

Enate Master Software and Services Agreement

This Enate Master Software and Services Agreement ('MSA') is dated _____ [Drafting note: we usually sign contracts using DocuSign, and the date is inserted here by DocuSign. All drafting notes will be deleted before use.]

and made between:

[Enate Limited, a company registered in England and Wales with company number 4077681 with its registered office at 167-169 Great Portland Street, 5th Floor, London, W1W 5PF ('Enate'))

[Enate Technologies India Pvt Limited, a company registered in Karnataka with company number U72200KA2013FTC072544 with its registered office at WeWork Galaxy, 43, Residency Road, Bangalore 560025, India ('Enate'))

[Drafting note: the Enate solution is available through either of these Enate companies. For customers in the APAC region, our Indian entity is usually the contracting entity. For the rest of the world, our English entity is usually the contracting entity.]

and

_____, a [company] registered in [England and Wales] [with company number _____] with its [registered office][principal place of business] at _____ ('Customer').

Each Order is a separate contract incorporating the terms of this MSA. References to 'this agreement' refer to each such contract. If an Order incorporating this MSA is signed by an entity other than Customer, the Order will create a contract between the named entity and Enate, and references in this MSA to 'Customer' will mean the entity named in the Order.

Signed on behalf of

Signed on behalf of

Enate Limited by _____

_____ by _____

_____ Title

_____ Title

Terms of Business

1. Definitions and Interpretation

1.1. In this agreement:

'API' means application programming interface published by Enate for use with the Enate Solution, and has the same meaning as commonly understood by software engineers.

'Charges' means the sums payable by Customer to Enate under this agreement, as stated in Orders.

'Confidential Information' means non-public information disclosed to a party (or acquired by a party from performing this agreement) that is labelled as confidential or which the recipient ought to have regarded as confidential in the circumstances. The terms (but not the existence) of this agreement are confidential.

'Customer Data' means any data supplied by or on behalf of Customer or created from processing such data.

'Data Protection Legislation' means applicable legislation relating to the protection and processing of personal data including, if applicable, the General Data Protection Regulation (Regulation (EU) 2016/679) and the United Kingdom's Data Protection Act 2018.

'Enate Platform' means the infrastructure used by Enate to provide the Enate Solution in the form of software-as-a-service, described and kept up-to-date at <https://docs.enate.net/enate-contract-documents/#hosting-the-enate-solution-the-enate-platform>.

'Enate Solution' means the software application known as 'Enate' (as described in the Solution Description) and any updates or upgrades supplied as part of Maintenance & Support, provided in the form of software-as-a-service.

'Group Company' means any entity that is a subsidiary of Customer or a parent company of Customer or an entity under the same ownership or control as Customer, in each case as determined by Customer acting reasonably.

'Intellectual Property Rights' means all patents, copyrights, design rights, trademarks, service marks, trade secrets, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world.

'Maintenance & Support' means the support and maintenance obligations for the Enate Solution, described and kept up-to-date at <https://docs.enate.net/enate-contract-documents/#enate-maintenance-and-support>.

'Minimum Period' means the period specified in the relevant Order.

'Order' means a document stated to be an order that incorporates the terms of the MSA signed by both parties. A template Order is available at <https://docs.enate.net/enate-contract-documents/#enate-order-template>.

'Professional Services' means services other than Maintenance & Support provided by Enate that are subject to Charges as set out in an Order.

'Solution Description' means the online documents that describe the Enate Solution, maintained and located at <https://docs.enate.net/enate-help/work-manager/work-manager-2021.1> (for the component known as 'Work Manager') and <https://docs.enate.net/enate-help/builder/builder-2021.1> (for the component known as 'Builder').

'User' means an individual or a bot provided with access to the Enate Solution through unique login credentials. A bot means a non-human user that has unique login credentials. Enate does not operate a 'concurrent user' model. Any individual or bot having access to the Enate Solution will count as a User. Customer will be charged for the number of registered Users on the Enate Solution.

- 1.2. References to 'including' mean 'including (but not limited to)' and references to 'included' or 'include' are to be similarly interpreted.

2. Licence

- 2.1. Enate grants a non-exclusive licence to Customer, for such period as Customer continues to pay the Charges in accordance with the Order to grant access to Users to the Enate Solution operating from the Enate Platform, within the scope of the Order.
- 2.2. All Users may use free of charges the online learning environment known as the 'Enate Academy' at <http://www.enate.academy> and Enate Help at <https://docs.enate.net/enate-help/>.
- 2.3. Customer shall not adapt, modify, reverse engineer, decompile, disassemble or decode any component of the Enate Solution or translate any component into another language or write or derive any program from the Enate Solution except as expressly permitted by law
- 2.4. If Customer uses an API that impersonates a User, such use will be deemed to be use of the Enate Solution by that User (for the purposes of Charges and audit logs within the Enate Solution).
- 2.5. In this clause 2.5, 'System User' means either (i) a User that does not correspond to one specific human user or bot (for example, a User created as a proxy for a third party application to interact with the Enate Solution) or (ii) a third party application that uses an API that does not impersonate a specific User (that is to say, any use of an API that does not fall within clause 2.4). Customer shall not use an API to interact with the Enate Solution as a System User if the effect of such use is to deprive Enate of subscriptions for Users that would otherwise be required, unless such use is expressly authorised in the Order (and any such authorisation will be deemed to be limited to the particular use case). Using a System User to batch and execute inputs from multiple people or bots who are not set up as Users will be a breach of this clause 2.5.
- 2.6. For the protection of Enate customers collectively and to aid Enate planning to facilitate efficient use of performance and capacity, Enate operates a fair use policy. 'Fair use' means that the aggregate demands on the Enate Platform caused by use of the Enate Solution by Customer (ignoring occasional peaks) is broadly commensurate with the demands of other customers with similar volumes of Users. If Enate detects demands beyond fair use, Enate may instigate a discussion with Customer to reach agreement on ways to bring the demands within fair use. If the parties are unable to reach agreement, Enate may give not less than 30 days' written notice of steps to throttle Customer's use so as to restore fair use. Excessive use of APIs by System Users will be an example of demands beyond fair use.

3. Supply of the Enate Solution

- 3.1. Any requirement for the Enate Solution must be documented in an Order and signed by both parties.
- 3.2. The Commencement Date in the Order is the target date for supplying the Enate Solution. Enate shall provision the Enate Solution on the Enate Platform as follows:
 - 3.2.1. For a deployment that begins with a test environment, the Enate Solution will be provisioned within a test environment. After initial configuration and testing is complete to the Customer's satisfaction, Enate will reproduce the Enate Solution from the test environment into a production environment. Sometimes, the Enate Solution will have been provisioned in a test environment prior to the Order, as part of Enate's pre-sales process (in which case, such test environment will remain available until Customer is ready to promote the deployment into a production environment).
 - 3.2.2. Alternatively, Enate will provision the Enate Solution immediately into a production environment without the interim step of a test environment deployment.
- 3.3. If the period between Order signature and the Commencement Date is insufficient (for example, Customer delays signing an Order after it is issued), Enate shall supply for Enate Solution ready for installation as soon as practicable after the Order is signed.
- 3.4. Some features within the Enate Solution are optional modules that originate from third parties. The selection of available third party modules may change from time to time and Enate is entitled to discontinue third party modules. If Enate discontinues a third party module, Enate shall refund the Charges (if any) for that module that have been paid in advance for any period in which the module will be unavailable.

4. Maintenance & Support

Customer acknowledges that Maintenance & Support is limited to failure of the Enate Solution to function as described in this agreement and in the Solution Description insofar as the failure is related to the features and performance of those parts of the Enate Solution which are common to all users of the Enate Solution. Maintenance & Support excludes Customer-specific configurations and processes.

5. Facilities to be provided by Enate and by Customer

- 5.1. Customer is responsible for providing the means of connection over the Internet to the Enate Solution.
- 5.2. The Enate Solution may require the installation of software on the work-stations of Users. It is Customer's responsibility to ensure that such personal computers (and their internet connectivity and firewall settings) are of sufficient specification to run properly the relevant software. The minimum requirements applicable from time to time (including browser compatibility requirements) are stated within the Solution Description.
- 5.3. Customer must nominate (and notify changes in writing to Enate) a key point of contact who will be deemed to have Customer's authority for the management and control of Customer resources and decisions required for the efficient performance of this agreement. The Customer key point of contact is also responsible for communicating any relevant information to other persons within Customer's organisation.

6. Professional Services

- 6.1. Professional Services might include customised training or onsite training, assistance with implementing the Enate Solution to meet Customer requirements, or assistance with configuring an Enate Solution already deployed.
- 6.2. The Enate Solution is common to all Enate customers. Enate does not perform custom software development for any customers. If Enate agrees to add any features or otherwise modify the Enate Solution, such features and modifications become part of the Enate Solution.
- 6.3. Any requirement for Professional Services must be documented in an Order and, optionally, further described in a statement of work attached to the Order. Unless otherwise specifically stated in the Order, Professional Services are subject to Charges on a time and materials basis at the rate(s) specified in the Order and any total Charges in the Order are estimates only.
- 6.4. The product of Professional Services is outside the scope of Maintenance & Support.
- 6.5. Unless otherwise described in the Order, Professional Services will be performed using agile methods and the outcome will be dependent on the participation of Customer personnel.

7. Charges

- 7.1. Enate shall invoice Customer, and Customer shall pay the Charges within 30 days of the invoice date by bank transfer to the account specified in the invoice. All sums payable under this agreement are expressed exclusive of VAT (or other applicable sales or use tax), which is payable in addition at the rate prescribed by law.
- 7.2. Enate may invoice the Charges in the currency of the Order or in GBP Sterling. If Enate invoices the Charges in GBP Sterling and such Charges are stated in the Order using a currency other than GBP Sterling, Enate shall invoice the GBP Sterling sum calculated using the Bank Of England's Daily Spot Rate from the Bank of England's interactive database at the date of the invoice (or a similar index selected by Enate, acting reasonably, if the Bank of England spot rate ceases to be published). Customer shall pay the invoice in the currency of the invoice. If Customer pays Charges in any other currency, Customer shall reimburse Enate's cost of converting the remittance to cleared funds in GBP Sterling, including bank charges and foreign exchange losses.
- 7.3. If Customer disputes all or any part of an invoice, Customer must promptly (at the latest, by the date the invoice would fall due for payment) notify Enate in writing the basis for the dispute and pay any undisputed Charges. Enate and Customer shall promptly and in good faith discuss the resolution of any such dispute, failing which it will be resolved using the dispute resolution procedure in clause 16.
- 7.4. Except as otherwise expressly set out in this agreement or any Order, Charges for Professional Services will be invoiced monthly in arrears, and other Charges will be invoiced annually in advance. Charges expressed as day rates will be applied pro rata for part-days on the basis of 7 working hours per day. In addition to the Charges stated in the Order, Customer shall reimburse Enate (without mark-up) for travel and subsistence expenses incurred by Enate for Professional Services performed onsite at premises nominated by Customer.
- 7.5. The Enate Solution includes a database with a record of Users who can access the Enate Solution. Enate may use the database to measure the number of Users for the purpose of ascertaining the Charges. Save for manifest error, the Enate Solution's determination of the number of Users from time to time will be conclusive.
- 7.6. If withholding of tax from any sum due under this agreement is required by law, Customer may withhold the requisite sum provided that:
 - 7.6.1. Customer has given Enate prior notice of its intention to withhold such taxes promptly after becoming aware of the requirement and, insofar as lawful, sufficiently in advance to facilitate Enate's requests for co-operation pursuant to section 7.6.2;

- 7.6.2. Customer co-operates with any Enate requests to take such reasonable and lawful steps to minimise or avert the withholding and to optimise Enate's ability to obtain the benefit of any taxes withheld;
- 7.6.3. the due date for payment of the invoice will be deemed extended by such period as is necessary for Enate to comply with section 7.6.2; and
- 7.6.4. Customer shall obtain and promptly provide to Enate proof of payment of such taxes to the appropriate government authority.

8. Warranties

- 8.1. Enate warrants that the Enate Solution conforms in all material respects with the description in the Solution Description.
- 8.2. The Enate Solution might not operate entirely uninterrupted or error-free.
- 8.3. Customer accepts responsibility for the selection of the Enate Solution to achieve its intended results.
- 8.4. Enate shall perform this agreement using reasonable care and skill.
- 8.5. Enate warrants that it is lawfully entitled to enter into the terms of this agreement and to supply the Enate Solution as set out in this agreement.
- 8.6. All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded.

9. Customer Data and Data Protection Legislation

- 9.1. Customer Data will remain Customer's exclusive property. Upon request on termination of this agreement, a copy of the Customer Data will be delivered to Customer (in a machine readable format if it exists in such form).
- 9.2. Customer hereby grants to Enate a licence to process Customer Data for the purpose of performing this agreement. Customer shall indemnify Enate in respect of any claim that Customer Data uploaded to the Enate Solution infringes the rights of a third party.
- 9.3. References to '**controller**', '**data subject**', '**personal data**', '**personal data breach**', '**processor**', '**processing**' and '**supervisory authority**' have the meanings defined in the Data Protection Legislation. References to '**sub-processor**' mean another processor appointed by a processor.
- 9.4. Enate has a subsidiary, Enate Technologies India Pvt Ltd, to whom it sub-contracts certain services, including the processing of some Customer Data. Enate shall ensure that any Customer Data transferred to its Indian subsidiary is afforded adequate protection within the meaning of the Data Protection Legislation and Enate will remain responsible for the acts and omissions of its subsidiary.
- 9.5. Except as specifically stated in an Order, Enate shall ensure that the datacentre used to host the Enate Solution and the Customer Data remains located within the European Economic Area or the United Kingdom. Except as described by clause 9.4, Enate shall not process personal data (or permit any sub-processor to process such personal data) outside the European Economic Area and the United Kingdom without Customer consent and without ensuring the personal data is afforded adequate protection within the meaning of the Data Protection Legislation.
- 9.6. Without limiting Enate obligations in the remainder of this clause 9, Customer is responsible for ensuring it is lawfully entitled to supply personal data to Enate for processing under this agreement.
- 9.7. In the context of all personal data provided to Enate by or on behalf of Customer for processing under this agreement, the parties intend that Customer is the controller (or is acting on behalf of a controller) and Enate is the processor of the personal data.
- 9.8. Customer acknowledges that the Enate Solution includes a database schema that manifestly identifies some Customer Data as personal data. Before uploading personal data it is the responsibility of Customer to use the training available from Enate to learn how to use the features of the Enate Solution to identify personal data and the manner in which it might be necessary to search, update, export, delete or return such personal data as may be required by the Data Protection Legislation. Customer may request, and Enate shall provide, such further assistance as Customer requires for the effective discharge of this responsibility but non-trivial requests might be chargeable.
- 9.9. The Enate Solution does not distinguish personal data falling within special categories of personal data subject to additional protection under Data Protection Legislation. It is the responsibility of Customer to consider such requirements when discharging its responsibilities under this clause 9.
- 9.10. If Customer makes the Enate Solution accessible to Users outside the European Economic Area, Customer is responsible for configuring such access in a way that is compatible with any Data Protection Legislation restrictions on processing outside the European Economic Area.
- 9.11. Except insofar as Customer requires Enate's assistance because the Enate Solution does not provide Customer with the necessary access or features, Customer shall:
 - 9.11.1. determine when personal data ought to be deleted or when processing of personal data ought to cease;

- 9.11.2. take any steps to comply with the rights of data subjects for access to personal data, rectification or erasure of personal data, data portability, rights to be forgotten, and reply to any notices from data subjects; and
- 9.11.3. keep a record of processing with any greater information than that which is evident from this agreement.
- 9.12. If Customer requests Enate's assistance with any of the matters listed in clauses 9.11.1 to 9.11.3, Enate may treat any non-trivial requests as a request for Professional Services.
- 9.13. Enate and Customer shall each comply with Data Protection Legislation and shall not do anything that puts the other party in breach of its obligations under the Data Protection Legislation.
- 9.14. Enate shall:
 - 9.14.1. process the personal data only on documented instructions from Customer, including with regard to transfers of personal data to a third country or an international organisation outside the European Economic Area, unless required to do so by law to which Enate is subject; and in such a case, Enate shall inform Customer of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
 - 9.14.2. ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - 9.14.3. take all measures and implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons;
 - 9.14.4. if there is a personal data breach in relation to any Customer Data, notify Customer without undue delay and, where practicable, within 48 hours and thereafter assist Customer with its obligations to notify the personal data breach to a supervisory authority;
 - 9.14.5. provide Customer with reasonable assistance to undertake data protection impact assessments in relation to processing of personal data pursuant to this agreement and all reasonable assistance required in relation to any consultation with a supervisory authority that Customer carries out in relation to such assessment;
 - 9.14.6. at the choice of Customer, securely delete or enable Customer to download all Customer Data (and thereby ensure the deletion or return of all personal data) upon termination of this agreement or when processing is no longer required;
 - 9.14.7. make available to Customer all information necessary to demonstrate compliance with the obligations in this clause 9 and allow for and contribute to audits, including inspections, conducted by Customer or another auditor mandated by Customer; and
 - 9.14.8. immediately notify Customer if, in the opinion of Enate, an instruction infringes Data Protection Legislation.
- 9.15. To the extent that Enate uses another processor to process any Customer Data, it is agreed that:
 - 9.15.1. the sub-processors appointed by Enate from time to time are listed at <https://docs.enate.net/enate-contract-documents/#enate-sub-processors>. Such list also discloses any processing of personal data outside the European Economic Area and the United Kingdom pursuant to clause 9.5. Enate shall notify Customer in advance of any changed or new sub-processors or any material change to the processing done by sub-processors by updating the list, thereby giving Customer an opportunity to object to such changes. Customer may subscribe for notifications using the mechanism stated in the list.
 - 9.15.2. Enate and such sub-processors are common to all Enate customers and Enate shall remain fully liable for the actions of its sub-processors at all times;
 - 9.15.3. Enate shall impose on sub-processors the same data protection obligations as set out in clause 9.14;
 - 9.15.4. if Enate notifies Customer of any changes to sub-processors and Customer objects to such changes, Customer will be entitled to terminate this agreement (without liability for Enate or Customer, and such termination will be deemed to be a no-fault termination) if Customer has reasonable grounds for objecting to such changes by reason of the changes causing or being likely to cause Customer to be in breach of the Data Protection Legislation.

10. Limitations and exclusions of liability

- 10.1. Notwithstanding any other provision of this agreement, neither party excludes nor limits its liability for:
 - 10.1.1. death or personal injury caused by its negligence or the negligence of its officers, employees, contractors or agents;
 - 10.1.2. fraud or fraudulent misrepresentation;
 - 10.1.3. in the case of Customer, liability for payment of Charges due in accordance with this agreement; or
 - 10.1.4. any liability which cannot lawfully be excluded or limited.

- 10.2. All timescales expressed in this agreement have been estimated in good faith. Time will not be of the essence for the performance of any timescale obligations in this agreement.
- 10.3. Save as expressly set out in clause 10.1, neither party will be liable for any loss of profit, loss of business, loss of goodwill, loss of savings, claims by third parties (except those for which Enate has provided an express indemnity in clause 12.3), whether direct or indirect, or for any indirect loss or consequential loss whatsoever and howsoever caused (even if caused by that party's negligence and/or breach of contract and even if that party was advised that such loss would probably result).
- 10.4. Except as expressly set out in clause 10.1, each party's total liability arising in relation to each Order for any claims, losses, damages or expenses whatsoever and howsoever caused (even if caused by its negligence and/or breach of contract) will be limited for each event or series of linked events to a maximum sum equal to:
- 10.4.1. if liability arises from a breach of clause 9 (irrespective of whether Enate is also in breach of any other provisions of this agreement), 200% of the total Charges (excluding VAT) actually paid by Customer under that Order during the 12 month period immediately preceding the event (or last of a series of linked events) giving rise to such liability, or
- 10.4.2. if liability does not arise from a breach of clause 9, the total Charges (excluding VAT) actually paid by Customer under the Order during the 12 month period immediately preceding the event (or last of a series of linked events) giving rise to such liability.
- 10.5. Except as expressly set out in clauses 10.1 and 10.4, each party's total liability for any claims, losses, damages or expenses unconnected to any Order (even if caused by its negligence and/or breach of contract) will be limited for each event or series of linked events to a maximum sum equal to £10,000.

11. Insurance

- 11.1. Enate shall, at its expense, procure and maintain in force for the term of this agreement the following insurance policies with reputable insurance companies:
- 11.1.1. employer's liability insurance with cover of £5million or such higher cover as may be required by law;
- 11.1.2. public liability insurance with cover of £2million of such higher cover as may be required by law;
- 11.1.3. professional indemnity insurance with cover of at least £2million
- 11.1.4. cyber liability insurance with cover of at least £1million.
- 11.2. Upon request, Enate shall provide Customer with evidence of compliance with the insurance requirements in clause 11.1.

12. Intellectual property rights

- 12.1. Nothing in this agreement will cause the transfer of any Intellectual Property Rights.
- 12.2. Enate will have ownership of all Intellectual Property Rights in any software, documents, processes, materials or other work product which Enate creates in the course of performing this agreement.
- 12.3. Enate shall indemnify Customer with respect to any claim that may be brought against Customer for any alleged infringement of any Intellectual Property Rights ('**Infringement Claim**') based on the use of the Enate Solution by Customer in accordance with the terms of this agreement. Enate will not be obliged to indemnify Customer if the alleged infringement arises out of use of the Enate Solution in combination with any hardware or software not supplied by Enate if the alleged infringement would not have arisen but for such combination. Enate will not be obliged to indemnify Customer where the Infringement Claim is attributable to possession, use, development, modification or maintenance of the Enate Solution (or any part thereof) by Customer other than in accordance with the terms of this agreement or use of a non-current release of the Enate Solution.
- 12.4. Clause 12.3 is conditional on:
- 12.4.1. Customer notifying Enate in writing, as soon as reasonably practicable, of any Infringement Claim of which Customer has notice;
- 12.4.2. Customer not making any admission as to liability or compromise or agreeing to any settlement of any Infringement Claim without the prior written consent of Enate; and
- 12.4.3. Enate, at its own expense, having the conduct of or the right to settle all negotiations and litigation arising from any Infringement Claim and Customer giving Enate all reasonable assistance in connection with those negotiations and such litigation at Enate's request and expense.
- 12.5. If any Infringement Claim is made, or in Enate's reasonable opinion is likely to be made, against Customer, Enate may at its sole option and expense:
- 12.5.1. procure for Customer the right to continue using the Enate Solution (or any part thereof) in accordance with the terms of this agreement; or
- 12.5.2. modify the Enate Solution so that it ceases to be infringing; or
- 12.5.3. replace the Enate Solution with comparable non-infringing software; or

12.5.4. terminate this agreement immediately by notice in writing to Customer and refund any of the Charges paid by Customer as at the date of termination (less a reasonable sum in respect of Customer's use of the Enate Solution to the date of termination).

13. Termination

- 13.1. Each Order will continue for the Minimum Period and will renew automatically for successive 12 month periods until either party terminates the Order in accordance with this agreement.
- 13.2. Either party may terminate an Order by providing at least three months' prior written notice to the other party, expiring at the end of the Minimum Period or at the end of the prevailing renewal period (as applicable).
- 13.3. Upon termination of this MSA, no new Orders can be agreed. Except as specifically stated in this clause 13, termination of this MSA does not terminate any subsisting Orders, and termination of an Order does not terminate this MSA or any other Orders.
- 13.4. Either party may terminate this MSA and any or all Orders:
- 13.4.1. at any time on written notice to the other if the other party is in material or persistent breach of any of the terms of this agreement and either that breach is incapable of remedy, or the other party fails to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach; or
- 13.4.2. at any time on written notice to the other if the other party is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.
- 13.5. On termination of an Order for any reason:
- 13.5.1. all rights granted to Customer under this agreement will cease;
- 13.5.2. Customer shall cease all activities authorised by this agreement;
- 13.5.3. Customer shall immediately pay to Enate any sums due to Enate under this agreement; and
- 13.5.4. Enate shall assist Customer and/or any replacement supplier to the extent reasonably required to facilitate the smooth migration away from use of the Enate Solution to a replacement solution supplied by Customer or a replacement supplier. Enate may treat requests for such assistance as a request for Professional Services.

14. Enate Changes

Customer acknowledges and agrees that Enate may make changes to the Enate Solution (including changes to improve the Enate Solution). Enate will update the Solution Description to reflect such changes.

15. Force majeure

Enate will not be liable for any delay or non-performance of its obligations under this agreement arising from any cause beyond its reasonable control including, without limitation, any of the following: governmental act, war, fire, flood, explosion or civil commotion. This clause 15 will not excuse Customer from any payment obligations under this agreement. This clause 15 will not excuse either party for delays or non-performance caused by that party's failure to maintain and implement business continuity plans in accordance with good industry practice.

16. Dispute Resolution

- 16.1. If a dispute arises out of or in connection with this agreement (a 'Dispute'):
- 16.1.1. the parties will attempt to resolve the Dispute by escalating it to their respective executive officers;
- 16.1.2. failing which, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.
- 16.2. Nothing in this clause 16 will restrict either party's freedom to commence legal proceedings to preserve any legal right or remedy or to protect any Intellectual Property Rights or trade secrets whether by way of injunctive relief or otherwise.

17. Confidentiality and publicity

- 17.1. Enate and Customer shall, during the term of this agreement and thereafter, keep confidential all, and shall not use for its own purposes nor without the prior written consent of the other party disclose any of the other party's Confidential Information to any third party, unless such information is already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this agreement, or subsequently comes lawfully into the possession of such party from a third party.
- 17.2. Enate may disclose Confidential Information to its employees and subcontractors for the purposes only of performing this agreement and subject to a duty of confidentiality.

17.3. Enate may include Customer's name with a simple description of the services provided under this agreement in Enate's marketing materials and make a deal announcement following signing of this agreement. Enate will not undertake any further press work relating to this agreement without Customer's consent.

18. Subcontracting

Enate may use subcontractors in the performance of this agreement provided that:

- 18.1. such subcontractors will be selected using reasonable care and skill; and
- 18.2. Enate remains responsible for the acts and omissions of its subcontractors.

19. Waiver

No forbearance or delay by a party in enforcing its rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

20. Severability

If any provision of this agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions will not be prejudiced.

21. Third party rights

No term of this agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this agreement.

22. Entire agreement

This agreement contains the whole agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter.

23. Governing law and jurisdiction

This agreement and any dispute or claim arising out of or in connection with it (including any non-contractual disputes or claims) will be governed by and construed in accordance with the laws of England and Wales. Each of the parties irrevocably submits for all purposes (including any non-contractual disputes or claims) to the exclusive jurisdiction of the courts in England and Wales.