



SERVICES AGREEMENT

between

ePass Ltd

and

XXXX

ePass Ltd
Clockwise Commercial Quay
84 Commercial St
Leith
Edinburgh
Scotland
EH6 6LX

This agreement is dated XXXX

Parties

- (1) ePass Ltd incorporated and registered in Scotland with company number SC813091 whose registered office is at Clockwise Commercial Quay, 84 Commercial St, Leith, Edinburgh, Scotland, EH6 6LX (the **Supplier**);
- (2) XXXX (the **Customer**).

BACKGROUND

- (A) The Supplier is in the business of providing IT licensing, support and maintenance services.
- (B) The Customer agrees to obtain and the Supplier agrees to provide the Services on the terms set out in this agreement.

Agreed terms

1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions

Applicable Laws: all applicable laws, statutes, regulations and codes from time to time in force.

Applicable Data Protection Laws: means:

- a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.

Business Day: a day, other than a Saturday, Sunday or public holiday in Scotland, when banks in Edinburgh are open for business.

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Change Order: has the meaning given in clause 6.1.

Charges: the sums payable for the Services, as set out in Schedule 2.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be construed accordingly.

Customer Personal Data: any personal data which the Supplier processes in connection with this agreement, in the capacity of a processor on behalf of the Customer.

Deliverables: any output of the Services to be provided by the Supplier to the Customer and any other documents, products and materials provided by the Supplier to the Customer in relation to the Services.

EU GDPR: means the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Services: the services as set out in Schedule 1, including services which are incidental or ancillary to such services.

Supplier Personal Data: any personal data which the Supplier processes in connection with this agreement, in the capacity of a controller.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

VAT: value added tax or any equivalent tax chargeable in the UK or elsewhere.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.

- 1.9 A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.10 A reference to **writing** or **written** includes email.
- 1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.12 A reference to **this agreement** or to any other agreement or document referred to in this agreement is a reference of this agreement or such other agreement or document, in each case as varied from time to time.
- 1.13 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.14 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Commencement and duration

- 2.1 This agreement shall commence on XXX and shall continue, unless terminated earlier in accordance with clause 12 (Termination), or extended in accordance with clauses 2.2 and 2.3 below, until the third of the Commencement Date (the “Initial Term”)
- 2.2 The Parties may, not later than 90 days prior to the end of the Initial Term, enter into good faith negotiations in order to extend this Agreement for the a further 12 month period (“First Extension”). If the First Extension is agreed before the expiry of the Initial Term, this Agreement shall continue until the fourth anniversary of the Commencement Date, unless terminated in accordance with clause 12 (Termination).
- 2.3 In the event the First Extension is agreed, the Parties may, not later than 90 days prior to the end of the First Extension, enter into good faith negotiations in order to extend this Agreement for the a further 12 month period (“Second Extension”). If the Second Extension is agreed before the expiry of the First Extension, this Agreement shall continue until the fifth anniversary of the Commencement Date, unless terminated in accordance with clause 12 (Termination).
- 2.4 The Supplier shall provide the Services to the Customer in accordance with this agreement.

3. Supplier's responsibilities

- 3.1 The Supplier shall use reasonable endeavours to supply the Services, and deliver the Deliverables to the Customer, in accordance with this agreement in all material respects.

- 3.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in Schedule 1 but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this agreement.
- 3.3 The Supplier shall appoint a manager for the Services, such person as identified in Schedule 1. That person shall have authority to contractually bind the Supplier on all matters relating to the Services (including by signing Change Orders). The Supplier may replace that person from time to time where reasonably necessary in the interests of the Supplier's business.
- 3.4 The Supplier shall use reasonable endeavours to observe all health and safety and security requirements that apply at the Customer's premises and that have been communicated to it under clause 4.1(e), provided that it shall not be liable under this agreement if, as a result of such observation, it is in breach of any of its obligations under this agreement.

4. Customer's obligations

4.1 The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Services;
- (b) appoint a manager for the Services, such person as identified in Schedule 1. That person shall have the authority to contractually bind the Customer on matters relating to the Services (including by signing Change Orders);
- (c) provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as reasonably required by the Supplier including any such access as is specified in Schedule 1;
- (d) provide to the Supplier in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or third party) required under Schedule 1 or otherwise reasonably required by the Supplier in connection with the Services and ensure that they are accurate and complete in all material respects;
- (e) inform the Supplier of all health and safety and security requirements that apply at any of the Customer's premises, such requirements are as set out in Schedule 1. If the Customer wishes to make a change to those requirements which will materially affect provision of the Services, it can only do so via the change control procedure set out in clause 6 (Change control); and
- (f) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Supplier to provide the Services, in all cases before the date on which the Services are to start.

- 4.2 If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, then, without

prejudice to any other right or remedy it may have, the Supplier shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.

5. Non-solicitation

- 5.1 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of this agreement to the expiry of twelve months after the termination or expiry of this agreement, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Services.

6. Change control

- 6.1 Either party may propose changes to the scope or execution of the Services but no proposed changes shall come into effect until a **Change Order** has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:

- (a) the Services;
- (b) the Supplier's existing charges;
- (c) the timetable of the Services; and
- (d) any of the terms of this agreement.

- 6.2 If the Supplier wishes to make a change to the Services it shall provide a draft Change Order to the Customer.

- 6.3 If the Customer wishes to make a change to the Services:

- (a) it shall notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed changes, including the timing of the proposed changes; and
- (b) the Supplier shall, as soon as reasonably practicable after receiving the information at clause 6.3(a), provide a draft Change Order to the Customer.

- 6.4 The Supplier may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer pursuant to clause 6.3 on a time and materials basis at the Supplier's daily rates specified in Schedule 2.

7. Charges and payment

- 7.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the Charges.

- 7.2 Where the Charges are calculated on a time and materials basis:

- (a) the Supplier's daily fee rates for each individual person as set out in Schedule 2 are calculated on the basis of an eight-hour day, worked during Business Hours;

- (b) the Supplier shall be entitled to charge an overtime rate of 50% of the daily fee rate set out in Schedule 2 on a pro rata basis for any time worked by individuals whom it engages on the Services outside Business Hours; and
 - (c) the Supplier shall ensure that every individual whom it engages on the Services completes time sheets to record time spent on the Services, and the Supplier shall indicate the time spent per individual in its invoices.
- 7.3 The Charges exclude the following which shall be payable by the Customer monthly in arrears, following submission of an appropriate invoice:
 - (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services; and
 - (b) the cost to the Supplier of any materials or services procured by the Supplier from third parties for the provision of the Services as such items and their cost are approved by the Customer in advance from time to time.
- 7.4 The Supplier may increase the Charges on an annual basis with effect from each anniversary of the date of this agreement in line with the percentage increase in the Retail Prices Index in the preceding 12-month period, and the first such increase shall take effect on the first anniversary of the date of this agreement and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.
- 7.5 The Supplier shall invoice the Customer for the Charges at the intervals specified in 0. If no intervals are so specified the Supplier shall invoice the Customer at the end of each month for Services performed during that month.
- 7.6 The Customer shall pay each invoice submitted to it by the Supplier within 30 days of receipt to a bank account nominated in writing by the Supplier from time to time.
- 7.7 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier any sum due under this agreement on the due date:
 - (a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.7(a) will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%;
 - (b) the Supplier may suspend all or part of the Services until payment has been made in full.
- 7.8 All sums payable to the Supplier under this agreement:
 - (a) are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and

- (b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8. Intellectual property rights

8.1 In relation to the Deliverables:

- (a) the Supplier and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables.
- (b) the Supplier grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of this agreement to copy and modify the Deliverables for the purpose of receiving and using the Services and the Deliverables in its business; and
- (c) the Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 8.1(b).

8.2 In relation to any materials provided to the Supplier by the Customer, the Customer:

- (a) and its licensors shall retain ownership of all Intellectual Property Rights in such materials; and
- (b) grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify such materials for the term of this agreement for the purpose of providing the Services to the Customer.

8.3 The Customer:

- (a) warrants that the receipt and use of any materials provided to the Supplier by the Customer in the performance of this agreement by the Supplier, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- (b) shall indemnify the Supplier in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim brought against the Supplier, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this agreement of any materials provided by the Customer to the Supplier.

9. Data protection

- 9.1 For the purposes of this clause 90, the terms **controller**, **processor**, **data subject**, **personal data**, **personal data breach** and **processing** shall have the meaning given to them in the UK GDPR.

- 9.2 Both parties will comply with all applicable requirements of the Applicable Data Protection Laws. This clause 9.2 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 9.3 The parties have determined that for the purposes of Applicable Data Protection Laws the Supplier shall process the personal data as set out in Schedule 4 as processor on behalf of the Customer.
- 9.4 Should the determination in clause 9.3 change, the parties shall use all reasonable endeavours to make any changes that are necessary to this clause 9 and Schedule 4.
- 9.5 Without prejudice to clause 9.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Supplier Personal Data and Customer Personal Data to the Supplier or lawful collection of the same by the Supplier for the duration and purposes of this agreement.
- 9.6 In relation to the Customer Personal Data, Schedule 4 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.
- 9.7 Without prejudice to clause 9.2, the Supplier shall, in relation to Customer Personal data:
- (a) process that Customer Personal Data only on the documented instructions of the Customer, which shall be to process the Customer Personal Data for the purposes set out in Schedule 4 (Processing, personal data and data subjects) unless the Supplier is required by Applicable Laws to otherwise process that Customer Personal Data (**Purpose**). Where the Supplier is relying on Applicable Laws as the basis for processing Customer Personal Data, the Supplier shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer on important grounds of public interest. The Supplier shall inform the Customer if, in the opinion of the Supplier, the instructions of the Customer infringe Applicable Data Protection Laws;
 - (b) implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which the Customer has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - (c) ensure that any personnel engaged and authorised by the Supplier to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;

- (d) assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to the Supplier), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
- (f) at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the agreement unless the Supplier is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this clause 9.7(f), Customer Personal Data shall be considered deleted where it is put beyond further use by the Supplier; and
- (g) maintain records to demonstrate its compliance with this clause 90, and allow for reasonable audits by the Customer or the Customer's designated auditor, for this purpose, on reasonable written notice.

9.8 The Customer provides its prior, general authorisation for the Supplier to:

- (a) appoint processors to process the Customer Personal Data, provided that the Supplier:
 - (i) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on the Supplier in this clause 10;
 - (ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier; and
 - (iii) shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to the Supplier's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Customer shall indemnify the Supplier for any losses, damages, costs (including legal fees) and expenses suffered by the Supplier in accommodating the objection.
- (b) transfer Customer Personal Data outside of the UK as required for the Purpose, provided that the Supplier shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of the Supplier, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).

9.9 Either party may, at any time on not less than 30 days' notice, revise this clause 90 (Data protection) by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

10. Confidentiality

10.1 Each party undertakes that it shall not at any time during this agreement, and for a period of five years after termination or expiry of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 10.2.

10.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

10.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

11. Limitation of liability

11.1 References to liability in this clause 11 include every kind of liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

11.2 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

11.3 Nothing in this this clause 11 shall limit the Customer's payment obligations under this agreement.

11.4 Nothing in this agreement shall limit the Customer's liability under clause 8.3 (IPR indemnities).

11.5 Nothing in this agreement limits any liability which cannot legally be limited, including but not limited to liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and

- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 11.6 Subject to clause 11.5, the Supplier's total aggregate liability in contract, delict (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total amount paid by the Customer to the Supplier under this agreement.
- 11.7 Subject to clause 11.2 (No limitations in respect of deliberate default), clause 11.3 (No limitation on the customer's payment obligations), clause 11.4 (liability under identified clauses) and clause 11.5 (Liabilities which cannot legally be limited), this clause 11.7 specifies the types of losses that are excluded:
 - (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;
 - (f) loss of or damage to goodwill; and
 - (g) indirect or consequential loss.
- 11.8 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 3 (Supplier's responsibilities). In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.
- 11.9 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire twelve months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 12. Termination**
- 12.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
 - (a) the other party commits a material breach of any term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of twenty eight days after being notified in writing to do so;

- (b) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- (h) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1(c) to clause 12.1(j) (inclusive);
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

- (m) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.

12.2 Without affecting any other right or remedy available to it, the Supplier may terminate this agreement with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than fourteen days after being notified in writing to make such payment; or
- (b) there is a change of Control of the Customer.

13. Obligations on termination and survival

13.1 Obligations on termination or expiry

On termination or expiry of this agreement:

the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt.

14. Force majeure

14.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident;
- (g) interruption or failure of utility service.

14.2 Provided it has complied with clause 14.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

14.3 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

14.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than four weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving two weeks' written notice to the Affected Party.

15. Assignment and other dealings

15.1 This agreement is personal to the Customer and the Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

15.2 The Supplier may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this agreement, provided that the Supplier gives prior written notice of such dealing to the Customer.

16. Variation

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17. Waiver

17.1 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

17.2 A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

18. Rights and remedies

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

19. Severance

- 19.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 19.2 If any provision or part-provision of this agreement is deemed deleted under clause 19.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

20. Entire agreement

- 20.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 20.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

21. Conflict

If there is an inconsistency between any of the provisions of this agreement and the provisions of the Schedules, the provisions of this agreement shall prevail.

22. No partnership or agency

- 22.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 22.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

23. Third party rights

- 23.1 This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 23.2 The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.

24. Notices

- 24.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (b) sent by email to:
 - (i) For the Supplier: admin@epass.tech
 - (ii) For the Customer:
- 24.2 Any notice or communication shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
 - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 24.2(c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 24.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

25. Counterparts

- 25.1 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 25.2 Transmission of the executed signature page of a counterpart of this agreement by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this agreement.
- 25.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

26. Governing law

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with Scots law.

27. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

IN WITNESS WHEREOF these presents consisting of this and the preceding [18] pages are executed as follows:

on behalf of ePass Ltd

by XXX

on XXX

at XXX

before the witness

XXX

.....
.....

.....

Authorised Signatory

.....

Witness

on XXX

by

on

at

before the witness

.....
.....
.....

.....

Authorised Signatory

.....

Witness

Schedule 1

Services Details

Services:

Schedule 2

Charges, costs and payment

Charges:

Schedule 3

Processing, Personal Data and Data Subjects

1. Particulars of processing

The Supplier (Data Processor) will process personal data on behalf of the Customer (Data Controller) to provide support and maintenance services for the ePass system, ensuring its functionality, security, and compliance with applicable regulations.

1.1 Duration of processing

The processing of personal data will continue for the duration of the contract or until all personal data is securely deleted or returned to the Data Controller, as per the agreed retention and deletion policy.

1.2 Nature and purpose of processing

The processing activities undertaken by the Supplier include:

- User authentication and access management within the ePass system
- Maintenance, troubleshooting, and system support
- Data storage, backup, and recovery operations
- Security monitoring and incident response
- Compliance reporting and auditing assistance

1.3 Categories of personal data

The following categories of personal data may be processed:

- Full name
- Contact details (email address, phone number)
- Job title and organisational affiliation
- System access credentials (e.g., usernames)
- Log data related to system access and usage

1.4 Categories of data subject

The personal data processed relates to:

- Customer employees and authorised representatives
- External users granted access to the ePass system
- Any other individuals as required for system functionality and support

1.5 Special categories of data

The Supplier does not anticipate processing special category personal data. However, should such processing be required, prior written approval will be obtained from the Data Controller, and appropriate safeguards will be implemented.

2. Data protection obligations of the supplier

The Supplier shall:

- Process personal data only in accordance with documented instructions from the Data Controller.
- Ensure that all personnel handling personal data are subject to confidentiality obligations.
- Implement appropriate technical and organisational measures to ensure the security and integrity of the personal data.
- Assist the Data Controller in fulfilling data subject rights requests, including access, rectification, and deletion.
- Notify the Data Controller promptly in the event of a data breach, providing all necessary details for mitigation and regulatory compliance.
- Provide assistance with data protection impact assessments and audits as required.
- Upon termination of the contract, securely delete or return all personal data as instructed by the Data Controller.