

Esuasive Services Agreement

Parties

This Professional Services Agreement, reference DBG/xxx/PSAAnnn, is entered into as of the date of the last party to sign below (the “Effective Date”) between:

DB Group Limited trading as Esuasive, company registration number 02422056, registered office at 4 Bedford Row, London, WC1R 4DF and address for correspondence at Venture House, Arlington Square, Downshire Way, Bracknell, RG12 1WA (“Esuasive”); and

[Insert name of company], registered office and address for correspondence at [Insert registered address and company registration number] (“Customer”);

each a “Party” and together, the “Parties”.

Whereby it is agreed as follows:

Definitions

“Affiliates”	means any entity which directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with a party to this Agreement by way of majority ownership or the ability to otherwise direct or cause the direction of the management and policies of such party, for as long as such control exists;
“Agreement”	means this Esuasive Services Agreement and all Schedules to this Esuasive Services Agreement;
“Authorised Users”	means employees, agents, consultants, Customer Personnel and independent contractors of the Customer who are authorised by Customer to use the Software Services;
“Confidential Information”	means all information of a confidential nature which shall include, but is not limited to, all business and/or technical information: (i) concerning the business relationship between the Parties; (ii) concerning the terms and conditions of this Agreement; (iii) concerning the respective products, operations, research and development efforts, inventions, trade secrets, computer software, plans, intentions, market opportunities, processes, recipes, formulae, recipes, specifications, vendor and customer relationships, finances and other business operations and affairs of either Party and its affiliates; and (iv) of third parties that either Party (or any of its affiliates) maintains in confidence, in each case of (i), (iii) and (iv) above which are disclosed in writing and/or other materials, through the access of Customer employees and personnel to the Esuasive Software or by oral communication with employees, consultants or agents of either Party or its affiliates, and all tangible embodiments of such information;
“Controller”	has the meaning given to it in applicable Data Protection Legislation from time to time;
“Customer Personnel”	means the employees, directors, representatives, subcontractors, contractors and other individuals under the direction or employment of the Customer;
“Data Protection Legislation”	means all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) (DPA 2018); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and all other applicable laws and regulations relating to processing of personal data and privacy in force from time to time which apply to a party relating to the use of the Protected Data, including where applicable the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and which are applicable to a party;
“Data Subject”	has the meaning given to it in applicable Data Protection Legislation from time to time;
“Documentation”	means the documents and other physical and digital materials made available to the Customer through, or in connection with, the Customer’s usage of Esuasive’s software solutions and services;
“Esuasive EULA”	means the end user licence agreement governing the usage of the Esuasive Software located at Schedule E, as updated from time to time;
“Esuasive SaaS”	means: (i) the Esuasive Software; (ii) the Documentation; and (iii) any and all Modifications;
“Esuasive Software”	means computer software, software solutions, modules, elements, source code, associated tooling, software materials and documentation owned or created by or licensed to Esuasive (including Third Party Software where applicable), whether existing in the past, present or future. For convenience such computer software may be known as <i>Dynamics 365/CRM for Housing</i> , variants thereof and similar names;
“Feedback”	has the meaning given to it in clause 2.5;

"Fees"	means the charges payable for the Services provided hereunder, including Licence Fees where the Esuasive SaaS is being provided in part or in whole, as further set out in Schedule C or as otherwise agreed in writing between the Parties;
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation;
"Implementation Services"	means strictly those services requested by Customer as at the Effective Date and relating to, or otherwise required for, the initial set-up of the Esuasive SaaS, as set out in Schedule A or as otherwise agreed in writing by the Parties;
"Intellectual Property Rights"	means all rights in any country or jurisdiction in patents, trademarks, service marks, domain names, e-mail addresses, registered designs, utility models, inventions, know how, confidential information, unregistered and registered business names, including rights in any get-up or trade dress, copyrights (including rights in computer software, source code and object code and any or all specifications, designs, pre-configurations, configurations, customisations, localisations, extensions, forks, branches, versions, interfaces and APIs, and other modifications thereto), rights affording equivalent protection to copyright, rights in and to data, commercial information whether protectable or non-protectable, unregistered design rights and other rights in designs and rights in databases subsisting anywhere in the world, and all registrations or applications to register any of the foregoing items, and rights to defend and bring actions for passing off or similar or analogous claims, proceedings or actions in respect of any of the foregoing items, and moral rights to the extent applicable, and " Intellectual Property Right " shall be construed accordingly;
"Licence Fees"	means those fees payable for provision of the Esuasive SaaS;
"Licence Fees Schedule"	means the schedule of prices used to calculate the Licence Fees, as set out in the relevant Esuasive G-Cloud 15 Pricing document;
"Modifications"	means: (i) modifications or configurations of any nature requested by Customer in respect of the software solutions provided by Esuasive, whether or not such modifications or configurations affect the core functionality of the software; (ii) changes to the Esuasive Software in the form of updates, new versions, hotfixes, bug fixes, or similar updates and changes to the source code of the Esuasive Software, and "Modification" shall be construed accordingly;
"Personal Data"	has the meaning given to it in applicable Data Protection Legislation from time to time;
"Processor" and "processing"	have the meaning given to them in applicable Data Protection Legislation from time to time (and related expressions, including process, processed and processes shall be construed accordingly;
"Professional Services"	means all services outside of the scope of the Implementation Services and Support Services, including but not limited to: the creation or implementation of Modifications, software development services, data input, data migration, training, consulting, analysis, design, software configuration, systems integration, testing, implementation, training, project management, support and other related services provided to Customer by Esuasive from time to time, including any other services as defined in any agreement for professional services, and any statement of work thereto, between Customer and Esuasive;
"Protected Data"	means Personal Data provided to the Processor by or on behalf of the Controller;
"Regulatory Bodies"	means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of Customer and "Regulatory Body" shall be construed accordingly;
"Request for Information"	means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
"Schedule"	means a schedule or attachment to this Agreement;
"Services New IP"	means Modifications, Feedback and any and all Intellectual Property Rights generated from, or discovered through, provision of: (i) the Support Services; (ii) the Professional Services; and/or (iii) the Esuasive SaaS, whether or not the aforementioned is provided by Esuasive, on behalf of Esuasive, or through a third party;
"Sub-processor"	means any Processor engaged by Esuasive (or by any other Sub-Processor) for carrying out any processing activities in respect of the Protected Data on behalf of the Customer;
"Support Services"	means strictly the technical support services to be provided to Customer in relation to the Esuasive Software, as follows: i) investigation and rectification of functional defects, i.e. where the Esuasive Software does not operate according to the agreed specification;

ii) investigation and resolution, or actioning of cases for resolution by Microsoft and other third parties as required, of issues arising in relation to a) the technical operation of the Esuasive Software working in conjunction within/on the Microsoft Dynamics 365 / Microsoft Power Apps platform, and b) the 'Esuasive side' of any interface with any Third Party Applications.

For the avoidance of doubt, Support Services shall explicitly exclude any services not mentioned in this definition above, and shall further exclude:

i) investigation and resolution of availability, performance or other operational issues arising in relation to hardware, communications, network, operating system, Microsoft Dynamics 365, Microsoft Power Apps, Microsoft SharePoint and other technology infrastructure components on which the Esuasive Software relies;

ii) resolving issues in relation to the 'third party' side of any interface with any Third Party Software;

iii) resolving issues caused by errors in data provided or entered by Customer;

vii) functional and operational testing of software patches and roll-ups provided by any third party;

iv) the provision of additional functionality to exploit such software patches and roll-ups, and implementation of upgrades to and new releases of Microsoft Dynamics 365, Microsoft Power Apps and other Microsoft technologies; and

v) ad hoc user support, including, inter alia, helping users navigate the new system, responding to 'how do I...?' and similar questions relating to use of the Esuasive Software, providing additional group or 1:1 training over and above that specified or estimated in any proposal, and helping users to create specific dashboards, views or reports relevant to their roles;

all of which shall be considered to be included within the definition of "Professional Services".

"Support SLA"

shall have the meaning given to it in the Esuasive EULA;

"Territory"

means the United Kingdom;

"Third Party Software"

means software which is proprietary to any third party which is, has, or will be used by the Supplier for the purposes of the provision of the Services;

"UK GDPR"

means the General Data Protection Regulation, Regulation (EU) 2016/679, as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom or of a part of the United Kingdom from time to time).

"Variation"

has the meaning given to it in clause 2.2;

1. Services

1.1. Customer hereby agrees to engage Esuasive to provide and Esuasive agrees to provide one or more of the following: (i) the Esuasive SaaS; and/or (ii) the Implementation Services; and/or (iii) the Support Services; and/or (iv) the Professional Services (altogether the "**Services**").

Implementation Services

1.2. Where Esuasive is providing Implementation Services to the Customer, the provisions of clauses 1.3 and 1.4 below shall also apply.

1.3. Customer shall be responsible for outlining its need for, and the scope of, any Implementation Services reasonably in advance of executing this Agreement, with the Parties setting out the particulars of any such Implementation Services in Schedule A, such that Esuasive may begin work on such Implementation Services on or after the Effective Date.

1.4. Any requests for services after the Effective Date of this Agreement, including any requests for continuation of Implementation Services shall be deemed to constitute a Proposal for Professional Services (as defined below).

Support Services

1.5. Where Esuasive is providing Support Services to the Customer, the provisions of clauses 1.6 and 1.7 below shall also apply.

1.6. Esuasive shall use commercially reasonable endeavours to provide Support Services in accordance with the Support SLA.

1.7. To facilitate Esuasive providing the Support Services and so that Esuasive is able to determine Customer's use of the Esuasive SaaS, Customer hereby agrees to: i) confirm to Microsoft in writing or as otherwise requested by Esuasive, that Esuasive is Microsoft Digital Partner of Record (and partner of record or equivalent for any successor partner schemes thereto) in relation to Customer's use of Microsoft Dynamics 365, Microsoft Power Apps and other Microsoft technologies and licences (including any licences procured prior to the Effective Date), and ii) facilitate access by, and provide full co-operation to, Esuasive's nominated personnel to the Esuasive SaaS in any instance on the Customer's network, or any other network in which the Esuasive Software is installed. It is Customer's responsibility to provide reasonable access and to establish and maintain appropriate security measures surrounding such access.

Professional Services

- 1.8. Where Esuasive is providing Professional Services to the Customer, the provisions of clauses 1.9 - 1.11 below shall also apply.
- 1.9. Where Customer wishes for Esuasive to provide Professional Services to Customer, the Customer shall submit a request to its Esuasive representative setting out the proposed scope of such services (a **"Proposal"**). Esuasive shall then review and either (i) engage Customer in discussions to finalise the scope and agree fees for such Professional Services; or (ii) reject the Proposal and use commercially reasonable efforts to provide reasons for such rejection to the Customer.
- 1.10. Professional Services shall not commence, and Esuasive shall not be liable for performance of any such Professional Services, unless and until a written agreement has been signed by both Parties in respect of such Professional Services. For the avoidance of doubt a Proposal shall not be deemed binding on either Party unless and until it is expressly incorporated into a written agreement signed by both Parties.
- 1.11. The Parties hereby agree that any such agreement for Professional Services shall be made subject to the terms of this Agreement and no other terms (including but not limited to the standard terms of the Customer) shall apply.

Esuasive SaaS

- 1.12. Where Esuasive is providing the Esuasive SaaS, or any part or portion thereof to the Customer, the provisions of the Esuasive EULA shall also apply.

2. Variations

- 2.1. Esuasive shall not intentionally vary the Services in any material respect unless such variation is jointly agreed in writing between Esuasive and the Customer, other than to apply security and functional updates and upgrades to the Esuasive Software where applicable.
- 2.2. In the event that Customer shall require any reasonable alteration or addition to or omissions from the Services or any part thereof, excluding any Modifications, (hereinafter referred to as a **"Variation"**), Customer shall make such a request by submitting a request in writing (email to suffice) to the relevant Esuasive account manager.
- 2.3. Esuasive shall seek to respond to such requests by stating in writing the effect such Variation will have on the Services and what adjustment, if any, will be required to any agreed fixed price charges and/or any agreed time charges.
- 2.4. No Variation shall be binding and no work to incorporate any such Variation into the Services shall be initiated unless and until the Variation has been agreed in writing and signed by an authorised representative of Customer and Esuasive.
- 2.5. The Customer acknowledges and agrees that any ideas, suggestions, concepts, proposals or ideas of any nature related to the Esuasive SaaS which it may communicate to Esuasive in whatever form (**"Feedback"**), shall be owned by, and shall upon their creation or ideation vest in, Esuasive, and Esuasive shall have the unfettered right to exploit any such Feedback without making payment of any charges or royalties, or providing attribution or credit, to the Customer.
- 2.6. The Customer may, from time to time, request Modifications to the Esuasive Software, and the Customer and Esuasive shall discuss and agree in good faith: (i) whether such Modifications can be performed; (ii) the proposed or intended specification of any such Modifications; and (iii) the cost of creating and implementing such Modifications.
- 2.7. The Customer hereby acknowledges and agrees that all discussions, proposals and ideas raised pursuant to clause 2.5 above shall be considered Feedback and shall be accordingly owned by Esuasive, whether or not such Modifications are ultimately carried out. For the avoidance of doubt, Esuasive is under no obligation to make any Modifications and may use the Feedback for the benefit of Esuasive in any manner.

3. Term and Termination

- 3.1. This Agreement shall commence on the Effective Date and shall continue in force until the later of: (i) completion of the Support Services; (ii) completion of the Professional Services; (iii) the end date of the provision of the Esuasive SaaS (as detailed in writing by Esuasive in an order form or otherwise); and (iv) any other such term as may be agreed between the Parties. This Agreement may be terminated earlier in accordance with the remaining provisions of this clause 3.
- 3.2. A Party to this Agreement shall be entitled to terminate this Agreement forthwith by notice in writing (email to suffice) to the other party if:
 - a. such other party or any employee, consultant, director or permitted agent or subcontractor of such other party shall commit any serious or persistent breach of any its obligations hereunder (including under the Esuasive EULA) and in the case of a breach capable of being remedied shall have failed to remedy the breach within ten (10) days after receipt of a written request for such action. For the avoidance of doubt, non-payment, or late payment, of any sums due by Customer to Esuasive as detailed in written request or invoice from Esuasive, shall constitute a serious breach under this clause 3.2(a); or
 - b. such other party shall pass 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 shall make an order to that effect) or shall make any voluntary agreement with its creditors or become subject to an administration order or shall have a receiver or administrative receiver appointed over it or over any part of its undertaking or assets or shall cease or threaten to cease to carry on business, or any events, circumstances or actions analogous to the foregoing in any jurisdiction are taken, or occur (as applicable).

4. Warranty

- 4.1. Esuasive warrants that:
 - a. it shall provide the Services in accordance with good industry practice;
 - b. the Services shall not infringe the Intellectual Property Rights of any third parties;
 - c. the Services shall comply with all applicable laws in the Territory; and
 - d. its employees engaged from time to time in providing the Services (hereinafter the **"Consultants"**) will have the requisite knowledge skills and experience required to provide the Services.

5. Obligations of Customer

5.1. Customer shall:

- a. if it is required by the nature of the work make available to Esuasive free of charge suitable office accommodation and such secretarial technical telecommunications and other facilities as are reasonably necessary for the purpose of Esuasive providing the Services and be solely responsible for providing, reasonably in advance of any visit or operation, Esuasive and the employees of Esuasive with the relevant policies and procedures it may require compliance with;
- b. ensure that it and all Customer Personnel co-operate fully with Esuasive and the Consultants in relation to the provision of the Services and where reasonably requested by Esuasive;
- c. pay all invoices and charges promptly and be liable for all outstanding fees and interest thereto (where applicable);
- d. ensure that the number of Authorised Users does not exceed the amount specified in the relevant order (where applicable);
- e. ensure that no Authorised User shares its access to the Esuasive Software and promptly reports and rectifies any breaches in this regard;
- f. at all times abide by the terms of this Agreement and, where Esuasive is providing the Customer with access to the Esuasive SaaS (or any portion or part thereof), the Esuasive EULA and ensure compliance of its employees and Authorised Users with the terms of this Agreement and the Esuasive EULA; and
- g. at all times be solely responsible and fully liable for the acts and omissions of its Authorised Users.

6. Obligations of Esuasive

- 6.1. Esuasive shall be responsible for ensuring that the Consultants working at Customer's premises shall comply with Customer's regulations and procedures particularly as regards security, health and safety, solely to the extent that such regulations and procedures are communicated in writing to Esuasive reasonably in advance of any site visit or onsite operation at the Customer's premises.

7. Charges

7.1. Esuasive will invoice Customer for the Fees as follows:

- a. Fixed Price Implementation Fees: as set out in the relevant Esuasive G-Cloud 15 Pricing document, on achievement of agreed milestones and/or on agreed specified dates;
 - b. Licence Fees: as set out in the relevant Esuasive G-Cloud 15 Pricing document, annually in advance, beginning in the month in which the G-Cloud 15 Call-off Contract is signed or its effective date, whichever is the earlier. Esuasive will, after consultation with Customer, estimate Customer's likely use of the Esuasive SaaS in the forthcoming year and based on that estimate will calculate its invoice for Licence Fees accordingly. At the end of each year Esuasive will ascertain Customer's actual use of the Esuasive SaaS and will true up or true down its determination of Customer's use of the Esuasive SaaS accordingly. If required, an appropriate additional fee or credit will then be applied to the next year's invoice;
 - c. Other Fees, as may be agreed: as set out in the relevant Esuasive G-Cloud 15 Pricing document, monthly in arrears, or as otherwise agreed.
- 7.2. VAT will be added to all Fees and Licence Fees at the rate then in force.
 - 7.3. Customer shall pay all invoices within thirty (30) days from the date of the invoice.
 - 7.4. If any sum payable by Customer under this Agreement is not paid by the due date then without prejudice to Esuasive's other rights and remedies hereunder Esuasive may
 - d. charge interest on such sum on a daily basis as well as before any judgement from the due date to the date of payment at the rate of 3.00 per cent above the base rate of Barclays Bank Plc from time to time in force
 - e. on giving notice of not less than 5 working days suspend provision of the Services until such time as payment is made.

8. Confidentiality and Non-Solicitation

8.1. Each of Esuasive and Customer undertake to the other to:

- a. keep confidential all Confidential Information of the other Party and only to use such Confidential Information for the purpose of performing its obligations under or in connection with this Agreement;
 - b. not disclose any Confidential Information of the other Party in whole or in part to any third party unless expressly permitted under this Agreement or in writing by such other Party, or unless disclosing such information to professional advisors who shall similarly keep such information confidential, provided in all respects that in any event of disclosure of Confidential Information to a third party, the Party disclosing such information shall be fully liable for the acts and omissions of such third party;
 - c. procure that all relevant employees agents and subcontractors comply with the obligations of this clause; and
 - d. not directly nor otherwise during the term of this Agreement and for a period of twelve months thereafter induce or endeavour to induce any employee of the other to leave his or her employment.
- 8.2. The obligations of confidentiality in this clause 8 shall not apply to any Confidential Information that the party in receipt of such information (the "**Receiving Party**") can demonstrate, through the use of competent documentary evidence: (i) comes into the public domain other than through breach of this Agreement; (ii) was known by the Receiving Party (as established by its own records or other competent proof) before disclosure by the party which disclosed such information to the Receiving Party (the "**Disclosing Party**"); (iii) comes lawfully into the possession of the Receiving Party from a third party who is not under an obligation to keep such information confidential; or (iv) the disclosure of which is required by law, by any court of competent jurisdiction or by any official regulatory body.
 - 8.3. The Customer hereby acknowledges and agrees that the Esuasive SaaS shall at all times be considered the Confidential Information of Esuasive.

- 8.4. None of the Confidential Information disclosed by Esuasive shall be construed as a representation, warranty, assurance, inducement or guarantee of any kind.
- 8.5. The provisions of clause this clause 8 shall survive the expiration or termination of this Agreement.

9. Effect of Termination

- 9.1. On the expiration or termination of this Agreement all rights and obligations under this Agreement shall automatically cease except for such rights of action as shall have accrued prior thereto and any obligations which are expressly or implicitly intended to come into or continue in force on or after expiry or termination and Customer shall pay to Esuasive all unpaid charges accrued up to and including the date of expiration or termination.
- 9.2. On termination or expiration of this Agreement, each Party shall destroy or return (at the other Party's election) the Confidential Information of the other party and shall erase such Confidential Information from its systems to the extent technically and legally practicable. Both Parties may keep one copy of the other Party's Confidential Information solely to the extent such retention is required by law or best practice, provided that where such information is retained, it is not readily accessible and is kept confidential in accordance with the terms set out in clause 8 and kept secure to the same standard as such organisation keeps its own sensitive information confidential.
- 9.3. Upon termination or expiration of this Agreement:
- (i) to the extent that the Customer has copies (whether physical or digital) of the Esuasive SaaS, the Customer shall destroy all copies (unless requested by Esuasive prior to the date of termination to return such copies, in which case it shall so act);
 - (ii) Customer's licence to the Esuasive SaaS (if granted) shall end with immediate effect; and
 - (iii) Customer shall immediately remove all access to the Esuasive SaaS for Customer Personnel and all Authorised Users;
- and Customer shall hereby warrant to Esuasive that the above actions have been taken. Esuasive may, in its sole discretion, request a certification of such destruction and removal of access from the Customer.

- 9.4. With effect from the expiry or termination of this Agreement, Customer hereby grants to Esuasive an irrevocable, non-exclusive, royalty-free, worldwide, transferable, perpetual licence (with the right to sub-licence) of any Intellectual Property Rights owned by, or licensed to, Customer solely for use on and relating to the Esuasive SaaS, including but not limited to the retention, use, maintenance, upkeep, relocation of and operation of the Esuasive Software and any updates thereof.

10. Indemnity and Liability

- 10.1. The Customer shall defend, indemnify and hold harmless Esuasive against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with: (i) the Customer's use or receipt of the Services; (ii) Modifications requested by the Customer; (iii) alleged or actual infringement of third party rights caused in whole or in part by the Customer and/or Customer Personnel, Authorised Users or materials and/or documentation or ideas provided by Customer to Esuasive; (iv) the acts and/or omissions of Customer Personnel and all Authorised Users; and (v) breach of the Customer's obligations under clause 5.
- 10.2. Subject to clauses 10.4, 10.5 and 10.6, Esuasive shall defend, indemnify and hold harmless the Customer against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with any alleged or actual infringement of third party intellectual property rights caused solely by the Esuasive Software.
- 10.3. Neither Party excludes or limits its liability for: (i) death or personal injury caused by its negligence; or (ii) for fraud or fraudulent misrepresentation; or (iii) for any other liability which cannot be excluded under applicable law.
- 10.4. Save as expressly stated elsewhere in this Agreement Esuasive shall not be liable to the Customer for special, indirect or consequential loss, costs, expenses, charges or damages arising out of or in connection with this Agreement, howsoever caused, which shall include (but not be limited to):
- a. financial and economic loss, which shall include loss of profits, business, revenue, contracts, goodwill or anticipated savings;
 - b. wasted expenditure;
 - c. loss or corruption of data or information;
 - d. loss of goodwill; and
 - e. arising from any claim made by any other person or party
- even if such loss or damage is foreseeable and/or the Customer has made Esuasive aware of such loss or damage.
- 10.5. Other than as expressly provided under this Agreement, the Esuasive SaaS is provided to the Customer on an "as is" basis, and Esuasive makes no warranties, representations, conditions or other guarantees, promises or assurances in relation to the Services, and the Customer assumes sole responsibility for its usage of the Services and the outcome of any usage of the Esuasive SaaS.
- 10.6. Subject to clause 10.3, the Supplier's total aggregate liability to the Customer arising from, relating to, or otherwise connected with this Agreement, shall in no event exceed the amount of twice the fees paid by the Customer in the twelve calendar months preceding the date on which such liability arose.

11. Intellectual Property and Software Rights

- 11.1. The Customer acknowledges that Esuasive and/or its licensors own all Intellectual Property Rights in and to the Esuasive SaaS. Except as expressly stated herein, this Agreement does not grant the Customer any Intellectual Property Rights in respect of the Services or the Esuasive SaaS.
- 11.2. Any and all Services New IP shall, as between the Parties, vest in Esuasive immediately upon creation and Customer hereby assigns (by way of present assignment of any existing and future rights) to Esuasive (to the extent not already owned by Esuasive) all rights, title and interest in and to all Services New IP to the fullest extent permitted by law, with full title

guarantee and free from all encumbrances and other rights of whatever nature exercisable by any third party, together with the right to bring, make, oppose, defend, appeal proceedings, claims or actions and obtain relief (and to retain any damages recovered) in respect of any infringement, or any other cause of action arising from ownership, of any of the Services New IP whether occurring before, on, or after the Effective Date of this Agreement.

- 11.3. Insofar as all rights in and to the Services New IP do not vest automatically by operation of law or under this Agreement, Customer holds legal title in such rights on trust for the benefit of Esuasive until such assignment can be effected, and Customer hereby grants to Esuasive an irrevocable, exclusive, royalty-free, perpetual, assignable, sub-licensable, worldwide, transferable licence of any such Services New IP.
- 11.4. To the extent that the Customer acquires, creates or otherwise comes into ownership of any Intellectual Property Rights in the Esuasive SaaS, in consideration of the Services being provided hereunder, the Customer hereby assigns such rights (and procure the assignment of the same from Customer Personnel) to Esuasive, on a royalty-free and irrevocable basis, to the fullest extent permitted by law.
- 11.5. Where Esuasive provides Third Party Software in connection with the provision of the Services; the Third Party Software shall be provided to, licenced to and used by Customer only in accordance with the terms and conditions applicable to such Third Party Software. For the avoidance of doubt, it is the sole responsibility of the Customer to comply with the licence terms applicable to Third Party Software and to obtain and keep such software updated unless otherwise provided by Esuasive, and Esuasive shall bear no responsibility or liability in respect of Third Party Software.
- 11.6. All other Intellectual Property Rights remain vested in and the absolute property of their respective owner.

12. Data Protection

- 12.1. With respect to the parties' rights and obligations under this Agreement, the parties agree that Customer is the Data Controller and that Esuasive is the Data Processor for the purposes of processing Protected Data pursuant to this Agreement. The Customer shall at all times comply with the Data Protection Legislation in connection with the processing of Protected Data. The Customer shall ensure all instructions given by it to Esuasive in respect of Protected Data (including the terms of this Agreement) shall at all times be in accordance with the Data Protection Legislation. Nothing in this Agreement relieves the Customer of any responsibilities or liabilities under any Data Protection Legislation.
- 12.2. Esuasive shall:
 - a. process the Protected Data only in accordance with Schedule D and this Agreement, except to the extent that:
 - i. alternative processing instructions are agreed between the parties in writing; or
 - ii. otherwise required by applicable law (and shall inform the Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest).
 - b. at all times process the Protected Data in compliance with the obligations placed on it under the Data Protection Legislation and the terms of this Agreement.
 - c. implement and maintain appropriate technical and organisational measures to protect the Protected Data against accidental, unauthorised or unlawful loss, destruction, damage, alteration, access or disclosure.
 - d. take reasonable steps to ensure the reliability of any of its employees, agents and consultants who have access to the Protected Data and shall ensure that all of its employees, agents and consultants are informed of the confidential nature of the Protected Data and are bound by written confidentiality obligations and use restrictions in respect of the Protected Data.
 - e. have the right to appoint, and the Customer agrees to the appointment of Sub-Processors to support the performance of the Services. Without prejudice to the foregoing, when Esuasive engages any Sub-Processor, it shall:
 - i. prior to any Sub-Processor carrying out any processing activities in respect of the Protected Data, ensure such Sub-Processor is appointed under a binding written contract containing materially the same obligations as under this clause 12 (including those relating to sufficient guarantees to implement appropriate technical and organisational measures) and ensure such Sub-Processor complies with all such obligations;
 - ii. remain fully liable to Customer under this Agreement for all the acts and omissions of each Sub-Processor as if they were its own; and
 - iii. ensure that all natural persons authorised by Esuasive or any Sub-Processor to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential.
 - f. notify Customer promptly if it receives a request for exercising any Data Subject's rights under Chapter III of the UK GDPR which relate to any Protected Data. It shall be the Customer's responsibility to reply to all such requests as required by applicable law.
 - g. at the Customer's cost and expense and taking into account the nature of the processing and the information available to Esuasive, assist the Customer:
 - i. in ensuring compliance with the Customer's obligations pursuant to Articles 32 to 36 of the UK GDPR taking into account the nature of the processing; and
 - ii. by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the UK GDPR in respect of any Protected Data.
 - h. not process Protected Data outside the UK or the European Economic Area without the prior written consent of Customer except where required by applicable law.
 - i. in accordance with Data Protection Legislation, make available to Customer on request such information that is in its possession or control as is necessary to demonstrate Esuasive's compliance with the obligations placed on it under this clause 12 and to demonstrate compliance with the obligations on each Party imposed by Article 28 of the UK GDPR.

- j. notify Customer without undue delay and in writing on becoming aware of any personal data breach in respect of any Protected Data. With regard to breach of data liability, all costs, damages and expenses of any kind arising from any claim or demand brought by any person, data subject, Information Commissioner or supervisory authority as a result of any breach or alleged breach by them of the Data Protection Legislation or from breaches of this clause 12 shall be covered by the liability provisions of this Agreement.
- 12.3. On termination of this Agreement (the Processing End Date), at the Customer's cost and expense and at the Customer's option, Esuasive shall either return all of the Protected Data to Customer or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable Data Protection Legislation require Esuasive to continue to process that Protected Data or store one copy of such Protected Data for regulatory purposes. To the extent Customer has not notified Esuasive within thirty (30) days of the Processing End Date that it requires the return of any Protected Data, Esuasive is irrevocably authorised to securely dispose of the Protected Data at its discretion.
- 12.4. This clause shall survive termination or expiry of the Agreement:
 - a. indefinitely in the case of clause 12.3; and
 - b. in the case of all other provisions in this clause 12, until the later of:
 - 1. the termination or expiry of this Agreement; or
 - 2. return or secure deletion or disposal of the last of the Protected Data in Esuasive's (or any of its Sub-Processor's) possession or control in accordance with this Agreement.

13. Freedom of Information

- 13.1. Esuasive confirms that where Customer is subject to the requirements of the FOIA and the Environmental Information Regulations, and information being requested falls under the exclusive ownership of Esuasive, Esuasive shall provide reasonable assistance and co-operate with Customer to enable Customer to comply with its Requests for Information and Information disclosure obligations.

14. Corrupt Gifts and Fraud

- 14.1. Neither Party (nor anyone acting on its behalf or to its knowledge) shall:
 - a. offer, give or agree to give to any employee of the other party any gift or consideration as an inducement or reward for doing or not doing any act in relation to the obtaining or performance of this Agreement;
 - b. enter into this Agreement in connection with which commission has been paid or has been agreed to be paid by the other party (or anyone acting on its behalf or to its knowledge) unless (before such contract is made) particulars of any such commission have been disclosed in writing;
 - c. fix the amount of any charges specified in this Agreement in arrangement with any other person; and
 - d. communicate to any person other than the other party the value or approximate value of this Agreement (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation or performance of this Agreement or for insurance purposes).
- 14.2. Each Party shall promptly inform the other party of the occurrence of any such prohibited act or offence, including but not limited to those set out in this clause 14, of which it becomes aware.

15. Disputes

- 15.1. The parties shall attempt in the first instance to resolve any dispute arising out of or relating to this Agreement through negotiations between senior executives of the parties, who have authority to settle the same.
- 15.2. Should a resolution to dispute arising not be resolvable through negotiation, upon either Party giving written notice the matter may be referred (by either Party) to an independent mediator, within seven days of the notice, for resolution. The parties shall attempt to agree upon the appointment of a mediator, upon receipt by either of them of a written notice. Should the parties fail to agree within a further period of fourteen days, either Party, upon giving written notice, may apply to the President or the Deputy President, for the time being, of the Chartered Institute of Arbitrators, for the appointment of a mediator.
- 15.3. Should the mediation fail, in whole or in part, either Party may, upon giving written notice, and within twenty-eight days thereof, apply to the President or the Deputy President, for the time being, of the Chartered Institute of Arbitrators, for the appointment of a single arbitrator, for final resolution. The arbitrator shall have no connection with the mediator or the mediation proceedings, unless both parties have consented in writing. The arbitration shall be governed by both the Arbitration Act 1996 and the Controlled Cost Rules of the Chartered Institute of Arbitrators (2000 Edition), or any amendments thereof, which Rules are deemed to be incorporated by reference into this clause. The seat of the arbitration shall be England and Wales.

16. Force Majeure

- 16.1. Neither Party shall be liable for any failure or delay in performance of its obligations to the extent that such delay or non-performance was caused, or contributed to, by circumstances beyond such party's reasonable control, including but not limited to: labour shortages or strikes, network disruption (not caused directly by either party), acts of war, political instability, sanctions, terrorist activity, malicious damage, accidents or compliance with any applicable law or lawful order (each an "**Event of Force Majeure**"). The party affected by any of the aforementioned events shall promptly inform the non-affected party, and both party's obligations shall be suspended for the duration of the Event of Force Majeure and shall resume upon ending of such event. Where the Event of Majeure continues for a period of two weeks or more, the non-affected party shall have the right to terminate this Agreement without incurring any further liability.

17. Assignment

- 17.1. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, subcontract, delegate or otherwise deal with its rights under, or in connection with, this Agreement. The Supplier may at any time assign, transfer, subcontract, delegate or deal with its rights and obligations under this Agreement in any manner.

18. Headings and Interpretation

18.1. The headings to the clauses of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement. Unless the context requires otherwise, words in the singular shall include the plural and vice versa.

19. No agency

19.1. Esuasive is an independent company and nothing in this Agreement shall render it an agent or partner of Customer and Esuasive shall not hold itself out as such. Similarly, Customer is not, nor shall it purport to be, an agent or partner of Esuasive.

20. Jurisdiction

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

21. Notices

21.1. All notices which are required to be given hereunder shall be in writing (email to suffice) to:

For notices sent to Esuasive:

Address: [PHYSICAL ADDRESS]

FAO: [INDIVIDUAL RESPONSIBLE]

Email: [EMAIL ADDRESS]

For notices sent to Customer:

Address: [PHYSICAL ADDRESS]

FAO: [INDIVIDUAL RESPONSIBLE]

Email: [EMAIL ADDRESS]

21.2. For notices sent by first class post, the time of delivery of such notice shall be 48 hours after posting (unless the recipient can prove the notice arrived later). For notices sent by email, the notice will be deemed to have been delivered at the time of transmission, unless this falls outside of normal business hours for the recipient, in which case the email will be deemed to have been delivered on the next working day.

22. Miscellaneous

22.1. This Agreement and schedules hereto constitute the entire understanding between the parties concerning the subject matter hereof and supersedes all prior arrangements, understandings and agreements (oral or written) between the Parties on the subject matter contained herein, and shall be governed by and construed in accordance with the Laws of England. No waiver, variation or amendment shall be effective unless made in writing and signed by both parties.

22.2. Each provision of this Agreement shall be construed separately and in the event that any such provision may prove to be illegal or unenforceable, such provision shall be deemed deleted and the remaining provisions shall continue in full force and effect.

22.3. If there is a conflict or inconsistency between the terms and conditions of this Agreement and the content of any Schedule to this Agreement or the Esuasive EULA, the terms of this Agreement shall prevail.

22.4. Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

22.5. No delay, omission or failure by either Party to exercise any of its rights or remedies shall be deemed to be a waiver thereof or an acquiescence in the event giving rise to such right or remedy, but every such right and remedy may be exercised from time to time and so often as may be deemed expedient by the Party exercising such right or remedy.

22.6. A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999.

Executed under hand the day and year before written

Signed on behalf of Esuasive

Signed on behalf of Customer

(signature) _____

XXX

(name) _____

Director

(title) _____

nnn

(date) _____

Schedule A: Implementation Services

Implementation/supply of Esuasive Housing solutions / modules and/or related services as detailed below and/or in any agreed Statement of Work.

Cloud support services.

Schedule B: Consultants

As assigned by Esuasive.

Schedule C: Charge and Expenses

G-Cloud 15 pricing.

Schedule D: Data processing details

Processing of the Protected Data by Esuasive under this Agreement shall be for the subject-matter, duration, nature and purposes and involve the types of personal data and categories of data subjects set out in this Schedule D.

1. Subject-matter of processing:

The subject matter of the processing of the Protected Data by Esuasive is the performance of the Services pursuant to this Agreement.

2. Duration of the processing:

Esuasive will process the Protected Data in accordance with clause 12.3 of this Agreement.

3. Nature and purpose of the processing:

The nature of the processing by Esuasive will include the following: collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, collaboration and information sharing, alignment or combination, erasure or destruction of data (whether or not by automated means).

4. Type of Personal Data:

Esuasive may collect, store, and use the following types of personal data:

- Identity data (first name, last name, username, gender)
- Contact data (physical address, IP Address, email address and telephone numbers)
- Financial data (bank account, payment card details, rent and service charge details)
- Any other personal data or information provided by Customer to Esuasive under the Agreement.

5. Categories of Data Subjects:

Data subjects are the individuals about whom personal data is provided to Esuasive and include:

- Customers, tenants, household information, business partners, and prospects of Customer;
- Employees, agents, advisors and freelancers of Customer; and
- Any other categories of data subjects about whom personal data is provided to Esuasive by Customer.

Schedule E: Esuasive EULA

Definitions

Capitalised terms not defined elsewhere in this Agreement shall have the meaning given to them below:

“**Licence**” shall have the meaning given to it in clause 1.3 of this Esuasive EULA.

“**Support SLA**” means the targets associated with provision of Support Services, as set out below:

Severity Level	Description	Target time to respond	Target time to provide a fix for functional defects	
		100% within	80% within	100% within
1	Critical	1 working hour	8 working hours	2 working days
2	Major	1 working hour	2 working days	5 working days
3	Moderate	4 working hours	5 working days	10 working days
4	Minor	8 working hours	10 working days	20 working days

Definition of Severity Levels –

Critical

A critical incident is defined as an incident that causes the Esuasive Software to be unavailable in its entirety, or a major capability is failing (e.g. all users cannot save records)

Major

A major incident is defined as an incident where:

- A major capability of the Esuasive Software has failed or is failing for a significant number of Authorised Users; or
- An important interface has stopped working; or
- An important workflow, dialog or other process has stopped working.

Moderate

A moderate incident is defined as an incident where there is a material impact to users of the Esuasive Software but a temporary workaround within or outside of the Esuasive Software is available.

Minor

A minor incident is defined as an incident where there is only visual or minor impact to users.

“**Viruses**” means malicious code, software package, installer, malware, ransomware, software or network vulnerability, or any other thing or device (including files and programmes and physical tools and accessories) which may impair the functionality of the Esuasive Software in any way, or otherwise impair or adversely affect the operation of any computer software, hardware or network, telecommunications service, equipment, or any other service or device, or prevent or impair the operation of any programme or data, including the reliability of any programme or data, or adversely affect the user experience of any user, including but not limited to worms, trojan horses, viruses and other similar things, programmes, files or devices, and “**Virus**” shall be construed accordingly.

1. Licence

- 1.1. Esuasive and Customer hereby agree that Customer and all Authorised Users shall be bound by the terms of this Esuasive EULA.
- 1.2. Customer hereby warrants to Esuasive that all Authorised Users shall be made aware of the terms of this Esuasive EULA and shall agree to be bound by such terms before being granted access to the Esuasive SaaS or any part or portion thereof.
- 1.3. Subject to the terms and conditions of this Esuasive EULA and payment of the Licence Fees, Esuasive hereby grants to Customer a limited, revocable, non-transferable, non-exclusive licence to use the Esuasive SaaS within the Territory during the term of this Esuasive EULA on the terms set forth below (the “**Licence**”).
- 1.4. All Customer and Authorised Users’ rights under this Esuasive EULA automatically terminate upon expiration or termination of the Agreement.

2. Esuasive’s Intellectual Property Rights

- 2.1. The Esuasive Software is protected by the copyright laws and other intellectual property laws of England and international laws and treaties.
- 2.2. All Intellectual Property Rights, title and interest in and to the Esuasive SaaS, including derivative works thereof, are and shall remain vested in and are and shall remain the absolute property of Esuasive (or are and shall remain vested in and are and shall remain the absolute property of any third party which licenses any component of the Esuasive SaaS to Esuasive).
- 2.3. Nothing in this Esuasive EULA shall, nor shall be deemed to, grant the Customer or Authorised Users any rights of ownership in and to the Esuasive SaaS and all Intellectual Property Rights therein.

3. Right to Use

- 3.1. The Licence grants Customer the right to install and operate the Esuasive SaaS on the Customer's network for the number of Authorised Users specified in writing by Esuasive, subject to each Authorised User being correctly licensed to use Microsoft Dynamics 365, Microsoft Power Apps and other Microsoft software products as required.
- 3.2. The Customer may not install or operate the Esuasive SaaS in any unsecured environment where multiple unauthorised users may have access to the Esuasive SaaS, or outside of the Customer's IT infrastructure or network.
- 3.3. Unless otherwise agreed expressly in writing by both Parties, Customer is responsible for procuring the appropriate numbers and types of Microsoft Dynamics 365, Microsoft Power Apps and other Microsoft software product licences from Esuasive or from an alternative Microsoft-authorized partner or reseller of its choosing and Customer is further responsible for sourcing or procuring any required Third Party Software that is not otherwise provided by Esuasive.

4. Right to Modify

- 4.1. Customer may make reasonable modifications to the Esuasive Software for its convenience only, provided: (i) such modification is for its own internal use ("**Internal Modifications**"); and (ii) such modifications have been approved by Esuasive in writing, in advance.
- 4.2. The Customer hereby acknowledge and agrees that any Intellectual Property Rights generated, created or otherwise discovered through or related to any such Internal Modifications shall vest upon their creation in, and be owned by, Esuasive, and to the extent any such aforementioned rights vest in the Customer or any Authorised Users, the Customer hereby assigns, and/or shall procure the assignment of (as applicable), to Esuasive all Intellectual Property Rights in and to such Internal Modifications.

5. Restrictions

- 5.1. *Copying*: Customer may not copy the Esuasive SaaS except as expressly agreed in writing by Esuasive.
- 5.2. *Reverse Engineering*: Customer may not attempt to reverse engineer, decompile or disassemble the Esuasive SaaS or any portion thereof.
- 5.3. *Derivative works*: Customer may not create derivative works of or based upon the Esuasive SaaS without the prior express written consent of Esuasive.
- 5.4. If Customer wishes to create derivative works Customer will first notify Esuasive, and Esuasive shall, in its absolute discretion, choose whether to grant or refuse consent in reply to any such request. If Esuasive requires further information following any such aforementioned Customer request, Customer shall promptly reply to Esuasive's inquiries. Where consent is given Customer agrees to respond in a timely manner to Esuasive's reasonable requests for information regarding Customer's use of such derivative works.
- 5.5. Customer hereby acknowledges and agrees that any derivative works as envisaged under this clause 5 will be considered Internal Modifications, and therefore Customer hereby agrees to assign, and procure the assignment (in relation to any contractors, subcontractors, employees or any other individuals which Customer may use or employ for creating derivative works) to Esuasive of all Intellectual Property Rights in and to such derivative works, with full title guarantee.
- 5.6. *Transfer*: Customer may not sublicense, rent, lease, lend or otherwise transfer the Esuasive SaaS.
- 5.7. *Application Service Provider*: Customer may not use the Esuasive SaaS to build applications or to provide services which are made available: (i) on a commercial basis; nor (ii) to a third party on a 'software as a service' basis; nor (iii) outside of the Customer's internal business purposes.
- 5.8. *Proprietary Notices*: Customer may not remove any proprietary notices, labels or marks from the Esuasive SaaS.
- 5.9. *General Restrictions*: Customer may not:
 - (i) sell, assign, distribute, display, market or otherwise commercial exploit, or make available the Esuasive SaaS (or any part of it, or any information related to it) to any third party or individual;
 - (ii) access or attempt to access the Esuasive SaaS without the express prior written authorisation of Esuasive;
 - (iii) attempt to obtain, or assist third parties in obtaining, access to the Esuasive SaaS or any related documentation or materials, other than as expressly permitted under this Esuasive EULA;
 - (iv) distribute, transmit, execute or otherwise deal with any Viruses in any way;
 - (v) exploit, or allow others to exploit, any vulnerability or weakness in computational logic found in any software or hardware components;
 - (vi) use the Esuasive SaaS or any related software, networks or solutions to facilitate illegal activity;
 - (vii) use the Esuasive SaaS or any related software, networks or solutions to store, publish, distribute, disseminate or transmit any material which:
 - a. is unlawful, damaging, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - b. facilitates illegal activity;
 - c. depicts explicit images (including but not limited to sexual or violent images or imagery);
 - d. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - e. is otherwise illegal or causes damage or injury to any person or property.
- 5.10. Customer agrees to ensure that its employees, subcontractors, service providers and agents engaged to install, modify, review or otherwise use or access the Esuasive SaaS are made aware of the terms of this Esuasive EULA and are bound by this clause and other clauses as necessary to protect Esuasive's intellectual property rights.

6. Operational SLA

- 6.1. The *Operational* SLA is determined by Microsoft. Microsoft's current commitment to the provision of production instances may be found on the Microsoft web site. Non-production instances (as may be used for e.g. development, testing, etc.) may not be covered by the same Operational SLA as production ('live') instances. Note: The Operational is subject to change by Microsoft from time to time.

7. Termination

- 7.1. This Esuasive EULA shall continue in force for the entire duration of the Customer's usage of the Esuasive Software.

- 7.2. In the event of breach of any of the terms of this Esuasive EULA (whether by the Customer, Authorised Users or where such breach has been facilitated by Customer or Authorised Users), Esuasive reserves the right to terminate the Licence and the Agreement, and the Customer shall immediately upon receiving notice of such termination cease to use (and shall cease permitting the use of its Authorised Users of) the Esuasive SaaS in its entirety and follow the instructions of Esuasive in regard to destruction or return of the Esuasive SaaS or any part thereof.
- 7.3. Where it is suspected that the Customer or any Authorised User has facilitated breach of this Esuasive EULA, the Customer shall (and shall ensure that its Authorised Users) cooperate fully with Esuasive in any subsequent investigation of such breach and shall provide all reasonably requested assistance and information as Esuasive may deem necessary.

8. Amendments and Variations

- 8.1. Esuasive may at any time vary or update the terms of this Esuasive EULA at any time, and in the event that these terms are updated, Esuasive shall use commercially reasonable efforts to communicate such updated terms to the Customer in advance of their implementation.
- 8.2. In any event, the continued use of the Customer of the Esuasive Software shall constitute the Customer's acceptance to the latest version of these terms as at the date of access or usage of the Esuasive Software.
- 8.3. Where the Customer disagrees with any amendment or variation to the terms of this Esuasive EULA, it shall send notice in writing of its reasons for such disagreement to Esuasive and it may, within thirty (30) days thereafter, terminate the Agreement. For the avoidance of doubt, Customer shall remain responsible after termination for payment of Fees up to and including the date of any such termination.

9. Third Party Applications

- 9.1. Esuasive does not warrant the suitability or performance of Third Party Software, including those it may recommend to Customer as potential or actual solutions to Customer's needs, and any such recommendations are opinions only and not to be taken as expert information or relied upon in any way.
- 9.2. Procurement by Customer of any Third Party Software or services provided by a third party in connection with a Third Party Software is solely between Customer and the applicable third party, and the Customer bears full liability for any Third Party Software, and full responsibility for compliance with such terms.
- 9.3. Each time the Customer uses or accesses the Esuasive SaaS, the Customer hereby warrants (and repeats such warranty anew) that it is in full compliance with the terms of this Esuasive EULA and the terms of any Third Party Software it may use in connection with this Esuasive EULA.

10. Disclaimer

- 10.1. The Esuasive SaaS is provided 'as is' and Esuasive makes no warranty, representation or condition, express, implied, or statutory, and expressly disclaims the implied warranties of merchantability, fitness for a particular purpose and non-infringement of third party rights. No agent or employee of Esuasive is authorized to make any modifications, extensions or additions to this warranty.

11. Limitation of Liability.

- 11.1. Under no circumstances and under no legal theory, tort, contract or otherwise shall Esuasive or its suppliers or business partners be liable to the other or any other person for any indirect, special, exemplary, incidental or consequential damages of any character including, without limitation, damages for loss of goodwill, work stoppage, computer failure or malfunction even if that party shall have been informed of the possibility of such damages other than in the event of gross negligence or fraud.
- 11.2. In any event the aggregate liability of Esuasive, its suppliers and business partners under this Esuasive EULA shall not exceed twice the amount of Licence Fees paid in the twelve months preceding any claim.
- 11.3. This limitation of liability shall not apply to liability for death or personal injury, fraud or fraudulent misrepresentation, or any other liability that may not be excluded by applicable law.

12. Email and Notices

- 12.1. Customer and Esuasive each agree to keep the other provided with the name and email address of an individual authorised to send or receive communication relating to this Esuasive EULA, and each shall be entitled to rely on such communications.
- 12.2. Where agreement in writing is specified in this Esuasive EULA, such agreement may be made by email. Where notice in writing is specified, notice by email shall be satisfactory provided a 'read' receipt is obtained and retained. Alternatively, notices may be sent by post and shall be deemed delivered if evidenced by proof of delivery.

13. Confidentiality

- 13.1. Each party agrees to exercise a commercially reasonable degree of care in the protection of Confidential Information except to the extent necessary to perform its obligations or exercise rights under this Esuasive EULA or as otherwise agreed. Either party may disclose Confidential Information on a need to know basis to its Affiliates, subcontractors, service providers and agents who have executed binding written agreements requiring confidentiality and non-use obligations at least as restrictive as those contained herein.

14. General

- 14.1. This Esuasive EULA represents the complete agreement between the parties concerning the Licence and supersedes all prior or contemporaneous agreements and representations between them with respect to the subject matter.
- 14.2. This Esuasive EULA may be amended only in a written agreement *executed* by both parties.
- 14.3. The acceptance of any purchase order placed by Customer is expressly made conditional on Customer's assent to the terms set forth herein, and not those contained in Customer's purchase order, and such purchase order terms shall have no effect on this Esuasive EULA.

- 14.4. If any provision of this Esuasive EULA is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable and the remainder of this Esuasive EULA shall nonetheless remain in full force and effect.
- 14.5. This Esuasive EULA shall be governed by the laws of England and shall be interpreted in conformity of these laws. The competent courts for any dispute arising in connection with this Esuasive EULA are the courts of England.

15. Third Party Rights

- 15.1. A person who is not a party to this Esuasive EULA shall not have any rights to enforce any term of this Esuasive EULA. The rights of the parties to terminate, rescind or *agree* any variation, waiver or settlement under this Esuasive EULA are not subject to the consent of any other person.

16. Assignment

- 16.1. The Customer shall not assign or transfer any benefit or obligation under this Esuasive EULA unless it has first obtained the prior express written consent of Esuasive.
- 16.2. Esuasive may, without obtaining consent from the Customer, assign or transfer any benefit or obligation under this Esuasive EULA.