

Terms & Conditions (“Terms”)

These Terms have been entered into between

- 1) Hilton-Baird Financial Solutions Limited (“**HBFS**”), a company registered in England and Wales with registered number 03832884 and a registered office at Fleming Court, Leigh Road, Eastleigh, Southampton, Hampshire, SO50 9PD; and
- 2) The company or other person (“**Client**”) whose details are set out in the Brokerage Instruction Form (“**the Form**”) to which these Terms relate and by or on behalf of whom the Form has been signed.

1 Appointment and Authorisation

- 1.1 HBFS is authorised and regulated by the Financial Conduct Authority (FCA number 730445). We are a credit broker and not a lender and offer credit facilities from a panel of lenders.
- 1.2 By signing the Form, the Client has appointed HBFS on the terms set out in these Terms:
 - 1.2.1 to liaise with funders who may be able to provide a finance facility for the Client’s business and to facilitate the transfer of information between the Client and such funders; and/or
 - 1.2.2 to provide related services for which HBFS holds relevant permissions from the FCA and which may include credit broking, as that term is defined in paragraph 36A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544); and the services described in this 1.2 shall collectively be described as “**the Services**”.
- 1.3 Where the Client instructs HBFS to provide Services prior to the signature of the Form, these shall be provided on the basis set out in the Form and herein, without limitation of the right of HBFS to require the Client to provide a signed and dated copy of the Form. For the avoidance of doubt, the date on which we commence providing Services shall be the date of the contract between us, notwithstanding the date on the Form.

2 HBFS’s Obligations

- 2.1 HBFS shall use all reasonable care in providing the Services, subject to the provisions of these Terms.
- 2.2 Neither party shall have authority to act as agent for, to bind, the other party in any way. In its dealings with prospective funders in the course of the Services, including where it passes information to those entities, HBFS shall act as an independent contractor pursuant to the contract for services embodied in the Form and these Terms and shall have no authority to contract or negotiate with any funder on the Client’s behalf. The Client acknowledges that HBFS shall have no duty to the Client as an agent or fiduciary in any capacity.
- 2.3 HBFS will use all reasonable endeavours to introduce the Client to prospective funders who, in HBFS’s reasonable opinion, may be able to offer the financing sought by the Client. HBFS does not guarantee or warrant to the Client that any introduction will be successful or that any

- funder introduced to the Client will ultimately provide the Client with an offer of funding. HBFS does not accept any liability for ensuring the suitability or otherwise of a prospective funder’s offerings and the Client acknowledges it must undertake its own risk assessment and carry out any and all appropriate commercial, financial and legal due diligence as it deems appropriate.
- 2.4 The Client acknowledges that HBFS does not provide the Services exclusively to the Client and that, subject always to its obligations under these Terms, HBFS shall have no obligation to promote the interests of the Client above those of other clients.

3 Provision of Information to HBFS

- 3.1 The Client acknowledges that HBFS, in the course of providing its services, may pass on information from the Client to any prospective funder for the purposes of facilitating the relationship between the Client and the prospective funder. The Client acknowledges that:
 - 3.1.1 HBFS shall not be responsible for confirming the accuracy or completeness of such information or for providing assurances in that respect to any prospective funder;
 - 3.1.2 Notwithstanding the foregoing, HBFS will assume (and is wholly reliant on the Client to ensure) that information provided to HBFS by the Client (or any agent, employee or officer thereof) is accurate, complete and not misleading in any material respect; and
 - 3.1.3 The Client shall have a duty of utmost good faith to HBFS in relation to any information provided by it or on its behalf to HBFS.
- 3.2 HBFS shall be the Client’s exclusive broker, intermediary or introducer from the date the Form is signed by the Client for the period set out in the Form (“**Exclusivity Period**”).
- 3.3 Whether before or after the Exclusivity Period, the Client shall immediately notify HBFS in writing if at any time it appoints or intends to appoint an additional or alternate person to obtain an offer of finance for it. If such an appointment takes place during the Exclusivity Period, HBFS will be entitled to terminate this Agreement immediately by notice to the Client, without prejudice to any rights under these Terms which have accrued to date or which arise for the benefit of HBFS on or as a result of such termination.
- 3.4 Should the Client appoint an alternate or additional person during the Exclusivity Period to obtain an offer of finance for it and if an offer of finance is obtained from any funder as a result, then notwithstanding the Client’s election made on the Form, a Success Fee as set out in the Form and clause 4 of these Terms shall be paid to HBFS as set out in clause 4, except that the Success Fee shall be due and payable immediately on demand on the date such offer is made.
- 3.5 The Client agrees it will promptly notify, and that HBFS may arrange with any funder engaged by the Client at any time for HBFS to be notified by the funder (or to confirm the same with the funder):

3.5.1 when the Client's facilities or funding arrangements with that funder are terminated (for whatever reason); or

3.5.2 if for any reason the Client wishes to terminate its relationship with a funder;

and the Client shall, upon request, confirm the same to the funder. The Client further confirms that the Form and this clause 3.5 may be presented to any funder as evidence of the Client's instructions in this regard. This clause 3.5 shall survive termination of the Agreement.

4 Charges

4.1 Except in exceptional circumstances as set out in clause 4.7, HBFS will be remunerated for its Services in one of the two ways set out in this clause 4.1, which the Client acknowledges it is required to elect on the Form upon first instructing HBFS. HBFS will either:

4.1.1 receive a commission from any funding partner the Client secures a facility with ("**Commission**"); or

4.1.2 receive no commission from any prospective funder in relation to the Client, but receive from the Client a success-based fee, in the amount detailed in the Form ("**Success Fee**").

4.2 The Client acknowledges that once HBFS begins providing its Services, it shall do so on the basis of the election as to the basis for charging made by the Client and the Client shall have no right (whether under these Terms or otherwise) to alter or revoke its election. Should the Client fail to elect either option prior to entering into a Relevant Facility (as defined in clause 4.5 below), it shall be treated as having elected that HBFS be remunerated by Commission.

4.3 Where the Client elects the Commission option, HBFS shall disclose upon written request the basis and amount of any Commission earned by it as a result of the Services, except that HBFS shall be under no duty to do so prior to receiving the funder's written consent.

4.4 Where the Client elects the Success Fee option, the Success Fee shall become due and owing upon the Client entering into a contract or arrangement with a funder for a Relevant Facility. The Success Fee shall be payable in full [30 days] from the date of HBFS's invoice and if not paid as set out in clause 4.6 hereof, the method of payment (unless otherwise specified on the invoice) shall be electronic transfer to any account specified by HBFS from time to time. For the avoidance of doubt, the Success Fee shall not be conditional on the continuance of the Relevant Facility for any period or on any drawdown, advance or payment being made by a funder to the Client. The Success Fee shall be due at such point as the parties evidence their intent to enter into a Relevant Facility notwithstanding anything which may later invalidate (or be claimed to invalidate) the Relevant Facility or any part of it, including but not limited to any breach, repudiation, fraud, misstatement or misrepresentation by any party. For the avoidance of doubt, the Client expressly acknowledges that it shall have no right by way of setoff, counterclaim, reduction or otherwise to reduce or avoid the Success Fee on the basis of the acts or omissions of any prospective funder.

4.5 A "**Relevant Facility**" shall mean any funding facility (whether by way of loans, equity investments, asset-

based lending or a factoring or invoice discounting facility or otherwise, or any combination of the foregoing) entered into between a Client (or any Affiliate of the Client) and:

4.5.1 any prospective funder contacted by HBFS as part of the Services (other than any prospective funder contacted by HBFS which was previously notified to HBFS on the Form); or

4.5.2 any funder, where the Client or any Affiliate contacts the funder during, or receives an offer of funding during, the Exclusivity Period (other than any prospective funder which was previously notified to HBFS on the Form).

4.6 To ensure prompt payment of the Success Fee, the Client covenants to irrevocably instruct (and hereby irrevocably instructs) any funder in respect of whose facility or facilities a Success Fee is payable (and in each case to the extent that the facility in question is such as to permit a payment, advance or drawdown of monies) to pay to HBFS upon demand the full amount of the Success Fee from the first such monies available under that facility. The Client confirms that in the absence of any express instruction from the Client, HBFS may provide a copy of the agreement to the funder as evidence of the Client's instructions in this regard.

4.7 For the avoidance of doubt, HBFS, the Client and any relevant funder may agree in particular circumstances and in relation to any particular facility for HBFS to be remunerated via a combination of Commission and Success Fee. HBFS shall not be obliged under these terms to enter into such an arrangement, nor does this clause 4.7 constitute a waiver of any right to a Commission or Success Fee. Absent any specific agreement of the foregoing parties to the contrary, the provisions of this agreement applicable to Commissions or Success Fees shall apply to each aspect of HBFS's remuneration under such an arrangement.

5 Data Protection

5.1 For purposes of the Data Protection Act 2018 (and any amending or replacement legislation from time to time) ("**DPA**"), the General Data Protection Regulation (Regulation 2016/679) ("**GDPR**") and any other applicable law from time to time governing the use of personal data and the privacy and confidentiality of data ("**Data Protection Law**"), the parties agree that in respect of any personal data within the meaning of the GDPR ("**Personal Data**") that is provided by the Client to HBFS for the purposes of providing its Services ("**Shared Data**"), each of us will be a Data Controller.

5.2 Each party warrants to the other that it has processed and will process the Shared Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments. The Client warrants in relation to the Shared Data that it (i) has a lawful basis for sharing the Shared Data with HBFS; (ii) has provided the affected data subjects with the privacy information relating to such a transfer as required by Articles 13 and 14 of the GDPR; and (iii) holds all necessary or appropriate consents from data subjects whose data is comprised in the Shared Data.

5.3 Each of the Client and HBFS shall take appropriate technical and organisational measures against unauthorised or unlawful processing of and against accidental loss or destruction of, or damage to, Shared Data received by it from the other party, taking into account the nature of the Shared Data.

5.4 The Client agrees that its Personal Data may be shared with any current or prospective funder, with third parties to protect against fraud and in accordance with any statutory or legal obligation HBFS might have.

5.5 As part of the processing contemplated by these Terms, the Client confirms that HBFS is authorised to use and disclose details of this application and any resulting offer of funding to the Client to any prospective funder, any intended guarantor, any director or shareholder of the Client and their legal advisors, and that HBFS may further use and disclose information to the Financial Conduct Authority and other regulatory or government bodies to the extent necessary to comply with HBFS's legal obligations.

5.6 Notwithstanding any other provision of this clause 5, HBFS shall be entitled to retain and process any Personal Data relating to or provided by the Client, subject to complying with the DPA and GDPR, for (without limitation) the following purposes:

5.6.1 the administration of its contract with the Client, including the enforcement of HBFS's rights; and

5.6.2 marketing and customer relations, including contacting the Client or persons associated with it regarding HBFS and its affiliates' products and services (unless the Client has opted out on the Form); and

the Client acknowledges that Personal Data may be held by HBFS in paper and electronic records and retained for a period of up to six years from such time as HBFS ceases to provide its Services to the Client. The Client shall provide the data subjects with the privacy information required by Article 14 of the GDPR in respect of the provision of Personal Data to HBFS for these purposes.

5.7 Each party will assist the other, at the requesting party's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the DPA and GDPR with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators.

5.8 Each party shall, as soon as reasonably practicable, notify the other of any breach of Data Protection Law relating to the Shared Data which may affect the rights and obligations of the other under Data Protection Law

6 Term and Termination

6.1 HBFS's appointment shall commence on the date set out in the Form and shall continue until terminated in accordance with this clause 6.

6.2 Either party may terminate the appointment by giving the other party 30 days' written notice.

6.3 Without limiting its other rights or remedies, either party may terminate the appointment and the contract between them (subject to the provisions of this clause 6) with immediate effect by giving written notice to the other party if:

6.3.1 the other party commits a material breach of any of the Terms and (if such breach is remediable) fails to remedy that breach within 14 days of being notified in writing to do so;

6.3.2 any Insolvency Proceedings are instigated by or in respect of the other party; or

6.3.3 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

6.4 Without limiting any other rights or remedies it may have, HBFS may terminate the appointment with immediate effect by giving written notice to the Client if:

6.4.1 the Client fails to pay any amount due hereunder on the due date for payment and fails to pay all outstanding amounts within 14 days after being notified in writing to do so; or

6.4.2 the Client fails to comply with any of the obligations listed in clause 3 of the Terms.

6.5 On termination of the appointment for any reason:

6.5.1 the Client shall immediately pay to HBFS any due and unpaid Success Fee (and, in respect of any Success Fee for which no invoice has been submitted, HBFS shall submit an invoice which shall be payable by the Client immediately on receipt);

6.5.2 the accrued rights, remedies, obligations and liabilities of the parties as at the termination of the appointment shall be unaffected, including the rights to claim damages in respect of any breach of these Terms which existed at or before the date of the termination; and

6.5.3 any clauses which expressly or by implication survive termination shall continue in full force and effect including, but not limited to, the sections of the Form headed "Remuneration", "Client Communications", "Disclosure & Exclusivity" and "Declaration", and in relation to these Terms clauses 3.4-3.5, 4, 5.4-5.6, 6.5, 7 and 10.

7 Indemnities and Limitations

7.1 The Client will fully indemnify and hold harmless HBFS against any and all liabilities, damages, payments of fines, levies by regulatory authorities, expenses, costs, costs of money, actions, proceedings, claims and demands and all alleged claims and demands whatsoever, without any duty to mitigate, arising directly or indirectly out of or in consequence of any breach of these Terms by the Client or any misrepresentation made by the Client to any prospective funder.

7.2 Nothing in these Terms limits or excludes HBFS's liability for:

7.2.1 death or personal injury caused by HBFS's negligence;

7.2.2 fraud or fraudulent misrepresentation;

7.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

7.2.4 defective products under the Consumer Protection Act 1987.

7.3 Subject to clause 7.2, HBFS will under no circumstances be liable to the Client, whether in contract, tort

(including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Agreement for:

- 7.3.1 any loss of profits, sales, business, or revenue;
- 7.3.2 loss or corruption of data, information or software;
- 7.3.3 loss of business opportunity;
- 7.3.4 loss of anticipated savings;
- 7.3.5 loss of goodwill; or
- 7.3.6 any indirect or consequential loss; and

HBFS's total liability to the Client in respect of all losses arising under or in connection with the Services, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total charges by way of any Success Fees (and not, for the avoidance of doubt, Commission) paid to HBFS in the 12 months preceding the date our liability first arises.

8 No Partnership

Nothing in these Terms is intended to or shall be deemed to establish any partnership or joint venture between HBFS and the Client or constitute either of us as agent for the other for any purpose.

9 Entire Agreement

9.1 The Form together with the Terms (collectively referred to as "**the Agreement**") constitute 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.

9.2 Without limitation of the foregoing, the Client hereby confirms that it understands that HBFS is a separate and independent legal entity from any affiliated or group company from time to time and that the contract between HBFS and the Client set out in the Form and the Terms shall not, unless expressly herein provided, impose any obligation on any such affiliate or group company, nor shall HBFS be subject to any obligation by virtue of any arrangement between the Client and such a company.

10 Disputes

10.1 Save as set out in clause 10.2, if any dispute arises in connection with the Agreement, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("**CEDR**") Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing ("**ADR Notice**") to the other party to the dispute requesting a mediation. A copy of the ADR Notice should be sent to CEDR. The mediation will start not later than 28 days after the date of the ADR Notice. You may be able to refer your dispute to the Financial Ombudsman service.

10.2 The commencement of a mediation will not prevent HBFS commencing or continuing court proceedings for

the collection of any Success Fee or other monies owed by the Client to HBFS from time to time.

11 Anti-Bribery

Each party shall:

- 11.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**");
- 11.2 have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010 to ensure compliance with the Relevant Requirements and will enforce them where appropriate; and
- 11.3 promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by them in connection with the performance of this Agreement.

12 Confidentiality

12.1 Each party undertakes that it shall not at any time during this Agreement disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2.

12.2 A party may disclose the other party's confidential information:

- 12.2.1 In the case of HBFS only, as permitted under clause 5 hereof;
- 12.2.2 In the case of HBFS only, to the extent that HBFS, acting reasonably, deems appropriate for the provision of the Services (and the Client expressly waives any implied confidence in any information the Client provides regarding its business or affairs or its officers, directors or beneficial owners for the purposes of enabling HBFS to carry out the Services);
- 12.2.3 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement (and each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12); and
- 12.2.4 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

13 General

13.1 If any clause or part of a clause of the Form or the Terms is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant clause or part of a clause

shall be deemed deleted. Any modification to or deletion of a clause or part of a clause under this clause shall not affect the validity and enforceability of the rest of the parties' Agreement.

13.2 No variation of this Agreement (including the introduction of any additional terms and conditions) shall be effective unless it is agreed in writing and signed by each of the parties, except that HBFS shall be permitted to add, remove or vary the terms of this Agreement by notice in writing to the Client in any manner which it, acting reasonably, considers appropriate to ensure compliance with the law applicable to the Services and the Agreement. Amendments made in this way shall be effective on receipt by the Client, or in any event on the second business day after notice of the amendment is posted to the Client.

13.3 A person who is not a party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

13.4 HBFS may at any time sell, assign, transfer, charge, subcontract or deal in any manner with all or any of its rights and benefits under the parties' Agreement and may subcontract or delegate in any manner any or all of its obligations to any third party or agent. The Client shall not, without HBFS's prior written consent, assign, transfer, charge, subcontract or deal in any other manner with any of its rights or obligations. Notwithstanding, this Agreement is made for the benefit of the parties and any of the parties' successors or permitted assigns, and the rights and obligations under this Agreement shall continue for the benefit of, and shall be binding on, the respective party's successors and permitted assigns.

13.5 Any notice or communication given to a party under or in connection with this Agreement shall be in writing and be addressed to the party at its registered office or such other address that the party has specified to the other party in writing, and shall be delivered personally, sent by first class post or other next working day delivery service, fax or email. A notice or other communication shall be deemed to have been received:

- 13.5.1 if delivered personally, when left at the address referred to in clause 13.5;
- 13.5.2 if sent by first class post or an alternative next working day delivery service, at 9.00am on the second Business Day after posting;
- 13.5.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
- 13.5.4 if sent by fax or email, one Business Day after transmission; but

the provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.6 A waiver of any right under this Agreement or at law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising 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 prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

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

14 Definitions

The following, when used in these Terms, shall have the meaning set out below:

14.1 "**Affiliate**": means, in relation to a party, each and any subsidiary of a holding company of that party and any business entity from time to time Controlling, Controlled by, or under common Control with, that party;

14.2 "**Business Day**": means a day other than a Saturday, Sunday or public holiday when banks in London are open for business;

14.3 "**Control**": shall have the meaning set out in section 1124 of the Corporation Tax Act 2010; and

14.4 "**Insolvency Proceedings**": means:

- 14.4.1 the issue of a petition for winding up or bankruptcy; or
- 14.4.2 an administration application under paragraph 12 of Schedule B1 to the Insolvency Act 1986 or the appointment of an administrator under paragraph 14 or paragraph 22 of Schedule B1 to the Insolvency Act 1986; or
- 14.4.3 a proposal for a voluntary arrangement under the Insolvency Act 1986; or
- 14.4.4 the calling of any meeting of creditors; or
- 14.4.5 the appointment of a receiver in respect of any part or whole of the undertaking or property of any firm, LLP or company.