

Bill No. 128
2018

By-law No. A.- _____

A By-law to approve the Software as a Service Subscription Agreement with Partho Technologies Inc., for a licence to use MobilINSPECT; and to authorize the Mayor and the City Clerk to execute the Agreement.

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

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

1. The Software as a Service Subscription Agreement attached as Schedule "A" to this by-law, between The Corporation of the City of London and Partho Technologies Inc., for Subscription Services for mobilINSPECT, is authorized and approved.
2. The Mayor and the City Clerk are authorized to execute the agreement approved under section 1 above.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on March 27, 2018

Matt Brown
Mayor

Catharine Saunders
City Clerk

First Reading – March 27, 2017
Second Reading – March 27, 2017
Third Reading – March 27, 2017

SCHEDULE "A"

SOFTWARE AS A SERVICE SUBSCRIPTION AGREEMENT

THIS SOFTWARE AS A SERVICE SUBSCRIPTION AGREEMENT, effective as of the date indicated below ("Effective Date"), is by and between **PARTHO TECHNOLOGIES INC.**, a private limited company organized and existing under the laws of Ontario, with its registered office at 1432 Duval Drive, Mississauga, Ontario L5V 2W4 ("Partho") and **THE CORPORATION OF THE CITY OF LONDON** ("Client"), with offices at 300 Dufferin Avenue London Ontario PO BOX 5035 N6A 4L9. Each of Partho and the Client are referred to a "Party" and collectively as the "Parties" throughout this Agreement.

The **Effective Date** of this Agreement is the 1st day of April, 2018.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows;

1. DEFINITIONS AND INTERPRETATION

As used in this Agreement, and in addition to any other terms defined in this Agreement, the following terms shall have the following meanings:

"Acceptance Criteria" means the completion by the Client of the user acceptance testing ("UAT") with zero severity one defect results and less than three severity two defect result(s) as more particularly described in Schedule C – Support and SLA.

"Acceptable Use Policy" and **"AUP"** each mean the acceptable use policy posted on the day the Client's Term commences, as may from time to time be updated or amended by Partho. The AUP may be contained within the EULA.

"Agreement" means this *Software as a Service Subscription Agreement and any amendments or additions made in writing and executed by both parties* from time to time, and including any Schedules, exhibits and attachments.

"AMANDA" means the third-party software application necessarily and separately to be first acquired by the Client, the features and functions of which are to be utilized by it to access the Application. The AMANDA system is a popular third party software system in use by municipalities for managing business process workflow on inspections and e-permits and other such functions. In the context of mobiINSPECT, it refers to the business functionality within the Amanda system that municipalities use for recording business inspection results and the web services Application Programming Interface (API) that Amanda exposes for integration of external systems with such functionality.

"Authorized User" means an employee of the Client who is authorized to access the Subscription Services as either a named or concurrent user via the Client's account and to use a Client approved password subject to the terms of this Agreement.

"Business Days" means any day except Saturday, Sunday or any day on which banks are generally not open for business in the City of Toronto, Ontario.

"Client Data" means the Data or content inputted into the Software or generated by the Client or any of its employees or Authorized Users through the Software.

"Cloud Servers" means Partho's cloud infrastructure set up to host the Application and Client Data.

"Data" means any original digital data (i.e. that is transmitted electronically), or metadata that is captured by the Software as well as related documentation under the terms and conditions of this Agreement.

“Deliverables” means all Work Product that Partho is required under any Schedule to deliver to the Client as part of the Services.

“Documentation” means the documentation provided electronically by Partho for use with the Services, as periodically updated.

“Expiration Date” or **“Term Expiration Date”** means 12 o’clock midnight of the last day of the Term as specified under *Term Expiration* of Schedule B – Subscription Services.

“Fees” means the fees payable by the Client to Partho pursuant to this Agreement.

“Functional Specifications” means the specifications prepared by Partho with the cooperation of the Client which will conform in content, but not necessarily rigid structure, to the requirements specified in Schedule “A” – Software Specifications which, when completed, will fully describe the required Application at a business rather than a technical level.

“Initial Term Start Date” has the meaning given to it under Schedule B – Subscription Services.

“Intellectual Property Rights” or **“IPR”** means any and all tangible and intangible: (i) rights associated with works of authorship, including copyrights, moral rights, neighbouring rights, and derivative works thereof, (ii) trademark and trade name rights, (iii) trade secret rights, (iv) patents, design rights, and other industrial property rights, and, (v) all other intellectual property rights (of every kind and nature howsoever designated) whether arising by operation of law, treaty, contract, license, or otherwise, together with all registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof.

“Payment Dates” means the date on which the Fees as specified in Schedule B – Subscription Services are owing, and includes the dates on which such other amounts, as determined through the provision by Partho to Client of any deliverable under and as set forth in a Work Order Form or otherwise agreed to by the parties and accepted in writing.

“Professional Services” means the professional services to be provided by Partho as outlined in a Statement of Work, which may be requested pursuant to a submitted Work Order Form. Professional Services shall include, but are not limited to, the development of Enhancements (defined below).

“Schedules” means a schedule, which is attached to this Agreement, or which may be added hereafter by written agreement of the Parties, including but not limited to Statements of Work.

“Services” means the services to be provided by Partho to the Client as described in this Agreement including any Schedule and any additional services authorized by the Client that Partho agrees to perform or is required to perform hereunder. The Services shall include, but are not limited to, the Subscription Services and Professional Services.

“Service Level Agreement or **“SLA”**, in the form set out in Schedule C – Support and SLA *specifies* the quality, availability, and responsibilities of Partho in providing the Subscription Services and as agreed between Partho and the Client.

“Software” the *mobiINSPECT* product and service, a description and associated functionality of which is set out in Schedule A – Software Specifications.

“Statement of Work” means a statement of work (SOW) or other document which is attached to this Agreement, or which may be added hereafter by written agreement of the Parties that describes the Services to be provided by Partho to the Client.

“Subscription Fee” means the annual amounts, payable by Client to Partho for the Subscription Services, as set out in Schedule B – Subscription Services.

“Subscription Services” means license of the Software by Partho to the Client and Authorized Users.

“Support Services” means those Partho-provided services as set out in Schedule C – Support and SLA.

“Term” shall have the meaning given to it in Schedule B – Subscription Services.

Term Expiration Date shall have the same meaning as **Expiration Date”**.

“Third Party Components” refers to any one or more portions of the Software of which the Intellectual Property Rights belong to any one or more individuals or organizations that have provided Partho with the right to sublicense any such portion(s).

“Work Order Form” shall mean Partho’s standard form for requesting Professional Services the form of which is attached hereto as Schedule E – Work Order Form.

“Work Product” means all configurations and customizations to the Software made, created, designed or developed by Partho for the Client pursuant to a Work Order Form, including but not limited to any custom features, workflow, functionality, skins, banners, colour schemes and graphics. Work Product specifically excludes the Software, any preexisting software, open source software or third party software that may be implemented in the deliverables being created pursuant to such Work Order Form.

2. SCHEDULES

The following is a list of Schedules to this Agreement:

Schedule “A” – Software Specifications Schedule “B” – Subscription Services Schedule “C” – Support and SLA Schedule “D” – Statement of Work Schedule “E” – Work Order Form Schedule “F” – Security Policy

3. SERVICES

- (a) Partho shall perform the Services in accordance with this Agreement and the applicable Schedule(s), and in a timely, diligent and professional manner.
- (b) Subject to Section 11, each Schedule is automatically deemed to include all of the terms and conditions of this Agreement; provided that whenever the provisions of a Schedule expressly conflict with these terms and conditions, the conflicting provisions of the Schedule control and take precedence over the conflicting provisions of these terms and conditions, but only for purposes of the Schedule.
- (c) Where a Schedule contemplates the development of a Deliverable, Client shall have a period to review and accept the completed Deliverables (such period to be specified in the applicable Schedule, or a reasonable period if no period is specified) and Partho shall have a period to remedy any deficiencies identified by Client (such period to be as specified in the applicable Schedule, or a reasonable period if no period is specified). Client shall provide Partho prompt notice of any deficiencies identified by Client. If Client does not give written notice of any deficiencies within such period, it shall be deemed to have accepted the Deliverables.

4. TERM AND TERMINATION

- (a) The Term of this Agreement begins on the Initial Term Start date identified in Schedule “B” and shall end on the Term Expiration Date, unless renewed in accordance with Section 4(b).
- (b) The Term may be renewed by the parties in writing for successive Renewal Terms, unless terminated in accordance with this Agreement.

(c) The Fees to be charged during Renewal Terms shall be calculated in accordance with Schedule B – Subscription Services and shall be subject to increase, at minimum, equivalent to the higher of

- i. an equivalent increase in the Cost of Living Index as published by Statistics Canada under the heading "all items" for the City of Toronto, or
- ii. Partho's then current published rates.

(d) *Termination*

- i. Either party may terminate this Agreement if the other party materially breaches this Agreement, including any failure to make payments when due, and such other party fails to cure such breach in all material respects within thirty (30) days after being given notice of the breach from the non-breaching party.
- ii. Either party may terminate this Agreement, upon written notice to the other Party, if such other party is subject to proceedings in bankruptcy or insolvency, voluntarily or involuntarily, if a receiver is appointed with or without the other party's consent, if the other party assigns its property to its creditors or performs any other act of bankruptcy, or if the other party becomes insolvent and cannot pay its debts when they are due.

(e) *Early Termination.* If this Agreement is terminated by Partho pursuant to paragraphs 4(d)(i) or (ii), the Client shall pay Partho, as liquidated damages and not as a penalty, an amount equal to the annual fees due multiplied by the number of remaining years in the then current Term.

(f) *Effect of Termination*

- i. Each party shall promptly deliver to the other party, all papers, databases, documents, software programs, and other tangible items (including copies) containing the other party's Confidential Information in its possession or under its control, or on request, destroy such materials and certify that it has done so;
- ii. upon a request by the Client within thirty (30) days of termination, Partho will within fifteen (15) days of such request, provide to the Client a copy of the Client Data in a format that is readable using commercially available third party software (e.g. .csv or .xlsx);
- iii. upon a request by the Client within thirty (30) days of termination, Partho will delete and cause to be deleted all Client Data from all computer systems owned and controlled by Partho; and
- iv. the licenses granted to the Client under this Agreement shall terminate and the Client and all Authorized Users shall cease using the Software and any licenses granted to Partho in respect of the Client Data and Client's trademarks will terminate.

5. LICENSE TO SUBSCRIPTION SERVICES

(a) Partho hereby grants to Client a non-exclusive, non-transferrable license to access the Subscription Services and use the Software solely to permit the Client and Authorized Users to use the Software for legitimate purposes in accordance with the terms of this Agreement during the Term.

(b) Partho reserves the right to modify the Services at any time and without advance notice. The Client acknowledges that components used in connection with a prior version of the Services may be incompatible with a subsequent version of the Services.

Notwithstanding this paragraph, Partho will not modify the Services to remove the core functionality of the Software as described in Schedule A – Software Specifications and Project Plan.

- (c) Additional upgrades (i.e., modifications, additions or substitutions that result in a substantial change, improvement or addition to the Software), if available, may be offered by Partho for additional Fees. If the Client wishes to request such modifications/changes to the Software, it must do so by submitting a Work Order Form. Partho will evaluate such Work Order Form and outline the agreed upon scope of work and applicable fees in a Statement of Work.
- (d) Partho represents, warrants and covenants that the Software is and shall be hosted on Cloud Servers maintained by a reputable third party host (“Third Party Host”) located in Canada. Partho will be responsible for contracting with the Third Party Host, and for paying all fees and charges of the Third-Party Host. Partho further represents, warrants and covenants that (a) the Software is and shall be hosted on cloud hosting provider that are at least a Tier-2; and (b) the Third Party Host is and shall be certified compliant by an accredited certification body with the ISO/IEC 27018 standard (Code of practice for protection of personally identifiable information (PII) in public clouds acting as PII processors.
- (e) When each User first attempts to access the Software, such User will be prompted to accept the then current end-user license agreement (“EULA”).
- (f) Partho regularly upgrades and updates the Subscription Services. This means that the Subscription Services are continually evolving. Some of these changes will occur automatically, while others may require Client to schedule and implement the changes. The changes may also mean that Client needs to upgrade its equipment in order to make efficient use of the Subscription Services. Partho will provide Client with advance notification in this case.
- (g) Partho recognizes that Client may have legitimate business reasons for not upgrading to a new version of the Subscription Services as soon as the version becomes available. However, Partho will not support old versions indefinitely. When an old version used by Client is at end-of-life, Partho may remove Client's access to that version and upgrade Client to a new version. Client shall bear the sole responsibility and cost of performing any hardware upgrades required to access updated versions of the Software.

6. LICENSE RESTRICTIONS

Except as set forth in this Agreement, any Schedule and to the extent contrary to applicable law: (i) Client may not make or distribute copies of the Software; (ii) Client may not alter, merge, adapt or translate the Software, or decompile, reverse engineer, disassemble, or otherwise reduce the Software to a human-perceivable form; (iii) Client may not rent, lease, host or sublicense the Software (except as is incidental or necessary for the provision of the Software to Users); (iv) Client may not modify the Software or create derivative works based upon the Software; (v) Client may not make the Software available to anyone who is not an Authorized User; (vi) Client and Authorized Users must use the Software and Subscription Services in strict accordance with the EULA as amended from time to time; (vii) Client may not use the Subscription Services to build a competitive solution or assist someone else to build a competitive solution; (viii) use the Subscription Services in a way that violates any applicable law; (ix) Client may not use the Subscription Services to load test the Subscription Services in order to test scalability; or (x) Client may not exceed the payload or other usage limits identified in any Schedule.

7. CLIENT RESPONSIBILITIES, REPRESENTATIONS AND WARRANTIES

- (a) Client agrees to cooperate with any reasonable investigation by Partho regarding an actual or potential violation of the EULA as updated from time to time. Such investigation may include review of Client’s internal digital security protection strategy, its EULA and associated end user compliance and acceptance terms.

(b) Client Duties and Responsibilities:

- i. Client will make available in a timely manner for Partho at no charge to Partho, all technical data, programs, files, documentation, test data, sample output, or other information, resources, and personnel required by Partho as set forth in the applicable document for the performance of the Services. Client will be responsible for, and assumes the risk of any issues or problems resulting from the content, accuracy, completeness, competence, or consistency of all Client programs, files, documentation, test data, sample output, or other information, resources, and personnel supplied by Client. Client will provide, at no charge to Partho, reasonable office space and equipment at Client's facilities (such as copiers, fax machines and modems) as Partho reasonably requires in performing the Services.
- ii. Since the Software utilizes the web services API of the AMANDA system as well as relies on known configuration of AMANDA system, the Client acknowledges that any changes/updates to the web services API or AMANDA version and/or configuration updates may have a bearing on the proper functioning of the Software. Client must discuss any updates to configuration and version upgrades with Partho prior to making such updates.
- iii. The Client is responsible for all Authorized Users' use of the Service and compliance with this Agreement. The Client shall: (a) have sole responsibility for the accuracy, quality, and legality of all the Client Data; and (b) prevent unauthorized access to, or use of, the Service, and notify Partho promptly of any such unauthorized access or use.

8. PARTHO RESPONSIBILITIES, REPRESENTATIONS AND WARRANTIES

(a) Partho shall:

- a. make the Service available in accordance with the Documentation and the SLA to the Client during the Term pursuant to this Agreement;
- b. not use the Client Data except to provide the Service, or to prevent or address service or technical problems, or to ascertain trends through analytics in accordance with this Agreement and the Documentation, or in accordance with the Client's instructions; and
- c. not disclose the Client Data to anyone except in accordance with this Agreement.

(b) Partho represents and warrants that:

- a. it is the sole legal and beneficial owner (free from all encumbrances and third party claims) of, or has valid license to use (with right to license), the Software. To the best of Partho's knowledge and belief, neither the Software, nor its use within the scope of the terms of the Agreement, infringes any third party copyright;
- b. it has the authority to enter into this Agreement and it has the power and authority to grant the license to Client hereunder; and
- c. it has no constructive or actual knowledge of a potential legal proceeding being brought against Partho that could materially adversely affect performance of this Agreement; and that Partho's execution and performance of this Agreement is not prohibited by any contract to which Partho is a party (including a sole or exclusive license), or order by any court of competent jurisdiction.

9. FEES

- (a) In consideration for Partho's performance of the Services, the Client agrees to pay Partho the Fees more particularly described in Schedule B – Subscription Services. All Fees pursuant to this Agreement shall be in Canadian Funds.
- (b) Subject to the terms of a Schedule, on a monthly basis, Partho shall invoice the Client for Services, and the Client shall pay such invoices within thirty (30) days of receipt (or such other time specified in a Schedule). A finance charge applies on any overdue payment of one and one-half percent (1½%) for each month or portion of a month that the payment is overdue, or the highest interest rate permitted by applicable law, whichever is the lower. Interest shall compound monthly.
- (c) The Fees do not include any taxes, and Client shall pay any sales, use, harmonized sales, value-added or other taxes or import duties due as a result of any amounts paid to Partho. The Client shall bear all of Partho's costs of collection of overdue fees, including reasonable legal fees.

10. SUBSCRIPTION SERVICES, SUPPORT AND SLA

- (a) Subject to the terms and conditions contained herein, Partho will provide support, maintenance and training Services in accordance with Schedule C – Support and SLA.
- (b) Partho will not provide any support or maintain:
 - i. Software that has been modified by the Client or any third party, unless the modification has been approved in writing by Partho;
 - ii. a version of the Software that has passed its end-of-life date; or;
 - iii. errors or defects in the Subscription Services caused by any third-party software or hardware, by accidental damage or by other matters beyond Partho's reasonable control.
- (c) In the event that the Subscription Services are unavailable ("Downtime"), Partho shall provide the Client with the credits as required by the SLA (if any).
- (d) In the event that the Client is dissatisfied with the Service, the Client's sole remedies are those listed in the SLA, this Section 10, or termination of this Agreement in accordance with Section 4.
- (e) Notwithstanding the SLA, Partho may, upon reasonable notice, interrupt the Subscription Services between midnight and 6:00 AM, Toronto, Ontario time during Mondays to Fridays and between 9:00 PM and 6:00 AM, Toronto, Ontario time during Saturdays and Sundays, to perform planned maintenance on the Cloud Servers or the Software ("Planned Service Interruption").
- (f) Partho may also interrupt the Services on an exigent basis, as minimally required to repair and/or mitigate the effects of security breaches, virus attacks, denial of service attacks and other intentional interferences by third parties. Partho will exercise reasonable efforts to inform the Client before interrupting the Services to effect the said repairs.

11. PROFESSIONAL SERVICES

Professional Services provided by Partho shall be rendered in accordance with and subject to the terms of this Agreement.

Enhancements Requested Through Work Order Forms

The Client may request a modification or change to the Software or the Subscription Services by submitting a Work Order Form as prescribed by this Agreement, in the form attached as Schedule E, as amended from time to time. If such modification or change to the Software or Subscription Services adds additional functionality or features (an "**Enhancement**"), Partho shall advise the Client as to the cost, timeline and additional requirements for developing such Enhancement. The Parties shall then execute a Statement of Work. Unless expressly specified

otherwise in writing by both Parties, the development of the Enhancement will be governed by the terms of this Agreement.

Partho warrants that any Development of Enhancement developed will substantially conform to the specifications outlined in the Statement of Work.

If the terms of a submitted Work Order Form conflict with the Statement of Work, the terms of the Statement of Work will govern. However, if a Statement of Work conflicts with this Agreement, the terms of the Statement of Work shall govern, but only with respect to the conflict.

Statements of Work

The Parties may agree to additional Professional Services by signing one (1) or more Statements of Work setting forth, among other things, the following: (a) a full description of the Professional Service to be provided; (b) the applicable Fees, payment of expenses and payment schedule; (c) a description of the Deliverables and related acceptance criteria; (d) the materials to be provided by each Party; (e) designated project managers to act as the primary contact for the Client (with sufficient knowledge of the Amanda system); and (f) a timeline, if applicable.

12. SECURITY

Security on the Subscription Services will be provided in accordance with the Security Policy described in the attached as Schedule F – Security Policy. Except as expressly provided in this Agreement, the Client acknowledges that the Client bears sole responsibility for the security of the devices that Services are accessed on. The Client agrees to implement security measures that are commercially reasonable for the Client's use of the Services, including encryption technologies, password and user ID requirements, and procedures regarding the application of security patches and updates.

13. INTELLECTUAL PROPERTY

- (a) Client acknowledges that, unless stated otherwise in a Schedule, Partho is the sole and exclusive owner, together with all title and associated Intellectual Property Rights in and to the Services, including but not limited to the Software, Subscription Services, any Enhancements or Deliverables.
- (b) All title and Intellectual Property Rights in and to any of the Third-Party Components are the property of the respective content owners and may be protected by copyright, other intellectual property laws, common law or international treaties.
- (c) Partho retains all rights, title and interest in and to all software, programming documentation, technical ideas, concepts, know-how, databases, inventions, discoveries, improvements, techniques and all related intellectual property rights, created, conceived and developed by Partho prior to the commencement of this Agreement, including without limitation the Products and Documentation (the "Partho Prior Technology"). All right, title, and interest in and to all derivative works, enhancements, extensions and modifications of or related to the Partho Prior Technology or other products developed in whole or in part by Partho, including without limitation all intellectual property rights therein (the "Developed Technology") shall be the sole property of Partho whether developed by Partho or any other party in performing the Professional Services or otherwise unless the parties have agreed on a Work Order specifying ownership rights. All ideas, know-how, techniques or other intellectual property rights originated, developed or owned by the Client prior to the commencement of this Agreement and ideas, know-how, techniques or other intellectual property, excluding the Developed Technology, developed solely by Client during the term of this Agreement shall be the sole property of Client.
- (d) Partho acknowledges and agrees that as between the Parties, the Client is the sole and exclusive owner of the Client Data and Client trademarks, and that no right or interest in the Client Data and Client trademarks other than the licenses provided herein.

- (e) Client hereby grants to Partho a non-exclusive, royalty-free, non-transferable, limited right to use (during the Term) any Client Data provided to Partho, solely to perform the Services pursuant to this Agreement.

14. DISCLAIMER, LIMITATION OF LIABILITY

- (a) EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SERVICES AND ANY DELIVERABLES ARE PROVIDED TO THE CLIENT ON AN “AS IS” BASIS, WITHOUT WARRANTIES FROM PARTHO OF ANY KIND, EITHER EXPRESS OR IMPLIED. PARTHO EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, UNLESS OTHERWISE SPECIFIED IN A SCHEDULE. PARTHO DOES NOT WARRANT THAT THE USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.
- (b) NEITHER PARTY SHALL BE LIABLE UNDER THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOST OR CORRUPTED DATA, CLIENT DATA, LOST PROFITS, LOST BUSINESS OR LOST OPPORTUNITY), OR ANY OTHER SIMILAR DAMAGES UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY), EVEN IF THE OTHER PARTY HAS BEEN INFORMED OF THIS POSSIBILITY. CLIENT ASSUMES ALL RESPONSIBILITY FOR THE SELECTION OF THE SUBSCRIPTION SERVICES, SOFTWARE AND DOCUMENTATION NECESSARY TO ACHIEVE CLIENT'S INTENDED RESULTS, AND FOR THE USE AND RESULTS OF THE SUBSCRIPTION SERVICES OR WORK PRODUCT.
- (c) EACH PARTY'S TOTAL LIABILITY FOR ANY DIRECT LOSS, COST, CLAIM OR DAMAGES OF ANY KIND THAT ARISE AS A RESULT OF THIS AGREEMENT OR THE SERVICES PROVIDED SHALL NOT EXCEED THE AMOUNT OF THE FEES PAID OR PAYABLE BY CLIENT TO PARTHO DURING THE INITIAL TERM. THIS LIMITATION ON LIABILITY WAS AND IS AN EXPRESS PART OF THE BARGAIN BETWEEN PARTHO AND CLIENT AND WAS A CONTROLLING FACTOR IN THE SETTING OF THE FEES PAYABLE TO PARTHO.
- (d) Partho and the Client agree that the limitations contained in this Section 14 are reasonable in scope and form an integral part of this Agreement.

15. INDEMNIFICATION

- (a) *Indemnity by Client.* The Client agrees to defend, indemnify and hold Partho, its directors, officers, employees, agents, contractors and affiliates, harmless from any loss, damage or liability, including all reasonable legal costs, that Partho may incur as a result of or in connection with any third party claim relating to or resulting from (a) any breach by the Client of the Client's obligations under this Agreement, including its obligation to comply with all applicable law; or (b) any third party claim that the Client's use of any Client Data or Client Trademarks infringes, misappropriates or otherwise violates the Intellectual Property Rights of any third party.
- (b) *Indemnity by Partho.*
 - i. *Indemnity.* Partho agrees to defend, indemnify and hold the Client, its directors, officers, employees, elected officials, agents, contractors and affiliates, harmless from any loss, damage or liability, including all reasonable legal costs, that the Client may incur as a result of or in connection with any third party claim relating to or resulting from (a) any breach by Partho of Partho's obligations under this Agreement, including its obligation to comply with all applicable law; or (b) any third party claim that the Software, any Deliverable, Service or the use thereof in the

manner contemplated by the applicable Schedules, infringes, misappropriates or otherwise violates the Intellectual Property Rights of any third party.

- ii. *Exceptions.* Partho will have no indemnity obligation to the Client under Section 15(b) in respect of any damages that resulted from (i) a modification of the Software not provided by Partho; (ii) the failure by the Client to promptly install an upgrade or any enhancement made available by Partho at no additional cost that would have eliminated the actual or alleged infringement; (iii) the failure by the Client to use the latest version of the Software or any component of the latest version of the Software where the use of the latest version would eliminate the actual or alleged infringement, provided that such latest version has been made available to the Client at no additional cost; or (iv) the combination by the Client of the Software with other items (including Client customizations) not provided by Partho, but only if the claim would not have arisen from use of the Software alone.
- iii. *Replacement, etc.* Should the use of the Software be enjoined, or if in Partho's opinion the Software may become the subject of a suit or action for infringement, Partho may (i) obtain, at no expense to the Client, the right to continue to use such Software; or (ii) at no expense to the Client, provide the Client promptly with a substitute, modified or replacement Software that is functionally equivalent to such Software and with comparable or better performance and quality characteristics; or (iii) terminate the applicable license(s) and refund to the Client any amounts paid by the Client for use of the applicable Software.

16. CONFIDENTIALITY

- (a) *General Rule and Definition.* A party (the "Disclosing Party") may disclose Confidential Information to the other party (the "Receiving Party") in connection with this Agreement. "Confidential Information" means secret or confidential information which is not generally known to the public and may include but is not limited to:
 - i. information, in whatever form communicated by the Disclosing Party to the Receiving Party or anyone acting on the Receiving Party's behalf, whether orally, in writing, electronically, in computer readable form or otherwise, or that is gathered by inspection by, the Receiving Party, whether provided before or after the Effective Date;
 - ii. Computer software, including but not limited to the Software;
 - iii. All plans, proposals, reports, analyses, notes, studies, forecasts, compilations or other information, in any form, that are based on, contain or reflect any confidential information of the Disclosing Party regardless of the identity of the person preparing the same;
 - iv. Client Data;
 - v. Personal Information; and
 - vi. the fact that information has been disclosed or made available to the Receiving Party.
- (b) *Exclusions.* Confidential Information does not include the following information: (a) information that is known to the Receiving Party at the time of disclosure as evidenced by any written documents in the possession of the recipient; (b) information that is available to the general public at the time of disclosure to the Receiving Party or is subsequently made available to the general public, without restrictions as to its use or disclosure, without fault of the Receiving Party; (c) information that is disclosed to the Receiving Party by another person or entity having the right to disclose or publicize it; (d) information that is intentionally distributed without restrictions as to confidentiality by the Disclosing Party. In addition, each party may disclose Confidential Information to the extent that the Receiving Party is compelled, pursuant to Canadian law, to disclose it,

provided that a party being compelled to disclose shall provide the other party with prompt notice (to the extent permitted by law) in order to allow such party to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and shall co-operate with such party and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the party being compelled to disclose will only disclose that portion of the Confidential Information it is legally compelled to disclose, only to such person or persons to which such party is legally compelled to disclose, and shall provide notice to each such recipient that such Confidential Information is confidential and subject to non-disclosure on terms and conditions substantially similar to and not materially less protective than those in this Agreement, and, if possible, shall obtain each recipient's written agreement to receive and use such Confidential Information subject to such terms and conditions. Notwithstanding the foregoing, this Section 16(b) does not apply to any Personal Information.

(c) *Non-Disclosure.* Each party agrees to use the Confidential Information of the other party solely for the purpose of performing its obligations or exercising its rights under this Agreement, and will disclose such Confidential Information only to those of its own representatives who have a need to know the information in connection therewith, and who are under an enforceable legal obligation to keep same confidential and subject to comparable restrictions as apply to the Receiving Party under this Agreement, and shall take appropriate action to ensure their compliance with such obligation. Each party's efforts to maintain the confidentiality of information under this Agreement, including the measures taken, will not be less than those which the party takes to prevent disclosure of its own proprietary information of like significance and in no event less than a reasonable standard of care. With the exception of any disclosure permitted by the foregoing, each party agrees not to sell, license, transfer, publish, disclose, display, make available to others, the Confidential Information of the other party. In the event of a loss of any item containing Confidential Information of the disclosing party, or other instance as a result of which the unauthorized disclosure of Confidential Information is suspected (or ought reasonably to be suspected) to have occurred, the receiving party agrees to promptly notify the disclosing party in writing upon discovery of such loss.

(d) Partho acknowledges that Client is bound by the *Municipal Freedom of Information and Protection of Privacy Act of Ontario* ("MFIPPA"), as amended from time to time, and that this Agreement and any information provided to Client in connection with its performance or otherwise in connection with this Agreement may be subject to disclosure in accordance with MFIPPA. If, pursuant to MFIPPA, a third party requests access to or disclosure of, or if, pursuant to MFIPPA, access or disclosure is required with respect to any of Partho's Confidential Information or this Agreement or any other agreement, instrument, document or communication or other record, or any part thereof, relating to this Agreement, Partho, or the Services, the Client shall make reasonable attempts to provide prompt notice of the same to Partho prior to granting such access or making such disclosure and shall give Partho a reasonable opportunity prior to granting such access or disclosure to discuss the same with Client, challenge such access or disclosure, make redactions (or cause such redactions to be made) or otherwise preserve the confidentiality of its Confidential Information and the contents of any such agreement, instrument, document, communication or other record to the extent permitted under MFIPPA or otherwise by law.

(e) *Equitable Relief.* Each party acknowledges that it would be damaging to the other party if Confidential Information of the Disclosing Party which the Receiving Party has or will come into its possession or knowledge in connection with the Agreement or the performance of the Agreement is used other than is authorized under this Agreement or is disclosed to third parties. It is understood that such damages may be difficult to calculate, that monetary damages alone may not be a sufficient remedy for any breach of the confidentiality obligations contained in this Section 16(d) and that such breach will cause irreparable damage to a party. It is hereby agreed that upon any such breach, or threatened breach, by the other party, the non-breaching party wishing to protect its Confidential Information will be entitled to seek and obtain equitable relief, including

injunctive relief and specific performance, or any other relief as may be granted by any court, without the necessity of proving actual damages or posting of security or a bond.

- (f) *Destruction.* Each party, upon the request of the other party or within thirty (30) days after termination of this Agreement (whichever is earlier), agrees to return and cause its representatives to return, all copies of Confidential Information belonging to or provided by the other party or destroy such copies as directed by that party and certify their destruction.
- (g) *Indemnity.* Each party agrees to indemnify and hold the other party harmless from and against all loss or damage or any kind and nature suffered by the other party as a result of any breach by it or its representatives of its obligations relating to confidentiality contained in this Section 16
- (h) *Privacy and Personal Information.* Each party agrees that it will not, without the prior written consent of the other party, disclose or make available any Personal Information (as that term is defined in the *Personal Information Protection and Electronic Documents Act*) (“Personal Information”) to any other person or entity except for designated employees, agents and contractors of the other party who have a need to access the Personal Information in order to fulfill the terms of this Agreement, and who have been contractually obligated to maintain the privacy of such Personal Information. No employee shall be designated by either party to access the Personal Information disclosed or transferred by the other party unless such employee agrees to hold such Personal Information in confidence and private and limit the use of such Personal Information to the uses permitted hereby pursuant to and in accordance with a written covenant at least as restrictive as the covenant given by each party contained in this Section 16(h).
- (i) *Ibid.* Each party hereto agrees that Personal Information provided to it by the other party hereto shall only be used for such purposes as are specified herein or as otherwise permitted by the Disclosing Party and that the other party shall not sell, transfer or disclose such Personal Information to any other party or use the Personal Information for any other purpose other than the purposes of Partho providing the Services specified in this Agreement. Each other party will follow all rules and regulations of the disclosing party with respect to the use, destruction, retention and security of the Personal Information disclosed by the disclosing party.
- (j) *User Information.* The Client represents and warrants that it has the full right, authority and consent to provide Partho with any Personal Information (collectively, “User Information”) about Users, employees, agents, contractors or any other user of any software included in the Software. The Client further acknowledges that the Client shall be responsible for ensuring the accuracy of the User Information.
- (k) *Publicity.* Neither party will issue any press release or other public statement disclosing the existence of this Agreement or any other information relating to this Agreement, the other Party, or the transactions contemplated hereby, without the prior written consent of the other party. Notwithstanding this provision, during the term of this Agreement, or for such longer period at the parties mutually agree to in writing, Partho shall be permitted to use the Client’s trademarks on its website solely for the purpose of indicating that the Client is a customer of Partho. Partho’s use of the Client’s trademarks must be in accordance with the Client’s brand standards (to be provided by the Client upon request by Partho). Partho shall be responsible for all costs associated with use of the Client’s trademarks in accordance with this section. Client shall be entitled to terminate the permission granted in this section upon thirty (30) days prior written notice.

17. INSURANCE

During the term of this Agreement, Partho shall maintain commercially reasonable insurance coverage corresponding to the scope of the services offered hereunder including, but not limited to: (i) workers’ compensation, disability, employment insurance, and any other insurance required by law, covering all of its operations in all locations of Client at which services will be performed

by Partho under this Agreement; (ii) Comprehensive General Liability Insurance with limits not less than Two Million Dollars (\$2,000,000.00); and (iii) Errors and Omissions Insurance with limits not less than Two Million Dollars (\$2,000,000.00) (iv) Owned Automobile Liability Insurance, if applicable, with limits not less than Two Million Dollars (\$2,000,000.00); and (v) Technology and cyber risk Errors and Omissions Insurance and Network Security, with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate. Prior to execution of this Agreement Partho shall provide Client with a Certificate of Insurance naming Client as additional insured with respect to the liability arising out of the operations of the named insured and shall provide for not less than thirty (30) days prior written notice by registered mail by Partho's insurer to Client.

18. GENERAL PROVISIONS

- (a) **Appendices and Counterparts.** All recitals and appendices are hereby incorporated into this Agreement. This Agreement may be executed in any number of counterparts and/or duplicate originals.
- (b) **Lawyers' Fees.** The prevailing party in any suit under this Agreement shall recover all costs, expenses and reasonable lawyers' fees incurred in such action.
- (c) **Controversies.** Before either party commences any action against the other party, it shall give written notice to the other party of its intention to file a claim, and the senior management of the parties then shall meet in good faith to resolve the dispute.
- (d) **Definitions and Section Headings.** Singular terms shall be construed as plural, and vice versa, where the context requires. Section headings are a matter of convenience and shall not be considered part of this Agreement.
- (e) **Entire Agreement.** This Agreement is the complete and exclusive statement of the understandings of the parties, and it supersedes and merges all prior proposals and understandings, whether oral or written, relating to the subject matter of this Agreement. This Agreement may not be modified except in writing, signed by an officer of Partho and a duly authorized representative of Client, and expressly referring to this Agreement.
- (f) **Export Laws.** Neither party will export or re-export directly or indirectly (including via remote access) any part of the Documentation, or Deliverables under any Schedule, or any Confidential Information to any country for which a validated license is required under the export laws without first obtaining a validated license. Each party agrees to comply with all requirements of the Canadian export control laws.
- (g) **Force Majeure.** Neither party will be responsible for failure of performance, other than for an obligation to pay money, due to causes beyond its control, including, without limitation: acts of God or nature; labor disputes; sovereign acts of any federal, provincial or foreign government; or shortage of materials.
- (h) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the Parties hereto agree to adhere to the jurisdiction of the courts of Ontario. Any dispute resolution process in connection with this Agreement shall take place in Ontario.
- (i) **Independent Contractors; Non-exclusive.** Partho and the Client are independent contractors and will so represent themselves in all regards. Neither party may bind the other in any way. Nothing in this Agreement will be construed to make either party the agent or legal representative of the other or to make the parties partners or joint venturers.
- (j) **Notices.** All notices and other communications between the parties must be in writing and must be given by (i) personal delivery, (ii) a nationally-recognized, next-day courier service, (iii) first-class registered or certified mail, postage prepaid, or (v) electronic mail to the party's address specified in this Agreement, or to the address that a party has notified to be that party's address for the purposes of this section.

A notice given in accordance with this Agreement will be effective upon receipt by the party to which it is given or, if mailed, upon the earlier of receipt and the fifth Business Day following mailing.

- (k) **Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect. However, should either party reasonably conclude that a provision held to be invalid or unenforceable was a material inducement to its entering into this Agreement, and the loss of that provision has deprived it of the benefit of the bargain reached upon execution of this Agreement, then that party may, upon ten (10) days' prior written notice, terminate this Agreement.
- (l) **Waiver.** The waiver of one breach or default shall not constitute the waiver of any subsequent breach or default, and shall not act to amend or negate the rights of any party.
- (m) **Currency.** Unless otherwise specified, all references to amounts of money in this Agreement refer to Canadian (CAD) currency.
- (n) **Non-Solicitation of Employees.** During the course of this Agreement and for a period of two (2) years thereafter, Client shall not solicit for employment, or other capacity, directly or indirectly, the services of Partho's current employees or consultants. For greater certainty, this provision does not preclude Client from hiring an employee of Partho ("Employee") that has applied for employment with Client during the nonsolicitor period provided that Client has not induced or encouraged the Employee to apply for such employment.
- (o) **Subcontracting.** Partho shall not be permitted to subcontract the whole or any part of this Agreement without the Client's prior written consent.
- (p) **Language.** The parties have required that this Agreement and all deeds, documents and notices relating to this Agreement be drawn up in the English language. Les parties aux présentes ont exigé que le présent contrat et tous autres contrats, documents ou avis afférents aux présentes soient rédigés en langue anglaise.

[Remainder of this page left blank intentionally.]

[Signature page for Software as a Service Subscription Agreement]

IN WITNESS WHEREOF the parties have executed this Agreement by their authorized officers in that behalf.

PARTHO TECHNOLOGIES INC.

Per: _____

Name: VINOD VYAS

Position: Director & Senior Partner

I have authority to bind the corporation.

THE CORPORATION OF THE CITY OF LONDON

Per: _____

Per: _____

We have authority to bind the corporation.

SCHEDULE “A” SOFTWARE SPECIFICATIONS

THIS SCHEDULE “A” – SOFTWARE SPECIFICATIONS (“Schedule”) forms part of the Software as a Service Subscription Agreement dated effective _____, 20__ between Partho Technologies Inc. (“Partho”) and The Corporation of the City of London (“Client”), as amended from time to time (“Agreement”). Capitalized terms used in this Schedule but not defined in this Schedule are used in the Agreement.

Functional Specifications

The mobiINSPECT mobile Software is a tool which allows building inspectors to record the findings of their inspections while in the field using their Android or iOS mobile devices. mobiINSPECT mobile application provides useful business functions to the building inspectors through an easy to use and intuitive mobile application running on their smartphone. The feature list available to the inspectors through the mobile application is as listed below under “Functional Flow Specifications”.

The mobile application connects to AMANDA backend system through a secure and robust cloud based mobile backend system. The mobile application is login protected so that only users authorized within the AMANDA system are able to use it. Once authenticated, the inspectors are able to view their building inspection tasks that are created and assigned to them in AMANDA. Inspectors can then carry out the inspection task(s) by taking pictures of the building work. They can also add notes and assign an AMANDA results code to the inspection. When the inspector is ready to submit the completed report back to the AMANDA system, they can simply submit from the field from within the application.

The application handles connectivity issues from the field intelligently to ensure Data is delivered to the back-end AMANDA system. It also allows inspectors to save their report in draft mode if needed to retrieve it back later and submit on completion. Inspectors can also view inspections in the vicinity of where they are so they can carry out additional inspections while in that area to avoid redundant trips back to the same place.

An easy and intuitive user interface and other features such as on-screen annotations make it easy for the building inspector to capture accurate notes and deficiencies and focus on their business function rather than steep learning curves to use the application.

Functional Flow Specifications

1. The mobiINSPECT mobile application system is a tool which allows building inspectors to record the findings of their inspections in the field using Android or Apple smartphones. *
2. Using the mobiINSPECT application, the inspector will be able to:
 - (a) Log into mobile application using Amanda credentials
 - (b) View and open inspection tasks assigned to them using the Amanda system
 - (c) Take images and enter notes on each inspection task to create a “report” on that inspection task
 - (d) Annotate images using a stylus or by hand
 - (e) Add caption or description to associate with the image itself
 - (f) Remove unwanted images from the in-progress report
 - (g) Submit the inspection results report (images and notes) from the field to the Amanda back end system
 - (h) Save the report as a draft locally on the device if the inspector needs to work on it later. **
 - (i) Submit the updated draft to the backend system after any desired updates to it.
 - (j) View inspection nearby in a map view so that s/he can take on additional inspections in the vicinity of where they are at that point in time, to achieve logistical efficiencies.

- (k) Receive push notifications.
- (l) Select a submission policy per municipal policy of whether the reports can be submitted over mobile network connections such as 3G/LTE or only on Wi-Fi.
- (m) View and work open inspection tasks assigned in Amanda to other inspectors on their team similar to their own tasks.

3. The mobiINSPECT application will detect if the device does not have connectivity at the time of submission of report by the building inspector and queue it up internally for auto submission when it detects that connectivity is restored. The inspector will be able to view such pending submissions in read only mode.

*The following are a function of the resources available on the smartphone device and will be determined based on the client's device of choice during the project kick-off:

1. the number of images that can be taken per inspection report
2. the number of drafts that can be saved
3. number of pending submissions allowed

The quality and bandwidth of the Wi-Fi or mobile data connection being used can have a bearing on the queue size of the pending submissions list. It is highly advised that enterprise grade Wi-Fi and data connectivity be used for optimal performance.

**Partho will advise the client on the OS/API levels and minimum compatible smartphone to be used on Android and iOS. Client will need to upgrade the device OS levels to the required OS/API levels.

Partho recommends that the customer standardize on one platform e.g. either Apple or Android phone for their workforce to avoid complications from maintenance of two different platforms. For Android, Partho advises customers to go with the latest available OS version. For Android, at the time of this writing it is Oreo and for Apple it is iOS 11. For Apple the device selected should be the latest available device at the time of contract signing. At the time of this writing it is iPhone 10 running iOS 11. For Android there are different manufacturers, however, Partho recommends Google Pixel XL running Oreo OS version which is a market leading device.

**SCHEDULE “B”
SUBSCRIPTION SERVICES**

THIS SCHEDULE “B” – SUBSCRIPTION SERVICES (“Schedule”) forms part of the Software as a Service Subscription Agreement dated effective _____, 20____ between Partho Technologies Inc. (“Partho”) and The Corporation of the City of London (“Client”), as amended from time to time (“Agreement”). Capitalized terms used in this Schedule but not defined in this Schedule are used in the Agreement.

Services

Partho will configure, test and deliver the Software in accordance with the terms of Schedule D and the Agreement.

Client Project Team Members

The project team members assigned by the Client to manage the provision of the Services shall be:

<<Client to specify point person from client’s team who will interface with Partho Development team>>

Term

mobiINSPECT is offered as managed service with a term commitment.

The term of the Agreement (“Term”) shall commence on the Initial Term Start Date (identified below) and shall continue for the Initial Term Commitment (identified below) (“Initial Term”), subject to renewal.

Initial Term Commitment – Five (5) years (60 months)

Initial Term Start Date – April 1, 2018

Initial Term Expiration Date – March 30, 2023

Fees

The Client shall pay the fees described in the table below:

<u>Fees</u>	<u>Description/Amount</u>
One-Time Initial Setup Fee	\$49,500.00 based on 10 unique devices (“Base Number of Devices”) <i>Note: Will not be charged again for renewal terms.</i>
One-Time Integration Professional Services Fee	\$40,500.00. <i>Note: Will not be charged again for renewal terms</i>

Annual Device Fees	<p>Additional devices over the Base Number of Devices will be charged at \$150/year/device</p> <p>Note: Additional Device Fees will also be charged if the Client uses such devices without authorization. It shall be a material breach of the contract if a Client uses more than 3 additional devices over and above the agreed upon number of authorized devices without the consent of Partho.</p> <p>The entire annual Additional Device Fee will be charged for a device if such device uses the Software at any point during the year.</p>
Managed SaaS Annual Fees	<p>Per table “Table Of Managed SaaS Annual Fee” below</p> <p>Note: Partho reserves the right to increase the Managed SaaS Annual Fees for each renewal term. Fee increases will be made in consultation with the Chief Building Official of the Client to cover escalation in operational costs.</p> <p>Operational costs may also <i>decrease</i> as additional cities adopt the Software. This may result in decreased Managed SaaS Annual Fees for Renewal Terms.</p>
Professional Services including Additional Training	<p>Additional Professional Services may be charged at the hourly rate of \$175/hr.</p> <p>While initial training for employees using authorized devices is included, the Client may request additional training for new employees or refresher courses by submitting a Work Order.</p>

TABLE OF MANAGED SaaS ANNUAL FEES	
No of Cities	Operational cost/yr. per Client for up to 10 unique devices
1	\$21,467.00
2	\$15,293.50
3	\$13,235.67
4	\$12,206.75
5	\$11,589.40
6	\$11,177.83
7	\$10,883.86
8	\$10,663.38
9	\$10,491.89
10	\$10,354.70
11	\$10,242.45
12	\$10,193.50
13	\$10,152.08
14	\$10,116.57
15	\$10,085.80
16	\$10,058.88
17	\$10,035.12
18	\$10,014.00
19	\$9,995.11
20	\$9,978.10

4. Client Billing Information

Billing Department Name: The Corporation of the City of London, Development Compliance Services

Billing Department Address: 300 Dufferin Avenue London Ontario PO BOX 5035 N6A 4L9

Contact Name: George Kotsifas, Managing Director, Development and Compliance Services and Chief Building Official

Contract Phone number: 519-661-CITY (2489) Ext. 5027

Contact email: gkotsifa@London.ca

SCHEDULE “C” SUPPORT AND SLA

THIS SCHEDULE “C” – SUPPORT AND SLA (“Schedule”) forms part of the Software as a Service Subscription Agreement dated effective _____, 20____ between Partho Technologies Inc. (“Partho”) and The Corporation of the City of London (“**Client**”), as amended from time to time (“**Agreement**”). Capitalized terms used in this Schedule but not defined in this Schedule are used in the Agreement.

Maintenance and Paid Support

Maintenance Services

During the Term, Partho Technologies will provide maintenance services for mobiINSPECT. The maintenance will include, but is not limited to, patchwork and upgrades for newer versions of supported mobile OS. The maintenance will not include maintenance or upgrades arising out of changes made to (a) unsupported mobile OS or third party systems by the Client; or (b) substantial changes to (or upgrades to newer versions of) the Amanda system.

The Client shall advise Partho of any upcoming changes to their systems. Partho will assess such changes and suggest and provide a quote for the Professional Services needed to support the Client’s system changes.

Regular maintenance services will be provided in off business hours – 5:30 pm to 8:00am EST. Partho Clients will be provided a one week email notice prior to any maintenance service. Partho reserves the right to provide maintenance on shorter notice in the event of critical updates that may impact the working/functioning of mobiINSPECT

Paid Software Support

Subject to the Client’s payment of support services, during the Term, Partho shall provide support to the Subscription Services during regular business hours from 8:00 am to 5:00 pm.

Support Services can be initiated through direct access to the Partho AMS (Application Management Support) ticketing system, or by calling in to the helpdesk during regular business hours.

The Partho AMS system provides the Client an easy to use and self-intuitive web based tool to report support issues. The standard of Support Services will be governed by the SLA described herein.

The Partho team will analyze and diagnose the reported issues to establish root cause. Partho will endeavor to fix any issues relating to the Software as described herein. If issues are identified as being caused by the Client systems (e.g. VPN Gate way continuity issues or AMANDA changes/defects), Partho will report such issues to the associated Client team. In order to maintain SLA standards, during diagnosis of reported issues, the Partho support team will require the affected Client team to be regularly responsive to requests.

In the event of nonpayment by the Client by the due date, Partho reserves the right to suspend maintenance and paid support service with an email in accordance with the terms of the Agreement.

Limitations on Support

Partho’s obligation to provide support is contingent upon proper use of the Software and full compliance with the Agreement. Moreover, Partho shall be under no obligation to provide maintenance and support should the maintenance and/or support be required due (i) to failure to operate the Software within any recommended system requirements provided with the Software; (ii) any modification or attempted modification of the Software by the Client or any third party; or (iii) the Client’s failure to implement Software changes or upgrades recommended by the Provider.

Support Issue Severity Levels, Response Times, Issue Resolution and Escalation

Severity 1: The Production system / application is down, seriously impacted and there is no reasonable workaround currently.

Upon confirmation of receipt, Partho will begin continuous work on the issue, and an appropriate Client resource from the affected Client team must be available at any time to assist with problem determination.

Once the issue is reproducible or once Partho has identified the Software defect, Partho support will provide reasonable effort for workaround or solution within 24 hours.

Severity 2: The system or application is seriously affected. The issue is not critical and does not comply with the Severity 1 conditions. There is no workaround currently available or the workaround is cumbersome to use.

Partho will work during normal business hours, using reasonable effort to determine a workaround or solution within 5 Business Days, once the issue is reproducible.

Severity 3: The system or application is moderately affected. The issue is not critical and the system has not failed. The issue has been identified and does not hinder normal operation, or the situation may be temporarily circumvented using an available workaround.

Partho will work during normal business hours using reasonable effort to determine a workaround or solution within 10 Business Days, once the issue is reproducible.

Severity 4: Non-critical issues.

During normal business hours Partho will seek to provide a solution in future releases of the Service.

Service Level Agreement (SLA)

Uptime. “Uptime” means the aggregate percentage of hours in a calendar month during which Subscription Services is actually available for use by Client and reasonably operational and usable. “Downtime” is the amount of time during which Subscription Services is unavailable.

Uptime=100%-(Downtime [as defined in the Agreement] divided by the total number of hours in the relevant month, expressed as a percentage). If the Uptime during the month under consideration is less than 92.4%, Provider shall provide credits to the Customer as set out herein (“Credits”).

“Daily Fee” shall mean the annual fees paid by the Client for the Subscription Services divided by three hundred and sixty five (365).

Uptime	Rebate/Credit
92.40% or Greater Uptime	No Credits Provided
92.00% to 92.39% Uptime	Rebate equal to one (1) Daily Fee
91.00% to 91.99% Uptime	Rebate equal to two (2) Daily Fees
90.00% to 90.99% Uptime	Rebate equal to three (3) Daily Fees
89.99% or lower Uptime	Rebate equal to four (4) Daily Fees

Sole Remedy. In the event that Client is dissatisfied with the Uptime, Client’s sole remedies are (a) those listed in this Schedule; (b) termination in accordance with the terms of the License; or (c) if the Uptime falls below 92.4% in six (6) consecutive months or any six (6) months in a period of twelve (12) months, the Client may be permitted to terminate this Agreement without paying the early termination fees described in Section 4(e).

Reporting Downtime. Client must report any Downtime to Partho through Partho’s help desk. Client must provide the necessary information and co-operation required by Partho to enable Partho to determine the cause of the problems. A support ticket will be opened and Partho will subsequently investigate the reported Downtime.

Eligibility for Credits. Credits will only be applied to the account of Client when the Downtime was reported to Partho in accordance with this SLA, or if Partho was otherwise aware of the Downtime. Credits are calculated on a per year basis and are not cumulative. Credits shall be applied to the next annual invoice issued to Client. If there is no further invoice issued to Client, Partho will pay Client the amount equivalent to the Credits.

Exceptions. Partho shall not be responsible for any Downtime to the extent that such Downtime is the direct, normal and reasonable result from any of the following:

- (a) Subscription Services being modified or altered in any way by Client or at Client's request;
- (b) Delays or unavailability of the Subscription Services caused by the Client's action or inaction or due to the unavailability of the Amanda system or Client's VPN system;
- (c) Incomplete, inaccurate information provided by Client to Provider;
- (d) Any delay or failure in complying with any of Client's obligations under the Agreement;
- (e) Time taken during Planned Service Interruptions (to a maximum of 2 hours per month), as provided above;
- (f) Regulatory events; or
- (g) Any Force Majeure under the MSA, other than unavailability of communications or electrical service provided by a third party.

SCHEDULE "D" **STATEMENT OF WORK - 001**

INSTALLATION AND CUSTOMIZATION OF SOFTWARE

For the installation and customization of the mobiINSPECT application, Partho Technologies shall:

- 1 Initiate a kick-off meeting with all stakeholders followed by the creation of a project plan that will detail activities to be undertaken by Partho and a schedule from inception to *Go-live* of the application for the Client. **Deliverable:** Project Plan
2. **Fit-Gap analysis:** The Partho team will setup meetings with the Client's Buildings Department business team and the Client's IT team to conduct a fit-gap analysis. The objective of this Fit-Gap Analysis will be to understand any specifics around the building inspections business process of the Client. A pre-requisite for the fit-gap analysis is that the Client should have available the necessary web services to integrate with the backend Amanda system. Client must make available relevant resources and subject matter experts for these meetings. **Deliverable:** Fit-Gap Analysis document
3. **Provisioning of the mobile application and middleware** including development of code, chargeable as Professional Services, to integrate with the backend Amanda system.
4. **Provisioning a VPN based hybrid cloud setup** for connecting to the backend Amanda system
5. **Conduct QA** cycles to test the functioning of the mobile application with the cloud based middleware and Amanda service backend. **Deliverable:** QA Completion Documentation
6. **Conduct UAT** with a subset of the users to ensure the application is working with their devices. Partho Technologies will conduct a UAT (user acceptance testing) in conjunction with Client's staff, to ensure that the provisioned users are able to use the application per specification. The roll out to the staff of the Client will be done once UAT is signed off. The criteria for sign off on UAT would be that there are no severity 1 defects and less than 3 severity 2 defects related to the custom development effort i.e. integration to the **AMANDA**

system. No changes or updates will be entertained on other parts of the Application.

Deliverable: UAT Completion Documentation.

7. **User training** on usage of the application. **Deliverable:** User Training documentation.
8. **Conduct Production readiness** and contingency plan along with the Client business and IT team.
9. **Release the enterprise app to the Mobile Application Center** for the respective platform(s) and provision access so provisioned users can download the mobile application.

SCHEDULE “E”

WORK ORDER FORM – mobiINSPECT New Feature/ Enhancements/Professional Services

New Feature / Enhancement including details on why required?

New Feature/ Enhancement Identification

Type: New Feature / Enhancement Request ID: Related Ticket # (where applicable): New Feature / Enhancement Title: Date Submitted: Originator: Potential Implementation Date:

New Feature/ Enhancement Identification Description

Summary:
Priority Level: Reason:
Details:
Impact/risk of not making the <i>New Feature/ Enhancement Identification</i>

Impact of late implementation:

Analysis (summary of options considered, impacts on product and recommendation) – See Supplementary Analysis Form for more details of content below)

Analyzed by:

Analyzed Date:

Option and impact: *(time, cost, quality, risk):*

Option and impact: *(time, cost, quality, risk):*

Option and impact: *(time, cost, quality, risk):* **Recommendation:**

Review (walkthrough)

Comments:

Reviewed by Partho:

Approval

Decision: <select>

Approved by:

Name:

Title: Date:

Comments:

SCHEDULE “F” SECURITY POLICY

Client data security is paramount in the mobiInspect application. As such, mobiInspect has been built with security at all levels to ensure sensitive data and privacy are protected. The mobiInspect application comprises of different layers starting from the client device where the mobile application runs to the cloud layer that hosts the integration adapters and business logic and finally, the data connection between the cloud and Client data center. Once the data reaches the Client’s VPN/client gateway/SSL endpoint, the security of the Client data center takes over. Partho ensures that sensitive data is protected in transit and at rest from mobile application device all the way to the point that it reaches the Client’s endpoint

Partho achieves the above stated objectives through:

1. Building security features at the application, cloud and communication layers
2. Monitoring the cloud traffic for the application to proactively thwart any suspicious activity
3. Building security awareness and practices in its DevOps processes
4. Responding to any potential threats in a timely manner

The following is a list of several security features and practices built into the solution:

1. Partho application architectural guideline is to avoid storing Client data on the client device unless it is necessary for functioning of a functional feature.
2. If sensitive client data is deemed necessary for storage on the client device, it is stored in an encrypted format with industry standard ciphers and algorithms
3. The communication between the client device running the app and the cloud layer is over SSL/TLS using encryption
4. Access to the resources within the integration layer hosted in the cloud, that the client application accesses to communicate with the backend system are protected through an OAuth2.0 layer.
5. Currently, only user access tokens are stored in the operational data store of the mobile application platform in the cloud. No client data from the backend system is stored in the cloud database. This may change in the future as the cloud layer is enhanced for reporting purposes
6. Any sensitive data that will be deemed important to be retained in the cloud database in the future will be encrypted with industry standard ciphers and algorithms
7. The user access tokens have a configurable time limit after which they expire. This is an important security feature to prevent malicious usage through session token theft. Once the user access token expires, the user is prompted to login again on the client device for renewal of the access token
8. The integration layer in the cloud is protected through Application Authentication. This means that the integration layer in the cloud checks each request that it receives from client application to ensure that the request came from a valid application i.e. mobiInspect. This protects the resource from any malicious attempt of access reverse through a reverse engineered application
9. Following best practices the Application binaries are minified and obfuscated to thwart reverse engineering attempts
10. Data sent from the cloud to the backend system with customer’s data center is sent over secure IPSec or SSL VPN tunnel or through SSL encryption over the internet. Further encryption for security at a message level may be applied as/if deemed necessary.

11. The cloud provider used by Partho to host the application integration layer and the client's data has the highest standard of security compliance i.e. ISO 270001, FedRamp, FIPS140-2 and compliance reports for the cloud can be provided on request
12. The cloud architecture uses cloud security best practices to host and run the application integration tier. Integration layer is secured through use of public and private subnets allowing traffic from one to other through whitelisting, security groups and network ACLS. Private subnets house the application integration layer with no direct access from or to the subnet
13. Access to administrative accounts and privileges therein are very tightly controlled and limited to select trusted individuals with long history with the company and thorough background checks
14. Access to all cloud accounts are secured through MFA (multi-factor authentication) for added security.
15. Security is paramount in on-going monitoring of the integration layer. Cloud Watch and cloud trail are used extensively to monitor any failed attempts of illegal access to the integration layer and/or to the cloud accounts
16. As an added security measure the mobile application client is only available for download over SSL through a securely hosted private enterprise application center in the cloud. Application is not hosted or available on public application center
17. The cloud tier of the application provides for administratively disabling access for any device connected to the cloud tier. If a client device is compromised, lost or stolen, the device's access can be turned off by Partho administrator on receiving request from the customer.