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SERVICES RETAINER AGREEMENT (FOR SET NUMBER OF 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] [creative] [marketing] [advertising] [business] Services (<<insert nature of services>>). The Provider has reasonable skill, experience and knowledge 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 in each Retainer Period for a fee of the Retainer Fee.<sup>1</sup>
- (4) The Provider and the Client agree that the Provider will provide the Services to the Client in each Retainer Period for a fee of the Retainer Fee and in consideration thereof the Client will pay the Retainer 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:

**"Business 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 2.1.

**"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, which is not the information is expressly identified as confidential or marked as such);

<sup>1</sup> This version of the Retainer Agreement provides for the Client to order a maximum of [insert maximum number of Services] maximum or indeed no work at all in that Retainer Period. The Client agrees to this type of retainer arrangement because it understands that the Provider will provide the Services over and above the maximum but if the Client might need the right to order additional Services, the accompanying version should be used instead.

Each Retainer Period during the Term is payable in advance. The Client agrees that the Provider is permitted by the Agreement or fewer than that guaranteed by the Agreement to provide Services ordered by the Client. The Client agrees that the Provider will be content to provide Services over and above the maximum but if the Client might need the right to order additional Services, the accompanying version should be used instead.

**“Data Protection Legislation”**

and until EU Regulation  
al Data Protection Regulation  
onger directly applicable in the  
nd any national implementing  
s, and secondary legislation (as  
me to time), in the UK and  
any legislation which succeeds

**“Intellectual Property Rights”**

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

er licences, consents, orders,  
erwise in relation to a right in

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

ue for past infringements of any of  
nts;

**“Order Form”**

ent in the form set out in  
e used to place an order under the  
ure;

**“Ordering Procedure”**

edure set out in Clause 3 for  
ces;

**“Retainer Fee”**

specified in Schedule 2 as the  
coming due to the Provider under  
or each Retainer Period;

**“Retainer Period”**

nd specified as such in Schedule

**“Retainer Period Value Limit”**

particular Retainer Period, the  
etainer Fee due for that Retainer

**“Services”**

ces to be provided by the Provider  
ccordance with Clause 2, as fully  
dule 1, and subject to the terms  
f this Agreement;

**“Term”**

of this Agreement as set out in

**“Value”**

specified in Schedule 2;

1.2 Unless the context of

reference in this Agreement to:

1.2.1	"writing" and communication includes a reference to any transmission or similar means;	
1.2.2	a statute or provision as at the relevant time;	
1.2.3	"this Agreement" and each of the Schedules as at the relevant time;	
1.2.4	a Schedule in this Agreement;	
1.2.5	a Clause or paragraph (other than the first and last paragraph) of the relevant Schedule;	
1.2.6	a "Party" or 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.	
<b>2.</b>	<b>Provision of the Services</b>	
2.1	Subject to the provisions of Clause 2 and Clause 3, with effect from the Commencement Date, the Parties shall from time to time during the Term provide to the Client the Services as the Client may order from time to time in accordance with the Ordering Procedure and the amount, if any, of the Retainer Fee as it requires to be provided in each Retainer Period; 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	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;	
2.2.2	If Services of a Value less than the amount of the Retainer Fee for that Retainer Period are of a Value less than the amount of the Retainer Fee for that Retainer Period, none of that Retainer Fee shall be payable by the Client.	
	[and (i) no Retainer Fee shall be credited against the Retainer Fee due for the next or any other Retainer Period; and (ii) the Retainer Fee payable for any Retainer Period shall not be fully earned and to be the amount of the Retainer Fee for that Retainer Period;]	
	<b>OR</b>	
	[However, a Retainer Fee shall be credited against the Retainer Fee due for the next or any other Retainer Period; and the Retainer Fee payable for any Retainer Period shall not be fully earned and to be the amount of the Retainer Fee for that Retainer Period;]	

that next Retainer Period shall be refundable to the Client;]

OR

[However, any shortfall arising for any Retainer Period(s) will be carried over to be set off against the amount of the Retainer Fees due for the next Retainer Periods. If the Term does not continue for any or all of those shortfall amounts, the Retainer Fee/s due for that next or any subsequent Retainer Period(s) shall not be refundable to the Client;]

2.3 No form of exclusivity or restriction shall be imposed by this Agreement and nothing in this Agreement shall prevent the Client from obtaining or the same as any third party/ies a

2.4 The Provider shall provide the Services with reasonable skill and care, in the <<insert sector/industry>> Kingdom;

2.5 The Provider shall act in accordance with any reasonable instructions given to it by the Client provided that such instructions are compatible with the specification of Services provided;

2.6 The Provider shall be bound by all applicable laws, regulations, byelaws and other rules relevant to the provision of the Services and shall ensure that it complies with all statutes, regulations, codes of conduct and any other rules applicable to the provision of the Services;

2.7 [The Provider may, from time to time, act on the Client's behalf if and as agreed between the Client and the Provider as they arise from time to time[.];]

2.8 [If from time to time the Client requests the Provider to provide reasonable additional Services ("Change Request"), the Provider will give notice to the Client of its ability to make that addition or change in the amount of the Retainer Fee which the Provider requires in order to provide the additional Services requested by the Client ("Change Proposal"). If the Client then wishes to proceed with the Change Request, the Client will do so by giving notice to the Provider within the number of days, e.g. 7>> days after the receipt of the Change Proposal ("Change Request Acceptance") and the Client will pay the additional fee from the Provider's receipt of that Change Request Acceptance on the terms of the Change Proposal.]

### 3 Ordering Procedure and

3.1 From time to time the Client may request the Provider to supply any Services set out in Schedule 3. All orders shall be subject to the provisions of Clause 20;

3.2 An Order Form may be used for the purpose of giving a notice under Clause 3.1 and shall be subject to the provisions of Clause 20;

3.3 The Order Form must contain sufficient detail to make clear the type and quantity and all other details of the Services requested;

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indication, it shall be dealt with more quickly than the Services ordered by means of the Ordering Period. The Provider shall not be liable for any failure to do so; and

3.7.4 [For the average Retainer Period, the Provider shall provide any such information, on one or more occasions will count when provided in that Retainer Period.]

OR

[The time taken by the Provider to provide any such information on one or more occasions will not count when provided in that Retainer Period. However, the time expended by it on all such occasions shall exceed <<insert number>> [minutes][hours] [days] time] will count when calculating the Retainer Period.]

to deal with the request any more quickly than the Services ordered by means of the Ordering Period. The Provider shall not be liable for any failure to do so; and

agreed that the time taken in any Retainer Period, the Provider shall provide any such information, on one or more occasions will count when provided in that Retainer Period.]

provided by the Provider to provide any such information on one or more occasions will not count when provided in that Retainer Period. However, the time expended by it on all such occasions shall exceed <<insert number>> [minutes][hours] [days] time] will count when calculating the Retainer Period.]

#### 4 Client's Obligations

4.1 The Client shall provide any information (orally or in writing or in any other tangible form) 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.

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

4.3 Unless the Provider states in writing in relation to any information provided 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 accurate information in response to a request for it and will not be liable for any failure to do so; and

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 should be in accordance with the specification of the Services provided in Schedule 1.

4.6 In the event that the Client gives the Provider 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 be responsible for providing the same in a timely manner;

4.7 If any consents, licences, permissions, approvals, consents or any other input or communication 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

any information (orally or in writing or in any other tangible form) as and when requested by the Provider if:

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n obtaining the information;

tion as it provides pursuant to this

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

to provide Services to the extent that it does not receive accurate information in response to a request for it and will not be liable for any failure to do so; and

reasonable instructions to the Provider in relation to the provision of the Services. Any such instructions should be in writing and should be in accordance with the specification of the Services provided in Schedule 1.

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 be responsible for providing the same in a timely manner;

sions 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 the relevant part thereof
- 4.8 If the nature of any of the relevant Services (or the Client's premises or the relevant part thereof) 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 between the Client and the Provider 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 relevant Services;
- 4.10 The Provider shall be liable for any defect, omission, delay or other shortcoming in the provision of the relevant Services due to any default or delay of the Client or its employees.
- 5 Fees, Payment and Retainer**
- 5.1 The Client shall pay the Retainer Fee in and every Retainer Period falling during the Term, in accordance with the provisions of sub-Clause 5.2.
- 5.2 The Provider shall be entitled to the Retainer Fee due in accordance with the provisions of sub-Clause 5.3.
- 5.3 The Retainer Fee shall be the amount both to secure for the Client the right to receive Services up to the Retainer Period Value Limit and for the time of those Services ordered by the Client in the Retainer Period. The Retainer Fee includes all associated direct and indirect costs of the Provider. However, it does not include any costs payable to the Client in addition in accordance with Sub-Clause 11.5.1.
- 5.4 All payments required by this Agreement shall be made within <<insert period>> days of receipt by the Client of the relevant invoice;
- 5.5 All payments required by this Agreement by the Client shall be made in cash or by bank in <<insert location>> as the Provider may from time to time require without any set-off, withholding or deduction except such as may be required by tax as the Client is required to deduct or withhold by law.
- 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 provisions of sub-Clauses 5.8, 5.11, and 11.5.1:
- 5.7.1 the amount of the Retainer Fee payable by the Provider represents a discounted amount that is only made available to the Client on and prompt payment by the Client of all Retainer Fees due. The Retainer Fee remains unpaid until the Client has made the Provider's Retainer Period payment. The Provider may increase the Retainer Fee for the Retainer Period by a percentage, e.g 5, 10>>% so that the Value Limit for the Retainer Period is [insert percentage, e.g 5, 10>>% so that the Value Limit for the Retainer Period is 7 hours] in that Retainer Period is then equal to the Value Limit for the Retainer Period plus the non-retainer rate[.];[;]
- [However, if the Provider exercises that right but the Client does not pay for that Retainer Period whose



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ase the Retainer Fee pursuant to  
e original invoice for the Retainer  
oice for the increased total amount  
tute invoice shall be payable as

paid invoice for any Retainer Fee, or invoice pursuant to Sub-Clause 5.4 for any interest, and the substitute Sub-Clause 5.8 from the date by Sub-Clause 5.4;

ent, allow the Client or its agent to account and, to the extent that they s, to take copies of them;

at all times suitable and valid  
insurance:

mand, proceedings, damages, loss, expenses) arising in any particular is Agreement shall be limited to equal to <<insert multiple, e.g 1.25. Retainer Fee] in aggregate for any occurring in that Retainer Period:

h, demand, proceedings, damages,  
al expenses) suffered or sustained  
failure to follow any instructions

6.1 The Provider shall insurance that shall

6.3 The Provider's total liability, costs or expenses incurred in any period from its negligence shall not exceed the sum of £<<insert sum>>] 1.5, 2, 2.5, 3>> times the fee payable for the services and all connected or

6.4 The Provider shall not be liable for any loss, liability, costs or damages incurred by the Client that

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given by the Provider

6.5 The Provider shall not be liable to the Client under or in relation to this Agreement in connection with the Services (including any liability for negligence) for:

6.5.1 any special loss, loss of revenue, loss of profits, or use of facilities; or

6.5.2 any other indirect or consequential loss or damage, in whole or in part, howsoever arising; whether or not the same was reasonably foreseeable or actually foreseen;

6.6 Nothing in this Clause shall limit or exclude the Provider's liability for fraudulent misrepresentation or for personal injury or for fraud or

6.7 The Client shall indemnify the Provider against any costs, liability, damages, loss or damage to any equipment or property appointed by the Provider and its employees; caused by the Client's negligence or willful misconduct;

6.8 In the event of any claim, demands or costs (including, without prejudice to the above, legal costs on a solicitor's basis) made against the Provider in connection with the Services by the Provider or Client's use of the Services, the Client shall indemnify the Provider from and against the whole of such claim, demands or costs (including, without prejudice to the above, legal costs on a solicitor's basis);

6.8.1 the Client or Client's use of the Services shall indemnify the Provider from and against the whole of such claim, demands or costs (including, without prejudice to the above, legal costs on a solicitor's basis);

6.8.2 the Provider shall indemnify the Client from and against the whole of such claim, demands or costs (including, without prejudice to the above, legal costs on a solicitor's basis);

6.9 The exclusions and limitations set out in this Clause 6 shall apply cumulatively, and shall not be subject to any statute, in contract or otherwise.

## 7 Guarantee

7.1 The Provider guarantees that the Services 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 Services appear during the guarantee period, the Provider shall rectify any and all such defects at no cost to the Client.

## 8 Intellectual Property Rights

8.1 [The Provider shall not be liable to the Client under or in relation to this Agreement in connection with the Services (including any liability for negligence) for:]

to the Client under or in relation to this Agreement in connection with the Services (including any liability for negligence)

or consequential loss of revenue, loss of profits, or use of facilities; or

any other indirect or consequential loss or damage, in whole or in part, howsoever arising; whether or not the same was reasonably foreseeable or actually foreseen;

Nothing in this Clause shall limit or exclude the Provider's liability for fraudulent misrepresentation or for personal injury or for fraud or

The Client shall indemnify the Provider against any costs, liability, damages, loss or damage to any equipment or property appointed by the Provider and its employees; caused by the Client's negligence or willful misconduct;

In the event of any claim, demands or costs (including, without prejudice to the above, legal costs on a solicitor's basis) made against the Provider in connection with the Services by the Provider or Client's use of the Services, the Client shall indemnify the Provider from and against the whole of such claim, demands or costs (including, without prejudice to the above, legal costs on a solicitor's basis);

the Client or Client's use of the Services shall indemnify the Provider from and against the whole of such claim, demands or costs (including, without prejudice to the above, legal costs on a solicitor's basis);

the Provider shall indemnify the Client from and against the whole of such claim, demands or costs (including, without prejudice to the above, legal costs on a solicitor's basis);

The exclusions and limitations set out in this Clause 6 shall apply cumulatively, and shall not be subject to any statute, in contract or otherwise.

[The Provider shall not be liable to the Client under or in relation to this Agreement in connection with the Services (including any liability for negligence) for:]

If any defects in the Services appear during the guarantee period, the Provider shall rectify any and all such defects at no cost to the Client.

[The Provider shall not be liable to the Client under or in relation to this Agreement in connection with the Services (including any liability for negligence) for:]

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Agreement and the  
period is stated the  
notice by the Provider  
remains unpaid follow

8.2 In complying with  
undertakes to execute  
that may be necessary  
bear any costs associated

8.3 The Provider shall  
Copyright, Designs and

**OR**

8.1 [Upon receipt of all  
Period, the Provider  
Property Rights that  
Provider in the course

8.2 In complying with  
undertakes to execute  
that may be necessary  
exclusively bear any

8.3 The Provider shall  
Copyright, Designs and

## 9 Confidentiality

9.1 Each Party undertakes  
authorised in writing  
continuance of this Agreement  
termination:

9.1.1 keep confidential

9.1.2 not disclose

9.1.3 not use any  
contemplated by

9.1.4 not make any  
any Confidential

9.1.5 ensure that  
contractors or  
be a breach of

9.2 Either Party may:

9.2.1 disclose any

9.2.1.1 any such

9.2.1.2 any general

9.2.1.3 any specific  
aforementioned

to such extent as  
this Agreement  
Services), or  
inform the  
Information

stated in Schedule 1, or if no such  
that that licence may be revoked by  
under this Agreement to the Provider  
period set out in sub-Clause 5.4;

Clause 8.1, the Provider hereby  
acts and perform any such actions  
into effect and shall exclusively

arising out of Chapter IV of the

reement in respect of any Retainer  
ership of any and all Intellectual  
ing produced or provided by the  
ces in that Retainer Period;

Clause 8.1, the Provider hereby  
acts and perform any such actions  
signments into effect and shall  
with; and

arising out of Chapter IV of the

provided by sub-Clause 9.2 or as  
it shall, at all times during the  
[<insert period>> years] after its

information;

tion to any other party;

n for any purpose other than as  
terms of this Agreement;

ny way or part with possession of

officers, employees, agents, sub-  
which, if done by that Party, would  
Clauses 9.1.1 to 9.1.4 above.

to:

of that Party;

thority or regulatory body; or

f that Party or of any of the  
es or bodies;

for the purposes contemplated by  
limited to, the provision of the  
n each case that Party shall first  
n question that the Confidential  
pt where the disclosure is to any

such body u  
such body)  
confidentiali  
should be a  
keep the Co  
purposes for

9.2.2 use any Cor  
other person  
or at any tir  
fault of that  
not disclose  
knowledge;

9.3 The provisions of th  
terms, notwithstand

## 10 Force Majeure

[10.1] No Party to this A  
obligations due to  
obligations where s  
the reasonable con  
to: power failure, in  
flood, storms, earth  
or any other even  
question.

[10.2] In the event that a  
hereunder as a re  
continuous period o  
terminate this Agre  
event of such termi  
the date of terminat  
of those Services up

## 11. Term and Termination

11.1 This Agreement sh  
and shall continue f  
provisions of this C

11.2 Either Party shall h  
of the other Party  
period>> written no  
specified in sub-Cl  
has been extended  
further period of <<

11.3 Either Party may te  
<<insert notice pe  
<<insert minimum t

11.4 [If pursuant to Sche  
the Client may, at  
Schedule 2 paragra  
the Provider referri  
terminate on the da

11.5 Either Party may

or any employee or officer of any  
ng to the other Party a written  
party in question. Such undertaking  
in the terms of this Clause 9, to  
confidential and to use it only for the  
made; and

any purpose, or disclose it to any  
it is at the date of this Agreement,  
nes, public knowledge through no  
use or disclosure, that Party must  
ntial Information that is not public

be in force in accordance with their  
s Agreement for any reason.

ned to be either in breach of its  
ure or delay in performing their  
Its from any cause that is beyond  
causes include, but are not limited  
industrial action, civil unrest, fire,  
, acts of war, governmental action  
asonable control of the Party in

t cannot perform their obligations  
red to in Sub-Clause 10.1 for a  
e other Party may at its discretion  
at the end of that period. In the  
ay for all Services provided up to  
lue of time expended on provision

<<insert Commencement Date>>  
rm>> from that date, subject to the

he written agreement and consent  
ing not less than <<insert notice  
me prior to the expiry of the Term  
r period for which this Agreement  
on) to extend this Agreement for a

by giving to the other not less than  
o expire on or at any time after

Provider gives notice to the Client,  
rice Increase Date referred to in  
reement by giving written notice to  
.4, and this Agreement shall then  
Price Increase Date;]

his Agreement by giving written

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11.7 The rights to term  
prejudice any other  
concerned (if any) d

12.4 subject as provided  
rights neither Party

except in respect of any accrued  
er obligation to the other; and

12.5 each Party shall (each) 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 Confidential Information.

### 13 [Data Protection]

13.1 All personal information that 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, 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, and personal data sharing (where applicable), please refer to the 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 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 under Data Protection Legislation. This Clause shall not relieve the Parties of their obligations set out in the Data Processing Agreement, nor shall it move or replace any of those obligations];

14.3 For the purposes of Data Protection Legislation and for this Clause 14, the Provider is the "Data Controller";

14.4 The type(s) of personal data, the nature and purpose of the processing, and the retention period are set out in Schedule 4;

14.5 The Data Controller shall ensure that all necessary consents are in place and that all notices required for the transfer of personal data to the Data Processor for the purposes of the Agreement;

14.6 The Data Processor shall ensure that all personal data processed by it in accordance with the Agreement is processed in accordance with the following provisions under this Agreement:

14.6.1 Process the personal data in accordance with the written instructions of the Data Controller, unless it is otherwise required to process the data in accordance with applicable law; 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 appropriate technical and organisational measures (adequate to the nature of the data and the risks to the data) are in place to protect the personal data from loss, destruction, accidental loss, damage or disclosure; such measures shall be proportionate to the

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potential harm to the individual, taking into account the current state of knowledge and the cost of implementing those measures;

events, taking into account the current state of knowledge and the cost of implementing those measures; and the cost of implementing those measures are set out in Schedule 4;

14.6.3 Ensure that the Data Processor is contractually obliged to keep the personal data secure (whether by law or otherwise) and to ensure that the Data Processor is contractually obliged to keep the personal data secure (whether by law or otherwise);

access to the personal data (whether by law or otherwise) and to ensure that the Data Processor is contractually obliged to keep the personal data secure (whether by law or otherwise);

14.6.4 Not transfer the personal data to a third party without the prior written consent of the Data Controller and only if the following conditions are met:

the Data Processor is contractually obliged to keep the personal data secure (whether by law or otherwise) and to ensure that the Data Processor is contractually obliged to keep the personal data secure (whether by law or otherwise);

14.6.4.1 The Data Processor has/has not

/or the Data Processor has/has not been contractually obliged to keep the personal data secure (whether by law or otherwise) and to ensure that the Data Processor is contractually obliged to keep the personal data secure (whether by law or otherwise);

14.6.4.2 The Data Processor has/has not

have enforceable rights and obligations under the law of the European Economic Area

14.6.4.3 The Data Processor has/has not

complies with its obligations under the law of the European Economic Area, providing an adequate level of protection for the personal data so transferred; and

14.6.4.4 The Data Processor has/has not

complies with all reasonable requirements imposed by the Data Controller with respect to the security of the personal data;

14.6.5 Assist the Data Controller to any and all extent reasonable in order to comply with the Data Controller's obligations with respect to security, breach notifications and consultations with supervisory authorities or the Information Commissioner;

Data Controller's cost, in responding to requests from data subjects in ensuring its compliance with its obligations with respect to security, breach notifications and consultations with supervisory authorities or the Information Commissioner;

14.6.6 Notify the Data Controller of a breach of security of the personal data;

undue delay of a personal data breach;

14.6.7 On the Data Controller's instruction, delete (or otherwise dispose of) the personal data and any and all copies thereof and to ensure that the Data Processor is contractually obliged to keep the personal data secure (whether by law or otherwise);

instruction, delete (or otherwise dispose of) the personal data and any and all copies thereof and to ensure that the Data Processor is contractually obliged to keep the personal data secure (whether by law or otherwise);

14.6.8 Maintain records of all processing activities and technical and organisational measures implemented necessary to ensure compliance with Clause 14 and to allow for audits by the Data Controller or a third party designated by the Data Controller[.];

records of all processing activities and technical and organisational measures implemented necessary to ensure compliance with Clause 14 and to allow for audits by the Data Controller or a third party designated by the Data Controller[.];

14.7 [The Data Processor shall be contractually obliged to ensure that the Data Processor is contractually obliged to keep the personal data secure (whether by law or otherwise) and to ensure that the Data Processor is contractually obliged to keep the personal data secure (whether by law or otherwise);

any of its obligations with respect to the personal data under this Clause 14.]

OR

14.7 [The Data Processor shall be contractually obliged to ensure that the Data Processor is contractually obliged to keep the personal data secure (whether by law or otherwise) and to ensure that the Data Processor is contractually obliged to keep the personal data secure (whether by law or otherwise);

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

14.7.1 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 Clause 14 and which shall permit both

the sub-processor, which shall impose upon the sub-processor the same obligations as are imposed upon the Data Processor by this Clause 14 and which shall permit both

- the Data Controller to enforce those obligations;
- 14.7.2 Ensure that the Data Controller complies fully with its obligations under the Data Protection Legislation; and
- 14.8 Either Party may, at any time, terminate this Agreement by giving the other Party <<insert period, e.g. 30 calendar days>> notice, after which the other Party shall be deemed to have accepted the termination of the Agreement. Such termination shall be subject to the provisions of the Data Protection Legislation. [The Data Controller shall be deemed to have accepted the termination of the Agreement.]
- 15 No Waiver**
- Except as provided expressly herein, no failure or delay by either Party in exercising any of its rights under this Agreement 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 provisions of this Agreement into full force and effect.
- 17 Costs**
- Subject to any provisions to the contrary, each Party shall pay its own costs of and incidental to the 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 sum due to it in respect of any claim under this Agreement against any sum due by it to the other Party at any time.
- 19 Assignment and Sub-Contracting**
- 19.1 [Subject to sub-Clause 19.2, neither Party shall assign, sub-contract, or otherwise delegate any of its rights or obligations under this Agreement, or sub-contract any of its obligations under this Agreement, without the prior written consent of the other Party, such consent not to be unreasonably withheld.]
- 19.2 [[Subject to the provisions of this Agreement, the Provider shall be entitled to perform its obligations under this Agreement through any other qualified and skilled sub-contractors. Any act or omission of any such sub-contractor shall, for the purposes of this Agreement, be deemed to be an act or omission of the Provider.]
- 20 Time**
- 20.1 The Parties agree that the time for performance of the obligations under this Agreement or any other obligations under this Agreement shall be of the essence of the contract, and the time for performance of the obligations under this Agreement shall be of the essence of the contract, and the time for performance of the obligations under this Agreement shall be of the essence of the contract.

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- 20.2 The Client understands that the Provider's business has other clients to whom it provides services and that the Provider will give the Client fair and realistic notice of the availability of those Services requested by the Client from time to time.
- 20.3 The Provider does not intend to provide Services to the Client on an urgent or emergency basis except when in its discretion the Provider so states in any particular case.
- 21 Relationship of the Parties**
- Nothing in this Agreement shall be deemed to constitute:
- 21.1 an employment relationship; or
- 21.2 a partnership, joint venture, or fiduciary relationship between the Parties other than any relationship expressly provided for in this Agreement.
- 22 Non-Solicitation**
- 22.1 Neither Party shall, for a period of <<insert period>> after its termination of this Agreement, employ or contract the services of any person who is or was previously engaged by the other Party at any time in relation to this Agreement without the express written consent of that Party]; and
- 22.2 Neither Party shall, for a period of <<insert period>> after its termination of this Agreement, solicit or entice away from the other Party any customer or client with whom solicitation or enticement would cause damage to the other Party [without the express written consent of that Party].
- 23 Third Party Rights**
- 23.1 No part of this Agreement shall confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement; and
- 23.2 Subject to this Clause, the terms and conditions of this 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 authorized 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 registered office of the recipient; or
- 24.2.2 when sent, by post, to the registered office of the recipient upon transmission; or
- 24.2.3 by electronic means, including e-mail, 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 Provider.

## 25 Entire Agreement

25.1 [Subject to the provisions of the entire agreement and may not be modified by the duly authorised representatives of the Parties in writing signed by the Parties [or in accordance with Sub-Clause 2.8]; and

25.2 Each Party acknowledges that the Agreement, in entering into this Agreement, it does not rely on any Other Term or Provision and all Other Term or Provisions are hereby excluded to the fullest extent possible. "Other Term or Provision" means a term, condition, undertaking, or any other term or provision, whether written or oral, statutory or otherwise.

## 26 Counterparts

This Agreement may be executed in counterparts and by the Parties to it on separate occasions. Each counterpart 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 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 bind them.

28.2 [If negotiations under this clause do not resolve the matter within <<insert period>> days of the date of the last attempt to resolve the matter, the parties will attempt to resolve the matter through an agreed Alternative Dispute Resolution (ADR) procedure.

28.3 [If the ADR procedure does not resolve the matter within <<insert period>> days of the date of the last attempt to resolve the matter, either Party may refer the dispute 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 (ICC) as amended from time to time. In the event that the Parties are unable to agree on the arbitration procedure, 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 other Party, apply to the President or Deputy President of the Chartered Institute of Arbitrators for the time being for a decision on rules to be applied.

28.5 Nothing in this Clause shall prevent either Party or its affiliates from pursuing any claim or dispute in any court of law.

28.6 The Parties hereby acknowledge that the outcome of the final method of dispute resolution under this Clause 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, any dispute, controversy, proceedings or claim between the parties arising out of or in connection with this Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

**IN WITNESS WHEREOF** this Agreement has been executed the day and year first 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>>

*[State period of time for the purposes of Clause 8.1]*

## Fees and Payment

A. The Retainer Fee<sup>2</sup> for each Retainer Period, a month, 3 months, 6 months, 12

<sup>2</sup> This version of the Retainer Agreement provides that the Retainer Fee is payable in full irrespective of whether the Client orders the maximum or indeed or no work at all in that Retainer Period. The client up to that maximum in each Retainer Period. The client agrees to this type of retainer arrangement because it is the best value for money for the Services concerned. This version also assumes that the Client might need the right to order additional

each Retainer Period during the Term is payable in full irrespective of whether the Client orders the maximum or indeed or no work at all in that Retainer Period. The client up to that maximum in each Retainer Period. The client agrees to this type of retainer arrangement because it is the best value for money for the Services concerned. This version also assumes that the Client might need the right to order additional

months >>, referred to in the Retainer Period", will be £<insert figure>> plus VAT represented by [insert figure>> working [hours][days of 7 hours] (excluding break time) priced at a rate of £<insert figure>> plus VAT per working day>> for work which may be or is carried out in that period.

Accordingly for the purposes of the Retainer Fee, the Value of each [hour][day of 7 hours] worked in a Retainer Period shall be the maximum number of hours [hours][days of 7 hours] multiplied by the said rate and the total Value of the Retainer Fee.

- B. The Retainer Fee for the Retainer Period shall be due and payable upon the issue of an invoice for it on or after the date of this Agreement.
- C. The Retainer Fee for any subsequent Retainer Period shall be due and payable upon the issue of an invoice for it on or up to the beginning of that particular Retainer Period.
- D. [The Provider may at any time vary the Retainer Fee with effect from a date stated in the invoice (<<insert number>> [month] [days][weeks][months] before the Price Increase Date]. The increase will take effect from the Price Increase Date.]

Retainer Period", will be £<insert figure>> plus VAT represented by [insert figure>> working [hours][days of 7 hours] (excluding break time) priced at a rate of £<insert figure>> plus VAT per working day>> for work which may be or is carried out in that period.

Accordingly for the purposes of the Retainer Fee, the Value of each [hour][day of 7 hours] worked in a Retainer Period shall be the maximum number of hours [hours][days of 7 hours] multiplied by the said rate and the total Value of the Retainer Fee.

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

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

[The Provider may at any time vary the Retainer Fee with effect from a date stated in the invoice (<<insert number>> [month] [days][weeks][months] before the Price Increase Date). The increase will take effect from the Price Increase Date.]

[/m]

## 1. Data Processing

### Scope

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

### Nature

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

### Purpose

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

### Duration

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

## 2. Types of Personal Data

instead.

<<List the types of personal data t

### **3. Categories of Data Subject**

<<List the categories of data subje

### **4. Organisational and Technical**

<<Describe the organisational and  
14.6.2>>.

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be implemented as referenced in

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