

Bill No. 29  
2024

By-law No. A.- \_\_\_\_\_ - \_\_\_\_\_

A by-law to approve a Service Agreement for case management software between The Corporation of the City of London and ESCASES INC.

WHEREAS section 2 of the Municipal Act, 2001, S.O. 2001, c.25, as amended, provides that municipalities are created by the Province of Ontario to be responsible and accountable governments with respect to matters within their jurisdiction and each municipality is given powers and duties under this Act and many other Acts for the purpose of providing good government with respect to those matters;

AND WHEREAS subsection 5(3) of the Municipal Act, 2001 provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the Municipal Act, 2001 provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS section 10 of the Municipal Act, 2001 provides that the City may provide any service or thing that the City considers necessary or desirable for the public, and may pass by-laws respecting same, and respecting economic, social and environmental well-being of the City, and the health, safety and well-being of persons;

AND WHEREAS the City is the Service System Manager for the London Catchment Area;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Service Agreement for the provision of case management software for service providers within the London Catchment Area ("Service Agreement") to be entered into between The Corporation of the City of London and ESCASES INC. attached as Schedule 1 IS APPROVED.
2. The Deputy City Manager, Social and Health Development, and the City Manager, are severally delegated the authority and power to:
  - (i) represent the City (City Representative) with respect to the Service Agreement; and
  - (ii) execute the agreement approved under Schedule 1 on behalf of the City of London; and
  - (iii) approve and execute amending agreements, and approve additional one-year terms to the Service Agreement, that are consistent with the requirements contained in the Service Agreement, and that do not require additional City of London funding.
3. This by-law shall come into force and effect on the day it is passed subject to the provisions of PART VI.1 of the *Municipal Act, 2001*.

PASSED in Open Council on January 23, 2024 subject to the provisions of PART VI.1 of the *Municipal Act, 2001*.

Josh Morgan  
Mayor

Michael Schulthess  
City Clerk

First reading – January 23, 2024  
Second reading – January 23, 2024  
Third reading – January 23, 2024

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**ESCASES CASE MANAGEMENT SERVICE AGREEMENT**

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This Services Agreement (this “**Agreement**”) is made as of, \_\_\_\_\_, being the (“**Start Date**”) (the “**Effective Date**”), by and between:

1) **ESCASES INC.**, having its registered address at 285 Montreal Street, Kingston, Ontario, Canada K7K 3G9, and represented by Sath Ly as CEO (“**ESCases**”).

- and -

2) **The Corporation of the City of London**, having its registered address at [**Client address**], and represented by [**name and title of client**] (“**CLIENT**”).

**RECITALS**

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**WHEREAS** CLIENT wishes to enter into this Agreement with ESCases for it to obtain the following services:

- An internet-accessible use of ESCases’s Case Management System, and which is hosted by or on behalf of ESCases and made available to CLIENT over its network on a term-use basis.
- the creation or development of new features for the Case Management System.
- training for the use of the Case Management System; and
- support services.

**NOW THEREFORE**, for good and valuable consideration stated herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

**SECTION 1 – DEFINITIONS AND INTERPRETATION**

**1.1. Definitions**

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

<b>Case Management System</b>	means a web-based software application with basic case management functionalities, as described in Annex “A”.
<b>Accessible</b>	means compliant with the Accessibility for Ontarians with Disabilities Act, 2005 and regulations to ensure that a product or service can be easily reached or obtained; a facility that can be easily entered; information that can be easily accessed; posing no obstacles to People with Disabilities.

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<b><i>Accessibility</i></b>	means a general term which is used to describe the degree of ease that something (for example, device, service, and environment) can be used and enjoyed by People with Disabilities. The term implies conscious planning, design, or effort to ensure it is barrier-free to People with Disabilities, and by extension, usable and practical for the general population as well.
<b><i>Business Day</i></b>	means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business.
<b><i>Confidential Information</i></b>	means: (i) individual client personal data including without limitation, name, address, email address; or (ii) the personal data of CLIENT employees and affiliates, including without limitation, company name (if applicable) employee name, address, and email address; and (iii) other individual information which could reasonably be viewed as being of a confidential nature.
<b><i>Delivery Date</i></b>	has the meaning given in Section 5 of this Agreement.
<b><i>Documentation</i></b>	has the meaning given in Section 2.5.6 of this Agreement.
<b><i>Employment Services</i></b>	or “ES” means services to help job seekers obtain and retain employment.
<b><i>Feature Add-ons</i></b>	means an Upgrade of the Case Management System intended to add functionality specific to the requirements of the CLIENT.
<b><i>FIPPA</i></b>	means the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F. 31, as amended.
<b><i>MFIPPA</i></b>	means the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M. 56, as amended.
<b><i>Privacy Laws</i></b>	means all federal, provincial, state, municipal or other applicable statute, law or regulation of any governmental authority in any jurisdiction governing the handling of information about an identifiable individual, including the Personal Information and Protection of Electronic Documents Act (Canada), MFIPPA and FIPPA.
<b><i>Province</i></b>	means Ontario and Ontario’s Ministry of Labour, Training, and Skills Development.

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<b>Services</b>	has the meaning given in Section 2.1 of this Agreement.
<b>Service Fee</b>	has the meaning given in Section 3.1 of this Agreement.
<b>Site</b>	means a physical location where services are coordinated for, or provided to, clients and requires access to ESCase’s Case Management System.
<b>Subscription Term</b>	has the meaning given in Section 5.3 of this Agreement.
<b>Support Hours</b>	has the meaning given in Section 2.4.4 of this Agreement.
<b>Support Services</b>	has the meaning given in Section 2.4.2 of this Agreement.
<b>Update</b>	has the meaning given in Section 2.4.5 of this Agreement.
<b>Upgrade</b>	has the meaning given in Section 2.4.5 of this Agreement.
<b>User</b>	means an individual seeking a job and accessing Employment Services through ESCases’s Case Management System.
<b>User Data</b>	<p>is data that is (a) received from Client or the Province that is marked as User Data or (b) received directly from the Client regardless of any marking, but in both instances contains information related to personal:</p> <ul style="list-style-type: none"><li>· demographics,</li><li>· life stabilization,</li><li>· skills</li><li>· self-efficacy,</li><li>· income/assistance, education status and history,</li><li>· employment status and history, and</li></ul>

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	<ul style="list-style-type: none"><li>• work attitudes and employment goals.</li></ul> <p>Some examples of User Data (for illustrative purposes only) can be found at: <a href="https://www.omssa.com/docs/1What_is_Life_Stabilization.pdf">https://www.omssa.com/docs/1What_is_Life_Stabilization.pdf</a>. Aggregated or Obfuscated Client data shall not constitute Client data for purposes of this definition.</p> <p>Any requirements regarding handling User Data, data security or privacy apply to any of ESCases’s third-party services providers.</p>
<b>Work</b>	includes any and all information, programs, concepts, processes, discoveries, improvements, formulas, know-how and inventions, in any form whatsoever, relating to the business or activities of ESCases, or resulting from or suggested by any work developed by ESCases in connection with this Agreement.

## 1.2. Interpretation

- (a) Unless a contrary intention appears, any reference in this Agreement to:
- (i) “**CLIENT**”, “**ESCases**” and any “**Party**” shall be construed so as to include its successors in title, permitted assigns and permitted transferees; and
  - (ii) this “**Agreement**” or any other document or instrument is a reference to this Agreement or that document or instrument as amended, novated, supplemented, extended or restated from time to time.
- (b) Unless a contrary intention appears, in this Agreement:
- (i) headings are for convenience only and do not affect the interpretation of this Agreement; and
  - (ii) words importing the singular include the plural and vice versa, and neuter.

## SECTION 2 – SCOPE OF SERVICES

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2.1. CLIENT hereby engages ESCases to provide CLIENT with the services described in this Article 2 (the “**Services**”):

- A. a nonexclusive right to access and use the Case Management System solely for CLIENT’s internal business operations, during the term of, and subject to and governed by, the provisions of this Agreement.

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- B. the creation and development of new features to the Case Management System, as set out more fully in Section 2.3 and Annex B of this Agreement.
- C. support services as set out more fully in Section 2.4 of this Agreement; and
- D. training for the use of the Case Management System as set out more fully in Section 2.5.

**2.2.** All Services to be provided by ESCases shall be performed with promptness and diligence in a professional manner and at a high level of proficiency, in accordance with this Agreement

### **2.3. ADDITIONAL FEATURES**

**2.3.1.** CLIENT engages ESCases to create and develop, on or before the Delivery Date, Feature Add-ons to the existing Case Management System, as more particularly described in Annex B. CLIENT shall provide detailed specifications to ESCases, within 10 Business Days of the date of execution of this Agreement, to state the CLIENT's requirements and functionality goals more fully for these Feature Add-ons.

**2.3.2.** ESCases agrees to:

- a. create the Feature Add-ons and updates set out in Annex B of this Agreement and use its best efforts to ensure that the design and functionality of the Case Management System, including the Feature Add-ons, meets CLIENT's specifications; and
- b.

**2.3.3.** CLIENT agrees to provide ESCases with:

- a. all assistance and cooperation to ESCases to complete the integration of the Case Management System in CLIENT's internal business operations, in a timely and efficient manner; This will include and be limited to ensuring CLIENT operational teams are available to validate specified Feature Add-Ons, provide user acceptance testing support, and user support to ensure all integrations are populating information correctly.
- b. initial information, and all content for the Case Management System.

**2.3.4.** If additional software Feature Add-ons are required to be developed outside the scope of work, outlined in Annex B, ESCases and CLIENT shall meet to discuss and agree on required software features, build-out requirements, timelines and estimated costs. ESCases will draft a "fee" quotation based on the new scope of work, as part of a Change Order document which will constitute an amendment to this Agreement by adding the

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additional functionality to Annex B, with the additional development work and costs payable by the Client. Once completed, the Change Order shall form part of this Agreement.

## 2.4. SUPPORT SERVICES

**2.4.1.** ESCases shall provide to CLIENT ongoing support for the Case Management System during the Subscription Term, commencing from and including the Delivery Date. This support will be provided to CLIENT at no additional cost.

**2.4.2.** During the Subscription Term, ESCases shall provide to CLIENT support services (the “**Support Services**”) which are intended to respond to any issues with the Case Management System as integrated in the CLIENT’s internal business operation, which Support Services shall be available via:

- a. Telephone; and
- b. On-line.

The Support Services shall be provided to the specific delivery standards described in Annex “C”.

**2.4.3.** ESCases is not required to provide Support Services involving:

- a. correction of problems caused by operation of the Case Management System in a manner other than that contemplated by this Agreement; and
- b. rectification of problems caused by misuse or incorrect use of the Case Management System by CLIENT.

**2.4.4.** The Support Services shall be provided during the hours of 8:30am to 5pm, Monday to Friday (the “**Support Hours**”).

**2.4.5.** During the Subscription Term, ESCases shall promptly provide CLIENT with the following information for any “Update” to or “Upgrade” of the Case Management System it may make or has made available from time to time:

- a. the nature of the improvements and/or corrections contained in the Update or Upgrade; and
- b. any adverse effects that the Update or Upgrade may be expected to have on CLIENT’s system/s, including any expected degradation in reliability, performance or functionality.

In this Agreement, an “**Update**” refers to a regular, periodic maintenance of the Case Management System, which is typically installed by ESCases, for bug fixes or similar functionality, whereas an “**Upgrade**” is a release of new features for the Case Management System. An update is typically not billed to the Client, whereas the upgrade is a billable

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release, and the client shall have the option of whether to install an upgrade to the Case Management System licensed to it.

## 2.5. TRAINING

**2.5.1.** ESCases will provide initial training to CLIENT staff on how to use the Case Management System.

**2.5.2.** The training shall be conducted by Sath Ly of ESCases in one session that will last approximately one (1) hour and will take place on a date to be agreed by the Parties.

**2.5.3.** CLIENT may have up to 100 participants attend the training session referred to in Section 2.5.2 of this Agreement.

**2.5.4.** The training sessions shall take place online, with a third-party video sharing conference software of choice, to be agreed by the Parties.

**2.5.5** A reasonable number of additional training sessions, throughout the term of this Agreement, will be made available by ESCases free of charge to CLIENT, through on-line learning facilities, as described in Section 2.5.4 above.

**2.5.6.** ESCases shall provide CLIENT with documentation for the Case Management System, in electronic format, that contains a description of the Case Management System's material functions and operations (the "**Documentation**").

## SECTION 3 – FEES

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**3.1.** CLIENT shall pay ESCases a fee (the "**Service Fee**") of CAD **[Price]** plus HST, for the Services provided. This is "per site" service fee and will include all the functionality and support specified in Annex A, B, and C. This is for the first year of the Subscription Term and any Service Fee required for subsequent annual terms of the Subscription Term is in addition to this payment. The sites to be included in this agreement are attached in Annex D. CLIENT has the right to add or remove or transfer access to the ESCases service to sites within the boundaries of the London Catchment at its sole discretion.

**3.3.** The Service Fee of Cdn. **[Price]** per 12-month renewal period of the Subscription Term, shall be payable by the CLIENT to ESCases.

**3.4.** The Service Fee shall be payable Net 30 days following the date of the relevant invoice sent by ESCases to CLIENT, which shall be sent to the CLIENT within 10 Business Days of the date of service start for the final list of sites provided to Escases by Client for which a draft list is reflected in Annex D, or the date of the start of a subscription term for site(s) added by Client during the term of this Agreement, respectively. Fees which are not paid within the



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30-day period shall be subject to a late fee of 6% per annum, calculated monthly, not in advance.

**3.5.** Client’s preferred method of payment to Escases is through bank EFT and shall require set-up documents from Escases to establish it as Payee. All amounts payable by CLIENT under or in relation to this Agreement should be made either by cash, cheque, bank draft, or wire transfer to the following bank account held by ESCases:

Account with Institution	
<b>Name: Toronto Dominion Bank</b>	Swift Code: TDOMCATTOR
Beneficiary	
<b>Account Name ESCases Inc</b>	Account Number 019020045236652

**3.6.** ESCases reserves the right to suspend the provision of Services in the event a payment obligation for such services is not met after 60 calendar days from the payment due date which is, in accordance with the terms of this Agreement, thirty (30) calendar days from the date of Escases’s accurate and complete invoice to Client. Escases agrees to make all reasonable and customary attempts to collect payment from Client prior to any potential suspension and to notify Client, in writing to both the operational and contractual POCs named hereunder, no less than thirty (30) calendar days prior to any potential suspension date. If any Escases invoices are incorrect or disputed by Client, the affected services shall not be at risk of suspension. Only the services which are the subject of Client’s non-payment shall be subject to potential suspension

**3.7.** CLIENT is responsible for paying HST and any other taxes applicable to the payments required to be made by it pursuant to this Agreement.

**3.8** Escases shall submit invoices only upon the successful delivery and acceptance of the work by the CLIENT in accordance with the specifications, requirements, and billing milestone schedule identified in Annex E, as applicable. Invoices shall include required supporting statements or certificates, which shall be sent under a separate email to the relevant Client POC. All invoices will be clearly identifiable with the required Agreement number stated clearly as “Purchase Order Number” at the top of the invoice; invoices must be provided in .pdf format with only one (1) attached invoice per email submission.

**3.9** Special billing provisions may be incorporated into the billing milestone issued hereunder. In no event shall invoiced amounts exceed the amount funded by Client, and in no event shall the total funding issued, and amounts invoiced, under this Agreement exceed the limits in Annex D and E. Client shall issue funding in accordance with the agreed upon fixed prices listed in Annex D and E; while the “per site” cost in Annex D shall remain unchanged, the list of sites is subject to change over time. Each invoice must be signed and

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approved by an authorized representative of Escases who shall certify that the invoiced amounts are accurate and that Escases has, in its possession, records to substantiate the invoices submitted to Client.

**4.0 Invoices** must be submitted electronically to [lres@london.ca](mailto:lres@london.ca) and [epardy@london.ca](mailto:epardy@london.ca) and shall include the Agreement Number, stated clearly as "Purchase Order Number" at the top of the invoice which shall also include the Invoice Date and a unique Invoice Number; the period of performance for the services/work being invoiced, cost of each invoiced service(s) in accordance with the pricing in Annex D and E, and total costs for that period; the Subcontractor Name and address;. ESCases shall also separately subtotal taxable services, materials and supplies on each invoice.

#### **SECTION 4 – LICENSE TERM AND PAYMENT**

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**4.1.** Subject to CLIENT compliance with the terms and conditions of this Agreement, ESCases hereby grants CLIENT a non-exclusive right and license to distribute internally, for the use of its officers, members, managers, employees, agents, contractors, successors and assigns, the Case Management System, subject to the payment of periodic fees and compliance with the other terms and conditions of this Agreement.

**4.2. "Subscription Term"** shall mean that period during which CLIENT will have on-line access and use of the Case Management System in accordance with this Agreement. The Subscription Term shall commence on the Delivery Date, which Escases agrees to provide to Client after order processing and delivery are completed and shall continue for 12 months thereafter. Client shall have the sole and exclusive option of renewing the Subscription Term upon issuance of a Purchase Order to Escases with Client's authorized funding for the renewal term. Client shall make every attempt to notify Escases in writing, via electronic mail, of its intent to renew a Subscription Term not later than 60 calendar days prior to the end of the first (or of any succeeding) Subscription Term and all renewals shall be in accordance with the same terms and conditions as set out in this Agreement. Client's notification to Escases of its intent to renew a Subscription Term shall not commit Client to a renewal and the details of such notification are subject to change as the site(s) change over time. The Client shall have up to four (4) successive annual options to renew this Agreement, provided that the unexercised options expire if CLIENT does not renew in any preceding year. Client may deliver written notice of non-renewal to Escases at least 30 calendar days prior to the expiration of the then-current Subscription Term.

#### **4.3. Expiry and Termination**

- A. Upon termination of this Agreement or expiration of the Subscription Term, ESCases shall immediately cease providing the Services and all usage rights granted under this Agreement shall terminate.

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- B. if ESCases terminates this Agreement due to a breach by CLIENT, then CLIENT shall immediately pay to ESCases all amounts then due under this Agreement. If CLIENT terminates this Agreement due to a breach by ESCases, then ESCases shall immediately repay to Customer all pre-paid amounts for any unperformed Services scheduled to be delivered after the termination date.
- C. Either Party may immediately terminate this Agreement for cause by written notice to the other Party and may regard the other Party as in default of this Agreement, if the other Party (i) becomes insolvent or bankrupt, (ii) makes an assignment for the benefit of creditors, (iii) to a trustee or receiver appointment, (iv) a trustee or receiver is appointed for its business or assets, or (v) voluntarily initiates bankruptcy or is the subject of involuntary bankruptcy proceedings and no successor assumes the Other Party's obligations under this agreement.

When requested by Client and within ten (10) calendar days from receiving such a request, but no less than twice annually, ESCases shall place the source code and associated documentation (together the "Source Code Materials") for the case management tools as used by Client and covered within the scope of this Agreement, with an escrow agent acceptable to both Parties with neither Party unreasonably withholding such agreement. The Source Code Materials means the source code and all related documentation reasonably required or needed for ESCases or its nominee to install, run, support, maintain (including to modify, compile and assemble) and otherwise use and make available the ESCases case management tools that are within the scope of this Agreement and in accordance with the terms of this Agreement. If Client terminates this Agreement for breach by ESCases or ESCases becomes insolvent or incapable of its performance, Client shall be entitled per the terms of the escrow agreement to access the Source Code Materials and use them in performance of its contract obligations for the term of its Agreement with the Ministry with no further obligation to ESCases.

- D. Termination for Convenience. CLIENT may unilaterally terminate this agreement, in whole or in part, without cause by written notice to ESCases. If terminated under this provision, CLIENT shall not be liable for any products delivered or services initiated and performed after sending to ESCases written notice of termination.
- E. Upon termination of this Agreement and upon subsequent written request by the disclosing party, the receiving party of tangible Confidential Information shall immediately return such information or destroy such information and provide written certification of such destruction, provided that the receiving

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party may permit its legal counsel to retain one archival copy of such information in the event of a subsequent dispute between the parties.

- F. If this agreement is terminated, or when the final Term expires whichever occurs first, all information residing in the Case Management System shall be exported to a data file and returned to CLIENT by ESCases within thirty (30) calendar days of the end or termination effective date, with the data file format to be determined by the CLIENT which shall be within the group of normally utilized file formats at no cost to CLIENT.

#### **SECTION 5 – TIMING AND DELAYS**

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The “*Delivery Date*” of the Case Management System is the date upon which the Case Management System, as upgraded by the Additional Feature Add-ons described in Section 2.3 and Annex B, shall be installed and initialized for Client’s use by Escases in accordance with the Billing Milestones (Annex E) and the terms of this Agreement. If either Party fails to meet agreed to deadlines as required by this Agreement, including the provision and utilization of complete data sets required for the functionality of the Case Management System in the SQL format required by ESCases, the Delivery Date may be postponed accordingly by the number of Business Days between the agreed to deadline and actual completion date. Neither Party shall be liable for the consequences (whether direct or indirect) of a delay caused entirely by the other Party.

#### **SECTION 6 – NATURE OF RELATIONSHIP**

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ESCases agrees to perform the Services hereunder solely as an independent contractor. The Parties agree that nothing in this Agreement shall be construed as creating a joint venture, partnership, franchise, agency, employer/employee, or similar relationship between the Parties, or as authorizing either Party to act as the agent of the other. ESCases is and will remain an independent contractor in its relationship to CLIENT.

#### **SECTION 7 – SUBCONTRACTING**

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In the performance of its obligations hereunder, ESCases shall have the right, in its sole discretion, to use third parties for the purposes of assisting it with completion of a one or more of the Services, *provided that* ESCases shall not be relieved from any of its obligations under this Agreement by doing so. ESCases shall require any such third party to conform with ESCases’s obligations hereunder.

ESCases will ensure that any agreement between ESCases and a third party related to the Project will:

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- i. Include such provisions as are necessary to enable ESCases to comply with all the terms and conditions of the Agreement with respect to the Project for which the third party is to be responsible in the same manner as if the Project were provided by ESCases.
- ii. Be drafted in accordance with all Applicable Laws, Privacy Laws and the obligations of ESCases in the Agreement.
- iii. Include provisions requiring the third party.
  1. to keep and maintain for a period of seven (7) years from their creation all financial records and non-financial records relating to any monies ESCases provides the third party related to the Project.
  2. to allow ESCases or any Person ESCases designates:
    - a. upon twenty-four hours' Notice to the third party and during normal business hours, to enter upon the third party's premises to conduct an audit or investigation of the third party regarding the third party's compliance with the agreement between ESCases and the third party.
    - b. inspects and copy and remove any copies of any records and documents ESCases or any Person it designates, reviews.
  3. to the extent possible, assignment rights to the CLIENT or any third party designated by the CLIENT upon the termination or expiry of this Agreement in accordance with its terms, without any further consent from the third party or any additional, accelerated or other similar payments having to be made.
  4. to acknowledge that ESCases may be subject to disclosure in accordance with FIPPA and/or MFIPPA.
  5. to develop procedures for responding to wrongdoing.
  6. to have a conflict-of-interest policy in place.
  7. to adhere to communication requirements, including:
    - a. a requirement to acknowledge that the project is supported by the CLIENT.
    - b. a publication requirement that includes the statement: "The Government of Ontario and its agencies are in no way bound by the recommendations contained in this document."
    - c. a requirement for third party's delivering EO Programs to comply with the Visual Identity and Communication Guidelines for EO SSMs.

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8. to outline obligations in relation to termination, e.g., continuation of service delivery until the effective date of the termination, implementation of wind-down procedures, etc.

9. to be prohibited from assigning the agreement without the consent of ESCases; and

10. to give the right for ESCases to provide the agreement between ESCases and third party to the CLIENT, which shall not be considered a breach of any confidentiality provisions of the relevant agreement.

## **SECTION 8 – INTELLECTUAL PROPERTY**

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**8.1.** CLIENT agrees that it will not interfere with the normal operation of the Software; will not itself, or allow any third party to copy, transfer, translate, reverse-assemble, reverse-compile, reverse-engineer or in any way derive from the Case Management System any source code or create derivative works based upon the Case Management System, or Documentation.

**8.2** CLIENT waives any objection to any Upgrade created for it by ESCases pursuant to this Agreement being used in other versions of the Case Management System for other customers of ESCases and waives all moral rights and droits de suite that it has now or may have in the future to the intellectual property rights existing in any of the works created for it by ESCases pursuant to this Agreement.

## **SECTION 9 – PRIVACY**

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### **9.2. Confidential Information**

(a) CLIENT hereby acknowledges and agrees that ESCases's performance of this Agreement may require ESCases to process, transmit and/or store CLIENT's Confidential Information, provided that ESCases shall restrict access to such Confidential Information to those of its directors, officers, employees, agents, partners, affiliates or subcontractors who have a need to know such information to provide the Services for the CLIENT. By submitting Confidential Information to ESCases, CLIENT agrees that ESCases and its Affiliates may process, transmit and/or store Confidential Information only to the extent necessary for, and for the sole purpose of, enabling ESCases to perform its obligations to under this Agreement, and for no other purpose whatsoever.

(b) The CLIENT shall be responsible for confirming, prior to providing Confidential Information to ESCases, whether the Confidential Information may be accessed pursuant to the *Freedom of Information and Protection of Privacy Act* (Ontario) ("FIPPA") and *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) ("MFIPPA"), and ESCases shall not access any such information where the CLIENT has advised ESCases that such information is no longer accessible in accordance with FIPPA and/or MFIPPA.

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(c) ESCases agrees to use commercially reasonable data protection measures in the provision of the Services to protect Confidential Information., and that its data shall be stored on Servers within Canada.

(d) With respect to any Confidential Information provided by CLIENT and which is resident in the Case Management System, ESCases agrees to provide Records, as defined in FIPPA and MFIPPA, to the CLIENT within seven (7) calendar days and/or remove them from the Case Management System, after being directed by CLIENT, in writing, to do so. ESCases agrees that any Confidential Information provided by it to the CLIENT may be disclosed by the CLIENT, where it is legally obligated to do so under FIPPA and/or MFIPPA by an order of a Court or Tribunal having jurisdiction, and this provision shall prevail over any other inconsistent provision in the Agreement.

**9.3 Data Controller Function** In relation to all Confidential Information provided by or through CLIENT to ESCases, CLIENT will be responsible as sole “Data Controller” for complying with all applicable data protection or similar laws and laws that regulate the processing of Confidential Information. CLIENT agrees to obtain all necessary consents and make all necessary disclosures before including Confidential Information in Content and using the Case Management System. CLIENT confirms that CLIENT is solely responsible for any Confidential Information that may be contained in Content, including any information which any ESCases User shares with third parties on CLIENT’s behalf. CLIENT is solely responsible for determining the purposes and means of processing CLIENT Confidential Information by ESCases under this Agreement, including that such processing according to CLIENT’s instructions will not place ESCases in breach of applicable data protection laws. Prior to processing, CLIENT will inform ESCases about any special categories of data contained within CLIENT Confidential Information and any restrictions or special requirements in the processing of such special categories of data, including any cross-border transfer restrictions. CLIENT is responsible for ensuring that the ESCases meets such restrictions or special requirements.

#### **9.4 Data Security**

ESCases represents and warrants that all industry best practices and security measures are implemented and adhered to.

- (a) The Case Management System will be based on current security technologies which will remain updated, supported, and maintained throughout the Subscription Term of the agreement. The Case Management System will comprise of the following:
- Hosted and Computing provided through Microsoft Azure Canada public Cloud and Amazon Web Services.

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- All web traffic is using HTTPS.
- All traffic will require authorization headers; and
- The CLIENT shall be provided with a separate MSSQL database on a shared instance.

(b) Escases must comply with the provincial guidelines relating to security and privacy set forth below. In addition, Escases shall put in place procedures that limit access to TWCP to only persons who are authorized to have access and for the purposes for which they are authorized. All persons with authorized access to provincial systems must comply with all security, acceptable use, conduct and other applicable ministry guidelines and policies as provided in the links below in this Section 10.8 as such policies exist as of the effective date of this Agreement:

- Security: GO-ITS 25.0 General Security Requirements:  
<https://www.ontario.ca/page/go-its-250-general-security-requirements>
- Privacy: Information Sensitivity Classification Guidelines:  
<https://www.ontario.ca/page/corporate-policy-information-sensitivity-classification>
- Ministry system standards are embodied in broader technology standards that are defined here: <https://www.ontario.ca/page/information-technology-standards>

(c) In the absence of well-established independent certifications of information and system security controls (such as a SOC 2 Type II, ISO 27001, or Cloud Security Alliance) for both the website/application security, as well as the security of the web hosting environment, EScases will:

**Website/application security (OWASP Application Security Verification Standard)**

(i) Provide and maintain, or allow the City of London to engage or perform, independent validation by a reputable application security assessor of implementation of OWASP ASVS v4.0.x Level 2 application security controls. Any exceptions to Level 2 controls, or acceptance of an alternative control framework (and exceptions thereto), must be managed and approved through standard City of London Information Technology Services (information security risk management) and Records Management (privacy management) processes.

(ii) Ensure that re-validation is performed on an annual basis at a minimum, or upon any significant changes to website/application functionality, or allow the City of London to engage or perform the same re-validation.



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**Web hosting security (CIS Critical Security Controls)**

- (iii) Provide and maintain, or allow the City of London to engage, independent validation by a reputable application security assessor of implementation of relevant CIS version 8 security controls for ESCases' development, test, QA, and production CMS environments. Any exceptions to CIS controls, or acceptance of an alternative control framework (and exceptions thereto), must be managed and approved through standard City of London Information Technology Services (information security risk management) and Records Management (privacy management) processes.
  
- (iv) Ensure that re-validation is performed on an annual basis at a minimum, or upon any significant changes to website/application functionality, or allow the City of London to engage or perform the same re-validation.
  
- (d) ESCases will complete the City of London Information Security Questionnaire and agrees to resolve or mitigate any significant vulnerabilities detected in the systems prior to production usage. The City of London Information Security team will evaluate the significance and pertinence of any detected vulnerabilities and work with ESCases to propose mitigation strategies.
  
- (e) Furthermore, Escases agrees that all Users Data will be stored inside Canada residing in Canadian data centres with established ISO/IEC security standards meeting GO-ITS 25.0 General Security Requirements.

**9.5 Data Privacy**

- (a) Both ESCases and the CLIENT are responsible for complying with any obligations applying respectively to each party under applicable federal and provincial privacy laws and regulations. CLIENT is responsible for ensuring that all persons to whom it permits access to any Confidential Information stored on the Case Management System have the appropriate internal authorizations and passwords permitting such access.
  
- (b) Both ESCases and the CLIENT will ensure that Confidential Information is protected in accordance with the security safeguards communicated by the other and agreed to by the receiving party. Only the CLIENT can authorize the use or disclosure of data.
  
- (c) Both ESCases and the CLIENT will ensure that any third party to whom Confidential Information is transferred is bound by the applicable terms within this section.
  
- (d) In addition to the foregoing, the ESCases agrees:

Agreement Number:

- (i) to keep CLIENT records secure.
- (ii) to ensure the security and integrity of Confidential Information and keep it in a physically secure location safe from loss, alteration, destruction, or intermingling with other records and databases and to implement, use, and maintain the most appropriate products, tools, measures and procedures to do so.
- (iii) Not to access any Confidential Information for any purpose other than as described in this Agreement.

#### **9.6 FIPPA and MFIPPA.**

(a) ESCases acknowledges that the Government of Ontario is bound by the Freedom of Information and Protection of Privacy Act (Ontario) and that any information provided to the Government of Ontario in connection with this Agreement may be subject to disclosure in accordance with FIPPA.

(b) ESCases acknowledges that the CLIENT is bound by the Municipal Freedom of Information and Protection of Privacy Act (Ontario) and that any information provided to the CLIENT in connection with this Agreement may be subject to disclosure in accordance with MFIPPA.

#### **SECTION 10 – FORCE MAJEURE**

A Party shall not be considered in breach of or in default under this Agreement on account of, and shall not be liable to the other Party for, any delay or failure to perform its obligations hereunder by reason of fire, earthquake, flood, explosion, strike, riot, war, terrorism, or similar event beyond that Party's reasonable control (each a "**Force Majeure Event**"); provided however, that if a Force Majeure Event occurs, the affected Party shall, as soon as practicable:

- a. notify the other Party of the Force Majeure Event and its impact on performance under this Agreement; and
- b. use reasonable efforts to resolve any issues resulting from the Force Majeure Event and perform its obligations hereunder.

#### **SECTION 11 – REPRESENTATIONS AND WARRANTIES**

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**11.1.** Each Party represents and warrants that:

- a. it has full power, authority and capacity to enter and perform its obligations under this Agreement and has taken all such action as is necessary, if any, to enter and perform its obligations under this Agreement.

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- b. this Agreement is a legal, valid and binding obligation of the Party, enforceable against it in accordance with its terms.
- c. entering into this Agreement will not violate the charter, bylaws or other constitutional document(s) of the Party or any material contract to which it is also a party; and
- d. the Services shall be performed in a legally acceptable manner and shall not violate any applicable laws.

**11.2.** ESCases hereby represents and warrants that the Case Management System will perform in all material respects in accordance with the documentation. ESCases does not guarantee that the services will be performed error-free or uninterrupted. CLIENT acknowledges that ESCases does not control the transfer of data over communications facilities, including the internet, and that the Services may be subject to limitations, delays, and other problems inherent in the use of such communications facilities. This section sets forth the sole and exclusive warranty given by ESCases (express or implied) with respect to the subject matter of this agreement. neither ESCases nor any of its licensors or other suppliers warrant or guarantee that the operation of the subscription service will be uninterrupted, virus-free or error-free, nor shall ESCases or any of its service providers be liable for unauthorized alteration, theft or destruction of customer's or any user's data, files, or programs.

**11.3** ESCases represents, warrants to, and covenants with CLIENT that

- a. all the Services to be performed by it hereunder will be rendered in a competent and professional manner by knowledgeable, trained and qualified personnel consistent in all material respects with generally accepted industry standards reasonably applicable to the provisions thereof.
- b. it possesses all rights necessary to grant CLIENT the rights set forth in this Agreement and that the Services do not infringe any intellectual property rights or other third-party proprietary right; and
- c. is in compliance with and will continue to comply with all Applicable Laws including but not limited to Privacy Laws and Client Data requirements, as defined in Section 1 of this Agreement, related to any aspect of this Agreement.
- d. has provided and will continue to provide, or ensure that it is provided, for the term of the Agreement, training to any person involved in carrying out the Agreement on the relevant responsibilities of ESCases set out in the Agreement.
- e. it has a privacy policy that is consistent with the Canadian Standards Association Code for the Protection of personal information and the privacy policy is publicly available.

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- f. has in place the necessary infrastructure and experienced employees to ensure compliance with ESCases' privacy policy.
- g. will provide notice of collection to the applicable persons and users, if required, and obtain and retain any consents that may be necessary to provide access to the Services and meet its obligations under the Agreement.
- h. will ensure that only authorized users have access to the ESCases platform and that the authorized users abide by the Terms and Conditions related to those systems and the representations made by us in this Agreement and in the users' respective registration forms.
- j. will ensure the secure and irreversible destruction or handover in accordance with CLIENT's direction to handover such paper records to CLIENT of paper records containing User Data or personal information where (i) the records are no longer needed to deliver the Services or to comply with the obligations under the Agreement, and (ii) ESCases received prior-written approval to destroy such records and destruction is consistent with written instructions from CLIENT. After the destruction is complete, the vendor will provide written confirmation of the destruction of the records and the destruction date.
- k. will ensure that electronic records containing User Data or personal information that are no longer needed to deliver the Services or to comply with the obligations under the Agreement are not accessible until secure and irreversible destruction of these records is possible and ESCases received prior-written approval to destroy such records and destruction is consistent with written instructions from CLIENT. After the destruction is complete, the vendor will provide written confirmation of the destruction of the records and the destruction date.
- l. will notify CLIENT as soon as ESCases becomes aware of a potential or actual breach of any of the privacy policy and the privacy protection provisions of the Agreement.
- m. will cooperate with CLIENT and its experts, subcontractors, and auditors in any audit of or investigation into a breach of the privacy policy and the privacy protection provisions of the Agreement.
- n. will not perform or fail to perform any action which could reasonably be expected to bring CLIENT or the Province into material disrepute in carrying out the Agreement.
- o. will ensure all User contact conducted on behalf of CLIENT or CLIENT's Service Provider in carrying out the Agreement will be by individuals located within Canada; and
- p. will ensure that all User Data related to carrying out the Agreement will be stored inside Canada residing in Canadian data centres with established ISO/IEC security standards

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meeting G0-ITS 25.0 requirements (available at <https://www.ontario.ca/page/go-its-250-general-security-requirements>).

r. has, will maintain in writing, and will follow:

- a code of conduct and ethical responsibilities for all persons at all levels of the ESCases's organization; and,
- procedures to ensure we can comply with its respective obligations under Applicable Law, including for greater certainty Privacy Laws and any policies and procedures established by the CLIENT or ESCases with respect to the security of personal information of Users.

## **SECTION 12 - LIMITATION OF LIABILITY**

IN NO EVENT SHALL CLIENT BE LIABLE TO ESCASES FOR ANY LOST PROFITS, LOST SAVINGS, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR SPECIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **SECTION 13 - INSURANCE & INDEMNIFICATION**

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(a) ESCases covenants and agrees to maintain, during the term of this Agreement:

(i) Ontario Workplace Safety and Insurance Board coverage or General Employers Liability Insurance, as required by law; and

(ii) Commercial General Liability Insurance against claims for bodily injury or death, property damage or loss, indemnifying ESCases and its employees, servants, volunteers, contractors and agents to the inclusive per occurrence limit of not less than \$2,000,000.00; and

(iii) Combined Technology Security/ Professional Liability Insurance for financial loss arising out of an error, omission or negligent act in the rendering of Services, to the inclusive per occurrence limit of not less than \$2,000,000.00. **SECTION 14 - NOTICES**

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Any notice or other communication provided for herein or given hereunder to a Party hereto shall be in writing and shall be given by electronic mail to the respective Party as follows:

*If to ESCases:*

Name: Sath Ly

Phone Number: 613 583 8697

Email address: Sath.ly@ESCases.ca

Address: 285 Montreal Street, Kingston, Ontario, Canada K7K 3G9

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*If to CLIENT:*

Name: []

Phone Number:[]

Email address:[]

Address: []

All notices shall be given by email with a Delivery and Read request to confirm receipt by the other Party.

**SECTION 15 – CONFLICT OF INTEREST**

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ESCases hereby warrants to CLIENT that, to the best of its knowledge, it is not currently obliged under any existing contract or other duty that conflicts with or is inconsistent with this Agreement. ESCases is free to engage in other development activities; provided, however, ESCases shall not accept work, enter contracts, or accept obligations inconsistent or incompatible with its obligations or the scope of Services to be rendered for CLIENT pursuant to this Agreement.

**SECTION 16 – DISPUTE RESOLUTION & GOVERNING LAW**

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**15.1.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada.

**15.2.** Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the Provincial or federal courts located in the Province of Ontario for the purpose of any action or proceeding brought by either of them in relation to or in connection with this Agreement.

**SECTION 17 – SEVERABILITY**

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Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of that provision in any other jurisdiction.

**SECTION 18 – AMENDMENT AND ASSIGNMENT**

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**17.1.** This Agreement may be amended in whole or in part only in writing signed by the Parties hereto.

**17.2.** Neither Party may assign its rights under this Agreement without the prior written consent of the other Party hereto.

**SECTION 19 – ENTIRE AGREEMENT**

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This Agreement and the Annex attached hereto constitute the entire agreement between the Parties and supersede all previous negotiations, understandings and agreements, verbal or written with respect to any matters referred to in this Agreement except as specifically set out in this Agreement. The Annex hereto forms an integral part of this Agreement and is incorporated by reference herein.

**SECTION 20 – COUNTERPARTS**

---

**Agreement Number:**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one agreement. To evidence the fact that it has executed this Agreement, a Party may send a copy of its executed counterpart to the other Party by electronic transmission and the signature transmitted by such transmission shall be deemed to be that Party's original signature for all purposes.

[Click here to enter text.](#)

## **SECTION 22 – RECORD MAINTENANCE**

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ESCases will keep and maintain for a period of seven years from their creation:

- A. all financial records (including invoices and evidence of payment) relating to the Funds or otherwise to the Project in a manner consistent with either international financial reporting standards or generally accepted accounting principles or any comparable accounting standards that apply to ESCases; and
- B. all non-financial records and documents relating to the Funds or otherwise to the Project.

1. **Records Review.** The CLIENT may, at its own expense, upon twenty-four hours' Notice to Escases and during normal business hours enter upon ESCases' premises to conduct an audit or investigation of ESCases regarding ESCases' compliance with the Agreement, including assessing any of the following:
  - a. the truth of any of ESCases' representations and warranties.
  - b. the progress of the Project.
  - c. ESCases' allocation and expenditure of the Funds.
2. **Inspection and Removal.** For the purposes of any Records Review, the CLIENT may take one or both of the following actions:
  - a. inspects and copy any records and documents referred to in Record Maintenance.
  - b. removes any copies the CLIENT makes pursuant to section A., above.
3. **Cooperation.** To assist the CLIENT in respect of its rights provided for in Inspection and Removal, ESCases will cooperate with the CLIENT by:
  - a. ensuring that the CLIENT has access to the records and documents wherever they are located, including records and documents in the possession of a Service Provider.
  - a. assisting the CLIENT to copy records and documents.
  - b. providing to the CLIENT, in the form the CLIENT specifies, any information the CLIENT identifies; and
  - c. carrying out any other activities the CLIENT requests.
4. **Records Transfer.** At any time during the Term or after the expiry of the Agreement or the termination of the Agreement pursuant to the Financial Administration Act (Ontario) and Termination, upon the request of the CLIENT ESCases will transfer any records referred to in Record Maintenance to any Person identified by the CLIENT to facilitate the continuation or completion of the Project, or a similar project, including the continuation or completion of services to Users.



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5. Collection and Review of Service Provider Records. ESCases will:
- a. ensure that ESCases has unobstructed access to, and the right to always copy and retain copies of all records relevant to the delivery of the Project by Service Providers.
  - b. upon the CLIENT's request, obtain any relevant records from Service Providers or to respond to the CLIENT's requests for further information to be obtained from Service Providers and provide such records to the CLIENT within the timeframe indicated in the CLIENT's request.
  - c. in the event ESCases initiates a review, inspection or audit of a Service Provider's records with whom ESCases has contracted with for the delivery of the Project, ESCases shall provide Notice to the CLIENT and, upon the CLIENT's request, designate the CLIENT as a Person permitted to participate in any review, inspection or audit of the applicable Service Provider; and
  - d. in the event the CLIENT requests ESCases to undertake a review, inspection and/or audit of the records of a Service Provider with whom ESCases has contracted with for the delivery of the Project, ESCases will designate the CLIENT as a Person permitted to participate in any review, inspection or audit of the applicable Service Provider.

### 23. PROGRAM REVIEWS

Scheduled program / subcontract reviews to address

- System Performance
- Support (issues)
- Enhancement Status
- Any other issues or concerns by either party will occur monthly for the first 6-months after the date of the execution of this Agreement and quarterly thereafter.

**Agreement Number:**

**IN WITNESS WHEREOF**, and intending to be legally bound, the Parties have duly executed this Agreement as of the date first written above.

**ESCASES INC.**

**CLIENT.**

Per:

\_\_\_\_\_

Per: \_\_\_\_\_

I have authority to bind the corporation

Name            Sath Ly

Name

Position        President & CEO

Position

Date             December 1, 2022

Date

**ANNEX A**

**Case Management System**

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ESCASES CASE MANAGEMENT FEATURES

OVERVIEW

1. Microsoft outlook calendar integration
  2. Employers and Trainers Management
  3. Client Profile Management
  4. One way notification via email and SMS
  5. Contract Management
  6. Program Specific Reporting
  7. Mileage and Expense Management
  8. User roles management
  9. Digital File Storage
-

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**ANNEX B**

**Case Management System Feature Add-ons**

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ESCases shall provide and maintain a working, tested and secure application interface to the Employment Ontario Information Systems – Case Management System (EOIS-CaMS). This interface shall meet the GO-ITS Information and Information Technology Standards for security and privacy referenced in Sec. 9.4 of this Agreement.

**ANNEX C**

**Service Standards**

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- **Response time:** 4 hours during Business Day 9am – 5 pm EST
- **Availability:** 99.9% Case Management System availability guarantee based on, and congruent with, AMS/Microsoft standards of availability
- **Return to service:** not more than 24 hours to full return to service following downtime incidents, if Bug resolution may, depending on the severity, take up to 48 hours.
- **Remote Correction** - remote correction of issues shall be the preferred standard.
- **on-site visits** – are not normally required, but On-site visits outside the Kingston area can be provided, on the pre-condition that ESCases and CLIENT agree as to the expenses that ESCases will incur in making any such on-site visit(s) and that CLIENT will reimburse such expenses.

**ANNEX D**

**Site Locations and Rate Table**

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<b>Organization</b>
London Regional Employment Services
ATN Access Inc.
Community Employment Choices
Community Employment Services – Ingersoll
Community Employment Services – Woodstock
CHS – London
College Boreal – London
Community Living Tillsonburg
Employment Services Elgin
West Elgin Support Services
Employment Solutions
Fanshawe College – London
Fanshawe College – Aylmer
Fanshawe College – St Thomas
Goodwill Career Centre
Hutton House Learning Centre
Leads Employment Services Inc.
London Training Centre
March of Dimes Canada
MCS Employment Resources
Pathways Employment Help Centre
Tillsonburg & District Multi-Service Centre
Women’s Employment Resource Centre
WILL Employment Solutions
Woodstock & District Developmental Services
Youth Opportunities Unlimited

**ANNEX E**

**Billing Milestone Schedule**

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**Subscription Term:**

The subscription term for the software-as-a-service offering shall be two years, commencing from the Effective Date of this Agreement.

**Billing Frequency:**

Billing shall occur annually throughout the subscription term.

**Payment Structure:**

For the first year of the subscription term, the CLIENT agrees to make an initial payment of 90% of the total annual subscription fee upon the execution of this Agreement.

The remaining 10% of the total annual subscription fee shall be payable upon successful implementation and deployment of the system.

**Annual Total:**

The total annual subscription fee is set at \$130,000.00, exclusive of applicable taxes.

**Taxes:**

All amounts specified in this billing schedule are exclusive of Harmonized Sales Tax (HST). HST will be applied to the total annual subscription fee at the prevailing rate.

**Amendment:** This billing schedule may be amended by mutual written agreement of the Parties.

**ANNEX F**

**Roles and Responsibilities**

<b>Role</b>	<b>Responsibilities</b>	<b>Assignment</b>
Technical administration	<ul style="list-style-type: none"> <li>• Responsible for overall system health and performance</li> <li>• Manages server configurations, updates, and backups.</li> <li>• Monitors resource utilization to address issues.</li> <li>• Manages data integrity, consistency and availability.</li> <li>• Ensures the security of the software and the associated data.</li> <li>• Addresses user issues raised through ticketing process.</li> </ul>	ESCASES INC.
User administration	<ul style="list-style-type: none"> <li>• Allocates licences.</li> <li>• Oversees service providers.</li> <li>• Evaluates user feedback to coordinate upgrade requests to ESCASES INC.</li> <li>• Liaises with ESCASES to address CaMS-related issues.</li> </ul>	LRES
Reporting specialist	<ul style="list-style-type: none"> <li>• Designs, develops and maintains customized reports.</li> <li>• Addresses user requests for specific data or analytics.</li> </ul>	LRES