

## **TERMS AND CONDITIONS [THE SERVICE AGREEMENT]**

### **SCOPE**

These terms and conditions specifically refer to any provision of Manned Security Guarding services as defined by the British Standard BS7499, any provision of Keyholding and Alarm Response services as defined by the British Standard BS7984, and any provision of Mobile Patrol services as defined by the British Standard BS7499 – with those services being provided by Bravo Security Ltd and its affiliated companies (including sub-contractors).

These terms and conditions take effect only to those particular services provided and whilst potentially referring to services not initially provided, would subsequently take effect were those services to be requested at a later date.

- Manned Security Services may be provided on a temporary basis and will be provided in accordance with an agreed schedule and/or quotation and/or purchase order and/or some other communication giving effect to the same. In this instance, no termination notice is required beyond the agreed term of temporary cover.
- Manned Security Services provided on a permanent basis, will be provided in accordance with an agreed schedule and/or quotation and/or purchase order and/or some other communication giving effect to the same for a period of one year from the Commencement Date, and without prejudice to either party's right to termination for breach, the Service may be terminated by either party at any time following the first anniversary of the Commencement Date (the initial period) by giving to the other not less than 30 days written notice.
- Keyholding and Alarm Response services will be provided in accordance with an agreed schedule and/or quotation and/or purchase order and/or some other communication giving effect to the same, and provided only on an annual basis and without prejudice to either party's right to termination for breach, the Service may be terminated by either party at any time by giving to the other not less than 30 days written notice.
- Mobile Patrol services will be provided in accordance with an agreed schedule and/or quotation and/or purchase order and/or some other communication giving effect to the same provided only on an annual basis and without prejudice to either party's right to termination for breach, the Service may be terminated by either party at any time by giving to the other not less than 30 days written notice.

### **SERVICES**

Manned Security Guarding will be provided in accordance with an agreed schedule and/or quotation and/or purchase order and/or some other communication giving effect to the same.

Keyholding and Alarm Response services operate between the hours of 19:00 and 07:00 seven days per week, throughout the year, including Bank and Public Holidays, as well as 07:00 – 19:00 at weekends and on Bank and Public Holidays.

Mobile Patrol services whereby patrols are conducted in accordance with an agreed schedule and/or quotation and/or purchase order and/or some other communication giving effect to the same.

## **DURATION**

With regards to permanent services not qualified by an agreed schedule and/or quotation and/or purchase order and/or some other communication giving effect to the same, and without prejudice to either party's right to termination for breach, this Agreement shall continue for a minimum of one calendar year from the Commencement Date, continuing thereafter until terminated by giving to the other not less than 30 days written notice.

## **CHARGES & PAYMENT**

Manned Security Guarding services provided under an annual contract will be billed monthly in advance at 1/12<sup>th</sup> of the annual agreed charge. Additional work if and when required will be billed in arrears and charged at the hourly rate agreed by way of schedule and/or quotation and/or purchase order and/or some other communication giving effect to the same.

The agreed Annual Keyholding Retainer Fee shall be invoiced annually in advance of the Commencement Date or anniversary thereof, and payable within 30 days of the invoice. This fee is not refundable if the Service is terminated by the Client pursuant to these terms and condition or if the Company terminates Service due to any default by the Client under these terms.

The call out charge including the first hour in attendance, and subsequent hours will be charged per hour or part thereof, broken down into 15 minute increments will be billed in arrears, with each invoice being payable within 30 days.

Mobile Patrols services provided under an annual contract will be billed monthly in arrears at 1/12<sup>th</sup> of the annual agreed charge, otherwise charges will be billed on a per patrol basis monthly in arrears, with each invoice being payable within 28 days.

Unless included in the schedule and/or quotation, all activities will be charged at double time for attendances on Public and Bank Holidays or any other Statutory Holidays as announced by parliament.

## **IT IS HEREBY AGREED**

### **1 Definitions**

In this Agreement and unless the context otherwise requires, the following expressions shall have the following respective meanings. Words in the singular shall include the plural and vice versa.

**"Additional Services"** Any services, whether or not of a similar nature to the Services, provided for the Client by the Company in addition to the Services, as agreed from time to time by the Client and the Company and added to the Assignment Instructions.

**"Agreement"** The Agreement as set out In this document and in the Assignment Instructions or (where relevant) any part thereof.

**"Agreement Period"** The period from the Commencement Date until termination of this Agreement.

**"Assignment Instructions"** The document entitled "Assignment Instructions" and all subsequent written (but not oral) amendments thereto from time to time agreed by the Client and the Company and signed on behalf of each of them.

**"Associate"** An associate as defined In Section 435 of the Insolvency Act 1986.

**"Key"** Includes keys and any electronic key-card or similar access device.

**"Key Receipt"** The Company's receipt given to the Client on receiving Keys to the Premises from the Client.

**"Losses"** Any costs, claims, proceedings, losses, damages, proceedings and expenses.

**"Prohibited Period"** The Agreement Period and the period of one year thereafter.

**"Regulations"** The Transfer of Undertakings (Protection of Employment) Regulations 2006.

**"Representative"** An officer, employee, agent or sub-contractor.

**"Service Charge"** The charges specified in Charges & Payment section of this Agreement and any sum which may replace the same pursuant to the provisions of Clause 4.

**"Security Officer"** The security personnel engaged by the Company In the provision of the Services.

**"Services"** All or any of the security or other services provided for the Client by the Company described in this Agreement and In any Assignment Instructions.

**"Service Shift"** Any period of twelve (12) hours or as indicated in the Assignment Instructions.

**"Statutory Holidays"** Any Bank, public, common law or other statutory holiday in the United Kingdom.

References to Clauses and Sub-clauses are references to Clauses and Sub-clauses of this document

## **2 The Services**

2.1 Subject to the Client fully complying with its obligations hereunder, the Company undertakes to provide the Services to the Client at the Premises on the terms and conditions set out in this Agreement.

- 2.2 Security Officers will be supervised by a senior officer of the Company who will make checking visits to the Premises from time to time as and when the Company considers necessary.
- 2.3 Where requested by the Client or stipulated in the Assignment Instructions a "Daily Occurrence Book" will be maintained by the Security Officer who will note in that record all matters which appear to him/her to affect the security of the Client's property at the Premises. The Daily Occurrence Book(s) will at all times remain the property of the Company but shall be available for examination by the Client.
- 2.4 The Security Officer will at all times safeguard the Keys entrusted to the Company for the purpose of performing the Services In respect of which a Key Receipt shall have been issued to the Client by the Company or any Representative of the Company.
- 2.5 In the event of any form of industrial action affecting the Premises or the Client's or any other person's employees, the Company shall not be obliged to perform any duties or functions previously performed by the Client's or any other person's employees involved in the industrial action but shall subject as aforesaid continue to perform the Services to the extent possible in the circumstances.
- 2.6 The Company shall not be obliged to perform the Services or any part of them where such performance would expose any Security Officer to risk of physical injury.
- 2.7 The Client acknowledges that:
- (a) although the Company undertakes to provide the Services in accordance with this Agreement the Company does not and cannot guarantee the security of the Client's (or any other) property at the Premises and that the essential nature of the Services is that of providing a manned security and/or a Key holding service at the Premises to reduce the risk of loss, damage or injury to the Client's property through trespass, theft, flooding or fire;
  - (b) although the Company may agree to undertake ancillary duties unrelated to manned security the Company does not hold itself to be an expert or specialist in such fields;
  - (c) although the Company has carried out inspection of the Premises sufficient for the purpose of providing the Services the Company is not obliged under this Agreement to provide the service of a security consultant or to give advice of the kind more usually provided by such specialists;
  - (d) as a manned security and/or Key holding service contractor it is neither reasonable nor practical for the Company to be expected to have knowledge of the value of the Client's or any third party's property at the Premises and/or any potential Losses which might arise from any loss or damage to any such property or the Premises;
  - (e) the Company is not an insurance company and that it is likely that the value of any such property and/or of any potential Losses will be or is disproportionate to the amounts which the Company can reasonably charge under this Agreement;

- (f) the Company is unable to obtain insurance providing unlimited cover for its full potential liability to its clients (including the Client) and that such insurance as is available to the Company is more expensive than insurance cover available to the Client to cover loss or damage to the Client's own property or that of a third party or of Losses arising there from, which insurance cover the Client should or ought reasonably to maintain in any event;
- (g) and warrants that, the Client has adequate insurance to cover any claims that a third party may bring against the Company and for which it is obliged to indemnify the Company in accordance with the terms of this Agreement;
- (h) in the light of the foregoing, which forms the basis on which the Company has calculated the Service Charge and agreed to provide the Services, it is fair and reasonable that the Company should seek to limit and restrict its liability under this Agreement as set out in Clause 10 of this Agreement;
- (i) that where the Company is in possession of Keys, provided by the Client for the purpose of the Services, the Company shall provide the Client with a Key Receipt detailing the number of Keys, and serial number or identity numbers, the date, and the name of the Security Officer receiving the Keys on behalf of the Company. The Key Receipt shall be signed by both parties and a copy of the Key Receipt shall be given to the Client;
- (j) that in compliance with Clause 10.1 (g) hereafter, the Company shall have no liability arising from the loss or misplacement of any Keys which are not the subject of a Key Receipt;
- (k) that the Company and its Security Officers will surrender to the Client any Keys which are the subject of a Key Receipt upon written notification by the Client to the Company of the authorised recipients of such Keys;
- (l) that the Services are provided to the Client on a non-exclusive basis and each request by the Client for the Services will be attended to in strict chronological order, unless the Company and its Security Officers are required by the Police, Fire-fighting or Ambulance services to facilitate access to the Premises, in which circumstances the Security Officers will attend to the Client at its Premises as soon as they are reasonably able to do so.
- (m) that the Services are provided to the Client on a non-exclusive and shared basis and accordingly the service may be temporarily interrupted or delayed if an incident detains the Response Officer at another clients' premises during the course of their duties – reference is given to BS7499 section 6.1.5 in this regard. Under these circumstances agreed visits may be delayed. In these circumstances the Company will not be liable for any default liability for any non-performance or delays in the provision of this Agreement.
- (n) that the Services are provided to the Client on a non-exclusive and shared basis and accordingly the Company can only commit to a Response Officer spending a limited amount of time on any one call out. In the absence of any response from the Clients designated representative, all reasonable efforts will be made to secure the site appropriately. The Company will not be liable for any losses

or damage which occur as a result of the Company leaving site and/or the failure of the Clients designated representative to attend site.

- (o) all calls received from an alarm receiving centre will be treated as a genuine activation and a response will be provided accordingly.

### **3 Provision of Facilities and The Premises**

- 3.1 The Client hereby warrants that the Premises are safe for the Company to carry out the Services and in particular, but without limitation, they comply with all relevant UK health and safety legislation. The Client will indemnify and keep indemnified the Company against any Losses it may incur or suffer in connection with any death or physical injury suffered by any of the Security Officers or any Representative of the Company or loss of or damage to property belonging to the Company its Security Officers or any Representative arising, in each case, from the unsafe state of the Premises or anything situated thereon belonging to or under the control of the Client. The Client will effect adequate insurance cover with reputable insurers at the Client's own expense for any liability it may incur under this Sub-clause.
- 3.2 The Client warrants that the provision of the Services does not and will not at any time in the future contravene any statutory or other regulation, order or byelaw affecting the security of the Premises, or the business(es) carried out at or forming part of the Premises and the Client has obtained all appropriate permissions and consents to permit the provision of the Services.
- 3.3 The Client will allow the Company's Representatives (including any Security Officer) such access to the Premises as is reasonably required for the purpose of providing the Services. Where such access is not permitted for any reason the Client agrees in any case to pay the Service Charge in full as if such access had been permitted and the Services provided.
- 3.4 The Client hereby agrees and undertakes to liaise closely with the Company's management over matters affecting the security of the Premises and/or the Client's property thereat and to promptly inform the Company's management of all material changes after the Commencement Date affecting the security of the Premises and/or the Client's or any third party's property thereat and without prejudice to the generality of the foregoing to promptly alert the Company's management to changes affecting the level of risk, layout, use, security and detection systems, reporting procedures and the Client's own security personnel at the Premises.

### **4 Service Charge**

- 4.1 If at any time during the period of this Agreement there is an increase in costs to the Company in providing the Services which are beyond the Company's control including (without limitation) an increase in the national minimum wage, changes to National Insurance contributions, changes to licensing costs under the Private Security Industry Act 2001, or any other additional liabilities, or other liabilities imposed on the Company by legislation or other change in the law after the Commencement Date, then the Service Charge or any part thereof may be increased pro rata to include such increase with effect from the expiry of (28) days' notice from the Company to the Client of the increase.



4.2 The Company may increase the Service Charge or any part thereof at any time after the anniversary of the Commencement Date by giving notice to the Client of such increase having effect from the expiry of twenty-eight (28) days notice from the Company to the Client of the increase.

4.3 Without prejudice to any other remedy which it may have, if the Client fails to pay any amount payable by it under this Agreement on its due date, the Company shall be entitled to charge interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 on all overdue sums from the due date to the date of actual payment whether before or after any judgment together with any debt recovery costs. Time shall be of the essence as regards payment of the Service Charge.

## **5 Additional Services**

5.1 All or any Additional Services provided to the Client at its request by the Company will in any event, in the absence of an express written agreement to the contrary, be subject to the terms and conditions of this Agreement and recorded in the Assignment Instructions. The Company reserves the right to refuse to perform any Additional Services.

5.2 Notwithstanding the provisions of Clause 5.1 above the Client will advise the Company in writing of any Additional Services requested and performed by the Company, the performance of which shall be subject to payment by the Client of the Company's additional charges in respect of such Additional Services, in addition to those charges set out in the Charges & Payment section of this Agreement.

5.3 Whilst the Company will endeavour to comply with any request for Additional Services from the Client, the Client acknowledges that the Company's ability to do so will be governed by the availability and capacity of suitable qualified personnel and the extent of the advance notification given by the Client. The Company reserves the right without reason to refuse to perform any Additional Services.

## **6 Equipment & Intellectual Property**

6.1 All equipment and materials supplied by the Company in the provision of the Services shall remain the property of the Company.

6.2 The Client will indemnify and keep indemnified the Company against any Losses it may incur or suffer in connection with any loss of or damage to property belonging to the Company, any Security Officer or any Representative of the Company whilst at the Premises.

6.3 Upon termination of this Agreement for whatever reason the Company shall, upon giving reasonable notice to the Client, be permitted to remove all or any of its apparatus, equipment and warning signs which may have been placed by it upon the Premises and the Client hereby grants permission to the Company to enter the Premises with or without workmen or other necessary persons and to carry out such removal.

6.4 The Client warrants that it has authority or relevant licences to supply any materials, designs, software and specifications provided by it to the Company and that any Services supplied using or based on the same will not infringe any third party rights

and /or third party intellectual property rights. The Client shall indemnify the Company against any Losses arising from any breach of this warranty.

6.5 The Company reserves all intellectual property rights in the Services provided and any associated merchandise or documentation, including but not limited to copyright, registered and unregistered design rights, patents and patent applications, registered and unregistered trade marks and confidential know-how. Save for the honest use of any trade marks to identify the Services, the Client may not use any such rights without the Company's express written consent.

6.6 The Client shall indemnify the Company against any Losses it may incur or suffer in connection with any claim against the Company by any person alleging breach of data protection or privacy rights (whether statutory or at common law) by virtue of the provision of the Services.

## **7 Suspension of Services**

7.1 The Company shall not be liable to the Client for any Losses caused to or suffered by the Client as a direct or indirect result of the supply of the Services being suspended pursuant to Sub clause 7.3, or being prevented, restricted, hindered or delayed by reason of any circumstances outside the control of the Company including, without limitation, circumstances affecting the provision of all or any part of the Services.

7.2 The Company will give notice in writing of suspension of the Services under Sub clause 7.3 and any other circumstances referred to in Sub clause 7.1 to the Client stating the reason in question as soon as practicable. Upon service or receipt of such a notice (i) the obligations of the Company to perform the Services shall forthwith be suspended until the Company serves notice on the Client that such circumstances have ceased and (ii) the Client shall immediately pay to the Company all arrears of Service Charge then due for payment. The Client shall be liable to make payment in respect of the period of any such suspension as if the Services had been provided during that period.

7.3 Notwithstanding clause 4.3, the Company shall be entitled to suspend the Services during the period that any monies remain outstanding from the Client for more than 7 days past their due date for payment.

## **8 Assignment by the Company**

8.1 Notwithstanding any other provision in this Agreement or any subsequent modification of this Agreement, the Company shall be entitled to freely assign its rights under this Agreement (subject to its obligations) and/or sub-contract its obligations, at any time, to any member of the Company's Group. Following receipt of written notice of any such assignment the Client hereby agrees to enter in to a formal novation of this Agreement to any such member of the Company's Group.

8.2 For the purposes of this Clause:

- (a) the term "Company's Group" means the Company, any subsidiary of the Company, any affiliated Company, any holding company of the Company, and any subsidiary of any such holding company; and



- (b) the terms "subsidiary" and "holding company" shall have the meanings given to such terms in section 736 Companies Act 1985.

## **9 Termination**

9.1 Notwithstanding the provisions of the Scope of the Agreement and Sub-clause 9.2, this Agreement may be terminated by either party forthwith on giving notice to the other if the other party is adjudged bankrupt, or shall go into liquidation (other than for the purpose of a solvent reconstruction or amalgamation), or has a petition presented against it seeking the making of an administration order, or shall suffer the appointment of a receiver, or an encumbrancer takes possession over all or any of his or its assets, or shall make an arrangement or composition for the benefit of any of his or its creditors, or by the Company if it is unable to purchase or maintain appropriate insurance cover either at all or at a cost acceptable to the Company.

9.2 Without prejudice to any other remedy available to it, if any payment to be paid by the Client to the Company under this Agreement (in whole or in part). including the Service Charge, is unpaid for a period of seven (7) days after it has become due the Company may at any time thereafter give to the Client seven (7) days written notice to terminate this Agreement and unless such overdue sum has been paid before the expiration of such notice period, the Company shall, without need for the giving of any further notice, have the absolute right at any time thereafter to cease to provide the Services whereupon this Agreement shall then terminate absolutely and the Company's obligations hereunder shall cease, but without prejudice to the liabilities of the Client to the Company.

9.3 In the event that any insurance cover held by the Company in respect of the Services becomes unavailable, or its cost is materially increased by reasons outside of the control of the Company, then the Company shall be entitled (at its option) to either exclude all liability to the Client for Losses that would otherwise have been covered by such insurance, or to terminate (without liability to the Client) this Agreement forthwith by notice in writing to the Client.

## **10 Liability and Insurance**

10.1 The liability (if any) of the Company and its Representatives to the Client howsoever arising in respect of any Losses whatsoever (other than liability for personal injury and/or death to the extent caused by the negligence of the Company) shall be limited to physical loss and damage directly arising from such liability and shall be limited in accordance with the following provisions, which are without prejudice to each other and to other provisions of this Agreement:

- (a) All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement by the Company.
- (b) The Company shall have no liability for any loss of profit, loss of business, loss of opportunity, damage or depletion to goodwill, loss of opportunity, loss of goods, loss of contract, loss of use, loss of data or any economic loss or any special, indirect or consequential loss howsoever caused.

- (c) The liability (if any) of the Company in respect of all or any Losses arising out of or by reason of any act or default of the Company in breach of contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, or any Representative of the Company shall not exceed the Individual Limit in respect of any one incident or series of related incidents and shall not exceed the Overall Limit in respect of all or any incidents howsoever arising in any period of twelve consecutive months.
  - (d) The liability (if any) of the Company in respect of all or any Losses whatsoever suffered by reason of any acts of fraud, embezzlement or dishonesty on the part of any Security Officer or Representative of the Company shall not exceed £50,000 in respect of any one incident or series of related incidents and shall not exceed £250,000 in respect of all or any incidents arising in any period of twelve consecutive months.
  - (e) Subject to (g) below, the liability (if any) of the Company in respect of the replacement of locks and/or Keys arising from the loss or misplacement of Keys of the Client by the Company, a Security Officer or any Representative of the Company shall not exceed £20,000 in respect of each such incident.
  - (f) The Company shall have no liability whatsoever in respect of any Losses arising from the loss or misplacement of Keys in respect of which no Key Receipt has been issued to the Client by the Company or a Representative of the Company.
  - (g) The Client shall not be entitled to make any claim against the Company, any Security Officer or any Representative of the Company unless it gives the Company written notice of the event giving rise to such claim, containing sufficient information for it to be identified and investigated by the Company, within fourteen (14) days of the date on which the Client becomes or ought reasonably to have become aware of the occurrence of such event.
  - (h) The Company shall have no liability in respect of any Losses caused by the injurious act or default of any Security Officer or any Representative of the Company unless such act or default could have been foreseen and avoided by the exercise of due diligence on the part of the Company. Where such injurious act or default should have been foreseen or avoided by the Company, its liability (if any) shall not exceed the liabilities of the Company as set out in this Sub-clause 10.1.
- 10.2 The Client hereby agrees and declares that the limitations and exclusions of the Company's liability set out above are fair and reasonable in all the circumstances and taking into account, inter alia, the amount of the Service Charge.
- 10.3 The Client shall for all purposes be treated by the Company and its servants or agents as the sole beneficial owner of the Premises and all of the contents or things thereon whether buildings or chattels. In the event that any third party makes a claim or allegation against the Company or any of its Representatives for Losses in excess of the level of liability referred to in Sub clause 10.1 or which is excluded under this Clause 10, then to that extent, the Client agrees to indemnify the Company and its Representatives against all Losses which the

Company or its Representatives incur or suffer as a result of such a third party claim.

- 10.4 If any Security Officer or Representative of the Company, acting upon the instruction of the Client or any Representative or Associate of the Client, shall take or omit to take any action which is outside the scope of the Services or which requires the Services to be performed other than in accordance with this Agreement, the Company shall have no liability for any Losses arising as a result of such act or omission and the Client shall indemnify the Company against all or any Losses it may incur or suffer as a result of such act or omission.
- 10.5 The Client shall not make any claim against any of the Security Officers or Representative of the Company for a greater amount than it could claim from or in respect of any liability that it could not claim from, the Company in accordance with the provisions of the Agreement.
- 10.6 The Company warrants that it has in force, and will maintain during the Agreement Period, Employers Liability Insurance in respect of the Service Provision
- 10.7 The Client agrees to indemnify the Company in respect of Losses which it may suffer as a result of the termination by the Company of the employment of any person engaged in the provision of the Services arising as a result of the termination of this Agreement, or the suspension or reduction of any part of the Services, for any reason.
- 10.8 The Client shall indemnify the Company against all or any Losses incurred by the Company where and to the extent that such Losses arise directly or indirectly as a result of any act or omission of the Client or any Associate of it which is either negligent or in breach of this Agreement.
- 10.9 In the event that any individual's employment transfers to the employ of the Company by virtue of the Regulations and the provision of the Services by the Company (the "Transferring Employees"), then the provisions of this Clause 10.9 shall have effect.
  - (a) The Client warrants and undertakes to the Company to comply with the Regulations in relation to the Transferring Employees.
  - (b) The Client agrees to indemnify the Company against all Losses which it suffers or incurs as a result of (i) the Client's breach of the warranty set out in Sub clause 10.9 (a); (ii) any acts or omissions (including without limitation failure to pay any accrued emoluments and to comply with statutory obligations) of the previous employer in relation to the Transferring Employees prior to the Commencement Date; (iii) any change of identity of employer occurring by virtue of the Regulations and/or this Agreement being significant and detrimental to any of the Transferring Employees.
- 10.10 The Client warrants to the Company that any motor vehicle belonging to or in the custody, care or control of the Client, which is used or driven by a Security Officer or other Representative of the Client shall be in a safe and roadworthy

condition and shall be insured in respect of such driving and use, and the Client shall indemnify the Company in respect of any Losses arising from such driving and use.

## **11 Protection of the Company's Interests**

11.1 The Client shall:

- (a) not, and shall procure that its Associates do not, without the consent of the Company during the Prohibited Period directly or indirectly solicit or entice away or employ, or endeavour to solicit or entice away or employ any Security Officer who was engaged at the Premises in connection with the provision of the Services or any officer or employee of the Company who was known to the Client in connection with the provision of the Services where such person is to be engaged by the Client or its associates in a similar capacity.
- (b) keep strictly confidential and not use (save as properly required in connection with the operation of this Agreement) at any time any information in relation to the Services and/or costs or other financial information which the Company discloses to the Client or to which the Client or its advisors has access either in the course of the Agreement and/or the negotiations leading up to it.

11.2 If the Client shall commit any breach of its obligations under sub-clause 11.1(a) it shall pay to the Company a sum equal to 20 per cent of the amount of the relevant person's annualised gross earnings paid by the Company immediately preceding the termination of his employment or other arrangement with the Company, or if higher, 20 per cent of the amount of the relevant person's annualised gross earnings paid by the Client or its Associate following employment of such person by the Client or its Associate.

11.3 The Client's obligations of confidentiality shall survive any termination of this Agreement.

## **12 Dispute Procedure**

12.1 Subject to any other rights or remedies available to the parties either under this Agreement or at law:

- (a) Both Parties shall appoint an individual to deal with the day-to-day management of this Agreement (the "Account Manager"). All disputes and differences arising between the Parties shall in the first instance be referred to the Account Manager for resolution.
- (b) If any dispute or difference referred to the Account Manager is not resolved within 14 days of its referral, at the option of either the Company or the Client, its shall be passed to their respective Managing Directors for resolution within a further 14 days.
- (c) Any matter not resolved in accordance with Clause 12.1 (a) or 12.1(b) may be referred to mediation by agreement of the parties.

**13 Variations**

No variation extension exclusion or cancellation of this Agreement (including the Assignment Instructions) shall be binding until it is confirmed in writing in the case of the Assignment Instructions, by the Client and the Company, or in the case of any other provisions of this Agreement under the hand of a Director of the Company.

**14 Telephone Communications**

The Client hereby acknowledges that all telephone communications to the Company's control centres (as may be notified to the Client) may be remotely recorded and the Client hereby consents to such recordings being made.

**15 Third Party Rights**

Except for any Associate of the Company, no term of this Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Agreement.

**16 Partnership or Agency**

Nothing in this Agreement shall be construed as constituting a partnership between the parties or as constituting either party as the agent of the other for any purpose whatsoever except as specified by the terms of this Agreement.

**17 Notices**

Any notice to be given under this Agreement shall be in writing and shall be sent by hand, by email, or by first-class mail to the Client at the address appearing at the head of this Agreement and to the Company at the address appearing at the head of this agreement (or such other address as shall be notified in writing for the purpose of this Clause) and, if by delivery mail, shall be deemed to have been given on the second day (excluding Saturdays, Sundays and English Statutory Holidays) after despatch.

**18 Severance**

If any term or provision in this Agreement (or any document referred to herein) is or shall become in whole or in part illegal, invalid or unenforceable the legality, validity, and enforceability of the remainder of this Agreement (or any document referred to herein) shall not be affected or impaired thereby and any such illegal, invalid or unenforceable shall have effect with whatever amendment is necessary to give effect to the commercial intention of the parties.

**19 Set-Off**

The Client shall not be entitled to withhold payment of monies due under this Agreement by reason of any claim or counter-claim it may have or allege against the Company or otherwise.

## **20 Force Majeure**

If a party to this Agreement is prevented in any way from performing any of its obligations hereunder because of matters outside such party's reasonable control including fire, flood, storm, adverse weather, third party strike, riot, war, rebellion, acts of God, or other similar causes beyond the reasonable control of such party (each an "**Event of Force Majeure**"), then the party so prevented from performing shall not be liable for any failure or delay in its performance provided that such party shall give the other Party prompt notice of such failure or delay and the cause thereof and shall use all reasonable means to minimize the effect of the Event of Force Majeure on the performance of its obligations under this Agreement and to resume full performance of its obligations as soon as possible.

## **21 Entire Agreement**

This Agreement, together with the Assignment Instructions, constitutes the entire agreement between the Client and the Company in respect of the Services and no representation or statement not contained in this Agreement shall be binding on the Company.

This Agreement shall expressly override all or any terms or conditions sought to be imposed by the Client howsoever communicated to the Company and whether before or after the date of this Agreement unless and until such variations to this Agreement are agreed to by the Company in strict accordance with Clause 13 hereof.

## **22 Headings**

The headings in this Agreement are for convenience only and shall not affect the construction thereof.

## **23 Law and Jurisdiction**

The construction, validity and performance of this Agreement shall be governed by English law and the parties hereby submit to the non-exclusive jurisdiction of the courts of England.