

CONDITIONS FOR INVOICE FINANCE AND BACK OFFICE SERVICES

1. Perfection of our Ownership of Book Debts

The Book Debts shall be purchased in accordance with clause 1 of the Particulars.

2. Notification of Book Debts

- 2.1. You will promptly Notify us in such form and manner as we may from time to time require of every Book Debt relating to a Supply Contract which has not previously been Notified to us.
- 2.2. At our request you will promptly (at your expense) complete, execute and deliver to us a formal written assignment (in such form as we may direct) of every Book Debt relating to a Supply Contract which has not previously been the subject of such an assignment. Every such written assignment of a Book Debt will be in support of and will in no way affect the assignment of the Book Debt to us under condition 1.
- 2.3. With every Notification you will furnish us on demand with such documents evidencing the Book Debts and included in the Notification any Associated Rights as we may require by oral or written notice to you.
- 2.4. You will complete a separate Notification in respect of every Book Debt in respect of which you are unable to give us every warranty, representation and undertaking included in the Conditions and on that separate Notification you will clearly mark the reason that you are unable to do so.

3. Approved and Disapproved Book Debts

- 3.1. Every Book Debt will be deemed Approved together with any Associated Rights except the following which will be automatically Disapproved unless we tell you otherwise in Writing:
 - 3.1.1. any Book Debt which has become and so long as it remains Disapproved under condition 3.2.1 or under condition 3.3;
 - 3.1.2. any Book Debt included (or which should have been included) in a separate Notification under condition 3.3;
 - 3.1.3. any Book Debt arising from contra-accounts and/or contra-trading;
 - 3.1.4. any Book Debt which at any time, when aggregated with all other Book Debts owing by the same Debtor at that time, is and for so long as it remains outside a Debtor Funding Limit established under condition 3.2.3 or as set out in the Particulars;
 - 3.1.5. any Book Debt where the invoice has become disputed whether in whole or in part;
 - 3.1.6. any Book Debt where we are unable to fully verify the Book Debt or the Debtor;
 - 3.1.7. any Book Debt where the Debtor is over the Concentration Limit set out in the Particulars or as otherwise where the Debtor is over the Concentration Limit as reduced by us at our sole discretion;
 - 3.1.8. any Book Debt where the Debtor is subject to any of the Insolvency Events;
 - 3.1.9. any Book Debt where the Debtor is subject to the threat of any of the Insolvency Events; and
 - 3.1.10. any Book Debt which is not a Protected Book Debt or in respect of which you have been unable to obtain credit insurance.

For the purposes of condition 3.2.3 Book Debts will be deemed to fall into a Debtor Funding Limit in the order in which they are respectively included in a Notification.

- 3.2. We may at any time (without giving any reason) with immediate effect by written or oral notice to you:
 - 3.2.1. classify any Book Debt as Disapproved whether or not such Book Debt has been previously Approved;
 - 3.2.2. classify any Disapproved Book Debt as Approved;
 - 3.2.3. establish a Debtor Funding Limit in relation to any Debtor or increase an established Debtor Funding Limit or reduce (including a reduction to nil) any established Debtor Funding Limit;
 - 3.2.4. establish a Concentration Limit in relation to any Debtor or increase an established Concentration Limit or reduce (including a reduction to nil) any established Concentration Limit relating to any Debtor.
- 3.3. Any Approved Book Debt, which remains Outstanding after 28 days after its due date or is at any time the subject of legal proceedings (other than legal proceedings instigated by us or at our request) for its recovery or is at any time the subject of a breach of any representation, warranty or undertaking given by you to us, will then immediately be deemed as Disapproved without the need for notice or any other formality.
- 3.4. You undertake not to disclose to the Debtor or any other party the status of any Book Debt as Approved or Disapproved or the amount of or absence of any Debtor Funding Limit and/or Concentration Limit without our prior written consent.

- 3.5. Where Book Debts arise in the following circumstances, they are not subject to the requirement that you Notify us and therefore not eligible for an Advance unless we agree otherwise in Writing at our sole discretion:
- 3.5.1. any associated companies or interests including any that are associated to members of staff, directors or shareholders;
 - 3.5.2. sole trader and partnership debtors and any other unincorporated person;
 - 3.5.3. pro-forma sales;
 - 3.5.4. cash sales;
 - 3.5.5. payments in advance;
 - 3.5.6. pay when paid arrangements;
 - 3.5.7. where the Book Debt arises directly or indirectly from a Sanction Territory or Sanctioned Entity; and
 - 3.5.8. where the Book Debt is denominated in a foreign currency or originates in an overseas jurisdiction.

4. The Purchase Price and your Accounts with us

- 4.1. The Purchase Price of every Book Debt shall be equivalent to the amount payable by the Debtor according to the Supply Contract giving rise to that Book Debt after deducting from that amount any discount or other allowance allowed or allowable by you to the Debtor and after us deducting any Dilutions and the Service Fee in so far as it relates to that Book Debt.
- 4.2. For administrative convenience we shall, at our discretion, credit the amount of the Purchase Price of each Book Debt to the Current Account before making those deductions set out under condition 4.1 above and debit the amount of any discount or other allowance including any Dilutions and the Service Fee as soon as they are respectively ascertained.
- 4.3. In addition, prior to making an Advance to you we shall deduct the amount of any Transfer due in relation to that Book Debt;
- 4.4. Subject to Conditions 4.5, 4.6 and 12.2:
 - 4.4.1. at any time after the Business Day on which we receive a Notification we shall at your request but at our sole discretion make an Advance in respect of any Approved Book Debt included in that Notification and for the avoidance of doubt in the absence of your request we may make such a payment in our sole discretion;
 - 4.4.2. we shall make available to you the Purchase Price of any Approved Book Debt (less any Advance made in respect of it) on its Collection Date.
 - 4.4.3. We shall debit to the Current Account the amount of every Advance and/or other payment made to you in accordance with this condition and any other term of the Agreement.
- 4.5. We shall not :
 - 4.5.1. make any Advance before all the security documentation specified in the Particulars has been completed to our satisfaction; or
 - 4.5.2. make any advance whilst any other condition contained in the Particulars remains unsatisfied;
 - 4.5.3. be obliged to make any payment to you at any time in excess of the balance in your favour on the Available Funds Account at that time or if the effect of that payment would be that:
 - 4.5.3.1 the debit balance on the Sales Ledger Account would exceed the Facility Limit at that time (or as otherwise reduced by us in accordance with these Conditions); and/or
 - 4.5.3.2 the total of Advances made in respect of Outstanding Book Debts owing by any one Debtor would exceed the Concentration Limit (or as otherwise reduced by us in accordance with these Conditions) at the time of the payment.
- 4.6. Unless otherwise agreed by us in Writing all our payments to you shall be made in sterling by Electronic Payment. There shall be no fee for the first Electronic Payment per week but all other Electronic Payments shall be at our standard charge for such payments as notified by us to you from time to time.
- 4.7. We may debit to the Current Account the amount of any of the monetary liabilities included in your Obligations and apply any such amount in the discharge of any amount payable by us to you. For this purpose we may make a reasonable estimation of any of the monetary liabilities included in your Obligations when such monetary liabilities included in your Obligations cannot be accurately calculated immediately.
- 4.8. At any time without the requirement of notice or other formality we may combine any two or more accounts held by us in your name. Where (i) any such monetary liability included within your Obligations is in a currency other than that of the account to which it is to be debited or (ii) accounts held in different currencies are to be

combined (whether under this condition or under condition 12.4) then for any such transaction we shall be entitled to apply the middle spot rate of exchange quoted in London by our bankers at the time of the debit or combination.

- 4.9. You will pay (or repay) to us immediately upon our demand:
- 4.9.1. any Advance made in respect of an Approved Book Debt upon such Approved Book Debt becoming a Disapproved Book Debt;
 - 4.9.2. any debit balance owing to us on the Current Account at any time and any amount by which the debit balance on the Sales Ledger Account at any time exceeds the Approved Funding at that time; and
 - 4.9.3. the Purchase Price of any Book Debt paid to you by us to the extent that payment by the Debtor or any guarantor of the Book Debt is subsequently discharged under the law of the country of the payer or by reason of any decision of a court or tribunal of competent authority in that country.
- 4.10. We shall make available to you, without incurring liability if we fail at any time to do so, by such means as we consider appropriate (including by way of web based on-line browser) statements of your accounts.
- 4.11. In the absence of any manifest error or any error in law:
- 4.11.1. any statement of account or analysis which is made available to you by us shall be deemed to be correct and binding on you except for any error of which you advise us within five days of it being sent;
 - 4.11.2. for the purpose of determining the aggregate amount of the monetary liabilities included in your Obligations at any time you agree to be bound by a certificate signed by us and/or our auditors.

5. Charges for our Services

- 5.1. You will pay to us (or we may deduct from any payment to be made by us to you at any time) the following fees and charges:
- 5.1.1. a Service Fee (plus VAT), as follows:
 - (i) where the Service Fee is expressed as a monthly fee in the Particulars, it will be charged to you on or around the last Business Day of every calendar month until the full discharge of all your Obligations, or
 - (ii) where the Service Fee is expressed in the Particulars as a percentage then the Service Fee shall be calculated and applied as follows:
 - (a) subject to sub-paragraph (b) below, the Service Fee shall be a fee equivalent to such percentage paid on the Notified Amount of each Approved Book Debt Notified to us that month, which is charged to you upon Notification;
 - (b) in the event that the Service Fee calculated in accordance with sub-paragraph (a) above is less than the Minimum Monthly Service Fee then such Minimum Monthly Service Fee as set out in the Particulars shall be charged to you on or around the last Business Day of every calendar month until the full discharge of all your Obligations.
 - 5.1.2. a 45 Day Fee, if stated in the Particulars, expressed as a percentage, which fee shall be paid on each Approved Book Debt remaining Outstanding after 45 days from the date of invoice relating to that Approved Book Debt;
 - 5.1.3. a charge equivalent to the administrative cost to us from time to time of our dealing with cheques and other instruments of payment returned unpaid;
 - 5.1.4. Additional Fees, if stated in the Particulars;
 - 5.1.5. a Set up Fee, if stated in the Particulars; and
 - 5.1.6. all Disbursements.
- 5.2. If you give notice to us to terminate the Agreement prior to the expiry of the Minimum Period, the total Service Fee payable by you to us shall be the greater of:-
- 5.2.1. an amount equal to the sum of $(A + B) - C$ then multiplied by Z; or
 - 5.2.2. an amount equal to the sum of $(A + B) - C$ then multiplied by the average monthly Service Fee charged to you by us for the last 3 months of the Agreement.
- For the purposes this clause 5.2:
- A = the Minimum Period,
 - B = the Notice Period,
 - C = the number of months since the Commencement Date; and
 - Z = the Minimum Monthly Service Fee

- 5.3. If you give notice to us to terminate the Agreement after the expiry of the Minimum Period, the total Service Fee payable shall be the greater of:-
- 5.3.1. the Notice Period (in months) multiplied by the amount set out in the Particulars as the Minimum Monthly Service Fee (if applicable); or
- 5.3.2. the Notice Period (in months) multiplied by the average monthly Service Fee charged to you by us for the last 3 months of the Agreement.
- 5.4. If upon termination of the Agreement, the Service Fee or the Minimum Monthly Service Fee (as calculated in accordance with condition 5.1 - 5.3) has not been paid in full then it and any such other fees outstanding shall become immediately due and payable.
- 5.5. We shall be entitled to make a reasonable charge for any expenses incurred by us (including but not limited to any management time expended by us) by reason of or in any way connected with:
- 5.5.1. any task requested by you but not provided for in the Agreement; or
- 5.5.2. any task which we consider requisite for the reconciliation of your records with ours or for the protection of our security and/or this Agreement.
- 5.6. All our standard charges are quoted in the Agreement exclusive of VAT.
- 5.7. If we need to vary the terms of our Agreement with you, we will advise you in Writing of any such changes. For the avoidance of doubt verbal variations are not permitted.
- 5.8. If the Base Rate increases by 1%, we may vary the Agreement by increasing the Service Fee by 0.1% for every 1% increase. If we decide to implement this increase we will advise you in Writing and if we do not receive your acknowledgement within 7 days, you will be deemed to have consented to such increase.
- 5.9. We shall be entitled to debit to your Current Account any costs, charges and expenses incurred by us in the operation of or in connection with the Agreement and any related Security which shall include, without limitation, legal and other professional costs and expenses incurred by us (plus VAT, if applicable), our own administrative and other management costs.

6. Sales Ledger Administration and Collection of Book Debts

- 6.1. We shall have the sole right to enforce payment of and collect any Book Debt and its Associated Rights so long as we are the owner of it or it is held by you in trust for us and to institute defend or compromise proceedings in respect of any such Book Debt and its Associated Rights in such manner and upon such terms as we may think fit. For such purposes we may appoint agents to act on our behalf in the collection of such Book Debts and enforcement of their respective Associated Rights. We may also use your name in order to collect in the Book Debts and, should it become necessary so to do, issue proceedings in your name. You will co-operate to the fullest extent at your expense in any such enforcement collection or proceedings including the production of such documents and the giving of such evidence as may be necessary for such enforcement or collection or proceedings.
- 6.2. You will not collect or attempt to collect any Book Debt unless we ask you to.
- 6.3. As this is a disclosed facility and notices to Debtors are required, you will ensure that:
- 6.3.1. on the Business Day next following the Commencement Date there is sent to every Debtor by whom any Book Debt is then owing a notice; and
- 6.3.2. every invoice and statement of account representing a Book Debt issued after the Commencement Date bears a prominent and legible notice;
- in each case that the Book Debt has been purchased by us and it is payable only to us. Every such notice shall be in a form specified by us.
- 6.4. You will direct all your Debtors to pay all Book Debts into the Trust Account. If you receive any payment in respect of any Book Debt into any other bank account other than the Trust Account, you will immediately pay by same day transfer the identical monies (duly endorsed where necessary to effect collection) of any Book Debt directly to the Trust Account (and meanwhile hold it on trust for us).
- 6.5. We may appropriate any payment or other benefit received from or credit granted to a Debtor in or on account of the discharge of any Approved Book Debt owing by that Debtor in priority to any Disapproved Book Debt so owing notwithstanding any different appropriation by the Debtor.
- 6.6. You undertake to give immediate instructions to any banker or other person with whom you maintain an account to transfer to the Trust Account the proceeds of any credit transfer, relating to any Book Debt, which shall be received in your account. You will furnish the bank at which the Trust Account is held with such instructions

and/or indemnity as they may require in order that they may affect collection of any cheques made payable to you which are not transferable.

- 6.7. You will furnish us in Writing with the following by the tenth day (or such other day as we may direct) of each month and at such other times as we may require by oral or notice in Writing to you in a format prescribed by us:
- 6.7.1. a list of Book Debts Outstanding on the last day of the previous month (or such other day as we may specify in Writing) analysed by reference to the dates on which the Book Debts are due for payment;
 - 6.7.2. full details of all Book Debts in respect of which a Debtor fails to accept or disputes the invoice evidencing such Book Debt and of the reasons for such failure to accept and/or dispute;
 - 6.7.3. if requested by us, a list of all your creditors and amounts owing to them analysed by reference to the dates on which those amounts are due for payment; and
 - 6.7.4. a reconciliation of the ledger on which the Book Debts are recorded by you to the receipts into the Trust Account as at close of business at the last day of the previous month with any copy of your records of the same.
- 6.8. You will be bound by action taken by us in connection with the collection or enforcement of Book Debts or realisation of any Associated Rights.
- 6.9. You irrevocably authorise to us to pay any credit balance due to a Debtor.

7. Electronic Data Interchange

- 7.1. We shall for the time being accept the following interchange of information with you by electronic data transmission:
- 7.1.1. every Notification created under condition 2.1 and
 - 7.1.2. access by you to information shown on any Business Day during normal working hours on your Available Funds Account, Current Account and Sales Ledger Account.
- 7.2. You will pay to us (or we may deduct from any payment to be made to you by us at any time) a service fee for use of the EDI Services. The amount of the service fee will be notified to you from time to time. You will also be solely responsible for all costs and any taxes or duties relating to your sending information to us and receiving it from us including, but not limited to, telephone charges and charges made by any Intermediary.
- 7.3. You will obtain and maintain all equipment, software and communication services requisite for the proper functioning of the EDI Services and we shall have no responsibility for the reliability or proper functioning of such equipment, software or services or for the performance of any Intermediary.
- 7.4. You undertake:
- 7.4.1. to observe complete confidentiality in respect of any information received by you from us by the use of the EDI Services including information relating to matters other than the operation of the Agreement and that you will at all times comply precisely with all requirements of law and of orders, rules and regulations having the force of law for the time being in force in relation to any data held or received by you at any time;
 - 7.4.2. to ensure that only your duly authorised officers or employees have access to any authorisation codes and passwords and that no unauthorised person has access to the EDI Services;
 - 7.4.3. to tell us immediately if the EDI Services have been accessed by any unauthorised person or any information provided by you to us is inaccurate or incorrect;
 - 7.4.4. to ensure that each transmission by you correctly and clearly identifies:
 - 7.4.4.1 the sender and the recipient; and
 - 7.4.4.2 the approval of the information contained in the transmission by the sender; by the agreed method of identifying their authenticity.
 - 7.4.5. to ensure that your use of the EDI Services will not in any way corrupt our data processing systems or any of the data held by us whether by reason of any virus or otherwise; and
 - 7.4.6. to comply with all procedures specified by us for the use of the EDI Services.
- 7.5. We shall have no responsibility whatsoever for any failure or delay in your obtaining access to any information from us or in your provision of information to us nor for any default of any Intermediary nor shall we be liable to you for loss costs or expense caused to you by any incorrect information (including incorrect information obtained from credit reference agencies or other databases) received by either you or us by the use of the EDI Services except for any error arising solely from our own default.

- 7.6 We do not guarantee that the EDI Services will be accessible continuously and we may at any time in our absolute discretion by written or oral notice to you withdraw your right to use the EDI Services.
- 7.7 We may change the form and content of the information accessed by you through the EDI Services at any time without notice. The content and design of the EDI Services (including software) is our property or that of our suppliers and is protected by copyright and other intellectual property rights.

8 **Warranties, Representations, Undertakings and Restrictions**

You warrant, represent and where relevant undertake the following to us on the Commencement Date and on each day thereafter:

- 8.1 Every Notification (except any separate Notification in accordance with condition 2.4 to the extent stated on such Notification) will be deemed to constitute a representation and warranty in relation to every Book Debt included in it that:
- 8.1.1 the Book Debt has arisen from a Supply Contract entered into by you in the normal course of your business and such Supply Contract:
- (i) provides for payment to be made in sterling (or such other currency as we may approve in Writing) on your usual terms of payment as approved by us from time to time;
 - (ii) is governed by English law or Scots law, or the laws of Northern Ireland, or another law approved by us in Writing;
 - (iii) provides for the Debtor to submit to the exclusive jurisdiction of the English Courts, or Scottish Courts or the Courts of Northern Ireland;
 - (iv) is otherwise as approved by us in our absolute discretion;
 - (v) is made between you and a Debtor who is not a Sanctioned Entity or situate or derived from a Sanctioned Territory and/or is not otherwise connected whether directly or indirectly to a Sanctioned Entity; and
 - (vi) does not include any valid prohibition against or any restriction on the assignment of the Book Debt.
- 8.2 Prior to entering into the Agreement, you have disclosed to us all information which you knew or ought reasonably to have known might influence us in deciding whether or not to enter into the Agreement or negotiating its terms or as to the suitability of any person as a surety;
- 8.2.1 all accounting records and information which you provide to us about Book Debts, Debtors, Dilutions and Supply Contracts are materially accurate, true and correct;
- 8.2.2 the most recent financial statements provided to us prior to the Commencement Date were prepared in accordance with generally accepted accounting principles, fairly represent your financial position at the date they were prepared and there has been no material adverse change in your financial condition since that date;
- 8.2.3 you have performed all your obligations to the Debtor and the invoice for each Book Debt is a legally binding obligation of the Debtor to pay the full Notified Amount of the Book Debt without any Dilutions;
- 8.2.4 the Book Debt is free from all trusts, charges, liens and other encumbrances including any right or interest of any of your suppliers to or in the Book Debt which it relates;
- 8.2.5 you have no obligations to the Debtor other than under any Supply Contract and you have no agreement with the Debtor for retrospective discounts or otherwise whereby the amount of the Book Debt may be reduced (whether by set-off or otherwise) except in accordance with the Supply Contract provided you have informed us in Writing and we have approved, any such reduction provisions;
- 8.2.6 the Debtor has an established place of business in England and Wales or Scotland or Northern Ireland and is not an Associate of you, is not a Sanctioned Entity and is not situate or has a place of business in a Sanctioned Territory;
- 8.2.7 the Debtor has complied with all formalities required by law or rules or regulations having the force of law necessary for the complete performance of the Supply Contract by the Debtor including payment to us on the due date on the terms of the Supply Contract and the Debtor will not be unable or will not claim to be unable to pay owing to rules or regulations of any government or war or civil commotion or the circumstances in England and Wales, Scotland or Northern Ireland in which the Debtor is situate;
- 8.2.8 the Book Debt is not subject to withholding tax or any other deduction on account of tax or impost;

- 8.2.9 the details of the Book Debt Notified to us are correct and complete and the invoice has not been the subject of a previous Notification;
 - 8.2.10 the Supply Contract does not provide for clawbacks for poor or defective service, supply or performance;
 - 8.2.11 the Debtor is not subject to any Insolvency Events and
 - 8.2.12 you have informed us of any past Insolvency Events against you or any past analogous Insolvency Events against any of your directors or shareholders or of any Insolvency Events against any company in which they have been interested or any disqualification at any time of any of your directors or any shadow directors (as defined by the Insolvency Act 1986) from acting as a director.
- 8.3 You undertake in addition to all other undertakings given by you in the Conditions:
- 8.3.1 not to vary, waive rescind or terminate or attempt to vary waive, rescind or terminate any Supply Contract giving rise to any Book Debt after it has been Notified;
 - 8.3.2 not to vary any payment terms or settlement discount in respect of any invoice for a Book Debt;
 - 8.3.3 to keep proper books and records of account and to make appropriate entries in them to show Book Debts that have been Notified and/or otherwise sold to us;
 - 8.3.4 promptly to pay all taxes for which you are liable in relation to any Book Debt or the Supply Contract giving rise to it and to affect any insurance required by such Supply Contract and to pay the premium and to make any claim arising thereunder;
 - 8.3.5 to pay to us on demand the amount of any Book Debt which remains unpaid 28 days after its date of invoice so that your liability under this undertaking may be enforced against you as principal debtor without the requirement of any prior demand on the Debtor by whom such Book Debt is payable;
 - 8.3.6 without our prior consent in Writing not to assign or create any charge over any of your rights or benefits under the Agreement nor to delegate any of your responsibilities under it;
 - 8.3.7 not to enter into any agreement for the sale of any legal and/or beneficial interest in any Book Debts or grant any security right in respect of any Book Debts in each case in any form or manner except with or in favour of us;
 - 8.3.8 to indemnify us against all claims against us by any Debtor (save any claim arising solely from our own default) and against all losses costs charges interest and expenses (including legal costs and stamp duty) incurred by us at any time and arising from or in any way connected with:
 - (i) our entering into or enforcing, exercising or protecting our rights under the Agreement or any guarantee or indemnity or security created in relation to your Obligations;
 - (ii) enforcing or attempting to enforce payment of any Book Debt or settling or compromising any dispute with or claim by a Debtor or any other person in relation to any Book Debt;
 - (iii) the securing by us of any release of any Book Debt from any trust charge or other encumbrance;
 - (iv) any indemnity which we may be required to give to our bankers in connection with the collection on our behalf of any cheque or other instrument made payable to you;
 - (v) any breach by you of any of your Obligations; or
 - (vi) accepting and/or acting upon information or instructions purporting to come from you even if that information or those instructions subsequently prove to have been incorrect or unauthorised by you (except to the extent that our officers have conducted wilful misconduct or have been fraudulent).
 - 8.3.9 to use your best endeavours as required by us to procure for us a refund of any VAT included in any bad or doubtful Book Debt in any case in which the regulations of H M Revenue and Customs for the recovery of such VAT apply and for that purpose to accept a reassignment to you of that Book Debt and to hold any VAT recovered and any other recoveries in relation to that Book Debt in trust for us and separate from your own monies;
 - 8.3.10 to comply with the Data Protection Laws and the Bribery Act 2010 in so far as they relate to the operation and conduct of your business and your relations with Debtors and others with whom you have a business relationship;
 - 8.3.11 to comply with all procedures for the operation of the Agreement which we may make known to you from time to time and to assist us in every way to safeguard our interests under the Agreement and to

- procure that all your employees and agents and, if you are a company, all your directors and other officers and, if you are an LLP, all your members to assist us;
- 8.3.12 to protect and assist us to enforce the Associated Rights;
- 8.3.13 to inform us in Writing immediately:
- 8.3.13.1 of any actual or proposed change in your directors, shareholders, members or partners or in the nature of your business or trading style;
- 8.3.13.2 about any relevant information that may influence our decision to continue the Agreement or establish any Debtor Funding Limit or designate any Book Debts as an Approved Debt or Disapproved Debt;
- 8.3.13.3 of the enforcement of any form of security or guarantee against you or a surety; and
- 8.3.13.4 if you propose to enter into a material financial obligation of more than £50,000 with another person.
- 8.3.14 you will not (without our prior consent in Writing):
- 8.3.14.1 create any security whether in equity or law (including for the avoidance of doubt any assignment whether by way of security or otherwise) over any of your property, assets, undertaking or Book Debts other than in our favour;
- 8.3.14.2 enter into any agreement for the sale, assignment, factoring or discounting of your Book Debts other than pursuant to the Agreement;
- 8.3.14.3 enter into any agreement for the provision of back-office services as described in this Agreement other than pursuant to the Agreement;
- 8.3.14.4 assign (whether legal or equitable) or otherwise deal with your Book Debts except in accordance with the Agreement;
- 8.3.14.5 repay any loan which you have previously agreed with us will not be repaid;
- 8.3.14.6 transfer any material part of your business or assets and shall only trade your assets and business in the ordinary course of business as currently undertaken; or
- 8.3.14.7 enter into any guarantee, indemnity or similar agreement.

9 **Failure of Debtors to accept Invoices, Credit Notes and Credit Balances**

- 9.1. You undertake that, notwithstanding the representations and warranties given by you in condition 8, if a Debtor disputes its liability to pay the full Notified Amount of any Book Debt less any discount allowable (as approved by us in Writing) in accordance with the relevant Supply Contract or if the Debtor refuses to accept the invoice for any reason, you will:
- 9.1.1. immediately inform us of all the circumstances of the dispute or refusal;
- 9.1.2. use your best endeavours promptly to settle such dispute and obtain the payment for such invoice; and
- 9.1.3. promptly perform any remaining further or continuing obligations under the relevant Supply Contract.
- 9.2. Upon or at any time after any of the events specified in condition 12.1, or at any other time if you fail to perform your Obligations under condition 9.1, then we shall have the right (but shall not be bound) ourselves, at your expense, to settle or compromise any such dispute on such terms as we may think fit and/or to perform any such further or continuing Obligations.
- 9.3. You will be bound by anything done or omitted to be done by us under condition 9.2 including any resulting reduction in the Purchase Price of any Book Debt and hereby indemnify us in respect of costs and expenses incurred by us in respect of our actions under condition 9.2.
- 9.4. Upon the Commencement you will furnish us with a copy of every credit note issued before the Commencement relating to any Book Debt then Outstanding. Thereafter you will promptly raise and deliver to a Debtor any credit note that is validly due and deliver to us promptly a copy of each credit note which you issue to any Debtor.
- 9.5. You irrevocably authorise us to make payment in settlement of or on account of any credit balance appearing in our records at any time however it may have arisen.

10. **Recourse**

- 10.1. We shall be entitled to exercise Recourse as follows:

- 10.1.1. in respect of any Book Debt included in a separate Notification under condition 2.4 or any other Disapproved Book Debt, as soon as or at any time after it shall have been assigned to us or, if later, upon or after the relevant Book Debt becoming Disapproved;
- 10.1.2. in respect of any Book Debt which the Debtor claims to be unable to pay owing to rules or regulations of any Government or civil commotion or the circumstances in the territory in which the Debtor is situated, at any time after the event or circumstance giving rise to the claim by the Debtor or its inability to pay;
- 10.1.3. in respect of any Book Debt where the Debtor has wrongly claimed or given affect to any discount or other deduction, as soon as we become aware of the claim, discount or deduction;
- 10.1.4. of all Book Debts then Outstanding (whether Approved or Disapproved including for the avoidance of doubt, any Protected Book Debts) upon the occurrence of any of the following events:
 - 10.1.4.1. the termination of the Agreement by either party;
 - 10.1.4.2. immediately upon the occurrence of any of the events listed under condition 12 of the Conditions.
- 10.2. We may exercise Recourse by written notice to you or by debiting the Repurchase Price to the Current Account. We shall remain the owner of every Book Debt purchased by us in respect of which we shall exercise Recourse until the Repurchase Price has been fully discharged either by your payment of it to us or by our applying it in the discharge of any amount payable by us to you.
- 10.3. The following Conditions 10.3.1 to 10.3.5 inclusive will only apply if it is specified in the Particulars that Modified Recourse is to apply:
 - 10.3.1. Subject to your compliance with all your Obligations under the Agreement we shall:
 - 10.3.1.1. in respect of a Book Debt purchased by us, treat any payment which may be made by the Insurer to us in settlement of a claim under the Policy as a payment in or on account of settlement of that Book Debt by the relevant Debtor;
 - 10.3.1.2. at our discretion make a retention of an amount equivalent to the First Loss in respect of such claim referred to under condition 10.3.1.1 of these Conditions; and
 - 10.3.1.3. provided that the Insurer does not seek repayment of such payment from us, thereafter refrain from exercising our right of Recourse in respect of the relevant Book Debt.
 - 10.3.2. For the avoidance of doubt our obligations under condition 10.3.1:
 - 10.3.2.1. shall only apply to the extent of any payment made to us by the Insurer in settlement of a claim under the Policy and we may (in our absolute discretion and without giving any reason) decide whether or not to accept the determination of the Insurer as to the validity of any such claim;
 - 10.3.2.2. shall, unless otherwise agreed in Writing by us, cease immediately upon the occurrence of a termination event under any part of condition 12;
 - 10.3.2.3. shall not constitute a waiver of our rights against the relevant Debtor or an election not to seek payment from the relevant Debtor;
 - 10.3.3. In respect of all Book Debts covered by the Policy you undertake to comply with all instructions given by us from time to time in respect of such Book Debts;
 - 10.3.4. We may at our discretion terminate our provision of the Modified Recourse service to you upon 30 days notice in Writing by us to you; and
 - 10.3.5. If for any reason, Modified Recourse ceases to apply we shall have no further obligations to you in respect of Protected Book Debts and any fees or charges paid by you or accrued and due to us shall be retained by, or paid to us, as appropriate.

11. Information and your Accounts and Records

- 11.1. You represent and warrant to us that you have disclosed to us every fact or matter known to you which you knew or should reasonably have known might influence any decision of ours as to the entry into the Agreement or as to its terms or as to its continuation or as to the acceptance of any person as surety for any of your Obligations or as to the establishment or cancellation of any Debtor Funding Limit or the classification of any Book Debt as an Approved Book Debt or Disapproved Book Debt including:
 - 11.1.1. any mortgage or charge or other encumbrance on any of your undertaking, property and rights and any trust in relation to any of your assets;

- 11.1.2. any change or proposed change in your memorandum or articles of association or management or the ownership or control of you or your business;
- 11.1.3. the name and address of any person who is an Associate of you;
- 11.1.4. any breach of the Agreement.
- 11.2. You represent and warrant to us that all information supplied to us is accurate and complete.
- 11.3. We shall be entitled at any time to inspect, to verify and/or (at your expense) to take copies of any of your records or documents on or by which any Book Debt is recorded or evidenced and to take possession of any such records or documents included in respect of the Associated Rights. We shall have the right to inspect any and all Supply Contracts, stocks and any records or documents relating to your financial position or the results of your operations. For such purpose you will let any employee, representative or agent of ours enter upon any premises at which you carry on business or at which any of your property is situated at regular intervals and at any other time that we may determine. You undertake to keep us informed at all times of the situation of all such records and documents. The cost of such inspections shall be treated as a Disbursement.
- 11.4. You will furnish us with:
 - 11.4.1. if you are a company or LLP required to produce audited accounts, a copy of your audited accounts for each year or other financial accounting period ending in the duration of the Agreement within six months of the end of such period or later as we allow; or
 - 11.4.2. if you are a company or LLP which is not required to produce audited accounts, a copy of your accounts for each year or other financial accounting period ending in the duration of the Agreement within six months of the end of such period or later as we allow certified as true and correct by a firm of chartered or certified accountants,
- 11.5. You will prepare and furnish us with such management accounts of your business and at such times as we may from time to time prescribe, together with such information relating to your financial affairs as we may at any time request.
- 11.6. You authorise us:
 - 11.6.1. to furnish your bankers, auditors and accountants with such information in our possession relating to your affairs and the Book Debts as any of them may require at any time; and
 - 11.6.2. at any time to obtain from any of your bankers, auditors and accountants any information in their possession which we may then require regarding the state of your accounts or your financial affairs.
- 11.7. You represent, warrant and undertake that you have given your existing bankers and auditors, and will give to any banker and auditor whom you may in future appoint, the requisite authority for the purpose of condition 11.6.2 and that, if we so require, you will instruct your auditors to report at your expense on any audited accounts direct to us.
- 11.8. You will notify us promptly about any new bank accounts that you open and on request will provide us with details of any of your bank accounts and send us copies of your bank statements.
- 11.9. You will provide us with copies of all new Supply Contracts for our written approval prior to us making any Advances in respect of Book Debts arising out of or in connection with such Supply Contracts.
- 11.10. You shall provide us with bank statements with management accounts/information on a monthly basis in a format prescribed by us.

12. Insolvency and Default

- 12.1. On or at any time after the occurrence of any of the following events which is continuing and not remedied to our satisfaction within 2 Business Days we shall have the right to terminate the Agreement immediately by Written or oral notice to you:
 - 12.1.1. any Insolvency Events relating to you;
 - 12.1.2. the occurrence of any of the events referred to in condition 12.1.1 in relation to any person who has given or may at any time give a guarantee or indemnity or warranty in respect of your Obligations or the death of that person or the termination or attempted termination of any such guarantee and/or indemnity and/or warranty or the invalidity of such guarantee and/or indemnity and/or warranty;
 - 12.1.3. any breach or termination of any warranty, covenant or undertaking given by any person in reliance on which we entered into or continued the Agreement or the withdrawal or attempted withdrawal of any waiver or release or agreement as to priorities in our favour in respect of any security right over any of your assets;

- 12.1.4. the cessation of your business or any material part of it or your threat to cease business or any material part of it;
- 12.1.5. your inability to pay your debts, if you are a company or an LLP, as defined in section 123 of the Act, or if you are not an LLP, as defined in section 268 of the Act;
- 12.1.6. we consider in our absolute discretion, that there has been a material adverse change or deterioration in:
- (a) the business, assets, financial condition or operating performance of:
 - (i) you; or
 - (ii) any person who has given us a guarantee, warranty or indemnity in respect of your Obligations; or
 - (b) your overall management and control or in your day-to-day administration and organisation or in your sales ledger administration or credit control procedures;
- 12.1.7. without our prior written consent, any material change in composition of your board of directors or partners or senior management or any change in the ownership of 10 per cent or more of your shares or in your constitution or composition;
- 12.1.8. any breach of any representation, warranty or undertaking given by you in the Agreement or of any of your Obligations which we consider to be material and if we consent to redress at our discretion which is not redressed by you within two Business Days of our request to you to do so;
- 12.1.9. your failure to deliver to us any Notification for a consecutive period of more than 5 weeks;
- 12.1.10. a breach of any agreement between you or any group company of yours and us for the provision of finance or otherwise;
- 12.1.11. in respect of the Back Office Services only, your failure to provide any time sheets and/or Payroll Information and/or to verify any Approved Timesheet Report in a Relevant Period; or your failure to request any Transfers in a Relevant Period; or your failure to provide or make available the funds necessary for us to make a Transfer; or your failure to pay the applicable part of the Minimum Monthly Service Fee which relates to the Back Office Services charges; or any breach of any of your Obligations set out in condition 13 below.
- 12.2. Upon or at any time after any such events listed in condition 12.1 (whether or not we shall have exercised our right to terminate the Agreement) we may exercise any one or more of the following rights:
- 12.2.1. Recourse in respect of all Book Debts then Outstanding (whether Approved Book Debts or Disapproved Book Debts including for the avoidance of doubt, any Protected Book Debts) so that each such Book Debt shall continue to belong to us until all your Obligations to us have been discharged in full;
 - 12.2.2. to withhold all payments to you until the full discharge of all your Obligations or to reduce the Advance Percentage specified as such in the Particulars to such percentage as we may decide;
 - 12.2.3. to demand the immediate repayment by you of all Advances previously made;
 - 12.2.4. to be paid by you (or to debit to the Current Account) the full cost and expense of any exercise of our rights under condition 11.4 including the appointment of accountants or other professional experts for those purposes;
 - 12.2.5. to require that no credit note will be issued by you without our prior consent;
 - 12.2.6. to suspend the provision of the Back Office Services;
 - 12.2.7. to require immediate repayment by you of all your Obligations to us arising from this Agreement and to appoint at your expense accountants or other professional experts for the purpose of obtaining such information regarding your financial position as we may require.
- 12.3. If you issue any credit note at any time after we have exercised our rights under condition 12.2.5 requiring you not to you will immediately advise us of that credit note in such manner and with such documents (including the original of the credit note) as we may require. For the avoidance of doubt this will not be deemed as consent by us to such credit note. However, if we elect to give consent to the issue of any credit note, whether after exercising our rights under condition 12.2.5, of which the original is in our possession we shall despatch it (at your expense) to the Debtor.
- 12.4. Upon the occurrence of any Insolvency Events in relation to you or any surety in respect of your Obligations to us, we may without any notice or other formality we may at our discretion combine or deem combined all accounts held by us in your name (other than any Available Funds Account).

- 12.5. Upon or after the occurrence of any event specified in condition 12.1, to compensate us for the additional expense of collection of Book Debts which may arise after such an event, we shall be entitled to a Collection Fee.
- 12.6. You unconditionally confirm your agreement that the fees, costs and expenses referred to above are a fair and reasonable pre-estimate of our likely loss of fees, costs and expenses that we would have otherwise received but for the occurrence of an event specified in condition 12.1, and that as such our fees and additional charges are not penalties.
- 12.7. Upon termination of this Agreement
- 12.7.1. all Approved Book Debts shall immediately become Disapproved Book Debts;
- 12.7.2. you must immediately pay to us the Repurchase Price in respect of all Outstanding Book Debts; and
- 12.7.3. all Book Debts coming into existence prior to the date of termination shall continue to belong to us, and our respective rights and obligations under this Agreement shall continue, until such time as we have received from you the Repurchase Price in respect all Outstanding Debts;
- 12.7.4. all Obligations to us must be immediately satisfied in full;
- 12.7.5. for the purposes of this condition 12.7 the Repurchase Price shall be satisfied by your paying to us an amount equivalent to the balance on your Sales Ledger Account, the aggregate of all credit balances on Debtor accounts and all other Obligations; and
- 12.7.6. provided that all sums due to us under this Agreement have been paid in full we shall supply to you such data held on our systems relating exclusively to you as is reasonably requested by you. We shall be entitled to make such charges as we consider reasonable in the circumstances for the supply of the data and shall only release the data upon receipt of payment of such charge.

13. Back Office Service Specific Provisions

13.1 Information, Tax, Transfers and Obligations

- 13.1.1 Every submission of information to you referred to in relation to the Back Office Services shall be deemed to be correct and binding on you except for any manifest error or any error of which you advise us within 7 days of the despatch of that submission, unless such submission has been agreed by you.
- 13.1.2 We will rely solely upon your determination as to the rate of VAT payable on amounts invoiced to Customers and whether a supply is exempt from VAT or not and the responsibility for ensuring the correct treatment of each supply for VAT purposes shall be a matter solely for you and we shall not be liable for any loss suffered by you as a result of VAT having been applied at the wrong rate or a supply having been treated incorrectly as exempt from VAT. You shall indemnify us, on a full indemnity basis, against all losses, claims, demands, expenses, proceedings and costs arising which it may suffer or incur as a result of VAT having been applied at the wrong rate or a supply having been incorrectly treated as VAT exempt.
- 13.1.3 Subject to the provisions of condition 13.1.4 below and your compliance with its Obligations, we undertake:
- (a) to act as agent for you to promptly effect any Transfers in the amount and on the Business Day notified by you to us subject to Payroll Funds being made available to us in a timely fashion.
- (b) provide you with confirmation of the Transfers effected in each Relevant Period.
- 13.1.4 The Transfers are subject to the following provisions:
- (a) all Workers must operate bank accounts with institutions based in the United Kingdom that are able to accept BACS transmissions (or such other similar method as may be available to both us and such institutions); and
- (b) the necessary Payroll Funds required to complete any Transfer are available and delivered in good time; and
- (c) Each party shall promptly comply with the reasonable instructions of the other party as are necessary for the effective operation of the Back Office Services.

13.2 Responsibility to Workers

We accept no responsibility for the failure of any Transfer by us and we accept no legal or tortious or other responsibility to any Worker at any time.

13.3 Warranties And Undertakings

13.3.1 Until the termination of the Agreement and the discharge of all your Obligations you hereby warrant and undertake (as the context permits or dictates):

- (a) that (except as fully and fairly disclosed to us in Writing and subsequently accepted by us) no disposition charge trust or other encumbrance (whether or not created by you) affects or may affect the performance by us of the Agreement and in particular the Back Office Services;
- (b) that before entry into the Agreement you have disclosed to us its VAT number, employers PAYE reference, accounts office reference, and every fact or matter known to you which you knew or should reasonably have known might influence our decision to enter into this Agreement or the acceptance by us of any person as surety for any of your Obligations;
- (c) to disclose promptly to us any fact or matter of which you become aware including (but not limited to) any change or prospective change in your memorandum or articles of association or the ownership or control or you or your business or of any surety which you know or should reasonably know might influence us in any decision as to the continuance of the Agreement;
- (d) not to vary or attempt to vary any Book Debt in any way after you have furnished us with any timesheet, placement or Worker Information in relation to that Supply Contract;
- (e) to submit all documents, papers and information as we shall from time to time specify and in such format as we shall from time to time specify;
- (f) to complete fully and properly timesheet, placement or Workers Information in respect of each Worker in accordance with any instructions given by us from time to time;
- (g) to submit all documents, papers and information as required by us in a timely manner to such address as we shall notify you of in Writing in order to facilitate the prompt delivery of Back Office Services by us in accordance with the Agreement;
- (h) to make all necessary and appropriate VAT returns to HMRC on or before the respective due dates for making such returns and to account to HMRC for all sums due or owing by you in respect of VAT.
- (i) to make all necessary and appropriate submissions to HMRC on or before the respective due dates for making such returns and to account to the HMRC for all sums due or owing by you in respect of PAYE, national insurance and any other applicable taxes;
- (j) to indemnify us on a full indemnity basis against all claims against us by any Customer, Worker (except any claim arising solely from our own default) and against all losses costs charges and expenses (including legal costs but excluding our own administrative expenses) incurred by us at any time and arising from or in any way connected with us entering into this Agreement or enforcing, exercising or protecting its rights under it or under any guarantee or indemnity or security or warranty created in relation to your Obligations or any breach by you of any of your Obligations;
- (k) to ensure we are in receipt of the correct Payroll Funds as is necessary to make any Transfer on your behalf; and
- (l) to comply with all procedures for the operation of this Agreement which we may make known to you from time to time.

13.3.2 While we shall use our reasonable commercial endeavours to provide the Back Office Services at all times, you nevertheless acknowledge that it is technically impossible for us to provide fault free and totally secure Back Office Services and we do not warrant or undertake to do so.

13.3.3 In the event of disruption to or failure of (for whatever reason) the Back Office Services, we shall take all reasonable steps to process the Back Office Services on alternative equipment and to minimise any disruption to the Back Office Services.

13.3.4 In the case of disruption to or failure of the Back Office Services, we shall aim to restore the Back Office Services as soon as possible.

13.4 Accounts And Records

We undertake to retain on your behalf for the duration of this Agreement and for a minimum of six years all records and documents relating to the taxation of the Workers whose Remuneration has been calculated by us on behalf of you and to furnish you with any such records or documents which you may at any time require for

purposes connected with its taxation affairs and on termination of this Agreement. Such records and documents shall remain at your risk and we shall not be responsible for any loss or damage to any such records or documents otherwise than by reason of our own negligence.

13.5 Client Obligations in relation to Back Office Services

You will ensure that as well as all the obligations set out in condition 13 herein, you will comply with all obligations set out in clause 5 of the Agreement.

13.6 Liability

13.6.1 We shall not be liable to you for any breach of this Agreement or for any losses, damages or delays arising from your failure to provide the correct time sheet, placement or Worker Information, Payroll Information and Invoicing Information or correctly verify the Approved Timesheet Report, or your failure to comply with any other procedures or your Obligations set out in this Agreement.

13.6.2 We shall not be liable to you for any breach of this Agreement or for any losses, damages or delays arising from any computer program operated by you or arising from technical failure or disruption to the Back Office Services arising from failure or breakdown of either party's computer systems.

13.6.3 Except in respect of injury to or death of any person or any other liability which cannot be limited or excluded by law (for which no limit applies), the liability of us to you under this Agreement in respect of each event or series of connected events shall not exceed the total amount of the charges paid by us to you in relation to Back Office Services in the calendar year in which the liability occurred.

13.6.4 Notwithstanding anything else contained in this Agreement we shall not be liable to you for loss of profits or contracts, loss of goodwill or other special, indirect or consequential loss whether arising from negligence, breach of contract or howsoever.

13.6.5 We shall indemnify you and keep you fully and effectively indemnified on demand against any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or breach of this Agreement by us, our employees, agents or sub-contractors.

13.6.6 You shall indemnify us and keep us fully and effectively indemnified on demand against any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or breach of this Agreement by you, your Workers, agents or sub-contractors.

13.7 Authority to pay Payroll Funds

13.7.1 You hereby authorise and instruct us to pay out of any sums which are now payable to you or which may hereafter become payable to you under the Agreement, such amounts as from time to time may be requested in relation to Payroll Funds;

13.7.2 You confirm that compliance with these instructions shall fully discharge our obligations in respect of monies so paid. You further confirm that these instructions:

- a) do not constitute an assignment of the monies to be so paid;
- b) shall not in any way extend or vary our obligations nor affect our rights pursuant to the Agreement;
- c) are irrevocable unless otherwise agreed by us;

For the purpose of determining any sums payable to us under this instruction we may rely on our demand (however made) and we shall have no duty to make any enquiry as to the validity or correctness of any such demand.

14. Scottish Debts

The following provisions shall apply to Scottish Debts:

14.1. This condition 14 contains a declaration of trust by you in our favour in respect of Scottish Debts. You constitute yourself trustee for and on behalf of us and constitute us the beneficiary of the trust. The trust property, which you hold on trust for us as trustee is as specified in this condition 14 or as provided elsewhere in this Agreement.

14.2. By our execution of this Agreement, we acknowledge having received intimation of the creation of the foregoing trust, and that we know the property that is and will be trust property. Accordingly, you and we agree:

- a. immediately that you receive any remittance in payment of, or on account of, or in any way relating to a Scottish Debt or its Associated Rights, you will hold it in trust for us as part of the property of the

- trust created by this condition 14 and you will pay it into such account as we may specify;
- b. all Scottish Debts and their Associated Rights purchased or to be purchased by us under this Agreement, together also with all other sums or property, which in terms of this Agreement relate to Scottish Debts and are to be held in trust for us shall be the property of this trust except where, or until:
 - i. in the case of each of the Scottish Debts, we have a complete and unencumbered title thereto, in accordance with Scots law, or
 - ii. in the case of each of the Associated Rights, we receive payment in full of the Scottish Debt to which such Associated Rights relate or complete our title thereto; or
 - iii. in the case of each of such other sums or property, as we receive payment of such sums or complete our title to such property;
 - iv. Scottish Debts and Associated Rights shall become trust property, for Scottish Debts and their Associated Rights existing on the Commencement Date, on the Commencement Date, and, in the case of everything other than such Scottish Debts and Associated Rights existing on the Commencement Date, as soon as the Scottish Debts come into existence; and
 - v. the delivery of information to us in accordance with condition 2 shall constitute notice to us that those of the Scottish Debts in existence at the Commencement as specified in that Notification, and their Associated Rights, have become trust property, except where we already have a complete and unencumbered title thereto.
 - c. We may at any time give notice to any Customer or any other person as we may think fit of the existence of the foregoing trust and that any payment is to be made to us. You shall give like notice if we ask you to.
 - d. In granting this declaration of trust, you hereby, further agree and declare that:
 - i. at any time, including on the occurrence of any of the events referred to in condition 12, we as beneficiary under the trust may call on the trustee to denude in our favour and transfer to us absolutely the legal title to the whole or any part of the property of the trust, and
 - ii. we, acting by our directors, Company Secretary and other officers jointly and each of them severally (an any person to whom we may have assigned or novated our rights under this Agreement) are (notwithstanding the generality of any other terms of this condition 14) hereby appointed by you as your attorneys and mandatories (in our or that person's own interest) and your successors as trustee under the trust with full power both before and upon the Insolvency of such trustee to conduct, defend or compromise any legal proceedings in relation to the trust or trust property in your name as trustee or in our name, to agree to and accept any call made on the trustee under condition 14.2(d) and to grant, execute, sign and bind any assignments, intimations, documents of transfer, or other deeds and documents necessary or in our view desirable to give us, as beneficiary of the trust, a real right in our own name to the whole or any part of the property of the trust and to deliver the same, and to take all other steps that we or our assignee considers necessary, and generally to bind you as trustee thereunder. You shall ratify and confirm whatever shall be lawfully done under these powers.
 - e. You shall, if so required by us, and in such terms as we may reasonably require, grant such security in favour of us over Scottish Debts and their Associated Rights which fail to vest in us as described in the foregoing terms of this condition 14.
 - f. An assignment pursuant to condition 2, to the extent that it relates to Scottish Debts, shall be in support of and shall not affect that granted by you under this condition 14, or in any Notification.
 - g. If you are a Scottish company registered in Scotland, you hereby consent to the registration of this Agreement and of any statement provided under this condition 14 for execution.

15. Constitution and Plurality

- 15.1. If you are more than one person you agree that
 - 15.1.1 references to “you” or “your” include references to any one or more of you or to events relating to any one or more of you;
 - 15.1.2 all undertakings and warranties given by you in the Agreement and the acknowledgements, appointment and authorities given and made by you in the Agreement shall be deemed to have been given, incurred and made by every one of you;

- 15.1.3 all your Obligations shall be joint and several with regards to you and any person or persons who have provided surety, security and or guarantee and/or indemnity in respect of your Obligations to us and we may release or compromise with any one or more of you without affecting our rights against the others; and
- 15.1.4 we may (but shall not be obliged to) treat any notice to or demand on any one or more of you as notice to or demand on you all and any notice to us by any of you as notice by you all.
- 15.2 Except as provided in condition 12 the Agreement and all its terms shall remain in full force and effect notwithstanding any change in your constitution.

16 Notices

- 16.1 Any written notice or demand required or permitted to be given or made by us to or on you shall be validly served or made:
- 16.1.1 if handed, if you are a company, to any of your officers or, if you are an LLP, to any member of it, or;
- 16.1.2 if delivered or sent by first class prepaid post to your address stated in the Agreement or to any address at which you carry on business or, if you are a company or an LLP, to your registered office; or
- 16.1.3 if transmitted by facsimile or e-mail to any facsimile number or e-mail address of you made known to us by you at any time.
- 16.1.4 any such notice or demand, if served personally, shall take effect upon its service and, if sent by post, shall take effect within two Business Days of the time of its posting and, if transmitted by facsimile or email, shall take effect upon its transmission.
- 16.1.5 any notice required or permitted to be given by you to us shall be validly given if sent to us at our registered office by prepaid first class post and shall be effective upon its receipt by us.

17 Data Protection

- 17.1 For the avoidance of doubt, the provisions of this condition 17 relating to Personal Data are supplemented by the provisions of clause 7 and Schedule 3 to the Agreement's Particulars.
- 17.2 You have provided, us with, information about your Associates who are individuals and your sole trader and partnership Debtors, and you have consented to our making checks and searches about them with credit reference and fraud prevention agencies (including those outside of the United Kingdom and European Economic Area). During the term of this Agreement you consent to us making further checks and searches against your Associates and sole trader and partnership Debtors with credit reference agencies, and you accept that this will include searches as to criminal offences, proceedings and convictions.
- 17.3 You further accept that any information received by us in relation to condition 17.2 will form part of our ongoing records and that we will act as an independent controller in respect of any Personal Data contained in or related to that information. Such information may be useful for credit risk assessment, to exercise our rights under this Agreement and to prevent fraud or money laundering. You agree that we may disclose the said information to credit reference agencies, credit insurers, fraud prevention agencies or other financial service organisations (including those outside of the United Kingdom and European Economic Area) as we think fit and that such agencies and organisations may hold and process such information. You acknowledge that any Personal Data we hold or obtain in respect of your Debtors is data which we require for the provision of our services to you.
- 17.4 You agree that we may disclose any details of this Agreement or any transaction under it or any entry on any account or any other information held by us in your name or in the name of your sole trader and partnership Debtors to any credit reference agency or trade register for the purpose of credit decisions, fraud prevention or the tracing of Debtors, or to any group company for any purpose (including, but not limited to, training and marketing) or to any other person for the purpose of our business, including but not limited to our financiers, or to any of our associates or persons acting on our behalf.
- 17.5 You further agree that we may disclose details of this Agreement or any transaction under it or any entry on any account or any other information held by us in your name or in the name of your sole trader and partnership Debtors to any person who has given us security in respect of your Obligations under this Agreement, any person to whom you may wish to transfer your factoring facility and any person to whom we may wish to transfer all or any part of our rights and/or obligations under this Agreement.

17.6 At any time, upon our requesting you so to do, you will send a Data Privacy Notice to your Associates (which shall include but shall not be limited to, your shareholders, directors, employees and guarantors) and your sole trader and partnership Debtors.

18 General Provisions

- 18.1 If any act or event would be required to be performed or be due to take place according to the Agreement on or within a period ending on a day which is not a Business Day the act or event shall be deemed to be performed or to take place on or by the next Business Day.
- 18.2 If any provision of the Agreement shall be held to be invalid or unenforceable no other provision shall be affected and all such other provisions shall remain in full force and effect.
- 18.3 We shall be entitled to rely upon any act done or any letter or document signed or any communication sent to us by facsimile or by e-mail by any person purporting to act or sign or send on your behalf despite any defect in or absence of any authority of such person.
- 18.4 Our rights under the Agreement shall not be affected in any way by any grant by us of any time or indulgence to you or any other person nor by any delay or failure in our exercise of any option under the Agreement or otherwise.
- 18.5 The Agreement shall be construed and take effect in accordance with English law and you hereby submit to the jurisdiction of the English courts without prejudice to our right to bring proceedings in the courts of any country in which you carry on business.
- 18.6 Except as specifically provided for in the Agreement, termination of the Agreement (including termination in accordance with condition 12) shall not affect the rights and obligations of either of us in relation to any transaction having its inception before the date of termination or any Book Debt in existence on that date and such rights and obligations shall remain in full force and effect until duly extinguished. All licences and authorities given to us by you in the Agreement are irrevocable and shall continue after the termination of the Agreement until all your Obligations have been fully discharged.
- 18.7 No person other than you or us will have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement. This condition 18 does not affect any rights or remedy of any person which exists or is available otherwise than under that Act.
- 18.8 You agree that this Agreement and any or all of our rights, benefits and obligations under it may be assigned, novated or transferred by us to any other party without your consent. You further agree that in the event of any such assignment, novation or transfer of this Agreement then this Agreement shall be binding upon and enure to the benefit of our successors and assigns and, where the context permits, references in this Agreement to “we” or “us” shall include such successors and assigns.
- 18.9 We may vary the Agreement by notice to you in Writing. If we do not receive your acknowledgment of the proposed variation within 14 days, or you deliver to us a notification after we have sent you a notice of variation, you will be deemed to have accepted such variation, for the avoidance of doubt verbal variations are not permitted.
- 18.10 We may disclose such information about you, the Debtors and any other person as we see fit to any potential assignee, transferee, sub-participant or delegate, or any assignee, transferee, sub-participant or delegate, of our rights or obligations under this Agreement together with any of our or their respective professional advisors and any of our group companies.

19 Meanings of Words and Expressions

- 19.1 In these Conditions:
- 19.1.1 “we” or “us” means Recruitment Funding Solutions Limited (Registered Number 10821704) whose registered address is at, Unit A Telford Court, Chester Gates Business Park, Chester, CH1 6LT; and
- 19.1.2 “you” means any person for whom we provide our services by an agreement of which the Conditions are a part.
- 19.2 In the Agreement including these Conditions:
- 19.2.1 where the context allows the singular includes the plural and vice versa and any of the three genders includes either of the other two;

- 19.2.2 references to clauses (except where otherwise specified) are to clauses of the Particulars and to conditions are to the Conditions and the headings of clauses and conditions are for convenience only and do not affect the meaning of any clause or condition;
- 19.2.3 the meanings of general words introduced by the word "other" are not limited by reference to any preceding word indicating a particular class of acts matters or things;
- 19.2.4 where we have a right or option to do anything then the right or option is at our absolute discretion;
- 19.2.5 the expressions "**including**" and "**includes**" do not limit or restrict any general words preceding any of them;
- 19.2.6 where the meaning of any expression is used and is to be considered in or in relation to any place outside England and Wales and there is no exact equivalent to that expression in that place then the expression is to have the meaning of its closest equivalent in that place;
- 19.2.7 the definitions contained within the Particulars shall apply to these Conditions and furthermore the following words and expressions used in these Conditions have the meanings attributed to them below:

45 Day Fee	the charge for which provision is made in condition 5.1.2 and set out in the Particulars;
Access Pay & Bill	the Access Pay and Bill system specifically designed for the recruitment sector and which we, RFS use to provide our Back Office Services to you or such other electronic system as we may notify to you from time to time;
Additional Fees	means any additional fees payable as set out in the Particulars;
Agreed Format	means the format of documentation used in relation to the provision of the Services;
Agreed Timetable	means the timetable or timetables specified in Schedule 1 of the Agreement;
Agreement	the agreement pursuant to which we provide to you invoice finance services on the terms and conditions set out in the Particulars and set out in the Conditions;
the Act	means the Insolvency Act 1986, or in respect of Northern Ireland the Insolvency (NI) Order 1989;
Advance	a payment by us to you on account of the Purchase Price of any Book Debt before its Collection Date up to the Advance Percentage of the Notified Amount of the Book Debt;
Advance Percentage	means the percentage as specified in the Particulars;
Approved	in relation to any Book Debt, Approved for Advance under Conditions 3.1 to 3.3 (inclusive);
Approved Funding	The Facility Limit less an amount equal to the Advance Percentage of the total amount of the Outstanding Approved Book Debts.
Approved Timesheet Report	means the payroll summary report produced by us for you, further described in clause 5 of the Agreement;

Associate	any partner, shareholder, director or other officer (or, in the case of an LLP, a member), or any employee or other person involved in the management of your business or any person who has or may give a guarantee, warranty or indemnity in respect of your Obligations under this Agreement or any person whose relationship with you is within the meaning of “associate” in section 435 of the Act;
Associated Rights	in respect of any Book Debt all of the following: (i) all your rights under the Supply Contract; (ii) the benefit of all guarantees indemnities insurances and securities given to or held by you; (iii) all cheques bills of exchange and other instruments held by or available to you; (iv) the right to possession of all ledgers computer data records and documents on or by which any Book Debt is recorded or evidenced; and (v) any interest to which you become entitled in relation to the Book Debt as a result of any statutory enactment or any rule or regulation of government; (vi) any credit insurance in respect of a Book Debt; and (vii) any time sheets or proofs of delivery;
Authorised Work	the provision or supply by you of staff or workers providing services for or to a Customer on permanent and non-permanent assignments;
Available Funds Account	a memorandum account maintained by us for recording the amount remaining at any time after deducting any debit balance on the Sales Ledger Account from (or adding any credit balance on it to) the Approved Funding at that time;
Back Office Services	The payroll, invoicing and other specific services set out as “included” in the Particulars and detailed in Schedule 2 of the Agreement;
BACS	Bankers’ Automated Clearing Service;
BACS File	means the file containing details of all BACS payments to the Workers, held by us or by a third party on our behalf;
Base Rate	the base rate of Royal Bank of Scotland plc as set from time to time, provided that the Base Rate shall never be lower than the Minimum Base Rate;
Book Debt(s)	the amount (or, where the context allows, a part of such amount) of any obligation or indebtedness, including any tax or duty payable, incurred by a Debtor under a Supply Contract including for the avoidance of doubt where the Debtor is domiciled in Northern Ireland or arising under a Supply Contract governed by the laws of Northern Ireland together with (where the context allows) any Associated Rights pertaining to such obligation or indebtedness;
Business	the business carried out by you at the date of this Agreement and from time to time;

Business Day	any day except any Saturday, Sunday or bank holiday in England or Wales;
CHAPS	Clearing House Automated Payments System;
CIS	Construction Industry Scheme;
Client Personal Data	any personal data which we process in connection with this Agreement, in the capacity of a processor on behalf of you;
Collection Date	in respect of any Book Debt paid in cash, by credit transfer or Faster Payment Service the date of the advice to us of the receipt of the funds in the Trust Account and, in respect of any Book Debt paid by cheque or other instrument, the date when the funds represented by it are collected and received into the Trust Account (for administrative convenience, and in the absence of any disruption to banking procedures, we may allow three Business Days for clearing of cheques or other instruments of payment);
Collection Fee	the fee as set out in the Particulars;
Commencement or Commencement Date	the date specified in the Particulars;
Confidential Information	means all information obtained by one party from the other which is expressly marked as confidential or which is manifestly confidential;
Concentration Limit	means the percentage provided for in the Particulars (or such other percentage as we may specify from time to time, subject always to the credit status of the Debtor) as being the value of Outstanding Book Debts owing by any one Debtor expressed as a percentage of the total amount of all Approved Book Debts Outstanding at any time in respect of that Debtor;
Conditions	these conditions for invoice finance between us and you;
Credit Insured Limits	such limits as set by our Insurer or such limits set by any insurer of a credit insurance policy held by you;
Current Account	accounts maintained by us in your name on which are recorded transactions between you and us;

Customer	any person for whom Authorised Work has been, is or may be provided or supplied;
Data Protection Laws	means all statutes, laws, secondary legislation and regulations pertaining to privacy, confidentiality and/or data protection of Personal Data or corporate data, including the Data Protection Act 2018 (including the UK GDPR, as that term is defined in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018)), the General Data Protection Regulation (Regulation (EU) 2016/679) (in relation to the processing of EU data subjects' data), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699) and any relevant national laws implementing Directives 95/46/EC and 2002/58/EC;
Data Privacy Notice	means a notice of the manner in which either you or we shall process Personal Data in the form supplied by us to you from time to time;
Debtor	any person who has incurred or may incur an obligation to you under a Supply Contract;
Debtor Funding Limit	a discretionary limit established under condition 3.2.3 or set out in the Particulars in relation to any Debtor for the purpose of determining which Book Debts owing by that Debtor may be Approved. All other limits are subject to satisfactory credit status;
Dilutions	all credit and debit notes, deductions, retentions, setoff, withholding or other adjustments which reduce or we anticipate may reduce the Notified Amount of an Approved Book Debt including for the avoidance of doubt any re-assignment by you of a Book Debt back to a Debtor whether under the terms of a Supply Contract or otherwise;
Disapproved	in relation to any Book Debt, not Approved;
Disbursements	all bank charges and other costs, charges and expenses incurred by us in the operation of or in connection with this Agreement and which shall include, without limitation, audit, legal and other professional costs and expenses incurred by us (plus VAT, if applicable), our own administrative and other management costs including those set out in the Fees Schedule;
EDI Services	the availability for you to communicate with us by electronic means for the purposes described in condition 7.1;
Electronic Payments	a payment made by CHAPS, Faster Payment or BACS;
Facility Limit	the limit as specified in the Particulars;

Faster Payment	the Faster Payment Service promulgated by the Payment Services Regulations 2017;
Fees Schedule	the schedule detailing any additional fees payable as provided to you by us from time to time;
First Loss	The amount as set out in the Particulars;
HMRC	HM Revenue and Customs;
Insolvency Events	<p><i>In relation to a company, LLP (as the context permits):</i></p> <ul style="list-style-type: none"> (i) the convening of a meeting of creditors to pass a resolution for the winding-up of the company or LLP; (ii) the passing of a resolution by directors or members for the purpose of entering into liquidation or administration; (iii) the appointment of a provisional liquidator, receiver, administrative receiver, liquidator, judicial factor or administrator; (iv) the presentation of a petition or the making of any order for the winding-up or administration of the company or LLP; (v) the service of notice of intention to appoint an administrator, receiver or administrative receiver; (vi) the commencement of a moratorium; (vii) the dissolution of a company or LLP; or any such analogous action; <p><i>In relation to a partnership:</i></p> <ul style="list-style-type: none"> (viii) the presentation of a petition or the making of an order for the bankruptcy or the sequestration of any partner or the partnership; (ix) the presentation of a petition or the making of an order for the winding-up or administration of the partnership; (x) the appointment of a partnership administrator or any person giving notice of intention to appoint a partnership administrator; (xi) the dissolution of a partnership; or (xii) the passing of a resolution by the partners for its dissolution. <p><i>In relation to any individual/person</i></p> <ul style="list-style-type: none"> (xiii) entering into or proposing to enter into a voluntary arrangement or the appointment of any nominee or supervisor under the Act or the Order; (xiv) commencing negotiations with any creditor for the rescheduling of any indebtedness or any informal arrangement generally for the benefit of creditors; (xv) any creditor attaching, taking possession of, exercising commercial rent arrears recovery or executing against, sequestrating, levying on, exercising rights of lien on or enforcing security rights against or obtaining an order restraining the disposal of any part of the person's income or assets; (xvi) the service of a statutory demand under the Act or the Order; (xvii) the entry of any judgment, order or award which remains unsatisfied or whose terms are not complied with for 5 days (except whilst any appeal is pending);

	<p>(xviii) the presentation of a petition for an individual’s bankruptcy (or equivalent process in any relevant jurisdiction);</p> <p>(xix) the making of a bankruptcy order;</p> <p>(xx) following service of a duly executed charge in connection with proceedings issued in Scotland for payment of a debt, the days of charge expire without payment;</p> <p>(xxi) being unable to pay debts as they fall due; or</p> <p>(xxii) being deemed insolvent under the Act or the Order;</p>
Insurer	the insurer by which the Policy has been issued;
Intermediary	any internet server or other concern through which you communicate with us by electronic means;
Invoicing Information	the information required by us to invoice your customers on your behalf that shall be notified to you by us from time to time;
LLP	a limited liability partnership incorporated under the Limited Liability Partnership Act 2000;
Minimum Base Rate	0%
Minimum Period	the minimum period as set out in the Particulars;
Minimum Monthly Service Fee	as specified in the Particulars (to include all and any fees in relation to the Specified Services) and used to calculate total Service Fees payable in the event of Termination in conditions 5.2 and 5.3.
Modified Recourse	the protection of certain Book Debts in accordance with condition 10.3;
Notice Period	the minimum period of notice that we require you to give us in Writing to terminate the Agreement as set out in the Particulars;
Notification	your notification to us of Book Debts which have come into existence, and “Notify” and “Notified” shall be construed accordingly;
Notified Amount	in relation to any Book Debt, the amount of it as included in any Notification of it;
your Obligations	all your monetary and other actual or contingent or prospective obligations incurred at any time to us whether arising under the Agreement or otherwise and whether arising in or by contract tort restitution or assignment, including representations and covenants arising under the Agreement;
Order	The Insolvency (NI) Order 1989;
Outstanding	in relation to any Book Debt, remaining in our ownership and unpaid;

Particulars	the particular terms as set out in the Agreement;
PAYE	pay as you earn (including using real time information (RTI));
Payroll Funds	means sufficient cleared funds delivered to our bank account by you at least one Business Day prior to us committing to any Transfer;
Payroll Information	means the information, described in more detail in condition 13, to be provided by you to us to enable us to effectively provide the Services to you;
Personal Data	any personal data (including sensitive personal data) that we, our employees, agents or sub-contractors process on our behalf in performing our obligations under or in connection with this Agreement;
the Policy	the policy of credit insurance described in condition 10.3;
Privacy Policy	a policy as to the manner in which we shall process, and your rights in connection with, Personal Data, in a form supplied by us to you from time to time;
Processing Day	means the day on which the BACS payments are processed, as detailed in the Agreed Timetable (Schedule 1);
Protected Book Debts	any Book Debts which are the subject of Modified Recourse which for the avoidance of doubt includes those Book Debts which are the subject of a claim being made to the Insurer;
Purchase Price	the price payable by us for a Book Debt determined in accordance with condition 4.1;
Purpose	the purposes for which the Client Personal Data is processed, as set out in this Agreement;
Recourse	our right to require that you repurchase forthwith and take a re-assignment of any Outstanding Book Debt at the Repurchase Price;
Relevant Period	the period of time specified in the Particulars;
Remuneration	the wages, salaries or charges payable to the Workers;
Repurchase Price	the repurchase price of an Outstanding Book Debt equivalent to the Notified Amount of that Book Debt;
Sales Ledger Account	an account on which we record the aggregate Notified Debts Outstanding at any time;
Sanctioned Entity	any person who is domiciled in a Sanctioned Territory or has been designated as a sanctions target or who is owned or controlled by or acting on behalf of a Sanctioned Entity;

Sanctioned Territory	any country which is subject to a financial sanctions regime or has been designated as a sanctions target by the European Union, the United Kingdom or the United States of America;
Scottish Debts	any Book Debt incurred by a Debtor domiciled in Scotland or arising under a Supply Contract governed by Scots law.
Service Fee(s)	the fees in respect of the Specified Services calculated in accordance with condition 5.1.1 and set out in the Particulars;
Set up Fee	the fee payable to us by you prior to Commencement as set out in the Particulars;
Specified Services	to include all service fees, such as all collection fees, all initial due diligence fees, regular audits fees, bank account costs, Electronic Payments, Modified Recourse fees, Back Office Services charges and access to Access Pay & Bill (EDI fees);
Supply Contract	a contract for Authorised Work;
Time Sheet	record of the hours worked by each Worker prepared by you or the Customer in such form and containing such other information as we may from time to time specify;
Transfer	payment of Remuneration to any Worker;
Trust Account	the account in your name at our bankers upon which we or our bankers are the only authorised signatory;
UK Money Laundering Regulations	means all statutes, laws, secondary legislation and regulations pertaining to anti-money laundering, counter-terrorist financing and counter proliferation financing regime, including but not limited to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (<i>SI 2017/692</i>) and any other regulations or any relevant national laws implementing or amending the United Kingdom anti money laundering counter-terrorist financing and counter proliferation financing regime;
United Kingdom	means Great Britain and Northern Ireland;
VAT	Value Added Tax payable by a Customer at the date of provision of the relevant service or payable to a Worker at the date of provision of the relevant service;
Worker	any person employed by you to operate the Business as notified to us by you, who is resident in the United Kingdom and subject to its tax regulations and who is: <ul style="list-style-type: none"> (a) recruited by you and placed with Customers of the Business; or (b) contracted by you to provide payroll services to the Customers of the Business; and Workers shall be construed as the context permits or dictates;

Worker Information	record of the hours worked by each Worker, charge and bill rates prepared by you or the Customer and uploaded via the Access Pay & Bill online portal or otherwise in such form and containing such other information as we may from time to time specify;
Writing	any method by which a communication may be recorded in a permanent form so that it may be reproduced and used at any time after its creation and "written" is to be construed accordingly.