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Terms of Business – McVicar Marketing August/2009

1. The following terms of business apply to all contracts between us. Acceptance of the Project Contract and commissioning of the project will be taken as acceptance of these terms of business, unless otherwise agreed in writing before commencing the project.

Fees & Invoicing

2. Where the fees payable to McVicar Marketing are £2,500 or more, we will invoice you in two staged payments. The first 50% of the agreed fee for the project will be invoiced on commission of the project. The balance 50% of the agreed fee, plus any additional costs outstanding (including, without limitation, under terms 5, 6 and 12) will be charged on completion of the project. Such costs will either be included in the second invoice or will be invoiced separately.

3. The full (100%) amount will be invoiced on completion of the project. Additional costs (including, without limitation, under terms 5, 6 and 12) will also be invoiced on completion of the project.

4. The fees exclude VAT, which will be charged as applicable.

5. McVicar Marketing will charge for [reasonable] supplementary expenses such as hotel, travel, subsistence costs, and direct office administration costs.

6. Payment of each invoice is due from you within 30 days of the invoice date. Interest will run on any payment due to McVicar Marketing at a rate of 8% above the Bank of England base rate calculated on a daily basis from the date falling 30 days after receipt of the invoice and until the date of payment of the outstanding amount in full. Additional statutory charges may also be applicable.

7. All payments must be made in sterling unless otherwise agreed by McVicar Marketing. For all non-sterling payments an administrative charge may be made.

8. Any quotation for a project made by McVicar Marketing will remain valid for 30 days.

9. McVicar Marketing reserves the right to adjust the fees and the date of completion of the project in the event that the project proposal is altered after the project is commissioned.

Confirmation, cancellation & termination

10. McVicar Marketing requires written confirmation to commence a project. Once the project has been confirmed, you have no right to cancel. If cancellation is agreeable to McVicar Marketing, cancellation charges set out below will apply.

11. McVicar Marketing may terminate this Agreement upon notice in writing if you are in breach of any material obligation contained in this Agreement, which is not remedied (if the same is capable of being remedied) within 30 days of written notice from the other Party so to do.

12. If McVicar Marketing agrees to cancellation, you will be liable to McVicar Marketing for any and all direct and indirect expenses and costs incurred by McVicar Marketing, its officers, agents or employees and any loss of earnings or other any loss whatsoever to date and forward in time.

13. Either of us may terminate this agreement at any time by written notice to the other if a voluntary arrangement is approved, a bankruptcy or an administration order is made or a receiver or administrative receiver is appointed over any of the Party's assets or an undertaking or resolution or petition to wind up the other Party is passed or presented (other than for the purposes of amalgamation or reconstruction) or any analogous procedure in the country of incorporation of either Party or if any circumstances arise which entitle the Court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding-up petition or make a winding-up order in respect of the other Party.

Cost assumptions

14. The fees quoted are estimated according to specific project requirements, the agreed timescale and any assumptions detailed in the proposal. If the timescale, project objectives or requirements or research approach or the assumptions on which the quote is based change in any way, McVicar Marketing reserves the right to review the agreed fee and charge for any additional work that has resulted from changes.

15. McVicar Marketing shall not be liable for failure to perform or delay in performing any obligation if the failure or delay is caused by any circumstances beyond its reasonable control, including but not limited to acts of god, war, civil commotion or industrial dispute. If such delay or failure continues for at least 7 days, the Party not affected by such delay or failure shall be entitled to terminate this Agreement by notice in writing to the other.

Working practice

16. McVicar Marketing observes the Code of Professional Practice of the Chartered Institute of Marketing. Copies of it can be found on www.cim.co.uk

17. In providing the services, we will comply with the Data Protection Act 1998 and any other relevant secondary legislation.

18. Except in respect of death or personal injury, McVicar Marketing shall not be liable to you by reason of any representation (unless fraudulent), or

any term (express or implied) of our agreement for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims which arise out of or in connection with the project or the use of the results of the project by you.

19. On written agreement of a project, McVicar Marketing is authorised to contract third party suppliers and agents on behalf of the client.

20. In line with standard practice, in the event that you request proposals from four or more agencies a fee of £500 may be charged to you by us. This will be credited against the project fee if McVicar Marketing proposal is accepted. If any aspect of our proposals are utilised within a project carried out by a company other than McVicar Marketing, a fee of £500 plus a project-based commission will be charged to you by us.

21. You will supply at your expense all agreed documents or other materials, and all necessary data or other information relating to the project (and ensure the accuracy of the same), within sufficient time to enable us to carry out the project in accordance with the proposal. All such materials remain your property and will be returned on completion of the contract.

22. Any changes or additions to the project must be agreed in writing by us.

23. All projects are subject to your final approval, including (without limitation) proofing of both text and graphic illustrations. This approval constitutes the authorisation of all aspects of the project. Any errors or omissions after your final approval are not the responsibility of McVicar Marketing.

International work

24. Fees that include foreign costs are based on the exchange rates prevailing between sterling and the currencies of the applicable countries on the specified date. The rates used are those quoted in the United Kingdom. McVicar Marketing reserves the right to adjust the final fee in line with any rate fluctuations during the course of the project.

Copyright and confidentiality

25. If any work produced by us for you during the project is then used outwith the scale of the agreed project, a royalty fee will be charged by us to you. McVicar Marketing reserves the right to include any work produced for you as part of McVicar Marketing's portfolio.

26. You warrant that any material or information supplied by you and its use by us, will not infringe the copyright or other intellectual property rights of any third party, and you will indemnify us against any loss, damages, costs, expenses or other claims arising from any such infringement.

27. McVicar Marketing undertakes to keep confidential and not disclose to any other person (except in the proper performance of duties) either during or after the termination of this contract any information whatsoever relating to your business/organisation or any trade secrets or make use of the same in any manner which might be prejudicial to your interests.

28. You undertake to keep confidential and not disclose to any other person either during or after the termination of this contract any information

whatsoever relating to our business, any proposals, methodologies and debrief documentation or other information supplied by us during or before the project, or make use of the same in any manner which might be prejudicial to our interests.

General

29. Scottish law governs the agreement between us and you agree to submit to the non-exclusive jurisdiction of the Scottish courts.

30. These terms, together with the proposal and proposal confirmation, constitute the entire agreement between us, supersede any previous agreements or understandings and all other terms, express or implied by statute or otherwise are excluded to the fullest extent permitted by law.

31. No addition to or variation of these conditions will bind McVicar Marketing, unless it is specifically agreed in writing and signed by Inga McVicar. No agent or person employed by or under contract with McVicar Marketing has the authority to alter or vary these conditions in any way.

32. A notice required to be served on either of us under these terms shall be in writing addressed to the other at its registered office or principal place of business or such other address as may have been notified to the party giving notice pursuant to this term.

33. No failure or delay by us to exercise any of our rights under the agreement shall be deemed to be a waiver of that right, and no waiver of any breach of the agreement shall be considered as a waiver of any subsequent breach of the same or any other provision.

34. If any provision of these terms is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the validity of these terms and the remainder of the provision in question shall not be affected.