

# Terms and Conditions

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The terms below and the attached cover sheet (“Agreement”) set out the terms and conditions on which Westbourne Communications Ltd (the “Consultant”) will provide the communications services described in the cover sheet, Appendix 1 and such other customary PR, public affairs and related services (“Services”) as the Client may reasonably require from time to time.

## 1. Supply of the Services

- 1.1 In consideration for the payment of the Fees in accordance with clause 3, the Consultant shall provide the Services described in Section 3.
- 1.2 The Consultant shall:
  - 1.2.1 apply reasonable skill and expertise to the performance of the Services;
  - 1.2.2 provide the Services in a timely and efficient manner and to a professional standard in accordance with the standards generally observed in the industry for similar services;
  - 1.2.3 comply with all reasonable advice, standards and instructions given by the Client;
  - 1.2.4 keep the Client fully and promptly (as far as is reasonably possible) informed of all matters of which it becomes aware affecting or relating to the Client; and
  - 1.2.5 meet with the Client whenever reasonably required and where appropriate liaise closely and on a regular basis with the Client’s publicity, marketing, corporate, financial, legal, regulatory and any other relevant departments in order to keep itself fully apprised on the Client’s business activities;
  - 1.2.6 ensure that it has all necessary licences, permits and consents to enter into and to perform this Agreement.

## 2. Client’s Obligations

- 2.1 The Client shall:
  - 2.1.1 provide the Consultant, its employees and contractors with all necessary information, support and co-operation which the Consultant may reasonably require in order to carry out its obligations in a timely and efficient manner;
  - 2.1.2 ensure that all information which is provided to the Consultant for the purposes of producing reports and narratives is accurate in all material respects and not defamatory; and
  - 2.1.3 ensure that it has all necessary licences, permits and consents in connection with information or other materials provided to the Consultant in connection with this Agreement.

## 3. Fees

- 3.1 The Fees for the Services shall be paid in advance of the work.
- 3.2 The Consultant shall invoice the Client one month in advance of the first day of the billable period. Each invoice is payable 30 days after invoice date without deduction or set off.
- 3.3 The Consultant reserves the right to charge interest (ie LIBOR + 1%) on late payments.
- 3.4 The Fees due in respect of the first month of this Agreement shall be due and payable on signature of this Agreement. Invoices will be issued on the first working day of each month. The first invoice will cover the period up to end of the current month.

- 3.5 All amounts and fees stated or referred to in this Agreement are exclusive of value added tax, which shall be added to the Consultant's invoice(s) at the appropriate rate.

#### **Project fees**

- 3.6 In addition to the monthly Fees, any work undertaken by the Consultant in connection with any specific project or outside of the scope of Services, will be at an additional cost to be agreed by the parties.

#### **4. Disbursements**

- 4.1 The Client shall reimburse at cost all Consultant's reasonable out of pocket expenses incurred directly in the provision of the Services and any third party costs (together "Disbursements"). Any travel lasting more than five hours required by the Consultant's personnel in the performance of the Services will be by business class. Disbursements will be invoiced, once incurred, with the Consultant's Fee invoice.
- 4.2 To the extent Disbursements exceed a total of £200 in a calendar month the Client's prior approval shall be obtained before they are invoiced. All Disbursements will be supported by receipts.
- 4.3 For the avoidance of doubt, the Consultant shall be responsible for its own day to day and office expenses incurred in providing the Services including but not limited to any overheads, the cost of telephone calls, stationery and costs of all equipment and materials reasonably required to perform the Services.

#### **5. Term and Termination**

- 5.1 This Agreement shall take effect on the date the cover sheet is signed and continue for the Term. At the end of the Term, the Agreement shall continue at will provided that either party shall be entitled to terminate it on giving the other at least three months' written notice given at any time. Termination shall not affect any rights of a party accrued at the date of termination or any provisions of this Agreement expressly or by implication surviving termination.
- 5.2 A party may terminate this Agreement immediately on giving written notice if:-
- 5.2.1 the other commits any material breach of its obligations under this Agreement which cannot be remedied, or which can be remedied but is not remedied within 30 days of the party in breach receiving written notice to remedy it; or
  - 5.2.2 the other becomes unable to pay its debts as they fall due, enters liquidation, reaches an agreement with its creditors, has a receiver, manager or administrator appointed or suffers or threatens or resolve to do the above or takes or suffers a similar action on account of debts.

#### **6. Employees and Contractors**

- 6.1 Neither party shall, from the date of this Agreement until 12 months after its termination, employ or engage on any other basis or offer employment or engagement to any senior employee or senior contractor (being, in the case of the Consultant, a person who is paid the equivalent pro rata of £35,000 p.a. or more) of the other party who shall have worked for that party for a continuous period of three months or more during the preceding 12 months and who shall have been associated with the provision of Services.
- 6.2 Each party agrees that if it employs or engages any person contrary to Clause 6.1, the party in default (recognising that the other has suffered substantial damage) shall be liable to pay to the other (by way of liquidated damages) a sum equal to the current annual salary of the senior employee or senior contractor concerned being a reasonable pre-estimate of the damage caused.

## **7. Intellectual Property Rights**

- 7.1 Subject to the payment of the Fees in accordance with clause 3, the Consultant grants the Client a non-transferable, irrevocable, worldwide, royalty free licence to use (for its own internal business purposes) the materials created by the Consultant for the Client in the course of providing the Services.
- 7.2 The Consultant shall ensure that the use of any such materials in accordance with this agreement does not infringe the copyright of any other person.

## **8. Limitation of Liability**

- 8.1 Neither party limits liability for death or personal injury caused by negligence.
- 8.2 Subject to paragraph 8.1, each party's entire liability to the other arising out of or in connection with the Agreement shall be limited to an amount equivalent to the Fees paid to the Consultant by the Client in the previous 6 months. In this clause "liability" means all forms of liability including, without limitation, for breach of contract, negligence, breach of statutory duty or other tort or otherwise.
- 8.3 Subject to paragraph 8.1, neither party shall have any liability for (i) any loss or damage other than direct loss (direct loss being any loss characterised at law as direct loss and excludes all indirect, special or consequential loss); (ii) for any loss of profit, opportunity, goodwill, revenues or business savings (whether direct or indirect) provided that this shall not limit Client's obligation to pay the Fees.
- 8.4 Except for the express provisions of this Agreement and to the maximum extent permitted by law each party disclaims and excludes all implied warranties, terms and other conditions.

## **9. Confidentiality**

- 9.1 In this Clause, "Confidential Information" means: (i) all information of a confidential nature concerning the trade secrets or business dealings, methods of business, transactions, plans or affairs of a party and its group or other party to whom the party owes a duty of confidence; (ii) any information designated as confidential; and (iii) any information which a party ought to conclude was confidential, in each case in whatever form.
- 9.2 Each party keep confidential any Confidential Information received from or belonging to the other and not disclose it to anyone except on a need to know basis for internal use or use the Confidential Information except for the purposes of this Agreement or with written agreement if the other. A party shall return all Confidential Information received from or belonging to the other promptly following a written request.
- 9.3 Clause 8.1 shall not apply to any Confidential Information to the extent that (i) disclosure is required to or by any court, tribunal or government authority; (ii) which is or comes into the public domain other than through breach of this Agreement; or (iii) is independently developed by the receiving party. The provision of this Clause 8 shall survive termination of the Agreement for whatever reason.
- 9.4 Consultant shall be entitled to issue a press release or other public document recording that this Agreement has been entered into, with client's permission.

## **10. Entire Agreement and Modification**

This Agreement sets out the entire agreement and understanding between the parties. It supersedes any prior agreements and arrangements between the parties in relation to its subject matter. It prevails over any other terms and conditions in correspondence or elsewhere. In entering into this agreement each party acknowledges and agrees it has not relied on any representations made by the other (all of which are excluded). Nothing in this Agreement (including, without limitation, in Clause 7) limits liability for any representations made fraudulently.

No addition to or modification of the Agreement shall be effective

unless it is in writing and signed by a duly authorised representative of both parties.

**11. Events Beyond Consultant's Control**

Consultant shall be liable for any failure to perform or delay in performing any of its obligations under this Agreement due to any cause beyond its reasonable control.

**12. No Waiver**

No failure or delay by a party in exercising its rights or remedies shall operate as a waiver of these or any other rights or remedies, unless such a waiver is made by specific written notice

**13. No Partnership, Sub-contracting and Assignment**

The Consultant shall supply the Services to the Client as an independent contractor and nothing in this Agreement shall create or imply a partnership, joint venture, agency or any power or right of a party to contract in the name of or bind the other. The Consultant shall be entitled to sub-contract its obligations under this Agreement provided that it remains primarily liable to Client for performance of this Agreement. Neither party shall be able to assign this Agreement without the consent of the other.

**14. Law and Jurisdiction**

The Agreement shall be governed by and construed in accordance with English law and the parties submit to the non-exclusive jurisdiction of the English courts.

**15. Third Party Rights**

This Agreement shall not be enforceable by any third party under the provisions of The Contracts (Rights of Third Parties) Act 1999.