

# **FMP HR & PAYROLL SOFTWARE LIMITED**

## **General Terms and Conditions (Hosted software)**

This software agreement (**Agreement**) between the customer named below (**Customer**) and FMP HR & Payroll Software, a company registered in England and Wales with number 09855245 and having its registered office at Downlands House, Drayton Lane, Merston, Chichester, West Sussex, PO20 1EL (**FMP**) consists of this order form (**Order Form**), FMP's current general terms and conditions from time to time (**General Terms and Conditions**), the other documents referred to in them and if ordering any of the Software Services detailed below, the Specific Terms and Conditions for Software Services. Capitalised terms used in this Order Form have the meanings given to them in the General Terms and Conditions. Hard copies of the General Terms and Conditions and any other documents can be provided on request.

### **1 Definitions and Interpretation**

#### **1.1 In this Agreement:**

**Additional Charge** means any additional fees charged in accordance with the Fee Policy;

**Authorised Users** means employees who are accessing the Software;

**Additional Modules** means any additional chargeable modules, which are priced at £10 per month per module.

**Additional Employees** means additional employees using the system.

Additional Employees are sold in blocks of 10 employees. The cost is detailed in the Fees section.

**BACS** means Bankers Automated Clearing Services Limited;

**Business Day** means any day other than a Saturday, Sunday or a day which is a public holiday in England;

**Change** has the meaning given to it in clause 12.1;

**Commencement Date** means the date that the system is first accessed.

**Confidential Information** means information of commercial value which has been kept confidential by the party from whom the information originates and which has not come into the public domain during the Term in breach of any obligation of confidence.

**Core System** means the standard Amity Essentials system. The Core System will be free for any Clients with 10 employees or less.

**Customer** means the customer identified as such in the Order Form;

**Customer Data** means all data which is supplied to FMP by or on behalf of the Customer and relating to the Customer's employees, business, operations or clients; and any Personal Data in respect of which the Customer is the Data Controller (as defined in the Data Privacy Laws);

**Customer Hardware** means the computers and other equipment to be used by the Customer in conjunction with the Software;

**Customer Representative** means a person duly authorised by the Customer to act on its behalf for the purposes of this Agreement and specified in the Order Form;

**Data** means the Customer's data to be transferred to the Software;

**Data Privacy Laws** means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC and all applicable laws and regulations relating to the processing of personal data and privacy in the jurisdiction where the Services are performed and Software provided;

**Dispute Resolution Procedure** means the procedure for dealing with disputes under this Agreement as set out in clause 16.

**Documentation** means the operating manuals and all other related materials in human-readable and/or machine readable forms supplied by FMP to the Customer in relation to the Services and/or the Software;

**Fees** means the fees and expenses payable under this Agreement as set out , and charged in accordance with the Fee Policy; and can be amended from time to time.

**FMP** means FMP HR and Payroll Software Limited (company number 09811970);

**FMP Relief Event** means (a) any negligent act or omission or any failure or delay on the part of the Customer in relation to a Customer obligation under or in connection with this Agreement; or (b) any error, inaccuracy or omission in any Customer Data, or (c) any failure in the receiving, transmission or execution of Customer Data or payment instructions by BACS;

**Force Majeure Event** means an unforeseeable and insurmountable act, event or set of circumstances which affects the performance by a party of its obligations under this Agreement and which is beyond that party's reasonable control;

**Free Employees** means any employees using the system. The system is free of charge for upto and including 10 Employees of the Client. The Free Employees cannot be transferred between systems.

**GDPR** means EU Regulation (EU) 2016/679 or such UK legislation intended to replace or supersede it;

**Group** has the meaning set out in section s.474 Companies Act 2006;

**HMRC** means Her Majesty's Revenue and Customs;

**Hosting Facility** means 6 degrees Limited or such other hosting company as FMP may appoint from time to time for the purposes of hosting;

**Initial Term** – [means the term](#) of the Subscription. The Subscription will be renewed each month. It is the clients responsibility to cancel the contract or reduce modules /employee numbers in relation to their system.

**Intellectual Property Rights** means patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, copyright (including rights in computer software) and moral rights, database rights, semi-conductor topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications

for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

**Normal Working Hours** means the hours 9:00 am to 5:30 pm UK time, Monday to Thursday and 9:00 am to 5:00 pm on Fridays, on Business Days;

**Personal Data** means data that are subject to protection under Data Privacy Laws.

**Regulations** means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

**Review Date** means each monthly anniversary of the Initial Term;

**Subscription** means your monthly subscription to Amity Essentials. The subscription is renewed on the Review Date and it is the Clients responsibility to cancel the subscription, should it not be required.

**Support Services** means Helpdesk support via email. The Client has access to free email based support by emailing [amityhelpdesk@fmpglobal.com](mailto:amityhelpdesk@fmpglobal.com) The Helpdesk is available from 09:00 – 17:30 Monday to Thursday and 09:00 – 17:00 on Friday.

**Specific Terms and Conditions for Software** means the terms and conditions governing FMP's provision of Software Services incorporated into this Agreement if applicable;

**Free Trial Period** means a term of 3 months starting from the date the system is first accessed. The Free trial period cannot be extended. When the Free Trial Period ends, the Client will be charged the applicable fee for the Core system (if 11 Employees or above) plus any Additional modules.

**Termination** means expiry or termination of this Agreement for any reason and Terminate and Terminated shall be interpreted accordingly; and

**VAT** means value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax.

**Viruses** means anything 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 program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2 Words and phrases which have defined meanings in the Data Privacy Laws have the same meanings when used in this Agreement. To the extent that any UK legislation supersedes or replaces EU Regulation (EU) 2016/679, any reference in this Agreement to a term defined in or provision of the GDPR shall be interpreted as a reference to the nearest equivalent term or provision in such legislation.

1.3 Wherever the words other, in particular, include, including or for example are used in this Agreement, they are to be construed without limitation.

1.4 A reference to a statute or a statutory instrument is a reference to it as it is in force at the relevant time, taking account of any amendment, extension or re-enactment, and includes any subordinate legislation then in force under it.

1.5 If there is a conflict or inconsistency between any of the documents forming this Agreement, the following order of precedence will apply: these General Terms and Conditions; and then, the Fee Policy; and then, the Order Form; and then (if applicable) the Specific Terms and Conditions for Software Services.

#### **4 Software licence**

4.1 Where relevant, FMP grants to the Customer a non-exclusive, non-transferable licence to use the Software in the course of its business

4.2 The licence is subject to the following:

4.2.1 the Customer may not disassemble, decompile, reverse engineer, modify, adapt, make error corrections, attempt to copy, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit or distribute all or any portion of the Software and/ or the Documentation in any form or media or by any means except as permitted by this Agreement, by law or with the prior written consent of FMP;

4.2.2 the Customer may not, subject to any provisions in this Agreement, license, sell, rent, lease, transfer, assign, distribute, display, disclose or otherwise commercially exploit, or otherwise make the Software and/ or the Documentation available to any third party, except the Authorised Users, without the prior written consent of FMP;

4.2.3 the Customer may not access all or any part of the Software and/ or the Documentation in order to build a product or service which competes with the Software and/ or the Documentation;

4.2.4 the Customer may not make adaptations or variations of the Software without the prior written consent of FMP;

4.2.5 if any of the Customer Hardware becomes inoperable for any reason, the Software may be temporarily used on backup equipment until such hardware is repaired;

4.2.6 the Software may only be used by Authorised Users;

4.2.7 all Authorised Users shall keep a secure password for his use of the Software and shall keep the password confidential.

4.3 FMP makes no representation or commitment and shall have no liability or obligation whatsoever in relation to any third-party websites.

#### **5 Platform as a service and software as a service**

5.1 Where relevant, any access to an FMP “platform as a services” or “software as a service” will be via the internet and during Normal Working Hours only.

## **7 INTELLECTUAL PROPERTY**

7.1 The Software and the Documentation are proprietary to FMP (or the appropriate third party rights owner(s)) and the Customer acquires no rights in or to the Software or the Documentation other than those expressly granted by this Agreement.

7.2 The Customer shall use reasonable endeavours to prevent all violation of FMP's proprietary rights in the Software and shall promptly report to FMP any such violation that comes to its attention. In particular, the Customer shall:

7.2.1 ensure that each employee who uses the Software is made aware that the Software is proprietary to FMP and that it may only be used and copied in accordance with its licence granted hereunder;

7.2.2 implement suitable disciplinary procedures for employees who make unauthorised use or copies of the Software; and

7.2.3 not permit third parties to have access to the Software without the prior written consent of FMP.

## **8 Confidentiality**

8.1 FMP shall treat as confidential all Confidential Information of the Customer supplied under this Agreement. FMP shall not divulge any such Confidential Information to any person except to its own employees and then only to those employees who need to know the same.

8.2 FMP may provide any subcontractor with such of the Customer's Confidential Information as it needs to know in order to perform its obligations under this Agreement, provided that such sub-contractor has first entered into a written obligation of confidentiality.

8.3 The Customer shall treat as confidential all Confidential Information of FMP supplied to or obtained by the Customer during the performance of this Agreement.

8.4 The Customer shall not, without the prior written consent of FMP, divulge any part of FMP's Confidential Information to any person other than employees, officers and advisers of the Customer who need to know the same for purposes relating to this Agreement.

8.5 The Customer undertakes to ensure that the persons mentioned in clause 8.4 above are made aware, prior to the disclosure of any part of FMP's Confidential Information, that the same is confidential and that they owe a duty of confidence to FMP.

8.6 The obligations under this clause shall remain in full force and effect notwithstanding Termination.

## **9 Data Protection**

9.1 The following details apply to the processing being carried out under this Agreement:

9.1.1 the Personal Data will be processed for the provision of the Services;

9.1.2 the Personal Data will be processed for the term of this Agreement;

9.1.3 the specific processing activities will be the processing of HR and payroll information; and

9.1.4 the Personal Data processed concern the HR and payroll information of the Customer's employees.

9.2 Each party will comply with the Data Privacy Laws applicable to it in

connection with the Services, and will not cause the other party to breach any of its obligations under Data Privacy Laws.

9.3 The Customer:

9.3.1 will provide to FMP on demand all such information as FMP may reasonably request in connection with the performance of its obligations under this Agreement, including but not limited to the information which FMP needs in order to comply with article 30(2) GDPR (if not already within FMP's knowledge); and

9.3.2 represents and warrants that all such information will be correct, complete and not misleading, and that it has disclosed to FMP all information relating to the Personal Data which is relevant to FMP's performance of its obligations under this Agreement or the Data Privacy Laws in respect of the Personal Data.

9.4 FMP acknowledges, and will comply with, its obligation under article 28(3) GDPR to inform the Customer if, in its opinion, an instruction given by the Customer infringes the Data Privacy Laws. However, the Customer acknowledges and agrees that FMP is not a law firm and does not give legal advice, and therefore FMP will have no liability whatsoever to the Customer arising out of or in connection with the content or effect of any such opinion, or whether or when any such opinion is given or not given, or otherwise.

9.5 Where FMP processes Personal Data (as processor) on behalf of the Customer (as controller) in connection with the Services, FMP will:

9.5.1 process that Personal Data only in accordance with this Agreement or (at the Customer's cost) such different or additional instructions received in writing from the Customer from time to time. If compliance with such additional instructions prevents or hinders the performance of FMP's obligations under this agreement, FMP will be excused from the performance of the affected obligations, without liability;

9.5.2 ensure that all of its personnel with access to that Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;

9.5.3 take all measures required pursuant to Article 32 of the GDPR to implement technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and accidental loss, destruction, damage, alteration or disclosure; and detect and report Personal Data breaches within good time;

9.5.4 engage such other processors as it considers appropriate (each, a "Sub-Processor") to process that Personal Data on its behalf. Details of the current Sub-Processors used are available on request from FMP. If FMP wishes to engage a different or an additional Sub-Processor, it will first inform the Customer of the identity of the proposed Sub-Processor and provide the Customer with a reasonable opportunity (the length of which will be determined by FMP acting reasonably and notified to the Customer) to object to that Sub-Processor's engagement. If the Customer does so object it will inform FMP within such time period, giving reasons for the objection, and if FMP cannot address the reasons

for it to the Customer's reasonable satisfaction FMP may choose not to appoint that Sub-Processor, or it may choose to appoint that Sub-Processor regardless, in which case the Customer will be entitled to terminate this Agreement by notice to FMP;

- 9.5.5 if FMP does appoint a new or different Sub-Processor it shall bind that Sub-Processor by a written agreement complying with the requirements of Article 28 GDPR as it applies to that Sub-Processor's processing activities and FMP shall remain liable to the Customer for the acts and omissions of that Sub-Processor, as if they were the acts or omissions of FMP itself;
- 9.5.6 taking into account the nature of the processing and insofar as is possible, assist the Customer (at the Customer's cost) with the fulfilment of the Customer's obligation to respond to requests by data subjects to exercise their rights under the Data Privacy Laws over that Personal Data, by providing relevant information requested by the Customer and copies of relevant Personal Data requested by the Customer within a reasonable time and in a commonly used electronic format, in each case unless that information or relevant Personal Data is already accessible to the Customer without FMP's intervention;
- 9.5.7 taking into account the nature of the processing and the information available to FMP, assist the Customer (at the Customer's cost) in ensuring the Customer's compliance with regards to security of processing under article 32 GDPR, in carrying out privacy impact assessments pursuant to article 35 GDPR and prior consultations pursuant to article 36 GDPR in respect of that Personal Data, by providing such relevant information about the processing carried out by FMP as the Customer may reasonably request;
- 9.5.8 inform the Customer of any personal data breach which occurs in respect of the Personal Data under FMP's control without undue delay after becoming aware of it, providing sufficient details to enable the Customer to comply with its own notification obligations (and FMP may provide such details in stages as they become available to it, provided that it is reasonable to do so);
- 9.5.9 after the termination of the Services, delete or return to the Customer (at the Customer's option and cost) all copies of the Personal Data in its possession or control, and procure that any relevant Sub-Processor does the same, unless the applicable laws of the United Kingdom or European Union require FMP or that Sub-Processor to retain a copy of it;
- 9.5.10 make available to the Customer on demand all information reasonably necessary to demonstrate compliance with this clause 9.5, to the extent that it is not already available to the Customer; and
- 9.5.11 allow the Customer, or its external auditor (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit FMP's data processing activities insofar as they relate to the Personal Data, to enable the Customer to verify that FMP is in compliance with this clause 9.5, provided that any such inspection or audit shall be subject to the

provisions of clause 9.6.

- 9.6 In exercising its right of inspection and audit, the Customer:
- 9.6.1 shall do so no more frequently than once per calendar year, unless required by a supervisory authority;
  - 9.6.2 shall meet FMP's reasonable costs incurred as a result of any such inspection or audit, unless that inspection or audit shows FMP to be in breach of clause 9.5;
  - 9.6.3 (or its auditor, as the case may be) will not thereby be entitled to access to the personal data or confidential information of any other customer of FMP, nor to direct access to any computer or storage system unless explicitly required by a supervisory authority;
  - 9.6.4 (or its auditor, as the case may be) shall comply with FMP's reasonable policies while onsite, including its safety and security policies; and
  - 9.6.5 shall ensure that any information coming into its possession (or that of its auditor, as the case may be) as a result of such inspection or audit shall be and remain the confidential information of FMP and the Customer will (and will procure that its auditor will, as the case may be) treat it accordingly.
- 9.7 FMP and the Customer acknowledge their mutual obligations under Chapter V GDPR in relation to international transfers of Personal Data, and agree to address those obligations as follows. FMP may transfer the Personal Data outside of the United Kingdom without the Customer's prior written agreement provided that FMP and the Customer agree to enter into such arrangement as may reasonably be required to provide adequate safeguards in respect of that transfer, such as entry into standard-form contracts governing such transfers which have been approved by the EU Commission and/or the UK Information Commissioner (as the case may be).
- 9.8 The Customer grants to FMP and any Sub-Processor, a non-exclusive, non-transferable licence to use the Personal Data and all other information and documents provided to FMP in order for FMP to provide the Services.
- 9.9 Nothing in this clause 9 will relieve the Customer from any of its responsibilities and liabilities under Data Privacy Laws.

## **10 TUPE**

- 10.1 FMP and the Customer do not consider or intend that the Regulations apply as a result of entering into this Agreement.
- 10.2 If for any reason the Regulations do apply, the Customer shall indemnify and keep FMP indemnified against all and any claims, costs, expenses, awards, or liabilities (including without limitation legal expenses and other professional fees) whatsoever and howsoever arising, incurred or suffered by FMP arising directly or indirectly from the application of the Regulations to this Agreement in relation to any transferring employee.

## **11 Limitation of Liability**

- 11.1 Nothing in this Agreement shall have the effect of limiting FMP's liability for: fraud; death or personal injury caused by FMP or its employees, agents or sub-contractors' negligence; or any other liability that cannot be limited or excluded by law.



11.2 FMP shall not have any liability to the Customer for: any category of indirect, special or consequential loss or damage; or any loss of profit.

11.3 FMP shall not have any responsibility or liability for the actions or omissions of any third party in connection with the provision of the Services and/ or Software Services (including the receiving, transmission or execution of data and the transmission of payment instructions by BACS).

11.4 Subject to clauses 11.1 and 11.2, the total liability of FMP, whether in contract, tort (including negligence and breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement or any collateral contract, shall be limited to a maximum sum (including interest and costs) equal to the total Fees paid by the Customer during the 12 months immediately preceding the date on which the claim arose.

## **12 Change Control**

12.2 Notwithstanding clause 12.1, FMP may, from time to time and without notice, change the Services and/ or Software Services in order to comply with any applicable safety or statutory requirements provided that such changes do not materially affect the Services and/ or Software Services. FMP will give as much notice as reasonably practicable of the changes to the Services and/ or Software Services.

## **13 Term and Termination**

13.1 This Agreement shall commence on the Commencement Date and shall continue (unless Terminated earlier in accordance with these terms) for the duration of the Subscription.

13.2 Upon expiry of the Initial Term (or any Renewal Term), the Term shall automatically continue for a further Renewal Term unless the Client cancels the Subscription.

13.3 Either party may Terminate this Agreement immediately by written notice to the other if the other party: (i) commits any material breach of this Agreement and (if the breach can be remedied) it fails to remedy the breach within 30 days of such notice; or (ii) commits a material breach of this Agreement which is not capable of being remedied.

13.4 Without limitation, any failure by the Customer to pay the Fees when required will be a material breach of this Agreement.

13.5 Either party may Terminate this Agreement immediately if the other party ceases carrying on business in the normal course, or calls a meeting of its creditors or makes a proposal for a voluntary arrangement within the meaning of Part 1 of the Insolvency Act 1986 or for any other composition or scheme of arrangement with (or assignment for the benefit of) its creditors, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or if a trustee, receiver, administrative receiver or other similar officer is appointed or a meeting is convened for the purpose of considering a resolution for its winding up (other than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction), or it is the subject of an administration order, or is subject to any equivalent process or proceedings in any jurisdiction anywhere in the world.

13.6 Except where FMP has Terminated this Agreement under clauses 13.2 to 13.4, FMP shall provide the Customer, in a FMP standard format, such assistance as

the Customer may reasonably require to facilitate the orderly transfer of services and/ or software similar to the Services and/ or Software Services to the Customer or to another supplier.

13.7 On Termination, FMP will either (a) if so requested by the Customer, return in FMP standard format (i) the Customer Data in its possession in respect of the period of 3 years before Termination at no charge; and (ii) the Customer Data in its possession over 3 years' subject in both cases to payment of all Fees current at the date of the request; or (b) if not so requested by the Customer, destroy any Customer Data in its possession.

13.8 On Termination, the Customer will (i) immediately cease using the Software.

13.9 If the Customer requires any services and/ or software from FMP after the date of Termination, FMP may at its discretion agree to provide such services and/ or software on a time and materials basis.

#### **14 FMP Relief Event**

Notwithstanding any provision to the contrary in this Agreement, FMP shall not be in default or liable for any failure or delay in the performance of its obligations under this Agreement where such failure or delay is caused by the occurrence of a FMP Relief Event.

#### **15 Staff**

During the Term, and for a period of 12 months after Termination, neither party shall solicit the services of any employee of the other party who has been engaged in the provision or receipt (as appropriate) of the Services and/ or Software Services or in the management of this Agreement.

#### **16 Dispute Resolution**

16.1 Any dispute which may arise between the parties concerning this Agreement shall be determined as provided in this clause 16.

16.2 For the purpose of this clause 16, a dispute shall be deemed to have arisen when one party serves on the other a notice in writing stating the nature of the dispute.

16.3 After service of the notice of dispute, the following procedure shall be followed by the parties:

16.3.1 within 5 Business Days, the Service and the Customer Representative shall attempt to settle the dispute; and

16.3.2 if the Service Manager and the Customer Representative are unable to reach a settlement within 5 Business Days from the date of service of the notice, the head of FMP and a director of the Customer shall meet (or discuss on the telephone) within the following 5 Business Days to attempt to settle the dispute.

16.4 If no settlement is reached under the provisions of this clause 16 then clause 18.11 shall apply.

#### **17 Force Majeure**

Neither party will be liable for failures, delays or reduced performance caused by any Force Majeure Event provided that it uses reasonable endeavours to perform regardless of the Force Majeure Event. Only those obligations of the affected party that are affected by the Force Majeure Event will be excused. Nothing in this clause 17 will excuse or relieve the Customer's obligation to pay the Fees.

## **18 General**

18.1 Any provision of this Agreement that expressly, by implication or by its nature is intended to come into or continue in force on or after Termination will remain in full force and effect following Termination.

18.2 The parties are independent contractors. Consequently, the provisions of this Agreement will not, under any circumstances, be interpreted as creating any agency or partnership between the parties. Neither party may bind the other in any manner whatsoever or in favour of anyone whomsoever, except in accordance with this Agreement.

18.3 The Customer will not assign or transfer all or part of its rights and/or obligations under this Agreement to any third party without FMP's prior written consent, which FMP will not unreasonably withhold or delay. FMP may assign or transfer this Agreement to any company within its Group without the Customer's consent.

18.4 FMP may subcontract the performance of any of its obligations under this Agreement, provided that FMP will remain liable to the Customer for the acts and omissions of its subcontractors.

18.5 This Agreement contains the whole agreement between the parties, and supersedes all prior agreements, arrangements and understandings between the parties, relating to its subject matter. Each party acknowledges that, in entering into this Agreement, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this Agreement or not) (each, a Representation) other than as expressly set out in this Agreement. Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation will be for breach of this Agreement. Nothing in this clause 18.5 will limit or exclude any liability for fraud.

18.6 These General Terms and Conditions apply to this Agreement 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. In particular, any terms or conditions attached to or forming part of any purchase order issued by the Customer will be null and void and of no effect.

18.7 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18.8 If any provision of this Agreement is held to be invalid or unenforceable for any reason, that provision will, if possible, be adjusted rather than voided, in order to achieve a result which corresponds to the fullest possible extent to the intention of the parties. The nullity or adjustment of any provision of this Agreement will not affect the validity and enforceability of any other provision of this Agreement.

18.9 Any notice required or permitted to be given under this Agreement must be in writing and delivered personally, sent by courier, first class post or by email, such that the notifying party can prove delivery of the notice, in each case to the address of the receiving party set out in the Order Form.

18.10 The failure of a party to enforce a provision of this Agreement or any rights with respect thereto (or any delay in so doing) will not be a waiver of that provision

or right, or in any way affect the validity of this Agreement. A waiver of any claim for a breach of this Agreement will not operate to waive any claims in respect of any other breach.

18.11 This Agreement and all non-contractual obligations arising out of or in connection with it are governed by English law and subject to the exclusive jurisdiction of the English courts.

## **Specific Terms and Conditions for Hosted Software**

If FMP has agreed to provide the Customer with any Software Services on the Order Form, then these Specific Terms and Conditions for Software Services form part of the Services Agreement (the “**Agreement**”) between the Customer and FMP. The Service Agreement also consists of the Order Form, the General Terms and Conditions, Fee Policy and the other documents referred to in them. Capitalised terms used in these Specific Terms and Conditions have the meanings given to them in the General Terms and Conditions.

### **1 Customer Obligations**

1.1 The Customer shall:

1.1.1 operate the Software according to the webinars.

1.1.7 notify FMP as soon as practically possible of any abnormal functioning of the Software by emailing the [amityhelpdesk@fmpglobal.com](mailto:amityhelpdesk@fmpglobal.com)

1.1.8 provide assistance to FMP support staff as required;

1.1.9 hold and maintain all necessary licences, consents and permissions necessary for FMP, its contractors and agents to provide the Software;

1.1.10 maintain a connection to the Internet of sufficient bandwidth to support the Software;

1.1.12 comply with all applicable laws and regulations when using the Software.

### **2 Warranties**

2.1 FMP warrants that the Software will perform substantially in accordance with the webinars.

2.2 Save for the warranty given at clause 2.1, all other conditions, warranties or other terms which might have effect between FMP and the Customer or be implied or incorporated into the Agreement or any collateral contract, whether by statute, common law or otherwise are hereby excluded, including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality and fitness for purpose. FMP specifically denies any implied or express representation that the Software will be fit:

2.2.1 to operate in conjunction with any hardware items or software products other than those that are identified in the Documentation as being compatible with the Software;

2.2.2 to operate uninterrupted or error-free; or

2.2.3 to have all program defects corrected.

2.3 Any unauthorised modifications, use or improper installation of the Software, or breach of clause 1.1 by the Customer shall render FMP's warranty and support obligations null and void.

## **5 Software Support Services**

5.1 If FMP has agreed to provide the Customer with Software support services then this clause will apply.

5.2 During the Term, FMP will provide email support to the Customer for the Software during Normal Working Hours.

5.3 In the event that the Customer has a problem operating the Software during the Term, it shall provide FMP with a problem report. This report should detail aspects of the Software which are not operating properly, any action taken by the Customer to date, and the Customer's perceived severity level of the problem. FMP will then provide the Customer with a reference number and confirm the severity level.

5.4 A problem is not considered reported until the Customer has been given a reference number by the FMP; response times are relative to the time that the problem has been assigned a support call number.

5.5 Calls and emails reported outside of Normal Working Hours will be deemed to have been sent on the next Business Day.

5.6 In the event that FMP has made available enhancements and/or corrections to the Software, only the updated version including such enhancements and/or corrections shall be eligible for support.

5.7 FMP is not responsible for, and shall charge an Additional Charge for work related to correcting defects due to any of the following:

5.7.1 operator error;

5.7.2 hardware malfunction or breakdown on non-FMP equipment;

5.7.3 defects present in third party software;

5.7.4 alterations to the Customer's network, hardware or site by any party other than FMP or its authorised agents, except as permitted under the Agreement; and

5.7.5 alterations to the Software by any party other than FMP or its authorised agents, other than in the normal course of software operation.

## **7 Maintenance**

7.1 The Customer will be given at least 48 hours' notice of any planned service interruptions during Normal Working Hours.

7.2 FMP shall not be responsible for and interruptions as a result of:

7.2.1 Customer-caused outages due to Customer's action on the server;

7.2.2 work performed by FMP at Company's request;

7.2.3 planned maintenance carried out each Thursday between the hours of 18.00 and 23.59 local time in London;

7.2.4 a third-party supplier suspends access to the servers for any reason; or

7.2.5 other causes beyond FMP's reasonable control.

7.3 FMP reserves the right to disallow access to the Software outside Normal Working Hours without prior notification to the Customer to perform routine maintenance work and system upgrades.

## **8 Security**

8.1 FMP will use the following application-level and system-level security measures to ensure the security of the Software:

8.1.1 all data will be encrypted between the Software application servers and the Customer's browser using SSL;

8.1.2 servers will be placed behind enterprise class firewalls; and

8.1.3 Authorised Users shall have security on their profiles which shall:

8.1.3.1 only allow access to their own data (based on Customer structure);

8.1.3.2 lock them out after a predefined succession of unsuccessful login attempts; and

8.1.3.3 define what the Authorised User is able to access including screens, menus and workflows.

8.2 FMP is only responsible for the security of facilities under its direct control. The Customer and its other service providers are responsible for the security of items under their control including virus protection and the internet connection and network at the Customer's site.

## **9 Backup and Disaster Recovery**

9.1 If FMP has agreed to provide the Customer with backup and disaster recovery services, this clause will apply.

9.2 The Software will be backed up nightly. Daily full backups shall be retained for no less than one calendar month, stored at the Hosting Facility and will be available for a period of one week. Monthly backups shall be stored off-site and will be available for a period of 12 months.

9.3 FMP will provide a method by which two independent data backups slots can be taken by the Customer. The Customer will control when these backups are taken, and must initiate the process itself. The backup slots will not form part of the regular backups taken by FMP. FMP reserves the right to restrict the use of this feature, based on capacity availability.

9.4 At the Customer's request, FMP shall respond to a support call to commence restoration of the Software to the state which it was at the time of the most recent backup within two Normal Working Hours and complete the restoration as soon as reasonably possible.

9.5 In the unlikely event that FMP needs to restore the Customer's system from backup due to reasons other than hardware failure, FMP shall restore the most recent backup of the Services.

9.6 FMP is not responsible for Customer Hardware, equipment, or software, or data stored on computers other than those in its own facilities. Notwithstanding the foregoing, if there is a hardware failure of the server at the Hosting Facility on which the Software is stored, FMP shall restore the most recent available snapshot or backup of the Software to a comparable server in a comparable hosting facility.

## **FEE POLICY**

- 10.1 The Free Trial period will last for 3 months from the date the Initial Term.
- 10.2 If you have below 11 employees once the Free Trial Period lapses, and only the base system is used, there will be no charge made.
- 10.3 If you have below 11 employees and are using the Core System you will be charged £50 per month for the base system. Any Additional Modules, will be charged at £10 per month per module, in addition to the Core System.
- 10.4 Blocks of Additional Employees are charged at £10 per month.