

## AGREEMENT FOR THE INTRODUCTION OF CLIENTS

### PARTIES AND CONTACT DETAILS

#### The Company

<b>Name</b>	Foreign Currency Direct PLC (the “ <b>Company</b> ”)
<b>Country of Incorporation</b>	England & Wales
<b>Company number</b>	05082565
<b>Head office</b>	Spaces, Building 1 Chalfont Park, Chalfont St. Peter, Gerrards Cross, Buckinghamshire, England, SL9 0BG
<b>Registered address</b>	Spaces, Building 1 Chalfont Park, Chalfont St. Peter, Gerrards Cross, Buckinghamshire, England, SL9 0BG
<b>FCA firm reference number</b>	538392
<b>Type of firm</b>	Electronic Money Institution
<b>Website</b>	<a href="https://www.currencies.co.uk/">https://www.currencies.co.uk/</a>
<b>Name of lead contact at the Company</b>	Your usual contact.
<b>E-mail address to use to contact the Company</b>	Your usual contact’s email address.
<b>Telephone number to use to contact the Company</b>	Your usual contact’s telephone number.
<b>Name of contact at the Company relating to data protection matters</b>	Philip Webb
<b>E-mail address of contact at the Company relating to data protection matters</b>	Philip.webb@currencies.co.uk
<b>Telephone number of contact at the Company relating to data protection matters</b>	+44 1494 725353

#### The Partner

Partner means you, being the person that agrees to be bound by the terms of this Agreement (the “Partner”).

### BACKGROUND

- (A) The Company is an electronic money institution based in the United Kingdom, the specific details of which are set out in the above table. The Company has a subsidiary, Foreign Currency Direct Europe Limited (“**FCDEU**”), which is based in Ireland. FCDEU is an electronic money institution, authorised by the Central Bank of Ireland for the issuance of electronic money with firm reference number C186257.

- (B) The Company and FCDEU, as their business, both enter into foreign exchange contracts and payment contracts with businesses and consumers.
- (C) The Company mainly contracts (for foreign exchange and payment services) with persons located in the UK and FCDEU mainly contracts (for foreign exchange and payment services) with persons located in the EEA.
- (D) The Partner and the Company have already entered into an agreement governing the referral of contacts and the payment of commission by the Company to the Partner. However, as a result of the end of the transition period relating to the United Kingdom leaving the European Union, EEA based contacts will need to contract with FCDEU and there are changes in how data controllers can comply with Data Protection Legislation. Accordingly, the Company requires the Partner to execute this Agreement which takes into consideration, among other things, these issues and will replace the existing Agreement.
- (E) The Partner has a large number of contacts, and can meet further contacts, who may be interested in entering into foreign exchange and payment contracts with the Company or with FCDEU (depending on where the contacts are based or are residents of).
- (F) The Partner is willing to introduce contacts to the Company in return for Commission on the terms specified in this Agreement.
- (G) If:
  - (a) the Company is unable to enter into foreign exchange and payment contracts with the referred contact; but
  - (b) FCDEU is able to enter into foreign exchange and payment contracts with the referred contact, for example, because the contact is a citizen of a member state of the EEA,then the Company shall refer this contact onto FCDEU and the Partner shall still be entitled to Commission from the Company in accordance with the terms of this Agreement.
- (H) The Company wishes to be introduced to such contacts and is willing to pay the Partner Commission on the terms of this Agreement, if such contacts enter into foreign exchange contracts with it or FCDEU.

## **HEADLINE TERMS**

### **1. Definitions**

The definitions and rules of interpretation set out in the General Terms apply to these Headline Terms.

### **2. Contractual Period**

This Agreement commences on the date that the Partner agrees to the terms of this Agreement and shall continue, unless terminated earlier in accordance with clause 18 (Termination) of the

General Terms, until either party gives to the other party at least 30 days prior written notice to terminate.

**3. Payment of Commission and other fees**

The amount of commission (“**Commission**”) the Company shall pay the Partner shall be calculated in the same way as it was calculated prior to the coming into force of this Agreement but shall apply to Relevant Contracts (as defined in the General Terms).

If the Partner was paid any fees other than commission prior to the coming into force of this Agreement, then those fees shall still be payable under this Agreement.

**4. Commission payments upon termination or expiry of this Agreement**

The Partner shall not be paid any Commission after termination or expiry of this Agreement.

## **GENERAL TERMS**

### **1. Interpretation**

The following definitions and rules of interpretation apply in this Agreement.

#### **1.1 Definitions:**

“**Agreement**” means this agreement including the sections entitled “**Parties and Contact Details**”, “**Background**”, “**Headline Terms**”, “**Execution**” and “**General Terms**” (including the Appendix).

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

“**FCDEU**” means Foreign Currency Direct Europe Limited, being a company incorporated in the Republic of Ireland with company number 631617 and registered address 98 Baggot Street Lower, Dublin 2.

“**Group**” means the Company together with its subsidiaries and holding companies from time to time, and any subsidiaries from time to time of any of its holding companies and includes, for the avoidance of doubt, FCDEU.

“**Introduction**” means the provision to the Company of the Company’s referral form or, at the Company’s discretion, any other medium containing the same information as is requested in the referral form, containing (amongst other information) contact details of the Relevant Client or of an employee at a Relevant Client who knows one or more individuals at the Partner and is of sufficient seniority to authorise or recommend the purchase of the Services from the Company. “**Introduce**”, “**Introduces**”, and “**Introduced**” shall be interpreted accordingly; and

“**Introduction Date**” means for each Relevant Client, the date during the term of this Agreement on which the Partner first Introduces such Relevant Client to the Company.

“**Partner Portal**” means the online portal that the Partner can log into to access their Commission Statement and other information which is available via [affiliaite.currencies.co.uk](http://affiliaite.currencies.co.uk).

“**Quarter**” means a three calendar month block of this Agreement with “**Quarter 1**” meaning the first three full calendar months of this Agreement.

“**Relevant Client**” means a person resident or having its principal place of business in the Territory which has not:

- (a) during the 12 months preceding the Introduction Date been provided with the Services by the Company or by a member of the Group; or
- (b) during the 6 months preceding the Introduction Date, been in bona fide negotiations with the Company or a member of the Group relating to the provision of the Services;

“**Relevant Contract**” means a contract for the supply of Services between the Company or FCDEU (as applicable) and a Relevant Client who was introduced by the Partner; and

“**Services**” means contracts to sell money in various currencies whether for immediate delivery (generally known as a spot contract) or for delivery at a date in the future (generally known as a forward contract).

**1.2 Person.** A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person’s personal representatives, successors and permitted assigns.

**1.3 All sections of this Agreement apply.** All sections of this Agreement, including the sections entitled “Parties and Contact Details”, “Background”, “Headline Terms”, “Execution” and “General Terms” (including the Appendix) form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the

sections “Parties and Contact Details”, “Background”, “Headline Terms”, “Execution” and “General Terms” (including the Appendix).

**1.4 Amendments to statutes.** A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

**1.5 Subordinate legislation.** A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

**1.6 Writing.** A reference to writing or written includes e-mail.

**1.7 Including.** Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

**1.8** A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006

### **2. Introductions**

The Company appoints the Partner to identify Relevant Clients for the Company and FCDEU and to make Introductions of such persons to the Company on the terms of this Agreement. If the Company deems that FCDEU would be better suited than it to enter into Relevant Contracts with a particular Relevant Client introduced by the Partner, then the Company shall pass the details of the Relevant Client onto FCDEU.

### **3. Duties of the Partner**

(a) **Good faith.** The Partner shall serve the Company faithfully and diligently and not to allow its interests to conflict with its duties under this Agreement;

(b) **Introductions.** The Partner shall use its best endeavours to make Introductions of Relevant Clients;

(c) **Reports.** The Partner shall report in writing to the Company from time to time on progress made with Relevant Clients;

(d) **Record keeping obligation.** The Partner shall keep separate records and full and accurate accounts of all business transacted under this Agreement.

(e) **Compliance with relevant requirements.** The Partner shall comply, and ensure that its employees, agents, representatives and any persons who provide services to the Partner under a contract of services or a contract for service, comply with all relevant requirements that apply to the Partner’s activities pursuant to this Agreement including any policies or guidelines provided to the Partner by the Company from time to time.

(f) **Compliance with instructions.** The Partner shall comply with all reasonable and lawful instructions and requests of the Company including giving the Company and its auditors any of its books, files, accounts, telephone recordings with Relevant Clients or persons the Partner wishes to be Relevant Clients, vouchers and providing information and explanations to the Company’s officers so that the Company can monitor the general compliance of the Partner to the terms of this Agreement and its general obligations.

(g) **Co-operating with regulators** The Partner shall co-operate with the Financial Conduct Authority, the Information Commissioner’s Office and any other regulator the Company requests that the Partner co-operates with in any information gathering exercise including being readily available for meetings, granting access to records and business premises and answering questions.

(h) **Training of staff.** The Partner shall ensure its staff meet appropriate training and competence requirements.

### **3.2 Limited scope of authority.**

(a) **No authority to bind.** The Partner shall have no authority, and shall not hold itself out, or permit any person to hold itself out, or otherwise create the impression that it is authorised to bind the Company or FCDEU in any way and shall not do any act which might reasonably create the impression that the Partner is so authorised.

(b) **No authority to contract or negotiate.** The Partner shall not make or enter into any contracts or commitments or incur any liability for or on behalf of the Company or FCDEU, including for the provision of the Services or the price for them, and shall not negotiate any terms for the provision of the Services with Relevant Clients.

(c) **No advice.** The Partner shall not provide any advice relating to the Services to the Relevant Clients.

(d) **No authority to issue financial promotions.** The Partner shall not issue financial promotions without the prior written consent of the Company.

(e) **Partner shall not hold client money.** The Partner is prohibited from holding any Relevant Client’s money which is meant to be for the account of the Company or FCDEU. If such client money is received by the Partner, it must contact the Company immediately to arrange for this client money to be paid immediately to a bank account instructed by the Company.

**3.3 Obligation to disclose limits on authority.** The Partner must disclose to each Relevant Client that:

(a) it is an introducer of the Company;

(b) its personal data will be passed onto the Company and may be passed by the Company onto FCDEU; and

(c) it has no authority or ability to negotiate or vary the Services or the terms of the Services or enter into any contract on behalf of the Company or FCDEU or provide any advice on the Services or provide any indicative prices for the Services.

**3.4 Marketing.** The Partner shall at all times:

(a) comply with the Company’s marketing guidelines;

(b) not produce any marketing material for the Company’s Services or use the Company or FCDEU’s name, logo or trade marks on any marketing material for the Services without the prior written consent of the Company.

**3.5 Limits on representations.** The Partner shall not, without the Company’s prior written consent, make or give any representations, warranties or other promises concerning the Services which are not contained in the Company’s marketing material.

**3.6** During the term of this Agreement, the Partner shall:

(a) carry out its duties and obligations with all due care, skill and ability and use its best endeavours to promote the interests of the Company;

(b) promptly give to the Company all such information and reports as it may reasonably require in connection with matters relating to its duties and obligations set out in this Agreement.

**3.7** Unless specifically authorised to do so by the Company in writing, the Partner shall not:

(a) have any authority to incur any expenditure in the name of or for the account of the Company; or

(b) hold itself out as having authority to bind the Company.

**3.8** The Partner may use a third party to perform any administrative, clerical or secretarial functions provided that:

(a) the Company will not be liable to bear the cost of such functions; and

(b) at the Company's request the third party shall be required to enter into direct undertakings with the Company, including with regard to confidentiality.

3.9 The Partner shall:

(a) comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;

(b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

(c) have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010;

(d) notify the Company (in writing) if it becomes aware of any breach of clause 3.9(a) or 3.9(b), or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with the performance of this Agreement;

(e) immediately notify the Company (in writing) if a foreign public official becomes an officer or employee of the Partner or acquires a direct or indirect interest in the Partner and the Partner warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this Agreement;

(f) ensure that any person associated with the Partner who is performing services in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Partner in this clause 3.9 ("Relevant Terms"). The Partner shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Company for any breach by such persons of any of the Relevant Term;

(g) if it or any of its employees or representatives is or becomes a shareholder, partner, promoter, director, officer, agent, manager, employee, consultant or independent contractor to any Relevant Client Introduced to the Company it shall notify the Company of such appointment and require the Relevant Client to notify the Company that they are aware of this Agreement, its contents and the arrangement between the Partner and the Company. For the avoidance of doubt, the Company may require the Relevant Client to execute a statement to this effect; and

(h) within one month of the date of this Agreement, and annually thereafter, certify to the Company in writing, its compliance with this clause 3.9.

The Partner shall provide such supporting evidence of compliance as the Company may reasonably request.

3.10 The Partner shall:

(a) not engage in any activity, practice or conduct which would constitute either:

(i) a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017; or

(ii) a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017;

(b) promptly report to the Company any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017 or any suspected tax evasion offences or facilitation of tax evasion offences, whether under UK law or under the law of

any foreign country, in connection with the performance of this Agreement; and

(c) ensure that all persons associated with the Partner or other persons who are performing services in connection with this Agreement comply with this clause 3.10.

3.11 The Partner agrees that any material breach of this clause 3 shall be deemed to be a material breach of this Agreement in accordance with clause 18.1(b).

#### 4. Payment of Commission

4.1 Subject to clause 5 and the remaining provisions of this clause 4, the Company shall pay Commission to the Partner, in relation to every Relevant Contract, in the month immediately following the date on which such Relevant Contract is closed out or settled in full. For the avoidance of doubt, the Company shall pay Commission to the Partner for both Relevant Contracts entered into between:

(a) FCDEU and Relevant Clients; and

(b) the Company and Relevant Clients.

4.2 The Company shall, after the end of each calendar month, make a statement ("Commission Statement") available to the Partner on the Partner Portal confirming the Commission on all Relevant Contracts closed out and settled during the prior month together with details of all Relevant Contracts entered into during that month.

4.3 The Commission, set out in the Commission Statement, shall be paid to the Partner (whether invoiced by the Partner or not and irrespective of any payment terms contained on the Partner's invoice) within 20 Business Days of the end of each calendar month provided that the Commission payable for that month is greater than £50. If the Commission in any such month is less than £50, such monies will be held by the Company until the aggregate Commission payable to the Partner is greater than £50.

4.4 In entering into this Agreement, the Partner understands that all Commission payable under this Agreement is exempt from VAT (or any other similar sales tax). In the event, however, that the Commission or any commission paid prior to the date of this Agreement is deemed not to be exempt from VAT (or any other similar sales tax), the Commission paid or payable to the Partner shall be deemed to be inclusive of VAT (or any other similar sales tax) and the Partner shall remain solely liable for its payment to HMRC. Furthermore, the Partner will ensure that VAT invoices are issued to the Company as appropriate and in any case within 30 days of receipt of a ruling from HMRC that the Commission or any commission is subject to VAT.

4.5 Except as otherwise set out in this Agreement, all Commission payable under this Agreement shall be paid in full without any deductions (including deductions in respect of items such as income, corporation, or other taxes, charges and/or duties) except where the Company is required by law to deduct withholding tax from sums payable to the Partner. If the Company is so required, then the Company shall take all reasonable steps necessary to:

(a) lawfully avoid making any such deductions; or

(b) enable the Partner to obtain a tax credit in respect of the amount withheld.

4.6 If you are to receive Commission in a currency other than Sterling, it will be converted at the prevailing market rate determined by the Company on the day of payment.

4.7 In the event that a Relevant Client fails to make a payment to the Company under a Relevant Contract of monies properly due to the Company,

the Company shall be entitled to withhold all or any Commission otherwise payable to the Partner relating to that Relevant Client until such time as the Relevant Client has paid such monies in full.

4.8 **Accounts and records.** The Company shall keep separate accounts and records giving correct and adequate details of all Relevant Contracts entered into by the Company and FCDEU, all payments received under them and details of how Commission was calculated for each Relevant Contract. The Company shall permit the duly appointed representatives of the Partner at all reasonable times, but no more than once in any 12 month period, to inspect all such accounts and records and to take copies of them. For the avoidance of doubt, all rights in such records (including database right and copyright) shall belong to the Company.

4.9 **Disputes about Commission.** If any dispute arises as to the amount of Commission payable by the Company to the Partner, the same shall be referred to the Company's chief revenue officer for settlement and their decision, save in the case of manifest error, shall be final and binding on both parties.

#### 5. Warranties

5.1 The Partner warrants as follows at the date of this Agreement and each time an Introduction is made:

(a) that it is solvent;

(b) that it is suitable to act as a Partner;

(c) that it has no close links that would be likely to prevent its effective supervision by the Company;

(d) that it will provide the Company with all information for it to be able to assess compliance with clause 5.1(a), (b) and (c) above;

(e) that it has full capacity to enter and perform its obligations under this Agreement and has and will have taken all requisite corporate action (if required) to authorise the execution, delivery and performance of this Agreement.

#### 6. Confidentiality

6.1 **Obligations of confidentiality.** Each party undertakes that it shall not at any time during this Agreement, and for a period of five years after termination of this Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 6.2.

6.2 **Confidentiality exceptions.** Each party may disclose the other party's confidential information:

(a) to FCDEU;

(b) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this Agreement. Each party shall procure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 6; and

(c) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

6.3 **Limited use of confidential information.** No party shall use any other party's confidential information for any purpose other than to perform its obligations under this Agreement.

6.4 **Return of documents and records.** All documents and other records (in whatever form) containing confidential information supplied to or acquired by the Partner from the Company shall be returned promptly to the Company on

termination or expiry of this Agreement, and no copies shall be kept, whether digitally or otherwise.

## 7. Compliance

Each party shall at its own expense comply with all laws and regulations relating to its activities under this Agreement, as they may change from time to time, and with any conditions binding on it in any applicable licences, registrations, permits and approvals.

## 8. Data protection

### 8.1 Definitions.

(a) **"Agreed Purposes"** means:

(i) each party complying with its obligations under this Agreement which will include the Partner providing details of Relevant Clients and their employees to the Company;

(ii) the Company providing the Services to the Relevant Clients or passing the details of the Relevant Clients to FCDEU so that FCDEU can enter into Relevant Contracts with Relevant Clients.

(b) **"Controller", "joint controller", "data controller", "processor", "data processor", "data subject", "personal data", "processing" and "appropriate technical and organisational measures"** have the meanings set out in the Data Protection Legislation in force at the time.

(c) **"Data Protection Legislation"** means all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including, without limitation (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy to the extent that it applies to the Company and the Partner.

(d) **"Permitted Recipients"** means the parties to this Agreement and the Group, the employees of each party and the Group and any third parties engaged to perform obligations in connection with this Agreement.

(e) **"Shared Personal Data"** means the personal data to be shared between the parties under this Agreement. Shared Personal Data shall be confined to the following categories of information relevant to potential Relevant Clients and Relevant Clients and their employees, representatives and ultimate beneficial owners:

- (i) name;
- (ii) address;
- (iii) passport and driving licence number;
- (iv) photograph;
- (v) email address;
- (vi) telephone number (whether landline or mobile);
- (vii) customer number from a utility supplier or banker;
- (viii) bank account details.

**"Standard Contractual Clause"** means the clause set out in the Appendix

8.2 The parties intend that, in addition to the provisions set out in this clause 8, the Standard Contractual Clause should apply where:

- (a) the Partner is based in the EEA; and
- (b) Article 44 of the General Data Protection Regulation (the "GDPR") applies to a transfer of personal data from the Partner to the Company, because the UK has left the European Union; and
- (c) the transfer is not permitted under Art 45

and will become effective on the first date Article 44 GDPR applies to a transfer of personal data from the EEA to the UK, and that transfer is not permitted under Article 45 GDPR.

8.3 **Shared Personal Data.** The provisions which follow set out the framework for the sharing of personal data between the parties as data controllers. Each party acknowledges that one party (the **"Data Discloser"**) will regularly disclose to the other party (the **"Data Recipient"**) Shared Personal Data collected by the Data Discloser for the Agreed Purposes. Each party shall:

(a) ensure that it has all necessary consents and notices in place to enable lawful transfer of the Shared Personal Data to the Data Recipient for the Agreed Purposes. Specifically, the Partner shall ensure that it has all necessary consents and notices in place to enable lawful transfer of the Shared Personal Data to the Company and for the onward lawful transfer of that Shared Personal Data by the Company onto FCDEU;

(b) give full information to any data subject whose personal data may be processed under this Agreement of the nature such processing. This includes giving notice that, on the termination of this Agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Data Recipients and FCDEU, their successors and assigns;

(c) process the Shared Personal Data only for the Agreed Purposes;

(d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;

(e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less demanding than those imposed by this Agreement;

(f) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

(g) if the Data Recipient is based inside the EEA, the Data Recipient shall not transfer any personal data obtained from the Data Discloser outside of the European Economic Area unless the prior written consent of the data subject has been obtained and the following conditions are fulfilled:

(i) the transfer complies with the provisions of Articles 26 of the GDPR (in the event the third party is a joint controller); and

(ii) the transferring party complies with its obligations under Data Protection Legislation ensuring that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 GDPR; or (iii) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.

(h) if the Data Recipient is based inside the UK, the Data Recipient shall not transfer personal data outside the UK unless such transfer complies with Data Protection Legislation applicable in the UK.

8.4 **Compliance:** Each party shall comply with the Data Protection Legislation and agrees that any material breach of the Data Protection Legislation shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this Agreement with immediate effect.

8.5 **Mutual assistance.** Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:

(a) consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;

(b) promptly inform the other party about the receipt of any data subject access request;

(c) provide the other party with reasonable assistance in complying with any data subject access request;

(d) assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(e) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;

(f) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this Agreement unless required by law to store the personal data;

(g) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;

(h) maintain complete and accurate records and information to demonstrate its compliance with this clause 8; and

(i) provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

## 9. Audits

9.1 The Partner shall allow the Company and any auditors of or other advisers to the Company or the Financial Conduct Authority or the Information Commissioner's Office or any other regulator notified by the Company to the Partner to access any of the Partner's premises, Partner's personnel and relevant records as may be reasonably required in order to:

(a) fulfil any legally enforceable request by the Financial Conduct Authority, the Information Commissioner's Office or any other regulatory body; or

(b) undertake verification that all obligations of the Partner are being performed in accordance with this Agreement; or

(c) undertake verification that the Partner is complying with this Agreement and Data Protection Legislation including implementing appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

9.2 The Company shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Partner.

9.3 Subject to the Company's confidentiality obligations, the Partner shall provide the Company (and its auditors and other advisers) with all reasonable co-operation, access and assistance in relation to each audit.

9.4 The Company shall provide at least 15 Business Days' notice of its intention to conduct an audit unless such audit is conducted in respect of a suspected fraud, in which event no notice shall be required.

9.5 The parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this clause 9, unless the audit

identifies a material default by the Partner, in which case the Partner shall reimburse the Company for all its reasonable costs incurred in the course of the audit.

9.6 The Company may increase the extent to which it monitors the Partner if the Partner fails to fulfil its obligations under this Agreement. The Company shall give the Partner prior notification of its intention to increase the level of its monitoring. The Partner shall bear its own costs in complying with the Company in relation to any monitoring which is conducted by the Company pursuant to this clause 9.

#### 10. Online Content

10.1 The Partner's website must not:

- (a) promote illegal activities, violence, discrimination based on race, sex, sexual orientation, age, religion, nationality or disability or display any information or material which harasses, annoys or disrupts any third party, is unlawful, threatening, abusive, defamatory, obscene, vulgar, pornographic, profane or indecent or infringes the rights of any other person;
- (b) duplicate content from the Company's website or such other website that might be owned or operated by the Group from time to time unless the Partner has obtained the prior written permission of the Company;
- (c) copy or resemble the look and feel of the layout of either the Company's website or otherwise represent to users that the Partner is an agent of the Company or FCDEU;
- (d) use the Company's brand names as part of a domain or in a website URL including misspellings and/or variations;
- (e) operate so as to transmit or send viruses, trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or any unsolicited or unauthorised advertising or promotional material or any other form of similar solicitation to any person; or
- (f) misrepresent or embellish the relationship between the Partner and the Company or FCDEU.

10.2 The Partner is solely responsible for the development, operation and maintenance of its website and for all materials and links that appear on the website.

10.3 Any content used to promote the Company must first be approved by the Company in writing prior to publication in any form. Under no circumstances can the content appear online without the Company's prior approval.

10.4 The Company may, in its absolute discretion, monitor the Partner's website and shall notify the Partner of any aspect of the Partner's website that the Company reasonably considers to be unacceptable with regard to this Agreement. On notification of such an infringement the Partner shall change the Partner's website to remove any such unacceptable content as soon as reasonably practicable and in any event, no later than 7 Business Days after being notified by the Company. Failure to do so will constitute an irremediable material breach in accordance with clause 18.1(b).

10.5 The Company may provide the Partner with content for publication on the Partner's website and such content remains the Company or the Group's intellectual property and must be removed if requested by the Company or upon termination or expiry of this Agreement.

10.6 The Partner hereby gives the Company authorisation to directly instruct digital service providers to remove any content featuring or provided by the Company in the event that the Partner is rendered bankrupt or insolvent.

#### 11. Natural Search

The Partner shall not optimise its website, blogs and/or marketing material to appear above the Company's website (or such other website that might be owned or operated by the Group from time to time) in any natural search listings for the Company brand keywords or other brands used by the Group from time to time.

#### 12. Social Media

If the Partner operates within social media environments, it must:

- (a) not use social media to sell the Services without the prior written consent of the Company;
- (b) communicate under its own name and not make any reference to the Company.

#### 13. Pay per click or paid search ("PPC") restrictions

13.1 The Partner shall not, without the Company's prior written consent:

- (a) engage in any PPC advertising where such advertisements include any trade mark, target or other intellectual property rights owned by the Company or the Group or any brand terms, brand permutations and misspellings; or
- (b) use vanity URL's which include any trade mark or other intellectual property rights owned by the Company or the Group or any brand terms, brand permutations and misspellings

13.2 The Partner shall:

- (a) use reasonable endeavours to ensure that the Partner's online advertisement does not appear above any of the Company or FCDEU's advertisements that appear in response to the same search term; or
- (b) not copy any element of any PPC search-listing text used by the Company or FCDEU, unless the Partner has obtained the prior written permission of the Company.

#### 14. Brand Guidelines

14.1 The Partner shall display its own trademark (word and/or logo) prominently on its website and shall ensure that a customer browsing the Partner's website is given enough information to convey the message that its website is not operated by or on behalf of the Company or FCDEU.

14.2 The Partner shall ensure that any written statement promoting the Company or FCDEU displayed on its website is written from a third party perspective.

#### 15. Intellectual Property

15.1 The Company grants the Partner a non-exclusive, royalty-free, revocable licence to use and display the Company's trademarks and other intellectual property rights on the Partner's website solely for the purpose of promoting the Company and creating links to the Company's website provided always that such promotion is in accordance with the terms and conditions of this Agreement.

15.2 Nothing in this document shall grant to the Partner any right to use any of the trade marks as part of the Partner's corporate or trading name and the Partner undertakes not to do so or to otherwise to hold the Partner out as being the Company's agent.

15.3 The Partner acknowledges that all content on the Company's website is proprietary to or licensed by the Company and may not be reproduced, modified, transmitted, displayed, published or distributed without the Company's prior written consent.

#### 16. Limitation of liability

16.1 **Unlimited liability.** Nothing in this Agreement shall limit or exclude the liability of either party for:

(a) **Death or personal injury.** Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable).

(b) **Fraud.** Fraud or fraudulent misrepresentation or wilful default.

(c) **Unlawful liability restrictions.** Any matter in respect of which it would be unlawful to exclude or restrict liability.

16.2 **Limitations of liability.** Subject to clause 16.1 above:

(a) **Loss of profit, revenue, goodwill, or anticipated savings.** Neither party shall under any circumstances whatever be liable to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:

- (i) any loss of profit, sales, revenue, or business;
- (ii) loss of anticipated savings;
- (iii) loss of or damage to goodwill;
- (iv) loss of agreements or contracts;
- (v) loss of use or corruption of software, data or information;
- (vi) any loss arising out of the lawful termination of this Agreement or any decision not to renew its term, or
- (vii) any loss that is an indirect or secondary consequence of any act or omission of the party in question.

(b) **Liability for supply of Services.** The liability of the Company and FCDEU arising in connection with the supply of Services shall be as set out in the Company or FCDEU's (as appropriate) applicable terms and conditions.

16.3 **No limitations in respect of deliberate default.** Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

#### 17. Onboarding and ongoing checks and compliance

17.1 The Company may require the Partner to:

- (a) provide certain due diligence documentation to the Company including information on the Partner's solvency, knowledge, skills and expertise;
- (b) subject itself and its directors, partners, staff and ultimate beneficial owners (as requested by the Company) to searches and fitness and proprietary checks requested by the Company, including disclosure and barring services checks and credit checks, both:
  - (c) prior to onboarding the Partner as its introducer and on a periodic basis thereafter; and
  - (d) at any time requested by the Company.

17.2 The Partner confirms that prior to signing this Agreement:

- (a) (if the Partner is an individual) it has provided its consent; or
  - (b) (if the Partner is not an individual) each director, partner, member of staff and ultimate beneficial owner which is to be subject to the searches set out in clause 17.1(b) has provided its consent, for the Company or a third party on its behalf carrying out such checks.
- 17.3 If the Partner, in the Company's view, fails to comply adequately with clause 17.1, within a reasonable time, then the Company reserves the right to:
- (a) refuse all introductions made by the Partner to the Company; and/or
  - (b) terminate this Agreement in accordance with clause 18.1(b).

#### 18. Termination

18.1 **Termination on notice.** Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

(a) the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 90 days after being notified in writing to make such payment;

(b) the other party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

(c) the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;

(d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

(e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;

(h) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

(i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

(j) the other party (being an individual) is the subject of a bankruptcy petition or order;

(k) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

(l) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 18.1(d) to clause 18.1(k) (inclusive);

(m) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

(n) there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

**18.2 Termination on notice.** Without affecting any other right or remedy available to it, the Company may terminate this Agreement with immediate effect by giving written notice to the Partner if the Partner:

(a) (being an individual) is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed);

(b) is in the reasonable opinion of the board of directors of the Company negligent or incompetent in its performance under this Agreement;

(c) (being an individual) is incapacitated (including by reason of illness or accident) from fulfilling its obligations under this Agreement for an aggregate period of 12 weeks in any 52-week consecutive period;

(d) commits any fraud or dishonesty or acts in any manner which in the opinion of the Company brings or is likely to bring the Partner or the Company or any member of the Group into disrepute or is materially adverse to the interests of the Company or any member of the Group;

(e) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

**18.3 Company's termination with notice.** The Company may terminate this Agreement:

(a) on notice with immediate effect if the Partner is in breach of its compliance obligations in clause 3 and/or clause 6 and/or clause 7 and/or clause 8; or

(b) on giving not less than 30 days' notice to the Partner.

#### **19. Consequences of termination**

**19.1 Clauses to remain in force on termination.** On termination of this Agreement the following clauses shall continue in force: clause 1, clause 3, clause 6 to clause 17 (inclusive) and clause 19 to clause 32 (inclusive).

**19.2 Accrued rights.** Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.

**19.3 Commission payments upon termination or expiry of this Agreement.** Commission payments upon termination will be dealt with in accordance with the Headline Terms. Notwithstanding the Headline Terms, the Company reserves the right to cease paying any Commission upon termination if the Partner has acted fraudulently, dishonestly or criminally or if it would be unlawful for the Company to pay the Commission.

#### **20. Status**

**20.1** The relationship of the Partner to the Company will be that of independent contractor and nothing in this Agreement shall render it an employee, worker, agent or partner of the Company and the Partner shall not hold itself out as such.

**20.2** This Agreement constitutes a contract for the provision of introductory services by the Partner and is not a contract of employment and accordingly the Partner shall declare, all Commission it is paid under this Agreement to the relevant tax authority and be fully responsible for and shall indemnify the Company and every member of the Group for and in respect of:

(a) any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the Partner's performance of this Agreement, where the recovery is not prohibited by law;

(b) all reasonable costs, expenses and any penalty, fine or interest incurred or payable in connection with or in consequence of liability, deduction, contribution, assessment or claim set out in clause 20.2(a), other than where the latter arise out of the Company's negligence or wilful default; and

(c) any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Partner against the Company arising out of or in connection with the

provision of this Agreement, except where such claim is as a result of any act or omission of the Company.

**20.3** The Company may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Partner.

#### **21. No partnership or agency**

**21.1 No partnership or agency between the parties.** Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

**21.2 No agency on behalf of third party.** Each party confirms it is acting on its own behalf and not for the benefit of any other person.

#### **22. Entire agreement**

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

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

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

**22.4 Fraud.** Nothing in this clause shall limit or exclude any liability for fraud.

#### **23. Amendments**

We may amend this agreement by giving the Partner 20 Business Days' notice in writing and such amendment shall be binding on the Partner.

#### **24. Assignment and other dealings**

This Agreement is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

#### **25. No automatic waiver**

**25.1** No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

**25.2** 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.

#### **26. Severance**

**26.1 Deemed modification or deletion.** If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

**26.2 Obligation to negotiate compliance amendments.** If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as

amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## 27. Notices

27.1 **Form of notices.** Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be:

- (a) addressed to that party at one of its addresses for the relevant party set out in the "Parties and Contact Details" section of the Agreement as same may be updated from time to time by notice in writing to the other party (if being delivered personally, or sent by pre-paid first class post or other next Business Day delivery service, or by commercial courier); or
- (b) sent by email to the email addresses for the relevant party set out in the "Parties and Contact Details" section of the Agreement as same may be updated from time to time by notice in writing to the other party.

27.2 **Deemed receipt of notices.** A notice or other communication shall be deemed to have been received:

- (a) if delivered personally, when left at the address referred to in clause 27.1;
- (b) if sent by pre-paid first class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting;
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
- (d) if sent by email, one Business Day after transmission.

27.3 **Exclusions from notice provisions.** This clause 27 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this sub-clause 27.3, "writing" shall not include e-mail.

## 28. Accepting the terms of this Agreement

Without limitation to any other methods available in law, the Partner can accept the terms of this Agreement by the Partner or someone representing the Partner:

- (a) ticking the relevant box or link, sent to the Partner via email or made available to the Partner online; or
- (b) using an electronic signature software service or other similar method; or
- (c) sending an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) to the Company or to someone representing the Company; or
- (c) confirming that the Partner accepts the terms of this Agreement via email or telephone; or
- (d) acting like the Partner accepts the terms of this Agreement by making an Introduction to the Company, having been:
  - (1) provided with a copy of this Agreement (probably by email);
  - (2) directed to the part of the website where a copy of this Agreement is able to be viewed; or
  - (3) provided with a summary of the main provisions of this Agreement via telephone, with this Agreement being sent shortly thereafter.

## 29. Third party rights

Any member of the Group and any party to this Agreement, their successors and permitted assignees, are the only persons which have any right to enforce any of the terms of this Agreement.

## 30. Conflict

If there is an inconsistency between the provisions in section in this Agreement entitled "Headline Terms" and the section entitled "General Terms", the section entitled "Headline Terms" shall prevail.

## 31. Governing law and jurisdiction if the Partner is based in the UK

If the Partner is based in the UK:

- (a) this Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales; and
- (b) each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

## 32. Dispute resolution if the Partner is not based in the UK

If the Partner is not based in the UK or there is uncertainty as to where the Partner is based when a dispute arises, any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London, England. The language to be used in the arbitral proceedings shall be English. The governing law of the contract shall be the substantive law of England.

## Appendix – Standard Contractual Clause

**Name of the data exporting organisation:** The Partner, the details of which are set out in the section entitled "Parties and Contact Details" (the sender of the data)

**Address and country of establishment:** The address of the Partner is set out in the section entitled "Parties and Contact Details"

**Telephone:** See the section entitled "Parties and Contact Details"

**Fax:** Not applicable

**Email:** See the section entitled "Parties and Contact Details"

**Other information needed to identify the organisation (eg a company number):** See the section entitled "Parties and Contact Details" (the data exporter)

and

**Name of the data importing organisation:** FCDUK, the details of which are set out in the section entitled "Parties and Contact Details" (The receiver of the data)

**Address and country of establishment:** See the section entitled "Parties and Contact Details"

**Telephone:** See the section entitled "Parties and Contact Details"

**Fax:** Not applicable

**Email:** See the section entitled "Parties and Contact Details"

**Other information needed to identify the organisation (eg a company number):** See the section entitled "Parties and Contact Details"

(the data importer)

**Definitions** For the purposes of the Clauses:

(a) 'personal data', 'special categories of data/sensitive data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority' shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data

(b) 'the data exporter' shall mean the controller who transfers the personal data;

(c) 'the data importer' shall mean the controller who agrees to receive from the data exporter personal data for further processing in accordance with the terms of these clauses and who is not subject to a third country's system ensuring adequate protection

(d) "clauses" shall mean these contractual clauses, which are a free-standing document that does not incorporate commercial business terms established by the parties under separate commercial arrangements.

The details of the transfer (as well as the personal data covered) are specified in Annex B, which forms an integral part of the clauses.

## Clause I. Obligations of the data exporter

The data exporter warrants and undertakes that:

(a) The personal data have been collected, processed and transferred in accordance with the laws applicable to the data exporter.

(b) It has used reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses.

(c) It will provide the data importer, when so requested, with copies of relevant data protection laws or references to them (where relevant, and not including legal advice) of the country in which the data exporter is established.

(d) It will respond to enquiries from data subjects and the authority concerning processing of the personal data by the data importer, unless the parties have agreed that the data importer will so respond, in which case the data exporter will still respond to the extent reasonably possible and with the information reasonably available to it if the data importer is unwilling or unable to respond. Responses will be made within a reasonable time.

(e) It will make available, upon request, a copy of the clauses to data subjects who are third party beneficiaries under clause 4, unless the clauses contain confidential information, in which case it may remove such information. Where information is removed, the data exporter shall inform data subjects in writing of the reason for removal and of their right to draw the removal to the attention of the authority. However, the data exporter shall abide by a decision of the authority regarding access to the full text of the clauses by data subjects, as long as data subjects have agreed to respect the confidentiality of the confidential information removed. The data exporter shall also provide a copy of the clauses to the authority where required.

## Clause II. Obligations of the data importer

The data importer warrants and undertakes that:

(a) It will have in place appropriate technical and organisational measures to protect the personal data against accidental or unlawful destruction or

accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.

(b) It will have in place procedures so that any third party it authorises to have access to the personal data, including processors, will respect and maintain the confidentiality and security of the personal data. Any person acting under the authority of the data importer, including a data processor, shall be obligated to process the personal data only on instructions from the data importer. This provision does not apply to persons authorised or required by law or regulation to have access to the personal data.

(c) It has no reason to believe, at the time of entering into these clauses, in the existence of any local laws that would have a substantial adverse effect on the guarantees provided for under these clauses, and it will inform the data exporter (which will pass such notification on to the authority where required) if it becomes aware of any such laws.

(d) It will process the personal data for purposes described in Annex B, and has the legal authority to give the warranties and fulfil the undertakings set out in these clauses.

(e) It will identify to the data exporter a contact point within its organisation authorised to respond to enquiries concerning processing of the personal data, and will cooperate in good faith with the data exporter, the data subject and the authority concerning all such enquiries within a reasonable time. In case of legal dissolution of the data exporter, or if the parties have so agreed, the data importer will assume responsibility for compliance with the provisions of clause 2(e).

(f) At the request of the data exporter, it will provide the data exporter with evidence of financial resources sufficient to fulfil its responsibilities under clause 4 (which may include insurance coverage).

(g) Upon reasonable request of the data exporter, it will submit its data processing facilities, data files and documentation needed for processing to reviewing, auditing and/or certifying by the data exporter (or any independent or impartial inspection agents or auditors, selected by the data exporter and not reasonably objected to by the data importer) to ascertain compliance with the warranties and undertakings in these clauses, with reasonable notice and during regular business hours. The request will be subject to any necessary consent or approval from a regulatory or supervisory authority within the country of the data importer, which consent or approval the data importer will attempt to obtain in a timely fashion.

(h) It will process the personal data, at its option, in accordance with the data processing principles set forth in Annex A.

(i) It will not disclose or transfer the personal data to a third party data controller located outside the European Economic Area (EEA) unless it notifies the data exporter about the transfer and

(a) the third party data controller processes the personal data in accordance with a Commission decision finding that a third country provides adequate protection,

or

(b) the third party data controller becomes a signatory to these clauses or another data transfer agreement approved by a competent authority in the EU,

or

(c) data subjects have been given the opportunity to object, after having been informed of the purposes of the transfer, the categories of recipients and the fact that the countries to which data is exported may have different data protection standards, or with regard to onward transfers of sensitive data,

data subjects have given their unambiguous consent to the onward transfer.

(d) with regard to onward transfers of sensitive data, data subjects have given their unambiguous consent to the onward transfer.

### **Clause III. Liability and third party rights**

(a) Each party shall be liable to the other parties for damages it causes by any breach of these clauses. Liability as between the parties is limited to actual damage suffered. Punitive damages (i.e. damages intended to punish a party for its outrageous conduct) are specifically excluded. Each party shall be liable to data subjects for damages it causes by any breach of third party rights under these clauses. This does not affect the liability of the data exporter under its data protection law.

(b) The parties agree that a data subject shall have the right to enforce as a third party beneficiary this clause and clauses 2(b), 2(d), 2(e), 3(a), 3(c), 3(d), 3(e), 3(h), 3(i), 4(a), 6, 7(d) and 8 against the data importer or the data exporter, for their respective breach of their contractual obligations, with regard to his personal data, and accept jurisdiction for this purpose in the data exporter's country of establishment. In cases involving allegations of breach by the data importer, the data subject must first request the data exporter to take appropriate action to enforce his rights against the data importer; if the data exporter does not take such action within a reasonable period (which under normal circumstances would be one month), the data subject may then enforce his rights against the data importer directly. A data subject is entitled to proceed directly against a data exporter that has failed to use reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses (the data exporter shall have the burden to prove that it took reasonable efforts).

### **Clause IV. Law applicable to the clauses**

These clauses shall be governed by the law of the country in which the data exporter is established, with the exception of the laws and regulations relating to processing of the personal data by the data importer under clause 11(h), which shall apply only if so selected by the data importer under that clause.

### **Clause V. Resolution of disputes with data subjects or the authority**

(a) In the event of a dispute or claim brought by a data subject or the authority concerning the processing of the personal data against either or both of the parties, the parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.

(b) The parties agree to respond to any generally available non-binding mediation procedure initiated by a data subject or by the authority. If they do participate in the proceedings, the parties may elect to do so remotely (such as by telephone or other electronic means). The parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.

(c) Each party shall abide by a decision of a competent court of the data exporter's country of establishment or of the authority which is final and against which no further appeal is possible.

### **Clause VI. Termination**

(a) In the event that the data importer is in breach of its obligations under these clauses, then the data exporter may temporarily suspend the transfer of personal data to the data importer until the breach is repaired or the

contract is terminated.

(b) In the event that:

(i) the transfer of personal data to the data importer has been temporarily suspended by the data exporter for longer than one month pursuant to paragraph (a);

(ii) compliance by the data importer with these clauses would put it in breach of its legal or regulatory obligations in the country of import;

(iii) the data importer is in substantial or persistent breach of any warranties or undertakings given by it under these clauses;

(iv) a final decision against which no further appeal is possible of a competent court of the data exporter's country of establishment or of the authority rules that there has been a breach of the clauses by the data importer or the data exporter;

or

(v) a petition is presented for the administration or winding up of the data importer, whether in its personal or business capacity, which petition is not dismissed within the applicable period for such dismissal under applicable law; a winding up order is made; a receiver is appointed over any of its assets; a trustee in bankruptcy is appointed, if the data importer is an individual; a company voluntary arrangement is commenced by it; or any equivalent event in any jurisdiction occurs then the data exporter, without prejudice to any other rights which it may have against the data importer, shall be entitled to terminate these clauses, in which case the authority shall be informed where required. In cases covered by (i), (ii), or (iv) above the data importer may also terminate these clauses.

(c) Either party may terminate these clauses if (i) any Commission positive adequacy decision under Article 25(6) of Directive 95/46/EC (or any superseding text) is issued in relation to the country (or a sector thereof) to which the data is transferred and processed by the data importer, or (ii) Directive 95/46/EC (or any superseding text) becomes directly applicable in such country.

(d) The parties agree that the termination of these clauses at any time, in any circumstances and for whatever reason (except for termination under clause 8(c)) does not exempt them from the obligations and/or conditions under the clauses as regards the processing of the personal data transferred

### **Clause VII. Variation of these clauses**

The parties may not modify these clauses except to update any information in Annex B, in which case they will inform the authority where required. This does not preclude the parties from adding additional commercial clauses where required.

### **Clause VIII. Description of the transfer**

The details of the transfer and of the personal data are specified in Annex B. The parties agree that Annex B may contain confidential business information which they will not disclose to third parties, except as required by law or in response to a competent regulatory or government agency, or as required under clause 1(e). The parties may execute additional annexes to cover additional transfers, which will be submitted to the authority where required. Annex B may, in the alternative, be drafted to cover multiple transfers.

**Additional commercial clauses** Effective date of the Standard Contractual Clauses - the parties intend that these Clauses should only become effective if Art 44 of the General Data Protection Regulation (the "GDPR") applies to a

transfer of personal data from the EEA to the UK, because the UK has left the European Union, and the transfer is not permitted under Art 45. On that basis, the Clauses will become effective on:

(i) the first date Article 44 GDPR applies to a transfer of personal data from the EEA to the UK, and that transfer is not permitted under Article 45 GDPR; or

(ii) the date of the Standard Contractual Clauses, if later.

In this clause, "a transfer of personal data" has the same meaning as in Article 44 of the GDPR.

#### **Annex A (Data Processing Principles)**

1. Purpose limitation: Personal data may be processed and subsequently used or further communicated only for purposes described in Annex B or subsequently authorised by the data subject.

2. Data quality and proportionality: Personal data must be accurate and, where necessary, kept up to date. The personal data must be adequate, relevant and not excessive in relation to the purposes for which they are transferred and further processed.

3. Transparency: Data subjects must be provided with information necessary to ensure fair processing (such as information about the purposes of processing and about the transfer), unless such information has already been given by the data exporter.

4. Security and confidentiality: Technical and organisational security measures must be taken by the data controller that are appropriate to the risks, such as against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, presented by the processing. Any person acting under the authority of the data controller, including a processor, must not process the data except on instructions from the data controller.

5. Rights of access, rectification, deletion and objection: As provided in Article 12 of Directive 95/46/EC, data subjects must, whether directly or via a third party, be provided with the personal information about them that an organisation holds, except for requests which are manifestly abusive, based on unreasonable intervals or their number or repetitive or systematic nature, or for which access need not be granted under the law of the country of the data exporter. Provided that the authority has given its prior approval, access need also not be granted when doing so would be likely to seriously harm the interests of the data importer or other organisations dealing with the data importer and such interests are not overridden by the interests for fundamental rights and freedoms of the data subject. The sources of the personal data need not be identified when this is not possible by reasonable efforts, or where the rights of persons other than the individual would be violated. Data subjects must be able to have the personal information about them rectified, amended, or deleted where it is inaccurate or processed against these principles. If there are compelling grounds to doubt the legitimacy of the request, the organisation may require further justifications before proceeding to rectification, amendment or deletion. Notification of any rectification, amendment or deletion to third parties to whom the data have been disclosed need not be made when this involves a disproportionate effort. A data subject must also be able to object to the processing of the personal data relating to him if there are compelling legitimate grounds relating to his particular situation. The burden of proof

for any refusal rests on the data importer, and the data subject may always challenge a refusal before the authority.

6. Sensitive data: The data importer shall take such additional measures (e.g. relating to security) as are necessary to protect such sensitive data in accordance with its obligations under clause II.

7. Data used for marketing purposes: Where data are processed for the purposes of direct marketing, effective procedures should exist allowing the data subject at any time to "opt-out" from having his data used for such purposes.

8. Automated decisions: For purposes hereof "automated decision" shall mean a decision by the data exporter or the data importer which produces legal effects concerning a data subject or significantly affects a data subject and which is based solely on automated processing of personal data intended to evaluate certain personal aspects relating to him, such as his performance at work, creditworthiness, reliability, conduct, etc. The data importer shall not make any automated decisions concerning data subjects, except when:

- (a) (i) such decisions are made by the data importer in entering into or performing a contract with the data subject, and (ii) (the data subject is given an opportunity to discuss the results of a relevant automated decision with a representative of the parties making such decision or otherwise to make representations to that parties. or
- (b) where otherwise provided by the law of the data exporter.

#### **Annex B (Description of the Transfer)**

**Data subjects.** The personal data transferred concern the following categories of data subjects: Relevant Clients (as such term is defined in the main Agreement), potential Relevant Clients, and any employees, representative and ultimate beneficial owners of the Relevant Clients and Potential Relevant Clients.

**Purpose of the transfer(s).** The transfer is made for the following purposes: the Agreed Purpose as such term is defined in the main Agreement.

**Categories of data.** The personal data transferred concern the following categories of data: name; address; passport and driving licence number; photograph; email address; telephone number (whether landline or mobile); customer number from a utility supplier or banker; bank account details.

**Recipients** The personal data transferred may be disclosed only to the following recipients of categories of recipients: members of the Group and as otherwise described in the data importer's privacy policy available on the following link (<https://www.currencies.co.uk/privacy-policy/>)

**Sensitive data** (if appropriate) The personal data transferred concern the following categories of sensitive data: Not applicable

**Data protection registration information of the data exporter** (where applicable): Please see the section entitled "Parties and Contact Details".