

## Confidential Information

[Date]

[Client Contact Name]

[Client Address]

Client email: [ ]

Dear [ ],

### **[PROJECT NAME / SERVICES DESCRIPTION]**

Further to our recent discussions we are pleased to present this Engagement Letter to [Client Name] with registered number [add number] and with its registered office as stated above ("Client") confirming the terms on which Baringa Partners LLP ("Baringa") will assist Client in the Project specified below. This Engagement Letter also includes the business terms contained in Annex 1 (Business Terms) ("Business Terms") upon which Baringa will provide the Services set out below.

## **1. BACKGROUND AND TERM**

Client has asked Baringa to assist it in the [project description overview] ("Project") by providing the Services specified below from [start date] to [end date] ("Term").

## **2. SCOPE OF SERVICES**

### **2.1 Services**

Baringa will assist Client in the furtherance of the Project over the Term by providing the following services ("Services"): [description of services]

In the event that the scope of the Services expands or Client wishes Baringa to take on any additional work and responsibilities as part of this engagement, this will be brought to the attention of the management of each Party and if agreed in writing by the Parties, will be recorded as an amendment to this Engagement Letter.

### **2.2 Work Products**

As part of the Services Baringa will work to provide the following deliverables ("Work Products"): [description of deliverables]

### **2.3 Project Responsibility**

Client will have overall management responsibility for the Project and Baringa will assist Client with the Project. Client will be solely responsible for identifying all legal requirements and all regulatory matters relating to the Project. In providing the Services, Baringa shall at all times work under the management and direction of Client. In providing the Services, Baringa will not be providing Client with any legal or financial investment advice or advice for which a regulatory licence is required.

Once the Services have been fully provided Baringa may seek in writing Client's acknowledgement that there are no outstanding parts of the Services. Any subsequent request by Client for additional services will then be agreed in writing by the parties at charges and rates to be agreed.

## 2.4 Baringa Staff

Baringa will provide the following staff members to provide the Services ("Baringa Personnel"):

Name	Baringa Grade	Role

## 3. ASSUMPTIONS AND DEPENDENCIES

In agreeing to perform the Services Baringa will rely upon the following Assumptions ("Assumptions") being correct and complete and the following dependencies ("Dependencies") being met and performed:

- [List Assumptions and Dependencies outside of Baringa's control and without which Baringa is unable to provide the Services]
- [Include if working at Client site:] Health, safety and security: Where it is planned that Baringa staff will provide the Services at a Client site but are unable to do so due to the medical policies (including precautionary medical measures) of either Party then Baringa staff may perform the Services remotely at a site designated by Baringa. Where the Services are adversely affected by such change in the site delivery location or availability of impacted Baringa or Client staff the Parties will seek to agree and record any resultant reasonable adjustment to the scope of Services and Charges. In the event of any failure to reach such agreement either Party may terminate this Engagement Letter for convenience on reasonable written notice to the other Party.

## 4. CHARGES

**IF FP:** Baringa's charges for the Services ("Charges") will be a Fixed Price of [add price] plus VAT and expenses.

**IF T&M:** Baringa's charges for the Services ("Charges") will be calculated on a Time & Materials basis as follows plus VAT and expenses:

Name	Baringa Grade	Day Rate (£)	Days	Charges (£)
Total Charges (£):				

Baringa will invoice for the Services [at the end of each month in which the Services are performed]. Client will pay all correctly produced invoices within thirty (30) days of receipt.

Baringa should be grateful if you would please indicate your acceptance of these arrangements by signing this Engagement Letter where indicated below and returning a copy to us.

If you have any queries please don't hesitate to contact [partner name] on [telephone number] or by email at [email address].

Yours sincerely

[Name of Baringa partner]  
Baringa Partners LLP

[Baringa Legal Representative]  
Baringa Partners LLP

The contents of this Engagement Letter are agreed and accepted for and on behalf of [Client Name] by signature below:

Signed: \_\_\_\_\_

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **ANNEX 1: BUSINESS TERMS**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 In this Engagement Letter:**

**“Affiliate”** means in relation to a Party any entity, whether incorporated or not, that controls that Party or is controlled by that Party or under common control with that Party and **“control”** (or variants of it) shall mean the ability whether directly or indirectly to direct the affairs or management of another by means of ownership, contract or otherwise.

**“Applicable Data Protection Laws”** means: (a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; and (b) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which Baringa is subject, which relates to the protection of personal data.

**“Confidential Information”** means any and all information or materials disclosed, directly or indirectly, by one Party or any of its Affiliates to the other Party in connection with this Engagement Letter whether orally, in writing, electronically or in any other form. (Confidential Information will not include any information or material which: (a) is or becomes public knowledge through no improper conduct on the part of the receiving Party; (b) is already lawfully in the possession of the receiving Party free from any obligations of confidentiality or restrictions on use; or (c) is subsequently obtained by the receiving Party from a third party in lawful possession of such information and/or materials and free from any obligations of confidentiality or restrictions on use; or (d) is identified in writing at the time of delivery as non-confidential by the providing party.)

**“EU GDPR”** means the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law.

**“Force Majeure Event”** means any cause preventing either Party from performing any or all of its obligations in this Engagement Letter which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the Party so prevented including strikes, lock-outs or other industrial disputes, act of God, war, riot, civil commotion, malicious damage, epidemic or pandemic, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.

**“Intellectual Property Rights”** or **“IPR”** means any and all patents, patent applications, know-how, trade secret, trademarks, trade mark applications, trade names, registered or unregistered design, copyright, database rights or other similar intellectual property rights created, developed, subsisting or used in connection with the Services whether in existence at the date of this Engagement Letter or created in the future.

**“Parties”** means Baringa and Client and each shall be a **“Party”**.

**“UK GDPR”** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

All other defined terms contained in this Engagement Letter shall have the meaning provided in this Engagement Letter.

#### **1.2 The headings in this Engagement Letter do not affect the interpretation of this Engagement**

Letter. Unless the context otherwise so requires: (a) references to an Annex are to an Annex to this Engagement Letter which is incorporated herein and in the event of any conflict between the main body of this Engagement Letter and an Annex the main body will take priority; (b) references to **"Sections"** and to **"Clauses"** are, unless otherwise stated, to sections in the main body of this Engagement Letter and Clauses in these Business Terms; (c) references to Baringa and Client include their permitted successors and assignees; (d) references to statutory provisions include those statutory provisions as amended or re-enacted; (e) the singular shall mean the plural and vice-versa and any references to a person shall mean a partnership or incorporated body and vice-versa; and (f) references to **"include"**, **"including"** and **"in particular"** are to be construed without limitation.

## **2. SCOPE OF SERVICES**

2.1 Baringa agrees to perform the Services subject to the terms and conditions set out in this Engagement Letter and with reasonable skill and care.

2.2 Any changes to this Engagement Letter must be mutually approved in writing by the authorised representatives of Client and Baringa.

2.3 Baringa will make reasonable efforts to meet Client's requests regarding specific individuals and other staffing matters but Baringa reserves the exclusive right to determine the Baringa personnel for assignments and may replace Baringa personnel providing the Services at any time during the Term. The Services will be performed at locations outside of the UK only if Baringa staff have an appropriate right to work in such locations. Unless stated in this Engagement Letter to be exclusively dedicated to the Services, Baringa's personnel may perform services for other Baringa clients during the Term.

## **3. CHARGES AND PAYMENT**

3.1 Client shall pay Baringa the Charges for the Services in accordance with this Engagement Letter.

3.2 All Charges and other invoiced amounts by Baringa shall be paid without set-off, withholding or deduction of any kind by Client. If Client fails to make any payment on the due date then, without prejudice to any other right or remedy available to Baringa, Baringa shall be entitled to charge Client interest on any amount which remains unpaid after it is due, computed at the rate of four per cent (4%) per annum above National Westminster Bank's base rate from time to time on a monthly basis from the date payment was due and as well after as before judgement.

3.3 Client shall reimburse Baringa within thirty (30) days after the date of invoice for all expenses incurred by Baringa in performance of Services in accordance with Baringa's expenses policy including, without limitation, expenses for travel, lodging, communications, per diem and any other expenses specifically set out in this Engagement Letter (**"Expenses"**).

3.4 The Charges and other invoiced amounts due under this Engagement Letter do not include applicable taxes. Client will be responsible for the payment of all taxes in connection with the receipt of the Services and payment of the Charges including sales, use, excise, value-added, business, service, goods and services, consumption, withholding, and other similar taxes or duties. Client will reimburse Baringa for any deficiency relating to taxes that are Client's responsibility under this Engagement Letter. Each Party will be responsible for its own income taxes, employment taxes, and property taxes. Each Party will provide tax exemption information and documentation reasonably requested by the other Party.

3.5 If the Services have been received wholly by Client and if requested in writing by Client prior to the due invoicing date, Baringa shall submit the invoice for the Charges to an Affiliate of Client for payment purposes marking such invoice as payable by such Affiliate. In such circumstances Client shall remain responsible for payment of the Charges.

3.6 If the Services have been received wholly by an Affiliate or 'Special Purpose Vehicle' established to receive the benefit of the Services ("SPV") then if requested in writing by Client prior to the due invoicing date or completion of the Services, Baringa shall submit the invoice for the Charges to such Affiliate or SPV for payment purposes. In the event the Affiliate or SPV does not pay the Charges in accordance with this Engagement Letter then Client shall pay within ten (10) days of receiving a written request from Baringa to make such payment.

#### **4. USE OF WORK PRODUCT**

4.1 Except as permitted in this Engagement Letter, for use by Client Affiliates or where the Work Products are provided by Baringa as Client-branded and prepared materials, Client agrees not to (a) amend, alter, vary, remove Baringa's name from or distribute or use for other commercial purposes the Work Product but may make such limited number of copies of the Work Product as are required for the Project, (b) make the Work Products available to any third party (other than Client Affiliates) without Baringa's prior written consent or (c) use or allow Client Affiliates or any other third parties to use or rely upon the Work Products for financing, investment, asset or corporate purchase, loan or commercial valuation purposes. Baringa disclaims all liability permitted by law to any third party for the use of the content of a Work Product and owes no duty of care to any such third party. Client shall ensure Client Affiliates that receive the benefit of the Services comply with Client's obligations in this Engagement Letter (including in respect of confidentiality) and any non-compliance by Client Affiliates will be deemed a non-compliance by Client.

4.2 Baringa makes no representation or warranty regarding the accuracy or completeness of any output from the Services (including the Work Products) in a draft condition prior to formal delivery by Baringa ("Drafts"). The Parties agree that any Drafts are provided: (i) on an "AS IS" without warranty basis and should Client choose to rely upon the Drafts (or allow a third party to do so) that reliance shall be at Client's own risk and Baringa shall incur no liability to Client (or any third party) for the use of the Drafts; and (ii) on condition Drafts may be disclosed by Client only to Client's Affiliates and not any other third parties.

#### **5. PERFORMANCE OF SERVICES**

5.1 In the event Baringa is unable to provide the Services due to any of the matters in Clause 7 and the Assumptions and Dependencies specified in this Engagement Letter not being met in whole or in part or any consent to use personal data being withdrawn by Client then the Parties will discuss such matter as soon as practically possible and in the meantime Baringa will (a) not be liable for any such non-performance or be held in breach, (b) be excused the performance of its obligations to provide the Services affected and be granted such additional period of time as is reasonably appropriate and (c) for interrupted fixed price Services, be entitled to a reasonable proportion of the Charges for Services provided prior to such interruption.

5.2 If any change in law results in an increase in Baringa's costs in performing the Services or materially impedes or precludes Baringa performing the Services as they are then being provided, then Baringa may decide without incurring any liability to provide Client with a proposed written variation to this Engagement Letter (in accordance with Clause 2.2) to comply with such change in law and any

additional Charges for Client's agreement. Where Baringa and Client are unable to reach agreement upon such proposed written variation then either Party may terminate this Engagement Letter upon fourteen (14) days' written notice.

5.3 Where Baringa provides any software development, configuration or coding services as part of the Services which result in the creation of Work Products or other outputs ("**Software Products**") then the following shall apply:

5.3.1 Client shall have sole responsibility for achieving acceptance of the Software Products following completion of the Services or relevant part of the Services ("**Acceptance**") and as part of the Services Baringa shall assist Client in the Acceptance process.

5.3.2 Client shall arrange for appropriate Acceptance Testing within twenty-one (21) days of Baringa confirming to Client that the Software Products have been provided in accordance with the Services description in this Engagement Letter. Client shall define the necessary acceptance testing to determine that the Software Products have been provided in accordance with the Services description ("**Acceptance Testing**"). Baringa shall assist Client with the Acceptance Testing if a requirement of the Services and Client shall act reasonably in determining if Acceptance has been achieved. Acceptance will have been achieved if:

- (a) The Software Products successfully pass the Acceptance Testing;
- (b) Acceptance Testing is not undertaken within such twenty-one (21) day period; or
- (c) Client (or another party at Client's request) puts the Software Products into commercial use.

If Client determines (acting reasonably) that the Software Products have not passed the Acceptance Testing then Client may either (i) re-perform the Acceptance Testing within a reasonable time (in which case Client shall notify Baringa in writing and Baringa shall work to ensure the Software Products are provided in accordance with the Services description) or (ii) put the Software Products into commercial use. Subject to Clause 10.2 Client may require the above Acceptance process to be repeated until Acceptance is achieved. Baringa shall have no responsibility for the state of or use of the Software Products following Acceptance.

5.4 Forecasts and estimates provided pursuant to this Engagement Letter (and those generated by the Work Products) are estimates only and will reflect Baringa's evaluation of publicly available or Client data and Baringa's professional judgment. Changes in market conditions, scientific advances, and legal and regulatory frameworks may result in material differences from Baringa's forecasts and estimates. Baringa does not provide any assurance, warranty or guarantee that any forecasts and estimates contained in the Work Products will materialise or be accurate. Baringa does not undertake to update or revise such forecasts and estimates unless expressly included as part of the Services.

## **6. TERM AND TERMINATION**

6.1 This Engagement Letter shall continue for the period of the Term unless terminated earlier in accordance with this Clause 6.

6.2 This Engagement Letter may be terminated by either Party without cause at any time and without penalty by giving the other Party at least thirty (30) days' prior written notice.



6.3 Without prejudice to any rights that have accrued under this Engagement Letter or any of its rights or remedies, either Party may at any time terminate this Engagement Letter with immediate effect by giving written notice to the other Party if: (a) the other Party fails to pay any amount due under this Engagement Letter on the due date for payment and remains in default not less than ten (10) days after being notified in writing to make such payment; or (b) the other Party commits a material breach of any term of this Engagement Letter (other than failure to pay any amounts due dealt with in (a) above) and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so.

6.4 Without prejudice to any rights that have accrued under this Engagement Letter or any of its rights or remedies, either Party may at any time terminate this Engagement Letter with immediate effect by giving written notice to the other Party if: (a) the other Party makes a general assignment for the benefit of creditors, (b) the other Party becomes or is unable to pay debts as they fall due, (c) a trustee, custodian, administrator or receiver is appointed by any court with respect to the other Party or any substantial part of the other Party's assets, (d) an action is taken by or against the other Party under any bankruptcy or insolvency laws or laws relating to the relief of debtors and such action is not dismissed within thirty (30) days of commencement of the action, (e) the other Party is the subject of a winding-up petition which is not dismissed within ten (10) days, or a resolution is passed for its winding up or (f) any event analogous to any of the events set out in this Clause 6.4(a) – (e) occurs in another jurisdiction.

6.5 Clauses 1, 4, 5.3, 6.5, 8, 9, 10, 11, 12, 13, 16.3, 16.5, 16.6 and 16.12 shall survive termination or expiry of this Engagement Letter for any reason. Termination of this Engagement Letter shall be without prejudice to the rights and remedies of the Parties in respect of any breach of this Engagement Letter occurring prior to such termination or expiry.

6.6 Upon termination or expiry of this Engagement Letter, all Charges, Expenses or other amounts previously invoiced by Baringa, to be invoiced or scheduled for payment for Services shall immediately become due and payable and Client shall pay all such amounts to Baringa within thirty (30) days after the effective date of termination of the Engagement Letter. Further, in the event any Services are terminated prior to completion, Baringa shall prepare an invoice of Charges for all Services performed up to the effective date of termination and for any Expenses incurred, sums due to third parties or obligations incurred by Baringa for those Services which cannot be cancelled or returned.

## **7. OBLIGATIONS OF CLIENT**

7.1 Client shall (a) be responsible for its operation and use of the Services and the Work Products; (b) be responsible for ensuring that the scope of the Services and the Work Products meets the Client's requirements; (c) obtain all necessary consents from third parties, including the necessary third party rights to use all Client software or other items (including Client-Provided Materials and Client's personal data), that are required for Baringa to perform its obligations in relation to the Services and/or Work Products; (d) at Client's own expense, separately procure all third party software, equipment or other items which are required or otherwise determined from time to time by Baringa as necessary or desirable to complete the Services; (e) be responsible for determining that all third party software, equipment or other items are fully compatible with the specifications for the Services; (f) be responsible for ensuring that Client's site, facility and operating environment is otherwise suitable in all respects for Services to be delivered; (g) be responsible for Client's compliance with all applicable laws and regulations and for ensuring the compliance of the Services and Work Products with all laws applicable to the Client and its business and (h) treat Baringa resources in the same way as Client's own staff whilst on Client premises for health and safety and security purposes. Nothing in



the provision of the Services shall require Baringa to do anything which requires a regulatory licence, registration or certification.

7.2 Where necessary to provide the Services, Client shall provide Baringa and Baringa's personnel with (a) safe and clean work spaces and work environments that comply with all applicable laws and regulations, (b) direct access to all computer equipment and other facilities of Client, including remote computer access, (c) direct access to and the co-operation of employees, managerial personnel, agents and other contractors employed or retained by Client and (d) all reasonably required data and information.

## **8. OWNERSHIP OF WORK PRODUCT AND IPR**

8.1 As between the Parties, Client will be the sole and exclusive owner of the Intellectual Property Rights in pre-existing Client-provided computer programs, documentation and other materials ("**Client-Provided Materials**") used by Baringa to provide the Services. Client hereby grants to Baringa a royalty free, non-exclusive, non-revocable licence for the Term to use, copy, modify and prepare derivative works (and to permit Baringa's agents and contractors to use, copy, modify and prepare derivative works) of the Client-Provided Materials to the extent necessary to perform the Services. Any derivatives, modifications, enhancements or improvements to the Client-Provided Materials (or its related documentation) developed by Baringa as part of the Services will be owned by Client.

8.2 As between the Parties, Baringa will be the sole and exclusive owner of the Intellectual Property Rights in pre-existing Baringa-provided computer programs, documentation and other materials ("**Baringa-Provided Materials**") used by Baringa to provide the Services. Any derivatives, modifications, enhancements or improvements to the Baringa-Provided Materials (or its related documentation) developed by Baringa as part of the Services will be owned by Baringa.

8.3 Client acknowledges and agrees that all Work Products conceived, created or developed in connection with the performance of the Services, and all Intellectual Property Rights in Work Products and any derivations or enhancements of Work Products, are and shall at all times remain the sole and exclusive property of Baringa. In consideration of and subject to payment in full of the Charges for the Services in accordance with Clause 3, Client is hereby granted a non-exclusive, non-transferable, perpetual licence to use the Work Product solely for Client's internal business operations for the Project. Except as expressly authorised by Baringa in writing, Client shall not sub-license, distribute or otherwise transfer the Work Product or use the Work Product for the benefit of a third party other than to an Affiliate of Client. Third parties with whom Client has a business relationship (and such third parties' employees and agents) shall have the right to access and utilise the Work Product in connection with providing services to Client provided that each such third party has agreed in writing with Client to be bound by the use and non-disclosure / confidentiality requirements of this Engagement Letter which relate to the Work Product.

8.4 At the request and expense of the other Party, each Party will do all such things and sign all documents reasonably necessary to enable the other Party to obtain all rights in the Client-Provided Materials, Baringa-Provided Materials and Work Products in accordance with this Clause 8. In no event shall Baringa be precluded from independently developing for itself or for others anything, whether in tangible or non-tangible form, which is competitive with, or similar to, the Work Products. Baringa will be free to use without restriction (but subject to the confidentiality provisions herein) its general knowledge, skills and experience, and any ideas, concepts, know-how, products, materials, methodologies and techniques that are acquired or used in the course of providing the Services.

## **9. CONFIDENTIALITY**

Except as required by law each Party shall procure that all Confidential Information disclosed by one Party to the other Party in accordance with the Services shall remain confidential and shall not be disclosed to any third party other than permitted sub-contractors and Affiliates. The receiving Party may disclose the disclosing Party's Confidential Information to the receiving Party's employees, officers, representatives or professional advisers ("**Representatives**") who need to know such information for the purposes of exercising the receiving Party's rights or carrying out the receiving Party's obligations under or in connection with this Engagement Letter provided that the Representatives are subject to either contractual or professional obligations to keep the Confidential Information confidential. All tangible copies or storage media including Confidential Information of a disclosing Party in the possession of a receiving Party (or its Representatives) shall upon written request be returned or destroyed by the receiving Party within thirty (30) days following expiration of the Term or termination of this Engagement Letter, provided that a receiving Party may retain (a) Confidential Information to the extent required to comply with legal or regulatory requirements or internal document retention or corporate governance policies of general applicability (not specifically targeting the Confidential Information), and (b) Confidential Information that is retained in the receiving Party's or its Representatives' electronic or computer backup system as part of ordinary course data retention policies; provided that the receiving Party shall continue to be bound by its obligations under this Clause 9 relating to such retained Confidential Information.

## **10. WARRANTIES - LIMITATION OF LIABILITY**

10.1 Where the performance of the Services requires the use or reliance upon information and data provided to Baringa by Client and Client's third party advisors or which has been obtained by Baringa directly or indirectly from publicly-available sources ("**Advice**") and Baringa is not required to substantiate the Advice as correct or accurate as part of the Services then Baringa's warranties in this Engagement Letter will not apply to any deficiencies in the Services due to the Advice being incorrect or inaccurate.

10.2 Client shall notify Baringa in writing within the period of thirty (30) days after completion of the Services of any failure of the Services to meet their descriptions in this Engagement letter. If the Services are found not to meet their descriptions in this Engagement Letter then Baringa's sole obligation under this warranty is to promptly re-perform the Services to meet the requirements of this Engagement Letter. The above is a limited and exclusive warranty and states the sole and exclusive remedy against Baringa for any claim against Baringa based on any defects in or non-performance of the Services howsoever arising. In the event that Baringa is unable to re-perform or correct such Services within a reasonable time after using good faith efforts or acceptance cannot be achieved after two (2) rounds of acceptance testing then Baringa may reimburse Client all Charges paid for such Services or Work Products (and any other Services or Work Products that cannot be fully used in accordance with their specification in this Engagement Letter) and such Services or Work Products will be deemed removed from the Services description. All other warranties, representations (including all warranties of quality, fitness for a particular purpose and non-infringement), conditions and other terms implied by statute or common law shall not apply to this Engagement Letter.

10.3 Subject to Clauses 10.4, 10.5, 10.6, 10.7 and 10.8, the total liability of a Party (howsoever arising and including liability of such Party's Affiliates or subcontractors) in connection with the Services (or any part thereof) or otherwise arising in connection with this Engagement Letter (and in each case whether in contract, tort (including negligence or breach of statutory duty), under an indemnity or otherwise howsoever arising) shall not exceed in the aggregate an amount equivalent to one hundred and fifty per cent (150%) of the total Charges paid to Baringa for the Services. The

limitations in this Clause 10.3 will not apply to liability arising from the following which shall be unlimited: Each Party's indemnity in Clause 11 for third party Intellectual Property Rights claims and under Clause 4.1.

10.4 Subject to Clause 10.8, neither Party will be liable (whether in contract, tort (including negligence or breach of statutory duty), under an indemnity or otherwise howsoever arising) for (a) business interruption, loss of profits, loss of production, loss of or corruption to data, loss of or corruption to software, loss of business, loss of revenue, loss of operation time, loss of goodwill or reputation, loss of anticipated savings, loss of competitive advantage, loss of opportunity, wasted management time or any claims by third parties (other than arising from a breach of Clause 4.1), in each case whether direct or indirect, or (b) any special, indirect, incidental, punitive or consequential loss, damage, cost or expense.

10.5 Subject to Clause 10.8, any formal court action or proceedings by either Party against the other relating to or arising out of this Engagement Letter must be brought within two (2) years after the aggrieved Party became aware of (or should reasonably have become aware of) the cause of action, failing which the alleged wrongdoer will be discharged of any liability with respect to such claim.

10.6 Unless a requirement of the Services, Baringa will have no responsibility for the performance of other advisors, contractors or vendors engaged by the Client, or delays caused by them, in connection with the Services even if Baringa has been involved in recommending or selecting such contractors or vendors, or in the monitoring of their work.

10.7 Subject to Clause 10.8 and except under Clause 11.1, Baringa shall have no liability for any losses, claims, demands, proceedings, actions, damages, costs, expenses or any other liabilities howsoever caused arising from the state or condition of a Software Product or the Client's or a third party's use of a Software Product following Acceptance and Client acknowledges that Client shall have sole responsibility for the state, condition and use of the Software Product following Acceptance.

10.8 Nothing in this Engagement Letter excludes or limits either Party's liability to the other which cannot lawfully be excluded or limited including, without limitation, liability for death or personal injury caused by negligence.

## **11. IPR INDEMNIFICATION**

11.1 Subject to Clauses 11.2 and 11.3, Baringa will defend or settle, at its expense, any third party claim against the Client that the Services or Work Products provided by Baringa infringes the Intellectual Property Rights of such third party and will indemnify Client for all costs, expenses, liabilities, losses or damages which the Client incurs or suffers in respect of any such claim provided that the Client (a) allows Baringa conduct of the defence of such claim, including any settlement, (b) makes no admission of liability or other prejudicial statement and does not agree to any settlement or compromise, (c) notifies Baringa promptly of any such claim and (d) gives Baringa all reasonable assistance in connection with the defence of such claim.

11.2 Baringa's indemnity in Clause 11.1 will not apply if the infringement or claimed infringement is the result of (a) the Client's modification or misuse of the relevant Services or Work Product, (b) Client's provision of such Services or Work Product to a third party not permitted by this Engagement Letter, (c) the Client's failure to use enhancements or modifications offered by Baringa at no charge to avoid infringement, (d) the use of the Services or Work Product in association or combination with any other product not permitted by this Engagement Letter, (e) Baringa having used Client-Provided

Materials, Client-supplied data or publicly available data or having followed a design, specification and/or instruction provided by the Client or Client's Affiliates or (f) the use by Baringa of open source software products which have been identified in the description of the Services.

11.3 If any Services or Work Product is or in Baringa's opinion is likely to be, held to be infringing the Intellectual Property Rights of a third party, Baringa may at its expense and option either (a) procure the right for the Client to continue using it, (b) replace it with a non-infringing equivalent, (c) modify it to make it non-infringing or (d) direct the return of the Services or Work Product and refund to the Client the Charges paid for such Services or Work Product. The Client shall use all reasonable endeavours to mitigate the losses Client suffers as a result of a third party claim for infringement referred to in this Clause 11.3. The indemnity in Clause 11.1 constitutes the Client's sole and exclusive remedy and Baringa's entire liability with respect to any part of the Services and/or Work Product infringing any Intellectual Property Rights.

11.4 Client will defend or settle, at its expense, any third party claim against Baringa that any Client-Provided Materials provided by Client to Baringa in accordance with Clause 8.1 infringes the Intellectual Property Rights of such third party and will indemnify Baringa for all costs, expenses, liabilities, losses or damages which Baringa incurs or suffers in respect of any such claim (or claim by a permitted subcontractor that has received such third party claim) provided that Baringa (a) allows Client conduct of the defence of such claim, including any settlement, (b) makes no admission of liability or other prejudicial statement and does not agree to any settlement or compromise, (c) notifies Client promptly of any claim and (d) gives Client all reasonable assistance in connection with the defence of the claim.

## **12. NON-SOLICITATION**

For purposes of this Clause 12, "**Employee**" shall mean current employees or persons employed or contractors hired by the related Party to provide services within three (3) months prior to the referenced activity. During the period of performance of the Services by Baringa and for twelve (12) months thereafter, (a) Baringa agrees not to solicit or induce any Employee of Client to terminate his or her employment with or contract to provide services to Client, or to hire any Employee of Client without the prior written approval of Client, and (b) Client agrees not to solicit or induce any Employee of Baringa to terminate his or her employment with or contract to provide services to Baringa or to hire any Employee of Baringa without the prior written approval of Baringa. The restrictions contained in this Clause 12 shall not apply where a Party hires an Employee of the other Party who has responded to a general advertisement for a vacant position.

## **13. TRADEMARKS, TRADE NAMES AND PUBLICITY**

Neither Party shall use the names, trademarks, trade names, service marks, or other marks of the other Party, whether registered or not, in publicity releases or advertising or in any other manner, without securing the prior written approval of the other Party, provided that (a) Baringa may include Client's name and logo and summarise generally the nature of the work performed for Client in Baringa's client lists, sales and marketing materials and on Baringa's website and (b) Client will reasonably assist Baringa in producing a press release and case study upon conclusion of the related Services (the issue and wording of which will be subject to the prior agreement of the Client) with any subsequent press releases or case studies to be issued only upon mutual agreement.

## **14. EMPLOYMENT PROVISIONS**

It is not intended that the Transfer Legislation will apply on the commencement of the Services or on the cessation of all or part of the Services irrespective of whether Client or any new service provider takes over all or part of the Services (or services similar to them) upon termination. ("**Transfer Legislation**" means the EU Acquired Rights Directive (No.2001/23 EC) or similar legislation or other legal requirement which provides for the automatic transfer of workers in connection with the transfer of a business or change in service provider.) Each of the Parties shall retain at all times and in all circumstances full authority and control over its personnel and shall remain responsible for all social, administrative and accounting obligations relating to their employment.

## **15. DATA PRIVACY**

15.1 For the purposes of this **Error! Bookmark not defined.**15, the terms "**controller**", "**processor**", "**data subject**", "**personal data**", "**personal data breach**" and "**processing**" shall have the meaning given to them in the UK GDPR.

15.2 Each Party will comply with all applicable requirements of Applicable Data Protection Laws. This Clause 15 is in addition to and does not relieve, remove or replace a Party's obligations or rights under Applicable Data Protection Laws. Following Acceptance Client shall be solely responsible for ensuring that the use of Work Products does not cause any non-compliance with Applicable Data Protection Laws. Each Party will be responsible for responding to requests for access to personal data held by it.

15.3 Client consents to (and shall procure and hold for the period of the provision of the Services all required consents from its personnel, representatives and agents in respect of) (a) the lawful transfer of the Client's personal data to Baringa and the lawful collection of Client's personal data by Baringa in connection with the Services, (b) all actions taken by Baringa in connection with the processing of Client's personal data provided this is in connection with the Services and in compliance with the then-current version of Baringa's 'Privacy Statement' available at <https://www.baringa.com/en/site-support/privacy-policy/> ("**Privacy Statement**") and (c) retention of Client's personal data for the periods set out in the Privacy Statement. In the event of any inconsistency or conflict between the terms of the Privacy Statement and this Engagement Letter then the Privacy Statement will take precedence. All Client queries in respect of Baringa's use of Client's personal data may be sent by email to the following Baringa address: LegalDept@baringa.com.

15.4 In relation to the Client personal data Annex 2 sets out the subject matter and duration of the processing, the nature and purpose of the processing, the type of personal data being processed and the categories of data subjects.

15.5 Where in providing the Services Baringa acts as a controller then Baringa may process Client's personal data for the purposes of: (a) providing the Services; (b) administering and managing Baringa's relationship and business with Client; (c) security, quality assurance and risk management activities; (d) providing Client with information about Baringa and Baringa's services; and (e) complying with any requirement of any applicable laws or regulation. Full details of how Baringa uses personal data can be found in the Privacy Statement.

15.6 Where in providing the Services Baringa acts as processor in relation to Client's personal data Baringa will: (a) process Client's personal data only on Client's lawful written instructions or to provide the agreed Services; (b) implement appropriate measures designed to ensure personal data security; (c) transfer Client's personal data only to sub-processors (as set out in Baringa's Privacy Statement) under a written contract which imposes obligations consistent with those in this Clause 15.6 and Client authorises Baringa to transfer Client's personal data to such sub-processors; (d) provide Client with



reasonable assistance in carrying out any legally required data protection impact assessments, complying with the rights of data subjects and complying with Client's own data security obligations under Applicable Data Protection Laws; (e) notify Client without undue delay after becoming aware of a reportable personal data breach in respect of Client's personal data; (f) subject to Clause 9 at Client's request either return or destroy the Client's personal data when this Engagement Letter ends; and (g) at Client's written request provide Client with reasonable information necessary to demonstrate Baringa's compliance with this Clause 15.6.

15.7 Baringa may transfer Client personal data to Baringa Affiliates and contractors of Baringa and its Affiliates in relation to the provision of the Services. Some of these recipients may be located outside the UK or the European Union ("EU"). Baringa will carry out such transfers only where Baringa has a lawful basis to do so, including to a recipient who is: (a) in a country which provides an adequate level of protection for personal data; or (b) under an agreement which covers the UK or EU requirements governing contracts for the transfer of personal data to processors outside the UK or EU as appropriate. Where the Services involve a transfer of EU citizens' personal data to Baringa and no other appropriate safeguard or exemption applies those transfers will be carried out in accordance with the controller-to-controller model contractual clauses in Commission Decision 2004/915/EC, or the controller-to-processor model contractual clauses in Commission Decision 2010/87/EU, or any successor model contractual clauses that the European Commission issues to replace them, as appropriate. Those clauses will be deemed to form part of this Engagement Letter.

## **16. MISCELLANEOUS PROVISIONS**

16.1 Notices: Any notice to be given under this Engagement Letter shall be in writing and signed by or on behalf of the Party giving it and may be served by either (a) leaving it at or sending it to the Party's address as stated at the commencement of this Engagement Letter or (b) sending it by email to the following addresses: (i) For Baringa: LegalDept@baringa.com and (ii) For Client: the Client's email address as stated at the commencement of this Engagement Letter. Any subsequent change of address or email address shall be promptly notified in writing by the Party concerned to the other Party.

16.2 Force Majeure: If Baringa is prevented from performance of its obligations in this Engagement Letter for a continuous period in excess of fourteen (14) days due to a Force Majeure Event then Baringa shall have no liability in respect of the performance of such obligations as are prevented by the Force Majeure Event during the continuance of such events and Client or Baringa may terminate this Engagement Letter immediately on service of written notice upon the other in which case neither Party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.

16.3 Waiver: No forbearance or delay by either Party in enforcing its respective rights will prejudice or restrict the rights of that Party and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

16.4 Remedies: Subject to the specific limitations set out in this Engagement Letter, no remedy conferred by any provision of this Engagement Letter is intended to be exclusive of any other remedy except as expressly provided for in this Engagement Letter and each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Engagement Letter or existing at law or in equity by statute or otherwise. Each Party will take all steps within its power and in the ordinary course of business to mitigate and reduce any losses suffered under this Engagement Letter.

16.5 **Baringa Group:** This Engagement Letter is between Client and Baringa only. Where appropriate, Baringa may use other Affiliates of Baringa to assist Baringa with the provision of the Services ("**Baringa Affiliates**"). Notwithstanding the fact that the Services may be carried out by other Baringa Affiliates assisting Baringa as supplemental providers of services and as sub-contractors Client agrees that Baringa shall have sole liability for both Baringa's acts and / or omissions and also all acts and / or omissions of any Baringa Affiliate providing the Services and Client agrees that Client shall bring no claims or proceedings of any nature whatsoever (whether in contract, tort (including negligence), breach of statutory duty or otherwise) against any Baringa Affiliate in any way arising from, in respect of or in connection with the Services or this Engagement Letter. Client agrees that any Baringa Affiliate involved in providing the Services shall each have the right to rely on and enforce this Clause 16.5 and the contractual limitations of liability contained in this Engagement Letter as if they were parties to this Engagement Letter. Subject to Clause 10.8 Client shall bring no claims or proceedings of any nature whatsoever (whether in contract, tort (including negligence), breach of statutory duty or otherwise) individually against any staff members or officers of Baringa or a Baringa Affiliate.

16.6 **Severability:** If any of the provisions of this Engagement Letter are judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions will not be prejudiced unless the substantive purpose of this Engagement Letter is then frustrated, in which case either Party may terminate this Engagement Letter immediately on written notice.

16.7 **Further Assurance:** Each Party shall do or procure to be done all such further acts and things and execute or procure the execution of all such other documents as the other Party may from time to time reasonably require for the purpose of giving such other Party the full benefit of the provisions of this Engagement Letter.

16.8 **Relationship:** The Parties are independent contractors and neither Party is agent for the other Party, nor has any authority to make any contract, whether expressly or by implication, in the name of the other Party, without such other Party's prior written consent for express purposes connected with the performance of this Engagement Letter.

16.9 **Entire Agreement:** This Engagement Letter and the documents referred to in this Engagement Letter constitute the entire agreement and understanding of the Parties and supersede any previous agreement between the Parties, usage, course of dealing or custom relating to the subject matter of this Engagement Letter. Neither Party shall rely on nor have any remedy in respect of any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether a Party or not) other than as expressly set out in this Engagement Letter as a warranty. The only remedy available to it for breach of any such warranty shall be for breach of contract under the terms of this Engagement Letter. Nothing in this Clause 16.9 shall however operate to limit or exclude any liability for fraud.

16.10 **Third Parties:** Except where otherwise stated in this Engagement Letter no provision of this Engagement Letter is intended to confer a benefit on, or to be enforceable by, any person who is not a Party and any rights that a third party might have bestowed by law (including under the Contracts (Rights of Third Parties) Act 1999) are specifically excluded.

16.11 **Assignment / Subcontracting / Novation:** Neither Party will assign this Engagement Letter or any benefits or interests arising under this Engagement Letter without the prior written consent of the other Party which will not be unreasonably withheld or delayed except that Baringa shall be permitted



to make an assignment to any Affiliate. Baringa shall only be permitted to sub-contract the provision of all or part of the Services with the Client's written consent or as permitted in this Engagement Letter but may use staff augmentation contractors subject to the same requirements as Baringa's own employees without the need to obtain prior written consent. Prior to completion of or invoicing for the Services the Parties may agree that Client's rights and obligations in this Engagement Letter may be novated to an Affiliate or SPV in which case the Parties and the relevant Affiliate or SPV shall enter into an appropriate Novation Agreement.

16.12 Law: This Engagement Letter and all non-contractual obligations arising from or connected with this Engagement Letter shall be governed by and construed in accordance with the laws of England and each Party submits to the exclusive jurisdiction of the English courts.

## **ANNEX 2: DATA PROTECTION PARTICULARS**

The subject matter and duration of the processing	<p>[Baringa's and Client's business operations and staff and customers relating to the Services.]</p> <p>[For such period as necessary for Supplier to provide the Services.]</p>
Data retention period	Baringa shall only retain Client-provided Personal Data for the periods set out in the Privacy Statement.
The nature and purpose of the processing	[To provide the Services.]
The type of personal data being processed	[As determined by access provided by Baringa and Client in respect of the Services.]
The categories of data subjects	[As determined by access provided by Baringa and Client in respect of the Services but including Baringa staff, Client staff, their contractors' staff and Client's customers.]
Who is Processor / Controller of personal data?	[Baringa will be the Processor. Client will be the Controller.]