



C5 ENTITIES

# Terms of Business

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**Changing the way the Channel Islands use technology for positive impact**

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# 1. Introduction

- 1.1 These Terms of Business apply to each of the C5 Entities and the relevant entity is referred to in these Terms of Business as the “Contracting Entity”, “us”, “we” or “our” which, where appropriate, includes our successor and predecessor firms and our staff members.
- 1.2 References in these Terms of Business to “you” or “your” are to the persons or entities who are our clients for the Engagement.
- 1.3 The relevant Contracting Entity for the purposes of these Terms of Business and the Services to be performed (and/or Equipment to be provided) by that Contracting Entity will be set out in the Statement of Work. In the absence of a Statement of Work (as envisaged under clause 1.10), the Contracting Entity will be the entity that invoices for the particular Services or Equipment provided.
- 1.4 The following definitions are used in these Terms of Business:

“**associated BDO entities**” means other businesses we are connected with through the ownership by us of shares or which include ‘BDO’ in their title.

“**BDO Member Firm**” means a member of BDO International Limited, a Jersey company limited by guarantee, which forms part of the international BDO network of independent member firms.

“**Business Day**” means any day other than a Saturday, a Sunday, or a public holiday in Jersey or the Island of Guernsey as appropriate.

“**C5 Entities**” means the Jersey Entities and the Guernsey Entities.

“**C5 Privacy Notice**” means the fair processing information and your rights in relation to this information set out in our privacy notice, as may be updated from time to time. A copy of the notice can be found at <https://www.c5alliance.com/privacy-policy/>

“**Consultant**” means consultant and/or engineer personnel or sub-contractors of the Contracting Entity who provide the Services under an Engagement Contract.

“**Contracting Entity**” means any one of the C5 Entities that is the relevant contracting party under the Engagement Contract as detailed in the accompanying Statement of Work.

“**Data Breach**” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data.

“**Data Protection Legislation**” means, as they apply to the relevant Contracting Entity,: (a) the Data Protection (Jersey) Law 2018, (b) The Data Protection (Bailiwick of Guernsey) Law, 2017 (as amended) (c) the General Data Protection Regulation (Regulation (EU) 2016/679)(“**GDPR**”), until such time as it might cease to apply; (d) any legislation ratifying or otherwise adopting, replacing or supplementing the GDPR; and (e) in respect of your obligations, any other laws and regulations relating to privacy or the processing of data relating to natural persons relevant to your obligations in any other jurisdiction.

“**Engagement**” means the Services and/or Equipment which we provide pursuant to the Engagement Contract.

“**Engagement Contract**” means the letter of engagement or Statement of Work and enclosures (including these Terms of Business) sent to you which set out the basis of our contract with you. An Engagement Contract includes any agreement arising under the provisions of clause 1.10.

“**Equipment**” means the computer equipment specified in the relevant Statement of Work and all items delivered to you under the Engagement Contract including software and hardware provided to you in conjunction with the Services.

“**Guernsey Entities**” means C5 Alliance (Guernsey) Limited and C5 IT Services (Guernsey) Limited.

“**Jersey Entities**” means C5 Alliance Group Limited, C5 Alliance Limited, C5 IT Services (Jersey) Limited and Altius Consulting (CI) Limited.

“**Live Date**” means the date that the Services are first made available for use in a live running environment.

“**Location**” means the premises or site specified in the relevant Statement of Work.

“**Loss**” shall have the meaning given to it in clause 22.3.

“**Services**” means the services delivered to you that are the subject of the Engagement Contract.

“**Service Credits**” means service credits set out in a Statement of Work, payable by a Contracting Entity to you if the Services fail to meet the Service Levels.

“**Service Levels**” means the level of performance for the provision of the Services as set out in the relevant Statement of Work.

“**staff member**” means a member of the C5 Entities, consultant, employee, director, officer, representative or agent.

“**Statement of Work**” means the document which details, inter alia, the Contracting Entity and Services to be provided and/or Equipment to be delivered to you which together with these Terms of Business form the Engagement Contract.

1.5 In these Terms of Business:

- 1.5.1 any act, law or regulation, will be construed as referring also to any amendment or re-enactment of such act, law or regulation (whether before or after the date of the Engagement Contract (which includes these Terms of Business));
- 1.5.2 references to any party will, where relevant, be deemed to be references to or include, as appropriate, their lawful successors, assigns and transferees,
- 1.5.3 use of the singular is deemed to include the plural;
- 1.5.4 the headings will not affect interpretation;
- 1.5.5 references to a “month” are to a calendar month, unless otherwise stated; and
- 1.5.6 reference to a Clause or Schedule, unless the context otherwise requires, is a reference to a clause of, or schedule to, these Terms of Business.

1.6 The Engagement Contract (which includes these

Terms of Business) constitutes the whole agreement between the parties and applies to all the work which the Contracting Entity undertakes for you, unless we negotiate variations to them or agree that they will not apply. No addition to, variation of, exclusion or attempted exclusion of the Engagement Contract shall be binding on the Contracting Entity unless in writing and signed by a duly authorised representative of the Contracting Entity.

- 1.7 By signing the Statement of Work, you confirm acceptance of these Terms in respect of the Services to be provided.
- 1.8 In the event of any conflict or inconsistency between the documents forming part of the Engagement Contract, the Statement of Work shall take precedence over these Terms of Business.
- 1.9 Unless otherwise specifically agreed in the Statement of Work, the Engagement Contract replaces any previous agreements between us in relation to or in contemplation of the Engagement and shall apply to any future engagements we carry out on your behalf unless varied or replaced. The Engagement Contract shall prevail over any conditions implied by law (to the extent permitted), trade custom, practice or course of dealing.
- 1.10 If we undertake any work or provide any equipment at your request which is not properly covered by a Statement of Work, the provisions of these Terms of Business shall apply to such work or equipment (so far as the same are capable of applying) and the fee or price to be paid to us will be set out on the relevant invoice.
- 1.11 In entering into this Engagement Contract, you acknowledge that you have not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Engagement Contract. All warranties, conditions and other terms implied by law, whether by statute, the courts or otherwise, are excluded from the Engagement Contract to the fullest extent permitted by law.

## 2. Fees and invoicing

- 2.1 Unless otherwise stated in the Engagement Contract, our fees are based on the time required by our staff members to complete the Engagement, which may include travelling time. Time is charged at hourly rates that vary to reflect the degree of skill, responsibility and experience of the relevant individual, as well as the nature, complexity and urgency of the work involved. Hourly charge out rates are modified from time to time in accordance with prevailing market conditions. We will recharge to you any disbursements (such as sub-contractor fees, travel and accommodation expenses) that we incur in undertaking the Engagement and you shall reimburse all such reasonable and proper disbursements and expenses.
- 2.2 Whenever appropriate, we will agree a fee budget with you in advance of commencing work. Unless expressly set out in the Statement of Work as a

fixed fee arrangement, the fee budget is not a commitment to perform the Services within a fixed time or for a fixed fee. The budget (or fixed fee, if agreed in the Statement of Work) will be based on the assumption that we have timely access to the information and personnel that are required to complete the Engagement in a cost-effective manner and in accordance with relevant deadlines. We will advise you of delays or unexpected problems as they arise and will estimate their effect on the fee budget or fixed fee arrangement (which, in the case of delay occasioned by you or by causes beyond our control and requiring urgent action, may not be known prior to work being undertaken).

- 2.3 Unless otherwise stated in the Engagement Contract, invoices for fees and disbursements (together with any additional taxes where appropriate) necessarily incurred on your behalf will be rendered monthly in arrears as work progresses. Any queries on invoices must be raised in writing within 7 days of the invoice date. We reserve the right to request prepayment of fees and disbursements (such as an order of Equipment). In the event that such prepayment exceeds the actual cost of the Engagement as determined in accordance with the Engagement Contract, we will refund the remaining balance.
- 2.4 Invoices are due for payment within 30 days of presentation in full, in pounds sterling and without any deduction, set off or counterclaim. We reserve the right to charge interest on any outstanding balance thereafter and we also reserve the right to withdraw any discounts, cease or suspend delivery of the Services and/or Equipment in accordance with clause 26.2 of these Terms of Business and/or to cancel this Engagement or any other agreement between you and us. For the purposes of this clause 2.4, the rate of interest that we may charge shall be the rate contained within the Engagement Contract or, if no such rate is specified, we will charge interest at a rate of 4% over RBS current Base Rate at the time of invoice. Time for payment shall be of the essence of the Engagement Contract.
- 2.5 We reserve the right to exercise a lien over all documents or Equipment in our possession relating to the Engagement until all outstanding fees and disbursements are paid in full. All payments payable to the Contracting Entity shall become due immediately on termination of the Engagement Contract and without prejudice to any right of the Contracting Entity to claim interest.
- 2.6 Where Service Credits are payable in accordance with clause 8.2 they will be deducted from our fees for the period following that to which they relate and will be shown as such on the relevant invoice(s) covering that period. If Service Credits are payable but no further fees are due from you, we will pay the same to you on the termination of this Engagement Contract.
- 2.7 You shall pay us the price and any other charges due in respect of any Equipment in advance of delivery of the same unless otherwise agreed in writing between the parties. Prices invoiced will be charged in accordance with our current price list in

force at the date of dispatch of the relevant Equipment. You shall pay us an additional amount to the standard price in respect of any special packaging or carriage arrangements required.

### 3. Goods and services tax

- 3.1 Where required to do so by the Goods and Services Tax (Jersey) Law 2007 ("**GST Law**"), as amended from time to time, we shall add Goods and Services Tax ("**GST**") at the appropriate rate to any invoice we raise in respect of this Engagement, including but not limited to travel and accommodation expenses. We shall charge GST at the appropriate rate in respect of such expenses incurred.
- 3.2 If we pay amounts to third parties on your behalf, i.e. where the expense incurred is in respect of a separate engagement between you and a third party and we are merely acting in the capacity of agent in respect of such costs, the GST Law as it currently stands does not require us to include GST on such disbursements. In these circumstances, the responsibility for accounting for GST in respect of such disbursements rests with you. We reserve the right to add GST to any such disbursements should the GST Law change in this respect.
- 3.3 Where you are an "**International Services Entity**" as defined by Part 12 of the GST Law and the associated Goods and Services Tax (International Services Entities) Regulations, you agree to provide us with a certified copy of the relevant, current End User Relief Certificate ("**EURC**") issued to you by the Comptroller of Taxes. Upon presentation of the EURC, we shall not add GST to any invoice raised in respect of the Engagement, except where the amount of the invoice is less than any sum specified in the GST Law below which GST must be charged regardless of the existence of any EURC. If you do not provide us with a copy of the relevant, current EURC, we shall be obliged to issue invoices to you with any applicable GST added to the total amount due to us and it will be your responsibility to reclaim any GST suffered by you, if you are eligible to do so.

### 4. Groups

- 4.1 Where our appointment is by a parent company on behalf of a group or particular group companies, the parent company confirms and warrants that these Terms of Business apply to, and are binding on, all group entities to which we have been appointed.
- 4.2 Whilst fee invoices may be addressed to either the parent company or the relevant group company or entity, both parties remain jointly and severally liable until they are settled.

### 5. Personnel

- 5.1 We reserve the right to determine which of our staff members are allocated to an Engagement and,

where named individuals are not available, we will supply substitutes of equivalent quality and experience. With your agreement, we may also use third parties in performing our services.

- 5.2 Where Consultant(s) will be providing the Services and/or Equipment (or part thereof) on-site at your premises, you shall pay us (including travel time, accommodation where necessary, and reasonable expenses where appropriate) in accordance with the Statement of Work.
- 5.3 In the event that you require Consultant(s) to work overtime after the end of any Business Day or on a weekend or bank holiday, you will agree this in advance in writing with us.
- 5.4 In respect of overtime you shall pay Consultant(s) our charges as set out in the Statement of Work or, if no such overtime rates are set out therein, such rates as may otherwise be agreed in writing. You shall also reimburse us in respect of any reasonable expenses incurred by us or our Consultant(s) as a result of Consultant(s)' having to work such overtime.

### 6. Non solicitation of personnel

- 6.1 You undertake not to solicit or entice away, or endeavour to solicit or entice away (whether for yourself or for a third party) in any way the services of any staff member with whom you have had dealings in connection with the Engagement both during the term of the Engagement and for a period of 12 months after termination or expiration of the Engagement.
- 6.2 Should you breach the terms of the undertaking set out in clause 6.1 and employ or engage a staff member (without our prior consent), we reserve the right to charge you a fee of 30% of such staff member's annual earnings from us.

### 7. Client responsibilities

- 7.1 It is your responsibility to provide us with true, complete, accurate and timely instructions, documents or information relevant to our Engagement. It is also your responsibility to prepare the relevant premises at which the Engagement is to be performed to allow the Engagement to be performed. We will not be responsible for any consequences that may arise from your failure to do so including delay and cost increase. Such failures may also result in additional fees being charged.
- 7.2 If the Contracting Entity is prevented or delayed from performing its obligations under the Engagement by reason of any act or omission of you or your staff (other than a delay under clause 27) then you shall pay all our reasonable costs, charges and losses sustained.
- 7.3 Any opinions and advice will be provided in writing and addressed to you. Our reports, letters, information, opinions and advice should not be



used for any purpose other than that for which they were prepared, nor should they be reproduced, referred to in any other document or made available to any third party without our prior written consent. The only exceptions to this requirement are others within your own organisation, your professional advisors acting in such capacity or as required by law, court order or any regulatory or professional body. No reliance should be placed on any oral advice or representations we may make or any draft reports, unless and until we confirm that advice to you in final form in writing. Any third-party loss that arises as a result of your failure to comply with this clause 7.3 shall be your responsibility and you agree to hold us harmless and indemnify us against all costs incurred by us in relation such loss, whether a claim is brought against you or us.

- 7.4 Where it is envisaged that reports, letters, information, opinions or advice given by us to you will be provided to or used by a third party we reserve the right to agree with you terms regarding such provision, or to require the third party to enter into a direct relationship with us. Accordingly, neither the Engagement Contract nor any terms we agree with you to allow third parties access to our reports, letters, information or advice are enforceable by a person who is not a party to it, except where expressly provided for in the Engagement Contract. Unless otherwise agreed in writing, we recognise no responsibility whatsoever other than that owed to you as at the date on which our report or other advice is given. Any third-party loss that arises as a result of your failure to comply with this clause 7.4 shall be your responsibility and you agree to hold us harmless and indemnify us against all costs incurred by us in relation such loss, whether a claim is brought against you or us
- 7.5 You will not commit us to provide any opinions, certificates or reports to any third party without our prior written consent. Any such consent will be subject to conditions (to be agreed with you and/or the third party) and may include the provision of an indemnity.
- 7.6 Where information that is or may be relevant to our work has been provided to someone in the C5 Entities other than those individuals who are carrying out the Contracting Entity's responsibilities for that work, you accept that knowledge of that information will not automatically be imputed to those individuals.
- 7.7 You will provide the Contracting Entity with access to all appropriate premises, information, staff, systems and technology facilities as required for the completion of the Engagement without cost to us. If work is to be undertaken on your premises you will provide us with suitable office facilities including access to a telephone, e-mail and copying facilities. We will not be responsible for any consequences that may arise from your failure to do so including delay and cost increase. Such failures may also result in additional fees being charged.
- 7.8 You will ensure that your employees and sub-contractors co-operate fully with the Contracting Entity in relation to the provision of the Services and/or Equipment and that they are qualified to

carry out the tasks to which they may be assigned.

- 7.9 You shall obtain all third party consents, licenses and rights reasonably required in order to allow us to perform the Services and/or provide the Equipment and be responsible for complying with any applicable laws, statutes, regulations and codes of practice, relating to you in connection with the Services and/or Equipment and all of your other obligations under these Terms of Business.
- 7.10 You shall put in place adequate security and virus checking procedures in relation to any computer facilities to which you provide us with access.

## 8. Service Levels and Performance

- 8.1 We shall perform the Services in accordance with the Service Levels (if any) set out in the relevant Statement of Work.
- 8.2 If we fail to meet the Service Levels, Service Credits may apply if this is agreed as part of the Statement of Work.
- 8.3 We shall not be liable for any failure to achieve the required Service Levels and you shall not incur Service Credits to the extent that such failure results from:
- 8.3.1 a breach by you of any of your obligations under these Terms of Business;
  - 8.3.2 a failure attributable solely to the use of public telecommunications links between us and you; or
  - 8.3.3 an event of Force Majeure falling within the scope of Clause 27.
- 8.4 Without prejudice to any other right or remedy under these Terms of Business, if we fail to meet any of the Service Levels, we will use all reasonable commercial endeavours to remedy such failures, which will include: immediately investigating the cause of the failure or problem; taking necessary remedial measures; and advising you of the status of all remedial efforts.
- 8.5 In the event that the failure to achieve the required Service Levels is only partially the result of any matter falling within Clause 8.3 our actual performance in relation to the required Service Levels shall be adjusted to such levels as the parties agree would have been achieved, but for the impact of such matters.

## 9. Acceptance

- 9.1 In the event that you require the Services and/or Equipment to be subject to acceptance procedures, this clause 9 shall apply.
- 9.2 Where function, performance and/or acceptance tests are necessary, they will be agreed between us in advance.
- 9.3 Prior to the Live Date, or such other date as may

be set out in the Statement of Work (or subsequently agreed), we shall give you written notice of any agreed testing date and testing plans on which we will be ready to carry out acceptance tests either at your premises or remotely. You shall provide all the necessary facilities to enable such tests to be carried out.

- 9.4 Where we have achieved the testing criteria you shall be deemed to accept the Services and/or Equipment as fulfilling all necessary requirements.
- 9.5 The Services and/or Equipment shall not be deemed to have failed a test by reason of any failure to provide any facility or function not specified in the relevant Statement of Work.
- 9.6 If the test(s) show that the Services and/or Equipment are not providing a service which meets the Service Levels then you may by written notice to us elect:
- 9.6.1 to accept the Services and/or Equipment subject to a reasonable abatement of the total consideration payable in respect of the same. In the absence of written agreement as to abatement within fourteen (14) days after the date of such notice you shall be entitled to reject the Services and/or Equipment in accordance with clause 9.6.2 below; or
- 9.6.2 to reject the Services and/or Equipment as not being in conformity with the relevant Statement of Work provided that you properly evidence the failure and there is no reasonable means of rectifying it in which event the Statement of Work shall automatically terminate.
- 9.7 Notwithstanding anything else contained in this clause 9, we shall be entitled at any time and from time to time after the agreed testing date to serve written notice on you requiring you to identify any part of the Services and/or Equipment which do not fulfil our obligations under the Statement of Work. If you shall fail to identify the same in writing to us within fourteen (14) days after the receipt of such notice you shall be deemed to have accepted the Services and/or Equipment.
- 9.8 If at any time you shall commence live running of the whole or any part of the Services and/or Equipment then you shall be deemed to have accepted the Services and/or Equipment.

## 10. Equipment, Delivery, Title and Risk

- 10.1 Equipment may be provided by us to you under a Procurement Quote and shall be delivered to your preferred address within the Channel Islands.
- 10.2 Unless otherwise agreed, all Equipment quoted under a Procurement Quote, will be invoiced on receipt of an order from you. Where Equipment is ordered in instalments, each instalment shall constitute a separate Engagement Contract and no cancellation or termination relating to one instalment shall entitle you to cancel any other

instalment or repudiate any other Engagement Contract. Contracts performed by instalment shall be invoiced per instalment.

- 10.3 Where a Statement of Work sets out a delivery date for Equipment, we shall endeavour to deliver the Equipment on such date. You acknowledge that such date is only an approximate date and the time of delivery of the Equipment shall not be of the essence of the Engagement Contract and we will not accept any liability if such date is not met. Failure by us to deliver on the date stated shall not be sufficient cause for you to terminate the Engagement.
- 10.4 You may not cancel or postpone the delivery of any Equipment without our prior written consent. In the event that we permit you to cancel or postpone such a delivery pursuant to this Clause, you will indemnify us in respect of all loss (including without limitation loss of profit), costs (including without limitation the costs of all labour and materials), damages, charges and expenses incurred by us as a result of such cancellation.
- 10.5 In circumstances where we have agreed to deliver Equipment to you in instalments, any delay in delivering one or more of such instalments shall not entitle you to refuse to accept any remaining instalments.
- 10.6 You shall not refuse to accept delivery of any Equipment due to any shortage or defect in any other delivery.
- 10.7 Subject to Clause 10.8 below, if the Equipment or any part thereof is damaged or missing upon delivery to you, we will, at your option, either replace such Equipment or such part thereof or refund you the price in respect of the same. Such replacement or refund shall be our sole liability to you in such respect.
- 10.8 In no circumstances shall we be liable to you to replace or refund in accordance with Clause 10.7 above:
- 10.8.1 in respect of any shortages or damaged Equipment unless the Equipment is inspected by you on arrival in the presence of the carrier or us (as applicable). If on such inspection any Equipment is damaged or missing the consignment note must be endorsed by you accordingly and you shall notify us in writing of any such damage or missing Equipment, attaching a copy of the endorsed consignment note, within 48 hours of such delivery.
- 10.8.2 in respect of the non-delivery of a whole consignment of the Equipment unless you inform us in writing in respect of the same within ten (10) days of the date of the invoice received by you in respect of such non-delivered Equipment.
- 10.9 In the absence of the receipt by us of any written notification from you in accordance with Clause 10.8 above, you shall be deemed to have accepted the Equipment.
- 10.10 You shall not be entitled to return the Equipment or any part thereof to us for credit unless previously confirmed by us in writing.
- 10.11 Any Equipment will be subject to the

manufacturer's warranty. You may obtain further warranty cover by purchasing an extended warranty and/or an advanced product replacement guarantee where available from the manufacturer of the Equipment. You will be responsible for ascertaining the terms of such guarantee and/or warranty and ensuring that any conditions in respect of the same are complied with in full.

- 10.12 Title in any Equipment provided by us to you under the Engagement Contract shall not pass to you until you have paid the price and any additional charges in respect of such Equipment in full. You acknowledge that you are in possession of the Equipment solely as bailee for us until such time as the price and any additional charges are paid by you to us in respect of such Equipment.
- 10.13 Until such time as title in the Equipment passes to you in accordance with this Clause, you agree to store the Equipment (at no cost to us) in satisfactory conditions and separately from your own equipment or the equipment of any third party kept on site at the Location in a manner which makes them readily identifiable as the Equipment belonging to us pursuant to this Engagement Contract.
- 10.14 You shall not remove the Equipment or any part of it, from the Location for any purpose whatsoever until such time as you have paid the price to us in respect of the same in full.
- 10.15 Your right to possession of the Equipment shall cease if you do anything which would entitle a receiver to take possession of any of your assets or which would entitle any person to present a petition for winding up. In such circumstances you irrevocably license us to enter the Location, your premises or any other premises where the Equipment is stored, for the purpose of recovery of the Equipment and we may repossess the same.
- 10.16 Risk in any Equipment provided by us to you under this Engagement Contract shall pass to you as soon as such Equipment is delivered to the Location and accordingly you shall be responsible for insuring such Equipment on our behalf for its full price against all normal risks with a reputable insurer with effect from the time risk passes. You agree to hold the proceeds of such insurance on trust for us and not to mix the proceeds with any other money, nor pay the proceeds into an overdrawn bank account. In the event that proceeds received from an insurance claim do not cover the full cost of the Equipment, this shall not discharge your obligation to repay the remaining amount outstanding on the Equipment.
- 10.17 You shall not change, remove or obscure any labels, plates, insignia, lettering or other markings which are on the Equipment at the time that such Equipment is delivered.

## 11. Mode of Instructions

- 11.1 You authorise us to act from time to time on instructions given in any manner (including but not limited to verbal and electronic instructions) in circumstances where we reasonably believe those

instructions have emanated from you or any person with authority to act on your behalf.

- 11.2 You understand and acknowledge that the electronic transmission of information via the internet or otherwise has inherent risks (particularly the risk of access by unauthorised parties). Unless otherwise agreed, despite the inherent risks you authorise us to communicate electronically with you and all third parties on all matters related to the Engagement. Accordingly, you agree that we shall have no liability to you for any Loss arising directly from the use of electronic communications, except where caused by our own negligence.

## 12. Acquisition or disposal of interests

- 12.1 Where it is proposed that you acquire or dispose of any interest (including in a company, business or other entity), we shall have no responsibility for reviewing the terms of any draft contract or other contractual documentation for such acquisition or disposal, unless we are specifically instructed by you to carry out such a review (in which event we will issue you with a separate letter covering the scope of our work).

## 13. Confidentiality

- 13.1 **"Confidential Information"** shall mean any confidential information in any form (whether in writing, verbally or by other means, and whether directly or indirectly, including any copies and any document which contains, reflects or is derived from Confidential Information) disclosed by one of us or our employees, officers or advisers to the other (whether before or after the date of the Engagement Contract). Confidential Information does not include any information that: (a) is or subsequently becomes public knowledge (other than as a result of disclosure in breach of paragraph 13.2 below); or (b) was known by the receiving party on a non-confidential basis prior to disclosure; or (c) becomes available to the receiving party on a non-confidential basis from a person who is not bound by obligations of confidence; or (d) you and we agree in writing is not confidential or may be disclosed; or (e) is independently developed by the receiving party.
- 13.2 Each of us shall keep the other's Confidential Information confidential and shall not use such Confidential Information except for the purpose of exercising or performing the relevant rights and obligations under the Engagement and shall not disclose any Confidential Information to a third party, except as expressly permitted by this clause. We may disclose your Confidential Information to (a) persons who supply services in relation to, or connected with, the Engagement, or (b) associated BDO entities for the purpose of providing additional advice on the understanding they will treat that information as confidential. You and we may disclose Confidential Information to the extent required by law, by any governmental or other



regulatory authority or by a court or other authority of competent jurisdiction (including relevant professional bodies) provided that, to the extent we both are legally permitted to do so, the disclosing party provides reasonable notice of such disclosure and takes into account the other party's reasonable requests in relation to the content of such disclosure.

## 14. Conflicts

- 14.1 In accordance with the ethical requirements of the Institute of Chartered Accountants in England and Wales ("ICAEW"), we have put in place procedures to identify situations where conflicts of interest may arise. However, we cannot be certain that our procedures will identify all such situations. If you become aware of any potential conflict affecting our provision of the Services, you will notify us immediately.
- 14.2 Where a conflict of interest is identified and we believe that implementing appropriate procedures can properly safeguard your interests, we will notify you (subject to any obligations including confidentiality we may owe to third parties), explain the safeguards we have implemented and obtain your consent to their implementation. However, there may be circumstances where we consider that your position cannot be safeguarded and in such circumstances the Services may be terminated.

## 15. Client monies

- 15.1 It is the Contracting Entity's policy not to hold clients' money except in exceptional circumstances.

## 16. File retention

- 16.1 You agree that we shall have the right to retain copies of documents relating to the Engagement after the Engagement has ended. It is our normal practice to retain documents relating to client engagements after the end of the relevant Engagement in accordance with our document retention policy or as otherwise required by law. Thereafter, unless separate arrangements have been made, we may destroy or erase the documents or papers without reference to you.

## 17. Intellectual property rights and document ownership

- 17.1 Subject to any relevant proprietary third-party rights, we retain all intellectual property rights in everything generated or developed by us, in our possession or control, or addressed to us that existed prior to the Engagement, including rights in all documents, information, reports, written advice or other materials and the Equipment.

- 17.2 Intellectual property rights developed by us for you during the course of the Engagement shall be your property and you give us an unrestricted, royalty free, transferrable and perpetual licence to use the same including a licence to use any tools, know-how or methods developed during the Engagement.

- 17.3 You warrant to us that the necessary use of any of your software and/or hardware by us to enable us to perform the Services and/or provide the Equipment will not infringe the intellectual property rights or any other rights of any third party. If we manufacture the Equipment, or apply any processes to it, in accordance with a specification provided by you, you shall indemnify and keep us indemnified against all losses, damages, costs, claims, demands, liabilities and expenses (including without limitation consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) awarded against or incurred by us in connection with, or paid or agreed to be paid by us in settlement of, any claim or infringement of any third party intellectual property rights which result from our use of the specifications you have provided. This indemnity shall apply whether or not you have been negligent or at fault and does not limit any further compensation rights we may have.

In this clause 17 "**intellectual property rights**" shall mean all patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any party of the world.

## 18. Data protection

The terms '**data controller**', '**data processor**', '**data subject**', '**personal data**', '**processing**' and '**appropriate safeguards**' shall be interpreted in accordance with the applicable Data Protection Legislation.

- 18.1 The Jersey Entities are each registered under the Data Protection (Jersey) Law 2018 ('DPJL').
- 18.2 The Guernsey Entities are each registered under The Data Protection (Bailiwick of Guernsey) Law 2017.
- 18.3 The Contracting Entity shall comply with the relevant Data Protection Legislation as it applies to it in connection with this Engagement.
- 18.4 Where you transfer or otherwise make available personal data to us in relation to this Engagement, you shall ensure that (a) you have the necessary

rights to transfer or make available such personal data to us (including that you have, or have procured, the necessary legal authority, permissions and/or consents for us to process the personal data to provide the Services); (b) your instructions to us comply with (and will not cause us to be in breach of) the Data Protection Legislation; and (c) that you have taken reasonable steps to ensure that any data subjects are aware of the nature of the processing to be undertaken.

18.5 Where we act as data controller in respect of any personal data processed in relation to this Engagement (including where you are an individual):

18.5.1 we shall process or arrange for processing of the personal data only in accordance with the details set out in the C5 Privacy Notice and purposes reasonably ancillary thereto;

18.5.2 if you provided us with or gave us access to the personal data, you shall take reasonable steps to ensure that the relevant data subjects are aware of our processing activities and the C5 Privacy Notice; and

18.5.3 both of us shall co-operate with the other, and promptly provide such information and reasonable assistance as the other may reasonably require to enable it to comply with its obligations under the Data Protection Legislation in respect of this Engagement, and to deal with and respond to all investigations, complaints, and requests for information from any regulator or data subject relating to such personal data.

18.6 Where we process personal data as a data processor on your behalf we shall:

18.6.1 only process such personal data in accordance with your written instructions from time-to-time (including as set out in the Engagement Contract) or as required for us to provide, manage and facilitate the provision of the Services, and only in respect of the subject matter, duration, nature and purpose of the Services, and the type of personal data and categories of data subject relevant to the Services and as set out in the Engagement Contract;

18.6.2 notify you if in our opinion any instructions contravene the Data Protection Legislation.

18.6.3 ensure that only persons authorised by us process such personal data and that such persons are subject to appropriate obligations to maintain the confidentiality of such personal data;

18.6.4 taking into account the (a) state of the art, (b) cost of implementation, (c) nature, scope, context and purposes of the processing, and (d) the risk and severity of potential harm, protect such personal data by putting in place technical and organisational measures to protect such personal data from a personal data breach;

18.6.5 taking into account the nature of our processing, put in place appropriate technical and organisational measures, insofar as is possible, to assist you to fulfil, at your cost, your obligations to respond to data subjects' requests to exercise their rights under the Data Protection Legislation

over such personal data;

18.6.6 where reasonably requested and taking into account the nature of our processing and the Services and the information available to us, assist you, at your cost, in complying with your obligations under the Data Protection Legislation in respect of such personal data including in relation to the exercise of individual rights and the completion of such data protection impact assessments as may be required.

18.6.7 notify you without undue delay should any personal data breach occur.

18.6.8 when we cease providing the Services to you, and at your choice, either delete or return all such personal data to you and delete such copies of such personal data, unless applicable law or regulation requires storage of such personal data or deletion of personal data is not technically possible, using all reasonable efforts;

18.6.9 subject to reasonable access arrangements being agreed with us and save for disclosure of information which is confidential and/or privileged (or where access is otherwise restricted by applicable law or regulation), make available to you all relevant information necessary to demonstrate compliance with our obligations under this clause 18.6 and allow for and contribute to audits, including inspections, conducted by you or another auditor mandated by you, at your cost provided always that:

(a) you shall give the Consultant Company reasonable notice of any audit or inspection;

(b) Make (and ensure that your auditors make) reasonable endeavours to avoid causing any damage, injury or disruption to our business in the course of any audit or inspection in relation to Data Protection Legislation; and

(c) not require audits or inspections to be carried out more frequently than once in any 12-month period.

18.6.10 be permitted to appoint other processors to process such personal data, provided (a) they process the personal data only for the purposes of assisting us with the performance of our obligations under this Engagement; (b) we enter into a written agreement with them requiring them to process the personal data only in accordance with your or our written instructions, and to comply with obligations equivalent in all material respects to those imposed on us under this clause 18.6 and (c) we permit you an opportunity to object to the appointment of any such processor; and

18.6.11 not process or transfer such personal data outside Jersey, Guernsey or the EEA unless (a) an adequacy finding has been made under the Data Protection Legislation that the relevant

jurisdiction provides an adequate level of protection; or (b) we have put in place appropriate safeguards as required under the Data Protection Legislation for such processing or transfers. Where the Engagement identifies that processing will take place in specified jurisdictions, you acknowledge that personal data will be transferred to or from, and/or processed from, those jurisdictions.

- 18.7 Where you instruct us to transfer personal data to anyone other than a processor engaged by us, you are responsible for ensuring that adequate arrangements are in place for transfer as required by the Data Protection Legislation.

## 19. Money laundering

- 19.1 If as part of our engagement we examine transactions which appear to us as if they might indicate suspicions of money laundering and other matters, we are obliged under certain legislation such as the Terrorism (Jersey) Law 2002, the Proceeds of Crime (Jersey) Law 1999 and the Money Laundering (Jersey) Order 2008 in respect of the Jersey Entities and the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002, the Drug Trafficking (Bailiwick of Guernsey) Law, 2000, and the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 in respect of the Guernsey Entities to report our suspicions to the relevant Joint Financial Crimes Unit. Under the terms of the laws, it is a criminal offence to disclose the reporting of such suspicions to any other party where, inter alia, this may prejudice a criminal investigation. In normal circumstances, we would expect to make such a report in conjunction with your Money Laundering Reporting Officer, although there may be circumstances where we are statutorily obliged to report direct without informing you.

## 20. Provision of specialised services

- 20.1 We may, with your consent (which may be given under the paragraph headed “Data Protection”), refer you to associated BDO entities for the provision of specialised services. They will send you a separate Engagement Contract if you choose to use their services.

## 21. Complaints and dispute resolution

- 21.1 If at any time you would like to discuss with us how our service to you could be improved, or if you are dissatisfied with any aspect of the service you are receiving, please let us know by contacting the Engagement Director or the Contracting Entity's Managing Director at our registered office.
- 21.2 We undertake to look into any complaint carefully and promptly.

## 22. Liability

- 22.1 The limitation of liability provisions in this Engagement Contract apply to the aggregate liability arising under this Engagement whether caused by any or all of the C5 Entities, BDO sub-contractors or other sub-contractors (including associated BDO entities) involved in providing the Engagement and regardless of the number of claims and claimants.
- 22.2 Except in respect of injury to or death of any person or any other liability which cannot be limited or excluded by law (for which no limit applies), or as otherwise agreed in a Statement of Work, the respective liability of us to you in aggregate shall not exceed £1,000,000.
- 22.3 In this clause, “Loss” shall mean the aggregate of all losses and damages (including interest thereon if any) and costs suffered or incurred directly by the addressees of the Engagement Contract (together with such other parties whom the Contracting Entity and such original addressees have agreed may have the benefit of or rely upon our work on the terms hereof) (together “the Addressees” and individually an “Addressee”) under or in connection with this Engagement or its subject matter (as the same may be amended or varied) and any other report prepared pursuant to it, including as a result of breach of contract, breach of statutory duty, tort (including negligence), or other act or omission by the Contracting Entity but excluding any such losses, damage or costs arising from the fraud or dishonesty of the Contracting Entity or in respect of death or personal injury caused by our negligence or other liabilities which cannot lawfully be limited or excluded.
- 22.4 Subject to the express terms of the Engagement Contract, neither the Contracting Entity nor its staff members shall be liable in connection with the exercise of rights or the performance of its obligations under this Engagement for any indirect, incidental or consequential Loss whether arising from negligence, breach of contract or howsoever caused. In addition, we shall not be liable for any Loss, damages, costs or other consequences arising from information having been misrepresented to or withheld or concealed from us.
- 22.5 Where there is more than one Addressee the limit of liability specified will have to be allocated between Addressees. It is agreed that such allocation will be entirely a matter of the Addressees, who shall be under no obligation to inform the Contracting Entity of it, provided always that if (for whatever reason) no such allocation is agreed, no Addressee shall dispute the validity, enforceability or operation of the limit of liability on the grounds that no such allocation was agreed.
- 22.6 It is agreed that for our interest in limiting the personal liability and exposure to litigation of our staff members, you will not bring any claim in respect of any Loss against any of our staff members personally, but this will not limit or exclude the liability of the Contracting Entity for the acts or omissions of its staff members. This

exclusion shall not apply to fraud.

- 22.7 You agree to release, indemnify and hold harmless the Contracting Entity from any and all claims, liabilities, costs and expenses arising out of or based upon any misstatement or omission in any material, information or representation supplied or approved by you or any other matter related to or arising out of the Engagement, except to the extent finally determined to have resulted from our negligence, wilful misconduct or fraudulent behaviour.
- 22.8 We shall not be liable for any loss arising out of (and to the extent caused by) any failure by you to keep full and up-to-date security copies of the computer programs and data you use in accordance with best computing practice.

## 23. Sub-Contractors and Sole Recourse

- 23.1 We shall be entitled to appoint sub-contractors without your prior written consent. Any sub-contracting by us will not relieve or discharge us from any of our obligations or responsibilities under the Engagement Contract.
- 23.2 If we sub-contract any services to a BDO Member Firm, the provisions of this paragraph shall apply where, and to the extent, permitted by applicable laws. Where appropriate, we may use BDO Member Firms to assist us with the Services to which this Engagement applies. Notwithstanding the fact that the Services may be carried out by BDO Member Firms assisting us as supplemental providers of services and as sub-contractors ("**BDO sub-contractors**"), you agree that the Contracting Entity shall have sole liability for both its acts and/or omissions and also all acts and/or omissions of any BDO sub-contractors and you agree that you shall bring no claims or proceedings of any nature whatsoever (whether in contract, tort, breach of statutory duty or otherwise) against any BDO sub-contractors or BDO International entities (including, without limitation, BDO International Limited and Brussels Worldwide Services BVBA) or BDO Member Firms in any way arising from, in respect of or in connection with the Services or this Engagement.
- 23.3 You agree that any BDO sub-contractors who we may involve in the Services or BDO International entities or other BDO Member Firms shall each have the right to rely on and enforce paragraph 23.1 above as if they were parties to this Engagement.

## 24. International BDO network

- 24.1 The Contracting Entity is an associated BDO entity of BDO Group Limited, which is a member of BDO International Limited, a Jersey company limited by guarantee, and forms part of the international BDO network of independent member firms. This

network comprises independent firms (which use "**BDO**" as part of their business name) in many countries.

- 24.2 With the exception of any sub-contracted Services where we appoint BDO sub-contractors pursuant to paragraph 23 above (a) no associated BDO entity is our agent or has authority to enter into any legal obligations on our behalf and (b) if we introduce you to an associated BDO entity we do not accept any liability for work that they carry out on your behalf and you must make your own contractual arrangements with them directly.

## 25. Successors

- 25.1 If we should merge with another firm or transfer our business to another entity (a "**Successor Firm**") then our Engagement with you shall not automatically terminate by reason of such merger or transfer. You agree that the Successor Firm is automatically appointed by you so that continuity of service can be provided. Both the Successor Firm and you may rely on the Engagement Contract as setting out the continuing terms of the Engagement. If such transfer requires some official action by you then you will take such steps as are necessary to enable continuity of service. This paragraph does not in any way limit your termination rights as set out in the paragraph headed "Termination".

## 26. Termination

- 26.1 Either party may terminate the Engagement Contract with immediate effect if the other party is in material breach and the breach is not capable of remedy. Where a material breach is capable of remedy, either party may terminate where the breaching party shall have failed to remedy within a reasonable time from written notification. An Engagement in relation to Equipment only may only be terminated in accordance with clause 10.
- 26.2 Should you fail to pay our invoices or requests for funds on account when they become due we may cease or suspend the Engagement until the invoices have been paid or funds are received. We will give you notice of our intention to cease or suspend the Engagement. Any such notice shall not affect our right to later terminate the Engagement.
- 26.3 We are not liable for any loss or damage whatsoever incurred by you or any associated entity or third party as a result of any suspension in accordance with this clause 26.
- 26.4 Unless otherwise stated in the Engagement Contract or where termination rules are prescribed by legislation or professional obligations, or where either of us becomes the subject of insolvency proceedings or calls any meeting of its creditors (in which case we each may terminate without notice) the Engagement may be terminated by you or us upon the expiry of 14 days written notice to the other. Notice will be deemed served 24 hours after the notice has been sent. We will be entitled to



receive payment for all time and costs incurred up to the date of termination.

- 26.5 If we have grounds to suspect that it would be unlawful (under the laws of Jersey or the Island of Guernsey (as appropriate) or under the laws of the jurisdiction where the relevant act would take place) to undertake all or part of the Engagement, we may without notice and at our unfettered discretion, delay all of the Engagement, delay part of the Engagement or terminate the Engagement.
- 26.6 Upon termination or expiry of the Engagement, all rights and obligations of the parties under the Engagement shall automatically terminate except for such rights of action as shall have accrued prior to such termination and any obligations which expressly are intended to come into or continue in force after such termination.

## 27. Force Majeure

- 27.1 We will not be liable for any delays or failures in performance or breach of contract due to events or circumstances beyond our reasonable control (a "**Force Majeure**" event). Force Majeure includes acts of God, war, acts by governments and regulators, acts of terrorism, accident, explosion, fire, flood, storm, civil disturbance, delay in delivery or non-delivery by suppliers of the delaying party, breakdowns or accidents to machinery, labour strikes or dispute, or any other causes or any circumstances whatsoever beyond the control of the delaying party.
- 27.2 Subject to the delaying party promptly notifying the other party in writing of the reasons for the delay (and the likely duration of the delay), the performance of the delaying party's obligations shall be suspended during the period that the said circumstances persist and such party shall be granted an extension of time for performance equal to the period of the delay.
- 27.3 Following a Force Majeure event: (a) Any costs arising from such delay shall be borne by the party incurring the same; (b) Either party may, if such delay continues for more than three (3) months, terminate the affected element of the Engagement Contract forthwith on giving notice in writing to the other in which event neither party shall be liable to the other by reason of such termination, save that you shall pay us in full in respect of any Services and/or Equipment already provided and/or work carried out by us prior to such termination; (c) Both parties will in any event use all reasonable commercial endeavours to mitigate the impact of any event of force majeure and to recommence performance of their obligations under these Terms of Business as soon as reasonably possible; and (d) Save as set out above, no party shall in any circumstances be liable to the other for any loss of any kind whatsoever, including, but not limited to, any damages, whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure.

## 28. Severability

- 28.1 In the event that any part of these Terms of Business and the Engagement Contract of which they form part is held to be invalid or unenforceable, the remainder will continue in full force and effect.

## 29. General provisions

- 29.1 Any failure or delay in enforcing an obligation or exercising a right under the Engagement Contract does not amount to a waiver of that obligation or right. The waiver of a breach of a term of this Engagement Contract does not amount to a waiver of any other term.
- 29.2 The Contracting Entity is an independent contractor and nothing in this Engagement will be construed as to deem the Contracting Entity or its consultants to be an employee, servant, partner or joint venture partner of you.
- 29.3 Any notice to be given under these Terms of Business must be in writing (a "**Notice**") and delivered personally, or sent by email or first class post to the relevant address set out in the Statement of Work. A notice sent by email is not valid unless a copy of the notice is delivered personally or sent by first class post or has been formally confirmed in writing (email or otherwise) as received by the Contracting Entity. A Notice will be deemed to have been served: (a) if personally delivered, at the time of delivery; or (b) if formally confirmed as received, only on receipt of written confirmation by an authorised signatory of the Contracting Entity; or (c) if posted, two Business Days after 1st class posting.
- 29.4 For the purposes of this clause, a reference to writing or written includes email.
- 29.5 All disputes arising out of or in connection with the Engagement shall to the extent possible be settled amicably by negotiation between the parties within 30 days from the date of written notice by either party of the existence of such a dispute and, failing such amicable settlement, shall be settled by arbitration under the Rules of Arbitration of the International Chamber of Commerce.
- 29.6 You will not assign, transfer, charge or otherwise deal with the rights or obligations under the Engagement Contract without our prior written consent.

## 30. Governing law and jurisdiction

- 30.1 These Terms of Business and the Engagement Contract of which they form a part and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Jersey in respect of the Jersey Entities and the



laws of the Island of Guernsey in respect of the Guernsey Entities.

- 30.2 Where the Contracting Entity is a Jersey Entity, you and the Contracting Entity irrevocably agree that the courts of Jersey shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Engagement Contract or their subject matter or formation (including non-contractual disputes or claims).
- 30.3 Where the Contracting Entity is a Guernsey Entity, you and the Contracting Entity irrevocably agree that the courts of the Island of Guernsey shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Engagement Contract or their subject matter or formation (including non-contractual disputes or claims).

## 31. Signatories

SIGNED for and on behalf of  
**C5 Alliance Group Limited**

Name (sign): \_\_\_\_\_

Name (print): \_\_\_\_\_

Date: \_\_\_\_\_

SIGNED for and on behalf of  
**[Client]**

Name (sign): \_\_\_\_\_

Name (print): \_\_\_\_\_

Date: \_\_\_\_\_