



Fuse Master Services Agreement

Last updated: 16 February 2022

This Fuse Master Services Agreement (the “**Agreement**”) is between you and the relevant Fuse contracting party defined below (“**Fuse**” or “**we**”). Capitalised terms have the definitions also set forth herein.

If you are agreeing to this Agreement not as an individual but on behalf of your company, government, or other entity for which you are acting (for example, as an employee or governmental official), then “**you**” means your entity and you are binding your entity to this Agreement. Fuse may modify this Agreement from time to time, subject to the terms in clause 16 (Changes to this Agreement) below.

The “**Effective Date**” of this Agreement is the date which is the earlier of (a) your initial access to or use of the Software (as defined below) or (b) the effective date of the first Order Form referencing this Agreement.

You accept to be bound by the terms of this Agreement by (1) clicking a box indicating acceptance, (2) executing an Order Form that references this Agreement, or (3) using or accessing the Services (whether you have paid for such use or access Services or not). If you do not agree to this Agreement, do not use or access the Software.

This Agreement governs your initial purchase of Fuse’s Software and Services, as well as any future purchases made by you that reference this Agreement. This Agreement includes each Order Form and/or Statements of Work the Fuse Policies, and any other referenced policies and terms.

1. Definitions and Interpretation

1.1. The definitions and rules of interpretation in this clause apply in this Agreement.

Acceptable Use Policy: means the policy outlining the conditions for Customer’s access and use of the Services included at Annex C.

Active User: means a Provisioned User who has accessed the Services via a web browser or the app.

Agreement: means this Master Services Agreement, the Statement of Work, Order Form, its annexures and schedules, and any other terms expressly incorporated herein by reference.

Business Day: a day other than a Saturday, Sunday, or public holiday in England when

banks in London are open for business.

Confidential Information: information of a party concerning its business and/or affairs, including, without limitation, information relating to a party's operations, technical or commercial know-how, specifications, inventions, processes or initiatives, plans, product information, pricing information, know-how, designs, trade secrets, software, documents, details of the Services, data and information which, when provided by a party to the other: a) are clearly identified as "Confidential" or "Proprietary" or are marked with a similar legend; b) are disclosed orally or visually, identified as Confidential Information at the time of disclosure and confirmed as Confidential Information in writing within ten (10) days; or c) a reasonable person would understand to be confidential or proprietary at the time of disclosure.

Customer Data: the (i) data and information provided by Customer to Fuse and/or imported, inputted, uploaded and/or shared by Customer, Users or Fuse on Customer's behalf, for the purpose of using the Services or facilitating Customer's use of the Services; or (ii) data collected and processed by or for Customer through Customer's use of the Services, but excluding Fuse's data.

Data Protection Legislation: means all applicable local, state, federal and international data protection and privacy legislation in force from time to time (including, without limitation, for Customers in UK and Europe, the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC, as updated by Directive 2009/136/EC; and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended), (including, without limitation, for Customers in New Zealand and Australia, the (i) Privacy Act; and (ii) Australian Privacy Principles (APPs) contained in Schedule 1 to the Privacy Act).

Documentation: any and all (i) materials created by or on behalf of Fuse that describe or relate to the functional, operational or performance capabilities of the Services, regardless of whether such materials be in written, printed, electronic or other format; (ii) user, operator, system administration, technical, support and other manuals, including but not limited to functional specifications, help files, flow charts, logic diagrams, programming comments, acceptance plan, if any, and portions of Fuse's website that in any way describe the Services; and (iii) updates, changes and corrections to any of the foregoing that may be made during the Term of this Agreement.

Enterprise Licence: mean a licence granted to Customer on a fixed Fee basis to authorise employees, agents, and independent contractors of Customer to be Users.

Fuse: means the Fuse entity identified in the table below, based on where you are domiciled. If you change your country of domicile, you agree that this Agreement is then assigned to the new Fuse entity pursuant to clause 21.2 without any further action required by either party.

If Customer is domiciled in:	The Fuse entity entering into this Agreement is:
The United States of America	FUSE UNIVERSAL LLC
United Kingdom	FUSE UNIVERSAL Limited
Australia or New Zealand	FUSE UNIVERSAL PTY LIMITED
Rest of the World	FUSE UNIVERSAL Limited

Fuse policies: means the Fuse policies currently in force and effect and as may be provided to the Customer from time to time.

Fees: means the fees payable by Customer to Fuse which are calculated as set out in the Order Form, in accordance with the provision of an Enterprise License.

Force Majeure Event: means circumstances where a party is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Fuse or any other party), failure of a utility service or transport or telecommunications network, act of God, epidemic, pandemic, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that Customer is notified of such an event and its expected duration.

Initial Term: the initial term of this Agreement as set out in the Order Form.

Laws: means all applicable laws, enactments, regulations, mandatory regulatory policies, mandatory regulatory guidelines and mandatory industry codes, in each case which are in force from time to time.

Order Form: the order form executed in writing by both parties which references this Agreement and which details the level of Services ordered by Customer, the Term, and the Fees payable by Customer and any other additional terms in respect of Customer's access to and use of the Services. Where there is a conflict between the Order Form and the Agreement, the provisions in the Order Form take precedence;

Platform: the online video-sharing, social learning forum and software application developed and provided by Fuse to Customer as part of the Services and to be used in accordance with the Acceptable Use Policy.

Platform Content: all content including data, metadata, video, text, comments or captions and any other information published or created on the Platform by Customer or any Users.

Queried Invoice: shall have the meaning as detailed in clause 8.5.

Renewal Period: the period described in clause 13.1.

Service Level Agreement: shall mean an element of the Services specified in Annex B;

Services: the Software and implementation and customisation of the Platform, access to which is provided by Fuse to Customer under this Agreement via any website notified to Customer by Fuse from time to time, as more particularly described in the Acceptable Use Policy and support services according to the Service Level Agreement.

Software: the online software applications provided by Fuse as part of the Services.

Fuse Data: any information or data provided by Fuse to Customer as part of the Services and any feedback or suggestions on the Services provided by Customer to Fuse.

Fuse Materials: has the meaning given to it in clause 9.1.

T&M Fee: shall have the meaning given to it in clause 8.7.

T&M Price Model: shall mean the price model for time and material services provided outside of the scope of the Services and calculated in accordance with clause 8.7.

Term: has the meaning given in clause 13.1 (being the Initial Term together with any subsequent Renewal Periods).

Third Party Platform Changes: shall have the meaning given to it in clause 2.8.

Users: those of Customer's employees, agents and independent contractors who are authorised by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement, as further described in clause 2.

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.

- 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).
- 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 includes faxes but not e-mail.
- 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. Access and Use of Services

- 2.1. Subject to payment of the applicable Fees, the restrictions set out in this clause 2 and the other terms and conditions of this Agreement, Fuse hereby grants to Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Users to use the Services in accordance with the Acceptable Use Policy during the Term solely for Customer's internal business operations.
- 2.2. In relation to the Users, Customer undertakes that:
 - (a) each User shall keep a secure password for their use of the Services, that such password shall be changed frequently and that each User shall keep his password confidential; and
 - (b) Customer shall permit Fuse to audit Customer's use of the Services via the Fuse Platform in order to establish that the use of the Services by Customer is in accordance with the agreed scope.
- 2.3. In relation to the Users, Customer undertakes that:
 - (a) it will not allow any username or password ("**Login**") to be used by more than one (1) individual User unless it has been reassigned in its entirety to another individual User, in which case the prior User shall no longer have any right to access or use the Services;
 - (b) it shall permit Fuse to audit the Services via universal analytics in order to

establish the name of each User and to audit compliance with this Agreement in such a manner as not to substantially interfere with Customer's normal conduct of business; and

- (c) if Fuse discovers that any password has been provided to any individual who is not a User, then without prejudice to Fuse's other rights, Customer

shall promptly disable such passwords and Fuse may choose not to issue any new passwords to any such individual.

2.4. Customer shall not, and shall procure that its Users shall not, access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property;

and Fuse reserves the right, without liability or prejudice to its other rights against Customer, to disable Customer's access to any material that breaches the provisions of this clause 2.4.

2.5. Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services;
- (c) use the Services and/or Documentation to provide services to third parties; or
- (d) subject to clause 21.1, license, sell, rent, lease, transfer, assign, distribute,

display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Users;

- (e) attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 2;
- (f) introduce or permit the introduction of any Virus into Fuse's network and information systems.

- 2.6. Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify Fuse.
- 2.7. The rights provided under this clause 2 are granted to Customer only and shall not be considered granted to any subsidiary or holding company of Customer.
- 2.8. Any changes to or customisation of the Fuse Platform made by Customer or a third party not contracted by Fuse ("**Third Party Platform Changes**") may only be made where such Third Party Platform Changes are agreed with Fuse in advance. Such Third Party Platform Changes shall be outside the scope of the Services and not covered by the support services as described in the Service Level Agreement.
- 2.9. Customer shall make a request for additional support services in relation to any Third Party Platform Changes to Fuse in writing. Fuse is under no obligation to provide any additional support services in relation to a request under this clause.
- 2.10. Following a request under clause 2.9, for which Fuse agrees to provide additional support services, Fuse shall submit an estimate to Customer for charges to be payable by Customer for the work to be delivered and such work shall be chargeable in accordance with the T&M Price Model. The estimate shall include time to investigate and estimate the work required to be undertaken.

3. Additional user subscriptions

- 3.1. Where the Fees are payable based on the number of Users, the Order Form will reference the maximum number of licensed Users for the Term (the "**User Floor**"). If at any point during the Term the number of Users falls below the User Floor, the Fees stated in the Order Form shall remain payable. However, the Customer may purchase additional User licenses in excess of the User Floor on written request to Fuse. Fuse shall then grant access to the Services to such Users in accordance with the provisions of this Agreement. The User Floor shall be increased following any such request for the remainder of the Term.
- 3.2. Each User will have an individual Login to access the Services. If a User leaves or

otherwise stops using the Services, the Customer may deactivate the Login and assign the User to another active Login via the Platform.

- 3.3. If the Customer becomes aware that the number of Users with active Logins exceeds the User Floor at any point then the Customer must notify Fuse as soon as reasonably possible.
- 3.4. Following receipt of notice under clause 3.3., Fuse shall review the Customer's use of the Platform to identify the maximum number of Users accessing the Services during the Term. Using the payment methodology in the Order Form or, if no such methodology exists, at Fuse's reasonable discretion, Fuse shall be entitled to issue an invoice (the "**True-Up Invoice**") for the Fees payable in respect of the number of additional Users (the "**True-Up Charges**"), for their past use of the Services (rounded up to the nearest contract quarter) and for the remainder of the Initial Term or then current Renewal Term. If the Customer pays in arrears the True-Up Charges may be added to the next applicable Customer invoice.
- 3.5. Following the exercise of an audit under clause 2.3, Fuse retains the right to issue a True-Up Invoice with respect to any True-Up Charges, plus reasonable interest and the cost of such audit.

4. Services

- 4.1. Fuse shall, during the Term, provide the Services on and subject to the terms of this Agreement.
- 4.2. Subject to Customer paying the Fees as outlined in the Order Form, Fuse will, as part of the Services, provide to Customer the level of support services stated in the Order Form and in accordance with the Service Level Agreement (Annex B). Fuse will provide the support services with due skill and care and in accordance with good industry practice.

5. Customer data

- 5.1. Customer shall own all right, title and interest in and to all of Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy, and quality of all such Customer Data.
- 5.2. Customer hereby grants to Fuse a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display Customer Data and perform all acts with respect to Customer Data as may be necessary for Fuse to provide the Services to Customer.

- 5.3. In the event of any loss or damage to Customer Data, Customer's sole and exclusive remedy against Fuse shall be for Fuse to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Fuse in accordance with the archiving procedure described in its information security policies. Fuse shall not be responsible for any loss, destruction, alteration, or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Fuse to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable).
- 5.4. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 5 is in addition to, and does not relieve, remove, or replace, a party's obligations or rights under the Data Protection Legislation.
- 5.5. Customer is the data controller of Customer Data and appoints Fuse as the data processor to process Customer Data for the purposes described in this Agreement.
- 5.6. Without prejudice to the generality of clause 5.4, Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Fuse for the duration and purposes of this Agreement so that Fuse may lawfully use, process and transfer the personal data in accordance with this Agreement on Customer's behalf.
- 5.7. The parties shall comply with the provisions of the data processing agreement ("DPA") at Annex A with respect to the processing of any personal data pursuant to this Agreement.

6. Fuse's Warranties

- 6.1. Fuse warrants and represents that:
 - (a) the Services will be performed substantially in accordance with the Acceptable Use Policy and with reasonable skill and care;
 - (b) in providing the Services, it will comply with Fuse Policies relating to the privacy and security of Customer Data as such document may be amended from time to time by Fuse in its sole discretion; and
 - (c) it has the right, power, and authority to enter into this Agreement and to grant Customer the right to use the Platform.
- 6.2. The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Fuse's instructions, or modification or alteration of the Services by any party other than Fuse or Fuse's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking,

Fuse will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1.

6.3. Fuse:

- (a) does not warrant that:
 - (i) Customer's use of the Services will be uninterrupted or error-free; or
 - (ii) use of the Services will be compliant with all applicable laws, which is the responsibility of Customer; and
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and Customer acknowledges that the Services may be subject to limitations, delays, and other problems inherent in the use of such communications facilities.

6.4. This Agreement shall not prevent Fuse from entering into similar agreements with third parties, or from independently developing, using, selling, or licensing documentation, products and/or services which are similar to those provided under this Agreement.

7. **Customer's obligations**

Customer shall:

- (a) provide Fuse with:
 - (i) all necessary co-operation in relation to this Agreement; and
 - (ii) all necessary access to such information as may be required by Fuse; in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- (b) without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;
- (c) carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in Customer's provision of such assistance as agreed by the parties, Fuse may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Users use the Services in accordance with the terms and conditions of this Agreement and the Acceptable Use Policy shall be

responsible for any User's breach of this Agreement;

- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for Fuse, its contractors, and agents to perform their obligations under this Agreement, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by Fuse from time to time;
- (g) be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining, and securing its network connections and telecommunications links from its systems to Fuse's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Customer's network connections or telecommunications links or caused by the internet; and
- (h) adhere to, and ensure that the Users adhere to, the Fuse Acceptable Use Policy.

8. Charges and payment

8.1. Customer shall pay the Fees to Fuse for the Services and in accordance with this clause 8 and the Order Form. You agree that we may bill your credit card or payment method for renewals, additional users, expenses and unpaid fees, as applicable.

8.2. Fuse shall invoice Customer:

- (i) on the Effective Date for the Fees payable in respect of the Initial Term; and
- (ii) subject to clause 13.1, at least thirty (30) days prior to each anniversary of the Effective Date for the Fees payable in respect of the next Renewal Period,

and Customer shall pay each invoice within thirty (30) days after the date of such invoice.

8.3. If Fuse has not received payment within fourteen (14) days after the due date for any invoice which is not a Queried Invoice, and without prejudice to any other rights and remedies of Fuse:

- (a) Fuse may, without liability to Customer, disable Customer's password, account and access to all or part of the Services and Fuse shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- (b) interest shall accrue on a daily basis on such due amounts:
 - (i) for UK Customers, US Customers and Customers in the EU, at an

annual rate equal to one and a half percent (1.5%) over CPI in the UK from time to time,

- (ii) for New Zealand and Australian Customers, at an annual rate equal to one and a half percent (1.5%) over the then-current overdraft rate for businesses published by the Australian and New Zealand Banking Group Limited (or, if lower, the maximum rate permitted by applicable law), or

commencing on the due date and continuing until fully paid, whether before or after judgment.

8.4. All amounts and fees stated or referred to in this Agreement:

- (a) shall be payable in the currency specified in the Order Form and without deduction;
- (b) are, subject to clause 12.3(b), non-cancellable and non-refundable; and
- (c) are exclusive of taxes or duties payable in the jurisdiction where the payment is either made or received, which shall be added to Fuse's invoice(s) at the appropriate rate.

8.5. If Customer receives an invoice which it reasonably believes includes a sum which is not valid and properly due ("**Queried Invoice**"):

- (a) Customer shall immediately notify Fuse of the Queried Invoice, in writing;
- (b) upon resolution of the Queried Invoice Fuse shall provide a corrected invoice; and
- (c) where Customer has already made payment of a Queried Invoice, Fuse shall issue a credit note within ten (10) working days.

8.6. The Fees during any Renewal Period will increase by the CPI rate as set at the date of the invoice unless Fuse notifies Customer of different pricing with written notice not less than thirty (30) days prior to the Fee increase. Subject to this clause, the Order Form shall be deemed to have been amended accordingly.

8.7. For work agreed to be undertaken subject to the T&M Price Model, the charges shall be incurred for working hours spent by Fuse in providing the work. Each such charge is equal to the hourly rate applicable and as agreed in an Order Form ("**T&M Fee**"). Fuse shall notify Customer, in writing, if a fee estimate provided for the T&M Fee is exceeded or if there is a material risk that it may be exceeded. Fuse shall in such case provide Customer with a revised estimate covering the completion of the work.

8.8. Fuse shall invoice Customer in relation to the T&M Fee on a monthly basis at the end of the month where the work was performed, and Customer shall pay each invoice within

thirty (30) days after the date of such invoice.

9. Proprietary rights

- 9.1. Customer acknowledges and agrees that Fuse and/or its licensors own all intellectual property rights in the Services, Software, Platform, any pre-existing content which is used by Fuse in order to provide the Services and any other materials arising out of the provision of the Services and which were not developed solely for Customer (“**Fuse Materials**”). Except as expressly stated herein, this Agreement does not grant Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or Platform.
- 9.2. Fuse confirms that it has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.
- 9.3. Subject to the clause 9.1, Customer shall be entitled to all intellectual property rights in all Platform Content maintained by Fuse on behalf of Customer. Fuse, as beneficial owner, assigns, with full title guarantee, all intellectual property rights (and by way of present assignment of future copyright) absolutely to the fullest extent possible in the Platform Content to Customer who shall have the right to use such Platform Content for any purpose without further payment.
- 9.4. Fuse shall procure that, where relevant, all moral rights in respect of the Platform Content are waived by the relevant third parties and at the request and reasonable expense of Customer, Fuse shall do and/or shall procure that its consultants, employees, agents, contractors, and sub-contractors shall do all such things and sign all such documents or instruments necessary in the opinion of Customer to enable Customer to obtain, defend and enforce its rights in the Platform Content.
- 9.5. Fuse reserves the right to remove any Platform Content that is the subject of a claim by a third party that the Platform Content infringes the intellectual property rights of any party.
- 9.6. The provisions of this clause 9 shall survive the expiry or termination of this Agreement.

10. Confidentiality

- 10.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party’s Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 10.2. Subject to clause 10.3 and 10.5, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 10.3. During the Term, the receiving party may disclose the Confidential Information of the disclosing party to its affiliates, employees, agents, or contractors ("**Affiliates**") but only to the extent reasonably necessary to perform properly its obligations under this Agreement and provided that:
- (a) before disclosure of any of the Confidential Information to any of the Affiliates the receiving party procures that they are aware of the obligation of confidentiality and undertakes to keep Confidential Information confidential; and
 - (b) the receiving party shall be responsible for any unauthorised disclosure of Confidential Information by the Affiliates as though such breach were committed by it as a party to this Agreement.
- 10.4. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 10.5. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 10.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 10.6. Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Fuse's Confidential Information.
- 10.7. Fuse acknowledges that Customer Data is the Confidential Information of Customer.

- 10.8. No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 10.9. Without prejudice to any other rights or remedies that the disclosing party may have, the receiving party acknowledges and agrees that if the Confidential Information is used or disclosed other than in accordance with the terms of this Agreement, the disclosing party shall, without proof of special damage, be entitled to an injunction or other equitable relief for any threatened or actual breach of the provisions of this clause, in addition to any damages or other remedy to which it may be entitled.
- 10.10. The obligations of confidentiality under this clause 10 shall survive any expiration or termination of the Agreement for a period of three (3) years from the date of termination, except for any information which is deemed a trade secret of a party in respect of which the obligations of confidentiality shall continue for as long as such information remains a trade secret.

11. Indemnity

- 11.1. Customer shall defend, indemnify, and hold harmless Fuse against claims, actions, proceedings, losses, damages, expenses, and costs (including, without limitation, court costs and reasonable legal fees) arising out of or in connection with Customer's use of the Services and the Platform Content, provided that:
- (a) Customer is given prompt notice of any such claim;
 - (b) Fuse provides reasonable co-operation to Customer in the defence and settlement of such claim, at Customer's expense; and
 - (c) Customer is given sole authority to defend or settle the claim.
- 11.2. Fuse shall defend Customer, its officers, directors, and employees against any claim that Customer's use of the Services in accordance with this Agreement infringes any patent effective as of the Effective Date, copyright, trademark, database right or right of confidentiality, and shall indemnify Customer for any amounts awarded against Customer in judgment or settlement of such claims, provided that:
- (a) Fuse is given prompt notice of any such claim;
 - (b) Customer provides reasonable co-operation to Fuse in the defence and settlement of such claim, at Fuse's expense; and

- (c) Fuse is given sole authority to defend or settle the claim.
- 11.3. In the defence or settlement of any claim, Fuse may procure the right for Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on two (2) Business Days' notice to Customer without any additional liability or obligation to pay liquidated damages or other additional costs to Customer.
- 11.4. In no event shall Fuse, its employees, agents, and sub-contractors be liable to Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services by anyone other than Fuse;
 - (b) Customer's use of the Services in a manner contrary to the instructions given to Customer by Fuse; or
 - (c) Customer's use of the Services after notice of the alleged or actual infringement from Fuse or any appropriate authority.
- 11.5. The foregoing states Customer's sole and exclusive rights and remedies, and Fuse's (including Fuse's employees', agents', and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trademark, database right or right of confidentiality.

12. Limitation of liability

- 12.1. Except as expressly and specifically provided in this Agreement:
- (a) Customer assumes sole responsibility for results obtained from the use of the Services by Customer, and for conclusions drawn from such use. Fuse shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Fuse by Customer in connection with the Services, or any actions taken by Fuse at Customer's direction;
 - (b) all warranties, representations, conditions, and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
 - (c) the Services are provided to Customer on an "as is" basis.
- 12.2. Nothing in this Agreement excludes the liability of Fuse:
- (a) for death or personal injury caused by Fuse's negligence; or
 - (b) for fraud or fraudulent misrepresentation.
- 12.3. Subject to clause 12.1 and clause 12.2:

- (a) Fuse shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses, or pure economic loss, or for any special, indirect, or consequential loss, costs, damages, charges, or expenses however arising under this Agreement;
- (b) Without prejudice to the provisions of clause 11 and subject to clause 12.3(c), neither party's total aggregate liability in each calendar year (whether arising in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise) arising in connection with the performance or contemplated performance of this Agreement shall exceed an amount equal to one hundred and twenty five percent (125%) of the total Fees paid during the twelve (12) months immediately preceding the date on which the claim arose or one hundred thousand British pounds sterling (£100,000), whichever is greater; and
- (c) in respect of the indemnity at clause 11.2, Fuse's aggregate liability shall be limited to two million British pounds sterling (£2,000,000).

12.4. The provisions of this clause 12 shall survive the termination or expiry of this Agreement for any reason.

13. Term and termination

13.1. This Agreement shall, unless otherwise terminated as provided in this clause 13, commence on the Effective Date and shall continue for the Term as specified in the applicable Order Form and, thereafter, this Agreement shall be automatically renewed for successive periods of twelve (12) months (each a "**Renewal Period**"), unless:

- (a) either party notifies the other party of termination, in writing, at least ninety (90) days before the end of the Initial Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of this Agreement;

and the Initial Term together with any subsequent Renewal Periods shall constitute the

Term.

13.2. Without affecting any other right or remedy available to it, Fuse may suspend this Agreement (in whole or in part) and any Customers' account or Users' right to access and use the Platform with immediate effect by giving written notice, if the Customer:

- (a) fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than thirty (30) days after being notified in writing

to make such payment;

- (b) is in material or persistent breach of any terms of the Agreement, or in Fuse's reasonable determination the Customer is suspected of being in material breach of the terms of this Agreement; or
- (c) is in breach of applicable laws;

and for the purposes of clause 13.3(b) the parties acknowledge, without limitation, that any breach of clause 9 will be a material breach of this Agreement.

The parties agree that any suspension under this clause 13.3 shall continue until Causaly notifies the Client in writing that the relevant suspension has been unsuspending, or, alternatively, that the Agreement shall be terminated in accordance with its terms.

13.3. Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach or persistent breach of any of the terms of this Agreement and that breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
- (b) the other party fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than thirty (30) days after being notified in writing to make such payment;
- (c) 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 upon the institution of insolvency proceedings;
- (d) 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;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in 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;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party; or
- (g) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

13.4. On termination of this Agreement for any reason:

- (a) all licences granted under this Agreement shall immediately terminate and Customer shall immediately cease all use of the Services;
- (b) each party shall return and make no further use of any equipment, property, documentation, and other items (and all copies of them) belonging to the other party;
- (c) Fuse may destroy or otherwise dispose of any of Customer Data in its possession in accordance with the DPA, unless Fuse receives, no later than ten (10) days after the effective date of the termination of this Agreement, a written request for the delivery to Customer of the then most recent back-up of Customer Data. Fuse shall use reasonable commercial endeavours to deliver the back-up to Customer within thirty (30) days of its receipt of such a written request, provided that Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). Customer shall pay all reasonable expenses incurred by Fuse in returning or disposing of Customer Data; and
- (d) 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 shall not be affected or prejudiced.

14. Force majeure

A party will not be in breach of this Agreement or otherwise liable to the other party for any failure to perform or delay in performing its obligations under this Agreement to the extent that such failure or delay is due to a Force Majeure Event.

15. Conflict

If there is an inconsistency between any of the provisions in the main body of this Agreement and the Order Form, the provisions in the Order Form shall prevail.

16. Changes to this Agreement

16.1. Modifications Generally. We may modify the terms and conditions of this Agreement (including Fuse Policies) from time to time, with notice given to you by email, through the Software or through our website. Together with notice, we will specify the effective date of the modifications.

16.2. No-Charge Software: You must accept the modifications to continue using any our

Software free of charge. If you object to the modifications, your exclusive remedy is to cease using the Software.

- 16.3. Paid Licenses: Typically, when we make modifications to the main body of this Agreement (excluding the Fuse Policies), the modifications will take effect at the next renewal of your Renewal Period and will automatically apply as of the renewal date unless you elect not to renew pursuant to clause 13 (Term and termination). In some cases – e.g., to address compliance with Laws, or as necessary for new features – we may specify that such modifications become effective during your then-current Renewal Period. If the effective date of such modifications is during your then-current Renewal Period and you object to the modifications, then (as your exclusive remedy) you may terminate your affected Order Forms upon notice to us, and we will refund to you any Fees you have pre-paid for use of the affected Software for the terminated portion of the applicable Renewal Period. To exercise this right, you must provide us with notice of your objection and termination within ninety (90) days of us providing notice of the modifications. For the avoidance of doubt, any Order Form is subject to the version of this Agreement in effect at the time of the effective date of the Order Form.
- 16.4. Fuse Policies: Our products and business are constantly evolving, and we may modify the Fuse Policies from time to time, including during your then-current Renewal Period in order to respond to changes in our products, our business, or Laws. In this case, unless required by Laws, we agree not to make modifications to the Fuse Policies that, considered as a whole, would substantially diminish our obligations during your then-current Renewal Period. Modifications to the Fuse Policies will take effect automatically as of the effective date specified for the updated policies.

17. 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 prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18. Rights and 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.

19. Severance

- 19.1. If any provision or part-provision of this Agreement is or becomes invalid, illegal, or

unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

- 19.2. If any provision or part-provision of this Agreement is deemed deleted under clause 19.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

20. Entire agreement

- 20.1. This Agreement, and any documents referred to in it, 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.

21. Assignment

- 21.1. Customer shall not, without the prior written consent of Fuse, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 21.2. Fuse may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

22. No partnership or agency

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

23. Third party rights

This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

24. Fuse Contracting Entity, Notices, Governing Law, and Jurisdiction.

- 24.1. The Fuse entity entering into this Agreement, the address to which Customer should direct notices under this Agreement, the law that will apply in any dispute or lawsuit arising out of or in connection with this Agreement, and the courts that have jurisdiction over any such dispute or lawsuit, depend on where Customer is domiciled, as set out in

table below.

If Customer is domiciled in:	The Fuse entity entering into this Agreement is:	Notices should be addressed to:	Governing law is:	Courts with exclusive jurisdiction are:
The United States of America	FUSE UNIVERSAL LLC, a Massachusetts corporation	Fuse Universal LLC, 303 Wyman St, suite 325, Waltham, Massachusetts, 02451, U.S.A., attn: CEO, with a copy to attn: Legal Counsel.	internal laws of the Commonwealth of Massachusetts	Commonwealth of Massachusetts, U.S.A.
United Kingdom	FUSE UNIVERSAL Limited, a company incorporated in England and Wales	FUSE UNIVERSAL LIMITED, 1 Curtain Road, London EC2A 3LT, attn: CEO, with a copy to attn: Legal Counsel.	England	London, England
Australia or New Zealand	FUSE UNIVERSAL PTY LIMITED, a company incorporated in New South Wales	FUSE UNIVERSAL PTY LIMITED, Level 5, 1 Chifley Square, Sydney, New South Wales, NSW2000, Australia, attn: CEO with a copy to attn: Legal Counsel.	New South Wales, Australia	New South Wales, Australia
Rest of the World	FUSE UNIVERSAL Limited, a company incorporated in England and Wales	FUSE UNIVERSAL LIMITED, 1 Curtain Road, London EC2A 3LT, attn: CEO, with a copy to attn: Legal Counsel.	England	London, England

24.2. Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Order Form, or such other address as may have been notified by that party for such purposes. Billing-related notices to Customer will be addressed to the relevant finance contact designated by Customer. All other notices to Customer will be addressed to the relevant Services system administrator designated by Customer.

24.3. Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

Annexures

Annex A – [*Data Processing Addendum*](#)

Annex B – [*Service Level Agreement*](#)

Annex C – [*Acceptable Use Policy*](#)