

# TERMS OF BUSINESS

Whale Rock Limited, are a firm of chartered accountants authorised and regulated by the Institute of Chartered Accountants of England and Wales. These terms of business set out the basis on which we are to provide services as advisers and your and our respective responsibilities. These terms of business apply to all services provided by us to you unless any variation or supplement to them is specifically agreed in writing between us.

## 1. Respective Responsibilities

You have asked us to help you carry out various assignments as per a separate written instruction.

We will provide services as requested with reasonable skill and care. We shall plan and perform our work on the basis that no report on the financial information is required by statute or regulation, unless you inform us in writing to the contrary. We will make enquiries of management and undertake any procedures that we judge appropriate but are under no obligation to perform procedures that may be required for assurance engagements such as audits or reviews. You are responsible for maintaining proper accounting and compliance records. We will rely on the information and documents being true, correct and complete and will not audit the information or those documents. Each director is required to take all steps that he ought to take as a director in order to make himself aware of any relevant information and to establish that we are aware of that information.

If financial information is published, which includes a report by us or is otherwise connected to us, on the company's website or by other electronic means, you must inform us of the electronic publication and get our consent before it occurs and ensure that it presents the financial information properly. We have the right to withhold consent to the electronic publication of our reports if they are to be published in an inappropriate manner.

We also have a professional responsibility not to allow our name to be associated with financial or other information which we believe may be misleading. Therefore, although we are not required to search for such matters, should we become aware, for any reason, that the information may be misleading, we will discuss the matter with you with a view to agreeing appropriate adjustments and/or disclosures in the information. In circumstances where adjustments and/or disclosures that we consider appropriate are not made or where we are not provided with appropriate information, and as a result we consider that the information is misleading, we may withdraw from the engagement.

As part of our normal procedures we may ask you to confirm in writing any information or explanations given to us orally during our work.

## 2. Staffing

We try to maintain staff continuity but if this is not possible, we will notify you promptly of who will be handling your affairs (and why the change was necessary).

## 3. Charges and Expenses

Our charges are based on the time we spend in dealing with an assignment. Time spent on your affairs will include meetings with you and perhaps others; any time spent travelling (outside of Central London Zone 1), considering, preparing and working on papers; correspondence; and making and receiving telephone calls. To enable you to monitor costs, bills will be delivered to you regularly.

You agree to our current fee rates as outlined in our proposal as attached. Fees are reviewed biannually and will be notified with one month's notice.

We will notify you in advance in writing of any increased rate in our charges. If you have a query about the level of any revised rates notified to you, please contact your engagement Director.

Unless our fee is clearly stated to be a fixed sum, any indication of a likely fee overall is an estimate only (not including expenses and VAT) and subject to

change as matters progress and the full amount of work becomes apparent.

For work performed in the United Kingdom and for a United Kingdom entity we will add VAT to our charges at the rate that applies when the work is done.

There may be certain disbursements i.e. fees for experts' reports, travelling expenses and courier charges, which you will have to pay. VAT is also payable on certain expenses. These third party charges are also payable by you. We will seek your advance consent for any disbursement over £250.

We will inform you as soon as possible if any unforeseen additional work becomes necessary (for example, due to unexpected difficulties or if your requirements or the circumstances significantly change during the course of the assignment). We will also inform you of its estimated cost in writing or by email before any extra charges and expenses are incurred.

You may set a limit on the charges and expenses to be incurred. This means that you must pay those up to the agreed limit without our needing to refer back to you. We will inform you as soon as it appears that the limit may be exceeded and will not exceed the limit without first obtaining your consent.

If the assignment is transactional then, if for any reason, this matter does not proceed to completion, we will charge you for work done and expenses incurred.

## 4. Billing Arrangements

We will send you an interim bill for our costs on a monthly or quarterly basis while the work is in progress. This will enable you to budget as the matter progresses. We will send a final bill after completion of the assignment. For ongoing assignments monthly invoices will be raised.

Payment is due on delivery of the bill. In the event of payment not being made, we reserve the right to decline to act for you further and the full amount of work done up to that date will be charged to you and become payable immediately. We will have no liability for the effect of any resulting delay. We also reserve the right to charge you legal collection costs and interest at the Court rate, on bills which are not paid within 28 days of the date of invoice.

In the event of the client failing a credit check an initial fee invoice equivalent to the first month's anticipated fee will be issued and payable prior to us commencing any engagement.

For private companies, if you fail to pay fees and it transpires that the directors were aware that the company did not have the financial resources to incur the liability on behalf of the company then the directors and / or shareholders and or individual instructing us shall be jointly and severally liable to pay any fee addressed to the company.

If you have any queries about the bill, you should contact your client director straight away.

## 5. Restraint of Staff

Both parties undertake not to offer employment to staff or directors of the other without the prior written consent of the employing party.

## 6. Money Laundering

We are obliged to report to the appropriate authorities any suspicion we may have that funds derive from the Proceeds of Crime Act 2002. You should note that it is an offence for anyone to prejudice an investigation by warning a person who is the subject of suspicion (or any third party) that a disclosure has been made to the authorities.

In order to comply with the Money Laundering Regulations 2003, evidence of identity must be obtained from every new client of the firm. For individual clients we will generally require a passport or national identity card containing a photograph and proof of address (e.g. on a utility or telephone bill). For corporate clients, a copy of the company's Certificate of Incorporation will usually be required. In addition, evidence of identity of at least one of the directors (in the appropriate form for an individual client) will be required. There are separate client take on procedures for clients authorised by the Financial Service Authority or listed on a recognised stock exchange. If we are not given satisfactory evidence, then we reserve the right not to accept instructions or to terminate them.

## 7. Confidentiality

As a result of its engagement by you, we will be in possession of or have access to proprietary information, confidential information and information of a similarly sensitive nature relating to your business, business practices, financial matters, legal and regulatory matters, investors, employees, partners, affiliates and related parties. Such information includes, but is not limited to, all information related to your financial, legal and regulatory compliance matters, including its policies, procedures, compliance manual and code of ethics as well as your implementation thereof. We agree that without the express prior authorisation of you we will not, at any time during the term of its engagement hereunder or thereafter, directly or indirectly use, publish or otherwise disclose to any person, firm, corporation or other entity any such proprietary or confidential information or information of a similarly sensitive nature that we acquires during the term of its engagement and that it will maintain and observe processes reasonably designed to preserve the confidentiality thereof. Notwithstanding the foregoing, the parties acknowledge that we may use such information in connection with its services to you hereunder or as required under the terms of a valid and effective subpoena or by order or request issued by a court or governmental authority of competent jurisdiction, to promptly notify you of the existence, terms and circumstances surrounding such a request, assuming that such a request is not prohibited by law or regulation, so that you may seek an appropriate protective order and/or waive our compliance with this paragraph (and, if you seek such an order, to provide such cooperation as you may reasonably request), and if you are unable to obtain such an order and disclosure of such information is nonetheless required in the written opinion of our counsel, We shall exercise its reasonable best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such of the disclosed information that you so designates.

## 8. Termination

You may terminate your instructions to us in writing at any time although if there is a retention agreement there is a 3 month notice period.

We may decide to stop acting for you, for example, if you do not pay an interim bill or comply with our request for payment on account. We will endeavour to give you reasonable notice that we will stop acting for you.

We will be entitled to keep all your papers and documents whilst there is money owed to us for our outstanding invoices, work in progress not yet invoiced and contractual payments. All such

payments fall due for immediate settlement upon termination howsoever arising.

Upon termination there are no refunds for annual fees invoiced in advance.

#### **9. Communication between you and us**

We are confident of and committed to providing a high quality service in all respects. If, however, you have any queries or concerns about our work, please raise them in the first instance with your client director. If that does not resolve the problem to your satisfaction or you would prefer not to speak with your client director then please contact the office and ask to speak with another director. The firm operates a written complaints handling procedure, a copy of which is available upon request. If for any reason the problem cannot be resolved using this procedure you may refer your complaint to the Institute of Chartered Accountants of England & Wales.

All accountants must attempt to resolve problems that may arise with their service. It is therefore important that you immediately raise any concerns that you may have with us. We value you and do not wish you to have any reason to be unhappy with the service we provide to you.

#### **10. Limitation of Liability**

We limit our liability howsoever arising resultant from this engagement to a maximum of the lower of a) 50% of the invoices paid by you in the calendar year or b) £100,000. We confirm that we hold £1.5m of Professional Indemnity insurance within the Lloyds of London market.

We will provide services as outlined in this letter with reasonable care and skill. However, to the fullest extent permitted by law, we will not be responsible for any losses, penalties, surcharges, interest or additional tax liabilities where you or others supply incorrect or incomplete information, or fail to supply any appropriate information or where you fail to act on our advice or respond promptly to communications from us or the tax authorities.

You will not hold us, our directors and staff, responsible, to the fullest extent permitted by law, for any loss suffered by you arising from any misrepresentation (intentional or unintentional) supplied to us orally or in writing in connection with this agreement. You have agreed that you will not bring any claim in connection with services we provide to you against any of our directors or employees personally.

Our work is not, unless there is a legal or regulatory requirement, to be made available to third parties without our written permission and we will accept no responsibility to third parties for any aspect of our professional services or work that is made available to them.

Where in relation to any loss you have causes of action against us and against any third parties, we shall only be liable to you for our share of the responsibility. Nothing in these Terms of Business shall increase our liability beyond that.

#### **11. Data Protection**

Save as set out below, we will use all personal information that is supplied to us by you or a third party on your behalf as your data processor for the purpose of providing you with legal services. We may also use the personal information we collect about you or that you or a third party on your behalf gives to us about your employees as a data controller for the following purposes: (a) to comply with legal and regulatory requirements; (b) to carry out credit checks, to detect, investigate and prevent fraud and

to trace debtors; (c) for internal analysis and research; and (d) to contact you or your employees by post, phone, email, fax or other permitted means with details of our legal products and services which may be of interest to you or them. You and your employees can tell us at any time if you/they would prefer not to receive such direct marketing. We may disclose you and your employees' personal information to: our agents, service providers, other offices for any of the purposes set out above; credit reference agencies, the police, Government departments and agencies for the purposes set out in this Clause 11(b) above; and any person for the purposes set out in Clause 11(a) above. Before you or a third party on your behalf gives us any personal information about your employees you must inform them that you are giving the personal information to us and that it will be used in the manner and for the purposes described above and you must obtain their informed consent to such use.

#### **12. Electronic communications**

During the course of this matter, we may wish to communicate electronically with one another. The electronic transmission of information cannot be guaranteed to be secure or error-free, as it will be transmitted over a public network, and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or otherwise be adversely affected or unsafe to use. Save in the case of fraud, neither of us (nor any Whale Rock Person) shall be liable to the other on any basis, whether in contract, tort (including negligence) or otherwise, in respect of any damage or loss arising from or in connection with the electronic communication of information between us.

#### **13. Equality and diversity**

Whale Rock has formal procedures in place to ensure equal opportunities. We view diversity as critical to the international nature of our business and have created a working environment where people from different backgrounds can thrive. We are committed to treating all prospective and existing employees, Directors, clients and third parties equally and without regard to gender, marital status, ethnic origin, age, disability, sexual orientation or religious belief. Our Equality and Diversity Policy is available on request.

#### **14. Rights and remedies**

The rights and remedies available to us by virtue of these Terms of Business are without prejudice to any other rights or remedies available to us. Any failure by us to exercise or delay by us in exercising a right or remedy provided by these Terms of Business or by law does not constitute a waiver of the right or remedy, or a waiver of other rights or remedies.

#### **15. Outsourcing**

Sometimes we ask other companies or people to perform work where they have specific skills that are not available to our employees. We will always hold a confidentiality agreement with them. If you do not wish us to outsource work, please advise us.

#### **16. Whale Rock Professional Services Group Referrals**

We, Whale Rock Legal Limited and Whale Rock Company Secretariat Limited (together called 'the Parties') have entered into an agreement that if one of the Parties successfully refers new client business to another then the referring party will receive from the party who signs an engagement letter with the client a percentage commission from fees generated by the company to whom the new business has been introduced. The commission will be:

a. For new clients who have not previously signed an engagement letter with any of the Parties, up to 12% of the first 12 month's fees from the date of the engagement letter is signed.

b. For clients who have signed an engagement letter with one or more of the Parties, up to 12% of the fees from the date that the engagement letter is signed with a party who does not already have an engagement letter with that client ending 12 months from the date that the client signed the original engagement letter.

c. For clients who have signed an engagement letter with one or more of the parties, up to 6% of the first 12 month's fees from the date that the engagement letter is signed with a company who does not already have an engagement letter with that client.

You agree that we may pay or keep any such commissions.

In making or accepting a referral, we:

a) will do nothing which would compromise our independence or our ability to act and advise in your best interests;

b) will act and will continue to act in good faith, judging what is in your best interests; and

c) have not entered into and will not enter into any agreement or association which would restrict our freedom to recommend any particular firm, agency or business.

In accordance with our professional obligations, any information disclosed to us by you will not be disclosed to Whale Rock Legal Limited or Whale Rock Company Secretariat Limited ('Whale Rock Companies') without your consent, which consent is hereby given. However, if we find ourselves in a conflict of interest when acting in the same matter where both you and any of the Whale Rock Companies are clients, we might be obliged to cease to act for one or both clients. By signing and returning a copy of these Terms of Business, you confirm your agreement to the arrangements described in this paragraph. Should you require any further information regarding the arrangement please contact your client director.

#### **17. Governing Law and Jurisdiction**

The contract for our provision of services to you is governed by English Law.

The English courts are to have exclusive jurisdiction over any claim which you bring against us and non-exclusive jurisdiction over any claim brought by us against you.

#### **18. Agreement**

Unless otherwise agreed, these terms of business apply to any future instructions you give us.

Your continuing instructions in this matter will amount to your acceptance of these Terms of Business. Even so, we ask you to please sign and date the enclosed copy of these terms and return it to us immediately. We can then be confident that you understand the basis upon which we will act for you.

This is an important document: please keep it in a safe place for future reference.