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SERVICES RETAINER AGREEMENT (PLUS ADDITIONAL HOURS)

**THIS SERVICES RETAINER AGREEMENT**

day of

**BETWEEN:**

- (1) <<Name of Provider>> [a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at] **OR** [of <<insert Address>> ("the Provider")]
- (2) <<Name of Client>> [a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at] **OR** [of <<insert Address>> ("the Client")]

**WHEREAS:**

- (1) The Provider offers to provide consultancy [advertising] [business] [creative] [marketing] [insert nature of services>>]. The Provider has reasonable skill, knowledge and experience in that field.
- (2) The Client's business comprises <<insert nature of business>>.
- (3) The Client wishes to engage the Provider on a retainer basis for the Term to provide the Services.
- (4) The Provider and the Client agree that the Provider will provide the said type(s) of services to the Client and in consideration thereof the Client will pay the retainer [and additional] fees.

**IT IS AGREED** as follows:

**1. Definitions and Interpretation**

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the meanings set out below:

**"Additional Fees"**

the amounts specified in Schedule 2 as "Additional Fees" and becoming due to the Provider in accordance with this Agreement;

**"Business Day"**

any day (other than Saturday or Sunday) on which banks are open in England & Wales in the full range of normal business;

**"Commencement Date"**

the date on which provision of the Services commences, as set out in sub-Clause 11.1;

**"Confidential Information"**

information disclosed to either Party, information disclosed to that Party by the other Party in connection with this Agreement, whether in writing or any other medium, whether or not the information is expressly identified as confidential or marked as such);

**“Data Protection Legislation”**

and until EU Regulation (EU) 2016/679 (General Data Protection Regulation) is no longer directly applicable in the UK and any national implementing legislation, and secondary legislation (as it may from time to time), in the UK and any legislation which succeeds it.

**“Intellectual Property Rights”**

and all rights in any patents, trade marks, registered designs, and rights to apply for any of those, business and company names, names and e-mail addresses, trade marks and service marks, database rights, know-how, rights in inventions;

over licences, consents, orders, otherwise in relation to a right in

the same or similar effect or nature as paragraphs (a) and (b) which now or may subsist; and

the sum payable for past infringements of any of those rights;

**“Order Form”**

document in the form set out in Schedule 1 to place an order under the Ordering

**“Ordering Procedure”**

procedure set out in Clause 3 for the Services;

**“Retainer Fee”**

the fee specified in Schedule 2 as the fee becoming due to the Provider under the Agreement for each Retainer Period;

**“Retainer Period”**

the period specified as such in Schedule 2;

**“Retainer Period Value Limit”**

for any particular Retainer Period, the sum of Retainer Fee due for that Retainer Period not exceeding £ <<insert figure>> in Additional

**“Services”**

the Services to be provided by the Provider in accordance with Clause 2, as fully set out in Schedule 1, and subject to the terms and conditions of this Agreement;

**“Term”**

the term of this Agreement as set out in Clause 1;

**“Value”**

the value specified in Schedule 2;

1.2 Unless the context of

reference in this Agreement to:

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- 1.2.1 "writing" and communication includes a reference to any transmission or similar means;
- 1.2.2 a statute or provision as in force at the relevant time;
- 1.2.3 "this Agreement" and each of the Schedules as in force at the relevant time;
- 1.2.4 a Schedule in force at the relevant time;
- 1.2.5 a Clause or Paragraph of this Agreement (other than this Clause and Paragraph) as in force at the relevant time;
- 1.2.6 a "Party" or "Parties" means the Parties to this Agreement.
- 1.3 The headings used herein are for convenience only and shall have no effect upon the interpretation of this Agreement.
- 1.4 Words imparting the singular shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.
- 1.6 References to persons shall include corporations.

## 2. Provision of the Services

- 2.1 Subject to the following conditions, the Provider shall, from the Commencement of the Term provide to the Client the amount of Services as the Client may order from time to time, if any, of each Retainer Period, in particular limits on the amount and payment therefor, with effect from time to time during the Retainer Period such amount of each type of Services as the Client may order from time to time of the Ordering Procedure, and the Client shall be bound to fulfil that order.
- 2.2 The Parties agree that the Client shall be obliged to order any minimum Value of any type(s) of Services during all or any part/s of either the Term or any Retainer Period provided that (whether or not the Client orders any other Services) the Client shall be obliged to pay the Retainer Fee for that and/or any other Retainer Period;
- 2.2.1 If Services of a type(s) of Services of a Value short of the Retainer Fee for that Retainer Period are of a Value less than the Retainer Fee for that Retainer Period, none of that Value shortfall may be carried over to be credited against the Retainer Fee due for the next or any other Retainer Period; the Retainer Fee payable for any Retainer Period shall be fully earned and to be the maximum number of Services actually ordered for that Retainer Period is less than the maximum number of Services for that Retainer Period;]
- 2.2.2 [However, a Value shortfall may be carried over to be credited against the Retainer Fee due for the next or any other Retainer Period; the Retainer Fee payable for any Retainer Period shall be fully earned and to be the maximum number of Services actually ordered for that Retainer Period is less than the maximum number of Services for that Retainer Period;]

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- 2.3 Except as follows, t  
any Retainer Period  
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Provider may in its  
Value Limit in relat  
case, Sub-Clauses  
of Value exceeding
- 2.4 No form of exclusiv  
this Agreement sh  
prevent the Client f  
to or the same as a  
any third party/ies a
- 2.5 The Provider shall  
commensurate wit  
relevant to Services
- 2.6 The Provider shall a  
by the Client provid  
of Services provide
- 2.7 The Provider shall b  
regulations, byelaw  
relevant to the prov
- 2.8 [The Provider may,  
as agreed between  
and]]
- 2.9 [If from time to ti  
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Additional Fees wh  
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e refundable to the Client;]

together with any Value shortfall/s  
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ount of the Retainer Fees due for  
Periods. If the Term does not  
y or all of those shortfall amounts  
ee/s due for that next or any  
not be refundable to the Client;]

o obligation to provide Services in  
e Retainer Period Value Limit and  
such excess Services. However,  
rried out in a Retainer Period of  
Limit for that Retainer Period, the  
side to waive the Retainer Period  
etainer Period and, in each such  
ply in relation to ordering Services  
e Limit;

by this Agreement and nothing in  
r any Retainer Period(s), either  
third party/ies any services similar  
vent the Provider from providing to  
the same as any of the Services;

with reasonable skill and care,  
in the <<insert sector/industry  
Kingdom;

reasonable instructions given to it  
e compatible with the specification

ng that it complies with all statutes,  
f conduct and any other rules  
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es, act on the Client's behalf if and  
s they arise from time to time[.];

by notice to the Provider any  
Services ("Change Request"), the  
confirm whether or not it is able to  
o confirm details of any addition to  
anges to the Retainer Fee and/or  
es in order to give effect to the  
("Change Proposal"). If the Client  
request on the basis of the Change  
ice to the Provider within <<insert  
notice unconditionally accepting the  
nd this Agreement shall from the  
ce be deemed to be varied on the



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- 3.8.1.1 it can be provided by email; and
- 3.8.1.2 it can be provided immediately or within <<insert number>> hours of the Client's telephone or email or request; and
- 3.8.1.3 the time taken by the Provider to provide the information, advice or guidance shall not exceed <<insert number>> [minutes].
- the Provider shall ensure that the Client may dispense with the requirement of the Procedure (or any other particular means) to obtain the provision of that information, advice or guidance.
- 3.8.2 Unless the Client agrees in writing, any follow up or supplementary services may only be ordered by the Client.
- 3.8.3 If the Client requests information, advice or guidance, the Provider shall indicate to the Client whether it will be provided on the basis of the request on that basis, but, if the Client or the Provider gives any such indication, it shall not be liable for any failure to do so; and
- 3.8.4 [For the avoidance of doubt, the time taken in any Retainer Period to provide any such information, advice or guidance on more occasions will count when calculating the time taken in that Retainer Period.]
- OR**
- [The time taken by the Provider to provide any such information, advice or guidance on one or more occasions will not count when calculating the time taken in that Retainer Period. However, if the time expended by it on all such occasions exceeds <<insert number>> [minutes][hours][days] time] **OR** [the excess over that <<insert number>> [minutes][hours][days] time] will count when calculating the time taken in that Retainer Period.]]

## 4 Client's Obligations

- 4.1 The Client shall provide the Provider with any information (orally or in writing) as and when requested by the Provider if:
- 4.1.1 it is reasonably necessary for the Provider to provide the Services; and
- 4.1.2 the Provider is unable to obtain it; and
- 4.1.3 whether or not the Client has agreed to provide it.
- 4.1.4 the Client has agreed to provide it.
- whether or not the Client has agreed to provide it.

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4.2 The Client shall ensure that the information it provides pursuant to this Clause 4 is complete and accurate;

4.3 Unless the Provider states in writing in relation to any information pursuant to this Clause 4, the Provider will be entitled to rely on the information as being complete and accurate;

4.4 The Provider shall not be obliged to provide Services to the extent that it does not receive sufficient information in response to a request for it and will not be obliged to provide those Services without it;

4.5 The Client may, from time to time, give the Provider reasonable instructions to the Provider in relation to the provision of the Services. Any such instructions should be in writing and specify the specification of the Services provided in Schedule 2;

4.6 In the event that the Client provides any decision, approval, consent or any other input or communication in order to continue with the provision of any, or all, of the Services at any time, the Client shall provide the same in writing in the same manner;

4.7 If any consents, licences or permissions are needed from any third parties, local authorities or similar to enable the provision of the Services, it shall be the Client's responsibility to obtain the same in writing in the relevant part thereof;

4.8 If the nature of any of the Services requires the Provider to have access to the Client's premises or other facilities which is lawfully controlled by the Client, the Client shall ensure that the Provider has access to the same at the times to be agreed in writing with the Client as required;

4.9 The Client will take all reasonable steps to protect the health and safety of the Provider's employees and sub-contractors while providing any of the Services;

4.10 The Provider shall not be liable for any defect, omission, delay or other shortcoming in the provision of the Services due to any default or omission of the Client or its employees;

## 5 Fees, Payment and Retention

5.1 The Client shall pay the Provider the Retainer Fee and every Retainer Period falling during the Term, together with any Additional Fees in accordance with the provisions of Schedule 2;

5.2 The Provider shall not be entitled to claim the Retainer Fee and the Additional Fees due in accordance with the provisions of Schedule 2;

5.3 The Retainer Fee shall be payable by the Client both for the right to receive the Services under the Retainer Agreement and for the time which the Provider spends on providing the Services up to the maximum hours referred to in Schedule 2, paragraph A. The Retainer Fees are consideration for the Services and include all associated direct and indirect overhead costs. However, they do not include any Client expense charges in addition in accordance with Sub-Clause 3.7;

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- 5.4 All payments required by this Agreement shall be made within <<insert period>> of the date of receipt by the Client of the relevant invoice;
- 5.5 All payments required by this Agreement shall be made in <<insert currency>> at the bank in <<insert location>> as the Provider may from time to time determine without any set-off, withholding or deduction except as required by law or tax as the Client is required to deduct or withhold from the sum payable;
- 5.6 Where any payment required by this Agreement is required to be made on a day that is not a Business Day, the payment shall be made on the next following Business Day.
- 5.7 Without prejudice to the above, the Retainer Fee shall be paid in accordance with Sub-Clauses 5.8, 5.11, and 11.5.1:
- 5.7.1 where any Retainer Fee is not paid at the expiry of the period set out in sub-Clause 5.5, the Provider shall be entitled to charge an additional Retainer Fee for the Retainer Period concerned such that each and all of the maximum Retainer Fees for the Retainer Period are instead charged at the rate of the Additional Retainer Fee;
- 5.7.2 for this purpose, the Provider shall cancel the original invoice for the Retainer Fee and issue a substitute invoice for the increased total amount payable as set out in the substitute invoice. The substitute invoice shall be payable as required by Sub-Clause 5.4;
- 5.7.3 the above notwithstanding, the Provider may in its absolute discretion increase the Retainer Fee for a Retainer Period may in its absolute discretion in relation to the Retainer Period. The Provider shall give notice in writing to the Client which shall then be binding on the Client. In such case no substitute invoice shall be issued;
- 5.8 Without prejudice to the above and any other provisions of this Agreement, any sum payable by the Client following the expiry of the period set out in sub-Clause 5.5 shall bear interest on a daily basis at <<insert percentage>>% above the base rate of <<insert name of bank>> from time to time until payment in full is received by the Provider of all outstanding sums;
- 5.9 Whilst Sub-Clause 5.7.1 applies, the Provider shall not be obliged to issue a paid invoice for any Retainer Fee, where that invoice is not issued or invoice pursuant to Sub-Clause 5.7, the original unpaid invoice shall instead be treated as a paid invoice. Sub-Clause 5.8 from the date by which it is due to be paid by the Client; Sub-Clause 5.4;
- 5.10 The Provider shall:
- 5.10.1 keep, or procure to be kept, such records and books of account as shall be necessary to show the amount of any sums payable by the Client to the Provider and the amount of any sums payable by the Provider to the Client; and
- 5.10.2 at the reasonable request of the Client, allow the Client or its agent to inspect those records and books of account and, to the extent that they so request, to take copies of them;
- 5.11 Without prejudice to the above, if the Client fails to pay by the due date any sum payable pursuant to this Agreement, the Provider may exercise a particular and general right of lien in respect of the Client's goods or other property of the Client in its possession or control until such time as payment of the invoice/s is received by the Provider.

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6.7 The Client shall indemnify and hold the Provider harmless against any costs, liability, damages, loss, claims or proceedings (including that brought by third parties appointed by the Provider) caused by the Client's negligence or intentional acts; fees;

6.8 In the event of any [REDACTED] claims, demands or costs (including, without prejudice to [REDACTED] provision, legal costs on a solicitor and own-client basis [REDACTED] by:

6.8.2 the Provider shall not be liable for the Provider's use or possession of any information in whatever form provided to it by the Client in accordance with the Agreement for the purposes of the Agreement. The use of such information by the Provider does not constitute the infringement of any Intellectual Property rights of the Client. If, however, due to a third party, the Client shall indemnify the Provider against the same; and

6.9 The exclusions and limitations of remedies set forth in this Clause 6 shall apply cumulatively, and shall not be subject to the form of action, whether under contract, tort, statute, in contract or otherwise, or any other form of action.

## 7 Guarantee

- 7.1 The Provider guarantees that the [products][materials][items] to be supplied as part of the Services shall be free from any and all defects for a period of 12 months>> following completion of those Services; and
- 7.2 If any defects in the [products][items] appear during the guarantee period set out in sub-Clause 7.1, the Provider shall rectify any and all such defects at no cost to the Client.

## 8 Intellectual Property Rights

- 8.1 [The Provider shall own all Intellectual Property Rights that may subsist in or be provided by the Provider in the course of providing the Services. The Provider shall be deemed to have granted an exclusive licence of any and all such Intellectual Property Rights to the Client in accordance with the terms of this Agreement and the period is stated the Client shall give notice by the Provider remains unpaid following the end of the Retainer Period set out in sub-Clause 5.4;
- 8.2 In complying with Clause 8.1, the Provider hereby undertakes to execute and perform any such actions that may be necessary to give effect to the provisions into effect and shall exclusively bear any costs associated with the same.
- 8.3 The Provider shall be responsible for all claims arising out of Chapter IV of the Agreement in respect of any Retainer Period.

### OR

- 8.1 [Upon receipt of all payments due under the Retainer Period, the Provider shall assign to the Client all Intellectual Property Rights that may subsist in or be provided by the Provider in the course of providing the Services in that Retainer Period;
- 8.2 In complying with Clause 8.1, the Provider hereby undertakes to execute and perform any such actions that may be necessary to give effect to the provisions into effect and shall exclusively bear any costs associated with the same.
- 8.3 The Provider shall be responsible for all claims arising out of Chapter IV of the Agreement in respect of any Retainer Period.

## 9 Confidentiality

- 9.1 Each Party undertakes to keep confidential and not disclose to any other party any information provided by sub-Clause 9.2 or as otherwise required by law, it shall, at all times during the continuance of this Agreement and for a period of <insert period>> years] after its termination:
- 9.1.1 keep confidential and not disclose to any other party any information provided by sub-Clause 9.2 or as otherwise required by law, it shall, at all times during the continuance of this Agreement and for a period of <insert period>> years] after its termination;
- 9.1.2 not disclose to any other party any information provided by sub-Clause 9.2 or as otherwise required by law, it shall, at all times during the continuance of this Agreement and for a period of <insert period>> years] after its termination;
- 9.1.3 not use any information provided by sub-Clause 9.2 or as otherwise required by law, it shall, at all times during the continuance of this Agreement and for a period of <insert period>> years] after its termination for any purpose other than as contemplated by the terms of this Agreement;

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9.1.4 not make any disclosure of Confidential Information in any way or part with possession of

9.1.5 ensure that any disclosure by its officers, employees, agents, subcontractors or any other person to whom it is at the date of this Agreement, in any way or part with possession of Confidential Information, which, if done by that Party, would be a breach of the Confidentiality Obligations set out in Clauses 9.1.1 to 9.1.4 above.

9.2 Either Party may:

9.2.1 disclose any Confidential Information to:

9.2.1.1 any Service Provider or any other person acting on behalf of that Party;

9.2.1.2 any government authority or regulatory body; or

9.2.1.3 any other person acting on behalf of that Party or of any of the Service Providers or bodies;

to such extent as is necessary for the purposes contemplated by this Agreement (including for the provision of the Services), or to inform the other Party of any Confidential Information (except where the disclosure is to any person who is not an officer or employee or officer of any Service Provider or any other person acting on behalf of the other Party a written undertaking in the terms of this Clause 9, to keep the Confidential Information confidential and to use it only for the purposes for which it was disclosed; and

9.2.2 use any Confidential Information for any purpose, or disclose it to any other person acting on behalf of that Party, if it is at the date of this Agreement, in any way or part with possession of Confidential Information, or has become, public knowledge through no fault of that Party, or disclosure, that Party must not disclose Confidential Information that is not public knowledge;

9.3 The provisions of this Clause 9 shall be in force in accordance with their terms, notwithstanding any termination of this Agreement for any reason.

## 10 Force Majeure

[10.1] No Party to this Agreement shall be in breach of its obligations due to any failure or delay in performing their obligations where such failure or delay is caused by a Force Majeure event. The causes include, but are not limited to: power failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of war, governmental action or any other event beyond the reasonable control of the Party in question.

[10.2] In the event that a Party cannot perform their obligations hereunder as a result of a Force Majeure event referred to in Sub-Clause 10.1 for a continuous period of more than 30 days, the other Party may at its discretion terminate this Agreement at the end of that period. In the event of such termination, the Party shall pay for all Services provided up to the date of termination and for the value of time expended on provision of those Services up to the date of termination.

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## 11 Term and Termination

- 11.1 This Agreement shall commence on <<insert Commencement Date>> and shall continue for a term of <<insert term>> from that date, subject to the provisions of this Clause 11.
- 11.2 Either Party shall have the right to terminate this Agreement by giving written notice to the other Party of not less than <<insert notice period>> written notice prior to the expiry of the Term specified in sub-Clause 11.1, or if the Agreement has been extended (see Clause 11.4) to extend this Agreement for a further period of <<insert period>>.
- 11.3 Either Party may terminate this Agreement by giving to the other not less than <<insert notice period>> written notice to expire on or at any time after <<insert minimum term>>.
- 11.4 [If pursuant to Schedule 2 paragraph 2 the Client may, at the Client's option, terminate this Agreement by giving written notice to the Provider referring to the Client's right to terminate on the date of the Price Increase Date referred to in Schedule 2 paragraph 2.4, and this Agreement shall then terminate on the date of the Price Increase Date;]
- 11.5 Either Party may terminate this Agreement by giving written notice to the other Party if:
- 11.5.1 any sum owed by the other Party under any of the provisions of this Agreement is not paid within <<insert period>> of the due date of payment;
  - 11.5.2 the other Party is in breach of any of the provisions of this Agreement and is incapable of remedy, fails to remedy it within <<insert period>> Days after being given written notice giving it the opportunity to be remedied;
  - 11.5.3 an encumbrance is placed on, or where the other Party is a company, a charge is created over, any of the property or assets of the other Party;
  - 11.5.4 the other Party enters into an arrangement with its creditors or to an administration order (within the meaning of Section 86);
  - 11.5.5 the other Party is a company or firm, has a bankruptcy order made against it, goes into liquidation (except for reconstruction or re-construction and in such a manner that the other Party is bound by or for the purposes of this Agreement);
  - 11.5.6 anything is done in breach of the foregoing under the law of any jurisdiction;
  - 11.5.7 that other Party ceases, to cease, to carry on business; or
  - 11.5.8 control of the other Party is exercised by any person or connected with the other Party on the date of this Agreement. For the purposes of this Clause 11, "control" and "connected" have the meanings ascribed thereto by the provisions of the Corporation Tax Act 2010.

- 11.6 For the purposes of remedy if the Party respects.
- 11.7 The rights to terminate shall not be prejudiced by the provisions of this Clause 11 shall not prejudice any other Party in respect of the breach concerned (if any) of the Agreement.
- 12 Effects of Termination**
- Upon the termination of this Agreement, the following shall apply:
- 12.1 any sum owing by either Party under any of the provisions of this Agreement shall be due and payable;
- 12.2 all Clauses which, by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect;
- 12.3 termination shall not affect the 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 remedy which any Party may have in respect of the Agreement which existed at or before the date of termination;
- 12.4 subject as provided in Clause 9, neither Party shall be liable to the other except in respect of any accrued rights or obligations to the other; and
- 12.5 each Party shall (except in respect of any Confidential Information, and any documents in its possession or control which contain Confidential Information) immediately cease to use, either directly or indirectly, any Confidential Information referred to in Clause 9) immediately after termination of the Agreement, and shall immediately return or destroy any Confidential Information, and any documents in its possession or control which contain Confidential Information.
- 13 [Data Protection]**
- 13.1 All personal information which the Provider may use will be collected, processed, and handled in accordance with the provisions of Data Protection Legislation and the rights thereunder; and
- 13.2 For complete details of the collection, processing, storage, and retention of personal data, please refer to the Privacy Policy, which is not limited to, the purpose(s) for which personal data is collected, or bases for using it, details of the Client's rights and remedies (where applicable), please refer to the Privacy Policy and personal data sharing (where applicable) Privacy Notice [available from <<insert location>>].
- 14 [Data Processing]**
- 14.1 In this Clause 14, "data subject", "data controller", "data processor", and "personal data" shall have the meaning defined in the Data Protection Legislation.
- 14.2 [All personal data processed by the Provider on behalf of the Client under this Agreement shall be processed in accordance with the terms of the Data Processing Agreement entered into by the Parties on <<insert date>>]
- OR**
- 14.2 [The Parties hereby agree that both shall comply with all applicable data protection requirements set out in the Data Protection Legislation. This Clause shall not relieve either Party of its obligations set out in the Data Protection Legislation to move or replace any of those

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obligations;

- 14.3 For the purposes of this Agreement and for this Clause 14, the Provider is the “Data Controller”;
- 14.4 The type(s) of personal data, the scope, nature and purpose of the processing, and the location(s) where the processing takes place are set out in Schedule 4;
- 14.5 The Data Controller shall ensure that it obtains in place all necessary consents and notices required by applicable law for the transfer of personal data to the Data Processor for the purposes set out in the Agreement;
- 14.6 The Data Processor shall ensure that it processes any personal data processed by it in accordance with the instructions set out in Schedule 4 under this Agreement:
- 14.6.1 Process the personal data in accordance with the written instructions of the Data Controller unless the Data Controller is otherwise required to process the personal data in a different manner. The Data Processor shall promptly notify the Data Controller of any such requirement unless prohibited from doing so by law;
- 14.6.2 Ensure that it implements appropriate technical and organisational measures (adequate to the nature of the personal data) to protect the personal data from unlawful or unauthorised access, disclosure, loss, damage or destruction, and from any other events, taking into account the state of the art, the nature of the personal data, the potential harm and the cost of implementing those measures; such measures are set out in Schedule 4;
- 14.6.3 Ensure that it ensures that all persons who have access to the personal data (whether or not they are employees of the Data Controller) are contractually obliged to keep the personal data confidential;
- 14.6.4 Not transfer the personal data outside the European Economic Area without the prior written consent of the Data Controller and only if the following conditions are met:
- 14.6.4.1 The Data Processor has/has not been approved by the relevant supervisory authority for the transfer of personal data;
- 14.6.4.2 The Data Processor has/has not been approved by the relevant supervisory authority for the transfer of personal data;
- 14.6.4.3 The Data Processor has/has not been approved by the relevant supervisory authority for the transfer of personal data;
- 14.6.4.4 The Data Processor has/has not been approved by the relevant supervisory authority for the transfer of personal data;
- 14.6.5 Assist the Data Controller, at the Data Controller’s cost, in responding to any and all requests from data subjects in ensuring its compliance with applicable law, including with respect to security, breach notifications, data subject rights, and consultations with supervisory authorities or the European Commission;
- 14.6.6 Notify the Data Controller of any breach of the personal data without undue delay of a personal data breach;

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14.6.7 On the Data Processor's instruction, delete (or otherwise dispose of) all personal data and any and all copies thereof to the Data Controller on termination of this Agreement unless it is required to retain such data by law; [and]

instruction, delete (or otherwise dispose of) all personal data and any and all copies thereof to the Data Controller on termination of this Agreement unless it is required to retain such data by law; [and]

14.6.8 Maintain complete and accurate records of all processing activities and measures implemented necessary to comply with Clause 14 and to allow for audits by the Data Controller or any other party designated by the Data Controller[.]

records of all processing activities and measures implemented necessary to comply with Clause 14 and to allow for audits by the Data Controller or any other party designated by the Data Controller[.]

14.7 [The Data Processor shall comply with all of its obligations with respect to the processing of personal data under this Clause 14.]

[The Data Processor shall comply with all of its obligations with respect to the processing of personal data under this Clause 14.]

OR

14.7 [The Data Processor shall not transfer any of its obligations to a sub-processor with respect to the processing of personal data under this Clause 14 without the prior written consent of the Data Controller (such consent not to be unreasonably withheld). Where the Data Processor appoints a sub-processor, the Data Processor shall ensure that the sub-processor, which shall

not transfer any of its obligations to a sub-processor with respect to the processing of personal data under this Clause 14 without the prior written consent of the Data Controller (such consent not to be unreasonably withheld). Where the Data Processor appoints a sub-processor, the Data Processor shall ensure that the sub-processor, which shall

14.7.1 Enter into a written agreement with the sub-processor, which shall impose upon the sub-processor the same obligations as are imposed upon the Data Processor under Clause 14 and which shall permit both the Data Controller and the Data Processor to enforce those obligations;

the sub-processor, which shall impose upon the sub-processor the same obligations as are imposed upon the Data Processor under Clause 14 and which shall permit both the Data Controller and the Data Processor to enforce those obligations;

14.7.2 Ensure that the sub-processor complies fully with its obligations under the Data Protection Legislation; and

the sub-processor complies fully with its obligations under the Data Protection Legislation; and

14.8 Either Party may, at any time, terminate this Agreement by giving <<insert period, e.g. 30 calendar days'>> notice, after which time the Data Processor shall cease processing personal data under this Agreement. Such termination shall not affect the obligations of the Data Processor under this Agreement.]

Either Party may, at any time, terminate this Agreement by giving <<insert period, e.g. 30 calendar days'>> notice, after which time the Data Processor shall cease processing personal data under this Agreement. Such termination shall not affect the obligations of the Data Processor under this Agreement.]

## 15 No Waiver

Except as provided expressly herein, no failure or delay by either Party in exercising any of its rights or remedies shall be deemed to be a waiver of that right, and no waiver of any provision of this Agreement shall be deemed to be a waiver of any other provision.

Except as provided expressly herein, no failure or delay by either Party in exercising any of its rights or remedies shall be deemed to be a waiver of that right, and no waiver of any provision of this Agreement shall be deemed to be a waiver of any other provision.

## 16 Further Assurance

Each Party shall execute all such deeds, documents and things as may be necessary to carry out the purposes of this Agreement into full force and effect.

Each Party shall execute all such deeds, documents and things as may be necessary to carry out the purposes of this Agreement into full force and effect.

## 17 Costs

Subject to any provisions to the contrary, each Party shall bear its own costs of and incidental to the negotiation, preparation, execution and carrying out of this Agreement.

Subject to any provisions to the contrary, each Party shall bear its own costs of and incidental to the negotiation, preparation, execution and carrying out of this Agreement.

## 18 Set-Off

Save as may be otherwise provided herein, neither Party shall be entitled to set-off any sums due or sums received in respect of any claim under this Agreement at any time.

Save as may be otherwise provided herein, neither Party shall be entitled to set-off any sums due or sums received in respect of any claim under this Agreement at any time.

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- Nothing in this Agreement shall be deemed to constitute:

- ## 22 Non-Solicitation

- 22.2 Neither Party shall, [REDACTED] agreement and for a period of <<insert period>> after its termination, solicit or entice away from the other Party any customer or prospective customer through solicitation or enticement would cause damage to [REDACTED] party [without the express written consent of that Party].

23.1 No part of this Agreement shall be assigned, transferred, or otherwise convey rights on any third parties and accordingly the Copyright, Designs and Patents Act 1988 and the Intellectual Property (Rights in Designs) Act 1988 shall not apply to this Agreement; and

- 23.2 Subject to this Clause, the Agreement shall continue and be binding on the transferee, successors and assigns of the Party as required.
- 24 Notices**
- 24.1 All notices under this Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, an authorised officer of the Party giving the notice;
- 24.2 Notices shall be deemed to have been given:
- 24.2.1 when delivered by hand to the addressee or by registered mail;
- 24.2.2 when sent, by email, to the email address notified to the Party;
- 24.2.3 on the fifth business day after mailing, if mailed by national or international express mail.
- In each case notice shall be deemed to have been given to the most recent address or e-mail address notified to the Party.
- 25 Entire Agreement**
- 25.1 [Subject to the provisions of this Agreement, this Agreement shall constitute the entire agreement between the Parties and may not be modified orally. It shall be the duly authorised signature of the Parties [or in accordance with Sub-Clause 2.9]; and
- 25.2 Each Party acknowledges that it enters into this Agreement, in entire and exclusive reliance on the terms, conditions, provisions, or other provisions of this Agreement, and that no Other Term or Provision and all other terms, conditions, provisions, or other provisions are hereby excluded to the extent they conflict with the terms, conditions, provisions, or other provisions of this Clause 25, "Other Term or Provision" means any term, condition, undertaking, or any provision, whether written or oral, statutory or otherwise.
- 26 Counterparts**
- This Agreement may be executed in any number of counterparts and by the Parties to it on separate occasions. Each counterpart when so executed and delivered shall be an original, but all counterparts together shall constitute one and the same instrument.
- 27 Severance**
- In the event that one or more provisions of this Agreement are found to be unlawful, invalid or otherwise unenforceable, those provision(s) shall be deemed severed from the remainder of this Agreement and the remainder of this Agreement shall remain valid and enforceable.
- 28 Dispute Resolution**
- 28.1 The Parties shall attempt to resolve any dispute arising out of or relating to this Agreement through their appointed representatives who have the authority to settle the dispute.
- 28.2 [If negotiations under this Clause do not resolve the matter within <<insert period>> days after the date of the last attempt to negotiate, the parties will attempt to resolve the dispute through an agreed Alternative Dispute Resolution process.]

28.3 [If the ADR procedure does not resolve the matter within <<insert period>> of that procedure, or if either Party will not participate in the dispute may be referred to arbitration by either Party.]

28.4 The seat of the arbitration shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and the Rules for Arbitration of the International Chamber of Commerce. In the event that the Parties are unable to agree on the arbitration rules, either Party may, upon the request of the President or Deputy President of the Chartered Institute of Arbitrators for the time being, apply to the decision on rules that the President or Deputy President shall make.

28.5 Nothing in this Clause shall prevent either Party or its affiliates from applying to a court of law for any relief.

28.6 The Parties hereby agree that the decision and outcome of the final method of dispute resolution used shall [not] be final and binding on both Parties.

## 29 Law and Jurisdiction

29.1 This Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the law of England and Wales; and

29.2 Subject to the provisions of this Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) any dispute, controversy, proceedings or claim between the Parties shall fall within the jurisdiction of the courts of England and Wales.

**IN WITNESS WHEREOF** this Agreement has been executed and signed before written

SIGNED by  
<<Name and Title of person signing>>  
for and on behalf of <<Provider's Name>>

In the presence of  
<<Name & Address of Witness>>

SIGNED by

<<Name and Title of person signing>>  
for and on behalf of <<Client's Name>>

In the presence of  
<<Name & Address of Witness>>

## Specification of Services

<<Insert a detailed specification of the services to be provided by the Provider to the Client under this Agreement>>

28.2 does not resolve the matter within <<insert period>> of that procedure, or if either Party will not participate in the dispute may be referred to arbitration by either Party.]

Clause 28.3 shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and the Rules for Arbitration of the International Chamber of Commerce. In the event that the Parties are unable to agree on the arbitration rules, either Party may, upon the request of the President or Deputy President of the Chartered Institute of Arbitrators for the time being, apply to the decision on rules that the President or Deputy President shall make.

28.5 Nothing in this Clause shall prevent either Party or its affiliates from applying to a court of law for any relief.

28.6 The Parties hereby agree that the decision and outcome of the final method of dispute resolution used shall [not] be final and binding on both Parties.

29.1 This Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the law of England and Wales; and

29.2 Subject to the provisions of this Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) any dispute, controversy, proceedings or claim between the Parties shall fall within the jurisdiction of the courts of England and Wales.

executed the day and year first

provided by the Provider to the Client

## Fees and Payment

### A. Retainer Fee

The Retainer Fee<sup>1</sup> for each [week, a month, 3 months, 6 months, 12 months >> (referred to as the “Retainer Period”) will be £<insert figure>> plus VAT representing [insert figure>> working [hours][days of 7 hours] (excluding break time) priced at a rate of £<insert figure>><sup>2</sup> plus VAT per working day>> for work carried out in that period.

Accordingly for the purposes of this Agreement, the Value of each [hour][day of 7 hours] worked in a Retainer Period [hours][days of 7 hours] shall be the maximum number of working hours and the total Value of that maximum number of hours shall be the Retainer Fee.

### B. Additional Fees

The rate of Additional Fees shall be £<insert figure>><sup>3</sup> plus VAT per working <e.g. hour, [7 hour] day>> (excluding break time). Accordingly for the purposes of this Agreement, the Value of each [hour, [7 hour] day>> worked in a Retainer Period in excess of the maximum number of working [hours][days of 7 hours] referred to in “A” above shall be the figure as in first line of “B”>>.

C. The Retainer Fee for the purposes of this Agreement shall be due and payable upon the issue of an invoice for it on or after the date of this Agreement.

D. The Retainer Fee for any services provided shall be due and payable upon the issue of an invoice for it on or up to the beginning of that particular Retainer Period.

E. [The Provider may at any time increase the Price with effect from a date stated in the notice <<insert number>> [months] after the commencement Date, either/both the Retainer Fee or the rate of Additional Fees will increase. The Provider’s notice must be given at least <<insert number>> [weeks][months] before the Price Increase Date. The increased Price shall be the Price on the Price Increase Date if this Agreement has not terminated by that date.]

<sup>1</sup> The Retainer Fee should not only be sufficient to cover the cost of the work up to the maximum number of hours within the retainer but also to recognize the fact that the Client, up to that maximum number of hours, is paying for the use of the Provider’s time. The payment of a much lower, perhaps nominal Retainer Fee would secure the right to order Services up to a certain maximum number of hours at a non-discounted or slightly discounted rate per hour.

<sup>2</sup> This will often be a lower (i.e. discounted) rate per hour. However, the rate will normally still be a proper rate for the work carried out.

<sup>3</sup> The Additional Fee rate will usually be the full rate. See also footnote “2”.

for the work up to the maximum number of hours to carry out that amount of work, if required by the Client. This version of this template is designed to allow the Provider to charge any charges for any work but which instead only charge for the work carried out. In that other version, each hour of Services is at a fixed rate.

Additional Fees (See footnote “3”.) However, the rate will normally still be a proper rate for the work carried out.

rate. See also footnote “2”.

[//m]

## 1. Data Processing

### Scope

<<Insert description of the scope of the processing carried out>>.

### Nature

<<Insert description of the nature of the processing carried out>>.

### Purpose

<<Insert description of the purpose of the processing is to be carried out>>.

### Duration

<<Insert details of the duration of the processing>>.

## 2. Types of Personal Data

<<List the types of personal data to be processed>>.

## 3. Categories of Data Subject

<<List the categories of data subject>>.

## 4. Organisational and Technical Measures

<<Describe the organisational and technical measures to be implemented as referenced in 14.6.2>>.

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