

Smartr365 Finance Ltd Terms and Conditions

1. INTRODUCTION

- 1.1. Welcome to Smartr365 which is provided to you by Smartr365 Finance Limited (“Smartr365”, “us”, “we” or “our”). Our registered office is at 1 Queen Caroline Street, Hammersmith, London, United Kingdom, W6 9YN. Our registered company registration number is 10487227.
- 1.2. Please read these Terms of Use (“Terms”) carefully. They set out the basis on which you are allowed to access and use the Smartr365 platform and its APIs (the “Platform”). These Terms apply to all users who are given access to the Platform, including employees and contractors of brokers or other service providers, clients of brokers or other service providers.
- 1.3. In addition to these Terms, your use of the Platform may also be subject to other terms and conditions and policies which are referred to below.

BY ACCESSING THE PLATFORM YOU AGREE TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS, PLEASE CEASE USING THE PLATFORM.

2. ACCEPTANCE OF OUR TERMS

- 2.1. Please read these Terms carefully. In order to use the Platform, you must agree to be bound by these Terms. By using the Platform, you agree to accept and comply with these Terms. If you do not agree to accept these Terms, you must not use the Platform.
- 2.2. We recommend you review these Terms each time that you use the Platform and print a copy of them for your future reference.

3. SMARTR365'S RIGHT TO AMEND THESE TERMS

- 3.1. Smartr365 reserves the right to change these Terms at any time, including in relation to the way in which the Platform works or may be accessed, our arrangements with third parties, and to achieve compliance with laws and/or regulations.
- 3.2. If Smartr365 changes the Terms, we will take steps to make clear the revised date of the new Terms. We may also communicate changes to you or your broker/service provider/employer (as applicable) by email. You are responsible for regularly reviewing these Terms so that you are aware of any changes. Your continued use of the Platform after any such changes constitutes your acceptance of the new Terms. If you do not agree to (or cannot comply with) the revised Terms, please do not use the Platform.

4. USING THE PLATFORM

- 4.1. We reserve the right to suspend the Platform. We shall try to provide reasonable notice of our intention to suspend the Platform but may not always be able to do so. You are responsible for making all arrangements necessary to access our Platform. You are also responsible for ensuring that all authorised persons accessing our Platform through your internet connection are aware of these Terms.

5. AVAILABILITY OF THE SERVICE

- 5.1. We strive hard to make available a Platform that is helpful, easy to use and secure. However, you acknowledge that we cannot guarantee that the Platform will:
 - (a) always stay the same or perform entirely as expected;
 - (b) perform as be compatible with the any hardware, software or data format that you may use;

- (c) be available all the time (we might need to suspend the Platform for technical or commercial reasons);
 - (d) be entirely accurate, complete or up-to-date (as, for example, we rely on various third parties);or
 - (e) be entirely error-free or free of viruses, electronic bugs, Trojan horses or other harmful components (“Viruses”) and you agree to take your own precautions accordingly, although we take reasonable steps to minimise the risk of Viruses being introduced to the Platform.
- 5.2. You also acknowledge that, without prejudice to our legal obligations, while we take reasonable steps to ensure that data shared or submitted via the Platform is secure we cannot guarantee the security of our Platform.
- 5.3. You must not:
- (a) interfere with, or disrupt, the Platform or any servers or networks connected to the Platform, including by transmitting any worms, viruses, malware, spyware or any other code of a destructive, malicious or disruptive nature. You may not inject content or code or otherwise alter or interfere with the way any page of the Platform is rendered or displayed in a user’s browser or device;
 - (b) access the Platform via a means not authorised in writing in advance by Smartr365, including but not limited to, automated devices, scripts, bots, spiders, crawlers or scrapers (except for standard search engine technologies);
 - (c) attempt to restrict another user of the Platform from using or enjoying the Platform and you must not encourage or facilitate the breach of these Terms by others;
 - (d) use the Platform for any illegal or unauthorised purpose; or
 - (e) change or alter the Platform or change, modify or alter another website so as to inaccurately imply an association with the Platform or with Smartr365.

6. YOUR PRIVACY

- 6.1. Our Privacy Policy (available here) explains how we process any personal data that is shared with us via the Platform.
- 6.2. Please also refer to your broker’s/service provider’s/employer’s privacy policy to understand how the data that you share with them is processed.

7. REGISTRATION, USER ACCOUNT, PASSWORD AND SECURITY

- 7.1. Registration and use of the Platform – By registering and using the Platform, you represent that:
- (a) you are at least 18 years old; and
 - (b) you have provided accurate and truthful information during the registration process.
- 7.2. Password Security – In order to use parts of the Platform, you will be required to open an account and you will be required to complete the registration process by providing certain information and registering a username and password for your use of the Platform.
- 7.3. You are responsible for maintaining the confidentiality of the username and password. We will be entitled to assume that any person logging into the Platform or using the Platform using your username and password is either you or someone doing so with your permission. You are responsible for any use of the Platform under your username and password, including all financial charges and liability. We recommend that you change your password from time to time to assist with security.

- 7.4. Unauthorised Access – If you believe someone has accessed the Platform using your username and password without your authorisation, it is your responsibility to set up a new password. You must immediately notify us of any unauthorised use of your password or username or any other breach of security (including where you may have disclosed or lost your username and/or password).

8. CONTENT AVAILABLE THROUGH THE SERVICE

- 8.1. Access – Your access to any information, data, images, photographs, videos and other content displayed on the Platform (“Content”) is permitted in accordance with, and subject to your compliance with, these Terms.
- 8.2. Restriction on use – You must not:
- (a) use, or cause others to use, any automated system or software to extract Content from the Platform except in cases where you or any applicable third party has entered into a written agreement with us that expressly permits such activity; and
 - (b) use the Content for any illegal or unauthorised purpose.

9. INTELLECTUAL PROPERTY IN OUR PLATFORM AND THE CONTENT

- 9.1. As between us and you, we own and shall continue to own all intellectual property rights in the Platform and in all Content.
- 9.2. The design of the Platform and all software contained within the Platform and the Content are protected by copyright, trade marks and other intellectual property rights and laws. Neither the design of the Platform nor the Content may be copied, made available, stored, sold or distributed without the prior written consent of Smartr365.

10. TERMINATION

- 10.1. We have the right to suspend or terminate your access to the Platform (or any part of it) at any time, without notice, for any reason, including for actual or suspected breach of these Terms. We may also at any time, at our sole discretion, discontinue the Platform or any part thereof without prior notice and you agree that we shall not be liable to you or any third party for any termination of your access to the Platform.

11. WARRANTIES AND LIMITATION ON LIABILITY

PLEASE READ THIS SECTION CAREFULLY AS IT SETS OUT IMPORTANT INFORMATION CONCERNING OUR LIABILITY TO YOU AND YOUR LIABILITY TO SMARTR365:

Warranties

- 11.1. Smartr365 agrees to make available the Platform with reasonable skill and care. Other than the express warranty in this clause, the Platform is provided on an “AS IS” and “AS AVAILABLE” basis without any representation or endorsement made and without further warranty of any kind whether express or implied, including but not limited to the implied warranties of satisfactory quality, fitness for a particular purpose, non-infringement, compatibility, security and accuracy. All other terms and conditions relating to the Platform (whether by implied by state, custom, course of dealing or otherwise) are hereby excluded to the fullest extent permitted by law.

Our liability to you

- 11.2. Smartr365 will not be liable for any:
- (a) incorrect or incomplete information provided to us by third parties;
 - (b) loss of anticipated saving;

- (c) loss of profit or revenue;
- (d) damage to goodwill; or
- (e) any indirect, exemplary or special loss.

- 11.3. In the absence of any breach of contract by us, the use by you of the Platform is entirely at your risk. We do not guarantee the suitability of the Platform for you – you must check that it is appropriate for your needs, especially before your personal information is shared via the Platform.
- 11.4. Nothing in these Terms shall affect your statutory rights to which you may be entitled, if using the Platform in your capacity as a consumer.
- 11.5. Our maximum aggregate liability to you in connection with your use or attempted use of the Platform, however arising, whether in contract, tort (including negligence) or otherwise will be £250.
- 11.6. Nothing in these Terms shall have the effect of excluding or limiting Smartr365's liability for fraud or for death or personal injury caused by our negligence.

12. LINKS TO THIRD PARTY WEBSITES AND PLATFORMS

- 12.1. The Platform may include links to third party websites and platforms that are controlled and maintained by others. Any link to other websites or platforms is not an endorsement of such websites and you acknowledge and agree that Smartr365 is not responsible for the content or availability of any such websites or platforms. We recommend you review those websites and platforms' terms and conditions and privacy policies to ensure you are happy to use them.

13. GOVERNING LAW

- 13.1. These Terms and the use of the Platform generally 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) will be governed by English law. Any dispute or claim arising out of or in connection with such contracts or their formation (including non-contractual disputes or claims) shall be subject to the non-exclusive jurisdiction of the courts of England.

14. NOTICE

- 14.1. All notices given by you to us must be given to Smartr365 at 1 Queen Caroline Street, London W6 9YN or via e-mail at info@smartr365.com.
- 14.2. We will give notice to you via the Platform or using the contact information you provided to us as part of your registration.
- 14.3. Notice will be deemed received and properly served immediately when posted to the Platform, 24 hours after an e-mail is sent, or three days after the date of posting any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that such e-mail was sent to, and received by, the e-mail address provided by the addressee.

15. QUESTIONS, SUGGESTIONS OR COMPLAINTS?

- 15.1. If you have any questions, suggestions or complaints regarding the Platform, or these Terms, please contact us by sending an e-mail to info@smartr365.com.

16. REFERRAL SCHEME TERMS AND CONDITIONS

- 16.1. What is a Referral Scheme?

16.1.1. A referral scheme is designed to encourage clients to share our business with their friends and business colleagues. It's a way to grow by leveraging our business's network of customers and partners. In return for this, clients are rewarded by an incentive which helps encourage customers to share, although this is not always the case.

16.1.2. A referral scheme is beneficial in that it takes your already established customers and uses them to market your business.

16.2. Smartr365's Referral Scheme

16.2.1. Smartr365 has introduced a referral scheme, "**Refer and Earn**" which is available to any existing client of Smartr365 (Referrer). The referral scheme reward will be a voucher at the value determined by Smartr365, for each verified Qualifying Referral generated by a Referrer.

16.2.2. The Referrer will not be eligible to receive the referral credit under this scheme in the event that the referred person is already on the Smartr365 database at the date of referral or if Smartr365 have already received their details but have not yet entered them on the database.

16.3. What is a Qualifying Referral?

16.3.1. Referrals from existing clients should be passed on to your sales contact at Smartr365.

16.3.2. A Referrer must be:

- (a) an existing client of Smartr365
- (b) at least 18 years old.

16.3.3. A Qualifying Referral is:

- (a) a new client, introduced by a referrer directly,
- (b) where the new client has signed an agreement with Smartr365,
- (c) where the new client has onboarded, and is being successfully billed by Smartr365

16.3.4. In the event the Referee is already a client with Smartr365 this will not be treated as a Qualifying Referral.

16.4. Payments

16.4.1. The current voucher value is **£150**.

16.4.2. Upon the new client being successfully onboarded and billed, the voucher value will be applied against the next invoice as a credit to the account of the Referrer for the successful referral of a new client (Referee).

16.4.3. The Referrer will be able to check that the voucher has been applied as a credit on their next invoice.

16.5. Smartr365 Refer and Earn scheme Terms and Conditions

16.5.1. The Smartr365 Refer and Earn scheme is open and available to all existing Client's.

16.5.2. By participating in the Refer and Earn scheme, a Referrer represents that they have the Referees prior consent to provide their contact information to Smartr365. This is the responsibility of the Referrer and is subject to the Data Protection Act 2018. The Referrer

will indemnify Smartr365 for any loss or claim arising out of the Referrer's failure to procure such consent.

- 16.5.3. It is the Referrer's responsibility to contact their Smartr365 Sales / CS contact in order to claim their referral reward.
- 16.5.4. Referral rewards have no monetary value and may not be redeemed for cash. Referral rewards are not transferable and may not be auctioned, traded, bartered or sold. Upon termination of the referral scheme or any portion thereof for any reason, any unredeemed rewards that have not yet been delivered to Referrer are forfeited.
- 16.5.5. The Referee can only be referred to Smartr365 once. In the event that a Referee is referred to Smartr365 more than once, only the first Referrer will be eligible for a referral reward under this scheme.
- 16.5.6. Staff members of Smartr365 including permanent, contract and temporary staff are not eligible to participate in the scheme.
- 16.5.7. The Referee agrees that they will not be held liable for any loss or claim arising out of the exercise of any of the vouchers in this scheme, and that the Referee exercises such vouchers or experiences wholly at their own risk.
- 16.5.8. Smartr365 at its discretion have the right to alter the referral reward from time to time including right to end the scheme after giving fair notice.
- 16.5.9. Referral rewards are subject to verification. Smartr365 may delay a reward for the purposes of investigation. Smartr365 may also refuse to verify and process any transaction Smartr365 deems, in its sole discretion, to be fraudulent, suspicious, in violation of these Terms and Conditions, or believes will impose potential liability on Smartr365, its subsidiaries, affiliates or any of their respective officers, directors, employees, representatives and agents.
- 16.5.10. All of Smartr365's decisions are final and binding.
- 16.5.11. Smartr365 is responsible for any taxes, as required by law, arising from the provision of the referral reward.
- 16.5.12. No part of the scheme is directed to persons under the age of 18. If you are under 18 years of age, you may not use, access or participate in the scheme at any time or in any manner.
- 16.5.13. Referrers are bound by these Terms and Conditions by participating in this scheme. By participating in this scheme, Referrers agree to use the scheme in the manner specified in these Terms and Conditions.
- 16.5.14. If you do not agree to these Terms and Conditions in their entirety, you are not authorised to participate in the scheme in any other manner. Referrers may not participate in the scheme, where doing so would be prohibited by any applicable law or regulation.
- 16.5.15. Smartr365 reserve the right to modify or amend at any time these Terms and Conditions and/or the methods through which rewards are earned. We reserve the right to disqualify any Referrers from participation in this scheme at any time at our sole discretion, including without limitation if he/she does not comply with any of these Terms and Conditions or otherwise fails to comply with any applicable laws (including, without limitation, through any failure to include any disclosures as required by Smartr365).
- 16.5.16. The personal information may also be used by Smartr365 to contact Referrers with regards to their participation in the referral scheme and to send to Referrers additional communications from Smartr365.

SCHEDULE 1 – LEGAL TERMS

1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement the following words and expressions shall have the meanings given to them in the Commercial Terms. In addition:

“Additional Charges” means the additional charges payable by the Adviser to Smartr365 in respect of the Adviser’s use of the Smartr365 Platform (such as for use of specific features within the Smartr365 Platform), which shall be calculated in accordance with the rates set out in the Commercial Terms or notified by Smartr365 to Adviser;

“Adviser and Registered User Data” means the data of the Adviser and the Registered Users that is transmitted through or otherwise processed on or via the Smartr365 Platform;

“Adviser Material” means all material which is provided by or on behalf of the Adviser to Smartr365 for use in the performance of the Services, which shall include, without limitation, the Adviser’s logo and all documentation provided by the Adviser to Smartr365 to enable Smartr365 to provide the Services;

“Applicable Laws” means all applicable laws and regulations in force from time to time;

“Business Day” means any day that is not a Saturday, Sunday or a public holiday in the United Kingdom;

“Client” means an individual or organisation that has a Client Agreement with the Adviser;

“Client Agreement” means an agreement between the Adviser and the Client for the provision of mortgage and financial advice services by the Adviser;

“Configuration Services” means the configuration services to be provided by Smartr365 to the Adviser, as set out in the Commercial Terms;

“Configuration Charge” means the charges payable in respect of the Configuration Services, as set out the Commercial Terms;

“Completion Date” means that date set out in the Commercial Terms when Configuration Services will be completed, and the Adviser has been provided login details to the platform;

“Data Protection Laws” means as applicable and binding on the Adviser and/or Smartr365:

(a) in the United Kingdom:

- i. the Data Protection Act 2018; and/or
- ii. the GDPR, and/or any corresponding or equivalent national laws or regulations;

(b) in member states of the European Union: the GDPR and all relevant member state laws or regulations giving effect to or corresponding with any of them;

(c) any Applicable Laws replacing, amending, extending, re-enacting or consolidating any of the above Data Protection Laws from time to time;

“Effective Date” means that date set out in the Commercial Terms;

“External Platform Service Providers” means those third party service providers used by Smartr365 as part of the functionality or operation of the Smartr365 Platform, including Azure, 27Tec, Mortgage Brain Anywhere, Zoopla, Hometrack, Digidentity, MogoPlus (as may be replaced or added by Smarts from time to time), excluding for the avoidance of doubt, Third Party Service Providers;

“**FCA**” means the Financial Conduct Authority;

“**Force Majeure**” means acts of God, war, hostilities, riot, fire, explosion, accident, failure of third party IT systems, failure of internet connection, flood, sabotage, lack of adequate power, raw materials or labour, strike, or industrial action or indisposition of key Smartr365 employees, or any other act or omission beyond the reasonable control of the performing party;

“**GDPR**” means the General Data Protection Regulation;

“**Initial Term**” means the initial term of this Agreement set out in the Commercial Terms;

“**Intellectual Property Rights**” means all intellectual property rights, including patents, utility models, trade and service marks, trade names, domain names, right in designs, copyrights, moral rights, topography rights, rights in databases, trade secrets and know-how, in all cases whether or not registered or registrable and including registrations and applications for registration of any of these and rights to apply for the same, and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world;

“**Normal Business Hours**” means 9.00am to 5.30pm UK time on Business Days;

“**Part IV Permission**” means permission granted by the FCA to carry on Regulated Activity;

“**Personal Data**” means all information relating to and/or identifying individuals as defined by the Data Protection Laws, which is processed using the Smartr365 Platform;

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

“**Platform Fee**” means the monthly fee payable per Registered User to Smartr365 for Use of the Smartr365 Platform from and including the Initial Term, as set out in the Commercial Terms or agreed between the parties in writing;

“**Protected Data**” means personal data received by Smartr365 from or on behalf of the Adviser in connection with the performance of Smartr365’s obligations under this Agreement;

“**Registered User**” means an individual who is authorised by the Adviser to provide mortgage advice on its behalf;

“**Regulated Activity**” means any activity regulated by the FCA in accordance with the Financial Services and Markets Act 2000 and the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 as amended, extended, consolidated, substituted, re-issued or re-enacted from time to time;

“**Services**” means the Configuration Services, the provision of the Smartr365 Platform and such other services to be provided by Smartr365 to the Adviser from time to time as may be agreed by the parties in writing;

“**Smartr365 Charges**” means the Platform Fee, the Additional Charges, the Configuration Charge, and such other charges payable to Smartr365 as set out in the Commercial Terms or otherwise agreed by the parties in writing;

“**Smartr365 Terms of Use**” means the standard terms conditions of use of the Smartr365 Platform as published on the Smartr365 Platform website, or otherwise made available by Smartr365, from time to time;

“**Smartr365 Platform**” means the platform available via the website located at www.smartr365.com or such other URL as may be notified to the Adviser by Smartr365 from

time to time, and all software and technology created by Smartr365 through the provision of the Configuration Services;

“**Sub-processor**” means another data processor engaged by Smartr365 for carrying out processing activities in respect of the Protected Data on behalf of the Adviser;

“**Term**” means the period described in clause 10.1 of these Legal Terms;

“**Third Party Service Providers**” has the meaning given to it in clause 3.1 of these Legal Terms;

“**Trial Period**” means the free trial period of this Agreement set out in the Commercial Terms;

“**Use**” means use for the Adviser’s own internal business purposes and for the purpose of administering and arranging mortgages, via the Smartr365 Platform, with Adviser’s clients;

“**Year**” means starting on the Effective Date, each successive (twelve) 12 month period during the Term.

- 1.2. The headings are included for convenience only and shall not affect the interpretation or construction of this Agreement. Words expressed in the singular shall include the plural and vice versa. The word "including" shall be construed without limitation unless the context otherwise so requires. All references in this Agreement to Clauses, Schedules and Appendices are to the clauses, schedules and appendices to this Agreement and, in particular, reference to clauses are references to clauses of these Legal Terms unless the context implies otherwise.
- 1.3. In the case of conflict between these Legal Terms (Schedule 1), Data Processing Terms (Schedule 2) and the Commercial Terms, they shall prevail in that order.

2. PROVISION OF THE SERVICES

- 2.1. Smartr365 agrees to provide the Services to the Adviser, and the Adviser agrees to purchase the Services from Smartr365, in accordance with the terms and conditions of this Agreement.
- 2.2. Smartr365:
 - 2.2.1. agrees to perform the Services with reasonable care and skill; and
 - 2.2.2. warrants to the Adviser the Services will materially conform with all descriptions and specifications provided to the Adviser by Smartr365.
- 2.3. Smartr365 and the Adviser may from time to time agree to additional Services by setting out those Services in writing (including associated charges), which shall be subject to the terms and conditions set out in this Agreement.
- 2.4. The Smartr365 Platform is a platform to enable the Adviser to better service its Clients. Smartr365 is not authorised and regulated by the Financial Conduct Authority (FCA) for the conduct of any regulated activity, including regulated activities connected with mortgages. Accordingly, Smartr365 does not provide mortgage advice including on the Smartr365 Platform. This includes advice on the merits, suitability or otherwise of any transactions or products included on the Smartr365 platform service. If a Client were to ask Smartr365 any questions related to the suitability or otherwise of a mortgage, Smartr365 would inform the Client that it was unable to assist and would refer them to the Adviser.
- 2.5. Smartr365 shall be entitled to employ any person, company or firm as its agent or sub-contractor to perform or deal with any of its rights, obligations and duties under this Agreement.

3. THIRD PARTY SERVICES

- 3.1. Smartr365 may offer Advisers the option to offer or purchase additional products and services that are supplied by third parties (each such third party being a “**Third Party Service Provider**”), which might include conveyancing, insurance and/or credit referencing products or services. Certain Third Party Service Providers are set out in the Commercial Terms.
- 3.2. Smartr365 does not itself provide the products and/or services offered or provided by any of the Third Party Service Providers, and the contract for the sale of such products and services is concluded directly between the Adviser (or their Clients) and the relevant Third Party Service Provider. Smartr365 is not the agent, joint venture or partner of either the Third Party Service Provider or the Adviser and makes no representation, warranty or promise in respect of the suitability or capability of those products or services.

4. AUTHORITY AND AUTHORISATION

- 4.1. The Adviser warrants, represents and undertakes on a continuing basis to Smartr365 that:
 - 4.1.1. it will comply (and that all Registered Users will comply) with all Applicable Laws relating to its business including the FCA requirement for authorisation and regulation by the FCA in the conduct of its business by correctly and properly operating its business pursuant to and under the Part IV Permission to carry on Regulated Activities and comply with all rebate, commission, trail and other fee obligations in accordance with FCA regulations;
 - 4.1.2. the entry into and performance of this Agreement by it does not (and will not during the Term) violate or conflict with any Applicable Laws; and
 - 4.1.3. all governmental and/or regulatory consents required to have been obtained by it with respect to the business contemplated by this Agreement have been, and will be, obtained and are in full force and effect and all conditions of such consents have been, and will be, complied with.
- 4.2. Adviser shall notify Smartr365 immediately of any suspension or termination by the FCA of its (or any Registered Users) approved status or any reductions in scope, limitations or restrictions imposed by the FCA that affect the rights and obligations of the Adviser (or any Registered Users). Promptly following a request, Adviser shall supply to Smartr365 its FCA registration number and a copy of its registration certificate.
- 4.3. Should the Adviser cease to be authorised under the Financial Services and Markets Act 2000, Smartr365 reserves the right to terminate this Agreement on notice to the Adviser, whereupon the provisions of clause 10.5 shall apply.
- 4.4. Should any Registered Users cease to be authorised to carry on Regulated Activity for whatever reason or if any of the Registered Users cease to be a Registered User of the Adviser, the Adviser shall immediately notify Smartr365 in writing, such notice to include the name of the Registered User and the reason for the withdrawal of such authorisation or the termination of being a Registered User.

5. CONFIGURATION SERVICES

- 5.1. Subject to the terms of this Agreement, Smartr365 shall provide the Configuration Services described in the Commercial Terms.
- 5.2. Ownership of any and all Intellectual Property Rights created by (or on behalf of) Smartr365 as a result of the provision of the Configuration Services or other work undertaken for the benefit of the Adviser shall vest exclusively in Smartr365 upon creation.

6. SMARTR365 PLATFORM

- 6.1. Subject to the Adviser complying with the terms of this Agreement, Smartr365 grants to the Adviser a non-exclusive, non-assignable, non-sub-licensable right to Use the Smartr365 Platform and to permit Registered Users to Use the Smartr365 Platform for the Term (subject to earlier termination or suspension in accordance with these Terms).
- 6.2. Subject to the Adviser complying with the terms of this Agreement, Smartr365 grants to the Adviser a non-exclusive, non-assignable, non-sub-licensable right to Use the Smartr365 Platform and to permit Registered Users to Use the Smartr365 Platform for the Term (subject to earlier termination or suspension in accordance with these Terms).
- 6.3. The Adviser shall, and shall procure that each Registered User shall, Use the Smartr365 Platform only in accordance with the terms of this Agreement, the Smartr365 Terms of Use, and the policies and written instructions from time to time of Smartr365. The Adviser is responsible for all Use of the Smartr365 Platform by Registered Users and shall be liable for any breach of this Agreement by a Registered User as if it were a breach by the Adviser.
- 6.4. The Adviser shall not, and shall procure that Registered Users shall not, except as expressly permitted in this Agreement (i) modify, translate, create or attempt to create derivative copies of or copy the Smartr365 Platform in whole or in part; (ii) reverse engineer, decompile, disassemble or otherwise reduce the object code of the Smartr365 Platform to source code form; (iii) distribute, sub-license, assign, share, sell, rent, lease, transmit, grant a security interest in or otherwise transfer any part or all of the Smartr365 Platform or the Adviser's right to Use the Smartr365 Platform.
- 6.5. The Adviser agrees to procure that all relevant Registered Users attend such training, workshops and meetings at Adviser's expense in the use of the Smartr365 Platform, as reasonably requested by Smartr365. Smartr365 reserves the right to refuse access to the Smartr365 Platform to any Registered User that has failed to attend and complete such training, workshops and meetings reasonably required by Smartr365 hereunder.
- 6.6. Smartr365 reserves the right to modify any aspect of the Smartr365 Platform (including the functionality) at any time (which may include but not be limited to any changes required to comply with Applicable Laws). Smartr365 shall use its reasonable endeavours to give the Adviser advance notice of any such changes and to minimise any impact on the Adviser's use of the Smartr365 Platform.
- 6.7. Smartr365 shall use its reasonable endeavours to ensure that access to the Smartr365 Platform is available during Normal Business Hours. However, the Adviser acknowledges that the Smartr365 Platform may not be accessible to the Adviser from time to time. Wherever possible all scheduled service interruptions shall take place outside of Normal Business Hours and three (3) days' prior notice of such scheduled service interruptions shall be given to the Adviser.
- 6.8. The Adviser acknowledges that Smartr365 may, as part of the Smartr365 Platform, use External Platform Service Providers who may impose certain terms and conditions on Smartr365 and/or require Smartr365 to ensure compliance with those terms and conditions by users of their respective services. The Adviser agrees to ensure that it and its Registered Users comply with such terms and conditions as are communicated to Adviser from time to time in respect of those External Platform Service Providers.

7. ADVISER'S OBLIGATIONS

- 7.1. The Adviser shall perform its obligations as set out herein including those set out in the Commercial Terms and providing Smartr365 promptly with all necessary co-operation, information, data, access to staff and timely decision making which may be reasonably required by Smartr365 for the performance of the Services.
- 7.2. The Adviser shall use the Smartr365 Platform only in accordance with this Agreement and shall not make any use of the Smarr365 Platform that, in the reasonable opinion of Smartr365, may

damage, or threaten to damage, the security or stability of the Smartr365 Platform or damage the reputation or goodwill of Smartr365 or its other clients or providers.

- 7.3. The Adviser agrees to provide Smartr365 with such up to date information and cooperation as Smartr365 reasonably requires from time to time in relation to use of the Smartr365 Platform.
- 7.4. Smartr365 shall issue usernames and passwords to the Adviser for each Registered User. The Adviser acknowledges that it is responsible for issuing those usernames and passwords to the Registered User(s). Smartr365 shall not be liable for (i) any delay or failure by the Adviser to issue or accept such usernames and passwords; or (ii) verifying whether the Adviser and Registered User Data is correct and accurate or whether the usernames and passwords are sufficiently secure.
- 7.5. The Adviser acknowledges that it is solely responsible for procuring and paying for access to the internet to enable it to use the Services.
- 7.6. The Adviser grants Smartr365 a non-exclusive, worldwide, royalty-free licence to use, copy, cache, store, display, reproduce and sublicense the Adviser and Registered User Data (including all Intellectual Property Rights therein) for the purposes of fulfilling Smartr365's obligations under this Agreement. Smartr365 will disclose the use of any third party to fulfil its obligations and will be responsible for the security and management of such data.
- 7.7. The Adviser represents, undertakes and warrants to Smartr365, on behalf of itself and each Registered User, on an ongoing basis that:
 - 7.7.1. the Adviser and/or the Registered User owns all rights in and/or has any and all necessary consents to use the Adviser and Registered User Data as are necessary to grant Smartr365 the right to carry out its obligations pursuant to this Agreement;
 - 7.7.2. the Adviser and Registered User Data does not and will not breach any Applicable Laws including financial services legislation or consumer or trade regulation or data protection legislation or regulation and that the use of the Adviser and Registered User Data will not contravene any Applicable Laws;
 - 7.7.3. the Adviser and Registered User Data does not and will not infringe any Intellectual Property Rights or other rights of any person, nor are they obscene, defamatory, libellous or slanderous, nor will it cause injury to, invade the privacy of or otherwise violate other rights of any person;
 - 7.7.4. all information supplied by the Adviser for the purpose of registering the Registered User(s) is true, complete and accurate in all respects and the Adviser shall promptly notify Smartr365 of all changes to such information;
 - 7.7.5. it shall keep confidential the usernames and passwords and use them in accordance with any instructions of Smartr365 (or its licensors);
 - 7.7.6. it shall procure that no unauthorised access to and/or use is made of the Smartr365 Platform or of any username or password allocated to the Adviser and/or each Registered User;
 - 7.7.7. it shall notify Smartr365 where any usernames and passwords are no longer required (including on the retirement, dismissal or other absence of a Registered User);
 - 7.7.8. it shall inform Smartr365 immediately if it has any reason to believe that the username and password has become known to any individuals not authorised to use them or if the Smartr365 Platform is or is likely to be used in an unauthorised way; and
 - 7.7.9. it shall ensure that any rebalancing transactions performed through the Smartr365 Platform are verified and successfully cross checked.

- 7.8. The Adviser shall remain responsible for all access to and use of the Smartr365 Platform whether authorised by the Adviser or any Registered User or arising because of the breach, negligence or wilful default of the Adviser or a Registered User.
- 7.9. The Adviser shall be responsible for ensuring that all information contained in the Adviser Material and the Adviser and Registered User Data is true, accurate and complete. For the avoidance of doubt, and without limitation to the foregoing, Adviser hereby acknowledges that:
- 7.9.1. the Adviser is responsible for verifying the Adviser Material and the Adviser and Registered User Data prior to submitting it on the Smartr365 Platform;
- 7.9.2. Smartr365 shall bear no responsibility or liability for checking the Adviser Material and the Adviser and Registered User Data prior to or during its use on the Smartr365 Platform; and
- 7.9.3. the Adviser is responsible for verifying the accuracy and completeness of all information provided by or on behalf of any lenders or Third Party Service Providers that is made available or sent via the Smartr365 Platform.
- 7.10. If the Adviser is in breach of this clause 7, Smartr365 shall notify the Adviser in writing of such breach and, if the Adviser has failed to remedy the breach (if the breach is capable of remedy) within 30 days after receipt of Smartr365's notice in writing requiring the Adviser to do so, then without prejudice to any other rights it may have in respect of such breach, Smartr365 may suspend the provision of the Services and/or terminate this Agreement on notice to the Adviser and without liability for the consequences of such suspension or termination.
- 7.11. Smartr365 shall not be liable for any delay or failure to perform its obligations to the extent that such delay or failure arises as a result of a failure by the Adviser to comply with its obligations. All dates and timelines to which Smartr365 is working shall, unless otherwise expressly agreed in writing, be extended by any amount of time equal to any delay caused by the Adviser.

8. MONEY LAUNDERING

- 8.1. The Adviser undertakes to provide Smartr365 as soon as reasonably practicable following the Effective Date with the name of its compliance officer ("**Compliance Officer**") and/or money laundering reporting officer ("**MLRO**") and notify Smartr365 promptly of any changes to such personnel.
- 8.2. The Adviser confirms that it has established, and undertakes to maintain, an anti-money laundering program consisting of (at a minimum) written internal policies, procedures and controls (including, but not limited to, monitoring and reviewing Clients' transactions and accounts, identifying suspicious activity and conducting an on-going employee training program with a view to combating money laundering and terrorist funding), and that it maintains appropriate records in relation to its anti-money laundering program for such period as is required by Applicable Law.

9. SMARTR365 CHARGES

- 9.1. The Adviser shall pay the Smartr365 Charges set out in the Commercial Terms. Smartr365 shall invoice the Adviser for the Smartr365 Charges in accordance with those terms set out in the Commercial Terms. The Adviser shall pay the applicable Smartr365 Charges by automated payment via Smartr365's chosen payment processor. Where not stated, all sums due to Smartr365 shall be payable within 30 days of receipt of an invoice from Smartr365.
- 9.2. Smartr365 may at any time set off any liability of the Adviser to Smartr365 against any liability of Smartr365 to the Adviser, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Agreement. No set off by the Adviser is permitted.

- 9.3. Smartr365 reserves the right to charge the Adviser interest on any payment due from the Adviser and not made by the due date. Interest will be calculated on a daily basis, both before and after any judgement, at the rate of 4 per cent per annum above the base rate from time to time of the Bank of England, for the period from the due date until the date on which it is actually paid, compounded quarterly and payable on demand.
- 9.4. In the event of a bona fide dispute regarding any invoice or other request for payment, the Adviser shall immediately notify Smartr365 in writing and the parties shall attempt promptly and in good faith to resolve any dispute regarding amounts owed. The Adviser shall pay all undisputed amounts on the due date.
- 9.5. All Smartr365 Charges are exclusive of any applicable value added tax (or any successor tax) and any other applicable tax of any nature whatsoever, which will be added and shall be payable by the Adviser in accordance with the law applicable from time to time against receipt of an appropriate invoice.

10. DURATION AND TERMINATION

- 10.1. This Agreement shall be deemed to have come into force on the Effective Date and shall remain in force, unless terminated earlier in accordance with its terms, for the Trial Period and shall automatically continue for the Initial Term. Following the Initial Term, this Agreement shall automatically continue until terminated in accordance with this Agreement.
- 10.2. Each party may terminate this Agreement for convenience on written notice to the other by exercising its termination for convenience right as set out in the Commercial Terms.
- 10.3. Either party (the "**Terminating Party**") may terminate this Agreement in whole or in part with immediate effect by written notice to the other party (the "**Defaulting Party**") on or at any time after the occurrence of: (i) a material breach by the Defaulting Party of any of its obligations in this Agreement; or (ii) any breach (whether minor or material) by the Defaulting Party of clause 4, clause 7.2 or clause 8 of this Agreement, which (if the breach is capable of remedy) the Defaulting Party has failed to remedy within 30 days after receipt of notice in writing from the Terminating Party requiring the Defaulting Party to do so.
- 10.4. The Terminating Party may terminate this Agreement with immediate effect by notice in writing to the Defaulting Party on or at any time if the Defaulting Party becomes insolvent, enters into liquidation, whether voluntary or compulsory, passes a resolution for its winding up, has a receiver or administrator appointed over the whole or any part of its assets, makes any composition or arrangement with its creditors or takes or suffers any similar or analogous action in consequence of its debt.
- 10.5. Smartr365 may terminate this Agreement with immediate effect by notice in writing to the Adviser in the event:
 - 10.5.1. the Adviser is guilty of any conduct which in the reasonable opinion of Smartr365 brings, or could bring, Smartr365 or its business into disrepute or otherwise have an adverse effect on Smartr365's reputation;
 - 10.5.2. Smartr365, acting reasonably, is of the opinion that the Adviser is providing unsuitable advice to its Clients; or
 - 10.5.3. the Adviser fails to pay any invoice that is overdue within 14 days of any written payment reminder issued by Smartr365.
- 10.6. On termination of this Agreement for any reason:
 - 10.6.1. the Services provided under this Agreement shall immediately terminate, including termination of the Adviser's (and each Registered User's) right to access and use the Smartr365 Platform; and

10.6.2. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

10.7. On termination of this Agreement for any reason, this Agreement shall continue in force to the extent necessary to give effect to those of its provisions which expressly or impliedly have effect after termination, including clause 9 (to the extent of any unpaid obligations), 10.6, 10.7, 11, 12, 14, 16, 17 and 18, and all other provisions necessary for their interpretation.

11. INTELLECTUAL PROPERTY

11.1. Smartr365 has sole and exclusive ownership of (or licence to use) all right, title, and interest in and to the Smartr365 Platform, and the software comprised therein, including all copyright and any other Intellectual Property Rights therein. All goodwill arising as a result of the use of the Smartr365 Platform by the Adviser and Registered Users shall vest exclusively in Smartr365. Nothing in this Agreement will serve to transfer from Smartr365 to the Adviser any of the Smartr365 Platform, or the software comprised therein, and all right, title and interest in and to the Smartr365 Platform, and the software comprised therein will remain exclusively with Smartr365 and/or Smartr365's licensors. All rights in and to the Smartr365 Platform, and the software comprised therein not expressly granted to the Adviser are reserved by Smartr365 and the relevant third party licensors.

11.2. Except for the rights expressly granted in this Agreement, nothing in this Agreement will serve to transfer from the Adviser to Smartr365 any of the Adviser Material, and all right, title and interest in and to the Adviser Material will remain exclusively with the Adviser.

11.3. The Adviser grants to Smartr365 a non-exclusive, revocable, worldwide, non-assignable, royalty-free licence to use the Adviser Material for the sole purpose of performing its obligations under this Agreement.

11.4. Nothing in this Agreement shall prevent Smartr365 from using any know-how, methods, techniques or procedures owned or developed by Smartr365 in the course of providing the Services for any purpose.

11.5. The Adviser shall indemnify Smartr365 for all losses, damages, liabilities, claims, cost and expenses (including reasonable legal fees and disbursements and costs and expenses of investigation and litigation and cost of settlement, judgment, interest and penalties) arising out of or in connection with any third party claim or allegation made against Smartr365 in respect of infringing Intellectual Property Rights resulting from:

11.5.1. use, transfer, storage or processing by, or on behalf of, Smartr365 of the Adviser and Registered User Data, any Personal Data or Adviser Material; and

11.5.2. the use by the Adviser of the Smartr365 Platform in combination with any other software, product, services or system where the combination has not been expressly authorised by Smartr365 in writing.

11.6. At no time during or after the term of this Agreement will the Adviser challenge or assist others to challenge any Smartr365 trademarks, service marks, trade names, logos or other words or symbols identifying the products and services of Smartr365's business adopted by Smartr365 from time to time ("**Smartr365 Trademarks**") or attempt to register any trademarks, service marks, trade names, copyright, company name or other proprietary or commercial right which is identical or confusingly similar to Smartr365 Trademarks. Upon the termination of this Agreement, the Adviser shall cease use of all Smartr365 Trademarks.

12. LIABILITY

12.1. Each party warrants and represents to the other that:

- 12.1.1. it has the right, power and authority and has taken all action necessary to execute, deliver and exercise its rights, and perform its obligations, under this Agreement; and
- 12.1.2. neither the execution or the performance of this Agreement by it is prohibited or restricted by any provision of law and will not put it in breach of any obligation owed to a third party.
- 12.2. Except as expressly set out in this Agreement, Smartr365 cannot guarantee that any specific actions or results will be produced by the Smartr365 Platform or the Services. Except as expressly set out in this Agreement, to the maximum extent permitted by law, Smartr365 expressly excludes all representations, warranties, obligations, liabilities, terms and conditions in connection with the Smartr365 Platform and the Services, including those of satisfactory quality, accuracy, completeness, fitness for a particular purpose, whether arising by statute, course of dealing or otherwise.
- 12.3. Subject to clauses 12.5 and clause 12.6 (which deals with External Platform Service Providers and Third Party Service Providers), Smartr365's maximum aggregate liability in respect of each Year under, arising from or in connection with this Agreement, whether arising in contract, tort (including negligence) or otherwise, shall not exceed the greater of: (a) 100% of the Smartr365 Charges paid to Smartr365 in respect of that Year; and (b) £2,000.
- 12.4. Subject to clause 12.5, in no event shall Smartr365 be liable for:
- 12.4.1. any loss of profits, loss of business, business interruption, loss of management time, loss of contracts, loss of anticipated savings, loss of opportunity, loss of goodwill or loss of or damage to data; or
- 12.4.2. any special, indirect or incidental loss of any nature whatsoever, in each case, whether or not caused by or resulting from its negligence or a breach of its statutory duties or a breach of its obligations hereunder, howsoever caused even if it is advised of the possibility of such loss.
- 12.5. Nothing in this Agreement shall exclude or limit liability of either party: (i) for death or personal injury resulting from negligence; or (ii) any liability for fraud or fraudulent misrepresentation.
- 12.6. The Adviser acknowledges and agrees that:
- 12.6.1. Smartr365's maximum aggregate liability to the Adviser in respect of the acts or omissions of an External Platform Service Provider is strictly limited to a proportion of any and all sums that may be recovered by Smartr365 from such External Platform Service Provider (with such proportion being determined by Smartr365 in good faith taking into account all loss suffered by Advisers and other parties); and
- 12.6.2. Smartr365 shall have no liability in respect of the acts and omissions of Third Party Service Providers.
- 12.7. Adviser indemnifies and shall keep indemnified on demand Smartr365, its officers, directors, employees and agents (the "**Indemnified Parties**") from all loss, cost, damage, liability and expenses (including reasonable legal costs) incurred or suffered by the Indemnified Parties arising out of or in connection with any claim, action or proceedings brought by a third party arising out of:
- 12.7.1. incorrect and/or incomplete related information uploaded or downloaded from or via the Smartr365 Platform, except to the extent caused by Smartr365's breach of this Agreement;
- 12.7.2. claims made by Registered Users or Clients against Smartr365 in connection with the Smartr365 Platform;

12.7.3. Smartr365's act or omission in reliance on instructions given (or which Smartr365 reasonably believes to have been given) by or on behalf of the Adviser and/or any Registered User; and

12.7.4. the Adviser's breach of clause 4.1 of this Agreement.

13. FORCE MAJEURE

13.1. To the extent that the performing party is prevented or delayed from or in performing any of its obligations under this Agreement by Force Majeure:

13.1.1. its obligations under this Agreement shall be suspended for so long as the Force Majeure event continues and shall not be relieved of any associated liability; and

13.1.2. both parties shall use all reasonable efforts to mitigate the effects of the Force Majeure.

13.2. If any Force Majeure prevails for a continuous period of more than 28 days, either party may terminate this Agreement by giving not less than 7 days' notice in writing to the other party.

14. CONFIDENTIALITY

14.1. Each party (the "**Receiving Party**") shall use its reasonable endeavours to keep confidential the provisions of this Agreement and all information and documentation disclosed by the other party (the "**Disclosing Party**"), before or after the date of this Agreement, to the Receiving Party or of which the Receiving Party becomes aware which in each case relates to any software, operations, products, processes, dealings, trade secrets or the business of the Disclosing Party (including all associated software, specifications, designs and graphics) or which is identified by the Disclosing Party as confidential (the "**Confidential Information**") and will not use any Confidential Information for any purpose other than the performance of its obligations under this Agreement. The Receiving Party shall not disclose Confidential Information to any third party without the prior written consent of the Disclosing Party.

14.2. During the Term, the Receiving Party may disclose the Confidential Information to its employees and sub-contractors (any such person being referred to in this clause as the "**Recipient**") to the extent that it is reasonably necessary for the purposes of this Agreement. The Receiving Party shall procure that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement.

14.3. The obligations contained in clauses 14.1 and 14.2 shall not apply to any Confidential Information which is:

14.3.1. at the date of this Agreement already in, or at any time after the date of this Agreement comes into, the public domain other than through breach of this Agreement by the Receiving Party or any Recipient;

14.3.2. furnished to the Receiving Party or any Recipient without restriction by a third party having a bona fide right to do so; or

14.3.3. required to be disclosed by the Receiving Party by law or regulatory requirements of any stock exchange, provided that the Receiving Party shall give the Disclosing Party as much notice as reasonably practicable of the requirement for such disclosure.

14.4. All tangible forms of Confidential Information, including all summaries, copies, excerpts of any Confidential Information whether prepared by the Disclosing Party or not, shall be the sole property of the Disclosing Party, and shall be immediately returned by the Receiving Party to the Disclosing Party or destroyed upon the Disclosing Party's request or the termination of this Agreement (whichever is earlier). The Receiving Party shall not copy, reproduce, publish or

distribute in whole or in part any Confidential Information without the prior written consent of the Disclosing Party.

15. PUBLICITY AND MARKETING

- 15.1. Adviser agrees that Smartr365 may, in any of its marketing material or references on its website, refer to the Adviser as a customer of Smartr365 and refer to the type of services that Smartr365 has provided to the Adviser.
- 15.2. Adviser agrees that Smartr365 may publish and circulate a case study describing the Services supplied by Smartr365 to the Adviser (for use by Smartr365 as a marketing tool), the exact wording of which must be agreed by the Adviser in advance. No Client details will be disclosed without obtaining prior consent from the Client or Adviser.

16. DATA PROTECTION AND INCIDENT REPORTING

- 16.1. The parties agree to comply with the data processing provisions set out in Schedule 2.
- 16.2. Adviser agrees to notify Smartr365 in writing (with full details) promptly after:
 - 16.2.1. first becoming aware (and in any event within 36 hours) of any data breach and/or security incident that relates to the Services or Platform ("**Incident**"), including any Personal Data Breach and
 - 16.2.2. any notification of an Incident (or other notification) is made by (or on behalf of) Adviser to a regulator (including the ICO) ("**Notification**"), and Adviser shall promptly provide a copy of such Notification to Smartr365 (and in any event within 24 hours of such Notification being made to the regulator).
- 16.3. Notwithstanding anything else (including clause 14), Smartr365 shall be entitled to notify regulatory bodies (and any other relevant third parties) of any Incident or Notification (including associated details as it considers necessary) of which it becomes aware (whether or not reported by Adviser to Smartr365) to the extent that Smartr365 considers that the Incident or Notification has given rise (or is likely to give rise) to an adverse reputational and/or other adverse business impact for Smartr365 and/or third parties involved or interested in the provision, marketing and/or use of the Platform or Services, solely for the purposes of reporting, understanding, mitigating against, and/or preventing the recurrence of, any such Incident or Notification.
- 16.4. Adviser agrees to cooperate with and assist Smartr365, in good faith, in connection with each Incident and promptly to provide to Smartr365 such information and assistance as Smartr365 may reasonably request in order for Smartr365 to understand, mitigate the impacts of, and/or prevent any recurrence of, the Incident.

17. NON-SOLICITATION OF EMPLOYEES

- 17.1. During the period this Agreement is in effect and for a period of 6 months thereafter, neither party shall solicit or offer employment to any employees of the other or any sub-contractors used by the other hereunder without the prior written consent of the other.
- 17.2. In the event that either party breaches clause 17.1, it shall be liable to pay, immediately on demand, and without prejudice to any other remedy that the other party may have, the equivalent of 12 months' gross salary of the employee so solicited and/or employed.

18. GENERAL

- 18.1. Notwithstanding anything else in this Agreement, Adviser consents to Smartr365 using, during and after the term of this agreement, on an aggregated and anonymised basis any information and data (including Adviser and Registered User Data) supplied by or on behalf of the Adviser under this Agreement for the purpose of conducting market research, preparing strategic and/or other marketing plans, gauging product sales or product performance, and

improving or launching products and services. As such, Adviser shall ensure in its privacy notice and communications with the Clients that it permits the transfer of data to Smartr365 for use by it for these purposes and any other purposes agreed from time to time.

- 18.2. Nothing in this Agreement shall render the Adviser or any Registered User an employee, worker, agent or partner of Smartr365 and the Adviser shall not hold itself out as such and shall procure that its Registered Users, employees, consultants or agents do not hold themselves out as such.
- 18.3. The Adviser shall use all reasonable endeavours to procure that any necessary third party shall (including any Registered Users and Clients), promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Agreement, including to ensure compliance with all Applicable Laws.
- 18.4. This Agreement and the documents referred to in it constitute the entire agreement and understanding of the parties and supersede all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of this Agreement.
- 18.5. Each of the parties acknowledges that in entering into this Agreement on the terms set out herein it has not relied on or been induced to enter into this Agreement by any representation, warranty, undertaking, promise or assurance made or given by any other party or any other person, whether or not in writing, at any time prior to the execution of this Agreement other than those expressly set out in this Agreement.
- 18.6. If any part of any provision of this Agreement shall be invalid or unenforceable, then the remainder of such provision and all other provisions of this Agreement shall remain valid and enforceable.
- 18.7. No amendment or variation of the terms of this Agreement shall be effective unless it is made or confirmed in a written document signed by both parties.
- 18.8. No delay in exercising or non-exercise by either party of any of its rights under or in connection with this Agreement shall operate as a waiver or release of that right. Rather, any such waiver or release must be specifically granted in writing signed by the party granting it.
- 18.9. Nothing in this Agreement or any document referred to in it or any arrangement contemplated by it shall be construed as creating a partnership between the parties for any purpose whatsoever and neither party shall have the power or authority to bind the other party or impose any obligations on it to the benefit of any third party.
- 18.10. The parties do not intend any term of this Agreement to be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 18.11. The Adviser may not assign, transfer or sub-contract any part of all of this Agreement without the prior written consent of Smartr365.
- 18.12. This Agreement shall be construed in accordance with English law and the parties irrevocably submit to the exclusive jurisdiction of the English courts to settle any disputes, which may arise in connection with this Agreement.
- 18.13. All notices, documents and other communications relating to this Agreement must be in writing and delivered, or posted by first class pre-paid post or sent by e-mail transmission to those contact details in the Commercial Terms or such other address as either party may give notice to the other from time to time, as appropriate and any such notice shall be deemed to have been duly served upon and received by the party to whom it is addressed at the time of delivery if delivered by hand, on the expiry of 48 hours after posting or at the time of transmission in the case of e-mail transmission.
- 18.14. The Adviser shall (i) comply with the Bribery Act 2010 (the "**Bribery Act**"); (ii) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; (iii) have and maintain throughout the term of this Agreement its own policies and procedures, including adequate procedures to ensure compliance with the Bribery Act; (iv) promptly report

to Smartr365 any request or demand for any undue financial or other advantage of any kind received by the Adviser in connection with the performance of this Agreement. For the purpose of this clause 18.14, the meaning of adequate procedures shall be determined in accordance with section 7(2) of the Bribery Act (and any guidance issued under section 9 of the Bribery Act) sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

SCHEDULE 2 - DATA PROCESSING TERMS

In supplying the Service, Smartr365 will process Adviser Personal Data on behalf of Adviser. This Schedule sets out the parties' respective obligations in respect of the Adviser Personal Data and any other personal data that is processed in connection with the Services.

1. DEFINITIONS

1.1. Defined terms in this Schedule have the same meaning as given to them in the rest of this Agreement. In addition, unless the context otherwise requires:

"Adviser Personal Data" shall mean personal data made available to Smartr365 by, or on behalf of Adviser, which is more particularly described in clause 3.3(b) of this Schedule, and which is processed by Smartr365 as a Data Processor in the performance of Services;

"Data Privacy Laws" shall mean the following as amended, re-enacted or replaced from time to time.

- (a) EC Directive 1995/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (b) EC Directive 2002/58/EC on Privacy and Electronic Communications;
- (c) EC Regulation 2016/679 (the "GDPR") on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (when in force); and
- (d) all local laws or regulations implementing or supplementing the EU legislation mentioned in (i)-(iii) above.

"Data Controller" shall have the same meaning as defined in the GDPR;

"Data Processor" shall have the same meaning as defined in the GDPR;

"Data Subject" shall have the same meaning as defined in the GDPR;

"EU Law" means any law in force in the European Union or any law in force in a member state of the European Union including the Data Privacy Laws.

"Losses" means losses, damages, liabilities, claims, demands, penalties, fines, costs and expenses (including reasonable legal professional expenses);

"Processing/Processed" shall have the same meaning as defined in the GDPR;

"Personal Data" shall have the same meaning as defined in the GDPR;

"Personal Data Breach" shall have the same meaning as defined in the GDPR;

"Processing Records" shall have the meaning set out in clause 3.4(j) of this Schedule; and

2. ORDER OF PRECEDENCE

2.1. In the event of conflict between this Schedule and the remainder of the Agreement, the remainder of the Agreement shall prevail.

3. DATA PROTECTION

3.1. Appointment of Smartr365 as Adviser's Data Processor

- (a) The parties confirm that where Services comprise of Smartr365's processing of Adviser Personal Data, Smartr365 shall be the Data Processor and Adviser shall be the Data Controller with respect to such processing.
- (b) If, as a consequence of Smartr365's provision of Services, a party considers that the relationship between them no longer corresponds to the intention of the parties stated in clause 3.1(a) of this Schedule it shall notify the other party and the parties shall discuss and agree in good faith such steps that may be required to confirm the parties' intention.
- (c) The Adviser acknowledges that in connection with provision of the Services, Smartr365 may need to provide Adviser Personal Data to (a) lenders who typically act as Data Controllers (b) platforms or intermediaries who may be Data Controllers in their own right or third parties acting on behalf of those lender who may be processors of those lender and (c) sub-processor as per clause 3.7 of this Schedule below.

3.2. Smartr365 as Data Controller

- (a) Smartr365 may process certain personal data, including personal data relating to Registered Users and Clients (individuals), as Data Controller, for example as set out in clause 3.2(b). This does not apply in respect of the Use of the Adviser Personal Data. Where a party processes data as Data Controller, it shall comply with its obligations set out in the Data Privacy Laws.
- (b) Smartr365 uses cookies (including Google Analytics cookies), among other things, to improve the Smartr365 Platform and to train and provide feedback to Registered Users in respect of their use of the Smartr365 Platform. Notwithstanding clause 3.2(a) above, Adviser agrees to assist Smartr365 in obtaining any and all necessary consents from, and disclosing such use to, relevant Data Subjects. In this regard, Adviser agrees to (i) disclose the use of such cookies to relevant Data Subjects (ii) take reasonable steps to obtain any necessary consent to such use from relevant Data Subjects; and (iii) inform Smartr365 of any issues raised by a Data Subject in respect of such use.

3.3. General obligations

- (a) Each party shall comply with the obligations imposed on it by applicable Data Privacy Laws with regard to Adviser Personal Data processed by it in connection with Services.
- (b) The parties acknowledge and agree that in order to provide the Services, Smartr365 will process the Adviser Personal Data. For the purposes of Data Privacy Laws:
 - (i). **Subject matter and duration of the processing:** it is necessary for Smartr365 to process personal data in order to provide the Services under this Agreement for the duration of the Agreement;
 - (ii). **Nature and purpose of the processing:** Smartr365 may be required to access, receive, generate, store or otherwise process personal data in order to facilitate the Use of the Smartr365 Platform;
 - (iii). **Type of personal data being processed:** Information that specifically relates to the Use of the Smartr365 Platform, including name, address, age, gender, profession, contact information (telephone number, email address), mortgage status and financial, banking and creditworthiness information; and
 - (iv). **Categories of the data subject:** Registered Users and other personnel of Adviser and Clients .

3.4. Obligations of Smartr365

- (a) Smartr365 shall only process Adviser Personal Data in accordance with the lawful documented instructions of Adviser, including transfers of Adviser Personal Data outside

the European Economic Area, unless required to do so by EU Law to which Smartr365 is subject, in which event Smartr365 shall inform Adviser of such legal requirement unless prohibited from doing so by EU Law on important grounds of public interest.

- (b) Smartr365 shall inform Adviser if, in Smartr365's reasonable opinion, an instruction given by Adviser to Smartr365 under clause 3.4(a) of this Schedule infringes Data Privacy Laws.
- (c) Smartr365 shall ensure that any persons authorised by it to process Adviser Personal Data are subject to an obligation of confidentiality.
- (d) Smartr365 shall implement appropriate technical and organisational measures to ensure that Adviser Personal Data is subject to a level of security appropriate to the risks arising from its processing by Smartr365 or its sub-processors, taking into account the factors and measures stated in Article 32 of the GDPR.
- (e) Smartr365 shall notify Adviser without undue delay after becoming aware of a Personal Data Breach.
- (f) Taking into account the nature of the processing, Smartr365 shall assist Adviser by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of Adviser's obligation to respond to requests for exercising a Data Subject's rights under the GDPR.
- (g) Taking into account the nature of the processing and the information available to Smartr365, Smartr365 shall assist Adviser with regard to Adviser's compliance with its obligations under the following Articles of the GDPR:
 - (i). Article 32 (Security of processing);
 - (ii). Articles 33 and 34 (Notification and communication of a personal data breach);
 - (iii). Article 35 (Data protection impact assessment); and
 - (iv). Article 36 (Prior consultation by Adviser with the supervisory authority).
- (h) On termination of Services that required the processing of Adviser Personal Data (in whole or in part), Smartr365 shall deliver up to the Adviser such Adviser Personal Data that is in the possession of, or under the control of, Smartr365 where requested in accordance with the Commercial Terms, except to the extent that Data Protection Law requires Smartr365 to store such Adviser Personal Data or Smartr365 is otherwise permitted to retain and/or use such Adviser Personal Data under this Agreement or Applicable Laws.
- (i) Smartr365 shall, at the request of Adviser, provide Adviser with all information reasonably necessary to demonstrate material compliance with its obligations under this clause and shall allow for and contribute to audits and inspections conducted by or on behalf of Adviser.
- (j) Where required to do so by the GDPR, Smartr365 and, where applicable, Smartr365's representative shall maintain written records of its processing of Adviser Personal Data (the "**Processing Records**") as follows:
 - (i). the name and contact details of A) Smartr365 and its sub-processors; B) Adviser; C) where applicable, the representatives of Adviser, Smartr365 and its sub-processors;
 - (ii). the categories of processing carried out on behalf of Adviser, including client data of Adviser;
 - (iii). transfers of Adviser Personal Data to a third country or an international organisation, including the identification of that third country or international organisation and, where applicable, details of the suitable safeguards in place; and

- (iv). a general description of the technical and organisational security measures taken by Smartr365, its sub-processors and Adviser.
- (k) Smartr365 and its sub-processors and, where applicable, their representatives, shall make the Processing Records available to a supervisory authority on request.

3.5. Obligations of Adviser

- (a) Adviser shall ensure that:
 - (i). the supply to Smartr365 of Adviser Personal Data by or on behalf of the Adviser for the purposes of processing undertaken by the Smartr365 and its permitted sub-processors where such processing is authorised by Adviser shall comply with Data Privacy Laws (including the Adviser having obtained any and all necessary consents); and
 - (ii). the instructions given by Adviser to Smartr365 by operation of clause 3.4(a) of this Schedule shall comply with Data Privacy Laws.

3.6. Costs of assistance

Where, by operation of clause 3.4 of this Schedule, Smartr365 is obliged to provide assistance to Adviser, or to third parties at the request of Adviser (including submission to an audit or inspection and/or the provision of information), such assistance shall be provided at the Adviser's cost, except where such assistance arises from Smartr365's breach of its obligations under this clause 3.

3.7. Smartr365's appointment of sub-processors

- (a) Notwithstanding any provision in this Agreement, Smartr365 may sub-contract part or all of the Services requiring the processing of Adviser Personal Data, in which case:
 - (i). Smartr365 shall notify Adviser in writing of its intention to engage a sub-contractor. Such notice shall give details of the identity of such sub-contractor and the services to be supplied by it;
 - (ii). Adviser shall be deemed to have approved the engagement of the sub-contractor if it has not served a notice in writing on Smartr365 objecting (acting reasonably) to such appointment within seven (7) days of the date that the notice is deemed to be received by Adviser in accordance with clause 18.13 of the Legal Terms. If Adviser objects, Smartr365 shall endeavour to find another solution reasonably satisfactory to Adviser but if it is unable to do so, Adviser acknowledges that notwithstanding anything else in this Agreement Smartr365 may be unable to provide the Services in accordance with the terms of this Agreement and Smartr365 shall not be liable in such event; and
 - (iii). Adviser is deemed to have approved the External Platform Service Providers as sub-processors.

3.8. Losses

Where, in accordance with the provisions Article 82 of the GDPR, both parties are responsible for the act, or omission to act, resulting in the payment of Losses by a party, or both parties, then each party shall only be liable for that part of such Losses which is in proportion to its respective responsibility.