

8. TERMINOLOGY

In addition to any terms defined elsewhere in this Agreement, the following terms shall bear the meaning given to them when used in this Agreement:-

“**Associate**” as defined in s1260 of Companies Act 2006.

“**Control**” means the power to secure that the affairs of a company or a group of people are conducted in accordance with the wishes of the person holding such power, and “**Controls**” is to be interpreted accordingly.

“**Insolvency Act**” means the Insolvency Act 1986 and the schedules thereto and any re-enactment or amendment thereof or of any part thereof.

“**Insolvent**” and “**Insolvency**” means in relation to a person means any of the following:

- a. the person is unable to pay his or its debts within the meaning of section 123 of the Insolvency Act;
- b. a statutory demand is served on the person and the statutory demand is not set aside within 21 days;
- c. the person applies for an interim order under section 253 of the Insolvency Act or an arrangement or a composition is made for the benefit of creditors (or a class of creditors) whether or not pursuant to the Insolvency Act;
- d. a bankruptcy order is made in relation to a Partner or a Partner applies for an interim order under section 253 of the Insolvency Act or an arrangement or a composition is made for the benefit of creditors (or a class of creditors) whether or not pursuant to the Insolvency Act;
- e. a petition is presented, or other proceedings are commenced, or a meeting is called to pass a resolution, for winding up or for a corporate voluntary arrangement or similar procedure;

- f. a receiver or administrative receiver, or administrator or similar official is appointed;
- g. the person’s assets are seized or distrained or executed against;
- h. the person ceases or threatens to cease to carry on business or suspends payment of his or its debts;
- i. a judgment or other money order is obtained which is not satisfied within 7 days;
- j. any other indebtedness due, owing or incurred by the person is not paid when it becomes due, or becomes capable of being declared due and payable prior to its stated maturity for any reason.

“**LLP**” means a limited liability partnership registered in accordance with the Limited Liability Partnership Act 2000.

“**Master Services Agreement**” the written agreement between us that incorporates modules detailing the services to be provided by us to you, the costs of those services and the terms and conditions and our respective rights and obligations in relation to those services.

“**Partner**” means any partner in partnership with you in the business to which this Agreement relates and, in respect of an LLP, any member, designated member or partner.

“**Sterling**” and “**£**” means the lawful currency for the time being of the United Kingdom.

“**UK**” means the United Kingdom of Great Britain and Northern Ireland but excluding, for the avoidance of doubt, the Isle of Man and the Channel Islands.

“**VAT**” means value added tax as imposed by the Value Added Tax Act 1994 and legislation supplemental or in substitution thereof.

“Working Day” means a day other than a Saturday, Sunday, public or bank holiday.

9. INTERPRETATION

- 9.1. In this Agreement with you any reference to:
- a. this “Agreement” or any “Module” or other part of it, is a reference to this Agreement or such Module or such part, as the case may be, as novated, varied, amended, substituted or added to from time to time;
 - b. a clause, paragraph or condition is, unless otherwise stated, a reference to the relevant clause, paragraph or condition of this Agreement;
 - c. a “person” is a reference to any individual person, firm, partnership or body corporate;
 - d. “us” includes any person to which we may novate, transfer or otherwise dispose of any of our rights and/or obligations under this Agreement;
 - e. a statute or statutory provision includes any statute or statutory provision that amends, consolidates, replaces or extends the same;
 - f. “our bank” is a reference to a bank at which we may from time to time hold any one or more accounts in our name, including any trust account specified in the Fees and Special Conditions Module;
- 9.2. Unless the context requires otherwise, words denoting one gender include all other genders and words denoting the singular include the plural and vice versa.
- 9.3. If any provision of this Agreement is held to be invalid, illegal or unenforceable, no other provisions will be affected and the remaining provisions will remain in full force and effect.
- 9.4. Nothing in this Agreement is intended to create a charge requiring registration.

10. ACCOUNTS AND SET OFF

- 10.1. We will send you, usually on a monthly basis, a statement of account recording the entries that we have made in your accounts with us. All entries that we make will be conclusive and binding on you unless they contain a manifest error or you identify in writing an error within 30 days of us sending such statement to you or us making such statement available for you to view via the internet.
- 10.2. In the event of any dispute between you and us, a statement of account, certified as true and correct by either our company secretary or one of our directors, shall be treated as adequate proof of indebtedness and in any proceedings shall be conclusive evidence of the amount so certified, save in the event of manifest error.
- 10.3. We may at any time and without notice set off against any sums due from us to you, any moneys due from you to us and/ or to any of our group companies, whether actually, prospectively or contingently and whether alone or jointly with others and whether arising pursuant to this Agreement or otherwise howsoever. You may not exercise any right of set-off or counterclaim against moneys due from you to us.
- 10.4. We may at any time without notice combine or consolidate your accounts with us.

11. REPRESENTATIONS AND WARRANTIES

You represent and warrant to us (on the date of this Agreement and on each day during which it is in force until it is terminated) that:

- 11.1 you have disclosed to us every material fact or matter known to you that may influence us in deciding whether to:

- a. enter into or continue operating this Agreement; or
- b. if you have our Debt Purchase service, vary your Funding Limit and/or any Credit Limit and/or classify a Debt as Approved or Disapproved; or
- c. accept any person to be a guarantor, warrantor or indemnifier of your obligations and liabilities to us;

with creditors or for an interim order or any other Insolvency or analogous proceedings.

- 11.2 all information supplied to us about your business, assets and financial condition was when supplied true, complete and up-to-date;
- 11.3 you are solvent and will be able to pay all your debts in full, together with interest, for the anticipated duration of this Agreement; and
- 11.4 you have obtained and maintained all such insurance policies (including, without limitation, product liability insurance) as would be maintained by prudent organisations carrying on business of the type carried on by you and have complied in all material respects with the terms and conditions of such policies; and
- 11.5 you have complied and will continue to comply with all your obligations under the Data Acts.

12. UNDERTAKINGS

- 12.1 You undertake that you will:
 - a. comply in all material respects with all legislation and regulatory requirements relating to your business or assets where failure to do so might adversely affect your business, assets or financial condition; and
 - b. give to us at least 7 days prior written notice of any application for an administration order or an arrangement

13. ELECTRONIC COMMUNICATIONS AND SOFTWARE

- 13.1 We may agree with you that for the purposes of this Agreement you can deliver information to us and communicate with us via either our own dedicated website and/ or software or via email or other electronic methods we may approve. If we do so, you must deliver hard copy written Notification schedules to us within two Working Days of our request for you to do so.
- 13.2 We may alter, or withdraw our agreement to communicate electronically at any time.
- 13.3 You recognise that agreeing to communicate electronically is only ancillary to this Agreement and that we shall not be liable for any loss or damage (other than death or personal injury) suffered by you of whatever nature and howsoever arising (including any consequential, special, secondary or indirect loss) from communicating or attempting to communicate with us by electronic means.
- 13.4 You will indemnify us against all liabilities, damages and expenses arising out of our receipt of any incorrect, incomplete or inaccurate message or data by electronic means or our failure to receive or to act upon any such message or data.
- 13.5 We, or one of our chosen suppliers, may need to install software provided by such a supplier onto your computer systems to enable us to deliver and/or manage the services we have agreed to provide to you. We take all reasonable care when choosing such suppliers but we will not be liable for any direct or indirect loss or damage (other than death or personal injury) suffered by you of whatever nature and howsoever

arising (including any consequential, special, secondary or indirect loss) attributable to the installation of such software on your computer systems.

of any other requirement. No failure or delay on our part in the exercise of any of our rights under this Agreement will constitute a waiver of that right.

14. TRANSFERS

- 14.1. We may at any time novate, assign, transfer, charge or otherwise dispose of any of our rights and/or obligations under this Agreement or under any related guarantee, warranty, indemnity or security. You will enter into any documentation that we may require in order to give effect to any such novation, assignment, transfer, charge or other disposition.
- 14.2. You may not, without our prior written consent, assign, transfer or hold upon trust any of your rights and/or obligations under this Agreement or any related security.

15. VARIATIONS AND WAIVERS

- 15.1. We may vary this Agreement from time to time in the manner stated in the Master Agreement. Where we are entitled to vary this Agreement without your specific consent, we will give you written notice of any such proposed variation. You will be asked to acknowledge such a variation, however if we do not receive your acknowledgement of such a variation within 7 days, you will be deemed to have accepted such variation.
- 15.2. If we agree to your request for any variation to this Agreement at any time, we may charge a fee agreed with you beforehand for agreeing to such a variation.
- 15.3. Our rights under this Agreement will not be affected in any way by our granting you time or indulgence, and no waiver by us of any requirement of this Agreement will constitute a waiver of that requirement in the future or

16. NOTICES

- 16.1. Each communication shall be in writing (which includes email) and sent to the recipient at its usual email address or the address stated in the Master Agreement or such other address in Great Britain as you or we may for this purpose notify to the other and shall be deemed to have been given upon receipt (if delivered by hand) or when successfully transmitted (if sent by email) or two days after posting (if sent by first class mail).

17. MISCELLANEOUS

- 17.1. If any provision of this Agreement is found to be unenforceable, all other provisions shall remain unaffected.
- 17.2. The terms of this Agreement together with our privacy and cookies policy and any terms of use on our website in effect from time to time contain the entire agreement and understanding between us and you in relation to the subject matter hereof and supersedes all prior oral or written agreements, representations, understandings or arrangements other than a fraudulent misrepresentation that a party has relied on.
- 17.3. We shall not be responsible for any delay or failure to perform when its failure results from any of the following cause: Acts of God or public enemies, civil war, insurrection or riot, acts of terrorism, fire, flood, explosion, earthquake or serious accident, pandemic, change of law, failure of the Internet, strike, labour trouble or work interruption or any cause beyond our reasonable control. If any such circumstances of delay or failure

to perform prevail for a period of 45 days or more, then you or we may forthwith terminate this Agreement by written notice to the other, in which event neither party shall be liable to the other by reason of such termination.