

1. DOCUMENT DEFINITIONS:

1.1 The Agency shall mean Keltie+Cochrane Limited (registered office: Studio 25-26, Gateshead International Business Centre, Gateshead, Tyne and Wear NE8 1AN UK).

1.2 Contract shall mean this contract between the Agency and the Client for the supply of Work and Services.

1.3 The Work and Services means the work and services to be provided by the Agency to the Client pursuant to this Contract, as set out overleaf. This shall include, without limitation, advertising, direct marketing, design, marketing communications or any other ancillary work or service provided by the Agency to the Client from time to time.

2. PROJECT ACCEPTANCE AND TERMS

2.1 By requesting any Work and Services from the Agency and/or accepting any fee proposal, designs, plans and/or materials produced by the Agency in the Agency's performance of the Work and Services, the Client will be deemed to have accepted the terms and conditions of this Contract, which will govern the provision of the Agency's services to the exclusion of any other terms and conditions.

3. AGENCY APPOINTMENT

3.1 The Client hereby appoints the Agency to provide the Work and Services on the terms and conditions set out in this Contract.

4. MEDIA BUYING AND OTHER SUPPLIERS

4.1 Where media advertising by the Client shall be placed by the Agency, a commission of 15% (the Commission) shall be charged by the Agency on the gross amount payable by the Agency to the media for the Client's advertisements. The Agency shall invoice the Client for the full cost of the advertising (including, without limitation, the Commission) immediately upon placing the Client's advertisement and the same shall be payable forthwith.

4.2 All production sub-contracts shall be placed by the Agency. The Agency shall charge the invoice price from the supplier plus a handling fee of 17.5% on the gross amount payable by the Agency in relation to all outside services such as, by way of example, photography, artwork, typesetting and the production of television and cinema advertisements.

5. CLIENT INFORMATION

5.1 The Client undertakes promptly to provide the Agency with all information, assistance and materials that the Agency requests from time to time to facilitate the proper and timely performance of the Work and Services.

5.2 The Client warrants that all information it supplies to the Agency hereunder shall be accurate and complete. It will not be illegal, misleading or defamatory and will not infringe the intellectual property rights of any third party. The Client shall not in any way require the Agency to do any act or thing which may contravene the British Code of Advertising Practice, The Independent Television Commission Code of Advertising Standards and Practice for Television, the ITC Sponsorship Code, the Radio Authority Code and any other relevant codes of Practice or any relevant legislation or common law. The Client will indemnify the Agency and keep the Agency indemnified in respect of any and all actions, claims or disputes arising from any claim that any material supplied to the Agency hereunder does not comply with such legislation and/or regulatory codes.

6. THE APPROVAL PROCESS

6.1 The Agency shall submit to the Client for approval all copy, layout, artwork, storyboards and scripts together with media schedules for time, space and other facilities. Where reasonably required by the Client in writing, the Agency will submit estimates of the cost of the various items or work required. The approval of copy and layout will be authority for the Agency to purchase production materials and to prepare proofs and the approval of proofs will be the authority for the Agency to publish the same. The approval of television, cinema and radio scripts and/or storyboards will be authority of the Agency to make production contracts and engage performers and the approval of films and recordings will be authority to transmit the same. Where schedules and estimates are approved this will constitute authority for the Agency to reserve and make contracts for space, time and other facilities under the terms and conditions required by the media or suppliers. The client shall be responsible for all costs and expenses thereby incurred. For the avoidance of doubt, the Agency shall be entitled to assume that any person holding himself out to have the necessary authority to provide any approvals required from time to time pursuant to this clause 6 has such authority.

7. CONTACT REPORTS

7.1 Where, following a meeting between representatives of the Agency and representatives of the Client, the Agency submits a report of the meeting to the Client recording decisions, agreements, amendments or other matters discussed. That report shall be deemed to be a true and accurate record of the meeting and of the decisions taken or agreements reached, unless within 48 hours of the date of the report the Client notifies the Agency in writing that it does not accept any part, or parts, of the report as being a true record of the meeting.

8. FEES AND EXPENSES

8.1 The Agency will invoice the Client for all approved costs and expenses (including without limitation couriers and international telephone calls) and the charges of third party suppliers (including without limitation photographers, illustrators and printers).

8.2 Unless otherwise stated in these conditions all Fees and Expenses owing by the Client to the Agency under this Contract shall be payable within 14 days from the date of invoice. In the event that the Client does not pay an invoice on the due date the Agency shall be entitled to charge interest at the rate of 8% above the base rate of Bank of England from time due to time of payment. Any invoice queries should be notified to the Agency in writing within 7 days of the date of the invoice.

8.3 All sums referred to in this Contract shall be payable in full without deduction, withholding, or set off.

8.4 Where a third party supplier has requested payment in advance or immediate payment of any expense, the Client will pay the Agency's invoice for such expense within seven days of presentation.

8.5 Where a surcharge is levied by a supplier against the Agency due to late payment, and this results from late payment by the Client, the Client shall immediately reimburse to the Agency the amount of such surcharge, together with any accrued interest charged by the supplier in respect of the overdue amount.

8.6 If the Client cancels or amends any Work and Services after the Agency has started work on them, the Client will reimburse the Agency for all costs, expenses, charges and losses incurred by the Agency as a result of such cancellation or amendment including without limitation any costs, expenses or charges arising from the cancellation or amendment of any contracts the Agency has entered into and/or orders the Agency has placed with third parties for the purpose of performing the Work and Services for the Client.

9. INTELLECTUAL PROPERTY & IP RIGHTS

9.1 All project work, retainer work, fee-paid or free client work produced by the Agency remains the Intellectual Property of the Agency and is therefore owned by the Agency unless the transfer of IP is agreed in writing at the beginning of a project or agreed during a project phase.

9.2 For the avoidance of doubt, the Agency retains the copyright and all other intellectual property rights in any material contained in any presentation in the event that the Agency's presentation does not proceed beyond concept stage during this contract.

9.3 Transfer of IP ownership (buyout) can be quoted on request and is never quoted as a matter of course. Certain aspects (such as illustrations and photographic images etc) provided by third parties to the Agency for the purposes of final client delivery are subject to shared IP, owned jointly between the supplier and the Agency, with all copyrights recognised.

9.4 Unless previously agreed with the Agency, the Client may not use or reproduce any of the Agency's Intellectual Property, including any trademarks, registered or unregistered for any reason without written permission from the Agency or without Intellectual Property Rights being granted.

9.5 On any payment from the Client to the Agency becoming overdue, the Agency may at anytime (and without prejudice to any of its other rights) recover or resell the goods supplied including removing a website from the server.

10. CONFIDENTIAL INFORMATION

10.1 Neither party will disclose without the permission of the other any confidential information with which they may be supplied in the course of this Contract (Confidential Information). For the purpose of this clause, Confidential Information excludes confidential information which:

10.1.1 is in or falls into the public domain through no default of the recipient;

10.1.2 must be disclosed by law;

10.1.3 was already known to the recipient before receipt hereunder.

10.2 Notwithstanding the foregoing the Agency may use any general marketing and advertising intelligence in the field of the Client's products or services which the Agency acquires pursuant to its appointment hereunder.

11. LIMITATION OF LIABILITY

11.1 The Agency shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Agency of this Contract.

11.2 Under no circumstances shall the liability of the Agency under this Contract exceed the contract price payable in respect of the Work and Services giving rise to the liability.

11.3 The Agency will not be liable for any delays, errors or omissions in publications or transmissions, to the extent that such delay, omission or error is outside the Agency's control.

12. TERMINATION

12.1 The Agency may terminate this Agreement immediately on written notice to the Client if:

12.1.1 the Client ceases to pay its debts in the ordinary course of business or cannot pay its debts as they fall due or (being a company) is deemed to be unable to pay its debts or has a receiver or administrative receiver appointed or has a winding-up petition presented against it or (being a natural person) has a bankruptcy petition against him;

12.1.2 the Client commits a material or persistent breach of any of the terms of this Contract and in the case of a breach capable of remedy fails to remedy such breach within 30 days of receipt of written notice giving full particular of the breach and requiring the same to be remedied.

12.2 Termination of this Contract for any reason shall not affect any duties or responsibilities accrued to the Client before termination. Upon such termination, the Client shall pay all sums due in respect of Work and Services performed and expenditure incurred (or committed to) by the Agency up to and including the effective date of termination.

13. FORCE MAJEURE

13.1 The Agency shall be under no liability if it is prevented from or unable to perform any obligations owed by it to the Client for any reason beyond its control including (without prejudice to the generality of the foregoing) Act of God, legislation, executive action, war, fire, flood, drought, breakdown or other failure of all or part of its machinery, failure of power supply, lock-out, strike or other action taken by employees in contemplation of furtherance of any dispute or owing to any inability to procure materials or labour required for the performance of such obligations.

14. NOTICES

14.1 All notices and other communications required or permitted to be served or given hereunder shall be in writing and delivered by hand or sent by first class registered post or courier to the intended recipient's address as specified in this Contract or such other address as either party may notify to the other from time to time.

15. GENERAL

15.1 The Agency acts in all of its contracts as a principal and not as an agent of the Client.

15.2 This Contract cannot be varied unless it is in writing and signed by or on behalf of both parties.

15.3 This Contract shall be deemed to have been made in England and shall be governed and interpreted in all respects in accordance with the Laws of England and subject to the jurisdiction of the English and Welsh Courts.