

Master Products and Services Agreement

[Client Name]

Engaging with Forfusion Ltd

This Agreement is made the day of DD Month 2026

Between:

1. **Forfusion Limited** (CRN: 06051770) whose registered office is at CBX, Cobalt Park Way, Wallsend, Tyne and Wear, NE28 9NZ ("**Forfusion**"); and
 2. **[Client Name]** (CRN: [Registration Number]) of [Client Address] (the "**Customer**");
- (together the "**Parties**" and individually a "**Party**").

Background

- (A) Forfusion has expertise in the field of information and communications technology and is able to supply products, services and/or software.
- (B) The Customer may wish to purchase products, services and/or software from Forfusion, from time to time.
- (C) The parties have entered into this Agreement to create a framework under which the Customer can purchase, and Forfusion can supply, products, services and/ or software.
- (D) The specific products, services and/ or software to be supplied by Forfusion under this Agreement will be detailed in statements of work to be agreed between the Parties from time to time.

It is hereby agreed as follows:

1. Interpretation

- 1.1. In this Agreement, except where the context otherwise requires, the following words shall have the following meanings:

"**Agreement**" means this Agreement, including (where applicable) any Statements of Work concluded under it;

"**Business Days**" means Monday to Friday inclusive (excluding public holidays in England);

"**Business Hours**" means 9.00am to 5.00pm in the UK on Business Days;

"**Commencement Date**" means the date of this Agreement;

"Confidential Information" means all information disclosed or made available by a Party (or members of its Group) in connection with this Agreement (howsoever conveyed whether in eye or machine readable form or orally) including: (a) technical information including, documents, lists, data, drawings, designs, flow charts, formulae, specifications, test results, performance data and reports, computer programs, algorithms, hardware configuration; (b) all commercial, marketing and financial information, data and reports, employee data, supplier and customer lists, correspondence, evaluations, recommendations and advice provided; and (c) all quotations, concepts, marketing proposals, branding strategies, designs, technical data, trade secrets and know-how, research and technical requirements;

"Contract Year" means (in respect of this Agreement) each consecutive period of twelve (12) months commencing on the date of this Agreement, and (in respect of any Statement of Work) each consecutive period of twelve (12) months commencing on the date of the Statement of Work;

"Customer Hardware" means any Hardware owned by the Customer, or provided by the Customer, which is used in connection with, or relevant to, the provision of any Products, Services or Software by Forfusion under this Agreement;

"Customer IPR" shall have the meaning given in clause 12.1.

"Customer Materials" means any data, documents, software or other content or materials provided, or made available, by the Customer to Forfusion for use in connection with the provision of any Products, Services or Software by Forfusion under this Agreement, including any Customer Software;

"Customer's Personnel" means the Customer's officers, employees, agents and contractors, including any other service provider to the Company (i.e. other than Forfusion);

"Customer's Service Manager" shall have the meaning given in clause 10.1;

"Customer Software" means any software which is owned by, licensed to, or otherwise used by the Company, and which is provided by, or made available by, the Customer to Forfusion for use in connection with the provision of any Products, Services or Software by Forfusion under this Agreement;

"Data Protection Laws" means all applicable data protection and privacy laws and legislation in force from time to time, including: (i) UK GDPR; (ii) the Data Protection Act 2018 (and regulations made thereunder) ("**DPA 2018**"); and (iii) the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;

"Delivery Location" shall have the meaning given in clause 6.3;

"End of Life Product" means any Customer Hardware or Customer Software (including but not limited to, operating systems, firmware, databases, applications and infrastructure) that is either out of

maintenance/support or the manufacturer or supplier has ceased to provide updates/patches for, including security patches;

"Evolving Networks Hardware" means any Hardware or CPE (as defined in the Evolving Networks Terms of Service) which is supplied to the Customer as part of, or in connection with, or in order to provide, the Evolving Networks Services;

"Evolving Networks Services" means the SD-WAN service (and related products and services) which are offered and provided by Evolving Networks Ltd and which Forfusion is authorised to resell to its customers under the Evolving Networks Terms of Service;

"Evolving Networks Terms of Service" means Forfusion's Terms of Service for Evolving Networks Services, in force from time to time, details of which are published at <https://www.forfusion.com/policies-statements/evolving-networks-terms-of-service> (Version 1.0) or which are available from Forfusion on request;

"Fees" means the fees to be paid by the Customer to Forfusion for the provision of any Products, Services and/ or Software under this Agreement;

"Force Majeure Event" means an event specified in clause 23.1;

"Forfusion IPR" shall have the meaning given in clause 12.1.

"Forfusion Materials" means any data, documents, software or other content or materials supplied by Forfusion to the Customer pursuant to this Agreement, or developed by Forfusion under this Agreement, including any Forfusion Software supplied by Forfusion under this Agreement, but excluding any Third Party Software or Products supplied by Forfusion under this Agreement;

"Forfusion Service Manager" shall have the meaning given in clause 5.1.

"Forfusion Software" means any software developed by Forfusion (whether prior to, independently of, or pursuant to, this Agreement) and which is supplied to the Customer or made available for use by the Customer, under this Agreement.

"Group" means, in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

"Hardware" means any physical telecommunications, networking, computer or other equipment (including switches, routers, cables, servers, racks, cabinets and peripheral accessories);

"Intellectual Property Rights" means and includes: (a) rights in, and in relation to, any patents, registered designs, design rights, trademarks, trade and business names (including all goodwill associated with any

trademarks or trade and business names), copyright, moral rights, databases, domain names, topography rights and utility models, and including the benefit of all registrations of, applications to register and the right to apply for registration of any of the foregoing items and all rights in the nature of any of the foregoing items, each for their full term (including any extensions or renewals thereof) and wherever in the world enforceable; and (b) trade secrets, confidentiality and other proprietary rights including rights to know how; and (c) all other intellectual property rights and forms of protection of a similar nature or having equivalent or similar effect and which may subsist anywhere in the world;

"Products" means any Hardware, or other physical products or goods, to be supplied by Forfusion and delivered to the Customer pursuant to this Agreement, as detailed in a Statement of Work, but excluding any Evolving Networks Hardware.

"Services" means any services to be provided by Forfusion pursuant to this Agreement, as detailed in a Statement of Work, including (where applicable) any consultancy services, engineering services, project management services, implementation or configuration services, hosting services, support and maintenance services or managed services, but excluding any Evolving Networks Services;

"Software" means any Forfusion Software and/ or Third Party Software to be supplied by Forfusion to the Customer under or in connection with this Agreement, including any such software which Forfusion is responsible for supplying as detailed in a Statement of Work, but excluding any Customer Software;

"Statement of Work" means an individual contract for the provision of Products, Services and/ or Software, concluded between the parties in accordance with clause 2 below, which incorporates the terms and conditions in this Agreement;

"Third Party Software" means any software, or software as a service (SaaS) (or similar) solutions, which were developed by and/ or which are proprietary to any third party, and which are provided by Forfusion to the Customer under this Agreement;

"TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006, and any subordinate or related legislation, or successor legislation, as amended from time to time;

"UK GDPR " has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

1.2. In this Agreement, (unless the context otherwise requires) reference to:

- 1.2.1. any statute or statutory provision are to that statute or statutory provision as from time to time amended, re-enacted or modified from time to time;
- 1.2.2. the singular includes a reference to the plural and vice versa and reference to any gender includes a reference to all other genders;

- 1.2.3. any Party (where relevant) includes its successors in title and permitted assigns or transferees;
 - 1.2.4. a “person” includes any individual, company, firm, corporation, partnership, joint venture, association, institution or Government body (whether or not having a separate legal personality);
 - 1.2.5. any phrase in this Agreement introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
 - 1.2.6. any undertaking under this Agreement not to do any act or thing shall be deemed to include an undertaking not to permit or suffer the doing of that act or thing.
- 1.3. The headings are used for convenience only and shall not affect the interpretation or validity of this Agreement.

2. Statements of Work

- 2.1. This Agreement shall create a framework under which the Customer may request, and Forfusion may agree to supply, Products and/ or Services and/ or Software from time to time, as detailed in individual Statements of Work agreed between the parties in accordance with this clause.
- 2.2. Any number of Statements of Work may be agreed between the parties under this Agreement and added to this Agreement. Forfusion shall have no obligation to provide any Products, Services or Software under this Agreement unless a Statement of Work has been agreed between the parties in respect of the Products, Services or Software in question.
- 2.3. Each Statement of Work, when executed by, or otherwise agreed between, an authorised representative of both Parties, shall constitute a separate agreement and, except for provisions in this Agreement which are specifically excluded or modified in such Statement of Work, each such Statement of Work shall incorporate therein all the terms and conditions of this Agreement.
- 2.4. In the event of any inconsistency between the terms and conditions contained in any Statement of Work and those contained in the main body of this Agreement, the terms of the Statement of Work shall prevail with respect to the Products, Services and/ or Software to be provided under that Statement of Work.
- 2.5. Both Parties irrevocably acknowledge and agree that each Statement of Work and this Agreement shall override and exclude any other terms and conditions referred to, offered or relied on by the Customer, whether in negotiation or at any stage in the dealings between the Parties (including the Customer’s standard terms appearing on any purchase order).

- 2.6. Statements of Work may take the form of written scope documents, quotations or proposals for the supply of Products, Services and/ or Software which are issued by Forfusion and executed or otherwise accepted by the Customer.

3. Change Control

- 3.1. If either Party wishes to change the scope or content of any Statement of Work concluded between the Parties, or of any Products or Services or Software to be provided under it (a "Change"), it shall submit details of the requested Change to the other in writing. If either Party requests a Change, Forfusion shall, within a reasonable period of time, provide a written estimate to the Customer of:
- 3.1.1. the likely time required to implement the Change;
 - 3.1.2. any variations to Forfusion's Fees and expenses arising from the Change;
 - 3.1.3. the likely effect of the Change on any relevant Products and/ or Services and/ or Software being provided under the relevant Statement of Work and/ or this Agreement more generally; and
 - 3.1.4. any other impact of the Change on the terms and conditions in any relevant Statement of Work or this Agreement more generally.
- 3.2. If the Customer wishes Forfusion to proceed with the Change, Forfusion has no obligation to do so unless and until the Parties have agreed in writing on the necessary variations to any relevant Statement of Work and/ or this Agreement to take account of the Change.
- 3.3. Forfusion may charge for the time it spends assessing a request for a Change from the Customer on a time and materials basis, in accordance with its standard rates in force from time to time.

4. Fees and Payment

- 4.1. In consideration of Forfusion supplying any Products and/ or Services and/ or Software under this Agreement, the Customer shall pay to Forfusion the applicable Fees therefor.
- 4.2. With respect to any Products or Software supplied by Forfusion pursuant to this Agreement:
- 4.2.1. the Fees due to be paid to Forfusion in respect thereof shall as detailed in the applicable Statement of Work, or as otherwise agreed between the Parties in writing, or where no such Fee has been specified or agreed the price set out set out in Forfusion's standard price list for the Products or Software in question as at the date of delivery; and

- 4.2.2. the Fees shall (unless expressly stated otherwise) be exclusive of any and all costs and charges of packaging, insurance and transport of the Products or Software in question, which shall be invoiced to the Customer in addition to the Fees; and
 - 4.2.3. the Customer shall pay the Fees (and any other sums) due to Forfusion in respect of any Products or Software on such dates or payment terms as may be detailed in the applicable Statement of Work, or if no such dates or payment terms have been specified or agreed then Forfusion shall be entitled to raise an invoice in respect thereof on delivery of the Products or Software to the Customer and the Customer shall pay any such invoice in accordance with clause 4.6.
- 4.3. With respect to any Services supplied by Forfusion pursuant to this Agreement, the Fees to be paid to Forfusion shall either be calculated on a fixed fee basis, or based monthly, quarterly or annual usage/ consumption, or on a time and materials basis, as specified in the applicable Statement of Work. Where the applicable Statement of Work does not expressly provide for the Fees to be calculated on a fixed fee basis or based on usage/ consumption then they shall be calculated on a time a material basis. Where the Fees for any Services are to be calculated on a time and materials basis, then the following shall apply:
 - 4.3.1. the Fees shall be calculated in accordance with Forfusion's daily fee rates, as set out in the applicable Statement of Work, or where they are not set out in the applicable Statement of Work, Forfusion's standard daily fee rates in force at the time the Services were performed;
 - 4.3.2. unless stated otherwise, Forfusion's daily fee rates for each individual person are calculated on the basis of a seven-hour day from 9.00 am to 5.00 pm worked on Business Days;
 - 4.3.3. the Supplier shall be entitled to charge an overtime rate of 150% of the daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in 4.3.2; and
 - 4.3.4. unless stated otherwise in the applicable Statement of Work, Forfusion shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Forfusion engages in connection with the Services, including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Forfusion for the performance of the Services, and for the cost of any materials.
- 4.4. Where Fees for the provision of Services are charged on fixed price basis, then Forfusion shall be entitled to raise an invoice for the applicable fixed fees on such dates, or at such intervals or on

the achievement of such milestones as are stipulated in the applicable Statement of Work, or (where no dates, intervals or milestones or stated) in advance.

- 4.5. Where Fees for the provision of Services are charged based on usage or consumption, then Forfusion shall (where applicable/ feasible) report to the Customer on its usage or consumption of the applicable Services and raise an invoice for the corresponding Fees at such intervals as are stated in the relevant Statement of Work, or (where no intervals for reporting or invoicing are stated in the Statement of Work) Forfusion shall be entitled to report to the Customer and invoice the Customer monthly in arrears.
- 4.6. All Fees and other sums due under this Agreement are payable in pounds Sterling (GBP) unless otherwise stated in any applicable Statement of Work, and shall be paid within thirty (30) days from receipt of Forfusion's invoice or as agreed between the Parties in writing.
- 4.7. Forfusion shall be entitled to increase the Fees detailed in any Statement of Work, or as detailed in this clause 4, at any time on providing the Customer with reasonable notice (having regard to the particular circumstances) where it can demonstrate that such increase is necessary in light of third party cost increases, including additional Hardware costs, licence fees, maintenance fees, data, bandwidth and/ or power charges etc.
- 4.8. All Fees are exclusive of VAT and all other applicable taxes which shall be payable in addition by the Customer at the applicable rates in force from time to time on receipt of a valid VAT invoice from Forfusion.
- 4.9. In the event that the Customer fails to make payment of any Fees or other sums due to be paid to Forfusion under or in connection with this Agreement by the due date for payment, then without prejudice to any other rights or remedies which may be available to Forfusion, Forfusion shall be entitled to:
 - 4.9.1. charge interest on such overdue amount at a rate of four per cent (4%) above the base rate of HSBC Bank Plc from the due payment date up to the date of actual payment. Interest shall accrue on a daily basis and be compounded quarterly;
 - 4.9.2. suspend delivery of any Products and/ or Software and/ or the performance of any Services until the overdue sum has been paid in full, without incurring any liability to the Customer; and/ or
 - 4.9.3. recover its reasonable expenses incurred in pursuing late payments including internal finance and legal fees, external third party fees and costs of collection.

- 4.10. The Customer shall pay Fees and other sums properly due and owing to Forfusion without deduction, counterclaim or set-off.

5. General Obligations of Forfusion

- 5.1. Forfusion shall, within five (5) Business Days of the date of this Agreement, provide the Customer with the name of an individual (together with their e-mail and telephone contact details) who is empowered to make decisions on the Customer's behalf in relation to matters arising under this Agreement and under any Statement of Work ("Forfusion Service Manager").
- 5.2. Provided that the Customer complies with its obligations under this Agreement and any applicable Statement of Work, Forfusion shall provide any Products, Services and Software in accordance with the provisions of clause 6, 7, 8 or 9 respectively, as well as the terms and conditions of this Agreement generally and any relevant terms and conditions contained in any applicable Statements of Work.

6. Supply of Products

- 6.1. Any Products to be supplied by Forfusion to the Customer pursuant to this Agreement shall be as detailed in an applicable Statement of Work concluded between the Parties.
- 6.2. Forfusion reserves the right to amend any agreed description or specification for Products to be supplied pursuant to this Agreement, if this is required by any applicable statutory or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Products in question, and in such circumstances Forfusion shall notify the Customer accordingly.
- 6.3. Forfusion shall deliver Products to the location set out in the applicable Statement of Work (or quotation) for delivery, or such other location as the parties may agree (the "**Delivery Location**") and delivery of the Products shall be deemed completed on the completion of unloading of the Products at the Delivery Location.
- 6.4. Any dates quoted for delivery of the Products (whether in any Statement of Work or otherwise) are approximate only, and the time of delivery is not of the essence.
- 6.5. If Forfusion fails to deliver any Products in breach of its obligations under this Agreement, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement products of similar description and quality in the cheapest market available, less the price of the Products. Forfusion shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Forfusion with adequate delivery instructions for the Products or any relevant instruction related to the supply of the Products.

- 6.6. Forfusion may deliver any Products by instalments, which may be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 6.7. The risk in any Products supplied under this Agreement shall pass to the Customer on completion of delivery.

Basis of Supply of Products:

- 6.8. Where it is agreed that Forfusion shall supply Products under a Statement of Work, the applicable Statement of Work shall specify whether the Products are being supplied for sale to the Customer, or for hire to the Customer. Where Products are supplied for sale to the Customer, then the provision of clauses 6.9 to 6.11 (inclusive) below shall apply. Where Products are supplied for hire or lent to the Customer, then the provisions of clause 6.12 below shall apply. The remaining provisions of this clause 6 shall apply irrespective of whether Products are supplied for sale or hire.

Sale of Products:

- 6.9. Where Products are sold to the Customer (i.e. as opposed to being leased, hired or loaned to the Customer), title to Products shall not pass to the Customer until Forfusion receives payment in full (in cash or cleared funds) for the Products. Until title to the Products has passed to the Customer, the Customer shall:
- 6.9.1. store the Products so that they remain readily identifiable as Forfusion's property;
 - 6.9.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
 - 6.9.3. maintain the Products in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
 - 6.9.4. notify Forfusion immediately if it becomes subject to any of the events listed in clause 17.2; and
 - 6.9.5. give Forfusion such information relating to the Products as Forfusion may require from time to time.
- 6.10. If before title to any Products passes to the Customer the Customer becomes subject to any of the events listed in clause 17.2, then, without limiting any other right or remedy Forfusion may have:

6.10.1. Forfusion may at any time require the Customer to deliver up all Products in its possession in respect of which title has not passed to the client under clause 6.9; and

6.10.2. if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.

6.11. The Customer agrees that it will comply with all applicable documentation and guidelines issued by any third party manufacturer, as well as the reasonable instructions of the Forfusion, in connection with its use of any Products supplied under this Agreement.

Hire of Products:

6.12. Where Products are hired (or lent or loaned) to the Customer then the following terms shall apply:

6.12.1. The Products shall at all times remain the property of Forfusion;

6.12.2. the Customer shall ensure that the Products are kept and operated in a suitable environment and used only for the purposes for which they are supplied;

6.12.3. the Customer must keep the Products at the designated site or location (agreed between the parties) and must not move it without the prior written permission of Forfusion;

6.12.4. the Customer must ensure that the Products are marked/ labelled as being the property of Forfusion and recorded in its accounts and records as the property of Forfusion and shall not remove any notice or label on the Products which identifies the Products as the property of Forfusion;

6.12.5. the Customer must maintain the Products, and keep them in good condition at all times. Subject to fair wear and tear, the Customer is responsible for all damage to Products;

6.12.6. in respect of any such Products: (i) the Customer shall insure such Products from and against all loss or damage for all insurable risks, for its full replacement cost, and with a reputable insurance company. The Customer must arrange for the insurer to note the interest of Forfusion on the insurance policy and upon request produce evidence of the insurance policy; (ii) if the Customer fails to make acceptable arrangements for the insurance of the Products Forfusion may insure the Products and charge the Customer for the cost of such insurance; and (iii) if the Customer has to make a claim upon such insurance policy the Customer must advise Forfusion immediately in writing and must not agree any settlement of a claim without first obtaining the written permission of Forfusion, and any insurance monies must be paid to Forfusion;

6.12.7. the Customer must not without the prior written consent of Forfusion: (i) alter, add or change anything on the Products; (ii) part with control of (other than for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Products or allow the creation of any mortgage, charge, lien or other security interest in respect of the Products; or (iii) allow the Products to be taken or seized by any person in satisfaction of a debt owed by the Customer;

6.12.8. on expiry or termination of the relevant Statement of Work, or if notified by Forfusion at any time, the Customer will no longer have permission from Forfusion to be in possession of the Products and the Customer shall, at its own cost, deliver up the Products to Forfusion on the date or dates specified by Forfusion. Failure to comply with the above provisions of this clause 6.12.8, shall mean the Customer is liable to pay to Forfusion a sum equivalent to the value to acquire the items not returned to Forfusion through its normal procurement channels.

7. Supply of Services

- 7.1. Forfusion shall supply any Services to the Customer in accordance with the relevant Service descriptions or specifications contained in the applicable Statement of Work.
- 7.2. Forfusion shall use all reasonable endeavours to meet any performance dates for delivery or performance of any Services which may be specified in any applicable Statement of Work, or otherwise agreed between the parties, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3. Forfusion reserves the right to amend any applicable Service description or specification contained in any Statement of Work or otherwise agreed between the parties, if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and in such circumstances Forfusion shall notify the Customer in writing.

8. Supply of Software

- 8.1. Forfusion shall supply any Forfusion Software and/ or any Third Party Software which it is responsible for supplying under any Statement of Work, in accordance with the terms of the applicable Statement of Work.
- 8.2. With respect to any Forfusion Software supplied by Forfusion pursuant to this Agreement, the Customer acknowledges and agrees that (unless expressly agreed otherwise in writing by Forfusion) all Intellectual Property Rights in such Forfusion Software shall be and remain the property of Forfusion and the Customer shall have a non-exclusive licence to use the same

subject to any applicable software licence terms detailed in the applicable Statement of Work or notified in writing to the Customer or which may accompany such Forfusion Software ("**Forfusion Software Licence Terms**") or in the absence of any such Forfusion Software Licence Terms, on the terms detailed in clause 12.1 below. The Customer agrees to comply with, and procure that the Customer Personnel comply with, any applicable Forfusion Software Licence Terms, in using any Forfusion Software.

- 8.3. With respect to any Third Party Software supplied by Forfusion pursuant to this Agreement, the Customer acknowledges and agrees that all Intellectual Property Rights in such Third Party Software shall be and remain the property of the applicable third party software supplier. The Customer shall have a non-exclusive licence to use any such Third Party Software subject to any applicable software licence terms for such Third Party Software ("**Third Party Software Licence Terms**"). The Customer acknowledges that Third Party Software providers may change the Third Party Software Licence Terms relating to their software from time to time. Forfusion shall notify the Customer of any material changes to such terms as soon as reasonably practicable following notification of such changes by the relevant third party software supplier.
- 8.4. The Customer acknowledges that its sole rights in respect of any Forfusion Software and any Third Party Software supplied pursuant to this Agreement shall be as set out in this Agreement, any applicable Statement of Work and any applicable Forfusion Software Licence Terms and Third Party Software Licence Terms.
- 8.5. The Customer may not remove, modify or obscure any copyright, trademark or other proprietary rights notice that appears on any Forfusion Software or Third Party Software or that appear during their use.
- 8.6. The Customer shall keep Forfusion informed as to any changes which might affect the number of licences it requires to use any Forfusion Software or Third Party Software supplied under this Agreement, to take account of, for example, any changes in its user and/or processor numbers.

9. Supply of Evolving Networks Services

- 9.1. In the event that Forfusion agrees to supply Evolving Networks Services to the Customer, under any Statement of Work or otherwise, then the following provisions of this clause 9 shall apply.
- 9.2. The Customer understands, acknowledges and agrees that the Evolving Networks Services are developed and provided by Evolving Networks Ltd and that Forfusion is authorised by Evolving Networks Ltd to resell the Evolving Networks Services to its customers. If the Customer purchases Evolving Networks Services from Forfusion, its contract for the provision of the Evolving Networks Services shall be with Forfusion; however, the Customer understands that

supply and performance of those Evolving Networks Services shall be sub-contracted in their entirety by Forfusion to Evolving Networks.

- 9.3. The Customer further understands, acknowledges and agrees that any contract concluded between the Customer and Forfusion for the supply of Evolving Networks Services shall be governed exclusively by the Evolving Networks Terms of Service and the applicable Statement of Work. With the exception of this clause 9 of this Agreement, the terms and conditions contained in this Agreement shall not apply to any such contract.
- 9.4. Notwithstanding the preceding provisions of this clause 9, Forfusion may agree to supply Services which are ancillary or complementary to the Evolving Networks Services and which are ultimately performed by Forfusion itself (rather than Evolving Networks). Any such ancillary Services which are ultimately performed by Forfusion itself (as opposed Evolving Networks) shall be governed by the terms and conditions of this Agreement.

10. General Obligations to the Customer

- 10.1. The Customer shall within five (5) Business Days of the date of this Agreement, provide Forfusion with the name of an individual (together with their e-mail and telephone contact details) who is empowered to make decisions on the Customer's behalf in relation to matters arising under this Agreement and under any Statement of Work ("**Customer's Service Manager**").
- 10.2. The Customer agrees that it shall, and shall procure that the Customer's Personnel shall:
- 10.2.1. promptly provide Forfusion with any information, facilities, access to premises or other assistance as Forfusion may reasonably request or require from time to time in order to perform its obligations under this Agreement;
 - 10.2.2. promptly provide Forfusion with, or with access to, any Customer Hardware, Customer Software or other Customer Materials, as Forfusion may reasonably require in order to fulfil and perform its obligations under this Agreement;
 - 10.2.3. promptly inform Forfusion of any matters which are likely to materially adversely affect the ability of Forfusion to perform its obligations under this Agreement, or to supply any Products or Services or Software;
 - 10.2.4. ensure that any Customer Hardware or Customer Software that will be accessed or used by Forfusion in performing its obligations under this Agreement, or which are relevant to or required, to enable Forfusion to fulfil its obligations under this Agreement, are properly managed and available and comply with any reasonable requirements which have been notified to the Customer in writing;

- 10.2.5. use any Products and/ or Services and/ or Software supplied by Forfusion pursuant to this Agreement, in accordance with any reasonable instructions, policies, requirements or specifications notified to the Customer from time to time (including any applicable legal notices, privacy policies and acceptable use policies and licence terms) and all applicable laws;
- 10.2.6. promptly comply with Forfusion's reasonable instructions and advice relating to the security, integrity or performance of any Products or Services or Software supplied pursuant to this Agreement; and
- 10.2.7. comply with any Customer obligations as identified in any applicable Statement of Work.
- 10.3. Forfusion shall not be liable for any failure to observe or perform its obligations set out in this Agreement (including under any Statement of Work) to the extent that such failure arises from a breach of the Customer's obligations detailed in this clause 10.
- 10.4. In the event of any material failure of the Customer to comply with its obligations under this clause 10, then without prejudice to any other rights and remedies which may be available to Forfusion, Forfusion may:
 - 10.4.1. invoice the Customer for any fees, costs and expenses reasonably incurred as a result of such failure and the Customer shall pay such invoice within thirty (30) days of the invoice date. Any such fees shall be invoiced in accordance with Forfusion's standard daily rates for Services as amended from time to time; and/ or
 - 10.4.2. suspend the delivery of any Products and/ or Software and/ or the performance of any Services where such failure materially adversely affects the proper performance of Forfusion's obligations under this Agreement (including any Statement of Work).
- 10.5. In the event that Forfusion's ability to perform any of its obligations under this Agreement or any Statement of Work is adversely affected by an End of Life Product, then at the request of Forfusion, Forfusion and the Customer shall collaborate in identifying and agreeing a succession plan for such End of Life Product. Forfusion shall be relieved of its obligations under this Agreement (including any Statement of Work) to the extent that it is prevented or hindered from performing such obligations as a consequence of any End if Life Product.

11. [Warranties](#)

- 11.1. Forfusion warrants that:
 - 11.1.1. it has the requisite power and authority to enter into and perform this Agreement;

- 11.1.2. subject to clause 11.5 below, any Products, Services and Software supplied by Forfusion under this Agreement shall, on delivery and for a period of thirty (30) days thereafter, conform in all material respects with any agreed description or specification detailed in any applicable Statement of Work;
 - 11.1.3. it shall perform the Services with reasonable care and skill and in accordance with accepted industry standards;
 - 11.1.4. it shall provide appropriately qualified and trained personnel to perform the Services; and
 - 11.1.5. subject to clause 11.5, the Services and any Forfusion Software supplied under this Agreement, and the use thereof by the Customer in accordance with the terms and conditions of this Agreement, shall not infringe the Intellectual Property Rights of any third party.
- 11.2. Subject to clause 11.3, 11.4 and 11.5 below, in the event that the Customer can demonstrate that any Products, Services or Software supplied by Forfusion under this Agreement do not comply in any material respect with the warranties detailed in clause 11.1 above, Forfusion shall (for no additional charge) use commercially reasonable endeavours to remedy such non-conformance. In the event that it is not reasonably possible to remedy the non-conformance, then Forfusion shall refund any Fees paid for any affected Products, Services and/ or Software (or a fair and reasonable proportion thereof) provided that (where applicable) the Customer returns, or ceases any further use of, the Products, Services or Software in question as Forfusion may reasonably direct. The Parties agree that this clause sets out the Customer's sole and exclusive remedy in respect and Forfusion's entire liability in respect of any non-compliance with the warranties detailed in clause 11.1.
- 11.3. Forfusion shall not be liable for any failure to comply with the warranties in clause 11.1 if:
- 11.3.1. the defect or non-conformance arises because the Customer has failed to follow Forfusion's (or, where applicable, the manufacturer's) oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products, Services or Software in question or (if there are none) good trade practice;
 - 11.3.2. the defect or non-conformance arises as a result of Forfusion following any drawing, design, specification or requirement supplied by the Customer or as a result of any Customer Hardware, Customer Software or other Customer Materials supplied by the Customer;
 - 11.3.3. the Customer alters or repairs any affected Products, Services or Software without the written consent of Forfusion;

- 11.3.4. the defect or non-conformance arises as a result of fair wear and tear, wilful damage, negligence, or abnormal use or working conditions; or
- 11.3.5. the Products, Services or Software differ from their description contained in any applicable Statement of Work, as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 11.4. Forfusion makes no warranty that the Services or Software supplied by it under this Agreement will be error free or that their use will be uninterrupted and the Customer acknowledges and agrees that the existence of such errors and interruptions shall not constitute a breach of this Agreement.
- 11.5. Notwithstanding anything else contained in this Agreement, the Customer acknowledges and agrees that Forfusion was not the manufacturer of any Hardware or other third party manufactured Products supplied pursuant to this Agreement and did not develop any Third Party Software supplied pursuant to this Agreement. Accordingly, it is understood and agreed that Forfusion does not itself give any warranty, guarantee, indemnity, condition or other assurance (whether express or implied) in respect of any such Hardware or Products or Third Party Software, including any warranty or guarantee or indemnity or condition or assurance that the same are free from defects, of satisfactory quality, or fit for any particular purpose or non-infringing. Notwithstanding the foregoing, where reasonably required by the Customer, Forfusion shall use its reasonable endeavours to pass on to the Customer the benefit of any warranties, guarantees, indemnities, condition or other assurance as may be given by the applicable third party manufacturer or supplier of any such Hardware or Products or Third Party Software. In addition, Forfusion shall, on request, use reasonable endeavours to notify the Customer of any applicable support and maintenance programmes or extended warranties or guarantees or similar that may be offered or available from the relevant third party manufacturers and suppliers.
- 11.6. The warranties set out in this clause 11 and terms of this Agreement generally, are in lieu of all other warranties, conditions, undertakings, terms and obligations concerning the provision of the Products, Services and Software which might, but for this clause, have effect between Forfusion and the Customer or would otherwise be implied or incorporated into this Agreement or considered to take effect as a collateral contract, whether by statute, common law, trade usage, course of dealing or otherwise, all of which are agreed to be excluded to the fullest extent permitted by law.

12. [Intellectual Property Rights](#)

- 12.1. All Intellectual Property Rights in any Customer Software and any other Customer Materials supplied or made available for use by Forfusion under this Agreement ("**Customer IPR**") shall be

and remain the property of the Customer (or its licensors). The Customer hereby grants to Forfusion a non-exclusive, royalty free and non-transferable licence to use the Customer's IPR solely for the purpose of performing its obligations and exercising its rights under this Agreement (including any applicable Statement of Work).

- 12.2. All Intellectual Property Rights in any Forfusion Software or any other Forfusion Materials or which may be developed or created or arise from the performance by Forfusion of the Services ("**Forfusion IPR**") shall be and remain the property of Forfusion (or its licensors). Subject always to any applicable Forfusion Software Licence Terms or any other applicable licence terms and restrictions detailed in any applicable Statement of Work, Forfusion grants to the Customer a non-exclusive, non-transferable licence to use such Forfusion IPR solely for the purpose of using the relevant Products, Services and/ or Software supplied by Forfusion under this Agreement for the purposes for which they were supplied (as detailed in any applicable Statement of Work or reasonably contemplated by the parties at the time the same were delivered).
- 12.3. All Intellectual Property in any Third Party Software shall be and remain the property the relevant third party software supplier. The Customer agreed to abide by and respect any applicable Third Party Licence Terms as further described in clause 8.3.

13. Intellectual Property Claims

- 13.1. Subject to clause 13.2, 13.3 and 13.4 below, Forfusion shall defend at its own expense any claim brought against the Customer alleging that the use of any Forfusion IPR or the Services in accordance with the terms of this Agreement (including any applicable Statement of Work) infringes the Intellectual Property Rights of a third party (an "**Intellectual Property Claim**") and Forfusion shall pay all costs and damages awarded or agreed to in settlement of an Intellectual Property Claim, provided that the Customer:
- 13.1.1. furnishes Forfusion with prompt written notice of the Intellectual Property Claim;
 - 13.1.2. provides Forfusion with reasonable assistance in respect of the Intellectual Property Claim;
 - 13.1.3. gives to Forfusion the sole authority to defend or settle the Intellectual Property Claim.
- 13.2. If, in Forfusion's reasonable opinion, the use of the Forfusion IPR or Services are or may become the subject of an Intellectual Property Claim then Forfusion may either:
- 13.2.1. obtain for the Customer the right to continue using the Forfusion IPR or Services which are the subject of the Intellectual Property Claim; or

13.2.2. replace or, modify the Forfusion IPR or Services which are the subject of the Intellectual Property Claim so they become non-infringing.

13.3. If the remedies set out in clause 13.2 above are not in Forfusion's opinion reasonably available, then Forfusion may terminate the applicable Statement of Work in which event the Customer shall return the Forfusion IPR and/ or cease using any Services which are the subject of the Intellectual Property Claim and Forfusion shall refund to the Customer the corresponding portion of any fees paid for such Forfusion IPR or Services, as normally depreciated.

13.4. Forfusion shall have no liability for any Intellectual Property Claim resulting from;

13.4.1. the use of any Forfusion IPR or Services in combination with any equipment or programs not supplied by Forfusion (including any Customer Hardware, Customer Software or Customer Materials); or

13.4.2. any modification of any Forfusion IPR or Services by a party other than Forfusion or its authorised agent; or

13.4.3. Forfusion using or following any specifications, requirements, instructions, software or materials supplied by the Customer to Forfusion for the purposes of this Agreement (including any Customer Software, Customer Materials or Customer Hardware); or

13.4.4. any Hardware or other third party manufactured Products or Third Party Software supplied by Forfusion under this Agreement, (in respect of which Forfusion's sole obligation shall be as set out in clause 11.5).

13.5. The Customer shall defend at its own expense any claim brought against the Forfusion alleging that the use of any Customer Hardware, Customer Software or other Customer Materials in accordance with the terms of this Agreement (including any applicable Statement of Work) infringes the Intellectual Property Rights of a third party and the Customer shall pay all costs and damages awarded or agreed to in settlement of an such claim.

14. Confidentiality

14.1. Each of the Parties hereby undertakes to the other:

14.1.1. to keep confidential all Confidential Information concerning the business and affairs of the other that it shall have obtained or received as a result of the discussions leading up to or the entering into or performance of this Agreement and each Statement if Work or any subsequent agreement contemplated hereunder;

- 14.1.2. not (without the other's prior written consent) to disclose the Confidential Information of the other in whole or in part to any other person except those of its employees, agents and sub-contractors involved in the subject matter of this Agreement (and in the case of Forfusion, to any advisers or consultants) and who have a need to know the same; and
 - 14.1.3. to use the Confidential Information solely in connection with the subject matter of this Agreement and not for its own benefit or the benefit of any third party.
- 14.2. The provisions of clause 14.1 shall not apply to any Confidential Information to the extent that it is:
 - 14.2.1. information which is already in or becomes part of the public domain without fault of the recipient;
 - 14.2.2. information which can be shown to have been in the possession of the recipient before disclosure by the discloser;
 - 14.2.3. information which can be shown to have been generated independently by the recipient without any benefit from or use of the Confidential Information;
 - 14.2.4. information which comes into the possession of the recipient from any third party without breach of any duty of confidence; or
 - 14.2.5. information which the discloser expressly states in writing is not confidential.
- 14.3. The obligations in this clause 14 shall not prohibit disclosure to the extent that such disclosure is required by law (including by a regulatory body) or ordered by a court of competent jurisdiction. In the event that the recipient is required to make such a disclosure it shall immediately notify the discloser (unless it is prohibited by law from doing so).
- 14.4. Each of the Parties hereby undertakes to the other to make all relevant employees, agents and sub-contractors aware of the confidentiality of the Confidential Information and the provisions of this clause 14 and without limitation to the forgoing to take all such steps as shall from time to time be necessary to ensure compliance by its employees, agents and sub-contractors with the provisions of this clause 14.

15. Data Protection

- 15.1. Each of the Parties agrees to comply with its obligations under the Data Protection Laws.
- 15.2. Forfusion may, in connection with this Agreement, collect the names, contact details and other personal data of/ concerning personnel of the Customer with whom it deals and use and process

the same for the purposes of managing its relationship with the Customer and performing its obligations under this Agreement. Forfusion shall act as "controller" (as defined under Data Protection Laws) in this respect and all such processing shall be in accordance with Forfusion's Privacy Statement in force from time to time details of which can be viewed at <https://www.forfusion.com/policies-statements/privacy-statement> or which is available from Forfusion on request ("**Forfusion Privacy Statement**").

- 15.3. In the event that Forfusion processes any personal data on behalf of the Customer in the performance of its obligations under this Agreement, acting as a "processor" (as defined under Data Protection Laws), then the parties shall comply with their respective obligations set out in Forfusion's Data Processing Terms in force from time to time ("**Forfusion Data Processing Terms**"), details of which are published at <https://www.forfusion.com/policies-statements/data-processing-terms> (Version 1.0) or which are available from Forfusion on request;
- 15.4. The Customer hereby warrants that it has obtained all necessary consents permissions and used appropriate fair processing notices (as may be required by the Data Protection Laws) to enable any personal data to be disclosed to Forfusion and processed by Forfusion as contemplated under this Agreement.

16. [Limitation of Liability](#)

- 16.1. Nothing in this Agreement shall exclude or limit either Party's liability to the other for:
- 16.1.1. death or personal injury caused by its negligence; or
 - 16.1.2. any breach of any obligations under Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or
 - 16.1.3. any fraudulently made statement or representation; or
 - 16.1.4. any other liability which cannot be excluded or limited under applicable law.
- 16.2. Where service credits are payable under any particular Statement of Work for a failure on the part of Forfusion to meet any agreed service levels or key performance indicators, Forfusion's liability in respect of any such failure shall be limited to the amount of the service credit specified in the applicable Statement of Work and any such service credits awarded shall be in full and final settlement of Forfusion's liability in relation to the event giving rise to the service credit claim.
- 16.3. Forfusion shall not be liable to the Customer under or in connection with this Agreement or any Statement of Work, for any loss of data, loss of use, lost profits, loss of revenue, loss of contracts, loss of anticipated savings, loss of or damage to goodwill or reputation.

- 16.4. Forfusion shall not be liable to the Customer under or in connection with this Agreement or any Statement of Work for any indirect, incidental, consequential or special loss.
- 16.5. Subject to clause 16.1, Forfusion's total aggregate liability for all claims arising under or in connection with this Agreement in any Contract Year (whether in contract, tort, negligence, statute or otherwise) shall be limited to:
- 16.5.1. in respect of any claim(s) relating to any Statement of Work (including any claim(s) made in respect of any Products, Services or Software supplied under such Statement of Work), 100% of the total aggregate Fees payable under the applicable Statement of Work in the Contract Year when the claim arose; and
- 16.5.2. in respect of any claim which is not covered under clause 16.5.1, 100% of the total aggregate Fees payable under this Agreement in the Contract Year when the claim(s) arose.
- 16.6. The Parties acknowledge and agree that the limitations contained in this clause 16 are reasonable in the light of all the circumstances. All liability that is not expressly assumed in this Agreement is excluded. These limitations will apply regardless of the form of action, whether under statute, in contract or tort including negligence or any other form of action. For the purposes of this clause, 'Forfusion' includes its directors, officers, employees, sub-contractors and suppliers who shall all have the benefit of the limits and exclusions of liability set out above in terms of the Contracts (Rights of Third Parties) Act 1999.

17. Term and Termination

- 17.1. This Agreement shall commence or be deemed to have commenced on the Commencement Date and (subject to earlier termination in accordance with clause 17.1 or 17.2) shall continue for a period of one (1) year the ("**Initial Term**") following which it shall automatically continue in force for further consecutive periods of one (1) year (each a "**Renewal Term**") unless and until either party gives not less than six (6) months prior written notice of its intention not to renew the Agreement at the end of the Initial Term or any Renewal Term. Notwithstanding any termination of this Agreement pursuant to this clause 17.1, each Statement of Work concluded under this Agreement shall (subject to earlier termination in accordance with any other term of this Agreement or by agreement between the parties) continue in force in accordance with its own terms or until the relevant Products, Services or Software to be supplied or performed under it have been supplied or performed in full.
- 17.2. Either party may terminate this Agreement and all Statements of Work concluded under it, forthwith on giving notice in writing to the other if the other party commits any serious breach of any term of this Agreement which impacts to a material extent on all such Statements of Work,

and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing from the other to do so, to remedy the breach. Either party may additionally terminate any individual Statement of Work concluded under this Agreement, forthwith on giving notice in writing to the other if the other party commits any serious breach of that Statement of Work, and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing from the other to do so, to remedy the breach.

- 17.3. Either Party may terminate this Agreement and/ or any Statements of Work concluded under it, if the other party is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding to the foregoing in any applicable jurisdiction in consequence of debt.

18. Effect of Termination

- 18.1. Any termination or expiry of this Agreement and/ or any Statements of Work shall be without prejudice to any other rights or remedies a Party may be entitled to hereunder and shall not affect any accrued rights or liabilities of either Party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 18.2. (Subject to clause 19) upon the termination or expiration of this Agreement and/ or any Statements of Work:
- 18.2.1. Forfusion shall immediately cease providing any Products or Services or Software which are the subject of any terminated or expired Statements of Work;
- 18.2.2. the Customer's right to use all Forfusion Software and/ or Third Party Software provided by Forfusion under any terminated or expired Statements of Work shall immediately cease (unless the licences granted to the Customer to use such Forfusion Software and/ or Third Party Software are specifically expressed to extend beyond the termination or expiry of the relevant Statement of Work); and
- 18.2.3. each Party shall on the written request from the other Party either: (a) return to the other all Confidential Information and other property belonging to the other Party which was delivered in connection with any terminated or expired Statements of Work; or (b) (at the

request of the other Party) destroy or delete and certify the destruction or deletion of such Confidential Information or property.

19. Exit Management

- 19.1. Concurrently with the termination or expiration of any this Agreement and/or any Statement of Work for any reason whatsoever (other than a termination effected by Forfusion pursuant to clause 17.1 or 17.2) Forfusion shall provide reasonable exit management assistance, subject to agreement of a mutually acceptable exit plan as well as the professional fees payable to Forfusion for any assistance provided by it in executing the exit plan.
- 19.2. The Customer may request the Parties to agree to or update an exit plan at any time during the term of a Statement of Work subject to the Customer bearing Forfusion's reasonable costs for producing or updating such exit plan.

20. TUPE

- 20.1. The Parties confirm that it is not intended that any contract of employment of any employee of the Customer, or any Group company of the Customer, or any contractor of such parties (a "**Customer Party**") shall be transferred to Forfusion, or any Group Company of Forfusion, or any contractor of such parties (a "**Forfusion Party**") on entering into this Agreement or any Statement of Work or by virtue of any other arrangements or activities set out in, or carried on under, this Agreement.
- 20.2. If any contract of employment of any person employed by a Customer Party has effect, or is alleged to have effect, as if originally made with a Customer Party, or transfers, or is alleged to have transferred, to a Forfusion Party, under TUPE (or any equivalent legislation), then:
- 20.2.1. the Forfusion Party shall within ninety (90) days of becoming aware of such effect or such allegation give notice to the Customer of the effect or such allegation and the Customer shall have a period of twenty one (21) days from the date of such notification to make an offer in writing, or to procure that any Customer Party make an offer in writing, to employ such persons ("**First Offer Period**");
- 20.2.2. within twenty one (21) days from the expiry of the First Offer Period, the Forfusion Party shall be entitled to terminate the employment of any such person or notify the Customer that it is not the employer of such person (as appropriate) and the Customer shall indemnify the Forfusion Party from and against any losses and expenses (to include at least, damages, notice pay and compensation) arising out of the termination of the contract of employment of such person and the employment of such person up to the date of such termination.

21. Non-Solicitation

- 21.1. Neither Party shall, without the prior written consent of the other Party, at any time whilst this Agreement (and any Statements of Work concluded under it) remain in force, and for a period of twelve (12) months thereafter solicit or entice away from the other Party or employ or attempt to employ or engage in any capacity any person who is, or has been, engaged as an employee, consultant or sub-contractor of the other Party and who has been engaged in the performance of any activities under this Agreement (or any Statement of Work concluded under it).

22. Dispute Escalation and Resolution

- 22.1. In the event that any disagreement or difference of opinion arises out of this Agreement and/ or in relation to a Statement of Work the matter shall be disposed of as follows:
- 22.1.1. the Party raising the disputed issue shall provide the other Party with a brief written summary of the issue in dispute;
- 22.1.2. Forfusion's Service Manager (or equivalent) and the Customer's Service Manager (or equivalent) shall meet to seek resolution. In the event they do not meet within ten (10) Business Days of the first discussion of the matter in dispute or should they not be able to resolve the matter within ten (10) Business Days of first meeting, then clause 22.1.3 shall apply;
- 22.1.3. the dispute shall be promptly referred by either Party to the next level of management for each of the Parties; and
- 22.1.4. if within 10 Business Days of the matter having been escalated in accordance with clause 22.1.3 no agreement has been reached as to the matter in dispute, this dispute resolution process shall be deemed to have been exhausted in respect of the matter in dispute, and each Party shall be free to pursue the rights granted to it by this Agreement in respect of such matter without further reference to the dispute resolution process.
- 22.2. This clause 22 shall not prevent either Party from seeking injunctive relief in the case of any breach or threatened breach by the other of any obligation of confidentiality or any infringement of Intellectual Property Rights, nor prevent Forfusion taking action against the Customer for non-payment of the Fees or any expenses.

23. Force Majeure

- 23.1. Neither Party shall be liable for any failure or delay in its performance of its obligations under this Agreement (including any Statements of Work) due to any cause beyond its reasonable control

including, but not limited to, act of war, acts of foreign enemies, acts of God, natural disaster, embargo, riot, civil disturbance, acts of terrorism, sabotage, labour shortage/illness of personnel or dispute (not involving the workforce of the Party so prevented), action or decrees of governmental bodies, malicious acts of third parties (e.g. "hacking", spreading viruses, denial of service attacks etc.) or failure of the internet or telecommunications systems.

- 23.2. Upon the occurrence of a Force Majeure Event, the affected Party shall give the other Party prompt notice of such cause and shall use its reasonable endeavours to correct promptly such failure or delay in performance. Upon receipt of such notice, all obligations under this Agreement (other than payment and confidentiality obligations) shall be immediately suspended for the duration of the Force Majeure Event.
- 23.3. Where performance of any obligations are delayed by a Force Majeure Event then the Party affected shall have such additional period as is reasonable in the circumstances to perform its obligations. In the event that the Force Majeure Event continues for a period in excess of ninety (90) days then either party may terminate any affected Statements of Work immediately by serving written notice on the other.

24. Miscellaneous

- 24.1. The relationship of the Parties shall be that of independent contractors. Nothing in this Agreement or any Statement of Work shall be construed to constitute a partnership between or joint venture of the Parties, nor shall either Party be deemed the agent or employee of the other or have the right to bind the other in any way without the prior written consent of the other.
- 24.2. All notices given under this Agreement shall be in writing and shall be deemed to have been duly given: when delivered, if delivered by messenger during Business Hours; when sent, if transmitted by facsimile transmission (receipt confirmed) during Business Hours; when sent, if transmitted by email (provided no delivery failure notification is received); or on the 3rd Business Day following posting, if posted by first class or recorded post postage pre-paid. Such notices shall be in writing, addressed and delivered, in the case of Forfusion, to Forfusion, at the address stated at the beginning of this Agreement or to the Forfusion Service Manager's email address or fax number and, in the case of the Customer, to the Customer, at the address stated at the beginning of this Agreement, or to the Customer's Service Manager's fax number or email address.
- 24.3. Save as expressly provided in clause 16.6 and 19, a person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

- 24.4. Neither Party may assign this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld) except that Forfusion shall be entitled to assign this Agreement (or any of its rights or obligations under it) to any of its Group companies from time to time or to any person or entity that acquires or succeeds to all or substantially all of Forfusion's business or assets. Forfusion may additionally sub-contract the performance of any of its obligations under this Agreement, at its discretion and without needing to obtain the consent of the Customer, provided that it shall remain responsible for the performance of such obligations in accordance with this Agreement.
- 24.5. If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.
- 24.6. If so requested by either Party the other Party shall co-operate to issue a joint press release announcing this Agreement. Forfusion shall have the non-exclusive right and licence to use the Customer's name and trademarks as part of Forfusion's Customer portfolio or Customer list, including case studies and a general description of the Products, Services and Software provided to the Customer by Forfusion under this Agreement.
- 24.7. Failure by either Party at any time to require the performance of any provision of this Agreement shall not affect the right of such Party to require full performance thereof at any time thereafter.
- 24.8. No variation of this Agreement (or any Statement of Work) shall be valid unless it is in writing, it expressly states that it varies this Agreement (or a Statement of Work) and it is signed by authorised representatives of each party.
- 24.9. This Agreement (together with any Statements of Work) concluded under it, constitutes the complete and exclusive understanding of the Parties with respect to the subject matter hereof, and supersedes all prior sales proposals, negotiations, agreements, authorisation to proceed letters and other representations or communications, whether oral or written except in respect of any fraudulent representation made by either Party.
- 24.10. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 24.11. 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).

This Agreement has been entered into on the date of the last signature appearing below.

Authorised to sign for and on behalf of **Forfusion Limited**

Signature:

Name:

Position:

Authorised to sign for and on behalf of [Client Name]

Signature:

Name:

Position:

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Transforming business, together.

forfusion.com