

## APPENDIX 1

### eVA SERVICES TERMS AND CONDITIONS

#### 1. DEFINITIONS & INTERPRETATION

1.1. Capitalised terms shall have the meaning first ascribed to them, in particular:

"Acceptable Use Policy"	means any policy determined by Manheim from time to time concerning the use of the Manheim Licensed Software;
"Appraisal"	means the process by which information is provided in the WebApp, or as the case may be the Online Platform, through a series of questions and fields provided for completion in order to generate a Valuation;
"Charges"	means the fees and charges set out in the Schedule as amended from time to time in accordance with the provisions of this Agreement;
"Commencement Date"	has the meaning given to it in the Schedule;
"Company"	has the meaning given to it in the Schedule;
"Company Materials"	any material provided by or on behalf of the Company to Manheim in connection with the Services, including Consumer details, and other information relating to the Company's business;
"Confidential Information"	means all information which, by its nature is confidential to a party to this agreement, including but not limited to: all business and trade secrets, methods of doing business, supplier lists, customer lists and other confidential information and material disclosed by or obtained from the other in connection with this Agreement including in Manheim's case, those of any of its Group;
"Consumer"	means any person or entity (excluding Manheim, the Company or a Retailer) that has provided information about a Vehicle for the purposes of a Valuation;
"Contract Year"	means each period of 12 months commencing on the Commencement Date and every anniversary of the Commencement Date;
"Data Protection Legislation"	means all applicable data protection and privacy legislation in force from time to time in the UK including the EU GDPR; the UK GDPR; the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended. <b>Controller (or Data Controller), Processor (or Data Processor), Data Subject, Personal Data, Personal Data Breach, Processing and Appropriate Technical Measures:</b> shall each be as defined in the Data Protection Legislation;
"eVA Lite Services"	has the meaning given to it in the Services Descriptions;
"eVA Premium Services "	has the meaning given to it in the Services Descriptions;
" eVA Pro Services "	has the meaning given to it in the Services Descriptions;
"EU GDPR"	means General Data Protection Regulation ((EU) 2016/679);
"Group"	means any party together with any Parent Undertaking of that party from time to time, any Subsidiary Undertaking of that party from time to time and any Subsidiary Undertakings of any Parent Undertaking of that party from time to time. The expressions Parent Undertaking and Subsidiary Undertaking shall have the meanings attributed to them in section 1162 of the Companies Act 2006 (and shall include any overseas companies) and for Manheim includes any entity notified to the Company as part of its Group from time to time;
"Initial Term"	has the meaning given to it in the Schedule;
"Intellectual Property Rights"	means any patent, copyright, database right, moral right, design right, registered design, trade mark, service mark, domain name, know-how, utility model, unregistered design or, where relevant, any application for any such right, or other industrial or intellectual property right subsisting anywhere in the world;
"Linked Agreement"	means an agreement between Manheim and another party, where that other party has agreed to pay for the Company to receive some of the Services;
"Losses"	means all losses (whether direct or consequential), damages, third party claims, liabilities (including liability to taxation), claims, costs and expenses including fines, penalties, legal and

	other professional fees and expenses;
"Manheim Background IPR"	all Intellectual Property Rights vesting in Manheim (or its licensors) at the time of the commencement of this agreement, or created independently of this agreement during the Term, including in the Manheim Licensed Software;
"Manheim Licensed Software"	means the proprietary software of Manheim, including the WebApp (and where appropriate, its licensors), Algorithm and Output Data (as defined in the Services Descriptions), including any updates, releases, enhancements and /or modifications (whether or not at the request of the Company);
"Manual Valuation"	means a valuation of a Vehicle that cannot be generated solely through the WebApp and instead requires manual intervention (This is usually because the Vehicle is a specialist Vehicle and the WebApp has insufficient data to produce a valuation);
"Online Platform"	means the website used by the Company to integrate the WebApp, more particularly described in the Services Descriptions (Appendix 2);
"Retailer"	means a vehicle retailer who is authorised to receive and use the WebApp under the terms of this Agreement;
"Roof Top"	means each physical location of a Retailer
"Schedule"	means the document that is titled EVA Services Agreement Schedule and that states the Services to be provided and the applicable Charges;
"Service Levels"	means any applicable standards of performance which are to be met by Manheim when performing the contracted Services (the Service Levels are explained in the Services Descriptions);
"Service(s)"	means the service(s) to be provided by Manheim as set out in the Schedule;
"Services Descriptions"	means the Appendix 2 document that forms part of this Agreement and describes the Services;
"Term"	means the term of this Agreement as more particularly described in clause 2.2;
"Transactions"	means any use of the WebApp by the Company or a Retailer to obtain a Valuation or verify a Valuation that has been provided to a Consumer for the Consumer's Vehicle and either the Company, a Retailer or Manheim has purchased that Vehicle;
"Transaction Data"	means the data entered by the Company, Consumer or the Retailer into the WebApp, but which excludes Personal Data;
"United Kingdom Mainland"	means the mainland of England, Wales and Scotland (For the avoidance of doubt, United Kingdom Mainland excludes: Jersey, Guernsey, Northern Ireland, Isle of White, Isle of Mann, Orkney & Shetland Islands, Mull, Arran, Islay and Jura Islands);
"UK GDPR"	means the General Data Protection Regulation as enacted into UK law by the European Union (Withdrawal) Act 2018 as amended by the Data Protection, Privacy and Electronic Communications (Amendments Etc) (EU Exit) Regulations 2019;
"Valuation"	a guide purchase price of the Vehicle generated on the WebApp following the description entered onto it by the Consumer, Retailer or Manheim as the case may be;
"Vehicle"	the Consumer's car that has been submitted for the Valuation;
"WebApp"	means the Manheim Appraisals and Valuations Tool;

## 2. COMMENCEMENT AND DURATION

- 2.1. The Company engages Manheim and Manheim agrees to provide the Services (in the United Kingdom Mainland) to the Company commencing on the Commencement Date and continuing for the term of this Agreement, subject to the terms and conditions of this Agreement and payment of the Charges.
- 2.2. This Agreement shall come into force or come into force on the Commencement Date and shall continue until: (i) terminated under any of the early termination provisions in clause 10 or 11.2 or (ii) terminated by either party on 6 months' written notice provided that the effective date of termination shall not be prior to the end of the Initial Term.

## 3. SERVICES

- 3.1. Subject to the terms of this Agreement, Manheim warrants that:
- 3.1.1. each applicable Service shall operate materially in accordance with the Services Descriptions when used in accordance with this Agreement under normal use and normal circumstances during the Term; and

- 3.1.2. it will provide each applicable Service with reasonable care and skill.
- 3.2. Manheim shall use reasonable endeavours to identify all consents (including for the avoidance of doubt all approvals necessary to produce artwork, illustration, photography, copy, drawings, literary and other such work) necessary for the fulfilment of its obligations under this Agreement and shall use its reasonable endeavours to obtain any such consent.
- 3.3. If Manheim's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Company, the Retailers, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, Manheim shall be allowed an extension of time to perform its obligations equal to the delay.
- 3.4. The Company acknowledges that clause 3.1 does not apply to any free or trial services provided by Manheim.
- 3.5. The Services may be subject to delays, interruptions, errors or other problems resulting from use of the internet or public electronic communications networks used by the parties or third parties. The Company acknowledges that such risks are inherent in cloud services and that Manheim shall have no liability for any such delays, interruptions, errors or other problems.
- 3.6. The warranties in clause 3.1 are subject to the limitations set out in clause 0 and shall not apply to the extent that any error in the Services arises as a result of:
- 3.6.1. incorrect operation or use of the Services by the Company, the Retailers, its agents, subcontractors, consultants or employees (including any failure to follow the Acceptable Use Policy or failure to meet minimum specifications);
- 3.6.2. use of any of the Services other than for the purposes for which it is intended;
- 3.6.3. use of any Services with other software or services or on equipment with which it is incompatible (unless Manheim recommended or required the use of that other software or service or equipment in the Services Descriptions);
- 3.6.4. any act by any third party (including hacking or the introduction of any virus or malicious code);
- 3.6.5. any modification of Services (other than that undertaken by Manheim or at its direction); or
- 3.6.6. any breach of this Agreement by the Company or a Retailer.
- 3.7. Manheim may at its absolute discretion make, and notify the Company of, updated versions Manheim Licensed Software from time to time by notifying the Company of such update by e-mail (together with a copy of the update or a link to a copy of the update) or by any other reasonable means which Manheim elects.

#### **4. COMPANY OBLIGATIONS**

- 4.1. The Company shall: (i) co-operate with Manheim in all matters relating to the Services; (ii) provide to Manheim all documents, information, items and materials in any form (whether owned by the Company or third party) reasonably required by Manheim in connection with the Services and ensure that they are accurate and complete and (iii) comply with the Acceptable Use Policy.
- 4.2. The Company shall use reasonable endeavours to identify all consents (including for the avoidance of doubt all approvals necessary to produce artwork, illustration, photography, copy, drawings, literary and other such work) necessary for the fulfilment of its obligations under this Agreement and shall use its reasonable endeavours to obtain any such consent.
- 4.3. The Company acknowledges that if it is a Retailer or Verifying Retailer as defined in this Appendix 1 or in the Services Descriptions (Appendix 2), it shall be subject to the obligations that this Agreement imposes on a Retailer and/or Verifying Retailer.

#### **5. CHARGES & PAYMENT**

- 5.1. In consideration of the provision of the Services by Manheim, the Company shall pay the Charges.
- 5.2. Manheim shall invoice the Company for the Charges on a monthly basis in arrears. The Company shall pay invoices within 30 days of receipt to a bank account nominated in writing by Manheim from time to time.
- 5.3. Manheim may increase the Charges on an annual basis. Manheim shall provide a minimum of 30 days' notice before such changes take effect.
- 5.4. Without prejudice to any other right or remedy Manheim may have, if the Company fails to pay the Charges or any other sum due to Manheim under this agreement on the due date: (i) the Company shall pay interest on the overdue sum from the due date until payment of the overdue sum. Interest under this Clause 5.4 shall accrue each day at 4% a year above the Bank of England's base rate from time to time; (ii) Manheim may suspend all or part of the Services until payment has been made in full.

- 5.5. The Charges 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).
- 5.6. All Charges payable hereunder are exclusive of VAT or any other applicable tax or duty payable upon such sums, which shall be added if appropriate at the rate prevailing at the relevant tax point. Manheim shall issue VAT invoices in respect of the sums payable by the Company prior to the relevant payment date.

## **6. INTELLECTUAL PROPERTY**

- 6.1. All Intellectual Property Rights in Manheim Licensed Software, Manheim Background IPR whether existing prior to or following the Commencement Date is the exclusive property of Manheim (or where applicable, its licensors) and shall at all times vest in and be owned by Manheim (or its licensors). Nothing in this Agreement shall have the effect of transferring or assigning in any way Manheim Intellectual Property Rights.
- 6.2. Manheim grants to the Company and its Retailers a limited, non-exclusive, non transferrable and royalty-free licence during the Term to use Manheim Licensed Software solely to the extent required for the purpose of receiving the Services.
- 6.3. The Company and its Retailers shall have the right to use the WebApp in accordance with the terms of this Agreement for the purpose of making it available on the Online Platform and for the purpose of carrying out and generating Valuations.
- 6.4. The Company grants to Manheim, a worldwide, non-exclusive, perpetual, irrevocable and royalty-free licence to retain and use the Transaction Data in connection with its business or any other legal or regulatory purpose. Manheim shall have the right to share the Transaction Data within its Group and with selected third parties for the purposes set out above provided that the Transaction Data is anonymised and does not link to the Company in any way.
- 6.5. The Company (or its licensors) shall retain ownership of all Intellectual Property Rights in the Company Materials. The Company hereby grants to Manheim a fully paid-up, non-exclusive, royalty-free, non-transferable licence for the Term to use, copy and modify the Company Materials for the purpose of providing the Services.
- 6.6. Manheim warrants that the Company's use of the Manheim Licensed Software and Manheim Background IPR under the terms of this Agreement, shall not infringe the Intellectual Property Rights of any third party. The Company warrants that the use by Manheim of the Company Materials and Transaction Data in accordance with the terms of this Agreement shall not infringe the Intellectual Property Rights of any third party.
- 6.7. The Company shall procure that each of its Retailers, at the request of Manheim, enter into an agreement with Manheim that is materially the same as the terms of this Agreement.

## **7. DATA PROTECTION**

- 7.1. The parties acknowledge that when processing Personal Data they will generally process the personal data as separate Data Controllers however there are times when they may act as a Data Processor of the other party, as follows:
  - 7.1.1. If the Company is acting as a Verifying Retailer processing Provenance Material as defined and described in Appendix 2, the Company shall process such data as a Data Processor of Manheim and the parties shall comply with the Data Processing Terms in Appendix 6;
  - 7.1.2. If Manheim transfers personal data to the Company that a Consumer has entered into the WebApp during a Valuation, Manheim shall be a Data Processor for the Company for the processing of such personal data and the parties shall comply with the Data Processing Terms in Appendix 5.
- 7.2. Each party warrants and represents that, in respect of such data, it shall comply in all respects with Data Protection Legislation.

## **8. CONFIDENTIALITY**

- 8.1. Each party undertakes that it shall not at any time during the Term, and for a period of 3 (three) years after termination of this Agreement, disclose to any person any Confidential Information of the other party or of any member of the Group to which the other party belongs, except as permitted by this Agreement.
- 8.2. A party may disclose the other party's Confidential Information:
  - 8.2.1. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this Clause 8; and
  - 8.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 8.3. A party shall not use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.
- 8.4. The obligations of confidentiality imposed under this Clause 8 does not apply to any Confidential Information that:
  - 8.4.1. is or was already, or has subsequently become generally available to the public other than as a result of a disclosure by the receiving party in breach of this Clause 8.
  - 8.4.2. was already in the receiving party's possession at the time of disclosure by the other party other than as a result of a breach of this Agreement; or
  - 8.4.3. is disclosed by the receiving party as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

## **9. LIMITATION OF LIABILITY**

- 9.1. Nothing in this Agreement shall limit or exclude a party's liability for any matters which it would be illegal for it to exclude or limit its liability.
- 9.2. Except for warranties, conditions or terms expressly stated in this Agreement, each party excludes all warranties, conditions and other terms that may be impliedly incorporated by statute or common law into this Agreement to the fullest extent permitted by law.
- 9.3. Subject to Clause 9.1, neither party shall, save where expressly stated, have any liability to the other for any of the following losses, damage, injury or expense (in each case whether direct or indirect): loss of profits; loss of opportunity; loss or depletion of goodwill; loss of anticipated savings or any special, indirect or consequential damage or loss of any nature whatsoever arising out of or relating to any breach of this Agreement, even if any such losses, damage, injury or expense are foreseeable.
- 9.4. Subject to Clauses 9.1 and 9.3, Manheim's total liability in a Contract Year to the Company arising under or in connection with this Agreement shall not exceed an amount equal to 100% of the Charges paid to Manheim by the Company in the twelve months preceding its breach.

## **10. TERMINATION**

- 10.1. A party may immediately terminate this Agreement without payment of compensation or other damages caused to the other party solely by such termination by giving notice in writing to the other party if any one or more of the following events happens:
  - 10.1.1. the other party commits a material breach of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - 10.1.2. the other party proposes a voluntary arrangement within the meaning of Section 1 or Section 253 of the Insolvency Act 1986, or an interim order is made in relation to the other party under Section 252 of the Insolvency Act 1986, or any other steps are taken or negotiations commenced by the other party or any of its creditors with a view to proposing any kind of composition, compromise or arrangement involving the other party and any of its creditors;
  - 10.1.3. the other party has any distress or execution levied on its assets which is not paid out within seven days of its being levied, or a secured lender of the other party takes any steps to obtain possession of the property on which it has security or otherwise to enforce its security;
  - 10.1.4. the other party is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or calls a meeting for the purpose of passing a resolution to wind it up, or such a resolution is passed, or a resolution is passed by the directors of the other party to seek a winding up or administration order, or the other party presents, or has presented, a petition for a winding up order, or presents, or has presented, a petition to appoint an administrator, or has an administrative receiver, or receiver appointed over all or any part of its business, undertaking, property or assets;
  - 10.1.5. the other party is constituted, established or domiciled against or to an insolvent debtor or available to the creditors of such a debtor;
  - 10.1.6. the other party undergoes a change of Control and for the purposes of this Clause 10.1.6, "Control" has the meaning specified in Section 416 of the Income and Corporation Taxes Act 1988, save as where such change of Control is for the purpose of an intra-group restructure;
  - 10.1.7. a Linked Agreement expires or is terminated.
- 10.2. The termination of this Agreement or of any of the Services shall be without prejudice to the rights and remedies of either party, which may have accrued up to the date of termination.

- 10.3. Any expiry or termination of this Agreement (for whatever reason) shall not affect the coming into force or the continuance in force of any provision of this Agreement that is expressly or by implication intended to come into or continue in force on or after such termination.
- 10.4. Upon termination of this Agreement for any reason whatsoever the Company shall immediately cease using and remove all copies of Manheim Licensed Software. The Company shall procure that each of its Retailers also immediately cease using and remove all copies of Manheim Licensed Software.

## 11. GENERAL

- 11.1. Nothing in this Agreement shall create, or be deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the parties.
- 11.2. Manheim shall not be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances, Manheim shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for a period exceeding four (4) weeks, the Company may terminate this Agreement by giving 15 days' written notice to Manheim.
- 11.3. The Company irrevocably and unconditionally waives any right it may have to claim damages for, and/or to rescind this Agreement because of a breach of any warranty not contained in this Agreement, or any misrepresentation whether or not contained in this Agreement, unless such misrepresentation was made fraudulently.
- 11.4. No purported alteration or variation of this Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is duly executed by each of the parties to this Agreement.
- 11.5. The waiver by either party of any breach of a provision of this Agreement shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.
- 11.6. If at any time any part of this Agreement is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from this Agreement and the validity and/or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired as a result of that omission.
- 11.7. Each of the parties shall, and shall use their reasonable endeavours to procure that any necessary third parties shall, execute and deliver to the other party such other instruments and documents and take such other action as is necessary to fulfil the provisions of this Agreement in accordance with its terms.
- 11.8. This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 11.9. No person who is not a party to this Agreement (including any employee, officer, agent, representative or subcontractor of either party) shall have the right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any provision of this Agreement which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the parties to this Agreement.
- 11.10. Any notice given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address of the party's authorised representative. A notice shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; 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 sent by email, at the time of sending (provided the email is supported by a valid server delivery receipt), or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 11.10, business hours mean 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt. This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution. It is noted that Manheim does not accept notice by e-mail or facsimile.
- 11.11. The Agreement shall be governed and construed and have effect in all respects in accordance with English Law. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.