

Appendix A – Equantiis Standard Terms and Conditions

BACKGROUND

Equantiis (Hereafter referred to as “Equantiis” or the “Service Provider”) provides management consultancy services to business clients. The Service Provider has reasonable skill, knowledge and experience in that field. These Terms and Conditions shall apply to the provision of services by the Service Provider to its clients.

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

“Agreement” means the agreement entered into by the Service Provider and the Client incorporating these Terms and Conditions (or variation thereof agreed upon by both Parties) which shall govern provision of the Services;

“Business Day” means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in United Kingdom

“Client” means the party procuring the Services from the Service Provider who shall be identified in the Agreement;

“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);

“Data Controller”, “Data Processor”, “processing”, and “data subject” shall have the meanings given to the terms “controller”, “processor”, “processing”, and “data subject” respectively in Article 4 of the GDPR;

“Fees” means any and all sums due under the Agreement from the Client to the Service Provider, as specified in the Agreement;

“ICO” means the UK’s supervisory authority, the Information Commissioner’s Office;

“Personal Data” means all such “personal data”, as defined in Article 4 of the GDPR, as is, or is to be, processed by the Data Processor on behalf of the Data Controller, as described in Schedule 2;

“Programme” means a schedule for the provision of the Services which shall set out relevant dates and times for the Services as set out in the Agreement;

"Project" means the project in relation to which the Service Provider is to provide the Services, as fully described in the Agreement;

"Services" means the services to be provided by the Service Provider to the Client as detailed in proposal/engagement letter.

"Specified Contractor" means a third-party consultant or contractor appointed in accordance with clause 4 of the Agreement who shall be instructed by the Service Provider as identified in the Programme;

"Sub-Processor" means a sub-processor appointed by the Data Processor to process the Personal Data.

"Sub-Processing Agreement" means an agreement between the Data Processor and a Sub-Processor governing the Personal Data processing carried out by the Sub-Processor, as described in Clause 10 and

"Term" means the term set out in clause 21 of this Agreement.

1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:

- (a) "writing", and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
- (b) 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;
- (c) "these Terms and Conditions" is a reference to these Terms and Conditions as amended or supplemented at the relevant time;
- (d) a clause or paragraph is a reference to a clause of these Terms and Conditions; and
- (e) a "Party" or the "Parties" refer to the parties to the Agreement.

1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.

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.

1.7 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

2. PAYMENT TERMS

- 2.1 A signed proposal along with a Purchase Order (if applicable by the client) must be received before the order is accepted.
- 2.2 Unless otherwise agreed in writing, all fees are based on a fixed price for an agreed outcome.
- 2.3 The total agreed fees of the project will be divided into equal monthly fees based on the number of months the project is forecasted by Equantiis to be delivered across.
- 2.4 Deposits are payable immediately. No project will begin, or resources will be committed until deposits are received.
- 2.5 Monthly fees are invoiced for payment monthly in advance.
- 2.6 If the client delays the project, the original monthly fee schedule will remain unchanged unless agreed by Equantiis in advance.
- 2.7 Equantiis reserves the right to pause any project should fees not be made in accordance with the due date.
- 2.8 All payments required to be made pursuant to the Agreement by either Party shall be made within 14 Business Days of receipt by that Party of the relevant invoice.
- 2.9 All payments required to be made pursuant to the Agreement by either Party shall be made in GBP 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.
- 2.10 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.
- 2.11 Without prejudice, any sums which remain unpaid shall incur interest on a daily basis at 10% above the base rate of HSBC from time to time until payment is made in full of any such outstanding sums.
- 2.12 Each Party shall:
 - (a) keep, or procure that there are kept, such records and books of account as are necessary to enable the amount of any sums payable pursuant to the Agreement to be accurately calculated;
 - (b) at the reasonable request of the other Party, allow that Party or its agent to inspect those records and books of account and, to the extent that they relate to the calculation of those sums, to take copies of them; and
 - (c) within 6 months after the end of each financial year, obtain at its own expense and supply to the other Party an auditors' certificate as to the accuracy of the sums paid by that Party pursuant to the Agreement during that period.

- 2.13 All pricing and costings quoted (unless otherwise stated) are calculated in Pounds Sterling (GBP).
- 2.14 All pricing is exclusive of VAT. VAT is levied at the prevailing rate at the time of the invoice being raised.
- 2.15 Deposits are non-refundable

3. CANCELLATION

- 3.1 Once a signed contract and PO (if applicable) have been received, the work is committed and cannot be cancelled.

4. POSTPONEMENTS & DELAYS

- 4.1 The Client shall provide Equantiis's Project Manager with at least 10 business days' notice of postponements in advance of the scheduled work. If Equantiis is not able to reasonably accommodate the postponement, especially where the consulting services require participation by client personnel, Equantiis is authorised to charge the client for time and additional expenses incurred at Equantiis standard hourly and daily rates.

5. WORKING HOURS

- 5.1 All work will be performed during standard business hours, Monday to Friday, 9 am through 5 pm hours.

6. PROJECT EXPENSES

This section provides an overview of expenses that will be charged where relevant. VAT at the prevailing rate will be added to all expenses charged.

- 6.1 Distances charged will be the return journey from Equantiis's consultants home location to the client location and distances travelled for client business during the duration of the training/consultancy, i.e. distance from the hotel to venue.
- 6.2 Mileage
 - (a) Equantiis will charge the Client mileage as per the current Inland Revenue guidelines. This is currently 45 pence per mile.
- 6.3 Subsistence
 - (a) All reasonable expenses for meals and refreshments purchased by Equantiis staff whilst travelling to, from or during client training or consultancy will be chargeable to the Client.
- 6.4 Hotel Accommodation
 - (a) When Equantiis's consultants are required to stay overnight, Equantiis will book business standard (i.e. restaurant, room service, phone/internet access) hotels within the local area. The Client can alternatively book their own hotels if they prefer, with breakfast and evening meals included. Equantiis reserve the right to change a hotel

booking where a hotel provides insufficient facilities or as travel plans are altered and will do this with as much notice as possible; however, any charges for cancellation will be borne by the Client. Equantiis will always book flexible rates, where these are offered, to minimise the risk of cancellation charges.

6.5 Travel

- (a) Where Equantiis book tickets (air/train) on behalf of a client where consultancy or training is to be supplied, all tickets will be purchased on a fully flexible basis. This is to ensure that in the event of a postponement or cancellation Equantiis may redeem the ticket at no expense to the client. Where the client is not content with flexible tickets being purchased, they may book and pay for the tickets directly. The client will however maintain full liability for any charges incurred for any travel cancellations or changes.
- (b) Equantiis expect travel times which do not cause unnecessary delay or wait times at the airport/station and reserve the right to change tickets and recharge the client the full expense, where this would occur. Equantiis expect Business class travel for flights over four hours, but shorter flights may be booked in Economy.

6.6 Airport Parking Services and Airport transfers

- (a) Equantiis will charge all costs for travelling to and from the airport along with any airport parking costs back to the client.

6.7 Taxis

- (a) Equantiis will charge the client for any journeys taken by taxi during the training/consultancy period, to and from the airport, hotel and clients premises.

6.8 Parking

- (a) Wherever possible the client should provide a convenient parking space. Where this is not possible any parking charges incurred will be charged back to the client.

6.9 Car Hire

- (a) Where car hire is necessary this will be charged back to the client

7. PROVISION OF THE SERVICES

- (a) With effect from the Commencement Date, the Service Provider shall, throughout the Term of the Agreement, provide the Services to the Client.

- (b) The Service Provider shall provide the Services with reasonable skill and care, commensurate with prevailing standards in the Management Consultancy sector in the United Kingdom.
- (c) The Service Provider shall act in accordance with all reasonable instructions given to it by the Client provided such instructions are compatible with the specification of Services provided in the Agreement.
- (d) 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.
- (e) The Service Provider shall keep the Client informed of all activities related to the Project by means of regular reports, supplied to the Client at regular intervals to be defined in the Agreement.
- (f) Milestone dates on which the Service Provider is to complete certain parts of the Services in order to enable the Client's other contractors to proceed with their agreed services (or the relevant parts thereof);
- (g) The Service Provider shall use all reasonable endeavours to accommodate any reasonable changes in the Programme that may be requested by the Client, subject to the Client's acceptance of any related reasonable changes to the Fees that may be due as a result of such changes.
- (h) The Service Provider may, in relation to certain specified matters related to the Services, act on the Client's behalf. Such matters shall not be set out in the Agreement but shall be agreed between the Parties as they arise from time to time

8. MARKETING

- 8.1 The Client and Service Provider agree to participate in joint marketing activities that promote the work that has been undertaken within this assignment.
- 8.2 The joint marketing is to promote both the client and service providers objectives to encourage good PR.
- 8.3 Upon signing of this engagement letter, a joint press release will be issued
- 8.4 Upon completion of the project, the client agrees to a case study.
- 8.5 Activities can include but not are not limited to; press releases, case studies, interviews, events and client references.
- 8.6 All activities and content to be agreed before by both parties

9. CLIENT'S OBLIGATIONS

- 9.1 The client commits to dedicate resources to deliver the agreed project within the timescales outlined in the proposal.

- 9.2 The client's own internal governance for project sign-off is not factored into project delivery and should not delay the project under any circumstances.
- 9.3 The Client 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. Such information shall include, but not necessarily be limited to, that pertaining to the priorities of the Project and the Project timetable.
- 9.4 The Client shall, within an agreed time of receiving a Programme from the Service Provider, inform the Service Provider in writing either of the Client's acceptance or shall submit, with detailed reasons, its reasons for non-acceptance, including proposed changes.
- 9.5 The Client 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.
- 9.6 In the event that the Service Provider requires the decision, approval, consent or any other communication from the Client in order to continue with the provision of the Services or any part thereof at any time, the Client shall provide the same in a reasonable and timely manner.
- 9.7 If any consents, licences or other permissions are needed from any third parties such as landlords, planning authorities, local authorities or similar, it shall be the Client's responsibility to obtain the same in advance of the provision of the Services (or the relevant part thereof).
- 9.8 If the nature of the Services requires that the Service Provider has access to the Client's premises or any other location, access to which is lawfully controlled by the Client, the Client shall ensure that the Service Provider has access to the same at the times to be agreed between the Service Provider and the Client as required.
- 9.9 Any delay in the provision of the Services resulting from the Client's failure or delay in complying with any of the provisions of clause 3 of the Agreement shall not be the responsibility or fault of the Service Provider.

10. APPOINTMENT OF THIRD PARTY CONSULTANTS AND CONTRACTORS

- 10.1 The Client may, from time to time, appoint such other third-party consultants and contractors as required to perform other services necessary for the Project. The Service Provider's involvement in such appointments shall not be required except in the event that the services provided by such third parties are likely at any time to duplicate, overlap, or in any other manner interfere with the Services provided by the Service Provider.
- 10.2 Any and all third-party consultants and contractors appointed to the Project shall be required to cooperate fully with the Service Provider and to promptly provide any and all such information reasonably required by the Service Provider to enable the Service Provider to provide the Services and comply with the Agreement.
- 10.3 The Service Provider shall be required to cooperate fully with any and all third-party consultants and contractors appointed to the Project and to promptly

provide any and all such information reasonably required by any such consultants and contractors to enable them to provide the relevant agreed services to the Client in compliance with all relevant agreements.

- 10.4 The Service Provider may, from time to time, identify certain parts of the Project which require the services of a third-party specialist. In such cases, the Service Provider shall inform the Client of the need for such a specialist and it shall be the Client's responsibility to appoint and contract with the specialist. The Service Provider shall not be a party to any such contracts.
- 10.5 The Client shall keep the Service Provider fully informed of any and all third-party consultants and contractors appointed to the Project.
- 10.6 In certain cases, the Service Provider may require third-party consultants and contractors appointed by the Client to consider and comment upon certain work completed by the Service Provider, where such work relates to the services provided by those third-party consultants and contractors, in order that the Service Provider may make any reasonably necessary and appropriate adjustments and revisions to that work.
- 10.7 Certain Specified Contractors shall be instructed only via the Service Provider. The Client shall not instruct Specified Contractors directly without the express written consent of the Service Provider. The Service Provider shall not be responsible for any instructions issued in breach of this provision.

11. LIABILITY, INDEMNITY AND INSURANCE

- 11.1 The Service Provider shall ensure that it has in place at all times suitable and valid insurance that shall include public liability insurance.
- 11.2 In the event that the Service Provider fails to perform the Services with reasonable care and skill, it shall carry out any and all necessary remedial action at no additional cost to the Client.
- 11.3 The Service Provider's total liability for any loss or damage in respect of any individual occurrence or a series thereof arising out of any one event shall be limited to £2million pounds or to the net contribution calculated in accordance with sub-clause 11.3 of the Agreement, whichever is the smaller sum.
- 11.4 The net contribution referred to in sub-clause 11.3 shall be calculated on the basis of what is deemed just and equitable for the Service Provider to pay, taking into account the Service Provider's responsibility for the loss or damage in question and comparing that responsibility with that of all other third parties providing services for the Project for the same loss or damage. The net contribution shall be assessed on the following assumptions:
 - (a) that such third parties have provided to the Client contractual undertakings which are no less onerous than those under the Agreement with the Service Provider with respect to liability for such loss or damage;
 - (b) that there are no exclusions or limitations of liability nor joint insurance or co-insurance provisions between the Client and any such third party; and

- (c) that such third parties are deemed to have paid to the Client such sums as it would be just and equitable for them to pay, having regard to the extent of their responsibility for the loss or damage in question.
- 11.5 The Service Provider shall not be liable for any loss or damage suffered by the Client that results from the Client's failure to follow any instructions given by the Service Provider.
- 11.6 Nothing in this Agreement shall limit or exclude the Service Provider's liability for death or personal injury.
- 11.7 The Client and Service Provider agree to mutually indemnify each other against any costs, liability, damages, loss, claims or proceedings arising from loss or damage to any equipment (including that belonging to any third parties appointed by the Service Provider) caused by either party, its agents or employees.
- 11.8 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.
- 11.9 Except to the extent that it is not lawful to exclude such liability, we the Service Provider shall not be liable to you the Client or to anyone else for any loss or damage whatever or however caused (and whether or not caused by negligence) arising directly or indirectly in connection with a Contract, in excess £2,000,000.

12. PROVISION OF THE SERVICES AND PROCESSING PERSONAL DATA

- 12.1 The Data Processor is only to carry out the Services outlined in section within the engagement letter, and only to process the Personal Data received from the Data Controller:
 - (a) for the purposes of those Services and not for any other purpose;
 - (b) to the extent and in such a manner as is necessary for those purposes; and
 - (c) strictly in accordance with the express written authorisation and instructions of the Data Controller (which may be specific instructions or instructions of a general nature or as otherwise notified by the Data Controller to the Data Processor).

13. DATA PROTECTION COMPLIANCE

- 13.1 All instructions given by the Data Controller to the Data Processor shall be made in writing and shall at all times be in compliance with the GDPR and other applicable laws. The Data Processor shall act only on such written instructions from the Data Controller unless the Data Processor is required by law to do otherwise (as per Article 29 of the GDPR).

- 13.2 The Data Processor shall promptly comply with any request from the Data Controller requiring the Data Processor to amend, transfer, delete, or otherwise dispose of the Personal Data.
- 13.3 The Data Processor shall transfer all Personal Data to the Data Controller on the Data Controller's request in the formats, at the times, and in compliance with the Data Controller's written instructions.
- 13.4 Both Parties shall comply at all times with the GDPR and other applicable laws and shall not perform their obligations under this Agreement or any other agreement or arrangement between themselves in such way as to cause either Party to breach any of its applicable obligations under the GDPR.
- 13.5 The Data Controller hereby warrants, represents, and undertakes that the Personal Data shall comply with the GDPR in all respects including, but not limited to, its collection, holding, and processing.
- 13.6 The Data Processor agrees to comply with any reasonable measures required by the Data Controller to ensure that its obligations under this Agreement are satisfactorily performed in accordance with any and all applicable legislation from time to time in force (including, but not limited to, the GDPR) and any best practice guidance issued by the ICO.
- 13.7 The Data Processor shall provide all reasonable assistance (at the Data Controller's cost) to the Data Controller in complying with its obligations under the GDPR with respect to the security of processing, the notification of personal data breaches, the conduct of data protection impact assessments, and in dealings with the ICO.
- 13.8 When processing the Personal Data on behalf of the Data Controller, the Data Processor shall:
 - (a) not process the Personal Data outside the European Economic Area (all EU member states, plus Iceland, Liechtenstein, and Norway) ("EEA") without the prior written consent of the Data Controller and, where the Data Controller consents to such a transfer to a country that is outside of the EEA, to comply with the obligations of Data Processors under the provisions applicable to transfers of Personal Data to third countries set out in Article 5 of the GDPR by providing an adequate level of protection to any Personal Data that is transferred;
 - (b) not transfer any of the Personal Data to any third party without the written consent of the Data Controller and, in the event of such consent, the Personal Data shall be transferred strictly subject to the terms of a suitable agreement, as set out in Clause 18;
 - (c) process the Personal Data only to the extent, and in such manner, as is necessary in order to comply with its obligations to the Data Controller or as may be required by law (in which case, the Data Processor shall inform the Data Controller of the legal requirement in question before processing the Personal Data for that purpose unless prohibited from doing so by law);

- (d) implement appropriate technical and organisational measures, as described in Schedule 3, and take all steps necessary to protect the Personal Data against unauthorised or unlawful processing, accidental loss, destruction, damage, alteration, or disclosure. The Data Processor shall inform the Data Controller in advance of any changes to such measures;
- (e) if so requested by the Data Controller (and within the timescales required by the Data Controller) supply further details of the technical and organisational systems in place to safeguard the security of the Personal Data held and to prevent unauthorised access;
- (f) keep detailed records of all processing activities carried out on the Personal Data in accordance with the requirements of Article 30(2) of the GDPR;
- (g) make available to the Data Controller any and all such information as is reasonably required and necessary to demonstrate the Data Processor's compliance with the GDPR;
- (h) on at least 30 days' prior notice, submit to audits and inspections and provide the Data Controller with any information reasonably required in order to assess and verify compliance with the provisions of this Agreement and both Parties' compliance with the requirements of the GDPR. The requirement to give notice will not apply if the Data Controller believes that the Data Processor is in breach of any of its obligations under this Agreement or under the law; and
- (i) inform the Data Controller immediately if it is asked to do anything that infringes the GDPR or any other applicable data protection legislation.

14. DATA SUBJECT ACCESS, COMPLAINTS, AND BREACHES

- 14.1 The Data Processor shall, at the Data Controller's cost, assist the Data Controller in complying with its obligations under the GDPR. In particular, the following shall apply to data subject access requests, complaints, and data breaches.
- 14.2 The Data Processor shall notify the Data Controller without undue delay if it receives:
 - (a) a subject access request from a data subject; or
 - (b) any other complaint or request relating to the processing of the Personal Data.
- 14.3 The Data Processor shall [, at the Data Controller's cost, cooperate fully with the Data Controller and assist as required in relation to any subject access request, complaint, or other request, including by:
 - (a) providing the Data Controller with full details of the complaint or request;

- (b) providing the necessary information and assistance in order to comply with a subject access request;
 - (c) providing the Data Controller with any Personal Data it holds in relation to a data subject (within the timescales required by the Data Controller); and
 - (d) providing the Data Controller with any other information requested by the Data Controller.
- 14.4 The Data Processor shall notify the Data Controller immediately if it becomes aware of any form of Personal Data breach, including any unauthorised or unlawful processing, loss of, damage to, or destruction of any of the Personal Data.

15. LIABILITY, INDEMNITY AND INSURANCE

- 15.1 The Service Provider shall ensure that it has in place at all times suitable and valid insurance that shall include public liability insurance.
- 15.2 In the event that the Service Provider fails to perform the Services in accordance with the Scope of Services, it shall carry out any and all necessary remedial action at no additional cost to the Client.
- 15.3 The Service Provider's total liability for any loss or damage in respect of any individual occurrence or a series thereof arising out of any one event shall be limited to £2million pounds or to the net contribution calculated in accordance with sub-clause 11.3 of the Agreement, whichever is the smaller sum.
- 15.4 The net contribution referred to in sub-clause 11.3 shall be calculated on the basis of what is deemed just and equitable for the Service Provider to pay taking into account the Service Provider's responsibility for the loss or damage in question and comparing that responsibility with that of all other third parties providing services for the Project for the same loss or damage. The net contribution shall be assessed on the following assumptions:
- (a) that such third parties have provided to the Client contractual undertakings which are no less onerous than those under the Agreement with the Service Provider with respect to liability for such loss or damage;
 - (b) that there are no exclusions or limitations of liability nor joint insurance or co-insurance provisions between the Client and any such third party; and
 - (c) that such third parties are deemed to have paid to the Client such sums as it would be just equitable for them to pay have regard to the extent of their responsibility for the loss or damage in question.
- 15.5 The Service Provider shall not be liable for any loss or damage suffered by the Client that results from the Client's failure to follow any instructions given by the Service Provider.

- 15.6 Nothing in this Agreement shall limit or exclude the Service Provider's liability for death or personal injury.
- 15.7 The Client and Service Provider agree to mutually indemnify each other against any costs, liability, damages, loss, claims or proceedings arising from loss or damage to any equipment (including that belonging to any third parties appointed by the Service Provider) caused by either party, its agents or employees.
- 15.8 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.
- 15.9 Except to the extent that it is not lawful to exclude such liability, and liability in connection with a breach of Clause 8, we the Service Provider shall not be liable to you the Client or to anyone else for any loss or damage whatever or however caused (and whether or not caused by negligence) arising directly or indirectly in connection with a Contract, in excess £2,000,000.
- 15.10 The Data Controller shall be liable for, and shall indemnify (and keep indemnified) the Data Processor in respect of any and all action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and payments on a solicitor and client basis), or demand suffered or incurred by, awarded against, or agreed to be paid by, the Data Processor [and any Sub-Processor] arising directly or in connection with:
- (a) any non-compliance by the Data Controller with the GDPR or other applicable legislation;
 - (b) any Personal Data processing carried out by the Data Processor in accordance with instructions given by the Data Controller that infringe the GDPR or other applicable legislation; or
 - (c) any breach by the Data Controller of its obligations under this Agreement,
- 15.11 except to the extent that the Data Processor is liable under sub-Clause 13.2
- 15.12 The Data Processor shall be liable for, and shall indemnify (and keep indemnified) the Data Controller in respect of any and all action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and payments on a solicitor and client basis), or demand suffered or incurred by, awarded against, or agreed to be paid by, the Data controller arising directly or in connection with the Data Processor's Personal Data processing activities that are subject to this Agreement:
- (a) only to the extent that the same results from the Data Processor's breach of this Agreement; and
 - (b) not to the extent that the same is or are contributed to by any breach of this Agreement by the Data Controller.
- 15.13 The Data Controller shall not be entitled to claim back from the Data Processor any sums paid in compensation by the Data Controller in respect of any

damage to the extent that the Data Controller is liable to indemnify the Data Processor under sub-Clause 32.1

- 15.14 Nothing in this Agreement (and in particular, this Clause 32) shall relieve either Party of, or otherwise affect, the liability of either Party to any data subject, or for any other breach of that Party's direct obligations under the GDPR. Furthermore, the Data Processor hereby acknowledges that it shall remain subject to the authority of the ICO and shall co-operate fully therewith, as required, and that failure to comply with its obligations as a Data Processor under the GDPR may render it subject to the fines, penalties, and compensation requirements set out in the GDPR.

16. INTELLECTUAL PROPERTY RIGHTS

- 16.1 All copyright, database rights, and other intellectual property rights subsisting in the Personal Data (including but not limited to any updates, amendments, or adaptations to the Personal Data made by either the Data Controller or the Data Processor) shall belong to the Data Controller or to any other applicable third party from whom the Data Controller has obtained the Personal Data under licence (including, but not limited to, data subjects, where applicable). The Data Processor is licensed to use such Personal Data under such rights only for the purposes of the Services, and in accordance with this Agreement.

17. CONFIDENTIALITY

- 17.1 The Data Processor shall maintain the Personal Data in confidence, and in particular, unless the Data Controller has given written consent for the Data Processor to do so, the Data Processor shall not disclose any Personal Data supplied to the Data Processor by, for, or on behalf of, the Data Controller to any third party. The Data Processor shall not process or make any use of any Personal Data supplied to it by the Data Controller otherwise than in connection with the provision of the Services to the Data Controller.
- 17.2 The Data Processor shall ensure that all personnel who are to access and/or process any of the Personal Data are contractually obliged to keep the Personal Data confidential.
- 17.3 The obligations set out in in this Clause 17 shall continue for a period of 90 days after the cessation of the provision of Services by the Data Processor to the Data Controller.
- 17.4 Nothing in this Agreement shall prevent either Party from complying with any requirement to disclose Personal Data where such disclosure is required by law. In such cases, the Party required to disclose shall notify the other Party of the disclosure requirements prior to disclosure, unless such notification is prohibited by law.

18. APPOINTMENT OF SUB-PROCESSORS

- 18.1 The Data Processor shall not sub-contract any of its obligations or rights under this Agreement without the prior written consent of the Data Controller (such consent not to be unreasonably withheld).

- 18.2 In the event that the Data Processor appoints a Sub-Processor (with the written consent of the Data Controller), the Data Processor shall:
- (a) enter into a Sub-Processing Agreement with the Sub-Processor which shall impose upon the Sub-Processor the same obligations as are imposed upon the Data Processor by this Agreement and which shall permit both the Data Processor and the Data Controller to enforce those obligations; and
 - (b) ensure that the Sub-Processor complies fully with its obligations under the Sub-Processing Agreement and the GDPR.
- 18.3 In the event that a Sub-Processor fails to meet its obligations under any Sub-Processing Agreement, the Data Processor shall remain fully liable to the Data Controller for failing to meet its obligations under this Agreement.

19. DELETION AND/OR DISPOSAL OF PERSONAL DATA

- 19.1 The Data Processor shall, at the written request of the Data Controller, delete (or otherwise dispose of) the Personal Data or return it to the Data Controller in the format(s) reasonably requested by the Data Controller within a reasonable time after the earlier of the following:
- (a) the end of the provision of the Services under the Service Agreement
 - (b) the processing of that Personal Data by the Data Processor is no longer required for the performance of the Data Processor's obligations under this Agreement.
- 19.2 Following the deletion, disposal, or return of the Personal Data under sub-Clause 19, the Data Processor shall delete (or otherwise dispose of) all further copies of the Personal Data that it holds, unless retention of such copies is required by law, in which case the Data Processor shall inform the Data Controller of such requirement(s) in writing.

20. FORCE MAJEURE

- 20.1 No Party to the Agreement will 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, acts of war, governmental action or any other event that is beyond the control of the Party in question.
- 20.2 In the event that a Party to the Agreement cannot perform their obligations thereunder as a result of force majeure for a continuous period of 12 months, 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.

21. TERM AND TERMINATION

- 21.1 The Agreement shall come into force on the agreed Commencement Date and shall continue for an agreed period of one (1) month (the "Term") from that date, subject to the provisions of clause 21 of the Agreement.
- 21.2 Either Party shall have the right, exercisable by giving not less than 7 days written notice to the other at any time prior to the expiry of the Term specified in sub-clause 21.1 of the Agreement (or any further period for which the Agreement has been extended) to extend the Agreement for a further period.
- 21.3 Either Party may terminate the Agreement by giving to the other not less than 90 days written notice, to expire on or at any time after the minimum term of the Agreement (which shall be defined in the Agreement).
- 21.4 Either Party may immediately terminate the Agreement by giving written notice to the other Party if:
 - 21.5 any sum owing to that Party by the other Party under any of the provisions of the Agreement is not paid within 90 Business Days of the due date for payment;
 - 21.6 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 30 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;
 - 21.7 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;
 - 21.8 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);
 - 21.9 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);
 - 21.10 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
 - 21.11 other Party ceases, or threatens to cease, to carry on business; or
 - 21.12 control of that 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 10, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.
- 21.13 For the purposes of sub-clause 10.4.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 21.14 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.

22. EFFECTS OF TERMINATION

- 22.1 Upon the termination of the Agreement for any reason:
- 22.2 any sum owing by either Party to the other under any of the provisions of the Agreement shall become immediately due and payable;
- 22.3 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;
- 22.4 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 exist at or before the date of termination;
- 22.5 subject as provided in clause 11 of the Agreement and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and
- 22.6 each Party shall (except to the extent referred to in clause 8 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.

23. NO WAIVER

- 23.1 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.

24. COSTS

- 24.1 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.

25. ASSIGNMENT AND SUB-CONTRACTING

- 25.1 Subject to sub-clause 16.2 The Agreement shall be personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights thereunder, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of the other Party, such consent not to be unreasonably withheld.
- 25.2 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 omission of such other member or sub-contractor shall, for the purposes of the Agreement, be deemed to be an act or omission of the Service Provider.

26. TIME

- 26.1 All times and dates referred to in the Agreement shall be of the essence of the Agreement.

27. RELATIONSHIP OF THE PARTIES

- 27.1 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.

28. NON-SOLICITATION

- 28.1 Neither Party shall, for the term of the Agreement and for a period of 12 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.
- 28.2 Neither Party shall, for the term of the Agreement and for a period of 12 months after its termination or expiry, solicit or entice away from the other Party any client or client where any such solicitation or enticement would cause damage to the business of that-party [without the express written consent of that-party].

29. THIRD PARTY RIGHTS

- 29.1 No part of the Agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.
- 29.2 Subject to clause 29 of the Agreement, the Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.

30. NOTICES

- 30.1 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.
- 30.2 Notices shall be deemed to have been duly given:
- 30.3 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
- 30.4 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or
- 30.5 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
- 30.6 on the tenth business day following mailing, if mailed by airmail, postage prepaid.
- 30.7 In each case, notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

31. SEVERANCE

- 31.1 In the event that one or more of the provisions of the Agreement and/or of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Agreement and/or these Terms and Conditions. The remainder of the Agreement and/or these Terms and Conditions shall be valid and enforceable.

32. LAW AND JURISDICTION

- 32.1 The Agreement and these Terms and Conditions (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.