

1. Definitions

1.1 Words and expressions that appear in these terms and conditions have the following meanings:

1.1.1 '**Agreement**' means these standard terms and conditions ('**Conditions**') together with the relevant Brief.

1.1.2 '**Agency**' means Precise Media Monitoring Limited, of The Registry, Royal Mint Court, London EC3N 4QN company number 03247942.

1.1.3 '**Articles**' means copies of articles from publications corresponding to the Client's requirements as set out in the Brief.

1.1.4 '**Brief**' means the document specifying the Services to be supplied by the Agency to the Client as signed by the Client and the Agency as varied from time to time by written or oral agreement between the parties in accordance with the terms of this Agreement.

1.1.5 '**Charges**' means the Agency's standard fees and charges for the Services from time to time.

1.1.6 '**CLA**' means the Copyright Licensing Agency Limited.

1.1.7 '**Client**' means the person, corporation, partnership or firm to whom the Agency has agreed to supply Services.

1.1.8 '**Commencement Date**' means the first date the Agency provides the Services to the Client in accordance with the terms of this Agreement.

1.1.9 '**Copyright Notice**' means a notice of at least the size of Times New Roman 7pt in the following terms on paper copies: "This Article has been produced under licence by Precise Media Monitoring Limited. It is protected by copyright. No further copies may be made except under licence from the NLA, CLA or other copyright body" and in the following terms on electronic copies: "This digital Article has been produced under Licence by Precise Media Monitoring Limited and may only be printed off once for your personal use in the course of your work. Digital reproduction/forwarding is not permitted. No further copies may be made except under licence from the NLA, CLA or other copyright body."

1.1.10 '**NLA**' means the Newspaper Licensing Agency.

1.1.11 '**PR Agency**' means any Client that conducts business as or holds itself out as a public relations agency.

1.1.12 '**Services**' means the services to be supplied by the Agency to the Client as set out in the Brief and subject to these Conditions and as varied from time to time in accordance with clause 2.2.

1.1.13 '**Summary**' means a summary of an Article prepared by the Agency.

1.2 Headings in these Conditions are for convenience and do not affect interpretation, however in the event of a conflict between the Brief and these Conditions, these Conditions shall prevail.

2. Services

2.1 The Agency will provide the Services to the Client and the Client will pay the Charges subject to the terms of the Agreement.

2.2 The Client may request changes to the Services at any time and provided they are reasonable these can be implemented immediately the changes have been agreed by the Agency orally or in writing.

2.3 The Agency may at any time and without notification to the Client make changes to the Services (including the temporary suspension of the Services provided it notifies the Client of same) which are required to comply with any applicable statutory requirements or with the requirements of any licensing agency.

2.4 All Articles shall be at the sole risk of the Client from the time of delivery to the Client.

2.5 The Agency is obliged to give the names of any client or prospective client where that client is copying or delivering Articles to any third party without a licence from the NLA, CLA or other copyright body. The Agency undertakes to give the Client 28 days notice of its intention to contact the licensing agencies in such circumstances. The Client is obliged to inform the Agency if it acquires a licence within the notice period.

2.6 The Agency is obliged to stop providing services to the Client where the Client is involved in unlicensed activities or where the Agency reasonably believes that the Client is likely to further distribute and make Articles available as part of its business. This will constitute a material breach of the agreement.

2.7 The Client will not use 'efax' software to receive faxed cuttings.

3. Prices and payment

3.1 The Agency may vary the Charges from time to time by giving not less than one month's notice in writing to the Client.

3.2 All Charges quoted to the client are exclusive of VAT for which the Client shall be additionally liable at the applicable rate.

3.3 The Agency shall invoice the Client monthly in arrears. The Client shall pay invoices without any set off or deductions within 30 days. The Client shall raise all invoicing disputes, be it relating to charges or the delivery of the service, in writing and communicated to the Agency within 14 days from the date of invoice in order for the dispute to be regarded as being valid. The Agency shall respond to all disputes, be it upholding or rejecting the dispute, in writing within 14 days of the dispute being raised. The Client shall not withhold payment of any invoice following a dispute being raised where the dispute represents less than 10% of the net value of the invoice.

3.4 Without limiting any other rights of the Agency, the Agency may charge the Client interest at 6% over the base lending rate of Barclays Bank plc from time to time or pursuant to The Late Payment of Commercial Debts (Interest) Act 1988 whichever is greater (both before as well as after any judgment) on any sums outstanding for more than 30 days.

3.5 Any Articles or Summaries which may be sent to the Client in error should be returned by the Client to the Agency within 24 hours of receipt and the Agency will issue a credit for them against the Client's subsequent invoice. Any Articles or Summaries not so returned shall not be so credited.

4. Copyright

4.1 To the best of the Agency's information and belief, (i) it complies with all copyright and Article and Summary distribution restrictions imposed by the applicable licensing agencies; and (ii) it has registered with appropriate copyright and licensing agencies.

4.2 Copyright in an Article remains with the original copyright holder. The Client is not permitted to further reproduce, copy (including electronically), distribute, display, sell, publish, broadcast, circulate, deliver or transmit Articles or copies of Articles either internally or to any third party without holding the necessary licences, legal and other permissions and consents prior to any such use. The Client will not make unlicensed copies of cuttings supplied by the Agency.

4.3 Depending on the use the Client makes of any Article it may require a licence from either the Copyright Licensing Agency (see www.cla.co.uk) or the Newspaper Licensing Agency (see www.nla.co.uk) or other third party. The Client acknowledges that it is the Client's sole responsibility to verify any need for such a licence, and to obtain and maintain any such necessary licences or permissions. The Agency reserves the right to stop providing cuttings to any Client not properly licensed by the NLA, CLA or other copyright body.

4.4 The Client shall comply with all applicable copyright and distribution restrictions applicable to any and all Articles and that it will register and maintain any registration with appropriate copyright and licensing agencies such that its use of Articles will not infringe any intellectual property rights of third parties.

4.5 Notwithstanding clauses 4.3 and 4.4, when Articles are sent to the Client, the Client shall abide by the then current terms of the Agency and any relevant copyright and licensing agencies relating to their storage and distribution. The Client will destroy any Articles provided by the Agency on request of the Agency. Information about the Agency's current terms is available on request.

4.6 The Agency is required to notify the licensing agencies of the details of all its clients who receive electronic distribution of Articles and the Client hereby authorises the Agency to do so.

4.7 As between the Client and the Agency, copyright in a Summary is owned by the Agency. The Agency licenses the Client to copy, use and amend a Summary, but distribution must be restricted to within the Client's own group of companies (including, for the avoidance of doubt, posting on any intranet accessible only to the Client's own staff). The Client may not distribute a Summary externally to any third party (including, for the avoidance of doubt, posting on the Client's website) unless it has obtained the prior written approval of the Agency.

4.8 The Client indemnifies and agrees to keep indemnified the Agency on demand against all costs, claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with any claim in respect of the Client's use of, onward distribution or possession of any Article that infringes any intellectual property rights of any third party.

5. Electronic Delivery of Articles

5.1 Where the Client requires electronic delivery of the Articles, these will be hosted on a secure section of the Agency website for a maximum of 7-28 days depending on the Publication. The Client will be issued with a password in accordance with the terms of the Brief for a specified number of users.

5.2 The Client will only allow permitted users to access the Agency website. Where there is more than one permitted user, the Client must hold a licence with the NLA and/or CLA.

5.3 Without a CLA licence, any single Digital Cutting (from any published edition of a magazine, journal, or other periodical containing an item of news or current affairs) may only be accessed once and a single paper copy printed out (such single paper copy may not itself be further copied), following which, that Digital Cutting and any electronic copies of that Digital Cutting, must be deleted.

5.4 The Agency is required to notify the licensing authorities of the number of permitted users and the Client hereby authorises the Agency to do so. The Client will notify the Agency if the number of permitted users changes.

5.5 The Agency is required to put a Copyright Notice on every page of every Article which is visible if the Article is printed out. The Client must not remove, conceal or alter the Copyright Notice if the Article is printed.

5.6 The Client agrees not to create a digital archive or to store Articles in electronic form.

6. Withdrawal of Articles

6.1 The Agency reserves the right to withdraw the whole or part of Articles if they reasonably consider that they may potentially or actually be legally liable to third parties in respect of the contents thereof.

6.2 The Client agrees that all such withdrawals notified to them by the Agency are deleted from storage on electronic equipment immediately using all reasonable endeavours and in any event within 24 hours of written or electronic notification during the working week or by 11.58pm of the next working day if notification is received on a Saturday, Sunday or Bank Holiday. This must be confirmed in writing to the Agency.

6.3 The Client agrees that the Agency shall have no liability whatsoever for the Client's failure to comply with such notice.

6.4 The Client indemnifies and agrees to keep indemnified the Agency on demand against all costs, claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with any claim in respect of the Client's continued use of, onward distribution or possession of any Articles which have been withdrawn.

7. Liability

7.1 The Agency will provide the Services using reasonable skill and care. All other warranties, terms or conditions, express or implied are disclaimed to the fullest extent permitted by law. In particular, no warranty is given that all relevant Articles will be located and/or supplied nor that Summaries will be free from grammatical or spelling errors.

7.2 The Agency accepts no responsibility for the scope or extent of Articles which its reviews of relevant publications may produce. Further, the Agency does not guarantee that it reviews all and every publication available in the market and that may be relevant to the Client's Brief. The Agency reserves the right to vary the scope of the publications it reviews from time to time without prior notice to the Client.

7.3 The Agency shall not be liable to the Client by reason of any delay in performing or failing to perform the Services if the delay or failure was due to any cause beyond the Agency's reasonable control.

7.4 Notwithstanding anything to the contrary in this Agreement, the Agency shall not limit its liability for death or personal injury caused by its negligence.

7.5 The Agency shall not be liable to the Client (whether in contract, tort or otherwise) for any (i) loss of profit, data, goodwill, anticipated savings or (ii) any indirect, special or consequential loss, damage, costs, expenses or other claims whether caused by the negligence of the Agency or otherwise.

7.6 Any liability of the Agency to the Client shall be limited to a sum equal to 1.25 times the sum paid to the Agency by the Client during the previous calendar year. If liability arises during the first twelve months of the Agreement, the liability cap shall be calculated according to the following formula:

(Total Charges paid by Client divided by No. of calendar months since Commencement Date) x 12.

7.7 The Services supplied by the Agency are an aggregation of news and information from various external sources and the Client should not act or rely upon any information (including any Summary) provided without undertaking its own evaluation of the reliability of, and the views expressed in, the content. Any view or opinion appearing in a Summary is that of the author of the original Article and does not represent the view or opinion of the Agency.

7.8 The Client must satisfy itself before further dissemination of a Summary that such dissemination is appropriate. The Agency shall not be liable to the Client in respect of any claim that may be brought by any person (including any employee of the Client) arising out of the dissemination of any Summary within the Client's organisation.

7.9 Any circulation, readership or related figures forming part of the Services will be circulated from what is regarded by the Agency as a reliable source. The Client acknowledges that such source may vary from time to time and that sources may differ in the circulation or readership they ascribe to any publication.

8. Confidentiality

8.1 The Client and the Agency shall use all reasonable endeavours to keep confidential any information of a confidential nature provided to it by the other party. This obligation survives termination of the Agreement for any reason.

8.2 The provisions of this Clause shall not apply to any information which is public knowledge at the time it is provided or which subsequently becomes public knowledge through no fault of the other party or which is required to be disclosed by any applicable government body or a court or which is provided to the relevant party's professional advisers.

9. Data Protection

9.1 The Agency will need to collect certain personal information in order to provide the Client with the Services. The Agency may share personal information within its group for information purposes and in order to provide the Client with the Services.

10. Termination

10.1 For Monitoring service Agreements, if the Client is a PR Agency, the Agency does not require a minimum contract and accordingly the Client may terminate this Agreement at any time immediately by written notice to the Agency. If the Client is not a PR Agency, the Client may terminate this Agreement at any time upon one month's written notice to the Agency.

10.2 For Analysis and Evaluation service Agreements, the Client may terminate this Agreement at any time upon three month's written notice to the Agency.

10.3 The Agency may terminate this Agreement at any time by written notice to the Client.

10.4 Either party may (without limiting any other remedy they may have) terminate this Agreement by written notice to the other if the other party commits any material breach of this Agreement and (if capable of remedy) fails to remedy the breach within one month after being required by written notice so to do or if the other party goes into liquidation or (in the case of an individual or firm) goes bankrupt, or makes an arrangement with creditors or has a receiver or administrator appointed.

11. General

11.1 Nothing in this Agreement shall prevent the Agency from performing like or similar services to any other business or client.

11.2 Nothing in this Agreement shall prevent the Agency from subcontracting, assigning, mortgaging or charging any of its rights or obligations hereunder to any third party.

11.3 These Conditions (together with any terms which may be set out in the Brief) constitute the entire Agreement between the parties and supersede any previous arrangements or agreements. All other terms and conditions are excluded to the fullest extent permitted by law.

11.4 Neither party have relied upon nor shall be liable in respect of any representations, warranties, terms or conditions not expressly contained in the Conditions or the Brief (save that this provision shall not apply to any fraudulent misrepresentation).

11.5 Neither party shall be liable for any failure or delay in the performance of its obligations under this Agreement to the extent that such failure or delay is caused by any event beyond the reasonable control of such party, including without limitation acts of God, severe weather, industrial action or the failures of third party systems.

11.6 Unless expressly provided herein, no variation to the Conditions shall be effective unless signed by a duly authorised representative of each party.

11.7 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party at its registered office or any other address as may have been notified for that purpose.

11.8 No term of this Agreement is enforceable pursuant to the Contract (Rights of Third Parties) Act 1999 by any person who is not a party to it.

11.9 These Conditions shall be governed by and construed in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the English Courts.