



**Standard Terms and Conditions (STC)**  
**For the**  
**Supply of Products, Professional &**  
**Managed Services**  
**By**  
**Fuse Collaboration Services Limited**

## Contractual Agreement Overview:

This is the Standard Terms and Conditions (STC) Contractual Agreement for the supply of Products, Professional & Managed Services

### BY:

#### Fuse Collaboration Services Limited

whose registered office is 12 Brookfield, Duncan Close, Moulton Close, Northampton, NN3 6WL England, Registered Number: 04027996 & VAT Number: GB 812 4175 56

herein referred to as "**Fuse Collaboration**"

### TO:

#### The Customer

identified in:

- the **Order Acknowledgement**, issued on receipt of a valid, signed, purchase order ("**PO**") by Fuse Collaboration.

OR

- any valid **quote, proposal** or **agreement** signed by Fuse Collaboration and the customer.

The **Customer** jointly with **Fuse Collaboration** are collectively referred to in this Contractual Agreement as the "**Parties**".

This document forms the contractual binding agreement between the Parties and shall become effective from the date of issue of the Order Acknowledgement.

This Contractual Agreement shall and will remain in full force and effect unless the Parties invoke the terms of Clause 16.

The terms and conditions of this Contractual Agreement shall govern all future orders for IT Products, Professional & Managed Services and each new agreed Product or Service provided to the Customer as part of this Contractual Agreement shall be specified in a sequentially numbered attachment ("**Engagement Schedule**") to this Contractual Agreement.

This Contractual Agreement, together with any Engagement Schedules, represents the entire agreement between the Customer and Fuse Collaboration with respect to IT Products, Professional & Managed Services and supersedes any and all prior agreements, proposals, representations, statements, or understandings, whether written or oral, concerning the same. Any terms or conditions purportedly imposed by any purchase order, or other document the Customer uses to order IT Products, Professional or Managed Services, or any correspondence between the Parties shall be void and of no effect. Neither Fuse Collaboration's commencement of performance or delivery of IT Products, Professional or Managed Services shall be deemed or construed as acceptance of any terms or conditions purportedly contained in such documents.

A change, modification or waiver of any of the terms or conditions of this Contractual Agreement shall only be binding if it is made in writing by incorporation in a formal

#### **"Fuse Collaboration Engagement Schedule to the Contractual Agreement for the sale of Products, Professional & Managed Services"**

and duly signed by authorised representatives of both Parties.

Any purported change, modification, or waiver contained in any other document designated by Fuse Collaboration as an Engagement Schedule pursuant to the definition thereof appearing on the first page of this Contractual Agreement shall be void and of no effect.

New Products, Professional & Managed Services shall only become subject to this Contractual Agreement when a completed Engagement Schedule and valid signed Purchase Order ("PO") specifying such Products and/or Professional Services and/or Managed Services is accepted by Fuse Collaboration and agreed between the Parties.

Each Engagement Schedule shall therefore constitute a specifically defined Service governed by the Terms and Conditions of this Contractual Agreement.

## Document Change Control

- Version 1, May 2015 (original)
- Version 2, November 2018
  - Formatting changes
  - Updated contact details in section 2.1
  - Changed the wording on page 2 to include alternate methods of identifying the customer subject to this agreement.

## Standard Terms and Conditions – Contractual Agreement Clauses

<b>1</b>	<b>AGREEMENT EXPRESSIONS &amp; DEFINITIONS</b>	<b>6</b>
<b>2</b>	<b>NOTICES &amp; KEY INFORMATION</b>	<b>9</b>
<b>3</b>	<b>GOVERNING LAW</b>	<b>10</b>
<b>4</b>	<b>PROFESSIONAL SERVICES (CONSULTANCY &amp; DEVELOPMENT)</b>	<b>10</b>
<b>5</b>	<b>MANAGED SERVICES/SUPPORT SERVICES</b>	<b>12</b>
<b>6</b>	<b>PROGRAMMING SERVICES</b>	<b>14</b>
<b>7</b>	<b>PRICING AND PAYMENT</b>	<b>16</b>
<b>8</b>	<b>FORCE MAJEURE</b>	<b>17</b>
<b>9</b>	<b>DELIVERY AND INSTALLATION</b>	<b>18</b>
<b>10</b>	<b>TITLE AND RISK</b>	<b>23</b>
<b>11</b>	<b>LICENCE GRANT</b>	<b>24</b>
<b>12</b>	<b>COPYRIGHT AND CONFIDENTIALITY</b>	<b>25</b>
<b>13</b>	<b>WARRANTIES</b>	<b>26</b>
<b>14</b>	<b>LIMITS OF LIABILITY</b>	<b>28</b>
<b>15</b>	<b>PATENT AND COPYRIGHT INDEMNITY AND DEFENCE</b>	<b>29</b>
<b>16</b>	<b>TERMINATION</b>	<b>30</b>
<b>17</b>	<b>EXPORT</b>	<b>31</b>
<b>18</b>	<b>ASSIGNMENT</b>	<b>32</b>
<b>19</b>	<b>MISCELLANEOUS PROVISIONS</b>	<b>32</b>
<b>20</b>	<b>NON-SOLICITATION OF STAFF</b>	<b>33</b>
<b>21</b>	<b>PUBLICITY</b>	<b>33</b>
<b>22</b>	<b>Appendix A: TERMS AND CONDITIONS REGARDING USE OF MICROSOFT SOFTWARE</b>	<b>34</b>

# Contractual Agreement Clauses

## 1 AGREEMENT EXPRESSIONS & DEFINITIONS

1.1 Unless the context otherwise requires, the following expressions and their definitions shall apply:

Expression	Definition
"Fuse Collaboration"	Shall mean "Fuse Collaboration Services Limited"
"Acceptance"	The formal acceptance of delivery of the IT products, equipment or Services to or at the Location(s) in accordance with Clauses 6.2.4(c) to 6.2.4(f) inclusive.
"Commencement Date"	The date stated in the Engagement Schedule when support or other Services shall be deemed to have commenced for the purposes of this Contractual Agreement. If no date is specified in the Engagement Schedule, then the date of Acceptance by the Customer shall be accepted as the Commencement Date.
"CPPC"	Customer's Prime Point of Contact.
"Designated Hardware"	The hardware specified as such in the Engagement Schedule and on which the Software is licensed to operate.
"Due Payment Period"	The period of time designated for payment of invoices to be paid as defined in Clause 5.2
"Engagement Schedule"	A Fuse Collaboration Engagement Schedule attachment to the Contractual Agreement for detailing the Supply of Computer IT Products and Services and any other specific terms or details agreed between the parties within the Document separately so designated by Fuse Collaboration, signed and mutually agreed by the Customer (e.g. Customer purchase order or facsimile) which Fuse Collaboration regards as sufficient for Fuse Collaboration to supply IT Products and/or Services to the Customer under the terms and conditions of this Contractual Agreement.
"Estimated Delivery Date"	The date agreed between the parties by which Fuse Collaboration will use reasonable endeavours to deliver to the Customer the IT Products or Services, and in the case of Programmed Products, each Stage of the Project.
"Functional Specification"	The functional specification(s) in accordance with which Programmed Products are to be written.
"Group Company"	Means in relation to a company, any holding company of it and any subsidiary or subsidiary undertaking of any such holding company of Fuse Collaboration, where holding company and subsidiary shall have the meaning defined in Section 1159 of the Companies Act 2006.
"Hardware"	Any item described as such in an Engagement Schedule.
"Implementation Plan"	Fuse Collaboration's estimated timetable for delivery or installation (as the case may be) of any IT Products or Services under this Contractual Agreement or any Engagement Schedule.
"Installation Charges"	The charges identified as such in the relevant Engagement Schedule.
"IT Products" or "Products"	Any Hardware or Software described in the Engagement Schedule.
"Licence Charges"	The licence charges for the Software specified in the relevant Engagement Schedule.

"Location"	The location(s) designated in the relevant Engagement Schedule where IT Products are to be installed or Services performed.
"Minimum Term"	The Minimum Term is the minimum period of provision of Service before any acts of termination can be conducted as per Clause 16.6, excluding termination for default by either party, and shall be the term specified in the Engagement Schedule. Where no such term is specified, the Minimum Term shall be 3 years.
"Over and Above Expenses"	Expenses for items outside of the agreed charges for the IT Products and Services provided to the Customer, example: hotel expenses, travel to locations not contracted, out of hours working not agreed as part of the Services, additional Man-power/ materials/ equipment.
"Per User Basis"	Shall mean a Software licence granted to the Customer for a designated volume of users as stipulated in any associated Fuse Collaboration Engagement Schedule.
"PO"	Is defined as a signed Purchase Order with a Purchase Order number which can be invoiced against and which has been signed by an Authorised Customer signatory.
"Product or Service Description"	The documents of this name and any addenda thereto which provide specification information for the IT Products or Services.
"Programmed Products"	Any bespoke software or modifications to Software Products created pursuant to Clause 13 of this Contractual Agreement.
"Project"	The development, supply and delivery of Programmed Products and all other work carried out by Fuse Collaboration as detailed in the Engagement Schedule.
"Programme of Work"	The timetable for completion of the Stages agreed between the Customer and Fuse Collaboration for the performance of the Programmed Products.
"Project Charges"	The charges for each Stage as detailed in the Engagement Schedule.
"Quotation"	The sum quoted in writing by Fuse Collaboration to perform the Project.
"Services"	Any Professional Services (Installation and Professional Services, Software Development) and/or Managed Services (such as Hardware and/or Software 2 <sup>nd</sup> , 3 <sup>rd</sup> 4 <sup>th</sup> line technical Support, Hosting, Hosted Services, Infrastructure-as-a-Service) described in the Engagement Schedule.
"Software"	Any item described as such in an Engagement Schedule together with any operating system software or other licensed material specified in the Engagement Schedule and residing in Hardware which may be embodied in or on various media such as tapes, disks, cards or chips (including Programmed Products).
"Specification Charges"	The charge for the Functional Specification shown in the Engagement Schedule.
"Stage"	An agreed portion of the Programmed Products.

"Standard Software Products"	Any non-Third party Software Product specified in the relevant Engagement Schedule.
"Third Party Products / Services"	Any third party Hardware and/or Software and/or Services described as such in an Engagement Schedule.
"User Documentation"	The documentation supplied by Fuse Collaboration or Fuse Collaboration's suppliers, to include manufacturer instruction manuals hardcopy or electronic ebook, DVD-Rom / CD-Rom diskettes which are associated with the recommended guidelines for use of the IT Products or Services as may be modified in writing by Fuse Collaboration or Fuse Collaboration's Third party suppliers or manufacturers periodically.

- 1.2 In this Contractual Agreement, unless the context otherwise requires:
- 1.2.1 references to this Contractual Agreement or any other document include references to this Contractual Agreement, its recitals and its schedules, Engagement Schedules or such other designated document as varied, supplemented and/or replaced (such replacement shall be in accordance with Page 2 in any manner from time to time);
  - 1.2.2 references to any party shall, where relevant, be deemed to be references to or to include, as appropriate, their respective lawful successors, assigns or transferees;
  - 1.2.3 references to any enactment shall be deemed to include references to such enactment as re-enacted, amended or extended and any subordinate legislation made from time to time under it, unless otherwise stated;
  - 1.2.4 references to a "person" include any individual, company, corporation, firm, partnership, joint venture, association, organisation, institution, trust or agency, whether or not having a separate legal personality;
  - 1.2.5 references to the one gender include all genders and references to the singular shall include the plural and vice versa;
  - 1.2.6 headings are included for ease of reference only and shall not affect the interpretation or construction of this Contractual Agreement;



## 2 NOTICES & KEY INFORMATION

2.1 All notices & key information under this Contractual Agreement must be addressed to a party as specified below and sent by one of the following methods:

- Email with confirmation of delivery
- Postage pre-paid, certified or registered mail return receipt requested
- Overnight courier e.g. DHL, Federal Express, Airbourne charges prepaid, confirmation requested
- Each party will immediately notify the other in writing if any of the information (contact and address details) in the Contractual Agreement Overview changes.

	<b>Customer Point of Contact</b>	<b>Fuse Collaboration Point of Contact</b>
<b>Full name and Business Title</b>	As Specified in the order acknowledgment and/or agreement	Daniel South Head of Operations
<b>Contact Telephone Numbers</b>		Office: +44 (0)1604 79 79 79
<b>Contact Email Address</b>		d.south@fusecollaboration.com
<b>Contract Postal Address</b>		12 Brookfield, Duncan Close, Moulton Park, Northampton, NN3 6WL United Kingdom

### 3 GOVERNING LAW

- 3.1 Any dispute or difference arising between the Parties out of or in connection with this Contractual Agreement shall be governed by English Law. The parties submit to the exclusive jurisdiction of the English Courts.
- 3.2 All communications between the parties will be conducted in English.

### 4 PROFESSIONAL SERVICES (CONSULTANCY & DEVELOPMENT)

- 4.1 In the event that Professional Services are specified as part of this Contractual Agreement as detailed in the Engagement Schedule, the following additional terms and conditions specified in this Clause 11 shall apply.
- 4.1.1 Late cancellation of services by the Buyer shall be subject to the following charges, regardless of agreement by the Seller;
- Less than 24 hours' notice = 100% of order value
  - 24 to 72 hours' notice = 85% of order value
  - 72 hours to 1 week notice = 70% of order value
  - 1 to 2 weeks' notice = 50% of order value
  - 2 to 3 weeks' notice = 25% of order value
- 4.2 Fuse Collaboration agrees to:
- 4.2.1 (unless enhanced arrangements are specified in the Engagement Schedule) make available the required levels of personnel specified in the Engagement Schedule to perform the Professional Services during normal business hours which are defined as: 9.00am to 5.00pm Monday to Friday.
- 4.2.2 If Services are delivered at the Location, travel will be performed on a reasonable basis to minimise the impact on normal business hours.
- 4.2.3 Nominate prior to the provision of the Professional Services a responsible representative to be Fuse Collaboration prime point of contact with the Customer during performance of the Professional Services.
- 4.3 The Customer agrees to:
- 4.3.1 Promptly supply Fuse Collaboration with such information as Fuse Collaboration may reasonably require to perform the Professional Services (taking reasonable steps to ensure its validity and accuracy in all cases).
- 4.3.2 Allow Fuse Collaboration staff up to one hour per working man-day for lunch.
- 4.3.3 After hours work during the working week 5pm to 9am, Monday to Friday to be charged at one and a half (1.5x) times the prevailing rate.
- 4.3.4 Work on UK Bank Holidays, and weekends, being conducted by prior arrangement (with plenty of notice) and being charged at double (2x) the prevailing rate.
- 4.3.5 Nominate prior to the provision of the Professional Services a responsible representative to be the Customer prime point of contact with Fuse Collaboration during performance of the Professional Services. Such person shall be empowered to sign and agree any changes, reports

or other documentation as so required to provision the Services on behalf of the Customer as though the Customer had done so itself.

- 4.3.6 Sign a Professional Services Report to signify the Customer has satisfactorily received the Services (such signature not to be unreasonably withheld).

## 5 MANAGED SERVICES/SUPPORT SERVICES

5.1 In the event that Managed Services / Support Services are specified as part of this Contractual Agreement as detailed in the Engagement Schedule, the following additional terms and conditions specified in this Clause 12 shall apply.

5.1.1 Fuse Collaboration reserves the right to withhold the provision of Managed Services / Support Services for any item(s) of Software not conforming to this Contractual Agreement and the attached Engagement Schedule, until those items are brought into conformity with approved configurations. Fuse Collaboration will use reasonable endeavours to provide such services as are necessary to ensure such conformity provided the Customer agrees to pay Fuse Collaboration Over and Above charges for such work.

### 5.2 ADDITIONAL TERMS AND CONDITIONS FOR HARDWARE SUPPORT SERVICES

The following additional terms and conditions shall, upon payment of the relevant charge, apply to Hardware Support Services detailed in the Engagement Schedule.

5.2.1 The scope of Hardware Support Services is set out in the applicable Service Description segment contained in the Engagement Schedule document. Hardware Support Services do not however include:

- a) The Customer's failure to maintain a suitable environment for the Hardware at the Location(s) including a constant power supply, air conditioning or humidity control;
- b) The Customer's neglect or misuse of the Hardware or failure to operate the Hardware outside of Fuse Collaboration or manufacturer's recommended guidelines, electronic or CD-Rom / DVD-Rom technical manuals, comprehensive training or hard copy written manuals;
- c) the alteration, modification or maintenance of the Hardware by a party other than Fuse Collaboration, without Fuse Collaboration prior written consent;
- d) the Hardware being moved (except where it is moved by Fuse Collaboration or under Fuse Collaboration's direction) without Fuse Collaboration's prior written consent;
- e) the use of operating consumables not approved by Fuse Collaboration or the manufacturer's recommended guidelines for example: disks, tapes, paper, etc. (such approval not to be unreasonably withheld);
- f) any defect in any software which is not also maintained by Fuse Collaboration;
- g) any accident or disaster affecting the Hardware, such as fire, flood water, wind, lightning, vandalism or burglary an event of force majeure as defined in Clause 4;

5.2.2 The correction of any fault due to:

- a) painting or refinishing the Hardware by the Customer or its designate third parties;
- b) electrical work external to the Hardware other than that conducted by Fuse Collaboration;
- c) the provision of supplies for use in conjunction with the Hardware conducted without the involvement or prior written agreement of Fuse Collaboration;

5.2.3 Fuse Collaboration will, at the Customer's request extend any Service to include any matter exempt from Clause 12.2.1 to the extent that Fuse Collaboration is able to do so and subject to

such Over and Above charges for such work as is reasonable in the circumstances. Costs for such works shall be agreed prior to commencement.

### 5.3 TERMS APPLICABLE TO HARDWARE AND SOFTWARE

- 5.3.1 The Hardware and Software Support Services will commence from the date specified in the relevant Engagement Schedule and continue for a minimum period of one year, and (unless terminated by any other provision in this Contractual Agreement) then for consecutive annual periods on advance payment of the relevant charges, until terminated by either party as per the terms of Clause 16.
- 5.3.2 Fuse Collaboration may withdraw Hardware and Software Support Services for Third Party Products if, in Fuse Collaboration's reasonable opinion they can no longer be properly maintained by Fuse Collaboration. If support services cannot be passed to either the author or a partner authorised by them then all Support charges paid in advance for such Third Party Products shall be refunded on a pro-rata basis with effect from the month in which such withdrawal takes effect.
- 5.3.3 All Hardware and Software Support charges will be specified in the Engagement Schedule and are payable in accordance with the payment terms defined in the applicable Engagement Schedule. Fuse Collaboration may increase Hardware/Software Support charges and/or amend the Support Services after the first anniversary of the Commencement Date at any time upon 30 days' prior written notice, such changes shall only occur once per annum. All Hardware/Software Support charges are due in accordance with Clause 5 of this Contractual Agreement.

## 6 PROGRAMMING SERVICES

**In the event that Programmed Products are specified in an Engagement Schedule, the following additional terms and conditions specified in this Clause 13 shall apply.**

- 6.1 Fuse Collaboration will supply, where requested by the Customer, Programmed Products in accordance with the Functional Specification to be produced by Fuse Collaboration and agreed by the Customer in accordance with Clause 13.2 below.

### AGREEMENT TO FUNCTIONAL SPECIFICATION

- 6.2 The Customer will provide Fuse Collaboration with a full written agreement to all parts of the Functional Specification prior to the comment of any programming work on any given Project. In the event that the Customer's agreed Specification is met by Fuse Collaboration, but the Customer does not accept the functional outcome of such specification, the Customer will be billed for the time spent and the Customer will promptly return the work completed by Fuse Collaboration (together with all copies) to Fuse Collaboration unless the Customer has previously paid Fuse Collaboration for the time that was incurred on production and discussion of said specification.

### DELIVERY AND INSTALLATION

- 6.3 Fuse Collaboration will deliver a copy of each Stage in machine readable form to the Location(s) by the Estimated Delivery Date, along with the relevant User Documentation as mutually agreed and defined in the Engagement Schedule. Each stage will then be submitted to Acceptance Testing in accordance with Clause d).

### SPECIFICATION CHANGES

- 6.4 Should the Customer wish to change the finally agreed Functional Specification, Fuse Collaboration will use reasonable endeavours to do so but reserve the right at its sole option to alter the Project Charges and Estimated Timeline as agreed with the Customer, such revised Estimated Timeframe and Charges where applicable.

### TERMS OF PAYMENT

- 6.5 Maintenance or Professional Days paid in advance, not used within a period of 12 months from date of order, will be treated as used, unless otherwise stipulated in the relevant Engagement Schedule.

## 7 PRICING AND PAYMENT

- 7.1 The charge for IT Products and Services and any relevant Installation Charges are listed in the Engagement Schedule. Unless otherwise indicated all prices exclude Value Added and any other Sales Taxes where applicable.
- 7.2 Payment of all sums due under this Contractual Agreement shall be made in accordance with the agreed payment terms detailed in the applicable Engagement Schedule. In the absence of any specific payment terms in the Engagement Schedule, all sums due under this Contractual Agreement shall be paid in Great British Pounds Sterling and made within 30 (thirty) days from the date of the invoice (the "Due Payment Period").
- 7.3 In the case of IT Products and Services supplied to a location situated outside of the United Kingdom the Customer agrees to pay all import levies, duties or taxes of whatever nature in relation to Services and IT Products related to this Contractual Agreement.
- 7.4 Without prejudice to Fuse Collaboration's other rights, at its sole option Fuse Collaboration reserves the right to charge interest on any overdue invoice amounts payable by the Customer to Fuse Collaboration at a rate of 4% (four per cent) per annum above Lloyds Bank plc Base Rate. Such charges will be levied to the Customer upon written notification that current invoices have exceeded the Due Payment Period. Interest shall then be charged from the date of notification until payment is received from the Customer. Fuse Collaboration shall at its sole option, be entitled to terminate this Contractual Agreement for overdue sums exceeding 14 (fourteen) calendar days from notification of the Customer's breach of the payment terms of this Contractual Agreement, such termination shall be in accordance with Clause 16.
- 7.5 All charges for IT Products and Services are exclusive of all Over and Above Expenses that Fuse Collaboration reasonably incur except where specifically stated. Fuse Collaboration will notify the Customer as soon as is reasonably possible and invoice these charges to the Customer as and when they occur.
- 7.6 In the case of payments becoming more than 14 (fourteen) days overdue, Fuse Collaboration reserves the right to suspend any and all work. Upon receipt of payment, Fuse Collaboration will agree to review current Engagement Schedules and amend or replace them as mutually agreed. Any additional costs resulting from the delays in payment by the Customer shall be borne by the Customer.
- 7.7 In the event that the Customer makes payment for days in advance, any unused days within a period of 12 (twelve) months from date of order, will be treated as used.
- 7.8 In the event of any dispute in connection with any invoice rendered by Fuse Collaboration, Customer agrees to notify Fuse Collaboration of such dispute within 10 (ten) working days of date of invoice. The Parties agree to use reasonable endeavours to resolve such dispute within 10 (ten) working days of the date of notification. The Customer shall pay the whole or relevant part of the undisputed amount agreed between the Parties on the due date.
- 7.9 In the event the Customer disputes a part or the entire invoice due and the dispute is resolved in favour of Fuse Collaboration the Customer shall pay the disputed amount within 5 (five) working days of the date the dispute is resolved if the Due Payment Period for the invoice payment has been exceeded since the date of the invoice. If the Due Payment Period has not been exceeded the remaining time from the date of the invoice shall apply.
- 7.10 In the event the Customer disputes a part or the entire invoice due and the dispute is resolved in favour of the Customer, Fuse Collaboration shall credit the disputed amount within 5 (five) working days of the date the dispute is resolved.



## 7.11 LIEN

Where the Customer requests Fuse Collaboration to provide storage for equipment and materials in support of the Services as defined in the applicable Engagement Schedule. Fuse Collaboration shall retain a legal lien over any such Customer equipment or materials in Fuse Collaboration's possession or under Fuse Collaboration's control, in the event that the Customer is in default of the payment terms of this Clause 3.

- 7.11.1 The exercise of such lien by Fuse Collaboration shall be notified to the Customer in writing detailing the undisputed payments due, the enforcement of this Clause 5.11,5.10 and the equipment and materials over which the lien has been exercised.
- 7.11.2 The Customer shall respond within 5 (five) days to such written notification detailing when payments are to be received.
- 7.11.3 Where the Customer fails to respond to such written notification after 5 (five) days, or the Customer subsequently fails to make payment on the date notified to Fuse Collaboration in accordance with Clause 5.11.2, Fuse Collaboration shall be entitled to seek the value of the outstanding sum due from the Customer by attaining the market value of the equipment and materials over which the lien has been exercised by Fuse Collaboration offset against the outstanding sums due and all such reasonable administrative charges incurred by Fuse Collaboration. The balance of any sums offset or remaining equipment and materials, if any, shall be returned to the Customer at the Customer's expense and this Contractual Agreement shall be terminated in accordance with Clause 16.

## 8 FORCE MAJEURE

- 8.1 Neither party shall be held responsible for any delay or failure in performance pursuant to this Contractual Agreement including any Engagement Schedule to the extent such delay or failure is caused by: fire, flood, explosion, war, strike, embargo, labour dispute, government requirement, civil or military authority, Act of God, nature or the public enemy, inability to secure materials, transportation facilities or circuits from telecommunications suppliers, act or omission of carriers and suppliers, acts or failure to act of any governmental authority, any other causes beyond its reasonable control. Each party shall endeavour to give the other reasonable notice of any such delay and provide updates of timeframe for dealings to return to normal business.

## 9 DELIVERY AND INSTALLATION

### 9.1 DELIVERY

- 9.1.1 The Customer agrees where requested by Fuse Collaboration or if so applicable to the Service provided and defined in the Engagement Schedule to prepare or make suitably available for purpose, the Location for the installation of the IT Products or performance of the Services in accordance with any Fuse Collaboration written instructions prior to the delivery date (unless Fuse Collaboration has agreed in the Engagement Schedule to undertake such preparation as part of the Services). In the event that the Customer has not made the Location suitable as per Fuse Collaboration's written instruction, any additional works required to bring the area up to such Fuse Collaboration's requirement will be charged to the Customer as per Clause 5.5.
- 9.1.2 Fuse Collaboration will deliver the IT Products, or perform the Services as required and applicable to this Contractual Agreement at the Location in accordance with any proposed agreed date or times stated in the Engagement Schedule (including any proposed implementation plan referenced by or in the Engagement Schedule). Unless the relevant Engagement Schedule expressly states or it is otherwise agreed, such date or times shall constitute agreed estimates only, and shall not be binding. Fuse Collaboration shall not be liable for any delay in delivery against an agreed estimate. Fuse Collaboration will however use reasonable endeavours to notify the Customer of any delay as far in advance as reasonably possible, with any possible action plan to minimise any such delay.
- 9.1.3 Upon Customer's request and as mutually agreed between the Parties to expedite an alternate delivery date or time which necessitates Fuse Collaboration to conduct additional works or incur additional costs (Over and Aboves) to facilitate such request, the Customer shall reimburse Fuse Collaboration for the cost of such Over and Aboves which shall be agreed between the Parties prior to Fuse Collaboration undertaking such work. Where the Customer requests Fuse Collaboration to postpone delivery, the Customer agrees (at Fuse Collaboration's reasonable discretion) to pay all direct costs and expenses for storage, handling, care, stand-down of manpower and or any other applicable cost Fuse Collaboration reasonably incurs resulting from such postponement.

- 9.1.4 If the delivery of IT Products or performance of Services is suspended at the Customer's request or delayed through the Customer's default (including but not limited to lack of, incomplete or incorrect instructions or the Customer's refusal to accept delivery of the IT Products or Services for a period of 30 days or more from the dates mutually agreed for the dispatch or delivery of products or performance of Services) Fuse Collaboration will be entitled to payment at the agreed rates for Services already performed, IT Products supplied or ordered and any other additional costs Fuse Collaboration thereby reasonably incurs without prejudice to any other remedies Fuse Collaboration may have.
- 9.1.5 Notwithstanding Clauses 6.1.3 and 6.1.4, prior to despatch of the IT Products or performance of Services, Fuse Collaboration will attempt to meet any reasonable written request made by the Customer to revise the Implementation Plan.

## 9.2 INSTALLATION AND ACCEPTANCE

- 9.2.1 In the event installation services are specified in the relevant Engagement Schedule as part of this Contractual Agreement, Fuse Collaboration will install the IT Products based on the following terms:
- a) Installation will be undertaken as soon as reasonably practicable after delivery of the IT Products or in accordance with the relevant implementation plan specified in the Engagement Schedule.
  - b) Customer will not alter or tamper with the IT Products in any way until installation is complete without Fuse Collaboration prior written consent, such consent not to be unreasonably withheld.
  - c) The Customer will provide Fuse Collaboration (and/or Fuse Collaboration's authorised third parties) with sufficient free access to and use of associated computer hardware and software, communications facilities and other consumables together with suitable accommodation on the Customer's premises and access to Customer designate employees as applicable and reasonably necessary to enable the IT Products or Services to be installed, tested and performed.
  - d) Install the required number of licensed users as defined in the agreed Engagement Schedule.
- 9.2.2 Any applicable Hardware purchased from Fuse Collaboration as part of this Contractual Agreement shall;
- a) be handled and stored in a safe area by the Customer and all risk shall be with the Customer, if the relevant Hardware as stipulated in the Engagement Schedule is delivered to the Customer prior to the agreed installation date.
  - b) where the Customer does not commission Fuse Collaboration to install Hardware on which the Software Products will operate, the Customer will ensure the Hardware is installed and fully operational, (at the Customer's expense) on the estimated delivery date for the Software. Fuse Collaboration shall not be held responsible for any delays in installation as a result of such failure by the Customer to make available the required Hardware for installation.

- 9.2.3 If Hardware is NOT purchased from Fuse Collaboration as part of this Contractual Agreement, the Customer shall;
- a) ensure that the Hardware meets Fuse Collaboration's recommended minimum specification requirements to operate the relevant Software products purchased by the Customer from Fuse Collaboration.
  - b) agree not to hold Fuse Collaboration responsible for any Software incompatibility issues that may be suffered as a consequence of such failure by the Customer to use Hardware that does not meet the recommended requirements for the IT Products purchased by Customer from Fuse Collaboration.
  - c) ensure the Hardware is installed and fully operational on the estimated delivery date for the Software. Fuse Collaboration shall not be held responsible for any delays in installation as a result of such failure by the Customer to make available the required Hardware for installation.
- 9.2.4 Unless alternative arrangements are detailed in the applicable Engagement Schedule:
- a) The IT Products will (where installation is specified in the relevant Engagement Schedule) be submitted following installation to acceptance testing ('the Acceptance Tests'). In the case of Hardware or Standard Software the Acceptance Tests shall (if any exist) comprise the Suppliers' standard diagnostic tests and/or sample procedures and/or other tests designed to show the Customer that the IT Products perform in accordance with the User Documentation or (in the case of Standard Software) with any applicable Software Product Description.
  - b) In the case of Programmed Products the Acceptance Tests shall be performed on each Stage in accordance with the test specification(s) included in the Functional Specification (or such other documents as may be agreed between the parties) to show that Stage performs in accordance with the Section(s) of the Functional Specification covering that Stage.
  - c) Satisfactory completion of the Acceptance Tests (if any) will be evidenced by the Customer's signature of an acceptance certificate presented by Fuse Collaboration. The date that the Customer signs the Acceptance Certificate shall be deemed "the Acceptance Date". The Customer agrees not to unreasonably withhold signature of such certificate and that minor defects in any Product which do not affect the overall performance of the tested product shall not be used as a reason for the Customer not accepting that Product.
  - d) A Product shall be deemed to have been accepted by the Customer if; (i) the Customer makes productive use of that Product in advance of any such tests having been carried out; or (ii) if Acceptance Tests cannot be carried out within 14 days of delivery of such IT Products due to causes which are deemed the Customer's responsibility or within the Customer's reasonable control, and the 'Acceptance Date' shall be construed accordingly;
  - e) If no installation is specified in the Engagement Schedule or no Acceptance Tests are published for that Product, the Acceptance Date shall be deemed to be the date when Fuse Collaboration delivers the Product to the Customer.
  - f) Where delivery of the Hardware is requested as part of the Services, Acceptance of the Hardware shall be deemed by Fuse Collaboration as;

- i. the Customer's acceptance upon delivery to the agreed delivery Location of the Hardware items as detailed in the Engagement Schedule; or
- ii. the Customer's signature of the Delivery note for the Software and or Hardware delivered to the Location specified and agreed as detailed in the Engagement Schedule

For the avoidance of doubt full risk shall pass from Fuse Collaboration to the Customer upon delivery and Acceptance as defined in Clause 6.2.4(f).

### 9.3 THIRD PARTY PRODUCTS

- 9.3.1 Fuse Collaboration may require users to enter into separate licence agreements with third party owners of software and hardware.
- 9.3.2 Any such licence agreement shall be for the agreed specified user numbers as stated in the Engagement Schedule. In the event that the Customer contravenes such specified users Fuse Collaboration shall be entitled to audit the Customer and re-coup any such additional charges as required for the additional number of users above the stated contracted amount.
- 9.3.3 The Customer agrees not to hold Fuse Collaboration responsible for any loss of whatever nature suffered or incurred by the Customer by reason of the Customer failing or refusing to enter into any such separate licence agreement as Fuse Collaboration may require pursuant to Clause 6.3.1.

## 10 TITLE AND RISK

### 10.1 HARDWARE

With regards to any Hardware provided to the Customer as part of this Contractual Agreement title to each item of Hardware shall pass to the Customer when payment in full in respect of that item has been received in cleared funds by Fuse Collaboration.

### 10.2 SOFTWARE

With regards to any Software provided to the Customer as part of this Contractual Agreement, title shall pass as regards the media on which the programs are recorded upon payment in full of the applicable agreed price; intellectual property title shall not pass for the programs themselves which shall at all times remain the property of Fuse Collaboration and /or any relevant designate Fuse Collaboration third party supplier(s).

10.3 Risk in each item of the IT Products shall pass to the Customer upon physical delivery to the Customer of each item unless expressly stated otherwise in this Contractual Agreement.

10.4 It is the Customer's responsibility and duty of care to store the Software or Hardware in the event that the Software or Hardware is delivered prior to the agreed specified delivery date.

## 11 LICENCE GRANT

- 11.1 Fuse Collaboration hereby grants to the Customer a non-exclusive, non-transferable licence, specific to the volume of users specified in the agreed Engagement Schedule, to use the Software and the User Documentation from the Acceptance Date as per acceptance terms defined in Clause 6.2 (unless otherwise specified in the Engagement Schedule) on the Customer's Designated Hardware at the required Location to process Customer data, only insofar as the Customer complies with the terms and conditions of this Contractual Agreement. In the event that Software cannot be used on the Customer's Designated Hardware due to a failure or malfunction, the Software may be temporarily used on alternative equipment until such failure or malfunction is remedied. Such use will require Fuse Collaboration's written consent not to be unreasonably withheld.
- 11.2 Unless otherwise specified in the relevant Engagement Schedule, once-only Licence Charges shall not be subject to variation. Fuse Collaboration may however, vary periodic Licence Charges as specified in the Engagement Schedule by providing the Customer with no less than 30 days prior written notice.
- 11.3 If the Software is licensed as stipulated in the applicable Engagement Schedule, the Customer is permitted to use the Software for the defined purchased volume of users specified in the relevant Engagement Schedule. In the event that the Customer is deploying the Software to a greater volume of users than the designated number stated in the Engagement Schedule, then the Customer shall be deemed to be in breach of the terms of this Contractual Agreement and (without prejudice to Fuse Collaboration's other rights) Fuse Collaboration shall at its sole option be entitled to claim compensation and/or damages and/or recoup such additional costs for the volume of such additional users added by the Customer subject to Clause 14, and/or terminate this Contractual Agreement in accordance with Clause 16.
- 11.4 Except as permitted under Clause 8.1 above, the Customer will not transfer the Software to another location without prior written consent of Fuse Collaboration such consent not to be unreasonably withheld.
- 11.5 Where applicable and upon agreement of Fuse Collaboration the Customer may make such copies of the Software as are reasonably necessary for the Customer's operational storage or security but shall not copy the Software for any other purpose. However, every copy the Customer makes must contain or have annexed to it (in either case in a prominent position) the same copyright and other proprietary notices which appear on the original version. All copies of the Software shall be subject to the terms and conditions of this Contractual Agreement.
- 11.6 User Documentation is a valuable asset. Accordingly, the Customer may not copy it without Fuse Collaboration prior written agreement such agreement not to be unreasonably withheld.
- 11.7 The Customer must not modify, counter-productively interface with, add to, reverse engineer, de-compile, disassemble, or in any other way interfere with the Software or incorporate any Software into any product or program not supplied by Fuse Collaboration except as may be permitted under Sections 50A, 50B, 50BA and 50C of the Copyright, Designs and Patents Act 1988 or otherwise by the applicable User Documentation.



## 12 COPYRIGHT AND CONFIDENTIALITY

- 12.1 The copyright and all other intellectual property rights in Software, Programmed Products, Functional Specifications and User Documentation provided by Fuse Collaboration or its designate third party suppliers shall remain vested in Fuse Collaboration or Fuse Collaboration's third party suppliers.
- 12.2 The copyright and all other intellectual property rights in Software, Programmed Products, Functional Specifications and User Documentation provided by the Customer shall remain vested in the Customer.
- 12.3 The Customer will keep confidential the Software and User Documentation and will not disclose the same to any third party without Fuse Collaboration's prior written consent.
- 12.4 The Parties will jointly agree to keep all information obtained from each other under or in connection with this Contractual Agreement including any Engagement Schedule confidential and will not divulge the same to any third party without the other Party's prior written consent.
- 12.5 The provisions of Clause 9 shall not apply to:
  - 12.5.1 Any information which is or becomes in the public domain (otherwise than by breach of this Contractual Agreement) or which is trivial or obvious.
  - 12.5.2 Information which is demonstrably in the possession of the receiving Party before divulgence as aforesaid.
  - 12.5.3 Information legitimately obtained from a third party without any obligation of confidence and without that third party breaching any obligation of confidence (whether to a Party or otherwise).
- 12.6 The Parties jointly agree to allow each other to divulge confidential information only to those employees, agents, or subcontractors who are directly involved in the supply or use of the IT Products and Services and shall ensure that such employees, agents, or subcontractors are aware of and comply with these obligations as to confidentiality.
- 12.7 The provisions of this Clause 9 will survive the event of any termination of this Contractual Agreement for whatever reason.

## 13 WARRANTIES

- 13.1 Fuse Collaboration warrants to the Customer as follows:
- 13.1.1 That Fuse Collaboration has the right to market the IT Products and license the Software.
  - 13.1.2 Fuse Collaboration warrants that when the program is used in the specified operating environment on the specified recommended hardware it will conform to its published specifications. Fuse Collaboration does not warrant uninterrupted or error free operation of the program or that the IT Product will not contain minor defects.
  - 13.1.3 Programmed Products to be supplied pursuant to this Contractual Agreement will substantially comply with the mutually agreed Functional Specification.
  - 13.1.4 Any Services to be provided by Fuse Collaboration or Fuse Collaboration's third party suppliers on Fuse Collaboration's behalf shall be performed with due care and skill as required to provide the Services to the Customer.
  - 13.1.5 Fuse Collaboration will assign to the Customer the benefit of any warranty given to Fuse Collaboration by the supplier of the relevant Third Party Products to the extent Fuse Collaboration is able to do so. Unless otherwise detailed in the relevant Engagement Schedule the warranty period for each item of Third Party Products shall commence from the date of delivery of that item to the Location.
- 13.2 In the event that any IT Products do not perform as warranted in Clauses 10.1.2 to 10.1.4 Fuse Collaboration shall, at Fuse Collaboration's sole option and discretion, repair or replace any defective item provided that such non-performance is notified to Fuse Collaboration in writing within 90 days from the relevant Acceptance Date in terms of Clause 6 (in the case of Standard Software and Programmed Products) or (in the case of Third Party Software) within any relevant warranty period given to Fuse Collaboration by the supplier thereof (such Warranties from Third party Suppliers shall be notified to the Customer). Repair or replacement as aforesaid shall be the Customer's sole remedy in respect of any breach of the warranties contained in Clauses 10.1.2 to 10.1.4 or in respect of any implied conditions as to quality or fitness of the IT Products.
- 13.3 To the extent that any Services performed by Fuse Collaboration or on behalf of Fuse Collaboration fail to meet the requirements of Clause 10.1.3 Fuse Collaboration shall re-perform, or have re-performed, such services within a reasonable time provided such failure is notified to Fuse Collaboration in writing within 90 days from the date of original performance. Re-performance shall be the Customer's sole remedy in respect of deficient Services.
- 13.4 Fuse Collaboration shall have no liability to the extent that non-compliance with the relevant Specification or documentation arises as a result of;
- 13.4.1 any modification or addition to the IT Products made by the Customer
  - 13.4.2 incorrect use or corruption of the IT Products by the Customer
  - 13.4.3 incorrect or improper use of the IT Products by the Customer or its designate third party's outside of Fuse Collaboration or manufacturer's recommended guidelines, electronic or CD-Rom / DVD-Rom technical manuals, comprehensive training or hard copy written manuals.
  - 13.4.4 the Customer's failure to operate the Software Products on the Designated or Fuse Collaboration/ manufacturer's recommended Hardware specification.
- 13.5 Save as expressly provided in Clause 10.1 Fuse Collaboration gives no warranty that IT Products or Services shall be free from minor defects or interruptions not materially affecting the use of such IT Products or Services. The express warranties in Clause 10.1 are accepted by the Customer to the exclusion of all other

warranties, conditions, statements, representations or other terms implied by law. No statement or representation not expressly set out in this Contractual Agreement or any Engagement Schedule shall be binding upon Fuse Collaboration whether as a warranty or otherwise. Nothing in Clause 10 shall, however, limit or restrict Fuse Collaboration's liability for any representation made fraudulently.

## 14 LIMITS OF LIABILITY

In this Contractual Agreement "default" shall mean any breach of either party's obligations under this Contractual Agreement or any Engagement Schedule, any negligent, reckless or illegal act or omission, or any other default, act, omission or statement by either party, or its employees, agents or subcontractors in connection with or in relation to the subject matter of this Contractual Agreement (including any Engagement Schedule or other order either party accepts hereunder) and in respect of which that party is legally liable to the other party.

14.1 Fuse Collaboration's entire liability to the Customer and the Customer's exclusive remedies against Fuse Collaboration for any "Default" shall be set out in this Clause 14. Such liability shall be limited to the following:

14.1.1 For infringement of third party rights, the rights and remedies contained in Clause 15.

14.1.2 For breach of warranty, the rights and remedies contained in Clause 10.

14.1.3 For direct physical damage to property (but excluding data) with a maximum liability of £1,000,000 per incident or series of connected incidents.

14.1.4 Subject to Clause 14.2, in all other cases (including claims under Clause 15) Fuse Collaboration's maximum aggregate liability arising from the supply of IT Products and Services under this Contractual Agreement (including any Engagement Schedule), and whether arising under contract, tort or in any other circumstances whatsoever, shall be limited to an amount not exceeding the price paid by the Customer to Fuse Collaboration for the IT Products and Services supplied pursuant to this Contractual Agreement.

14.2 Notwithstanding any other provision of this Contractual Agreement:

14.2.1 Neither party shall be liable for any loss of turnover, sales, revenue or profits, or any indirect, consequential or special loss suffered by the other; and

14.2.2 Neither Party shall exclude nor limit liability for death or personal injury, or in respect of any circumstances in which at law, such exclusion or limitation would not be permissible.

14.2.3 Fuse Collaboration shall not be liable for any loss of Customer data.

14.3 The Customer will afford Fuse Collaboration a mutually agreed reasonable timeframe to correct any deficiency in any IT Product or Service (including at Fuse Collaboration's option the substitution or addition of IT Products) or other Default before the Customer deems Fuse Collaboration to be in breach of Fuse Collaboration obligations under this Contractual Agreement.

## 15 PATENT AND COPYRIGHT INDEMNITY AND DEFENCE

- 15.1 In the event of any successful claim arising against the Customer alleging that IT Products or Services supplied by Fuse Collaboration hereunder infringe the intellectual property rights of any third party, Fuse Collaboration will indemnify the Customer against:
- a) all costs and expenses incurred with Fuse Collaboration prior written authorisation or at Fuse Collaboration request in connection with the defence of such successful claim, and
  - b) any amount assessed against the Customer in final judgement of such successful claim, provided that Fuse Collaboration shall only be liable under this Clause 15:
- 15.1.1 In all cases of a successful claim for alleged infringement against Fuse Collaboration, Fuse Collaboration shall require sole control of the defence of the claim or proceedings arising therefrom.
- 15.1.2 Notwithstanding the foregoing Fuse Collaboration shall not be liable in the event that;
- a) Fuse Collaboration has not received written notification from the Customer of a third party claim within a reasonable time (and in any event, within 7 days) of the Customer first becoming aware of it, or the possibility of it;
  - b) the Customer has modified the IT Products or Services or incorporated them into a system not supplied, notified or recommended by Fuse Collaboration, if such modification or incorporation has been carried out without Fuse Collaboration prior written consent or notification;
  - c) the Customer has not taken, and does not continue to take, all reasonable steps to mitigate its loss.
  - d) to the extent that such alleged infringement arose as a result of any detailed instruction or design supplied by the Customer.
- 15.2 If the Customer's use of the IT Products and Services shall be legally prevented or is in Fuse Collaboration opinion likely to be so, and such prevention is not due to any modification or use of the IT Products or Services not previously authorised by Fuse Collaboration, then Fuse Collaboration shall at Fuse Collaboration's option and expense:
- e) replace the relevant Product or Service with a suitable substitute free of any such infringement; or
  - f) modify the IT Product or Service so that it will be free of such infringement, provided that after such modification the relevant Product or Service shall remain capable of satisfying the warranties given in Clause 10; or
  - g) procure for the Customer a licence or other right to allow continued use of the Product or Service; or
  - h) discontinue the relevant Product or Service and refund to the Customer any amounts paid in respect thereof less a reasonable charge based on any use the Customer has enjoyed prior to such prevention.

- 15.3 Notwithstanding any other provision of this Contractual Agreement, we shall have no liability in respect of any infringement or alleged infringement of any United States patent.
- 15.4 For the avoidance of doubt Fuse Collaboration shall have no liability in the event that the Services infringe the intellectual property rights of any third party if such an infringement is caused as a direct result of an unauthorised Customer modification without the notification of Fuse Collaboration or if such an infringement is caused as a result of a direct instruction from the Customer.

## 16 TERMINATION

- 16.1 Termination of this Contractual Agreement shall only occur in the event of material breach of terms or Default of a party's (the defaulting party) obligations and the defaulting party has exceeded 15 (fifteen) working days or an otherwise mutually agreed timeframe permitted to resolve the subject of default that is capable of remedy.
- 16.2 Either party may terminate its outstanding obligations under any Accepted Engagement Schedule (subject to Clause 16.2 below):
- 16.2.1 Immediately by written notice to the other in the case of a material breach directly concerning the IT Products or Services the subject of that Engagement Schedule which is incapable of remedy, or
  - 16.2.2 In the case of a material breach capable of remedy and directly concerning the IT Products or Services the subject of that Engagement Schedule (other than non-payment) after providing thirty (30) days written notice to the other specifying the material breach and requiring its remedy and allowing an additional sixty (60) days to cure the breach.
  - 16.2.3 Immediately by written notice to the other if the other shall have a receiver or liquidator appointed or shall pass a resolution for winding up (otherwise than for the purpose of amalgamation or reconstruction) or a Court shall make an order to that effect or if the other party shall enter into any composition or arrangement with its creditors or shall become insolvent.
  - 16.2.4 the Minimum Term has passed and the Customer has provided written notification no less than 90 (ninety) days prior to the due date of the Engagement Schedule term.
  - 16.2.5 In all cases under this Clause 16 with the exception of 16.1, 16.2.2 and 16.2.3 the termination of an Engagement Schedule shall not constitute the Termination of the entire Contractual Agreement but only the Services and Engagement Schedule terminated. This Contractual Agreement is intended to form the basis of all working relations between the parties and all Engagement Schedules containing details of the IT Products and Services agreed to be supplied to the Customer by Fuse Collaboration shall be governed by the terms of this Contractual Agreement. Where there is inconsistency between this Contractual Agreement and an Engagement Schedule, the terms of this Contractual Agreement shall prevail.
- 16.3 In the event of the Customer's non-payment of any undisputed invoices Fuse Collaboration may (without prejudice to any other Fuse Collaboration rights) upon giving the Customer seven days prior written notice

- to suspend the performance of any of Fuse Collaboration obligations under any Engagement Schedule until payment is received.
- 16.4 Prior to invoking the formal procedure set out in Conditions 16.2.2 and 16.3 above both Parties shall refer any dispute to their respective managing directors. If the parties then remain unable to resolve the dispute, conditions 16.2.2 and 16.3 may then be invoked.
- 16.5 Any termination of this Contractual Agreement or any Engagement Schedule howsoever caused shall not affect any of either Parties accrued rights or liabilities arising from this Contractual Agreement or any such Engagement Schedule.
- 16.6 In the event the Customer wishes to terminate this Contractual Agreement or any Engagement Schedule for convenience the following conditions shall apply;
- 16.6.1 Termination before 90 days prior to the end of the Minimum Term shall incur a cancellation fee equivalent to the charges that would be payable over the period to the end of the Minimum Term.
- 16.6.2 Termination after 90 days prior to the end of the Minimum Term shall incur a cancellation fee equivalent to the charges that would be payable over 90 days.
- 16.6.3 The Parties agree that the terms above are an appropriate liquidated damages settlement for termination of convenience by the Customer and reflect a genuine estimate of the economic and other loss that would be suffered or incurred by Fuse Collaboration as a result of the Customer's early termination.
- 16.6.4 For the avoidance of doubt in the event of termination notwithstanding the foregoing any items purchased or manufactured by Fuse Collaboration on behalf of the Customer shall be re- charged to the Customer at cost price. For items ordered by Fuse Collaboration or items in production at a third party on behalf of the Customer, at the Customer's sole option to progress with continued production to fulfil the order or terminate the order. Any costs incurred with such third party for cancellation of production shall be borne by the Customer.
- 16.7 The following Clauses shall survive termination of this Contractual Agreement 3, 5, 6, 7, 8 , 9, 10, 14, 15, 16, 1619, and 20.

## 17 EXPORT

Certain IT Products and technical information supplied by Fuse Collaboration to the Customer pursuant to this Contractual Agreement may be subject to export controls. Accordingly (regardless of any notification the Customer makes to Fuse Collaboration of the ultimate destination of the IT Products and/or technical information outside the United Kingdom) it is the Customer's sole responsibility to obtain the appropriate written consent of Her Majesty's Government and any other appropriate Governments, governmental bodies, licensing authorities or regulatory bodies, including (if applicable) the United States Department of Commerce, before exporting from the United Kingdom or importing into any country any such IT Products, technical information or system incorporating any such IT Products or technical information.

## 18 ASSIGNMENT

- 18.1 Fuse Collaboration may, without Customer consent assign this Contractual Agreement to any other company owned or controlled by Fuse Collaboration or subcontract any of Fuse Collaboration rights or obligations under this Contractual Agreement.
- 18.2 Subject to Clause 18.1, neither party shall have the right to assign this Contractual Agreement and all rights and obligations in connection with this Contractual Agreement without the written agreement of the other party.
- 18.3 In the event of Fuse Collaboration agreeing to the assignment of this Contractual Agreement by the Customer then the assignee of this Contractual Agreement will where applicable and so required pay a fee according to the prevailing price list for licences. The assignee of this Contractual Agreement will enter into a deed of adherence agreeing to be bound by the terms of this Contractual Agreement.

## 19 MISCELLANEOUS PROVISIONS

- 19.1 The waiver by either Party of any breach of this Contractual Agreement by the other Party in a particular instance shall not operate as a waiver of subsequent breaches of the same or a different kind. The failure of either Party to exercise any rights under this Contractual Agreement in a particular instance shall not operate as a waiver of that Party's right to exercise the same or different rights in subsequent instances.
- 19.2 If any provision of this Contractual Agreement shall be held to be invalid or unenforceable, it shall be severed from this Contractual Agreement, and the remainder of this Contractual Agreement shall remain in full force and effect. However, if the provision is essential the parties shall promptly negotiate in good faith with the view to agreeing a replacement provision that reasonably reflects the Parties' original intentions.
- 19.3 Any provision of this Contractual Agreement which by its context is intended to apply after termination of this Contractual Agreement shall survive its termination.
- 19.4 Unless otherwise agreed in writing, the Customer will not set-off any monies due to Fuse Collaboration under any Engagement Schedule to this Contractual Agreement against any amount claimed by or due to the Customer from Fuse Collaboration under any other Engagement Schedule to this Contractual Agreement or any other agreement with Fuse Collaboration.
- 19.5 In the event of conflict between the provisions of this Contractual Agreement and any Engagement Schedule, the following order of precedence shall be;
- 19.5.1 Conflict of contractual terms the provisions of this Contractual Agreement shall prevail.
- 19.5.2 Conflict of the scope of the Services, the provisions of the applicable Engagement Schedule shall prevail.
- 19.6 At Fuse Collaboration sole discretion in the unlikely event that the Services as set out within the Engagement Schedule are no longer economically viable for Fuse Collaboration to provide, Fuse Collaboration shall in the first instance contact the Customer. Fuse Collaboration and the Customer shall negotiate in good faith with a view to mutually agreeing a process of change or, where all other avenues are exhausted, Fuse Collaboration reserves the right to terminate the Services set out in that Engagement Schedule upon giving written notice to the Customer.
- 19.7 Where any Fuse Collaboration personnel are located at Customer premises the Customer shall ensure that all Fuse Collaboration personnel are provided with any required Health and Safety training. The Customer shall also be responsible for ensuring that any Fuse Collaboration personnel are provided with any required passes or security access to perform the Services.



## 20 NON-SOLICITATION OF STAFF

- 20.1 The Customer will not during the term of this Contractual Agreement and for a period of 12 months after termination without Fuse Collaboration prior written consent directly or indirectly solicit or offer employment or engagement to any Fuse Collaboration personnel who at the time of such action or during a period of 12 months immediately preceding such action was directly involved in the provision of Services to the Customer.
- 20.2 If the Customer wishes to engage any Fuse Collaboration resource within the restricted period there are 2 options available:
- 20.2.1 exercise an option to extend the resource assignment for a further period; or
  - 20.2.2 elect to pay a transfer fee equivalent to 12 months' worth of fees that the Customer would have paid Fuse Collaboration for the supply of the resource. Such a transfer fee will not be payable where the resource has responded to a published general advertisement for a vacancy within the Customer's organisation.

## 21 PUBLICITY

- 21.1 Either Party may include name and logo on its customer/ supplier lists and disclose and summarise generally the nature of any work being performed hereunder or under supplemental agreements, provided that:
- 21.1.1 no such disclosure shall result in the breach of the disclosing Party's confidentiality obligations under this Contractual Agreement;
  - 21.1.2 the other Party shall be entitled to have sight of and approve (insofar as they relate to the other Party) all copy marketing and other materials prior to release by the disclosing Party – this includes the right to decline the disclosing Party's request;
  - 21.1.3 use of either Party's name and logo shall be in accordance with the Party's brand including <sup>TM</sup> and <sup>®</sup> legends where applicable;
  - 21.1.4 the disclosing Party shall remove the other Party's name, logo and any other relevant content from any marketing materials, client lists or summaries in the event that, in the reasonable opinion of the other Party, such publication damages or may potentially damage the image or reputation of that Party.
- 21.2 In all cases any publicity or use of either Party's logo or name in any marketing or publicity information shall be with the full written consent and agreement of the other Party.

## 22 Appendix A: TERMS AND CONDITIONS REGARDING USE OF MICROSOFT SOFTWARE

This document concerns your use of Microsoft software, which includes computer software provided to you by **Fuse Collaboration Services Ltd** as described below, and may include associated media, printed materials, and “online” or electronic documentation (individually and collectively “SOFTWARE PRODUCTS”). **Fuse Collaboration Services Ltd** does not own the SOFTWARE PRODUCTS and the use thereof is subject to certain rights and limitations of which **Fuse Collaboration Services Ltd** needs to inform you. Your right to use the SOFTWARE PRODUCTS is subject to your agreement with **Fuse Collaboration Services Ltd**, and to your understanding of, compliance with and consent to the following terms and conditions, which **Fuse Collaboration Services Ltd** does not have authority to vary, alter or amend.

### 1. DEFINITIONS.

“**Client Software**” means software that allows a Device to access or utilize the services or functionality provided by the Server Software.

“**Device**” means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, “smart phone,” or other electronic device.

“**Server Software**” means software that provides services or functionality on a computer acting as a server.

“**Redistribution Software**” means the software described in Paragraph 4 (“Use of Redistribution Software”) below.

**2. OWNERSHIP OF SOFTWARE PRODUCTS.** The SOFTWARE PRODUCTS are licensed to **Fuse Collaboration Services Ltd** from an affiliate of the Microsoft Corporation (“Microsoft”). All title and intellectual property rights in and to the SOFTWARE PRODUCTS (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text and “applets” incorporated into the SOFTWARE PRODUCTS) are owned by Microsoft or its suppliers. The SOFTWARE PRODUCTS are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your possession, access, or use of the SOFTWARE PRODUCTS does not transfer any ownership of the SOFTWARE PRODUCTS or any intellectual property rights to you.

**3. USE OF CLIENT SOFTWARE.** You may use the Client Software installed on your Devices by **Fuse Collaboration Services Ltd** only in accordance with the instructions, and only in connection with the services, provided to you by **Fuse Collaboration Services Ltd**.

**4. USE OF REDISTRIBUTION SOFTWARE.** In connection with the services provided to you by **Fuse Collaboration Services Ltd**, you may have access to certain “sample,” “redistributable” and/or software development (“SDK”) software code and tools (individually and collectively “Redistribution Software”). YOU MAY NOT USE, MODIFY, COPY, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER USE RIGHTS (“SPUR”) APPLICABLE TO **Fuse Collaboration Services Ltd**, WHICH TERMS MUST BE PROVIDED TO YOU BY **Fuse Collaboration Services Ltd**. Microsoft does not permit you to use any Redistribution Software unless you expressly agree to and comply with such additional terms, as provided to you by **Fuse Collaboration Services Ltd**.

**5. COPIES.** You may not make any copies of the SOFTWARE PRODUCTS; provided, however, that you may (a) make one (1) copy of Client Software on your Device as expressly authorized by **Fuse Collaboration Services Ltd**; and (b) you may make copies of certain Redistribution Software in accordance with Paragraph 4 (Use of Redistribution Software). You must erase or destroy all such Client Software and/or Redistribution Software upon termination or cancellation of your agreement with **Fuse Collaboration Services Ltd**, upon notice from **Fuse Collaboration Services Ltd** or upon transfer of your Device to another person or entity, whichever first occurs. You may not copy any printed materials accompanying the SOFTWARE PRODUCTS.

**6. LIMITATIONS ON REVERSE ENGINEERING, DECOMPILATION AND DISASSEMBLY.** You may not reverse engineer, decompile, or disassemble the SOFTWARE PRODUCTS, except and only to the extent that applicable law, notwithstanding this limitation expressly permits such activity.

**7. NO RENTAL.** You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the SOFTWARE PRODUCTS to any third party, and you may not permit any third party to have access to and/or use the functionality of the SOFTWARE PRODUCTS.

**8. TERMINATION.** Without prejudice to any other rights, **Fuse Collaboration Services Ltd** may terminate your rights to use the SOFTWARE PRODUCTS if you fail to comply with these terms and conditions. In the event of termination or cancellation, you must stop using and/or accessing the SOFTWARE PRODUCTS, and destroy all copies of the SOFTWARE PRODUCTS and all of its component parts.

**9. NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT.** ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY **Fuse Collaboration Services Ltd** AND NOT BY MICROSOFT OR ITS AFFILIATES OR SUBSIDIARIES.

**10. PRODUCT SUPPORT.** Any product support for the SOFTWARE PRODUCTS is provided to you by **Fuse Collaboration Services Ltd** and is not provided by Microsoft or its affiliates or subsidiaries.

**11. NOT FAULT TOLERANT.** THE SOFTWARE PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE SOFTWARE PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.

**12. EXPORT RESTRICTIONS.** The SOFTWARE PRODUCTS are of U.S. origin for purposes of U.S. export control laws. You agree to comply with all applicable international and national laws that apply to the SOFTWARE PRODUCTS, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.

**13. LIABILITY FOR BREACH.** In addition to any liability you may have to **Fuse Collaboration Services Ltd**, you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions.