

Terms and Conditions v9.2

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these Conditions.

Acceptance Tests: the tests of the Software after configuration and development to ensure it complies with the Specification, as set out in the Contract Details.

Annex: the annex to these Conditions.

Authorised Users: those employees, agents and independent contractors of the Customer (or a subsidiary or holding company of the Customer) who are authorised by the Customer to use the Services and the Documentation, as further described in condition 4.2.4.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Conditions: these terms and conditions as amended from time to time in accordance with condition 19.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in condition 13.5 or condition 13.6.

Contract: the contract between Fu3e and the Customer for the supply of Services in accordance with these Conditions.

Contract Date: the date on which the Contract is formed as provided for in condition 2.2.

Contract Details: the online form headed "Contract Details" which amongst other things identifies the Customer and sets out the commercial terms applicable to the Contract.

CPI the Consumer Prices Index (CPI)(all items)(United Kingdom).

Customer: the entity which purchases Services from Fu3e, as identified in the Contract Details.

Customer Data: the data inputted by the Customer, Authorised Users, or Fu3e on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Documentation: the document made available to the Customer by Fu3e online via <https://app.fu3e.com> or such other web address notified by Fu3e to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

Fu3e: Fu3e Limited, a limited company incorporated and registered in England and Wales with company number 08892330 whose registered office is at The Beehive, Beehive Ring Road, Gatwick, England, RH6 0PA.

Initial Service Term from and including the Contract Date up to and including expiry of that period identified as the "Initial Service Term" in the Contract Details.

Month: from and including the first day of a calendar month up to and including the last day of that month.

Normal Business Hours: 8.00 am to 6.00 pm local UK time, each Business Day.

Renewal Period: the period described in condition 16.1.

Services: the online services provided by Fu3e to the Customer under the Contract via <https://app.fu3e.com> or any other website notified to the Customer by Fu3e from time to time, as more particularly described in the Documentation and/or the Contract Details.

Service Term: the Initial Service Term together with any subsequent Renewal Periods.

Set-up Fees: the fees payable by the Customer to Fu3e for the Set-Up Services, as set out in the Contract Details.

Set-up Services: if applicable, configuration, development, testing of and/or training in the use of the Software, as set out in the Contract Details.

Software: the online software applications (as configured and developed pursuant to the Set-up Services, if applicable) marketed and licensed under the trade mark “fu3e” and provided by Fu3e as part of the Services.

Subscription Fees: the subscription fees payable by the Customer to Fu3e for the User Subscriptions, as set out in the Contract Details.

Support Services Policy: Fu3e's policy for providing support in relation to the Services as made available at <https://www.fu3e.com/support-services-policy-service-policy> or such other website address as may be notified to the Customer from time to time.

User Subscriptions: the user subscriptions purchased by the Customer pursuant to condition 11.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with the Contract.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be construed accordingly.

Year: a twelve month period commencing from and including the Contract Date or any anniversary of it.

1.2 Condition headings shall not affect the interpretation of these Conditions.

1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of the Contract.

1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of the Contract under that statute or statutory provision.

1.9 A reference to writing or written includes e-mail.

1.10 References to conditions are to the conditions of these Conditions.

2. CONTRACT FORMATION

2.1 By signing the Contract Details the Customer shall be deemed to be making a binding offer to purchase Services (and, Set-up Services, if applicable) in accordance with these Conditions.

2.2 The Customer's offer shall only be deemed to be accepted when Fu3e issues written acceptance of that offer (for which email shall suffice) at which point and on which date the Contract shall come into existence (**Contract Date**).

2.3 Any samples, drawings, descriptive matter or advertising issued by Fu3e, and any descriptions or illustrations contained on Fu3e's websites or other marketing materials, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Any quotation given by Fu3e shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. SET-UP SERVICES

3.1 If the Contract Details provide for Set-Up Services, the following shall apply.

3.2 Within 5 Business Days of the Contract Date, Fu3e shall start to configure the Software for the Customer's use. Fu3e shall use all reasonable efforts to complete such configuration services within the period provided for in the Contract Details.

3.3 Fu3e shall undertake any development work within the period provided for in the Contract Details.

3.4 Once Fu3e has completed the configuration and development of the Software, Fu3e shall run the Acceptance Tests.

3.5 The Acceptance Tests shall test compliance of the Software with the Specification. The form and detail of such tests is set out in the Contract Details.

3.6 Acceptance of the Software shall occur when the Software has passed the Acceptance Tests. Fu3e shall notify the Customer when the tests have been passed and provide the results of the Acceptance Tests to the Customer in writing.

3.7 If any failure to pass the Acceptance Tests results from a defect which is caused by an act or omission of the Customer, or by one of the Customer's sub-contractors or agents for whom Fu3e has no responsibility (**Non-Supplier Defect**), the Software shall be deemed to have passed the Acceptance Tests notwithstanding such Non-Supplier Defect. Fu3e shall provide assistance reasonably requested by the Customer in remedying any Non-Supplier Defect by supplying additional services or products. The Customer shall pay Fu3e in full for all such additional services and products at Fu3e's then current fees and prices.

3.8 Acceptance of the Software shall be deemed to have taken place on whichever is the earliest of:

3.8.1 Fu3e notifying the Customer the Acceptance Tests have been passed in accordance with condition 3.6; or

3.8.2 the use of the Software by the Customer or any Authorised User in the normal course of the Customer's business.

3.9 Once the Software and Services are ready for the Customer's use (that is, following acceptance pursuant to condition 3.8), Fu3e shall provide the training to the Customer for that period identified for training in the Contract Details. Any additional training required by the Customer shall be provided by Fu3e at its standard rates then in force. Unless otherwise agreed in writing, training shall be provided remotely.

4. USER SUBSCRIPTIONS

4.1 Subject to the Customer purchasing the User Subscriptions in accordance with condition 5.2 and condition 11.1, the restrictions set out in this condition 4 and the other conditions of these Conditions, Fu3e grants to the Customer a non-exclusive, non-transferable right, without the right to grant sub-licences, to permit the Authorised Users to use the Services and the Documentation during the Service Term solely for the Customer's internal business operations.

4.2 In relation to the Authorised Users, the Customer undertakes that:

4.2.1 the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;

4.2.2 it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;

4.2.3 each Authorised User shall keep a secure password for their use of the Services and Documentation, and that each Authorised User shall keep their password confidential;

4.2.4 it shall maintain a written, up to date list of current Authorised Users and provide such list to Fu3e within 5 Business Days of Fu3e's written request at any time or times;

4.2.5 it shall permit Fu3e or Fu3e's designated auditor to audit the Services in order to establish the name and password of each Authorised User and the Customer's data processing facilities to audit compliance

with the Contract. Each such audit may be conducted no more than once per quarter, at Fu3e's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;

4.2.6 if any of the audits referred to in condition 4.2.5 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Fu3e's other rights, the Customer shall promptly disable such passwords and Fu3e shall not issue any new passwords to any such individual; and

4.2.7 if any of the audits referred to in condition 4.2.5 reveal that the Customer has underpaid Subscription Fees to Fu3e, then without prejudice to Fu3e's other rights, the Customer shall pay to Fu3e an amount equal to such underpayment as calculated in accordance with the prices set out the Contract Details within 10 Business Days of the date of the relevant audit.

4.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

4.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

4.3.2 facilitates illegal activity;

4.3.3 depicts sexually explicit images;

4.3.4 promotes unlawful violence;

4.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

4.3.6 is otherwise illegal or causes damage or injury to any person or property; and Fu3e reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this condition.

4.4 The Customer shall not:

4.4.1 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 the Contract:

(a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

(b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

4.4.2 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or

4.4.3 use the Services and/or Documentation to provide services to third parties; or

4.4.4 subject to condition 4.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or

4.4.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this condition 4; or

4.4.6 introduce or permit the introduction of any Virus or Vulnerability into Fu3e's network and information systems.

4.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Fu3e.

4.6 The Customer, subject to the restrictions in condition 4.4, is entitled to extract Customer Data (held by Fu3e as part of the Services) at any time during the Service Term. If the Customer requires Fu3e to perform this task for it, Fu3e will advise the Customer of the fees for such extraction and shall only proceed with the Customer's agreement to those fees.

5. ADDITIONAL USER SUBSCRIPTIONS

5.1 The Customer may, from time to time during the Service Term, purchase additional User Subscriptions in excess of the number set out in Contract Details and Fu3e shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of the Contract. The fees

for such additional User Subscriptions shall be as set out in the Contract Details or otherwise as agreed in writing by the parties.

5.2 The Customer shall, within 30 days of the date of Fu3e's invoice, pay to Fu3e the relevant fees for such additional User Subscriptions.

6. SERVICES

6.1 Fu3e shall, during the Service Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of the Contract.

6.2 Fu3e shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

6.2.1 planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time; and

6.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that Fu3e has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.

6.3 Fu3e will, as part of the Services and at no additional cost to the Customer provide the Customer with Fu3e's standard customer support services during Normal Business Hours in accordance with the Contract Details and Fu3e's Support Services Policy in effect at the time that the Services are provided. Fu3e may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services (including training) separately at Fu3e's then current rates.

7. DATA PROTECTION

7.1 In this condition 7, the following definitions shall apply:

Applicable Laws means: (a) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom; and (b) to the extent EU GDPR applies, the law of the European Union or any member state of the European Union to which Fu3e is subject.

Applicable Data Protection Laws means: (a) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; and (b) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which Fu3e is subject, which relates to the protection of personal data.

Customer Personal Data any personal data which Fu3e processes in connection with the Contract, in the capacity of a processor on behalf of the Customer.

EU GDPR the General Data Protection Regulation ((EU) 2016/679).

Fu3e Personal Data any personal data which Fu3e processes in connection with the Contract, in the capacity of a controller.

Purpose: the purposes for which the Customer Personal Data is processed, as set out in Condition 7.9.1.

UK GDPR has the meaning given to it in the Data Protection Act 2018.

For the purposes of this condition 7, the terms **controller, processor, data subject, personal data, personal data breach** and processing shall have the meaning given to them in the UK GDPR.

7.2 This condition 7 assumes the only relevant data protection laws are the Applicable Data Protection Laws. Should this not be the case, the parties shall work together and negotiate in good faith a supplementary data processing agreement to ensure that processing of personal data is lawful. In the absence of such an agreement, Fu3e shall not process, nor shall the Customer require Fu3e to process, the relevant personal data.

7.3 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This condition 7.3 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.

7.4 The parties have determined that, for the purposes of Applicable Data Protection Laws:

7.4.1 Fu3e shall act as controller of the personal data set out in Part 1 of the Annex; and

7.4.2 Fu3e shall process the personal data set out in Part 2 of the Annex, as a processor on behalf of the Customer.

7.5 Should the determination in condition 7.4 change, then each party shall work together in good faith to make any changes which are necessary to this condition 7 or the Annex.

7.6 By entering into the Contract, the Customer consents to (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by Fu3e in connection with the processing of Fu3e Personal Data, provided these are in compliance with the then-current version of Fu3e's privacy notice available at <https://fu3e.com/privacy-policy/> (**Privacy Notice**). In the event of any inconsistency or conflict between the terms of the Privacy Notice and the Contract, the Privacy Notice will take precedence.

7.7 Without prejudice to the generality of condition 7.3, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Fu3e Personal Data and Customer Personal Data to Fu3e and, if applicable, lawful collection of the same by Fu3e for the duration and purposes of the Contract.

7.8 In relation to the Customer Personal Data, Part 2 of the Annex; sets out the scope, nature and purpose of processing by Fu3e, the duration of the processing and the types of personal data and categories of data subject.

7.9 Without prejudice to the generality of condition 7.3, Fu3e shall, in relation to Customer Personal Data:

7.9.1 process that Customer Personal Data only on the documented instructions of the Customer, which shall be to process the Customer Personal Data for the purposes set out in Part 2 of the Annex, unless Fu3e is required by Applicable Laws to otherwise process that Customer Personal Data. Where Fu3e is relying on Applicable Laws as the basis for processing Customer Processor Data, Fu3e shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer on important grounds of public interest. Fu3e shall inform the Customer if, in the opinion of Fu3e, the instructions of the Customer infringe Applicable Data Protection Legislation;

7.9.2 implement technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which the Customer has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;

7.9.3 ensure that any personnel engaged and authorised by Fu3e to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;

7.9.4 assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to Fu3e), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

7.9.5 notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;

7.9.6 at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the agreement unless Fu3e is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this condition 7.9.6 Customer Personal Data shall be considered deleted where it is put beyond further use by Fu3e; and

7.9.7 maintain records to demonstrate its compliance with this condition 7 and allow for reasonable audits by the Customer or the Customer's designated auditor, for this purpose, on reasonable written notice.

7.10 The Customer provides its prior, general authorisation for Fu3e to:

7.10.1 appoint processors to process the Customer Personal Data, provided that Fu3e:

(a) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on Fu3e in this condition 7;

b) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of Fu3e; and

(c) shall inform the Customer of any intended changes concerning the addition or replacement of the processors, accordingly giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to Fu3e's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Customer shall indemnify Fu3e for any losses, damages, costs (including legal fees) and expenses suffered by Fu3e in accommodating the objection

7.10.2 transfer Customer Personal Data outside of the UK or EEA as required for the Purpose, provided that Fu3e shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of Fu3e, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the ICO from time to time (where the UK GDPR applies to the transfer).

7.11 Either party may, at any time on not less than 30 days' notice, revise condition 7 by replacing it (in whole or part) with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply on that date the parties have agreed in writing).

8. THIRD PARTY PROVIDERS

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. Fu3e makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not Fu3e. Fu3e recommends that the Customer refers to the third party's website terms and conditions and privacy notice prior to using the relevant third-party website. Fu3e does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

9. FU3E'S OBLIGATIONS

9.1 Fu3e undertakes that the Services and Set-Up Services will be performed with reasonable skill and care and that the Services will be performed substantially in accordance with the Documentation.

9.2 The undertaking at condition 9.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Fu3e's instructions, or modification or alteration of the Services by any party other than Fu3e or Fu3e's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Fu3e will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in condition 9.1.

9.3 Fu3e:

9.3.1 does not warrant that:

(a) the Customer's use of the Services will be uninterrupted or error-free; or

(b) that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements.

9.3.2 warrants it shall use reasonable endeavours to ensure the Software and the Services are free from Vulnerabilities or Viruses; and

9.3.3 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 the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

9.4 The Contract shall not prevent Fu3e 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 the Contract.

9.5 Fu3e warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Contract.

9.6 Fu3e shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy available at <https://fu3e.com/backup-policy/> or such other website address as may be notified to the Customer from time to time, as such document may be amended by Fu3e in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against Fu3e shall be for Fu3e to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Fu3e in accordance with the archiving procedure described in its Back-Up Policy. Fu3e 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 Fu3e to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable).

10. CUSTOMER'S OBLIGATIONS

The Customer shall:

10.1.1 provide Fu3e with:

- (a) all necessary co-operation in relation to the Contract; and
- (b) all necessary access to such information as may be required by Fu3e.
in order to provide the Services and Set-Up Services, including but not limited to Customer Data, security access information and configuration services;

10.1.2 without affecting its other obligations under the Contract, comply with all applicable laws and regulations with respect to its activities under the Contract;

10.1.3 carry out all other Customer responsibilities set out in the Contract in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Fu3e may adjust any agreed timetable or delivery schedule as reasonably necessary;

10.1.4 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of the Contract and shall be responsible for any Authorised User's breach of the Contract;

10.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for Fu3e, its contractors and agents to perform their obligations under the Contract, including without limitation the Services and Set-Up Services;

10.1.6 ensure that its network and systems comply with the relevant specifications provided by Fu3e from time to time; and

10.1.7 be, to the extent permitted by law and except as otherwise expressly provided in the Contract, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Fu3e's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

10.2 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

11. CHARGES AND PAYMENT

11.1 At the start of each Month, Fu3e shall submit an invoice for the Subscription Fees for that Month.

11.2 In addition, at the end of each Month, Fu3e shall submit an invoice for:

- 11.2.1 the Set-Up Fees (only at the end of the first Month);
- 11.2.2 fees due for any additional User Subscriptions for that Month;
- 11.2.3 fees due for archive project file storage in that Month;
- 11.2.4 fees due for excess storage (whether standard storage or archive project file storage) in that Month; and
- 11.2.5 fees due for any additional Customer support and training.

11.3 For that Month in which the Contract Date falls, the monthly fees (not including the Set-Up Fees) referred to in condition 11.1 shall be calculated on a pro rata basis for the period from and including the Contract Date, up to and including the end of that Month.

11.4 The Customer shall pay each invoice submitted by Fu3e:

- 11.4.1 within 30 days of the date of the invoice; and

11.4.2 in full and in cleared funds to a bank account nominated in writing by Fu3e, and time for payment shall be of the essence of the Contract.

11.5 If Fu3e has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Fu3e:

11.5.1 Fu3e may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and Fu3e shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

11.5.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of Barclays Bank Plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

11.6 All amounts and fees stated or referred to in the Contract:

11.6.1 shall be payable in pounds sterling;

11.6.2 are, subject to condition 15.3.2, non-cancellable and non-refundable;

11.6.3 are exclusive of value added tax, which shall be added to Fu3e's invoice(s) at the appropriate rate.

11.7 If, at any time whilst using the Services, the Customer considers it will exceed the amount of disk storage space (whether standard storage or archive project file storage) provided for in the Contract Details, it shall notify Fu3e of the same. Promptly following such notification, Fu3e will advise the Customer as to the charges payable in respect of such additional storage. If the Customer wishes to proceed with the additional storage, it shall provide Fu3e with its approved purchase order information and Fu3e shall invoice the Customer the storage fees payable in respect of the additional storage. The Customer shall pay such invoice within 30 days after the date of such invoice.

11.8 Fu3e shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to condition 5.2, the support fees payable pursuant to condition 6.3, fees due in respect of any particular functionality identified in the Contract Details and/or the excess storage fees payable pursuant to condition 11.6 at the start of each Year to reflect increases in the cost of delivering the Services indicated by the percentage increase in the CPI during the previous 12 months (as shown in the most recently published CPI figures). Fu3e shall notify the Customer of the increase at least 30 days' prior to commencement of the relevant Year, and the Contract Details shall be deemed to have been amended accordingly.

11.9 If any amounts due under this Contract remain unpaid for more than 30 days after the due date, Fu3e shall be entitled, without further notice, to:

a) Refer the debt to a third-party debt collection agency or legal advisors for enforcement; and/or

b) Commence legal proceedings to recover the debt, including interest and reasonable legal fees, without further recourse to dispute resolution procedures under clause 28.

11.9.1 The Customer shall be liable for any and all reasonable costs (including legal costs, debt recovery costs, and court fees) incurred by Fu3e in pursuing overdue amounts, in addition to the amounts owed and interest payable under clause 11.5.2.

12. PROPRIETARY RIGHTS

12.1 The Customer acknowledges and agrees that Fu3e and/or its licensors own all intellectual property rights in the Services, the Set Up Services and the Documentation. Except as expressly stated in the Contract, the Contract does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

12.2 Fu3e confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Contract

13. CONFIDENTIALITY

13.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Contract. A party's Confidential Information shall not be deemed to include information that:

13.1.1 is or becomes publicly known other than through any act or omission of the receiving party;

13.1.2 was in the other party's lawful possession before the disclosure;

13.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

13.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence.

13.2 Subject to condition 13.4, 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 and performance of the Contract.

13.3 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 the Contract.

13.4 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 condition 13.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

13.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Fu3e's Confidential Information.

13.6 Fu3e acknowledges that the Customer Data is the Confidential Information of the Customer.

13.7 No party shall make, or permit any person to make, any public announcement concerning the Contract without the prior written consent of the other party, 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.

13.8 The above provisions of this condition 13 shall survive termination of the Contract, however arising.

14. INDEMNITY

14.1 The Customer shall defend, indemnify and hold harmless Fu3e 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 the Customer's use of the Services and/or Documentation, provided that:

14.1.1 Fu3e gives to the Customer prompt notice of any such claim;

14.1.2 Fu3e provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

14.1.3 the Customer is given sole authority to defend or settle the claim.

14.2 Fu3e shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services or Documentation in accordance with the Contract infringes any United Kingdom patent effective as of the Contract Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

14.2.1 the Customer gives to Fu3e prompt notice of any such claim;

14.2.2 the Customer provides reasonable co-operation to Fu3e in the defence and settlement of such claim, at Fu3e's expense; and

14.2.3 Fu3e is given sole authority to defend or settle the claim.

14.3 In the defence or settlement of any claim, Fu3e may procure the right for the 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 the Contract on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

14.4 In no event shall Fu3e, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

14.4.1 a modification of the Services or Documentation by anyone other than Fu3e; or

14.4.2 the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Fu3e; or

14.4.3 the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Fu3e or any appropriate authority.

14.5 The foregoing and condition 15.3.2 state the Customer's sole and exclusive rights and remedies, and Fu3e's (including Fu3e's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

15. LIMITATION OF LIABILITY

15.1 Except as expressly and specifically provided in the Contract:

15.1.1 the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. Fu3e shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Fu3e by the Customer in connection with the Services, or any actions taken by Fu3e at the Customer's direction;

15.1.2 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 the Contract; and

15.1.3 the Services and the Documentation are provided to the Customer on an "as is" basis.

15.2 Nothing in the Contract excludes the liability of Fu3e:

15.2.1 for death or personal injury caused by Fu3e's negligence; or

15.2.2 for fraud or fraudulent misrepresentation.

15.3 Subject to condition 15.1 and condition 15.2:

15.3.1 Fu3e 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 loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract; and

15.3.2 Fu3e's total aggregate liability in contract (including in respect of the indemnity at condition 14.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract (or any collateral contract) shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

16. TERM AND TERMINATION

16.1 The Contract shall, unless otherwise terminated as provided in this condition 16, commence on the Contract Date and shall continue for the Initial Service Term and, after that, the Contract shall be automatically renewed for successive periods of 24 months (each a **Renewal Period**), unless:

16.1.1 either party notifies the other party of termination, in writing, at least 90 days before the end of the Initial Service Term or any Renewal Period, in which case the Contract shall terminate upon the expiry of the applicable Initial Service Term or Renewal Period; or

16.1.2 otherwise terminated in accordance with the provisions of the Contract.

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

16.2.1 the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 7 (seven) days after being notified in writing to make such payment;

16.2.2 the other party commits a material breach of any other term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 28 (twenty-eight) days after being notified in writing to do so;

16.2.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the

meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;

16.2.4 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;

16.2.5 the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;

16.2.6 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;

16.2.7 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 (being a company, partnership or limited liability partnership);

16.2.8 the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;

16.2.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

16.2.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 (fourteen) days;

16.2.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 16.2.3 to condition 16.2.10 (inclusive);

16.2.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

16.2.13 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

16.3 On termination of the Contract for any reason:

16.3.1 all licences granted under the Contract shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;

16.3.2 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;

16.3.3 Fu3e may destroy or otherwise dispose of any of the Customer Data in its possession unless Fu3e receives, no later than ten (ten) days after the effective date of the termination of the Contract, a written request for the delivery to the Customer or its nominee of the then most recent back-up of the Customer Data (**Data Migration Services**). Fu3e shall promptly following receipt of a request for the provision of Data Migration Services provide the Customer with an estimate of its reasonable costs (calculated on a time and materials basis) for the Data Migration Services. Subject to the Customer accepting that estimate, Fu3e shall use reasonable commercial endeavours to complete the Data Migration Services within 30 (thirty) days of the Customer's acceptance of the estimate; and

16.3.4 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.

17. FORCE MAJEURE

Neither party shall have liability to the other party under the Contract if it is prevented from or delayed in performing its obligations under the Contract, 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 (not involving the workforce of the affected party), failure of a utility service or transport or telecommunications network, act of God, epidemic or 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 the unaffected party is promptly notified of such an event and its expected duration. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for one month, [either party] **OR** [the unaffected party] may terminate the Contract by giving 7 days' written notice to the [other party] **OR** [the affected party].

18. CONFLICT

If there is an inconsistency between any of the provisions in these Conditions and the Contract Details, the provisions in Contract Details shall prevail.

19. VARIATION

Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

20. WAIVER

No failure or delay by a party to exercise any right or remedy provided under the Contract 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.

21. RIGHTS AND REMEDIES

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

22. SEVERANCE

22.1 If any provision or part-provision of the Contract 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 the Contract. 22.2 If any provision or part-provision of the Contract is deemed deleted under condition 22.1 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.

23. ENTIRE AGREEMENT

23.1 The Contract 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.

23.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

23.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

23.4 Nothing in this condition shall limit or exclude any liability for fraud.

24. ASSIGNMENT

24.1 The Customer shall not, without the prior written consent of Fu3e, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

24.2 Fu3e 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 the Contract.

25. NO PARTNERSHIP OR AGENCY

Nothing in the Contract 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).

26. THIRD PARTY RIGHTS

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

27. NOTICES

27.1 Any notice required to be given under the Contract shall be in writing and in the English language and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service or, if the Customer is based outside the UK, sent by pre-paid air-mail post, in each case, to the other party at its address set out in the Contract Details, or such other address as may have been notified by that party for such purposes, or sent by email to the other party's email address as set out in the Contract Details.

27.2 Any notice shall be deemed to have been received:

(a) if delivered by hand, at the time the notice is left at the proper address;

(b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;

(c) if sent by pre-paid air-mail post, at 9.00 am on the fifth Business Day after posting; or

(d) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this condition, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

27.3 This condition 27 does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

28. DISPUTE RESOLUTION

28.1 If any dispute arises in connection with the Contract, a director or other senior representatives of the parties with authority to settle the dispute will, within 14 (fourteen) days of a written request from one party to the other, meet (whether physically or virtually) in a good faith effort to resolve the dispute.

28.2 If the dispute is not wholly resolved at that meeting, the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (ADR notice) to the other party to the dispute, referring the dispute to mediation. A copy of the request should be sent to CEDR. Unless otherwise agreed, the mediation will start not later than 28 days after the date of the ADR notice.

28.3 No party may commence any court proceedings/arbitration in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

29. GOVERNING LAW

The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

30. JURISDICTION

Each party irrevocably agrees, for the sole benefit of Fu3e that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation. Nothing in this clause shall limit the right of Fu3e to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

31. TRADE MARKS AND PATENTS

TRADE MARKS: "fu3e" is a registered trade mark of FU3E Limited. Other product and company names mentioned herein may be trademarks of their respective owners.

PATENTS: The Software and Services are the subject of US Patent. No.11,334,563 B1, 11,783,295 B2 and other patents pending.

ANNEX DATA PROTECTION

Part 1

Fu3e Personal Data

1. Categories of data subject

Customer contacts and Authorised Users.

2. Types of personal data

2.1 Identity Data including name, username or similar identifier, title, and gender.

2.2 Contact Data including address, email address and telephone numbers.

2.3 Financial Data including bank account and payment card details of a Customer contact.

2.4 Technical Data includes internet protocol (IP) address, Authorised Users' login data, browser type and version, time zone setting and location, browser plug-in types and versions, operating system and platform, and other technology on the devices the Authorised Users use to access the Services.

2.5 Usage Data including information about how Authorised Users use the Services.

2.6 Marketing and Communications Data includes your preferences in receiving marketing from us and our third parties and your communication preferences.

Part 2

Customer Personal Data

1. Subject matter

The subject matter of the data processing under the Contract is Customer Personal Data.

2. Duration of processing

Fu3e will process Customer Personal Data for the duration of the Contract and then shall either delete or return to as provided for under condition 7.9.6 of the Contract.

3. Purpose of processing

Fu3e shall only process Customer Personal Data for the Purpose, which shall include:

(i) processing as necessary to provide the Services in accordance with the Contract;

(ii) processing initiated by the Customer in its use of the Services; and

(iii) processing to comply with any other reasonable instructions provided by Customer (e.g., via email or support tickets) that are consistent with the terms of the Contract.

4. Nature of the processing

Fu3e provides an online platform and other related services, as more particularly described in the Documentation.

5. Categories of data subjects

5.1 Customers' directors, officers, employees, and contractors.

5.2 Customers' suppliers' directors, officers, employees, and contractors.

5.3 Customers' customers' directors, officers, employees, and contractors.

5.4 Other individuals connected with Customers' projects.

6. Types of Customer Personal Data

Customers may upload, submit or otherwise provide certain personal data to the Services, the extent of which is typically determined and controlled by Customers in their sole discretion, and may include the following types of personal data:

6.1 Identity Data including name, username or similar identifier, title, and gender.

6.2 Contact Data including address, email address and telephone numbers.

6.3 Employment Data including employer, job title, geographic location, area of responsibility.

7. Special Category Data

Fu3e does not want to, nor does it intentionally, collect or process any Special Category Data in connection with the provision of the Service.

8. Processing Operations

Customer Personal Data will be processed in accordance with the Contract and may be subject to the following processing activities:

8.1 Storage and other processing necessary to provide, maintain and improve the Services provided to the Customer pursuant to the Contract; and/or

8.2 Disclosures in accordance with the Contract and/or as compelled by Applicable Law.