



**FUND ELEMENTS – CUSTOMER FORM**

This Agreement by and between **Fund Elements** and the **Customer** is effective as of the Effective Date.

Fund Elements provides a Business Intelligence Platform to optimise investment fund's operational activity and the Customer wishes to avail of the Services subject to the terms and conditions contained in this Agreement and in consideration of the payment of the Fees.

*The agreement includes this Customer Form, the Terms and Conditions and any other attachments and schedule referred to therein (together the "Agreement").*

**PARTIES:**

**Fund Elements** means: Magnetite Change Management Limited, Co Dublin A94 D2Y4, Ireland with company number 572108 trading as Fund Elements

and

**Customer** means: [REDACTED]

<b>EFFECTIVE DATE:</b>	[REDACTED]
<b>SERVICE &amp; QUANTITY:</b>	Business Intelligence Platform for [REDACTED] (enter quantity) Investment Fund(s) to optimise operational activity. The legal name of the Investment Fund(s) to which this agreement applies, needs to be entered in Schedule 3 Permitted Investment Funds of this agreement and the number of entries needs to equal the quantity identified in this section.
<b>FEES</b>	[REDACTED] plus relevant taxes, invoiced every year. The Free Trial is provided free of charge.
<b>FREE TRIAL:</b>	14 (fourteen) days from the Effective Date.
<b>INITIAL TERM:</b>	36 (thirty six) months from the expiry of the Free Trial with renewal as per clause 15.1.

Accepted and agreed to as of the Effective Date by the authorised representative of each party:

FUND ELEMENTS	CUSTOMER
Signed: _____	Signed: _____
Print Name: _____	Print Name: _____
Position: _____	Position: _____
Date: _____	Date: _____



## TERMS & CONDITIONS- FUND ELEMENTS SAAS Agreement (2019)

### 1. DEFINITIONS

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

**Agreement:** the Customer Form, these Terms & Conditions and any materials available on the Fund Elements website or [www.fundelements.io](http://www.fundelements.io) by reference herein as well as any document referred to therein;

**Authorised Users:** for each Investment Fund identified in Schedule 3, any employee of that Investment Fund; any employee of a Service Provider with a contractual relationship to provide services to that Investment Fund; any employee of a solution provider with a contractual relationship to provide solutions to that Investment Fund; any employee of an Investor in that Investment Fund; any employee of a regulatory or statutory body for that Investment Fund; any other class or individual identified by that Investment Fund and approved by Fund Elements, provided at all times each individual has a legitimate interest in the operational activities of that Investment Fund and is authorised by the Investment Fund to access the Fund Elements Content for that Investment Fund;

**Business Days:** any day which is not a Saturday, Sunday or public/bank holiday in Ireland;

**Business Hours:** 9:00am to 5:00pm, local Irish time, on Business Days;

**Confidential Information:** information that is proprietary or confidential to either party and is either clearly labelled as such or identified as Confidential Information in accordance with Clauses 5.3 or 16;

**Content:** the content accessed electronically by the Customer as part of the Services, including all text, graphics, images, audio, video, information or other materials available through the Fund Elements platform and/or website;

**Customer Form:** Fund Elements' standard subscription Customer Form signed by Fund Elements and the Customer;

**Data Protection Addendum:** the addendum appended to this Agreement as described in Clause 8.5;

**Effective Date:** the date set out in the Customer Form;

**Fees:** the charge for the provision of the Service as specified in the Customer Form;

**Fund Elements Content:** all of Fund Elements' proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to the Customer by Fund Elements in providing the Services, including the Content;

**Free Trial:** the period as set out in the Customer Form provided to the Customer free of charge;

**Infringement Claim:** any claim or action brought against the Customer alleging that the use of the Services, Content and/or Fund Elements Content in accordance with the terms of this Agreement infringes the Irish Intellectual Property Rights of a third party;

**Initial Term:** the initial term of this Agreement as set out in the Customer Form;

**Intellectual Property Rights:** means all intellectual property of whatever nature anywhere in the world and the rights subsisting therein, including, without prejudice to the generality of the foregoing: discoveries; inventions; improvements; designs; processes; research; know-how; confidential and proprietary knowledge and information and any rights protecting same; works of authorship; computer software; databases; database rights; performances; trade or business names; domain names; patents, utility models and short term patents (and applications for same); trade marks and trade mark applications; rights (registered or unregistered and applications for same) in any design; copyright (including rights in computer software); business goodwill and reputation and rights protecting same; and all intellectual property rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world;

**Permitted Investment Funds:** those Investment Funds identified by the Customer that can avail of the Services as detailed in Schedule 3;

**Received Data:** the data and content, including but not limited to files, images and text, inputted and/or provided by the Customer, Authorised Users, or Fund Elements on the Customer's behalf onto the Fund Elements Content for the purposes of using the Services or facilitating the Customer's use of the Services;

**Renewal Period:** the period set out in the Customer Form and described in Clause 15.1; and

**Services:** the subscription services, access to the Fund Elements Content provided by Fund Elements to the Customer under this Agreement via the Fund Elements website or any other website notified to the Customer by Fund Elements from time to time.



1.2 The headings contained in this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the terms, conditions or provisions of this Agreement.

1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.5 References to a document include a reference to that document as amended.

1.6 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.

1.7 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.

## 2 SCOPE OF AGREEMENT

2.1 In consideration of the payment by the Customer of the Fees, Fund Elements will provide the Customer with use of the Services, including a user interface and data transmission, access and storage, and the Customer agrees to be bound by and comply in full with the terms of the Agreement.

2.2 In the event that additional services are required to be provided by Fund Elements to the Customer, the provision of such services shall be governed separately under the terms of a master services agreement (or other similar agreement) to be entered into between Fund Elements and the Customer.

## 3 INTELLECTUAL PROPERTY RIGHTS

3.1 The Customer acknowledges that any and all of the Intellectual Property Rights subsisting in or used in connection with the Fund Elements Content and the Services including the manner in which it is comprised, compiled, presented or appears (“look and feel”) and all information, documentation and manuals relating to such are (unless another owner is specified in or on those items, such party being referred to in this Section as the “Owner”) the property of Fund Elements or the Owner.

## 4 INTELLECTUAL PROPERTY RIGHTS RESTRICTIONS

4.1 Save as expressly set out in this Agreement, or otherwise permitted by law, the Customer shall not:

(a) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Services or the Fund Elements Content in any way;

(b) copy, modify, duplicate, or make derivative works based upon the Services or the Fund Elements Content;

(c) create Internet "links" to the Services or "frame" or "mirror" or reproduce any element of the Fund Elements Content on any other server or wireless or Internet-based device;

(d) reverse engineer or access the Services or the Fund Elements Content for any reason including in order to build a competitive product or service, build a product using similar ideas, features, functions or graphics of the Services, copy any ideas, features, functions or graphics of the Services;

(e) publish or distribute externally any results of any use of the Services for any form of benchmarking or software comparison purposes;

(f) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws;

(g) send or store infringing, obscene, threatening, libellous, or otherwise unlawful or tortious material, including material harmful to children or that violates any third party privacy rights;

(h) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs;

(i) during or after the expiry or termination of this Agreement, without the prior written consent of Fund Elements or the Owner as the case may be or to the extent only permitted by applicable law, abuse or permit the abuse of the Intellectual Property Rights;

(j) shall not, other than as expressly permitted in this Agreement, extract or re-utilise the contents of the Fund Elements Content (or any part thereof) for any commercial purpose including but not limited to trading, building commercial hosting systems, reselling or redistributing the Fund Elements Content;

(k) interfere with or disrupt the integrity or performance of the Services or the data contained therein; or

(l) attempt to gain unauthorised access to the Services or its related systems or networks.

4.2 Fund Elements reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this Clause 4.

## 5 CUSTOMER'S OBLIGATIONS

5.1 Save as expressly set out in this Agreement or as otherwise permitted by law, the Customer may not make any communication, display or performance to the public of any element of the Fund Elements Content or otherwise disseminate, sell, give away, hire, lease, offer or expose for sale or distribute any element of the Fund Elements Content.

5.2 On or after the Effective Date, Fund Elements will provide the Customer with login and password details which will be used by the Customer and its permitted Authorised Users to access and use the Services in relation to the Permitted Funds.

5.3 The Customer shall be responsible for each Authorised User and all use of such login and password details and will ensure that all login and password details are kept secure and confidential at all times and will not disclose them to any third parties who are not authorised by Fund Elements to use them.

5.4 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Fund Elements Content and, in the event of any such unauthorised access or use, promptly notify Fund Elements.

5.5 The Customer shall ensure that its use of the Services and the Fund Elements Content and the Received Data complies with all applicable laws and regulations.

5.6 The Customer shall ensure that the Authorised Users use the Services and the Fund Elements Content solely in relation to the Permitted Funds and always in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User breach of this Agreement.

5.7 Fund Elements does not warrant or undertake that the Services or any other materials provided pursuant to this Agreement will meet the Customer's requirements or that they or their access or use will be uninterrupted, free from viruses, bug or error or completely secure. Except as expressly provided in this Agreement, the entire risk as to the products, the Services and any other materials provided by Fund Elements is with the Customer, including for quality and performance and for accuracy or quality of any

information transmitted, received or otherwise delivered via the Services.

5.8 All information provided to the Customer through the Services or the Fund Elements Content is provided only as of the date published, and may be superseded by subsequent events or for other reasons.

5.9 Information provided through the Services or on the Fund Elements website is subject to change. Fund Elements may amend, update, suspend or delete any information in the content without notice at any time and at its sole discretion.

5.10 Customer acknowledges that access to the Services is dependent on the creation of an elements.cloud user account by each of the Authorised Users and acceptance by each Authorised User of the elements.cloud Terms of Service (website and app) available at <https://elements.cloud>.

## 6 SERVICES AND NETWORK AVAILABILITY

6.1 Fund Elements shall, during the Term, provide the Services to the Customer on and subject to the terms of this Agreement. The Services may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. Fund Elements is not responsible for any delays, delivery failures, or other damage resulting from such problems.

6.2 Emergency unplanned maintenance may need to occur where the Services may not be available (or may be limited) to the Customer for a period of time. Fund Elements will endeavour to keep disruptions to the Services to a minimum during Business Hours.

6.3 Fund Elements will also need to schedule maintenance periods and during such periods the Services will not be available to the Customer. Fund Elements will endeavour or notify the Customer of such scheduled maintenance via the Fund Elements helpdesk. Fund Elements will provide the Customer with reasonable notice of any downtime due to non-routine maintenance and will use reasonable endeavours to ensure that any non-routine maintenance periods take place outside of Business Hours.

6.4 The Services may be subject to periodic maintenance. Fund Elements will attempt not to materially affect its Services during this time, but Fund Elements cannot guarantee that there will not be an occasional disruption as a result of any periodic maintenance to the Services.

6.5 Fund Elements does not guarantee network availability between the Customer and the Fund Elements hosting servers, as network availability can involve numerous third parties and is beyond the control of Fund Elements. Fund Elements will not be liable for any downtime caused by its internet provider nor for any downtime that the Customer experiences as a result of its own network connectivity issues.

6.6 The Customer shall:

(a) obtain and shall maintain all necessary licences, consents and permissions necessary for Fund Elements, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services and the provisions of the Data Protection Addendum, if applicable;

(b) ensure that its network, systems and supported web browser comply with the relevant specifications as may be notified from Fund Elements from time to time; and

(c) be solely responsible for procuring and maintaining its network connections, supported web browser and telecommunications links from its systems to the Services, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

6.7 If the Customer experiences a service outage and is unable to use the Services, the Customer should contact Fund Elements and notify Fund Elements of the issue, providing all necessary information that may assist Fund Elements in determining the cause of the issue.

6.8 As per clause 5.10 Fund Elements accepts no responsibility for any functioning, limitations, delays, and other problems inherent with the elements.cloud platform, which is a separate platform run by an entity independent to Fund Elements.

## **7 CUSTOMER USE OF SERVICES**

7.1 In the event that the Customer's use of the Services is reasonably deemed by Fund Elements to constitute unfair use of the Services, Fund Elements reserves the right to, in its sole discretion and without limiting its other rights or remedies, permanently or temporarily, discontinue provision of or access to the Services to the Customer. For the avoidance of doubt, unfair use of the Services includes excessive decoupling of Authorised Users and any use of the Services in relation to any accounts, funds or programs not specified in the list of Permitted Fund in Schedule 3.

## **8 ACCOUNT INFORMATION & RECEIVED DATA**

8.1 The Customer shall own all right, title and interest in and to all the Received Data and shall have sole responsibility for and hereby warrants the accuracy, quality, integrity, legality, reliability, appropriateness, of all Received Data.

8.2 The Customer grants Fund Elements a non-exclusive, royalty free licence for the Term to use the Received Data for the purposes of providing the Services (subject to the Data Protection Addendum).

8.3 Fund Elements shall follow its standard archiving procedures for Received Data as set out in its then current back-up policy (unless agreed otherwise between the Customer and Fund Elements), which may be amended by Fund Elements in its sole discretion from time to time. In the event of any loss or damage to Received Data, the Customer's sole and exclusive remedy shall be for Fund Elements to use reasonable commercial endeavours to restore the lost or damaged Received Data from the latest back-up of such Received Data maintained by Fund Elements in accordance with its archiving procedure. Fund Elements shall not be responsible for any loss, destruction, alteration or disclosure of Received Data caused by any third party (except those third parties sub-contracted by Fund Elements to perform services related to Received Data maintenance and back-up).

8.4 Fund Elements shall, in providing the Services, comply with its data security policy and the Data Protection Addendum relating to the security of the Received Data, as such document may be amended from time to time by Fund Elements in its sole discretion.

8.5 If Fund Elements processes any personal data on the Customer's behalf when performing its obligations under this Agreement, as identified in the Customer Form, such processing shall be carried out in accordance with the Data Protection Addendum.

## **9 INTELLECTUAL PROPERTY & INFRINGEMENT CLAIMS**

9.1 The Customer acknowledges that all Intellectual Property Rights in the Services and Fund Elements Content are and shall remain the sole property of Fund Elements and/or its licensors. Nothing in this Agreement shall be construed as granting to the Customer any rights in any Intellectual Property Rights comprised in the Services and Fund Elements Content other than the right to use it in accordance with the terms of this Agreement.

9.2 Fund Elements shall defend the Customer or, at its option, settle an Infringement Claim and shall be responsible for any reasonable losses, damages,





costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Infringement Claim.

9.3 For the avoidance of doubt, Clause 9.2 shall not apply where the Infringement Claim in question arises from the use of the Services or Fund Elements Content other than in accordance with the terms of this Agreement or where it arises directly or indirectly as a result of the Received Data.

9.4 As a condition of obtaining an indemnity in the circumstances set out in Clause 9.2 the Customer agrees to immediately:

(a) fully and promptly notify Fund Elements of any Infringement Claim, or threatened Infringement Claim;

(b) not make any admission as to liability or compromise or agree to any settlement of any Infringement Claim without the prior written consent of Fund Elements, which consent shall not be unreasonably withheld or delayed;

(c) permit Fund Elements to take full control of such Infringement Claim, including settling it at Fund Elements' expense; and

(d) give reasonable assistance in the investigation and defence of such Infringement Claim.

9.5 If any Infringement Claim is made, or in Fund Elements' reasonable opinion is likely to be made, against the Customer, Fund Elements may at its sole option and expense:

(a) procure for the Customer the right to continue using the Services in accordance with the terms of this Agreement;

(b) modify the Services so that they cease to be infringing;

(c) replace the Services; or

(d) immediately terminate this Agreement on written notice to the Customer.

9.6 This Clause 9 states that the Customer's sole and exclusive rights and remedies, and Fund Elements' (including Fund Elements' employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

## 10 THIRD PARTY PROVIDERS

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services

from, third parties via third-party websites and that it does so solely at its own risk. Fund Elements makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website. Fund Elements recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. Fund Elements does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

## 11 LIMITED WARRANTY

Each Party represents and warrants that it has the legal power and authority to enter into this Agreement.

## 12 DISCLAIMER OF WARRANTIES

12.1 Save as otherwise set out in this Agreement, Fund Elements and its licensors do not represent or warrant that:

12.2 the use of the Services will be secure, timely, uninterrupted or error-free or operate in combination with any other hardware, software, system or data;

12.3 the Services will meet the Customer's requirements or expectations even where such requirements or expectations have been identified prior to entering into this Agreement;

12.4 the Content will be accurate or reliable;

12.5 errors or defects in the Fund Elements Content will be corrected within a specific time period; and

12.6 the Services or the server(s) that make the Services available are free of viruses or other harmful components.

12.7 Save as otherwise provided in this Agreement, the Services and the Fund Elements Content are provided to the Customer strictly on an "as is" basis. Save for the provisions otherwise expressly specified in this Agreement, all conditions, representations and warranties, whether express, implied, statutory or otherwise, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose, or non-infringement of third party rights, are hereby disclaimed to the maximum extent permitted by applicable law by Fund Elements and its licensors.

## 13 LIMITATION OF LIABILITY

13.1 Fund Elements shall have no liability to the Customer, whether in contract, tort or otherwise and

whether in connection with this Agreement or any collateral contract.

13.2 In no event shall either Party and/or its licensors be liable in contract, tort (including negligence) or for breach of statutory duty in any other way for: loss of data, loss revenue, loss of profits, use or other economic advantage, or for any indirect, special or consequential, in any case, whether or not such losses were within the contemplation of the parties at the date of this Agreement, or were suffered or incurred by the Customer arising out of or in connection with any matter arising under this Agreement.

13.3 Except as expressly and specifically provided in this Agreement, the Customer assumes sole responsibility for results obtained from the use of the Services and/or the Fund Elements Content by the Customer, and for conclusions drawn from such use. Fund Elements shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Fund Elements by the Customer in connection with the Services and/or any Consultancy Services, or any actions taken by Fund Elements at the Customer's direction.

13.4 If Fund Elements' performance of its obligations under this Agreement is prevented or delayed by any breach of this Agreement or negligent act or omission of the Customer, Fund Elements shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.

## 14 INDEMNITY

14.1 The Customer shall indemnify and hold Fund Elements, its licensors and its Affiliates, officers, directors, employees, attorneys and agents harmless from and against any third party costs and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with:

- (a) a claim alleging that use of the Received Data infringes the rights of, or has caused harm to, the party that supplied the Received Data or a third party;
- (b) a claim, which if true, would constitute a violation by the Customer of its representations and warranties; or
- (c) a claim arising from the breach by the Customer or any Authorised User of this Agreement, provided in any such case that Fund Elements:
  - (i) gives written notice of the claim promptly to the Customer;

- (ii) gives the Customer sole control of the defence and settlement of the claim (provided that the Customer may not settle or defend any claim unless the Customer unconditionally releases Fund Elements of all liability and such settlement does not affect Fund Elements' business or Service);

- (iii) provides to the Customer all available information and assistance; and

- (iv) has not compromised or settled such claim.

## 15 TERM AND TERMINATION

15.1 This Agreement shall commence on the Effective Date (as specified in the Customer Form) and the Free Trial shall run for 14 (fourteen) days from the Effective Date. Thereafter the Initial Term shall be for 36 (thirty six) months and this Agreement shall be automatically renewed for successive yearly periods ("**Renewal Period**") unless terminated by either Party after the Initial Term by giving at least 30 (thirty) days written notice to the other Party prior to the end of the Initial Term or applicable Renewal Period. The term of this agreement shall therefore be the Free Trial, the Initial Term and any Renewal Period (collectively the "**Term**").

15.2 Either Party may terminate this Agreement at any time on 15 (fifteen) days written notice to the other if:

- (a) the other is in material or persistent breach of any of the terms of this Agreement and either that breach is incapable of remedy, or the other Party fails to remedy that breach within 30 (thirty) days after receiving written notice requiring it to remedy that breach;
- (b) the other is deemed to be unable to pay its debts within the meaning of section 570 of the Companies Act 2014, is unable to pay its debts as they fall due, commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of or composition with its creditors;
- (c) the other ceases carrying on, threatens to cease carrying on, or disposes of its business or a material part of its business;
- (d) the other takes any corporate action or other steps are taken or legal proceedings are started for its winding up, dissolution, examinership or re-organisation or for the appointment of a liquidator, receiver, examiner, conservator, custodian, trustee or similar officer of it or of any or all of its revenues and assets; or

(e) any execution or distress is levied against, or an encumbrancer takes possession of, the whole or any part of, the property, undertakings or assets of the other or any event occurs which under the laws of any jurisdiction has a similar or analogous effect.

15.3 On termination of this Agreement for any reason:

(a) the Customer shall cease all activities authorised by this Agreement;

(b) the Customer shall immediately pay to Fund Elements any sums due under this Agreement; and

(c) the accrued rights of the Parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

## 16 CONFIDENTIALITY

16.1 Each Party may be given access to Confidential Information from the other Party in order to perform its obligations under this Agreement. A Party's Confidential Information shall not be deemed to include information that:

(a) is or becomes publicly known other than through any act or omission of the receiving Party and information shall not be deemed to be in the public domain merely because it may be derived from one or more items which are publicly known;

(b) was in the other Party's lawful possession before the disclosure;

(c) is lawfully disclosed to the receiving Party by a third Party without restriction on disclosure;

(d) is independently developed by the receiving Party, which independent development can be shown by written evidence;

(e) the Parties agree in writing is not confidential or may be disclosed; or

(f) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

16.2 Each Party shall hold the other's Confidential Information in confidence and, unless required by law, 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.

16.3 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.

16.4 Neither Party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

16.5 The Customer acknowledges that details of the Services constitute Fund Elements' Confidential Information.

16.6 This Clause 16 shall survive termination of this Agreement, however arising.

## 17 ASSIGNMENT

17.1 This Agreement may not be assigned by the Customer without the prior written approval of Fund Elements but may be assigned without the Customer's consent by Fund Elements.

17.2 Any purported assignment in violation of this Clause 17 shall be void. Any actual or proposed change in control of the Customer shall entitle Fund Elements to terminate this Agreement for cause immediately upon written notice.

## 18 FORCE MAJEURE

Fund Elements shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Fund Elements or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

## 19 GENERAL

19.1 **Notices:** Any notice or other communication whether required or permitted to be given under this Agreement shall be given in writing and shall be deemed to have been duly given if delivered by hand to the addressee or sent by registered post to the addressee at the address set out for such Party in this Agreement (or such other address as that Party may from time to time designate in writing to the other Party in accordance with the provisions of this Clause 19).



Any such notice shall be deemed to have been duly given if delivered, at the time of delivery, or if sent by registered post, 48 (forty eight) hours after posting.

19.2 **Severability**: If any provision in this Agreement is deemed to be, or becomes invalid, illegal, void or unenforceable under applicable laws, such provision will be deemed amended to conform to applicable laws so as to be valid and enforceable, or if it cannot be so amended without materially altering the intention of the Parties, it will be deleted, but the validity, legality and enforceability of the remaining provisions of this Agreement shall not be impaired or affected in any way.

19.3 **Parties Bound**: This Agreement shall be binding upon and run for the benefit of the Parties, their successors and permitted assigns.

19.4 **Entire Agreement**: This Agreement constitutes the entire agreement and understanding between the Parties with respect to its subject matter, and except as expressly provided, supersedes all prior representations, writings, negotiations or understandings with respect to that subject matter.

19.5 **Further Assurance**: Each Party shall do and execute, or arrange for the doing and executing of, each necessary act, document and thing reasonably within its power to implement this Agreement.

19.6 **Conflict**: If there is an inconsistency between any of the provisions in the main body of this Agreement and the Customer Form, other attachments or any other document referred to in this Agreement, the provisions in the main body of this Agreement shall prevail.

19.7 **Counterparts**: This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute this Agreement.

19.8 **No Partnership or Agency**: Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

19.9 **Publicity and Announcements**: Without Fund Elements' prior written consent, the Customer shall not issue nor cause the issuance of any public statement in any way concerning Fund Elements or the Services. Fund Elements shall have the right to

identify the Customer as a customer to which it is providing the Services.

19.10 **Waivers or Variations**: A failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents further exercise of the right or remedy or the exercise of another right or remedy. No variation of this Agreement shall be effective unless it is made in writing and signed by each of the Parties.

19.11 **Governing Law and Jurisdiction**: This Agreement shall be governed by and construed in accordance with the laws of Ireland, and the Parties irrevocably agree that the courts of Ireland 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).

## Fund Elements Data Protection Addendum

In accordance with the Data Protection Legislation (as defined below), the Customer and Fund Elements have entered into this Data Protection Addendum ("DPA").

### AGREED TERMS

#### 2. Definitions and Interpretation

(a) The definitions and rules of interpretation in this Clause apply in this DPA (unless the context requires otherwise).

(b) For the purposes of this DPA:

**"Customer Personal Data"**, means personal data received by Fund Elements from or on behalf of the Customer in connection with the performance of the Services including the personal data set out in DPA Schedule 1;

**"Data Protection Legislation"** means the Data Protection Acts 1988 to 2018 (as may be amended from time to time), and as of 25 May 2018, the General Data Protection Regulation (EU) 2016/679 (the **"GDPR"**);

**"Security Breach"** the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Customer Data;

**"Services"** has the meaning ascribed to it in the Agreement or, in the absence of any defined term in the Agreement, shall mean the services provided by Fund Elements to the Customer in the manner contemplated by and in accordance with the terms of the Agreement;

(c) **"controller"**, **"data subject"**, **"personal data"**, **"processing"**, **"processor"** and **"supervisory authority"** shall have the meanings given to those terms in the GDPR.

(d) A reference to this DPA includes its schedules.

(e) Words in the singular include the plural and vice versa.

(f) Any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed without limitation.

(g) Clause, schedule or other headings in this DPA are included for convenience only and shall have no effect on the interpretation of this DPA.

(h) A reference to any statute, statutory provision, rule, regulation or any requirement shall be construed as including references to it as modified, consolidated, re-enacted or superseded from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.

(i) A reference to any regulator or regulatory board shall include a reference to any replacement or successor bodies from time to time.

(j) In the case of conflict or ambiguity between the terms of this DPA and the terms of the Agreement as to the subject matter of this DPA, the terms of this DPA shall prevail.



### 3. Status

In respect of any Customer Data processed by Fund Elements under this DPA, the Parties acknowledge that the Customer shall be the controller and Fund Elements shall be a processor.

### 4. Customer Obligations

- (a) Customer, as the controller or primary processor (as applicable), is solely responsible for establishing the lawful basis for the processing of Customer Personal Data by Fund Elements under this DPA and will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to Fund Elements for the duration and purposes of this DPA.
- (b) Customer, as the controller, is further solely responsible for the accuracy and quality of the Customer Personal Data.

### 5. Fund Elements Obligations

- (a) To the extent that Fund Elements processes Customer Personal Data pursuant to this DPA, Fund Elements shall:
  - (a) process the Customer Personal Data only on instructions from the Customer (unless Fund Elements is required to process the Customer Personal Data by applicable European Union or European Member State law in which case Fund Elements shall notify the Customer of that legal requirement before such transfer or access occurs or is permitted, unless that law prohibits such notification on important grounds of public interest);
  - (b) ensure that all personnel authorized to process the Customer Personal Data are party to confidentiality obligations in respect of the Customer Personal Data;
  - (c) cooperate as reasonably requested by the Customer (at the Customer's sole expense):
    - (i) to enable the Customer to comply with any exercise of rights by a data subject under the Data Protection Legislation in respect of Customer Personal Data; and
    - (ii) where the Customer conducts a data protection impact assessment;
  - (d) notify the Customer if Fund Elements receives a request from a data subject to have access to that data subject's personal data. Fund Elements shall not respond directly to such data subject unless it is instructed to do so by the Customer; and
  - (e) implement and at all times maintain appropriate technical and organizational measures in place to ensure the security of the Customer Personal Data taking into account: (i) the state of the art; (ii) the costs of implementation; (iii) the nature, scope, context and purposes of the processing; and (iv) the inherent risk of the processing activities to data subjects;
  - (f) notify the Customer without undue delay of any Security Breach; and
  - (g) cooperate with the Office of the Data Protection Commissioner (or, to the extent required by the Customer, any other supervisory authority) in the performance of its tasks where required.



**6. International Transfers**

- (a) The Customer hereby agrees to the transfer of Customer Personal Data processed under this DPA outside of the EU PROVIDED that in effecting any international transfer of Customer Personal Data, Fund Elements shall ensure that:
  - (a) it has provided appropriate safeguards in relation to the transfer which may include Privacy Shield certification (in the case of US transferees) or EU standard contractual clauses. The Customer hereby appoints Fund Elements as its agent for the purpose of entering into any EU standard contractual clauses in the context of providing the Services; and
  - (b) data subjects continue to have enforceable rights and effective legal remedies following the transfer.

**7. Sub-Processors**

- (a) The Customer hereby authorises Fund Elements to use third parties ("**sub-processors**") to provide the Services provided:
  - (a) Fund Elements shall notify the Customer in advance of any proposed use of a sub-processor, and any replacement or addition to them and the Customer shall have the right to object on reasonable grounds to the use of or change to any sub-processor within 14 (fourteen) days of Fund Elements notifying the Customer of the change. In the event of the Customer raising such an objection, Fund Elements may terminate part or all of the Agreement on 14 (fourteen) days' notice;
  - (b) in engaging any sub-processor Fund Elements agrees adequate data protection arrangements that are in all materials respects similar to those set out in this DPA; and
  - (c) Fund Elements shall at all times remain liable for the acts and omissions of any sub-processor as if such acts and omissions were those of Fund Elements.
- (b) For the purpose of this DPA, the Customer consents to the use of the sub-processors listed at Schedule 2.

**8. Audit**

- (a) Fund Elements shall make available all information reasonably requested by the Customer to satisfy itself that Fund Elements is complying with its data protection obligations under this DPA.
- (b) Customer (and its third-party representatives) shall be permitted to audit Fund Elements' premises, systems, and facilities during Business Hours PROVIDED THAT:
  - (i) Customer shall provide at least 14 (fourteen) days prior written notice of its intention to carry out an audit;
  - (ii) all expenses incurred by Fund Elements shall be promptly discharged by Customer;
  - (iii) Fund Elements may request that any third party representative performing an audit on behalf of Customer shall provide written confidentiality undertakings to the reasonable satisfaction of Fund Elements and Fund Elements shall be entitled to refuse access to any of its premises or records until such time as it has received such undertakings; and



- (iv) nothing in this DPA shall entitle Customer to access or inspect any records which contain information relating to any other Customer of Fund Elements and Fund Elements shall be entitled to restrict or prevent access to any part of its premises which it considers in its sole discretion could compromise the security of any information or data relating to such other Customers.
- (c) Fund Elements will inform Customer if it comes to its attention that any instructions received in respect of this clause (a) infringe the provisions of any applicable EU or EU Member State data protection law. Notwithstanding the foregoing, Fund Elements shall have no obligation to review the lawfulness of any instruction received from Customer.

## 9. Term and Termination

- (a) This DPA shall be effective as and from the Effective Date and shall remain in force until such time as the Agreement is terminated.
- (b) On termination of this DPA, Fund Elements shall, at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the agreement save to the extent that Fund Elements is required by applicable law to retain the Customer Personal Data.

## 10. General

- (a) Any notice or other communication required to be given to a party under or in connection with this DPA shall be in writing and shall be delivered by email only to Fund Elements using the email address [privacy@fundelements.io](mailto:privacy@fundelements.io). Any notice or communication shall be deemed to have been received the first working day after the time of transmission.
- (b) The parties' respective aggregate liability whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any and all claims arising out of or in connection with this DPA shall be as set out in the Agreement.
- (c) Customer shall not assign or deal in any other manner with any of its rights and obligations under this DPA without the prior written consent of the Fund Elements (which is not to be unreasonably withheld or delayed).
- (d) No failure or delay by a party to exercise any right or remedy provided under this DPA or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (e) This DPA, together with the Agreement, represents the entire agreement between the parties with respect to its subject matter. Each party confirms that it has not relied upon any representations not recorded in this document inducing it to enter into this DPA.
- (f) No variation of this DPA shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- (g) If any provision or part-provision of this DPA is or becomes 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. If such amendment is not possible, the relevant provision or part-provision shall be deemed deleted. Any amendment to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this DPA.





- (h) Nothing in this DPA is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor authorise any party to make or enter into any commitments for or on behalf of any other party except as expressly provided herein.
- (i) This DPA and all disputes arising from this DPA whether contractual or non-contractual in nature shall be governed by and construed in accordance with the laws of Ireland. The parties irrevocably submit to the exclusive jurisdiction of the Irish courts in relation to all matters arising out of or in connection with this DPA.

**SCHEDULE 1-PERSONAL DATA PROCESSED**

This schedule provides information about the use of personal data by Fund Elements:

<b>Categories of data subjects:</b>	Customers
<b>Types of personal data:</b>	Customer Contact details (name, phone number and email address)
<b>Nature of processing:</b>	Functioning and processing relating to delivery of the services.
<b>Purpose of processing:</b>	To ensure Fund Elements services are delivered to Customers.



**SCHEDULE 2– SUB-PROCESSORS**

This schedule provides information about the sub-processors use by Fund Elements:

Sub-Processor	Description
Wix ( <a href="http://www.wix.com">www.wix.com</a> )	Website Hosting and eCommerce software solutions used by Fund Elements to host the domain <a href="http://www.fundelements.io">www.fundelements.io</a> .
elements.cloud ( <a href="https://elements.cloud/">https://elements.cloud/</a> )	Enterprise Business Process Architecture software solution used by Fund Elements to build the Business Intelligence Platforms and to deliver the Fund Elements service.
Stripe ( <a href="http://www.stripe.com">www.stripe.com</a> )	Payment software solution used by Fund Elements as part of the eCommerce functionality delivered through Wix.
Salesforce ( <a href="http://www.salesforce.com">www.salesforce.com</a> )	Customer Relationship Management software solution used by Fund Elements.
Microsoft Office 365 ( <a href="http://www.office365.com">www.office365.com</a> )	Business Solutions Software used by Fund Elements for business administration purposes.

