



## O'Farrell Associates TERMS OF BUSINESS

### 1. INTRODUCTION

These terms of business (the "Terms") apply to engagements accepted by O'Farrell IT & Business Consultants Limited trading as O'Farrell Associates ("O'Farrell Associates"). All work carried out on your behalf is subject to these Terms except to the extent that changes are expressly agreed in writing. Nothing in any proposal or correspondence is intended to create a legal partnership between O'Farrell Associates and you. To the extent that there is any conflict between the Engagement Letter (if any) and these Terms the Engagement Letter will prevail.

We are O'Farrell IT & Business Consultants Limited a Limited Company under Irish Law ("O'Farrell Associates"). Our principal place of business is at Newbridge, Co Kildare, Ireland.

References in these Terms to "we", "us" or "our" shall be construed as a reference to O'Farrell Associates accordingly. References in these Terms to "you" or "your" shall refer to each and every party to the Engagement Letter (other than us).

### 2. OUR FEES AND INVOICING ARRANGEMENTS

A fee estimate is not an agreement to perform the services for a fixed price or within a fixed period. Our fees will be based on the number and experience of staff required, the skill and responsibility involved, the resources required and the fee rates for the appropriate personnel. Our rates will be reviewed from time to time. We will also charge for any disbursements and we will charge value added tax ("VAT") to charges and disbursements if applicable. We will be entitled to submit interim invoices for services and disbursements as the work progresses. Invoices will normally be rendered monthly unless other arrangements are agreed. Invoices are payable upon presentation.

### 3. COMMISSIONS

We will disclose any commissions or other benefits payable to us as a result of this engagement. You consent to our retaining such commission or other benefit without our being liable to account to you for such amounts. We will not be liable to pay any such commission to you but we may take it into account in determining our fee. If at an early stage in its operation you terminate any contract giving rise to commission, we may have to repay all or some of the commission. In that event you will be liable to recompense us for the amount of any commission repaid by (or not paid to) us as a result of your termination of the contract.

### 4. OUR RESPONSIBILITIES TO YOU

We are committed to providing our services with due skill and care and in accordance with the appropriate professional standards.

Save as otherwise expressly provided in these terms, any implied term and any liability, which may arise by law (including statute) is hereby expressly excluded to the fullest extent permissible by law. We make no warranties (whether express or implied) including, but not limited to, warranties of merchantable quality or fitness for purpose or use, or warranties of any products or services used or performed in connection with this engagement save to the extent expressly specified in writing.

The nature and content of our advice will necessarily reflect the specific scope and limitations of our engagement, the amount and accuracy of information provided to us and the timescale within which advice is required. If, at your request, we provide our advice in an abbreviated format or timescale, you accept that you will not receive all the information you would have done had we provided a full written report or had more time to carry out the work.

If general advice is provided, its applicability will depend on the particular circumstances in which it is to be used (of which we might not be aware) and should be viewed accordingly. Specific advice should always be sought in particular transactions and comprehensive material provided to us. Our advice is provided for the purpose of this engagement and we disclaim any responsibility for its use for a different purpose or in a different context.

We will not normally verify or check information provided to us by you, or by others, and you acknowledge that we are entitled to rely on such information when undertaking our services.

If it becomes necessary to engage any third party adviser on your behalf (such as a solicitor, valuer etc.) we will not do so without your prior consent and you acknowledge that we will not be liable for the advice or services rendered by such third party. It will be your responsibility to pay the fees and expenses of such third parties.

## **5. YOUR RESPONSIBILITIES TO US**

It is your responsibility to ensure we receive complete, accurate and timely information and assistance and to carry out any other obligations ascribed to you or others under your control. We will not be responsible for the consequences of any delay or failure to meet this responsibility and any such delay or default may result in additional fees for which invoices may be raised, whether or not the services were originally undertaken on a fixed fee basis.

You agree that any commercial decisions that you make, are not within the scope of our duty of care and in taking such decisions you must take into account the restrictions on the scope of our work and other factors, commercial and otherwise, of which you and your other advisers are, or should be, aware from sources other than our work.

## **6. INFORMATION AND CONFIDENTIALITY**

Where you give us confidential information we shall keep it confidential. You agree that, subject to clause 16 it will be sufficient compliance with our duty of confidence for us to take such steps as we in good faith think fit to preserve confidential information from misuse both during and after this engagement. Unless there is a specific agreement to the contrary, the existence of our professional relationship with you shall not be treated as confidential information and we may disclose this fact, and the general nature of our work, to clients, prospective clients or other third parties. Subject to our duty of confidentiality, you agree that we may act for your competitors or for other clients, whose interests are or may be opposed to yours.

Neither we nor you will be prevented from disclosing confidential information (a) which is or becomes public knowledge other than by a breach of an obligation of confidentiality; or (b) which is or becomes known from other sources without restriction on disclosure; or (c) which is required to be disclosed by law or any professional or regulatory obligation.

You agree that we can discuss and exchange information with O'Farrell Associates and with its staff or employees at our discretion for general administration purposes and for the purposes of the services we are respectively undertaking for you but you recognise that, for the purpose of carrying out our responsibilities in this engagement, we shall not be treated as having notice of information, which may have been provided to individuals within O'Farrell Associates who are not involved in this engagement.

## **7. ELECTRONIC COMMUNICATION**

Unless otherwise agreed with you, we may correspond by means of the internet or other electronic media or provide information to you in electronic form. Because of the inherent risks associated with electronic information (including its transmission by means of the internet or otherwise), we cannot guarantee the security and integrity of any electronic communications or information sent or received in relation to this engagement. Whilst it is our policy to check our email correspondence and other electronic information with anti-virus software, we similarly cannot guarantee that transmissions or other electronic information will be free from infection. You acknowledge that if we are working on your premises we may need to connect to the internet through your internal network in order to access our systems.

## **8. INTELLECTUAL PROPERTY RIGHTS**

We retain all ownership, copyright and other intellectual property rights in everything developed, designed or created by us either before or during the course of an engagement including systems, methodologies, software, know-how and working papers. We also retain all ownership, copyright and other intellectual property rights in all reports, written advice or other materials provided by us to you, although the fees you pay us will give you a licence to use those materials for the purposes for which they were created under this engagement.

You agree to ensure that any use of works in your possession or control during the engagement do not infringe the intellectual property rights of any third parties. You also agree to grant to or obtain for us a licence to use, copy and modify any copyright protected works during the engagement, which are owned by or licensed to you.

## **9. OUR LIABILITY**

Throughout these terms the word "claims" shall mean actual or threatened claims or proceedings of any sort whatsoever (whether for losses, damages, interest, costs or other relief), arising out of (or relating to) any act, omission or default alleged arising out of (or in connection with or in relation to) the services performed or which should have been performed on your behalf, including, without limitation, claims for breach of contract, negligence, or other torts including breach of statutory or other duty, but not including claims for death and personal injury or other claims to the extent that limitation of liability for such claims is prohibited by law and also not including any statutory right to compensation under the Investor Compensation Act 1998.

You agree that any claim shall be brought only against O'Farrell Associates and that, no claim in respect of this engagement will be brought personally against any other persons involved in this engagement, whether actual or deemed servants or agents of us or not.

## **10. LIMITATION OF LIABILITY**

Our total liability for claims under this engagement for you shall be limited to the lower of the figures produced by the operation of the following two sections.

## **11. CAP**

Our aggregate liability for claims shall be limited to €100,000, one hundred thousand Euros, (or if greater, the total fees charged by us to you during this engagement period).

Where there is more than one party to the Engagement Letter (other than us) the limit of liability will have to be allocated among you. It is agreed that, save where an allocation is expressly stated in the Engagement Letter, such allocation will be entirely a matter for you and you shall be under no obligation to inform us of the allocation. If (for whatever reason) no such allocation is agreed, this omission shall not affect the limit of liability and you shall not dispute the validity, enforceability or operation of the limit of liability on the ground that no such allocation was agreed.

## **12. PROPORTIONALITY**

Our liability to you for any claim shall be limited to a just and equitable proportion of the total loss or damage (including interest and costs) suffered by you, whether or not you can obtain judgment against others for the balance of the total loss and whether or not any such judgement is satisfied or enforceable in practice. In this context a just and equitable proportion means that proportion which, having regard to any contributory negligence or fault on your part, and to the respective degree of fault of any other persons, (whether or not party to any proceedings) it is just and equitable to ascribe to us. The determination of such proportion is to be agreed between the parties, or failing such agreement, by a court of competent jurisdiction.

## **13. DATA PROTECTION AND PRIVACY**

Both parties confirm that they will comply with the General Data Protection Regulations (GDPR).

You warrant that you shall take all actions necessary and appropriate to comply with applicable notification and consent requirements of any "data subjects" necessary for us to process or control personal data for the purposes of or relating to the work we undertake on your behalf.

## **14. HEALTH & SAFETY**

We acknowledge our statutory responsibility to co-operate with your health and safety requirements, provided we are given notice of these. Whilst on your premises our partners, staff and sub-contractors shall be afforded by you the same protection for health and safety purposes as is due to your employees.

If you require us to enter the premises of a third party you will procure that the third party also affords such protection to our partners, staff and sub-contractors as is due to its employees.

## **15. THIRD PARTY RIGHTS**

Any reports, letters, information and advice we provide to you are given in confidence solely for the purpose of the engagement and are provided on the condition that you undertake not to disclose these, or any other confidential information made available to you by us during the course of our work, to any third party (being a party other than those to whom the report, letter, information or advice is addressed) without prior written consent.

Before we provide such consent, we may stipulate terms regarding such provision or require the third party to enter into a direct relationship with us. We disclaim all responsibility for any consequence whatsoever should any such third party rely on any report, letter, information or advice without written consent. Our only responsibility is that which is owed to you in the

context of this engagement as at the date on which our report or other advice is given to you. You agree to notify us immediately of any unauthorised disclosure or use of this confidential material and to take all action to prevent any further disclosure of such material.

## **16. STATUTORY AND REGULATORY OBLIGATIONS**

You understand and accept that, we may be required in certain circumstances to make reports to regulatory and law enforcement authorities, or to disclose documents or information or take other action, as a result of information received by us or matters which come to our attention during the course of this engagement. Where appropriate and permitted we will advise you in advance of any action we may be required to take.

## **17. FORCE MAJEURE**

Neither we nor you shall be liable in any way for failure to perform our respective obligations under this engagement if the failure is due to causes outside the reasonable control of the party which has failed to perform.

## **18. COMMENCEMENT**

Unless otherwise agreed with you, these Terms will apply from the commencement of your retention of us to provide the services outlined in the Engagement Letter.

## **19. TERMINATION**

Our services may be terminated by either party by notice, with immediate effect, in writing to the regular correspondence address of the other party marked for the appropriate partner or contact.

Termination will not affect accrued rights, existing commitments or any contractual provision intended to survive termination and will be without penalty or other additional payment, save that you will pay:

- (a) our fees to the date of termination;
- (b) any additional expenses necessarily incurred by us as a result of you terminating this engagement letter;
- (c) any losses necessarily realised in settling outstanding obligations; and
- (d) any fees for binding commitments entered into prior to termination.

## **20. SEVERANCE OF TERMS**

If any of the Terms is invalid or unenforceable, the remainder of the Terms will continue in full force and effect.

## **21. ENTIRE AGREEMENT**

With respect to this engagement, our engagement letter and these terms of business constitute the entire agreement between us and supersede all prior agreements, proposals, oral and written representations and negotiations.

## **22. GOVERNING LAW AND JURISDICTION**

These Terms shall be governed and construed in accordance with the laws of Ireland and any claim shall be subject to the exclusive jurisdiction of the Irish courts.

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