

## INTRODUCTION

This Agreement sets out the terms and conditions upon which Acorn has agreed to appoint the Affiliate.

### IT IS AGREED THAT:

#### 1 Definitions and interpretation

1.1 In this Agreement, unless the context requires otherwise:

<b>Acorn</b>	means Acorn Mobility Services Limited with offices at Telecom House, Millennium Business Park, Station Road, Steeton BD20 6RB;
<b>Affiliate</b>	means the affiliate as identified on the “Affiliate Information page” on the Affiliate Portal;
<b>Affiliate Portal</b>	means the Acorn Affiliate Programme website at <a href="http://www.acornaffiliate.com">www.acornaffiliate.com</a> ;
<b>Bribery Laws</b>	means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption and any similar or equivalent legislation in any other relevant jurisdiction;
<b>Business Day</b>	means a day other than a Saturday, Sunday or public holiday;
<b>Commencement Date</b>	means the date of registration by the Affiliate in the Affiliate Portal;
<b>Confidential Information</b>	shall have the meaning given to it in clause 11.1;
<b>Contract</b>	means a contract for the supply of the Services between Acorn and a Prospect entered into following an Introduction;
<b>Control</b>	means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or

cause the direction of the management of the company and **Controls, Controlled and under common Control** shall be interpreted accordingly;

<b>Fee</b>	means the sum calculated in accordance with Schedule 1 and payable in accordance with clause 6;
<b>Introduction</b>	means the provision of the contact details of a Prospect by the Affiliate to Acorn in the form set out in Schedule 1. <b>Introduces and Introduced</b> shall be interpreted accordingly;
<b>Introduction Period</b>	means, for each Prospect, the period starting on the date the Introduction is accepted by Acorn and ending 365 days from that date;
<b>MSA Offence</b>	shall have the meaning in clause 10.1.1;
<b>Price</b>	means the full gross price invoiced under a Contract;
<b>Prospect</b>	means a prospective person or company who has not previously been a customer of Acorn or has not previously been in negotiations with Acorn to purchase the Services in the last 365 days;
<b>Representatives</b>	shall have the meaning given in clause 13.2.1;
<b>Reserved Intellectual Property</b>	means any intellectual property owned or used by Acorn;
<b>Services</b>	means the services listed in Schedule 1;
<b>Term</b>	has the meaning given in clause 2;
<b>Terms of Sale</b>	means Acorn's standard terms of sale for the Services, as the same may be amended or updated by Acorn from time to time;
<b>VAT</b>	means United Kingdom value added tax as defined by the Value Added Tax Act 1994 or any other tax imposed in substitution for it and any equivalent or similar tax imposed outside the United Kingdom.

1.2 In this Agreement:

- 1.2.1 a reference to this Agreement includes its schedules;
- 1.2.2 the table of contents, background section and any clause, schedule or other headings in this Agreement are included for convenience only and shall have no effect on the interpretation of this Agreement;
- 1.2.3 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;
- 1.2.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.2.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.6 a reference to a gender includes each other gender;
- 1.2.7 words in the singular include the plural and vice versa;
- 1.2.8 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.9 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form; and
- 1.2.10 without prejudice to the provisions of Schedule 2, a reference to any legislation or legislative provision is a reference to it as amended, extended, re-enacted or consolidated from time to time.

**2 Commencement and Term**

This Agreement commences on the Commencement Date and shall continue in full force and effect unless or until terminated in accordance with clause 12 or clause 19 (the **Term**).

**3 Appointment and scope**

- 3.1 Acorn appoints the Affiliate, on a non-exclusive basis, to make Introductions during the Term upon the terms and conditions of this Agreement, and the Affiliate accepts such appointment.
- 3.2 Acorn shall have the right to appoint other persons as introducers for the Services during the Term.
- 3.3 The Affiliate shall have no authority to:
  - 3.3.1 obtain orders from; or

3.3.2 enter into or conclude contracts with,  
any person or company, including the Prospects, for sales of the Services.

#### **4 Rights and duties of the Affiliate**

4.1 During the Term, the Affiliate shall:

- 4.1.1 make Introductions;
- 4.1.2 conduct its business in accordance with the highest business standards and not perform any act (nor omit to do any act) which might reflect adversely upon the integrity or goodwill of Acorn;
- 4.1.3 keep and maintain adequate records of Introductions and Prospects and provide to Acorn upon request details of their names and copies of correspondence with them;
- 4.1.4 generally make itself available to Acorn for the purpose of consultation and advice relating to the Prospects and Introductions;
- 4.1.5 act diligently and in good faith towards Acorn and the Prospects;
- 4.1.6 seek to enhance the reputation of Acorn;
- 4.1.7 make clear to all of the Prospects and generally that it is the Affiliate of Acorn only to the extent provided for in this Agreement;
- 4.1.8 ensure that, in the event that it has cause to make reference to Acorn's pricing or Terms of Sale, such reference is accurate and is made to the most recent pricing and Terms of Sale as communicated to it by Acorn;
- 4.1.9 comply with:
  - (a) all relevant laws, legislation, enactments, regulations, regulatory policies, guidelines and industry codes; and
  - (b) all policies, directions and instructions of Acorn from time to time in place;
- 4.1.10 maintain all such authorisations and other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with this Agreement;
- 4.1.11 communicate to Acorn all information available to it and relevant to this Agreement.

4.2 During the Term the Affiliate shall not:

- 4.2.1 hold itself out as being Acorn or otherwise imitate Acorn;
- 4.2.2 pledge the credit of Acorn;

- 4.2.3 allow its interests to conflict with those of Acorn;
- 4.2.4 take part in any negotiations between Acorn and Prospects;
- 4.2.5 enter into any settlement or compromise with Prospects;
- 4.2.6 incur any obligation on Acorn's behalf except as expressly permitted under this Agreement or with Acorn's prior written consent;
- 4.2.7 make any statement or give any warranty or guarantee in respect of the Services without Acorn's prior written consent;
- 4.2.8 use any promotional materials in connection with the performance of its duties under this Agreement which are not supplied or expressly approved by Acorn and made available through the Affiliate Portal;
- 4.2.9 make, receive or accept any secret income, profit or other benefit in connection with this Agreement; or
- 4.2.10 do anything which shall harm the reputation of Acorn.

## **5 Rights and duties of Acorn**

- 5.1 During the Term Acorn shall use its reasonable endeavours to:
  - 5.1.1 supply the Affiliate with sales and marketing materials as Acorn sees fit through the Affiliate Portal;
  - 5.1.2 notify the Affiliate of any relevant or material changes made to the Services, the prices for the Services and the Terms of Sale from time to time;
  - 5.1.3 act in good faith towards the Affiliate; and
  - 5.1.4 provide the Affiliate with such information as the Affiliate reasonably requires to perform its obligations under this Agreement
- 5.2 Acorn may refuse an Introduction where:
  - 5.2.1 the Prospect is a contact already recorded on Acorn's database;
  - 5.2.2 Acorn has an enquiry from the Prospect which is less than 365 days old or a customer survey has been carried out in the last 365 days;
  - 5.2.3 within 14 days of receiving the referral, the Prospect is non-contactable or not interested in purchasing a stairlift; or
  - 5.2.4 the Affiliate has failed to provide a complete Introduction in accordance with the requirements set out at Schedule 1.

- 5.3 Acorn may at any time:
- 5.3.1 add or withdraw the Services in whole or in part;
  - 5.3.2 change the price or specification of any of the Services; or
  - 5.3.3 change the commercial terms set out at Schedule 1 giving a minimum 30 days' notice in writing to the Affiliate.

## **6 Fees and expenses**

- 6.1 Acorn shall pay the Affiliate a Fee in respect of a Contract concluded during the Introduction Period, provided always that:
- 6.1.1 the Prospect has been:
    - (a) Introduced by the Affiliate; and
    - (b) accepted by Acorn;
  - 6.1.2 such Contract has been unconditionally entered into by both Acorn and the Prospect;
  - 6.1.3 Acorn has received the Price of the Contract unconditionally and in full from the Prospect; and
  - 6.1.4 it is the first Contract between Acorn and the Prospect in the Introduction Period.
- 6.2 Within fifteen Business Days of the end of each month, Acorn shall make available within the Affiliate Portal a purchase order document including the following details:
- 6.2.1 the Contracts concluded in that month;
  - 6.2.2 any Contracts concluded previous to that month but which remain applicable for that month in respect of the calculation of the Fee;
  - 6.2.3 the Fee due for that month; and
  - 6.2.4 the method of calculation of the Fee.
- 6.3 The Affiliate shall bear all out-of-pocket expenses, including travel and accommodation expenses of its personnel and all other expenses incurred by the Affiliate in performing its obligations under this Agreement.
- 6.4 Without prejudice to any additional obligations and rights of the parties under Schedule 2, each party shall keep records of the matters referred to in this Agreement, during the Term and for six years from its termination.

## **7 Taxes and duties**

- 7.1 Fees due under this Agreement are inclusive of VAT, sales or other taxes or duties applicable for the time being prescribed by law by any relevant authority.

## **8 Invoicing and payment**

- 8.1 On receipt of the document provided for under clause 6.2, the Affiliate shall issue an invoice quoting the applicable purchase order number provided within the Affiliate Portal within ten Business Days and Acorn shall pay the Fee due within 30 Business Days of Acorn's receipt of a validly issued and undisputed invoice.
- 8.2 Time of payment is not of the essence.
- 8.3 Amounts payable to the Affiliate under this Agreement shall be paid by electronic funds transfer unless otherwise notified by the Affiliate to Acorn in writing in accordance with this Agreement.

## **9 Anti-bribery**

- 9.1 For the purposes of this clause **Error! Reference source not found.** the expressions '**adequate procedures**' and '**associated with**' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.

- 9.2 The Affiliate shall ensure that it and each person referred to in clauses 9.2.1 to 9.2.3 (inclusive) does not, by any act or omission, place Acorn in breach of any Bribery Laws. The Affiliate shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:

9.2.1 all of the Affiliate's personnel;

9.2.2 all others associated with the Affiliate; and

9.2.3 each person employed by or acting for or on behalf of any of those persons referred to in clauses 9.2.1 and/or 9.2.2,

involved in connection with this Agreement so comply.

- 9.3 Without limitation to clause 9.2, the Affiliate shall not make or receive any bribe (which term shall be construed in accordance with the Bribery Act 2010) or other improper payment or advantage, or allow any such bribe or improper payment or advantage to be made or received on its behalf, either in the United Kingdom or elsewhere, and the Affiliate shall implement and

maintain adequate procedures to ensure that such bribes or improper payments or advantages are not made or received directly or indirectly on its behalf.

9.4 The Affiliate shall immediately notify Acorn as soon as it becomes aware of a breach or possible breach of any of the requirements in this clause **Error! Reference source not found..**

9.5 Any breach of clause **Error! Reference source not found.** by the Affiliate shall be deemed a material breach of this Agreement that is not remediable and shall entitle Acorn to immediately terminate this Agreement by notice under clause 12.2.1.

## **10 Modern slavery**

10.1 The Affiliate undertakes, warrants and represents that:

10.1.1 neither it nor any of its officers, employees, agents or sub-contractors has:

- (a) committed an offence under the Modern Slavery Act 2015 (an **MSA Offence**);  
or
- (b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
- (c) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

10.1.2 it shall comply with the Modern Slavery Act 2015;

10.1.3 it shall notify Acorn immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or sub-contractors have breached or potentially breached any of its obligations under clause **Error! Reference source not found..** Such notice to set out full details of the circumstances concerning the breach or potential breach of the Affiliate's obligations.

## **11 Limitation of liability**

11.1 The extent of the parties' liability under or in connection with this Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 11.

11.2 Subject to clause 11.5, Acorn shall not be liable for any consequential, indirect or special loss.

11.3 Subject to clause 11.5, Acorn shall not be liable for any of the following (whether direct or indirect):

11.3.1 loss of profit;

11.3.2 loss of revenue;

11.3.3 loss or corruption of data;



- 11.3.4 loss or corruption of software or systems;
  - 11.3.5 loss or damage to equipment;
  - 11.3.6 loss of use;
  - 11.3.7 loss of production;
  - 11.3.8 loss of contract;
  - 11.3.9 loss of commercial opportunity;
  - 11.3.10 loss of savings, discount or rebate (whether actual or anticipated);
  - 11.3.11 harm to reputation or loss of goodwill.
- 11.4 Except as expressly stated in this Agreement, and subject to clause 11.5, all warranties and conditions whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.
- 11.5 Notwithstanding any other provision of this Agreement, the liability of the parties shall not be limited in any way in respect of the following:
- 11.5.1 death or personal injury caused by negligence;
  - 11.5.2 fraud or fraudulent misrepresentation;
  - 11.5.3 any other losses which cannot be excluded or limited by applicable law.
- 12 Termination**
- 12.1 This Agreement may be terminated by:
- 12.1.1 Acorn giving a minimum of four weeks' notice in writing to the Affiliate;
  - 12.1.2 the Affiliate giving a minimum of four weeks' notice in writing to Acorn.
- 12.2 Acorn may terminate this Agreement at any time by giving notice in writing to the Affiliate if:
- 12.2.1 the Affiliate commits a material breach of this Agreement and such breach is not remediable;
  - 12.2.2 the Affiliate commits a material breach of this Agreement which is not remedied within 14 days of receiving written notice of such breach; or
  - 12.2.3 the Affiliate is allocated to Tier D for a period of three consecutive months as set out in Schedule 1.
- 12.3 Either party may terminate this Agreement at any time by giving notice in writing to the other party if that other party:

- 12.3.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
- 12.3.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the non-defaulting party reasonably believes that to be the case;
- 12.3.3 becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;
- 12.3.4 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
- 12.3.5 becomes subject to a restructuring plan under Part 26A Companies Act 2006;
- 12.3.6 becomes subject to a scheme of arrangement under Part 26 Companies Act 2006;
- 12.3.7 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
- 12.3.8 has a resolution passed for its winding up;
- 12.3.9 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
- 12.3.10 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
- 12.3.11 has a freezing order made against it;
- 12.3.12 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;
- 12.3.13 is subject to any events or circumstances analogous to those in clauses 12.3.1 to 12.3.12 in any jurisdiction.
- 12.4 Acorn may terminate this Agreement at any time by giving not less than two weeks' notice in writing to the Affiliate if the Affiliate undergoes a change of Control.
- 12.5 The right of a party to terminate the Agreement pursuant to clause 12.3 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) where the amalgamated, reconstructed or merged party agrees to adhere to this Agreement.
- 12.6 On termination or expiry of this Agreement the Affiliate shall immediately cease to promote the Services or use any of the Reserved Intellectual Property and return or (at Acorn's request) destroy any Confidential Information and other property or materials of Acorn then in its possession or control, and certify in writing to Acorn that this has been done.

12.7 Termination or expiry of this Agreement shall not affect any accrued rights and liabilities of either party at any time up to the date of termination.

12.8 Termination of this Agreement for whatever reason shall not operate to affect any provisions that expressly or by implication survive termination.

### **13 Confidential Information**

13.1 The Affiliate agrees that it shall keep any information that is confidential in nature concerning Acorn including, any details of its business, affairs, customers, clients, suppliers, know-how (including without limitation designs, processes of production and technology), trade secrets and software, plans or strategy (**Confidential Information**) confidential and that it shall not use or disclose Acorn's Confidential Information to any person, except as permitted by clause 13.2.

13.2 The Affiliate may:

13.2.1 disclose the Confidential Information to those of its employees, officers, advisers, agents or representatives (**Representatives**) who need to know the relevant Confidential Information for the purposes of the performance of any obligations under this Agreement, provided that the Affiliate must ensure that each of its Representatives to whom Confidential Information is disclosed is aware of its confidential nature and agrees to comply with this clause as if it were a party;

13.2.2 disclose any Confidential Information as may be required by law, any court, any governmental, regulatory or supervisory authority or any other authority of competent jurisdiction to be disclosed; and

13.2.3 use Confidential Information only to perform any obligations under this Agreement.

13.3 The Affiliate recognises that any breach or threatened breach of this clause 13 may cause irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages, the Affiliate agrees that Acorn may be entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

13.4 The Affiliate shall indemnify and keep indemnified and hold harmless Acorn from and against any losses, damages, liability, costs (including legal fees) and expenses which Acorn may incur or suffer as a result of or arising from any breach by the Affiliate of its obligations under this clause 13.

13.5 This clause 13 shall bind the parties during the Term and for a period of 2 years following termination of this Agreement.

### **14 Data protection**

14.1 Each party shall comply with its respective obligations, and may exercise its respective rights and remedies, under Schedule 2.

## **15 Dispute resolution**

- 15.1 Any dispute arising between the parties out of or in connection with this Agreement shall be dealt with in accordance with the provisions of this clause 15.
- 15.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 15.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:
- 15.3.1 within seven days of service of the notice, the parties' contract managers shall meet to discuss the dispute and attempt to resolve it;
- 15.3.2 if the dispute has not been resolved within seven days of the first meeting, then the matter shall be referred to the senior managers. The senior managers shall meet within seven days of the date of such referral to discuss the dispute and attempt to resolve it.
- 15.4 The specific format for the resolution of the dispute under clause 15.3.1 and, if necessary, clause 15.3.2 shall be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.
- 15.5 If the dispute has not been resolved within 14 days of the first meeting of the senior managers under clause 15.3.2 then the matter may be referred to mediation in accordance with the London Court of International Arbitration Mediation Rules.
- 15.6 Until the parties have completed the steps referred to in clauses 15.3 and 15.5, and have failed to resolve the dispute, neither party shall commence formal legal proceedings or arbitration except that either party may at any time seek urgent interim relief from the courts or emergency arbitrator relief.

## **16 Entire agreement**

- 16.1 The parties agree that this Agreement constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 16.2 Each party acknowledges that it has not entered into this Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in this Agreement.
- 16.3 Nothing in this Agreement purports to limit or exclude any liability for fraud.

## **17 Notices**

- 17.1 Any notice given by a party under this Agreement shall be in writing and sent by registered post to the address of the other party as set out in this Agreement and on the Affiliate Portal. Such notice shall be deemed to have been received by the addressee 72 hours after posting provided applicable evidence of posting is retained and produced on request.
- 17.2 Whilst the parties may make operational communications concerning this Agreement via email, formal notice may not be served via email.
- 17.3 This clause does not apply to notices given in legal proceedings or arbitration.

## **18 Announcements**

- 18.1 Subject to clause 18.2, no announcement or other public disclosure concerning this Agreement or any of the matters contained in it shall be made by, or on behalf of, the Affiliate without the prior written consent of Acorn (such consent not to be unreasonably withheld or delayed).
- 18.2 If the Affiliate is required to make an announcement or other public disclosure concerning this Agreement or any of the matters contained in it by law, any court, any governmental, regulatory or supervisory authority or any other authority of competent jurisdiction, it may do so. The Affiliate shall:
- 18.2.1 notify Acorn as soon as is reasonably practicable upon becoming aware of such requirement to the extent that it is permitted to do so by law, by the court or by the authority requiring the relevant announcement or public disclosure;
- 18.2.2 make the relevant announcement or public disclosure after consultation with Acorn so far as is reasonably practicable; and
- 18.2.3 make the relevant announcement or public disclosure after taking into account all reasonable requirements of Acorn as to its form and content and the manner of its release, so far as is reasonably practicable.

## **19 Force Majeure**

- 19.1 In this clause 19 '**Force Majeure**' means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under this Agreement.
- 19.2 A party shall not be liable if delayed in or prevented from performing its obligations under this Agreement due to Force Majeure, provided that it:
- 19.2.1 promptly notifies the other of the Force Majeure event and its expected duration; and
- 19.2.2 uses reasonable endeavours to minimise the effects of that event.

19.3 If, due to Force Majeure, a party:

19.3.1 is unable to perform a material obligation; or

19.3.2 is delayed in or prevented from performing its obligations for a continuous period of more than 30 Business Days,

the other party may terminate this Agreement on not less than four weeks' written notice.

## **20 Further assurance**

20.1 Each party shall at the request of the other, and at the cost of the requesting party, do all acts and execute all documents which are necessary to give full effect to this Agreement.

## **21 Variation**

21.1 Save as provided at clause 5.3.3, no variation of this Agreement shall be valid or effective unless it is in writing, refers to this Agreement and is duly executed by, or on behalf of, each party.

## **22 Assignment**

22.1 The Affiliate may not assign, sub-contract or encumber any right or obligation under this Agreement, in whole or in part, without Acorn's prior written consent (such consent not to be unreasonably withheld or delayed).

## **23 No partnership or agency**

23.1 The parties are independent contractors and are not partners, principal and agent or employer and employee and this Agreement does not establish any joint venture, trust, fiduciary, agency or other relationship between them. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

## **24 Equitable relief**

24.1 The Affiliate recognises that any breach or threatened breach of this Agreement may cause Acorn irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to Acorn, the Affiliate acknowledges and agrees that Acorn is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

## **25 Severance**

25.1 If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.

25.2 If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

## **26 Waiver**

26.1 No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

26.2 No single or partial exercise of any right, power or remedy provided by law or under this Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.

26.3 A waiver of any term, provision, condition or breach of this Agreement shall only be effective if given in writing and signed by the waiving party, and then only in the instance and for the purpose for which it is given.

## **27 Compliance with law**

27.1 Each party shall comply and shall (at its own expense unless expressly agreed otherwise) ensure that in the performance of its duties under this Agreement, its employees, agents and representatives shall comply with all applicable laws and regulations, provided that neither party shall be liable for any breach of this clause 27.1 to the extent that such breach is directly caused or contributed to by any breach of this Agreement by the other party (or its employees, agents and representatives).

## **28 Conflicts within Agreement**

28.1 In the event of any conflict or inconsistency between different parts of this Agreement, the following descending order of priority applies:

28.1.1 the terms and conditions in the main body of this Agreement and Schedule 2;

28.1.2 the other Schedules.

28.2 Subject to the above order of priority between documents, later versions of documents shall prevail over earlier ones if there is any conflict or inconsistency between them.

## **29 Costs and expenses**

29.1 Except as otherwise expressly agreed by the parties in writing, each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of this Agreement (and any documents referred to in it).

### **30 Third party rights**

- 30.1 Except as expressly provided for in clause 30.2, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of this Agreement.
- 30.2 Any group company of Acorn shall have the right to enforce any of the provisions of this Agreement.

### **31 Language**

- 31.1 The language of this Agreement is English. All documents, notices, waivers, variations and other written communications relating to this Agreement shall be in English.
- 31.2 If this Agreement and any document relating to it is translated, the English version shall prevail.

### **32 Governing law**

- 32.1 This Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

### **33 Jurisdiction**

- 33.1 Subject to clause 15, the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with this Agreement, its subject matter or formation (including non-contractual disputes or claims).



**SCHEDULE 1  
COMMERCIAL TERMS**

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**Services**

Means the sale and installation of stairlift products, in residential properties by Acorn.

**Introduction contact requirements**

A valid Introduction shall contain the (a) full name, (b) address and (c) telephone number, of the Prospect.

**Fee**

The affiliate will be paid a Fee per Contract in accordance with the following commission structure:

<u>Tier</u>	<u>Referral to Enquiry rate</u>	<u>Commission</u>
A	over 90%	£600
B	60% - 89%	£400
C	30% - 59%	£200
D	29% and below	£100

**Referral to Enquiry Rate** means the number of Introductions passed to us versus the number that turned into Contracts.

The Affiliate shall be placed at Tier B at Commencement of the Agreement.

Thereafter, the percentage of Introductions that result in a Contract shall be reviewed and re-calculated on the first day of the next and all subsequent months. The Affiliate shall be allocated to a tier on a monthly basis according to the 'Referral to Enquiry' rate achieved over the preceding 3 months, on a rolling basis.

In the event that the Affiliate is allocated to Tier D and remains at that tier for a period of 3 consecutive months, Acorn reserves the right to terminate the Agreement.

As per clause 5.2 of the Agreement, Introductions will be rejected for the following reasons:

- **Duplicates.** Either Acorn already has an enquiry from the Prospect less than 365 days old or a customer survey has been carried out in the last 365 days;
- **Incomplete referrals** (Missing a full name, phone number or address) or spam; or
- Within 14 days of receiving the referral the Prospect is non-contactable or not interested in a stairlift purchase.

You will have 365 days from the date of the Introduction to gain credit for a sale. No sales after that date will give you a credit.

You will only be credited for the first sale to a Prospect. After the first sale, no additional sales within the year are valid for credit.

**SCHEDULE 2**  
**DATA PROTECTION**

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**1 Definitions**

1.1 In this Schedule 2:

**Communication**

means a complaint, request or other communication (but excluding any Data Subject Request) relating to either party's obligations under any Data Protection Laws in connection with this Agreement and/or the processing of any of the Shared Personal Data, including any compensation claim from a Data Subject or any notice, investigation or other action from a Data Protection Supervisory Authority relating to the foregoing (and **Communicator** means the Data Protection Supervisory Authority, Data Subject or other person initiating or conducting a Communication);

**Consent**

means a freely given, specific, informed and unambiguous indication (by a statement or by a clear affirmative action) by which the relevant Data Subject has agreed to the relevant disclosure(s) and/or processing of the Shared Personal Data relating to them that has not been withdrawn (and **Consented** shall be construed accordingly);

**Controller**

has the meaning given in Data Protection Laws;

**Data Protection Laws**

means, as applicable to either party and/or to the rights, responsibilities and/or obligations of either party in connection with this Agreement:

- (a) the GDPR;
- (b) the Data Protection Act 2018;
- (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003;

- (d) any applicable law relating to the processing, privacy and/or use of Personal Data;
- (e) any laws which implement any such laws; and
- (f) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;

**Data Protection Supervisory Authority** means any regulator, authority or body responsible for administering Data Protection Laws;

**Data Subject** has the meaning given in Data Protection Laws;

**Data Subject Request** means a request made by a Data Subject to exercise any right(s) of Data Subjects under Chapter III of the GDPR in relation to any of the Shared Personal Data or concerning the processing of such data;

**GDPR** means the General Data Protection Regulation, Regulation (EU) 2016/679, as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom or of a part of the United Kingdom from time to time);

**Permitted Purpose** means to facilitate Acorn contacting the Data Subject who has indicated their consent to Acorn contacting them about the Services that Acorn can provide to the Data Subject;

**Personal Data** has the meaning given in Data Protection Laws;

**Personal Data Breach** has the meaning given in the Data Protection Laws;

**processing** has the meaning given in Data Protection Laws (and related expressions, including

**process, processed, and processes** shall be construed accordingly); and

**Shared Personal Data**

means Personal Data received by Acorn from or on behalf of the Affiliate, or otherwise made available by the Affiliate for the Permitted Purpose.

**2 Status of this Schedule and the parties**

2.1 Each party shall be a Controller of the Shared Personal Data. If the parties share the Shared Personal Data, it shall be shared and managed in accordance with the terms of this Schedule.

**3 Lawful basis**

The lawful basis on which the parties intend to share the Shared Personal Data under this Agreement is that the Data Subjects have Consented to the processing of their personal data by the Affiliate and Acorn.

**4 Compliance with data protection laws**

Subject to paragraph 5, each party shall at all times comply with all Data Protection Laws in connection with the exercise and performance of its respective rights and obligations under this Agreement. This Schedule allocates certain tasks and responsibilities among the parties as enforceable contractual obligations between themselves, however nothing in this Schedule is intended to limit or exclude either party's responsibilities or liabilities under any Data Protection Laws including under Article 82 of the GDPR and the duties owed by each party to Data Subjects under all Data Protection Laws.

**5 Obligations on the Affiliate**

5.1 The Affiliate shall ensure that at all times:

5.1.1 all Shared Personal Data disclosed to Acorn is accurate and up-to-date at the time it is collected and has at all times been collected, processed and disclosed by and on behalf of the Affiliate in accordance with all Data Protection Laws;

5.1.2 that prior to any Shared Personal Data (or any part) being disclosed to Acorn from time to time, each relevant Data Subject has been provided with sufficient information (in an appropriate form) so as to enable fair, transparent and lawful processing (including sharing) of the Shared Personal Data for the Permitted Purpose in accordance with the obligations of each party under all Data Protection Laws;

5.1.3 it identifies itself (without prejudice to the rights of any person to contact another person) in all information referred to in paragraph 5.1.2 as the contact point for all Data Subject Requests and Communications regarding the processing of the Shared Personal Data (and agrees that Acorn may also identify the Affiliate as the contact point for such purposes in any information or notices);

- 5.1.4 the Shared Personal Data is not subject, or potentially subject, to any laws from time to time giving effect to Article 71 (Protection of personal data) of the agreement in the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community;
- 5.1.5 the Shared Personal Data when disclosed to Acorn in connection with this Agreement is not subject to the laws of any jurisdiction outside of the United Kingdom;
- 5.1.6 the Affiliate is entitled to disclose and Acorn is entitled to process all Shared Personal Data for the Permitted Purpose in accordance with all Data Protection Laws including that Data Subjects have each Consented to such disclosure and other processing of their respective Shared Personal Data;
- 5.1.7 the Shared Personal Data is disclosed to (and received by) Acorn in a secure manner using appropriate technical and organisational security measures that comply with the obligations of each party under all Data Protection Laws;
- 5.1.8 it shall immediately notify Acorn if it becomes aware of any change or circumstance which will, may or is alleged to impact the lawfulness of any processing of the Shared Personal Data by Acorn (including if a Data Subject withdraws any necessary Consent or requests their Shared Personal Data is no longer processed or is erased or if any of the Shared Personal Data is not accurate or up-to-date), together with full details of the circumstances and (immediately once available) revised and corrected data;
- 5.1.9 it shall not by any act or omission cause Acorn (or any other person) to be in breach of any Data Protection Laws;
- 5.1.10 it shall keep copies of all notices, Consents and other information necessary to demonstrate its compliance with this Schedule; and
- 5.1.11 it shall promptly (and in any event within five Business Days of request) provide Acorn with copies of all notices, Consents and other information referred to in paragraph 5.1.10 as may be requested from time to time by Acorn.

## **6 International transfers**

- 6.1 Except as required by applicable law of the United Kingdom (or any part of the United Kingdom), Acorn shall not transfer the Shared Personal Data to any country or territory outside the United Kingdom or to any international organisation (as defined in the GDPR). For the purposes of this paragraph 6 'transfer' bears the same meaning as the word 'transfer' in Article 44 of the GDPR.

## **7 Respective responsibilities for compliance**

- 7.1 Subject to the remainder of this Schedule, as between the parties, responsibility for compliance with and responding to:

- 7.1.1 any Data Subject Request falls on the party which first received such Data Subject Request;
- 7.1.2 any Communication falls on the party which receives the Communication from a Communicator;
- 7.1.3 each party's respective obligations in respect of any Personal Data Breach (including notification of the Data Protection Supervisory Authority and/or Data Subject(s)) impacting or relating to any Shared Personal Data in the possession or control of the Introducer (or any third party with whom it has shared such data) falls on the Affiliate; and
- 7.1.4 each party's respective obligations in respect of any other obligation under Data Protection Laws that is not addressed elsewhere in this Agreement falls on each party subject to such obligation(s) under the Data Protection Laws.

## **8 Notification**

The Affiliate shall notify Acorn of any action under paragraph 7.1.3 (together with full details) to the extent such action relates to this Agreement or to the fulfilment of any of the Affiliate's obligations under Data Protection Laws. Where possible the affiliate shall notify Acorn as soon as possible in advance of such action being taken (and in any event shall do so within one calendar day of such action).

## **9 Reservation of rights to take action**

Paragraph 7 does not restrict either party's right to perform any of its obligations under Data Protection Laws itself in the manner it determines (whether or not in addition to the other party having performed such obligation).

## **10 Co-operation and assistance**

Each party shall promptly co-operate with and provide reasonable assistance, information and records to the other to assist each party with their respective compliance with Data Protection Laws and in relation to all Communications and Data Subject Requests.

## **11 Costs and expenses**

Acorn's obligations under paragraphs 7.1.1 to 7.1.3 (inclusive), and paragraph 10 shall be performed at the Affiliate's expense, except to the extent that the circumstances giving rise to such obligation arose out of any breach by Acorn of its obligations under this Agreement.

## **12 Indemnity**

12.1 The Affiliate shall indemnify and keep indemnified Acorn against:

- 12.1.1 all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects (including compensation to

protect goodwill and ex gratia payments), demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a Data Protection Supervisory Authority) arising out of or in connection with any breach by the Introducer of its obligations under this Schedule; and

12.1.2 all amounts paid or payable by Acorn to a third party which would not have been paid or payable if the Affiliate's breach of this Schedule had not occurred.

**13 Material breach**

Any breach by the Affiliate of any of its obligations under this Schedule shall be regarded as being material for the purposes of this Agreement.

**14 Retention**

Acorn shall retain any Shared Personal Data in its possession or control for the duration of the Agreement. Upon termination of the Agreement, Acorn shall retain the Shared Personal Data for a period sufficient to enable Acorn to fulfil any legal obligations arising either under the Agreement or generally under applicable law.

**15 Costs**

Except as expressly stated in this Schedule, each party shall pay its own costs and expenses incurred in connection with the performance of this Schedule.

**16 Survival on termination**

The provisions of this Schedule shall survive termination or expiry of this Agreement and continue indefinitely.