

KERBURN ROSE
TERMS AND CONDITIONS
OF
BUSINESS

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TERMS AND CONDITIONS OF BUSINESS

1. Definitions

The following words and expressions shall wherever used in these Terms and Conditions have the following meanings:-

“Applicable Regulations”	means the rules, requirements and regulations of the Bank of England, the ICAEW, the FSA, the LSE, the UKLA and the City Code and all applicable laws of the United Kingdom.
“City Code”	means the City Code on Takeovers and Mergers and the Rules Governing Substantial Acquisitions of Shares.
“the Commencement Date”	is the date set out in the Engagement Letter for the commencement of the provision of Services and in the absence of such the date of commencement shall be the date that the Engagement Letter has been signed by both parties.
“the Contract”	means the Engagement Letter, these Terms and Conditions of Business and any other attachments signed by the Parties.
“the Client”	means the Person, Persons, Partnership or Company to whom the Engagement Letter is addressed.
“the Deliverables”	means all the documents (whether on paper, computer disk or electronic) including, without limitation, notes of meetings, correspondence and reports which Kerburn Rose provides to the Client from time to time.
“the Engagement”	means the hiring of Kerburn Rose by the Client to provide the Services.
“Engagement Letter”	means the letter from Kerburn Rose to the Client setting out the Services to be provided and the fee arrangements.
“Financial Promotions Order”	means the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001.
“FSA”	Financial Services Authority.
“FSM Act”	The Financial Services and Markets Act 2000.
“ICAEW”	means the Institute of Chartered Accountants in England and Wales.
“Kerburn Rose”	means Kerburn Rose Limited LLP or Kerburn Rose Capital Limited as the circumstances of the Engagement Letter shall dictate.
“KR Persons”	means any of Kerburn Rose directors, partners, employees, sub contractors or agents.

“LSE”	means the London Stock Exchange Limited.
“the Parties”	means the Client and Kerburn Rose.
“the Services”	means the services described in the appropriate paragraph in the Engagement Letter.
“the UKLA”	means the UK Listing Authority.

2. Application

- 2.1. These Terms and Conditions will apply to any Services which Kerburn Rose provides to the Client. They are without prejudice to any specific undertaking or other written agreement which Kerburn Rose may enter into with the Client in connection with any particular transaction or series of transactions.
- 2.2. These Terms and Conditions together with the Engagement Letter form the Contract between the Parties.
- 2.3. In the event of any conflict between these Terms and Conditions of Business and the Engagement Letter and any other document which forms part of the Contract, the Engagement Letter will take precedence. In the event, and only to the extent, of any conflict arising between the Engagement Letter and any referenced or attached document other than these Terms and Conditions of Business the Engagement Letter will again take precedence.

3. Services

- 3.1. The Services which Kerburn Rose will provide to the Client will be only such services as are from time to time agreed between Kerburn Rose and the Client, and set out in the Engagement Letter.
- 3.2. Except as set out in the Engagement Letter, Kerburn Rose will not be responsible for the provision of specialist advice or services in respect of matters which are not within its expertise, such as legal or regulatory matters, accounting, actuarial or taxation matters, press and public relations nor for any advice or services which any other of the Client’s advisers has agreed to provide or would customarily provide.
- 3.3. Kerburn Rose will not advise on the commercial merits of any transaction and will rely on the Client’s directors’ assessment of the same unless it is specifically agreed in writing that it is to do so.
- 3.4. The performance of Kerburn Rose is, where applicable, dependent upon the Client carrying out its responsibilities and meeting its obligations as set out herein.

4. Timetable

- 4.1. Where a timetable is referred to or set out in the Engagement Letter, the Parties will each use reasonable endeavours to carry out their respective obligations in accordance with the timetable. However, unless both Parties specifically agree otherwise in writing, dates contained in the timetable are intended for planning and estimating purposes only and are not contractually binding.

5. Standard of Work

- 5.1. Kerburn Rose will use reasonable skill and care in the provision of the Services and the preparation of any Deliverables. All work that Kerburn Rose carries out for the Client will be performed in accordance with Kerburn Rose's understanding of the proper interpretation of the law and in accordance with current professional guidance and practice. All work is subject to Kerburn Rose's internal review procedures which bring the wider perspective and the greater experience of partners and managers to bear on the key issues and help to ensure compliance with recognised standards of reporting and compliance. Kerburn Rose is bound by the ethical guidelines of the ICAEW, which includes such matters as communicating with the tax authorities, and will act in accordance therewith.
- 5.2. Kerburn Rose will represent, and carry out all negotiations on behalf of, the Client with reasonable care, honesty, integrity and utmost good faith. The Client will advise Kerburn Rose immediately if there is any event that could or is reasonably likely to make it difficult for Kerburn Rose to act on the Client's behalf in this manner at any stage in the provision of Services.
- 5.3. It is the intention of Kerburn Rose to provide the best advice which it considers appropriate in all the circumstances. The Client must recognise that such advice will be given in good faith and will be based upon a combination of technical knowledge, market conditions and expertise.

6. Management of the Engagement

- 6.1. Each of the Parties will name a contact who will be responsible for managing all issues relating to the performance of the Contract. The Kerburn Rose contact ("the Engagement Partner") will be recorded in the Engagement Letter.

7. Intellectual Property

- 7.1. Except as set out in the Engagement Letter Kerburn Rose will own all the intellectual property rights in all systems, techniques, methodologies, ideas, concepts, information and know-how developed by Kerburn Rose, whether alone or with the Client, during the provision of the Services but nothing herein gives Kerburn Rose any rights in or over any of the core intellectual property of the Client and which comprise its fundamental business.
- 7.2. Kerburn Rose may develop or use for other clients any such systems, techniques, methodologies, ideas, concepts, information or know-how, whether or not reflected in any of the Deliverables which came into its possession during the provision of the Services subject to it not being in breach of its Confidentiality Undertaking set out herein.
- 7.3. Kerburn Rose will own all intellectual property rights in the Deliverables including, without limitation, any copyright. The Client may make copies of the Deliverables for its own internal use but it must not provide the Deliverables, or copies of them, to any third party including its other advisers without first obtaining written consent from Kerburn Rose which will not be unreasonably withheld. Consent is hereby given that the Client may make and distribute copies of any final Information Memorandum, or Private Placement Memorandum referred to in the Engagement Letter.

8. The Deliverables

- 8.1. The Deliverables will be prepared by Kerburn Rose solely for the use of those to whom they are addressed and are to be used only for the purposes for which they were delivered. Kerburn Rose accepts no liability or responsibility to any third party to whom the Deliverables are shown or into whose hands they may come.
- 8.2. Unless expressly recorded in writing to the contrary, the Deliverables shall not include an obligation upon Kerburn Rose to authorise any communication comprising an invitation or inducement to engage in an investment activity as defined by the FSM Act
- 8.3. Acceptance of the Deliverables will be deemed to take place five business days after receipt, or after the Completion Date, whichever is earlier, unless the Client shall have notified Kerburn Rose in writing that they are not acceptable and state why they are not acceptable. In the event that the Client notifies Kerburn Rose that the Deliverables are not acceptable, Kerburn Rose will, subject to its professional responsibilities, use reasonable endeavours to modify them to the Client's satisfaction within a reasonable period of time.
- 8.4. Kerburn Rose shall answer enquiries over the telephone or in meetings, on an informal basis. As these may involve an immediate answer to a complicated problem in respect of which we may not have received full and accurate information, we shall have no liability to you in contract or tort (including negligence) for our answers. You should neither act nor refrain from acting on the basis of such answers unless they are confirmed in writing by us.
- 8.5. Any draft reports or draft letters Kerburn Rose might provide will not constitute its definitive opinion and/or conclusion which will be solely contained in a final written product bearing the signature of a director or partner of Kerburn Rose.
- 8.6. Kerburn Rose shall not be responsible for the implementation of its advice unless otherwise agreed in writing.

9. Regulatory and Legal Requirements

- 9.1. Kerburn Rose provides its services subject to the Applicable Regulations. The Client acknowledges such duties and obligations are to be performed and construed in the light of all such Applicable Regulations and agrees that Kerburn Rose may take all such steps as may be necessary or desirable to comply with such Applicable Regulations.
- 9.2. The Client agrees to abide by all Applicable Regulations including, without limitation, the Companies Act 1985, the Criminal Justice Act 1993, the Financial Services and Markets Act 2000, and the Client will procure that its directors, officers, employees, servants and agents and, in the case of a transaction which is subject to the City Code, its associates and any person with whom it is acting in concert (the expressions "associates" and "acting in concert" having the meanings given in the City Code) abide by all such Applicable Regulations.
- 9.3. The Client undertakes to obtain appropriate advice in respect of all laws and regulations which may be applicable whether in the UK or any other jurisdiction and promptly to communicate that advice to Kerburn Rose in so far as the same is relevant to the carrying out by Kerburn Rose of the Services under this Contract. The Client acknowledges that (save to the extent required by law and any Applicable Regulations) Kerburn Rose shall not incur any liability to the Client, any of its directors or employees or to any holding company of the Client or subsidiary of any such holding company in respect of any breach of the law and/or Applicable Regulations where Kerburn Rose has acted in good faith in the absence of, or in accordance with, any such advice.

10. Financial Services Authority – No protection

- 10.1. As a result of the Client's experience and understanding, in relation to the Services set out in the Engagement Letter Kerburn Rose has categorised the Client as an Intermediate Customer as defined by the Rules of the FSA. As such, the Client will not be entitled to any of the protections provided by the rules of the FSA to individuals and the Client acknowledges this accordingly.

11. Other Consents

- 11.1. The Client will ensure that it has and/or will obtain all authorisations, consents and approvals as are necessary:
- 11.1.1. to enable the Client to use and accept the services of Kerburn Rose on the Terms and Conditions set out herein and such other terms as may be agreed; and
- 11.1.2. to engage in the transactions and carry on the activities in respect of which Kerburn Rose provides its services.
- 11.2. The Client undertakes to comply with the terms of any such authorisations, consents, approvals and authorities and to procure that the same will remain in full force and effect.
- 11.3. Where the Client uses third parties to provide information or support to a project including, but not limited to, where the Client is contracting with other suppliers whose work may affect the ability of Kerburn Rose to provide the Services, the Client will ensure that it has appropriate agreements in place with those third parties. The Client will be responsible for the management of the third parties and the quality of their input and work.

12. Provision of Information

- 12.1. The Client agrees to provide to Kerburn Rose on a timely basis all information and materials which Kerburn Rose reasonably requires in order to provide its Services to the Client and the Client authorises the use of such information and materials by Kerburn Rose in providing such Services. The Client undertakes to ensure that, unless it advises Kerburn Rose otherwise, all information provided to Kerburn Rose will be true, accurate, complete and not misleading in all material respects. Any such advice, to be effective, must be given in writing.
- 12.2. Kerburn Rose will rely on and will not be required to independently verify the accuracy and completeness of the information the Client supplies. The Client is responsible for informing Kerburn Rose of any changes to the information originally presented to it.
- 12.3. The Client undertakes to ensure that the statements contained in any advertisements which Kerburn Rose is asked by the Client to approve for the purposes of the FSA, the FSM Act, the UKLA and/or any document or announcement issued or to be issued in connection with any matter in respect of which Kerburn Rose provides services:
- 12.3.1. are true and not misleading and all expressions of opinion, intention or expectation expressed are made on reasonable grounds, there are no facts known the omission of which would make any of such statements or expressions misleading; and
- 12.3.2. contain all information required by and otherwise comply with all applicable laws and regulations whatsoever in any relevant jurisdiction on the assumption that it is only distributed as contemplated therein with which restrictions Kerburn Rose agrees to comply.

- 12.4. The Client agrees to provide Kerburn Rose with such confirmations and other evidence as Kerburn Rose may require before it approves or issues any advertisement, document or announcement in connection with any matter in respect of which it provides services and the Client accepts that Kerburn Rose may, at its absolute discretion, withhold any such approval or refuse to issue any such advertisement or document. Save as required by law or the rules of the LSE, and/or the UKLA Kerburn Rose agrees that, save as otherwise provided herein, it will not release any announcements without the Client's prior instructions.

13. Provision of Staff and Facilities

- 13.1. To enable Kerburn Rose to provide the Services the Client will ensure that appropriate staff is reasonably available to provide such assistance as Kerburn Rose reasonably requires and that Kerburn Rose will be given reasonable access to senior management, as well as to any members of the Client's staff. The Client will be responsible for ensuring that its staff who are appointed to assist and provide information to Kerburn Rose have the skills and experience appropriate for this Engagement. If any of the Client's staff fail to perform as required to properly fulfil the Engagement it will make suitable additional or alternative staff available.
- 13.2. When it is agreed that Kerburn Rose will undertake some or all of the Services at the Client's premises the Client will provide Kerburn Rose and its staff, with all office and other accommodation and facilities that may reasonably be required to perform the Services including, in particular, secretarial support, access to telephone and fax communications and computer facilities. The Client will obtain all third party consents necessary to permit Kerburn Rose to use any software or any other proprietary information or property of said third party.
- 13.3. The Client will be responsible for ensuring that it has appropriate back-up security and virus-checking procedures in place for any computer facilities which it provides. Kerburn Rose agrees to comply with the Client's reasonable virus-checking procedures relating to such facilities which are notified to it in writing.

14. Conduct of Transactions

- 14.1. The Client agrees that it will not, during the Engagement or for a six month period following termination of the Engagement, make any public comment (except where required to do so by law or the rules of any governmental or regulatory body to which it may be subject) concerning any Services which Kerburn Rose is providing or has provided or the subject matter of such Services, without first consulting with Kerburn Rose and will procure that its directors, officers, employees and advisers will not do so either.
- 14.2. If any document, statement or communication is issued or made without Kerburn Rose's consent which contains a reference to it or to its advice or opinion or where it purports to have been approved by it, Kerburn Rose shall be entitled to publish such further documents, statements or communications as it shall think fit at the cost of the Client.

15. Correspondence and Documents

- 15.1. All documents, files, correspondence and papers either in the possession or control of Kerburn Rose and whether created by Kerburn Rose or not relating to or the subject matter of the Services provided to the Client shall be the sole property of Kerburn Rose and will remain under its power and control save for original contracts, share certificates and other documents of title held to the order of the Client where Kerburn Rose reserves the right to retain a copy on release to the Client.

- 15.2. Kerburn Rose will destroy all documentation relating to the Services seven years after the Completion of Services. Unless and until the Client notifies Kerburn Rose to the contrary it will regard the Client's acceptance of these Terms and Conditions as including the Client's consent for Kerburn Rose to destroy any papers which might belong to the Client at that time other than, original contracts, share certificates and other documents of title held to the order of the Client.
- 15.3. It is not Kerburn Rose's practice to release papers or documents or grant access to any third party to its files, papers, documents or correspondence other than in the context of a due diligence investigation and only then provided it has received in letter form, in its sole opinion a suitable indemnity releasing it from any liability.

16. Transactions in Investments

- 16.1. All transactions in investments which Kerburn Rose undertakes or arranges for the Client will be subject to the rules of FSA and the rules, regulations and customs of the exchange or market and/or any clearing house through which the transactions are settled or executed.
- 16.2. Where the transaction, in connection with which Kerburn Rose provides Services is one between the Client and another company or involves the Client in acquiring securities in another company, the Client undertakes that, during the term of the provision of Services and for a period of 12 months thereafter the Client will not acquire or dispose of any interest in securities issued by such other company or enter into any agreement, arrangement or understanding whatsoever with respect to any such securities without both prior consultation with Kerburn Rose and immediate subsequent disclosure to Kerburn Rose and in accordance with all other applicable disclosure requirements in the UK and any other relevant jurisdiction.
- 16.3. The Client agrees that no such acquisition, disposal, agreement, arrangement or understanding shall be entered into in breach of any applicable requirement of the City Code, the FSM Act, Part V of the Criminal Justice Act 1993, or any other applicable law or regulation. The Client will procure that none of its group companies or directors, officers, employees or advisers or persons acting in concert (as defined in the Code) with it will undertake any act which would be in breach of this clause if done by the Client.

17. Client's Money

- 17.1. Kerburn Rose is not authorised by the FSA to hold Client Money.
- 17.2. To the extent that a Client requires Kerburn Rose to hold its money as part of the provision of the Services then Kerburn Rose will keep all Client Money that comes under its control or custody separate from its own at a bank approved by the FSA. The approved bank may hold such money with other client money in a pooled account. Irrespective of these arrangements the Client acknowledges that it may only rank as a general creditor of Kerburn Rose in the event of its insolvency.
- 17.3. Interest will not be paid on such Client's funds unless separately agreed between the Parties.
- 17.4. The Client authorises Kerburn Rose to draw from such Client's Money the amount of any fees and other payments due to Kerburn Rose from the Client and the amount of any other payments required to be made by the Client in connection with the matters to which the Services provided by Kerburn Rose relate. Kerburn Rose will promptly notify the client of any action taken by it pursuant to this authority.

18. Authorisation

- 18.1. The Client authorises Kerburn Rose to rely on any instructions, notices or requests (whether in writing or not and however communicated to Kerburn Rose) given or purporting to be given by or on behalf of the Client, and which are reasonably believed by Kerburn Rose to be given by persons authorised by the Client to give such instructions, notices or requests.
- 18.2. The appointment by the Client of Kerburn Rose confers on Kerburn Rose all powers, authorities and discretions which are necessary for, or reasonably incidental to, or customary, or reasonably required, for the proper performance of the provision of the Services and its duties hereunder and the Client agrees to ratify and confirm everything which Kerburn Rose shall lawfully and reasonably do in the exercise of such powers, authorities and discretions but nothing in this paragraph 18.2 shall permit Kerburn Rose to bind the Client.

19. Confidentiality and Conflicts of Interest

- 19.1. During the term of the provision of the Services and for 12 months thereafter the Parties undertake one to the other that neither of them will disclose to any third party without the prior written consent of the other party any proprietary or confidential information (including, without limitation, the terms and conditions of the Engagement Letter and amounts payable thereunder), which is received from the other party for the purposes of providing or receiving the Services (“Confidential Information”). The Parties agree that any Confidential Information received from the other party shall be used only for the purposes of providing or receiving the Services. The Confidential Information may be disclosed to either of the Parties respective directors, officers, employees, agents, advisers, bankers and stockbrokers involved in the Services, but each Party will ensure its respective employees, to whom such Confidential Information is disclosed, are aware of the restrictions on disclosure. These restrictions will not apply to any information which:
- (i) is or becomes generally available to the public other than as a result of a breach of an obligation under this clause; or
 - (ii) is acquired from a third party who owes no obligation of confidence to the recipient in respect of the information; or
 - (iii) is or has been independently developed by the recipient.
- 19.2. The Parties acknowledges that the other party may disclose Confidential Information and deliver documentation relating to the Engagement (and expressly authorises any such disclosure and delivery) to:
- (i) its insurers or legal or professional advisors,
 - (ii) the ICAEW, the LSE, the FSA, The Panel on Takeovers and Mergers, the UKLA, or any recognised investment exchange,
 - (iii) a third party to the extent that it is required to do so by law, by any court of competent jurisdiction, or by a governmental or regulatory authority, or where there is a legal right, duty or requirement to disclose provided that (and without breaching any legal or regulatory requirement) and where reasonably practical, not less than 2 business days’ notice in writing is first given to the other party.
- 19.3. Notwithstanding the above Kerburn Rose may disclose any Confidential Information to a third party appointed by Kerburn Rose to carry out internal quality reviews provided such third party is made aware of the confidentiality undertaking and agrees to be bound by it.

- 19.4. Without prejudice to any of the above, Kerburn Rose may, on completion of the Services, cite, refer to or advertise its appointment, the general nature of that appointment and the performance of the Services as an indication of its experience provided that no reference is made to any specific commercial terms without the prior written consent of the Client unless those commercial terms are already in the public domain.
- 19.5. Kerburn Rose will, at the outset of the provision of the Services, advise the Client if to its reasonable knowledge there exists a conflict of interest which may impinge upon the Services. However, as Kerburn Rose provides a wide range of services for a large number of Clients it may provide services to companies and organisations which the Client might regard as giving rise to a conflict of interest. Whilst Kerburn Rose has established procedures to identify such situations it cannot be certain that it will identify all of those which exist or may develop, in part because Kerburn Rose cannot always anticipate what a Client might perceive to be a conflict. Kerburn Rose requests that the Client notify it of any conflicts relating to the Services of which the Client is or becomes aware. Where any such conflicts are identified and Kerburn Rose believes that the Client's interests can be properly safeguarded by the implementation of appropriate procedures, Kerburn Rose will discuss and agree with the Client the arrangements which it will put in place to preserve confidentiality and to ensure that its advice and opinions are wholly objective.
- 19.6. Kerburn Rose has no duty to disclose information received or obtained in the course of carrying on business for other clients.
- 19.7. Kerburn Rose will not be prevented or restricted from providing services for other Clients.

20. Electronic Mail ("e-mail") Communications

- 20.1. During the provision of Services the Parties may wish to send messages and/or documents to each other by e-mail. Like other means of communication, e-mail carries with it the possibility of inadvertent misdirection, or non-delivery of confidential material. Accordingly, unless the Client notifies Kerburn Rose otherwise, Kerburn Rose shall regard the Client's acceptance of these Terms and Conditions as including the Client's consent to use e-mail. All risks connected with sending by e-mail commercially sensitive information relating to the Client's business are borne by the Client and are not the responsibility of Kerburn Rose unless arising from the wilful neglect or default of Kerburn Rose.
- 20.2. Where messages are sent by e-mail the Parties agree that they will adopt the following procedures:
- (i) There will be no presumption that an e-mail has arrived. If a matter is urgent the sender will supplement the e-mail with a telephone call to confirm that appropriate action is being taken.
 - (ii) If sending a confidential e-mail message, the sender will indicate clearly if a response is not wanted in electronic form.
 - (iii) Both parties will carry out procedures to protect the integrity of data, in particular, it is the recipient's responsibility to carry out a virus check on any e-mail (or in any other electronic media) including attachments before launching any documents.

21. Kerburn Rose Liability and limitation thereof

- 21.1. The services are provided by Kerburn Rose to the Client alone. No other person (including any of your directors, officers, employees, agents, investors lenders, or advisers) is the Client. Kerburn Rose's obligations are limited to the Client and to any person to whom the Deliverables are addressed.

- 21.2. Kerburn Rose is not liable to the Client for any loss which the Client suffer or incur in connection with the performance of obligations, or the provision of Services, by Kerburn Rose under or in relation to this Contract or otherwise unless and to the extent that it is finally determined that the Client has suffered or incurred loss because of the negligence or wilful default of Kerburn Rose, or KR Persons, or Kerburn Rose having committed a material breach of an obligation.
- 21.3. The Client agrees with Kerburn Rose that, to the extent permissible by law, in the absence of wilful default or fraud, the liability of Kerburn Rose and any KR Person to the Client (whether arising in contract, tort or otherwise) for all losses, damages, costs and expenses in connection with the provision of Services, and including all consequential loss, costs and expenses, shall in no circumstances exceed UK £2 million. Neither Party shall have any liability to the other in respect of any failure to realise any anticipated or hypothetical profits, savings, or gains or fails to ameliorate any loss or consequential loss.
- 21.4. To the extent permissible by law all warranties, conditions or terms other than those expressly set out in the Contract are excluded from the obligations of Kerburn Rose to the Client including, but not limited to, all implied and statutory conditions.
- 21.5. Under no circumstances will Kerburn Rose be liable for any loss, damage, cost or expense arising in any way to the extent that it is attributable to
- (i) any fraudulent or negligent act or omission, misrepresentation or default on the part of the Client or by its directors, employees or agents; or
 - (ii) any tax liability, civil liability or penalty, whether existing at the Commencement Date or which arises or is uncovered during the course of the Engagement.
- and in so far as Kerburn Rose incurs any costs or expenses as a consequence of such a cause on the Client's part, Kerburn Rose will have the right to recover such costs from the Client.
- 21.6. The longer the delay between an event which could give grounds for a complaint and the date on which the complaint is made, the more difficult it is for matters to be put right to the complainant's satisfaction. Accordingly, any legal proceedings arising from a breach of the Contract may be brought only after notifying the other party of such intention and within 3 years from the date on which the complainant first becomes aware, or ought reasonably to have become aware, of the facts which give rise to the complaint.
- 21.7. If at any time the Client agrees, or has agreed, that any of its other advisers may exclude or limit their liability to the Client, and Kerburn Rose shall have joint or several liability with such adviser, then Kerburn Rose shall not be liable to the Client for more than it would have been liable had such adviser not limited their liability. Accordingly, Kerburn Rose is not liable to the Client for more than the net amount for which it would have been liable after deducting the amount for which any other adviser(s) would have been liable in contribution proceedings if the other adviser(s) had not limited their liability. The Client agrees to take such reasonable other actions as Kerburn Rose may reasonably require to ensure that it is not prejudiced by such exclusion or limitation.
- 21.8. If the Client allege that Kerburn Rose is liable to the Client and Kerburn Rose believes that another person should be liable to the Client also and / or instead, nothing in these Terms and Conditions of Business limits the right of Kerburn Rose to claim that the other person is liable to Client and/or to Kerburn Rose (including on account of a right of contribution) but such right shall be without prejudice to any ultimate determination of the validity of such claim.

22. Indemnity

- 22.1. The Client hereby agrees to indemnify Kerburn Rose and to keep Kerburn Rose indemnified against all losses, charges, expenses, claims, actions, liabilities, demands, or proceedings brought, established or threatened against Kerburn Rose by any person, governmental agency or regulatory body arising out of or in connection with the Services, including but not limited to:-
- 22.1.1. any publication, statement or communication not containing or being alleged not to contain all information required to be stated therein or being alleged to be untrue, inaccurate, incomplete or misleading in any respect or as having been made negligently or otherwise without the required standard of skill and care or reasonableness; or
- 22.1.2. any breach by the Client of any of its obligations under these Terms and Conditions; or
- 22.1.3. any breach or alleged breach of the laws or regulations of any country; or
- 22.1.4. otherwise in connection with the provision by Kerburn Rose of its Services under these Terms and Conditions,
- 22.1.5. and which does not in any such case arise directly or indirectly from the negligence, wilful default or fraud of Kerburn Rose or any KR Person or breach by it of its express or statutorily imposed obligations or under the Contract. This indemnity shall extend to all losses, costs, charges or expenses suffered or incurred in disputing, considering or seeking advice as to any claim, action, liability demand or proceedings suffered or threatened against Kerburn Rose.
- 22.2. If the United Kingdom Inland Revenue brings into charge to tax any sum payable to Kerburn Rose by way of reimbursement under the indemnity contained in these Terms and Conditions of Business, then the amount so payable shall be grossed up by such amount as will ensure that after deduction of the tax so chargeable there shall be left a sum equal to the amount that would otherwise be payable under this indemnity.
- 22.3. Kerburn Rose will, to the extent reasonable and practicable in the circumstances and subject to any requirement imposed by an insurer of Kerburn Rose or of any indemnified party, consult with the Company and keep the Client informed in relation to any action or claim of this kind.

23. Costs and Attorneys' Fees

- 23.1. In the event of any dispute between the parties hereto with respect to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and other costs and expenses incurred in resolving such dispute in addition to such other relief as such party may be entitled to in law or equity.

24. Disclaimers and Exclusions

- 24.1. Any valuation and other written reports produced by Kerburn Rose in connection with the Engagement will contain Kerburn Rose's normal disclaimers or exclusions of liability with any additional disclaimers or exclusions that Kerburn Rose considers necessary or desirable in the circumstances.

25. Complaints Procedure

- 25.1. Kerburn Rose aims to offer all Clients an efficient and effective service. As recommended by the ICAEW and the FSA, Kerburn Rose has a complaints procedure. Should any problems arise or, indeed, the Client has any suggestions on how Kerburn Rose can improve its services then the Client should discuss them with the Engagement Partner. If the Engagement Partner is unable to resolve the matter the Client should contact the partner as advised in the Engagement Letter. The Client also has the right to address any complaint to the ICAEW and the FSA.

26. Sole Appointment

- 26.1. The Client agrees not to appoint any other firm or company to carry out the Services for a period of 6 months from the Commencement Date otherwise than through the wilful neglect, default or fraud of Kerburn Rose unless agreed otherwise in writing, such consent to be not unreasonably withheld.

27. Duration and Termination

- 27.1. The Engagement will commence on the Commencement Date. The Engagement will continue until the delivery and acceptance of the Services and Deliverables specified in the Engagement Letter unless it is terminated earlier in accordance with the terms set out below.
- 27.2. The Client may terminate the Engagement at any time by giving written notice to Kerburn Rose such notice to take effect no earlier than 10 working days after receipt save in the event of negligence, wilful default or material breach by Kerburn Rose in which event such notice may take immediate effect. Termination will not affect any legal rights or obligations which may already have accrued to or been incurred by either Party or affect any representations, confirmations or indemnities given by the Client to Kerburn Rose.
- 27.3. Where the Client terminates the contract, otherwise than through the negligence, wilful default or material breach by Kerburn Rose, the Client will pay Kerburn Rose seven days after the termination date for all Services provided up to the date of termination together with a sum equal to the accrued proportion of any value, success, continuing or contingent fees (including the issue of appropriate options, warrants or securities) as envisaged in the Engagement Letter and for any additional costs reasonably incurred as a result of early termination of the Engagement. Where the Client enters into an agreement with a third party to implement the transaction envisaged in the Engagement Letter, within the later of 24 months from the date of the Engagement Letter or 18 months from the termination date, Kerburn Rose shall be paid the balance of any value, success, continuing or contingent fee (including the issue of appropriate options warrants or securities) in relation to such transaction as set out in the Engagement Letter as if such third party agreement had been entered into during the term of this agreement provided Kerburn Rose can show that it had a reasonably meaningful involvement in the transaction and that the termination was not as a result of the negligence, default or material breach by Kerburn Rose.
- 27.4. The Parties reserve the right at any time to terminate the Engagement forthwith (without such termination creating any liability or contingency obligation by one party to the other) in the event that the other party is in material breach of any of the terms of this agreement
- 27.5. Kerburn Rose reserves the right at any time to terminate the Engagement forthwith (without such termination creating any liability or contingency obligation by Kerburn Rose to the Client) in the event that the Client fails to accept Kerburn Rose's advice on a material matter or concerning any action to be taken in respect of the Services or Kerburn Rose is not satisfied that it can provide the Services without defaulting or otherwise failing to observe all of its responsibilities at law and/or under any regulatory requirement to which Kerburn Rose may from time to time be subject.

28. Fees

- 28.1. The Client agrees to pay Kerburn Rose fees for the provision of the Services.
- 28.2. Kerburn Rose fees for providing the Services to the Client shall be as agreed in writing between Kerburn Rose and the Client from time to time.
- 28.3. The Client agrees that it will pay all costs, charges and expenses incurred by Kerburn Rose in connection with the Services including (without limitation):-
 - 28.3.1. all reasonable out-of-pocket expenses incurred by Kerburn Rose in the provision of the Services under the Contract (including but not limited to travel and hotel expenses);
 - 28.3.2. all stamp duty and stamp duty reserve tax and any related fines, costs, penalties or interest otherwise payable by Kerburn Rose (except on securities transactions for its own account);
 - 28.3.3. all fees and expenses payable to the UKLA or any other exchange or regulatory body;
 - 28.3.4. the expenses of the Client's other professional and other advisers plus the fees and expenses of Kerburn Rose's legal advisers, and receiving bankers and registrars;
 - 28.3.5. printing, postage and advertising expenses.
- 28.4. The Client agrees that it will immediately upon request by Kerburn Rose reimburse to Kerburn Rose the amount of any such expense which it may have paid on behalf of the Client. Kerburn Rose is authorised to deduct from any amounts received or held by it on behalf of the Client, any amount(s) to which it is entitled under these Terms and Conditions.
- 28.5. All fees will be subject to Value Added Tax at the appropriate rate.
- 28.6. Where Kerburn Rose receives amounts by way of reimbursement, the Client agrees to pay to Kerburn Rose in respect of Value Added Tax:
 - 28.6.1. if any reimbursement constitutes part of the consideration for any supply of services to the Client, such amount as equals any input tax payable by Kerburn Rose in respect of the same costs or expenses, for which it is unable to take any credit or make any recovery, together with the amount of any value added tax for which Kerburn Rose is properly liable in respect of that supply; and
 - 28.6.2. if any costs or expenses constitute disbursements incurred by Kerburn Rose as agent on behalf of the Client, any value added tax thereon.
- 28.7. Invoices will be paid within 14 days from the date of the invoice.
- 28.8. Where any fees which are contingent upon an event, such as a success fee or fees which relate to any earn-out or additional or deferred consideration, and those fees are not paid on the due date then all such fees which may become payable in the future become payable immediately.

29. Staff

- 29.1. Neither Party will during the period of the Contract or within 6 months of its termination or expiry solicit directly or indirectly any employees of the other who have been involved in providing or receiving Services or otherwise connected with the Engagement, except those employees who have been involved on a purely administrative or secretarial basis. This will not restrict either Party from employing staff who apply unsolicited in response to a general advertising or other general recruitment campaign.

30. Sub-Contracting

- 30.1. Kerburn Rose reserves the right to employ agents and sub-contractors to assist it when providing any part of the Services. Any reference to Kerburn Rose staff in these Terms and Conditions of Business includes agents and sub-contractor staff. Kerburn Rose will remain liable to the Client in respect of any Services provided by its agents and sub-contractors.

31. Governing Law

- 31.1. These Terms and Conditions are governed by English law and the Parties hereby submits to the exclusive jurisdiction of the Courts of England in respect of any claim dispute or difference arising out of or in connection with the Contract.

32. Out of pocket expenses and disbursements

- 32.1. Travel and Hotel accommodation will be at the same standard that the Client provides for its directors and senior employees except that
- 32.1.1. hotel accommodation shall not be less than 4 star or, in the UK, a quality branded Limited Services Hotel.
- 32.1.2. air travel will always be on a reputable airline and for journeys of less than three hours will be at flexible economy rates between three and five hours traveller plus rates and over five hours at business class rates.
- 32.2. Mileage rates will not exceed the approved AA mileage rates for a car of under 3 years old, of 2,500cc and doing 10,000 miles a year

33. Interest on Late Payment

- 33.1. Should any amount on any invoice be outstanding for more than 31 days after its due date then Kerburn Rose, in its absolute discretion interest, may charge interest on the amount outstanding at the rate of 5% above HSBC base lending rate from time to time calculated on a daily basis and compounded quarterly with interest commencing on the due date for payment..

34. Further Obligations

- 34.1. Time is of the essence in respect of the Client's obligations to Kerburn Rose under this contract. The Client agrees to do and execute, or arrange for the doing and executing of, each necessary act, document and thing reasonably within its power to implement this contract.

35. Amendments

- 35.1. The Parties may agree amendments to the Contract from time to time. Such amendment will only be valid if expressly recorded in writing and signed by both Parties.

36. Notices

- 36.1. Any notice to be given under these Terms and Conditions of Business may be delivered in person or by first class letter post to the address last notified by the one party to the other. Facsimile Transmission and e-mail are not acceptable means of giving notice.

37. Partnership and Joint Venture

- 37.1. Nothing in this Engagement, and no action taken by either the Client or Kerburn Rose, shall constitute, or be deemed to constitute, a partnership, joint venture, association or other co-operative activity between the Client and Kerburn Rose.

38. Force Majeure

- 38.1. The Parties shall not be liable one to the other nor have any responsibility of any kind for any loss or damage incurred or suffered by either party or their respective officers, employees or agents as a result of any failure, interruption or delay in the performance of the Services or either Parties obligations under the Contract resulting from acts, events or circumstances not reasonably in either Party's control.

39. Validity of Contract Provisions

- 39.1. If any provision of the Contract is held to be invalid in whole or in part, such provision shall be deemed not to form part of the Contract. In any event the enforceability of the remainder of the Contract will not be affected.

40. Entire Agreement

- 40.1. The Contract forms the entire agreement between the Parties relating to the Services. It replaces and supersedes any previous proposals, correspondence, understandings or other communications whether written or oral (except that Kerburn Rose does not exclude liability for any fraudulent pre-contractual misrepresentations made by it on which the Client can be shown to have relied). The headings and titles in these Terms and Conditions are included to make it easier to read but do not form part of these Terms and Conditions of Business.

41. Defined Terms

- 41.1. All terms referred to or defined in the Engagement Letter shall have the same meaning as in these Terms and Conditions of Business and vice versa.

42. Survival

- 42.1. The provisions of these Terms and Conditions of Business which expressly or by implication are intended to survive its termination or expiry will survive and continue to bind both Parties.

Kerburn Rose LLP
Kerburn Rose Capital Limited