

Forster Chase Advisory Limited – Standard Terms & Conditions

Definitions and interpretation

1.1 In these Terms & Conditions the following definitions apply:

"**Affiliate**" means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;

"**Bribery Laws**" means the Bribery Act 2010 and any similar or equivalent legislation in any other relevant jurisdiction;

"**Business Day**" means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in England;

"**Client**" means the person who purchases the Services from Forster Chase and whose details are set out in the Engagement Letter;

"**Confidential Information**" means any commercial, financial or technical information, information relating to the Services, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by either party in performing its obligations under, or otherwise pursuant to the Contract;

"**Contract**" means the agreement between Forster Chase and the Client for the sale and purchase of the Services incorporating these Terms & Conditions and the Engagement Letter;

"**Control**" means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company;

"**Controller**" shall have the meaning given in applicable Data Protection Laws from time to time;

"**Data Protection Laws**" means, as binding on either party or the Services:

- (a) The GDPR;
- (b) The Data Protection Act 2018;
- (c) Any laws which implement any such laws; and
- (d) Any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;

"**Data Subject**" shall have the meaning in applicable Data Protection Laws from time to time;

"**Engagement Letter**" means the description or specification of the Services as required by the Client, as set out in the Proposal, and to be delivered or performed by Forster Chase;

"**Fee**" has the meaning given in clause 3.1;

"**Force Majeure**" means an event or sequence of events beyond any party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster; pandemic or mass illness and any governmental restrictions arising out of or in connection with pandemic or mass illness; war, riot or civil unrest; interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service; or material required for performance of the Contract; strike, lockout or boycott or other industrial action including strikes or other industrial disputes involving Forster Chase's or its suppliers' workforce, but excluding the Client's inability to pay or circumstances resulting in the Client's inability to pay;

"**Forster Chase**" means Forster Chase Advisory Limited, a company incorporated in England and Wales (Company Registration Number: 09395007) and whose registered office is situated at Warnford Court, 29 Throgmorton Street, London, England, EC2N 2AT;

"**Forster Chase Personnel**" all employees, officers, staff, other workers, agents and consultants of Forster Chase, its Affiliates and any of their sub-contractors who are engaged in the performance of the Services from time to time;

"**GDPR**" means the General Data Protection Regulation, Regulation (EU) 2016/679;

"**Intellectual Property Rights**" means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case:

- (a) Whether registered or not
- (b) Including any applications to protect or register such rights
- (c) Including all renewals and extensions of such rights or applications
- (d) Whether vested, contingent or future
- (e) To which the relevant party is or may be entitled, and
- (f) In whichever part of the world existing;

"**International Organisation**" has the meaning given in the applicable Data Protection Laws from time to time;

"**Location**" means any relevant address for the performance of the Services as may be set out in the Engagement Letter;

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"**Modern Slavery Policy**" means Forster Chase's anti-slavery and human trafficking policy in force and notified to the Client from time to time;

"**Personal Data**" has the meaning given in the applicable Data Protection Laws from time to time;

"**Personal Data Breach**" has the meaning given in the applicable Data Protection Laws from time to time;

"**processing**" has the meaning given to it in applicable Data Protection Laws from time to time (and related expressions, including process, processed, processing, and processes shall be construed accordingly);

"**Processor**" has the meaning given to it in applicable Data Protection Laws from time to time;

"**Proposal**" means the document setting out the proposed Services as required by the Client and to be delivered or performed by Forster Chase;

"**Protected Data**" means Personal Data received from or on behalf of the Client in connection with the performance of Forster Chase's obligations under the Contract;

"**Services**" means the services set out in the Engagement Letter and to be performed by Forster Chase for the Client;

"**Sub-Processor**" means any agent, subcontractor or other third party (excluding its employees) engaged by Forster Chase for carrying out any processing activities on behalf of the Client in respect of the Protected Data;

"**Terms & Conditions**" means Forster Chase's terms and conditions of sale set out in this document; and

"**VAT**" means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the performance of the Services.

1.2 In these Terms & Conditions, unless the context otherwise requires:

1.2.1 A reference to the Contract includes these Terms & Conditions, the Engagement Letter, and their respective schedules, appendices and annexes (if any);

1.2.2 Any clause, schedule or other headings in these Terms & Conditions are included for convenience only and shall have no effect on the interpretation of these Terms & Conditions;

1.2.3 A reference to a 'party' means either Forster Chase or the Client and includes that party's personal representatives, successors and permitted assigns;

1.2.4 A reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;

1.2.5 A reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;

1.2.6 A reference to a gender includes each other gender;

1.2.7 Words in the singular include the plural and vice versa;

1.2.8 Any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;

1.2.9 A reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;

1.2.10 A reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under the Contract; and

1.2.11 A reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

2. APPLICATION OF THESE TERMS & CONDITIONS

2.1 These Terms & Conditions apply to and form part of the Contract between Forster Chase and the Client. They supersede any previously issued terms and conditions of purchase or supply.

2.2 No terms or conditions endorsed on, delivered with, or contained in the Client's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that Forster Chase otherwise agrees in writing.

2.3 No variation of these Terms & Conditions or to the Engagement Letter or to the Contract, shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of Forster Chase.

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- 2.4 Forster Chase will provide the Client with an Engagement Letter signed by Forster Chase setting out the details of the Services. No binding obligation to perform any Services shall arise until Forster Chase's receipt of the Engagement Letter signed by the Client.
- 2.5 Forster Chase may issue Proposals to the Client from time to time. Proposals are invitations to treat only. They are not an offer to perform Services and are incapable of being accepted by the Client.
- 2.6 Marketing and other promotional material relating to the Services are illustrative only and do not form part of the Contract.
- 2.7 The Client authorises Forster Chase to act on instructions relating to the performance of the Services given in any manner if Forster Chase reasonably believes that the Client or a person with authority to act on behalf of the Client has issued such instructions.
- 2.8 The Client acknowledges and agrees that the electronic transmission of information via the internet or otherwise has inherent risks (particularly the risk of access by unauthorised parties). The Client authorises Forster Chase to communicate electronically with the Client and all third parties on all matters related to the performance of the Services.

3. FEE

- 3.1 The fee for the Services shall be as set out in the Engagement Letter ("**Fee**").
- 3.2 Unless otherwise stated in the Engagement Letter, the Client acknowledges and agrees:
 - 3.2.1 The Fee reflects the input required by Forster Chase Personnel to perform the Services;
 - 3.2.2 The Fee may include travelling time of any Forster Chase Personnel;
 - 3.2.3 The Fee may vary to reflect the skill, responsibility and experience of the Forster Chase Personnel involved in performing the Services, as well as the nature, level, complexity and urgency of the Services required by the Client;
 - 3.2.4 Forster Chase will add to the Fee any expenses and disbursements (such as sub-contractor fees, travel and accommodation expenses) incurred by Forster Chase in performing the Services, together with an administration charge of 5% of the Fee.
- 3.3 Whenever appropriate, Forster Chase will agree a Fee level with the Client in advance of performing the Services. The Client acknowledges and agrees that the Fee level is not a commitment to perform the Services within a fixed time or for a fixed Fee, and that the Fees basis will be based on the assumption that Forster Chase is granted timely access to the information and personnel that are required to complete the performance of the Services in a cost-effective manner and in accordance with relevant deadlines. Forster Chase will advise the Client of delays or unexpected problems as they arise and will estimate their effect on the Fee level and notify the Client as soon as is reasonably practicable.
- 3.4 Unless otherwise stated in the Engagement Letter, invoices for Fees, expenses and disbursements necessarily incurred on behalf of the Client are normally rendered monthly as the performance of the Services progresses and are subject to VAT if applicable. Any queries relating to invoices must be raised by the Client in writing within 10 Business Days of the invoice date. Forster Chase reserves the right to request payment of Fees, expenses and disbursements in advance.
- 3.5 The Fee is exclusive of VAT.
- 3.6 The Client shall pay any applicable VAT to Forster Chase on receipt of a valid VAT invoice.
- 3.7 Forster Chase may increase the Fee in accordance with clause 3.3.
- 3.8 Notwithstanding clause 3.7, Forster Chase may increase the Fee with immediate effect by written notice to the Client where there is an increase in the direct cost to Forster Chase of performing the relevant Services and which is due to any factor beyond the control of Forster Chase.

4. PAYMENT

- 4.1 Forster Chase shall invoice the Client for the performance of the Services as set out in the Engagement Letter.
- 4.2 The Client shall pay all invoices:
 - 4.2.1 In full without deduction or set-off, within 10 Business Days of the date of the invoice, in cleared funds by the due date for payment of each invoice or as set out in the Engagement Letter; and
 - 4.2.2 To the bank account nominated by Forster Chase.
- 4.3 Time of payment is of the essence. Where sums due under these Terms & Conditions are not paid in full by the due date:
 - 4.3.1 Forster Chase may, without limiting its other rights, charge interest on such sums at 5% a year above the base rate of The Bank of England from time to time in force; and

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4.3.2 Interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

5. ANTI-MONEY LAUNDERING & CONFLICT OF INTEREST

5.1 The Client acknowledges that Forster Chase is responsible for ensuring that its obligations in connection with Article 28 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 are met.

5.2 Further to clause 5.1, Forster Chase shall:

5.2.1 Require the Client to provide relevant identification documents as set out in the Engagement Letter;

5.2.2 Require the Client to provide information as to any relevant corporate structure as may be required by Forster Chase.

5.3 The Client acknowledges and agrees that:

5.3.1 Forster Chase does not act exclusively for the Client in the provision of services the same as or similar to the Services, and the Client agrees that Forster Chase may act for third parties whose interests may conflict with the Client's, provided that Forster Chase complies with Forster Chase's ethical obligations and its obligations under these Terms & Conditions in respect of the Client's Confidential Information.

5.3.2 Forster Chase has put in place procedures to identify situations where conflicts of interest may arise. However, Forster Chase cannot be certain that its procedures identify all such situations. If the Client becomes aware of any potential conflict of interest affecting the performance of the Services, the Client will notify Forster Chase immediately.

5.3.3 Where a conflict of interest is identified and Forster Chase believes that implementing appropriate procedures can properly safeguard the Client's interests, Forster Chase will notify the Client (subject to any obligations, including confidentiality, that Forster Chase may owe to third parties), explain the safeguards to be implemented, and obtain the Client's consent to their implementation. However, there may be circumstances where Forster Chase may consider that the Client's position cannot be safeguarded, and in such circumstances the performance of the Services may be terminated by Forster Chase.

6. PERFORMANCE

6.1 In respect of the performance of the Services:

6.1.1 The Services shall be performed by Forster Chase on or by any relevant date(s) specified in the Engagement Letter;

6.1.2 The Services shall be deemed delivered by Forster Chase only on completion of the performance of the Services.

6.2 Forster Chase may engage Forster Chase Personnel or subcontractors in connection with the performance of the Services, subject to the following:

6.2.1 Forster Chase warrants that any Forster Chase Personnel or subcontractor that is engaged to perform any Services shall be suitably qualified to do so. For the avoidance of doubt, Forster Chase reserves the right to determine which Forster Chase Personnel or subcontractor is allocated to perform the Services and, where named individuals are not available, Forster Chase will supply substitutes of equivalent quality and experience;

6.2.2 The Client acknowledges that:

(a) Any performance of the Services carried out by any Forster Chase Personnel or subcontractor shall be supplied to the Client by Forster Chase;

(b) The Client, via the Engagement Letter and these Terms & Conditions, engages Forster Chase for the performance of the Services and does not engage the Forster Chase Personnel or subcontractor;

(c) Forster Chase is responsible for the performance of the Services carried out by any Forster Chase Personnel or subcontractor;

(d) Any complaints relating to the conduct of any Forster Chase Personnel or subcontractor should be directed to Forster Chase by the Client.

6.2.3 The Client will not solicit, or endeavour to solicit, in any way the services of any Forster Chase Personnel or subcontractor with whom the Client has had dealings in connection with the performance of the Services during the 12 months immediately prior to the Client's approach of such Forster Chase Personnel or subcontractor (except where such Forster Chase Personnel or subcontractor responds directly to the Client's general recruitment campaign);

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- 6.2.4 For the avoidance of doubt, the Client agrees that the Client will not bring any claim in respect of any loss against any Forster Chase Personnel or subcontractor, save insofar as that claim arises out of any fraudulent activity of such Forster Chase Personnel or subcontractor. This provision will not limit or exclude the liability of Forster Chase for the acts or omissions of Forster Chase Personnel or subcontractors. The Client agrees that Forster Chase Personnel or subcontractors may rely upon the Contract (Rights of Third Parties) Act 1999 should such Forster Chase Personnel or subcontractors require enforcement of this clause 6.2.4.
- 6.3 Time is not of the essence in relation to the performance of the Services. Forster Chase shall use its reasonable endeavours to meet estimated dates for performance, but any such dates are approximate only.
- 6.4 Forster Chase shall not be liable for any delay in or failure of performance caused by:
- 6.4.1 The Client's failure to: (i) Make any relevant Location available, (ii) Prepare any relevant Location in accordance with Forster Chase's instructions or as required for the performance of the Services or (iii) Provide Forster Chase with adequate instructions for performance or otherwise relating to the Services;
- 6.4.2 Force Majeure.
- 6.5 For the avoidance of doubt, the Client may only use the reports, letters, opinions and advice provided by Forster Chase during the course of the performance of the Services in the following ways:
- 6.5.1 For the purposes for which such reports, letters, opinions and advice were prepared and agreed between the parties in writing and as notified to the Client from time to time;
- 6.5.2 For the private use of the Client;
- 6.5.3 Without reproducing any such reports, letters, opinions and advice;
- 6.5.4 Without disseminating any such reports, letters, opinions and advice to any third party without the written consent of Forster Chase.
- 6.6 For the avoidance of doubt, where it is proposed that the Client acquires or disposes of any interest (including in a company, business or other entity), Forster Chase shall have no responsibility for reviewing the terms and conditions of any draft contract or other contractual documentation for such acquisition or disposal, unless Forster Chase has specifically agreed to carry out such a review (in which event Forster Chase will issue the Client with a separate Engagement Letter covering the scope of such Services).
- 7. ANTI-BRIBERY**
- 7.1 For the purposes of this clause 7 the expressions 'adequate procedures' and 'associated with' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 7.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:
- 7.2.1 All of that party's personnel;
- 7.2.2 All others associated with that party; and
- 7.2.3 All of that party's subcontractors;
Involved in performing the Contract so comply.
- 7.3 Without limitation to clause 7.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 7.4 Each party shall immediately notify the other as soon as it becomes aware of a breach or possible breach of any of the requirements in this clause 7.
- 8. ANTI-SLAVERY**
- 8.1 The Client undertakes, warrants and represents that:
- 8.1.1 Neither the Client nor any of its officers, employees, agents or subcontractors has:
- (a) Committed an offence under the Modern Slavery Act 2015 ("**an MSA Offence**");
- (b) Been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

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- (c) Is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
 - 8.1.2 It shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy;
 - 8.1.3 It shall notify Forster Chase immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of Customer's obligations under clause 8.1. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Client's obligations.
- 8.2 Any breach of clause 8.1 by the Client shall be deemed a material breach of the Contract and shall entitle Forster Chase to terminate the Contract with immediate effect.

9. INDEMNITY

- 9.1 The Client shall indemnify, and keep indemnified, Forster Chase from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by Forster Chase as a result of or in connection with the Client's breach of any of the Client's obligations under the Contract.

10. LIMITATION OF LIABILITY

- 10.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 10. For the avoidance of doubt this clause 10, as applicable to Forster Chase, shall apply to the aggregate liability arising under the Contract whether caused by any or all of Forster Chase, Forster Chase Personnel or any other third party sub-contractors involved in performing the Services, and regardless of the number of claims and claimants.
- 10.2 Subject to clauses 10.5 and 10.6, Forster Chase's total liability shall not exceed the sum as set out in the Engagement Letter.
- 10.3 Subject to clauses 10.5 and 10.6, Forster Chase shall not be liable for consequential, indirect or special losses.
- 10.4 Subject to clauses 10.5 and 10.6, Forster Chase shall not be liable for any of the following (whether direct or indirect):
- 10.4.1 Loss of profit;
 - 10.4.2 Loss or corruption of data;
 - 10.4.3 Loss of use;
 - 10.4.4 Loss of production;
 - 10.4.5 Loss of contract;
 - 10.4.6 Loss of opportunity;
 - 10.4.7 Loss of savings, discount or rebate (whether actual or anticipated);
 - 10.4.8 Harm to reputation or loss of goodwill.
- 10.5 The limitations of liability set out in clauses 10.2 to 10.4 shall not apply in respect of any indemnities given by either party under the Contract.
- 10.6 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 10.6.1 Death or personal injury caused by negligence;
 - 10.6.2 Fraud or fraudulent misrepresentation;
 - 10.6.3 Any other losses which cannot be excluded or limited by applicable law;
 - 10.6.4 Any losses caused by willful misconduct.
- 10.7 For the avoidance of doubt, where there is more than one addressee to the Engagement Letter, the financial limit of liability specified in this clause 10 or the Engagement Letter (if any) will be shared between those addressees and any other party Forster Chase agrees in writing to assume a duty of care to in relation to the performance of the Services. The addressees to the Engagement Letter acknowledge and agree that they are wholly responsible, as the Client, apportioning the sharing of the financial limit of liability and that they are under no obligation to inform Forster Chase of any such apportionment. If (for whatever reason) no apportionment is agreed, the Client agrees that it shall not dispute the validity, enforceability or operation of this clause 10 on the grounds that no such apportionment was agreed between the addressees to the Engagement Letter.

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11. INTELLECTUAL PROPERTY

- 11.1 Forster Chase retains all Intellectual Property Rights arising out of or in connection with the performance of the Services, including Intellectual Property Rights arising out of or in connection with any materials developed by Forster Chase both before and during the performance of the Services, including Intellectual Property Rights in all reports, letters, opinions and advice or other materials provided by Forster Chase.
- 11.2 All documents in the possession or control of Forster Chase created by Forster Chase or addressed to Forster Chase relating to the Services shall be the sole property of Forster Chase.
- 11.3 In consideration of the full payment of the Fee by the Client, and upon Forster Chase's receipt of such Fee in full and cleared funds, Forster Chase hereby grants the Client a non-exclusive, non-transferable licence to use the reports, letters, opinions and advice provided by Forster Chase during the course of the performance of the Services as permitted in clause 6.5.

12. CONFIDENTIALITY AND ANNOUNCEMENTS

- 12.1 The Client shall keep confidential all Confidential Information of Forster Chase and of any Affiliate of Forster Chase and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
- 12.1.1 Any information which was in the public domain at the date of the Contract;
- 12.1.2 Any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
- 12.1.3 Any information which is independently developed by the Client without using information supplied by Forster Chase or by any Affiliate of Forster Chase; or
- 12.1.4 Any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- Except that the provisions of clauses 12.1.1 to 12.1.3 shall not apply to information to which clause 12.4 relates.
- 12.2 This clause shall remain in force for a period of 5 years from the date of the Contract and, if longer, 3 years after termination of the Contract.
- 12.3 The Client shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.
- 12.4 To the extent any Confidential Information is Protected Data such Confidential Information may be disclosed or used only to the extent such disclosure or use does not conflict with any provisions of clause 13.

13. PROCESSING OF PERSONAL DATA

- 13.1 The parties agree that the Client is a Controller and that Forster Chase is a Processor for the purposes of processing Protected Data pursuant to the Contract. The Client shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. The Client shall ensure all instructions given by it to Forster Chase in respect of Protected Data (including the terms of the Contract) shall at all times be in accordance with Data Protection Laws.
- 13.2 Forster Chase shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of the Contract.
- 13.3 The Client shall indemnify and keep indemnified Forster Chase against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with any breach by the Client of its obligations under this clause 13.
- 13.4 Forster Chase shall:
- 13.4.1 Only process (and shall ensure Forster Chase Personnel only process) the Protected Data in accordance with schedule 1 and the Contract (and not otherwise unless alternative processing instructions are agreed between the parties in writing) except where otherwise required by applicable law (and shall inform the Client of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest); and
- 13.4.2 Without prejudice to clause 13.1, if Forster Chase believes that any instruction received by it from the Client is likely to infringe the Data Protection Laws it shall promptly inform the Client and be entitled to cease to perform the relevant Services until the parties have agreed appropriate amended instructions which are not infringing.

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- 13.5 Taking into account the state of technical development and the nature of processing, Forster Chase shall implement and maintain the technical and organisational measures set out in Part 2 of schedule 1 to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.
- 13.6 Forster Chase shall:
- 13.6.1 Not permit any processing of Protected Data by any agent, subcontractor or other third party (except its or its Sub-Processors' own employees in the course of their employment that are subject to an enforceable obligation of confidence with regards to the Protected Data) without the prior written authorisation of the Client;
 - 13.6.2 Prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a written contract containing materially the same obligations as under this clause 13 that is enforceable by Forster Chase and ensure each such Sub-Processor complies with all such obligations;
 - 13.6.3 Remain fully liable to the Client under the Contract for all the acts and omissions of each Sub-Processor as if they were its own; and
 - 13.6.4 Ensure that all persons authorised by Forster Chase or any Sub-Processor to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential.
- 13.7 The Client authorises the appointment of the Sub-Processors as notified to the Client from time to time.
- 13.8 Forster Chase shall (at the Client's cost):
- 13.8.1 Assist the Client in ensuring compliance with the Client's obligations pursuant to Articles 32 to 36 of the GDPR (and any similar obligations under applicable Data Protection Laws) taking into account the nature of the processing and the information available to Forster Chase; and
 - 13.8.2 Taking into account the nature of the processing, assist the Client (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of the Client's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Protected Data.
- 13.9 Forster Chase shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to countries outside the United Kingdom or to any International Organisation without the prior written consent of the Client.
- 13.10 Forster Chase shall, in accordance with Data Protection Laws, make available to the Client such information that is in its possession or control as is necessary to demonstrate Forster Chase's compliance with the obligations placed on it under this clause 13 and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR (and under any equivalent Data Protection Laws equivalent to that Article 28), and allow for and contribute to audits, including inspections, by the Client (or another auditor mandated by the Client) for this purpose (subject to a maximum of 1 audit request in any 12 month period under this clause 13.10).
- 13.11 Forster Chase shall notify the Client without undue delay and in writing on becoming aware of any Personal Data Breach in respect of any Protected Data.
- 13.12 On the end of the performance of the Services relating to the processing of Protected Data, at the Client's cost and the Client's option, Forster Chase shall either return all of the Protected Data to the Client or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires Forster Chase to store such Protected Data. This clause 13 shall survive termination or expiry of the Contract.
- 13.13 The Client agrees that Forster Chase shall have the right to retain copies of documents relating to the performance of the Services after the performance of the Services has ended, subject to our continuing confidentiality obligations as set out in these Terms & Conditions. It is Forster Chase's normal practice to retain documents relating to Clients for eight years after the end of the relevant performance of the Services. Thereafter, unless separate arrangements have been made, Forster Chase may destroy or erase the documents or papers without notice to the Client.
- 13.14 In the event of any request pursuant to the Freedom of Information Act 2000 ("**the FIA**"), that requires the Client to disclose any information provided to the Client by Forster Chase, the Client will notify Forster Chase promptly and consult with Forster Chase before making any disclosure. The Client agrees to pay due regard to any representations that Forster Chase may make in connection with such disclosure and to apply any relevant exceptions that may exist under the FIA to such information. If, following consultation with Forster Chase, the Client discloses any such information, the Client will ensure that any disclaimer that Forster Chase included or may subsequently wish to include in such information is reproduced in full in any copies disclosed.

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14. FORCE MAJEURE

14.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:

- 14.1.1 Promptly notifies the other of the Force Majeure event and its expected duration; and
- 14.1.2 Uses reasonable endeavours to minimise the effects of that event.

15. TERMINATION

15.1 Forster Chase may terminate the Contract at any time by giving notice in writing to the Client if:

- 15.1.1 The Client commits a material breach of the Contract and such breach is not remediable;
- 15.1.2 The Client commits a material breach of the Contract which is not remedied within 20 Business Days of receiving written notice of such breach;
- 15.1.3 The Client has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 40 Business Days after Forster Chase has given notification that the payment is overdue;
- 15.1.4 Any consent, licence or authorisation held by the Client is revoked or modified such that the Client is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled;
- 15.1.5 The performance of the Services are subject to a conflict of interest in accordance with clause 5.3.3.

15.2 Forster Chase may terminate the Contract at any time by giving notice in writing to the Client if the Client:

- 15.2.1 Stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
- 15.2.2 Is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if Forster Chase reasonably believes that to be the case;
- 15.2.3 Becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
- 15.2.4 Has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
- 15.2.5 Has a resolution passed for its winding up;
- 15.2.6 Has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
- 15.2.7 Is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within 10 Business Days of that procedure being commenced;
- 15.2.8 Has a freezing order made against it;
- 15.2.9 Is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title in those items;
- 15.2.10 Is subject to any events or circumstances analogous to those in clauses 15.2.1 to 15.2.9 in any jurisdiction;
- 15.2.11 Takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 15.2.1 to 15.2.10 including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.

15.3 Forster Chase may terminate the Contract at any time by giving not less than 20 Business Days' notice in writing to the Client if the Client undergoes a change of Control or if it is realistically anticipated that it shall undergo a change of Control within two months.

15.4 The right of Forster Chase to terminate the Contract pursuant to clause 15.2 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) where the amalgamated, reconstructed or merged party agrees to adhere to the Contract.

15.5 If the Client becomes aware that any event has occurred, or circumstances exist, which may entitle Forster Chase to terminate the Contract under this clause 15, it shall immediately notify Forster Chase in writing.

15.6 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of Forster Chase at any time up to the date of termination.

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16. DISPUTE RESOLUTION

- 16.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 16.
- 16.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 16.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:
- 16.3.1 Within 10 Business Days of service of the notice, the client relationship manager of Forster Chase and the equivalent of the Client shall meet to discuss the dispute and attempt to resolve it.
- 16.3.2 If the dispute has not been resolved within 10 Business Days of the first meeting of the client relationship manager of Forster Chase and the equivalent of the Client, then the matter shall be referred to a partner of Forster Chase (such partner not responsible for the Client relationship management) and the equivalent of the Client. The partner or Forster Chase and the equivalent of the Client shall meet within 10 Business Days to discuss the dispute and attempt to resolve it.
- 16.4 The specific format for the resolution of the dispute under clause 16.3.1 and, if necessary, clause 16.3.2 shall be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.
- 16.5 If the dispute has not been resolved within 20 Business Days of the first meeting of the partner or Forster Chase and the equivalent of the Client under clause 16.3.2 then the matter may be referred to mediation in accordance with the London Court of International Arbitration Mediation Rules.
- 16.6 Until the parties have completed the steps referred to in clauses 16.3 and 16.5, and have failed to resolve the dispute, neither party shall commence formal legal proceedings or arbitration except that either party may at any time seek urgent interim relief from the courts or emergency arbitrator relief.

17. NOTICES

- 17.1 Any notice given by a party under these Terms & Conditions shall:
- 17.1.1 Be in writing and in English;
- 17.1.2 Be signed by, or on behalf of, the party giving it (except for notices sent by e-mail); and
- 17.1.3 Be sent to the relevant party at the address set out in the Contract.
- 17.2 Notices may be given, and are deemed received:
- 17.2.1 By hand: On receipt of a signature at the time of delivery;
- 17.2.2 By Royal Mail Recorded post: At 9.00 am on the second Business Day after posting;
- 17.2.3 By Royal Mail International Recorded post: At 9.00 am on the fourth Business Day after posting; and
- 17.2.4 By e-mail: On receipt of a read receipt e-mail from the correct address.
- 17.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 17.1 and shall be effective:
- 17.3.1 On the date specified in the notice as being the date of such change; or
- 17.3.2 If no date is so specified, 10 Business Days after the notice is deemed to be received.
- 17.4 All references to time are to the local time at the place of deemed receipt.
- 17.5 This clause does not apply to notices given in legal proceedings or arbitration.

18. CUMULATIVE REMEDIES

- 18.1 The rights and remedies provided in the Contract for Forster Chase only are cumulative and not exclusive of any rights and remedies provided by law.

19. TIME

- 19.1 Unless stated otherwise, time is of the essence for any date or period specified in the Contract in relation to the Client's obligations only.

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20. FURTHER ASSURANCE

20.1 The Client shall at the request of Forster Chase, and at the Client's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

21. ENTIRE AGREEMENT

21.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

21.2 Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

21.3 Nothing in these Terms & Conditions purports to limit or exclude any liability for fraud.

22. VARIATION

22.1 No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Terms & Conditions and is duly signed or executed by, or on behalf of, Forster Chase.

23. ASSIGNMENT

23.1 The Client may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without Forster Chase's prior written consent, such consent not to be unreasonably withheld or delayed.

23.2 Notwithstanding clause 23.1, the Client may perform any of its obligations and exercise any of its rights granted under the Contract through any Affiliate provided that it gives Forster Chase prior written notice of such subcontracting or assignment including the identity of the relevant Affiliate. The Client acknowledges and agrees that any act or omission of its Affiliate in relation to the Client's rights or obligations under the Contract shall be deemed to be an act or omission of the Client itself.

24. SET OFF

24.1 Forster Chase shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Client under the Contract or under any other contract which Forster Chase has with the Client.

24.2 The Client shall pay all sums that it owes to Forster Chase under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

25. NO PARTNERSHIP OR AGENCY

25.1 The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

26. EQUITABLE RELIEF

26.1 The Client recognises that any breach or threatened breach of the Contract may cause Forster Chase irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to Forster Chase, the Client acknowledges and agrees that Forster Chase is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

27. SEVERANCE

27.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

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27.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

28. WAIVER

28.1 No failure, delay or omission by Forster Chase in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

28.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by Forster Chase shall prevent any future exercise of it or the exercise of any other right, power or remedy by Forster Chase.

28.3 A waiver of any term, provision, condition or breach of the Contract by Forster Chase shall only be effective if given in writing and signed by Forster Chase, and then only in the instance and for the purpose for which it is given.

29. COMPLIANCE WITH LAW

29.1 The Client shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

30. CONFLICTS WITHIN CONTRACT

30.1 If there is a conflict between the terms contained in these Terms & Conditions and the terms of the Engagement Letter, schedules, appendices or annexes to the Contract, the terms of the Engagement Letter and Part 1 and Part 2 of schedule 1 shall prevail.

31. COSTS AND EXPENSES

31.1 The Client shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

32. THIRD PARTY RIGHTS

32.1 Except as expressly provided for in clause 32.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

32.2 Any Affiliate of Forster Chase shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.

33. GOVERNING LAW

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

34. JURISDICTION

34.1 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).

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SCHEDULE 1

PART 1

Data processing details

Processing of the Protected Data by Forster Chase under the Contract shall be for the subject-matter, duration, nature and purposes and involve the types of personal data and categories of Data Subjects set out in this Part 1 of schedule 1.

1. **SUBJECT-MATTER OF PROCESSING:**
Any and all information provided by the Client for the purposes of Forster Chase and the Client carrying out the parties' respective obligations in accordance with these Terms & Conditions.
2. **DURATION OF THE PROCESSING:**
The duration of the Contract.
3. **NATURE AND PURPOSE OF THE PROCESSING:**
The collection, recording, organisation, storage, retrieval, erasure and destruction of Protected Data for the purposes of Forster Chase and the Client carrying out the parties' respective obligations in accordance with these Terms & Conditions.
4. **TYPE OF PERSONAL DATA:**
Name, address, telephone number, e-mail addresses, passport information, driving licence information, or other information for the purposes of confirming identity of the Client, and any and all information provided by the Client.
5. **CATEGORIES OF DATA SUBJECTS:**
Clients.
6. **SPECIFIC PROCESSING INSTRUCTIONS:**
Not applicable.

PART 2

Technical and organisational security measures

1. Forster Chase shall implement and maintain the following technical and organisational security measures to protect the Protected Data:
 - 1.1 In accordance with the Data Protection Laws, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of the Protected Data to be carried out under or in connection with the Contract, as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons and the risks that are presented by the processing, especially from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Protected Data transmitted, stored or otherwise processed, Forster Chase shall implement appropriate technical and organisational security measures appropriate to the risk, including as appropriate those matters mentioned in Articles 32(1)(a) to 32(1)(d) (inclusive) of the GDPR.
 - 1.2 The Client acknowledges and agrees that Forster Chase uses local server storage based in the United Kingdom for the storage of Protected Data.