

## Clarkson Group

### General Terms and Conditions for Provision of Shipbroking Services (2022)

V:5 05DEC2022

Effective 05 December 2022

#### Application of these Terms and Conditions

A) These General Terms and Conditions ("Terms") shall be effective from 02 November 2020 and from that date replace and supersede any previous versions of Group terms and conditions.

B) These Terms represent the sole terms upon which the Company provides Services to the Client and will exclusively govern the Agreement entered into between the Company and the Client as a result of the Client's acceptance of Services provided to it by the Company whether such Services are provided at the Client's request or in response to the Company's offer of Services to the Client.

C) The Client confirms that it accepts these Terms on this basis by receiving the Services and, if a Representative, warrants and represents to the Company that it has the Principal's authority to accept these terms on the part of the Principal on the same basis.

D) The words "Company", "Client", "Principal", "Representative" "Services" and Agreement" used above are defined in Clause 1 below.

E) Attention is drawn specifically to the exclusion and limitation of the Company's liability both in respect of the Services provided and generally as are set out in Clause 7.

# 1. Definition of Words Used in and Interpretation of these Terms

1.1. In these Terms the following definitions apply:

"Agreement" means the contract pursuant to which the Company agrees to provide Services to the Client in accordance with these Terms, whether such contract is verbal and/or in writing including any contract between the Company and the Client which is contained in or evidenced by the terms of a separate contract between the Client and a third party.

"Ancillary Services" means the ancillary services set out in Clause 2.7.

"Affiliate" means a company or other legal entity which directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another entity; "control" (including the terms "controls", "controlled by" and "under common control with") means the possession, directly or indirectly, of more than 50% of the equity securities or equity interests in such entity or the power to direct or cause the direction of the management and policies of such entity (whether through ownership of securities, partnership interest or other ownership interests, by contract, or otherwise).

"Broking Services" means the broking services set out in Clause 2.3.

"Company" means the company which is a member of the Group which has been requested by the Client to provide Services or to which the Client has responded in relation to the provision of Services and shall unless the context requires otherwise include its officers, employees and agents; for the avoidance of doubt, Clarkson PLC acts solely as a holding company and does not trade.

"Client" means the party requesting the Services from the Company or responding to the Company in relation to the provision of the Services and shall unless the context requires otherwise include its officers, employees and agents. Where such party is acting as a Representative, references to the Client shall include the Principal;

"Contract" means a contract or contracts, including but not limited to for the sale and purchase (including second-hand, new-building, recycling and demolition)

construction, towage, or charter (including voyage, time, bareboat and contracts of affreightment) of a Ship.

"Group" means Clarkson PLC and its Affiliates.

"Data Protection Legislation" means (as they relate to these Terms) (i) the General Data Protection Regulation (EU/2016/679) ("GDPR") and any relevant subordinate legislation in the UK unless and until the GDPR is no longer directly applicable in the UK, and then (ii) any successor legislation to the Data Protection Act 1998.

"Market Reports" means market reports, commentary, catalogues, circulars or literature.

"Negotiations" means exchanges, whether verbal or in writing including via an electronic platform, conducted by or with the Company in relation to concluding a Contract.

"Parties" means together, the Company and the Client (each, a "Party").

"Post Contract Services" means the Post Contract services set out in Clause 2.4.

"Principal" means the party to a Contract including, as relevant, an owner, operator, seller, buyer, builder or charterer of a Ship and any party guaranteeing the obligations of such a party.

"Representative" means a person or company (including but not limited to a ship manager, charterer, shipbroker or other agent) who is not a Principal but is involved in Negotiations or the conclusion of a Contract as an agent on behalf of a Principal.

"Services" together, means the Broking Services, Post Contract Services and Ancillary Services and also the arranging of Third Party Services.

"Ship" means any type of vessel or floating object or structure or equipment used or intended to be used for any purpose on, in or over water including but not limited to rigs, jack ups, submersibles, and barges.

"Terms" mean the terms and conditions set out in this document.

"Third Party Services" mean the services provided by third parties set out in Clause 2.11

1.2. Headings in these Terms are for convenience and ease of reference only and shall not affect their interpretation.

1.3. In these Terms, unless the context requires otherwise:

1.3.1. words in the singular shall be deemed to include the plural and vice versa;

1.3.2. references to persons shall include bodies of persons whether corporate or otherwise;

1.3.3. words importing the whole shall be treated as including a reference to any part of the whole;

1.3.4. references to a party includes its successors and permitted assigns;

1.3.5. references to Clauses are references to clauses in these Terms.

## 2. Services provided by the Company to the Client

2.1. The Company provides Services to the Client when engaged to do so by the Client whether in response to a request from the Client to the Company for Services or to the offer by the Company to the Client of Services. The Company's provision of Services is subject exclusively to these Terms which the Client acknowledges and accepts by its receipt of any Services of the Company.

2.2. Depending upon what service or services the Company is engaged by the Client and agrees with the Client to provide, the Company may provide Broking Services, Post Contract Services or Ancillary Services or a combination of the same.

2.3. When engaged to provide Broking Services:

2.3.1. The Company will act as a broker in relation to Negotiations and Contracts.

2.3.2. The role of the Company is to introduce Principals to each other and thereafter to assist the Principals and/or their Representatives in the

negotiation and conclusion of Contracts between Principals.

2.3.3. The Company shall not be responsible for the performance or non-performance by Principals or any other parties of Contracts concluded arising out of the Broking Services provided.

2.3.4. It is the Client's sole responsibility to decide (a) whether to enter a Contract with the proposed counterparty and if so on what terms; (b) to assess and ensure for itself the validity, binding nature or enforceability of a Contract or any relevant security; (c) to seek or obtain security in connection to the Contract which it may consider to be necessary and (d) the status or standing, creditworthiness, ability to perform and good faith of the proposed counterparty. The Company takes no responsibility for these matters.

2.4. When engaged to provide Post Contract Services in addition to Broking Services, the Company shall provide the Client with assistance in relation to communications and operational matters arising from the performance of a Contract.

2.5. Unless otherwise agreed in writing, both Broking Services and Post Contract Services shall be provided by the Company on a Negotiation by Negotiation or Contract by Contract basis (as applicable).

2.6. In relation to Broking Services and Post Contract Services the Company acts solely as broker and agent for and on behalf of the Client both in relation to any Contract and in all other respects.

2.7. When engaged to provide Ancillary Services:

2.7.1. The Company shall provide services supplementary or ancillary to Broking or Post-Contract Services as may be specifically agreed between the Parties including but not limited to market research and the preparation and making of reports, studies, specific analyses and Market Reports.

2.7.2. The provision of Ancillary Services may be subject to specific provisions (including, without limitation, disclaimers) in addition to these Terms. In the event of, and only to the extent of, a conflict between these Terms and such specific provisions, the latter shall prevail. Otherwise these Terms, including those as to exclusion and limitation of liability and indemnity, shall apply in the same way as to any other Service provided by the Company.

2.8. Unless expressly agreed to the contrary between the Parties in writing at the time of the Client's engagement of the Company to provide the Services, the Company does not provide its Services to the Client on an exclusive or sole client basis. The Client confirms and agrees that at any time during the provision to it of the Services:

2.8.1. The Company may act without notice to the Client as broker for any additional party or parties or Principal or Principals in relation to the same

Negotiations or Contracts in respect of which the Client has engaged the Company or any other Negotiations or Contracts; and

- 2.8.2. The Company may without notice to the Client provide any of the Services set out above to any additional party or parties or Principal or Principals.
- 2.9. The Company may, in its sole discretion, provide the Services to the Client by or together with any other company in the Group. In such circumstances, such other company in the Group shall comply with and have the full benefit and protection of these terms. The liability of the Company and such other company in the Group shall be joint and several.
- 2.10. Where the Client is a Representative, the Principal for which the Client acts shall have the same rights and be bound by the same obligations as set out in these Terms.
- 2.11. In the event that a Client requests the Company to use the services of a third party in any way in relation to the Company's provision of Services ("Third Party Services"), the Company will contract with such third party solely as agent for the Client

### **3. The Obligations and Responsibilities of the Company**

#### Company Provided Services

- 3.1. Save in respect of Third Party Services (as to which see Clause 3.6 below), the Company will perform the Services:
- 3.1.1. In accordance with these Terms;
  - 3.1.2. With the reasonable skill and care expected of a professional broker; and
  - 3.1.3. In accordance with any applicable law or laws governing the Services or their subject-matter.
- 3.2. When providing Broking Services the Company undertakes to pass on offers, counter-offers and other communications during Negotiations to and from the Client accurately and with reasonable promptness.
- 3.3. When providing the Services, the Company may deal with Representatives or other intermediaries and not directly with the Principal. In such a case, the Company deals in good faith as to the authority such other party possesses or states that it possesses

but does not give any warranty or guarantee or make any representation as to that authority or the existence or validity thereof.

- 3.4. Whenever the Company provides any information of any sort to the Client in respect of any person or in respect of any Ship or other property (including but not limited to information regarding corporate structure or financial standing of any party) and whether in relation to a Negotiation, Contract or otherwise:
  - 3.4.1. The Company provides the information honestly and in good faith;
  - 3.4.2. The Company gives no warranty or guarantee or representation as to the accuracy or nature of any information provided;
  - 3.4.3. The Client warrants and represents to the Company that it does not and will not rely upon any such information as warranted, guaranteed or represented by the Company as being accurate or otherwise endorsed by the Company as to its content;
  - 3.4.4. The Client warrants and represents to the Company that it accepts that, notwithstanding the Services provided by the Company, it is at all times its sole obligation and responsibility to satisfy itself of any counterparty risk and decide whether to enter into a Contract with the proposed counterparty and on what terms.
- 3.5. The obligations and responsibilities set out in this clause and at clause 12 are the sole obligations and responsibilities of the Company towards the Client and any other conditions, terms or warranties of any kind and whether implied by law or under any statute are excluded (to the extent permissible in law or under any applicable statute).

#### Third Party Services

- 3.6. Where the Company at the Client's request contracts with a third party for Third Party Services, it will do so solely as agent for the Client and the following provisions will apply in place of any other provision in these Terms.
  - 3.6.1. The Company's undertakings and obligations in Clause 3.1 to 3.5 will not apply to any Third Party Services provided by the third party under that contract.
  - 3.6.2. The Client acknowledges and agrees (a) that the Third Party Services are provided without any obligation of any kind upon the Company in relation to them or to any aspect whatsoever of the performance or non-performance by the third party of such Third Party Services or the negligence or any other fault on the part of the third party and (b) that the entire risk as to the

provision, quality, timeliness, performance and non-performance of the Third Party Services will be borne solely by the Client.

- 3.6.3. Without prejudice to the preceding provisions in this Clause 3.6, the Company expressly disclaims all warranties, conditions and other terms with respect to the Third Party Services whether express, implied, statutory or otherwise, including without limitation, accuracy or reliability of results from use of the Third Party Services, that the Third Party Services will meet specific requirements, be uninterrupted, completely secure or free of errors, including, without limitation, software errors.

#### Market Reports

- 3.7. Any Market Reports published by the Company or the Group, which may be provided to the Client either in connection with the Services or otherwise are provided for general information and convenience only and without any statement, representation or warranty as to their accuracy. Nothing in the fact of their being provided or in their content constitutes an offer, solicitation, advice or a recommendation of any kind, including without limitation, with respect to the Contract or for any other purposes whatsoever. The Client acknowledges, agrees and represents to the Company that it will not rely on the Market Reports in making any decision, financial or otherwise, and that any use by the Client of the Market Reports for any purpose shall be at Client's sole risk.

## 4. The Obligations and Responsibilities of the Client

#### 4.1. The Client will:

- 4.1.1. Comply with these Terms in so far as they are applicable to it;
- 4.1.2. Observe good faith at all times in its dealings with the Company;
- 4.1.3. Comply with any applicable law or laws governing the Services or their subject-matter; and
- 4.1.4. Comply with its obligations pursuant to the United Kingdom Modern Slavery Act 2015.

#### 4.2. In relation to information, instructions and assistance:



- 4.2.1. The Client will provide with reasonable promptness all information, instructions and assistance which may be requested by the Company at any time in the performance of the Services;
  - 4.2.2. The Client will take all reasonable care to ensure that any information and instructions provided to the Company by it or on its behalf is accurate and complete in all respects and the Client confirms that the Company can rely upon the information and instructions for the purposes of and in connection with the Services;
  - 4.2.3. In the event that there is any change to any information or instructions provided to the Company, the Client will notify the Company of that change immediately
  - 4.2.4. The Client undertakes and represents that the Company shall be entitled to accept, rely upon and act in accordance with any instructions and information received from the Client (whether verbal, written, or otherwise) in relation to any of the Services without enquiry as to the identity or authority of the person(s) giving or purporting to give such instructions and information.
  - 4.2.5. Where actions or message transmissions need to be taken by the Company by or within a certain time and the Company informs the Client of this, the Client will ensure that all necessary responses, information and instructions are provided by it to the Company in good and sufficient time to permit the Company to take such action or transmit such message as may be required prior to the relevant time limit;
  - 4.2.6. If the Company has requested the Client to use one or more specified e-mail addresses, the Client will use those e-mail addresses. In the event that the Client does not receive a prompt acknowledgement by the Company of receipt of time sensitive messages or claims documentation sent by the Client to the Company, the Client will contact the Company promptly to confirm receipt of such messages. The Company shall have no responsibility for a failure by it to take action in relation to information or instructions contained in a time-sensitive message or claims documentation sent by the Client unless it is sent to the correct e-mail address and receipt of the same has been expressly acknowledged by the Company.
- 4.3. The Client will take all reasonable care to avoid inaccuracies or misrepresentations in any messages sent to or copied to the Client by the Company and will carefully review the same on receipt. The Client will promptly advise the Company of any errors or misrepresentations in them. The Client shall be solely responsible for any error or misrepresentation (and the consequences thereof) which could and should have been detected by such careful review by the Client and resulting from the failure properly to review messages and the Company shall be under no responsibility for the same.

- 4.4. The Client undertakes and represents to the Company that neither the Services requested nor the Contract are unlawful and are not of a nature as could render the provision of the Services in breach of any relevant applicable law, including but not limited to:
- 4.4.1. sanctions imposed by the United Nations, the European Union, the United States of America or any national government having authority or jurisdiction over the Company, the Group, the Client, a Representative or a Principal;
  - 4.4.2. any laws relating to money laundering, bribery and corruption.
- 4.5. In the event that, at any time after the request for Services has been made by the Client or a Contract has been concluded, the Client becomes aware that the provision of the Services or the performance of the Contract is or has become or may be in breach of any such relevant law, the Client shall inform the Company immediately.
- 4.6. The Client further undertakes, warrants and represents to the Company that:
- 4.6.1. If it is acting as Principal, it has full power and authority to enter into the Contract arising from the Services;
  - 4.6.2. If it is acting as a Representative, it has the Principal's authority to make all offers, counter-offers, representations and communications and to conduct the Negotiations and to conclude a Contract on the Principal's behalf;
  - 4.6.3. It (if the Client is a Principal) or its Principal (if the Client is a Representative) has full and adequate resources to enter into and perform any Contract arising out of the Services.
- 4.7. The Client further undertakes, warrants and represents to the Company that it enters into the Agreement with the Company in a commercial capacity and that with respect to the Agreement it is in all respects subject to civil and commercial law and that it irrevocably and unconditionally and to the fullest extent permitted by law waives any rights of sovereign immunity which it may have now or which it may subsequently acquire in respect of its position or any property and/or assets (present or subsequently acquired and wherever located) belonging to it.

## 5. Fees Payable by the Client

Fees Payable for the Company's Broking and Post-Contract Services

- 5.1. The Client shall pay or procure payment of fees to the Company for the Services provided in respect of each Contract concluded arising out of or in connection with the provision of Services ("Fees"). The fees will be in the form of a percentage of the

freight, hire, or purchase price or other payments or remuneration due under the relevant Contract as the case may be and as set out further below.

- 5.2. The Fees shall be:
  - 5.2.1. As specifically agreed verbally or in writing between the Parties; or
  - 5.2.2. As contained in and evidenced by the commission clause or other agreement in the Contract concluded between the Client (or its Principal) and a third party; or
  - 5.2.3. A combination of specific agreement and commission clause or agreement in the Contract as referred to in Clauses 5.2.1 and 5.2.2; or
  - 5.2.4. If Clauses 5.2.1, 5.2.2 or 5.2.3 are not applicable, a reasonable fee based on the Parties' previous course of dealing (if any), or in the absence of any relevant course of dealing in accordance with market practice.
- 5.3. Fees are exclusive of all tax and duties, which will, where required or applicable, be payable by the Client in addition to the Fees.
- 5.4. Unless otherwise expressly agreed between the Parties in writing:
  - 5.4.1. Fees payable on voyage charters are due and payable as a percentage of sums due in respect of freight, which shall include all items that comprise the freight rate, and also of sums due as or in respect of deadfreight, detention monies, deviation costs and demurrage (whether or not so provided for in the charter commission clause).
  - 5.4.2. Fees payable on time charters are due and payable on the hire payable under the charter, damages for non-payment of hire, if any, ballast bonus, if any, and any continuation or extension of the charter (whether or not so provided for in the charter commission clause).
  - 5.4.3. Fees payable on ship sale and purchase transactions are due and payable on the gross purchase price or construction cost as the case may be including any extras and any mobilisation, demobilisation and commissioning costs (whether or not so provided for in the commission clause or other agreement in the Contract).
- 5.5. The Client shall pay Fees, calculated as set out above, to the Company in respect of the following (whether or not provided for in the commission clause or other agreement in the Contract):
  - 5.5.1. Any subsequent renewal or extension of any Contract;
  - 5.5.2. Any optional further contract arising out of or in connection with any such Contract; and

- 5.5.3. Any Contract where the Client or a party to the Contract for whom the Client was Representative nominates a person to perform the same in the Client's or in such party's stead.
- 5.6. Where Services are provided to the Client, the Client will be deemed to have engaged the Company in relation to any subsequent Contract that arises in connection with those Services whether or not the Contract has been concluded through the Company and Fees shall be payable in full and in the same manner as if the Contract had been concluded through the Company.
- 5.7. If a Contract is cancelled, terminated or modified in such manner as would deprive the Company of its Fees, the Client shall be liable to make such payment in respect of Fees as will ensure that the Company is placed in no worse position than if such cancellation, termination or modification had not taken place.
- 5.8. Unless otherwise expressly agreed in writing by a director of the Company, the Client shall in all circumstances be responsible to the Company for the full and timely payment of the Fees.
- 5.9. If and to the extent that the Client is responsible for the payment of the Fees, payment shall be made by the Client in accordance with Clause 6 below.
- 5.10. If the Client's responsibility for the payment of the Charges is to be discharged (whether wholly or partly) by a third party under a commission clause or other agreement in the Contract (or otherwise), the Client will take all necessary steps to ensure the prompt payment of the Fees and in the event of any default or delay in payment by the third party the Client will be liable itself to pay the Fees in full to the Company on demand by the Company.

#### Fees Payable for the Company's Ancillary Services

- 5.11 If Ancillary Services are provided by the Company, the Client will be liable to pay such fee as has been specifically agreed, or in the absence of agreement, a reasonable fee based on the Parties' previous course of dealing (if any), or in the absence of any relevant course of dealing, in accordance with market practice.

#### Fees payable for the use of Third Party Services

- 5.12. The Client will be liable to pay such fee as has been agreed with the Third Party.

## 6. Payment of Fees

- 6.1. Unless otherwise stated in the invoice, the Client shall pay each invoice submitted by the Company within thirty (30) days of each invoice date ("Due Date") without set-off (statutory or otherwise), deduction, counterclaim, abatement or discount and notwithstanding the existence of any claim or dispute including but not limited to any disputes in respect of off-hire, demurrage and breach of contract claims between the Client and any other party or under the Contract or otherwise.
- 6.2. Where payment of the Fees is not made on the Due Date and without prejudice to the Company's rights, the Company will be entitled to charge interest on the overdue amount at the annual rate of 3% per annum above the base rate from time to time of Barclays Bank plc calculated on actual/360 day basis, compounded monthly and accrued from the Due Date until the date of payment whether before or after judgment (a part of a month being treated as a full month for the purpose of calculating such interest).
- 6.3. Time for payment shall be of the essence. Any failure to make payment in strict accordance with the terms of this Clause will entitle the Company to treat the Client as in breach of a condition of the Agreement and to terminate the Agreement and claim damages for loss of benefit of the Agreement.
- 6.4. Unless otherwise stated in the invoice, the Client shall pay any invoice submitted by the Third Party in accordance with the Third Party payment terms directly to the Third Party.

## **7. Exclusion and Limitation of Liability on the part of the Company**

- 7.1. Notwithstanding anything contained elsewhere in these Terms, the Client accepts and agrees to the following provisions excluding and limiting the liability of the Company (and of any other company within the Group).
- 7.2. Neither the Company (nor any other company within the Group) shall be liable for:
  - 7.2.1. Loss of profits, loss of anticipated savings, loss of use, loss of or interruption to business, loss of market reputation, loss of goodwill or loss of or errors in or in relation to documents and/or data;
  - 7.2.2. Loss caused by any event or cause that the Company was unable to avoid and/or the consequences of which could not have been prevented by the exercise of reasonable diligence;
  - 7.2.3. Loss which was not solely caused by the act or omission of the Company; and
  - 7.2.4. Indirect or consequential loss.

- 7.3. The total liability of the Company and of the Group and any and all companies within it arising out of or in way in connection with the Services shall in no circumstances exceed the lower of the following aggregate figures:
- 7.3.1. The amount of Fees payable to the Company by the Client in respect of the Services in connection with which the claim arises or
- 7.3.2. The sum of USD 1,000,000.
- 7.4. The Client will save, indemnify, defend and hold harmless the Company and the Group and any and all companies within it from and against claims, loss, damage, costs (including legal costs), expenses and liabilities, (including without limitation liability to third parties) of any kind whatsoever and by whomsoever made in excess of the maximum liability provided for under Clause 7.3.
- 7.5. The exclusions from and limitation of liability set out and above together with the indemnity and hold harmless obligation set out above shall apply irrespective of cause and notwithstanding the breach of contract, negligence, breach of duty or other failure of any kind of the Company (or of any other company within the Group) or of the Company's (or other such company's) employees, agents or sub-contractors and shall apply whether the claim or liability is one in tort (including negligence), for breach of contract or under or in respect of any other cause of action in law or in equity.
- 7.6. The Client undertakes, warrants and represents to the Company that it has specifically considered the limits and exclusions of liability and the indemnity set out in this Clause (and in Clause 8 below) and that it considers them to be fair and reasonable and a commercial allocation of risk in relation to the consequences of having regard to the nature of the Services, the Fees paid for such Services by the Client and all other circumstances relating to the Services known to the Client and the Company at the time of entering into the Agreement.
- 7.7. However, nothing in this Clause will limit or exclude the liability of the Company (or of any other company within the Group) for fraud or fraudulent misrepresentation or for death or personal injury caused by the negligence of the Company or such other company.

## **8. Obligation of the Client to Indemnify the Company against Claims, Liabilities etc.**

- 8.1. Notwithstanding anything contained elsewhere in these Terms, the Client accepts and agrees to the following provisions obliging it to bear responsibility for and to indemnify the Company (and any other company within the Group) in respect of the matters set out below.

- 8.2. The Client shall save, indemnify, defend and hold harmless the Company and its Group from and against all claims, loss, damage, costs (including legal costs), expenses and liabilities, (including without limitation liability to third parties) of any kind whatsoever arising out of or in connection with:
- 8.2.1. the Company or any company within the Group acting in consequence of the Client's instructions;
  - 8.2.2. any breach by the Client of any obligation contained or undertaking or representation in these Terms or the negligence of the Client;
  - 8.2.3. any duties, taxes, fines, penalties or charges levied by any authority in relation to the Services;
  - 8.2.4. any Third Party Services;
  - 8.2.5. any liability assumed or incurred by the Company or any company within the Group to any other party as a result of carrying out the Client's instructions.
- 8.3. If the Client becomes aware of any claims or circumstance which might involve litigation or arbitration concerning the subject matter of the Contract, the Client shall immediately inform the Company.

## 9. Termination of the Agreement

- 9.1. Without prejudice to its other rights of termination in law and to claim damages, the Company shall be entitled to terminate the Agreement with immediate effect and without any liability whatsoever on its part by giving written notice to the Client where:
- 9.1.1. The Client commits any material breach of any term of the Agreement.
  - 9.1.2. The Client commits any breach whatsoever of the Contract which is capable of being remedied and where the Client fails to remedy the breach within five working (5) days of the receipt of a request in writing from the Company to do so;
  - 9.1.3. The Client fails in any respect to make payment strictly in accordance with the provisions of Clause 6;
  - 9.1.4. The Client has a change of Control;
  - 9.1.5. The Client summons a meeting of its creditors, makes a proposal for a voluntary arrangement, becomes subject to a voluntary arrangement, is unable to pay its debts when they become due, has a receiver, manager or

administrative receiver or a provisional liquidator or administrator appointed over any of its assets, or is the subject of an application for administration filed at any court or a notice of intention to appoint an administrator or has passed a resolution for winding up, or is subject to any notice or application in respect of an administrator or is subject to or undergoes any analogous act, process or proceedings under any applicable law; or

9.1.6. The Company in its absolute discretion believes that the provision of the Services or the performance of the Contract, as the case may be, may breach any applicable law.

9.2. Without prejudice to any other rights including rights as to damages, if the Agreement is terminated or cancelled whether under the provisions of this Clause or otherwise howsoever by the Company or by the Client:

9.2.1. The Client will pay the Company all Fees earned and recoverable costs incurred in respect of the Services performed up to the date of the termination or cancellation (as applicable) of the Services.

9.2.2. The Client will in addition pay any reasonable costs and/or expenses incurred by the Company as a result of the termination or cancellation (as applicable).

9.2.3. Thereafter the Client will remain liable to pay to the Company any Fees which become due and payable after the date of termination of the Services in respect of any Contracts which were concluded on or before the date of termination and/or which arise after the date of termination of the Services following performance of the Services prior to the date of termination of the Services.

## 10. Force Majeure

10.1. Neither Party shall be liable for any failure to perform or delay in performance of its obligations hereunder if and in so far as and for so long as such performance is delayed or prevented by the other's acts or omissions, or by circumstances beyond its reasonable control including but not limited to strikes, lockouts, labour disputes of any kind (whether relating to its own employees or others), fire, flood, explosion, natural catastrophe, military operations, blockade, sabotage, revolution, riot, civil commotion, war or civil war whether declared or not, terrorism, adverse weather or prolonged power failure or similar event (each, an "Event of Force Majeure").

10.2. Notwithstanding the above, an Event of Force Majeure shall not, under any circumstances, excuse any payment obligation of the Client.



- 10.3. In the event that the circumstances constituting Force Majeure continue for an uninterrupted period of ninety (90) days, either party may terminate the Agreement immediately by giving written notice to the other party.

## 11. Confidentiality

- 11.1. Where Client is given information (the "Receiving Party") stated by the Company (the "Disclosing Party") to be of a confidential basis or where it is expressly agreed that a Contract is confidential (in either case "Confidential Information") the Receiving Party shall hold that Confidential Information in confidence and shall not disclose it to any other party without prior permission from the Disclosing Party. This obligation shall not however extend to information which (i) was already or becomes known to the Receiving Party through other sources not subject to such an obligation of confidentiality (ii) is or becomes known to the market generally other than as a result of a breach of this obligation and (iii) the Receiving Party is obliged to disclose pursuant to an order of a court or other such authority.
- 11.2. The Receiving Party may disclose Confidential Information to those of its officers, employees, Affiliates and professional advisers (i) who reasonably need to receive the Confidential Information to enable the Receiving Party to perform the Services and (ii) who have been informed by the Receiving Party of the confidential nature of the Confidential Information.
- 11.3. The Receiving Party may disclose Confidential Information to those of its officers, employees and Affiliates who reasonably need to receive the Confidential Information to market the Company's and its Affiliates' services to the Disclosing Party or its Affiliates.
- 11.4. The Client consents to the Company including the Client's name, trademark and/or logo on the Company's website and other promotional materials for marketing purposes.
- 11.5. In all cases the obligation of confidentiality shall be deemed to end one (1) year after the end of performance of the Contract in question or in the absence of a concluded Contract one year from the end of the Negotiations.
- 11.6. If the Parties have entered into a non-disclosure agreement ("NDA") regarding the disclosure of Confidential Information, the terms and conditions of the NDA shall apply regarding such disclosure to the exclusion of this Clause.

## 12. Data Protection

12.1. In this clause 12:

12.1.1. "Agreed Purpose" means providing, receiving or requesting Services under this Agreement;

12.1.2. "Data Breach" means any unauthorised or unlawful access, disclosure, alteration and/or destruction or any misappropriation in any case by a third party of or in relation to Supplied Personal Data;

12.1.3. "Data Protection Legislation" as it relates to this Agreement means (i) the General Data Protection Regulation (EU/2016/679) ("GDPR") and any relevant subordinate legislation in the UK unless and until the GDPR is no longer directly applicable in the UK, and then (ii) any successor legislation to the Data Protection Act 1998 in force from time to time. "Controller", "Data Subject" and "Personal Data" have the meanings ascribed in the Data Protection Legislation;

12.1.4. "Permitted Recipients" means the Parties to this Agreement, their employees and any third parties engaged in connection with the Services; and

12.1.5. "Supplied Personal Data" in relation to a Data Subject means his or her email address, phone number and any other Person Data shared in the performance of the Agreement.

12.2. Each party acknowledges that it may disclose Supplied Personal Data that it has collected to the other party and accordingly each party shall comply with its obligations as a Controller under the Data Protection Legislation. The parties also acknowledge that it is not their intention to be considered joint Controllers in relation to any Personal Data. Each party shall also:

12.2.1. as provider, ensure (by means of appropriate notices, consents or otherwise) that the Supplied Personal Data it provides is lawfully transferred to and for use by the other party;

12.2.2. as receiver of Supplied Personal Data, process it only for the Agreed Purpose and not disclose or allow access to it to anyone other than the Permitted Recipients;

12.2.3. ensure that all Permitted Recipients are subject to appropriate written obligations (including as to confidentiality) concerning the Supplied Personal Data;

12.2.4. comply with the rights of Data Subjects whose Personal Data is processed under this Agreement;

12.2.5. ensure that it has in place appropriate technical and organisational measures to protect the security, confidentiality and integrity of the Supplied Personal

Data and notify the other party without undue delay on becoming aware of a Data Breach; and

12.2.6. not transfer any Personal Data received from the other outside the EEA except in conformity with the Data Protection Legislation.

12.2.7. Each Party will provide reasonable assistance to the other in complying with the Data Protection Legislation and accordingly will:

12.2.8. consult with the other on any notices to Data Subjects concerning Supplied Personal Data;

12.2.9. promptly inform the other on receipt of a Data Subject access or other request;

12.2.10. not disclose or release any Supplied Personal Data in response to a Data Subject access request without first consulting the other party wherever possible;

12.2.11. assist the other party at that other's cost and request in relation to security, breach notifications and consultations with supervisory authorities or regulators; and

12.2.12. maintain records and information reasonably necessary to show compliance with this clause 12.

12.3. The Company may record telephone conversations at any time without prior notice to the Client for record-keeping purposes so as to resolve complaints and disputes or to improve its service or training standards

## 13. Intellectual Property Rights

13.1. All Intellectual Property Rights in or arising out of the Services belong to the Company and/or other companies within the Group and/or its third party licensors.

13.2. For the purpose of these Terms, Intellectual Property Rights means:

13.2.1. any copyright, design rights, patents, inventions, logos, business names, service marks and trademarks, internet domain names, moral rights, rights in databases, data, source codes, reports, drawings, specifications, know how, business methods, trade secrets, circuit topography rights, whether registered or unregistered, rights in the nature of unfair competition, confidentiality and the right to sue for passing off;

13.2.2. applications for registration, and the right to apply for registration or renewal, for any of these rights; and

13.2.3. all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world, whether now known or subsequently created.

## 14. Notices

14.1. Any notice to be given hereunder or otherwise in relation to the Services shall be in writing and shall be deemed to have been duly given if sent or delivered to the Party concerned at such address as the Party may from time to time notify in writing or to the correct facsimile number or electronic mail address (as notified by the receiving Party) and shall be deemed to have been served, if sent by first class post, 48 hours after posting and in the case of a facsimile transmission on the following day or in case of electronic mail on the same date.

## 15. Time Bar in Respect of Claims by the Client

15.1. Any claim against the Company or any Group company or their employees, servants and agents must be made in writing and notified to the Company within fourteen (14) days of the date on which the Client became aware or ought reasonably to have become aware of the circumstances giving rise to the claim and any claim not so notified shall be deemed waived and absolutely time barred and the Company discharged from all liability in respect of it.

15.2. The Company and any Group company and their employees, servants and agents shall in any event be discharged of all liability for any claim arising out of or in connection with the provision of the Services unless arbitration proceedings are commenced against the Company in accordance with Clause 17.2 within one (1) year of the end of performance of the Contract or in the absence of a concluded Contract one year from the end of the Negotiations. If arbitration proceedings are not commenced in respect of a claim before the expiry of this period, such claim shall be waived and absolutely time barred.

## 16. Miscellaneous

16.1. If any term of the Agreement including but not limited to any Clause of these Terms is held by any competent authority to be invalid, illegal or unenforceable, in whole or in part, the validity, legality and enforceability of the other clauses in this Agreement

and Terms shall not be affected.

- 16.2. The Company shall provide the Services to the Client as an independent contractor and not as the Client's employee. Nothing in these Conditions shall constitute, or be deemed to constitute, a partnership or joint venture between the Parties for any purpose.
- 16.3. The rights and remedies of the Company under the Agreement shall not be diminished, waived, or extinguished by the granting of any indulgence, forbearance or extension of time by the Company in asserting any such rights or remedies.
- 16.4. A person, company or other legal entity that is not a party to the Agreement shall neither have nor acquire, whether by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise, any rights in relation to the Agreement.
- 16.5. The parties hereto may rescind or vary the Agreement, whether in whole or in part, without the consent of any third party.
- 16.6. The Client agrees to be bound by these Terms to the exclusion of all warranties, conditions and other terms, whether express or implied, statutory or otherwise. The Company and its Group shall be entitled to the benefit of such implied terms as might ordinarily be held to apply to the Agreement for the protection of the Company.
- 16.7. The Company has a general lien on all documents in its possession or control for all sums due from the Client to the Company whether arising out of the Contract, this Agreement or otherwise.
- 16.8. Nothing in these Terms shall prevent the Company from enforcing a clause conferring a benefit on them as a third party in the terms of a contract between the Client and a third party.

## 17. Governing Law and Dispute Resolution

- 17.9. The Agreement between the Company and the Client and any dispute arising out of or in connection with the Agreement or these Terms or the Services or Third Party Services shall be governed by and construed in accordance with the law of England.
- 17.10. Subject to Clauses 17.3 and 17.4 below, any dispute arising out of or in connection with the Agreement or these Terms or the Services or Third Party Services will be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force.
- 17.10.1. The arbitration shall be conducted in accordance with the London Maritime Arbitrators' (LMAA) Terms current at the time when the arbitration is

commenced.

- 17.10.2. The reference shall be to three arbitrators who shall be or shall have been English barristers and who are members of the LMAA, one to be appointed by each Party and the third by the two so appointed. A Party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment to the other Party requiring the other party to appoint its arbitrator within fourteen (14) days of that notice and stating that it shall appoint its arbitrator as sole arbitrator unless the other Party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified.
- 17.10.3. If the other Party does not appoint its own arbitrator and give notice that it has done so within the fourteen (14) days specified, the Party referring the dispute to arbitration may, without the requirement of any further prior notice to the other Party, appoint its arbitrator as sole arbitrator and shall advise the other Party accordingly. The award of a sole arbitrator shall be as binding as if he had been appointed by agreement.
- 17.10.4. In cases where neither the claim nor any counterclaim exceeds the sum of USD150,000 (or such other sum as the parties may agree), any dispute arising out of or in connection with the Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 and the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.
- 17.10.5. Notwithstanding Clause 17.2, for the exclusive benefit of the Company, the Client agrees that the Company shall have the exclusive right, in its option, to submit any dispute or disputes arising out of or in connection with the Agreement or these Terms or the Services or Third Party Services to the courts of England, who shall then have exclusive jurisdiction to settle any such dispute or disputes.
- 17.10.6. The Client shall at all times be bound to refer all disputes arising out of or in connection with the Agreement or these Terms or the Services or Third Party Services to arbitration in accordance with Clause 17.2 and will not be permitted to bring proceedings in any other court or tribunal other than by way of counterclaim before the courts of England in respect of proceedings brought by the Company in accordance with Clause 17.3