

PACE Master Terms and Conditions

These Master Terms and Conditions (the “**Master Terms**”) govern the access to, and use of, all PACE Services provided by us, Fexco Limited trading as PACE (“**Fexco**” “**We**” “**Us**” “**Our**”), to you, a client, customer or subscriber under the applicable Order Form (“**Customer**” “**You**” “**Your**”).

1. Agreement and Interpretation

1.1 Agreement:

- (a) The terms of this Master Services Agreement (the “**Agreement**”) between Us and You for the supply of PACE Services consist of:
 - (i) The Order Form signed on behalf of both parties; and
 - (ii) The Master Terms; and
 - (iii) Other applicable terms referenced in the Master Terms or the Order Form and incorporated by reference to this Agreement including but not limited to the PACE Privacy Policy, the Website Terms, and any applicable Service Description (“**Other Applicable Terms**”)
- (b) In the case of conflict or ambiguity, the order of precedence for this Agreement and the documents attached to or referred to in this Agreement shall be as follows: (1) Order Form (2) Master Terms (3) Other Applicable Terms.
- (c) Access to and use of PACE Services is restricted to professional, commercial or business purposes only. By entering into this Agreement, You warrant and agree that You are not using the PACE Services for any domestic, personal or private use whatsoever.

1.2 Definitions

(**Affiliates**) means any subsidiary, holding company or company with a holding company in common, as defined in accordance with section 7 of the Companies Act 2014; (**API Call**) each call from an application developed by You to interact with the PACE API (**API Key**) the security key We make available for You to access the PACE API (**API Limits**) the restrictions on usage which may apply to Your use of the PACE API as set out in the Order Form (**Authorised User**) Your employees, agents, independent contractors and, where relevant, customers, who are authorised by You to use the PACE Services and the Documentation on Your behalf for the Permitted Purpose in accordance with this Agreement (**Background IPRs**) any and all Intellectual Property Rights that are owned or

licensed to either party and which are or have been developed independently of this Agreement (**Business Day**) a day other than a Saturday, Sunday or public holiday in Ireland, when banks in Dublin are open for business. (**Commencement Date**) the date the Agreement commences, as set out in the Order Form. (**Confidential Information**) means all information disclosed by a party to this Agreement to the other party directly or indirectly, including but not limited to trade secrets, business opportunities, transactions, contracts, products, services, lists of customers and potential customers, customer terms and charges, research, know-how, software programmes, source code, specifications, formulae, processes (whether or not the same are or may be patents, registered or otherwise publicly protected), audited accounts, management accounts, financial projections, customer and employee details of the disclosing party, or any other information of disclosing party whether disclosed before or after the date of this Agreement; (**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures**) as defined in the Data Protection Legislation. (**Credentials**) the user ID, password, activation code and any other security information required or provided to Authorised Users to access the Platform or access the PACE Services (**Customer Input Data**) the data provided by You or Your Authorised Users or Your Affiliates to Us for Our use in the provision of the PACE Services (**Customer Personal Data**) any personal data which We process in connection with this Agreement, in the capacity of a processor on Your behalf (**Data Protection Legislation**) the Data Protection Acts 1988 to 2018, Directive 95/46/EC, the GDPR and any other applicable law or regulation relating to the processing of personal data and to privacy (including the E-Privacy Directive and the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 as amended, revised or replaced from time to time, and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including,

without limitation, the privacy of electronic communications) (**Derived Data**) any information or data created by You or an Authorised User which has benefited from, derived from, relied on or made any use of any PACE Data or other information or data published or made available through the PACE Services provided that such data cannot subsequently be identified as originating or deriving directly from the PACE Data or the PACE Services or reversed back to PACE Data or used as a replacement or substitute for it (**Documentation**) any document(s) and information (including updates and new versions thereof) appended to the Order Form or made available to You by Us on the Site, the Platform or such other web address notified by Us to You from time to time including but not limited to Service Descriptions, user guides or instructions for using the PACE Services or other documents relevant to the use of the PACE Services. (**Expiry Date**) the date the Agreement expires, as set out in the Order Form, or such later date as may be agreed between the parties in writing. (**Fees**) the Fees payable by You for the supply of the PACE Services in accordance with clause 7 (Fees and payment) (**GDPR**) General Data Protection Regulation (EU) 2016/679 (**Good Industry Practice**) means the exercise of the degree of skill, care, prudence, efficiency, foresight and timeliness which would reasonably be expected from a person skilled and experienced in providing services similar to the PACE Services (**Heightened Cybersecurity Requirements**) any laws, regulations, codes, guidance, international and national standards, industry schemes and sanctions, which are applicable to either You or an Authorised User relating to security of network and information systems and security breach and incident reporting requirements (**Initial Term**) the term set out in the Order Form (**Input Data**) means PACE Input Data or Customer Input Data as the case may be (**Intellectual Property Rights**) all patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, trade, brand and business names, domain names, rights in get-up and trade dress, goodwill and the right to prevent passing off or unfair competition, rights in designs, rights in computer software (including source code), database rights, rights to use, and protect the confidentiality of confidential information, know-how and all other intellectual or industrial property rights, in each case whether registered or unregistered and including applications or rights to apply for them and claim priority from them and together with all extensions

and renewals of them and in each case all rights or forms of protection having equivalent or similar effect anywhere in the world (**PACE API**) the PACE application programming interface which may be accessed or used by You as part of the PACE Services (**PACE Data**) the information and data which is generated and/or accessed through the PACE Services as more particularly described in the Documentation and which is generated using PACE Input Data and, where relevant, Customer Input Data (**PACE Input Data**) the data is used by PACE in the provision of PACE Services which is collected by PACE from TPPs and other publicly and commercially available data sources (**PACE Marks**) Our proprietary trade marks, trade names, branding or logos made available for use in connection with the PACE API, the Documentation or the PACE Data pursuant to this Agreement (**PACE Services**) the service(s) supplied by Us to You as more specifically described in the Order Form and the relevant Service Description, and each a “**PACE Service**” (**Permitted Purpose**) has the meaning set out in clause 3.1 (**Platforms**) platform(s) from where certain PACE Services are accessed and each a “**Platform**” (**Primary Contact**) Your nominated representative for dealing with Us in the context of the PACE Services as set out in the Order Form (as amended from time to time on prior written notice to Us) (**Renewal Period**) has the meaning set out in clause 2.1 (**Service Description**) the document(s) provided or made available by Us to You, described as a Service Description, and relating to a PACE Service (**Sites**) the websites (<https://www.pace-esg.com/>) and (<https://portal.pace-esg.com/>) which host the Platform and information about the PACE Services; (**Software**) the online software application(s) provided by Us as part of the PACE Services including the PACE API (**PACE IPRs**) all Intellectual Property Rights subsisting in any Background IPR, PACE Input Data, Platforms, Software, Documentation, know-how, processes, procedures and other materials used by Us to provide the PACE Services (**PACE Personal Data**) any personal data which We process in connection with this Agreement, in the capacity of a controller (**PACE Staff**) means Our staff, Affiliates, sub-contractors or independent contractors, allocated to the performance of the PACE Services; (**Term**) has the meaning given in Clause 2 (being the Initial Term together with any subsequent Renewal Periods) (**Master Terms**): these terms and conditions as amended from time to time in accordance with clause 14.5 (**TPP**) means a third party provider of services, technology,

data, information, software, or other items to Us that are part of or otherwise used in connection with the PACE Services. **(User Terms)** the terms and usage restrictions governing Your access and use of the PACE Services and that of Your Affiliate and Authorised Users, as set out in clause 5 and clause 6 **(Virus)** Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices. **(Website Terms)** the terms establishing the rules for accessing and using the Platform and the Sites.

1.3 Interpretation:

- (a) A reference to legislation or a legislative provision:
 - (i) is a reference to it as amended, extended or re-enacted from time to time; and
 - (ii) shall include all subordinate legislation made from time to time under that legislation or legislative provision
- (b) A reference to either party includes: (i) that party, its employees, officers and agents, and (ii) in respect of us, Our sub- contractors, Affiliates relevant to the supply of the PACE Services and their successors and permitted assigns,
- (c) Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and will not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (d) A reference to **writing** or **written** includes email.

2. Commencement and Term

- 2.1 The Agreement between You and Us for the provision of the PACE Services shall commence on the Commencement Date and shall continue for

the Initial Term and thereafter, the Agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:

- (a) either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Term or Renewal Period; or
 - (b) otherwise terminated in accordance with the provisions of this Agreement
- and the Initial Term together with any subsequent Renewal Periods shall constitute the **Term**.

Licence

- 3.1 Subject to You paying the Fees, and the restrictions and other terms and conditions set out in this Agreement, We hereby grant You with a non-exclusive, non-transferable right to access and use, and to permit the Authorised Users to access and use the PACE Services and the Documentation and where applicable the PACE Marks during the Term solely for
 - (a) the purpose of Your legitimate internal business operations, or
 - (b) such other or additional or varied purpose as set out in the Order Form, the Service Description and/or the Documentation.(the “**Permitted Purpose**”)
- 3.2 Unless otherwise indicated in the Order Form, the rights provided under Clause 3.1 are granted to You only and will not be considered granted to any of Your Affiliates.
- 3.3 Where the PACE Service you are subscribing to requires the use of Customer Input Data, You grant Us a royalty-free, non-exclusive, non-transferable licence during the Term to use the Customer Input Data solely to the extent necessary for performing the PACE Service in accordance with this Agreement. We will not use the licensed materials for any other purpose.

Our Obligations

- 4.1 We undertake that the PACE Services will be performed in accordance with the Documentation with reasonable skill and care in accordance with Good Industry Practice.
- 4.2 The undertaking at Clause 4.1 will not apply to the extent of any non-conformance which is caused by

use of the PACE Services contrary to Our instructions, or modification or alteration of the PACE Services by any party other than Us or Our duly authorised contractors or agents. If the PACE Services do not conform with the foregoing undertaking, We will, at Our expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide You with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes Your sole and exclusive remedy for any breach of the undertaking set out in Clause 4.1.

4.3 We and Our sub-contractors:

(a) do not warrant that:

- (i) Your use of the PACE Services will be completely uninterrupted or error-free (access to the PACE Services may be affected, for example, by routine maintenance, repairs, reconfigurations or upgrades) (but subject to the proviso that a continuous interruption to the PACE Services of a duration of 30 days or more will be considered a material breach for the purposes of clause 12.1(a)); or
- (ii) the Software, Documentation or PACE Services will comply with any Heightened Cybersecurity Requirements; or
- (iii) the Software or the PACE Services will be free from Viruses (but We shall take all reasonable steps not to introduce any Viruses); or the PACE Services the Documentation or the PACE Data is or will be fit for a particular purpose, and the term implied pursuant to s.39 of the Sale of Goods and Supply of Services Act 1980 is, to the maximum extent permitted by law, excluded from this Agreement

- (b) are not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and You acknowledge that the PACE Services and Documentation may be subject to limitations, delays and

other problems inherent in the use of such communications facilities.

4.4 We make every effort to ensure that the PACE Services and the PACE Data generated therefrom meet the highest standards of data quality management and the PACE Services are ISO 20000 and ISO 27001 certified. However, You acknowledge and agree as follows:

- (a) the PACE Data may be generated using PACE Input Data, which, by its nature, may not always be free from defect.
- (b) We take all available steps to externally validate and verify the accuracy and completeness of the PACE Input Data. However You acknowledge and agree that the PACE Data and the PACE Services are provided to You on an "as is" basis.
- (c) When You provide Us with Customer Input Data for use in the provision of the PACE Services, You are responsible for the accuracy and completeness of the data and We accept no responsibility for nor do We provide any warranty relating to the Customer Input Data.

4.5 This Agreement will not prevent Us from entering into similar Agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

4.6 We warrant that We;

- (a) have and will maintain all necessary licences, consents, and permissions necessary for the performance of Our obligations under this Agreement; and
- (b) shall take all reasonable steps not to knowingly introduce any Viruses into Your network and information systems via the PACE Services or Software; and
- (c) will co-operate with You in all matters relating to the PACE Services and comply with Your reasonable instructions;

5. Your obligations

5.1 You undertake that You will:

- (a) only use the PACE Services for the Permitted Purpose, and subject to any restrictions or limitations set out in this Agreement;
- (b) ensure any information You provide in the Order Form is complete and accurate;

- (c) co-operate with Us in all matters relating to the PACE Services;
- (d) promptly provide Us with such information and materials as We may reasonably require in order to supply the PACE Services, and ensure that such information is complete and accurate in all material respects;
- (e) obtain and maintain all necessary licences, permissions and consents which may be required for the PACE Services before the date on which the PACE Services are to start;
- (f) comply with all applicable laws;
- (g) keep all PACE Data accessed using the PACE Services confidential and secure;
- (h) where accessing the PACE Services via the PACE API, keep the API Key and all log-in information secure, and use the API Key as Your sole means of accessing the PACE API.

5.2 You undertake that You will not knowingly:

- (a) use the PACE Services for any illegal or inappropriate purposes;
- (b) use the PACE Services in any manner or for any purpose that infringes, misappropriates, or otherwise infringes the Intellectual Property Rights or other right of any person, or that violates any applicable law;
- (c) remove any proprietary notices or PACE Marks as may be contained in the PACE API, the PACE Data or the Documentation unless otherwise agreed with Us in writing;
- (d) knowingly access, store, distribute, convey or transmit any material during Your use of the PACE Services that:
 - (i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - (ii) facilitates or promotes illegal activity;
 - (iii) depicts sexually explicit images;
 - (iv) promotes unlawful violence;
 - (v) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - (vi) is otherwise illegal or causes damage or injury to any person or property;
- (e) except as may be allowed by any applicable law which is incapable of exclusion by Agreement between the parties and except to

the extent necessary to use the PACE Services and / or expressly permitted under this Agreement or any Order Form:

- (i) attempt to copy, modify, duplicate, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software, the PACE Data and/or Documentation (as applicable) in any form or media or by any means provided always that You shall have the right, as part of Your ordinary course of business, to create Derived Data during the Term. All right, title and interest in such Derived Data shall vest in You and nothing herein shall restrict Your use of Derived Data both during and after the Term. You shall have the right to use the PACE Data subject to clause 8.
- (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
- (iii) combine or integrate the PACE API, the Documentation or any PACE Service with any software, technology, services, or materials not approved in advance by Us;
- (iv) use the PACE Services, the PACE Data and/or the Documentation to provide services to third parties;
- (v) attempt to obtain, or assist third parties other than Authorised Users in obtaining, access to the PACE Services and/or Documentation other than as provided under this Agreement;
- (vi) subject to Clause 14.2 (Assignment), license, sell, rent, lease, transfer assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the PACE Services, the PACE Data and/or Documentation available to any third party except the Authorised Users or any governmental or other supervisory or regulatory authority or for any purpose except the Permitted Purpose;

- (f) access or use all or any part of the PACE Services, the PACE Data or the Documentation in order to build a product or service which competes with the PACE Services;
- (g) make API Calls in excess of the API Limits (where applicable); or
- (h) knowingly introduce or permit the introduction of any Virus into Our network and information systems.

5.3 You shall be responsible for providing Us with the Customer Input Data and, to enable Our provision of the PACE Services, You warrant and agree that at all times:

- (a) The Customer Input Data will be provided in a timely manner and in compliance with the timelines agreed with Us;
- (b) The Customer Input Data will be provided in a form and manner agreed with Us
- (c) The Customer Input Data will not contain any Personal Data; and
- (d) You have obtained all permissions, licences and consents necessary to provide us with the Customer Input Data and the receipt and use of the Customer Input Data in the performance of this agreement by Us shall not infringe the Intellectual Property Rights of any third party

5.4 In the event We determine or reasonably suspect that You have breached an obligation and/or undertakings set out in this Clause 5 of the Agreement, We reserve the right, without liability or prejudice to Our other rights to You, to disable Your access to the PACE Services at any time without notice.

6. Authorised Users

6.1 In relation to the Authorised Users, You undertake that:

- (a) Your Primary Contact has full authority and responsibility for managing all Authorised Users on Your behalf;
- (b) each Authorised User shall keep their Credentials for their use of the PACE Services and Documentation secure and confidential at all times;
- (c) You will not allow or suffer any Authorised User's Credentials to be used by more than one individual;
- (d) You shall maintain a written, up to date list of current Authorised Users and provide such list

to Us within 5 (five) Business Days of Our written request at any time or times;

- (e) You shall permit Us or Our designated auditor to audit Your use of the PACE Services and Your data processing facilities in order to establish Credentials of each Authorised User and in order to audit compliance with this Agreement. Save in the case where We have reasonable grounds to suspect a breach by You of the terms of this Agreement, each such audit may be conducted no more than once per year at Our expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with Your normal conduct of business;
- (f) if any of the audits referred to in Clause 6.1(e) reveal that an Authorised User's Credentials have been provided to an individual who is not an Authorised User, then without prejudice to Our other rights, You shall promptly notify Us; and
- (g) if any of the audits referred to in Clause 6.1(e) reveal that You have underpaid Fees to us, then without prejudice to Our other rights, You shall pay to Us an amount equal to such underpayment as calculated in accordance with the Fees set out in the Order Form within 10 Business Days of the date of the relevant audit.
- (h) if any of the audits referred to in Clause 6.1(e) reveal that You have breached the terms of this Agreement, We reserve the right, without liability or prejudice to Our other rights to You, to disable Your access to the PACE Services at any time without notice.

6.2 You shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the PACE Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify us.

6.3 You are responsible for all acts and omissions of Authorised Users in connection with their use of the PACE Services. You agree to take reasonable efforts to make all Authorised Users aware of User Terms and other provisions of this Agreement which apply to such Authorised Users and to cause Authorised Users to comply with such provisions.

7. Fees and payment

- 7.1 You shall pay the Fees to Us for the PACE Services in accordance with this Clause 7 and the Order Form.
- 7.2 We shall invoice You and You shall pay each invoice in the manner agreed in the Order Form.
- 7.3 All amounts payable by You under the Agreement are exclusive of amounts in respect of VAT, GST, sales tax, other taxes, fees and costs (including any such taxes, fees and costs which may be levied on and in connection with the payment of Fees) arising in the jurisdiction from which You are transacting or any other applicable jurisdiction.
- 7.4 Where any taxable supply is made under the Agreement by Us to You, You shall, on receipt of a valid invoice from us, pay to Us such additional amounts in respect of VAT (or other tax) as are chargeable on the supply of the PACE Services at the same time as payment is due for the supply of the PACE Services.
- 7.5 If You fail to make a payment due under the Agreement by the due date, and You do not remedy this failure within a period of 5 days from the due date, then, without prejudice to any of Our other rights and remedies:
- (a) We may, without liability to You, disable Your password, account and access to all or part of the PACE Services and We shall be under no obligation to provide any or all of the PACE Services while the invoice(s) concerned remain unpaid; and
 - (b) You shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.5 will accrue each day at the rate of two per cent (2%) over the base lending rate of the European Central Bank from time to time from the due date until payment is made (calculated on an annual basis but accruing daily), but at 2% a year for any period when that base rate is below 0%.
- 7.6 All amounts due under the Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

- 7.7 We shall be entitled to impose a reasonable increase in any of the Fees payable in respect of the PACE Services at the start of each Renewal Period upon 60 days' prior notice to You and the Order Form shall be deemed to have been amended accordingly.

8. Data and Intellectual property rights

- 8.1 You acknowledge and agree that We and/or Our licensors own all Intellectual Property Rights in the PACE IPRs, the PACE Data and the PACE Services. Except as expressly stated herein, this Agreement does not grant You any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the PACE IPRs, PACE Data or the PACE Services.
- 8.2 We shall not acquire any right, title or interest in or to the Intellectual Property Rights of you or your licensors including any Intellectual Property Rights in the Customer Input Data or Your Background IPRs.
- 8.3 All Derived Data and all Intellectual Property Rights in the Derived Data shall be owned by You and there shall be no limitations or restrictions on Your use or distribution of Derived Data.
- 8.4 We confirm that We have the right to grant all the rights We purport to grant under, and in accordance with, the terms of this Agreement.

9. Data protection

- 9.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 9.2 Where We act as Controller, Our Privacy Policy available on the Sites (the "**PACE Privacy Policy**") will apply to any processing by Us of Personal Data. By entering into this Agreement, You consent to (and shall procure all required consents from Your personnel, representatives and agents, in respect of) all actions taken by Us in connection with the processing by Us of PACE Personal Data, provided these are in compliance with the PACE Privacy Policy.

- 9.3 Without prejudice to the generality of Clause 9.1, You will ensure that You have all necessary appropriate consents and notices in place to enable lawful transfer of all required Personal Data to Us for the duration and purposes of this Agreement.
- 9.4 The Appendix to this Agreement sets out the scope, nature and purpose of Our processing of Customer Personal Data.
- 9.5 Without prejudice to the generality of Clause 9.1, We shall, in relation to Customer Personal Data:
- (a) process that Personal Data only on Your documented written instructions, unless the processing is for one of the following purposes:
 - (i) To provide the PACE Services in accordance with this Agreement.
 - (ii) To fulfil Our legal, regulatory and/or compliance obligations;
 - (iii) To carry out searches (including verifying identity with fraud prevention agencies and/or conducting credit searches with credit reference agencies);
 - (iv) To prevent and detect fraud or other criminal activity and to trace those responsible;
 - (v) For risk assessment, statistical, trend analysis and planning purposes; or
 - (vi) To enforce Our rights under this Agreement
 - (b) ensure that We have in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - (d) not transfer any Personal Data outside of the European Economic Area unless Your prior

written consent has been obtained and appropriate safeguards are put in place;

- (e) assist You, at Your cost, in responding to any request from a Data Subject and in ensuring compliance with Our obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify You without undue delay on becoming aware of a Personal Data breach;
- (g) at Your written direction, delete or return Personal Data and copies thereof to You on termination of the Agreement unless required by law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate Our compliance with this clause.

10. Indemnity

10.1 You shall defend, indemnify and hold Us harmless against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) brought by third parties in respect of or arising directly or indirectly out of or in connection with (i) this Agreement; (ii) Your use of the PACE Services and/or Documentation (iii) the collection, processing, use, or transfer of personal data by You and/or for which You are the controller arising from the use of the PACE Services; or (iv) from You reselling or otherwise making available the PACE Services to a third party in breach of this Agreement provided that:

- (a) You are given prompt notice of any such claim;
- (b) We provide reasonable co-operation to You in the defence and settlement of such claim, Your expense; and
- (c) You are given sole authority to defend or settle the claim.

10.2 We shall defend You, Your officers, directors and employees against any claim that Your use of the PACE Services or Documentation in accordance with this Agreement infringes any patent active as of the Commencement Date, copyright, trademark, database right or right of confidentiality, and shall indemnify You for any amounts awarded against You in judgment or settlement of such claims provided that:

- (a) We are given prompt notice of any such claim;

- (b) You do not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to Us in the defence and settlement of such claim, at Our expense; and
- (c) We are given sole authority to defend or settle the claim.

10.3 In the defence or settlement of any claim, We may procure the right for You to continue using the PACE Services, replace or modify the PACE Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to You without any additional liability or obligation to pay liquidated damages or other additional costs to You.

10.4 In no event shall We or Our employees, agents and sub-contractors be liable to You to the extent that the alleged infringement is based on:

- (a) a modification of the PACE Services or Documentation by anyone other than us, Our employees, agents and sub-contractors; or
- (b) Your use of the PACE Services or Documentation in a manner contrary to the instructions given to You by Us; or
- (c) Your use of the PACE Services or Documentation after notice of the alleged or actual infringement from Us or any appropriate authority.

10.5 The foregoing and clause 11.3(b) state Your sole and exclusive rights and remedies, and Our (including Our employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trademark, database right or right of confidentiality.

11. Limitation of liability

11.1 Except as expressly and specifically provided in this Agreement:

- (a) You assume sole responsibility for results obtained by You from the use of the PACE Services and the Documentation, and for conclusions drawn from such use. We shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Us by You in connection with the PACE Services, or any actions taken by Us at Your direction;

- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
- (c) the PACE Services and the Documentation are provided to You on an "as is" basis.

11.2 Nothing in the Agreement limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence; and
- (b) fraud or fraudulent misrepresentation.

11.3 Subject to clause 11.1 and 11.2,

- (a) neither Party shall be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
- (b) Our total maximum aggregate liability to You whether under any express or implied term of this Agreement, tort (including negligence), breach of statutory duty, misrepresentation, or for breach of any other duty imposed by law or in any other way arising under or in connection with this Agreement shall be limited to a sum equivalent to the total Fees paid for the PACE Services during the 12 months immediately preceding the date on which the claim arose.

11.4 Unless You notify Us that You intend to make a claim in respect of an event within the notice period, We shall have no liability for that event. The notice period for an event shall start on the day on which You became, or ought reasonably to have become, aware of the event having occurred and shall expire 24 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

11.5 This clause 11 shall survive termination of the Agreement.

12. Termination

- 12.1 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
 - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.
- 12.2 Without affecting any other right or remedy available to it, We may terminate the Agreement with immediate effect by giving written notice to You if You fail to pay any amount due under the Agreement on the due date for payment.
- 12.3 Without affecting any other right or remedy available to it, We may suspend the supply of Services under the Agreement or any other Agreement between You and Us if You fail to pay any amount due under the Agreement on the due date for payment, if You are a body corporate and You become subject to any of the events listed in clause 12.1(b) to clause 12.1(d), or We reasonably believe that You are about to become subject to any of them.

13. Consequences of termination

- 13.1 Termination or expiry of the Agreement will not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
- 13.2 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.
- 13.3 If the Agreement is terminated:
- (a) by Us other than pursuant to clause 12.1 or 12.2; or
 - (b) by You pursuant to clause 12.1;
- We will refund any Fees paid in advance in respect of a period following termination (on a pro-rata basis).
- 13.4 If the Agreement is terminated by Us pursuant to clause 12.1 or 12.2, or by You for a reason other than pursuant to clause 12.1, there will be no refund of any Fees paid in advance in respect of a period following such termination.

14. General

- 14.1 **Force majeure.** Neither party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving Our workforce or that of any other party), failure of a utility service or transport or telecommunications 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 suppliers or sub-contractors.
- 14.2 **Assignment and other dealings.**
- (a) We may at any time assign, mortgage, charge, subcontract, delegate, or deal in any other manner with any or all of Our rights and obligations under the Agreement.
 - (b) You will not assign, transfer, mortgage, charge, subcontract, delegate, or deal in any other manner with any of Your rights and obligations

under the Agreement without Our prior written consent.

14.3 Confidentiality

- (a) Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information will not be deemed to include information that:
 - (i) is or becomes publicly known other than through any act or omission of the receiving party;
 - (ii) was in the other party's lawful possession before the disclosure;
 - (iii) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - (iv) is independently developed by the receiving party, which independent development can be shown by written evidence.
- (b) Subject to Clause 14.3(d), each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- (c) Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- (d) A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 14.3(d), it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- (e) Neither party shall use the other party's confidential information for any purpose

other than to perform its obligations under the Agreement.

14.4 Entire Agreement

- (a) This Agreement and the documents referred to in it constitutes the entire Agreement between the parties and supersede all previous discussions, correspondence, oral statements, negotiations, arrangements, understandings and Agreements between them relating to their subject matter.
- (b) Each party acknowledges that in entering into the Agreement it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

14.5 Variation.

- (a) We may amend this Agreement from time to time. We will give notice of any such amendments to You by posting amendments on the Sites or by sending email notice to You, and any such amendments will be prospectively binding on You effective thirty (30) days from the date of such posting. Notwithstanding the foregoing, We will provide You with thirty (30) days' prior notice, by email or by other direct communication, of any such amendments that are likely to materially and adversely affect You or Your rights or obligations under an Order Form. Your use of the applicable Services after the effective date of any such amendment shall constitute Your ratification of, and Agreement to, any such amendment.
- (b) If any amendment to this Agreement under this Clause 14.5 has a material adverse impact on You or Your rights or obligations under an Order Form, You may, within thirty (30) days from the date of the notification of such amendment, provide Us with no more than three (3) months' written notice of Your intention to terminate this Agreement. If You

terminate this Agreement under this Clause 14.5(b), it is agreed and acknowledged that

- (i) The amendment will not apply for the remainder of the term of this Agreement except where amendments are implemented due to TPP requirements or legal requirements); and
- (ii) Your use of the PACE Services following the expiry of the thirty (30) days' notice period referred to in this Clause 14.5(b) shall constitute acceptance of the relevant amendment.

14.6 **Waiver.** A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and will not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Agreement or by law will not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

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

14.8 **Notices**

- (a) Any notice given to a party under or in connection with the Agreement shall be in writing and shall be delivered by hand or by pre-paid registered post or other next working day delivery service at the address set out below, or sent by email to the address set out below.
- (b) Any notice shall be deemed to have been received:

- (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
- (ii) if sent by post or other delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

(c) The addresses for service of notices are:

- (i) **Customer:** see the Order Form
- (ii) **Fexco:** Fexco Limited trading as PACE, Fexco Centre, Iveragh Road, Killorglin, Co. Kerry for the attention of the Company Secretary

(d) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

14.9 **Governing law** The Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of Ireland.

14.10 **Jurisdiction** Each party irrevocably agrees that the courts of Ireland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or format.

Appendix – Data Processing Details

This Appendix includes certain details of the Processing of Customer Personal Data as required by Article 28(3) GDPR.

Subject matter and duration of the Processing of Customer Personal Data

The subject-matter of the processing is the personal data provided by You to Us in respect of the products and services under the Agreement.

The duration of the processing is the Term of the Agreement.

The nature and purpose of the Processing of Customer Personal Data

The nature and purpose of the Processing as is necessary for the provision of the PACE Services as described in the Agreement.

The types of Customer Personal Data to be Processed

Typically, the types of Customer Personal Data may include, but are not limited to the following:

- Name (first name, surname)
- Email address
- Address
- Contact Number

Special categories of data (if appropriate)

The personal data transferred concern the following special categories of data:

N/A

The categories of Data Subject to whom the Personal Data relates

Typically, the categories of Data Subject may include, but are not necessarily limited to the following:

- Employees
- Directors
- Authorised Users

The obligations and rights of Customer

Your obligations and rights are set out in the Agreement