



STANDARD TERMS AND CONDITIONS FOR CONSULTANCY WORK

Glossary of Terms

In these Terms of Business the following definitions apply:

"Blackswan" describes all companies within GFI Blackswan Limited and Global Blackswan Limited, including but not limited to Blackswan Transformation Limited;

"Client" means the person; firm or corporate body / group together with any subsidiary or associated Company as defined by the Companies Act 1985, irrespective of location or geography to which the Candidate is introduced

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Blackswan and the Client have agreed to engage with respect to certain services provided by Blackswan. Blackswan and the Client hereby agree to the following terms and conditions in connection with such services.



1 Terms

- 1.1** These terms are referred to as the Blackswan terms and shall apply to the provision of services and goods under contracts into which they are expressly incorporated.
- 1.2** Once incorporated, these terms shall apply to the exclusion of all other terms and conditions including any terms which a Client may purport to apply under any confirmation of instruction or similar document.
- The Blackswan terms shall continue to apply to all services provided by Blackswan to the Client under any contract hereafter until expressly excluded in writing.

2 Assignment and Terms of Reference

- 2.1** Blackswan agrees to carry out the Assignment in accordance with any mutually agreed Terms of Reference.
- Blackswan agrees to assist the Client in connection with its development of the Project. In the event the Client requests additional services related to the Project, the scope of such additional services shall be as agreed by the parties and shall be governed by these Terms of Business.
- These Terms of Business shall govern all services provided by Blackswan in connection with the Assignment and any additional services related to the Project as agreed by the parties.
- 2.2** The Client agrees to cooperate with Blackswan in the performance of Blackswan's services and to give such support, facilities and information as may be reasonably required.

2.3 THE CONTRACT

These Terms constitute the contract between Blackswan and the Client and are deemed to be accepted by the Client.

These terms contain the entire agreement between the parties and unless otherwise agreed in writing by a Managing Director of Blackswan these Terms of Business prevail over any other terms of business or purchase conditions put forward by the Client.

No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between Blackswan and the Client and are set out in writing and a copy of the varied terms is given to the Client stating the date on or after which such varied terms shall apply.

A non-disclosure agreement is agreed by the Client that will state all information relating to the Project, including but not limited to detail of charges and expenses, will not be disclosed to any external source.

3 Charges and Payments

- 3.1** The Client agrees to pay the charges and expenses in accordance with the provisions of the Terms of Engagement as defined within the proposal.
- The parties agree that Blackswan will be compensated by the Client for its professional fees in connection with the Project. In addition, the Client will reimburse Blackswan for expenses incurred, which expenses will include external costs such as travel and courier, and other costs such as administrative support, report reproduction and computer support. Compensation for any additional services provided by Blackswan relating to the Project shall be as agreed by the parties.
- 3.2** All sums due from the Client which are not paid on the due date (normally 30 days unless



stated otherwise) shall bear interest from day to day at the same annual rate as is prescribed from time to time pursuant to section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 with a minimum rate of 10% per annum plus any cost associated with the collection of the debt.

- 3.3** During any period in which payments from the Client are overdue, the obligations of Blackswan may be suspended.
- 3.4** Expenses incurred by Blackswan and recoverable from the Client hereunder shall be subject to an administration charge of 5% of cost plus VAT payable by the Client.

4 Confidentiality

Blackswan recognises that certain confidential information concerning the Client will be furnished by the Client to Blackswan in connection with the Project ("Confidential Information"). In the event that Blackswan receives a request to disclose all or any part of any Confidential Information under the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, judicial or administrative agency or by a legislative body or committee, such disclosure by Blackswan shall not constitute a violation of this Agreement provided that Blackswan (a) promptly notifies Client of the existence, terms and circumstances surrounding such request, (b) consults with Client on the advisability of taking available legal steps to resist or narrow such request, and (c) if disclosure of such Confidential Information is required or deemed advisable, exercises its best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the Confidential Information to be disclosed which Client designates.

- 4.1** Blackswan undertakes not at any time to divulge or allow to be divulged to any person any confidential information relating to the business or affairs of the Client other than to sub-contractors who have signed an appropriate secrecy undertaking or others where the Client has expressly or impliedly consented to the disclosure.

Blackswan agrees that it will disclose Confidential Information only to those of its directors, officers, employees, advisors or agents who have a need to know such information, or to advisors to the Client. Confidential Information shall not include information that (i) is in the possession of Blackswan prior to its receipt of such information from the Client, (ii) is or becomes publicly available other than as a result of a breach of this agreement by Blackswan, or (iii) is or can be independently acquired or developed by Blackswan without violating any of its obligations under this agreement.

- 4.2** The client undertakes not at any time to divulge or allow to be divulged to any person any confidential information relating to the business or affairs of Blackswan other than to employees who maintain the same undertaking or others where the Client has expressly or impliedly consented to the disclosure.

The Client recognises and confirms that Blackswan (a) will use and rely primarily on the Confidential Information and on information available from public sources in performing the services contemplated by this agreement without having independently verified the same, and (b) does not assume responsibility for the accuracy or completeness of the Confidential Information or such other publicly available information.

- 4.3** Blackswan shall not be liable under any circumstances for any loss, expense, damage, delay, costs or compensation (whether direct, indirect or consequential) which may be suffered or incurred by the Client arising from or in any way connected with Blackswan seeking a Candidate for the Client or from the Introduction to or Engagement of any Candidate by the Client or from the failure of Blackswan to introduce any Candidate. For the avoidance of doubt,



Blackswan does not exclude liability for death or personal injury arising from its own negligence.

5 Delegation/Assignment

5.1 Blackswan (if an individual) undertakes to consult with the Client before delegating any of Blackswan's obligations hereunder to any third party other than contractually engaged Blackswan personnel.

Neither of the parties hereto shall assign or transfer its interest in this Agreement or any portion thereof without the prior written consent of the other party except that (i) Client may assign or transfer its rights and obligations under this Agreement to a subsidiary or entity controlling, controlled by or under common control with Client (an "Affiliate") or to any entity that acquires all or substantially all of the assets of Client or more than 50% of the current outstanding voting stock of Client and (ii) Blackswan shall be entitled to assign the right to receive any compensation received hereunder to a third party without the prior written consent of Client, subject to restrictions of applicable law.

5.2 Blackswan shall have discretion as to which of its personnel are assigned to perform its services but shall consult with the Client concerning any significant changes.

5.3 The parties agree that Blackswan is an independent contractor to Client and will not be deemed an employee of Client for any purpose whatsoever. Without limiting the foregoing, all income taxes arising from or in connection with professional fees paid by the Client to Blackswan for the services provided under this Agreement shall be borne by Blackswan. Neither party nor such party's directors, officers, employees or agents, shall bind or make any commitment on behalf of the other party.

6 Intellectual Property, Use of Blackswan Name and Work Products

6.1 Blackswan undertakes not to cause or permit anything which may damage or endanger the intellectual property of the Client or the Client's title to it or assist or allow others to do so.

6.2 In connection with the Project, Blackswan may furnish the Client with reports, analyses or other such materials (the "Materials"). The Client understands and agrees that any such Materials will be furnished solely for its internal use and may not be furnished in whole or in part to any other person other than its directors, officers and employees without the prior written consent of Blackswan.

The Client may furnish Materials to its legal counsel, accountants or investment bankers who have been retained by the Client to provide services in connection with the Project and who need to know such information in the performance of such services if (i) the Client informs each such person of the confidential nature of the Materials, (ii) each such person agrees not to disclose the Materials to any other person and to use the Materials solely in connection with the performance of its services to the Client, and (iii) each such person agrees that in connection with discussions with or disclosures to other third parties, it will not attribute any information contained in the Materials to Blackswan.

The Client further agrees not to refer to Blackswan or attribute any information to Blackswan (i) in the press, (ii) for advertising or promotional purposes, or (iii) for the purpose of informing or influencing any third party, including the investment community, without the prior written consent of Blackswan.

In the event that the Client receives a request to disclose all or any part of any Materials under



the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, judicial or administrative agency or by a legislative body or committee, such disclosure by the Client shall not constitute a violation of this Agreement provided that the Client (a) promptly notifies Blackswan of the existence, terms and circumstances surrounding such request, (b) consults with Blackswan on the advisability of taking available legal steps to resist or narrow such request, and (c) if disclosure of such Materials is required or deemed advisable, exercises its best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the Materials to be disclosed which Blackswan designates.

- 6.3 Work Product.** Client shall have a perpetual, irrevocable, nontransferable, paid-up right and license to use and copy the Materials and prepare derivative works based on the Materials for its internal use, subject to the terms of Section 6.2. All other rights in the Materials, subject to the terms of Section 4, remain in and/or are assigned to Blackswan. The parties will cooperate with each other and execute such other documents as may be appropriate to achieve the objectives of this Section.

Client acknowledges that Blackswan may develop for itself, or for others, problem solving approaches, frameworks or other tools or information similar to the Materials and processes developed in performing the Project and any additional Services, and nothing contained herein precludes Blackswan from developing or disclosing such materials and information provided that the same do not contain or reflect Confidential Information

7 Liability and Insurance

- 7.1** Blackswan shall not be liable to the Client for loss or damage to the Client's property unless due to the negligence or other failure of Blackswan to perform its obligations under this agreement or the general law.
- 7.2** Blackswan shall have no liability to the Client for any indirect, special or consequential loss to the Client arising out of or in connection with the provision of any goods or services pursuant to this.
- 7.3** The Client hereby agrees to indemnify and hold harmless (i) Blackswan, (ii) any entity directly or indirectly controlling, controlled by, or under common control with, Blackswan, or any other affiliates of Blackswan or such entities (collectively "Blackswan Affiliates"), and (iii) the respective directors, officers, stockholders, agents and employees of Blackswan and such entities (collectively, "Indemnified Persons"), from and against all claims, liabilities, losses, damages, and expenses as incurred (including reasonable legal fees and disbursements of counsel and the costs of Blackswan professional time), joint or several (including actions or proceedings in respect thereof) (collectively "Losses"), relating to or arising out of: (i) the Project (including without limitation the provision of consulting services), or (ii) any transaction or matter which is related to the subject matter of the Project. The Client shall not, however, be liable under the foregoing indemnity agreement to the extent that any such Losses are determined by an arbitration pursuant to Section 14 or are otherwise finally determined, as the case may be, to have resulted primarily from the gross negligence, wilful misconduct or bad faith of any Indemnified Person in connection with the Project. The Client also agrees that no Indemnified Person shall have any liability (whether direct or indirect, in contract or in tort or otherwise) to the Client or any person claiming through the Client, including without limitation its owners, parents, affiliates, security holders or creditors, for any Losses suffered by the Client or any such other person relating to or arising out of (i) the Project (including without limitation the provision of consulting services), or (ii) any transaction or matter which is related



to the subject matter of the Project, and further agrees that Blackswan shall be reimbursed for any expenses as incurred by any Indemnified Persons relating to the foregoing (including reasonable legal fees and disbursements of counsel and the costs of Blackswan professional time), except to the extent that any such Losses are determined by an arbitration pursuant to Section 14 or are otherwise finally determined, as the case may be, to have resulted primarily from the gross negligence, wilful misconduct or bad faith of any Indemnified Person in connection with the Project.

The Client further agrees that it will not settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding in respect of which indemnification may be sought hereunder (whether or not any Indemnified Person is an actual or potential party to such claim, action or proceeding) unless the Client has given Blackswan reasonable prior written notice thereof and obtained an unconditional release of each Indemnified Person from all liability arising therefrom, which unconditional release shall not place any non-financial obligations on any Indemnified Person.

The Client acknowledges and agrees that its obligations hereunder shall be in addition to any rights that any Indemnified Person may have at law or otherwise.

Upon receipt by Blackswan of notice of a claim, action or proceeding in respect of which indemnity may be sought hereunder, Blackswan shall promptly notify the Client with respect thereto. If in Blackswan's reasonable judgment there is no conflict of interest between Blackswan (or any Indemnified Person) and the Client, the Client may at its option assume and control the defence of any litigation or proceeding in respect of which indemnity is sought hereunder with counsel reasonably acceptable to Blackswan. If in Blackswan's reasonable judgment there is a conflict of interest between Blackswan (or any Indemnified Person) and the Client, Blackswan shall assume and control the defence of any litigation or proceeding (as it relates to Blackswan or any such Indemnified Person) in respect of which indemnity is sought hereunder with counsel reasonably acceptable to the Client. The Client shall not be liable hereunder or otherwise for any settlement of any claim, action or proceeding effected without its written consent, which shall not be unreasonably withheld. Nothing contained herein shall prevent Blackswan from retaining, at its own expense, legal counsel of its choice.

8 Termination for Breach

The following obligations are conditions of this agreement and any breach of them shall entitle the party not in breach to terminate this agreement by immediate written notice and the rights and liabilities of the parties shall then be determined in accordance with clause 9:

- 8.1** Failure on the part of the Client to make punctual payment of all sums due to Blackswan under the terms of this agreement.
- 8.2** Failure on the part of Blackswan to remedy any breach of its obligations hereunder within a reasonable time following written notice from the Client which: refers to this clause; specifies the breach with full particulars; indicates how the breach is to be remedied and specifies the Client's opinion of a reasonable time for remedy.
- 8.3** The levying of distress or execution against the Client or the making by it of any composition or arrangement with creditors or the presentation of a petition for the Client's liquidation or bankruptcy or administration or the appointment of a receiver over any part of the Client's assets.
- 8.4** The doing or permitting of any act by which Blackswan's rights in any intellectual property may be prejudiced or put in jeopardy.
- 8.5** Any serious or persistent breach by the Client of its obligations hereunder.



9 Termination and Consequences

Either party may terminate the Project by giving 60 (sixty) days prior written notice to the other. In the event of any such termination, Blackswan shall be compensated pro rata for professional fees and expenses incurred with respect to services performed through the effective date of termination, any commitments made and/or additional fees or contracts entered into to support the Project, together with any expenses incurred. In the event of this agreement being terminated whether by effluxion of time, notice, breach or otherwise and without prejudice to any other remedy available to Blackswan the Client shall immediately pay to Blackswan:

- 9.1 any sums due under the terms of this agreement, and
- 9.2 in the event of termination by reason of sub-clauses 8.1, 8.3, 8.4 or 8.5, any further sums which would but for the termination of this agreement have fallen due by the end of Blackswan's engagement less a discount for any accelerated payment at the rate of 5% per annum.
- 9.3 Survival and Succession. This agreement shall survive the completion or termination of the Project and any related services provided by Blackswan. Further, this agreement, in its entirety, shall inure to the benefit of and be binding on the successors and assigns of the Client and Blackswan.

10 Recruitment of Blackswan's Staff

- 10.1 The Client undertakes that it (including for this purpose any subsidiary or associated company) or any person connected with it will not directly or indirectly recruit as an employee or engage as an independent contractor any person employed or so engaged by Blackswan in connection with the services provided hereunder for a period of six months after such person last provided services to the Client.
- 10.2 In the event that the Client is in breach of the undertaking in sub-clause 10.1, the Client and Blackswan agree and the Client will pay liquidated damages of a sum equal to 33% of the annual remuneration or payment and any other benefits payable to the relevant individual by Blackswan at the rate payable during the week immediately prior to such individual ceasing to provide services to Blackswan.

11 Blackswan's Outputs, Materials and Information

- 11.1 All intellectual property rights including copyright which are capable of existing in any documents, computer software or information or (without limit) other materials created or provided pursuant to this contract by Blackswan shall be and remain Blackswan's property.
- 11.2 The Client undertakes to keep all materials, documents and information provided to it by Blackswan confidential to itself and its employees and not to distribute any product of the services provided hereunder to any third party without Blackswan's prior written consent.
- 11.3 Any materials produced or supplied to the Client by Blackswan in which intellectual property rights are capable of subsisting shall be licensed to the Client for internal use only in connection with the purposes of the terms of reference and such licence shall forthwith terminate if notice is given by Blackswan terminating this contract pursuant to clause 8.
- 11.4 The Client and Blackswan undertake with each other not during the course of this contract to



infringe the intellectual property rights of any third party.

12 Blackswan's References to Client

- 12.1** Subject to clause 4 (Confidentiality) Blackswan shall be entitled to refer to its provision of services to the Client for any purpose in connection with Blackswan's business provided that prior to any published reference to the Client Blackswan shall give the Client an opportunity to object to such reference and in the event of objection upon reasonable grounds shall not refer to the Client as proposed.
- 12.2** It is the long-standing practice of Blackswan to serve multiple clients within industries, including those with opposing economic interests, as well as counter-parties in potential and actual merger, acquisition and alliance transactions. Blackswan is committed to maintaining the confidentiality of each client's information (generally as described in this agreement) in all such situations. Accordingly, the Client acknowledges the possibility and agrees that Blackswan may have served, may currently be serving or may in the future serve other companies whose interests are adverse to those of the Client, including parties with whom the Client (i) competes; (ii) has a commercial relationship or potential commercial relationship (e.g., suppliers, distributors); (iii) enters into competitive bidding situations; and (iv) enters into or considers entering into merger, acquisition, divestiture, alliance or joint venture transactions.

13 Force Majeure

Both parties shall be released from their respective obligations in the event of national emergency, war, prohibitive governmental regulation or if any other cause beyond the reasonable control of the parties or either of them renders the performance of this agreement impossible, whereupon all money accrued due under this agreement shall be paid.

14 Miscellaneous

14.1 Warranty

Each of the parties warrants its power to enter into this agreement and has obtained all necessary approvals to do so.

14.2 Whole Agreement

Each party acknowledges that this agreement (as varied) and the conditions contain the whole agreement between the parties and that it is not relied upon any oral or written representations made to it by the other or its employees or agents and has made its own independent investigations into all matters relevant to it.

14.3 Change of Address

Each of the parties shall give notice to the other of the change or acquisition of any address or telephone, telex or similar numbers at the earliest possible opportunity but in any event within 24 hours of such change or acquisition.

14.4 Notices

Any notice to be served on either of the parties by the other shall be sent by pre-paid recorded delivery or registered post to the address of the relevant party shown at the head of this agreement or such other address substituted in writing under clause 14.3 (and if more than one address any such address) or by facsimile transmission or by electronic mail or by



telex and shall be deemed to have been received by the addressee within 72 hours of posting or 24 hours if sent by facsimile transmission or by electronic mail or by telex to the correct facsimile number or electronic mail number of the addressee (with correct answer back).

14.5 Headings

Headings contained in this agreement are for reference purposes only and should not be incorporated into this agreement and shall not be deemed to be any indication of the meaning of the clauses to which they relate.

14.6 Joint and Several

All agreements on the part of either of the parties which comprise more than one person or entity shall be joint and several and the neuter singular gender throughout this agreement shall include all genders and the plural and the successor in title to the parties.

The various provisions and subprovisions of this Agreement are severable and if any provision or subprovision or part thereof is held to be unenforceable by any court of competent jurisdiction, then such enforceability shall not affect the validity or enforceability of the remaining provisions or subprovisions or parts thereof in this Agreement.

14.7 Entire Agreement/Proper Law and Jurisdiction

14.7.1 - This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, oral and written, and may not be modified or amended except in writing signed by both parties. This agreement shall be governed by English law in every particular including formation and interpretation and shall be deemed to have been made in England.

14.7.2 - Any proceedings arising out of or in connection with this agreement may be brought in any court of competent jurisdiction in England or Wales.

14.7.3 - The submission by the parties to such jurisdiction shall not limit the right of Blackswan to commence any proceedings arising out of this agreement in any other jurisdiction it may consider appropriate.

14.7.4 - Any notice of proceedings or other notices in connection with or which would give effect to such proceedings may without prejudice to any other method of service be served upon any party in accordance with clause 14.4.

14.7.5 - In the event that the Client is resident outside England, its address for service in England shall be the address for such service nominated in this agreement and any time limits in any proceedings shall not be extended by virtue only of the foreign residence of the Client.

14.8 Waiver

Failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this agreement shall not be a waiver of them or the right at any time subsequently to enforce all terms and conditions of this agreement.

14.9 Sub-Contracting

Blackswan shall be entitled to sub-contract any of its rights or duties under this agreement to any contractually engaged Blackswan personnel.

14.10 Set-off

The Client shall not be entitled to withhold payment of any sum otherwise payable to Blackswan by reason of any claim, set-off or for damages in relation hereto.

15 Mediation

15.1 In the event of any dispute arising between the parties in connection with this agreement, the



parties will in good faith seek to resolve that dispute through mediation. The mediator shall be agreed upon within seven days of one party requesting mediation, failing which the issue shall be referred to the Centre for Effective Dispute Resolution. Unless otherwise agreed, the parties shall share equally the costs of the mediation. If the dispute is not resolved within 30 days or one of the parties refuses to participate in mediation, the dispute shall be resolved by way of litigation. Nothing in this clause shall prevent either party seeking a preliminary injunction or other judicial relief at any time if in its judgment such action is necessary nor shall Blackswan be precluded from issuing proceedings or taking any other step in relation to the non-payment of monies due.

16 Definitions

"The Assignment" means the Assignment referred to in the Terms of Engagement

"The Terms of Reference" means the Terms of Reference referred to in the Terms of Engagement

"The Terms of Engagement" means the written terms of agreement between the client and Blackswan which incorporate these terms.