
MASTER SOFTWARE AND SERVICES AGREEMENT

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This Master Software and Services Agreement is deemed effective the [XX] day of [XXXXXXXX] 202[] (the “**Effective Date**”)

Between

- (1) **Fusion Business Solutions (UK) Ltd**, with company number 03508523 whose registered office is 55 Staines Road West, Sunbury-on-Thames, TW16 7AH (the “**Supplier**”); and
- (2) [Client name] with company number [xxxxx] whose registered address is at [Client registered address] (the “**Client**”)

Recitals

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

Agreement

1. Definitions and Interpretation

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

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

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

"Data Controller"	has the meaning set out in the DPA.
"Data Processor"	has the meaning set out in the DPA.
"DPA"	means the Data Protection Act 2018.
"Data Protection Legislation"	means the DPA, the Data Protection Directive (95/46/EC), the General Data Protection Regulations (Regulation (EU) 2016/679) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner and all updates and amendments thereto.
"Data Subject"	means an individual who is the subject of Personal Data.
"Data Transfer Agreement"	means the Standard Contractual Clauses for Data Processors established in third countries pursuant to Commission Decision (2010/87/EU) of 5 February 2010 under the EU Directive (95/46/EC) or such other Commission decision as may replace that Commission Decision from time to time.
"Documentation"	means all documentation (including specifications, technical, systems and user manuals) in eye-readable form (whether in hard copy or electronic form) which enables proper use of, or otherwise relate to, the Software and/or the Services.
"Group"	means a legal entity in which a Party directly or indirectly owns and controls and continues to own and control fifty percent (50%) or more of the voting stock or share or other control mechanism.
"Intellectual Property Rights"	means all patents, design rights (whether registered or unregistered), trademarks, service marks, domain names, trade and business names, publicly available and registered applications for any of the foregoing, copyrights, inventions, confidential information, trade secrets, know-how and registered database rights including all applications for the same, all extensions and renewals to any of them and publicly available and registered applications for any of them and any right or form of protection of a similar nature and having equivalent or similar

effect to any of them which may subsist anywhere in the world.

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

1.2. In this Agreement:

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

1.3. A reference to any Party shall include a reference to the legal successors to the whole part of its undertaking and its permitted assignees.

- 1.4. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time.
- 1.5. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

2. Commencement

- 2.1. This Agreement shall be deemed to have commenced upon the Effective Date and shall continue unless or until terminated in accordance with its terms.
- 2.2. Each SOW shall commence on the relevant SOW commencement date and shall remain in full force for the relevant SOW term ("SOW Term") unless stated otherwise by the Parties or terminated earlier in accordance with the terms of this Agreement.

3. Operation of this Agreement

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

4. Supplier's Obligations

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

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

5. The Client’s Obligations and Rights of Access

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

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

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

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

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

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

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

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

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

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

5.3.1. to extend the timeframe;

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

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

6. Charges

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

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

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

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

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

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

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

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

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

Company Name:	
Company Address:	
E Mail Address:	
Attn Of:	

7. Warranties

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

- 7.1.1. repair the Software; or
- 7.1.2. replace the Software; or
- 7.1.3. terminate the Licence immediately by notice in writing to the Client and refund any of the Charges paid by the Client as at the date of termination (less a reasonable sum in respect of the Client's use of the Software to the date of termination) upon return of the Software and all copies thereof,

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

- 7.2. The Supplier does not warrant that the use of the Software will be uninterrupted or error-free.
- 7.3. The Client accepts responsibility for the selection of the Software and Authorised Software to achieve its intended results and acknowledges that the Software and Authorised Software has not been developed to meet the individual requirements of the Client.
- 7.4. The Client acknowledges that any open-source software provided by the Supplier is provided "as is" and expressly subject to the disclaimer in Clause 7.5.
- 7.5. All other conditions, warranties or other terms which might have effect between the Parties or be implied or incorporated into the Licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care to the maximum extent permitted by law.
- 7.6. The Supplier will perform the Services and the Support Services with reasonable skill and care and in accordance with industry best practices. If any of the Services and/or the Support Services are not provided in accordance with this warranty and the Client notifies the Supplier in writing of the non-compliance with this warranty within two (2) months after performance, the Supplier will (at its own cost and expense) promptly re-perform the Service and/or Support Services.
- 7.7. The Supplier gives no warranty in respect of, and is not responsible for, any third-party products including the Authorised Software but shall, to the extent possible, transfer to the Client the benefit of any third-party warranty that it has acquired.

- 7.8. The Supplier warrants that:
- 7.8.1. it has full capacity, power and authority (including rights under third party Intellectual Property Rights) to enter into the Agreement and to perform it in accordance with its terms;
 - 7.8.2. it shall apply ethical work practices in the provision of the Services and Support Services to be supplied hereunder;
 - 7.8.3. it shall comply with all applicable anti-slavery and human trafficking laws and regulations from time to time in force including but not limited to the Modern Slavery Act 2015 and will maintain throughout the term of this Agreement an anti-slavery policy;
 - 7.8.4. the provision of the Software (but excluding the Authorised Software) Services and the Support Services shall comply with all applicable laws, enactments, regulations, orders, standards and other similar instruments which the Supplier is aware (having undertaken appropriate due diligence) are applicable or which it is notified by the Client are applicable; and
 - 7.8.5. the employees performing the Services and the Support Services shall be properly trained and qualified to perform such services.

8. Intellectual Property Rights

- 8.1. Subject to Clause 8.2, the Parties acknowledge that all Intellectual Property Rights in and to all Software, data and other materials developed in the course of providing the Services and/or the Support Services ("**Created IPR**"), shall belong to the Supplier. The Client hereby assigns to the Supplier all present and future right, title and interest in any and all Created IPR. If and to the extent that any Intellectual Property Rights in any Created IPR do not first vest in the Supplier, the Client shall, where it is able to do so, procure that the individuals who create such Intellectual Property Rights shall assign the same to the Supplier.
- 8.2. The Intellectual Property Rights in all Documentation, templates and other materials in existence prior to the date of the Agreement, including the Software and the Authorised Software shall be governed in its entirety by this Agreement and/or the applicable EULA. ("**Pre-existing Material**") shall remain vested in the Supplier or its licensors. The Supplier hereby grants to the Client a non-exclusive, non-transferable, irrevocable and royalty-free licence to use the Pre-existing Material for the Client's internal business purposes only.
- 8.3. All rights not granted by this Agreement are expressly reserved.
- 8.4. Subject to Clause 8.5, the Supplier shall indemnify and shall keep fully indemnified the Client against all actions, claims, proceedings, damages, costs, and expenses arising from any claim that the use by the Client of any Software, Created IPR or Pre-Existing Material infringes the Intellectual Property Rights of any third party, provided that the Client notifies the Supplier as soon as reasonably practicable in writing of any action and related claims.
- 8.5. In the event of an Intellectual Property Rights claim, the Supplier may at its option follow the actions as set out in Clause 7.1.1 or 7.1.2 or 7.1.3.
- 8.6. The Supplier shall not be liable under Clause 8.4 and to the extent the alleged infringement is based on:

- 8.6.1. the use of the Software or Documentation in combination with products not supplied, or in a manner for which the Software or Documentation was not designed, or approved by the Supplier where such a combination gives rise to the infringement; or
 - 8.6.2. any modification of the Software or Documentation other than by or on behalf of or with the written approval of the Supplier; or
 - 8.6.3. compliance with designs or specification furnished by or on behalf of the Client; or
 - 8.6.4. the Client continuing the allegedly infringing activity after being notified or after being provided with modifications that would have avoided or mitigated the alleged infringement.
- 8.7. The provisions set out in Clause 8.5 and 8.6 states the entire liability of the Supplier for infringement of Intellectual Property Rights arising out of or in connection with the use of the Software or Services supplied.

9. Limitation of liability and Insurance

- 9.1. Neither Party excludes or limits its liability in respect of death or personal injury arising from its negligence or that of its servants or agents or for fraudulent misrepresentation.
- 9.2. Neither Party shall be liable to the other under any circumstances for any special, indirect or consequential loss, including loss of profit or potential profit.
- 9.3. Upon the written request of the Client, which may not be made more than once in any twelve (12) month period, the Supplier will provide confirmation from its brokers to the Client that it has in force a professional indemnity insurance policy suitable to cover the obligations and liabilities assumed by the Supplier under this Agreement. The Supplier shall, during the subsistence of this Agreement and for one (1) year thereafter, maintain in force such professional indemnity insurance policy.
- 9.4. In respect of any other loss or damage which in any way arises out of or is connected with the performance or non-performance by the Supplier or its personnel, agents and sub-contractors, of any of its obligations and indemnities under this Agreement, the maximum aggregate liability of the Supplier in any year of this Agreement (meaning the period of twelve (12) months from the Effective Date and any subsequent period of twelve (12) months thereafter) will be limited in total to the greater of one hundred thousand pounds British pound sterling (£100,000) or one hundred percent (100%) of the Charges payable under this Agreement in any year.

10. Confidentiality

- 10.1. Each Party agrees and undertakes to use the other Party's Confidential Information solely in the performance of its business obligations under this Agreement, and to treat and safeguard such Confidential Information as private and confidential during the currency of this Agreement and for a period of six (6) years after its termination for whatever reason.
- 10.2. The Client shall not disclose the Supplier's Confidential Information to any person other than to its directors, employees, temporary employees, independent contractors, agents, outsourcers, sub-contractors, consultants, advisers or Group ("**Client Recipients**") for the sole purpose of, and to the extent necessary to, enable the Client Recipients to perform, or to cause to be performed, or to enforce any of the Client's rights and obligations under this Agreement. The Client shall ensure that each Client

Recipient is informed of the confidential nature of the Confidential Information and is subject to obligations of confidentiality sufficient to enable the Client to comply with its obligations under this Clause 10.

- 10.3. The Supplier shall not disclose the Client's Confidential Information to any person except to its employees temporary employees, independent contractors, agents, outsourcers, sub-contractors, consultants, advisers or Group ("**Supplier Recipients**") who have a need to know such information for the sole purpose of, and to the extent necessary to, enable such Supplier Recipients to perform, or to cause to be performed, or to enforce any of the Supplier's rights and obligations under this Agreement. The Supplier shall ensure that such Supplier Recipients are informed of the confidential nature of the Confidential Information and are subject to obligations of confidentiality sufficient to enable the Supplier to comply with its obligations.
- 10.4. If a Party becomes compelled to disclose the other Party's Confidential Information to any governmental or regulatory authorities, or as required by law or court order, the Party compelled to disclose shall inform the other Party, in writing, of such fact or obligation as soon as reasonably possible after it becomes aware of it and, if possible, before any Confidential Information is disclosed. The Party compelled to disclose shall ensure, insofar as it is able to procure the same, that any such disclosure will be limited to the minimum amount of Confidential Information required to satisfy that disclosure obligation. Each Party agrees to assist and co-operate in any appropriate action, which the other Party may decide to take.
- 10.5. On the termination of this Agreement or any SOW, each Party shall return to the other any Confidential Information within its possession or control as may belong to the other Party, except that the Client may retain a copy of the Confidential Information solely for the purposes of record keeping and to ensure compliance with its obligations contained within this Agreement.
- 10.6. The provisions of this Clause 10 shall not apply to any information which:
 - 10.1.1. is or becomes public knowledge other than by breach of this Clause 10;
 - 10.1.2. is in the possession of the receiving Party without restriction in relation to disclosure before the date of receipt from the disclosing Party;
 - 10.1.3. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
 - 10.1.4. is independently developed without access to the Confidential information.

11. Data Protection and Data Processing and Security

- 11.1. The Parties acknowledge that for the purposes of the Agreement, the Client is the Data Controller, and the Supplier is the Data Processor in respect of any Personal Data.
- 11.2. The Parties shall at all times comply with all applicable Data Protection Legislation in force from time to time including the DPA, to the extent that it applies, the General Data Protection Regulations (Regulation (EU) 2016/679) (the "**GDPR**"), and all related guidance and codes of practice issued by applicable supervisory authorities and any equivalent legislation amending or replacing the GDPR or the DPA.
- 11.3. Each Party warrants that they:

- 11.3.1. shall not by any act or omission put the other party in breach of the Data Protection Legislation;
 - 11.3.2. shall not transfer or process any Personal Data to any other Party or outside of the European Economic Area without the other Party's express written consent and, where consent is given, shall only undertake such transfer or processing in accordance with the other Party's' instructions;
 - 11.3.3. shall keep all Personal Data confidential and provide appropriate technical and organisational measures against unauthorised or unlawful processing, accidental loss or destruction or damage and it shall only deal with the Personal Data for the purposes, and in accordance with its obligations, set out in this Agreement;
 - 11.3.4. shall take all reasonable steps to ensure the reliability of any of its personnel who have access to Personal Data processed in connection with this Agreement;
 - 11.3.5. shall provide such information and, on reasonable prior notice, allow for and contribute to audits, including inspections by an auditor mandated by any regulatory authority as is necessary to ensure compliance with the Data Protection Legislation;
 - 11.3.6. shall not use any sub-contractors to process Personal Data, unless the other Party has issued its prior written consent and the Supplier shall ensure that sub-contracts entered into with approved sub-contractors shall include provisions equivalent to those in this Clause 11; and
 - 11.3.7. shall on termination of this Agreement, and at any time on the other Party's request, immediately either return the Personal Data in the format requested or destroy the Personal Data (including all copies of it) and confirm in writing that it has complied with this Clause 11.3.7.
- 11.4. Each Party shall notify the other promptly if it receives:
- 11.4.1. a request from a Data Subject; or
 - 11.4.2. a complaint or request relating to the rights of a Data Subject under the Data Protection Legislation; or
 - 11.4.3. any other communication relating directly or indirectly to the processing of any Personal Data in connection with this Agreement; and
- in each case, each Party shall promptly provide its full co-operation and assistance as is reasonably required in order to respond to and resolve the request, complaint or other communication within any time frames imposed by applicable Data Protection Legislation.
- 11.5. Each Party shall:
- 11.5.1. notify the other Party promptly upon becoming aware of a Personal Data Breach; and
 - 11.5.2. following notification, provide such information and assistance as is reasonably required in order for the other Party to notify the Personal Data

Breach to the Information Commissioner and/or any Data Subjects, in accordance with the DPA or GDPR.

- 11.6. The Data Processor shall process the Personal Data only in accordance with the Data Controller's instructions and shall not process the Personal Data for any purpose other than those expressly authorised by the Data Controller and to the extent necessary to provide the Services and in accordance with this Agreement.
- 11.7. The Data Processor shall take reasonable steps to ensure the reliability of all its employees who have access to Personal Data.
- 11.8. The Data Processor shall:
 - 11.8.1. take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure an appropriate level of security; and
 - 11.8.2. reduce the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage.
- 11.9. The Supplier shall implement the data protection and security measures set out in Schedule 3.
- 11.10. Each Party agrees to indemnify and keep indemnified and defend at its own expense the other Party against all direct costs, claims, damages or expenses incurred by the breaching Party or for which the non-breaching Party may become liable due to any failure by the breaching Party or its employees or agents to comply with any of its obligations under this Agreement.
- 11.11. The Data Controller acknowledges that the Data Processor is reliant on the Data Controller for direction as to the extent to which the Data Processor is entitled to use and process the Personal Data. Consequently, the Data Processor shall not be liable for any claim brought by a Data Subject or any regulator arising from any action or omission by the Data Processor, to the extent that such action or omission resulted directly from the Data Controller's instructions.
- 11.12. The Data Processor may authorise a subcontractor to process the Personal Data provided that the subcontractor's contract is on terms which are substantially the same as those set out in this Agreement with the prior approval of the Data Controller.

12. Compliance with relevant terms

- 12.1. Each party shall:
 - 12.1.1. comply with all applicable laws, statutes, regulations and codes; to anti-bribery and anti-corruption legislation including but not limited to the Bribery Act 2010 and the Modern Slavery Act 2015 ("**Relevant Terms**");
 - 12.1.2. have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Relevant Terms, and will enforce them where appropriate;

12.1.3. report to the other any request or demand for any undue financial or other advantage of any kind received by a Party in connection with the performance of this Agreement;

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

13. Termination and Consequences of Termination

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

13.1.1. material breach of any term of this Agreement, any SOW or Schedule 2 which the Party in breach has failed to remedy (where it is capable of remedy) within thirty (30) days of receipt of notice of the breach, provided that, the material breach of a SOW or any Support Services shall only entitle the other Party to terminate that SOW or those Support Services to which the breach relates to, and this Agreement shall remain in force in respect of those SoW's or Support Services which is not in material breach; or

13.1.2. where one Party has a receiver or administrative receiver appointed or passes a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect or if that Party becomes subject to an administration order or enters into any voluntary arrangement with its creditors or ceases or threatens to carry on business.

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

13.3. This Agreement or any SOW or Support Services may be terminated by either Party subject to a written notice period of three (3) months.

13.4. Notwithstanding Clause 13.3, the Client will not be permitted to terminate any Professional Services SOW within the first six (6) months of the commencement date of that SOW.

13.5. In accordance with Clause 2.2, the Support Services will be provided for the SOW Term and Client may thereafter only terminate the Support Services three (3) months prior to the end of the SOW Term. For the avoidance of doubt, any Support Services are in effect non-cancellable within the contracted support period.

13.6. On termination of this Agreement, all SOWs shall terminate and both parties shall work together in good faith to complete all outstanding Services. Both parties shall endeavour from the date of cessation of the Agreement to minimise all costs to complete any relevant SOW and to agree a final account upon notification of cessation of this Agreement.

13.7. On termination of this Agreement or any SOW the Parties agree that:

13.7.1. Client shall, upon receipt of a written request from the Supplier:

i. immediately deliver up to the Supplier all Created IPR and other materials created up to and including the date of termination and

any property belonging to the Supplier which may be in the possession of, or under the control of the Client; and

- ii. undertake to procure from its personnel (or their personal representatives) that they will immediately deliver up to the Supplier such Created IPR, other materials created and any property as may be in the possession of or under the control of its Personnel or their personal representatives;

13.7.2. Supplier may provide the Client (as a cost to Client) with all assistance reasonably required to migrate the ongoing provision of any Services to an alternative supplier.

13.8. To the extent that any of the Created IPR or other materials and property are in electronic form and contained on non-detachable storage devices, the Client will provide the Supplier with unencrypted copies of the same on magnetic media and will destroy and delete copies so held.

13.9. In the event that the Agreement (in whole or in part) is terminated by either Party pursuant to Clause 13.3, 13.4 and 13.5, the Client will pay to the Supplier all outstanding Charges (apportioned on a daily basis) relating to the Software or Services undertaken in accordance with Schedule 2 or any and each SOW by the Supplier up until the date of such termination and including any applicable notice period. The Client will also pay the costs of any goods and materials ordered at the request of the Client or as necessitated in the normal course of business in relation to the work for which the Supplier has paid or is legally obliged to pay (for the avoidance of doubt the Client will pay all support and maintenance Charges until the end of the term of the Support Services) whether the Agreement or any SOW has been terminated or not.

13.10. Any termination of this Agreement, any SOW or the Services or Support Services (howsoever caused) shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force, or the continuance in force, of any provision of the same which is expressly or by implication intended to come into or continue in force on or after such termination, including "Definitions and Interpretation" "Warranties", "Intellectual Property Rights", "Limitation on liability and Insurance" and "Confidentiality".

14. Change Control

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

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

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

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

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

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

15. Assignment and Sub-Contracting

15.1. Save as expressly set out in this Agreement, the Client may not assign or transfer or sub-contract any of its rights or obligations under this Agreement without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed).

15.2. The Supplier may not assign any of its rights or obligations under this Agreement without the prior written consent of the Client (such consent not to be unreasonably withheld or delayed), save that no such consent shall be required in the event of an assignment by the Supplier to any member of its Group or to any person that acquires the whole or substantially the whole of the business or assets.

16. Notices

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

If to Supplier:

Name: Contracts Manager

Address: Suite 19, 61 Victoria Road, Surbiton, Surrey KT6 4JX

Email: legal@fusiongbs.com

If to Client:

Name:

Address:

E Mail:

17. Waiver

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

18. Invalidity and Severability

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

and enforceable and as nearly as possible to reflect the intentions of the Parties embodied in this Agreement including the illegal or unenforceable provision or part.

19. Cumulation of Remedies

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

20. Publicity

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

21. Counterparts

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

22. Third Party Rights

Unless expressly stated otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement.

23. Non-Solicitation

Neither Party shall (except with the prior written consent of the other) during the term of this Agreement, and for a period of twelve (12) months thereafter, solicit the services of any member of personnel of the other Party who has been engaged in the provision of the Services or the management of this Agreement (or any significant part thereof) other than by means of a national advertising campaign open to all comers and not specifically targeted at such personnel of the other Party. Should a Party breach this Clause 23, the injured Party will be indemnified by the Party at fault to the value of one (1) year's annual salary of the solicited individuals.

24. Force Majeure

Neither Party will be liable to the other Party for any delay in or failure to perform its obligations as a result of any cause beyond its reasonable control, including any industrial dispute (not being an industrial dispute involving the employees of the Party in question). If such delay or failure continues for at least thirty (30) days (or as otherwise agreed between the Parties), either Party will be entitled to terminate this Agreement giving one (1) months' notice in writing.

25. Entire Agreement

- 25.1 This Agreement sets out the entire agreement and understanding between the Supplier and the Client relating to the provision of Software, Support Services and Services by the Supplier to the Client. No addition to or modification of any of these terms will be binding on the Supplier or the Client unless recorded in writing and signed on behalf of both the Supplier and the Client. For the avoidance of doubt any terms

and conditions attached to any Purchase Order, or any such document produced by the Client subsequent to this Agreement (except in the circumstances expressly provided for in this Agreement) are specifically excluded and both Parties recognise that any such documentation shall be of no consequence to this Agreement.

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

26. Dispute Resolution Procedure

- 26.1 Any dispute, which arises between the Parties as to this Agreement or the performance of the Parties' respective obligations under this Agreement, shall first be discussed, and if possible, resolved, by the Project Director and the Project Manager.
- 26.2 If the Project Director and Project Manager fail to resolve the dispute then either Party, by notice in writing to the other, may refer the dispute to senior officers of the Parties who shall co-operate in good faith to resolve the dispute as amicably as possible within fourteen (14) days of such notice. If the senior officers fail to resolve the dispute in the allotted time, then the Parties, may within that period, on the written request of either Party enter into an alternative Dispute Resolution Procedure with the assistance of a mediator agreed by the Parties or, in default of such agreement within seven (7) days of receipt of such request, appointed, at the request of either party, by the Centre for Dispute Resolution.
- 26.3 The Parties shall then submit to the supervision of the mediation by the Centre for Dispute Resolution or similar body for the exchange of relevant information and for setting the date for negotiations to begin.
- 26.4 All negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the Parties in any future legal proceedings.
- 26.5 If the dispute relates to any implementation, whilst the dispute lasts and/or the Dispute Resolution Procedure is in place, the Supplier undertakes to continue to provide the Support Services in accordance with the terms of this Agreement so as to cause the minimum of disruption to the Client's business.
- 26.6 If, with the assistance of a mediator, the Parties reach a settlement, such settlement shall be reduced to writing and, once signed by the duly authorised representative of each of the Parties, shall remain binding on the Parties.
- 26.7 The Parties shall bear their own legal costs of this Dispute Resolution Procedure, but the costs and expenses of mediation shall be borne by the Parties equally.

27. Jurisdiction

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

READ AND AGREED by the Parties:

On behalf of the **[Company name]**

On behalf of **Fusion Business Solutions (UK) Ltd**

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Schedule 1 - Charges

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

1. Software and Authorised Software

Licenses

All applicable Charges shall be as per the Supplier quotation.

2. Services

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

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

Schedule 2 - Software, Services & Support Services

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

Schedule 3 - Data Protection and IT Security Provisions

1. Supplier Obligations

- 1.1 In respect of any Personal Data processed by the Supplier pursuant to this Agreement for and on behalf of the Client the Supplier shall keep the Personal Data secure and in accordance with the Data Protection Legislation including putting in place and maintaining:
 - 1.1.1 a level of security measures which ensures that only authorised personnel have access to the Personal Data and that any such persons whom the Supplier authorises to have access to such Personal Data will comply with like obligations as are contained in this Clause 1.1 and will respect and maintain all due confidentiality.
 - 1.1.2 A level of security measures which reflects the level of harm, damage or distress that might be suffered by a Data Subject to whom the Personal Data relates as a result of a breach of this Clause 1.1;
 - 1.1.3 Promptly give note to the Supplier of any actual incident of accidental or unlawful destruction, loss, alteration, unauthorised or accidental disclosure of or access to the Personal Data ("Security Breach");
 - 1.1.4 Promptly provide the Client with all information in the Suppliers possession or control concerning any Security Breach (including as a minimum a description of the nature of the Security Breach, the categories and approximate number of Data Subjects concerned and the records of the Personal Data affected and the measures taken or proposed to be taken by them to address the Security Breach) and provide all assistance and cooperation as is necessary in order for the Client to seek to mitigate the effects of the Security Breach and comply with its own obligations under the Data Protection Legislation in respect of the Security Breach;
 - 1.1.5 Not make any announcement or publish or otherwise authorise any broadcast of any notice or information about a Security Breach or authorise or permit the same without the prior written consent of the Client.
 - 1.1.6 Ensure the reliability of the Supplier's employees having access to the Personal Data and that they process it only where strictly necessary for the provision of the Services;
 - 1.1.7 Not to process any or all the Personal Data to which this Agreement relates as a means to enhance or enrich any Personal Data to which this Agreement does not relate;
 - 1.1.8 Not make any copies of the Personal Data unless strictly necessary for the provision of the Services.
- 1.2 Upon termination or completion of the provisions of services under a SOW, the Supplier shall securely delete all electronic copies of Personal Data processed under this Agreement in its/their possession or control.
- 1.3 No Personal Data may be transferred to any employees, agents, contractors, or other parties, whether such parties are working on behalf of Supplier or not,

without the prior written authorisation of the Supplier's Data Protection Officer
whose details are:

Name: Jeremy Bowman
Email Address: jeremy.bowman@fusiongbs.com
Telephone/mobile number: 020 8814 4802 / 07956 025 539

2. Execution of Data Transfer Agreement (Model Clauses)

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

3. IT and Data Security Provisions

3.1 Property

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

3.2 Information security procedures and standards

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

3.2.2 The Supplier confirms it has been certified compliant with ISO 27001.

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

3.3 Security requirements of information systems and system files

3.3.1 The Supplier shall:

3.3.1.1 not use any hardware in relation to Personal Data that is either no longer supported by its manufacturer or licensor, or whose support shall end in six (6) months or less;

3.3.1.2 implement a problem and incident management system, for all services provided under this Agreement, which is aligned with ISO 27001; and

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

3.4 Protection against malicious code

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

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

3.5 Network security management

The Supplier must provide that it has, and maintains throughout the term of this Agreement, a procedure in place to manage network threats, vulnerabilities and risks.

3.6 Security Testing

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

3.7 Media handling

3.7.1 The Supplier must ensure:

3.7.1.1 in respect of Personal Data, encryption is enforced for portable media devices containing Client information such as laptops, tablets, hard drives; backup tapes; USB drives and memory sticks; and

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

3.7.2 The Supplier must ensure that monitoring, detection and preventative controls are put in place to protect Personal Data.

3.8 Back-ups

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

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

3.9 Access to Systems

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

Schedule 4 - Statement of Work

EXAMPLE TEMPLATE STATEMENT OF WORK

1. Works: [LIST OUT ALL THE WORKS TO BE PROVIDED UNDER THIS STATEMENT OF WORK.
2. Client's manager and Supplier's manager: [LIST OUT THE RELEVANT INDIVIDUALS].
3. Start date and term: [SPECIFY WHEN THE WORKS WILL COMMENCE, AND THE TERM OF THIS STATEMENT OF WORK].
4. Client Materials: [LIST OUT THE CLIENT MATERIALS].
5. Client's Equipment: [LIST OUT THE CLIENT'S EQUIPMENT].
6. Supplier's Equipment: [LIST OUT THE SUPPLIER'S EQUIPMENT].
7. Service Levels: [INCLUDE ANY SERVICE LEVELS, IF APPLICABLE].
8. Timetable: [SET OUT THE TIMETABLE FOR PERFORMING THE WORKS].
9. Milestones: [SET OUT ANY MILESTONES FOR THE WORKS].
10. Deliverables: [SET OUT ANY DELIVERABLES FOR THE WORKS].
11. Acceptance Criteria: [SET OUT ANY CRITERIA FOR ACCEPTING THE DELIVERABLES OR THE MILESTONES].
12. SOW Charges: [SET OUT THE CHARGES AND PAYMENT FOR THE WORKS].