

# CareComplianceManager Service Agreement

## PARTIES

- (1) FOAM Studio Limited, a company incorporated and registered in England and Wales with company number 06902180 whose registered office is at Clarendon - Marble Arch, 42 Upper Berkeley St, Marble Arch, London W1H 5PW, United Kingdom (**FOAM**); and
- (2) The business entity which registers to use the Services (**Client**)

## BACKGROUND

- (A) FOAM has developed certain software applications and platforms which it makes available under the "CareComplianceManager" trademark to paying subscribers for the purpose of helping care providers fulfil their compliance obligations in a timely, effective, adequate and responsible manner.
- (B) The Client wishes to use FOAM's service in its business operations.
- (C) FOAM has agreed to provide and the Customer has agreed to take and pay for FOAM's service subject to the terms and conditions of this Agreement.

## 1. Definitions and Interpretation

### 1.1. In this Agreement:

- 1.1.1. "Affiliate" includes, in relation to either party, each and any subsidiary or holding company of that party and each and any subsidiary of a holding company of that party. Holding company and subsidiary mean a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006.
- 1.1.2. "Agreement" means this agreement, any schedules, appendices and addendums as well as any Commercial Terms emailed separately to the Client by FOAM.

- 1.1.3. "Authorised User" means any person other than the Client who is authorised by the Client in accordance with the Agreement to access and use the Services.
- 1.1.4. "Commercial Terms" means those terms and conditions emailed separately to the Client by FOAM, providing details which include, but are not limited to, the Service Fee and the number of Authorised Users associated with the Client's use of the Services.
- 1.1.5. "Confidential Information" means any and all secret or confidential information (including without limitation: commercial, financial, marketing and technical information, together with know-how, trade secrets and other information in written, electronic or any other form or medium), whether disclosed before, on or after the date of this Agreement; together with all personal data (as 'personal data' is defined under the Data Protection Act 1998 and the GDPR and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers, including all Intellectual Property Rights of FOAM, together with all information derived from any of the above, and any other information which is clearly confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential.
- 1.1.6. "Confirmation" means the confirmation email sent to the Client by FOAM, containing the Client's password(s) to access the Service, on receipt by FOAM of a valid Direct Debit mandate from the Client.
- 1.1.7. "Data" means the data inputted to the Services either by the Client or Authorised Users, or FOAM on the Client's behalf for the purpose of using the Services or facilitating the Client's use of the Services. This may include, but is not limited to, 'personal data' as defined by the GDPR.
- 1.1.8. "Data Protection Legislation" means the UK Data Protection Legislation and any European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).
- 1.1.9. "GDPR" means the General Data Protection Regulation (GDPR) (EU) 2016/679.
- 1.1.10. "Intellectual Property Rights" means intellectual property rights whether vested or contingent and howsoever arising including

(without limitation) those in data, Systems, documentation, information, patents, inventions, trademarks, service marks, logos, design rights, registered designs, copyright, database rights, domain names, trade or business names, moral rights, trade secrets, the right to sue for passing off and all similar rights whether registered or not (in any country).

- 1.1.11. "Minimum Subscription Period" means the minimum subscription period as specified in the Commercial Terms, such period to commence on the date FOAM issues the Confirmation. If not stated otherwise in the Commercial Terms, the Minimum Subscription Period is 90 days from the date FOAM issues the Confirmation.
- 1.1.12. "Services" means the services provided under the "CareComplianceManager" trademark, as set out in Section 2 below.
- 1.1.13. "Service Fee" means all subscriptions and other types of fees (excluding any taxes and duties) payable by Client to FOAM under the terms of this Agreement.
- 1.1.14. "Systems" means a fully working version of FOAM's Services.
- 1.1.15. "Term" means the initial period of duration of this Agreement set out in section 4.1.
- 1.1.16. "UK Data Protection Legislation" means all applicable data protection and privacy legislation in force from time to time in the UK including the GDPR; the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
- 1.1.17. "User Subscriptions" means the user subscriptions purchased by the Client which entitle a given number of Authorised Users to simultaneously access and use the Services in accordance with this Agreement.
  
- 1.1.18. Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.1.19. Unless the context otherwise requires:

- 1.1.19.1. words in the singular shall include the plural and in the plural shall include the singular;
  - 1.1.19.2. a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
  - 1.1.19.3. a reference to one gender shall include a reference to the other genders; and
  - 1.1.19.4. any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
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- 1.1.20. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
  - 1.1.21. References to clauses and schedules are to the clauses and schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
  - 1.1.22. The schedules, appendices and addendums as well as any Commercial Terms form part of this Agreement and shall have effect as if set out in full in the body of this Agreement.

## 2. Commencement

- 2.1. This Agreement shall commence on the date FOAM issues a Confirmation to the Client of the Client's order.
- 2.2. When the Client places an order for the Services, the Client will receive an email from FOAM acknowledging receipt of its order and giving payment instructions. This email does not constitute Confirmation of the Client's order. FOAM's acceptance of the Client's order will take place as described in clause 2.3 below.
- 2.3. On receipt of a valid Direct Debit mandate FOAM will confirm its acceptance by sending the Client a confirmation email (Confirmation) containing the Client's password(s) to access the Services. This Agreement between FOAM and the Client will only be formed when FOAM sends the Client the Confirmation.

- 2.4. By placing an order to use the Services and/or using the Services, the Client agrees to be bound as a party to this Agreement upon FOAM issuing a Confirmation. FOAM becomes a party to this Agreement upon issuing a Confirmation.
- 2.5. If the Client does not accept any of the terms of this Agreement, then it must immediately stop using the Services.

### 3. Services

- 3.1. In consideration of the mutual obligations of the parties set out in this Agreement, FOAM hereby grants to the Client a non-exclusive, non-sublicensable, non-transferable, licence to use the Systems as provided herein, subject to the provisions of this Agreement. FOAM may from time to time create updated versions of the Systems and may, at its discretion, make such updates available to the Client subject to this Agreement.
- 3.2. FOAM may improve the Services from time to time and changes made may necessitate a change to this Agreement. FOAM reserves the right to change this Agreement at any time, with any new terms taking effect as soon as they are posted on <https://www.carecompliancemanager.co.uk>. While FOAM will take steps to communicate changes via email, it is the Client's responsibility to read and understand the most recent terms as set out on <https://www.carecompliancemanager.co.uk>.
- 3.3. FOAM will be responsible for hosting the Systems and for providing sufficient bandwidth and storage for the Client's reasonable usage.
- 3.4. The Systems' functionality includes but is not limited to:
  - 3.4.1. Data collection and data management
  - 3.4.2. Reporting
  - 3.4.3. Service Users Administration
  - 3.4.4. My Personal Needs and risk Assessment
  - 3.4.5. My Support Plan
  - 3.4.6. Service User Review Form
  - 3.4.7. Telephone Quality Review
  - 3.4.8. Yearly Quality client form
  - 3.4.9. Care Worker Administration
  - 3.4.10. Home Assessment Visit Form (spot check)
  - 3.4.11. Supervision Form
  - 3.4.12. Week 1 Carer form

- 3.4.13. Week 2 - 3 Carer form
- 3.4.14. Annual Appraisals
  
- 3.5. By registering to use the Services, the Client agrees that it has read and understood this Agreement. The Client confirms that it has the authority to bind any business on whose behalf it orders or uses the Services.
- 3.6. The Client shall not access, store, distribute or transmit any viruses, or any material during the course of its use of the Services that:
  - 3.6.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - 3.6.2. facilitates illegal activity;
  - 3.6.3. depicts sexually explicit images;
  - 3.6.4. promotes unlawful violence;
  - 3.6.5. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability or
  - 3.6.6. in a manner that is otherwise illegal or causes damage or injury to any person or property;
  
- 3.7. FOAM reserves the right, without liability or prejudice to its other rights to the Client, to disable the Client's access to any material that breaches the provisions of clause 2.9.
- 3.8. The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify FOAM.
- 3.9. The Client is responsible for making all arrangements necessary for it to have access to the Services.
- 3.10. The rights provided under this Agreement are granted to the Client only, and shall not be considered granted to any subsidiary or holding company or related party of the Client.
- 3.11. It is the Client's sole responsibility to determine that the Services meet its specific needs and are suitable for the purposes for which the Client intends to use them.
- 3.12. FOAM grants the Client the right to access and use the Services for the Authorised User(s) set out in this Agreement with the Client. This right is non-exclusive, non-transferable, and is limited by and subject to this Agreement.
- 3.13. The Client acknowledges and agrees that:

- 3.13.1. the Client is responsible for the Authorised Users and any other person or entity given permission to access the Services or the Data as a result of this Agreement and the Client agrees that FOAM is not obliged to provide any person or entity with access to any information or Data without the Client's written authorisation and that FOAM has the right to refer any requests for information which is has received to the Client.
  - 3.13.2. the Client is responsible for deciding who is an Authorised User and what level of access to the Services that Authorised User has;
  - 3.13.3. the Client is responsible for its Authorised Users' use of the Services; and
  - 3.13.4. the Client controls its Authorised Users' level of access to the Services at all times and can change or revoke any Authorised User's access, or change the level of access, for any reason and at any time.
- 3.14. If there is any dispute between the Client and an Authorised User in relation to access to the Services, the Client shall decide what access to the Services that Authorised User shall continue to have.
- 3.15. The Client undertakes for itself and in relation to each Authorised User to ensure that all usernames and passwords required to access the Services are kept secure and confidential. The Client undertakes to immediately notify FOAM of any unauthorised use of passwords or any other breach of security. FOAM may reset the Client's password provided the Client agrees to take all other actions that FOAM reasonably deems necessary to maintain or enhance the security of FOAM's computing systems and networks and the Client's access to the Service.
- 3.16. When accessing and using the Services the Client agrees:
- 3.16.1. Not to attempt to undermine the security or integrity of FOAM's computing systems or networks;
  - 3.16.2. Not to use, or misuse, any of the Services in any way which may impair the functionality of the Services or the systems used to deliver the Services or impair the ability of any other user to use the Services;
  - 3.16.3. Not to attempt to gain unauthorised access to any materials other than those to which the Client has been given express

- permission to access or to the computer system on which the Services are hosted;
- 3.16.4. Not to transmit, or input into the Services, any: files that may damage any other person's computing devices or software, content that may be offensive, or material or Data in violation of any law (including Data or other material protected by copyright or trade secrets which the Client does not have the right to use);
  - 3.16.5. Not to attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the Services except as is strictly necessary to use them for normal operation;
  - 3.16.6. Not to access all or any part of the Services in order to build a product or service which competes with the Services;
  - 3.16.7. Not to license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services or the Software available to any third party except the Authorised Users; and
  - 3.16.8. Not to attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this Agreement.

## 4. Fees and Payment

- 4.1. The Client shall pay the Service Fees to FOAM in accordance with this Agreement and any Commercial Terms.
- 4.2. All costs exclude VAT which will be added.
- 4.3. The Client shall provide valid, up-to-date and complete contact and billing details.
- 4.4. FOAM shall issue invoices to the Client in respect of the Service Fees on the date of this Agreement and then monthly in advance.
- 4.5. The Client authorises FOAM to bill the Service Fees by Direct Debit on the date of this Agreement and then monthly in advance as specified in the Commercial Terms.
- 4.6. The Client shall pay each invoice by the due date specified in the invoice.
- 4.7. All expenses incurred by or on behalf of the parties including all fees of agents, solicitors, accountants, employed by any of the parties in connection with the negotiation or preparation and execution of this Agreement shall be borne solely by the party



which incurred them unless otherwise agreed. Reimbursement of expenses will be subject to provision of valid receipts or bills. Expenses will be invoiced monthly in arrears.

- 4.8. FOAM reserves the right to charge interest on any overdue payment in accordance with the Late Payment of Commercial Debts (Interest) Act. In addition, FOAM will be entitled to suspend provision of the Services if any payment is not made by the Client within 30 days of the due date.
- 4.9. The Client shall have no right of set-off or to withhold payment or deduct any amount for any reason whatsoever.
- 4.10. If the Client fails to pay when due any amount payable by it under the terms of this Agreement with FOAM:
  - 4.10.1. FOAM may, without liability to the Client, disable the Client's password(s), account and access to all or part of the Services and FOAM shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid;
- 4.11. If the Client has failed to pay the amount due the Client shall pay interest on the overdue amount from the due date until the date of actual payment (after as well as before judgment) at the rate of 4 per cent per annum above the base rate from time to time of HSBC. Such interest shall accrue on a daily basis and be compounded quarterly.
- 4.12. FOAM shall be entitled to increase the Service Fees upon 30 days' prior notice to the Client and the Commercial Terms shall be deemed to have been amended accordingly.

## 5. Term and Termination

- 5.1. This Agreement shall commence on the date FOAM issues a Confirmation (as described in clause 2) and shall continue until terminated by either FOAM or the Client by giving the other not less than 30 days prior written notice to expire at any time after the Minimum Subscription Period.
- 5.2. Either party may terminate this Agreement if the other party commits a material breach of any of these conditions and which, in the case of a breach being capable of remedy, shall not have been remedied within 30 days of a written notice to remedy the breach.

5.3. Upon termination of this Agreement for any reason:

- 5.3.1. the licence granted to the Client under clause 2.1 will immediately terminate;
  - 5.3.2. the Client shall immediately cease to use the Systems and Services;
  - 5.3.3. each party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other party;
  - 5.3.4. FOAM may destroy or otherwise dispose of any of the Data in its possession unless FOAM receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Client of the then most recent backup of the Data. FOAM shall use reasonable commercial endeavours to deliver the back-up to the Client within 30 days of its receipt of such a written request, provided that the Client has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Client shall pay all reasonable expenses incurred by FOAM in returning of Data;
  - 5.3.5. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination shall not be affected or prejudiced; and
  - 5.3.6. all the provisions of this Agreement which in order to give full effect to their meaning need to survive termination shall do so.
- 5.4. Refunds will not be provided by FOAM for any part of any remaining prepaid period in relation to Service Fees paid to FOAM by the Client in advance.
- 5.5. Any termination of this Agreement (however caused) shall not affect any rights or liabilities of either party which have accrued prior to date of termination nor shall it affect the coming into force or the continuation in force of any provision of this Agreement expressed to survive such termination.

## 6. Service Levels

- 6.1. Telephone support is provided by the FOAM Support Team, Monday to Friday between 09:00 and 17:30 UK time. Emergency support is available outside these hours for critical issues.
- 6.2. FOAM may from time to time close down the whole or part of the Systems for routine repair, maintenance work or for emergency repair. FOAM shall at its sole discretion decide when such action is necessary, although it will endeavour to update the Systems outside of office hours wherever possible. FOAM will, where practicable, notify the Client in advance of any scheduled downtime.
- 6.3. Data is owned by the Client and FOAM is not responsible for the accuracy, validity, or usability of data provided by the Client. The Client is responsible for providing correct and complete data to FOAM for the purposes of setting up the Systems, including user/administrator data, in line with their obligations as a Data Controller under the GDPR.
- 6.4. FOAM will take backup copies of Client data and data files and verify the functionality of such backup copies on a regular basis. Nightly encrypted backups are taken offsite, and, in the extremely unlikely event of total loss of service, FOAM would restore the previous night's backup on another server within 48 hours.
- 6.5. All of the main areas of data within FOAM will always be available for export to CSV files from the FOAM Reports section and Finance section.

## 7. Communications

- 7.1. As a condition of this Agreement, the Client agrees only to use any communication tools available via the Services for legitimate and lawful purposes. The Client must not use any of the Services' communication tools for communicating any material unrelated to the Client's use of the Services, including (but not limited to): offers of goods or services for sale, unsolicited commercial e-mails; files that could damage another person or entity's computing devices or software; content that may be regarded as offensive to other users of the Services; or material which violates English law.
- 7.2. When the Client communicates via the Services, the Client confirms that it is authorised to make that communication, including the lawful basis for sharing any sensitive data contained within the

communication, as defined by the GDPR. FOAM is under no obligation to moderate the Services or to ensure that communications made via the Services are valid or that they relate only to the use of the Services. FOAM reserves the right to remove any communication from the Services at its sole discretion and at any time.

## 8. Liability and Warranty

- 8.1. The Systems and Services are provided "as is" without warranty of any kind either express or implied. All conditions, terms, representations and warranties that are not expressly stated in this Agreement, whether oral or in writing or whether imposed by statute or operation of law or otherwise, including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose are hereby excluded to the extent permitted by law. In particular, FOAM does not warrant that the operation of the Systems will be uninterrupted or error free.
- 8.2. FOAM shall not be liable for any loss of, damage to, or alteration of data or data files of the Client which occurs in connection with this Agreement, with the exception of its obligations as a Data Processor under the GDPR.
- 8.3. The Client warrants and agrees that it will use the Services on behalf of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business entities does not apply to the provision of the Services by FOAM.
- 8.4. The Client acknowledges that FOAM, its agents, contractors, licensees, employees and information providers providing Services are unable to exercise control over the content of the Internet; and FOAM therefore excludes all liability of any kind arising out of the transmission or reception of material or information in any form by the Client or any third party.
- 8.5. In no event will FOAM be liable to the Client or any third party for any incidental, consequential or special damages, or any lost profits, lost savings or loss of data, arising out of the provision or failure to provide the Services, websites or systems even if FOAM has been advised of the possibility of such damages.
- 8.6. Except in respect of death or personal injury due to negligence for which no limit applies, the entire liability of FOAM to the Client in

respect of any claim whatsoever or breach of this Agreement, howsoever arising, shall be limited to the fees paid by the Client in the month preceding the first incident giving rise to such liability.

- 8.7. The Client agrees to fully indemnify and keep FOAM, its employees, affiliates and partners fully and effectively indemnified from and against all actions, demands, costs, losses, penalties, damages, liability, claims and expenses (including but not limited to legal fees) whatsoever arising from its breach of any contract with FOAM, its use or misuse of any services provided by FOAM or its affiliates, any claims by third parties as to ownership or any other rights to ownership or arising in any way by the Client infringing (whether innocently or knowingly) third party rights (including without limitation intellectual property rights).
- 8.8. No party shall be deemed in breach of this Agreement or otherwise liable to the other party for any failure or delay in performance by it of any of its obligations under this Agreement (other than an obligation to make payment when due) if and to the extent that the delay or non-performance is due to a circumstance beyond the control of that party ("Force Majeure"). If a party is prevented or delayed in the performance of any of its obligations under this Agreement by Force Majeure that party shall as soon as reasonably possible give written notice to the others of the nature and extent of the circumstances giving rise to Force Majeure. The operation of this Agreement shall be suspended during the period and only during the period in which Force Majeure continues and any time periods in this Agreement shall be extended accordingly.

## 9. Intellectual Property Rights

- 9.1. All right, title and interest in and to the Systems, together with any other intellectual property rights arising out of the development of the Systems remain the property of FOAM. This specifically includes all systems, programming and coding required in creating, amending and operating the System websites and tools.
- 9.2. The Client grants FOAM a licence to use, copy, transmit, store, and back-up its information and Data for the purposes of enabling it to access and use the Services and for any other purpose related to provision of the Services under the terms of this Agreement.
- 9.3. None of FOAM's Intellectual Property Rights shall be transferred or affected in any way by this Agreement and no party shall acquire

any right in relation to FOAM's Intellectual Property. Any use of FOAM's branding, logo or marketing collateral shall only be permitted with FOAM's prior approval in writing.

- 9.4. The Client may not copy, reproduce, publish, rent out, lease, modify, create derivative works from the Systems nor may the Client remove any proprietary notice, labels, or marks on the Systems. The Client may not modify, adapt, reverse engineer, decompile, disassemble, create derivative works based on or copy the Systems.
- 9.5. The content entered into the Systems remains the property of the Client. FOAM reserves the right to delete all such content from its servers, systems and networks upon termination of this Agreement and the Client expressly agrees to this. Without prejudice to the foregoing, FOAM will, upon request by the Client, provide the Client with a copy of all Client content entered into the content management systems, except where in its sole discretion FOAM considers that there is a good reason not to do so, for example and without limitation if the Client has materially breached this Agreement, to the extent permitted by FOAM's obligations under the GDPR.

## 10. Data Protection

- 10.1. Each Party shall be responsible for ensuring that it fulfils its respective obligations and responsibilities under the Data Protection Legislation.
- 10.2. If FOAM processes any personal data on the Client's behalf when performing its obligations under this Agreement, the Client shall be the Data Controller and FOAM shall be a Data Processor as defined in the GDPR. In any such case:
  - 10.2.1. the Client shall ensure that it is entitled to transfer the relevant personal data to FOAM so that FOAM may lawfully use, process and transfer the personal data in accordance with this Agreement on the Client's behalf; and
  - 10.2.2. the Client shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data

protection legislation. It is the Client's responsibility to establish a lawful basis for processing Data, as defined in the GDPR.

- 10.3. The Client undertakes to keep secure copies of all Data which the Client or its Authorised Users have input to the Service. FOAM does not guarantee that there will be no loss of Data. Subject to FOAM's obligations under the GDPR, FOAM expressly excludes liability for any loss of Data regardless of the cause.
- 10.4. In the event of any loss or damage to Data, and subject to FOAM's obligations under the GDPR, the Client's sole and exclusive remedy shall be for FOAM to use reasonable commercial endeavours to restore the lost or damaged Data from the latest backup of such Data maintained by FOAM. FOAM shall not be responsible for any loss, destruction, alteration or disclosure of Data caused by any third party.
- 10.5. The Client shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Data.
- 10.6. FOAM shall enable the appropriate, agreed access and use of the Systems by administrators as authorised by the Client; the Client is responsible for ensuring that all such authorised users of the Systems provided by FOAM under this Agreement comply with instructions in respect of the use of the Systems, including access to, processing of, and protection of, personal data.
- 10.7. FOAM shall safeguard the personal data made available by the Client and the operation and use of the Systems including restricting access to any personal data to the extent necessary for the provision of the Services under this Agreement, and to the extent permissible under the GDPR.
- 10.8. The parties agree that they will use reasonable endeavours to ensure that they do not, and do not cause the other party to, breach the Data Protection Legislation due to the acts or omissions of the parties.
- 10.9. For more information, please refer to our Data Processing Agreement, which forms an addendum to this Agreement.

## 11. Confidentiality

- 11.1. Each party shall in relation to any Confidential Information it receives in connection with this Agreement keep that confidential information strictly in confidence and not disclose it to third parties.

- 11.2. A party's Confidential Information shall not be deemed to include information that:
  - 11.2.1. is or becomes publicly known other than through any act or omission of the receiving party;
  - 11.2.2. was in the other party's lawful possession before the disclosure;
  - 11.2.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
  - 11.2.4. is independently developed by the receiving party, which independent development can be shown by written evidence.
- 11.3. Subject to Clause 11.5, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 11.4. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 11.5. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 11.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 11.6. No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 11.7. The above provisions of this Clause 11 shall survive termination of this agreement, however arising.



## 12. Governing Law and Dispute Resolution

- 12.1. This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 12.2. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

## 13. General

- 13.1. **Entire Agreement:** This Agreement supersedes any previous agreements between the parties in relation to the matters dealt with herein and represents the entire understanding between the parties in relation thereto. Each of the parties acknowledges and agrees that it has not entered into this Agreement in reliance upon any representation, warranty, undertaking, agreement, statement or replies to enquiries (whether oral or written) made or alleged to have been made by any other party (whether or not negligently made) on or prior to the date hereof except as expressly set out in this Agreement (provided that nothing contained in this Agreement shall operate to exclude any liability for fraudulent misrepresentation).
- 13.2. **Binding Agreement:** This Agreement shall be binding on and shall enure for the benefit of the successors in title of each party.
- 13.3. **No Waiver:** No failure or delay on the part of either party hereto to exercise any right or remedy under this Agreement shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be.
- 13.4. **Variations:** FOAM reserves the right to vary the terms of this Agreement upon giving 30 days' written notice. The Client may not

vary the terms of this Agreement except with the written agreement of FOAM.

- 13.5. **Rights, Remedies and Powers:** A failure to exercise or delay in exercising any right, remedy or power provided under this Agreement or by law does not constitute a waiver of the right, remedy or power or a waiver of any other right, remedy or power. No single or partial exercise of any right, remedy or power prevents any further exercise of it or the exercise of any other right, remedy or power. The rights, remedies and powers provided by this Agreement are cumulative and not exclusive of any rights, remedies or powers provided by law.
- 13.6. **Assignment:** Save as expressly stated in this Agreement, neither party to this Agreement may assign or transfer its rights or obligations under this Agreement without the written consent of the other party, save that either party shall be entitled to effect (and the other party hereby consents to) such an assignment to transfer to an Affiliate.
- 13.7. **Subcontracting:** FOAM may engage a subcontractor or agent to perform any of its obligations under this Agreement, however, no such subcontracting or agency shall relieve FOAM of responsibility for the due performance of this Agreement.
- 13.8. **Severability:** If any term or provision in this Agreement shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law that term or provision or part shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected.
- 13.9. **Notices:** Any notice given under the terms of this Agreement by either party to the other must be in writing by email and will be deemed to have been given on transmission. Notices to FOAM must be sent to asdf@asdf or to any other email address notified by email to the Client by FOAM. Notices to the Client will be sent to the email address provided by the Client during Confirmation of their order.
- 13.10. **Counterparts:** This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, each of which when executed shall be an original, but all of which together shall constitute a single instrument.

