

Dated

2019



ONE EIGHTY

FM180 Limited trading as One Eighty

and

Customer

FM180 Limited

Services Agreement



2 North Park Road, Harrogate, HG1 5PA, North Yorkshire

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THIS AGREEMENT is dated [DATE]

PARTIES

- (1) FM180 Ltd (t/a One Eighty) incorporated and registered in England and Wales with company number 07205847 whose registered office is at Hornbeam House, Hornbeam Business Park, Hookstone Road, Harrogate, North Yorkshire, HG2 8QT (**FM180**);
- (2) The business entity named on an Accepted Proposal (**the Customer**).

BACKGROUND

- (A) FM180 provide workplace and facilities management services and general support.
- (B) The Customer wishes to use FM180’s services in its business operations.
- (C) FM180 has agreed to provide, and the Customer has agreed to take and pay for, the services, subject to the terms and conditions of this agreement from the Commencement Date.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this Agreement (unless the context requires otherwise).

1.1 Definitions:

Agreement: means the these terms and conditions from clause 1 to clause 25 inclusive and including Schedule 1 to Schedule 2 (inclusive).

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

Acceptance: means the date that an individual Project Plan is accepted and entered into by the Customer and “Accept” shall be interpreted accordingly in the context of agreement to Proposals.

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Capacity: as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity.

Change Control Procedure: means the process set out in a Proposal or as set out in clause 8 below.

Commencement Date: means the earlier of the date of last signature to this Agreement or the date of Acceptance of a Proposal by the Customer.

Confidential Information: all confidential information (however recorded or preserved) disclosed by a party or its employees, consultants, officers, representatives, advisers, agents or sub-contractors involved in the provision or receipt of the Services (together, its Representatives) to the other party or that party's Representatives in connection with this agreement which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Customer Data: any information that is provided by or on behalf of the Customer to FM180 as part of the Customer's use of the Services, including any information derived from such information.

Data Protection Legislation: the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy.

Engagement: the engagement of FM180 by the Customer pursuant to Customer Acceptance of a Proposal according to the terms of this Agreement.

Fees: the fees payable to FM180, as described in the relevant Proposal.

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Group Company: FM180, its subsidiaries or holding companies from time to time and any subsidiary of any holding company from time to time

Insurance Policies: professional indemnity insurance cover, employer's liability insurance cover and public liability insurance cover.

Intellectual Property Rights: patents, utility models, rights to Inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off [or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) 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.

Invention: any invention, idea, discovery, development, improvement or innovation made by FM180 in the provision of the Services, whether or not patentable or capable of registration, and whether or not recorded in any medium.

Pre-existing Materials: materials which existed before the commencement of the Project.

Project: the project as described in the Proposal.

Project Milestone: a date by which a part of the Project is estimated to be completed, as set out in the Proposal.

Proposal: the detailed plan describing the Project and setting out the estimated Project Schedule (including without limitation Project Milestones) and responsibilities of each of the parties for, or in connection with, the provision of the Services in accordance with this agreement.

Project Schedule: means the schedule for estimated delivery dates of deliverables including any Project Milestones.

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Representatives: has the meaning given to that term in the definition of Confidential Information.

Services: the workplace and facilities management services provided by FM180 in a consultancy capacity for the Customer as more particularly described in Schedule 1.

Substitute: a substitute engaged by FM180 under the terms of clause 3.5.

Support Fees: the support fees payable to FM180, as calculated in accordance with the calculation or prices set out in or attached to an agreed Proposal.

Support Services: support services to be provided to the Customer with respect the Services under this agreement, as described in the relevant Proposal.

Termination Date: the date of termination of this Agreement, howsoever arising.

UK Data Protection Legislation: any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation.

Works: all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software, and all other materials in whatever form, including but not limited to hard copy and electronic form, prepared by FM180 in the provision of the Services.

- 1.2 The headings in this Agreement are inserted for convenience only and shall not affect its construction.
- 1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

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1.6 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

2. TERM OF AGREEMENT

2.1 The Customer shall engage FM180 and FM180 shall provide the Services on the terms of this Agreement.

2.2 The Agreement shall commence on the Commencement Date for and shall continue unless and until terminated:

- (a) as provided by the terms of this Agreement;
- (b) by either party giving to the other not less than three (3) months' prior written notice; or
- (c) expiry or termination of all Engagements.

2.3 Each Engagement shall commence on the date expressly stated within the relevant Proposal either as expressly set out in a proposal acceptance certificate or other order confirmation page signed and returned by the Customer to FM180.

2.4 Each Engagement shall continue in force for the duration the Proposal as stated therein unless otherwise terminated in accordance with its terms of the terms of this Agreement.

2.5 FM180 shall retain the right to suspend access to the Services in the event that the Customer has not paid any Fees by the date due for payment under any Engagement. Suspension by FM180 shall be in addition to and without prejudice to any right that FM180 has to terminate any part of an Engagement that otherwise arises under this agreement.

3. FM180'S OBLIGATIONS

3.1 FM180 shall use reasonable endeavours to manage and complete the Project, and to deliver the Services, in accordance with the Proposal.

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- 3.2 FM180 shall use reasonable endeavours to meet the performance dates specified in the Proposal or Project Schedule, but any such dates shall be estimates only and time shall not be of the essence under this Agreement or any Engagement.
- 3.3 FM180 shall use reasonable endeavours to ensure that they are available to deal with the response times contained in the relevant Proposal and shall provide reasonable assistance and information as required by the Customer from time to time.
- 3.4 FM180 shall provide the Services with reasonable care and skill and in accordance with industry best practice.
- 3.5 FM180 may appoint a suitably qualified and skilled Substitute to perform the Services on their behalf, provided that the Substitute shall be required to enter into direct undertakings with the Customer, including with regard to confidentiality. If the Customer accepts the Substitute, FM180 shall continue to invoice the Customer in accordance with clause 5.1(d) and shall be responsible for the remuneration of the Substitute. For the avoidance of doubt, FM180 will continue to be subject to all duties and obligations under this Agreement for the duration of the appointment of the Substitute.
- 3.6 If a Substitute is appointed, the provisions relating to sub-processor obligations under clause 10 will apply.
- 3.7 Unless specifically authorised to do so by the Customer in writing, FM180 shall not:
- (a) have any authority to incur any expenditure in the name of or for the account of the Customer; or
 - (b) hold themselves out as having authority to bind the Customer.
- 3.8 FM180 shall comply with all reasonable standards of safety and comply with the Customer's health and safety procedures from time to time in force at the premises where the Services are provided and report to the Customer any unsafe working conditions or practices.
- 3.9 FM180 shall:

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- (a) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
 - (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - (c) comply with the Customer's reasonable Ethics and Anti-bribery and Anti-corruption Policies, in each case as the Customer may update them from time to time by prior written notice to FM180 (**Relevant Policies**);
 - (d) promptly report to the Client any request or demand for any undue financial or other advantage of any kind received by the Consultant in connection with the performance of this Agreement;
 - (e) ensure that all persons associated with FM180 or other persons who are performing services in connection with this Agreement comply with this clause 3.9.
- 3.10 Failure to comply with clause 3.9 may result in the immediate termination of this Agreement.
- 3.11 FM180 shall:
- (a) not engage in any activity, practice or conduct which would constitute either:
 - (i) a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017; or
 - (ii) a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017;
 - (b) ensure that all persons associated with FM180 or other persons who are performing services in connection with this Agreement comply with this clause 3.11.

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4. OTHER ACTIVITIES

4.1 Nothing in this Agreement shall prevent FM180 from being engaged, concerned or having any financial interest in any Capacity in any other business, trade, profession or occupation during the Engagement provided that such activity does not cause a breach of any of FM180’s obligations under this Agreement.

5. CUSTOMER RESPONSIBILITIES

5.1 The Customer shall:

- (a) provide FM180 with:
 - (i) all necessary co-operation in relation to this Agreement; and
 - (ii) all necessary access to such information as may be reasonably required by FM180 in order to provide the Services
- (b) comply with all applicable laws and regulations with respect to its activities under this agreement;
- (c) carry out other Customer responsibilities set out in this agreement or in any of the Schedules in a timely and efficient manner. In the event of any delays in the Customer’s provision of such assistance as agreed by the parties, FM180 may adjust any timetable or delivery schedule set out in this agreement as reasonably necessary; and
- (d) where requested by FM180, nominate one person to be the principal contact between the parties and to whom FM180 shall direct all correspondence unless otherwise expressly agreed.

6. FEES

6.1 Clause 6.2 shall apply if the Services are to be provided on a time-and-material basis. Clause 6.3 and Clause 6.4 shall apply if the Services are to be provided for a fixed price. The remainder of this Clause 6 shall apply in either case.

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- 6.2 Where the Services are provided on a time-and-materials basis:
- (a) the Fees payable for the Services shall be calculated in accordance with FM180's standard daily fee rates as amended from time to time as may be initially set out in a Proposal;
 - (b) FM180's standard daily fee rates are calculated on the basis of an eight-hour day worked between 9.00 am and 5.00 pm on weekdays (excluding weekends and public holidays);
 - (c) FM180 shall provide a regular report showing how it has calculated the Fees covered by each monthly invoice referred to in Clause 6.2 (e); and
 - (d) FM180 shall invoice the Customer monthly in arrears for its Fees for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this Clause 6. Any expenses, materials and third party services shall be invoiced by FM180.

6.3 Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Proposal. The total price shall be paid to FM180 in instalments as set out in the Proposal. Where applicable. on achieving a Project Milestone, FM180 shall invoice the Customer for the Fees that are then payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in Clause 6.4.

- 6.4 Any fixed price contained in the Proposal excludes:
- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the project team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by FM180 for the supply of the Services. Such expenses, materials and third party services shall be invoiced by FM180; and
 - (b) VAT, which FM180 shall add to its invoices at the appropriate rate.

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- 6.5 The Customer shall pay each invoice submitted to it by FM180 in full, and in cleared funds, within 30 days of receipt.
- 6.6 Without prejudice to any other right or remedy that FM180 may have, if the Customer fails to pay FM180 on the due date FM180 may:
- (a) charge interest on such sum from the due date for payment at the annual rate of 5% above the base lending rate from time to time of Bank of England, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and
 - (b) suspend all Services until payment has been made in full.
- 6.7 Payment in full or in part of the fees claimed under clause 5.1(d) or any expenses claimed under clause 7 shall be without prejudice to any claims or rights of the Customer against FM180 in respect of the provision of the Services.
- 6.8 FM180 is entitled to vary the Fees in accordance with clause 6 or to take into account the rate of inflation. FM180 will give the Customer three (3) months' written notice of any such changes.

7. EXPENSES

- 7.1 The Customer shall reimburse all reasonable expenses properly and necessarily incurred by FM180 in the course of the Engagement, subject to production of receipts or other appropriate evidence of payment.
- 7.2 If FM180 is required to travel abroad in the course of the Engagement they shall be responsible for any necessary insurances, inoculations and immigration requirements.

8. CHANGE CONTROL

- 8.1 This clause 8 shall apply unless a separate Change Control Procedure for managing changes to the scope or Fees under any Engagement is set out in a Proposal.

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- 8.2 If either party wishes to change the scope of the Services (including Customer requests for additional services), it shall submit details of the requested change to the other in writing.
- 8.3 If either party requests a change to the scope or execution of the Services, FM180 shall, within a reasonable time, provide a written estimate to the Customer of:
- (a) the likely time required to implement the change;
 - (b) any variations to the Fees arising from the change;
 - (c) the likely effect of the change on the Proposal and any agreed Milestone or other date for delivery; and
 - (d) any other impact of the change on the terms of this agreement.
- 8.4 If FM180 requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it. If the Customer requests a change pursuant to clause 8, or a change is proposed pursuant to clause 8, FM180 shall not unreasonably withhold or delay consent to it.
- 8.5 If either party wishes the other party to proceed with the relevant change referred to in clause 8.4, FM180 has no obligation to do so unless and until the parties have agreed in writing the necessary variations to its Fees, and any other relevant terms of this agreement to take account of the change.

9. CONFIDENTIALITY

- 9.1 The provisions of this clause 9 shall not apply to any Confidential Information that:
- (a) is or becomes generally freely available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause 9);
 - (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
 - (c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality

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agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;

(d) was known to the receiving party before the information was disclosed to it by the disclosing party;

(e) the parties agree in writing is not confidential or may be disclosed.

9.2 Each party shall keep the other party's Confidential Information confidential and shall not:

(a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this agreement (Permitted Purpose); or

(b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 9.

9.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its Representatives in violation of the terms of this agreement.

9.4 FM180 acknowledges and agrees that the Customer Data is the Confidential Information of the Customer.

9.5 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

(a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and

(b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause 9.

9.6 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority (including any relevant securities exchange) or by a court or other authority of competent

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jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 9.6, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

9.7 A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.

9.8 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party or to be implied from this agreement.

9.9 The provisions of this clause 9 shall continue to apply after expiry or termination of this agreement for any reason for a period of three (3) years.

10. DATA PROTECTION

10.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

10.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and FM180 is the processor. Schedule 2 sets out the scope, nature and purpose of processing by FM180, the duration of the processing and the types of personal data and categories of data subject.

10.3 Without prejudice to the generality of clause 10.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to FM180 for the duration and purposes of this Agreement.

10.4 Without prejudice to the generality of clause 10.1, FM180 shall, in relation to any personal data processed in connection with the performance by FM180 of its obligations under this Agreement:

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- (a) process that personal data only on the documented written instructions of the Customer unless FM180 is required by Applicable Law to otherwise process that personal data. Where FM180 is relying on the laws of a member of the European Union or European Union law as the basis for processing personal data, FM180 shall promptly notify the Customer of this before performing the processing required by the Applicable Law unless the Applicable Law prohibits the Supplier from so notifying the Customer;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- (d) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- (i) the Customer or FM180 has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;

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- (iii) FM180 complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
- (iv) FM180 complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- (e) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a personal data breach;
- (g) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the personal data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 10 and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

10.5 The Customer consents to FM180 appointing a Group Company of FM180 as a third party processor of Personal Data under this Agreement. FM180 confirms that it has entered or (as the case may be) will enter with the third party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 10 and in either case which FM180 confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and FM180, FM180 shall remain fully liable for all acts or omissions of any Group Company third party processor appointed by it pursuant to this clause 10.

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11. INTELLECTUAL PROPERTY

- 11.1 All Intellectual Property Rights and all other rights in the Works shall be owned by FM180 or its third-party licensors. FM180 hereby licenses all such rights to the Customer free of charge and on a non-exclusive, non-transferable and worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Work and the Services as is envisaged by the parties. If FM180 terminates the Agreement under clause 13.1, this licence will automatically terminate.
- 11.2 To the extent that any third party software or licenses are included within or provided alongside any part of the Works, that third party software shall be subject to the terms of the third party licensor.
- 11.3 The Customer acknowledges that the Customer's use of rights in Pre-existing Materials is conditional on FM180 obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle FM180 to license such rights to the Customer.
- 11.4 Any Inventions arising out of this agreement shall be owned by FM180. Where use of such Inventions is required in order for the Customer to make use of the Services then FM180 hereby licenses all such rights to the Customer free of charge and on a non-exclusive, non-transferable and worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Works and the Services as is envisaged by the parties under this Agreement. If FM180 terminates the Agreement under clause 13.1, this licence will automatically terminate.

12. LIMITATION OF LIABILITY

- 12.1 The following provisions set out the entire financial liability of FM180 (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- (a) any breach of the Agreement howsoever arising;
 - (b) any use made by the Customer of the Services, the Works or any part of them; and

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(c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Agreement.

12.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

12.3 Nothing in these conditions excludes the liability of FM180:

- (a) for death or personal injury caused by negligence; or
- (b) for fraud or fraudulent misrepresentation.

12.4 Subject to Clause 12.2 and Clause 12.3:

(a) FM180 shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:

- (i) loss of profits;
- (ii) loss of sales or business;
- (iii) loss of agreements or contracts;
- (iv) loss of anticipated savings;
- (v) loss of use or corruption of software, data or information;
- (vi) loss of or damage to goodwill;
- (vii) indirect or consequential loss; and

12.5 FM180's total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the Fees paid by the Customer to FM180

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under this Agreement during the twelve (12) month period immediately preceding the date on which the claim arose.

13. INSURANCE

- 13.1 FM180 shall maintain in force during the Engagement full and comprehensive Insurance Policies with reputable insurers.
- 13.2 FM180 shall on request supply to the Customer copies of such Insurance Policies and evidence that the relevant premiums have been paid.
- 13.3 FM180 shall endeavour to comply with all terms and conditions of the Insurance Policies at all times.

14. TERMINATION

- 14.1 This Agreement shall commence on the the last date of signature to this Agreement or from Acceptance of a relevant Proposal. Unless terminated earlier in accordance with this clause 14, this Agreement shall continue in force until expiry of termination in accordance with clause 2 above.
- 14.2 Without prejudice to any other right or remedy available to it, and subject to clause 15, either party may terminate this agreement or a relevant Proposal with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 16 days after being notified in writing to make such payment;
 - (b) the other party commits a material breach of any term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - (c) the other party breaches any of the terms of clause 9.

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- (d) the other party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given, or an administrator is appointed, over the other party;
- (h) the holder of a qualifying floating charge over any of the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over any of the assets of the other party or a receiver is appointed over any of the assets of the other party;
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause (d) to clause (i) (inclusive);

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- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (m) there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

14.3 Without prejudice to any other right or remedy available to it, and subject to clause 15, the Customer may terminate this Agreement with immediate effect by giving written notice to FM180 if:

- (a) FM180 breaches the provisions relation to anti-bribery under this Agreement and the Customer exercises their rights pursuant to clause 3.10.

14.4 The party not affected by a continuing Force Majeure Event may terminate this agreement in accordance with clause 15.1.

14.5 Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after expiry or termination of this agreement shall remain in full force and effect.

14.6 Expiry or termination of this agreement for any reason shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at expiry or termination.

14.7 On expiry or termination of this agreement for any reason:

- (a) FM180 shall immediately cease provision of the Services;
- (b) (subject to clause 14.8) each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party and the Customer shall cease to use any IP address licensed to the Customer by FM180.

14.8 If a party is required by any law, regulation, or government or regulatory body (Regulatory Requirement) to retain any documents or materials which it would otherwise be obliged to return or destroy under clause 14, it shall notify the other party in writing of such retention, giving details of the documents or materials that it must retain. clause 9 shall

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continue to apply to any such retained documents and materials for as long as any such requirement continues in force, subject to any disclosure mandated by any Regulatory Requirement.

14.9 FM180 may elect to suspend Services in lieu of exercising any termination right that arises, but such suspension shall be without prejudice to and shall not prevent FM180 from terminating any Engagement where it would have otherwise been entitled to do so.

15. FORCE MAJEURE

15.1 Neither party shall have any liability to the other under this agreement if it is prevented from, or delayed in, performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, except to the extent that it could reasonably have avoided such circumstances by (in the case of FM180) fulfilling its obligations in accordance with clause 16 or otherwise exercising the level of diligence that could reasonably have been expected of it, including strikes, lock-outs or other industrial disputes (including any industrial disputes involving the workforce of FM180), act of God, war, riot, civil commotion, compliance with any law or regulation, fire, flood or storm (each a Force Majeure Event), provided that:

- (a) the other party is notified of such an event and its expected duration; and
- (b) it uses all reasonable endeavours to mitigate, overcome or minimise the effects of the Force Majeure Event concerned,

and that if the period of delay or non-performance continues for two weeks or more, the party not affected may terminate this agreement by giving not less than 14 days' written notice to the other party.

16. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

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17. SEVERANCE

17.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

17.2 If any provision or part-provision of this agreement is deemed deleted under clause 17.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

18. STATUS

18.1 The relationship of FM180 to the Customer will be that of independent contractor and nothing in this Agreement shall render them an employee, worker, agent or partner of the Customer and FM180 shall not hold themselves out as such.

18.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

19. NOTICES

19.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at the address given in this Agreement or as otherwise notified in writing to the other party. :

19.2 Unless proven otherwise, any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt;
- (b) 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 or at the time recorded by the delivery service.

19.3 If deemed receipt under clause 19.2 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. In this clause 19.3, business hours

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shall be taken to mean 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

19.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

20. ENTIRE AGREEMENT

20.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

20.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

20.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

21. VARIATION

No variation of this Agreement or of any of the documents referred to in it shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

22. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

23. THIRD PARTY RIGHTS

23.1 Except as expressly provided elsewhere in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

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23.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

24. GOVERNING LAW

This Agreement 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.

25. 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 Agreement or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed on the Commencement Date.

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SCHEDULE 1 – Services

PRO-FORMA PROPOSAL DOCUMENT

- [INSERT PROPOSAL DOCUMENT TEMPLATE]

SPECIMEN

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SCHEDULE 2- Processing, Personal data and Data subjects

PART 1 - PROCESSING BY FM180

1. SCOPE
2. NATURE
3. PURPOSE OF THE PROCESSING
4. DURATION OF THE PROCESSING

PART 2 - TYPES OF PERSONAL DATA

PART 3 - CATEGORIES OF DATA SUBJECT

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PRINTED DOCUMENTS ARE UNCONTROLLED

Executed by FM180 Limited

.....

acting by [NAME OF DIRECTOR] a
director:

[SIGNATURE OF DIRECTOR]

Director

Executed by [NAME OF
CUSTOMER], acting by [NAME OF
DIRECTOR], a director:

.....

[SIGNATURE OF DIRECTOR]

Director

SPECIMEN

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