

Version: 1.0.0

Last revised: September 7, 2019

## FUSEBIT PLATFORM LICENSE AGREEMENT

This License Agreement (this “**Agreement**”) contains the terms under which Five Quarters LLC, DBA Fusebit, (“**Five Quarters**”) agrees to grant Customer a license to Five Quarters’ extensibility platform and, if applicable, certain professional services. By indicating Customer’s acceptance of this Agreement, by executing a Sales Order that references this Agreement, Customer agrees to be bound by this Agreement. If you are entering into this Agreement on behalf of an entity, such as the company you work for, then you represent to Five Quarters that you have the legal authority to bind the Customer to this Agreement. If you do not have that authority or if Customer does not agree with the terms of this Agreement, then you may not indicate acceptance of this Agreement, and neither you nor Customer may use any of Five Quarters’ software or services. The “Effective Date” of this Agreement is the date on which you first indicate your assent to the terms of this Agreement.

### Background

Five Quarters provides SaaS extensibility, customization, and integration solutions, by providing its customers with access to Five Quarters’ on-line software platform and tools and, if applicable, provides related professional services. Customer wishes to acquire a subscription-based license to access and use the software platform and tools and, if applicable, to purchase professional services, all as specified in one or more “Sales Orders” under and subject to this Agreement. Therefore, for good and valuable consideration, the receipt and sufficiency of which they each acknowledge, Five Quarters and Customer agree to be bound by this Agreement.

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### *Terms and Conditions*

#### 1. License Grant

**1.1. Software License.** Five Quarters hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable license to use the Software during the term (“Term”) specified in the associated Sales Order (the “License”).

**1.2. No Other Rights.** Five Quarters reserves for itself all other rights and interest not explicitly granted under this agreement.

**1.3. Software.** “Software” means components of the Fusebit Platform, including server and client components, tools, and manuals.

#### 2. Support Services

**2.1. Initial Support.** Five Quarters shall, at Five Quarter’s expense, provide Customer’s employees with up to 8 hours of initial support services necessary and desirable to install and operate the Software, on days and times the parties agree to in writing.

**2.2. Renewed Support.** A separate Support Program agreement may specify terms of support after the Initial Support period.

### **3. Updates and Maintenance Services**

**3.1. Updates.** Five Quarters shall provide Customer, at Five Quarters' sole expense, with all updates, extensions, enhancements, modifications, and other changes Five Quarters makes or adds to the Software and which Five Quarters offers to other licensees of the Software.

**3.2. Fixes and Patches.** Five Quarters shall provide Customer, at Five Quarter's sole expense, with bug fixes and code corrections to correct Software malfunctions and defects in order to bring the Software into substantial conformity with its operating specifications.

**3.3. Release Schedule.** Five Quarters will make Updates, Fixes, and Patches available to Customer as part of Software scheduled releases that may combine multiple Updates, Fixes, and Patches.

**3.4. Exceptions.** Five Quarters may, but will not be required to, provide these maintenance services if Customer has modified the Software or is in default.

**4. License Fees.** Customer shall pay Five Quarters the license fee in the amount and on terms listed in the Sales Order (the "License Fee").

**5. Taxes.** Payment amounts under this agreement do not include Taxes, and Customer shall pay all Taxes applicable to payments between the parties under this agreement.

**6. Interest on Late Payments.** Any amount not paid when due will bear interest from the due date until paid at a rate equal to 1% per month (12.68% annually) or the maximum allowed by Law, whichever is less.

**7. Restricted Uses.** Customer will not

**7.1.** distribute, license, loan, or sell the Software or other content that is contained or displayed in it,

**7.2.** modify, alter, or create any derivative works from the Software,

**7.3.** reverse engineer, decompile, decode, decrypt, disassemble, or derive any source code from the Software,

**7.4.** remove, alter, or obscure any copyright, trademark, or other proprietary rights notice on or in the Software.

### **8. Permitted Uses**

**8.1. Installation.** Customer may install and use the Software solely for internal business use on Customer's Amazon Web Services infrastructure.

**8.2. Evaluation Use.** If Customer has ordered an evaluation license, Customer may use the Software only for evaluation purposes and only during the applicable evaluation period.

**8.3. Cloud Deployment.** Customer may install the server components of the Software on Customer's Amazon Web Services ("AWS") infrastructure, subject to limits listed in the Sales Order.

**8.4. Tooling Deployment.** Customer may install an unlimited number of copies of the tooling components of the Software.

**8.5 Backup and Archival Copies.** Customer may make one copy of the Software solely for backup or archival purposes.

## 11. Representations

### 11.1. Mutual Representations

**11.1.1. Existence.** The parties are corporations incorporated and existing under the laws of the jurisdictions of their respective incorporation.

**11.1.2. Authority and Capacity.** The parties have the authority and capacity to enter into this agreement.

**11.1.3. Execution and Delivery.** The parties have duly executed and delivered this agreement.

**11.1.4. Enforceability.** This agreement constitutes a legal, valid, and binding obligation, enforceable against the parties according to its terms.

**11.1.5. No Conflicts.** Neither party is under any restriction or obligation that the party could reasonably expect might affect the party's performance of its obligations under this agreement.

**11.1.6. No Breach.** Neither party's execution, delivery, or performance of its obligations under this agreement will breach or result in a default under

(i) its articles, bylaws, or any unanimous shareholders agreement,

(ii) any Law to which it is subject,

(iii) any judgment, Order, or decree of any Governmental Authority to which it is subject, or

(iv) any agreement to which it is a party or by which it is bound.

**11.1.7. Permits, Consents, and Other Authorizations.** Each party holds all Permits and other authorizations necessary to

(i) own, lease, and operate its properties, and

(ii) conduct its business as it is now carried on.

**11.1.8. No Disputes or Proceedings.** There are no Legal Proceedings pending, threatened, or foreseeable against either party, which would affect that party's ability to complete its obligations under this agreement.

**11.1.9. No Bankruptcy.** Neither party has taken or authorized any proceedings related to that party's bankruptcy, insolvency, liquidation, dissolution, or winding up.

### 11.2. Five Quarters' Representations

**11.2.1. Ownership of Intellectual Property.** Five Quarters

- (i) is the owner of all Intellectual Property rights included in the Software, and
- (ii) has the exclusive right to grant the License.

**11.2.2. Maintenance of Intellectual Property.** Five Quarters has properly maintained all its Intellectual Property rights licensed under this License, including paying all applicable registration and maintenance fees.

**11.2.3. No Prior Grant or Transfer.** Five Quarters has not granted and is not obligated to grant any license to any third party that would conflict with the License under this agreement.

**11.2.4. No Infringement.** To Five Quarters' knowledge, The Software does not infringe the Intellectual Property rights or other rights of any third party.

**11.2.5. No Third Party Infringement.** To Five Quarters' knowledge, no third party is infringing its Intellectual Property rights in the Software.

**11.2.6. Not in Public Domain.** The Software is not in the public domain.

## 12. No Warranty

**12.1. "As-Is".** The Software is provided "as is," with all faults, defects, bugs, and errors.

**12.2. No Warranty.** Unless otherwise listed in this agreement,

- (i) Five Quarters does not make any warranty regarding the Software, which includes that
- (ii) ***Five Quarters disclaims to the extent authorized by Law any and all warranties, whether express or implied, including any implied warranties title, non-infringement, quiet enjoyment, integration, merchantability or fitness for a particular purpose.***

## 13. Intellectual Property.

**13.1. Ownership of Software.** Five Quarters will retain exclusive interest in and ownership of its Intellectual Property rights in and to the Software and expressly reserves all rights not expressly granted under this agreement.

**13.2.. Ownership of Customer Data.** Customer retains all of its rights, title and interest and Intellectual Property Rights in and to any data that Customer or its users input into the Fusebit Platform ("Customer Data"), including any personal data forming part of such data. No ownership interest in the Customer Data is transferred or conveyed to Five Quarters by virtue of this Agreement.

## 14. Compliance with Laws.

Each party shall

**14.1.** comply with all applicable Laws, and

**14.2.** notify the other party if it becomes aware of any non-compliance in connection with this section.

## 15. Publicity

**15.1. Consent.** Neither party will use the other party's name, logo, or trademarks, or issue any press release or public announcement regarding this agreement, without the other party's written consent, unless specifically permitted under this agreement or required by Law.

**15.2. Cooperation.** The parties shall cooperate to draft all appropriate press releases and other public announcements relating to the subject matter of this agreement and the relationship between the parties.

**15.3. No Unreasonable Delay.** The parties will not unreasonably withhold or delay their consent to press releases or public announcements.

## **16. Termination**

**16.1. Termination for Convenience.** The parties acknowledge and agree that each Term is priced as a minimum term, and may not be terminated for convenience.

**16.2. Termination for Material Breach.** Each party may terminate this agreement with immediate effect by delivering notice of the termination to the other party, if

(i) the other party fails to perform, has made or makes any inaccuracy in, or otherwise materially breaches, any of its obligations, covenants, or representations, and

(ii) the failure, inaccuracy, or breach continues for a period of 30 Business Days after the injured party delivers notice to the breaching party reasonably detailing the breach.

## **17. Effect of Termination**

**17.1. Payment Obligations.** On the expiration or termination of this agreement, each party shall

(i) pay any amounts it owes to the other party, including payment obligations for services already rendered, work already performed, goods already delivered, or expenses already incurred, and

(ii) refund any payments received but not yet earned, including payments for services not rendered, work not performed, or goods not delivered, expenses forwarded.

**17.2. Termination of License Grant.** On the expiration or termination of this agreement the License granted under this agreement will terminate with immediate effect.

**18. Return of Property.** On termination or expiration of this agreement, or on Five Quarters' request, Customer shall

**18.1.** return to Five Quarters all originals of the information, documents, equipment, files, and other property, including Intellectual Property, it received from Five Quarters,

**18.2.** destroy all copies of Five Quarters' Software, information, documents, equipment, files, and other property, including Intellectual Property, it made, and

**18.3.** on Five Quarters' request, certify to Five Quarters in writing that it destroyed all these copies.

## **19. Indemnification**

**19.1. Indemnification by Customer.** Customer (as an indemnifying party) shall indemnify Five Quarters (as an indemnified party) against all losses and expenses in connection with any proceeding arising out of

- (i) Customer's use of the Software, and
- (ii) Customer's unauthorized customization, modification, or other alterations to the Software, including claims that its customization, modification, or other alterations infringe a third party's Intellectual Property rights,

**19.2. Mutual Indemnification.** Each party (as an indemnifying party) shall indemnify the other (as an indemnified party) against all losses in connection with any proceeding arising out of the indemnifying party's willful misconduct or gross negligence.

### **19.3. Notice and Failure to Notify**

**19.3.1. Notice Requirement.** Before bringing a claim for indemnification, the indemnified party shall

- (i) notify the indemnifying party of the indemnifiable proceeding, and
- (ii) deliver to the indemnifying party all legal pleadings and other documents reasonably necessary to indemnify or defend the indemnifiable proceeding.

**19.3.2. Failure to Notify.** If the indemnified party fails to notify the indemnifying party of the indemnifiable proceeding, the indemnifying will be relieved of its indemnification obligations to the extent it was prejudiced by the indemnified party's failure.

**19.4. Exclusive Remedy.** The parties' right to indemnification is the exclusive remedy available in connection with the indemnifiable proceedings described in this section.

**20. Limitation on Liability.** Neither party will be liable for breach-of-contract damages that are remote or speculative, or that the breaching party could not reasonably have foreseen on entry into this agreement.

## **21. General Provisions**

**21.1. Entire Agreement.** The parties intend that this agreement, together with all Sales Orders, attachments, schedules, exhibits, and other documents that both are referenced in this agreement and refer to this agreement,

- (i) represent the final expression of the parties' intent relating to the subject matter of this agreement,
- (ii) contain all the terms the parties agreed to relating to the subject matter, and
- (iii) replace all of the parties' previous discussions, understandings, and agreements relating to the subject matter of this agreement.

### **21.2. Counterparts**

**21.2.1. Signed in Counterparts.** This agreement may be signed in any number of counterparts.

**21.2.2. All Counterparts Original.** Each counterpart is an original.

**21.2.3. Counterparts Form One Document.** Together, all counterparts form one single document.

**21.3. Amendment.** This agreement can be amended only by a writing signed by both parties.

## **22. Relationship of the Parties**

**22.1. No Relationship.** Nothing in this agreement creates any special relationship between the parties, such as a partnership, joint venture, or employee/employer relationship between the parties.

**22.2. No Authority.** Neither party will have the authority to, and will not, act as agent for or on behalf of the other party or represent or bind the other party in any manner.

**22.3. Assignment.** Neither party may assign this agreement or any of their rights or obligations under this agreement without the other party's written consent.

### **22.4. Notices**

**22.4.1. Method of Notice.** The parties shall give all notices and communications between the parties in writing by (i) personal delivery, (ii) a nationally-recognized, next-day courier service, (iii) first-class registered or certified mail, postage prepaid, or (iv) electronic mail to the party's address specified in this agreement, or to the address that a party has notified to be that party's address for the purposes of this section.

**22.4.2. Receipt of Notice.** A notice given under this agreement will be effective on

(i) the other party's receipt of it, or

(ii) if mailed, the earlier of the other party's receipt of it and the fifth business day after mailing it.

### **22.5. Governing Law and Consent to Jurisdiction and Venue**

**22.5.1. Governing Law.** This agreement, and any dispute arising out of the subject matter of the agreement, shall be governed by the laws of the State of Washington.

**22.5.2. Consent to Jurisdiction.** Each party hereby irrevocably consents to the exclusive jurisdiction and venue of any state court located within King County, State of Washington, in connection with any matter arising out of this agreement or the transactions contemplated under this agreement.

**22.5.3. Consent to Service.** Each party hereby irrevocably

(i) agrees that process may be served on it in any manner authorized by the Laws of the State of Washington, and

(ii) waives any objection which it might otherwise have to service of process under the Laws of the State of Washington.

### **22.6. Dispute Resolution**

**22.6.1. Arbitration.** Any dispute or controversy arising out of this agreement and subject matter of the agreement will be settled by arbitration in the Washington State, according to the rules of the American Arbitration Association then in effect, and by one arbitrator.

**22.6.2. Judgment.** Judgment may be entered on the arbitrator's award in any court having jurisdiction.

**22.6.4. Arbitrator's Authority.** The arbitrator will not have the power to award any punitive damages.

## **23. Equitable Relief**

### **23.1. Waiver**

**23.1.1. Affirmative Waivers.** Neither party's failure or neglect to enforce any rights under this agreement will be deemed to be a waiver of that party's rights.

**23.1.2. Written Waivers.** A waiver or extension is only effective if it is in writing and signed by the party granting it.

**23.1.3. No General Waivers.** A party's failure or neglect to enforce any of its rights under this agreement will not be deemed to be a waiver of that or any other of its rights.

**23.1.4. No Course of Dealing.** No single or partial exercise of any right or remedy will preclude any other or further exercise of any right or remedy.

**23.2. Force Majeure.** Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control, except for payment obligations.

**23.3. Severability.** If any part of this agreement is declared unenforceable or invalid, the remainder will continue to be valid and enforceable.

**23.4. Headings.** The section headings contained in this agreement are for reference purposes only and shall not affect the meaning or interpretation of this agreement.

**23.5. Attorney Fees.** If either party brings an Action to enforce their rights under this agreement, the prevailing party may recover its expenses (including reasonable attorneys' fees) incurred in connection with the Action and any appeal from the losing party.