
MASTER SOFTWARE AND SERVICES AGREEMENT

Fusion Ref No: []

TABLE OF CONTENTS

1. Definitions and Interpretation 2

2. Commencement 5

3. Operation of this Agreement 5

4. Supplier’s Obligations..... 5

5. The Client’s Obligations and Rights of Access 6

6. Charges 7

7. Warranties 8

8. Intellectual Property Rights 9

9. Limitation of liability and Insurance 9

10. Confidentiality 10

11. Data Protection and Data Processing and Security 11

12. Compliance with relevant terms..... 13

13. Termination & Consequences of Termination 13

14. Change 15

15. Assignment and Sub-Contracting..... 15

16. Notices 15

17. Waiver..... 16

18. Invalidity and Severability 16

19. Cumulation of Remedies 16

20. Publicity..... 16

21. Counterparts 16

22. Third Party Rights 16

23. Non-Solicitation..... 17

27. Jurisdiction 18

Schedule No 1. Charges 20

Schedule No 2. 21

Software, Authorised Software, Services and Support and Maintenance Services (as applicable) 21

Schedule No 3. Data Protection 21

This Agreement is deemed effective the _____ day of _____ 201[]

Between

(1) **Fusion Business Solutions (UK) Ltd** company number 03508523 whose registered office is 55 Staines Road West, Sunbury-on-Thames, TW16 7AH (the “**Supplier**”); and

(2)with company number [xxxxx] whose registered address is at (the “**Client**”)

Recitals

1. The Supplier is the proprietary owner in respect of its own products (“Software”) and those of third parties as an authorised software reseller (“Authorised Software”).
2. The Supplier is also a provider of professional services, managed services, systems integration, consultancy (the “Services”) and maintenance and support services (the “Support Services”) in relation to the Software and the Authorised Software.
3. The Client has appointed the Supplier to supply the Software and Authorised Software and to perform certain Services as particularised in a Statement of Work, and the Supplier has agreed to supply and perform the same upon the terms set out in this Agreement.

Agreement

1. Definitions and Interpretation

1.1. The following words and phrases used in this Agreement shall have the following meanings:

- | | |
|-----------------------------------|---|
| “the Act” | means the Data Protection Act 2018 |
| “Agreement” | means this Framework Agreement together with its Schedules, any Statement of Work and all other documents attached to, or referred to as forming part of this Framework Agreement; |
| “Authorised Software” | means any software supplied or sub-licensed by the Supplier as a reseller of the relevant software owned by a third party; |
| “Bribery Act” | means the Bribery Act 2010 |
| “Charges” | means the Supplier’s charges for the supply of Software, Authorised Software, Services and Support Services, calculated in accordance with Schedule 1 unless agreed otherwise in writing; |
| “Confidential Information” | means any and all proprietary information, know-how, trade secrets and data whether of a business, marketing, financial, technical or non-technical nature and whether existing in hard copy form, in electronic form or otherwise, whether disclosed orally or in writing, which is held in confidence by the disclosing Party or any of that Party’s affiliates and which is or |

has been disclosed to the other Party. This will include information expressly identified as such as well as any other information which, by reason of its nature or the circumstances under which it is disclosed, might reasonably be expected to be confidential;

“Data Controller” has the meaning set out in section 1(1) of the Data Protection Act 2018;

“Data Protection Legislation” the Data Protection Act 1998, the Data Protection Directive (95/46/EC), the General Data Protection Regulations (Regulation (EU) 2016/679) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner and all updates and amendments thereto;

“Data Subject” means an individual who is the subject of Personal Data;

“Data Transfer Agreement” means the Standard Contractual Clauses for Data Processors established in third countries pursuant to Commission Decision (2010/87/EU) of 5 February 2010 under the EU Directive (95/46/EC) or such other Commission decision as may replace that Commission Decision from time to time;

“Documentation” means all documentation (including specifications, technical, systems and user manuals) in eye-readable form (whether in hard copy or electronic form) which enables proper use of, or otherwise relate to, the Software and/or the Services;

“End User Licensing Agreement” means the licensing agreement, attached hereto as Schedule 4, made between the proprietary owner of the Authorised Software and the Client

“Group” means any entity which directly or indirectly controls, is controlled by or under common control with the Client, whether by shareholding, voting power, board representation or otherwise;

“Intellectual Property Rights” means all patents, design rights (whether registered or unregistered), trademarks, service marks, domain names, trade and business names, publicly available and registered applications for any of the foregoing, copyrights, inventions, confidential information, trade secrets, know-how and registered database rights including all applications for the same, all extensions and renewals to any of them and publicly available and registered applications for any of them and any right or

form of protection of a similar nature and having equivalent or similar effect to any of them which may subsist anywhere in the world;

“Licence(s)”	means a licence for the Software or the Authorised Software as applicable;
“Party” or “Parties”	means either or both of the Supplier and the Client as the context requires;
“Personal Data”	has the meaning set out in section 1(1) of the Act and relates only to personal data, or any part of such personal data, in respect of which the Client is the Data Controller and in relation to which the Supplier is providing Services under this Agreement;
“Processing and process”	have the meaning set out in section 1(1) of the Act;
“Project Manager”	means the Supplier’s designated representative authorised to make and communicate decisions relating to this Agreement;
“Project Director”	means the Client’s designated representative authorised to make and communicate decisions relating to this Agreement;
“Services”	means the Professional Services and/or Managed Services (and may include Support Services) to be provided by the Supplier as detailed and agreed by both parties in a SOW;
“Software”	means the Fusion software products licensed by Supplier (as updated from time to time) identified in any SOW or order placed by the Client with the Supplier;
“Statement of Works or SoW”	means a technical description of the work to be completed by the Supplier and agreed by the Client as to the work to be performed by the Supplier, including the Supplier’s responsibilities and obligations; and
“Software and Services”	means the available software and services set out in Schedule 2.

1.2. In this Agreement:

- 1.2.1. words importing a gender shall include all genders; and
- 1.2.2. the word “including” shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word “include”, and its derivatives shall be construed accordingly.

- 1.3. A reference to any Party shall include a reference to the legal successors to the whole part of its undertaking and its permitted assignees.
- 1.4 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time
- 1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

2. **Commencement**

This Master Software and Services Agreement shall be deemed to have commenced upon the date set out at the start of this Agreement and shall continue unless or until terminated in accordance with its terms.

3. **Operation of this Agreement**

- 3.1. This Agreement shall operate as a framework under which the Client may purchase Software or Authorised Software licences and/or Services from the Supplier in accordance with the procedures set out in this Clause 3 for use by the Client and any members of its Group.
- 3.2. The Client's purchases of Software or Authorised Software licences and/or the purchase of Services shall be subject to the following procedure:
 - 3.2.1. The Client shall request a quote from Supplier for Software, Authorised Software and/or Services.
 - 3.2.2. The Supplier may provide the Client, without unreasonable delay, a formal quotation or SoW for the Software, Authorised Software and/or Services in accordance with the agreed pricing structure between the parties as more fully particularised in Schedule 2.
 - 3.2.3. The Client will provide Supplier with a formal Purchase Order ("PO"), upon which the Supplier shall commence the provision of the Software, Authorised Software, Services and Support Services in accordance with Schedule 2 of this Agreement and any applicable SoW.
- 3.3. All Support Services shall be provided to the Client and any member of the Client's Group in accordance with the terms of Schedule 2.
- 3.4. In the event of any conflict between the terms of this Agreement, Schedule 1 or 2 or any SOW the documents shall prevail in the following order: (1) SOW; (2) Schedule 1; (3) Schedule 2; (4) Agreement.

4. **Supplier's Obligations**

- 4.1. In consideration of the Charges to be paid by the Client to the Supplier under this Agreement, the Supplier will supply such quantities and types of available Software or Authorised Software as the Client may require and perform the Services and the Support Services in accordance with the terms of this Agreement and each Statement of Work or Schedule 2 (as applicable).
- 4.2. Both Parties agree and acknowledge that the Supplier is both a software vendor of the Software as the proprietary owner, and a reseller of Authorised Software. All matters relating to the use of any purchased Authorised Software, including any matters relating

to Intellectual Property Rights and any infringement thereof, shall be governed by the applicable End User Licence Agreement (EULA) between the proprietor of the Authorised Software and the Client, provided always that all Charges and other fees for the Licences shall be payable by the Client to the Supplier and not to the proprietor of the Authorised Software (notwithstanding anything to the contrary in the licence agreement).

5. The Client's Obligations and Rights of Access

5.1. The Client shall provide such assistance to the Supplier that is reasonably necessary to enable the Supplier to provide the Services and in particular:

5.1.1. the Client shall provide access to the appropriate personnel who have access to the necessary Client technical documentation and software to work with the Supplier. Such personnel are to be made available at all reasonable times to the Supplier, and to reply within a reasonable time to all queries and questions of a technical and business process nature applicable to the fulfilment of the Supplier's obligations hereunder;

5.1.2. the Client shall inform the Supplier on a timely basis of any changes made to the location, individual components, or the configuration environment of the Software or the Authorised Software; and

5.1.3. where the Client is required to give, or obtain any consent, authority, permission or agreement in order for the Supplier to perform the Services or the Support Services, the Client will (unless expressly provided otherwise) not unreasonably withhold the same and provide the same promptly and without unreasonable delay so as not to delay the provision of the Services or Support Services.

5.2. For the duration of this Agreement and provided that reasonable prior notice is given to the Client, the Client will permit designated employees of the Supplier:

5.2.1. to access such of the Client's software as it is reasonably necessary to enable the Supplier to provide the Services and/or the Support Services, provided however that Client is permitted under the relevant contracts to allow such access by the Supplier;

5.2.2. subject to such conditions as the Client shall reasonably impose, to use its technical infrastructure for the purpose of installing and testing any Software and/or Services and any applications;

5.2.3. subject to such conditions as aforesaid, to enter the Client's offices for the purpose of performing the Services and/or the Support Services.

5.2.4. subject to such conditions as the Client shall reasonably impose, to allow the Supplier access via remote services or other appropriate mechanism to the relevant part of the Client's technical infrastructure.

5.3. The Client will respond to all formal requests for information to the Supplier within a reasonable period of time, and if stated in documentation by the Supplier as to a specific timeframe for response, within that timeframe. Such a timeframe not to exceed 5 working days. If the response time is not met the Supplier will have the following options:

5.3.1. to extend the timeframe;

5.3.2. charge the Client for all additional costs incurred by the Supplier as a result of a failure of the Client to adequately respond within the required timeframe. Such charges shall be notified to the Client in advance or in accordance with a SoW. In the absence of any agreed day rate, the Client shall be charged the agreed day rate for similar Services); or

5.3.3. to terminate the contract without any further Liability to the Supplier.

6. Charges

6.1. The basis for calculating the Charges payable by the Client under this Agreement and any increases to the same shall, for Software, Authorised Software and Services be as set out in Schedule 1 and or each SOW and for the Services or Support Services as set out in Schedule 2. The actual Charges payable by the Client shall be as set out in the relevant SOW or applicable Supplier Quotation.

6.2. The Supplier shall invoice the Client for the Charges:

6.2.1. in respect to Services, monthly in arrears, on the last working day of each month;

6.2.2. in respect of Support Services, annually or as per a defined multi year term in advance;

6.2.3. in respect of out of pocket expenses, including travel and accommodation monthly in arrears at cost to the Supplier, for the avoidance of doubt, such costs must be pre-agreed by the Client prior to the Supplier invoicing the expense; and

6.2.4. in respect of Software or Authorised Software, upon receipt from Client of the appropriate PO and or additional required documentation.

6.3. The parties acknowledge and agree, that the payment structure may deviate from the procedure set out in this clause, in respect to the payment for Professional Services, in the form of milestone payments. Such a deviation will be stipulated in Schedule 2 or any applicable SOW.

6.4. The Client shall pay all undisputed invoices within thirty (30) days of receipt of the invoice submitted. Charges shall be paid in Great Britain Pounds (£) and are exclusive of Value Added Tax which shall be charged in accordance with the Value Added Tax Act 1983 (as amended from time to time) including all rules and regulations made thereunder.

6.5. The Supplier shall send all invoices to the Client, at the following address:

COMPANY NAME:	
COMPANY ADDRESS:	
E MAIL ADDRESS:	
ATTN OF:	
FAX NO.	

7. Warranties

7.1 The Supplier warrants that the Software will conform in all material respects to the Specification for a period of 90 days from the date of this licence (**Warranty Period**). If, within the Warranty Period, the Client notifies the Supplier in writing of any defect or fault in the Software in consequence of which it fails to conform in all material respects to the Specification, and such defect or fault does not result from the Client, or anyone acting with the authority of the Client, having amended the Software or used it outside the terms of this Licence for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by the Supplier, or it has not been loaded onto Supplier-specified or suitably configured equipment, the Supplier shall, at the Supplier's option, do one of the following:

- (a) repair the Software;
- (b) replace the Software; or
- (c) terminate this licence immediately by notice in writing to the Client and refund any of the Fee paid by the Client as at the date of termination (less a reasonable sum in respect of the Client's use of the Software to the date of termination) upon return of the Software and all copies thereof,

provided however, that the Client provides all the information that may be reasonably necessary to assist the Supplier in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable the Supplier to re-create the defect or fault.

7.2 The Supplier does not warrant that the use of the Software will be uninterrupted or error-free.

7.4 The Client accepts responsibility for the selection of the Software and Authorised Software to achieve its intended results and acknowledges that the Software and Authorised Software has not been developed to meet the individual requirements of the Client.

7.5 The Client acknowledges that any open-source software provided by the Supplier is provided "as is" and expressly subject to the disclaimer in Clause 7.6.

7.6 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care to the maximum extent permitted by law.

7.7 The Supplier will perform the Services and the Support Services with reasonable skill and care and in accordance with industry best practices. If any of the Services and/or the Support Services are not provided in accordance with this warranty and the Client notifies the Supplier in writing of the non-compliance with this warranty within 2 months after performance, the Supplier will (at its own cost and expense) promptly re-perform the Service and/or Support Services.

7.8 The Supplier gives no warranty in respect of, and is not responsible for, any third-party products including the Authorised Software but shall, to the extent possible, transfer to the Client the benefit of any third-party warranty that it has acquired.

7.9 The Supplier warrants that:

- 7.9.1 it has full capacity, power and authority (including rights under third party Intellectual Property Rights) to enter into the Agreement and to perform it in accordance with its terms;
- 7.9.2 it shall apply ethical work practices in the provision of the Services and Support Services to be supplied hereunder;

- 7.9.3 it shall comply with all applicable anti-slavery and human trafficking laws and regulations from time to time in force including but not limited to the Modern Slavery Act 2015 and will maintain throughout the term of this Agreement an anti-slavery policy;
- 7.9.4 the Software, Services, Support Services and Documentation will not infringe any rights, including any Intellectual Property Rights, of any third party;
- 7.9.5 the provision of the Software (but excluding the Authorised Software) Services and the Support Services shall comply with all applicable laws, enactments, regulations, orders, standards and other similar instruments which the Supplier is aware (having undertaken appropriate due diligence) are applicable or which it is notified by the Client are applicable; and
- 7.9.6 the employees performing the Services and the Support Services shall be properly trained and qualified to perform such services.

8. Intellectual Property Rights

- 8.1. The parties acknowledge that all Intellectual Property Rights in and to all Software, data and other materials developed in the course of providing the Software, Services and/or the Support Services ("Created IPR"), but for the avoidance of doubt specifically excluding the Authorised Software which shall be governed in its entirety by the End User Licence Agreement, shall belong to the Supplier. The Client hereby assigns to the Supplier all present and future right, title and interest in any and all Created IPR and warrants that it has the right to assign the same to the Supplier. If and to the extent that any Intellectual Property Rights in any Created IPR do not first vest in the Supplier, the Client shall, where it is able to do so, procure that the individuals who create such Intellectual Property Rights shall assign the same to the Supplier.
- 8.2 The Intellectual Property Rights in all documentation, templates and other materials in existence prior to the date of the Agreement, but for the avoidance of doubt specifically excluding the Software and the BMC Software which shall be governed in its entirety by this Agreement the applicable End User Licence Agreement. ("Pre-existing Material ") shall remain vested in the Supplier or its Licensors. The Supplier hereby grants to the Client a non-exclusive, non-transferable, irrevocable and royalty-free licence to use the Pre-existing Material for the Client's internal business purposes only.
- 8.3 All rights not granted by this Agreement are expressly reserved.
- 8.4 The Supplier shall indemnify and shall keep fully indemnified the Client against all actions, claims, proceedings, damages, costs, and expenses arising from any claim that the use by the Client of any Software, Created IPR or Pre-Existing Material infringes the Intellectual Property Rights of any third party.

9. Limitation of liability and Insurance

- 9.1. Neither Party excludes or limits its liability in respect of death or personal injury arising from its negligence or that of its servants or agents or for fraudulent misrepresentation.
- 9.2. Neither Party shall be liable to the other under any circumstances for any special, indirect or consequential loss, including loss of profit or potential profit.
- 9.3. Upon the written request of the Client, which may not be made more than once in any twelve (12) month period, the Supplier will provide confirmation from its brokers to the Client that it has in force a professional indemnity insurance policy suitable to cover the obligations and liabilities assumed by the Supplier under this Agreement. The

Supplier shall, during the subsistence of this Agreement and for one (1) year thereafter, maintain in force such professional indemnity insurance policy.

- 9.4. Except in respect of liability arising out of Clause 8.4 (for which no limit applies) and as otherwise provided in this Agreement, in respect of any other loss or damage which in any way arises out of or is connected with the performance or non-performance by either Party or its staff, agents and sub-contractors, of any of its obligations under this Agreement, the maximum liability of each Party in any year of this Agreement (meaning the period of 12 months from the date set out at the start of this Agreement and any subsequent period of 12 months thereafter) will be limited in total to the greater of £100,000 or 100% of the charges payable under this Agreement in any year.

10. Confidentiality

Each Party agrees and undertakes to use the other Party's Confidential Information solely in the performance of its business obligations under this Agreement, and to treat and safeguard such Confidential Information as private and confidential during the currency of this Agreement and for a period of six (6) years after its termination for whatever reason.

- 10.1. The Client shall not disclose the Supplier's Confidential Information to any person other than to its directors, employees, temporary employees, independent contractors, agents, outsourcers, sub-contractors, consultants, advisers or affiliates ("**Client Recipients**") for the sole purpose of, and to the extent necessary to, enable the Client Recipients to perform, or to cause to be performed, or to enforce any of the Client's rights and obligations under this Agreement. The Client shall ensure that each Client Recipient is informed of the confidential nature of the Confidential Information and is subject to obligations of confidentiality sufficient to enable the Client to comply with its obligations under this Clause 10.
- 10.2. The Supplier shall not disclose the Client's Confidential Information to any person except to its employees temporary employees, independent contractors, agents, outsourcers, sub-contractors, consultants, advisers or affiliates ("**Supplier Recipients**") who have a need to know such information for the sole purpose of, and to the extent necessary to, enable such Supplier Recipients to perform, or to cause to be performed, or to enforce any of the Supplier's rights and obligations under this Agreement. The Supplier shall ensure that such Supplier Recipients are informed of the confidential nature of the Confidential Information and are subject to obligations of confidentiality sufficient to enable the Supplier to comply with its obligations.
- 10.3. If a Party becomes compelled to disclose the other Party's Confidential Information to any governmental or regulatory authorities, or as required by law or court order, the Party compelled to disclose shall inform the other Party, in writing, of such fact or obligation as soon as reasonably possible after it becomes aware of it and, if possible, before any Confidential Information is disclosed. The Party compelled to disclose shall ensure, insofar as it is able to procure the same, that any such disclosure will be limited to the minimum amount of Confidential Information required to satisfy that disclosure obligation. Each Party agrees to assist and co-operate in any appropriate action, which the other Party may decide to take.
- 10.4. On the termination of this Agreement or any SoW, each Party shall return to the other any Confidential Information within its possession or control as may belong to the other Party, except that the Client may retain a copy of the Confidential Information solely for the purposes of record keeping and to ensure compliance with its obligations contained within this agreement.

- 10.5 The provisions of this Clause shall not apply to any information which:
- 10.5.1 is or becomes public knowledge other than by breach of this Clause 10;
 - 10.5.2 is in the possession of the receiving Party without restriction in relation to disclosure before the date of receipt from the disclosing Party;
 - 10.5.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
 - 10.5.4 is independently developed without access to the Confidential information.

11. **Data Protection and Data Processing and Security**

- 11.1. The parties acknowledge that for the purposes of the Agreement the Client is the Data Controller and the Supplier is the Data Processor in respect of any Personal Data.
- 11.2. The parties shall at all times comply with all applicable data protection legislation in force from time to time including the Data Protection Act 2018 (the “**DPA**”), to the extent that it applies, the General Data Protection Regulations (Regulation (EU) 2016/679) (the “**GDPR**”), and all related guidance and codes of practice issued by applicable supervisory authorities and any equivalent legislation amending or replacing the GDPR or the DPA.
- 11.3. Each party warrants that they:
- 11.3.1. shall not by any act or omission put the other party in breach of the Data Protection Legislation;
 - 11.3.2. shall not transfer or process any Personal Data to any other party or outside of the European Economic Area without the other party’s express written consent and, where consent is given, shall only undertake such transfer or processing in accordance with the other party’s instructions;
 - 11.3.3. shall keep all Personal Data confidential and provide appropriate technical and organisational measures against unauthorised or unlawful processing, accidental loss or destruction or damage and it shall only deal with the Personal Data for the purposes, and in accordance with its obligations, set out in this Agreement;
 - 11.3.4. shall take all reasonable steps to ensure the reliability of any of its staff who have access to Personal Data processed in connection with this Agreement;
 - 11.3.5. shall provide such information and, on reasonable prior notice, allow for and contribute to audits, including inspections by an auditor mandated by any regulatory authority as is necessary to ensure compliance with the Data Protection Legislation;
 - 11.3.6. shall not use any sub-contractors to process Personal Data, unless the other party has issued its prior written consent and the Supplier shall ensure that sub-contracts entered into with approved sub-contractors shall include provisions equivalent to those in this Clause 11; and
 - 11.3.7. shall on termination of this Agreement, and at any time on the other party’s request, immediately either return the Personal Data in the format requested or destroy the Personal Data (including all copies of it) and confirm in writing that it has complied with this obligation.
- 11.4. Each party shall notify the other promptly if it receives:

- 11.4.1. a request from a Data Subject (as defined in the DPA, and, with effect from 28 May 2018, the GDPR, or any amendment or replacement of the same) to have access to that person's Personal Data; or
- 11.4.2. a complaint or request relating to the rights of a Data Subject under the Data Protection Legislation; or
- 11.4.3. any other communication relating directly or indirectly to the processing of any Personal Data in connection with this Agreement; and

in each case, each party shall promptly provide its full co-operation and assistance as is reasonably required in order to respond to and resolve the request, complaint or other communication within any time frames imposed by applicable Data Protection Legislation.

11.5. Each party shall:

- 11.5.1. notify the other party immediately upon becoming aware of a Personal Data Breach (as defined in the GDPR or any amendment or replacement of the same); and
- 11.5.2. following notification, provide such information and assistance as is reasonably required in order for the other party to notify the Personal Data Breach to the Information Commissioner and/or any Data Subjects, in accordance with the DPA or GDPR.

11.6. The Supplier shall process the Personal Data only in accordance with the Data Controllers instructions from time to time and shall not process the Personal Data for any purpose other than those expressly authorised by the Data Controller under this Agreement.

11.7. The Supplier shall take reasonable steps to ensure the reliability of all its employees who have access to Personal Data.

11.8. The Supplier warrants that it will:

- (i) take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure an appropriate level of security:
- (ii) reduce the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
- (iii) implement the additional data protection and security measures set out in Schedule 3.

11.9. Data Protection Indemnity

- 11.9.1. Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all direct costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this agreement.
- 11.9.2. The Data Controller acknowledges that the Data Processor is reliant on the Data Controller for direction as to the extent to which the Data Processor is entitled to use and process the Personal Data. Consequently, the Data Processor will not be liable for any claim brought by a Data Subject or any regulator arising from any action or omission by

the Data Processor, to the extent that such action or omission resulted directly from the Data Controller's instructions.

- 11.10. The Supplier may authorise a subcontractor to process the Personal Data provided that the subcontractor's contract is on terms which are substantially the same as those set out in this agreement with the prior approval of the Data Controller.

12. Compliance with relevant terms

Each party shall:

- (i) comply with all applicable laws, statutes, regulations and codes; to anti-bribery and anti-corruption legislation including but not limited to the Bribery Act 2010 and the Modern Slavery Act 2015 ("Relevant Terms");
- (ii) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (iii) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010 and the Modern Slavery Act 2015, to ensure compliance with the Relevant Terms, and will enforce them where appropriate;
- (iv) each party shall report to the other any request or demand for any undue financial or other advantage of any kind received by a party in connection with the performance of this agreement;

- 12.1. The Supplier shall ensure that any person associated with the Supplier who is performing Services or Software in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause.

- 12.2. Each party shall be responsible for the observance and performance of the Relevant Terms and shall be directly liable to the other for any breach of any of the Relevant Terms.

13. Termination & Consequences of Termination

- 13.1. The following events will allow either Party to terminate this Agreement or any SoW or the relevant Support Services immediately on giving notice in writing to the other:

- 13.1.1. material breach of any term of this Agreement, any SoW or Schedule 2 which the Party in breach has failed to remedy (where it is capable of remedy) within thirty (30) days of receipt of notice of the breach, provided that, for the avoidance of doubt, the material breach of a SoW or any Support Services shall only entitle the other party to terminate that SoW or those Support Services and shall not SoW of Work or Support Services; or
- 13.1.2. where one Party has a receiver or administrative receiver appointed or passes a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect or if that Party becomes subject to an administration order or enters into any voluntary arrangement with its creditors or ceases or threatens to carry on business.

- 13.2. Prior to exercising any right of termination both Parties agree to enter into the Dispute Resolution Procedure, per clause 24 below.

- 13.3. In addition:
- 13.3.1. this Agreement or any SoW or the Support Services may be terminated by either Party subject to a notice period of three months. However, the Client will not be permitted to rely upon this Clause 11.3 within the first six (6) months of the date of this Agreement. Furthermore, the Client may only terminate any Support Services within six months of the next anniversary date of the support renewal. Such notice of termination will only be effective upon the cessation of the contracted renewal period. (For the avoidance of doubt any Support Services are in effect non-cancellable within the contracted support period).
- 13.4. On termination of this Agreement, all SoW shall terminate and both parties shall work together in good faith to complete all outstanding Services. Both parties shall endeavour from the date of cessation of the Agreement to minimise all costs to complete any relevant SOW and to agree a final account upon notification of cessation of this Agreement.
- 13.5. On termination of this Agreement or any SOW, the Client shall, upon receipt of a written request from the Supplier:
- 13.5.1. immediately deliver up to the Supplier all Created IPR and other materials created up to and including the date of termination and any property belonging to the Supplier which may be in the possession of, or under the control of the Client;
- 13.5.2. undertake to procure from its personnel (or their personal representatives) that they will immediately deliver up to the Supplier such Created IPR, other materials created and any property as may be in the possession of or under the control of its Personnel or their personal representatives; and
- 13.5.3. provide (at an agreed cost to the Client) the Client with all assistance reasonably required to migrate the ongoing provision of any Services to an alternative supplier.
- 13.6. To the extent that any of the Created IPR or other materials and property are in electronic form and contained on non-detachable storage devices, the Client will provide the Supplier with unencrypted copies of the same on magnetic media and will destroy and delete copies so held.
- 13.7. In the event that the Agreement (in whole or in part) is terminated by either Party pursuant to Clause 13.3 the Client will, pay to the Supplier all outstanding Charges (apportioned on a daily basis) relating to the Software or Services undertaken in accordance with Schedule 2 or any and each SoW by the Supplier up until the date of such termination and including any applicable notice period. The Client will also pay the costs of any goods and materials ordered at the request of the Client or as necessitated in the normal course of business in relation to the work for which the Supplier has paid or is legally obliged to pay (for the avoidance of doubt the Client will pay all support and maintenance charges until the end of the term of the Support Services) whether the Agreement or any SoW has been terminated or not.
- 13.8. Any termination of this Agreement, any SOW or the Services or Support Services (howsoever caused) shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force, or the continuance in force, of any provision of the same which is expressly or by implication intended to come into or continue in force on or after such termination, including "Definitions and Interpretation" "Warranties", "Intellectual Property Rights", "Limitation on liability and Insurance" and "Confidentiality".

14. Change

14.1. Either Party shall be entitled to request any changes, amendments or variations to this Agreement ('Change') by using the change control procedure set out this Clause 14.

14.2. The procedure for change control shall be as follows:

14.2.1. The authorised representative of the Party requesting the Change will provide the other Party's authorised representative with details of the Change which will contain sufficient information to enable the other Party to fully evaluate the nature and effect of the Change;

14.2.2. The Party receiving the Change request shall, without unreasonable delay, evaluate the request and either approve the Change or reject the Change, provided neither Party shall unreasonably withhold or delay approval of any Change, but the Client shall have absolute discretion to refuse any Change where the same impacts in an adverse way on the operation or delivery of any Services or Support Services provided by the Supplier;

14.2.3. If the Change is approved, it shall be recorded in writing and signed in duplicate by each Party; or

14.2.4. If the Change is rejected, it will not proceed.

15. Assignment and Sub-Contracting

Save as expressly set out in this Agreement, neither Party may assign or sub-contract any of its rights or obligations under this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed); provided however, that no such consent shall be required in the event of an assignment by the Client to any member of its Group as part of a solvent reorganisation/restructuring and the Supplier agrees to enter into any agreement required to effect such assignment.

16. Notices

All notices and consents under this Agreement shall be in writing and shall be sent to the other Party marked for the attention of the person at the address set out below. Correctly addressed notices and consents sent by first class mail shall be deemed to have been delivered seventy-two (72) hours after posting.

If to Supplier:

Name: The Company Secretary
Address: Fusion Business Solutions (UK) Ltd
Unit One, Wallbrook Business Centre, Green Lane
Hounslow, Middx TW4 6NW
Telephone Number: 020 8814 4888
Email: Finance@FusionGBS.com

If to Client:

Name:
Attn:
Address:

Telephone Number:

E Mail

17. **Waiver**

Failure by either Party to exercise or enforce any rights available to that Party or the giving of any forbearance, delay or indulgence shall not be construed as a waiver of that Party's rights under this Agreement.

18. **Invalidity and Severability**

If any provision of this Agreement is held to be illegal or unenforceable in whole or in part under any enactment or rule of law, such provision or part shall, to the extent it is held to be illegal or unenforceable, be deemed not to form part of this Agreement but the enforceability of the remainder of this Agreement shall not be affected. If any provision or part of this Agreement is severed as illegal or unenforceable, the Parties shall seek to agree to modify this Agreement to the extent necessary to render it lawful and enforceable and as nearly as possible to reflect the intentions of the Parties embodied in this Agreement including the illegal or unenforceable provision or part.

19. **Cumulation of Remedies**

No remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy except as expressly provided for in this Agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given in this Agreement or existing at law or in equity, by statute or otherwise.

20. **Publicity**

The Supplier may make public announcements, issue press releases or circulars relating to this Agreement or use the name, trade mark, logo or other designation of the Client or any of its affiliates in any promotion, advertising, publicity, marketing or other activities if the Supplier has first obtained the prior approval of the Client such approval not to be unreasonably withheld or delayed.

21. **Counterparts**

This Framework Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

22. **Third Party Rights**

The Parties agree that the Client and/or any member of its Group can exercise any rights under the Contracts (Rights of Third Parties) Act 1999 in relation to this Agreement. However, no other person who is not a party to this Agreement (including any employee, officer, agent, representative or sub-contractor of the Supplier) shall have the right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any term of this Agreement which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the Parties which agreement must refer to this Clause.

23. Non-Solicitation

Neither Party shall (except with the prior written consent of the other) during the term of this Agreement, and for a period of twelve (12) months thereafter, solicit the services of any member of staff of the other Party who has been engaged in the provision of the Services or the management of this Agreement (or any significant part thereof) other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of the other Party. Should either Party breach this clause, the injured Party will be indemnified by the Party at fault to the value of one years' annual salary of the solicited individual/s

24. Force Majeure

Neither Party will be liable to the other Party for any delay in or failure to perform its obligations as a result of any cause beyond its reasonable control, including any industrial dispute (not being an industrial dispute involving the employees of the Party in question). If such delay or failure continues for at least thirty (30) days, either Party will be entitled to terminate the Agreement immediately by notice in writing.

25. Entire Agreement

25.1 This Agreement sets out the entire agreement and understanding between the Supplier and the Client relating to the provision of Software, Support Services and Services by the Supplier to the Client. No addition to or modification of any of these terms will be binding on the Supplier or the Client unless recorded in writing and signed on behalf of both the Supplier and the Client. For the avoidance of doubt any terms and conditions attached to any Purchase Order, or any such document produced by the Client subsequent to this Agreement (except in the circumstances expressly provided for in this Agreement) are specifically excluded and both parties recognise that any such documentation shall be of no consequence to this Agreement.

25.2 The Client confirms that it has not been induced to engage the Supplier by any representation, warranty or understanding either oral or in any other form, except as specifically set out in this Agreement, but nothing in this Agreement will exclude liability for fraudulent misrepresentation

26. Dispute Resolution Procedure

26.1 Any dispute, which arises between the Parties as to this Agreement or the performance of the Parties' respective obligations under this Agreement, shall first be discussed, and if possible, resolved, by the Project Director and the Project Manager.

26.2 If the Project Director and Project Manager fail to resolve the dispute then either Party, by notice in writing to the other, may refer the dispute to senior officers of the two (2) Parties who shall co-operate in good faith to resolve the dispute as amicably as possible within fourteen (14) days of service of such notice. If the senior officers fail to resolve the dispute in the allotted time, then the Parties, may within that period, on the written request of either Party enter into an alternative Dispute Resolution Procedure with the assistance of a mediator agreed by the Parties or, in default of such agreement within seven (7) days of receipt of such request, appointed, at the request of either party, by the Centre for Dispute Resolution.

26.3 The Parties shall then submit to the supervision of the mediation by the Centre for Dispute Resolution or similar body for the exchange of relevant information and for setting the date for negotiations to begin.

- 26.4 All negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the Parties in any future legal proceedings.
- 26.5 If the dispute relates to any implementation, whilst the dispute lasts and/or the Dispute Resolution Procedure is in place, the Supplier undertakes to continue to provide the Support Services in accordance with the terms of this Agreement so as to cause the minimum of disruption the Client's business.
- 26.6 If, with the assistance of a mediator, the Parties reach a settlement, such settlement shall be reduced to writing and, once signed by the duly authorised representative of each of the Parties, shall remain binding on the Parties
- 26.7 The Parties shall bear their own legal costs of this Dispute Resolution Procedure, but the costs and expenses of mediation shall be borne by the Parties equally.

27. Jurisdiction

This Agreement shall be governed by and construed in accordance with English law and, subject to Clause 24, each Party hereby submits to the non-exclusive jurisdiction of the English courts.

In witness whereof, the undersigned have fully executed this Framework Agreement as of the day and year indicated below:

	On behalf of The Supplier	On behalf of The Client
Signature	_____	_____
Name	_____	_____
Position/Title	_____	_____
Date	_____	_____

Schedule Descriptions:

Schedule No	Description
1	Charges
2	Software, Authorised Software, Services and Support Services
3	Data Protection
4	End User Licensing Agreement
5	SoW Template

Schedule No 1. Charges

The basis for calculating the Charges payable under this Agreement shall be as follows:

1. Software and Authorised Software

Licenses

All applicable Charges shall be as per the Supplier quotation.

2. Services

The Charges for Services shall, unless agreed otherwise by the parties in writing, be on a [fixed price basis (as per the Supplier quotation and or SoW)]

Where the Charges are not on a fixed price basis, they shall be on a time and materials basis at a rate to be agreed between the parties.

Schedule No 2.

Software, Authorised Software, Services and Support and Maintenance Services (as applicable)

[insert relevant Software, Authorised, Software, Services or Support schedules]

Schedule No 3. Data Protection

1. Supplier Obligations

In respect of any Personal Data processed by the Supplier pursuant to this Agreement for and on behalf of the Client the Suppliers obligations are as follows:

- 1.1 always comply with the Data Protection Legislation
- 1.2 only process the Personal Data on behalf of the Client to the extent necessary to provide the Services and then only in accordance with this Agreement
- 1.3 as far as reasonably and commercially possible having regard to the Data Protection Legislation comply with change of instructions from the Client relating to the Personal Data as issued in accordance with this Agreement and/or as otherwise required by the Data Protection Legislation.
- 1.4 keep the Personal Data secure and in accordance with the Data Protection Legislation including putting in place and maintaining:
 - i. A level of security measures which ensures that only authorised personnel have access to the Personal Data and that any such persons whom the Supplier authorises to have access to such Personal Data will comply with like obligations as are contained in this clause 1 and will respect and maintain all due confidentiality; and
 - ii. A level of security measures which reflects the level of harm, damage or distress that might be suffered by a Data Subject to whom the Personal Data relates as a result of a breach of this clause;
 - iii. Promptly give note to the Supplier of any actual incident of accidental or unlawful destruction, loss, alteration, unauthorised or accidental disclosure of or access to the Personal Data ("Security Breach")
 - iv. Promptly provide the Client with all information in the Suppliers possession or control concerning any Security Breach (including as a minimum a description of the nature of the Security Breach, the categories and approximate number of Data Subjects concerned and the records of the Personal Data affected and the measures take or proposed to be taken by them to address the

Security Breach) and provide all assistance and cooperation as is necessary in order for the Client to seek to mitigate the effects of the Security Breach and comply with its own obligations under the Data Protection Legislation in respect of the Security Breach;

- v. Not make any announcement or publish or otherwise authorise any broadcast of any notice or information about a Security Breach or authorise or permit the same without the prior written consent of the Client.
- vi. Ensure the reliability of the Supplier's employees having access to the Personal Data and that they process it only where strictly necessary for the provision of the Services;
- vii. No process any or all the Personal Data to which this Agreement relates as a means to enhance or enrich any Personal Data to which this Agreement does not relate;
- viii. Not make any copies of the Personal Data unless strictly necessary for the provision of the Services.

1.5 upon expiry or termination of this Agreement securely delete all electronic copies of Personal Data processed under this Agreement in its/their possession or control.

1.6 not cause or permit the Personal Data to be transferred to or otherwise processed in any country or territory outside the European Economic Area other than with the Client's prior written consent.

2. No personal data may be transferred to any employees, agents, contractors, or other parties, whether such parties are working on behalf of Fusion or not, without the authorisation of Jeremy Bowman, Fusion's Data Protection Officer. (jeremy.bowman@fusiongbs.com / 0208 814 4802 / 07956 025539).;

3. Execution of Data Transfer Agreement (Model Clauses)

In the event that the Supplier obtains the Clients prior written consent to permit Personal Data to be transferred to anywhere outside the European Economic Area the Supplier will execute a Data Transfer Agreement

IT and Data Security Provisions

4.1 Definitions

Client Data means: data and personal data (as defined in the Data Protection Act 1998 which is supplied by the Client

4.2 Property

The Supplier's will use industry best practice to ensure that the Supplier's systems and processes within which the transmission, storage and processing of Customer Data, including locations that house computer systems such as data centres, network, telecommunications equipment, sensitive physical assets and other important assets shall be protected against accident or attack and unauthorised physical access.

4.3 Information security procedures and standards

4.3.1 The Supplier will implement and maintain in accordance with industry best practice, organisation, environmental and technical controls necessary to protect and maintain the security of the data and personal data.

4.3.2 In addition, the Supplier confirms it has been certified compliant with ISO 27001.

4.3.3 The Supplier will take all necessary organisational, environmental and technical steps in accordance with good industry practice to protect the confidentiality, integrity and accuracy the Customer Data.

4.4 Security requirements of information systems and system files

4.4.1 The Supplier shall:

(i) not use any hardware in relation to Customer Data that is either no longer supported by its manufacturer or licensor or whose support shall end in six months or less;

(ii) implement a problem and incident management system, for all services provided under this contract, which is aligned with ISO 27001; and

(iii) where possible it will implement securely configured known vulnerability free hardware, software and storage physical or virtual.

4.5 Protection against malicious code

4.5.1 At the time of delivery of the services, the Supplier shall ensure services are tested using commercially available anti-virus software for all known viruses.

4.5.2 An ongoing process must exist to ensure that installation of Anti-virus products is regularly updated and maintained according to established criteria with system controls used to automatically push anti-virus protection and regularly update signature files.

4.6 Network security management

4.6.1 The Supplier must provide that it has, and maintains throughout the Term, a procedure in place to manage network threats, vulnerabilities and risks

4.7 Security Testing

4.7.1 The Supplier undertakes to perform, or in the case of its supply chain, oversee, regular security testing of the hardware and software directly and indirectly involved in the transmission, storage, processing and protection of the Customer Data.

4.8 Media handling

4.8.1 The Supplier must ensure:

4.8.1.1 in respect of Customer Data encryption is enforced for portable media devices containing Customer information:

laptops; tablets, hard drives; backup tapes; USB drives and memory sticks, and

4.8.1.2 a secure destruction process is in place for all portable media with storage capability at the end of their use-life or when broken/unusable. Destruction of all portable media must be recorded and regularly audited, including those taken off-site for destruction

4.9 The Supplier must ensure that:

4.9.1 monitoring, detection and preventative controls are put in place to protect Customer Data.

4.10 Back-ups

4.10.1 The Supplier shall ensure that back-up arrangements exist for all Customer Data which, in the event of a data loss, will enable such data to be reconstructed from (suppliers) records accurately and without delay.

4.10.2 If any Customer Data is lost, destroyed, or corrupted whilst it is in the possession or under the control of Supplier, Supplier will at its own expense where possible reconstruct that data without delay.

4.11 Access to Systems

4.11.1 The Supplier shall operate a process which ensures only authorised personnel have access to applications, servers, storage, data communication networks and computing devices.

Schedule 4

[insert EULA]

Schedule 5

Template Statement of Work

EXAMPLE TEMPLATE STATEMENT OF WORK

1. Works: [LIST OUT ALL THE WORKS TO BE PROVIDED UNDER THIS STATEMENT OF WORK.

2. Customer's manager and Supplier's manager: [LIST OUT THE RELEVANT INDIVIDUALS].

3. Start date and term: [SPECIFY WHEN THE WORKS WILL COMMENCE, AND THE TERM OF THIS STATEMENT OF WORK].

4. Customer Materials: [LIST OUT THE CUSTOMER MATERIALS].

5. Customer's Equipment: [LIST OUT THE CUSTOMER'S EQUIPMENT].

6. Supplier's Equipment: [LIST OUT THE SUPPLIER'S EQUIPMENT].

7. Service Levels: [INCLUDE ANY SERVICE LEVELS, IF APPLICABLE].

8. Timetable: [SET OUT THE TIMETABLE FOR PERFORMING THE WORKS].

9. Milestones: [SET OUT ANY MILESTONES FOR THE WORKS].

10. Deliverables: [SET OUT ANY DELIVERABLES FOR THE WORKS].

11. Acceptance Criteria: [SET OUT ANY CRITERIA FOR ACCEPTING THE DELIVERABLES OR THE MILESTONES].

12. SoW Charges: [SET OUT THE CHARGES AND PAYMENT FOR THE WORKS].

