

DATED 3<sup>rd</sup> August 2021

TERMS & CONDITIONS

## Agreed terms

### 1. Interpretation

1.1 The following definitions and rules of interpretation apply in this agreement:

**Applicable Laws:** all applicable laws, statutes, regulation and code from time to time in force.

**Available Services:** the services as set out in **Error! Reference source not found..**

**Business Day:** a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Business Hours:** the period from 9.00 am to 5.00 pm on any Business Day.

**Business Relationship Manager:** means the person appointed to act in such capacity by the Service Provider who may be named in a Statement of Work or such other person as the Service Provider may from time to time nominate.

**Commencement Date:** means the date of the signing of this agreement.

**Commission Date:** means any date later than the Commencement Date as may be specified in a Statement of Work being the date when the Service Provider shall provide the Available Services.

**Confidential Information:** means, in relation to either party, information which is disclosed to that party by the other party pursuant to or in connection with the agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);

**Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** have the same meanings as given to them in the Data Protection Legislation.

**Customer:** means the party procuring the Available Services from the Service Provider who shall be identified in this agreement.

**Customer Management Representative:** means the person who may be named in a Statement of Work who shall be responsible for liaising with the Business Relationship Manager in accordance with clause 2.6, or such other person who the Customer may from time to time nominate.

**Customer Materials:** means all documents, information, items and materials in any form (whether owned by the Customer or a third party), which are provided

by the Customer to the Service Provider in connection with the Available Services.

**Data Protection Legislation:** means all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**Deliverables:** means any outputs of the Available Services and any other documents, products and materials provided by the Service Provider to the Customer as may be specified in a Statement of Work and any other documents, products and materials provided by the Service Provider to the Customer in relation to the Available Services (excluding the Service Provider Materials);

**Intellectual Property Rights:** means (a) any and all rights in any patents, trademarks, service marks, registered designs, applications (and rights to apply for any of those rights) trade, business and company names, internet domain names and e-mail addresses, unregistered trademarks and service marks, copyrights, database rights, know-how, rights in designs and inventions; (b) rights under licences, consents, orders, statutes or otherwise in relation to a right in paragraph (a); (c) rights of the same or similar effect or nature as or to those in paragraphs (a) and (b) which now or in the future may subsist; and (d) the right to sue for past infringements of any of the foregoing rights; 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, goodwill and the right to sue for passing off, 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.

**Periodic Review:** means the review undertaken by the Service Provider, from time to time during the Term as may be specified in a Statement of Work.

**Person or Personnel:** means the individual(s) some of whom may be professionally qualified with [specify the nature of qualification] and who, for the avoidance of doubt, shall under no circumstances be considered an employee of the Customer who the Service Provider shall procure in respect of providing the Available Services to the Customer pursuant to the terms of the agreement.

**Reference Charges:** the standard charges for the Available Services or the framework for calculating them as set out in Schedule 1.

**Service Provider Materials:** means any equipment, materials, systems, inventions, designs, information, know-how, specifications, formulae, data, processes, methods, techniques and other technology provided by the Service Provider or used by the Service Provider, its agents, subcontractors or consultants and used directly or indirectly in the supply of the Available Services.

**SoW Charges:** the sums payable for the Works as set out in a Statement of Work.

**Statement of Work:** a detailed plan, agreed in accordance with clause 3, agreed by the parties in writing, describing the services to be provided by the Service Provider, and the related matters in a form based upon the template statement of work set out in **Error! Reference source not found.**

**Term:** means a period of 5 years from the Commencement Date.

**Works:** the Available Services which are provided by the Service Provider under a Statement of Work.

- 1.2 Unless the context otherwise requires, each reference in this agreement to:
  - 1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
  - 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
  - 1.2.3 “this agreement” is a reference to this agreement as amended or supplemented at the relevant time;
  - 1.2.4 a clause or paragraph is a reference to a clause of this agreement or Statement of Work, as appropriate; and
  - 1.2.5 a “party” or the “parties” refer to the parties to the agreement.
- 1.3 The headings used in this agreement are for convenience only and shall have no effect upon the interpretation of this agreement.
- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.

1.6 References to persons shall include corporations.

## **2. Provision of the Services**

2.1 With effect from the Commencement Date, the Service Provider shall, throughout the Term of the agreement, provide the services and Deliverables to the Customer.

2.2 The Service Provider shall provide the services and Deliverables with reasonable skill and care, commensurate with prevailing standards in the accounting and compliance related services sector in the United Kingdom.

2.3 The Service Provider shall act in accordance with all reasonable instructions given to it by the Customer provided such instructions are compatible with the specification of services provided in a Statement of Work.

2.4 The Service Provider shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the services and Deliverables.

2.5 During the term of the agreement the Service Provider shall use all reasonable endeavours to accommodate any reasonable changes in the services that may be requested by the Customer which are not specified in a Statement of Work, subject to the Customer's acceptance of any related reasonable changes to the fees that may be due as a result of such changes.

2.6 The Business Relationship Manager shall assume responsibility for liaising with the Customer Management Representative to ensure that the proper elements and commitments are in place to provide consistent compliance related accounting services to the Customer by the Service Provider.

## **3. Statements of Work**

3.1 Each Statement of Work shall be agreed in the following manner:

- (a) the Customer shall make a request in writing to the Service Provider to provide any or all of the Available Services and provide the Service Provider with as much information as the Service Provider reasonably requests to enable it to do so;
- (b) following receipt of the information requested from the Customer the Service Provider shall, as soon as reasonably practicable either:

- (i) inform the Customer that it declines to provide the requested Available Services; or
    - (ii) provide the Customer with a draft Statement of Work in writing.
  - (c) if the Service Provider provides the Customer with a draft Statement of Work pursuant to clause 3.1(b)(ii), the Service Provider and the Customer shall correspond in writing, discuss and agree that draft Statement of Work; and
  - (d) both parties shall accept and agree to the terms of the draft Statement of Work in writing when it is agreed.
- 3.2 Unless otherwise agreed, the SoW Charges shall be calculated in accordance with the Reference Charges.
- 3.3 Once a Statement of Work has been agreed in writing in accordance with clause 3.1(d), no amendment shall be made to it except in accordance with clause 4 (Change control) or clause 25 (variation).
- 3.4 Each Statement of Work shall be part of this agreement and shall not form a separate contract to it.

#### 4. Change control

- 4.1 Either party may propose changes to the scope or execution of the Works but no proposed changes shall come into effect until a relevant **Change Order** has been agreed in writing by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:
- (a) the Works;
  - (b) the SoW Charges;
  - (c) the timetable for the Works; and
  - (d) any of the other terms of the relevant Statement of Work.
- 4.2 If the Service Provider wishes to make a change to the Works it shall provide a draft Change Order to the Customer.
- 4.3 If the Customer wishes to make a change to the Works:
- (a) it shall notify the Service Provider and provide as much detail as the Service Provider reasonably requires of the proposed changes, including the timing of the proposed change; and

- (b) the Service Provider shall, as soon as reasonably practicable after receiving the information in clause 4.3(a), provide a draft Change Order to the Customer.

4.4 If the parties:

- (a) agree to a Change Order, it shall be agreed in writing and that Change Order shall amend the relevant Statement of Work; or
- (b) are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 28 (Multi-tiered dispute resolution procedure).

4.5 The Service Provider may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer pursuant to clause 4.3 on a time spent basis at the Service Provider's monthly rates specified in Schedule 1.

## 5. Intellectual Property Rights

In relation to the Customer Materials:

- 5.1 the Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and
- 5.2 the Customer grants to the Service Provider a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the Term for the purpose of providing the services to the Customer.

In relation to the Service Provider Materials:

- 5.3 The Service Provider and its licensors shall retain ownership of all Intellectual Property Rights in the Service Provider Materials.

In relation to the Deliverables the Service Provider shall:

- 5.4 upon receipt of all sums due under the agreement, grant the Customer, or shall procure the direct grant to the Customer of a fully paid-up, worldwide, non-exclusive, royalty-free, licence to copy the Service Provider Materials for the purpose of receiving and using the services and the Deliverables in the Customer's business during the Term of this agreement.

## **6. Customer's Obligations**

- 6.1 The Customer shall use all reasonable endeavours to provide all pertinent information to the Service Provider that is necessary for the Service Provider's provision of the services and Deliverables.
- 6.2 The Customer may, from time to time, issue reasonable instructions to the Service Provider in relation to the Service Provider's provision of the services. Any such instructions should be compatible with the specification of the services provided in the agreement and should, in the first instance be provided to the Customer's allocated account manager.
- 6.3 In the event that the Service Provider requires the decision, approval, consent or any other communication from the Customer in order to continue with the provision of the services and the Deliverables or any part thereof at any time, the Customer shall provide the same in a reasonable and timely manner.
- 6.4 If any consents, licences or other permissions are needed from any third parties, it shall be the Customer's responsibility to obtain the same in advance of the provision of the services and the Deliverables (or the relevant part thereof). In the event that the Customer fails to obtain any such consent, licence or other permission in accordance with this clause 6 the Service Provider shall have the right to terminate the agreement with immediate effect.
- 6.5 Any delay in the provision of the services and Deliverables resulting from the Customer's failure or delay in complying with any of the provisions of clause 6 of the agreement shall not be the responsibility or fault of the Service Provider.

## **7. Fees and Payments**

- 7.1 In consideration of the provision of the Works by the Service Provider, the Customer shall pay the SoW Charges.
- 7.2 The Service Provider shall invoice the Customer at the end of each month for Works performed during that month.
- 7.3 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Service Provider any sum due under this agreement on the due date:
- (a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the

Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%;

- (b) the Service Provider may suspend part or all of the Works until payment has been made in full.

- 7.4 The Service Provider may increase the Reference Charges and any SoW Charges not calculated in accordance with the Reference Charges on an annual basis with effect from each anniversary of the date of this agreement in line with the percentage increase in the Consumer Prices Index (as published by the Bank of England) in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the date of this agreement and shall be the latest available figure for the percentage increase in the Consumer Prices Index.
- 7.5 The Service Provider shall invoice the Customer for SoW Charges and any other fees due in accordance with the provisions of the Customer's requirements as set out in a Statement of Work and the applicable pricing model set out in the Schedule 1.
- 7.6 Customer shall pay the SoW Charges to the Service Provider in accordance with the provisions of Schedule 1 and this clause 7. The fees are exclusive of any applicable VAT and other taxes or other levies which are imposed or charged by any competent authority.
- 7.7 All payments required to be made pursuant to the agreement and any Statement of Work by the Customer shall be made within 7 Business Days of receipt of the relevant invoice unless otherwise agreed by the parties.
- 7.8 All payments required to be made pursuant to the agreement shall be made in Sterling in cleared funds to such bank in the United Kingdom as the receiving party may from time to time nominate, without any set-off, withholding or deduction except such amount (if any) of tax as that party is required to deduct or withhold by law.
- 7.9 Where any payment pursuant to the agreement is required to be made on a day that is not a Business Day, it may be made on the next following Business Day.

## **8. Liability, Indemnity and Insurance**

- 8.1 The Service Provider's liability under the agreement, and in breach of statutory duty, and in tort or misrepresentation or otherwise, shall be limited as set out in this section.

- 8.2 Subject to clause 8.3 (which for the avoidance of doubt lists the types of loss which are wholly excluded from the Service Provider's liability under the agreement) the total amount of the Service Provider's liability is limited to the total amount of SoW Charges payable by the Customer to the Service Provider during the previous 12 month period payable under the agreement.
- 8.3 The Service Provider is not liable (whether caused by its employees, agents or otherwise) in connection with the Service Provider's provision of the services and Deliverables or the performance of any of its other obligations under the agreement for:
- 8.3.1 any indirect, special or consequential loss, damage, costs, or expenses; or
  - 8.3.2 any loss of profits; loss of anticipated profits; loss of sale or business; loss of agreements or contracts; loss of anticipated savings; loss of use or corruption of software, information or data; loss of reputation or goodwill; business interruption; or, other third party claims; or
  - 8.3.3 any failure to perform any of its obligations if such delay or failure is due to any cause beyond its reasonable control; or
  - 8.3.4 any losses caused directly or indirectly by any failure or the Customer's breach in relation to the Customer's obligations; or
  - 8.3.5 any losses arising directly or indirectly from the choice of Available Services and how they will meet the Customer's requirements or the Customer's use of the Deliverables.
- 8.4 Nothing in this agreement shall limit or exclude the Service Provider's liability for death or personal injury caused by its negligence, or for any fraudulent misrepresentation, or for any other matters for which it would be unlawful to exclude or limit liability.
- 8.5 The Service Provider shall ensure that for the duration of the agreement it has in place suitable and valid professional indemnity insurance.
- 8.6 The Service Provider shall not be liable for any loss or damage suffered by the Customer that results from the Customer's failure to follow any instructions given by the Service Provider.
- 8.7 The Customer shall indemnify the Service Provider against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect

or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Service Provider arising out of or in connection with:

- 8.7.1 the Customer's breach or negligent performance or non-performance of this agreement;
  - 8.7.2 any claim made against the Service Provider by a third party arising out of or in connection with the provision of the services in cases where the claim is attributable to the acts or omissions of the Customer or its employees;
  - 8.7.3 any claim made against the Service Provider as a result of the Customer permitting the Service Provider with access to the Personal Data of the Customer's (or its customers) but only to the extent that the Service Provider has complied with Data Protection Law and the terms of this agreement when processing such personal data;
  - 8.7.4 any claim made against the Service Provider or any sums awarded by a court against the Service Provider as a result of or in connection with any claim brought against the Service Provider for infringement of any third party's rights (including any Intellectual Property Rights) arising out of, or in connection with, the receipt or use of the Customer Materials by the Service Provider;
  - 8.7.5 any claim made against the Service Provider by a third party for death, personal injury or damage to property arising out of or in connection with the services, to the extent that the death, personal injury or damage to property is attributable to the acts or omissions of the Customer, its employees, agents or subcontractors; and
  - 8.7.6 any claim arising from loss or damage to any equipment belonging to the Service Provider caused by the Customer or its agents or employees.
- 8.8 Neither party shall be liable to the other or be deemed to be in breach of the agreement by reason of any delay in performing, or any failure to perform, any of that party's obligations if the delay or failure is due to any cause beyond that party's reasonable control.

## 9. Warranty

- 9.1 The Service Provider warrants that it will use reasonable care and skill in the performance of the services.
- 9.2 The Service Provider reserves the right to vary the services in circumstances where such variation is deemed necessary by the Service Provider to comply with any Applicable Laws, and the Service Provider will notify the Customer as soon as reasonably practicable if this is necessary.

## 10. Confidentiality

- 10.1 Each party shall undertake that, except as provided by clause 10.2 or as authorised in writing by the other party, it shall, at all times during the continuance of the agreement and two years after its termination:

10.1.1 keep confidential all Confidential Information;

10.1.2 not disclose any Confidential Information to any other party;

10.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of the agreement;

10.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and

10.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that party, would be a breach of the provisions of clauses 10.1.1 to 10.1.4 of the agreement.

- 10.2 Either party may:

10.2.1 disclose any Confidential Information to:

10.2.1.1 any sub-contractor, subsidiary or service provider of that party;

10.2.1.2 any governmental or other authority or regulatory body; or

10.2.1.3 any employee or officer of that party or of any of the aforementioned persons, parties or bodies;

to such extent only as is necessary for the purposes contemplated by the agreement (including, but not limited to, the provision of the services and

Deliverables), or as required by law. In each case that party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under clause 10.2.1.2 or any employee or officer of any such body) shall ensure that such body is bound by confidentiality and non-use obligations with respect to such Confidential Information which are no less onerous than those set out in the terms of this clause 10 of the agreement, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and

10.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the agreement, or at any time after that date becomes, public knowledge through no fault of that party. In making such use or disclosure, that party must not disclose any part of the Confidential Information that is not public knowledge.

10.3 The provisions of clause 10 of the agreement shall continue in force in accordance with their terms, notwithstanding the termination of the agreement for any reason.

## 11. Force Majeure

11.1 No party to the agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, epidemic, pandemic, acts of war, governmental action or any other event that is beyond the control of the party in question.

11.2 In the event that a party to the agreement cannot perform their obligations hereunder as a result of force majeure for a continuous period of 14 days, the other party may at its discretion terminate the agreement by written notice at the end of that period. In the event of such termination, the parties shall agree upon a fair and reasonable payment for all services provided up to the date of termination. Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of the agreement.

## 12. Term and Termination

12.1 The agreement shall come into force on the Commencement Date and shall continue for the Term.

- 12.2 Either party may terminate the agreement by giving to the other not less than 1 calendar months' notice in writing in accordance with clause 24.
- 12.3 Either party may immediately terminate the agreement by giving written notice to the other party if:
- 12.3.1 any sum owing to that party by the other party under any of the provisions of the agreement is not paid within 7 Business Days of the due date for payment;
  - 12.3.2 the other party commits any other breach of any of the provisions of the agreement and, if the breach is capable of remedy, fails to remedy it within 7 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;
  - 12.3.3 an encumbrancer takes possession, or where the other party is a company, a receiver is appointed, of any of the property or assets of that other party;
  - 12.3.4 the other party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
  - 12.3.5 the other party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other party under the agreement);
  - 12.3.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other party;
  - 12.3.7 the other party ceases, or threatens to cease, to carry on business; or
  - 12.3.8 control of the other party is acquired by any person or connected persons not having control of that other party on the date of the agreement. For the purposes of clause 12, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.

- 12.4 For the purposes of clause 12.3.2, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects.
- 12.5 The rights to terminate the agreement shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

### **13. Effects of Termination**

Upon the termination of the agreement for any reason:

- 13.1 any sum owing by either party to the other under any of the provisions of the agreement shall become immediately due and payable;
- 13.2 all clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the agreement shall remain in full force and effect;
- 13.3 termination shall not affect or prejudice any right to damages or other remedy which the terminating party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any party may have in respect of any breach of the agreement which existed at or before the date of termination;
- 13.4 subject as provided in clause 13 of the agreement and except in respect of any accrued rights neither party shall be under any further obligation to the other;
- 13.5 each party shall (except to the extent referred to in clause 10 of the agreement) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other party any documents in its possession or control which contain or record any Confidential Information.

### **14. Data Protection**

- 14.1 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Service Provider is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- 14.2 The type(s) of personal data, the scope, nature and purpose of the processing, and the duration of the processing are set out in Schedule 3.
- 14.3 Without prejudice to the generality of clause 14.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful

transfer of the Personal Data to the Service Provider for the duration and purposes of this agreement.

14.4 Without prejudice to the generality of clause 14.1, the Service Provider warrants and undertakes that it shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under this agreement:

14.4.1 process that Personal Data only on the written instructions of the Customer unless the Service Provider is required by the laws of the UK applicable to the Service Provider to process Personal Data (Applicable Laws). Where the Service Provider is relying on Applicable Laws as the basis for processing Personal Data, the Service Provider shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer;

14.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it) OR as otherwise specified measures and set out in Schedule 3;

14.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

14.4.4 not transfer any Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

14.4.4.1 the Customer or the Service Provider has provided appropriate safeguards in relation to the transfer;

- 14.4.4.2 the Data Subject has enforceable rights and effective legal remedies;
- 14.4.4.3 the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- 14.4.4.4 the Provider complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 14.4.5 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 14.4.6 notify the Customer without undue delay on becoming aware of a Personal Data breach;
- 14.4.7 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- 14.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 14 (and allow for audits by the Customer or the Customer's designated auditor).
- 14.5 The Customer consents to the Provider appointing Outbooks Outsourcing Pvt Ltd, India as a third-party processor of Personal Data under this agreement. The Service Provider confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business OR incorporating terms which are substantially similar to those set out in this clause 14. As between the Customer and the Service Provider, the Service Provider shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 14.
- 14.6 Either party may, at any time on not less than 30 days' notice, revise this clause 14 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

14.7 The Service Provider's liability for losses arising from breaches of this clause 14 is as set out in clause 8.7.3.

**15. No Waiver**

15.1 No failure or delay by either party in exercising any of its rights under the agreement shall be deemed to be a waiver of that right, and no waiver by either party of a breach of any provision of the agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

**16. Further Assurance**

16.1 Each party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the agreement into full force and effect.

**17. Costs**

17.1 Subject to any provisions to the contrary each party shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of the agreement.

**18. Set-Off**

18.1 Neither party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under the agreement or any other agreement at any time.

**19. Assignment and Sub-Contracting**

19.1 The Service Provider may at any time assign, transfer, subcontract or deal in any other manner with all or any of its rights under the agreement and can subcontract or delegate in any manner any or all of its obligations to any third party.

19.2 The Customer shall not, without the Service Provider's prior written consent, assign, transfer, subcontract or deal in any other manner with all or any of its rights or obligations under the agreement.

19.3 Subject to the provisions of clause 14, the Service Provider shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors. Any act or

## **20. Publicity**

20.1 Subject to the prior written consent of the Customer, the Service Provider shall be permitted to publicise the relationship with the Customer or use the Customer's name or other trademarks or service marks in any advertisement or publication but not disclose the terms of the agreement.

## **21. Relationship of the Parties**

21.1 Nothing in the agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the agreement.

## **22. Non-Solicitation**

22.1 Neither party shall, for the Term of the agreement and for a defined period of 6 months after its termination or expiry, employ or contract the services of any person who is or was employed or otherwise engaged by the other party at any time in relation to the agreement without the express written consent of that party.

## **23. Third Party Rights**

23.1 No part of the agreement shall confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the agreement.

## **24. Notices**

24.1 All notices under the agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the party giving the notice.

24.2 Notices shall be deemed to have been duly given:

25.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal Business Hours of the recipient; or

25.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or

25.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

25.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other party.

## **25. Entire Agreement**

25.1 This agreement contains the entire agreed position as between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

25.2 Each party shall acknowledge that, in entering into the agreement, it does not rely on any representation, warranty or other provision except as expressly provided in the agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

## **26. Counterparts**

26.1 The agreement may be entered into in any number of counterparts and by the parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

## **27. Severance**

27.1 In the event that one or more of the provisions of the agreement is found to be unlawful, invalid or otherwise unenforceable, then those provision(s) shall be deemed severed from the remainder of the agreement. The remainder of the agreement shall be valid and enforceable.

## **28. Dispute Resolution**

28.1 The parties shall attempt to resolve any dispute arising out of or relating to the agreement through negotiations between their appointed representatives who have the authority to settle such disputes.

28.2 If negotiations under clause 28.1 of the agreement do not resolve the matter within 30 calendar days of receipt of a written invitation to negotiate, the parties

will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (“ADR”) procedure.

- 28.3 If the ADR procedure under clause 28.2 of the agreement does not resolve the matter within 30 calendar days of the initiation of that procedure, or if either party will not participate in the ADR procedure, the dispute may be referred to arbitration by either party.
- 28.4 The seat of the arbitration under clause 28.3 of the agreement shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed between the Parties. In the event that the Parties are unable to agree on the arbitrator(s) or the Rules for Arbitration, either party may, upon giving written notice to the other party, apply to the President or Deputy President for the time being of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be required.
- 28.5 Nothing in clause 28 of the agreement shall prohibit either party or its affiliates from applying to a court for interim injunctive relief.
- 28.6 The decision and outcome of the final method of dispute resolution under clause 28 of the agreement shall be final and binding on both parties.

## **29. Law and Jurisdiction**

- 29.1 The agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 29.2 Subject to the provisions of clause 29.1 of the agreement, any dispute, controversy, proceedings or claim between the parties relating to the agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

This agreement has been entered into on the date stated at the beginning of it.