

TERMS OF SERVICE

Carflow

1. DEFINITIONS

1.1. In this Agreement, the following words and expressions shall have the following meaning:

'Agreement' means the underlying terms of service together with the Order Document and Exhibits specifically referring to these underlying terms of service and Order Document and/or SOW.

'Authorised Users' means natural persons or legal entities, which may include employees, agents and independent contractors of Customer who are authorised to access and use the Platform Service within the limits of this Agreement.

'Customer' means the legal entity specified in the Order Document, or as the case may be SOW.

'Customer Data' means all graphics, photograph, videos, text, files and other data or information of the Customer or its partners which is used, stored, uploaded or downloaded via the Platform Services.

'Documentation' means all manuals, instructions, specifications and other documents and materials that FusionIT may make available during the term of the Agreement to Customer, and which may change from time to time in any medium (such as, but not limited to the Service Description Exhibit), describing the functionality, components, features or requirements of the Platform Service. This documentation is provided 'as is'. FusionIT does not give any warranty in relation to the completeness or accuracy of this Documentation.

'Force Majeure Event' means an event, or series of related events, that is outside the reasonable control of the Party affected (including failures of the internet, underlying Platform hosting and platform service providers, or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, disputes affecting any third party, change to the law, disaster explosions, fires, flood, riots, terrorist attacks and wars).

Order Document means the document which contains the specific conditions. This Order Document shall form an integral part of the Agreement.

'Party/Parties' means Customer and/or FusionIT

'Platform' means the modules of the Carflow manager which are described in the Order Document and which are delivered as part of the Platform Services.

'Platform Service(s)' means the online access and availability and use of the Platform and, if agreed upon in the Order Document, the Plugin.

'Plugin' means the Carflow plugin configurator which may be made available to the Customer to the extent that this is agreed in the relevant Order Form.

'Professional Services' means the professional services which FusionIT may provide pursuant to the Order Document, such as, but not limited to set-up, configuration.

'Services' means all services provided under this Agreement, including the Platform Services and Professional Services.

'SOW' means a Statement of Work as defined in clause 3 (*Professional Services*).

2. PROVISION OF THE SERVICES

2.1. FusionIT is only bound by this Agreement after its written acceptance of the Order Document, or, if applicable, the SOW by the Customer. Acceptance that FusionIT starts to execute the Agreement will be sufficient proof that Customer accepts the Agreement in full and will entitle FusionIT to invoice the Services.

2.2. Subject to Customer's and its Authorised compliance with the terms of this Agreement, FusionIT shall provide the Platform Services to Customer. These Platform Services will materially comply with the specifications set out in the Documentation and/or Offer Description Exhibit.

2.3. In addition to the Platform Services, the Parties may agree that FusionIT performs Professional Services. These Services will be performed in accordance with clause 3 (*Professional Services*).

2.4. FusionIT shall perform the Services in a professional manner, using all reasonable skill and care. These Services shall be performed by an appropriate number of suitable, qualified and experienced personnel. Unless otherwise set out in this Agreement, the Services are delivered 'as is' and FusionIT does not warrant that, given the current state of technique, the Customer's use of the Platform Services will be uninterrupted, nor that the Platform Services and Documentation will meet the Customer's requirements, be compatible or work with any other goods, services or technologies which are not included in the Documentation or be free of harmful code or error free.

2.5. FusionIT shall maintain and support the Platform Service in accordance with the provisions set out in the Service Description Exhibit.

3. PROFESSIONAL SERVICES

3.1. Statements of Work. If Customer orders Professional Services from FusionIT, the Parties will either execute a separate Statement of Work ("SOW") or a separate Order Document. If the Parties execute a SOW, such document will describe the (i) scope of the Professional Services to be provided by FusionIT, (ii) Customer's related obligations, (iii) delivery location, and (iv) corresponding fees, (v) an estimated timing or project plan, (vi) an acceptance procedure. Each SOW executed by the Parties will reference and be subject to the terms of these terms of service and may contain additional terms.

3.2. Deliverables. Any reports, materials, Documentation, or other deliverables provided by FusionIT to Customer as part of the Professional Services are "Deliverables". Notwithstanding the foregoing, the Platform and/or the Plugin (including any updates, upgrades, patches, or bug fixes) or any underlying technology shall not be considered a Deliverable. FusionIT grants Customer a perpetual, worldwide, nonexclusive, nontransferable, nonsublicensable license to use the Deliverables for Customer's normal business purpose in connection with the Platform Services. Unless otherwise set out in the SOW, all Deliverables are deemed to be accepted if they are not disputed within ten (10) days after the Deliverable is made available to the Customer.

3.3. Change Orders. Any changes to the scope of a SOW must be made in writing and signed by both Parties ("Change Order"). Each Change Order shall contain full particulars of the adjustment. Each mutually executed Change Order will be incorporated herein by this reference and subject to the terms of this terms of service.

3.4. Expenses. If Customer requests that FusionIT provide certain Professional Services at a Customer designated location (e.g. on-site), Customer shall reimburse FusionIT for FusionIT's actual and reasonable travel expenses that have been preapproved by Customer.

4. ACCESS AND USE OF THE PLATFORM SERVICE

4.1. Subject to Customer's and its Authorised Users' compliance with the terms of service of this Agreement, Customer, exercisable by and through its Authorised Users will have the right to:

(a) access and use the Platform Services and underlying Platform/Plugin (to the extent technically possible) and the Documentation, including in operation with other software, hardware, networks and services for Customer's normal business purpose (including

using it to sell customer products to its B2B and B2C clients);

(b) generate, print, copy, upload, download, store and otherwise process all visual, digital and other output, displays and content as may result from any access to or use of the Platform Service in accordance with the terms of the Agreement and in a format accepted by the platform underlying the Platform Services;

4.2. Unless otherwise set out in the Order Document, the Platform Service shall only be made available on a production environment. The Platform Service contains a set of standard configurations and the parties agree that the Platform, or, as the case may be, the Plugin can only be configured within these standard configurations.

4.3. Customer shall be responsible for the compliance of its Authorised Users with the terms of this Agreement. Customer's access to the Platform Service may be limited to a number of Authorised Users set out in the Order Document. In addition the Customer shall be responsible for the use of the Platform Service by its end customers.

4.4. Customer agrees that it shall not be provided with a software but shall be entitled to remotely access the platform for the purpose of obtaining the Platform Service.

4.5. Customer undertakes and warrants that it shall not and procure that the Authorised Users shall not:

(a) to the extent permitted by the applicable law, (attempt to) copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Platform Services and/or Documentation (as applicable) in any form or media or by any means, save as may be expressly permitted under this Agreement; or

(b) except to the extent such restriction is prohibited under the applicable law (attempt to) reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Platform Services (including the underlying platform); or

(c) sell, rent, lease, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make use the Platform Services except as expressly permitted under this Agreement.

4.6. In addition to the above, Customer and its Authorised Users may not, directly or indirectly:

(a) bypass or breach any security device or protection used for or contained in the Platform Service; or

- (b) engage in any activity which interferes with or disrupts the Platform Service (including the performance thereof) and/or third party data contained therein;
 - (c) use the Platform Service to store or transmit infringing, libellous, or otherwise unlawful or tortious material, or store or transmit material in violation of third party privacy rights;
 - (d) use the Platform Service to store or transmit code, files, scripts, agents or programs intended to do harm, including any form of malware, for example, viruses, worms, time bombs and Trojan horses;
 - (e) attempt to gain unauthorised access to the Platform Service, its related systems and (electronic communication) networks or permit direct or indirect access to or use of the Platform Service in a way that circumvents a contractual usage limit;
 - (f) copy the Documentation, the Platform, the Plugin or any part thereof, feature, function or user interface thereof and/or access the Platform Service in order to build a competitive product or service.
- 4.7. If Customer becomes aware of any breach of this clause 4 (*Access, use and restrictions*), it shall promptly notify FusionIT thereof

5. CUSTOMER DATA

- 5.1. Customer retains to have the exclusive ownership of and/or rights to use all Customer Data. Customer grants all such rights and permissions in or related to Customer Data as are necessary or useful for FusionIT to perform its obligations under this Agreement. Customer shall be responsible for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use the Customer Data. Customer shall indemnify FusionIT for all claims and damages resulting from a breach of this clause.

6. OBLIGATIONS OF CUSTOMER

- 6.1. Customer shall provide FusionIT with all necessary information, documentation and co-operation as reasonably requested in order for FusionIT to fulfil its obligations under this Agreement.
- 6.2. In addition to the other obligations set out in this Agreement, Customer shall:
- (a) only use the Platform Services in accordance with the terms of this Agreement;
 - (b) only use the Platform Services in compliance with all to Customer applicable laws and regulations. If Customer offers consumer credit (either directly or via a third party), Customer shall provide FusionIT with all language which is required under the relevant consumer credit

laws. Customer shall indemnify FusionIT for any claims or damages resulting from a failure to provide the correct text.

- (c) ensure that its hardware, software, network connectivity and systems comply with the relevant specifications set out in the Documentation;
- (d) be responsible for procuring and maintaining its network connections and telecommunication links from its systems to the Platform Service;
- (e) implement the necessary precautions to prevent the introduction and proliferation of a virus into Platform Service.

6.3. Customer agree that the Platform Services are only a tool to connect Customer's with its B2B and B2C customers and, as the case may be, to enable Customer to sell cars to its B2B and B2C customers. Under no circumstances will FusionIT be responsible for the sale and/or purchase of these cars (including any risks inherent to such sale (e.g. the creditworthiness of the B2B and B2C customers).

6.4. Customer is responsible for its Authorised Users and its B2B and B2C customers. Customer shall defend, hold harmless and indemnify Fusion IT and its subcontractors against all claims of its Authorised Users and/or B2B and B2C customers as a result of the use of the Platform Services.

7. PROVISION OF FEEDBACK

7.1. During the course of this Agreement, Customer shall provide, and FusionIT may solicit, Customer's input regarding the Services, including, without limitation, comments or suggestions regarding the usability, possible creation, modification, correction, improvement or enhancement of the Services based on Customer's evaluation and testing of the performance and functionality of the Platform Services (collectively "Feedback").

7.2. The modalities and periodicity of the provision of Customer's Feedback shall be agreed between the Parties.

7.3. To the extent that the Feedback does not contain any Confidential Information of Customer, Customer grants FusionIT a worldwide, non-exclusive, perpetual, irrevocable, royalty free fully-paid right to: (i) make, use, copy, modify, and create derivative works of, the Feedback for the sole purpose of improving or modifying the Services and (ii) sublicense to third parties the foregoing rights, including without limitation the right to sublicense to further third parties. It being understood however that FusionIT shall never disclose the origin of the Feedback to any third party, and no attribution to Customer (or the Borrower) shall be given for any Feedback provided.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1. All ownership rights, intellectual property rights and other proprietary rights relating to the Platform Service (and underlying Platform and Plugin) and Documentation, including any amendments or additions thereto, belong to FusionIT, third party licensors and/or is open source software. This Agreement does not entail an assignment of any intellectual property right to Customer.
- 8.2. Subject to the conditions herein, FusionIT indemnifies and holds harmless Customer on a full indemnity basis against any action, claim or proceeding made or brought by any person alleging that Customer's use of the of the Platform or Plugin infringes the intellectual property rights or any other ownership or related rights of that person (hereinafter an "**Infringement Claim**").
- 8.3. FusionIT 's indemnity is conditioned as follows:
- (a) Customer must immediately give written notice of such Infringement Claim or any notice preceding this action to FusionIT as soon as it becomes aware of it and give FusionIT full and exclusive authority for, and information for and assistance with, the defence and settlement of the Infringement Claim;
- (b) If an Infringement Claim has been proven by a judicial decision, Customer agrees to permit FusionIT, at its option and expense, to; (a) either, secure the right to continue using the item, or (b) using reasonable efforts and at reasonable costs, replace or modify the item to make it non-infringing or without misappropriation, provided that any such replacement or modification will not degrade the performance or quality of the affected component of the Platform or Plugin. If neither of (a) nor (b) can be accomplished by FusionIT using reasonable efforts and at reasonable costs, remove the item from the Platform or Plugin, in which case the charges shall be equitably adjusted from then on to reflect such removal.
- 8.4. Only in the event the abovementioned under clause 8.4(b) proves not to be possible shall FusionIT, in addition to the steps that can be accomplished under clause 8.4(b), be responsible for the damages Customer is liable to pay following a final judicial decision in last resort or as part of a settlement agreement (that must be prior approved by FusionIT when such settlement agreement is made between Customer and a third party)
- 8.5. Under no circumstances shall FusionIT be held responsible for any infringement Claim related to (i) a breach by Customer of the terms of this Agreement, (ii) any modification of the relevant infringing item not made by or on behalf of FusionIT, (iii) the use of the relevant infringing item for a purpose not intended

according to this Agreement or not in accordance with Documentation, (iv) modification, configurations or implementations of the Platform or Plugin made in accordance with Customer's specific instructions, (v) the use of the relevant infringing item in combination with any item not provided or approved or any item other than those that have been expressly authorised by or on behalf of FusionIT.

- 8.6. The foregoing states the entire obligations of Fusion with respect to infringement of third party proprietary rights. The foregoing is given to Customer solely for its benefit and in lieu of all warranties of non-infringement with respect to the Platform and/or Plugin or any part thereof.

9. CHARGES AND PAYMENT

- 9.1. Unless otherwise agreed between the Parties, the fees for the Services are set out in the Order Document, or as applicable, in the SOW. All fees are excluding VAT and similar taxes. All fees are in euro.
- 9.2. FusionIT shall be entitled to annually index the Services fee in January

In the event that the Services are delivered in Belgium, indexation will be based on the following formula:

$$P1 = P0 (0,2 + 0,8S1/S0)$$

Whereby:

P1 = the adjusted price;
P0 = the price in year n-1;
S1 = the Agoria index for wages of the month October preceding year n;
S0 = the Agoria index for wages of the month October preceding year n-1;
Year n = the contractual year for which the price adjustment will be applicable;
Year n-1 = the contract year preceding year n

In the event that the Services are delivered outside Belgium, indexation will be based on the Belgian consumer price index in the month prior to the indexation.

- 9.3. Fees for the Platform Services will be invoice as set out in Order Document.
- 9.4. Unless otherwise agreed in the Order Document, or, if applicable the SOW, the invoices are payable thirty (30) calendar days after the date of invoice. Absence of a written contest of an invoice within fifteen (15) working days if its dispatch will imply the irrevocable acceptance of that invoice and the therein mentioned Platform Services. FusionIT shall send all Customer invoices electronically (by email or otherwise) and Customer shall be deemed to have received the invoice the next business day following transmission by FusionIT unless FusionIT receives a bounce

- back or automated response that the email was not delivered successfully.
- 9.5. Where the Customer disputes any amount invoiced in good faith, it will: (i) notify FusionIT within the term set out in clause 9.4, (ii) pay the balance of the invoice that is not in dispute by the due date; and (iii) pay the balance and any interest as set out in clause 9.6 on sums found or agreed to be due within fifteen (15) days.
- 9.6. If Customer fails to make any payment due to FusionIT under this Agreement by the due date for payment (and such invoice is not disputed), then FusionIT shall automatically and without reminder be entitled to a conventional late payment interest fee equal to one (1) per cent per month commenced (or, if such is not permitted by law, the highest rate permitted by such law). FusionIT may charge fixed amount of damages equal to 10% of the unpaid and due amount with a minimum of 100 euro.
- 9.7. Customer is not entitled to settle or suspend any payment
- 10. CONFIDENTIALITY**
- 10.1. Each Party (the 'Receiving Party') understands that the other Party (the 'Disclosing Party') has disclosed or may disclose confidential and/or proprietary materials relating to the Disclosing Party's business (hereinafter referred to as 'Confidential Information' of the Disclosing Party). Such information includes, without limitation, information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, and/or which the Receiving Party knows or reasonably should know the Disclosing Party considers confidential or proprietary.
- 10.2. The term 'Confidential Information' does not include any information that: (i) is or becomes generally available to the public (other than as a result of its disclosure by the receiving Party in breach of this clause), (ii) was available to the receiving Party on a non-confidential basis before disclosure by the disclosing Party, (iii) was, is or becomes, available to the receiving Party on a non-confidential basis from a person who, to the receiving Party's knowledge, is not bound by a confidentiality agreement with the disclosing Party or otherwise prohibited from disclosing the information to the receiving Party, (iv) was known to the receiving Party before the information was disclosed to it by the disclosing Party, (v) the Parties agree in writing is not confidential or may be disclosed; or (vi) is developed by or for the receiving Party independently of the information disclosed by the disclosing Party.
- 10.3. A Party may disclose the confidential information to the extent required 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 the disclosure as possible.
- 10.4. Each Party hereby undertakes to:
- (a) keep the Confidential Information secret and not disclose it, in whole or in part, to any person other than (i) with the prior written consent of the Disclosing Party or (ii) its employees, directors, subcontractors and consultants who have a direct need to know such Confidential Information for the sole purposes complying with its obligations under this Agreement. The Receiving Party shall ensure that these persons are bound by confidentiality obligations which are not less stringent than those set out in this Agreement;
- (b) to use the Confidential Information solely for in relation to this Agreement and to refrain from using such Confidential Information in any manner which could prejudice the Disclosing Party; and
- (c) to use the same degree of care and means that it utilizes to protect its own information of a similar nature, but in any event not less than reasonable care and means, to ensure the confidentiality of such Confidential Information and avoid a third party to use or have access to the Confidential Information;
- 10.5. Notwithstanding anything else in this Agreement, FusionIT shall have the right to collect and analyse data and other information relating to the use and performance of various aspects of the Services, included but not limited to Customer Data. FusionIT will be free to (a) use such information and data during and after the term hereof to improve and enhance the Platform Services and for other development, diagnostic and corrective purposes in connection with the Platform Services and other FusionIT offerings, and (b) disclose such data in aggregate provided that such information does not directly or indirectly identify Customer's Confidential Information or Customer Data.
- 10.6. The provision of this clause 10 shall survive the expiration or termination of this Agreement for a period of five (5) years.
- 11. PROCESSING OF PERSONAL DATA**
- 11.1. As part of the performance of its obligations under this Agreement, FusionIT may be required to process personal data on behalf of Customer in accordance with regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data

Protection Regulation). Customer shall ensure that the personal data that it supplies or discloses to FusionIT has been obtained fairly and lawfully and that it has, to the extent necessary, obtained all necessary approvals of those whose personal data is being processed. Customer shall not provide FusionIT with access to sensitive personal data that impose specific data security obligations for the processing of such data unless specifically agreed between the Parties in writing.

- 11.2. When personal data is being processed, the Parties rights and obligations are set out in the Data Processing Exhibit. These rights and obligations form an integral part of this Agreement

12. LIABILITY

- 12.1. Neither Party can limit its liability (i) for wilful misconduct or fraud, (ii) for death or personal injury, (iii) which cannot be excluded or limited under applicable law or (iv) damages resulting from a breach of clause 3 (*Access and Use of the Platform Service*).
- 12.2. Subject to clause 12.2, FusionIT shall only be liable for direct damages and FusionIT's total aggregated liability whether in tort or arising out of or in connection with this Agreement is limited per contract year to one hundred per cent (100 %) of the aggregated fees paid and payable under the Agreement during such contract year.
- 12.3. Subject to clause 12.2 (*Liability*), FusionIT shall not be liable for indirect damages, such as, but not limited to loss of profits, loss of goodwill, loss of revenue, loss of anticipated savings, loss of chances and the cost of supplying substitute products, services or technology. In addition FusionIT shall not be responsible for losses resulting from decisions made on the basis of the data or content which is generated via the Platform Services.

13. TERM

Unless otherwise agreed between the Parties in the Order Document, this Agreement is made and entered into for a period of 1 year as from the signing of the Order Document.

- 13.1. Unless otherwise agreed between the Parties in the Order Document, the term of this Agreement shall automatically extend for a period of twelve (12) months ('Extended Term') at the end of the Initial Term and at the end of each Extend Term, unless either Party gives written notice to the other Party, no later than three (3) months before the end of the Initial Term or the relevant Extended Term, to terminate this agreement at the end of the Initial Term or the relevant Extended Term, as the case may be.

14. TERMINATION

- 14.1. Without prejudice to that Party's right to claim for damages, each Party shall have the right to immediately terminate this Agreement upon giving written notice to the other Party:
- (a) if the non-terminating Party commits a material breach of the Agreement and has failed to cure such breach within thirty (30) days following a request in writing from the notifying Party to do so. Prolongation of the remedial period will however not be refused unreasonably if the non-terminating Party has commenced to remedy and continues to do so in all reasonableness and fairness;
- (b) if the other Party files a petition in bankruptcy, has an involuntary petition on bankruptcy filed against him which is not challenged in ninety (90) days, becomes insolvent or has a significant portion of its assets attached.
- 14.2. In addition to the above FusionIT is entitled to terminate the agreement in the event of any charges not being paid for two (2) months after being due.

15. EFFECT OF TERMINATION

- 15.1. Expiration or termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the Parties existing at termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
- 15.2. On termination or expiration of the Agreement for any reason, and unless otherwise agreed between the Parties:
- (a) Subject to clause (c)15.2(c), all user rights of Customer and the Authorised Users in respect of the Platform Services granted under this Agreement shall immediately terminate;
- (b) Customer shall pay all charges due or to become due up until termination or expiration;
- (c) for a period up to sixty (60) days after termination or expiration of the Agreement Customer shall be allowed to access the Platform, and/or as the case may be the Plugin solely to the extent necessary for Customer to retrieve the Customer Data from Platform. Alternatively, at Customer request, FusionIT will provide Customer with the Customer Data in the format agreed between the Parties. FusionIT shall be entitled to invoice Customer for its time spent at its then applicable standard rates.

16. SUSPENSION

- 16.1. FusionIT may suspend the Platform Services if (i) any charges are not paid within one (1) months after being due, (ii) FusionIT becomes

aware of what it deems a credible claim that the Customer and/or the Authorised User's use of the Platform Services violates any applicable law, (iii) Customer's and/or the Authorised User's use(s) the Platform Services in violation of this Agreement or is/are interfering with the normal operation of the Platform Services, (iv) the security of the Platform and/or Plugin is being compromised or (v) FusionIT is entitled to terminate this Agreement for cause.

16.2. In each event of suspension as set out above, FusionIT shall use reasonable efforts to give Customer an advance forty eight (48) hours' notice, unless FusionIT reasonably determines that giving a shorter notice is necessary or no notice is possible to protect the interests of FusionIT, the Customer, the Authorised Users and/or of a third party.

17. FORCE MAJEURE

17.1. If a Force Majeure Event gives rise to a failure or delay in either Party performing any obligation under this Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

17.2. A Party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that Party performing any obligation under this Agreement, must: (a) promptly notify the other; and (b) inform the other of the period for which it is estimated that such failure or delay will continue.

17.3. A Party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

18. MISCELLANEOUS

18.1. **Entire Agreement** - This Agreement contains the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes and replaces all prior agreements or understandings, whether written or oral, with respect to the same subject matter that are still in force between the Parties.

18.2. **Notices** – Any notices given under this Agreement will be sent by certified or registered mail, return receipt requested, or by recognized delivery service providing traceability, to the Party to be notified at its address set in the Order Document.

18.3. **Order of precedence** – In the event of a conflict between the terms and conditions of any of the foregoing documents, the conflict shall be resolved based on the following order of precedence: (i) the Order Document, (ii) the SOW (iii) the Exhibits (iv) underlying terms of

service. For avoidance of doubt, the Parties expressly acknowledge and agree that any additional terms such as purchase or invoice terms shall not apply even if these terms say differently.

18.4. **Subcontracting** – FusionIT is entitled to use subcontractors for the performance of its obligations under this Agreement, provided that such subcontracting shall not diminish FusionIT's liability under this Agreement.

18.5. **Survival of obligations** - All provisions of the Agreement which are expressly marked to survive the termination or expiration of the Agreement, as well as all provisions of the Agreement which aim to enforce or execute the Agreement after the termination or expiration of the Agreement, including without limitation accrued rights to payment, use restrictions, confidentiality obligations and limitations of liability shall survive the Agreement and remain in full force.

18.6. **Nature** – Unless the nature of the obligation reasonably constitutes an obligation of result ('*resultaatsverbintenis*' or '*obligation de résultat*') the obligations stemming from this Agreement shall be construed as obligations of means ('*inspanningsverbintenis*' or '*obligation de moyen*').

18.7. **Customer Identification** – FusionIT may use Customer's name and logo in lists of customers, on earnings calls and releases, marketing materials and on its website. Upon Customer's written request to FusionIT, FusionIT will remove Customer's name and logo from Customer's public website.

18.8. **Non-solicitation** – During the term of the Agreement (and/or any prolongations thereof) and for a period of one year after the termination or expiration of this Agreement, neither Party shall (directly or indirectly) recruit or solicit (other than by general advertisement not directed specifically to any person or persons) any independent contractor or employee of the other Party for employment or engagement as an independent contractor.

18.9. **No assignment** – Customer may not assign this Agreement in whole or in part without the prior written consent of the other FusionIT. FusionIT may assign this Agreement in its entirety (including the Order Document and/or SOW) upon written notice without consent of the other party in connection with a merger, acquisition, corporate reorganisation or sale of substantially all of its assets so long as the assignee agrees to be bound by all of the terms of this Agreement ('Permitted Assignment'). In the event of a Permitted Assignment, FusionIT shall provide notice of such assignment to the Customer.

18.10. **No waiver** – Any failure of either Party to insist upon or enforce performance by the other Party of any of the provision of this Agreement

will not be interpreted or construed as a waiver of such Party's right to assert on or rely upon such provision, right or remedy in that or any other instance.

- 18.11. **Severability** – Whenever possible, the provisions of this Agreement shall be interpreted in such a manner as to be valid and enforceable under the applicable law. However, if one or more provisions of this Agreement are found to be invalid, illegal or unenforceable, in whole or in part, the remainder of such provision and of this Agreement shall remain in full force and effect as if such invalid, illegal or unenforceable provision had never been contained herein. Moreover, in such event, the Parties shall amend the invalid, illegal or unenforceable provision(s) or any part thereof and/or agree on a new provision, in such a way as to reflect insofar as possible the purpose of the invalid, illegal or unenforceable provision(s).
- 18.12. **Non-Competition** - Notwithstanding anything in this Agreement to the contrary, (a) in no event shall FusionIT be restricted from providing services that are competitive with, or similar to, the services, for any third party; and (b) for the avoidance of doubt, FusionIT shall be free to use the general knowledge,

Exhibits:

- Service Level Exhibit
- Data Processing Exhibit
- Service Description Exhibit

skills and experience of its personnel, and any ideas, concepts, know-how, and techniques that are acquired or used pursuant to this Agreement; in each case provided that FusionIT does not use any Confidential Information of the Customer in breach of the terms of this Agreement.

- 18.13. **Relationship between the Parties** – FusionIT is entirely free and independent in performing the Services. There is no hierarchical relationship between FusionIT (or employees, agents or subcontractors) and Customer. Nothing in this Agreement shall be construed as a creation of partnership, joint venture, agency or otherwise between the Parties. Neither Party has the right to enter into an agreement in name of the other Party.
- 18.14. **Governing law and jurisdiction** - This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the Belgian laws. Each Party irrevocably agrees that the courts of Antwerp (division Antwerp) (Belgium) shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation which cannot be settled in an amicable way.