

Southern Asset Management – Terms and Conditions

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of Services in accordance with clause 5.

Commencement Date: has the meaning given in clause 2.2.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 14.2.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

Customer: the person or firm who purchases the Services from the Supplier.

Customer Data: the data inputted by the Customer or the Supplier on the Customer's behalf for the purpose of using the Portal or facilitating the Customer's use of the Portal.

Deliverables: the deliverables set out in the Order (excluding, for the avoidance of doubt, the Portal).

Force Majeure Event: has the meaning given in clause 12.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for the Services, as set out in the Customer's purchase order form which accompanies these terms and conditions.

Portal: the Supplier's proprietary Asset Management Portal which allows its customers to view and manage their assets digitally, as more particularly described here: <https://southernassetmanagement.co.uk/asset-management-portal/>

Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Specification.

Specification: the description or specification of the Services provided in writing by



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the Supplier to the Customer.

Supplier: Southern Asset Management Ltd (registered in England and Wales with company number 14214291).

Supplier Materials: has the meaning given in clause 4.1(g).

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes faxes and emails.

2. **BASIS OF CONTRACT**

- 2.1 The Order constitutes an offer by the Customer to purchase the Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence (**Commencement Date outlined in order**).
- 2.3 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.



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- 2.5 A quotation given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue.

3. SUPPLY OF SERVICES

- 3.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 The Supplier shall use reasonable endeavours to meet any performance dates specified by the Customer and agreed by the Supplier, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any event.
- 3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill and in accordance with all applicable laws and regulations.

4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall:
- (a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
 - (b) co-operate with the Supplier in all matters relating to the Services;
 - (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
 - (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - (e) prepare the Customer's premises for the supply of the Services;
 - (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;



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- (g) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
 - (h) comply with any additional obligations as set out in the Specification.
- 4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
 - (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5. CHARGES AND PAYMENT

- 5.1 The Charges for the Services shall be set out in the Order.
- 5.2 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 5.3 The Supplier reserves the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such



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increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.

- 5.4 The Supplier shall invoice the Customer for the Charges monthly in arrears for all Services supplied in the preceding month.
- 5.5 The Customer shall pay each invoice submitted by the Supplier:
- (a) within 30 days of the date of the invoice; and
 - (b) in full and cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

- 5.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.7 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 6, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6. CANCELLATION

- 6.1 The Contract may be terminated at any time by the Customer giving the Supplier notice in writing.
- 6.2 Where the Customer terminates the Contract early in accordance with clause 6.1, the Customer shall pay an early termination charge to the Supplier as follows:



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- (a) If cancelled between 3 and 5 business days in advance of works commencing - no charge will apply.
- (b) If cancelled between 1 and 2 business days in advance of works commencing – 80% of the shift rate charge will apply.
- (c) If cancelled on the same day works are due to commence – 100% of the shift rate charge will apply.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 The Customer acknowledges and agrees that the Supplier and / or its licensors own all Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) and the Portal. Except as expressly stated herein, this Contract does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services and / or the Portal.
- 7.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 7.3 The Customer shall not sub-licence, assign or otherwise transfer the rights granted in clause 7.2.
- 7.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

8. PORTAL USAGE

- 8.1 The Supplier shall, during the term of the Contract, make available the Portal to the Customer on and subject to the terms of this Contract. The Customer shall be permitted a specified number of user subscriptions which entitle authorised users to access and use the Portal and the Customer undertakes that the maximum number of authorised users its authorises to access and use the Portal shall not exceed the number of user subscriptions permitted by the Supplier.



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Company Registration Number: 14214291

VAT Registration Number: 422 2506 39



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- 8.2 The Portal shall be made available to the Customer free of charge as part of the Services for the first 12 (twelve months) following the Commencement Date, after which the Customer shall be required to pay a non-refundable, annual fee to the Supplier for continued use of the Portal. If the Customer does not agree the amount of the annual fee or fails to pay the annual when due, the Supplier may terminate the Customer's right to use the Portal and its access to the same.
- 8.3 Subject to clause 8.2, the Supplier shall use reasonable endeavours to make the Portal available to the Customer 24 hours a day, seven days a week, except for:
- (a) planned maintenance carried out during specified maintenance windows; and
 - (b) unscheduled maintenance performed outside normal business hours where possible.
- 8.4 The Supplier:
- (a) does not warrant that:
 - (i) the Customer's use of the Portal will be uninterrupted or error-free; or
 - (ii) the Portal and/or the information obtained by the Customer through the Portal will meet the Customer's requirements; or
 - (iii) the Portal will be free from vulnerabilities or viruses.
 - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that use of the Portal may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 8.5 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with its standard archiving procedure. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable).
- 8.6 The Customer shall not:
- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:



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- (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Portal in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Portal; or
 - (b) access all or any part of the Portal in order to build a product or service which competes with the Portal and / or Services; or
 - (c) use the Portal to provide services to third parties; or
 - (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Portal available to any third party; or
 - (e) attempt to obtain, or assist third parties in obtaining, access to the Portal; or
 - (f) introduce or permit the introduction of, any virus or vulnerability into the Portal or the Supplier's network and information systems.
- 8.7 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Portal and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 8.8 The rights provided under this clause 8 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.
- 8.9 The Supplier shall own all right, title and interest in and to all of the Customer Data that is not personal data.
- 8.10 The Supplier may terminate the Customer's right to access and use the Portal with immediate effect if there is a change of Control of the Customer.
- 9. TERMINATION AND SUSPENSION**
- 9.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
 - (b) the other party takes any step or action in connection with its entering



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administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

9.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
- (b) there is a change of control of the Customer.

9.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment;
- (b) the Customer becomes subject to any of the events listed in clause 9.1(c) or clause 9.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them; and
- (c) the Supplier reasonably believes that the Customer is about to become subject to any of the events listed in clause 9.1(b).

10. CONSEQUENCES OF TERMINATION

10.1 On termination or expiry of the Contract:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;



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- (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 10.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 10.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 11. LIMITATION OF LIABILITY**
- 11.1 References to liability in this clause 11 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), mis representation, restitution or otherwise.
- 11.2 Nothing in this clause 11 shall limit the Customer's payment obligations under the Contract.
- 11.3 Nothing in this Contract shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or
 - (b) fraud or fraudulent misrepresentation; or
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
 - (d) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 11.4 Subject to clause 11.3:
- (a) the Supplier shall under no circumstances whatever be liable to the Customer for any loss of profit, or any indirect, special or consequential loss arising under or in connection with the Contract; and
 - (b) the Supplier's total liability to the Customer in respect of all other liabilities arising under or in connection with an Order shall in no circumstances



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exceed the total Charges actually paid by the Customer to the Supplier in respect of that Order.

12. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay results from a Force Majeure Event. A Force Majeure Event means any event or circumstance beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including (but not limited to) strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, pandemics, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

13. CONFIDENTIALITY

13.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.2.

13.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13.2; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

14. GENERAL

14.1 **Assignment and other dealings.**



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- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.
 - (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.
- 14.2 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Supplier.
- 14.3 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.4 **Severance.**
- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
 - (b) If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 14.5 **Notices.**
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case), and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.



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- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.5(a); if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 14.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 14.7 **Governing law.** The Contract, 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.
- 14.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

Authorised to sign for and on
behalf of the Customer:

Name of Company

Signature

Name in CAPITALS

Position

Date

Authorised to sign for and on
behalf of the Supplier:

Name of Company

Southern Asset Management Limited

Signature

Name in CAPITALS

STEPHEN SOUTHERN

Position

CEO

Date



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