

Transfer360 Platform Terms

Terms and Conditions

1. Interpretation

- 1.1 The terms defined in the Contract Particulars and the definitions and rules of interpretation in this clause apply in this agreement.

Authorised Users: those employees, agents and independent contractors of the Corresponding Party who are authorised by the Corresponding Party to use the Services and the Documentation.

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

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in 10.5 or 10.6.

Corresponding Party: the Notifying Party or, as the case may be, the Responding Party.

Corresponding Party Data: the data inputted by the Corresponding Party or Authorised Users on the Platform.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).

Documentation: the description of the Services and the user instructions for the Services on the Platform.

Domestic Law: the law of the United Kingdom or a part of the United Kingdom.

DVLA: the Driver Vehicle and Licensing Agency of the UK.

Effective Date: the date of this agreement.

Heightened Cybersecurity Requirements: any laws, regulations, codes, guidance (from regulatory and advisory bodies. Whether mandatory or not), international and national standards, industry schemes and sanctions, which are applicable to either the Corresponding Party or an Authorised User (but not Transfer360) relating to security of network and information systems and security breach and incident reporting requirements, which may include the cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

Normal Business Hours: 8.00 am to 6.00 pm local UK time, each Business Day.

Notifying Party: where not named in the Contract Particulars, the person issuing a Ticket in respect of the Vehicle.

Platform: Transfer360's platform at transfer360.co.uk or any other website notified to the Corresponding Party by Transfer360 from time to time.

Responding Party: where not named in the Contract Particulars, the keeper and lessor of the Vehicle.

Services: the subscription services provided by Transfer360 to the Corresponding Party under this agreement on the Platform as more particularly described in the Contract Particulars and the Documentation.

Software: the online software applications provided by Transfer360 as part of the Services.

Subscription Term: the term of this agreement beginning on the Effective Date.

Ticket: any ticket relating to a Vehicle which is the subject of communications between the Corresponding Party and a third party on the Platform.

Vehicle: a vehicle which is the subject of communications between the Corresponding Party and a third party on the Platform.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

VRM: the Vehicle Registration Mark as administered and co-ordinated by the DVLA.

Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be construed accordingly.

- 1.2 Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.
- 1.3 Clause headings shall not affect the interpretation of this agreement.
- 1.4 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.10 A reference to writing or written includes faxes but not e-mail.
- 1.11 References to clauses are to the clauses of this agreement.

2. Services

- 2.1 Subject to the Corresponding Party paying the Subscription Fees, the restrictions set out in this clause 2 and the other terms and conditions of this agreement, Transfer360 hereby grants to the Corresponding Party a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Corresponding Party's internal business operations.
- 2.2 In relation to the Authorised Users, the Corresponding Party undertakes that:
- (a) each Authorised User shall keep a secure password for their use of the Services and Documentation and that each Authorised User shall keep their password confidential;
 - (b) it shall maintain a written, up to date list of current Authorised Users and provide such list to Transfer360 within 5 Business Days of Transfer360's written request at any time or times;
 - (c) it shall permit Transfer360 or Transfer360's designated auditor to audit the Services in order to establish the name and password of each Authorised User and the Corresponding Party's data processing facilities to audit compliance with this agreement. Each such audit may be conducted no more than once per quarter, at Transfer360's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Corresponding Party's normal conduct of business;
 - (d) if any of the audits referred to in 2.2(c) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Transfer360's other rights, the Corresponding Party shall promptly disable such passwords and Transfer360 shall not issue any new passwords to any such individual.
- 2.3 The Corresponding Party shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - (b) facilitates illegal activity;
 - (c) depicts sexually explicit images;
 - (d) promotes unlawful violence;

- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property;

and Transfer360 reserves the right, without liability or prejudice to its other rights to the Corresponding Party, to disable the Corresponding Party's access to any material that breaches the provisions of this clause.

2.4 The Corresponding Party shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- (c) use the Services and/or Documentation to provide services to third parties; or
- (d) subject to 20.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; or
- (f) introduce or permit the introduction of, any Virus or Vulnerability into Transfer360's network and information systems.

2.5 The Corresponding Party shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Transfer360.

2.6 The rights provided under this clause 2 are granted to the Corresponding Party only, and shall not be considered granted to any subsidiary or holding company of the Corresponding Party.

3. Services

3.1 Transfer360 shall, during the Subscription Term, provide the Services and make available the Documentation to the Corresponding Party on and subject to the terms of this agreement.

- 3.2 Transfer360 shall use commercially reasonable endeavours to make the Services available 99.5% of the time, except for:
- (a) planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time; and
 - (b) unscheduled maintenance performed outside Normal Business Hours, provided that Transfer360 has used reasonable endeavours to give the Corresponding Party at least 6 Normal Business Hours' notice in advance.

- 3.3 Transfer360 will, as part of the Services provide the Corresponding Party with Transfer360's standard Corresponding Party support services during Normal Business Hours.

4. Data Protection

- 4.1 Each party will comply with all applicable requirements of the Data Protection Legislation. This clause 4 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

- 4.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Corresponding Party is the Controller and Transfer360 is the Processor and the scope, nature and purpose of processing by Transfer360, the duration of the processing and the types of Personal Data and categories of Data Subject are as follows: Name, telephone number and email address of staff of the Corresponding Party; name, address, VRM of the Hirer. The personal data is stored and communicated between Platform users to fulfil Transfer360's obligations in relation to the Services. The name and address of the Hirer will only be stored until up to thirty days after receipt of confirmation from the Notifying Party that it has been received. The list of VRMs and Corresponding Party details will be held for up to six years for data audit and tracking.

- 4.3 Without prejudice to the generality of 4.1, the Corresponding Party will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Transfer360 for the duration and purposes of this agreement.

- 4.4 Without prejudice to the generality of 4.1, Transfer360 shall, in relation to any Personal Data processed in connection with the performance by Transfer360 of its obligations under this agreement:

- a. process that Personal Data only on the documented written instructions of the Corresponding Party unless Transfer360 is required by Domestic Law to otherwise process that Personal Data. Where Transfer360 is relying on Domestic Law as the basis for processing Personal Data, Transfer360 shall promptly notify the Corresponding Party of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits Transfer360 from so notifying the Corresponding Party;
- b. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Corresponding Party, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard

to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- c. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- d. not transfer any Personal Data outside the UK or EEA unless the prior written consent of the Corresponding Party has been obtained and the following conditions are fulfilled:
 - i. the Corresponding Party or Transfer360 has provided appropriate safeguards in relation to the transfer;
 - ii. the data subject has enforceable rights and effective legal remedies;
 - iii. Transfer360 complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - iv. Transfer360 complies with reasonable instructions notified to it in advance by the Corresponding Party with respect to the processing of the Personal Data;
- e. assist the Corresponding Party, at the Corresponding Party's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- f. notify the Corresponding Party without undue delay on becoming aware of a Personal Data Breach;
- g. at the written direction of the Corresponding Party, delete or return Personal Data and copies thereof to the Corresponding Party on termination of the agreement unless required by Domestic Law to store the Personal Data; and
- h. maintain complete and accurate records and information to demonstrate its compliance with this clause 4 and allow for audits by the Corresponding Party or the Corresponding Party's designated auditor and immediately inform the Corresponding Party if, in the opinion of Transfer360, an instruction infringes the Data Protection Legislation.

- 4.5 The Corresponding Party consents to Transfer360 appointing GoogleCloud as a third-party processor of Personal Data under this agreement. Transfer360 confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business and in either case which Transfer360 undertakes reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Corresponding Party and Transfer360, Transfer360 shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 4.5.

5. Third party Users

The Corresponding Party acknowledges that the Services enable it to access and communicate with other users of the Platform and that it does so solely at its own risk. Transfer360 makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content of such communication (including the exchange of Corresponding Party Data) or any action taken on the basis of that communication. Any agreement entered into and any transaction completed between the Corresponding Party and another user of the Platform is between the Corresponding Party and the relevant third party, and not Transfer360.

6. Transfer360's obligations

- 6.1 Transfer360 undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

- 6.2 The undertaking at 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Transfer360's instructions, or modification or alteration of the Services by any party other than Transfer360 or Transfer360's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Transfer360 will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Corresponding Party with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Corresponding Party's sole and exclusive remedy for any breach of the undertaking set out in 6.1.

- 6.3 Transfer360:

(a) does not warrant that:

- (i) the Corresponding Party's use of the Services will be uninterrupted or error-free; or
- (ii) that the Services and/or the information obtained by the Corresponding Party through the Services will meet the Corresponding Party's requirements; or
- (iii) the Software or the Services will be free from Vulnerabilities or Viruses; or
- (iv) the Software, Documentation or Services will comply with any Heightened Cybersecurity Requirements;

(b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities,

including the internet, and the Corresponding Party acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities. Corresponding Party further acknowledges and agrees that it does not rely solely upon the Services to ensure the proper processing of Tickets and that it is responsible for maintaining appropriate alternative processing methods including to meet the processing requirements of third parties;

- (c) save where an error in the Corresponding Party Data is caused by the act or omission of Transfer360, is not responsible for any inaccurate or incomplete Corresponding Party Data nor for any delay in the entering of Corresponding Party Data on the Platform.

- 6.4 This agreement shall not prevent Transfer360 from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.
- 6.5 Transfer360 warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.
- 6.6 Transfer360 shall follow its standard archiving procedures for Corresponding Party Data as varied by Transfer360 in its sole discretion from time to time. In the event of any loss or damage to Corresponding Party Data, the Corresponding Party's sole and exclusive remedy against Transfer360 shall be for Transfer360 to use reasonable commercial endeavours to restore the lost or damaged Corresponding Party Data from the latest back-up of such Corresponding Party Data maintained by Transfer360. Transfer360 shall not be responsible for any loss, destruction, alteration or disclosure of Corresponding Party Data caused by any third party (except those third parties sub-contracted by Transfer360 to perform services related to Corresponding Party Data maintenance and back-up for which it shall remain fully liable).

7. Corresponding Party's obligations

7.1 The Corresponding Party shall:

- (a) provide Transfer360 with:
 - (i) all necessary co-operation in relation to this agreement; and
 - (ii) all necessary access to such information as may be required by Transfer360, in the case of a Responding Party a list of all vehicles in respect of which it is the Registered Keeper with the DVLA and the VRM of each vehicle;

in order to provide the Services, including but not limited to, security access information and configuration services;
- (b) without affecting its other obligations under this agreement, comply with all applicable laws and regulations with respect to its activities under this agreement;
- (c) where it is a Responding Party, only communicate using the Platform in relation to a Vehicle of which it (or its client which shall not itself lease the Vehicle) is the Registered Keeper with the DVLA;
- (d) carry out all other Corresponding Party responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Corresponding Party's provision of such assistance as agreed by the parties, Transfer360 may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (e) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;

- (f) obtain and shall maintain all necessary licences, consents, and permissions necessary for Transfer360, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
- (g) ensure that its network and systems comply with the relevant specifications provided by Transfer360 from time to time; and
- (h) be, to the extent permitted by law and except as otherwise expressly provided in this agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Transfer360's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Corresponding Party's network connections or telecommunications links or caused by the internet.

7.2 The Corresponding Party shall own all right, title and interest in and to all of the Corresponding Party Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Corresponding Party Data.

8. **Charges and payment**

8.1 The Corresponding Party shall pay the Subscription Fees to Transfer360 in accordance with the Payment Terms.

8.2 If Transfer360 is not able to take payment in accordance with the Direct Debit Details and without prejudice to any other rights and remedies of Transfer360:

- (a) Transfer360 may, without liability to the Corresponding Party, disable the Corresponding Party's password, account and access to all or part of the Services and Transfer360 shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of Transfer360's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgement.

8.3 All amounts and fees stated or referred to in this agreement:

- (a) shall be payable in pounds sterling;
- (b) are non-cancellable and non-refundable;
- (c) are exclusive of value added tax, which shall be added to Transfer360's invoice(s) at the appropriate rate.

9. **Proprietary rights**

9.1 The Corresponding Party acknowledges and agrees that Transfer360 and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as

expressly stated herein, this agreement does not grant the Corresponding Party any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

- 9.2 Transfer360 confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

10. **Confidentiality**

- 10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 10.2 Subject to 10.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 10.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this 10.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 10.5 The Corresponding Party acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Transfer360's Confidential Information.
- 10.6 Transfer360 acknowledges that the Corresponding Party Data is the Confidential Information of the Corresponding Party.
- 10.7 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such

consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

10.8 The Corresponding Party shall not, during the term of this agreement, directly or indirectly approach, solicit, or contract with any other user of the Platform (including any Notifying Party or Responding Party) for the provision of services similar to or in competition with those provided through the Platform, except via the Platform or with the prior written consent of Transfer360.

10.9 The above provisions of this 10 shall survive termination of this agreement, however arising.

11. **Indemnity**

11.1 Without prejudice to Transfer360's obligations to provide the Services under this agreement, the Corresponding Party shall defend, indemnify and hold harmless Transfer360 against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Corresponding Party's use of the Services and/or Documentation, provided that:

- (a) the Corresponding Party is given prompt notice of any such claim;
- (b) Transfer360 provides reasonable co-operation to the Corresponding Party in the defence and settlement of such claim, at the Corresponding Party's expense; and
- (c) the Corresponding Party is given sole authority to defend or settle the claim.

11.2 Transfer360 shall defend the Corresponding Party, its officers, directors and employees against any claim that the Corresponding Party's use of the Services or Documentation in accordance with this agreement infringes any patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Corresponding Party for any amounts awarded against the Corresponding Party in judgment or settlement of such claims, provided that:

- (a) Transfer360 is given prompt notice of any such claim;
- (b) the Corresponding Party does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to Transfer360 in the defence and settlement of such claim, at Transfer360's expense; and
- (c) Transfer360 is given sole authority to defend or settle the claim.

11.3 In the defence or settlement of any claim, Transfer360 may procure the right for the Corresponding Party to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Corresponding Party without

any additional liability or obligation to pay liquidated damages or other additional costs to the Corresponding Party.

- 11.4 In no event shall Transfer360, its employees, agents and sub-contractors be liable to the Corresponding Party to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than Transfer360; or
 - (b) the Corresponding Party's use of the Services or Documentation in a manner contrary to the instructions given to the Corresponding Party by Transfer360; or
 - (c) the Corresponding Party's use of the Services or Documentation after notice of the alleged or actual infringement from Transfer360 or any appropriate authority.
- 11.5 The foregoing and 12.3(b) state the Corresponding Party's sole and exclusive rights and remedies, and Transfer360's (including Transfer360's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

12. Limitation of liability

12.1 Except as expressly and specifically provided in this agreement:

- (a) the Corresponding Party assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Corresponding Party. Transfer360 shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Transfer360 by the Corresponding Party in connection with the Services, or any actions taken by Transfer360 at the Corresponding Party's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- (c) the Services and the Documentation are provided to the Corresponding Party on an "as is" basis.

12.2 Nothing in this agreement excludes the liability of Transfer360:

- (a) for death or personal injury caused by Transfer360's negligence; or
- (b) for fraud or fraudulent misrepresentation.

12.3 Subject to clause 12.1 and 12.2:

- (a) Transfer360 shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any

special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and

- (b) Transfer360's total aggregate liability in contract (including in respect of the indemnity at 11.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to an amount equal to the total Subscription Fees paid by the Corresponding Party during the 12 months immediately preceding the date on which the claim arose.

13. Term and termination

13.1 This agreement shall, unless otherwise terminated as provided in this 13, commence on the Effective Date and shall continue unless:

- (a) either party gives to the other party written notice of termination at least equal to the Notice Period; or
- (b) otherwise terminated in accordance with the provisions of this agreement.

13.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 15 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986).

13.3 On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate and the Corresponding Party shall immediately cease all use of the Services and/or the Documentation;
- (b) Transfer360 may destroy or otherwise dispose of any of the Corresponding Party Data in its possession; and
- (c) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

14. Force majeure

Transfer360 shall have no liability to the Corresponding Party under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Transfer360 or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Transfer360s or sub-contractors, provided that the Corresponding Party is notified of such an event and its expected duration.

15. Variation

15.1 Subject to clause 15.2, no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15.2 Transfer360 shall be entitled to vary this agreement and/or the Services and Documentation at any time to the extent necessary to give effect to changes in Domestic Law and related and applicable regulatory requirements.

16. Waiver

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

17. Rights and remedies

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

18. Severance

18.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

18.2 If any provision or part-provision of this agreement is deemed deleted under 18.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

19. Entire agreement

19.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

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

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

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

20. **Assignment**

20.1 The Corresponding Party shall not, without the prior written consent of Transfer360, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

20.2 Transfer360 may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

21. **No partnership or agency**

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

22. **Third party rights**

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

23. **Counterparts**

This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

24. **Notices**

24.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by email to the email address habitually used by the recipient in relation to this agreement.

24.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have

been received at the time of transmission (as shown by the timed printout obtained by the sender).

25. **Governing law**

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

26. **Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).