

Subscription Agreement

Fluent Technology | Flexigrant®

INTRODUCTION

These terms and conditions (this **Agreement**) outline the terms upon which Fluent Technology Limited (**Fluent**) supplies the Flexigrant software and services to its customers (**Customers**).

- **Flexigrant is an innovative grant software solution designed specifically for organisations administering and allocating grants and funds.** Nearly all of Fluent's Customers find that Flexigrant as provided meets their organisational needs. However, if a Customer requires an enhanced service, Fluent is always happy to discuss any such requests. For more information on enhanced services, please see the following:
- Additional Licences e.g. additional users (clause 3);
- Enhanced support (clause 4.6);
- Additional implementation or training services (clause 5.1); and
- Any other extra services or customisation of the Software (clause 3.5)

Please note that the annual User Subscription Fees for Flexigrant are due from the date identified as the Commencement Date for this Agreement and on each anniversary of same (where applicable); Implementation Services Fees are due on a monthly basis, in and around the end of each calendar month. For more information on payment terms, please see clause 6 – Prices, Taxes and Payments.

1. **DEFINITIONS**

1.1 This Agreement uses a number of terms which have a specific meaning. The initial letter of each term is capitalised to indicate that there is a specific meaning. This clause 1 sets out an explanation of those terms. In this Agreement the following words shall have the following meanings:

Additional Implementation Services means the services described at clause 5.1.

Additional Licence means any further Flexigrant licences purchased in addition to the licences recorded in the User Subscription section of the Contract Information Sheet at the end of this Agreement.

Agreed Scope means the scope of the Flexigrant Services agreed by the Parties as detailed in the Contract Information Form.

Applicant Data means any and all data, information and material entered into the Software by or on behalf of an Applicant User.

Applicant Users means end users of the Software, who use the Software to apply for grants and funding offered or managed by the Customer (and who have not been registered by the Customer as Administrative Users or Reviewer Users). The maximum number of Applicant Users permitted to access Flexigrant at any time is specified in the Contract Information Sheet.

Change means any change, reduction or addition to the Agreed Scope of this Agreement.

Change Control Procedure means the procedure to agree any Change to the Agreed Scope of this Agreement as set out in Schedule 2 of this Agreement.

Commencement Date means the date stated as such in the Contract Information Form, upon which Fluent commences the implementation and set up of the Software. This is not the same as the Go Live Date; in all likelihood it will be in advance of the Go Live Date.

Confidential Information shall have the meaning given at clause 9.1.

Configuration Document means the document containing details of how the Flexigrant Services will be configured to meet the Customer's requirements to be prepared on completion of the Discovery Phase (the format and structure of which is to be agreed by the parties).

Contract Information Form means the contract information form agreed by Fluent and each Customer, which incorporates the terms of this Agreement (in the format as detailed in Schedule 1 of this Agreement, which may be changed by Fluent from time to time).

Customer Data means any and all data, information and material entered by or on behalf of the Customer (including by any Administrative User) into the Software in accordance with this Agreement, including, where applicable any Personal Data but excluding Applicant Data.

Customer IPRs means any Intellectual Property Rights belonging or licensed to the Customer, the use of which by Fluent is required in order to enable Fluent to provide the Flexigrant Services. Customer IPRs do not include any Intellectual Property Rights licensed to the Customer by Fluent under the terms of this Agreement.

Data Controller/Controller shall have the meaning given to it in the Data Protection Legislation.

Data Processor/Processor shall have the meaning given to it in the Data Protection Legislation.

Discloser means a Party disclosing Confidential Information, as described at clause 9.1.

Discovery Activities means the activities undertaken by the Parties to achieve a greater understanding of the Customer's requirements and elaborate the Configuration Document or Fluent's proposal.

Discovery Phase means an initial period (to be agreed by the Parties) during which the Parties conduct the Discovery Activities and agree any Change or changes to this Agreement.

Documentation means the document made available to the Customer by Fluent from time to time which sets out a description of the Flexigrant Services and the User instructions for the Flexigrant Services.

Data Protection Legislation means all applicable laws and regulations from time to time in force relating to personal data, privacy and the processing of Personal Data, including the General Data Protection Regulation (EU) 2016/679 (**GDPR**) and the Data Protection Act 2018 as amended, replaced or superseded from time to time.

Data Subject shall have the meaning given to it in the Data Protection Legislation.

Extra Services means the services described at clause 3.5.

Fees means the fees payable by the Customer to Fluent for the Flexigrant Services in accordance with this Agreement, as set out in the Contract Information Form.

Flexigrant Services means the User Subscription, Implementation Services (and Additional Implementation Services where applicable) provided by Fluent to the Customer under this Agreement and summarised in the Contract Information Form. The term Flexigrant Services shall include, and shall be deemed to refer to, the Documentation.

Good Industry Practice means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a software development company operating in Fluent's field.

Go Live Date means the date upon which the implementation and set up of the Flexigrant Services is complete.

Implementation Services means the services described in clause 5.1 and in the Contract Information Form.

Implementation Services Fees means the fees for the Implementation Services as detailed in the Contract Information Form.

Initial Term means the period identified in Schedule 1.

Intellectual Property Rights means patents, patent applications, and patent rights, copyrights, copyright applications, and copyright registrations, trademarks, trademark applications, trademark registrations, and trademark rights, trade secrets, and all other intellectual property and proprietary information rights as may exist now or hereafter come into existence, all modifications, continuations, renewals, and extensions of any of the foregoing, and all claims, actions, causes of action, damages, costs, expenses, profits, penalties, recoveries, and remedies relating to any past, present, or future infringement of any of the foregoing, arising under the laws of any country, state, or jurisdiction in the world.

Normal Business Hours means Monday to Friday, 9am – 5pm (UK time), excluding UK public and bank holidays.

Parties means the parties to this Agreement and **Party** shall mean either of them.

Personal Data shall have the meaning given to it in the Data Protection Legislation.

Recipient means a Party to whom Confidential Information is disclosed in accordance with clause 9.

Regular User means end users of the Software, with access to the private contact and grant management modules of Flexigrant. These are typically Customer staff involved in administering grants. The maximum number of Regular Users permitted to access such modules is specified in the Contract Information Sheet.

Renewal Period means the renewal period agreed by the Parties described in clause 11.1.

Reviewer User means any user who has been granted access to the Flexigrant software for the sole purpose of completing reviews of applications via the reviewer and/or committee dashboard and associated functionality but for no other purpose. The maximum number of Reviewer Users permitted to access Flexigrant at any time is specified in the Contract Information Sheet.

Schedule means a schedule to this Agreement.

Software means the cloud based online software applications provided by Fluent as part of the Flexigrant Services.

Standard Implementation Services means the services described at clause 5.1.

Standard Rates means the standard rates charged by Fluent from time to time for work carried out on behalf of the Customer on a time and material basis.

Term means the term of this Agreement, being the Initial Term and any subsequent Renewal Periods, if applicable.

Third Party means any third party licensing or providing directly or indirectly to Fluent any element of the Software (including any component service, software, hardware or facility).

Third Party IP means any intellectual property in any element of the Software (including any component service, software, hardware or facility), belonging to or licenced to Fluent by a Third Party.

Third Party Licence means any agreement between Fluent and a Third Party.

User shall mean any user of the Software (and shall include Regular Users, Reviewer Users and Applicant Users).

User Subscription means the usage restrictions (e.g. permitted number of Users) on the Customer's subscription to the Flexigrant Services specified in the Contract Information Form.

User Subscription Fees means the fees payable by the Customer for the User Subscription specified in the Contract Information Form.

- 1.2 In this Agreement (except where the context otherwise requires) a reference to a clause means a reference to a clause of this Agreement. The clause headings are included for convenience only and shall not affect the interpretation of this Agreement. Use of the singular includes the plural and vice versa and use of any gender includes the other genders. Any reference to a statute, statutory provision or subordinate legislation (**legislation**) shall (except where the context otherwise requires) be construed as referring to such legislation as amended and enforced from time to time and to any legislation which (either with or without modification) re-enacts, consolidates or enacts in rewritten form any such legislation and any former legislation which it re-enacts, consolidates or enacts in rewritten form. Any phrase introduced by the term **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms. References to a law of the European Union include a reference to that law as incorporated into the laws of the United Kingdom at any time before or after the United Kingdom ceases to be a Member State of the European Union.

2. **SOFTWARE LICENCE TERMS**

- 2.1. Provided that the Customer complies with the terms of this Agreement, Fluent grants the Customer a personal, non-exclusive, non-transferable, non-sublicenseable and non-assignable licence for the Term to allow Users to access the Flexigrant Services.
- 2.2. The Customer shall be solely responsible for its actions and the actions of all Users while using the Flexigrant Services. The Customer shall (and shall procure that any and all Users shall):

- 2.2.1. not attempt to duplicate, modify or distribute any portion of the Software or Documentation;
- 2.2.2. not reverse engineer, decompile, disassemble, or adapt any portion of the Software, except as specifically permitted by applicable law (but then only if and to the extent that the Customer first notifies Fluent of the Customer's requirements regarding the inter-operability or functional compatibility before engaging in any such activity, and gives Fluent the opportunity to provide the Customer with the information necessary to achieve such inter-operability or compatibility);
- 2.2.3. except when the Customer is running a grant scheme in association with another grant awarder, not use the Software to provide software related services to third parties (including in the operation of a service bureau);
- 2.2.4. not attempt to obtain, or assist others in obtaining, unauthorised access to the Software;
- 2.2.5. not remove any proprietary notices from the Software;
- 2.2.6. abide by all local and international laws and regulations applicable to the Customer's use of the Software, including all laws regarding the transmission of technical data exported from the United Kingdom through the Software;
- 2.2.7. not upload or distribute in any way files that contain viruses, corrupted files, or any other similar software or programs that may damage the operation of the Software or another's computer;

- 2.2.8. ensure that the administration functionality of the Software is used in a proper manner by competent trained employees only or by persons under their supervision;
 - 2.2.9. not transmit or post any material that encourages conduct that could constitute a criminal offense or give rise to civil liability;
 - 2.2.10. not in any circumstances use, nor allow any third party to use, any "webcrawler", "crawler", "spider" or similar technology in relation to the Software; or
 - 2.2.11. comply with all regulations, policies and procedures of any networks connected to the Software.
- 2.3. The Customer acknowledges and agrees that Fluent neither endorses the contents of any User communications nor assumes any responsibility for any threatening, libellous, obscene, harassing or offensive material uploaded by Users onto the Flexigrant Services, any infringement of third party intellectual property rights arising from, or any crime facilitated by User communications via the Flexigrant Services.
- 2.4. Fluent and the Customer acknowledge that the following terms shall apply in relation to any User:
- 2.4.1. the licence granted in clause 2.1.1 is subject to the Customer complying with any usage restrictions imposed by the User Subscription;
 - 2.4.2. Fluent shall issue to the Customer, or shall authorise a Customer administrator to issue, a password for each User and will keep such passwords confidential and will not disclose them to third parties, provided that:

- 2.4.2.1. the Customer shall procure that each User shall keep its password confidential, and the Customer shall ensure that each password is used only by the authorised User;
- 2.4.2.2. the Customer is entirely responsible for the acts and omissions of any User;
- 2.4.2.3. the Customer agrees immediately to notify Fluent upon becoming aware of any unauthorised use of any password of any User or any other breach of security known to the Customer;
- 2.4.2.4. the Customer shall permit Fluent to audit the Customer's use of the Flexigrant Services in order to establish the Customer's compliance with clause 2.4.1. If any such audit reveals that the Customer has exceeded the User Subscription, the Customer agrees that it will be required to purchase Additional Licences in accordance with Clause 3.4; and
- 2.4.2.5. Fluent shall have no liability for any loss or damage arising from the Customer's failure to comply with the requirements detailed in this paragraph 2.4.2.

3. EXTRA SERVICES AND ADDITIONAL LICENCES

3.1 The Customer may, from time to time during the Term, increase the permitted number of concurrent Users accessing Flexigrant at any time by purchasing an upgrade to its User Subscription (**i.e. Additional Licences**). If the Customer wishes to purchase Additional Licences, the Customer shall notify Fluent in writing and Fluent will confirm the cost of the Additional Licences in writing.

3.2 If the Customer accepts the cost of the Additional Licences, the Customer shall, within thirty (30) calendar days on receipt of Fluent's invoice, pay Fluent the relevant Additional Licence fees. If such a request is purchased by the Customer part way through the Initial Term or any Renewal Periods), such Additional Licence fees shall be pro-rated for the remainder of the Initial Term or the then current Renewal Period, as applicable.

3.3 Subject to clause 2.4.2.4, if the Customer exceeds the User Subscription without purchasing an upgrade in accordance with clause 3.1, Fluent reserves the right to evaluate the Customer's requirement for an Additional Licence. The Customer will then have the option to either:

3.3.1 pay Fluent's Additional Licence fees calculated in accordance with clause 3.2, as if the Customer has requested such an Additional Licence; or

3.3.2 immediately decrease its User numbers to comply with the original User Subscription.

3.4 Notwithstanding clause 3.3, if the Customer repeatedly exceeds the User Subscription, Fluent reserves the right to either terminate or suspend the Flexigrant Services until the fees

outlined in clause 3.3.1 are paid. Fluent may exercise this right entirely at its own discretion and this right is without prejudice to any other remedies or damages to which Fluent may be entitled.

- 3.5 Fluent encourages the Customer to use the Flexigrant Services as provided. Where the Customer requires any extra services e.g. additional training, bespoke reports etc. which falls outside the Agreed Scope of the Flexigrant Services detailed on the Contract Information Form, the Customer shall issue a written request to Fluent. If Fluent accepts the request, it shall provide the Customer with a cost estimate and timetable for the services required (such services, **Extra Services**). Extra Services may also be described in the Contract Information Form. Some Extra Services (e.g. technical services) may result in a corresponding increase in the Customer's annual maintenance charges. Upon notification of the Customer's approval, Fluent shall commence the provision of the Extra Services in accordance with the timetable. The Customer shall pay Fluent in accordance with the agreed cost estimate and the terms of this Agreement. The rates for Extra Services shall not be in any case more than Fluent's Standard Rates.

4. **SERVICES**

- 4.1 Fluent shall, from the Commencement Date and for the duration of the Term, provide the Flexigrant Services to the Customer on and subject to the terms of this Agreement.
- 4.2 Fluent will use commercially reasonable endeavours to ensure that the Service is available to the Customer 99.5% of the time during Normal Business Hours in any one calendar month.

- 4.3 From time to time Fluent may need to carry out scheduled maintenance on the Flexigrant Services, which may require their temporary suspension. Any such suspension shall not constitute non-availability for the purposes of clause 4.2 above, provided that Fluent uses reasonable endeavours to keep disruption to a minimum, provides reasonable notice to the Customer and where feasible seeks to carry out such work during periods of low activity.
- 4.4 Fluent will, as part of the Flexigrant Services, provide the Customer with Fluent's standard customer support services during Normal Business Hours. Such support comprises of email support to the Customer's system administrators to provide help and assistance with both technical queries and system functional queries. For the avoidance of doubt, Fluent shall not provide support services to Applicant Users, unless specifically agreed in writing by Fluent and paid for in full by the Customer. Fluent will respond to all Customer support requests as quickly as is reasonably possible. Fluent will determine the priority level of any defect reported by the Customer and aims to achieve the following target response and target resolution times for defects (unless otherwise agreed by Fluent and the Customer) once a support request from the Customer has been recorded:

Priority Level for Defects	Target Response Time for Defects	Target Resolution Time for Defects
A – Critical Defect	Within 30 mins	Within 8 hours thereafter
B – Major Defect	Within 2 hours	Within 12 hours thereafter
C – Minor Defect	Within 4 hours	Within 24 hours thereafter
D – Low Priority Defect	Within 24 hours	By agreement.

PRIORITY LEVEL	DEFINITION
Priority A - Critical Defect (serious business impact)	A major system failure of the Software removing service, or a major feature of it, which has a serious impact on the operation of the Software and might prevent it from being used by the Customer which requires urgent resolution via a Workaround or Patch until a Permanent Fix can be applied.
Priority B - Major Defect (significant business impact)	Major features of the Software are unavailable or unusable which do not prevent the Software being operable but will have a significant impact on the Customer's day to day operation of the Software which require resolution via a Workaround or Patch until a Permanent Fix can be applied.
Priority C - Minor Defect	A minor feature of the Software is unusable. This defect does not prevent the Software being operable but will have a minor impact on the Customer's day to day operation of the Software. A Minor Defect will be addressed via a Workaround or in the next planned release.
Priority D – Low Priority Defect	A defect that affects an aesthetic feature of the Software and/or an error in the Documentation. Such a defect will have no adverse impact on the operation of the Software and will be assessed in line with other development commitments.

- 4.5 Whilst Fluent aims to resolve any defect or provide a work around within the appropriate Target Resolution times outlined above, the Customer acknowledges and agrees that Fluent may not be able to do so, that the Target Resolution times are intended to be targets and that some errors may not be capable of rectification.
- 4.6 If the Customer requires support outside of Normal Business Hours or outside the scope of clause 4.4, the Customer may purchase enhanced support services separately at Fluent's Standard Rates.
- 4.7 Fluent reserves the right to make modifications to enhance and improve the Flexigrant Services (including, without limitation, the functionality or infrastructure settings of the Flexigrant Services) provided that such modifications have no material adverse long term effect on the Flexigrant Services.

5. IMPLEMENTATION

5.1 As part of the Flexigrant Services, Fluent offer standard implementation and training packages to the Customer (**Standard Implementation Services**) to deliver the Flexigrant® software as defined in the Configuration Document. If the Customer requires any additional implementation or training services outside of the scope of the Standard Implementation Services, Fluent will agree with the Customer, the scope, timing and content of any additional implementation services required by the Customer. Any such non-standard implementation services which are agreed by both Parties in writing shall be referred to as the **Additional Implementation Services** and the scope and cost of these will be defined using the Change Control Procedure. The Standard Implementation Services, together with any agreed Additional Implementation Services (where applicable) shall be referred to as the **Implementation Services**.

5.2. The Customer acknowledges and agrees that Fluent's ability to provide the Implementation Services is dependent upon:

- 5.2.1. the reasonably full and timely co-operation of the Customer (which the Customer agrees to provide);
- 5.2.2. the Customer's fulfilment of any requirements imposed on it as part of the agreement of the scope of the Implementation Services; and
- 5.2.3. the accuracy and completeness of any information and data the Customer provides to Fluent.

5.3. The Customer acknowledges and agrees as reasonable that:

- 5.3.1. where the Customer's failure to perform any task required of it by clause 5.2, and/or the Customer's delay or unreasonable withholding of approval, prevents Fluent from fulfilling the Implementation Services, Fluent shall be relieved from its obligation to provide the Implementation Services. Upon the Customer's subsequently remedying any such failure, delay or unreasonable withholding of approval the Parties will act in good faith and use all reasonable endeavours to agree a new timetable for the provision of the Implementation Services. Upon such new timetable being agreed, Fluent and the Customer shall use all reasonable endeavours to comply with it provided that to the extent that Fluent, in meeting the requirements of the new timetable, reasonably determines that it needs to deploy extra resources to meet such timetable, the Customer shall pay Fluent in full for such extra resources on a time and materials basis at Fluent's Standard Rates applicable at the date of delivery; and
- 5.3.2. where the Customer requires Fluent to provide any resources or services as part of the Additional Implementation Services, Fluent shall charge for any such resources or services on a time and materials basis at Fluent's Standard Rates applicable at the date of delivery.

6. **PRICES, TAXES AND PAYMENT**

- 6.1. The Customer shall pay the Fees to Fluent in accordance with this clause 6. Fees for any Extra Services will be paid in amounts and frequency as agreed in accordance with clause 3.6.

- 6.2. Fluent reserves the right to increase the Fees no more than once per calendar year by providing Customer with at least 30 days advance written notice, provided that any price increase will not exceed the increase (if any) in the consumer price index (CPI) rate, published by the Office for National Statistics, as of 1st September of that year. Fluent reserves the right to increase its Standard Rates at any time during the Term of the Agreement.
- 6.3. The Customer will pay each invoice for Fees and expenses within thirty (30) calendar days on receipt of the invoice. Time shall be of the essence in relation to the Customer's obligation to pay, and in the event that the Customer fails to pay any sum when due:
- 6.3.1. Fluent may with prior written notice suspend its obligations under this Agreement (and any such suspension will not constitute a termination of the Agreement). Fluent may require the Customer to pay a reconnection fee to recommence the provision of the Flexigrant Services and Documentation, together with all relevant Fees); and/or
- 6.3.2. Fluent may by written notice immediately terminate the licence granted at clause 2.1.1 of this Agreement, whereupon the Customer will promptly cease use of the Flexigrant Services and return any Fluent property to Fluent. Fluent shall have no liability for any such termination; and/or
- 6.3.3. Fluent may charge the Customer interest on sums due in accordance with the Late Payment of Commercial Debts (Interest) Act 1998, compounded monthly, from the due date for payment until payment has been made, together with any additional costs and expenses (including any reasonable legal costs) incurred by Fluent in recovering the sums due from the Customer.

6.4. Notwithstanding clause 6.3, Fluent reserves the right to seek immediate payment of the Fees (or any part thereof) if the Customer requests expedited implementation of the Flexigrant Services and/or expedited Additional Implementation Services.

6.5. All Fees and any additional charges shall be exclusive of value added tax (VAT) or any other tax, duty, levy, fee or charge which shall be added to invoices at the rate applicable at the date of invoice and which shall be payable by the Customer.

7. **INTELLECTUAL PROPERTY RIGHTS**

7.1. Except as expressly stated otherwise in this Agreement, neither Party shall acquire any right, title or interest in any Intellectual Property Rights belonging to the other Party, or the other Party's licensors.

7.2. Fluent shall grant the Customer a licence to use the Flexigrant Services in accordance with the provisions of clause 2 of this Agreement. The Customer acknowledges that it hereby acquires only the right to access and use the Flexigrant Services in accordance with this Agreement, and that all Intellectual Property Rights in the Flexigrant Services (including the source code of the Software) and (save to the extent expressly agreed by Fluent) all Intellectual Property Rights in the provision of any Extra Services shall remain vested in Fluent or where relevant Fluent's licensors. Nothing in this Agreement shall confer on the Customer or any User any right, title or interest in the Flexigrant Services (except the rights of use as set out in this Agreement), or to any source code within the Software.

- 7.3. Fluent shall indemnify the Customer from and against all claims and expenses (including reasonable legal expenses) incurred as a result of a claim that the use of the Flexigrant Services (excluding any Third Party IP) by the Customer or its Users in accordance with the terms of this Agreement infringes any third party's Intellectual Property Rights **provided** that the Customer promptly notifies Fluent in writing of the claim, allows Fluent exclusive control of the defence, and reasonably co-operates with Fluent in the defence at Fluent's reasonable expense.
- 7.4. The indemnity in clause 7.3 above shall not apply to any claim of infringement arising from:
- 7.4.1. Fluent's compliance with the designs, specifications, instructions, or technical information of the Customer or any third party expressly authorised by the Customer to provide such instruction or information to Fluent;
 - 7.4.2. modifications made by the Customer or a third party to the Flexigrant Services; or
 - 7.4.3. the Customer's or a User's non-compliance with this Agreement.
- 7.5. The Customer warrants that it is able to grant to, and hereby grants to, Fluent for the Term a non-exclusive, world-wide, royalty-free licence to use the Customer's IPRs and the Customer Data to the extent necessary for Fluent to perform its obligations under the Agreement. Customer warrants that Fluent's use of the Customer's IPRs and the Customer Data shall not infringe the IPR of any third party.

8. WARRANTIES AND LIABILITY

8.1 Fluent shall not be liable for any breach of this Agreement (including any breach of the warranties in this clause 8) for any breach or loss suffered by the Customer or other third party if and to the extent that such breach and/or loss arises from the following:

8.1.1 the incorrect use, abuse or corruption of the Software by the Customer or any User;

8.1.2 any use of or access to the Flexigrant Services by the Customer or any User which is not expressly permitted by this Agreement;

8.1.3 the act or omission of any third party provider of any product, service or solution, provided that Fluent shall have the obligation to use commercially reasonable efforts to mitigate the effect of such act or omission as far as possible;

8.1.4 any failure of the internet and/or any software or equipment of the Customer or any third party which enables access to the Software; and/or

8.1.5 for any loss, expense, cost, liability or sum incurred (whether directly or indirectly) by the Customer and/or any third party as a result of:

8.1.5.1 the performance or failure to perform of any third party provider of any product, services or solution, provided that Fluent shall have the obligation to use commercially reasonable efforts to mitigate the effect of such performance or failure to perform as far as possible;

8.1.5.2 any act or omission, or operation failure, of any website (including any software used in such website) which is co-hosted with the Software and/or with any website through which the Customer accesses the Software; and/or

8.1.5.3 any unauthorised access to and/or use of any of Fluent's websites and/or the Software by third party (whether by automated means or not), provided that Fluent has taken all commercially reasonable security precautions to prevent unauthorised access to the Flexigrant Services.

8.2 Fluent warrants to the Customer that:

8.2.1 Fluent will perform the Flexigrant Services with reasonable care and skill and in accordance with Good Industry Practice;

8.2.2 the Flexigrant Services will conform in all material respects with the Configuration Document as agreed between the Customer and Fluent; and

8.2.3 the Flexigrant Services will be provided in accordance with all applicable legislation from time to time in force.

8.3. Fluent makes no warranty or representation not expressly set forth in this Agreement. To the maximum extent permitted by law, and except for the warranties expressly set forth herein, Fluent disclaims any and all other warranties and conditions, whether express, implied, or statutory, including but not limited to implied warranties (if any) of merchantability, fitness for a particular purpose and satisfactory quality.

8.4 Fluent's liability will be limited as follows:

8.4.1 nothing in this Agreement shall limit Fluent's liability for death or personal injury caused by the negligence of Fluent or its employees, or for any liability which may not be limited under governing law;

8.4.2 subject to clause 8.4.1 above:

8.4.2.1 Fluent shall not be liable in contract, tort, or otherwise for any special, incidental, indirect or consequential losses damages, costs or expenses (whether or not of the type specified in 8.4.2.2 below); and

8.4.2.2 Notwithstanding clause 8.4.2.1, Fluent expressly excludes all liability for the following (whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort or otherwise):

8.4.2.2.1 loss of revenues, profits, contracts, goodwill, reputation, business, use of money and/or anticipated savings;

8.4.2.2.2 loss of use or downtime;

8.4.2.2.3 loss of Customer Data; and

8.4.2.2.4 losses incurred in the procurement by the Customer of any substitute products or services.

8.4.3 subject to clause 8.4.1 above, the aggregate liability of Fluent in respect of any loss, expenses or damage suffered by the Customer and arising out of or in connection with this Agreement shall not exceed four times the amount of the User Subscription Fees paid or payable by the Customer in the first year of this Agreement and 2.5 times the amount of the User Subscription Fees actually paid by the Customer in subsequent years of this Agreement (if applicable) (and for the avoidance of doubt, the Customer will act at all times to mitigate any such loss or damage).

8.5 The Customer agrees and acknowledges:

8.5.1 that it is in a better position than Fluent to foresee and evaluate any potential damage or loss which the Customer may suffer in connection with the Software and/or the Flexigrant Services;

8.5.2 that the Fees payable by the Customer have been calculated on the basis that Fluent shall exclude liability in accordance with the provisions of this clause 8;

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

8.5.4 the Flexigrant Services are provided to the Customer on an "as is" and "as available" basis.

8.6 In relation to Third Parties, the Customer acknowledges and accepts as reasonable that:

8.6.1 Fluent excludes all liability to the maximum extent permitted by applicable law for any loss whatsoever incurred by the Customer as a result of any act or omission of any Third Party, or of the failure, suspension and/or termination of any facility or service provided by any Third Party, or the breach by any Third Party of any relevant Third Party Licence (each such act, omission, failure, suspension or termination a Third Party Breach); and

8.6.2 any Third-Party Breach shall not constitute a breach by Fluent of the provisions of this Agreement.

8.7 Each provision of this clause 8 shall be construed separately and shall continue and survive even if for any reason one or other of those provisions is held invalid or unenforceable in any circumstances.

9. CONFIDENTIALITY

9.1 In relation to either Party, **Confidential Information** as used in this Agreement shall mean any and all information relating to that Party (or to any holding company and/or subsidiary of that Party, as those terms are defined by the Companies Act 2006) which is disclosed before or after the Commencement Date by that Party (**Discloser**) to the other Party (**Recipient**), and which is provided, either directly or indirectly, in writing, orally or by inspection, and being any and all information which is specified as confidential or which a reasonably prudent person should know is expected to be treated as confidential (including financial information, grant applications, reports, the proceedings of either party's business, documentation, notes, customer lists, business forecasts, sales and merchandising, and marketing plans and information). For the avoidance of doubt Fluent's Intellectual Property Rights (to the extent disclosed to the Customer) constitute Confidential Information of Fluent.

9.2 Each Party agrees that:

9.2.1 it will not use any Confidential Information of the other Party for any purpose other than the fulfilment of obligations imposed by this Agreement, nor disclose any such Confidential Information to any third party without the other Party's prior consent (and in the event that such consent is given, the Recipient will ensure, prior to such disclosure, that each such third party is made aware of the confidential nature of the Confidential Information and agrees in writing to be bound by conditions of secrecy no less strict than those set out in this Agreement);

- 9.2.2 it shall disclose Confidential Information of the other Party only to those of its employees who need to know such information, and that it will procure that such employees agree, either as a condition of employment or in order to obtain the Confidential Information, to be bound by terms and conditions substantially similar to those of this Agreement;
- 9.2.3 without affecting any rights or remedies that the Discloser may have, that damages would not be an adequate remedy for any breach by Recipient of the provisions of this Agreement. Consequently, Discloser shall be entitled to apply for the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of the provisions of this clause 9 by Recipient. No proof of special damages shall be necessary for the enforcement of this Agreement;
- 9.2.4 the Recipient will give notice to Discloser of any unauthorized use or disclosure of the Confidential Information by it, and/or any employee of it and/or any third party to whom it has disclosed Confidential Information, as soon as reasonably practicable after becoming aware of the same, and that it will provide all reasonable assistance to Discloser in remedying any such unauthorized use or disclosure of the Confidential Information; and
- 9.2.5 that its obligations hereunder shall survive for a period of six years from the date of last disclosure to it of Confidential Information of the other Party.
- 9.3 Information shall not be deemed to be Confidential Information to the extent that:
 - 9.3.1 it was in the public domain at or subsequent to the time it was communicated to Recipient by Discloser through no fault of Recipient;

- 9.3.2 it was rightfully in Recipient's possession free of any obligation of confidence at or subsequent to the time it was communicated to Recipient by Discloser;
- 9.3.3 it was communicated by the Discloser to an unaffiliated third party free of any obligation of confidence; or
- 9.3.4 the communication was in response to a valid order by a court or other governmental body or was otherwise required by law.

10 DATA PROTECTION

- 10.1 As part of this Agreement, each of the Customer and Fluent may be required to collect and/or process Personal Data relating to the Customer (including personal data relating to the customer's employees, contractors, representatives and sub-contractors), any such data **Customer Data**, and relating to Applicant Users, any such data, **Applicant Data**. In respect of any such Personal Data, each Party shall at all times comply with the Data Protection Legislation and its respective obligations set out in the Schedule 3 (Data Processing Agreement) in the performance of its obligations imposed by this Agreement.
- 10.2 Notwithstanding any other provision herein, the Customer expressly agrees that Fluent may collect user statistical information (from use of the Software by a User, which may include pseudonymised Applicant Data – provided Fluent does not retain the means to re-identify the data) such as usage or traffic patterns in aggregate form and use it for its own business

purposes or transfer it to third parties, provided that such information will not include any Personal Data.

- 10.3 The Customer acknowledges that it is solely responsible for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all Customer Data.
- 10.4 Fluent reserves the right to establish a maximum amount of memory or other computer storage and a maximum amount of data that the Customer may (or may permit or authorise a third party to) store, post or transmit on or through the Software provided that written notice is given to the Customer by Fluent no less than ninety (90) calendar days before such maximum amount is likely to be reached. For the avoidance of doubt, the ninety (90) calendar day period required in this clause 10.4 will be calculated on the basis of the average amount of storage or memory used or data stored, posted or transmitted on or through the Software by or on behalf of the Customer.
- 10.5 As part of Fluent's Services and/or a function on Flexigrant, Fluent may provide the Customer with access to a template privacy notice which may be used as a tool to help the Customer to notify Applicant Users of the uses that the Customer may wish to make of the Applicant Data. Alternatively, the Customer may provide its own privacy notice. The Customer acknowledges that as the Data Controller, it is the Customer's sole responsibility to make sure that any privacy notice used by it meets the requirements of the Data Protection Legislation and that it will have to amend and insert certain information into the template privacy notice to ensure that it accurately reflects the Customer's use of the Applicant Data and meets the information disclosure requirements of the Data Protection Legislation. Fluent makes no representations or warranties that its template privacy notice will be suitable for the Customer's purposes or that it is not compliant with the Data Protection Legislation and Fluent

accepts no liability for any losses that the Customer may occur if it chooses to use Fluent's template privacy notice.

11 TERM AND TERMINATION

11.1 This Agreement shall commence on the Commencement Date and continue, subject to earlier termination in accordance with this clause 11, for the Initial Term. Thereafter, the Agreement may be renewed on each anniversary with the Parties' prior written agreement. The Parties agree that ninety (90) days prior to any renewal date, the Parties will discuss in good faith whether the Agreement will be renewed. If the Customer fails to pay the Fees before the beginning of a Renewal Period, Fluent reserves the right to terminate/suspend the Flexigrant Services until the Fees are paid in full (including any interest due thereon).

11.2 If either Party materially breaches or materially fails to observe (together **Breach**) any provision of this Agreement, the other Party may (if the Breach is capable of remedy) give notice of the Breach and the Party in breach shall have twenty-eight (28) calendar days from receipt of the notice in which to remedy the Breach. If the Breach is not remedied in this period, or is incapable of remedy, then the Party not in breach may terminate the Agreement with immediate effect.

11.3 If either Party becomes insolvent or bankrupt or (being a company) makes an arrangement with its creditors or has an administrative receiver or administrator appointed or commences to be wound up (other than for the purpose of amalgamation or reconstruction) (in any such circumstance, such Party, the **Insolvent Party** and such event, **Break Event**) then the following provisions shall apply:

- 11.3.1 the Insolvent Party shall notify the other party of the likelihood of a Break Event as soon as reasonably practicable after becoming aware of the same; and
- 11.3.2 the other Party may without replacing or reducing any other of its rights terminate the Agreement with immediate effect by written notice.
- 11.4 Upon expiration or the earlier termination of this Agreement the licence granted in accordance with clause 2.1.1 of this Agreement will terminate, unless expressly otherwise agreed by Fluent in writing.
- 11.5 The provisions of clauses 7, 8, 9, 11 and 12.8 of this Agreement will survive expiration or termination of this Agreement.
- 11.6 Upon the expiration or termination of this Agreement and provided that this Agreement has not been terminated by Fluent due to Customer's failure to pay any amount due to Fluent, Fluent will provide to Customer and / or to the supplier selected by Customer (such supplier shall be known as the **Successor**), upon Customer's written request:
 - 11.6.1 a reverse migration and a full dump of the hosted Applicant Data in an MS SQL format or secure MS Excel format (including the data model), within one month of receipt of the Customer's written request. Such migration will be provided at a cost to be agreed by the Parties. If a repeat migration is required, or if a data migration is required in any other format, this shall be at a cost to be agreed by the Parties. Fluent shall delete the Applicant Data, including back-ups, and provide a written statement to this effect, following receipt of written confirmation from the Customer that the Applicant Data is complete and has been received by the Customer;

11.6.2 at Customer's sole cost and expense, assistance reasonably requested by Customer in order to effect the orderly transition of the applicable Services, in whole or in part, to Customer or to Successor (**Termination Assistance Services**). Termination Assistance Services may be supplied during a ninety (90) calendar days period (**Termination Assistance Period**) commencing not earlier than ninety (90) calendar days prior to, and not later than the date of, the expiration or termination of this Agreement. Fluent and Customer shall act all times in good faith and use all reasonable endeavours to agree in advance as to the price and scope of Fluent's providing of Termination Assistance Services, which may include:

11.6.2.1 developing a plan for the orderly transition of the terminated or expired Services from Fluent to Customer or to the Successor;

11.6.2.2 providing reasonable training to Customer staff or to the Successor in the performance of the Services then being performed by Fluent;

11.6.2.3 using commercially reasonable efforts to assist Customer, at Customer's sole cost and expense, in acquiring any necessary rights to legally and physically access and use any third party technologies and documentation then being used by Fluent in connection with the Flexigrant Services;

11.6.2.4 using commercially reasonable efforts to make available to Customer, pursuant to mutually agreeable terms and conditions, any third party services then being used by Fluent in connection with the Flexigrant Services; and

11.6.2.5 such other activities upon which the Parties may agree.


11.7 Where the Termination Assistance Period continues beyond the termination date of this Agreement, the provisions of this Agreement shall survive such termination for the purposes of the supply of Termination Assistance Services.

11.8 Fluent shall give Customer reasonable notice of its intention not to keep any or all data stored in connection with the Customer's account on the Software if the outstanding Fees are not paid within an additional thirty (30) calendar days grace period from the date of the notice, and unless legally prohibited, delete all such data in its systems, possession or control when (i) Customer fails to pay Fluent for Termination Assistance Services within ninety (90) calendar days from the due date of payment; or (ii) if this Agreement has been terminated by Fluent due to Customer's failure to pay any Fees due to Fluent.

12 GENERAL

12.1 Except for a Party's payment obligations, neither Party shall be liable for delay in performing the obligations or for the failure to perform obligations if the delay or failure results from any cause beyond its reasonable control (including acts of God, fire, explosion, war, terrorism, embargo, and any governmental action (**Force Majeure Event**)). The Party claiming a Force Majeure Event shall take all action which is reasonable under the circumstances to overcome any such cause of prevention or delay and to proceed with the performance of its obligations hereunder. Notice of any Force Majeure Event and any abatement thereof shall forthwith be given to the other Party by the Party claiming the benefit of this clause 12.1.

- 12.2 A person who is not a party to the Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 12.3 The Customer may not transfer, assign or novate the whole or any part of the Agreement or the benefit of it or any right under it without Fluent's prior written approval.
- 12.4 While this Agreement is in effect, either party may include the name and logo of the other party in lists (including on its website) of customers or vendors in accordance with the other party's standard logo and/or trademark usage guidelines. Except as set forth herein, neither party may use the trademarks and trade names of the other party without the prior written consent of the other party.
- 12.5 This Agreement 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. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.
- 12.6 A failure at any time to enforce any provision of the Agreement shall in no way affect the right at a later date to require complete performance of the Agreement, nor shall the waiver of the breach of any provision be taken or held to be a waiver of any subsequent breach of the provision, or be a waiver of the provision itself.
- 12.7 Nothing in this Agreement shall create or shall be deemed to create a partnership or the relationship of employer and employee between the Parties.

- 12.8 The terms of this Agreement may only be modified if agreed by both Parties in writing. If any provision of this Agreement or part thereof should be found to be invalid, ineffective or unenforceable under any applicable statute or regulation, the remainder of the provisions shall stand in full force and effect.
- 12.9 The Agreement is governed by the laws of Northern Ireland. All disputes, claims or proceedings between the Parties relating to the validity construction or performance of this Agreement shall be subject to the jurisdiction of the courts of Northern Ireland to which the Parties hereto irrevocably submit.
- 

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date hereof.

For and on behalf of:
Print Name:
Signature:
Position:
Company:
Date:
For and on behalf of: Fluent Technology Ltd (Forsyth House, Cromac Street, Belfast, Northern Ireland, BT2 8LA)
Print Name:
Signature:
Position: Managing Director
Company: Fluent Technology Ltd
Date:

Purchase Order Details

If a Purchase Order Number is required by the Customer to process invoices, Customer agrees to provide a Purchase Order Number as of the date of signature of the Agreement. The Purchase Order Number should cover the total value of the services procured and will be used on all invoices submitted to you for payment for the full duration of the initial term of the Agreement.

Purchase Order Number:

Billing contact person:

Billing contact e-mail:

VAT Registration No:

Schedule 1: Contract Information Form

CONTRACT TERM			
INITIAL TERM (MTHS):	12, 24, 36 months (<i>delete as appropriate</i>)		
COMMENCEMENT DATE:	01 January 2023		
END DATE:	31 December 2025		
PAYMENT TERMS:	Annual /Quarterly in Advance (<i>delete as appropriate</i>)		
NB: 100% of the year 1 Annual Licensing fees, and 20% of of the professional services fees with be invoiced upon execution of the contract, followed by montly billing of the remaining professional services fees until project completion.			
USER SUBSCRIPTION			
Annual Licenses	Qty	Unit Cost	Total Cost
Regular License(s)		£	£
Occasional License(s)		£	£
Applicant License(s)	1	£	£
Reviewer License(s)	1	£	£
Sub-total			£0.00
NB: A maximum of [number] Applicant Users and [number] Scoring Users are permitted to access Flexigrant at any time.			
PROFESSIONAL SERVICES			
Non Recurring	Qty	Unit Cost	Total Cost
Implementation and Configuration	1	£	£
Data Migration	1	£	£
Custom Migration	1	£	£
Sub-total			£0.00
PRODUCT SERVICES			

	Qty	Setup cost	ARR	Total Cost
Data Replication Service	1	£	£	£
API Integration(s)	1	£	£	£
Insights Tool	1	£	£	£
SSO (Azure AD or B2C)	1	£	£	£
Custom Domain	1	£	£	£
Custom E-mail	1	£	£	£
Standard Theming	1	£	£	£
Sub-total				£0.00
TOTAL COSTS (YEAR 1)*				
Annual Licensing Fees, Hosting and Support				£
Annual Technical Services Fees				£
Implementation, Configuration and One-Off Setup Fees				£
TOTAL:				£0.00
VAT @20%:				£0.00
TOTAL INCLUDING VAT:				£0.00
TOTAL PROJECT COSTS *				
Annual Licensing Fees, Hosting and Support				£
Annual Product Services Fees				£
TOTAL:				£0.00
VAT@20%:				£0.00
TOTAL INCLUDING VAT:				£0.00

OTHER PROVISIONS

* Licensing Fees, Hosting and Support, including Annual Product Services Fees are subject to an annual increase that will not exceed the increase (if any) in the consumer price index (CPI) rate, published by the Office of National Statistics as of 1st September of that year.

** The costs detailed above are for the set-up of <X> grant schemes. The costs detailed above are for the set-up of <Customer> core grant schemes. Fluent will set up a number of template schemes and work with the <Customer> Grants team to assist with the set-up of all required schemes. **NB:** this is part of Fluent's Standard Implementation Services provided to Customers to ensure sufficient knowledge transfer between Fluent and key <Customer> staff (i.e. so that future grants schemes can be set up with the need for support from Fluent.

*** These works require timely cooperation of <Customer> staff and potentially support from existing <Customer> suppliers. **If Customer causes inordinant implementation delays, Fluent reserves the right to impose an implementation penalty equal to 15% of the total User Subscription Fees.** **NB:** the effort and associated costs of any third party i.e. existing <Customer> suppliers will be the responsibility of the <Customer>. The exact effort for historic data migration will be confirmed following a review of a sample of historic data.

All Fees detailed in the contract information form exclude VAT, which will be applied at the relevant rate.

NB: all work will be carried out in accordance with the Fluent proposal submitted to the <Customer>.

Any Change will be agreed in accordance with the Change Control Procedure detailed in Schedule 2 (Change Control Procedures).

EXPENSES (where applicable)

If travel arrangements are required, the following rates apply (please note these costs are NOT included in the Implementation Fees and will be billed separately):

DESCRIPTION	EXPENSES RATE
Mileage	£0.45 per mile
Hotel/Taxi fares	At Cost
Train Fare	Standard Class at cost
Car Hire	Standard cost for a compact car
Car parking	At Cost
Air Fare	Standard Class at cost
Subsistence	Up to £25 per day
Courier	At cost

Where possible advanced bookings will be made to ensure expenses are as minimal as possible.

Schedule 2: Change Control Procedures

1. INTRODUCTION

The Parties agree that throughout the term of this Agreement the process for making a Change to this Agreement will be through the procedures set out in this Schedule 2.

2. CHANGE REQUEST

If either party wishes to propose a Change, then it will notify the other party of that fact by sending a written notification (**Change Request**) to the other party's appropriately appointed representative, specifying the nature of the proposed change

3. CHANGE PROPOSAL

As soon as reasonably practicable (but in any event within 15 working days) after sending or receipt of a Change Request, Fluent will provide a written estimate to the Customer of:

- a) a summary of the scope of the change;
- b) brief details of the likely impact, if any, of the Change Request on any existing Flexigrant Services;
- c) a list of deliverables required for implementing the Change;
- d) an estimate of the likely charges for implementation (where applicable) and/or on-going operation of the relevant Change, including any increase of or reduction in the charges or additional charges payable for the proposed Change;
- e) an estimate of the likely time impact of the proposed Change; and
- f) any other impact of the Change on this Agreement.

4. CHANGE CONTROL NOTE

If, following receipt of the Change Proposal, the Customer wishes to proceed with the proposed Change, it will notify Fluent in writing, who will as soon as reasonably practicable and in any event within 15 working days after receiving the Customer's written notice to proceed with the Change, provide the Customer with a detailed written proposal in the form included in the agreed configuration document (**Change Control Note** or **CCN**), including, but not limited to the following matters:

- a) full details of the proposed subject matter of the Change Request;
- b) details of the impact, if any, of the Change Request on any existing Flexigrant Services;
- c) a list of deliverables required for implementing the Change;
- d) a statement of the charges of the implementation (where applicable) and /or ongoing operation of the relevant Change, including any increase or reduction in the charges or additional charges payable for the proposed Change; and
- e) a timetable for the implementation (where applicable), together with any proposals for acceptance, of the Change Request.

5. ACCEPTANCE

The Customer will review the proposed CCN and as soon as reasonable possible after its receipt and in any event within 10 working days will either accept or reject the proposed CCN. If the CCN has not been formally accepted in writing within such 10 working day period, it shall be deemed rejected. If the Customer accepts the proposed CCN, and the CCN is executed by the appropriate authorised representatives on behalf of each party, Fluent will make the Change in accordance with that CCN and the provisions of this Agreement.

6. COMMENCEMENT OF WORK

Neither party will have any obligation to commence work in connection with any Change until the relevant CCN is signed by the appropriate representatives on behalf of each party.

If Fluent proceeds with a Change without the Customer's prior written authorisation, such Change will be entirely at Fluent's cost and risk.

Schedule 3: Data Processing Agreement

1. DEFINITIONS AND INTERPRETATIONS

In this Schedule 3 the following definitions shall apply:

Sub-Processor means a natural or legal person, public authority, agency or any other body contracted by Fluent to process personal data.

Supervisory Authority shall have the meaning given in article 4 of the GDPR.

2. WHERE A PARTY IS A CONTROLLER

- 2.1 Where either Party acts as Controller in relation to any Personal Data in the course of the operation of this Agreement, such Party undertakes that it will comply with the Data Protection Legislation when processing such Personal Data.

3. WHERE CUSTOMER IS CONTROLLER, AND FLUENT IS PROCESSOR

- 3.1 Where, in relation to any Personal Data, Customer is Controller and Fluent is Processor in the course of the operation of this Agreement, the provisions of paragraphs 3 to 6 apply.

- 3.2 Fluent acting as Processor shall:

- 3.2.1 only carry out processing of Personal Data in accordance with Customer's documented instructions, including where relevant for transfers of Personal Data outside the European Economic Area (unless Fluent is otherwise required to process Personal Data by European Union, Member State and/or UK law to which Fluent is subject, in which case Fluent shall inform Customer of that legal requirement before processing unless prohibited by that law), and shall immediately inform Customer if, in Fluent's opinion, any instruction given by Customer to Fluent infringes Data Protection Legislation;

- 3.2.2 notify Customer without undue delay of any requests received from a Data Subject exercising their rights under Data Protection Legislation and, taking into account the nature of the processing, assist Customer by taking appropriate technical and organisational measures, insofar as this is compatible with Fluent's fulfilling its obligations in respect of Data Subject rights under Data Protection Legislation, including responding to any subject access requests or requests from Data Subjects for access to, rectification, erasure or portability of Personal Data, or for restriction of processing or objections to processing of Personal Data;
- 3.2.3 take all security measures required in accordance with Data Protection Legislation (including Article 32 GDPR), and at the request of Customer provide a written description of, and rationale for, the technical and organisational measures implemented, or to be implemented, to protect the Personal Data against accidental or unlawful destruction of, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted stored or otherwise processed and detect and report Personal Data breaches without undue delay;
- 3.2.4 taking into account the nature of the processing and the information available to Fluent, use all measures to assist Customer in ensuring compliance with Customer's obligations to:
 - (a) keep Personal Data secure (Article 32 GDPR);
 - (b) notify Personal Data breaches to the Supervisory Authority (Article 33 GDPR);
 - (c) advise Data Subjects when there has been a Personal Data breach (Article 34 GDPR);
 - (d) carry out data protection impact assessments (Article 35 GDPR); and

- (e) consult with the Supervisory Authority where a data protection impact assessment indicates that there is an unmitigated high risk to the processing (Article 36 GDPR).
- 3.2.5 without undue delay (and where feasible within 48 hours), inform Customer of becoming aware of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed. Fluent accepts and acknowledges that Customer shall direct in its sole discretion any and all steps and measures taken to remedy a breach by Fluent under Data Protection Legislation, including but not limited to any communications with a Supervisory Authority. Fluent agrees not to act in any way upon such disclosure without the prior written consent of Customer;
- 3.2.6 make available to Customer all information necessary to demonstrate compliance with the obligations laid down in this Schedule 3 and allow for and contribute to audits, including inspections, conducted by Customer or another auditor mandated by Customer as set out in paragraph 4; and
- 3.2.7 in addition to the confidentiality obligations contained within this Agreement, ensure that persons authorised to process Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 3.3 On expiry or termination of this Agreement, Fluent shall immediately cease to use Personal Data (and all existing copies) and shall, save as otherwise agreed, arrange for its safe return or destruction as shall be required by Customer (unless European Union, Member States and/or UK law requires storage of any Personal Data contained within Personal Data or an exemption under GDPR applies).

4. AUDIT RIGHTS

4.1 Upon Customer's reasonable request, Fluent agrees to provide Customer with any documentation or records (which may be redacted to remove confidential commercial information not relevant to the requirements of this Schedule 3) which will enable it to verify and monitor Fluent's compliance with its data protection and security obligations under the terms of this Schedule 3, within 14 days of receipt of such request, and to notify Customer of the person within Fluent's organisation who will act as the point of contact for provision of the information required by Customer.

4.2 Where, in the reasonable opinion of Customer, such documentation is not sufficient in order to meet the obligations of Article 28 of the GDPR, Customer will be entitled, upon reasonable prior written notice to Fluent and upon reasonable grounds, to conduct an audit of Fluent, solely to confirm compliance with its data protection and security obligations under this Schedule 3.

4.3 Any audit carried out by Customer will be conducted in a manner that does not disrupt, delay or interfere with Fluent's performance of its business. Customer shall ensure that the individuals carrying out the audit are under the same confidentiality obligations as set out in this Agreement.

5. USE OF SUB-PROCESSORS

5.1 Customer provides its consent for Fluent to use Sub-Processors in the delivery of the Flexigrant Services. A list of Fluent's current processors may be found at <https://www.flexigrant.com/sub-processors>. Where Fluent uses any Sub-Processors, Fluent shall:

5.1.1 enter into a legally binding written agreement that places the equivalent data protection obligations as those set out in this Schedule 3 to the extent applicable to the nature of the services provided by such Sub-Processor, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the GDPR;

5.1.2 remain liable for any act or omission of a Sub-Processor that does not comply with the data protection obligations as set out in this Schedule 3.

5.2 Fluent shall inform Customer of any intended changes concerning the addition or replacement of a Sub-Processor with access to Personal Data under this Agreement and give Customer the opportunity to object to such changes.

6. TRANSFERS OF PERSONAL DATA TO NON-EEA COUNTRIES

6.1 Where a transfer to a data recipient whose organisation is established outside of the EEA is necessary for the purposes of this Agreement, the Parties acknowledge and accept that the data recipient shall either provide adequate safeguards as set out in Article 46 GDPR or rely on one of the derogations for specific situations set out in Article 49 GDPR to transfer Personal Data to a third country or an international organisation.

6.2 In the event of the United Kingdom being deemed by the European Commission to have inadequate levels of protection following its departure from the European Union, in accordance with Article 45 of the GDPR, the Parties undertake promptly to enter into the appropriate versions of such model standard data protection clauses as the European Commission may from time to time publish in accordance with Article 46 (2) of GDPR.

7. CUSTOMER OBLIGATIONS

7.1 Customer warrants and represents to Fluent that:

- 7.1.1 all instructions provided to Fluent in relation to the processing of Personal Data are lawful and are provided in accordance with the Data Protection Legislation;
 - 7.1.2 it shall only provide instructions to Fluent that are in accordance with the terms of this Agreement and this Schedule 3; and
 - 7.1.3 all Personal Data is sourced lawfully and that it is solely responsible for determining the purpose for which Personal Data may be processed by Fluent.
- 7.2 Customer acknowledges and agrees that Fluent is reliant on Customer for direction as to the extent to which Customer is entitled to use and process Personal Data. Consequently, Fluent shall not be liable for any claim brought by a subject of Personal Data and arising from any breach by Fluent of the Data Protection Legislation to the extent that such action or omission resulted from Customer's instructions.
- 7.3 For the purposes of Article 28(3) of GDPR, the subject matter of the processing is as follows:
- 7.3.1 The personal data used in the processing will be the following personal data in relation to Customer's employees and Users: forename(s), surname, email address, password, IP address;
 - 7.3.2 the duration of the processing will be the duration of this Agreement; and
 - 7.3.3 the nature and purpose of the processing will be limited to the storing and use of the personal data to allow Customer and its Users to use the Flexigrant Services.