

Finastra FusionFabric Developer Terms & Conditions (version 1.3)

PLEASE READ THESE TERMS CAREFULLY

These Finastra FusionFabric Developer Terms & Conditions ("**Agreement**") form a legal agreement between you ("**Partner**") and **Finastra International Limited** (company registration number: 971479) whose registered office is at Four Kingdom Street, Paddington, London W2 6BD, United Kingdom ("**Finastra**") (hereinafter referred to individually as a "**party**" and collectively as the "**parties**").

By registering as a developer PAAS Services, you agree to comply with this Agreement which shall come into effect at the point Finastra accepts your application and provides you access to FusionFabric.cloud as a developer. For the avoidance of doubt, Finastra is under no obligation to accept any application for access to FusionFabric.cloud or respond within any specific timescale.

1. Definitions

- 1.1. **Acceptable Use Policy** – means the then current version of the Acceptable Use Policy posted on FusionFabric.cloud.
- 1.2. **App** – means a software application or component, including its code, libraries, and documentation, that is designed to interface with the Finastra Software.
- 1.3. **App Consumer** – means a licensee of Finastra Software who has been provided access to FusionFabric.cloud by Finastra for the purposes of reviewing, testing, using and/or installing Apps and/or App SaaS Services.
- 1.4. **Applicable Law(s)** – means all applicable foreign and domestic laws, governmental regulations, ordinances, and judicial administrative orders, including, but not limited to, trademark and copyright laws, ICANN policies and procedures governing domain names and applicable export control laws or regulations.
- 1.5. **App SAAS Services** - means the provision of an App as a hosted software solution and related services to relevant App Consumers, and includes Partner SaaS Services.
- 1.6. **Distribution or Distribute** – means any monetisation of the Partner Apps or Partner SAAS Services by Partner, including related software, services and subscriptions and including the licensing or permitting access to the Partner Apps or Partner SAAS Services to third parties.
- 1.7. **End User** – means the App Consumer and any entities or individuals using the Partner App or Partner SAAS Services on behalf of and entitled by the App Consumer.
- 1.8. **Finastra APIs** – means the APIs, to which Finastra provides access to Partner to enable Apps and App SaaS Services to interface with the Finastra Software or authorised third party services.
- 1.9. **Finastra Confidential Information** – means any content, tools, software, information or material accessible to registered users of FusionFabric.cloud only, including the PAAS Services, the FusionStore, the Finastra APIs, the PAAS Documentation, the Program Guide and any information regarding the operation or performance of FusionFabric.cloud, whether provided in writing or orally or obtained through observation.
- 1.10. **Finastra Software** – means software created by or licensed to Finastra which Finastra licenses or provides access to its customers (including App Consumers), whether on an on-premises basis or a SaaS basis or otherwise.
- 1.11. **FusionFabric.cloud** – means the online portal operated by Finastra through which Partner, App Consumers and other authorised third parties can access the PAAS Services, FusionStore and other related Finastra services and materials.
- 1.12. **FusionStore** – means the online directory provided by Finastra where Finastra, Partner and other third parties may list Apps and App SAAS Services for Distribution to App Consumers, and which allows App Consumers to review Apps and contact Partner.
- 1.13. **Intellectual Property Rights** – means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 1.14. **PAAS Documentation** – means the user guides and technical specification issued by Finastra (as updated from time to time) in relation to the PAAS Services.

- 1.15. **PAAS Services** – means the computer systems, capabilities and services provided by Finastra to Partner on FusionFabric.cloud, including the FusionStore, in accordance with this Agreement.
- 1.16. **Partner App** – means an App, including a Private App, made available by Partner to App Consumers.
- 1.17. **Partner Confidential Information** - means all data and content Partner develops, loads, stores or processes on FusionFabric.cloud the PAAS Services.
- 1.18. **Partner SAAS Services** – means App SAAS Services provided by Partner.
- 1.19. **Private App** – means a Partner App that is developed for a specific App Consumer (which may be Partner itself) and that is not available to all (potential) App Consumers.
- 1.20. **Program Guide** – means the description of the Finastra PAAS Partner Program, the benefits provided thereunder and the fees payable by Partner (as updated from time to time and made available on FusionFabric.cloud).
- 1.21. **Term** – has the meaning given in clause 14.

2. Onboarding

Partner submits the information and declarations requested under the Sign-Up section on FusionFabric.cloud for consideration by Finastra. Upon acceptance of Partner by Finastra, Finastra creates user accounts personal to Partner and sends login details to Partner. The acceptance of Partner shall be in Finastra's sole discretion. Upon receipt of such login details, Partner shall be granted the licences and access rights set out herein for the duration of the Term.

3. Finastra licence to Partner

- 3.1. Finastra grants Partner during the Term the right to access and use the PAAS Services and the PAAS Documentation on FusionFabric.cloud solely for:
- 3.1.1. developing and testing Partner Apps;
 - 3.1.2. downloading, installing and using one copy of any software or documentation to the extent explicitly provided for download by Finastra for the sole purpose of developing and testing Partner Apps; and
 - 3.1.3. making Partner Apps and Partner SAAS Services available to App Consumers in accordance with the terms and conditions of this Agreement, the PAAS Documentation and the Program Guide, subject to review and approval of the Partner App by Finastra.
- 3.2. Any licences and access rights granted by Finastra to Partner hereunder shall be limited, non-exclusive, personal, revocable and non-transferable.
- 3.3. The rights set out under clause 3.1 are licensed on a named user basis and Partner shall be limited to five (5) named user accounts at any time, unless otherwise agreed. For each user account, Partner may permit one of its own employees the use in accordance with clause 3.1. User accounts cannot be shared or used by more than one individual employee but may be reassigned from time to time to new users who are replacing former users who have terminated employment or otherwise changed job status or function.
- 3.4. Partner may not permit use of any of the licences and/or access rights granted hereunder to any third party, including affiliates or subcontractors. Should such third parties wish to get access to the PAAS Services, they will have to onboard in their own name in accordance with clause 2 of this Agreement.
- 3.5. Partner Apps may only use the Finastra APIs published on FusionFabric.cloud at any point in time to interface with Finastra Software, and such use shall be in compliance with the guidance in the PAAS Documentation.
- 3.6. Partner Apps may not download or install any executable code. Interpreted code may only be used in the App if all scripts, code and interpreters are packaged in the App and not downloaded.

4. Technical Support

Partner shall be entitled to technical support to the extent set out in the Program Guide. Such technical support does not include support for third party applications.

5. Partner App Notification and Review

- 5.1. Partner shall notify Finastra of any new Partner App prior to its listing on FusionStore and thereafter of any subsequent versions of the Partner App (including all patches, updates and upgrades as those terms are generally understood in the software industry), including those in use by App Consumers.
- 5.2. Finastra may conduct reviews on any Partner App itself or through a third-party at any time. Partner agrees to reasonably cooperate with Finastra in any such testing and assessment.
- 5.3. Finastra's review may include a qualitative assessment involving review of a completed questionnaire, an interview with

appropriate Partner personnel, performance and/or security testing. Finastra shall have in particular the right to inspect the Partner App's code, binaries and documentation. If the Partner App, in whole or in part, runs outside FusionFabric.cloud, security testing may include remote application-level security testing and network-level security testing, including a vulnerability threat assessment.

5.4. Finastra conducts such reviews solely for its own benefit and Partner may not rely on or promote the Partner App's successful review. Finastra may at its own discretion reject to list, connect or deploy any Partner App on FusionFabric.cloud which has not successfully passed the review.

5.5. Finastra may charge Partner the fees for such reviews as set out in the Program Guide or otherwise agreed.

5.6. In relation to any Partner Apps already in use by App Consumers Finastra shall cooperate with Partner to minimise the effect of such reviews on any relevant App Consumers. Finastra shall not be liable to Partner for any downtime caused by the review.

6. Distribution of Partner Apps and Partner SAAS Services

6.1. Partner shall contract directly with the App Consumer for the use of the Partner App. Any contract with an App Consumer for the Partner App and related services, including Partner SAAS Services, is between Partner and the App Consumer only, and excludes in any event Finastra and its licensors. Partner must clarify such relationship in its contract with the App Consumer.

6.2. Partner acknowledges and accepts that Partner is solely responsible, and that Finastra has no responsibility of any kind for, testing and evaluation of each Partner App, including but not limited to, such Partner App's functionality, technology, security, performance, compatibility and user interfacing.

6.3. Partner acknowledges and accepts that Partner is solely responsible, and that Finastra has no responsibility of any kind for: the development, installation, operation, support and maintenance of each Partner App; the accuracy, legality and appropriateness of all content of each Partner App; and any documentation, warranty and use by End Users of each Partner App, including any content, and for any losses incurred by any App Consumers and End Users which may be incurred as a result of using any Partner App.

6.4. Partner shall ensure that all user documentation which it provides in connection with a Partner App shall accurately reflect and describe all its functionality, including security and safeguards. Partner shall ensure that an up-to-date privacy policy is made available to End Users setting out Partner's collection, processing, handling and control of any personal data. Partner shall promptly notify End Users of any update to such privacy policy.

6.5. Partner acknowledges that users may post reviews of Partner Apps on FusionStore and that Finastra is not responsible for the content of such reviews.

7. Fees, Taxes

7.1. Partner appoints Finastra as the billing and payment agent to invoice and collect all payments made by App Consumers in connection with the Partner App and Partner SAAS Services. Partner shall set the price for all Partner Apps and related services, including Partner SaaS Services, but Finastra shall be entitled to offer discounts to App Consumers in which case such discount shall be deducted from Finastra's commission in accordance with clause 7.3 below.

7.2. The Program Guide sets out the fees payable by Partner for the use of the PAAS Services, including the fees for development and testing of Partner Apps, as well as for the listing of Partner Apps on the FusionStore. Where applicable, those fees are invoiced monthly in arrears.

7.3. Unless otherwise agreed between Partner and Finastra in writing, Partner shall pay Finastra a commission based on revenue share amounting to thirty percent (30%) of the fees for any Distribution. Finastra in its capacity as Partner's billing and payment agent shall deduct and retain the applicable commission from all amounts received from App Consumers and pay the remainder of the revenue (less such commission) to Partner within thirty (30) days of receipt of any amounts from App Consumers.

7.4. All functionality and services made available through a Partner App and related services, such as the Partner SAAS Services or subscriptions, shall attract Finastra's commission. Where a Partner App provides access to additional functionality by connecting to other software products or services the fees payable for any such additional software products and services shall equally attract Finastra's commission. Partner shall not provide for any payment relating to any software products or services for such purpose other than via Finastra as Partner's billing and payment agent.

7.5. The fees and commissions set out in this Agreement and the Program Guide are exclusive of value added tax and any other sales tax which Partner shall pay in addition upon receipt of a valid tax invoice. All fees and commissions shall further be payable by Partner to Finastra without deduction or set-off in the currency set out in the Program Guide.

7.6. If Partner is required by law to deduct withholding tax from any payment to Finastra, Partner shall pay an additional amount to Finastra such that the net amount received by Finastra, after deduction of the withholding tax, is equal to the amount that Finastra would have received from Partner had the withholding requirement not applied. Partner shall ensure in its contract with the App

Consumer that payments shall be grossed up accordingly where withholding tax requirements apply to the App Consumer's payments.

8. Partner license to Finastra

Partner hereby grants Finastra a royalty-free, worldwide, sub-licensable, license to access the Partner App to interface with the Finastra Software and authorised third party services on behalf of App Consumers that have paid for such Partner Apps or Partner SAAS Services.

9. Compliance; Audit

9.1. Partner shall comply with all Applicable Laws and shall not engage in any deceptive, misleading, illegal or unethical marketing activities.

9.2. Partner shall at all times comply with the Acceptable Use Policy.

9.3. Each party undertakes that it will not, and will procure that none of its officers, employees, subcontractors or other persons acting on their instructions or behalf will not, in connection with this Agreement, engage in any activity, practice or conduct which would (if engaged in by an English person) constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010, or which would constitute an offence under the Foreign Corrupt Practices Act of the United States, and agrees to comply and procure compliance with each of them, as amended from time to time, and any similar local laws to the extent that they apply.

9.4. Partner agrees to complete Finastra's standard due diligence questionnaire and compliance certifications as and when requested by Finastra and in accordance with the Program Guide. As part of those Partner will certify in writing that Partner has not, and to Partner's knowledge no other person (including but not limited to every owner, director, employee, representative and agent of Partner) has made, offered to make, agreed to make, or authorized any payment, loan, donation or gift of money or anything else of value, directly or indirectly, to or for the benefit of any government official, to obtain or retain business, or secure any improper advantage. Partner further agree that should Partner learn of information regarding any such payment or offer in connection with Finastra's business, Partner will immediately notify Finastra of such knowledge or suspicion.

9.5. Partner warrants that none of its officers are government officials, police officers or civil servants.

9.6. Partner shall from time to time, at the request of Finastra, provide any information reasonably requested by Finastra to verify compliance with this Agreement, including Partner's payment obligations hereunder, and will allow Finastra or its representatives to audit its records in connection therewith. Partner shall provide all reasonable co-operation and assistance in relation to any such audit including, without limitation: all information requested by Finastra or its representative within the permitted scope of the audit; reasonable access to any Partner premises and computers; and access to Partner staff. Partner shall in particular provide copies of contracts and other documentation with App Consumers and all calculations necessary to understand and verify the fees charged to App Consumers. In case the audit reveals an underpayment of more than five percent, partner shall reimburse Finastra for the cost of the audit.

9.7. Breach of any of the undertakings in this clause shall be deemed to be a material breach of the Agreement and shall entitle Finastra to terminate this Agreement by written notice with immediate effect, without prejudice to any rights or remedies that have already accrued, or subsequently accrue, to Finastra.

10. Confidentiality

10.1. Confidential Information includes Partner Confidential Information and Finastra Confidential Information as well as all information related to the business of the disclosing party that may be obtained by the receiving party from any source (including, without limitation, in written, oral, visual or electronic form) arising from or as a result of this Agreement which would be considered to be confidential by a reasonable person based on the nature of the information and the circumstances in which it is communicated. Confidential Information does not include information that the receiving party can demonstrate:

10.1.1. is, or becomes, generally available to the public other than as a result of an act or omission by the receiving party in breach of this Agreement, including information and data which Partner makes available to potential purchasers;

10.1.2. the disclosing party discloses to a third party without restriction on further disclosure;

10.1.3. is rightfully disclosed to the receiving party by a third party without restriction on disclosure;

10.1.4. is independently developed by the receiving party without access to the disclosing party's Confidential Information; or

10.1.5. is previously known to the receiving party without nondisclosure obligations.

10.2. Each party agrees that it will hold the other's Confidential Information in confidence and not disclose to any third party any Confidential Information belonging to the other party without the other party's prior written consent, except as authorised in the Agreement, or use the other's Confidential Information for any purpose other than the implementation of this Agreement. Each party

further agrees to notify the other in writing of any misuse or misappropriation of the other party's Confidential Information that may come to its attention.

10.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

10.4. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 10.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

11. Intellectual Property

11.1. Subject to the limited licences set forth in this Agreement, nothing in this Agreement transfers or assigns to Finastra any of Partner's Intellectual Property Rights in any Partner App or Partner SAAS Services (including without limitation any code developed by Partner using the PAAS Services) or Partner's other technology, products or services, and nothing in this Agreement transfers or assigns to Partner any of Finastra's Intellectual Property Rights in the PAAS Services, the Finastra Software and any derivatives thereto, the Finastra API's, the FusionStore or Finastra's other technology, products or services.

11.2. Partner agrees that it has no right, title or interest in or to the PAAS Services or FusionFabric.cloud, except as expressly granted by Finastra herein, and Partner shall not directly or indirectly, sell, lease, license, lend, assign, transfer or otherwise charge or encumber any part of the PAAS Services or FusionFabric.cloud or any modified form thereof. Partner shall not modify, copy and/or reverse engineer, decompile, disassemble any materials provided as part of the PAAS Services or FusionFabric.cloud.

12. Competitive applications

Partner acknowledges that Finastra and other parties using the PAAS Services may develop and publish applications or provide services that are similar to or otherwise compete with Partner Apps or the Partner SAAS Services or Partner's other applications, products or services.

13. Restrictions

13.1. Partner is responsible for all activities that occur in its user accounts, and for Partner users' compliance with this Agreement. In no event shall Partner:

13.1.1. license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the benefits provided under this Agreement in any way; or

13.1.2. modify or make derivative works based upon FusionFabric.cloud, the PAAS Services, the Finastra APIs, or the FusionStore; or

13.1.3. create Internet "links" to the PAAS Services, or "frame" or "mirror" it on any other server or wireless or Internet-based device; or

13.1.4. send or store any virus, worm, time bomb, Trojan horse or other harmful or malicious code, file, script, agent or programs; or

13.1.5. interfere with or disrupt the integrity of performance of FusionFabric.cloud and/or the PAAS Services or the data contained therein; or

13.1.6. send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material; or

13.1.7. reverse engineer or access FusionFabric.cloud and/or the PAAS Services for the purpose of: (i) building a competitive product or service, (ii) building a product using similar ideas, features, functions or graphics of FusionFabric.cloud, or (iii) copying any ideas, features, functions or graphics of FusionFabric.cloud and/or the PAAS Services; or

13.1.8. share data or content from FusionFabric.cloud and/or the PAAS Services with Finastra competitors.

13.2. **Additional Restrictions.** Without affecting any other restrictions set forth in this Agreement, Partner may not:

13.2.1. remove or modify any program markings or any notice of Finastra' or Finastra' licensors' proprietary rights; or

13.2.2. make FusionFabric.cloud, the PAAS Services, any materials delivered hereunder, or any materials resulting from the services available in any manner to any third party for use in the third party's business operations, other than as expressly permitted herein or in the Program Guide; or

13.2.3. use any of the benefits provided under this Agreement in a way that misrepresent Partner's relationship with Finastra or is otherwise misleading or that reflects negatively on Finastra or may harm Finastra' rights therein; or (iv) modify in any way any Finastra' trademarks and/or associated logos (e.g., by combining Partner's company or brand name with the Finastra logo; or

13.2.4. create any content or otherwise transmit any information or material that: (i) is false or misleading; (ii) is harassing or invades

another's privacy, harms minors in any way, or promotes bigotry, racism, hatred or harm against any group; (iii) is obscene; (iv) infringes another's rights, including but not limited to Intellectual Property Rights; (v) constitutes unsolicited commercial email or "spam"; or (vi) violates any Applicable Laws or regulations. Partner, and not Finastra, are responsible for all content and other materials that Partner upload, post, email or otherwise transmit in using the PAAS Services provided under this Agreement.

13.3. Partner may not use any of the benefits and materials provided under this Agreement in any jurisdiction for any unlawful, fraudulent, obscene, offensive content or activity. In particular, Partner shall refrain from advocating or causing harm, interfering with or violating the integrity of a network or system, evading filters, sending unsolicited, abusive or deceptive messages, viruses or harmful code, or violating third party rights.

14. Term and Termination

14.1. The Term shall be from the date Partner is first provided access to FusionFabric.cloud to the date this Agreement is terminated in accordance with this clause 14.

14.2. Either party may terminate this Agreement for cause with immediate effect:

14.2.1. if the other party is in material irremediable breach of this Agreement;

14.2.2. if the other party has committed a material breach which hasn't been rectified upon notice within reasonable time (Partner's failure to make a payment under this Agreement, to take payments for Distributions other than via Finastra as its billing and payment agent, or to terminate such billing and payment agency shall be a material breach to be remedied within no later than 14 days from the due date);

14.2.3. if either party has to stop the running of its technology to mitigate the effects of a potential Intellectual Property Rights infringement; or

14.2.4. if the other party becomes subject of a petition in bankruptcy or other proceedings relating to insolvency, or makes an assignment for the benefit of its creditors.

14.3. Either party may terminate this Agreement for convenience on 30 days' written notice.

14.4. Upon termination:

14.4.1. Partner shall cease to use the PAAS Services including all materials, software and documentation and return all copies immediately on expiration or termination of this Agreement;

14.4.2. Finastra will destroy any data that Partner or its customers or any other person uploaded onto FusionFabric.cloud. Prior to termination Partner may download its data in accordance with the Program Guide;

14.4.3. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced;

14.4.4. any outstanding fees to Finastra shall become immediately due and payable; and

14.4.5. clauses 1, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 18, 19, 20, 21, 23 and 25, this clause 14 and other provisions which are necessary for the interpretation or enforcement of this Agreement shall continue in force.

15. Data Protection

15.1. Partner appoints Finastra as a processor for the personal data Partner loads, stores or processes in using the PAAS Services and the FusionStore. Additional rules as per the PAAS Documentation and the Program Guide may apply.

15.2. Partner shall be responsible for obtaining all necessary permissions to use, store and process any content in the PAAS Services and FusionStore and grants Finastra permission to do the same.

15.3. Finastra may use sub-processors and subject to Finastra complying with the obligations set forth in the General Data Protection Regulation (EU) 2016/679 transfer personal data across country borders, including outside the European Union. A list of the sub-processors current at any point in time shall be provided upon Partner's request.

15.4. Finastra will destroy or return any data upon termination of this Agreement, or earlier upon Partner's request. Finastra may charge for a return of data upon partner's request, such as delivering data in a specific content.

15.5. The PAAS Documentation and the Program Guide describe the security functionality provided by Finastra. If such security functionality does in any way not meet Partner's requirements, Partner shall immediately cease the use of the PAAS Services and the FusionStore.

16. Warranties

16.1. Finastra warrants during the Term of this Agreement that it provides the PAAS Services using commercially reasonable skill and

care.

16.2. Goods and services from third parties provided by Finastra under this Agreement are provided "as is" without any warranties of any kind.

16.3. Finastra does not warrant uninterrupted or error-free operation of FusionFabric.cloud or the PAAS Services, that FusionFabric.cloud or the PAAS Services are fit for a particular purpose or that it meets Partner's requirements or that it will correct any defects or that it will prevent third party disruptions or unauthorised third party access or viruses, malicious software. Partner is responsible for backing up Partner's and its user's data, software, information and other materials and Finastra shall not be liable for any loss of, theft of or damage to such data, software, information and other materials.

16.4. The warranties from Finastra under this Agreement are the exclusive warranties provided by Finastra under this Agreement and all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose.

16.5. Finastra's warranties shall not apply if Partner does not use FusionFabric.cloud, the PAAS Services or the FusionStore in accordance with the PAAS Documentation, the Program Guide, or otherwise in accordance with Finastra's instructions.

16.6. Partner warrants and represents that it owns all Intellectual Property Rights and other rights necessary to permit Finastra the licences and access rights granted under this Agreement.

17. Liability

17.1. Nothing shall limit or exclude liability for fraud or for death or personal injury caused by negligence or any other liability which cannot be limited or excluded by law.

17.2. Subject to clause 17.1, under no circumstances shall Finastra be liable (regardless of the basis of liability including without limitation as a result of breach of contract, negligence or any other tort, under statute or otherwise) for loss of profits, loss of business, loss of earnings, loss of contracts, loss of goodwill, loss of anticipated savings, wasted management, operation or other time, or loss of use or value of or damage to data (regardless of whether the foregoing losses are direct or indirect) or any indirect or consequential or incidental or special loss or damages.

17.3. Subject to clauses 17.1 and 17.2, Finastra's aggregate liability under or in relation to this Agreement or the relationship established thereby (regardless of the basis of liability, including without limitation as a result of breach of contract, negligence or any other tort, under statute or otherwise) shall not exceed the total fees payable by Partner to Finastra during the year within which the breach occurs.

18. Indemnification by Finastra

18.1. Finastra shall defend Partner against any claim by a third party that Partner's use of the PAAS Services infringes such third party's Intellectual Property Rights, and Finastra shall indemnify and hold harmless Partner in respect of all costs, damages and reasonable legal fees that a court awards or that are agreed by Finastra by way of settlement of the claim provided that:

18.1.1. Finastra is given appropriate written details of the claim within five (5) days of it first being made; and

18.1.2. Finastra (or any of its licensors that it nominates for this purpose) is given sole control of the defense of the infringement claim and any related settlement negotiations; and

18.1.3. Finastra is given all reasonable assistance (the reasonable cost of such assistance being met by Finastra); and

18.1.4. Partner or the person against whom the claim is made does not make any admission of liability or otherwise prejudice the claim without the written consent of Finastra or its nominated licensor.

18.2. Finastra shall have no obligation or liability under clause 18.1:

18.2.1. for claims in relation to products or services not owned or performed by Finastra;

18.2.2. for claims in relation to any modification of FusionFabric.cloud, the PAAS Services or the Finastra APIs by someone else than Finastra;

18.2.3. if Partner uses the PAAS Services other than as specified in the PAAS Documentation, the Program Guide or this Agreement; or

18.2.4. if Partner uses the PAAS Services PAAS Services or the PAAS Documentation other than permitted under this Agreement.

19. Indemnification by Partner

19.1. Partner shall defend, indemnify and hold harmless Finastra against any loss, damage or costs (including reasonable legal fees) incurred by Finastra in connection with claims made or brought by third parties against Finastra:

19.1.1. alleging that any Partner App, any Partner SAAS Services or any other products and services of Partner, any material (including

any trademarks) provided by Partner to FusionFabric.cloud, Partner's or its customers' use of FusionFabric.cloud, the PAAS Services, or the listing on FusionFabric.cloud infringes its Intellectual Property Rights or otherwise breaches any Applicable Laws;

19.1.2. arising out of Partner's actual or alleged breach of any representation, warranty or term of an agreement relating to Partner's products and services, including the Partner Apps or Partner SAAS Services; and

19.1.3. arising out of Partner's breach of this Agreement,

provided that: (i) Partner is given appropriate written details of the claim as soon as reasonably possible; (ii) Partner (or any of its licensors that it nominates for this purpose) is given sole control of the defense of the infringement claim and any related settlement negotiations; (iii) Partner is given all reasonable assistance (the reasonable cost of such assistance being met by Partner); and (iv) Finastra does not make any admission of liability or otherwise prejudice the claim without the written consent of Finastra or its nominated licensor.

20. Notices

All notices shall be in writing in the English language and addressed to the relevant party's then current registered office or last known place of business marked for the attention of the 'Legal Department'. Notices delivered by recorded delivery shall be deemed served three days after posting.

21. Governing Law and Jurisdiction

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) is governed by the laws of England and Wales, without regard to the conflict of law principles. The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims). The United Nations Convention for the Sale of Goods does not apply.

22. Variation

Finastra may amend this Agreement, the Program Guide and the PAAS Documentation from time to time provided such changes apply to the majority of developers using FusionFabric.cloud. Finastra shall inform Partner of all changes to this Agreement and any material changes to the Program Guide and the PAAS Documentation in writing or via a notification on FusionFabric.cloud and, where practicable, shall do so at least thirty (30) days prior to such changes taking effect. If Partner is unhappy with such changes, Partner should terminate this Agreement in accordance with clause 14.3.

23. Entire Agreement

23.1. 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.

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

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

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

24. Assignment

24.1. Partner shall not, without the prior written consent of Finastra, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

24.2. Finastra may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

25. Miscellaneous

25.1. Finastra and Partner are independent contractors. Subject to clause 7.1, Finastra is not Partner's agent, joint venturer, partner, or fiduciary and does not undertake to perform any of Partner's obligations, or assume any responsibility for Partner's business operations.

25.2. If any provision of this Agreement is invalid or unenforceable the remaining provisions remain in full force and effect. Nothing in this Agreement affects the statutory rights of consumers that cannot be waived or limited by contract.

25.3. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

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