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## STANDARD SERVICE TERMS AND CONDITIONS

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### BACKGROUND:

“Henray Capital” is a trading name of Digital Business Enterprises Ltd, a limited company registered in England under 08662459, whose registered address is 82 Wandsworth Bridge Road, London, SW6 2TF, United Kingdom (the “Service Provider”) provides unregulated asset and development finance broker referral services to business and HNW clients. These Terms and Conditions shall apply to the provision of services by the Service Provider to its clients. We are a broker not a Lender.

### 1. Definitions and Interpretation

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

<b>“Agreement”</b>	means the agreement entered into by the Service Provider and the Client incorporating these Terms and Conditions (or variation thereof agreed upon by both Parties) which shall govern provision of the Services;
<b>“Application”</b>	means your finance application to a Lender;
<b>“Broker Fee”</b>	means the fee payable to Us for our Services that is usually calculated as a percentage plus VAT of the total amount of finance based on the Broker Referral or Application, whichever is the greater;
<b>“Broker Referral”</b>	means referring your Broker Request and/or Order to a Lender commonly referred to as making an introduction to the Lender;
<b>“Broker Request”</b>	means when you request our finance broker Services and you’ve provided the information We requested from you so that we can refer you to a Lender, in order that you can obtain an unregulated financial quote or product such as an unregulated loan from a Lender;
<b>“Business Day”</b>	means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in England;
<b>“Client”</b>	means the party procuring the Services from the Service Provider who shall be identified in the Agreement and who are either a business or HNW;
<b>“Commencement Date”</b>	means the date on which provision of the Services will commence, as defined in the Agreement;
<b>“Confidential Information”</b>	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with the Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);

<b>“Data Protection Legislation”</b>	means all legislation in force in the UK from time to time relating to data protection and privacy including, but not limited to, the Data Protection Act 2018, EU Regulation 2016/679 General Data Protection Regulation (“GDPR”) and any other directly applicable EU regulation relating to data protection and privacy (for as long as, and to the extent that, EU law has legal effect in the UK) and any successor legislation relating to data protection and privacy;
<b>“Fees”</b>	means any and all sums due under the Agreement from the Client to the Service Provider, as specified in the Agreement and includes the Broker Fee;
<b>“HNW”</b>	means a person who is legally classified as a high net worth individual in the United Kingdom;
<b>“Lender”</b>	means either another broker or other person who arranges to the finance for you, or a bank, or other lender who provides the finance directly;
<b>“Quote/Quoted”</b>	means an indicative representation provided by the Service Provider to the Client showing the typical interest rate based on the information provided by the Client and that interest rate is above the base, and showing typical repayment terms over a fixed period of time;
<b>“Services”</b>	means the services to be provided by the Service Provider to the Client in accordance with Clause 2 of the Agreement, as fully defined in the Agreement, and subject to the terms and conditions of the Agreement; and
<b>“Term”</b>	means the term of the Agreement as defined therein.
<b>“We/Us/Our/Henray Capital”</b>	means Digital Business Enterprises Ltd, a company registered in England under 08662459, whose registered address is 82 Wandsworth Bridge Road, London, SW6 2TF, United Kingdom.

1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:

1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;

1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

1.2.3 “these Terms and Conditions” is a reference to these Terms and Conditions as amended or supplemented at the relevant time;

1.2.4 a Clause or paragraph is a reference to a Clause of these Terms and Conditions or to a Clause of the Agreement, as appropriate; and

1.2.5 a "Party" or the "Parties" refer to the parties to the Agreement.

1.3 The headings used in these Terms and Conditions are for convenience only

and shall have no effect upon the interpretation of these Terms and Conditions.

- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.
- 1.6 References to persons shall include corporations.

## **2. Provision of the Services**

- 2.1 With effect from the Commencement Date, the Service Provider shall, throughout the Term of the Agreement, provide the Services to the Client.
- 2.2 The Service Provider shall provide the Services with reasonable skill and care, commensurate with prevailing standards in the unregulated finance broker sector in the United Kingdom.
- 2.3 The Service Provider shall act in accordance with all reasonable instructions given to it by the Client provided such instructions are compatible with the specification of Services provided in the Agreement.
- 2.4 The Service Provider shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Services.
- 2.5 The Service Provider may, in relation to certain specified matters related to the Services, act on the Client's behalf. Such matters shall not be set out in the Agreement but shall be agreed between the Parties as they arise from time to time.
- 2.6 Without exception, the Service Provider shall only provide unregulated financial activities Services to Client's which are either businesses or people classified as a HNW person. Where the Client is a person not acting on behalf of a business, the Client confirms that they are a HNW person and agree to waive their rights to the protections provided by regulated finance activities in the United Kingdom for both the Service Provider and the Lender. This may include signing a waiver upon request.
- 2.7 The Service Provider is not licenced to provide financial advice. Therefore anything stated by the Service Provider to the Client is a personal opinion of whomever stated it to the Client and must not be considered as financial advice by the Client. See sub-Clause 3.7 for the Client's obligations relating to seeking professional financial advice.
- 2.8 The Service Provider Service is to make a Broker Referral to a Lender as the Service Provider decides on behalf of the Client. That is the limit of the involvement of the Service Provider. The Broker Referral can be made at any time after the Broker Request occurs without any notice being provided to the Client. The Service Provider has no ability to interfere with, nor amend in any way, any Application made after a Broker Referral is made. The Service Provider has no decision making capacity as to whether or not the Lender will decide to lend on similar terms as Quoted by the Service Provider, if at all. The Lender has the sole and final decision on any terms and conditions they set, any checks they require, any documents or guarantees, or any securities or anything else they require as part of your Application for your loan or financial product.
- 2.9 Any Quote provided by the Service Provider to the Client is for indicative purposes only. The Service Provider makes no guarantees whatsoever as to

what terms and conditions the Lender shall impose on the Client when an Application is made. Any interest rates quoted are above the base rate of the currency and as dictated by the Lender. A formal quotation can only be made by the Lender after the Broker Referral. Due to this, a refund is payable to the Client under certain circumstances as described in sub-Clause 10.6.

### 3. Client's Obligations

- 3.1 The Client shall use all reasonable endeavours to provide all pertinent information to the Service Provider that is necessary for the Service Provider's provision of the Services.
- 3.2 The Client may, from time to time, issue reasonable instructions to the Service Provider in relation to the Service Provider's provision of the Services. Any such instructions should be compatible with the specification of the Services provided in the Agreement.
- 3.3 In the event that the Service Provider requires the decision, approval, consent or any other communication from the Client in order to continue with the provision of the Services or any part thereof at any time, the Client shall provide the same in a reasonable and timely manner.
- 3.4 If any consents, licences or other permissions are needed from any third parties such as aviation authorities, marine authorities, landlords, planning authorities, local authorities or similar, it shall be the Client's responsibility to obtain the same in advance of the provision of the Services (or the relevant part thereof).
- 3.5 If the nature of the Services requires that the Service Provider has access to the Client's home or any other location or any asset or information, access to which is lawfully controlled by the Client, the Client shall ensure that the Service Provider has access to the same at the times to be agreed between the Service Provider and the Client as required.
- 3.6 Any delay in the provision of the Services resulting from the Client's failure or delay in complying with any of the provisions of Clause 3 of the Agreement shall not be the responsibility or fault of the Service Provider.
- 3.7 The Client shall ensure that they seek adequate professional financial advice as stated in sub-Clause 2.7, the Service Provider does not provide financial advice and as such, the Client is responsible for ensuring that they seek independent financial advice prior to any Broker Request or Broker Referral taking place. By making a Broker Request or Broker Referral, the Client agrees that they have sought any independent financial and legal advice. It is at the Client's own risk if they do not seek professional independent financial advice from a suitably qualified person or firm.
- 3.8 It should be assumed that in all cases, a Lender will require security against an asset belonging to the Client, which could include the Client's home. This security may be in the form of a mortgage registered against the asset. The Lender will decide the security value of the asset which is likely to be far below the value the Client believes it to be. The Lender will also decide what assets they are willing to consider.
- 3.9 The Client is responsible for ensuring that they understand the risks of securing any asset against any loan or financial product they receive as a result of their Application from a Lender. **The Client's assets, which could include their home, may be repossessed if the Client does not keep up repayments on their loan or financial product.**

- 3.10 The Client is responsible for ensuring that they inform the Service Provider of any information or documents requested in a timely manner and agrees to disclose (even if not asked for it) any adverse credit history, any relevant or unspent criminal history, any negative financial associations or directorship bans which it would be reasonable to assume could affect the Client's Application to a Lender. The Client shall make this disclosure at the earliest possible opportunity and prior to any Broker Request or Broker Referral taking place.
- 3.11 The Client shall inform the Client if any loan or finance product they wish to obtain is in any currency other than GBP (pound sterling).
- 3.12 Where any asset is being purchased by the Client outside of the United Kingdom, or has a majority shareholder by any person outside of the United Kingdom or the asset is registered outside of the United Kingdom, the Client shall inform the Service Provider of this at the earliest possible opportunity and prior to any Broker Request or Broker Referral taking place.
- 3.13 The Client agrees that once a Broker Request has been made by any means, the Client consents to checks being conducted against any person or business or asset provided by the Client as part of the Broker Request, which may include but are not limited to hard credit searches against any named person or corporate body. These checks will be conducted at any point by the Service Provider and/or Lender, or third parties without any additional permission being sought from the Client. Prior to the Client providing information to the Service Provider, it agrees that any named parties have given permission for checks to be conducted.

#### **4. Fees, Payment and Records**

- 4.1 The Client shall pay the Fees to the Service Provider in accordance with the provisions of the Agreement.
- 4.2 The Service Provider shall invoice the Client for Fees due in accordance with the provisions of the Agreement.
- 4.3 All payments required to be made pursuant to the Agreement by either Party shall be made within ONE Business Day of receipt by that Party of the relevant invoice.
- 4.4 All payments required to be made pursuant to the Agreement by either Party shall be made in Pound Sterling in cleared funds to such bank in England as the receiving Party may from time to time nominate, without any set-off, withholding or deduction except such amount (if any) of tax as that Party is required to deduct or withhold by law. Payments via bank transfer only.
- 4.5 Where any payment pursuant to the Agreement is required to be made on a day that is not a Business Day, it may be made on the next following Business Day.
- 4.6 Without prejudice to sub-Clause 9.4.1 of the Agreement, any sums which remain unpaid following the expiry of the period set out in sub-Clause 4.3 of the Agreement shall incur interest on a daily basis at 5% above the base rate of Barclays Bank Plc from time to time until payment is made in full of any such outstanding sums.
- 4.7 Each Party shall:

- 4.7.1 keep, or procure that there are kept, such records and books of account as are necessary to enable the amount of any sums payable pursuant to the Agreement to be accurately calculated; and
  - 4.7.2 at the reasonable request of the other Party, allow that Party or its agent to inspect those records and books of account and, to the extent that they relate to the calculation of those sums, to take copies of them.
- 4.8 The Fees will include the Broker Fee. The Broker Fee, unless otherwise stated is 3% + VAT of the amount of finance either requested by the Client as part of the Broker Referral, or on any Application made to the Lender by the Client whichever is the greater; or where sub-Clause 4.10 or sub-Clause 4.11 applies, on each and every occasion where any application made to the Lender directly by the Client.
- 4.9 The Service Provider may receive an additional commission from the Lender which does not make up any part of the Fee, nor does it reduce the Fee payable to the Service Provider by the Client.
- 4.10 If at any time the Client made an application for any finance product or loan from any Lender that the Service Provider has made a Broker Referral to in the past and that application is not made via the Service Provider, the Client will be liable to pay the standard Broker Fee as stated in sub-Clause 4.8 to the Service Provider within 7 days of making an application.
- 4.11 If the Service Provider has at any time, with or without the Client's knowledge, provided any information about the Client or any project or asset the Client wishes to finance which is obtained from any Broker Request or Broker Referral by any means, to any Lender, or other party and the Service Provider is contacted by that Lender or other party, or contacts the Lender or other party either directly or indirectly, by any means and applies for, or obtains any financial product such as a loan or refinancing from that Lender or other party, the Client shall pay the Service Provider the Broker Fee as stated in sub-Clause 4.8 within 7 days.
- 4.12 sub-Clause 4.10 shall include where the Client uses another finance broker or third party, who refers the Client to the same Lender. The Client is responsible for advising the other broker of their obligations under this Agreement.
- 4.13 Any Fees are subject to VAT at the prevailing rate in England at the time of invoicing.

## **5. Liability, Indemnity and Insurance**

- 5.1 The Service Provider shall ensure that it has in place at all times suitable and valid insurance that may include public liability insurance.
- 5.2 In the event that the Service Provider fails to perform the Services with reasonable care and skill, and if mutually agreed by the Service Provider, it shall carry out any and all necessary remedial action at no additional cost to the Client.
- 5.3 The Service Provider's total liability for any loss or damage caused as a result of its negligence or breach of the Agreement shall be limited to the sum defined therein.
- 5.4 The Service Provider shall not be liable for any loss or damage suffered by the Client that results from the Client's failure to follow any instructions given by the Service Provider or where the Client has provided any inaccurate, misleading or false information to the Service Provider or Lender as part of the

Client's Application.

- 5.5 Nothing in these Terms and Conditions nor in the Agreement shall limit or exclude the Service Provider's liability for death or personal injury.
- 5.6 Subject to sub-Clause 5.3 of the Agreement the Service Provider shall indemnify the Client against any costs, liability, damages, loss, claims or proceedings arising out of the Service Provider's breach of the Agreement up to the value of the Broker Fee that was paid in full and on time, by the Client to the Service Provider for the relevant Broker Request and/or Broker Referral, or £5,000, whichever is the lesser amount.
- 5.7 The Client shall indemnify the Service Provider against any costs, liability, damages, loss, claims or proceedings arising from loss or damage to any equipment (including that belonging to any third parties appointed by the Service Provider) caused by the Client or its agents or employees.
- 5.8 Neither Party shall be liable to the other or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of that Party's obligations if the delay or failure is due to any cause beyond that Party's reasonable control.
- 5.9 Subject to sub-Clause 5.3 of the Agreement the Service Provider shall have no liability whatsoever to the Client against any costs, liability, damages, loss, claims or proceedings arising out of anything to do with actions taken by the Lender or third party, particularly anything described in sub-Clause 2.8 including any damage to reputation, credit history or any other matter. Where a court awards damages in the Client's favour against the Service Provider due to anything to do with a Lender or third-party, the Client agrees that the maximum claim for all and any compensation, fines, damages and legal fees combined will not exceed £500.00.

## **6. Guarantee**

- 6.1 The Service Provider guarantees that it will make a Broker Referral to a Lender if the Client requests that it does and the Service Provider believes the Client has a reasonable prospect of making a successful Application with the Lender.
- 6.2 The Service Provider shall make no guarantees that a Lender will approve any Application made by the Client as a result of the Broker Referral.

## **7. Confidentiality**

- 7.1 Each Party undertakes that, except as provided by sub-Clause 7.2 of the Agreement or as authorised in writing by the other Party, it shall, at all times during the continuance of the Agreement and after its termination:
  - 7.1.1 keep confidential all Confidential Information;
  - 7.1.2 not disclose any Confidential Information to any other party;
  - 7.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of the Agreement;
  - 7.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
  - 7.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party,

would be a breach of the provisions of sub-Clauses 7.1.1 to 7.1.4 of the Agreement.

7.2 Either Party may:

7.2.1 disclose any Confidential Information to:

7.2.1.1 any Lender, sub-contractor or supplier of that Party;

7.2.1.2 any governmental or other authority or regulatory body; or

7.2.1.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;

to such extent only as is necessary for the purposes contemplated by the Agreement (including, but not limited to, the provision of the Services and making a Broker Referral), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under sub-Clause 7.2.1.2 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of Clause 7 of the Agreement, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and

7.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information that is not public knowledge.

7.3 The provisions of Clause 7 of the Agreement shall continue in force in accordance with their terms, notwithstanding the termination of the Agreement for any reason.

## 8. Force Majeure

8.1 No Party to the Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

8.2 In the event that a Party to the Agreement cannot perform their obligations hereunder as a result of force majeure for a continuous period to be defined in the Agreement, the other Party may at its discretion terminate the Agreement by written notice at the end of that period. In the event of such termination, the Parties shall agree upon a fair and reasonable payment for all Services provided up to the date of termination. Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of the Agreement.

## 9. Term and Termination

- 9.1 The Agreement shall come into force on the agreed Commencement Date and shall continue for a defined Term from that date, subject to the provisions of Clause 9 of the Agreement.
- 9.2 Either Party shall have the right, subject to the agreement and consent of the other Party and exercisable by giving not less than 7 days' written notice to the other at any time prior to the expiry of the Term specified in sub-Clause 9.1 of the Agreement (or any further period for which the Agreement is extended) to extend the Agreement for a further period as agreed by both Parties in writing.
- 9.3 Either Party may terminate the Agreement by giving to the other not less than 7 days' written notice, to expire on or at any time after the minimum term of the Agreement (which shall be defined in the Agreement).
- 9.4 Either Party may immediately terminate the Agreement by giving written notice to the other Party if:
  - 9.4.1 any sum owing to that Party by the other Party under any of the provisions of the Agreement is not paid within 5 Business Days of the due date for payment;
  - 9.4.2 the other Party commits any other breach of any of the provisions of the Agreement and, if the breach is capable of remedy, fails to remedy it within 5 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;
  - 9.4.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
  - 9.4.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
  - 9.4.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Agreement);
  - 9.4.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
  - 9.4.7 the other Party ceases, or threatens to cease, to carry on business; or
  - 9.4.8 control of the other Party is acquired by any person or connected persons not having control of that other Party on the date of the Agreement. For the purposes of Clause 9, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.
- 9.5 For the purposes of sub-Clause 9.4.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 9.6 The rights to terminate the Agreement shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.
- 9.7 Due to the nature of requesting finance requiring the Services to be provided

promptly, where any statutory cooling off period exists in law, the Client agrees to waive their right to this cooling off period. Where the Client has a statutory cooling off period, the Client shall inform the Service Provider in writing prior to any Broker Request and/or Broker Referral being made, if the Client wishes for the Service Provider to observe the cooling off period. In this case, the Service Provider will not make any Broker Referral until the statutory cooling off period has elapsed. This will delay the finance request on behalf of the Client and prevent an Application being made.

- 9.8 Any termination made by the Client under Clause 9 will require the Client to pay any outstanding Fees immediately or Fees yet to be invoiced upon receipt of the invoice from the Service Provider.

## **10. Effects of Termination and Refunds**

Upon the termination of the Agreement for any reason:

- 10.1 any sum owing by the Client under any of the provisions of the Agreement shall become immediately due and payable;
- 10.2 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect;
- 10.3 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement which existed at or before the date of termination;
- 10.4 subject as provided in Clause 10 of the Agreement and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and
- 10.5 the Client shall (except to the extent referred to in Clause 7 of the Agreement) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.
- 10.6 The Service Provider shall refund the Client as follows and in accordance of sub-Clause 10.7 and sub-Clause 10.8;
- 10.6.1 100% refund reason 1. The Service Provider shall provide a 100% refund for any Broker Fee paid by the Client to the Service Provider, if the Lender rejects the Client's Application based solely on the information that was provided and disclosed by the Client to the Service Provider prior to the Broker Referral being made;
- 10.6.2 100% refund reason 2. Where a written Quote is provided by the Service Provider to the Client (if one is provided at all), and after the Broker Referral is made, if the Lender, solely based on the information disclosed by the Client to the Service Provider, increases the interest rate by more than 2.5% above the upper limit Quoted by the Service Provider, AND the Client refuses to accept the loan or finance product due to the interest rate alone, the Service Provider will refund 100% of the Broker Fee;
- 10.6.3 Partial refund at the sole discretion of the Service Provider, where prior to a Broker Referral being made, the Client decides not to go ahead with the Broker Referral and informs the Service Provider in writing prior to that Broker Referral being made. (The Broker Referral may

have already been made at any time after the Broker Request is made without any notice to the Client). If the refund request is accepted by the Service Provider, the partial refund shall be a full refund of the Broker Fee only, less £1000 + VAT where applicable.

- 10.6.4 No refund or partial refund of the Fees including the Broker Fee if after the Broker Referral is made, the Client either lowers the amount of finance they initially requested, or if the Client is offered a lower amount and they accept the lower amount for any reason;
- 10.6.5 No refund or partial refund of the Fees including the Broker Fee for any other reason, which will include where the Client withdraws their Application for any reason or the Lender rejects an Application based on any information that was not already disclosed to the Service Provider, or in cases where it was disclosed, it is considered by the Service Provider to be misleading, deliberately vague or false.
- 10.6.6 No refund or partial refund will be given if an asset is being purchased such as an aircraft or boat, and it is decided by the Lender that the asset is not valued at the same amount stated by the Client at the time of the Broker Referral and the Lender either rejects the application or reduces the amount of finance they will offer to the Client, and subsequently results in the Client withdrawing or having their application refused.
- 10.7 Any refunds the Service Provider is liable to refund will be refundable within 90 business days if the value is below £500 or within 180 business days if the value is £500 or more. The refund is paid via a method the Service Provider decides.
- 10.8 To be eligible for a refund in all circumstances without any exception whatsoever, the Client must inform the Service Provider in writing within 14 days' of the Broker Referral being made that they wish to request a refund and the reason for it. The Client will be responsible for providing any proof the Service Provider reasonably requests in order to decide if a refund is due, and in all cases, this proof must be provided within 5 business days of being requested by the Service Provider.

## **11. Data Protection**

The Service Provider will only use the Client's personal information as set out in the Service Provider's Privacy Policy available from the Service Provider's website <https://henraycapital.com/privacy-policy/>.

## **12. Blank.**

## **13. No Waiver**

No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

## **14. Further Assurance**

Each Party shall execute and do all such further deeds, documents and things as may

be necessary to carry the provisions of the Agreement into full force and effect.

**15. Costs**

Subject to any provisions to the contrary each Party shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of the Agreement.

**16. Set-Off**

The Client shall not be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under the Agreement or any other agreement at any time.

**17. Assignment and Sub-Contracting**

17.1 Subject to sub-Clause 17.2, the Agreement shall be personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights thereunder, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of the other Party, such consent not to be unreasonably withheld.

17.2 The Service Provider shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors (which may include finance or asset brokers). Any act or omission of such other member or sub-contractor shall, for the purposes of the Agreement, not be deemed to be an act or omission of the Service Provider. The Client agrees that any claim for damages due to any act or omission of such other member or sub-contractor shall be claimed against the member or sub-contractor, and not the Service Provider.

**18. Time**

18.1 The times and dates referred to in the Agreement shall be for guidance only and shall not be of the essence of the Agreement and may be varied by mutual agreement between the Parties.

**19. Relationship of the Parties**

Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the Agreement.

**20. Non-Solicitation**

20.1 Neither Party shall, for the Term of the Agreement and for a defined period (which shall be defined in the Agreement) after its termination or expiry, employ or contract the services of any person who is or was employed or otherwise engaged by the other Party at any time in relation to the Agreement.

20.2 Neither Party shall, for the Term of the Agreement and for a defined period (which shall be defined in the Agreement) after its termination or expiry, solicit

or entice away from the other Party any customer or client where any such solicitation or enticement would cause damage to the business of that Party without the express written consent of that Party.

## **21. Third Party Rights**

- 21.1 No part of the Agreement shall confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.
- 21.2 Subject to Clause 21 of the Agreement, the Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.

## **22. Notices**

- 22.1 All notices under the Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
  - 22.2 Notices shall be deemed to have been duly given:
    - 22.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
    - 22.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or
    - 22.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
    - 22.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.
- In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

## **23. Entire Agreement**

- 23.1 The Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.
- 23.2 Each Party shall acknowledge that, in entering into the Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in the Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

## **24. Counterparts**

The Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

## **25. Severance**

In the event that one or more of the provisions of the Agreement and/or of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Agreement and/or these Terms and Conditions. The remainder of the Agreement and/or these Terms and Conditions shall be valid and enforceable.

## **26. Dispute Resolution**

26.1 The Parties shall attempt to resolve any dispute arising out of or relating to the Agreement through negotiations which could include an agreed method between both Parties.

26.2 Nothing in Clause 26 of the Agreement shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief.

26.3 Any decision and outcome of the final method of dispute resolution under Clause 26 of the Agreement shall not be final and binding on both Parties.

## **27. Law and Jurisdiction**

27.1 The Agreement and these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

27.2 Subject to the provisions of Clause 26 of the Agreement, any dispute, controversy, proceedings or claim between the Parties relating to the Agreement or these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.