

Terms and Conditions of Engagement of Ballamy LLP

These Terms and Conditions will apply to the delivery of services by Ballamy LLP (“**Ballamy**”) to a client pursuant to a letter recording the specific terms of the engagement (the “**Engagement Letter**”) for engagements which commence between 1 January 2018 and 30 June 2018:

1. INTERPRETATION

1.1 **Definitions** In these Terms and Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Charges: the charges payable by the Client for the supply of the Services in accordance with clause 5.

Conditions: these Terms and Conditions as amended from time to time in accordance with clause 12.9.

Contract: the Engagement Letter and these Terms and Conditions.

Client: the person or firm who purchases Services from Ballamy.

Report(s): the written report(s) produced by Ballamy for the Client as part of the Services.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Services: the services, including the Report(s), supplied by Ballamy to the Client as set out in the Engagement Letter.

1.2 **Construction** In these Terms and Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its successors or permitted assignees;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes communications transmitted by email.

2. CONTRACT

2.1 The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Ballamy which is not set out in the Contract.

2.2 In the event of any inconsistency between the Engagement Letter and these Terms and Conditions, the Engagement Letter shall prevail.

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Client may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. SUPPLY OF SERVICES

- 3.1 Ballamy shall supply the Services to the Client with reasonable skill and care.
- 3.2 The Services are provided solely for the Client and Ballamy accepts no liability to anyone, other than the Client, in connection with the Services. The Client indemnifies Ballamy for any liability (including legal costs) that Ballamy incurs in connection with any claim made by any third party in relation to the Services.
- 3.3 The Client may rely only on Ballamy's final written Report(s) and not on oral advice or draft Report(s).
- 3.4 It is the Client's responsibility to identify to Ballamy any limits on the authority of those who are authorised to give instructions to Ballamy.

4. CLIENT'S OBLIGATIONS

- 4.1 The Client shall:
- (a) ensure that any information it provides to Ballamy in connection with the Contract is complete and accurate;
 - (b) co-operate with Ballamy in all matters relating to the Services;
 - (c) provide Ballamy, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by Ballamy in order to supply the Services; and
 - (d) provide Ballamy with such information and materials as Ballamy may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects.
- 4.2 If Ballamy's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):
- (a) Ballamy shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays Ballamy's performance of any of its obligations;
 - (b) Ballamy shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Ballamy's failure or delay to perform any of its obligations as set out in this clause 4.2; and
 - (c) the Client shall reimburse Ballamy on written demand for any costs or losses sustained or incurred by Ballamy arising directly or indirectly from the Client Default.

5. CHARGES AND PAYMENT

- 5.1 The Charges for the Services shall be calculated in accordance with the Engagement Letter. Unless otherwise agreed in writing, time necessarily incurred by representatives of Ballamy in travelling to meetings will be charged at the hourly rates stated in the Engagement Letter.
- 5.2 Ballamy shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom Ballamy engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Ballamy for the performance of the Services, and for the cost of any materials.
- 5.3 Unless otherwise agreed in writing, Ballamy shall invoice the Client monthly in arrears as Ballamy renders Services to the Client. The Client shall pay such invoices within 30 days of the date of the invoice.

- 5.4 Unless otherwise agreed in writing, Ballamy shall invoice the Client at the conclusion of the performance of the Services but in advance of Ballamy issuing its final Report(s). The Client shall pay such invoice submitted by Ballamy, together with all unpaid invoices previously issued by Ballamy, in advance of Ballamy issuing its final Report(s).
- 5.5 All amounts payable by the Client under the Contract are exclusive of amounts in respect of Value Added Tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Ballamy to the Client, the Client shall, on receipt of a valid VAT invoice from Ballamy, pay to Ballamy such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.6 Without prejudice to clause 9.3, if the Client fails to make any payment due to Ballamy under the Contract by the due date for payment, then the Client shall pay interest on the overdue amount at the rate of 4 per cent per annum above LIBOR from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Ballamy.

7. CONFIDENTIALITY

- 7.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.
- 7.2 The Client may not disclose a Report or make the benefit of the Services available to any third party or refer to the contents of a Report or the findings of the Services, except (i) as stated in the Engagement Letter, (ii) with the prior written consent of Ballamy on terms to be agreed, or (iii) where required by applicable law or regulation as long as the Client informs them, in advance, that Ballamy accepts no liability to them and that no onward disclosure may be made.
- 7.3 This clause 7 shall survive termination of the Contract.

8. LIMITATION OF LIABILITY

- 8.1 Nothing in these Conditions shall limit or exclude Ballamy's liability for:
- (a) death or personal injury;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 8.2 Subject to clause 8.1:
- (a) Ballamy shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

- (b) Ballamy's total liability to the Client in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed five times the total fees paid to Ballamy under the Contract. This limit applies to all causes of action against Ballamy in respect of, or arising from, or in any way connected with the Services which we supply to the Client. Where we act for more than one Client in a matter, this limitation applies to Ballamy's aggregate liability to all of them.

8.3 Subject to Clause 8.2, if Ballamy is liable under the Contract to the Client for loss or damage and a third party would be liable to the Client in respect of the same loss or damage (save for the Client's contractual arrangements with that third party), Ballamy's liability for that loss or damage shall be reduced to take into account the extent of the responsibility of that other person for the loss, and in determining the extent of the responsibility of that third party for the loss or damage, no account will be taken of (i) any limit or exclusion placed on the amount that third party will pay or (ii) any shortfall in recovery from that third party (for whatever reason).

8.4 The Client agrees to bring any claim (including one in negligence) in connection with the Services only against Ballamy and not against any of Ballamy's partners, members, directors or employees, subcontractors, consultants, or agents even if they have been negligent. The fact that an individual person signs in his or her own name any document or Report in the course of performing Services for the Client does not mean that he or she is assuming any personal liability for that document or Report. Each of Ballamy's partners, members, directors or employees, subcontractors, consultants or agents is entitled to rely on this clause pursuant to the Contracts (Rights of Third Parties) Act 1999.

8.5 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

8.6 Any claims by the Client must be brought no later than 2 years after the date the Client was or should reasonably have been aware of the potential claim.

8.7 This clause 8 shall survive termination of the Contract.

9. TERMINATION

9.1 Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party one month's written notice.

9.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- (b) the other party is or appears likely to be unable to pay its debts as they fall due; or
- (c) the Client's financial position deteriorates to such an extent that in Ballamy's opinion the Client's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

9.3 Without limiting its other rights or remedies, Ballamy may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Contract on the due date for payment.

9.4 Without limiting its other rights or remedies, Ballamy may suspend provision of the Services under the Contract or any other contract between the Client and Ballamy if Ballamy reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Contract on the due date for payment.

10. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Client shall immediately pay to Ballamy all of Ballamy's outstanding unpaid invoices (and interest if applicable) and, in respect of Services supplied but for which no invoice has been submitted, Ballamy shall submit an invoice, which shall be payable by the Client immediately on receipt;
- (b) the Client shall return any Reports which have not been fully paid for. If the Client fails to do so, then Ballamy may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication survive termination shall continue in full force and effect.

11. FORCE MAJEURE

11.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of Ballamy including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Ballamy or any other party), failure of a utility service, a computer system, an electronic communications system, or a transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

11.2 Ballamy shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

12. GENERAL

12.1 Assignment and other dealings

- (a) Ballamy may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Client shall not, without the prior written consent of Ballamy, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

12.2 Notices

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier or email (or attachment thereto).
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

- 12.3 **Severance** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 12.4 **Waiver** No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy.
- 12.5 **No partnership or agency** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 12.6 **Third parties** Save as set out in clause 8.4 a person who is not a party to the Contract shall not have any rights to enforce its terms.
- 12.7 **Conflicts** The Client acknowledges and agrees that Ballamy may perform services for the Client's competitors or other parties whose interests may conflict with the Client's, provided that Ballamy complies with Clause 7.
- 12.8 **Data Protection** The Client agrees that Ballamy may process the Client's personal data for the purposes of any of (i) providing the Services, (ii) maintaining Ballamy's administrative or client relationship management systems, including the use of IT outsource providers, (iii) performing Ballamy's quality and risk management reviews and (iv) complying with Ballamy's obligations under the prevailing Money Laundering Regulations. Where Ballamy acts as the Client's data processor, Ballamy will act only on the Client's lawful instructions.
- 12.9 **Variation** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Ballamy.
- 12.10 **Governing law** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.
- 12.11 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).
- 12.12 **Safeguarding service** Without prejudice to Clause 8.4, the Partner of Ballamy who signed the Engagement Letter which accompanies these terms and conditions will be the Client Service Partner responsible for our Services. If at any time the Client were to be dissatisfied with the quality of Ballamy's Services, the Client should contact the Client Service Partner who will take all reasonable steps to remedy the cause of dissatisfaction. This will not affect your right to complain to the Institute of Chartered Accountants in England and Wales ("ICAEW").
- 12.13 **Provision of Services Regulations 2009** Ballamy is regulated by the ICAEW and is required to comply at all times with, among other things, the ICAEW's Code of Ethics which can be found at www.icaew.com/regulations. In accordance with the disclosure requirements of these regulations Ballamy LLP notifies the Client that the name of its professional indemnity insurer is Barbican Protect Limited that any correspondence should be directed to Barbican Protect Limited at King's House, 42 King Street West, Manchester, M3 2NU. The territorial coverage of Ballamy LLP's professional indemnity insurance is worldwide excluding the United States of America and Canada.
- 12.14 **Regulatory compliance** By accepting these terms and conditions of engagement, the Client confirms the authenticity of all documentation provided to Ballamy for the purpose of enabling Ballamy to fulfil its obligations under the Money Laundering Regulations.
- 12.15 **Retention of documentation and electronic information** Ballamy's practice is to retain documentation and electronic information for six years from the date of the conclusion of a matter. After six years all documentation and electronic information pertaining to a Client engagement will be destroyed in accordance with our archiving policy. The Client

must inform Ballamy in writing within six years of the date of conclusion of a matter of any objection to the implementation of this practice.