

**ORIGO LEGAL FRAMEWORK  
ELECTRONIC SERVICES AGREEMENT: PROVIDER - INTERMEDIARY**

Controlling Agency : Origo Services

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**1. DEFINITIONS AND INTERPRETATION**

The term "Agreement" shall mean this agreement, together with the attached Schedule of Definitions, as may be amended from time to time in accordance with Clause 20. The meanings of the defined terms in this Agreement are as set out in the Schedule of Definitions.

**2. TERM**

This Agreement will commence on the Commencement Date and remain in force until terminated in accordance with the provisions under this Agreement.

**3. REGISTRATION**

3.1 The Intermediary acknowledges that in order to obtain access to the Portal Services, the Intermediary must complete the Trusted Third Party Registration.

3.2 The Provider will provide the Direct Services to the Intermediary from the date of completion of the Provider Registration or from such other date or dates as set out in the Commercial and Technical Agreement.

**4. THE SYSTEM STANDARDS**

4.1 Provider Obligations

4.1.1 The Provider will operate the Provider System in accordance with the relevant part of the Provider Standards.

4.1.2 The Provider will put in place appropriate measures to minimise and mitigate the effects of any Defect detected in the Provider System and for the correction of such Defect.

4.2 Intermediary Obligations

4.2.1 The Intermediary is responsible for ensuring that the Intermediary System is maintained and secured in accordance with the Security Standards.

4.2.2 The Intermediary will operate the Intermediary System in accordance with the Intermediary Standards.

4.2.3 The Intermediary will notify the Provider immediately on detecting any Defect in the Intermediary System and will put in place appropriate measures to minimise and mitigate the effects of any Defect detected in the Intermediary System and for the correction of such Defect.

## **5. THE SERVICES**

### **5.1 General Obligations**

5.1.1 The Intermediary will be responsible for ensuring that it has all the necessary computer hardware, software, modems, connections and other items required for access to and use of the Services by the Intermediary and its Users.

5.1.2 The Provider shall not be responsible for any delays or failure to perform its obligations under this Agreement to the extent that they result from any failure by the Intermediary to provide such assistance as may reasonably be required from the Intermediary by the Provider under this Agreement in order to enable the Provider to carry out its obligations under this Agreement. The Intermediary acknowledges that the Provider shall not be liable to the Intermediary for any delay, act or omission of the Trusted Third Party.

5.1.3 Where the Provider wishes to provide additional services to the Intermediary within the scope of this Agreement, these shall be added to the Agreement in accordance with Clause 20.

5.1.4 The Provider reserves the right to immediately suspend or terminate the Intermediary's right to use the Direct Services and to receive Responses (both directly from the Provider and indirectly through the Trusted Third Party), where:

(a) the Intermediary uses the Direct Services or the Provider System for any purpose not expressly contemplated or permitted by this Agreement;

(b) the Intermediary persistently fails to ensure that its Users are complying with any User Guidelines.

5.1.5 The Intermediary acknowledges and agrees that the Trusted Third Party will not be liable to the Intermediary or to any User for such suspension or termination by the Provider under Clause 5.1.4.

### **5.2 Direct Services**

#### **5.2.1 The Provider:**

(a) will provide the Direct Services to the Intermediary in accordance with this Agreement unless and until this Agreement is terminated or in respect of any individual service forming part of the Direct Services, until that service is withdrawn by the Provider (for whatever reason);

(b) undertakes to provide the Direct Services in accordance with the Provider Standards.

5.2.2 The Intermediary undertakes to the Provider to access and use, and procure that each User accesses and uses, the Direct Services in accordance with the Intermediary Standards, the User Guidelines and any reasonable instructions given by the Provider from time to time. The Intermediary will be responsible for reviewing and complying with the User Guidelines, and shall ensure the continued adherence to the User Guidelines by the Users.

## **6. USER ACCESS**

### **6.1 General**

6.1.1 A User will only be permitted to gain access to the Services by using the appropriate User Access. The Intermediary shall, and will procure that each User shall:

(a) only access the Services using the appropriate User Access;

(b) employ the User Access solely for the purpose of accessing the Services in accordance with this Agreement and any User Guidelines, and not attempt to gain unauthorised access to the Provider's computer system;

(c) keep all relevant information and processes in respect of the User Access confidential and not divulge such information and processes to any third party;

(d) store all relevant information concerning the User Access securely; and

(e) inform the Provider immediately on becoming aware of any unauthorised access to the Services or anything amounting to breach of security, including compromise of any information concerning the User Access.

6.1.2 The Intermediary will be responsible for ensuring that only permitted individuals access and use the Services. The Intermediary will be liable for any and all acts or omissions resulting from the use of the User Access by any of its Users, including Users whose permission to use the Services has been withdrawn or suspended for whatever reason.

6.1.3 For the avoidance of doubt, the obligations under Clause 6.1.1 shall not affect any administration services or guidelines with which the Intermediary or a User is required to comply under any contract with a third party provider of the User Access.

## 6.2 Direct Services

6.2.1 Where a User is accessing the Direct Services the Provider will check that the access rights of the Intermediary to the Direct Services have not been revoked or suspended and will not permit a User to access and use the Direct Services where the Intermediary's access has been revoked or suspended.

## 7. REQUESTS

7.1 In order for Requests to be processed by the Provider they must be created, transmitted and Authenticated in accordance with the Standards.

### 7.2 General

7.2.1 The Provider will cross-check that Terms of Business are currently in force with the Intermediary or, where the Intermediary is an Appointed Representative, with the Authorised Firm.

7.2.2 The Intermediary is responsible for ensuring that all Requests from its Users are legitimate and that the Data submitted in the Request is accurate.

7.2.3 The Intermediary undertakes to, and shall ensure that each User shall,

(a) use all due care and diligence when inputting data;

(b) check all information carefully before submitting it to the Provider.

### 7.3 Portal Services

7.3.1 In respect of the Portal Services, the Provider will:

(a) Authenticate the Trusted Third Party;

(b) identify the Intermediary from the relevant data contained in the Request.

### 7.4 Direct Services

7.4.1 In respect of the Direct Services, the Provider will Authenticate the Intermediary.

## **8. RESPONSES**

8.1 Responses must be created, transmitted and Authenticated in accordance with the Standards.

8.2 The Intermediary acknowledges that a Response may be:

8.2.1 provided to an Intermediary in response to a Request; or

8.2.2 automatically generated and provided to the Intermediary at times determined by the Provider or agreed between the Parties.

8.3 Provider Obligations

8.3.1 The Provider will provide a Response to the Intermediary in accordance with the Provider Standards.

8.3.2 The Provider is responsible for ensuring that Data contained in any Response provided is accurate, subject to any relevant pending transactions not yet fully processed, and that there are no Errors in any Response which it generates.

8.3.3 Where a User is accessing the Services, the Provider shall be responsible for cross-checking that the Intermediary is recorded as the agent for the Customer who is the subject of the Response and is entitled to access and view the Data (including, without limitation, the details in respect of a particular Customer policy).

8.4 Intermediary Obligations

The Intermediary undertakes to the Provider:

8.4.1 that where any part of a Response is disclosed to a Customer such disclosure shall be made subject to any notes from the Provider which are contained within the Response relating to the presentation or disclosure of that Response;

8.4.2 to ensure that any Response or Data contained within a Response received by it is not disclosed to any person not authorised to access and view it; and

8.4.3 to ensure that a User who receives or is able to access a Response in error shall:

(a) not use or disclose the Response for any purpose whatsoever; and

(b) promptly notify the Provider;

8.4.4 not to use or permit the use of the Response for any purposes other than as may be required by the Intermediary in order to carry out its legitimate business.

8.5 Exclusions of Liability

8.5.1 Subject to the Provider's obligation under Clause 8.3.2, a Response is supplied by the Provider to the User on a "for information only" basis. The Provider shall use its reasonable endeavours to ensure the accuracy of any Response but does not warrant to the Intermediary that the Response, the Data contained within the Response or any part of it complies with any legal or regulatory requirements in relation to the presentation and/or the form of that Data, nor that the Data can be used legitimately outside the United Kingdom.

8.6 Transmissions

8.6.1 A Message will be deemed to have been received at the time that it enters an information system of the intended recipient provided that no message indicating a failure to deliver has been received by the sender.

## 9. DATA

9.1 The Parties acknowledge and agree that all Intellectual Property Rights in the Data shall at all times remain with the Party from whom the Data originated, whether the Data is in human or machine readable form. The Parties agree to comply with their respective obligations in this Clause 9 in respect of the use and protection of Data.

### 9.2 Provider Obligations

9.2.1 The Provider shall at all times retain control of the keys necessary to decrypt any encrypted Data. Where the encrypted Data cannot be decrypted, the Provider will provide the Intermediary with a readable copy of the Data or provide the necessary key for decrypting the encrypted Data, at the request of the Intermediary.

9.2.2 In the event that the Intermediary is required to provide the key necessary to decrypt any encrypted Data to any party who is legally authorised to receive the key, the Provider shall provide such key immediately on receiving a request from the Intermediary to do so.

### 9.3 Collective Obligations

9.3.1 Each Party undertakes to the other Party not to copy, distribute or use the Data of the other Party, nor reproduce that Data in whole or in part, in any form (whether in hard copy, electronic or other) except as provided by this Agreement or as necessary for the Party to carry out its obligations under this Agreement.

9.3.2 Each Party shall bear responsibility for the back-up of its Data and protection against loss of Data.

9.3.3 To the extent permitted by applicable law, neither Party makes any warranties or representations that any Data sent by it is free from computer viruses or other defects. Each Party acknowledges that it is responsible for taking its own precautions to ensure that all Messages, Data, programs and files received from the other Party are free from computer viruses or other defects.

9.3.4 Notwithstanding Clause 9.3.3, each Party:

(a) will take reasonable steps to prevent the introduction by its personnel of computer viruses into any Messages, programs and files sent to the other Party; and

(b) warrants and undertakes to the other Party that it will not wilfully introduce any viruses, worms, trojan horses or other contaminants including (without limitation) any code which will or may be used to access, modify, delete or damage any data, files or other computer programs used by the other Party, into any Message or other electronic communication between the Parties.

9.3.5 Each of the Parties accepts the validity of Messages and agrees to accord Messages the same status as would be applicable to a document or to Data sent or provided otherwise than by electronic means.

**10. THIRD PARTY SUPPLIERS:** The Parties acknowledge that certain third party providers of ancillary software or services (including, without limitation, the provider of the User Access), which may be used by the Provider, the Intermediary and/or the User in relation to the provision of the Services, may require an Intermediary and/or User to agree to additional terms for the use of such software or services by the Intermediary or any User. Such terms shall be without prejudice to the obligations and responsibilities of the Parties under this Agreement.

**11. CONTACTS:** Each of the Parties will give the other Party the details of those key contacts (as may change from time to time) who will oversee the performance of its obligations, and act as its liaison, under this Agreement, and to whom day-to-day communications regarding the Services shall be directed.

## 12. WARRANTIES AND DISCLAIMERS

12.1 Each of the Parties warrants to the other that it has the necessary rights to perform its obligations under this Agreement.

12.2 Each of the Parties warrants that it has full legal authority to enter into this Agreement.

12.3 The Provider represents and warrants to the Intermediary that:

12.3.1 it shall provide the Direct Services and perform all other obligations under this Agreement with reasonable skill and care;

12.3.2 it has all the necessary rights to use the Standards; and

12.3.3 it has full rights to grant the licences referred to in this Agreement free from all liens, claims encumbrances and other restrictions.

12.4 Where the Intermediary is not authorised in its own right under the FSMA, it warrants that it is an Appointed Representative. The Intermediary warrants that it will notify the Provider and the Trusted Third Party immediately on ceasing to be the Appointed Representative of the Authorised Firm, in which event the provisions of Clause 16.4 will apply.

### **13. LIMITATION OF LIABILITY**

13.1 The aggregate liability of each Party to the other Party arising out of breach of contract, or breach of any term of this Agreement, whether express or implied, or breach of any common law or statutory duty (including but not limited to any duty in relation to tort or delict) for any single event or series of connected events arising out of this Agreement shall not exceed fifteen thousand pounds (£15,000) sterling except that:

13.1.1 this limitation of liability shall not apply to the liability of either Party to the other Party pursuant to Clause 15 (Data Protection); and

13.1.2 the liability of any Party for breach of any obligations of confidence shall not be limited.

13.2 Except for a breach of Clause 15 (Data Protection), no Party shall be liable for any consequential, indirect or special losses, for loss of profits, business revenue, goodwill or anticipated savings suffered or incurred by the other Party as a result of any breach of any warranty contained in this Agreement or any of the provisions of this Agreement, regardless of whether the Party had been informed or had reason to know of the possibility of such loss.

13.3 Each of the Parties agrees that the other will not be liable to it under any circumstances for any consequences arising from Errors, lost Data, or lost or corrupted files as a result of its own failure to implement necessary backup or employ the Standards.

13.4 Nothing contained in this Agreement shall exclude or limit either Party's liability for death or personal injury resulting from any act, omission or negligence of that Party or its officers, agents, employees or sub-contractors, or any other liability the exclusion of which is expressly prohibited by statute.

### **14. INTELLECTUAL PROPERTY**

14.1 Except as expressly provided in this Agreement, neither of the Parties shall acquire any proprietary rights, title or interest in or to any Intellectual Property Rights of the other Party.

14.2 The Provider hereby grants a non-exclusive, non-transferable licence to the Intermediary to use the appropriate part of the Provider System as is necessary for it to access and use the Direct Services.

### **15. DATA PROTECTION**

15.1 In this Clause "Data Controller", "Data Processor" and "Data Subject" shall have the meaning set out in the Data Protection Act, and "Individual Rights" means the rights of Data Subjects under the Data Protection Act.

15.2 Each of the Intermediary and the Provider acknowledges that it acts as a Data Controller in respect of any Customer Personal Data Processed by it, irrespective of ownership of the Intellectual Property Rights in Customer Personal Data. Each of the Intermediary and the Provider agrees that they are separately responsible for compliance with the Data Protection Act.

15.3 Each of the Provider and the Intermediary warrants that it has in place all necessary notifications including, without limitation, notification to the Information Commissioner and notifications to Data Subjects in respect of its Processing of Personal Data as required by the Data Protection Act.

## **16. TERMINATION**

16.1 In addition to the other rights of termination set out in this Agreement, this Agreement may be terminated:

16.1.1 by either Party immediately on giving written notice if the other Party commits any material breach of any provision of this Agreement which is not capable of remedy or if capable of remedy, fails to remedy the breach within thirty (30) Working Days of receiving notice specifying the breach and requiring it to be remedied; or

16.1.2 by either Party immediately on giving written notice if the other ceases trading, or threatens to cease trading, or becomes apparently insolvent or has a trustee in sequestration appointed, combines with its creditors, or has a liquidator, receiver or administrator appointed over all or any of its assets other than for the purposes of a solvent amalgamation or reconstruction or undergoes any analogous act or proceeding under foreign law; or

16.1.3 by the Provider with immediate effect on giving written notice to the Intermediary if there is a change of control (as defined in Section 574 of the Capital Allowances Act 2001) of the Intermediary to which the Provider reasonably objects; or

16.1.4 by the Provider where either party to the Terms of Business has served notice to the other to terminate the Terms of Business; or

16.1.5 by either Party on giving the other fourteen (14) days' written notice; or

16.1.6 by the Provider with immediate effect in the event that the Intermediary uses any Data of the Provider in breach of this Agreement, or carries out any act or conducts itself in a manner which brings the Provider's name into disrepute or is otherwise detrimental to the reputation of, and goodwill in, the Provider's name.

16.2 The Provider will be entitled to withdraw any of the services provided under this Agreement (whether provided directly as part of the Direct Services or provided via the Trusted Third Party) at any time without prior notice to the Intermediary.

16.3 For the purposes of this Clause 16, a breach shall be capable of remedy if the other Party can comply with the provisions in question in all respects other than as to the time for performance.

16.4 Where the Intermediary is an Appointed Representative, the Provider will be entitled to terminate this Agreement, and require the Trusted Third Party to concurrently terminate the Intermediary's right to use the Portal Services in respect of the Provider, with immediate effect on being notified that the Intermediary has ceased to be an Appointed Representative of the Authorised Firm.

## **17. CONSEQUENCES OF TERMINATION**

17.1 On termination of this Agreement, for whatever reason, the access rights of all Users to the Direct Services and to the Portal Services in respect of the Provider will be withdrawn immediately.

17.2 The Intermediary acknowledges that on termination of the agreement between the Provider and the Trusted Third Party, for whatever reason, the access rights of all Users to the Portal Services in respect of the Provider will be withdrawn immediately.

17.3 Any termination of this Agreement, for whatever reason, shall be without prejudice to any other rights or remedies of either Party under this Agreement or at law and will not affect any accrued rights or liabilities of a Party at the date of termination, nor shall termination affect any rights or obligations of the Parties which are to be observed or performed after such termination including without limitation those warranties as set out in this Agreement.

17.4 Within ten (10) Working Days after the date of termination of this Agreement each Party will delete all copies of all software, materials or information, other than Data, belonging to the other Party except as otherwise permitted or required by this Agreement or Terms of Business, or to the extent that the Party is required to keep the information for the purposes of complying with any legislation including, without limitation, money laundering legislation and FSMA.

## **18. AUDIT AND AUDIT TRAIL**

18.1 During the term of this Agreement and for a period of twelve (12) months after the date of termination of this Agreement, the Intermediary will maintain accurate and up-to-date records, documentation and other similar materials, whether financial or otherwise, relating to this Agreement.

18.2 At the request of the Provider, the Intermediary shall promptly make available to the Provider, its internal and external auditors, representatives of the FSA or any third party appointed by the Provider (but no more than twice in any period of twelve (12) months for anyone other than representatives of the FSA), all information required by the Provider, such auditors or representatives relating to the Services at all reasonable times, and shall permit the Provider, such auditors or representatives, or any appointed third party, to inspect, review, verify and take copies of any associated records and documentation in the control or possession of the Intermediary.

18.3 The Intermediary agrees to provide such access to the Intermediary's premises and afford all reasonable assistance in good faith as may reasonably be required for the purposes of the inspection, review and verification under Clause 18.2.

18.4 The Provider shall ensure that any inspection or review under this Clause 18 which is undertaken on its instructions be undertaken, as far as reasonably possible, so as to minimise disruption to the Intermediary's business, both generally and in relation to the provision of the Services.

18.5 Any inspection or review under this Clause 18 is for the sole benefit of the Provider and will not constitute a waiver or exclusion of any obligation on the Intermediary or of the Provider's rights and remedies under this Agreement.

18.6 The Intermediary's costs of any inspection or review under this Clause 18 shall be paid by the Intermediary. The Intermediary shall additionally bear the reasonable costs of the Provider of any inspection or review under this Clause 18 if the inspection or review finds any material errors or non-compliance on the part of the Intermediary, either with any statutory or regulatory requirements or with the terms of this Agreement. Except as provided in this Clause 18.6, the Provider's costs of any inspection or review shall be paid by the Provider.

18.7 Each Party acknowledges that it is advisable to retain its respective part of the Audit Trail for a minimum period of six (6) months. The Parties may produce and rely on any part of the Audit Trail and any Message in its control to facilitate the resolution of any dispute which arises between the Parties out of or in connection with this Agreement. The Parties undertake to keep confidential any disclosed Audit Trail of the other Party and the Intellectual Property Rights in any part of the Audit Trail shall remain with the Party from which it originated.

## **19. FORCE MAJEURE**

19.1 Notwithstanding anything else contained in this Agreement, neither Party shall be liable for any delay in or failure to perform its obligations under this Agreement (other than for payment of money) if such delay or failure is caused by an event of Force Majeure, provided that the Party promptly notifies the other Party in writing of the reasons for the delay or failure of the performance of its obligations.

19.2 If any such delay or failure referred to in Clause 19.1 continues for more than eight (8) weeks, either Party may terminate this Agreement immediately on giving notice in writing to the other Party, in which event neither Party shall be liable to the other by reason of such termination. Except for delays caused by the acts or omissions of the Party (in which event the rights and liabilities of the Parties shall

be those conferred and imposed by the other terms of this Agreement and by law) any cost arising from such delay shall be borne by the Party incurring the same.

## **20. AMENDMENT**

20.1 The Provider reserves the right to vary the terms and conditions of any part of this Agreement by giving the Intermediary notice in writing. Any variation will take effect on the expiry of 30 days of notice being given to the Intermediary ("Variation Notice Period"). If the Intermediary does not agree to the variation, it will be entitled to terminate this Agreement immediately on giving the Provider notice in writing, provided that such termination notice is received by the Provider prior to the expiry of the Variation Notice Period. The Intermediary's continued use of the Services beyond the expiry date will be confirmation of acceptance of this Agreement as varied.

20.2 For the purposes of Clause 20.1, notice may be given to the Intermediary by posting the variation to the Portal or to the Site.

20.3 The Provider may give less than 30 days' notice of a variation where the variation is the result of legislative or regulatory requirements.

## **21. GENERAL**

### **21.1 Assignment**

21.1.1 Subject to Clause 21.1.2 below, neither the Provider nor the Intermediary is entitled to assign any of its rights and obligations arising under this Agreement without the prior written consent of the other, such consent not to be unreasonably withheld or delayed.

21.1.2 The Provider shall be entitled to freely assign the entire benefit of this Agreement as a whole to any other Group Company. The Provider may assign its rights under this Agreement (subject to the assumption by the assignee of all of the Provider's obligations) without the prior written consent of the Intermediary to any company or other organisation to which the Provider has transferred all or substantially all of its assets pursuant to its demutualisation under Part VII of FSMA or otherwise. The Intermediary undertakes to execute such documents necessary to effect any assignment referred to in this Clause 21.1.2.

21.2 Relationship of the Parties: Nothing in this Agreement shall create, or be deemed to create a partnership or joint venture or relationship of employee and employer or principal and agent between the Parties. Neither Party is agent for the other, and neither Party has any authority to make any contract, whether expressly or by implication, in the name of the other Party, without that Party's prior written consent.

21.3 Waiver: Any failure to exercise or any delay in exercising a right or remedy provided by this Agreement or at law shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies. A waiver of a breach of any of the terms of this Agreement shall not constitute a waiver of a subsequent breach of that term nor of any other breach and shall not affect the other terms of this Agreement.

21.4 Rights of Third Parties: Except as provided in this Agreement, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

21.5 Severability: If at any time a provision of this Agreement is held by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not prejudice the remaining provisions of this Agreement which shall remain in full force and effect. If any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid.

### **21.6 Entire Agreement**

21.6.1 This Agreement, together with the documents referred to in it, sets out the entire agreement and understanding between the Parties in connection with the provision of the Services, and supersedes all previous agreements, negotiations, representations and undertakings between the Parties relating to the provision of the Services.

21.6.2 Each of the Parties acknowledges and agrees that in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy under this Agreement in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement as a warranty. The only remedy available to it under this Agreement for breach of the warranties shall be for breach of contract under the terms of this Agreement.

21.6.3 Nothing in this Clause 21.6 shall be construed as excluding or intending to exclude the liability of either party for fraudulent misrepresentation.

## 21.7 Notices

21.7.1 All notices to be given under this Agreement shall be in writing and may be given personally or by post. Notices given personally or by post shall be delivered to the address of the Party in question as may be notified to the other Party from time to time.

21.7.2 Any notice shall be deemed to have been received: if delivered personally, at the time of delivery; and if sent by post, on the expiry of forty eight (48) hours after posting.

## 22. LAW AND JURISDICTION

22.1 This Agreement is entered into in consideration of the mutual obligations assumed by the Parties under the terms of this Agreement.

22.2 This Agreement and any dispute or claim arising out of or in connection with it shall be governed by and be construed in all respects in accordance with English law and the Parties hereby submit to the non-exclusive jurisdiction of the English courts.

This is the Schedule of Definitions referred to in the Agreement between the Provider and the Intermediary

In the Agreement the following words and expressions will have the following meanings unless the context requires otherwise:

*Application* means the application form by which new business is submitted, either directly or indirectly, to the Provider;

*Appointed Representative* means a party appointed to act as an agent in the conduct of investment business, in terms of the FSMA, from time to time;

*Audit Trail* means a full and unaltered transactional record of all Messages sent and received by the Parties;

*Authentication* means confirming the identity of the Party in question in accordance with the Standards and "Authenticate" shall be construed accordingly;

*Authorised Firm* means a firm, partnership or company which is authorised under the FSMA to carry on investment business and has appointed the Intermediary as its Appointed Representative, and which is either:

(a) the party identified as such as part of the Provider Registration and Trusted Third Party Registration; or

(b) each party subsequent to that referred to at (a), where the Intermediary has notified the Provider in accordance with Clause 12.4 and the Provider has chosen not exercise its right to terminate the Agreement under Clause 16.4;

*Commencement Date* means today's date;

*Commercial and Technical Agreement* means an agreement entered into between the Parties setting out the commercial conditions in relation to the Services, and which shall include the Standards, the User Guidelines and any service levels;

*Commission Services* means the services by which the Intermediary will be able to receive details of its commission from the Provider (either directly or indirectly through the Trusted Third Party, but for the avoidance of doubt not via any other third party network provider) as a Response;

*Contract Enquiry Services* means the services which enable enquiries to be made by the Intermediary, either directly or indirectly through the Trusted Third Party, about the policy or policies of a Customer;

*Customer* means an individual, organisation or company, (including an employee of, or individual associated with, such organisation or company) who has appointed the Intermediary as its agent;

*Customer Personal Data* means Personal Data relating to the Customer which is Processed by the Parties;

*Data* means all information and data transmitted by one Party to the other Party, including (without limitation) statistics, policy information and valuations, Personal Data (including Customer Personal Data), information about products and services, commercial information, and whether as images, text or otherwise;

*Data Protection Act* means the Data Protection Act 1998;

*Defect* means any and all material errors, omissions or failures in the system of either Party including (without limitation) errors, omissions or failures by reason of which such a system fails to perform in accordance with the relevant part of the Standards;

*Direct Services* means the services to be provided directly by the Provider to the Intermediary under this Agreement as further detailed in the Provider Standards and the Commercial and Technical Agreement, and which may include any or all of the Contract Enquiry Services, Commission Services and Tracking Services;

*Error* means a corruption of the Data contained within a Message, or a failure or omission within the content of the Message or in the structure of the Message;

*Force Majeure* means any event outside the reasonable control of either Party affecting its liability to perform any of its obligations (other than payment) under the Agreement, including Act of God, fire, flood, lightning, war, revolution, act of terrorism, strikes, lock-outs or other industrial action, whether of the affected party's own employees or others;

*FSA* means the Financial Services Authority or any successor body;

*FSMA* means the Financial Services and Markets Act 2000, and any amending or replacement legislation and all subordinate laws and regulations and Rules which regulate the carrying on of investment or financial business in the United Kingdom;

*Group Company* means the Provider, its subsidiary and holding companies and any other subsidiaries of such holding companies from time to time (and "subsidiary" and "holding company" shall have the meanings given to them by Section 736 and 736A of the Companies Act 1985 (as amended));

*Intellectual Property Rights* means any rights in or to intellectual property including, but not limited to, copyright, patents, database rights, designs, trade marks, know-how or confidential information and any other rights in respect of any other industrial or intellectual property, whether registrable or not and wherever existing in the world and including, without limitation, all rights to apply for any of the foregoing rights;

*Intermediary* means the individual, company, firm or partnership which is designated as the Intermediary as part of Provider Registration;

*Intermediary Standards* means the Intermediary's respective part of the Standards;

*Intermediary System* means the system by which the Intermediary connects to or accesses the Services;

*Message* means a transmission between the Parties using the Standards, and which may be a Request or a Response;

*Party or Parties* means a party or the parties to this Agreement;

*Personal Data* shall have the meaning set out in the Data Protection Act;

*Portal* means any web site through which the Intermediary can access and use the Portal Services;

*Portal Services* means the services to be provided by the Trusted Third Party to the Intermediary following the completion of the Trusted Third Party Registration, and which may include any or all of the Contract Enquiry Services, Commission Services and Tracking Services;

*Processing* has the meaning set out in the Data Protection Act, and "Process" and "Processed", when used in relation to Processing of Data, shall be construed accordingly;

*Provider* The Standard Life Assurance Company, having its Head Office at 30 Lothian Road, Edinburgh, EH1 2DH or, on demutualisation the company to which the Provider has transferred all or substantially all of its assets or any Group Company acting as provider;

*Provider Registration* means the process specified by the Provider by which the Intermediary will register to be given access to and use of the Direct Services and the services provided by the Provider indirectly through the Trusted Third Party;

*Provider Standards* means the Provider's respective part of the Standards;

*Provider System* means the system and processes operated by the Provider, including (without limitation) any software and materials owned by or licensed to the Provider, which are used by the Provider to deliver the Direct Services;

*Request* means a request made by the Intermediary in accordance with the Standards;

*Response* means an electronic message sent by the Provider in accordance with the Standards which may be (a) a direct response to a Request or (b) automatically generated and sent by the Provider periodically;

*Rules* means the rules of the FSA as amended from time to time;

*Security Standards* means the agreed technical security standards, as specified in the Commercial and Technical Agreement;

*Services* means the Direct Services and/or the Portal Services as the case may be;

*Services Standards* means any agreed standards, as may be set out in the Commercial and Technical Agreement in accordance with which the Provider will provide the Direct Services;

*Site* means any web site of the Provider through which the Intermediary can access and use the Direct Services;

*Standards* means the System Standards, the Security Standards and the Services Standards;

*System Standards* means the technical system and standards for sending and receiving Messages or accessing, inputting, submitting and displaying Data, as specified in the Commercial and Technical Agreement;

*Terms of Business* means the Provider's terms of business and any other relevant documents upon which the Provider will undertake business from the Intermediary or, if the Intermediary is an Appointed Representative, from the Authorised Firm;

*Tracking Services* means the services enabling enquiries to be submitted by the Intermediary to the Provider, or reports to be automatically generated from the Provider to the Intermediary, either directly or indirectly through the Trusted Third Party, about an Application that has been submitted, including (but not limited to) details on the progress of that Application;

*Trusted Third Party* means any trusted third party with whom the Provider has entered into an agreement for the provision of on-line authentication and other services, and as set out in the Commercial and Technical Agreement, as may be amended from time to time;

*Trusted Third Party Registration* means the process specified by the Trusted Third Party by which the Intermediary will register to be given access to and use of the Portal Services;

*Trusted Third Party Standards* means the Trusted Third Party's respective part of the Standards;

*User* means any individual user who accesses and uses the Services at any time using the User Access, and who may be (a) any individual user of the Intermediary, including a Customer, an employee, agent, consultant or sub-contractor, or (b) an Appointed Representative or any individual user, including a Customer, employee, agent, consultant or sub-contractor, of the Appointed Representative;

*User Access* means the method or process as specified as part of the Standards, by which a User will access and use the Direct Services and/or the Portal Services;

*User Guidelines* means any guidelines in accordance with which a User must use the Direct Services, as may be prescribed in the Commercial and Technical Agreement; and

*Working Day* means any day excluding Saturday and Sunday and public holidays both in England and Scotland.

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