



**BAG CAPITAL**

# **INTERNATIONAL BANK GUARANTEE PROCUREMENT & CONSULTANCY AGREEMENT**

## **ARTICLE 1 DEFINITIONS**

For the purposes of this Agreement, the following terms shall have the meanings assigned to them below:

"Agreement" means this International Bank Guarantee Procurement and Consultancy Agreement, including all Articles, Schedules, Annexes and amendments hereto.

"Employer" means the company, entity or individual identified in the signature section of this Agreement requesting the procurement of a Bank Guarantee or related financial instrument.

"Consultant" means GBA Capital Ltd., trading as BAG Capital, together with its affiliates, successors, permitted assigns and authorized representatives.

"Bank Guarantee" or "BG" means any irrevocable and unconditional financial undertaking, guarantee, insurance-backed guarantee, surety instrument, standby instrument or equivalent financial obligation issued by an acceptable Issuing Institution in favor of the Employer or its designated beneficiary.

"Issuing Institution" means any bank, insurance company, surety provider, guarantee provider, financial institution or other entity legally authorized to issue a Bank Guarantee or equivalent financial instrument.

"Guarantee Provider" means the institution arranging, underwriting, issuing, supporting or facilitating the issuance of the Bank Guarantee.

"SWIFT MT760" means the authenticated SWIFT message utilized for the transmission of a Bank Guarantee, standby instrument or other financial undertaking through the international SWIFT network.

"Business Day" means any day, other than a Saturday, Sunday or public holiday, on which banks are generally open for business in London, England.

"Retainer Fee" means the advance fee payable by the Employer pursuant to Article 7 for the initiation, administration, due diligence, coordination and commencement of the Services.

"Success Fee" means the remuneration payable to the Consultant pursuant to Article 6 upon the occurrence of a Successful Completion Event.

"Insurance Premium" means the premium, underwriting fee, guarantee fee, risk participation fee or equivalent charge payable to the relevant Guarantee Provider in connection with the issuance, underwriting or support of the Bank Guarantee.



"Verification" means all authentication, validation, confirmation, compliance review, SWIFT authentication, bank-to-bank verification and related procedures performed in connection with the Bank Guarantee.

"Successful Completion Event" means the occurrence of the events specified in Article 5.8, including successful delivery, authentication, verification and acceptance of the Bank Guarantee in accordance with this Agreement.

"Protected Parties" means all banks, insurance companies, guarantee providers, underwriters, investors, lenders, brokers, intermediaries, consultants, affiliates and other parties introduced directly or indirectly by the Consultant during the term of this Agreement.

"Confidential Information" means all commercial, financial, banking, legal, technical, proprietary or business information disclosed by one Party to the other Party in connection with this Agreement, whether in written, electronic, oral or any other form.

"Force Majeure Event" means any event beyond the reasonable control of the affected Party, including but not limited to war, terrorism, sanctions, governmental restrictions, banking disruptions, cyberattacks, pandemics, natural disasters, labor disputes or similar events.

"Applicable Laws" means all laws, regulations, sanctions regimes, anti-money laundering requirements, anti-bribery regulations, compliance obligations and governmental requirements applicable to the Parties or the transaction.

"LCIA" means the London Court of International Arbitration.

"England and Wales" means the legal jurisdiction governing this Agreement pursuant to Article 12.

References to Articles, Schedules and Annexes shall be references to the Articles, Schedules and Annexes of this Agreement unless otherwise stated.

Headings are included for convenience only and shall not affect interpretation of this Agreement.

Words importing the singular include the plural and vice versa. References to any gender include all genders.

The terms "including", "include" and similar expressions shall be deemed to be followed by the words "without limitation".

## **ARTICLE 2**

### **SCOPE OF SERVICES**

#### 2.1 Appointment

The Employer hereby appoints the Consultant, on a non-exclusive basis, to provide consultancy, coordination, facilitation and introduction services in connection with the procurement of a Bank Guarantee ("BG") and related financial instruments.



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Nothing in this Agreement shall prevent the Consultant from providing similar services to other clients.

### 2.2 Services

The Consultant shall use commercially reasonable efforts to provide the following services:

- (a) review the Employer's requirements relating to the requested Bank Guarantee;
- (b) identify and introduce potential Guarantee Providers, Issuing Institutions, insurers, banks, financial institutions and other relevant counterparties;
- (c) coordinate communications between the Employer and prospective counterparties;
- (d) assist in the preparation, collection and submission of required documentation;
- (e) facilitate negotiations relating to the proposed Bank Guarantee;
- (f) coordinate verification, authentication and compliance procedures;
- (g) monitor the progress of the transaction and provide reasonable status updates to the Employer;
- (h) facilitate the successful procurement and delivery of a compliant Bank Guarantee.

### 2.3 Nature of Services

The Employer acknowledges that the Consultant acts solely as an independent consultant, coordinator and intermediary.

The Consultant does not act as:

- (a) a lender;
- (b) a bank;
- (c) an insurer;
- (d) a guarantee provider;
- (e) an investment adviser;
- (f) a regulated financial institution;
- (g) a fiduciary.

### 2.4 No Financial, Legal or Tax Advice

Unless expressly agreed in writing, the Consultant does not provide:



- (a) legal advice;
- (b) tax advice;
- (c) accounting advice;
- (d) regulatory advice;
- (e) investment advice.

The Employer shall obtain independent professional advice where appropriate.

#### 2.5 No Guarantee of Issuance

The Employer acknowledges and agrees that:

- (a) the Consultant does not issue financial instruments;
- (b) the Consultant does not control the internal approval processes of any third party;
- (c) the Consultant does not guarantee the issuance of any Bank Guarantee;
- (d) the Consultant does not guarantee approval by any Issuing Institution, insurer or Guarantee Provider.

#### 2.6 Best Efforts Standard

The Consultant's obligations under this Agreement are obligations of best efforts and not obligations of guaranteed result.

No representation or warranty is made that a particular transaction, financing, guarantee issuance or commercial outcome will occur.

#### 2.7 Third-Party Providers

All Bank Guarantees and related instruments shall be issued by independent third-party institutions.

The Consultant shall not be liable for:

- (a) decisions of third-party institutions;
- (b) refusals by third-party institutions;
- (c) delays caused by third-party institutions;
- (d) changes in third-party policies, underwriting standards or compliance requirements.



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### 2.8 Employer Cooperation

The Employer shall cooperate fully with the Consultant and shall promptly provide all information, documents and assistance reasonably required for the performance of the Services.

### 2.9 Replacement Providers

The Consultant may, at its sole discretion, replace, supplement or substitute any proposed Guarantee Provider, Issuing Institution or intermediary where such action is reasonably necessary to facilitate the transaction.

### 2.10 Introduction Rights

Any introduction made by the Consultant pursuant to this Agreement shall be subject to the protections contained in Article 8 (Confidentiality, Non-Circumvention and Non-Disclosure).

### 2.11 Independent Contractor

The Consultant acts solely as an independent contractor.

Nothing contained in this Agreement shall create:

- (a) a partnership;
- (b) a joint venture;
- (c) an agency relationship;
- (d) a fiduciary relationship;
- (e) an employment relationship;

between the Parties.

### 2.12 Regulatory Status

The Employer acknowledges that the Consultant's role is limited to consultancy, coordination and introduction services and does not constitute regulated banking, insurance, investment management or financial services activity unless expressly stated otherwise in writing.

## **ARTICLE 3 EMPLOYER OBLIGATIONS**

### 3.1 General Cooperation

The Employer shall cooperate fully and in good faith with the Consultant throughout the term of this Agreement and shall promptly provide all information, documentation, confirmations and assistance reasonably requested by the Consultant.



### 3.2 Accuracy of Information

The Employer represents and warrants that all information, documents, declarations and supporting materials provided in connection with this Agreement shall be true, accurate, complete and not misleading.

The Employer shall immediately notify the Consultant of any material change affecting such information.

### 3.3 Beneficial Ownership Disclosure

The Employer shall provide complete and accurate information regarding:

- (a) its ultimate beneficial owners;
- (b) shareholders;
- (c) directors;
- (d) controlling persons;
- (e) affiliated entities;

and shall promptly notify the Consultant of any material changes thereto.

### 3.4 Due Diligence and Compliance

The Employer shall fully comply with all KYC, AML, CTF, sanctions screening, source-of-funds, source-of-wealth and compliance requirements imposed by the Consultant, the Guarantee Provider, the Issuing Institution or any competent authority.

### 3.5 Retainer Fee

Upon execution of this Agreement, the Employer shall pay the Retainer Fee specified in Article 7.

### 3.6 Alternative Security

Subject to the Consultant's prior written approval, the Employer may provide alternative financial security acceptable to the Consultant in lieu of the Retainer Fee.

### 3.7 Irrevocable Fee Payment Undertaking

The Employer shall execute and deliver Schedule B (Irrevocable Fee Payment Undertaking), which shall constitute a material Condition Precedent to commencement of the Services.

### 3.8 Bank Irrevocable Conditional Payment Undertaking



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The Employer shall procure and deliver Schedule C (Bank Irrevocable Conditional Payment Undertaking), which shall constitute a material Condition Precedent to commencement of the Services.

The Employer shall be solely responsible for obtaining any collateral, security, credit approval, cash margin, blocked funds arrangement or other banking support required by its Bank.

### **3.9 Cooperation with Verification Procedures**

The Employer shall ensure that its designated bank fully cooperates with all verification, authentication, SWIFT confirmation and compliance procedures relating to the Bank Guarantee.

### **3.10 Costs and Expenses**

The Employer shall bear all costs, expenses, taxes, duties, banking charges and third-party fees incurred by the Employer in connection with the transaction.

### **3.11 Compliance Discretion**

The Consultant may suspend, refuse or terminate any transaction if, in its reasonable opinion, the transaction presents legal, compliance, sanctions, regulatory, reputational or risk-management concerns.

### **3.12 Conditions Precedent**

The Consultant shall have no obligation whatsoever to commence any Services unless and until all Conditions Precedent have been satisfied in form and substance acceptable to the Consultant.

### **3.13 Conditions Precedent List**

The Conditions Precedent shall include:

- (a) execution of this Agreement;
- (b) payment of the Retainer Fee or approved alternative security;
- (c) execution of Schedule B;
- (d) delivery of Schedule C;
- (e) completion of all KYC, AML and compliance requirements;
- (f) provision of all documentation reasonably requested by the Consultant.

### **3.14 Good Faith Commitment**

The Employer confirms that it enters into this Agreement with the genuine intention of obtaining the requested Bank Guarantee and completing the contemplated transaction in good faith.



## **ARTICLE 4**

### **BANK GUARANTEE SPECIFICATIONS**

#### 4.1 Requested Instrument

The Consultant shall use commercially reasonable efforts to procure a Bank Guarantee or equivalent financial instrument meeting the specifications set forth in this Agreement and Schedule A.

#### 4.2 Eligible Instruments

The requested instrument may consist of:

- (a) a Bank Guarantee;
- (b) an Insurance Guarantee;
- (c) a Standby Letter of Credit (SBLC);
- (d) a Surety Instrument;
- (e) any equivalent financial undertaking acceptable to the Employer and the Consultant.

#### 4.3 Characteristics

Unless otherwise agreed in writing, the Instrument shall be:

- (a) irrevocable;
- (b) unconditional;
- (c) first demand;
- (d) freely verifiable;
- (e) authenticable by standard banking procedures;
- (f) substantially compliant with Schedule A.

#### 4.4 Delivery Method

The Instrument may be delivered through:

- (a) SWIFT MT760;
- (b) authenticated bank-to-bank communication;
- (c) insurer-to-beneficiary communication;



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(d) any internationally recognized transmission method acceptable to the Parties.

### 4.5 Governing Rules

Where applicable, the Instrument shall be issued subject to:

- (a) URDG 758;
- (b) ISP98;
- (c) equivalent internationally recognized banking or guarantee rules.

### 4.6 Validity Period

Unless otherwise agreed in writing, the Instrument shall remain valid for:

One (1) Year and One (1) Day

from the date of issuance.

### 4.7 Amount

The face value of the Instrument shall be as specified in Schedule A.

### 4.8 Issuing Institution

The identity of the proposed Issuing Institution shall be disclosed to the Employer prior to issuance.

Upon written approval by the Employer, the Employer shall not subsequently reject the Instrument solely on the basis of the identity of the approved Issuing Institution.

### 4.9 Verification Rights

The Employer, its designated bank, the Consultant and the Guarantee Provider shall be entitled to verify the authenticity of the Instrument directly with the Issuing Institution.

### 4.10 Substantial Compliance Standard

The Instrument shall be deemed compliant if it substantially conforms to the specifications contained in:

- (a) this Agreement;
- (b) Schedule A;
- (c) any written amendments agreed by the Parties.



Minor technical, clerical, formatting or administrative differences shall not constitute grounds for rejection.

#### 4.11 Extension

The validity period of the Instrument may be extended subject to:

- (a) written request by the Employer;
- (b) approval of the Guarantee Provider;
- (c) approval of the Issuing Institution;
- (d) payment of applicable extension fees.

Any request for extension shall be submitted not less than thirty (30) days prior to the expiry date of the Instrument.

#### 4.12 Replacement Instrument

Where an Instrument is rejected solely due to a curable technical, clerical or transmission defect, the Consultant and/or the Issuing Institution shall be afforded a reasonable opportunity to provide a corrected or replacement Instrument.

#### 4.13 Schedule A Prevails

In the event of any inconsistency between this Article and Schedule A, Schedule A shall prevail.

### **ARTICLE 5 VERIFICATION AND ACCEPTANCE PROCEDURES**

#### 5.1 SWIFT Delivery Event

For the purposes of this Agreement, the Instrument shall be deemed transmitted when the relevant SWIFT MT760 message, authenticated bank-to-bank communication or equivalent internationally recognized transmission method has been successfully sent by the Issuing Institution.

#### 5.2 Commencement of Verification Period

The Verification Period shall commence upon confirmation by the Employer's designated receiving bank that the Instrument has been received through the applicable transmission channel.

#### 5.3 Verification Procedures

The Employer and its designated bank shall promptly undertake all verification procedures reasonably required to confirm:



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- (a) authenticity;
- (b) validity;
- (c) enforceability;
- (d) compliance with this Agreement;
- (e) compliance with Schedule A.

### 5.4 Cooperation Obligation

The Employer shall ensure that its designated bank fully cooperates with all reasonable verification requests made by the Consultant, the Guarantee Provider or the Issuing Institution.

### 5.5 Verification Period

The Employer shall complete all verification procedures within five (5) Business Days following commencement of the Verification Period unless otherwise agreed in writing.

### 5.6 Acceptance

The Instrument shall be deemed accepted upon the earliest occurrence of:

- (a) written acceptance by the Employer;
- (b) written acceptance by the Employer's designated bank;
- (c) successful SWIFT authentication and verification by the Employer's designated bank;
- (d) any utilization, assignment, transfer, pledge, presentation or benefit derived from the Instrument;
- (e) expiry of the Verification Period without a valid written rejection.

### 5.7 Rejection Procedure

Any rejection must:

- (a) be made in writing;
- (b) be delivered before expiry of the Verification Period;
- (c) specify the exact provision of this Agreement or Schedule A allegedly breached;
- (d) include reasonable supporting evidence.

Failure to satisfy these requirements shall render the rejection ineffective.



### 5.8 Technical Defects

Minor technical, clerical, formatting, administrative or transmission defects shall not constitute grounds for rejection where such defects are reasonably capable of correction.

The Consultant and/or the Issuing Institution shall be afforded a reasonable opportunity to cure any such defect.

### 5.9 Successful Completion Event

A Successful Completion Event shall occur upon:

- (a) successful transmission of the Instrument through SWIFT MT760 or equivalent internationally recognized transmission method;
- (b) successful authentication and verification by the Employer's designated receiving bank;
- (c) absence of a valid rejection pursuant to Article 5.7 during the Verification Period.

### 5.10 Prima Facie Evidence

Authentication, verification or confirmation issued by the Employer's designated bank shall constitute prima facie evidence that the Instrument complies with the requirements of this Agreement unless clear and convincing evidence establishes otherwise.

### 5.11 Conclusive Evidence

Any SWIFT authentication record, SWIFT acknowledgement, bank-to-bank confirmation, authenticated verification message, bank acceptance confirmation or equivalent evidence shall constitute conclusive evidence of successful transmission, authentication and verification.

### 5.12 Trigger for Fees

Immediately upon occurrence of the Successful Completion Event:

- (a) the Insurance Premium shall become due and payable;
- (b) the Success Fee shall become due and payable;
- (c) all payment obligations under Article 6 shall become unconditional, irrevocable and immediately payable.

### 5.13 No Obstruction

The Employer shall not delay, obstruct, interfere with or frustrate the verification process.

Any such conduct shall constitute a material breach of this Agreement.



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### 5.14 No Circumvention of Acceptance

Following a Successful Completion Event, the Employer shall not seek to avoid payment obligations by:

- (a) changing banks;
- (b) introducing additional conditions not contained in this Agreement;
- (c) disputing acceptance already evidenced by bank verification records;
- (d) bypassing the Consultant, Guarantee Provider or Issuing Institution.

### 5.15 Finality

Upon occurrence of a Successful Completion Event, the Employer's payment obligations shall become final, unconditional and enforceable pursuant to Article 6.

## **ARTICLE 6 FEES, INSURANCE PREMIUM AND PAYMENT TERMS**

### 6.1 Insurance Premium

The Employer acknowledges and agrees that procurement of the Instrument may require payment of an insurance premium, guarantee premium, underwriting fee, risk participation fee or equivalent charge payable to the relevant Guarantee Provider.

Unless otherwise agreed in writing, the Insurance Premium shall be:

4.7% of the face value of the Instrument.

### 6.2 Success Fee

In consideration of the Services performed by the Consultant, the Employer shall pay a Success Fee equal to:

3.0% of the face value of the Instrument.

### 6.3 Total Transaction Fee

The Parties acknowledge and agree that the total amount payable upon occurrence of a Successful Completion Event shall be:

7.7% of the face value of the Instrument,

comprising:

- (a) 4.7% Insurance Premium; and

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(b) 3.0% Success Fee.

#### 6.4 Successful Completion Event

All fees and payment obligations under this Article shall become due and payable immediately upon occurrence of the Successful Completion Event as defined in Article 5.

#### 6.5 Payment Deadline

The Employer shall ensure that all amounts payable under this Article are paid in immediately available and cleared funds within seven (7) Business Days following the Successful Completion Event.

#### 6.6 Irrevocable Payment Obligation

Upon occurrence of the Successful Completion Event, the Employer's payment obligations shall become:

- (a) unconditional;
- (b) irrevocable;
- (c) absolute;
- (d) immediately enforceable.

#### 6.7 Liquidated Commercial Debt

The Employer expressly acknowledges and agrees that all amounts payable under this Article constitute liquidated, ascertainable and immediately recoverable commercial debts.

The Consultant shall be entitled to pursue immediate recovery of such debts through arbitration, court proceedings, summary judgment procedures, interim relief applications or any other lawful enforcement mechanism.

#### 6.8 Method of Payment

Payments shall be made by international bank transfer to the account(s) designated in writing by:

- (a) the Consultant;
- (b) the Guarantee Provider;

or both.

The Consultant may direct that the Insurance Premium and Success Fee be paid to separate beneficiaries.



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### 6.9 No Set-Off

The Employer shall make all payments in full without:

- (a) set-off;
- (b) deduction;
- (c) counterclaim;
- (d) withholding;
- (e) dispute.

### 6.10 Taxes

All amounts payable under this Agreement are exclusive of any applicable:

- (a) VAT;
- (b) GST;
- (c) withholding taxes;
- (d) sales taxes;
- (e) similar governmental charges.

The Employer shall bear all such taxes unless prohibited by applicable law.

### 6.11 Bank Charges

All sending bank charges, intermediary bank charges, receiving bank charges, SWIFT costs and transfer-related expenses shall be borne exclusively by the Employer.

The Consultant and Guarantee Provider shall receive the full invoiced amount free and clear of deductions.

### 6.12 Default Interest

Any amount not paid when due shall accrue interest from the due date until payment in full at a rate equal to:

Bank of England Base Rate + 8% per annum

calculated on a daily basis and compounded monthly,

or the maximum amount permitted by applicable law, whichever is lower.



### 6.13 Recovery Costs

The Employer shall reimburse the Consultant for all reasonable costs incurred in recovering overdue amounts, including:

- (a) legal fees;
- (b) arbitration costs;
- (c) enforcement expenses;
- (d) collection agency fees;
- (e) expert fees;
- (f) recovery costs.

### 6.14 Non-Refundable Fees

Following the occurrence of a Successful Completion Event, the Insurance Premium and Success Fee shall be fully earned and non-refundable.

### 6.15 No Refund Events

The Employer shall not be entitled to any refund on the grounds that:

- (a) the Instrument was not subsequently utilized;
- (b) the underlying transaction did not proceed;
- (c) the Employer no longer requires the Instrument;
- (d) commercial circumstances changed;
- (e) the Employer elected not to use the Instrument.

### 6.16 Survival

The payment obligations contained in this Article shall survive termination, expiration, completion or cancellation of this Agreement until fully satisfied.



**ARTICLE 7**

**RETAINER FEE, REFUND POLICY AND TERMINATION CONSEQUENCES**

7.1 Nature of Retainer Fee

The Parties acknowledge that the Retainer Fee is paid in consideration of the Consultant's commitment of resources, allocation of personnel, compliance reviews, preliminary due diligence, transaction assessment, coordination activities and reservation of capacity.

The Retainer Fee shall not constitute:

- (a) a trust deposit;
- (b) escrow funds;
- (c) client money;
- (d) a refundable security deposit,

except as expressly provided in this Article.

7.2 Consultant Performance Period

Unless otherwise agreed in writing, the Consultant shall have a performance period of thirty (30) calendar days from satisfaction of all Conditions Precedent to perform the Services contemplated under this Agreement.

7.2A Term of Agreement

This Agreement shall commence on the Effective Date and shall remain in force for forty-five (45) calendar days unless earlier terminated in accordance with its terms.

The Agreement shall automatically terminate upon the earliest occurrence of:

- (a) a Successful Completion Event;
- (b) expiration of the forty-five (45) day Agreement Term;
- (c) termination pursuant to any provision of this Agreement;
- (d) mutual written agreement of the Parties.

The Parties may extend the Agreement Term by mutual written agreement, including by exchange of emails pursuant to Article 13.18.

7.3 Refund upon Consultant Non-Performance



The Retainer Fee shall be refunded in full if:

- (a) the Employer has complied with all obligations under this Agreement;
- (b) all Conditions Precedent have been satisfied;
- (c) no breach has occurred on the part of the Employer;
- (d) the Consultant fails to procure a substantially compliant Instrument within the Performance Period.

Such refund shall be made within ten (10) Business Days following written demand by the Employer.

#### 7.4 Non-Refundable Events

The Retainer Fee shall become non-refundable if:

- (a) the Employer withdraws from the transaction;
- (b) the Employer fails to provide required documentation;
- (c) the Employer fails compliance, KYC or AML requirements;
- (d) the Employer provides false, misleading or incomplete information;
- (e) the Employer breaches any material provision of this Agreement;
- (f) the Employer refuses to proceed following procurement of a substantially compliant Instrument.

#### 7.5 Cancellation Prior to Retainer Payment

Following execution of this Agreement, if the Employer withdraws, cancels or refuses to proceed prior to payment of the Retainer Fee, the Employer shall immediately become liable for a cancellation fee of:

EUR 10,000

which the Parties acknowledge represents a genuine pre-estimate of the Consultant's administrative costs, compliance costs, due diligence expenses, opportunity costs and resource allocation.

#### 7.6 Successful Completion Event

Upon occurrence of a Successful Completion Event:

- (a) the Retainer Fee shall be deemed fully earned;
- (b) the Retainer Fee shall become non-refundable;



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(c) the Employer shall remain liable for all amounts payable under Article 6.

### 7.7 Consultant Right to Terminate

The Consultant may terminate this Agreement immediately upon written notice if:

- (a) the Employer commits a material breach;
- (b) the Employer fails compliance requirements;
- (c) fraud is suspected;
- (d) sanctions concerns arise;
- (e) legal or regulatory concerns arise.

In such circumstances the Consultant may retain the Retainer Fee.

The Consultant may also terminate this Agreement upon expiry of the Consultant Performance Period or the Agreement Term if no Successful Completion Event has occurred.

### 7.8 Employer Right to Terminate

The Employer may terminate this Agreement if:

- (a) the Consultant commits a material breach;
- (b) the Consultant becomes insolvent;
- (c) the Consultant fails to perform within the Performance Period.

Any refund entitlement shall be governed solely by Article 7.3.

### 7.9 Survival

Termination shall not affect:

- (a) accrued payment obligations;
- (b) confidentiality obligations;
- (c) non-circumvention obligations;
- (d) dispute resolution provisions;
- (e) rights arising from prior breaches.



## **ARTICLE 8**

### **CONFIDENTIALITY, NON-CIRCUMVENTION AND NON-DISCLOSURE**

#### 8.1 Confidential Information

Each Party shall keep strictly confidential all Confidential Information received from the other Party and shall not disclose such information to any third party except:

- (a) with the prior written consent of the disclosing Party;
- (b) where required by law, regulation, court order or governmental authority;
- (c) to professional advisers, auditors, legal counsel, compliance officers, insurers, banks or financial institutions having a legitimate need to know.

#### 8.2 Standard of Protection

Each Party shall exercise at least the same degree of care in protecting Confidential Information as it applies to its own confidential information, and in no event less than a reasonable standard of care.

#### 8.3 Ownership of Introduced Relationships

The Employer acknowledges that all relationships, contacts, introductions, opportunities, counterparties, institutions and commercial connections introduced directly or indirectly by the Consultant constitute valuable business assets and proprietary relationships of the Consultant.

#### 8.4 Non-Circumvention

The Employer shall not, directly or indirectly:

- (a) bypass the Consultant;
- (b) circumvent the Consultant;
- (c) avoid payment of any Success Fee, Insurance Premium or other compensation payable under this Agreement;
- (d) negotiate, transact, contract or otherwise deal directly with any Protected Party introduced by the Consultant for the purpose of avoiding the Consultant's compensation.

#### 8.5 Protected Parties

The protections contained in this Article shall apply to all Protected Parties as defined in Article 1.

#### 8.6 Protection Period



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The confidentiality, non-disclosure and non-circumvention obligations contained in this Article shall remain in force for a period of:

Ten (10) Years

following termination, expiration, completion or cancellation of this Agreement.

### 8.7 Presumption of Introduction

Any transaction entered into by the Employer with a Protected Party during the Protection Period shall be presumed to have resulted from the Consultant's introduction unless the Employer establishes otherwise through clear and convincing evidence.

### 8.8 Non-Solicitation

During the Protection Period, the Employer shall not directly or indirectly solicit, engage, retain or contract with any Protected Party introduced by the Consultant for the purpose of avoiding the Consultant's compensation rights.

### 8.9 Equitable Relief

The Parties acknowledge that a breach of this Article may cause irreparable harm that cannot be adequately compensated by monetary damages alone.

Accordingly, the Consultant shall be entitled to seek:

- (a) injunctive relief;
- (b) specific performance;
- (c) equitable remedies;
- (d) interim relief;
- (e) protective orders;

without the necessity of proving actual damages.

### 8.10 Liquidated Damages

If the Employer breaches this Article, the Employer shall immediately become liable for:

- (a) the full Success Fee that would otherwise have been payable;



- (b) the full Insurance Premium that would otherwise have been payable;
- (c) all legal fees;
- (d) arbitration costs;
- (e) enforcement costs;
- (f) recovery expenses.

The Parties acknowledge that such amounts represent a genuine pre-estimate of loss and are not intended as a penalty.

#### 8.11 Permitted Disclosure

Nothing contained herein shall prevent disclosure necessary for:

- (a) KYC procedures;
- (b) AML compliance;
- (c) sanctions screening;
- (d) banking verification;
- (e) regulatory reporting obligations.

#### 8.12 Survival

The provisions of this Article shall survive termination, expiration, cancellation, completion or rescission of this Agreement.

### **ARTICLE 9 REPRESENTATIONS, WARRANTIES AND COMPLIANCE**

#### 9.1 Authority and Capacity

Each Party represents and warrants that:

- (a) it is duly organized, validly existing and in good standing under the laws of its jurisdiction;
- (b) it possesses full legal power and authority to enter into and perform this Agreement;
- (c) all necessary corporate approvals have been obtained;
- (d) this Agreement constitutes a valid and binding obligation enforceable against such Party.



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### 9.2 Accuracy of Information

Each Party represents and warrants that all information, documents, declarations, statements and materials supplied in connection with this Agreement are true, accurate, complete and not misleading in any material respect.

### 9.3 No Misrepresentation

The Employer shall not knowingly provide:

- (a) forged documents;
- (b) false financial information;
- (c) misleading declarations;
- (d) concealed material facts;
- (e) fraudulent information.

Any such conduct shall constitute a material breach of this Agreement.

### 9.4 Compliance with Applicable Laws

Each Party shall comply with all Applicable Laws, regulations, sanctions regimes, governmental requirements and regulatory obligations relevant to the performance of this Agreement.

### 9.5 Anti-Money Laundering

The Employer represents and warrants that:

- (a) all funds utilized in connection with the contemplated transaction originate from lawful sources;
- (b) the transaction does not involve money laundering, terrorist financing or unlawful activities;
- (c) satisfactory source-of-funds documentation shall be provided upon request;
- (d) satisfactory source-of-wealth documentation shall be provided upon request.

### 9.6 Sanctions Compliance

The Employer represents and warrants that neither the Employer nor, to the best of its knowledge:

- (a) its beneficial owners;
- (b) shareholders;
- (c) directors;



(d) officers;

(e) controlling persons;

(f) affiliated entities;

are subject to sanctions imposed by:

(i) the United Nations;

(ii) the United Kingdom;

(iii) the European Union;

(iv) the United States;

or any other applicable sanctions authority.

#### 9.7 Anti-Bribery and Anti-Corruption

Each Party shall comply with all applicable anti-bribery and anti-corruption legislation, including:

(a) the UK Bribery Act 2010;

(b) the U.S. Foreign Corrupt Practices Act (FCPA);

(c) any equivalent legislation applicable to the Parties.

No Party shall offer, promise, authorize or provide any improper payment, benefit or inducement in connection with this Agreement.

#### 9.8 Fraud Prevention

The Employer acknowledges that any attempted fraud, document manipulation, identity misrepresentation, concealment of ownership or deceptive conduct shall constitute grounds for immediate termination of this Agreement.

#### 9.9 Continuing Compliance Obligation

The representations, warranties and undertakings contained in this Article shall be deemed repeated continuously throughout the term of this Agreement.

#### 9.10 Change Notification

The Employer shall promptly notify the Consultant of any material change relating to:

(a) ownership structure;



## **BAG CAPITAL**

- (b) beneficial ownership;
- (c) directors;
- (d) control;
- (e) sanctions status;
- (f) compliance status;
- (g) legal standing.

### 9.11 Compliance Discretion

The Consultant, Guarantee Provider and Issuing Institution shall retain sole discretion to determine whether compliance, KYC, AML and sanctions requirements have been satisfactorily completed.

### 9.12 Suspension or Termination Rights

The Consultant may immediately suspend or terminate its Services if:

- (a) compliance concerns arise;
- (b) sanctions concerns arise;
- (c) fraud is suspected;
- (d) KYC or AML requirements are not satisfied;
- (e) the transaction creates legal, regulatory or reputational risk.

### 9.13 Indemnification

The Employer shall indemnify and hold harmless the Consultant, its affiliates, directors, officers, employees and representatives against all losses, liabilities, claims, penalties, damages, costs and expenses arising from:

- (a) false information supplied by the Employer;
- (b) breach of this Article;
- (c) regulatory violations attributable to the Employer;
- (d) unlawful conduct attributable to the Employer.

### 9.14 Survival



The provisions of this Article shall survive termination, completion, expiration, rescission or cancellation of this Agreement.

## **ARTICLE 10**

### **LIMITATION OF LIABILITY**

#### 10.1 No Guarantee of Results

The Employer acknowledges and agrees that the Consultant does not guarantee:

- (a) issuance of any Instrument;
- (b) approval by any bank, insurer, Guarantee Provider or financial institution;
- (c) completion of any underlying commercial transaction;
- (d) achievement of any financial, commercial or business objective.

The Consultant's obligations are limited to the performance of the Services on a best efforts basis.

#### 10.2 Third-Party Decisions

The Consultant shall not be liable for any decision, action, omission, delay, refusal or conduct of any:

- (a) bank;
- (b) insurance company;
- (c) Guarantee Provider;
- (d) underwriter;
- (e) investor;
- (f) lender;
- (g) governmental authority;
- (h) regulatory authority;
- (i) third-party service provider.

#### 10.3 Market and Regulatory Changes

The Consultant shall not be liable for losses arising from:

- (a) changes in market conditions;



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- (b) interest rate fluctuations;
- (c) sanctions;
- (d) regulatory changes;
- (e) banking restrictions;
- (f) governmental actions;
- (g) geopolitical events;
- (h) Force Majeure Events.

#### 10.4 Excluded Losses

To the fullest extent permitted by applicable law, the Consultant shall not be liable for:

- (a) loss of profit;
- (b) loss of business opportunity;
- (c) loss of anticipated savings;
- (d) loss of goodwill;
- (e) indirect losses;
- (f) consequential losses;
- (g) special damages;
- (h) exemplary damages;
- (i) punitive damages.

#### 10.5 Maximum Liability

Except in cases of fraud or wilful misconduct by the Consultant, and to the fullest extent permitted by applicable law, the aggregate liability of the Consultant arising out of or in connection with this Agreement shall not exceed the total Retainer Fee actually received by the Consultant from the Employer under this Agreement.

The Parties acknowledge and agree that:

- (a) the Consultant acts solely as an intermediary, coordinator and consultant;
- (b) the Consultant does not issue, underwrite or guarantee any financial instrument;



(c) the limitation contained in this Article represents a fair and reasonable allocation of commercial risk between sophisticated commercial parties;

(d) the Employer has had the opportunity to obtain independent legal advice before entering into this Agreement.

Under no circumstances shall the Consultant be liable for any amount exceeding the Retainer Fee actually received, regardless of whether any claim arises in contract, tort, negligence, statutory duty, misrepresentation or otherwise.

#### 10.6 Reliance on Information

The Consultant shall be entitled to rely upon all information, documents and declarations supplied by the Employer and shall not be responsible for independently verifying such information unless expressly agreed in writing.

#### 10.7 No Professional Advice

Unless expressly agreed in writing, the Consultant is not acting as:

- (a) legal counsel;
- (b) tax adviser;
- (c) auditor;
- (d) investment adviser;
- (e) regulated financial adviser.

The Employer shall obtain independent professional advice where appropriate.

#### 10.8 Duty to Mitigate

Each Party shall take reasonable steps to mitigate any loss or damage suffered in connection with this Agreement.

#### 10.9 Exclusive Remedies

The remedies expressly provided in this Agreement shall constitute the primary contractual remedies available to the Parties.

#### 10.10 Exclusive Financial Remedy

Except in cases of fraud or wilful misconduct by the Consultant, the Employer acknowledges and agrees that its sole and exclusive financial remedy against the Consultant shall be limited to recovery of the Retainer Fee actually paid by the Employer.



## **BAG CAPITAL**

The Employer irrevocably waives any right to claim:

- (a) consequential damages;
- (b) indirect damages;
- (c) loss of profits;
- (d) loss of opportunity;
- (e) loss of business;
- (f) punitive damages;
- (g) exemplary damages;

in excess of the Retainer Fee actually paid.

### 10.11 Time Limit for Claims

No claim arising out of or in connection with this Agreement may be brought against the Consultant unless written notice of such claim is provided within twelve (12) months following the event giving rise to the claim.

### 10.12 Survival

The provisions of this Article shall survive termination, expiration, completion, rescission or cancellation of this Agreement.

## **ARTICLE 11 FORCE MAJEURE**

### 11.1 Definition

For the purposes of this Agreement, a "Force Majeure Event" means any event, circumstance or condition beyond the reasonable control of the affected Party which prevents, delays or materially impairs the performance of its obligations under this Agreement.

### 11.2 Force Majeure Events

Force Majeure Events shall include, without limitation:

- (a) war, invasion, armed conflict, terrorism, sabotage or civil unrest;
- (b) sanctions, embargoes, trade restrictions or export controls;



- (c) actions, orders or restrictions imposed by governmental, regulatory or supervisory authorities;
- (d) changes in applicable laws, regulations or regulatory interpretations;
- (e) banking restrictions, regulatory interventions or financial system disruptions;
- (f) suspension, disruption or failure of SWIFT or other international payment systems;
- (g) correspondent banking restrictions or delays;
- (h) cyberattacks, ransomware attacks, major technology failures or telecommunications disruptions;
- (i) pandemics, epidemics or public health emergencies;
- (j) strikes, lockouts, labor disputes or industrial action;
- (k) natural disasters, including earthquakes, floods, fires, storms or similar events;
- (l) power failures or utility interruptions;
- (m) delays arising from sanctions screening, compliance reviews, AML reviews, KYC reviews or enhanced due diligence procedures;
- (n) actions or omissions of banks, insurers, Guarantee Providers or financial institutions beyond the reasonable control of the Parties.

### 11.3 Suspension of Obligations

A Party affected by a Force Majeure Event shall be excused from performance of its affected obligations for the duration of the Force Majeure Event and for such additional period as may reasonably be required to resume performance.

### 11.4 Notice Requirement

The affected Party shall notify the other Party as soon as reasonably practicable after becoming aware of the Force Majeure Event and shall provide reasonable details regarding:

- (a) the nature of the event;
- (b) its anticipated impact;
- (c) its expected duration.

### 11.5 Mitigation

The affected Party shall use commercially reasonable efforts to mitigate the effects of the Force Majeure Event and resume performance as soon as reasonably practicable.



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### 11.6 No Liability

Neither Party shall be liable for any delay, non-performance, loss, damage, cost or expense directly resulting from a Force Majeure Event.

### 11.7 Extended Force Majeure

If a Force Majeure Event continues for more than one hundred and twenty (120) consecutive days and materially prevents performance of this Agreement, either Party may terminate this Agreement by written notice to the other Party.

### 11.8 Effect on Fees

Termination pursuant to this Article shall not affect:

- (a) fees already earned by the Consultant;
- (b) accrued payment obligations;
- (c) reimbursement obligations already incurred;
- (d) rights arising prior to the Force Majeure Event.

### 11.9 Preservation of Rights

All rights, remedies and obligations accrued prior to the occurrence of the Force Majeure Event shall remain fully enforceable.

### 11.10 Survival

The provisions of this Article shall survive termination, expiration, completion, rescission or cancellation of this Agreement where necessary to give effect to their purpose.

## **ARTICLE 12**

### **GOVERNING LAW, DISPUTE RESOLUTION AND LCIA ARBITRATION**

#### 12.1 Governing Law

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and Wales.

#### 12.2 Good Faith Negotiations

In the event of any dispute, controversy or claim arising out of or in connection with this Agreement, including any question regarding its existence, validity, interpretation, performance, breach or termination, the Parties shall first attempt in good faith to resolve the dispute through amicable negotiations.



### 12.3 Escalation Procedure

If the dispute is not resolved within thirty (30) days following written notice of the dispute by either Party, either Party may refer the matter to arbitration in accordance with this Article.

### 12.4 LCIA Arbitration

Any dispute, controversy or claim arising out of or in connection with this Agreement, including any question regarding its existence, validity, interpretation, performance, breach or termination, shall be finally resolved by arbitration under the Rules of the London Court of International Arbitration ("LCIA"), which Rules are deemed incorporated into this Agreement.

### 12.5 Seat of Arbitration

The seat (legal place) of arbitration shall be London, England.

### 12.6 Language

The language of the arbitration shall be English.

### 12.7 Number of Arbitrators

The arbitral tribunal shall consist of:

- (a) one (1) arbitrator where the amount in dispute is less than EUR 5,000,000; or
- (b) three (3) arbitrators where the amount in dispute equals or exceeds EUR 5,000,000.

### 12.8 Interim and Protective Relief

Nothing in this Agreement shall prevent either Party from seeking:

- (a) interim relief;
- (b) injunctive relief;
- (c) conservatory measures;
- (d) protective orders;
- (e) asset preservation orders;
- (f) freezing orders;

from any court of competent jurisdiction before or during the arbitration proceedings.

### 12.9 Confidentiality of Proceedings



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The Parties shall keep confidential:

- (a) the existence of any arbitration;
- (b) all submissions and evidence;
- (c) all hearings;
- (d) all awards;

except where disclosure is required by law, regulation or for enforcement purposes.

### 12.10 Costs

The arbitral tribunal shall have the authority to award:

- (a) legal fees;
- (b) arbitration costs;
- (c) expert fees;
- (d) enforcement costs;
- (e) recovery expenses;
- (f) interest;

against the unsuccessful Party.

### 12.11 Summary Recovery of Payment Obligations

The Parties acknowledge that all amounts payable pursuant to Article 6, Schedule B and Schedule C constitute liquidated and ascertainable commercial debts.

The Consultant shall be entitled to seek:

- (a) summary judgment;
- (b) expedited arbitration procedures;
- (c) interim payment orders;
- (d) emergency relief;
- (e) debt recovery proceedings;



for the recovery of unpaid amounts.

#### 12.12 Final and Binding Award

Any arbitral award shall be final and binding upon the Parties and may be enforced in any court of competent jurisdiction pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (New York Convention).

#### 12.13 Continued Performance

Unless otherwise directed by the arbitral tribunal, the Parties shall continue to perform all undisputed obligations under this Agreement during the pendency of any dispute.

#### 12.14 Electronic Service of Notices

For the purposes of any arbitration, court proceeding or legal process, notices may be validly served by:

- (a) email;
- (b) courier;
- (c) registered mail;
- (d) internationally recognized delivery service;
- (e) electronic signature platforms accepted by the Parties.

#### 12.15 Survival

The provisions of this Article shall survive termination, expiration, completion, rescission or cancellation of this Agreement.

### **ARTICLE 13 MISCELLANEOUS PROVISIONS**

#### 13.1 Entire Agreement

This Agreement constitutes the entire agreement between the Parties and supersedes all prior negotiations, discussions, correspondence, representations, understandings, term sheets, memoranda and agreements, whether oral or written, relating to its subject matter.

#### 13.2 Amendments

No amendment, modification or variation of this Agreement shall be valid unless made in accordance with Article 13.18.



### 13.3 Assignment

The Consultant may assign, transfer, subcontract, delegate or otherwise dispose of any of its rights, obligations or receivables arising under this Agreement to:

- (a) an affiliate;
- (b) an associated company;
- (c) a successor entity;
- (d) a collection agent;
- (e) a law firm;
- (f) a litigation funder;
- (g) a debt purchaser;
- (h) a financial institution;
- (i) a servicing company; or
- (j) any permitted assignee.

The Employer may not assign, transfer or delegate any rights or obligations under this Agreement without the prior written consent of the Consultant.

### 13.4 Independent Contractor

Nothing in this Agreement shall create any partnership, joint venture, fiduciary relationship, agency relationship or employment relationship between the Parties.

### 13.5 Electronic Signatures

The validity and enforceability of electronic signatures, scanned signatures, electronic execution and electronic delivery of this Agreement shall be governed by Article 13.25.

### 13.6 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

### 13.7 Severability

If any provision of this Agreement is determined by any court, arbitral tribunal or competent authority to be invalid, illegal or unenforceable, the remaining provisions shall remain in full force and effect.



The Parties shall negotiate in good faith to replace any invalid provision with a valid provision that most closely reflects the original commercial intent.

### 13.8 Waiver

No failure or delay by either Party in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof.

Any waiver shall be effective only if made in writing.

### 13.9 Notices

Any notice, request, demand, consent, approval or communication under this Agreement shall be in writing and may be delivered by:

- (a) email;
- (b) courier;
- (c) registered mail;
- (d) internationally recognized delivery service.

### 13.10 Further Assurances

Each Party shall execute and deliver such additional documents and take such further actions as may reasonably be required to give full effect to this Agreement and the transactions contemplated herein.

### 13.11 No Third-Party Rights

Except as expressly provided herein, no person who is not a Party to this Agreement shall have any right to enforce any provision of this Agreement.

### 13.12 Language

This Agreement is executed in the English language.

If any translation is prepared for convenience purposes, the English version shall prevail in the event of any inconsistency or conflict.

### 13.13 Survival

Any provisions which by their nature are intended to survive termination, expiration or completion of this Agreement, including payment obligations, confidentiality obligations, non-circumvention



## BAG CAPITAL

obligations, indemnities, dispute resolution provisions and liability limitations, shall survive accordingly.

### 13.14 Effective Date

This Agreement shall become effective on the date of the last signature affixed hereto ("Effective Date").

### 13.15 Binding Effect

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, permitted assigns, heirs, administrators and legal representatives.

### 13.16 Order of Precedence

In the event of any conflict or inconsistency between:

- (a) Schedule C;
- (b) Schedule B;
- (c) Schedule A;
- (d) the main body of this Agreement;

the foregoing documents shall prevail in the order listed above to the extent necessary to resolve such inconsistency.

### 13.17 Alternative Security Instruments

Where the Employer is unable to procure the Bank Irrevocable Conditional Payment Undertaking set forth in Schedule C, the Consultant may, at its sole discretion, accept an alternative security arrangement providing substantially equivalent protection, including:

- (a) blocked funds confirmation;
- (b) escrow arrangement;
- (c) standby letter of credit;
- (d) bank payment undertaking;
- (e) corporate guarantee;
- (f) other acceptable financial security instruments.

### 13.18 Amendments and Electronic Communications



No amendment, modification, variation or waiver of any provision of this Agreement shall be effective unless:

- (a) it is made in writing; and
- (b) it is approved by duly authorized representatives of both Parties.

For the purposes of this Article, a written amendment may be evidenced by:

- (i) a signed amendment agreement;
- (ii) an exchange of emails between duly authorized representatives of the Parties clearly evidencing mutual agreement;
- (iii) electronic signature platforms;
- (iv) digitally executed documents.

For the avoidance of doubt, unilateral emails, text messages, WhatsApp messages or informal communications shall not constitute a valid amendment unless the mutual agreement of both Parties is clearly evidenced in writing.

The Parties agree that email communications exchanged between authorized representatives may constitute legally binding amendments where the intention to amend this Agreement is expressly stated and clearly accepted by both Parties.

#### 13.19 Time of the Essence

Time shall be of the essence with respect to all obligations relating to:

- (a) payment obligations;
- (b) verification procedures;
- (c) delivery of documentation;
- (d) compliance requirements;
- (e) contractual deadlines.

#### 13.20 Cumulative Remedies

The rights and remedies provided under this Agreement are cumulative and shall not exclude any rights or remedies available under applicable law, equity, arbitration rules or judicial procedures.

#### 13.21 Relationship with Schedules



## **BAG CAPITAL**

The Parties acknowledge that:

- (a) Schedule A constitutes the definitive technical specification of the requested Instrument;
- (b) Schedule B constitutes an independent payment undertaking by the Employer;
- (c) Schedule C constitutes an independent undertaking issued by the Employer's Bank or approved alternative security provider;
- (d) all Schedules form an integral part of this Agreement.

### 13.22 Interpretation

This Agreement shall be interpreted fairly and reasonably so as to give effect to the commercial intentions of the Parties.

No rule of construction requiring interpretation against the drafting Party shall apply.

### 13.23 Execution as a Deed

The Parties agree that this Agreement may be executed as a Deed and, where so executed, shall take effect as a Deed under the laws of England and Wales.

The Parties shall comply with all applicable witnessing and execution requirements.

### 13.24 Certification

The Parties acknowledge that:

- (a) they have carefully reviewed and understood this Agreement;
- (b) they have had the opportunity to obtain independent legal, financial and tax advice;
- (c) they enter into this Agreement freely and voluntarily;
- (d) they intend to be legally bound by its terms;
- (e) the fees and obligations contained herein have been negotiated at arm's length and represent fair commercial arrangements between sophisticated commercial parties.

### 13.25 Execution and Delivery of Agreement

The Parties expressly agree that this Agreement may be validly executed, delivered and become legally binding by any one or more of the following methods:

- (a) original wet-ink signatures exchanged physically;
- (b) scanned signed copies exchanged by email;



- (c) PDF copies transmitted electronically;
- (d) electronic signature platforms, including but not limited to DocuSign, Adobe Sign or equivalent platforms;
- (e) digital signatures recognized under applicable law;
- (f) exchange of emails between duly authorized representatives clearly confirming execution and acceptance of this Agreement;
- (g) execution in counterparts, whether signed physically or electronically.

Each Party agrees that:

- (i) a scanned signature shall be deemed an original signature;
- (ii) an electronically signed copy shall have the same legal force and effect as an original document;
- (iii) counterparts executed separately shall together constitute one and the same Agreement;
- (iv) no Party shall challenge the validity, enforceability or admissibility of this Agreement solely because it was executed, delivered or stored electronically.

For the avoidance of doubt, this Agreement shall become fully effective upon execution by both Parties, regardless of whether signatures are exchanged simultaneously, electronically or in separate counterparts.



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## EXECUTION PAGE

# INTERNATIONAL BANK GUARANTEE PROCUREMENT AND CONSULTANCY AGREEMENT

The Parties hereby acknowledge that they have read, understood and agreed to all terms and conditions of this Agreement and have duly executed this Agreement on the dates set forth below.

### EMPLOYER

Company Name:

Registration Number:

Registered Address:

Authorized Signatory:

Title:

Signature:

Date:

Email:

Telephone:

### CONSULTANT

**GBA CAPITAL LTD  
(BAG CAPITAL)**

95 Wilton Road, Suite 3

London SW1V 1BZ

United Kingdom

Company Number:

Authorized Signatory:

Title:

Post: 95 WILTON ROAD SUITE 3  
LONDON SW1V 1B2 U.K.  
bag capital is a gba capital ltd trademark.

PHONE : +44(0) 2032878836  
FAX : +44(0) 2032878836

[www.bagcapital.com](http://www.bagcapital.com)  
[info@bagcapital.com](mailto:info@bagcapital.com)



Signature:

Date:

Email:

Telephone:

## EXECUTION PROVISIONS

The Parties agree as follows:

1. This Agreement may be executed in one or more counterparts.
2. Each counterpart shall be deemed an original, and all counterparts together shall constitute one and the same Agreement.
3. Electronic signatures, digital signatures, DocuSign, Adobe Sign and similar electronic signature methods shall be valid and legally binding.
4. Signed copies transmitted by PDF, scanned signatures and electronically transmitted signatures shall have the same legal effect as original wet-ink signatures.
5. The Parties agree that this Agreement may be created, stored, transmitted and delivered electronically.
6. Signed copies transmitted by email shall constitute admissible evidence and shall have the same evidentiary value as original signed counterparts.

## SCHEDULES

The following Schedules form an integral part of this Agreement:

### Schedule A

#### **Bank Guarantee Specification Sheet**

### Schedule B

#### **Employer Irrevocable Fee Payment Undertaking**

### Schedule C

#### **Bank Irrevocable Conditional Payment Undertaking**

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the dates written above.



**BAG CAPITAL**

**EMPLOYER**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**GBA CAPITAL LTD**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_





## **SCHEDULE A**

### **BANK GUARANTEE / INSURANCE GUARANTEE SPECIFICATION SHEET**

This Schedule A forms an integral part of the International Bank Guarantee Procurement and Consultancy Agreement ("Agreement") and shall be read together with Articles 4 and 5 of the Agreement.

#### **1. APPLICANT / EMPLOYER**

Company Name:

Registration Number:

Registered Address:

#### **2. BENEFICIARY**

Name:

Address:

#### **3. REQUESTED INSTRUMENT**

The requested Instrument may consist of any of the following:

- (a) Bank Guarantee (BG);
- (b) Insurance Guarantee;
- (c) Standby Letter of Credit (SBLC);
- (d) Surety Bond;
- (e) First Demand Guarantee;
- (f) any equivalent financial undertaking acceptable to the Parties.



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### 4. GUARANTEED AMOUNT

EUR \_\_\_\_\_

(In Words)

### 5. VALIDITY PERIOD

The Instrument shall be valid for:

One (1) Year and One (1) Day

from the date of issuance unless otherwise agreed in writing by the Parties.

### 6. CHARACTERISTICS OF THE INSTRUMENT

The Instrument shall be:

- (a) irrevocable;
- (b) unconditional;
- (c) payable upon first demand;
- (d) freely verifiable;
- (e) authenticable through standard banking procedures;
- (f) transferable only if expressly stated in the Instrument;
- (g) substantially compliant with this Schedule A.

### 7. TRANSMISSION METHOD

The Instrument shall be transmitted through one of the following methods:

- (a) SWIFT MT760;
- (b) authenticated bank-to-bank communication;
- (c) authenticated insurer-to-beneficiary communication;
- (d) any internationally recognized transmission method acceptable to the Parties.

### 8. GOVERNING RULES



Where applicable, the Instrument shall be issued subject to:

- (a) URDG 758;
- (b) ISP98;
- (c) equivalent internationally recognized guarantee or standby rules.

#### 9. DESIGNATED RECEIVING BANK

Bank Name:

SWIFT Code:

Address:

#### 10. VERIFICATION RIGHTS

The Employer, its designated receiving bank, the Consultant, the Guarantee Provider and the Issuing Institution shall be entitled to verify the authenticity and validity of the Instrument directly with the relevant issuing institution.

#### 11. VERIFICATION PERIOD

The Employer shall complete all verification procedures within five (5) Business Days following receipt and authentication of the Instrument by the designated receiving bank.

Failure to issue a valid written rejection within such period shall constitute acceptance of the Instrument.

#### 12. ACCEPTABLE ISSUING INSTITUTION

The Instrument shall be issued, underwritten, guaranteed or supported by:

(a) a bank, financial institution, insurance company or guarantee provider holding a minimum long-term credit rating of:

- (i) A- or higher by Standard & Poor's;
- (ii) A- or higher by Fitch Ratings; or
- (iii) A3 or higher by Moody's Investors Service;

or

(b) any other institution expressly approved by the Employer in writing.



## **BAG CAPITAL**

The Consultant shall notify the Employer in writing of the proposed Issuing Institution, Guarantee Provider or Insurance Guarantee Provider.

The Employer shall approve or reject the proposed institution within five (5) Business Days following receipt of such notification.

Failure to respond within such period shall constitute automatic approval.

Approval may be provided by:

- (i) signed written confirmation;
- (ii) exchange of emails between authorized representatives of the Parties;
- (iii) electronic signature platform;
- (iv) any other written communication clearly evidencing approval.

Once approved, whether expressly or by deemed approval, the Employer shall not subsequently reject the Instrument solely on the basis of the identity, rating, jurisdiction or status of the approved institution.

### **13. SUBSTANTIAL COMPLIANCE STANDARD**

The Instrument shall be deemed compliant if it substantially conforms to:

- (a) this Schedule A;
- (b) Article 4 of the Agreement;
- (c) any written amendment agreed by the Parties.

Minor clerical, formatting, transmission or administrative differences shall not constitute grounds for rejection.

### **14. CORRECTION OF DEFECTS**

Where a technical, clerical, formatting or transmission defect is identified, the Consultant and/or the Issuing Institution shall be afforded a reasonable opportunity to correct, amend or replace the Instrument.

### **15. EXTENSION**

The Instrument may be extended upon:



- (a) written request by the Employer;
- (b) approval of the Guarantee Provider;
- (c) approval of the Issuing Institution;
- (d) payment of applicable extension fees.

Any request for extension must be submitted not less than thirty (30) days prior to expiry.

#### 16. ACCEPTABLE ISSUING INSTITUTION

The Instrument shall be issued, underwritten, guaranteed or supported by:

(a) a bank, financial institution, insurance company or guarantee provider holding a minimum long-term credit rating of:

- (i) A- or higher by Standard & Poor's;
- (ii) A- or higher by Fitch Ratings; or
- (iii) A3 or higher by Moody's Investors Service;

or

(b) any other institution expressly approved by the Employer in writing.

The Consultant shall notify the Employer in writing of the proposed Issuing Institution, Guarantee Provider or Insurance Guarantee Provider.

The Employer shall approve or reject the proposed institution within five (5) Business Days following receipt of such notification.

Failure to respond within such period shall constitute automatic approval.

Approval may be provided by:

- (i) signed written confirmation;
- (ii) exchange of emails between authorized representatives of the Parties;
- (iii) electronic signature platform;
- (iv) any other written communication clearly evidencing approval.



## **BAG CAPITAL**

Once approved, whether expressly or by deemed approval, the Employer shall not subsequently reject the Instrument solely on the basis of the identity, rating, jurisdiction or status of the approved institution.

For the avoidance of doubt, institutions approved pursuant to this Article may include banks, insurance companies, surety providers, guarantee providers or other financial institutions capable of issuing or supporting the Instrument.

### **17. ORDER OF PRECEDENCE**

In the event of any conflict between:

- (a) this Schedule A;
- (b) the wording of the Instrument;
- (c) any technical specification provided by the Employer;

the provisions of this Schedule A shall prevail unless the Parties expressly agree otherwise in writing.

### **18. INTEGRAL PART OF AGREEMENT**

This Schedule A forms an integral and inseparable part of the Agreement and shall be interpreted together with Articles 4, 5, 12 and 13 of the Agreement.



## **SCHEDULE B**

### **EMPLOYER IRREVOCABLE FEE PAYMENT UNDERTAKING**

This Schedule B forms an integral part of the International Bank Guarantee Procurement and Consultancy Agreement ("Agreement").

#### **1. PARTIES**

Employer:

Registration Number:

Address:

Consultant:

GBA CAPITAL LTD  
(BAG CAPITAL)

95 Wilton Road, Suite 3  
London SW1V 1BZ  
United Kingdom

#### **2. PURPOSE**

The Employer acknowledges that the Consultant and/or the Guarantee Provider will incur substantial time, costs, resources, compliance obligations, underwriting expenses and commercial commitments in connection with the procurement of the Instrument.

Accordingly, the Employer hereby issues this irrevocable payment undertaking.

#### **3. IRREVOCABLE PAYMENT OBLIGATION**

The Employer irrevocably and unconditionally undertakes to pay:

(a) the Insurance Premium; and

(b) the Success Fee;

as defined in Article 6 of the Agreement.



## **BAG CAPITAL**

### 4. AMOUNT PAYABLE

Unless otherwise agreed in writing:

Insurance Premium:

4.7%

Success Fee:

3.0%

Total Amount:

7.7%

of the face value of the Instrument.

### 5. PAYMENT TRIGGER

The payment obligation shall automatically arise upon occurrence of a Successful Completion Event as defined in Article 5 of the Agreement.

### 6. PAYMENT PERIOD

The Employer shall pay all amounts due under this Undertaking within seven (7) Business Days following the Successful Completion Event.

### 7. PAYMENT BENEFICIARIES

The Consultant may direct that:

(a) the Insurance Premium;

(b) the Success Fee;

be paid to separate beneficiaries designated in writing by the Consultant.

The Employer agrees to comply with such payment instructions.

### 8. INDEPENDENT UNDERTAKING

This Undertaking constitutes an independent and separate payment obligation of the Employer.

The validity, enforceability or payment obligations under this Undertaking shall not be affected by:

(a) disputes relating to the underlying transaction;

(b) disputes between the Employer and any third party;

(c) changes in commercial circumstances;



- (d) non-utilization of the Instrument after issuance;
- (e) cancellation of any underlying project after a Successful Completion Event.

#### 9. NO SET-OFF

The Employer shall not withhold, delay, reduce, offset or deduct any amount payable under this Undertaking.

#### 10. ACKNOWLEDGEMENT OF DEBT

Upon occurrence of a Successful Completion Event, all amounts payable under this Undertaking shall constitute liquidated, due and payable commercial debts.

#### 11. DEFAULT INTEREST

Any overdue amount shall accrue interest in accordance with Article 6.12 of the Agreement.

#### 12. RECOVERY COSTS

The Employer shall reimburse all legal fees, arbitration costs, enforcement expenses, collection costs and recovery expenses incurred in recovering overdue amounts.

#### 13. SURVIVAL

This Undertaking shall survive:

- (a) termination of the Agreement;
- (b) expiration of the Agreement;
- (c) rescission of the Agreement;
- (d) completion of the Agreement;

until all payment obligations have been fully satisfied.

#### 14. GOVERNING LAW

This Undertaking shall be governed by and construed in accordance with the laws of England and Wales.

#### 15. DISPUTE RESOLUTION

Any dispute arising out of or in connection with this Undertaking shall be resolved exclusively in accordance with Article 12 of the Agreement.



## **BAG CAPITAL**

### 16. EXECUTION

The Employer confirms that:

- (a) it has authority to execute this Undertaking;
- (b) this Undertaking is legally binding upon it;
- (c) it understands the consequences of this Undertaking;
- (d) it intends to be legally bound by its terms.

### 17. WAIVER OF DEFENSES

To the fullest extent permitted by applicable law, the Employer agrees that its payment obligations under this Undertaking shall not be affected, reduced, suspended, delayed or discharged by reason of:

- (a) any dispute relating to the underlying transaction;
- (b) any dispute between the Employer and the Beneficiary of the Instrument;
- (c) any change in the commercial circumstances of the Employer;
- (d) any change in the financial condition of the Employer;
- (e) non-utilization, partial utilization or subsequent cancellation of the Instrument after a Successful Completion Event;
- (f) cancellation, postponement or failure of any underlying project, investment or transaction;
- (g) any change in ownership, management or control of the Employer;
- (h) any insolvency, restructuring, merger, acquisition or reorganization of the Employer;
- (i) any act or omission of a third party unrelated to the Consultant;
- (j) any circumstance occurring after the Successful Completion Event.

The Employer expressly acknowledges that its payment obligations under this Undertaking are intended to be absolute, unconditional and irrevocable following the occurrence of a Successful Completion Event.

Nothing in this Article shall limit the Employer's rights in cases of proven fraud or wilful misconduct by the Consultant established by a final and binding arbitral award or court judgment.



EMPLOYER

Company:

Authorized Signatory:

Title:

Signature:

Date:





**BAG CAPITAL**

## **SCHEDULE C**

### **BANK IRREVOCABLE CONDITIONAL PAYMENT UNDERTAKING**

This Schedule C forms an integral part of the International Bank Guarantee Procurement and Consultancy Agreement ("Agreement") entered into between the Employer and GBA Capital Ltd. ("Consultant").

#### 1. ISSUING BANK

Bank Name:

SWIFT:

Registered Address:

#### 2. CUSTOMER / EMPLOYER

Company Name:

Registration Number:

Address:

#### 3. BENEFICIARY OF THIS UNDERTAKING

GBA CAPITAL LTD

95 Wilton Road, Suite 3  
London SW1V 1BZ  
United Kingdom

#### 4. PURPOSE

This Undertaking is issued in connection with the International Bank Guarantee Procurement and Consultancy Agreement executed between the Employer and the Consultant.

#### 5. BANK ACKNOWLEDGEMENT

The Bank hereby confirms that:

(a) it has received the payment instruction issued by its customer in relation to the obligations arising under the Agreement;

(b) such instruction has been accepted as a valid banking instruction in accordance with the Bank's internal procedures;



- (c) such instruction has been recorded by the Bank;
- (d) the Bank may communicate directly with the Consultant for verification purposes;
- (e) the Bank shall process such instruction in accordance with its terms upon satisfaction of the conditions set forth in this Undertaking.

## 6. PAYMENT CONDITIONS

The Bank shall process the payment instruction upon confirmation that:

- (a) the Instrument has been transmitted through SWIFT MT760 or an equivalent internationally recognized transmission method;
- (b) the Instrument has been successfully authenticated and verified by the Employer's designated receiving bank;
- (c) the Verification Period defined in the Agreement has expired without a valid written rejection;
- (d) a Successful Completion Event has occurred pursuant to Article 5 of the Agreement.

## 7. PAYMENT AMOUNT

The payment instruction relates to:

- (a) Insurance Premium:  
4.7% of the face value of the Instrument;
- (b) Success Fee:  
3.0% of the face value of the Instrument;

Total:  
7.7% of the face value of the Instrument.

## 8. CUSTOMER RESPONSIBILITY

The Bank's acknowledgement is based upon the instruction received from its customer.

The customer shall remain solely responsible for satisfying all requirements, arrangements, approvals and conditions required by the Bank for execution of such instruction.

The Bank's internal arrangements with its customer shall remain confidential and shall not affect the validity of this Undertaking.

## 9. STATUS CONFIRMATION

Upon reasonable written request from the Consultant, the Bank may confirm:



## **BAG CAPITAL**

- (a) receipt of the instruction;
- (b) continued validity of the instruction;
- (c) status of the instruction.

### 10. RELIANCE

The Consultant and any designated Guarantee Provider shall be entitled to rely upon this Undertaking as evidence that the Bank has received, accepted and recorded the payment instruction of its customer.

### 11. NO REVOCATION WITHOUT NOTICE

The Bank shall not revoke, cancel or materially amend the recorded payment instruction without prior written notice to:

- (a) the Employer; and
- (b) the Consultant.

### 12. COMMUNICATIONS

All notices and communications relating to this Undertaking may be delivered by:

- (a) SWIFT message;
- (b) authenticated bank communication;
- (c) email;
- (d) courier;
- (e) internationally recognized delivery service.

### 13. GOVERNING LAW

This Undertaking shall be governed by and construed in accordance with the laws of England and Wales.

### 14. DISPUTE RESOLUTION

Any dispute arising out of or in connection with this Undertaking shall be resolved in accordance with Article 12 of the Agreement.

### 15. EXECUTION



This Undertaking may be executed by:

- (a) original signature;
- (b) scanned signature;
- (c) PDF transmission;
- (d) electronic signature platform;
- (e) any method recognized under Article 13.25 of the Agreement.

#### 16. BINDING EFFECT

This Undertaking shall be binding upon the Bank, the Employer and their respective successors and permitted assigns.

#### 17. EFFECTIVE DATE

This Undertaking shall become effective upon execution by the Bank and shall remain in effect until the payment instruction has been fully performed, revoked in accordance with this Undertaking or otherwise discharged in writing by the Consultant.

#### FOR AND ON BEHALF OF THE BANK

Bank Name:

Authorized Signatory:

Title:

Signature:

Date:

Bank Stamp (if applicable):



**BAG CAPITAL**

## **EXECUTION PAGE**

### **INTERNATIONAL BANK GUARANTEE PROCUREMENT AND CONSULTANCY AGREEMENT**

The Parties hereby acknowledge that they have read, understood and agreed to all terms and conditions of this Agreement and have duly executed this Agreement on the dates set forth below.

#### **EMPLOYER**

Company Name:

Registration Number:

Registered Address:

Authorized Signatory:

Title:

Signature:

Date:

Email:

Telephone:

#### **CONSULTANT**

**GBA CAPITAL LTD**  
(BAG CAPITAL)

95 Wilton Road, Suite 3

London SW1V 1BZ

United Kingdom

Company Number:



Authorized Signatory:

Title:

Signature:

Date:

Email:

Telephone:

## **EXECUTION PROVISIONS**

The Parties agree as follows:

1. This Agreement may be executed in one or more counterparts.
2. Each counterpart shall be deemed an original, and all counterparts together shall constitute one and the same Agreement.
3. Electronic signatures, digital signatures, DocuSign, Adobe Sign and similar electronic signature methods shall be valid and legally binding.
4. Signed copies transmitted by PDF, scanned signatures and electronically transmitted signatures shall have the same legal effect as original wet-ink signatures.
5. The Parties agree that this Agreement may be created, stored, transmitted and delivered electronically.
6. Signed copies transmitted by email shall constitute admissible evidence and shall have the same evidentiary value as original signed counterparts.

## **SCHEDULES**

The following Schedules form an integral part of this Agreement:

### **Schedule A**

#### **Bank Guarantee Specification Sheet**

### **Schedule B**

#### **Employer Irrevocable Fee Payment Undertaking**

### **Schedule C**

#### **Bank Irrevocable Conditional Payment Undertaking**



## **BAG CAPITAL**

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the dates written above.

### **EMPLOYER**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

### **GBA CAPITAL LTD**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_