

DATED

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

OF

DEBT RECOVERY PLUS LIMITED

The Client's attention is particularly drawn to the provisions of clause 8.

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Charges: the charges payable by the Client for the supply of the Services in accordance with clause 5.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 11.7.

Contract: the contract between the Company and the Client for the supply of Services in accordance with these Conditions.

Client: the person or firm who uses the Services of the Company.

Deliverables: the deliverables set out in the Order produced by the Company for the Client.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Order: the Client's order for Services as set out in the Company's engagement letter or the Client's written acceptance of a quotation by the Company, as the case may be.

Services: the services, including the Deliverables, supplied by the Company to the Client as set out in the Specification.

Specification: the description or specification of the Services provided in writing by the Company to the Client.

Company: Debt Recovery Plus Limited registered in England and Wales with company number 6774150.

Company Materials: has the meaning set out in clause 4.1(f).

1.2 In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes.

2. **BASIS OF CONTRACT**

- 2.1 The Order constitutes an offer by the Client to use the Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Company issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by the Company shall not constitute an offer, and is only valid for a period of 10 Business Days from its date of issue.

3. **SUPPLY OF SERVICES**

- 3.1 The Company shall supply the Services to the Client in accordance with the Specification in all material respects. The Company shall use all best endeavours to meet any performance dates specified in the Order or Specification, but any such dates shall be estimates only. The Company will take all reasonable care to ensure that the services are performed in a timely manner.
- 3.2 The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law, or which do not materially affect the

nature or quality of the Services, and the Company shall notify the Client in any such event.

- 3.3 All accounts designated as PCN accounts by the Company shall be treated as if issued pursuant to the terms of Schedule 4 of the Protection of Freedoms Act 2012, unless otherwise advised by the Client by prior written notice.

4. CLIENT'S OBLIGATIONS

4.1 The Client shall:

- (a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
- (b) co-operate fully with the Company in all matters relating to the Services;
- (c) forthwith provide the Company, its employees, agents, consultants and subcontractors, with access to the Client's personnel premises, office accommodation and other facilities as reasonably required by the Company;
- (d) provide the Company with such information and materials as the Company may require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (e) answer all queries of the Company (in writing or otherwise) within 7 days of receipt (by email or otherwise);
- (f) inform the Company forthwith in respect of all direct payments collected directly from debtors relating to a Contract (**Relevant Event**) and to keep all charges regarding such monies (**Commission**) in a separate account strictly on trust for the Company. The Company shall without limit be entitled to deduct and set off any Commission or disbursements/costs incurred by the Company, from any funds held on behalf of the Client.
- (g) keep strictly confidential all correspondence of the Company (including without limitation, any demands in writing).

4.2 If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):

- (a) the Company shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays the Company's performance of any of its obligations;
- (b) the Company shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 4.2.

- 4.3 Forthwith after becoming aware that a Relevant Event has occurred or will occur the Client shall give written notice to the Company. The Company shall be entitled to make all enquiries to verify the details contained in the written certificate and any ancillary agreement(s).
- 4.4 In the event of there being any dispute between the Company and the Client as to whether a Relevant Event has occurred and/or as to the amount of the Commission arising then the matter shall be referred for determination to the accountants of the Company. Any such accountant so appointed shall act as an expert and not as an arbitrator and the provisions of the Arbitration Act 1996 shall not apply. The costs of such accountant shall be borne by the Company and the Client in such proportions as such accountant shall determine and (in the absence of manifest error) his determination of the matter(s) in dispute shall be final and binding. The Company and the Client (as appropriate) agree to sign whatever letter of engagement (including whatever reasonable limitation of liability) as such accountant may require.
- 4.5 Any Commission due from the Client to the Company shall be paid to the Company within 2 days of the written demand of the Company in cash in cleared funds for same day value by way of bank transfer. The Commission will be calculated from any monetary sum or sums received or receivable by the Client or its successors, substitutes and assigns as aforesaid whether in one payment or a series of payments and whether pursuant to one transaction or a series of transactions, and will also take account of any sums (whether in cash or not) or benefits of any kind which can be regarded as consideration for all or any part of, or any interest in regarding the Relevant Event. For the avoidance of doubt the provisions of clause 4.1(f) above shall apply.
- 4.6 The Client undertakes to the Company:
- (a) to preserve and retain the Commission and/or all monies pursuant to a Contract to keep available for the Company's benefit;
 - (b) ensure the due and punctual payment of any sums payable to the Company in respect of a Contract; and
 - (c) not either alone, jointly or with any third party to take or procure any action steps or actions to avoid or defeat the due operation of this clause 4.
- 4.7 All transactions entered into between the Company and the Client shall be conducted in good faith and on the basis set out or referred to in these Conditions, on an arm's length basis.

- 4.8 The Client shall at all times act in good faith towards the Company and will not seek to increase its profit or reduce its loss at the expense of the Company. In addition to its obligations pursuant to these Conditions, the Client will do all things necessary or desirable to give effect to the spirit and intention of these Conditions.
- 4.9 Although we can take immediate action against your debtor, to comply with Money Laundering Regulations and to prevent fraud, we must receive certain details before we can send you any recovered monies.

For Limited companies we require the following details:

Full company name

Registered office address and Trading address is different

Company Registration Number

Please note: If you provide a trading address or require us to correspond with you at an address different from your registered office, we will require a copy of a utility bill clearly showing the company name and address.

For non-Limited companies we require the following details:

A business letterhead or piece of stationery showing trading name and address.

A copy of a utility bill addressed to the business at its trading address

A copy of a utility bill sent to your home address, or in the case of a partnership, copies of bills sent to at least 2 partners.

5. CHARGES AND PAYMENT

- 5.1 The Charges for the Services shall be calculated in accordance with the Company's standard fee rates, as set out in the Specification/Order.
- 5.2 The Company reserves the right to increase its standard fee rates. The Company will give the Client written notice of any such increase 7 days before the proposed date of the increase. If such increase is not acceptable to the Client, it shall notify the Company in writing within 7 days of the date of the Company's notice and the Company shall have the right without limiting its other rights or remedies to terminate the Contract by giving 7 days written notice to the Client.
- 5.3 The Company shall invoice the Client on a periodic basis.
- 5.4 The Client shall pay each invoice submitted by the Company:

- (a) within 28 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Company, and

time for payment shall be of the essence of the Contract.

- 5.5 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Company to the Client, the Client shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.6 Without limiting any other right or remedy of the Company, if the Client fails to make any payment due under the Contract by the due date for payment (**Due Date**), the Company shall have the right to charge interest on the overdue amount at the rate of 6 per cent per annum above the then current Barclays Bank Plc's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 5.7 The Client shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Client shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by the Company to the Client.
- 5.8 The client agrees to indemnify The Company against any amount passed to The Client by The Company following a successful collection by The Company on behalf of The Client which is subsequently clawed back or reclaimed from The Company's bank for any reason e.g. bounced cheques and debit/credit card chargeback's etc. In the event The Company suffers a loss in this way any amount paid to The Client by The Company becomes immediately due to be repaid by The Client.
- 5.9 The Company shall (at its discretion) charge a flat fee of £5 for the premature cancellation of any instruction or case from a Client.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Company.

7. **CONFIDENTIALITY**

A party (**Receiving Party**) shall keep in strict confidence all documents, technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 7 shall survive termination of the Contract.

8. **LIMITATION OF LIABILITY: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

8.1 Nothing in these Conditions shall limit or exclude the Company's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation.

8.2 Subject to clause 8.1:

- (a) the Company shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Company's total liability to the Client in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed an amount equal to all Charges for a 3 month period following the date of this Contract.

8.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

8.4 This clause 8 shall survive termination of the Contract.

9. TERMINATION

9.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 2 days of that party being notified in writing of the breach;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (k) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

- 9.2 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Contract on the due date for payment.
- 9.3 Without limiting its other rights or remedies, each party shall have the right to terminate the Contract by giving the other party 60 days written notice.
- 9.4 Without limiting its other rights or remedies, the Company shall have the right to suspend provision of the Services under the Contract or any other contract between the Client and the Company if the Client becomes subject to any of the events listed in clause 9.1(b)) to clause 9.1(k), or the Company reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Contract on the due date for payment.

10. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Client shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Client immediately on receipt;
- (b) the Client shall return any Deliverables which have not been fully paid for. If the Client fails to do so, then the Company may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

11. GENERAL

11.1 Force majeure:

- (a) For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of either party including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of either party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or

direction, accident, breakdown of plant or machinery, fire, flood, storm or default of either party's subcontractors.

- (b) Neither party shall be liable to the other party as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents either party from providing any of the Services for more than 2 weeks, that party shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the other party.

11.2 Assignment and subcontracting:

The Client shall not, without the prior written consent of the Company, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

11.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- (c) This clause 11.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

11.4 Waiver:

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

11.5 Severance:

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

11.6 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

11.7 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Company.

11.8 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.