

**IN THE PATENTS COUNTY COURT**

**Case no [ ]**

**BETWEEN:**

**DESTRA SOFTWARE LIMITED**

*Claimant*

**- and -**

CHANCERY CHAMBERS  
11 NOV 2014  
RECEIVED

(1) COMADA (UK) LLP  
(2) COMADA LIMITED  
(3) MAT SERVICES LIMITED  
(4) GERTRUD KEAZOR  
(5) CHRISTOPHER JOHN MITCHELL  
(6) ROBERT DAVID MITCHELL

*Defendant*

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**PARTICULARS OF CLAIM**

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**Definitions**

1. The following definitions and abbreviations are used in these particulars of claim:

<b>Parties</b>	<b>Meaning</b>
Comada UK	The first defendant. A limited liability partnership incorporated in the United Kingdom under the number OC 306574.
Comada Limited	The second defendant. Company No. 141188 incorporated in the Cayman Islands.
Mat Services Bermuda	The third defendant.
Ms Keazor	The fourth defendant. Ms Keazor is now also known as Gertrud Mayer.

Christopher Mitchell	The fifth defendant
Robert Mitchell	The sixth defendant

<b>Other defined terms</b>	<b>Meaning</b>
Mr Hughes	Mr Iain Hughes
Mr Shastri	Mr Devandranauth Shastri
Mr Vaughan Williams	Mr Rupert Vaughan Williams
One Capital Place	3 <sup>rd</sup> Floor, One Capital Place, George Town, Grand Cayman, Cayman Islands
Mat Services Cayman	A company incorporated in the Cayman Islands, having One Capital Place as its address.
Destra Platform	Software written by Mr Hughes between November 2003 and March 2004 which can be used as the basis for a database oriented dynamic website further particulars of which are set out in paragraphs 28 to 30 below.
Mat:Share	Software written by Mr Hughes between about March 2004 and July 2005 which enables fund managers to (amongst other things) track, manage and display portfolio positions further particulars of which are set out in paragraphs 16, 18 and 32 to 43 below.
Mat:Invest	Software which enables fund managers to allow investors to have secure access to information regarding their investments further particulars of which are set out in paragraphs 17, 18 and 55(3)

	below.
PFS Horizon	Fund management software for fund of hedge fund managers further particulars of which are set out in paragraphs 19 to 21 below.
Custom House Platform	Software which allows investors in hedge funds to invest, track and receive investment and redemption confirmations electronically further particulars of which are set out in paragraphs 22 and 23 below.
Custom House	Custom House Global Fund Services Limited
Prime Fund Solutions	A company or group of companies which provide fund management services, which has entered into an agreement with Mat Services Bermuda to use the PFS Horizon software.

**This claim in summary**

2. In summary, the claimant's case is as follows:

- (1) Between November 2003 and March 2004 the claimant, through Mr Hughes, developed the Destra Platform: see paragraphs 28 to 31 below.
- (2) Between March 2004 and July 2005, the claimant, through Mr Hughes, developed Mat:Share in return for which Mr Hughes in due course received shares in Comada Limited and the claimant the sum of £30,000: see paragraphs 32 to 43 below. Mat:Share includes the Destra Platform.
- (3) Comada Limited has claimed that pursuant to the terms of a draft Consultancy Agreement (see Annex 13 and paragraph 49 below) the copyright in Mat:Share belongs to it. However neither Mr Hughes nor

the claimant agreed to the terms proposed in the draft. Nor was it implicit in any arrangement made by the claimant with either Comada Limited or Comada UK that that such copyright belongs to either of those companies.

- (4) Therefore the claimant is and was at all times the owner of the copyright which subsists in both the Destra Platform and Mat:Share.
- (5) The rights which Comada Limited acquired to such software were a licence which permits Comada Limited to arrange for the hosting of Mat:Share on servers controlled by it for use by fund managers who pay a fee to Comada Limited for use of the software: see paragraphs 49 to 52 below. In point of law the extent of any licence to be implied should not exceed what is necessary in the circumstances. It is and was not necessary to imply a term providing more extensive rights to Comada Limited than the term set out in paragraph 51 below which is summarised above.
- (6) Mat:Invest, PFS Horizon and the Custom House Platform are derived from and incorporate a very substantial part of the Destra Platform and Mat:Share: see further paragraphs 16 to 27 and 55 below.
- (7) It follows that the making of copies of or running Mat:Invest, PFS Horizon and the Custom House Platform without the consent of the claimant is an infringement of the claimant's copyright in the Destra Platform and Mat:Share.
- (8) The defendants have acted pursuant to a common design to do and to authorise and procure others to do the acts listed below without the consent of the claimant: see further paragraphs 53 to 55 below. Each of such acts is an infringement of the claimant's copyright in the Destra Platform and Mat:Share:-
  - (a) The development of Mat:Invest, PFS Horizon and the Custom House Platform in the course of which it is inevitable that unauthorised copies were made of Mat:Share.

- (b) The installation and running of Mat:Share by persons other than Comada Limited, and in particular by Mat Services Bermuda and Mat Services Cayman.
  - (c) The installation and running of Mat:Invest by Mat Services Cayman, Mat Services Bermuda or Comada Limited or by some other company or organisation associated with the defendants.
  - (d) The provision of copies of PFS Horizon and the Custom House Platform to Prime Fund Solutions and Custom House and further or alternatively installing such software on servers for use by, respectively, Prime Fund Solutions and Custom House and thereafter arranging for such software to be run on their behalf.
- (9) Furthermore, acting pursuant to a common design, the defendants have developed and deployed other software the details of which are not known to the claimant which are based on Mat:Share and which are intended to meet the specific needs of specific customers in a similar manner to PFS Horizon and the Custom House Platform and have dealt with such software in the same way and have thereby further infringed the claimant's copyright in the Destra Platform and Mat:Share. See paragraph 24 below.

3. In light of the foregoing, it is clear that unauthorised use of Mat:Invest, Mat:Share, PFS Horizon and the Custom House Platform (and other software products based on the Destra Platform and Mat:Share) will infringe the copyright which subsists in the Destra Platform and Mat:Share.
4. Therefore the principal issues which arise in this case are (1) whether the copyright in the Destra Platform and Mat:Share was assigned to Comada Limited or otherwise belongs to Comada Limited and if not (2) the terms of the licence which claimant granted to Comada Limited in respect of such software.

## The parties

5. The claimant is company number 03513795. It was incorporated on 19<sup>th</sup> February 1998. At all times since its incorporation the claimant has been under the day to day control of Mr Hughes. At the material times the business of the claimant has been the provision of Mr Hughes' computer program development services.
6. Comada UK (the first defendant) is a limited liability partnership which was incorporated in the United Kingdom on 20<sup>th</sup> January 2004. In 2006 the members of Comada UK were or included Ms Keazor, Robert Mitchell and Mr Shastri. At present the members of Comada UK are or include Ms Keazor, Robert Mitchell and Christopher Mitchell. Annex 1 hereto provides details obtained from Companies House relating to Comada UK.
7. Comada Limited (the second defendant) was incorporated on or about 29<sup>th</sup> October 2004 in the Cayman Islands. As far as the claimant is aware, since about April 2005 the shareholders of Comada Limited have been Mr Hughes, Christopher Mitchell, Robert Mitchell, Nomad Holdings Limited, Raven Holdings Limited and Tankard Lane Holdings Limited. The three companies owning shares are, or at least were at the times material to this case, companies owned or controlled by Gertrud Keazor, Mr Shastri and Mr Vaughan Williams (the claimant does not know which individual owned and controlled which company).
8. Mat Services Bermuda (the third defendant) is a company organised and existing under the law of Bermuda. It was incorporated in or about August 2009. It appears to be closely involved in the activities of Comada Limited, and the claimant infers that it is a subsidiary or associated company of Comada Limited.
9. The business of Comada Limited, Comada UK and Mat Services Bermuda includes the provision of software for the purposes of fund management and portfolio management and similar and related purposes.

10. Gertrud Keazor (the fourth defendant) is and at all material times has been resident and domiciled in the United Kingdom. As far as the claimant is aware, her residence is and at all material times has been Flat 7, Dalmeny Mansions, 77 Anson Road, London N7 0AX.
11. Christopher Mitchell (the fifth defendant) is, and at all material times has been resident and domiciled in the United Kingdom. As far as the claimant is aware, his residence is and at all material times has been Hatties Cottage, 1 Tipping Row, Mobberley, Cheshire WA16 7JE.
12. Robert Mitchell (the sixth defendant) is, and at all material times has been resident and domiciled in the United Kingdom. As far as the claimant is aware, his residence is and at all materials times has been Pilchard Rock, The Warren, Polperro PL13 2RD.
13. The website accessible at [www.comada.com](http://www.comada.com) (the "Comada web site") has published the following information regarding the management team of "Comada":
  - (1) In about February 2005:
    - (a) Ms Keazor – Principal, Operations and Analysis.
    - (b) Robert Mitchell – Principal, Information Technology.
    - (c) Mr Shastri – Principal, Research and Business Development.
    - (d) Mr Vaughan Williams – Principal, Marketing And Sales
  - (2) In about June 2006:
    - (a) Ms Keazor – Head of Analysis and Design.
    - (b) Christopher Mitchell – Senior Systems Designer.
    - (c) Robert Mitchell – Head of Systems Development.
    - (d) Mr Shastri – Head of Research and Business Development.

Annex 2 hereto consists of prints of pages from the Comada web site providing such information.

14. The precise details of the business of Comada Limited are not known to the claimant because Mr Hughes has not received any accounts or other financial information or company reports from Comada Limited since 2006.
15. Moreover the precise relationship between Comada UK, Comada Limited and Mat Services Bermuda is not known to the claimant. Nor is the precise involvement of Ms Keazor, Christopher Mitchell and Mr Mitchell in such partnership and companies. However, to the best of the claimant's information and belief, they all act pursuant to a common design, which includes the deployment and licensing of Mat:Share, Mat:Invest, PFS Horizon, the Custom House Platform and other software derived from Mat:Share.

Mat:Share, Mat:Invest, PFS Horizon and the Custom House Platform

16. Mat:Share is web based software which enables fund managers to track, manage and display portfolio positions (amongst other things). It includes the Destra Platform.
17. Mat:Invest is web based software which enables fund managers to allow investors to have secure access to information regarding their investments. It was derived from the Mat:Share software and includes a substantial part of the Destra Platform.
18. Both Mat:Share and Mat:Invest are hosted in the same data centre in Hamilton, Bermuda. Prints of information relating to Mat:Share and Mat:Invest including prints of the logon screens on the Comada website form Annex 3 hereto.
19. PFS Horizon is web based software which provides funds of funds with a transaction-based custody portfolio and investment management system. It is software derived from either or both of Mat:Share and Mat:Invest.
20. According to a letter dated 13 October 2010 from solicitors instructed by or on behalf of Prime Fund Solutions, PFS Horizon was provided and licensed to

Prime Fund Solutions (or a company connected with PFS Horizon) by Mat Services Bermuda. A copy of a press release relating to PFS Horizon and of the letter of 13 October 2010 is included in Annex 4 hereto.

21. At present the claimant does not know whether PFS Horizon is hosted by servers controlled by the defendants (in which case it is a reasonable inference that such servers are located in Bermuda), or whether the software was provided to Prime Fund Solutions for deployment by Prime Fund Solutions on its own servers.
22. The Custom House Platform is web based software which allows investors in hedge funds administered by Custom House to invest, track and receive investment and redemption confirmations electronically. It is software derived from either or both of Mat:Share and Mat:Invest. Copies of press releases relating to the Custom House Platform form Annex 5 hereto.
23. At present the claimant does not know whether the Custom House Platform is hosted by servers controlled by the defendants (in which case it is a reasonable inference that such servers are located in Bermuda), or whether the software was provided to Custom House for deployment by Custom House. It is a reasonable inference (having regard to the licensing arrangements for PFS Horizon and the contents of Annex 5 below) that the Custom House Platform was provided and licensed to Custom House (or a company connected with Custom House) by Mat Services Bermuda.
24. The Comada website states on the "Architecture" page (see Annex 3 hereto) that:

*You can run M.A.T.ware products as a hosted solution or have the installed within your own technology infrastructure.*

...

*Our platforms are hosted at the QuoVadis SecureCentre ...*

It appears, and the claimant will contend, that the term M.A.T.ware is intended to encompass Mat:Share and Mat:Invest and derivations of such software such

as PFS Horizon and the Custom House Platform and that the defendants have developed and deployed other software products based on Mat:Share which are intended to meet the needs of specific customers in like manner to PFS Horizon and the Custom House Platform.

25. Terms and conditions relating to Mat:Share and Mat:Invest have been published on the Comada Website but have subsequently been removed. Prints of such terms and conditions as at December 2007 and April 2009 form Annex 6 hereto. In support of its case as to common design between the defendants the claimant will refer to the facts and matters set out in paragraph 26 below, and the fact that in clause 15 of the 2007 terms, notices are to be provided to the address of Comada UK and in clause 15 of the 2009 terms the address is that of a company called Comada (Bda) Ltd.
26. The terms and conditions provided that the software was licensed by "Comada". Until about September 2008 Comada was defined as meaning Comada Limited, between about September 2008 and August 2009, Comada was defined as meaning, Mat Services Cayman and from about August 2009, Comada was defined as meaning Mat Services Bermuda.
27. It is therefore to be inferred and the claimant will contend that until about September 2008, Mat:Share was licensed to end users by Comada Limited, but that subsequently Mat Services Cayman and Mat Services Bermuda have purported to be the licensors of such software.

#### Development of the Destra Platform

28. Prior to about November 2003, Mr Hughes had gained experience in the development of software to enable persons to manage investments and in particular in relation to a system known as "FundNexus". By November 2003 Mr Hughes was experienced in developing web based applications, which were a relatively new form of software development at the time.
29. Between about November 2003 and March 2004, Mr Hughes spent time developing skill and experience in relation to website development using software tools developed by Microsoft known as C# and ASP.NET and other

products which formed part of Microsoft's ".NET" offering. At the time such software tools were relatively new.

30. During that time Mr Hughes also developed certain software which could be used as the basis for a database oriented dynamic website using Microsoft ".NET" software tools. Such software will be referred to as the "Destra Platform".
31. The matters referred to in paragraphs 29 and 30 above were done with a view to a possible collaboration with Ms Keazor, Christopher Mitchell and Robert Mitchell in relation to fund management software.

#### Development of Mat:Share between March 2004 and July 2005

32. During and about March 2004, Mr Hughes was in communication with Ms Keazor, Robert Mitchell and Christopher Mitchell with a view to the claimant developing the software which in due course became known as Mat:Share for the purposes of a business which was referred to as "Comada". At that date Comada UK had been incorporated but Comada Limited had not been formed.
33. It was explained to Mr Hughes that, owing to lack of funds, Comada could not afford to pay Mr Hughes commercial rates. Mr Hughes was asked whether he would be interested in developing Mat:Share software on the basis that the payment would include a shareholding in the Comada business.
34. In an email of 15<sup>th</sup> March 2004, Ms Keazor wrote to Mr Hughes about discussions they had held in this regard as follows:
  1. *We will transfer to you 0.5% of the share capital in Comada as soon as we incorporate the holding company in Bermuda. The Comada holding company will fully own Comada (UK) LLP. We are waiting to incorporate the Bermuda company until we have our first client. Hope this makes sense to you.*
  2. *We will transfer to you the same number of shares at the end of July 2004.*
  3. *You will program for us without fees as required until end of July 2004.*

4. *We will start to pay you full commercial rates for your work from 1<sup>st</sup> August 2004, or earlier, when we have paying clients ...”*

A copy of such email and copies of other related emails form **Annex 7** hereto.

35. In the event, rather than incorporating the “holding company” in Bermuda, Comada Limited was incorporated in the Cayman Islands.

36. During the period March 2004 to July 2005, Mr Hughes provided his programming services in respect of Mat:Share to Comada UK and Comada Limited. The remuneration of Mr Hughes and of the claimant was as follows:

- (1) Mr Hughes was issued 500 shares in Comada Limited on 31<sup>st</sup> January 2005 and 5.319 shares in Comada Limited on 20<sup>th</sup> April 2005. By April 2005 Mr Hughes held 5% of the issued share capital of Comada Limited.

- (2) The claimant issued invoices to Comada Limited in respect of its software development services as set out below.

- (a) Invoice Com001 dated 17<sup>th</sup> December 2004 to Comada Limited for £10,000. The sum due was paid by Comada Limited on 23<sup>rd</sup> February 2005.

- (b) Invoice Com002 dated 15<sup>th</sup> April 2005 to Comada Limited for £10,000. The sum due was paid by Comada Limited on 7<sup>th</sup> June 2005.

- (c) Invoice Com003 dated 15<sup>th</sup> June 2005 to Comada Limited for £10,000. The sum due was paid on 28<sup>th</sup> March 2006.

Copies of such invoices are included in **Annex 8** hereto.

37. In each case the invoices were stated to be in respect of “*Software development fee, as agreed, for the next version of the Comada mat:share web site ...*”.

38. On 4<sup>th</sup> April 2005 the shareholdings in Comada Limited were as follows:

- (1) Mr Hughes – 5%,
  - (2) Christopher Mitchell and Robert Mitchell – 12.25% each.
  - (3) Nomad Holdings Limited, Raven Holdings Limited and Tankard Lane Holdings Limited - 23.5% each.
39. Subsequently, in 2005, the shareholders other than Mr Hughes submitted substantial invoices to Comada Limited in respect of services stated to be consultancy work. The sums due under such invoices were treated as loans from shareholders, and were subsequently converted into shares as a result of which Mr Hughes' shareholding was diluted to 2.356%.

#### Mat:Share

40. By July 2005, Mat:Share was complete, fully tested and substantially bug free.
41. The process and history of the development of Mat:Share was as follows:
- (1) The FundNexus software was written in the Delphi programming language as a set of COM objects together with T-SQL, xsl and asp pages.
  - (2) In March 2005, the claimant and Mr Hughes were told by Ms Keazor, Christopher Mitchell, Robert Mitchell and Mr Shastri that part of the new Mat:Share software should be based on the FundNexus software, with new developments being in C# and ASP.NET.
  - (3) Mr Shastri provided a specification for the software entitled "matshare specification.doc" a copy of which is included in **Annex 9** hereto. The document illustrated how pages from FundNexus would need to be used as a starting point for Mat:Share.
  - (4) Christopher Mitchell provided the claimant with a document entitled "Comada Database Split.doc" a copy of which is also included in Annex 9. The document referred to the database structure from

FundNexus as a guide to renaming conventions for database tables to make them distinct from the FundNexus table names.

- (5) Ms Keazor and Christopher Mitchell provided the claimant with the Delphi source code, database source code, xsl and asp pages from the FundNexus system.
- (6) By March 2004, the claimant and Mr Hughes had developed the Destra Platform which consisted of a .NET framework based application which was designed to form the basis of the claimant's future web site projects. The Destra Platform was used by the claimant for Mat:Share and also for a website subsequently developed by the claimant entitled "landorproperty.com". Further details of the Destra Platform are contained in **Annex 10** hereto.
- (7) During the period March 2004 to July 2005, the claimant developed Mat:Share based upon the FundNexus software and the Destra Platform. About 25% of the functionality of FundNexus remained in Mat:Share.
- (8) The claimant implemented the functionality of FundNexus which was to be included in Mat:Share by converting all or substantially all the Delphi code into the C# programming language. The Destra Platform was already written in C#.
- (9) By July 2005, about 27% of Mat:Share consisted of the Destra Platform (there being approximately 8,000 lines of C# code in the Destra Platform and approximately 30,000 of C# code in mat:share). Annex 10 includes a summary of the aspects of the Destra Platform which were incorporated in Mat:Share. **Annex 11** hereto provides (by way of example only) details of the code of two of the functions included in the Destra Platform which were included in Mat:Share.
- (10) The remaining functions of Mat:Share were developed by the claimant between March 2004 and July 2005.

42. The time spent by Mr Hughes on the development of Mat:Share between November 2003 to July 2005 was approximately as follows:

- (1) Destra Platform: about 700 hours between November 2003 and March 2004 (excluding time spent by Mr Hughes developing .NET programming skills).
- (2) Conversion of FundNexus Delphi code and asp/visual basic pages: about 1,400 hours between March 2004 and July 2005.
- (3) New code written between March 2004 and July 2005: about 2000 hours.

43. The claimant provided the code for Mat:Share to Comada Limited as follows:

- (1) From late March 2004 object code and source code was sent about twice a week by email to Christopher Mitchell in the United Kingdom.
- (2) During 2005 source code was sent less frequently, and the claimant provided mainly object code. In particular, during 2005 C# source code was only sent by the claimant on 4 occasions, namely 8<sup>th</sup> January, 7<sup>th</sup> March, 10<sup>th</sup> March and 25<sup>th</sup> March. On 19<sup>th</sup> May 2005 some old Delphi code was emailed by the claimant to Christopher Mitchell, but no C# code was sent.
- (3) On 28<sup>th</sup> June 2005, the claimant informed Comada that Mat:Share system was complete, and that it was now written entirely in C#. The object code for the completed Mat:Share system was sent by email to Christopher Mitchell on 1<sup>st</sup> July 2005. The C# source code was provided to Comada Limited in March 2006 when invoice Com003 was paid.
- (4) Source and object code was generally provided by the claimant in the form of a "zip" file. As far as the claimant is aware:
  - (a) Christopher Mitchell retained a backup copy of the source code.

- (b) Christopher Mitchell uploaded object code to servers controlled by Comada Limited in Bermuda for the purposes of its deployment.

**Subsistence and ownership of copyright in the Destra Platform and Mat:Share**

44. Copyright subsists in the Destra Platform and the Mat:Share software which was provided to Comada Limited on 1<sup>st</sup> July 2005 in object code form and in March 2006 in source code form in at least the United Kingdom and the Cayman Islands and Bermuda.
45. Moreover, having regard to the provisions of the Software Directive (Council Directive 91/250 EEC and Directive 2009/24/EC), the Berne Convention (the International Convention for the Protection of Literary and Artistic works signed at Berne on 9 September 1886 (Paris Act of 1971 as amended in 1979)) and TRIPs (the Agreement on Trade-related Aspects of Intellectual Property Rights), copyright protection is given to the Destra Platform and Mat:Share in all states who are parties to such instruments such that unlicensed reproduction or running of software is an infringement of copyright.
46. The claimant is the owner of the copyright in the Destra Platform and Mat:Share in all jurisdictions.
47. After disclosure by the defendants in relation to the activities complained of herein, the claimant reserves the right to amend these particulars of claim to assert subsistence, ownership and infringement of copyright in the Destra Platform and Mat:Share in such jurisdictions other than the United Kingdom, Bermuda and the Cayman Islands as may be appropriate.
48. In support of paragraphs 44 to 47 above, the claimant will rely upon the following facts and matters:
  - (1) The Destra Platform and Mat:Share are original computer programs which are the intellectual creation of Mr Hughes and to create them required the expenditure of substantial skill and labour by Mr Hughes.

- (2) Mr Hughes was a citizen of the United Kingdom until 1<sup>st</sup> April 2004. Thereafter he has been a dual citizen of the United Kingdom and Australia. Mr Hughes was resident in the United Kingdom until February 2002. Since then he has been resident in Australia.
- (3) By reason of the foregoing Mr Hughes has at all times been a qualifying person within the meaning of the Copyright Designs and Patents Act 1988.
- (4) By virtue of the Copyright (Cayman Islands) Order, 1965 (S.I. 1965 No. 2010) the provisions of the Copyright Act 1956 have at all material times extended to the Cayman Islands.
- (5) Mr Hughes was at all material times a qualified person within the meaning of section 1 of the Copyright Act 1956.
- (6) By reason of the provisions of the Copyright (Bermuda) Order 1962 (S.I. 1962/1642), the provisions of the Copyright Act 1956 were extended to Bermuda. That order was revoked by the Copyright (Order) 2003 (S.I. 2003 No. 1517) which came into force on 8<sup>th</sup> February 2008 and which extended the provisions of the Copyright Designs and Patents Act 1988 to Bermuda. Also on 8<sup>th</sup> February 2008, the Bermuda Copyright and Designs Act 2004 came into force.
- (7) Pursuant to the provisions of the Copyright, Designs and Patents Act 1988, copyright subsists in original computer software and software which is the intellectual creation of the author as a literary work. Pursuant to the provisions of the Copyright Act 1956 and the Bermuda Copyright and Designs Act 2004, copyright subsists in original computer software as a literary work.
- (8) At all material times, it was the intention of Mr Hughes that the copyright in the Destra Platform and Mat:Share would belong to the claimant.

- (9) Further, when he created the Destra Platform and Mat:Share Mr Hughes was an employee of the claimant, acting in the course of his employment.
- (10) Moreover, by an assignment in writing dated 18<sup>th</sup> August 2011, executed for the avoidance of doubt, Mr Hughes assigned to the claimant all the copyright he owned in Mat:Share software anywhere in the world together with all accrued rights of action in respect thereof. Annex 12 hereto is a copy of such assignment. Since the Destra Platform is included in Mat:Share such assignment also assigned the copyright in the Destra Platform to the extent that it did not already belong to the claimant.

Licence under the copyright which subsists in Mat:Share

49. During early 2005 there were discussions between Mr Hughes and Comada UK and Comada Limited as to the terms upon which the claimant and Mr Hughes would provide programming services. Drafts of written consultancy agreements were circulated. An example of a draft forms Annex 13 hereto. However, neither Mr Hughes nor the claimant agreed to their terms.
50. Neither Mr Hughes nor the claimant assigned any of the copyright in the Destra Platform or the Mat:Share software to Comada UK or Comada Limited (or to any other person or organisation associated with the Comada UK or Comada Limited).
51. It was, however, an implied term of the dealings between Mr Hughes and Comada Limited that Comada Limited would be entitled to use the Destra Platform and Mat:Share for the purposes of Comada Limited arranging for the hosting of Mat:Share on servers controlled by it for use by fund managers who paid a fee for use of the software to Comada Limited (the "Purposes").
52. The implied term under which the claimant provided Mat:Share to Comada Limited did not:

- (1) permit Comada Limited to make copies of, run or licence such software in whole or in part for purposes other than the Purposes;
- (2) permit Comada Limited to licence or permit other persons to deploy or use the Destra Platform or Mat:Share or any substantial part of such software; or
- (3) permit the development and licensing of other software which incorporated all or a substantial part of the Destra Platform or Mat:Share.

Infringement of copyright

53. Each of the defendants has acted pursuant to a common design to do the matters complained of below. Moreover, the development, deployment and licensing of software by Comada UK, Comada Limited and Mat Services Bermuda complained of below, are acts which are likely to have required the personal involvement of Ms Keazor, Chrisopher Mitchell and Robert Mitchell and in particular are likely to have been specifically authorised procured and directed by such persons. In support of the foregoing the claimant will refer to the following facts and matters:

- (1) the roles of the individuals within Comada Limited as described on the Comada website referred to in paragraph 13 above, indicate that each is involved in the development and deployment of software;
- (2) as far as the claimant is aware, each of such persons exercises day to day control over the activities of Comada Limited and Comada UK and it is to be inferred Mat Services Bermuda;
- (3) the importance of the decisions to develop, deploy and licence Mat:Share, Mat:Invest, PFS Horizon and the Custom House Platform is such that such acts are likely to have involved the personal authorisation, procurement and direction of the persons who control Comada Limited, Comada UK and Mat Services Bermuda; such persons are or at least include the individual defendants;

- (4) the individual defendants were closely involved in the development of Mat:Share, and it is a reasonable inference that they continued to be closely involved in the development of and decisions to deploy or licence Mat:Invest, PFS Horizon and the Custom House Platform and other software based on the Destra Platform and Mat:Share.
54. On days and in circumstances not precisely known to the claimant, the defendants have infringed the claimant's copyright in the Destra Platform and the Mat:Share software by, without the licence or consent of the claimant doing the following acts:
- (1) In the case of Mat Services Bermuda, running and granting licences to other persons to run Mat:Share. In the case of all defendants, acting pursuant to a common design to do such acts.
  - (2) Making copies of a substantial part of the Destra Platform and Mat:Share for the purposes of creating Mat:Invest, PFS Horizon and the Custom House Platform (and other custom software based on the Destra Platform and Mat:Share).
  - (3) Making copies of a substantial part of the Destra Platform and Mat:Share by the installation of Mat:Invest, PFS Horizon and the Custom House Platform on servers and subsequently by running or authorising such software to be run.

#### PARTICULARS

55. At trial the claimant will seek a remedy for all acts of infringement of the claimant's copyright in Mat:Share. At present, pending disclosure and further investigations, the claimant complains of the following acts of infringement:
- (1) The defendants have modified and adapted the Destra Platform and Mat:Share so as to create Mat:Invest and have thereafter made copies of such software by installing it on servers and by running the software.

- (2) In support of the fact that such acts have been done the claimant will refer to the fact that Mat:Invest software is advertised on the Comada web site.
- (3) In support of the fact that Mat:Invest is a reproduction of a substantial part of the Destra Platform and Mat:Share the claimant will refer to **Annex 14** hereto, which sets out details of similarities between such software which the claimant has been able to ascertain. If it is not admitted by the defendants that Mat:Invest is a reproduction of a substantial part of the Destra Platform and Mat:Share, the claimant will provide further particulars of similarity following disclosure and inspection.
- (4) The defendants have also modified and adapted the Destra Platform and Mat:Share so as to create custom software and in particular the Custom House Platform and PFS Horizon. In support of the foregoing the claimant will refer to the press releases contained in Annexes 4 and 5 above, and paragraph 23 above.
- (5) At present it is not known whether such software is hosted by Comada Limited (in which case such use is not licensed because it is not for the Purposes) or whether copies of such software have been made and provided to PFS and Custom House and others (in which case the making of the copies was not licensed).
- (6) In support of the contention that PFS Horizon and the Custom House Platform reproduce a substantial part of the Destra Platform and Mat:Share the claimant will also refer to Annex 14. If it is not admitted by the defendants that such software is a reproduction of a substantial part of the Destra Platform and Mat:Share, the claimant will provide further particulars of similarity following disclosure and inspection.
- (7) An individual named Kenny Joseph was employed by the defendants or one or other of them to assist in the development of Mat:Share and PFS Horizon in about 2008 and 2009. During that time he worked with

other software developers including developers based in the United Kingdom, New York, Germany, France and the Cayman Islands.

- (8) Having regard to that fact, and to the involvement of the individual defendants and in particular Christopher Mitchell, it is a reasonable inference that copies of the Destra Platform, Mat:Share, Mat:Invest, PFS Horizon, the Custom House Platform and other software based on the Destra Platform and Mat:Share were made and kept in the United Kingdom, the Cayman Islands and in Bermuda.

### Remedies

56. The claimant is entitled to and claims interest upon all sums found due to it pursuant to section 69 of the County Courts Act 1984.
57. The claimant has complied with the provisions set out in CPR 63.20(2).

### AND THE CLAIMANT CLAIMS

- (1) Declarations that:
- (a) the claimant has not assigned the copyright which subsists in the Destra Platform and Mat:Share to any of the defendants;
  - (b) the terms of the licence from the claimant pursuant to which the second defendant is entitled to use the Destra Platform and Mat:Share (as defined above) is as set out in paragraphs 51 and 52 above.
- (2) An injunction restraining each of the defendants from infringing the claimant's copyright which subsists in the Destra Platform and Mat:Share (as defined above) in any of the following jurisdictions:
- (a) The United Kingdom.
  - (b) Bermuda.
  - (c) The Cayman Islands.

- (3) An order that, at the defendants' expense, the defendants deliver up to the claimant to a destination in the UK to be specified by the claimant all infringing copies of the Destra Platform and Mat:Share which are in the possession, custody or control of any of the defendants.
- (4) An order that each of the defendants provides the claimant with full particulars in writing of the names, addresses and other contact details of all persons to whom the defendants or either of them or any other subsidiary or associated company or person of the first defendant or Comada Limited have supplied or licensed the Destra Platform or Mat:Share software or any substantial part of such software.
- (5) An inquiry as to damages for infringement of copyright (including damages pursuant to the Intellectual Property (Enforcement, etc) Regulations 2006 and Directive 2004/48/EEC) or at the claimant's option an account of profits.
- (6) Payment of all sums found due upon taking such inquiry or account together with interest thereon pursuant to section 69 of the County Courts Act 1984.
- (7) An order that at the claimant's option, and at the expense of the defendants, appropriate measures are taken for the dissemination and publication of any judgment or order made in this case.
- (8) Costs.
- (9) Further or other relief.

**MICHAEL HICKS**

**Statement of Truth**

The claimant believes that the facts stated in these particulars of claim are true. I am duly authorised by the claimant to sign this statement.

Signed *J Hughes* ..... position or office held *DESTRA MANAGING DIRECTOR* .....

Iain James Hughes                      November 2011

Dated *9th* November 2011

Served by Waterfront Solicitors LLP, 14 Weller Street, London SE1 1QU (Tel: 0207 234 0200, Ref: DES.001/PGS/JCN)

**IN THE PATENTS COUNTY COURT**

**B E T W E E N:**

**DESTRA SOFTWARE LIMITED**

*Claimant*

- and -

- (1) COMADA (UK) LLP**
- (2) COMADA LIMITED**
- (3) MAT SERVICES LIMITED**
- (4) GERTRUD KEAZOR**
- (5) CHRISTOPHER JOHN MITCHELL**
- (6) ROBERT DAVID MITCHELL**

*Defendants*

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**PARTICULARS OF CLAIM**

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London

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Tel: 0207 234 0200

Ref: DES.001/PXS/RAB