate fully with any such request.

#### **4. Data Storage for Application Documents**

- 4.1 If the Pathways: Applications module is licensed under this Agreement, the Customer agrees to the following:
  - 4.1.1 Uploaded documents related to student applications shall not exceed 100GB, or as otherwise agreed in writing between the parties.
  - 4.1.2 The Customer shall retain uploaded documents only for as long as necessary to complete the application process or to comply with applicable legal or regulatory requirements. Documents must otherwise be deleted or archived.
- 4.2 ESS reserve the right to monitor storage usage. Should the Customer exceed agreed limits, ESS may require remedial actions, including additional charges or reductions in data storage.

#### **5. Monitoring and Compliance**

- 5.1 ESS shall be entitled to monitor and audit the number of Back-Office Administration Users, FTE usage, and storage usage for compliance with this Policy. The Customer agrees to cooperate fully with such audits and provide relevant information as reasonably requested.
- 5.2 Where usage limits are exceeded or unauthorised activities occur, ESS shall notify the Customer, and the Customer shall remedy such non-compliance within 30 days or as otherwise agreed. Continued non-compliance may result in additional charges, Licence amendments, or suspension of access to the Services.

#### **6. Fair Use**

- 6.1 The Customer agree to adhere to fair use limits for software-as-a-service or cloud-based Services, as specified in the Agreement. Excessive usage causing degradation of service performance may result in additional charges or service restrictions.
- 6.2 Support services must be used in good faith for genuine issues only. Overuse or misuse may result in additional charges, calculated on a time-and-materials basis, or in adjusted support terms.

#### **7. Consequences of Non-Compliance**

- 7.1 Failure to comply with this Policy may result in:
  - 7.1.1 Suspension or termination of access to the Services.
  - 7.1.2 Additional charges or Licence adjustments to remedy the breach.
  - 7.1.3 Legal remedies to enforce ESS's rights under the Agreement.

**Agreement for the Supply and Maintenance of a Further, Higher and Adult Education Student Management Information Solution, including any modules thereof.**

**Schedule C – Service Level**

**1. Standard Terms & Definitions**

- 1.1 Education Software Solutions Limited (ESS) will provide a Software Maintenance service for each of its provided products, for the purpose of diagnosis and resolution of problems arising in the operation of those products.
- 1.2 This service is only available to Customers with a current application Software Maintenance agreement. The Software should be at a supported version as indicated in the Supported Platforms document. The software should be installed on approved equipment and hosted on supported environments.
- 1.3 The terms and conditions for Software Maintenance are defined in the Agreement as detailed in Section 6.

**2. Application Support**

- 2.1 Covers problems with the operation of each of the Application Software modules that may be preventing the Customer from achieving the functionality expected of that module. Exceptions to the cover can be found in section 13.

**3. Support Desk Opening Hours**

- 3.1 The Support Desk is available during the hours of 9.00am to 5.30pm each working day excluding Saturdays, Sundays, and UK (England) Bank Holidays. The Support Desk will be closed between December 25th and January 1st inclusive. ESS will notify the Customer of any other periods of closure with a minimum of 2 months' notice.

**4. Definition & Levels of Service**

- 4.1 Provided the Customer follows the calling routine detailed below, ESS will take all reasonable steps to respond to support calls:
  - 4.1.1 Priority 1 & 2 within 4 working hours
  - 4.1.2 Priority 3 within 8 working hours
- 4.2 To provide a solution or work-around:
  - 4.2.1 Priority 1 & 2 within 8 working hours
  - 4.2.2 Priority 3 within 24 working hours

- 4.3 This definition of service cannot be applied to calls logged via email due to the un-predictable nature of email services.

## **5. Calling Routine**

- 5.1 Before calling the Support Desk, we would advise you to check both the FAQ area as well as details about recent patches on the Support portal accessible at <https://customer.support-ess.com>

- 5.2 The Support Desk can be contacted via any of these methods:

5.2.1 Telephone : +44 (0) 333 0150 212

5.2.2 Email : [support@educationsoftwaresolutions.co.uk](mailto:support@educationsoftwaresolutions.co.uk)

- 5.3 Regardless of the method of contact, all calls are logged onto our call management system, with one of the following priorities based on the information provided by the Customer.

## **6. Call Priorities**

### **6.1 Priority 1**

6.1.1 Complete System/ Software Failure

6.1.2 Affecting business critical function

6.1.3 Ongoing system problems

### **6.2 Priority 2**

6.2.1 Urgent but not affecting the whole system or may affect a business-critical function in the near future.

### **6.3 Priority 3**

6.3.1 Not affecting business critical function, call back next day.

### **6.4 Priority 4**

6.4.1 Functionality questions, documentation issues, Non Urgent

## **7. Detailed Breakdown on Priorities**

### **7.1 Priority 1**

7.1.1 This is the highest priority level that can be assigned to a support call. This indicates that the system is down, totally inoperable and currently no work-around can be found.

7.1.2 The impact on your organisation is acute, and business critical functions (i.e. statutory returns, printing cheques etc) cannot proceed until the problem is resolved. This is for live databases only.

7.1.3 Please ensure your support call log clearly states that your problem is Priority 1.

## 7.2 Support Desk Response to Priority 1

7.2.1 On receipt of a call, a Priority 1 problem will be logged with the highest priority, taking precedence over all other logged calls, and will be dealt with as soon as a Support Analyst becomes available.

7.2.2 Please note: If the named contact at the institution cannot be reached after two attempts a Priority 1 problem will automatically be moved to Priority 2

## 7.3 Priority 2

7.3.1 A Priority 2 problem is urgent but does not affect the whole system, or a business critical function.

7.3.2 The nature of the problem may be such that the error could affect a business critical function in the near future (i.e. less than a week). This is for live databases only.

## 7.4 Support Desk Response to Priority 2

7.4.1 All Priority 2 problems will be treated as highest priority (following Priority 1).

7.4.2 Please note: If the named contact cannot be reached after two attempts a Priority 2 problem will automatically be moved to Priority 3.

## 7.5 Priority 3

7.5.1 A Priority 3 problem needs a reasonably fast turnaround, but does not threaten any business critical functions (i.e. next day response).

## 7.6 Support Desk Response to Priority 3

7.6.1 A Priority 3 call will be logged on the Support Desk as lower priority to Priority 2 and will be dealt with in order on receipt of the Support Call log.

## 7.7 Priority 4

7.7.1 A Priority 4 problem is one which the Support Desk needs to be aware of but does not require immediate attention.

7.7.2 Priority 4 problems would include documentation issues, and questions on the functions of the system.

7.7.3 Please be aware that the Support Desk is not to be used for training, and all training calls will be referred to your account manager for training to be arranged.

## 7.8 Support Desk Response to Priority 4

7.8.1 As the lowest priority these calls will be dealt with after Severities 1 – 3.

## 8. Other Information

- 8.1 Where a patch or fix is required to the Software the overall solution time will be dictated by the priority of the problem, and if the fix is to be immediate or included in a future production release of the Software.
- 8.2 Please try not to ask for a specific person on the Support Desk. Let the first available person take your call and deal with it. They will have access to any other individuals who may be needed.

## **9. Escalation Procedure**

- 9.1 If you are having a problem with the standard Support Desk procedure, your Account Manager should be the first point of escalation

## **10. Additional Services**

- 10.1 Additional services will be charged at the prevailing rate per hour or part hour thereof (excluding VAT, travel and subsistence costs). All activities which are outside the scope of the Support Desk services including and without limitation are as follows:
- 10.1.1 Software installation unless specified.
- 10.1.2 Initial set up of data.
- 10.1.3 Transfer of programs and data from one computer to another other than as specified.
- 10.1.4 Incorporation of amendments at the request of the Customer which are outside of the scope of the Support Services.
- 10.1.5 Recovery from data corruption or loss unless such data loss is caused by a breach by ESS of its obligations under this agreement. The Customer agrees to make back-ups of its data at reasonable intervals (daily, weekly, and monthly) to enable ESS to recover data.
- 10.1.6 Training.
- 10.1.7 Performing Software upgrades either remotely or on-site, however this can be provided by a Managed Service agreement.
- 10.1.8 System maintenance and housekeeping, including and without limitation, data backups, copying of databases e.g. Live to Test, monitoring of storage space and system resource, however this can be provided by a Managed Service agreement.
- 10.1.9 All support for and any changes to any bespoke work performed for the Customer as part of any installation or subsequent consultancy, including and without limitation, interface integration developed with systems and or applications not supplied by ESS, and bespoke reports and interfaces.

## **11. Technical Support**

- 11.1 Technical Support is outside the definitions of this SLA and can be covered if required by a Managed Service contract.

## **12. Customer Obligations**

- 12.1 The Customer will:

- 12.1.1 Within 30 days of the date of the Software Maintenance Agreement, designate an appropriately qualified primary contact who will within a reasonable period be trained through ESS training and consultancy services in the operation of the System. The primary contact will be authorised by the Customer to request Support Desk services and inform ESS accordingly. Only this contact shall be entitled to request Support Desk services until such time that ESS agrees in writing to the designation of secondary contacts.
- 12.1.2 Ensure that all primary and secondary contacts are trained in the operation of the System as above. If ESS declares any contact has fallen below an acceptable standard of knowledge or expertise, the Customer will act immediately to remedy the situation, failing which ESS shall not be obliged to provide Support Desk services via that contact.
- 12.1.3 Ensure that only properly trained personnel use the System, and the Support Desk.
- 12.1.4 Ensure that appropriate access to the system is provided on request, using approved remote access methods, as outlined in the ESS Supported Platforms guidance notes.

### **13. Exclusions**

- 13.1 Support of accessories, attachments, machines, or other services not furnished by ESS, or Software and equipment not supplied with a support agreement by ESS.
- 13.2 Support of 3rd party data extraction tools including ODBC tools, making specification changes, or performing services connected with re-location of the equipment, or adding or removing accessories, attachments, or other devices.
- 13.3 Support of bespoke Software that has been built by the Customer or an ESS Consultant from the core application or using one of the Software development tools.
- 13.4 This does not affect the support given to the Customer with respect to problems arising from the operation of the Software development suite.
- 13.5 If ESS is asked to restore the System to good operating condition, this work will be carried out at the Customer's expense and charged at ESS's then current time and materials rates and terms.

## Agreement for the Supply and Maintenance of a Further, Higher and Adult Education Student Management Information Solution, including any modules thereof.

### Schedule D – Third Party

#### 1. AFD Software

IMPORTANT! This agreement, together with the documents referred to in it, sets out the terms and conditions (the "Agreement") which govern Your use of the Product as defined below. It constitutes the entire agreement between the parties and supersedes all prior verbal and written discussion, agreements, understandings, representations, conditions and all other communications between the parties in relation to this matter. Please read the Agreement carefully before entering the Site or subscribing to or making use of the Product. You may wish to retain this Agreement for Your future reference.

The Product is not sold; it is licensed. The Product is and remains the property of AFD Software Ltd ("the Company") or other third parties and is protected by copyright laws and international copyright treaties.

By in any way installing, copying or otherwise using the Product or any part thereof, You agree to be bound by the terms of this Agreement. If You do not agree to the terms of this Agreement, do not install or otherwise and in any way use the Product or any part thereof but return it to Your supplier within fifteen (15) days for a full refund.

#### 1. DEFINITIONS

In this Agreement the following words and expressions shall have the following meanings:

**"Annual License Renewal"** means the latest version of the Product or any part of it;

**"Annual License Renewal Fee"** means the annual license renewal fee (if any) payable by You pursuant to clause 3.1 as published by the Company in respect to the Product from time to time;

**"Authorised User"** shall mean any individual who is employed or engaged under contract as part of Your staff, whether on a temporary, permanent, or visiting basis and whom You wish to authorise to have access to the Product or any part thereof;

**"Bureau Services"** shall mean all services operated by the Licensee in respect of the processing of information or data which is owned or controlled by another person, company, organisation or body, including (without limitation) companies in the same group as the Licensee or any other associated organisation.

**"Computer"** means any Computer, terminal or workstation owned or used by You;

**"Effective Date"** means the date of commencement of this License as printed on the License Certificate;

**"First Year Data License Fee"** means the data license fee (if any) payable by You pursuant to clause 3.1 as published by the Company in respect to the Product from time to time;

**"Initial License Period"** means the period of twelve months from the Effective Date or such other period as may be notified by the Company to You in the License Certificate or Appendix to this Agreement or otherwise;

**"Insolvency"** means in respect a Licensee the presentation of a petition for winding-up, bankruptcy, or administration or the convening of a meeting for the purpose of considering the same, the convening by the Licensee of a meeting of its creditors, or the appointment of a trustee, receiver, administrative receiver or similar officer in respect of all or any part of the business and assets of the Licensee;

**"Intellectual Property"** means the text, graphics, images and other material, and the organisation thereof and trade marks, software, copyrights, patents, trade secrets, processes and methods, know-how and other intellectual property rights embodied in or incorporated in the Product, and any tangible copies and expressions thereof;

**"License"** means the license granted to You pursuant to this Agreement and the License Certificate;

**"License Certificate"** means the certificate sent or to be sent by the Company to You granting a license to You to use the Product in accordance with this Agreement and references in this Agreement to the "Agreement" shall include the License Certificate;

**"Licensed Computers"** means the number of Computers on which the Product may be accessed pursuant to this Agreement as set out in the License Certificate;

**"License Period"** means the Initial License Period and thereafter whilst this Agreement is continuing;

**"Monthly Fee"** means the fee payable by You pursuant to clause 3.3 as published by the Company in respect to the Product from time to time;

**"Network"** means any electronic communication between two or more Computer terminals linked together through Computer software and/or telecommunication satellite cable or broadcasting services or through any other medium now known or hereinafter invented;

**"Person"** means any person, firm, company, institution, organisation or other legal entity throughout the world;

**"Product"** means the product(s) Licensed by the Company pursuant to this Agreement as set out on the License Certificate(s) and shall include all Computer software, the data supplied with it, any associated media, electronic documentation and printed materials and if applicable any Site;

**"Product Update"** means an updated version of the Product or any part of it;

**"Program License Fee"** means the fee (if any) payable by You pursuant to clause 3.1 as published by the Company in respect to the Product from time to time;

**"Site"** means any website supporting the Product;

**"You"** or **"Your"** means the Licensee under this Agreement as stated on the License Certificate.

## 2. GRANT OF LICENSE

**2.1** The Company hereby grants to You the non-exclusive right for the License Period to install one copy of the Product on the Licensed Computers only on the terms and subject to the conditions set out in this Agreement and (if the License Certificate so states) the Royal Mail Terms which (if applicable) may be obtained from or viewed at the website address given on the License Certificate. The Product may not be accessed and used or shared between or in any way accessed and used from, either on or off Network, any Computers, other than the Licensed Computers irrespective of whether such access or use is concurrent.

**2.2** If You intend to install, use or access the Product on or from more than the number of Licensed Computers or to share the Product between or in any way access it from, either on or off Network, more than the Licensed Computers then separate License Agreement(s) relating to the number of such other Computers intended to carry the Product or any part thereof must first be entered into with the Company.

**2.3** The Company shall be entitled to sell or grant Licenses of the Product or any part thereof to any Person and nothing herein contained shall prevent the Company from compiling contributing to, publishing, marketing or licensing any other product in any way similar to the Product.

**2.4** You shall have the right to load and store the Product on the Licensed Computers only and subject to the provisions of this Agreement to give access from the Licensed Computers to the Product only to Authorised Users.

## 3. LICENSE FEES

**3.1** In consideration of the License granted to You under this Agreement You shall, pay to the Company on receipt of the invoice in respect thereto the Program License Fee, the First Year Data License Fee and on each Annual License Renewal the Annual License Renewal Fee(s) in each case at the Company's prevailing price for such fees in respect of the Product from time to time.

**3.2** If elected by You prior to the commencement of this Agreement instead of the payments set out in clause 3.1 above You may in consideration of the License granted to You under this Agreement pay the Monthly Fee to the Company and You shall sign and effect a Direct Debit/Standing Order in such form as the Company may require for the amounts payable by You in respect of the Monthly Fee from time to time.

**3.3** All fees (save for the Monthly Fee, which is stated inclusive of Value Added Tax) payable pursuant to this Agreement are stated by the Company exclusive of Value Added Tax which, if payable, shall be paid by You on presentation of an appropriate VAT invoice.

**3.4** If You default in making payment of any sum payable by You pursuant to this Agreement then the Company shall be entitled (without prejudice to any other right or remedy it may have) to charge You interest on the outstanding sums at the rate of 2% per annum above Barclays Bank Plc's base rate in force from time to time from the date the payment became due until actual payment is made (irrespective of whether the date of payment is before or after any judgement or award is made).

**3.5** If You default in making payment of any sum payable by You pursuant to this Agreement then the Company shall also be entitled to deny You access to The Product until outstanding fees have been paid in full, and shall not be responsible for any loss or damage You may suffer in consequence. It is expressly agreed that You will continue to remain bound by all the obligations of this Agreement during the period that access to The Product is so denied, including notice periods, annual License Renewals and further fees payable.

**3.6** The Company may increase any fees payable pursuant to this Agreement at any time after having provided You with three calendar months notice thereof prior to any such increase.

## 4. YOUR OBLIGATIONS

You shall not:

- (i) transfer the Product from the Computer it was originally installed on or load it on to any other Computer without having made a prior written request of the Company for permission to do so which permission may be refused in the Company's absolute discretion;
- (ii) reverse engineer, decompile or disassemble the Product in any way;
- (iii) separate the component parts of the Product for use on more than one Computer;
- (iv) retain or make any copies of the Product other than the Product as provided to You by the Company pursuant to the terms of this Agreement and for a copy to be used for back-up purposes only;
- (v) extract Postcode Address File Data or AFD Data from the Product other than as part of the bona fide address management task You undertake or unless the prior consent of the Company has been obtained in writing display the Product on the internet or elsewhere or make it available to anyone other than an Authorised User;
- (vi) without prejudice to the generality of the foregoing, do anything with the Product which is in breach of or otherwise inconsistent with the moral rights of the Company;
- (vii) post or transmit through the Product or the Site any material which violates or infringes in any way upon the rights of others, which is unlawful, threatening, abusive, defamatory, invasive of privacy or publicity rights, vulgar, obscene, profane or otherwise objectionable, which encourages conduct that would constitute a criminal offence, give rise to civil liability or otherwise violate any law, or which, without the

Company's express prior approval, contains advertising or any solicitation with respect to products or Products; or take any action which the Company in its absolute discretion considers will restrict or inhibits any other Person from using or enjoying the Product.

## **5. PRODUCT UPDATES, RENEWALS AND SUPPORT**

**5.1** If You have not elected to pay the Monthly Fee the Company shall provide You with quarterly Product Updates for the duration of this Agreement only at Your specific request and at the prevailing cost for such Product Updates. It is an express condition of this Agreement that, if You have not elected to pay the Monthly Fee, You will in any event obtain an Annual License Renewal from the Company no less frequently than once in every calendar year whilst this Agreement is continuing (or such other frequency as may be notified to You by the Company in the License Certificate or otherwise) at the prevailing price for such Annual License Renewal at the time of such purchase.

**5.2** If You have elected to pay the Monthly Fee You will be sent Product Updates as and when available.

**5.3** Any Product support requested by You will be provided free of charge during normal working hours of 9am-5pm Monday – Friday (excluding holidays) by either Internet Electronic Mail (e-mail), World Wide Web (www) publications and documentation or telephone. Any further or subsequent Product support is chargeable at a fee agreed by You and the Company from time to time.

**5.4** Any supplemental software provided by the Company to You as part of or in the course of despatching and providing Product support or in providing Product Updates or Annual License Renewals shall be provided to You at one address only (being the address set out in the License Certificate) and shall be considered part of the Product and the installation or use thereof will be subject to the terms and conditions of this Agreement.

## **6. ACCESS TO THE PRODUCT**

**6.1** This clause 6 shall apply where access to the Product and any Site is by means of network requests including but not limited to those over the internet.

**6.2** You agree that You will not at any time disclose, transfer, or permit any other person to use Your serial number and password. You are responsible for taking all reasonable steps to ensure that no unauthorised person shall have access to Your serial number and password. It is Your sole responsibility to:

- (i) control the dissemination and use of serial number and password;
- (ii) authorise, monitor and control access to and use of Your account and serial number and password; and
- (iii) promptly notify the Company of any need to reset or deactivate Your serial number and password.

The Company reserves the right to freeze or terminate accounts that do not conform to these requirements.

## **7. DURATION OF AGREEMENT**

**7.1** This Agreement shall commence on the Effective Date and shall remain in effect for the Initial License Period and thereafter unless terminated in accordance with this Agreement. In the event this Agreement is not renewed this Agreement shall terminate at the end of the Initial License Period or the relevant anniversary of it.

**7.2** At the end of the Initial License Period and at each anniversary of the Effective Date this Agreement shall automatically renew for 12 months unless You shall previously have given written notice, to the Company at least one month but not more than three months prior to the expiration of the Initial License Period or each subsequent anniversary of the Effective Date of Your intention not to renew the Agreement.

**7.3** The Company shall have the right to immediately terminate this Agreement in the event of any conduct by You which the Company, in its sole discretion, considers to be unacceptable, or pursuant to clause 8 below or in the event of Your breach of this Agreement or Your Insolvency.

**7.4** In the event this Agreement shall terminate for any reason whatsoever You shall return the Product to the Company and You shall also delete or cause to be deleted the Product from any and all Computer-readable versions and shall provide the Company with a certificate attesting to such deletion.

## **8. DISCONTINUATION OF PRODUCT**

**8.1** The Company shall have the right at any time, without notice, to change, suspend, discontinue, withhold or refuse access to any aspect or feature of the Product or the Site, including, but not limited to, content, hours of availability and equipment and software needed for access or use. The Company may also impose limits on certain features and Products or restrict Your access to parts or the entire Product or Site without notice or liability on its part.

**8.2** The Company reserves the right at any time to withdraw the Product or any part thereof or terminate this Agreement if the Company ceases, for whatever reason, or no longer retains the right to License the Product or any part thereof, or if, in the Company's sole discretion and on reasonable grounds believes that the Product or any part thereof contains any material which infringes copyright or is defamatory, obscene, unlawful, or otherwise objectionable. The Company will in event of such withdrawal give written notice to You and You shall, on receipt of such notice, immediately comply with any of the Company's reasonable instructions with respect to such withdrawn Product.

**8.3** Should the Company permanently or for a continuous period of seven days or more withdraw the Product or the Site or terminate this Agreement pursuant to clauses 8.1 or 8.2, a refund of any of the fees paid pursuant to this Agreement will be refunded pro rata to You.

**8.4** The Company may at its sole discretion at any time and without warning withdraw from You or withhold the Product to You or terminate this Agreement if Your activities are considered by the Company in its absolute discretion to be inappropriate or unlawful.

## **9. MARKETING**

The Company may wish to identify You in its marketing materials as a subscriber or licensee of the Product. Your use of the Product indicates Your permission for the Company to use Your personal data in this manner unless You notify the Company otherwise, in writing, within five business days of the date of the License Certificate.

## **10. VARIATION OF TERMS OF AGREEMENT AND INFORMATION**

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- (ix) You will provide the Company with all information reasonably requested by it within 7 days of a request by the Company requesting such information and on request provide facilities to the Company during business hours to inspect at Your premises any records, documents and Computers in each case for the purpose only of ensuring Your compliance with the terms of this Agreement;
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**17. INDEMNIFICATION**

You agree to defend, indemnify and hold harmless the Company, its associated companies and entities, its suppliers and their respective officers, and agents and/or any other third party associated with or in the employ of the Company or such other Person from and against all claims and expenses, including legal fees, arising out of Your use of the Product and the Site or any use made of Your account with the Company.

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You may only transfer, assign sub-License or otherwise deal with the License granted under this Agreement if You have obtained the Company's express written consent which may be refused in the absolute discretion of the Company. The Company may transfer or assign this agreement in its absolute discretion.

**19. APPLICABLE LAWS**

**19.1** The terms of this Agreement are governed by English Law.

**19.2** You agree to the exclusive jurisdiction of the English courts in relation to any dispute, which may arise under this Agreement.

**20. CONFIDENTIALITY**

During the term of this Agreement and thereafter both parties shall keep and procure that their employees, contractors and agents keep secret and confidential all business, technical and commercial information concerning the Company and the Products that the Licensee has received or obtained as a result of the entering into of this Agreement save for information which is trivial or obvious or which enters into the public domain other than as a result of a breach of this clause.

**21. ADDITIONAL PROVISIONS APPLICABLE TO NAMES & NUMBERS PRODUCTS**

**21.1** It is a further condition of this Agreement that You agree that:

(i) it is Your responsibility to contact the Mailing Preference Service (MPS), the Telephone Preference Service (TPS) and the Corporate Telephone Preference Service (CTPS) (which are updated approximately every 28 days) to check and eliminate any records obtained from the Product before using such records for marketing, research or survey purposes;

(ii) no records obtained directly from the Product shall be used for marketing, research or survey purposes unless they are records including an Organisation Name, or are shown in The Product to be included in the "Edited Electoral Roll".

(iii) You will follow the following codes of practice when contacting people by telephone using records obtained from the Product:

(a) never call a person who has registered with the TPS or an Organisation registered with the CTPS;

(b) always identify Yourself clearly;

(c) never withhold Your own Caller Line Identity;

(d) never adopt a menacing or annoying manner;

(e) remain polite, respectful and never use profanities or bad language;

(f) immediately end a call when requested to do so;

(g) always respect a request not to be contacted again;

(h) never telephone during unsocial hours (i.e never call a private residence before 10a.m (11a.m at weekends or holidays) or after 10p.m.)

(iv) never use any telephone numbers from the Product for sending SMS ("Text") messages as part of any mass-marketing activity.

**21.2** The Mailing Preference Service can be contacted at DMA House, 70 Margaret Street, London, W1W 8SS; telephone 020 7291 3310 or <https://www.mpsonline.org.uk> and the Telephone Preference Service and Corporate Telephone Preference Service can be contacted at DMA House, 70 Margaret Street, London, W1W 8SS; telephone 020 7291 3320 or <http://www.tpsonline.org.uk>.

**21.3** In addition to the fees payable pursuant to clause 3 of this Agreement You shall:

(i) pay to the Company a Data Extract License Fee of £20 +VAT for each thousand (or part thereof) residential address records extracted from the Product after the first 100,000 residential address records have been extracted within a single license year. For the purpose of this clause a "residential address record" is a record of one person at one delivery point

(ii) pay to the Company a Data Extract License Fee of £120 + VAT for each thousand (or part thereof) organisation address records extracted from the Product after the first 10,000 organisation address records have been extracted within a single license year. For the purpose of this clause an "organisation address record" is a record containing data in the 'organisation', 'Sic' or 'Classification' fields at one delivery point.

(iii) submit a quarterly return to the Company detailing the records which have been extracted by You in the previous quarter in the format requested by the Company from time to time. The returns shall be submitted to the Company by the 15th April, 15th July, 15th October and 15th January in each year in respect of the 3 month period ending on the last day of the previous month.

(iv) Not export more than 50,000 organisation or 500,000 residential address records within a single license year without first seeking and receiving written authorisation from The Company

**21.4 Non-return of quarterly Data Extract Return**

(i) In the event of non-return of a quarterly Data Extract Return, the Licensee agrees to pay a late return penalty of £250 which shall be invoiced by the Company and payable within 14 days of the invoice date. Should the Licensee continue to fail to observe the terms and conditions of Data Extracts from the Product, the Company may terminate this Agreement forthwith pursuant to clause 7 above, with no refund of any fees paid.

(ii) Where the Company has reason to believe that Organisation data extracts have exceeded 10,000 records or that residential data extracts have exceeded 100,000 records it reserves the right to make an estimate of extracted records which have exceeded these amounts and invoice the Licensee according to the provisions in 21.3 i and 21.3 ii.

**21.5** The Product shall not be used in any automated process for validation, extraction or addition of data from the Product into other databases or Computer records.

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**24.1** Your right to use the Extended ISCD data provided with BankFinder is limited to use in connection with the UK Bacs scheme, Faster Payments scheme, CHAPS Sterling scheme and Cheque and Credit Clearing scheme.

**24.2** You acknowledge that all property rights including but not limited to Intellectual Property rights in the Sorting Code, Sorting Code Data, and the Extended ISCD, that form a part of BankFinder, are owned by UK Payments.

**24.3** You shall update BankFinder data at least monthly.

**24.4** All property rights in the Irish Bank sort code and validation data supplied with AFD BankFinder are the property of IPSO and/or its member banks, and that title shall not pass to You under any circumstances.

**24.5** You shall not grant any license or otherwise permit any third party to use the Irish Validation Data or the Product.

**24.6** You shall procure that only those employees and information technology contractors who have a need to know are given access to the Irish Validation Data supplied; and so that each such employee and contractor shall be advised that the Irish Validation Data is the property of IPSO and/or the Banks, and further is required to be kept confidential. You shall procure that the Irish Validation Data is kept confidential by such employees and contractors.

**24.7** You shall not reverse engineer, publish or cause to be distributed the modulus rules used in validation.

**24.8** You shall not publish or cause to be distributed a paper directory of Validation Data or Sort Code Data, and whether in competition with IPSO's publication entitled "Sort Code Book" or otherwise.

**25. ADDITIONAL PROVISIONS APPLICABLE TO GRID REFERENCE DATA**

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## 1. Definitions

|                |                                                                                                                                                                                                                                                |
|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
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| Loader         | The software program that facilitates the conversion of scripts encoded with SourceGuardian to readable form                                                                                                                                   |
| Maintenance    | Issuing updates to SourceGuardian to ensure continuing compatibility with third party software programs with which SourceGuardian is designed to inter-operate.                                                                                |
| SourceGuardian | The software encryption product of that name used to encrypt scripts from human-readable form into a form capable of being read only with the Loader, available at <a href="http://www.SourceGuardian.com">www.SourceGuardian.com</a>          |
| Support        | Assisting the End User with enquiries relating to Defects                                                                                                                                                                                      |

## 2. License for End Users

Subject to the remaining provisions of this Licence Inovica grants to the End User a world-wide, royalty free, non-exclusive, licence to permit the End User to use the Loader in its commercial operations for the purposes of:

- 2.1 Reading scripts encrypted with SourceGuardian;
- 2.2 Bundling the End User's own software applications together with the Loader;
- 2.3 Linking the End User's software applications to the Loaders on SourceGuardian's website (to ensure that the applications remain current with the latest updated version of the Loader)

This License shall be deemed to apply to and cover any use of the Loaders prior to the effective date of this Licence.

## 3. Restrictions and Exceptions

- 3.1 The rights granted to the End User under this Licence do not operate to assign or transfer the ownership of any intellectual property rights in the Loader to the End User.
- 3.2 The Loader is intended for commercial use only and not for use by consumers. By accepting this Licence the End User confirms that he or she is acting in the course of business. The End User will not remove or obscure any copyright or ownership notices or warning legends from the Loader nor will the End User attempt to reverse engineer, decompile or otherwise interfere with the Loader except to the extent expressly permitted by law or under this Licence. Inovica may terminate this Licence immediately if it discovers that the End User is in breach of its obligations in this Licence and in such a case the End User will immediately delete the Loader from its computer systems and will on request by Inovica provide and execute such written assurances as Inovica may require confirming such deletion.
- 3.3 The Loader is licensed free of charge and accordingly is provided on an "as is" basis. The End User agrees and acknowledges that Inovica has no liability to the End User, whether in contract, tort (including negligence) or otherwise arising from any Defects in the Loader and all warranties implied by the laws of any jurisdiction in which the End User uses the Loader are expressly excluded to the fullest extent permitted by the laws of such jurisdiction.
- 3.4 In no event will Inovica be liable to the End User for any consequential loss or any financial loss.
- 3.5 Inovica's only obligation to the End User is to use reasonable commercial efforts to (i) correct Defects within a reasonable time (ii) ensure the Loader is not corrupted and is free of any computer virus, trojans, worms or logic bombs and (iii) to issue Maintenance updates from time to time. Inovica may terminate or assign its obligations under this paragraph 3.5 by publishing a notice to this effect on the SourceGuardian website at [www.SourceGuardian.com](http://www.SourceGuardian.com). In such circumstances the provisions of paragraph 3.2 will also terminate. Nothing in this Licence applies so as to exclude or limit any liability that Inovica may have to the End User based on fraudulent misrepresentation or personal injury resulting from Inovica's negligence.

## 4. General

- 4.1 This Agreement contains the entire agreement between the parties on the subject matter of this Agreement and supersedes all representations, undertakings and agreements previously made between the parties with respect to the subject matter of this Agreement.
- 4.2 If any provision (or part of a provision) of this Licence is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision will apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 4.3 This Licence constitutes the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to its subject matter.

4.4 Each party acknowledges and agrees that in entering into this Licence it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Licence or not) relating to the subject matter of this Licence, other than as expressly set out in this Licence.

4.5 This Licence and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and should be construed in accordance with, the law of England and Wales.

4.6 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

<https://www.sourceguardian.com/termsloaders.html>

**Agreement for the Supply and Maintenance of a Further, Higher and Adult Education Student Management Information Solution, including any modules thereof.**

**Schedule E – Managed Services Service Level Agreement**

Not Applicable

**Agreement for the Supply and Maintenance of a Further, Higher and Adult Education Student Management Information Solution, including any modules thereof.**

**Schedule F – Hosting Software Services Service Level Agreement**

**1. Service Level Agreement (SLA)**

- 1.1. The services, in a production environment, are provided with the service levels described in this Service Level Agreement.
- 1.2. SLAs are only applicable to production environments.
- 1.3. SLAs will be available upon Customer's signature of Go Live Acceptance Form for customer's production environment.

**2. Application Availability**

- 2.1. Target is 99.5% application availability.
- 2.2. Availability is calculated by polling the URL's every 5 minutes. If a response is not received, or all content is not received, then the service is classed as being unavailable.
- 2.3. Actual Application Availability : (Monthly minutes minus the Total Minutes Not Available) multiplied by 100 and divided by Monthly Minutes but excluding Excluded events.
- 2.4. Outage : The accumulated time, measured in minutes, during which Customer is unable to access the Application for reasons other than an Excluded Event.

**3. Excluded Event**

- 3.1. Acts or omissions of Customer, its employees, customers, contractors.
- 3.2. Failure / malfunction of equipment, applications or systems not owned or controlled by ESS .
- 3.3. Force Majeure.
- 3.4. Scheduled / Emergency maintenance.
- 3.5. Suspension of the services in accordance with the terms of the Agreement.
- 3.6. Using an application in a manner inconsistent with the product documentation.

**4. Maintenance Period**

- 4.1. Scheduled maintenance periods established by ESS to maintain and update the Services, when necessary. During these maintenance periods, the services are available to ESS to perform periodic maintenance services, which include vital software updates.
- 4.2. ESS will provide notice for planned downtime via an email notice to the primary Customer contact at least three days in advance of any known downtimes outside of the scheduled maintenance periods, so planning can be facilitated by Customer. ESS will use all reasonable endeavours to conduct maintenance outside of core working hours.
- 4.3. Emergency maintenance means those times where ESS require to make immediate remediation to the service where there is the potential to cause significant impact to all Customers or a security risk. ESS will take all reasonable efforts to minimise downtime during emergency maintenance. ESS will provide notice for emergency maintenance via an email notice to the primary Customer contact.

## **5. Environments**

- 5.1. One standard production environment is provided.

## **6. Connectivity**

- 6.1. Customers connect to the software via the Internet and on premise.
- 6.2. ESS assumes no responsibility for the Customer internet connection or ISP relationships.

## **7. Operating System and Database Software Management**

- 7.1. Included are the required OS and SQL Server licenses, as well as services for ESS to apply security patches, service updates and fixes for the software running in the Cloud.

## **8. Server Maintenance**

- 8.1. Included is all server maintenance, including repair and replacement of defective or failed hardware and installation of hardware upgrades for the software running in the Cloud.

## **9. UNIT-e Application Updates**

- 9.1. Included are the services to perform technical tasks required to apply application service updates, patches, fixes, and updates.
- 9.2. Releases will contain new or amended features and resolution to defects. There may be some need for configuration and additional user training to obtain the maximum benefit of the new features.

## **10. Backup**

- 10.1. The Customer's data is backed up daily.
- 10.2. Backups are replicated via encrypted connections to a secondary, geographically dispersed datacentre.
- 10.3. Database backups are kept on a 30-day retention period.

## **11. Security**

- 11.1. The ESS hosting environment undergoes examinations from an independent auditor in accordance with ISO27001.
- 11.2. ESS will penetration test the application and platform at least annually using an experienced penetration testing organisation.
- 11.3. Customer agrees not to conduct security testing, which includes, but is not limited to penetration testing and vulnerability scanning.
- 11.4. Customer agrees not to conduct any sort of automated or manual performance testing of the service.
- 11.5. The ESS applications provide the customer with the ability to configure application security and logical access per the customer's business processes.

- 11.6. In the event the Customer identifies a security issue, the Customer agrees to notify ESS .
- 11.7. For security purposes the Customers is restricted from directly accessing the desktop, file systems, databases, and operating systems of the environments.
- 11.8. Customer agrees not to upload payment card information as the service is not certified for PCI DSS.

## **12. Disaster Recovery**

12.1. Disaster Recovery services are provided to all hosted customers at no additional fee and include:

- 12.1.1. Customer environment and all Customer data in the primary UNIT-e data centre are replicated to a secondary UNIT-e data centre.
- 12.1.2. Disaster recovery services provide for a Recovery Point Objective (RPO) of 24 hours and ESS strives to restore application availability in a commercially reasonable timeframe.
- 12.1.3. Customer applications will be down until the Production environment is restored in the primary or secondary data centre.

## **13. Encryption at rest**

13.1. Customer content will be encrypted at rest at the storage level.

## **14. Data Repatriation**

- 14.1. If within 60 Business Days of the expiry of the Agreement (including expiry due to termination), the Company receives a written request for the return of Customer data stored in the Company's database, such data shall be returned in either CSV or XML format, free of charge, to the Customer.
- 14.2. If a request is made
  - 14.2.1. (i) for the data to be returned in a different format; or
  - 14.2.2. (ii) more than 60 Business Days after the expiry of the Contract
- 14.3. the Company reserves the right to charge for this additional service on a Time and Materials Basis.

## **15. Updates**

15.1. Customer agrees to receive automatic updates to the applications.

**16. Retention Policies**

- 16.1. Application data retention policy must be configured by the Customer who is responsible for the accuracy of the data in line with legislation and local policies. The applications provide the Customer with the ability to meet their retention policies.
- 16.2. ESS manage and routinely purge hosting platform related information i.e. system log, audit, temporary files etc.. in-line with ESS policy and procedures.

**17. Sizing**

- 17.1. Sizing considerations are based on a three-year growth projection of the Production database environment.
- 17.2. After three years, an archiving strategy may be reviewed with the customer for Service performance.
- 17.3. Additional processing requirements(e.g. complex integration) may incur additional fees associated with corresponding system resources.

**18. Go Live**

- 18.1. Customer will be required to sign a go live milestone document confirming customer has completed their testing and is ready to go live with the application(s).

**19. Support Service**

- 19.1. The Support service desk is a single point of contact providing personalised support from a helpdesk analyst who will talk through your issues and, if required, access your system remotely to provide a resolution quickly.
- 19.2. Several useful tools can be found within our online portal, which gives you, as the Customer, access to the latest news, resources, discussions and events.
- 19.3. If a solution cannot be located, you can log a support incident or enquiry directly with the Service Desk. This (and any associated solution) can then be viewed online using our on-line facility, where you can also add notes to the case and review updates from us.

**20. Support Service Coverage Period**

- 20.1. 9:00-:17:30 UK -Monday to Friday (excluding any English Public Holidays).
- 20.2. The on-line portal enables Customers to report Incidents out of Support Hours and at weekends.
- 20.3. These Incidents will then be worked during Support Hours.

**21. Support Exclusions**

- 21.1. Customer's end user computer or operating system malfunctions.

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**Schedule G – Software / Software Maintenance**

| Item | Description     |
|------|-----------------|
| 1    | <<Module Name>> |

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**Schedule H – Exit Plan**

**1. Transition and Continuity of Services**

- 1.1. Objective: Ensure the continuity of the Customer's operations during and after the exit process.
- 1.2. Responsibility: ESS will provide ongoing support and reasonable assistance to the Customer up to the effective termination date, ensuring that essential services are maintained until the agreed exit date.

**2. Data Handling and Return of Materials**

- 2.1. Software and Documentation: The Customer will return all Supplied Software, Software Documentation, and associated media provided by ESS or, if requested, will destroy or erase them.
- 2.2. Certification of Destruction: If the Customer destroys any materials, it will certify this in writing to ESS.
- 2.3. Data: ESS will assist the Customer with the secure transfer of any hosted data back to the Customer in accordance with clause 3, following agreed data handling and protection procedures to ensure confidentiality and integrity during transfer.

**3. Data Repatriation**

- 3.1. If within 60 business days of the expiry of the Agreement (including expiry due to termination), ESS receives a written request for the return of Customer data, such data shall be returned in either CSV or XML format, free of charge, to the Customer.
- 3.2. If a request is made
  - (i) for the data to be returned in a different format; or
  - (ii) more than 60 Business Days after the expiry of the ContractESS reserves the right to charge for this additional service on a time and materials basis.

**4. Timeline and Key Milestones**

- 4.1. Exit Timeline: Parties will agree on specific dates for each step of the exit plan, with all actions completed within a mutually acceptable timeframe leading up to the final termination date.
- 4.2. Notice Period Compliance: Both parties will follow the required notice periods as specified in the agreement, with any changes documented and agreed upon in writing.

**5. Responsibilities and Communication Protocols**

- 5.1. Designated Contacts: Each party will assign a primary contact responsible for overseeing and coordinating exit-related activities.
- 5.2. Regular Updates: The designated contacts will maintain regular communication to address any emerging issues, reporting on progress toward each milestone.

## **6. Settlement of Financial Obligations**

- 6.1. Final Invoice: ESS will issue a final invoice covering any services provided up to the termination date.
- 6.2. Offset of Future Payments: Any future payments made by the Customer that cover periods beyond the termination date will be offset against the final payment.

## **7. Confidentiality and Security Compliance**

- 7.1. Data Security: Both parties will adhere to data protection obligations during all transfer and termination activities, ensuring compliance with confidentiality and data security standards as outlined in the Agreement.
- 7.2. Final Review: Parties will conduct a final review to confirm that all obligations and exit activities are satisfactorily completed.

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### **Schedule I – Implementation Services**

| <b>Item</b> | <b>Description</b>       | <b>Days</b> |
|-------------|--------------------------|-------------|
| 1           | Applications Consultancy | <<000>>     |