

FORTESIUM



CYBER
ESSENTIALS
PLUS



Microsoft
Partner Network



Crown
Commercial
Service



INSTITUTE OF
REGULATION



ISO 9001



ISO 27001

Introduction

This agreement sets out the main terms and conditions that govern the Clients subscription to the Association Smart cloud service.

Parties to this agreement are listed below:

- (1) FORTESIUM Limited incorporated and registered in England and Wales with company number 07196701 whose registered office is at 32 Byron Hill Road, Harrow on the Hill, Middlesex, United Kingdom, HA2 0HY (**Supplier**)
- (2) Customer established as xxx and having its office at xxx. (**Client**)

The Supplier has developed the software application and platform known as Association Smart which it makes available to subscribers on a pay-per-Member basis for the purpose of managing regulation, registration and associated activities.

The date of this agreement is xx/xx/xxxx

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply to this agreement

Active Members this term as it relates to this agreement is used to encompass all entity types with a status of active and registered as members.

Additional Services means any additional services to be provided by the Supplier to the Client as described in the Statement of Work.

Additional Services Fees the fees for the Additional Services payable by the Client to the Supplier, as set out in the Statement of Work. Additional services fees are any charges payable for work beyond the standard subscription fees

Admin User those employees of the Client who are granted privileged access by the Client to use (whether or not they do use) the Services and the Documentation.

Applicable Law means all applicable laws, statutes, regulations and codes from time to time in force in the jurisdiction in which the Client is located.

Application Type an application allows for a Member or other entity to apply to the Client organisation to establish or manage registration for access to the Supplier Solution or any other action required within the remit of the Client's business. A number of application types may be associated with one Registration Type.

Authorised Users those employees, agents, Members and independent contractors of the Client who are authorised by the Client

to use (whether or not they do use) the Services and the Documentation.

Business Day a day other than a Saturday, Sunday or public holiday in the United Kingdom.

Business Requirements Specification: the explicit statement that outlines the key features, capabilities and characteristics a software application or system must exhibit to satisfy the business needs, that can be found at Part B of Schedule 1 to this agreement.

Census on the last business day of each month, there shall be an enumeration of the number of Members or active entity types with access to the Services and the Census shall be used to calculate the SaaS subscription fees for the month just passed.

Cloud Service Parameters: describes the minimum charges and upper service limits of the base Association Smart subscription. If additions are made to the base subscription this term will also be used to describe the specific cloud service parameters for each client in Schedule 1.

Confidential Information all information (however recorded or preserved) that one party (discloser) discloses or makes available to the other party (recipient) in connection with this agreement and which is designated as confidential or would be regarded as confidential by a reasonable business person. It includes the terms of this agreement, the Client Data, and any information of a confidential nature relating to the business, operations, customers, suppliers, plans, processes, products, trade secrets or know-how of the discloser. It does not include information that:

is or becomes generally available to the public (other than as a result of the recipient's breach);

can be shown by the recipient to have been known to it on a non-confidential basis before disclosure by the discloser;

was, is or becomes available to the recipient on a non-confidential basis from a person who, to the recipient's knowledge, is not bound by a confidentiality agreement with the discloser or otherwise prohibited from disclosing the information to the recipient; or

is developed by or for the recipient independently of the information disclosed by the discloser; or

the parties agree in writing is not confidential or may be disclosed.

Client Data the data inputted by the Client, Authorised Users, Members, third party users or the Supplier on the Client's

behalf for the purpose of using the Services or facilitating the Client's use of the Services.

Client Personal Data	Client Data which is Personal Data, and which will be processed under this Agreement by the Supplier on behalf of the Client as Controller, as identified in Schedule 2.
Client Representative:	a person nominated by the Client as having designated authority to make decisions, and to provide the Supplier with instructions, or make changes to the subscription on behalf of the Client so as to enable the Supplier to perform its Services hereunder.
Defect	Can include: a flaw or deviation from expected behaviour; errors in code, incorrect logic, incomplete implementation, or unexpected interactions; unexpected results, incorrect data, system hangs, or missing requirements
Documentation	the Supplier's video and document-based training materials.
Effective Date	the date of this agreement.
Fees	means the Implementation Fees, the SaaS Subscription Fees and all other payments identified in the Statement of Work.
Go Live Date	means the date agreed by the Parties for the commencement of the Initial Term following the successful completion of the Onboarding Phase (as determined by the Client).
Good Practice	Industry a group of tasks that optimises the efficiency (cost and risk) or effectiveness (service level) of the business discipline or process to which it contributes. It must be implementable, replicable, transferable and adaptable across industries.
Heightened Cybersecurity Requirements	any laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, industry schemes and sanctions, which are applicable to either the Client or an Authorised User (but not the Supplier) relating to security of network and information systems and security breach and incident reporting requirements, which may include the cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.
Hosted Environment	means the computing environment, including hardware, software, infrastructure, and network resources, managed by or on behalf of the Supplier or a third party, in which the Services or Software are deployed, operated, and made accessible to the Customer.

Implementation Fees	means the fees to be paid for the Implementation Services, if any, as set out in the Statement of Work.
Implementation Support	the term used to describe the standard implementation support to be provided as part of the implementation fee.
Implementation Support Team	The Supplier team specialising in Association Smart and dedicated to provide implementation support to the Client as agreed
Initial Term	the initial term of this agreement as set out in clause 2.2 of this agreement.
Intellectual Property Rights	means all copyrights, patents, rights in computer software, database rights, registered and unregistered design rights, trademarks and service marks and applications for any of the foregoing, together with all trade secrets, know-how, rights to confidence and other intellectual and industrial property rights in all parts of the world and for the full term thereof including all rights to renew the same.
IT Security Requirements	means those security requirements set out in Schedule 3.
Licensed Software	Proprietary software distributed under this agreement to authorised users only.
Microsoft Azure	a cloud computing platform run by Microsoft. Association Smart services will be hosted in MS Azure.
New Release	The act of applying or preparing any new revision of the Supplier Software that includes enhancements which add new features or fix defects within the Supplier Software.
New Version	The outcome of the New Release. The new version is the applied New Release in use. Each new version will be designated a new version number.
Normal Business Hours	9.00 am to 5.00 pm [GMT] each Business Day.
Onboarding Phase	has the meaning given in clause 3.1
Open Source Software	Is released in a license that grants users the rights to use, study, change, and distribute the software and its source code to anyone and for any purpose; is developed and maintained through open collaboration, making it available for anyone to use, examine, alter and redistribute at no cost; is designed to be publicly accessible, allowing anyone to see, modify and distribute the code.
Renewal Period	as identified in clause 2.2 of this agreement
Registration Type	means the different types of entity that the Client may allow to access the Supplier Software, including but not limited

to Members, students, premises, partnerships, sole traders, bodies corporate, apprentices.

Association Smart	the cloud service supplied to the Client through this agreement.
Services	means the services to be provided by the Supplier to the Client as specified in this agreement and detailed in Schedule 1 (Statement of Work), including the Subscription Services and the Support Services.
Supplier Software	the Association Smart software solution provided by the Supplier as part of the Services
Supplier Representative	the Supplier employee who has overall responsibility for the Services. (Customer Success Manager)
Statement of Work	means the statement at Schedule 1 which identifies the Services and incorporates the Business Requirements Specification.
SaaS Subscription Fees	the fees for the Subscription Services payable monthly by the Client to the Supplier for the User Subscriptions, as calculated at a monthly Census.
Subscription Services	the subscription services provided by the Supplier to the Client under this agreement as identified in the Statement of Work.
Support Services	the support to be provided by the Supplier to the Client, following the Go Live Date, as described in Schedule 1 (Statement of Work).
Term	has the meaning given in Clause 2.2 of this agreement (being the Onboarding Phase and the Initial Term together with any subsequent Renewal Periods).
Third-Party Software	means any software, application, or code that is owned or licensed by a party other than the parties to this Agreement and is provided, incorporated, or used in connection with the Supplier Software.
User Subscription	the user subscription purchased by the Client which entitles Authorised Users to access and use the Subscription Services and the Documentation in accordance with this agreement.
Virus	Any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-

arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Vulnerability

a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability of client data.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision
- 1.9 A reference to **writing** or **written** excludes fax but not email.
- 1.10 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

2. CLOUD SERVICE

- 2.1 Cloud Service Provision
- 2.2 The Services are supplied on a subscription (i.e. time limited) basis as identified in the Statement of Work.
- 2.3 Cloud Subscription Periods (Term and Termination)
 - 2.3.1 The Services shall commence on the Go Live Date and continue for the remainder of the Term subject to earlier termination in accordance with this agreement. The production environment will be used for testing during the Onboarding Phase. For the avoidance of doubt, only test data (not including Personal Data), shall be used for testing during the Onboarding Phase.
 - 2.3.2 The Initial Term shall be xx months, which will automatically extend by a further 12-month period on the xx anniversary of the Go Live

Date and every 12 months thereafter. Subject to clause 2.3.3, on extension the Client will be liable to pay the monthly subscription fee as outlined within this agreement, and any addendums, for the duration of the applicable 12-month extension period.

- 2.3.3 Either party may prevent the automatic extension period under clause 2.3.2 from coming into effect by giving written notice to the other party at least 90 days prior to the relevant anniversary of the Go Live Date.

3. ONBOARDING SERVICES

- 3.1 The onboarding services ("**Onboarding Phase**") shall commence on the Effective Date. The Onboarding Phase, depending on the client organisation, can involve any combination of the following: process mapping / discovery session, request for forms and email templates, existing process maps, information relating to entity types and entity relationships, annual renewal and payment arrangements etc. The materials gathered during this phase will act as the solution requirements.
- 3.2 Following discovery, the parties will produce the Business Requirements Specification to identify the agreed route to implementation and detailed requirements to ensure clarity of expectations for the Supplier and the Client.
- 3.3 The Supplier shall supply the cloud service Association Smart as follows:
- 3.3.1 Service Commencement: Within the timeframes and Client requirements agreed during the Onboarding Phase and set out in the Business Requirements Specification, the Services will be made available to the Client as outlined below;
- (a) The Supplier will establish the Supplier Software in an agreed production environment. The dedicated site name for the Client's online portal will be created during this stage.
 - (b) The Supplier will create 1 Super User / Administrator account. Login credentials and website URL will be provided to the Client.
 - (c) The Client will be asked to provide payment provider details to enable initiation of the integration work.
 - (d) The Supplier implementation support team will collaborate with the client representative to assign, coordinate and deliver configuration works in line with the Business Requirements Specification.
 - (e) A short form project plan / dated task list will be provided to outline delivery dates and schedule dates for work to be undertaken.
 - (f) Regular support workshops will be scheduled between the Client representative(s) and the Association Smart Implementation Support Team to manage progress in line with the Business Requirements Specification .

- (g) The Supplier will share information with the Client on service desk coverage and how to raise support tickets, along with the support service exclusions.

3.4 Software and Hosting

3.4.1 From the Go Live Date and throughout the remainder of the Term the Supplier will:

- (a) Facilitate hosting of the customised Subscription Services within the Supplier's MS Microsoft Azure tenancy.
- (b) Provide the Client with ongoing access to the Documentation.
- (c) Conduct regular penetration testing and apply fixes as required to maintain optimum information security.
- (d) Undertake new feature developments / refinements and deploy new releases as appropriate. Developments will be scheduled in advance of deployment and highlighted to Association Smart Clients.
- (e) Act as a Data Processor of the Client Data for the Client as Data Controller and comply with the obligations in Clause – the Supplier will never amend or delete Client Data without written consent from pre-authorised Client representatives.
- (f) Ensure the Client Microsoft Azure instance is configured to ensure optimum information security standards.

3.5 Support

- 3.5.1 The Supplier will provide support services to the Client for the duration of the Term following the Go Live Date in accordance with the Statement of Work.
- 3.5.2 Support services will be provided between 09.00-17.00 on all standard business days in the UK.
- 3.5.3 Support tickets can be raised via the service desk portal. The Supplier shall provide details of the service desk portal to the Client prior to Service commencement.
- 3.5.4 Applicable service levels for the Subscription Services are outlined below

Service Levels

Classification	Description	SLA for resolution
Critical (L1)	Prevents core part of the system from working, there is no workaround.	4-hour response. Fix within 12 hours.
Major (L2)	There is a difficult workaround	8-hour response. Fix within 72hours
Minor (L3)	There is an easy workaround	16-hour response. Fix within 90 hours.

3.6 Ad Hoc Services

- 3.6.1 Ad hoc support services can be engaged by the Client at any time on request. Requests can be made to the designated Customer Success Manager. A quote will be provided, and work scheduled, if the quote is accepted, at a time agreeable to the Client and Supplier.

3.7 Fees and Payment Terms

- 3.7.1 The Supplier shall submit invoices in arrears in accordance with the Statement of Work. The Client shall make payment of each invoice within 30 days of receipt of the invoice in question.
- 3.7.2 The Client shall pay the SaaS Subscription Fees from the Go Live Date in the amounts and on the dates more particularly detailed in the Statement of Work, subject to the provisions of this paragraph 3.7.2.
- 3.7.3 The Implementation Fees, the SaaS Subscription Fees and all other payments stated in the Schedule are net of tax. The Client shall, in addition, pay to the Supplier the amount of any tax, duty or assessment, including any applicable VAT, which the Supplier is obliged to pay and/or collect from the Client in respect of any supply under the agreement (other than tax on the Supplier's income).
- 3.7.4 If the Client fails to make any payment due to the Supplier under this agreement by the due date for payment ("**Due Date**"), then, without limiting the Supplier's remedies under clause 17, the Client shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the Due Date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.

4. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

- 4.1 The Intellectual Property Rights in the Supplier Software (other than the Open-Source Software and the Third-Party Software) are, and shall remain, the property of the Supplier, and the Supplier reserves the right to grant a licence to use such Supplier Software to any other party or parties.

- 4.2 The Supplier Software is the property of the Supplier (or the appropriate third-party rights-owner(s)), and the Client acquires no rights in or to the Supplier Software other than those granted by this agreement.
- 4.3 The Client shall do, and execute or arrange for the doing and executing of, each necessary act, document and thing that the Supplier may consider necessary or desirable to protect the right, title and interest of the Supplier in and to the Intellectual Property Rights in the Supplier Software
- 4.4 The Client shall not knowingly or intentionally infringe the Supplier's Intellectual Property Rights in the Licensed Software and shall promptly report to the Supplier any such infringement that comes to its attention. In particular, the Client shall:
 - 4.4.1 ensure that each Admin User, before starting to use the Supplier Software, is made aware that the Supplier Software is proprietary to the Supplier and that it may only be used in accordance with this agreement.
 - 4.4.2 implement suitable disciplinary procedures for employees who make unauthorised use or copies of the Supplier Software; and
 - 4.4.3 not permit third parties to have access to the Supplier Software without the prior written consent of the Supplier, who may require that such third party executes a written confidentiality agreement before being given access to the Supplier Software.

5. **CONFIDENTIALITY AND PUBLICITY**

- 5.1 Each party undertakes not to use the Confidential Information otherwise than in the exercise and performance of its rights and obligations under this Agreement (**Permitted Purposes**).
- 5.2 In relation to the Client's Confidential Information the Supplier shall treat as confidential all Confidential Information of the Client supplied under this agreement. The Supplier shall not divulge any such Confidential Information to any person, except to its own employees and then only to those employees who need to know it for the Permitted Purposes. The Supplier shall ensure that its employees are aware of, and comply with, this clause 5.

In relation to the Supplier's Confidential Information:

- 5.2.1 the Client shall treat as confidential all Confidential Information of the Supplier contained or embodied in the Supplier Software or otherwise supplied to the Client during the performance of this agreement.
- 5.2.2 the Client shall not, without the prior written consent of the Supplier, divulge any part of the Supplier's Confidential Information to any person other than:
 - (a) the Client's Representative; and
 - (b) other employees of the Client who need to know it for the Permitted Purposes; and
 - (c) the Client undertakes to ensure that the persons mentioned in clause 5.2.2 are made aware, before the

disclosure of any part of the Supplier's Confidential Information, that the same is confidential and that they owe a duty of confidence to the Client in terms similar to clause 5.2.1 (which the Client shall ensure is adhered to).

- 5.3 Each party shall notify the other party if any of its staff connected with the provision or receipt of the Services becomes aware of any unauthorised disclosure of any Confidential Information and shall afford reasonable assistance to the other party, at that other party's reasonable cost, in connection with any enforcement proceedings which that other party may elect to bring against any person.
- 5.4 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other party, except as required by law, any governmental or regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction.
- 5.5 This clause 5 shall remain in full force and effect, despite any termination of this agreement.

6. DATA SECURITY AND PRIVACY

- 6.1 The Client acknowledges that the supplier service may contain analytics functionality to enable the supplier to collect, maintain, process and use technical, operational, usage, diagnostic and related information about how the service functions (**Analytics Data**). The Analytics Data will not include Personal Data.
- 6.2 The Client agrees that the supplier may use and process Analytics Data strictly for the purpose of improving the software and services.
- 6.3 The Supplier shall no less than once in any 12-month period, carry out a data back up and restore exercise in respect of the Client Data to test the Supplier's ability to back up and restore the Client Data. The Supplier shall report the results of such exercise to the Client and comply with the Client's reasonable requirements or instructions coming out of such exercise.
- 6.4 Both parties will comply with all applicable requirements of the Data Protection Legislation and with their respective obligations in this clause 6. This clause 6 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the relevant Data Protection Legislation. The Client owns all data, including any Personal Data, inputted to and generated by the Services.
- 6.5 The parties acknowledge that where the Supplier processes any Personal Data on the Client's behalf when providing the Services, the Client is the Controller, and the Supplier is the Processor for the purposes of the Data Protection Legislation.
- 6.6 Without prejudice to the generality of clause 6.4, the Supplier shall, in relation to any Client Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
 - 6.6.1 process that Client Personal Data only on the documented written instructions of the Client;

- 6.6.2 promptly inform the Client if any instruction relating to the Client Personal Data infringes or may infringe the Data Protection Legislation.
- 6.6.3 ensure that:
 - (a) Client Personal Data is maintained as the Client's Confidential Information, and access to Client Personal Data is restricted only to those Supplier personnel who need access to perform the Services;
 - (b) all Supplier personnel who have access to or process Client Personal Data are obliged to keep the personal data confidential; and
 - (c) not disclose the Client Personal Data to third parties unless authorised by the Client, or as required by domestic or UK law, court or regulator (including a data protection supervisory authority). If a domestic or UK law, court or regulator (including a data protection supervisory authority) requires the Supplier to process or disclose the Client Personal Data to a third party, the Supplier shall first inform the Client of such legal or regulatory requirement and give the Client an opportunity to object or challenge the requirement, unless the domestic or UK law prohibits the giving of such notice.
- 6.6.4 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Client Personal Data and against accidental loss or destruction of, or damage to, Client Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the Client Personal Data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Client Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
- 6.6.5 not transfer Client Personal Data outside of the agreed Microsoft Azure data centre (xxx).
- 6.6.6 assist the Client, in responding to any request from a data subject (as defined under the Data Protection Legislation) and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 6.6.7 provide such information, co-operation and other assistance to the Client as the Client reasonably requires (taking into account the nature of Processing and the information available to the Supplier) to

ensure compliance with the Client's obligations under Data Protection Legislation, including with respect to:

- (a) security of Processing (including with any review of security measures);
 - (b) Data Protection Impact Assessments (as such term is defined in the Data Protection Legislation);
 - (c) prior consultation with the applicable data protection supervisory authority as required; and
 - (d) any remedial action and / or notifications in response to any Personal Data Breach and / or any complaint or request relating to the Processing of the Client Personal Data, including regarding any notification of a Personal Data Breach to the applicable data protection supervisory authority and / or communication to any affected Data Subjects.
- 6.6.8 notify the Client without undue delay and in any event within 24 hours on becoming aware of a personal data breach in respect of the Client Personal Data;
- 6.6.9 at the written direction of the Client, delete or return the Client Personal Data and copies thereof to the Client on termination of the Agreement;
- 6.6.10 only take action to amend or delete Client Personal Data on receipt of written confirmation from a pre-authorised Client representative;
- 6.6.11 maintain complete and accurate records and information to demonstrate its compliance with this clause 6, and make them available to the Client on request. The Supplier shall allow for and submit its premises and operations to audits, including inspections, by the Client or the Client's designated auditor to demonstrate its compliance with Data Protection Legislation and this clause 6.
- 6.6.12 immediately inform the Client if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation;
- 6.6.13 other than those subcontractors set out in Schedule 2 which for the purpose of this Clause 6 are deemed approved ("**Approved Sub-Contractors**"), not authorise or engage a third party to process any Client Personal Data without the prior written consent of the Client (not to be unreasonably withheld or delayed). The Supplier shall:
 - (a) inform the Client of any intended changes relating to the addition or replacement of the Approved Sub-Contractors. The Client shall have the right to object to any such changes within ten business days of the notification. If no objection is received by the Supplier within the prescribed period, the new third party subcontractor shall be deemed to be approved; and
 - (b) ensure that the terms on which it appoints any third party subcontractor comply with the Data Protection

Legislation and are consistent with and no less onerous than the obligations imposed on the Supplier in this Clause 6; and

- 6.6.14 remain fully liable for the acts and omissions of that third party subcontractor as if they were the acts and omissions of the Supplier, and not do anything which may cause the Client to be in breach of the Data Protection Legislation or damage its reputation with data subjects; and
- 6.6.15 indemnify the Client against any loss or damage suffered by the Client in relation to any breach by the Supplier of its obligations under this clause 6.

7. REPRESENTATIONS AND WARRANTIES

- 7.1 The Supplier acknowledges that the Client has entered into this agreement in reliance upon the Supplier's expertise in developing software fit to meet the Client's business requirements as set out in the Business Requirements Specification.
- 7.2 The Supplier warrants and represents that:
 - 7.2.1 the Supplier Software is proprietary or licensed to the Supplier and that it has the right to license or sublicense as the case may be all Intellectual Property Rights in and to the Supplier Software to the Client, and to provide the Services to the Client;
 - 7.2.2 none of the New Releases and/or New Versions (if any) supplied by the Supplier under this agreement infringes the Intellectual Property Rights of any third party;
 - 7.2.3 the Supplier Software will perform in accordance with the Business Requirements Specification and conform to the Documentation;
 - 7.2.4 it will perform the Services quickly and in a reliable and professional manner, in conformity with Good Industry Practice, by a sufficient number of competent personnel with appropriate skills, qualifications and experience and has, and will at all times have, the ability and capacity to meet such requirements; and
 - 7.2.5 it is in compliance with, and will perform the Services at all times in compliance with:
 - (a) Applicable Law and all applicable regulations; and
 - (b) The IT Security Requirements and the Heightened Cybersecurity Requirements.
- 7.3 Any modifications, use or installation of the Supplier Software by, or on behalf of, the Client which are prohibited (as specified in the Documentation) shall render all the Supplier's warranties and obligations under this agreement null and void.
- 7.4 The Client acknowledges that the only warranties in relation to the Third-Party Software, or the supply thereof, are those contained in the licence from the

third-party supplier(s) of the same, and that to the extent that any of such warranties are given to the Supplier, it will pass on the benefit of such warranties to the Client.

- 7.5 Any Open-Source Software provided by the Supplier may be used according to the terms and conditions of the specific licence under which the relevant Open-Source Software is distributed but is provided "as is".
- 7.6 Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter into and perform this agreement and that those signing this agreement are duly authorised to bind the party for whom they sign.

8. **INTELLECTUAL PROPERTY RIGHTS INDEMNITY**

- 8.1 The Supplier shall indemnify the Client against all liabilities, costs, expenses, damages and losses suffered or incurred by the Client arising out of or in connection with any claim made against the Client for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with use of the Supplier Software, any New Release or New Version, or receipt of the benefit of the Services, provided that, if any third party makes a claim, or notifies an intention to make a claim, against the Client which may reasonably be considered likely to give rise to a liability under this indemnity ("**Claim**"), the Client:
 - 8.1.1 as soon as reasonably practicable, gives written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
 - 8.1.2 does not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);
 - 8.1.3 gives the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Client, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and
 - 8.1.4 subject to the Supplier indemnifying the Client to the Client's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, takes such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.
- 8.2 Without prejudice to clause 7.3, the Supplier shall not in any circumstances have any liability for any claim of infringement of Intellectual Property Rights:
 - 8.2.1 caused or contributed to by the Client's use of the Supplier Software or any New Release (as the case may be) in combination with software not supplied or approved in writing by the Supplier; or

- 8.2.2 based on use of any version of the Supplier Software other than the latest version supplied by the Supplier, if such claim could have been avoided by the use of such supplied version.
- 8.3 If use of the Supplier Software or receipt of the Services becomes a Claim, or in the opinion of qualified legal counsel is likely to become, the subject of such a claim, the Supplier may:
 - 8.3.1 replace all or part of the Supplier Software, the New Releases or New Versions (as the case may be) with functionally equivalent software or documentation without any charge or cost to the Client.
 - 8.3.2 modify the Supplier Software, the New Releases or New Versions (as the case may be) as necessary to avoid such Claim, provided that the Supplier Software, the New Releases or New Versions (as amended) function in substantially the same way as the Supplier Software, the New Releases or New Versions (as the case may be) before modification;
 - 8.3.3 procure for the Client a licence from the relevant third party to continue using the Supplier Software or the New Releases (as the case may be).
- 8.4 If:
 - 8.4.1 use of the Supplier Software or any New Release (as the case may be) is determined in a court of law to be infringing; or
 - 8.4.2 an injunction or similar order is granted in connection with a claim of the types referred to in clause 8.1 which prevents or restricts the use or possession by the Client of the Licensed Software in accordance with this agreement.

and the Supplier is unable, after best efforts, to procure for the Client the right to continue using the Supplier Software, the New Releases or New Versions (as the case may be) or to provide the Client with functionally equivalent non-infringing software, this agreement will be terminated and the Client shall receive a refund of Fees paid in respect Services not received.

- 8.5 Notwithstanding any other provision in this agreement, clause 8.1 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession, use, development, modification or maintenance of any Open-Source Software or through the breach of any Third-Party licence relating to any Open-Source Software by the Client.
- 8.6 If a payment due from the Supplier under this clause is subject to tax (whether by way of direct assessment or withholding at its source), the Client shall be entitled to receive from the Supplier such amounts as shall ensure that the net receipt, after tax, to the Client in respect of the payment is the same as it would have been were the payment not subject to tax.
- 8.7 Nothing in this clause shall restrict or limit the Client's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

9. **LIMITATION OF LIABILITY**

- 9.1 Except as expressly provided in this agreement and to the fullest extent permitted by applicable law:
 - 9.1.1 the Client shall be solely responsible, as against the Supplier, for any opinions, recommendations, forecasts or other conclusions made or actions taken by the Client, any client of the Client or any other third party based (wholly or in part) on the results obtained from the use of the Supplier Software or the Services by the Client; and
 - 9.1.2 the Supplier shall have no liability for any damage caused by errors or omissions in any information or instructions provided to the Supplier by the Client in connection with the Services; and
- 9.2 Neither party excludes or limits liability to the other party for:
 - 9.2.1 fraud or fraudulent misrepresentation.
 - 9.2.2 death or personal injury caused by negligence.
 - 9.2.3 a breach of any obligations implied by section 12 of the Sale of Goods Act 1893 or section 12 of the Sale of Goods and Supply of Services Act 1980; or
 - 9.2.4 any matter for which it would be unlawful for the parties to exclude liability.
- 9.3 Subject to clause 9.2, neither party shall in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
 - 9.3.1 any loss (whether direct or indirect) of profits, business, business opportunities, revenue, or turnover.
 - 9.3.2 loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
 - 9.3.3 any loss or liability (whether direct or indirect) under or in relation to any other contract.
- 9.4 Subject to clause 9.3, the Supplier's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to xx).
- 9.5 Subject to clause 9.3, the Client's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the price paid for the Services during the 12 months preceding the date on which the claim arose or, if the claim arose during any period before 12 months had elapsed from the Effective Date, during that shorter period.
- 9.6 The parties acknowledge and agree that any dates quoted for delivery of the implementation work are approximate only, and that the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the

Services that is caused by an event, circumstance or cause within the scope of clause 26 or the Client's failure to provide the Supplier with adequate delivery instructions.

10. DISPUTE RESOLUTION

- 10.1 In the event of any dispute or claim arising out of or relating to this Agreement, the parties agree to first attempt to resolve the dispute informally through good faith negotiations initiated by written notice from one party to the other. If the dispute is not resolved through such negotiations within 30 days, the parties shall then seek to resolve the matter through mediation conducted by a mutually agreed accredited mediator.
- 10.2 If the dispute cannot be resolved through mediation, the parties agree that any unresolved controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by an agreed accredited mediator in accordance with its rules, and judgement on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.
- 10.3 The arbitration will take place in UK before a single arbitrator mutually agreed upon by the parties. If the parties cannot agree on an arbitrator within 14 days, the arbitrator shall be appointed by the Civil Mediation Council
- 10.4 Each party shall bear its own costs and expenses (including legal fees) associated with the dispute resolution process, unless the arbitrator determines that a different allocation of costs is appropriate.
- 10.5 Notwithstanding anything to the contrary, either party may seek injunctive or other equitable relief from any court of competent jurisdiction to prevent or stop any actual or threatened breach of this Agreement.
- 10.6 This dispute resolution procedure shall not prevent either party from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

11. GOVERNING LAW

- 11.1 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.
- 11.2 The agreement has been entered into on the Effective Date.

12. ACCEPTABLE USE

- 12.1 The Client may only use the Services for its business purposes and in accordance the Documentation and the Statement of Work. The Client is responsible for Authorised Users' compliance with the term of this agreement.
- 12.2 Clients will only use the Services in compliance with, and only as permitted by, the Documentation and applicable law. If Clients use of the Services requires it to comply with industry specific regulations the Client will be solely responsible for such compliance.
- 12.3 Client will:

- 12.3.1 ensure that any Client Data uploaded by the Client directly is in the correct format in compliance with the Documentation.
- 12.3.2 protect as far as reasonably practicable, logins and passwords for Admin Users of Association Smart. If login credentials are compromised this will remain the sole responsibility of the Client to the extent not caused or contributed to by the Supplier. In all cases of actual or suspected compromise of login credentials the Client will promptly inform the Supplier.
- 12.4 Client will not:
 - 12.4.1 attempt to circumvent any authentication or other security measures to access the Supplier Software
 - 12.4.2 open, break, crack, scan, read or otherwise violate the application or any protected file relevant to the application
 - 12.4.3 probe or scan or test the vulnerability of the Hosted Environment except with the Supplier's prior written consent which may be given or withheld at the Supplier's discretion
 - 12.4.4 copy the application in any form or download the application, whether in source or object code form.
 - 12.4.5 manipulate or bypass or attempt to manipulate or bypass the storage allocation for Client Data
 - 12.4.6 create derivative works of the application or service documentation
 - 12.4.7 merge or otherwise subsume the application or cloud service documentation within or with other software or documents to form a combined work. This is a prohibition on merger and subsuming, and it does not apply to simple integration to the Clients third party applications.
 - 12.4.8 give, perform, deliver, display, distribute, licence, sub-licence, lease, rent, loan or resell the application or cloud service documentation, or any part thereof, to any third-party whether associated with Client or not, or purport to do any of the foregoing, or otherwise encumber the application or cloud service documentation in any way
 - 12.4.9 reverse engineer, reverse compile, recompile, disassemble or otherwise attempt to derive the source code of the application
 - 12.4.10 intentionally, recklessly or negligently overload the processing capacity of the hosted environment in any way, including by introduction of a robot to flood the network or otherwise cause an effective denial-of-service or do any of the foregoing in response of the support portal.
 - 12.4.11 publish the results of any benchmark tests run on the application
 - 12.4.12 use the application in any way that causes civil or criminal liability for the supplier
 - 12.4.13 use the application in any way that infringes the supplier's privacy policy or causes the supplier to be in breach of its own policy.

12.4.14 use the application to harvest user information.

13. TERMINATION

- 13.1 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may at any time terminate this agreement and/or the Support Services with immediate effect by giving written notice to the other party if:
- 13.1.1 the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
 - 13.1.2 the other party commits a material breach of any term of this agreement (other than failure to pay any amounts due under this agreement) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - 13.1.3 the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
 - 13.1.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 570 of the Companies Act 2014 or section 123 of the Insolvency Act 1986 (as applicable);
 - 13.1.5 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 13.1.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 13.1.7 an application is made to court, or an order is made, for the appointment of an administrator/examiner (as applicable) or if a notice of intention to appoint an administrator/examiner (as applicable) is given or if an administrator is appointed over the other party;
 - 13.1.8 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed a receiver or an administrative receiver (as applicable);
 - 13.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

- 13.1.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 13.1.11 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 13.2 Either party may terminate this agreement in accordance with clause 26.
- 13.3 The Client may terminate this agreement at any point during the Term by providing no less than 3 months' written notice.
- 13.4 The Client can terminate the automatic extension by making a written request to terminate at least 60 days prior to the anniversary date.
- 13.5 The Supplier can prevent the extension period from coming into effect by giving written notice to the Client at least 3 months prior to the anniversary date.
- 13.6 Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement, including clause 1, clause 4, clause 5, clause 6, clause 8 to clause 9, and clause 13 shall remain in full force and effect.
- 13.7 Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.
- 13.8 Notwithstanding its obligations in this clause 3, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other party's Confidential Information, it shall notify the other party in writing of such retention, giving details of the documents and/or materials that it must retain.
- 13.9 On termination of this agreement for any reason, the Supplier will provide the Client, at no additional cost, with a back-up of all Client Data in an SQL server format together with the supporting documentation so as to enable the Client to move the Client Data to another system/supplier.
- 13.10 Subject to clause 13.7, on termination of this agreement for any reason, each party shall as soon as reasonably practicable return, destroy or permanently erase any documents, information or data provided to it by the other party containing, reflecting, incorporating or based on Confidential Information belonging to the other party.
- 13.11 On termination of this agreement for any reason, the Client shall pay any outstanding unpaid invoices and interest due to the Supplier. The Supplier shall submit invoices for any Services that it has supplied, but for which no invoice has been submitted, and the Client shall pay these invoices in accordance with the terms of this agreement.

14. ASSIGNMENT AND SUBCONTRACTING

- 14.2 This agreement is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other

manner with any or all of its rights and obligations under this agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

- 14.3 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

15. **WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

16. **REMEDIES**

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

17. **ENTIRE AGREEMENT**

- 17.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

18. **VARIATION**

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

19. **SEVERANCE**

- 19.2 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 19.3 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

20. **THIRD PARTY RIGHTS**

- 20.2 No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 20.3 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

21. **NO PARTNERSHIP OR AGENCY**

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party, except as expressly authorised by the Client or the Supplier (as the case may be).

22. **NOTICES**

22.1 Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be:

22.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

22.1.2 sent by email to its usual email address.

22.2 Any notice or communication shall be deemed to have been received:

22.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

22.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the fifth Business Day after posting or at the time recorded by the delivery service.

22.2.3 if sent by email, at 9.00 am on the next Business Day after transmission.

22.3 This clause does not apply to the service of any proceedings or other documents in any legal action.

23. **SERVICE OF LEGAL PROCEEDINGS**

23.1 Each party irrevocably consents to any process in any legal action or proceedings arising out of or in connection with this agreement or its subject matter or formation being served on it in accordance with the provisions of this agreement relating to service of notices of claims. Nothing contained in this agreement shall affect the right to serve process in any other manner permitted by law.

24. **JURSDICTION**

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).

25. **COUNTERPARTS**

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

26. **FORCE MAJEURE**

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control ("**Force Majeure Event**"). For the purpose of this agreement, a Force Majeure Event shall

mean an act of God, flood, drought, earthquake or other natural disaster, epidemic or pandemic, terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination, or sonic boom; any law or action taken by a government or public authority, including imposing an export or import restriction, quota, or prohibition; collapse of buildings, fire, explosion or accident; and any labour or trade dispute, strikes, industrial action or lockouts (other than by the staff of the party seeking to rely on this clause or those of its subcontractors).

In the event of a Force Majeure Event, the affected party shall be entitled to a reasonable extension of time for performing its obligations under this agreement. If the period of delay or non-performance continues for 90 days or more, the party not affected may terminate this agreement by giving 30 days' written notice to the other party.

Schedule 1: Statement of Work

Relevant Implementation Fees to be added – see Association Smart Pricing Document

Part A:

Agreement particulars	Cost
1. Association Smart Base Subscription (Includes provision of unlimited Admin Users, unlimited Member Types and unlimited Application Types.)	£700 per month
2. Cost per Active Member or other entity – to be captured monthly via census on the last business day of each month. This figure will determine these costs monthly	£0.90 per Member

Part B:

Business Requirements Specification

[]

Signatures

Signed by a Director)
for and on behalf of FORTESIUM LIMITED)
)

Signature

Date)

Signed by [])
for and on behalf of)
)

Signature

Date)