

## **CONSULTING AGREEMENT**

This Agreement dated as of October 1, 2003, with an effective date of October 1, 2003 as agreed by the parties ("Effective Date"), is made between Kentucky American Water - 2300 Richmond Road, Lexington, Kentucky 40502-1308 (hereafter referred to as the "Company") and James E. Salsler, with an address at Ohio Avenue, Murraysville, West Virginia 26164 (hereafter referred to as the "Consultant").

1. **Consultation Services** The Company hereby retains the Consultant to assist and advise it in connection with the preparation, filing, and discovery process for rate case filed by the Company. The Consultant will provide services and related work products to the Company in accordance with the terms and provisions of this Agreement. The services to be performed are included on the Service Attachment attached hereto and incorporated herein.
2. **Term of Agreement** The term of this Agreement shall be from the Effective Date until December 31, 2004 and may be extended by mutual, written agreement of the parties. The obligation of each party to maintain confidentiality shall be unlimited in duration.
3. **Independent Contractor** Both the Company and the Consultant agree that the Consultant will act as an independent contractor in the performance of the Consultant's duties under this Agreement. As such, the Consultant will not be eligible for any benefits provided by the Company to its employees. Accordingly, the Consultant shall be responsible for payment of all federal, state and local taxes arising out of the Consultant's activities in accordance with this Agreement, including by way of illustration but not limitation, federal and state income taxes, Social Security taxes, Unemployment Insurance taxes and any other taxes or business license fees required.
4. **Confidentiality** The Consultant agrees that any information provided to the Consultant by the Company in connection with the Consultant's performance under this Agreement which concerns financial or other confidential or proprietary matters of the Company or any of its affiliated companies will be treated by the Consultant in full confidence and will not be revealed to any other persons, firms or organizations without the prior consent of the Company. The Consultant agrees to keep confidential the programs, projections or materials delivered under this Agreement and to avoid making them available to any third party without the prior consent of the Company. This obligation shall survive the termination of this Agreement.
5. **Work Products** All work products generated pursuant to this Agreement shall become the sole and exclusive property of the Company, which may use such work products for any purpose without additional compensation to the Consultant.

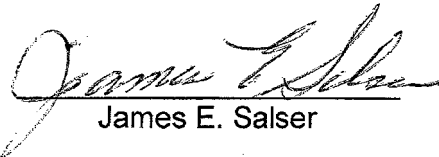
6. **Direction and Control/Performance Schedule** The Consultant will be free at all times to arrange the time and manner of performance of the consulting services contemplated by this Agreement and will report to the Director, Rates and Revenue, of the Company on such basis as shall be prescribed.
7. **Assignment** The Company specifically contracts for services of the Consultant and the Consultant may not assign, subcontract, or delegate the performance of the services contemplated by this Agreement without the express written consent of the Company.
8. **Performance Standard** All work will be performed to the satisfaction of and all invoices shall be submitted to Director, Rates and Revenue, of the Company.
9. **Code of Ethics** The Consultant acknowledges receipt of the Company's Code of Ethics and agrees to comply with such policies (attached hereto).
10. **Compensation** In consideration for the services rendered under this Agreement, the Company agrees to pay the Consultant \$100 per hour, including all expenses except as set forth below. During travel periods, Consultant shall be paid for actual time spent on Company business and travel. The Consultant will provided monthly invoices in a form satisfactory to Director, Rates and Revenue, for payment. Such invoices shall include a breakdown of the hours worked daily by the Consultant.
11. **Expenses** The Company will reimburse the Consultant for reasonable out-of-pocket expenses incurred by the Consultant in connection with airline (coach service)and transportation travel, meals and lodging, when necessary. The Consultant will be required to provide documentation of expenses incurred and shall submit request for payment of expenses with documentation to the Company in a timely manner. Authority to incur expenses must be obtained in advance from Director, Rates and Revenue.
12. **Termination** This Agreement may be terminated by either party upon thirty (30) days written notice. In the event of termination, all invoices for services and expenses previously rendered, and amounts owed but not yet invoiced for services and expenses, will be due and payable within thirty (30) days after receipt of invoice.
13. **Waivers** No waiver by either party hereto or any failure by the other party to keep or perform any covenant or condition of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or other covenant or condition. No failure to enforce any provision hereof shall operate as a waiver thereof or be deemed to be a release of any rights granted hereunder.

14. **Severability** If any provision of this Agreement shall be held or made invalid or unenforceable by a court decision, statute, rule or otherwise, the remaining provisions of this Agreement shall not be affected thereby and shall continue in full force and effect.
15. **Governing Law** This Agreement shall be construed, interpreted and enforced in accordance with, and governed by, the laws of the State of Kentucky, without regard to conflicts of law principles.
16. **Entire Agreement** This Agreement, including the Service Attachment, represents the entire agreement between the parties and is not subject to change or modification except by prior written agreement signed by both parties.

**IN WITNESS WHEREOF**, for good and valuable consideration and intending to be legally bound hereby, each of the parties hereto has caused this Agreement to be executed on its behalf as of the date first above written.

**CONSULTANT**

**KENTUCKY AMERICAN WATER**

By:   
James E. Salser

By: 

**SERVICE ATTACHMENT**

**Scope of Services/Responsibilities:**

The Consultant is engaged for the purpose of assisting in the filing and discovery related to Virginia American Water rate applications. The Consultant's services shall include, but not be limited to, the responsibilities listed below:

1. Assist in negotiations with industrial customers.
2. Assist in developing tariff/rate structure.
3. Assist in filing exhibits.
4. Prepare testimony in areas of responsibility.
5. Assist with Commission audit.
6. Assist in discovery process.
7. Testify in areas of responsibility.
8. Assist with rate order compliance requirements.

In addition to the above, the scope of responsibilities may include other assignments as set forth by and under the direction of the Director of Rates and Revenue.

| \_\_\_\_\_ |

This Agreement dated as of March 25, 2004, with an effective date of March 25, 2004 as agreed by the parties ("Effective Date"), is made between Kentucky-American Water Company – 2300 Richmond Road, Lexington, Kentucky 40502-1308 (hereafter referred to as the "Company") and Coleman D. Bush, with an address at 324 Pelican Lane, Lexington, KY 40511 (hereafter referred to as the "Consultant").

1. **Consultation Services** The Company hereby retains the Consultant to assist and advise it in connection with the preparation, filing, and discovery process for rate case filed by the Company as well as other matters related to business development and customer relations. The Consultant will provide services and related work products to the Company in accordance with the terms and provisions of this Agreement. The services to be performed are included on the Service Attachment attached hereto and incorporated herein.
2. **Term of Agreement** The term of this Agreement shall be from the Effective Date until December 31, 2004 and may be extended by mutual, written agreement of the parties. The obligation of each party to maintain confidentiality shall be unlimited in duration.
3. **Independent Contractor** Both the Company and the Consultant agree that the Consultant will act as an independent contractor in the performance of the Consultant's duties under this Agreement. As such, the Consultant will not be eligible for any benefits provided by the Company to its employees. Accordingly, the Consultant shall be responsible for payment of all federal, state and local taxes arising out of the Consultant's activities in accordance with this Agreement, including by way of illustration but not limitation, federal and state income taxes, Social Security taxes, Unemployment Insurance taxes and any other taxes or business license fees required. Consultant agrees to maintain and pay all general liability and worker's compensation insurance.
4. **Confidentiality** The Consultant agrees that any information provided to the Consultant by the Company in connection with the Consultant's performance under this Agreement which concerns financial or other confidential or proprietary matters of the Company or any of its affiliated companies will be treated by the Consultant in full confidence and will not be revealed to any other persons, firms or organizations without the prior consent of the Company. The Consultant agrees to keep confidential the programs, projections or materials delivered under this Agreement and to avoid making them available to any third party without the prior consent of the Company. This obligation shall survive the termination of this Agreement.

5. **Work Products** All work products generated pursuant to this Agreement shall become the sole and exclusive property of the Company, which may use such work products for any purpose without additional compensation to the Consultant.
6. **Direction and Control/Performance Schedule** The Consultant will be free at all times to arrange the time and manner of performance of the consulting services contemplated by this Agreement and will report to the President or Director, Rates and Revenue, of the Company on such basis as shall be prescribed.
7. **Assignment** The Company specifically contracts for services of the Consultant and the Consultant may not assign, subcontract, or delegate the performance of the services contemplated by this Agreement without the express written consent of the Company.
8. **Performance Standard** All work will be performed to the satisfaction of and all invoices shall be submitted to President or Director, Rates and Revenue, of the Company.
9. **Code of Ethics** The Consultant acknowledges receipt of the Company's Code of Ethics and agrees to comply with such policies (attached hereto).
10. **compensation** In consideration for the services rendered under this Agreement, the Company agrees to pay the Consultant \$75 (seventy-five dollars) per hour, including all expenses except as set forth below. During travel periods, Consultant shall be paid for actual time spent on Company business and travel, The Consultant will provide monthly invoices in a form satisfactory to President or Director, Rates and Revenue, for payment. Such invoices shall include a breakdown of the hours worked daily by the Consultant.
11. **Expenses** The Company will reimburse the Consultant for reasonable out-of-pocket expenses incurred by the Consultant in connection with airline (coach service) and transportation travel, meals and lodging, when necessary. The Consultant will be required to provide documentation of expenses incurred and shall submit request for payment of expenses with documentation to the Company in a timely manner. Authority to incur expenses must be obtained in advance from President or Director, Rates and Revenue.
12. **Termination** This Agreement may be terminated by either party upon thirty (30) days written notice. In the event of termination, all invoices for services and expenses previously rendered, and amounts owed but not yet invoiced for services and expenses, will be due and payable within thirty (30) days after receipt of invoice.

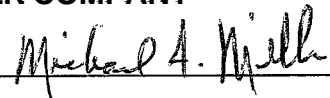
13. **Waivers** No waiver by either party hereto or any failure by the other party to keep or perform any covenant or condition of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or other covenant or condition. No failure to enforce any provision hereof shall operate as a waiver thereof or be deemed to be a release of any rights granted hereunder.
14. **Severability** If any provision of this Agreement shall be held or made invalid or unenforceable by a court decision, statute, rule or otherwise, the remaining provisions of this Agreement shall not be affected thereby and shall continue in full force and effect.
15. **Governing Law** This Agreement shall be construed, interpreted and enforced in accordance with, and governed by, the laws of the State of Kentucky, without regard to conflicts of law principles.
16. **Entire Agreement** This Agreement, including the Service Attachment, represents the entire agreement between the parties and is not subject to change or modification except by prior written agreement signed by both parties.

**IN WITNESS WHEREOF**, for good and valuable consideration and intending to be legally bound hereby, each of the parties hereto has caused this Agreement to be executed on its behalf as of the date first above written.

**CONSULTANT**

By:   
Coleman D. Bush  
March 25, 2004

**KENTUCKY-AMERICAN  
WATER COMPANY**

By: 

## SERVICE ATTACHMENT

### Scope of Services/Responsibilities:

The Consultant is engaged for the purpose of assisting in the filing and discovery related to Kentucky-American Water Company rate applications and other matters related to business development and customer relations. The Consultant's services shall include, but not be limited to, the responsibilities listed below:

1. Assist in developing schedules for the rate case filing
2. Assist in responding to data requests from regulators and intervenors
3. Testify before the Public Service Commission of Kentucky on matters which lie in Consultant's areas of expertise
4. Complete acquisition of Owenton Water and Wastewater systems including developing new rates
5. Assist in resolving issues with LFUCG regarding sewer and landfill billing

In addition to the above, the scope of responsibilities may include other assignments as set forth by and under the direction of the President or Director of Rates and Revenue.



February 22,2004

Mr. Roy Ferrell  
American Water Works Service Company  
P.O. Box 1906  
1600 Pennsylvania Avenue  
Charleston, W.Va 25237-1906

Dear Roy:

As we discussed, I am sending this letter confirming my scope of work for the Kentucky-American affiliate charges study (December 31, 2003 test year) and detailing my cost estimate to complete this work.

#### Scope of the Study

I will follow the same approach as I have in my previous studies for you. I will compare 2003 Kentucky-American's Service Company charges to the cost of procuring the same services from outside providers--attorneys, management consultants, accountants and engineers. The study will culminate in a total net cost/savings to Kentucky-American associated with using the Service Company compared to outsourcing.

The source of average 2003 billing rates for outside service providers will be obtained from the following sources.

- *Attorneys* – It does not appear as though the Kentucky bar association surveys its members as to their hourly billing rates. Thus, I will have to estimate what they are based on the rates for Virginia attorney billing rates from Lawyers Weekly surveys (there is no Lawyers Weekly published in Kentucky). The latest survey is dated April 29, 2003 and include data as of December 31, 2002. I will also adjust these rates for differences in costs of living and then escalate the average for one year's worth of inflation.
- *Accountants* – The American Institute of Certified Public Accountants performs an annual survey of its members. I will obtain the Kentucky version of the 2002 survey which includes hourly billing rates for Kentucky CPA firms. I will have to escalate this data for inflation.
- *Management Consultants* - I will utilize the "Survey of Key Management Information" published by the Association of Management Consulting Firms, the industry's trade organization. The hourly billing rate that will be calculated from this survey will be a national average. I feel it is appropriate to use a national, rather than a local, rate because management consultants do not

Mr. Roy Ferrell  
February 22, 2004  
Page 2 of 3

limit their practice to any one region and typically travel to client locations. The 2003 survey includes 2002 data. Here too I will have to escalate this data to make it comparable to Service Company hourly rates.

- *Professional Engineers* - The association for professional civil engineers, the American Society of Civil Engineers, does not survey its members' billing rates. The association for all professional engineers, the National Society of Professional Engineers, also does not survey its members' billing rates. Considering this lack of professional association surveys, I have found the best way to obtain hourly billing rate information for engineering firms is for my client to solicit the information from firms that could provide service to the operating company in question. Therefore, I will need the Service Company to provide average 2003 billing rates for firms with Kentucky offices that have performed work for Kentucky-American.
- *National Call Center Services* – I will develop cost per customer benchmark data for surrounding electric utilities (from FERC data) and compare that to Kentucky-American's Call Center costs per customer.

After compiling Service Company data and outsider provider data, I can then make the comparison of the rates. My report would thoroughly explain and support how these numbers were developed.

Just as I did in the other studies, I will address the issue of Kentucky-American's need for the services being provided by the Service Company. I would determine if there is any duplication of effort and if the services the Service Company provides are essential to an operating utility such as Kentucky-American.

#### Cost Estimate

Based on the scope of work outlined above, I estimate the Cost Comparison/Need For Service Study will cost approximately \$23,825 to complete. A breakdown of the hours and dollars is detailed in the table below. My expense budget assumes there will be no need to travel.

Mr. Roy Ferrell  
February 22, 2004  
Page 3 of 3

<b>Fees</b>	
<b>1. Obtain &amp; Review Data</b>	<b>6</b>
<b>2. Develop Cost Comparison</b>	
Calculate Svc Co Hourly Billing Rates	20
Calculate Outside Providers Hourly Rates	<b>24</b>
<b>3. Compare Call Ct Costs To Other Utilities</b>	24
<b>4. Need For Service</b>	
Prepare Responsibilities Matrix	8
<b>5. Report Preparation</b>	<b>36</b>
	Total Hours 118
	Hourly Rate \$ 200
	Total Fees \$ 23,600
<b>Expenses</b>	
Phone	\$ 50
Express Mail	\$ 25
Surveys/Other Expenses	\$ 150
<b>Total Expenses</b>	<b>\$ 225</b>
<b>Total Fees &amp; Expenses</b>	<b>\$ 23,825</b>

I will undertake this study on a fixed price basis, with a not-to-exceed total for fees and expenses of \$23,800. If the study does not cost this much to complete, you will only be billed for the actual costs incurred. It should be noted that this estimate does not include the cost of cross-examination that may be required in Lexington.

I submit invoices monthly and include a timesheet and copies of expenses to back up all charges. With each invoice I will provide a budget status so you can easily monitor my cost performance.

My initial data request is attached.

Roy, I want to thank you for asking me to help on this important assignment. I can assure you I will give it my utmost attention. Please send me a note acknowledging that you are in agreement with this proposal. Thank you.

Sincerely,

Patrick L. Baryenbruch



May 21, 2004

Bruce M. Larson  
Director, Security Programs  
American Water Company  
1025 Laurel Oak Road  
Voorhees, NJ 08043

Re: Letter of Agreement (LOA) to Provide Professional Services

Dear Bruce:

Enclosed is a fully executed original of the subject agreement from PA Consulting Group.

Let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Herbert A. Miller, Jr.".

Herbert A. Miller, Jr.

Enclosure

c: Roy Mundy  
Coleman Bush  
Linda Bridwell

American Water  
Herbert A. Miller, Jr.  
VP & Corporate Counsel  
2300 Richmond Road  
Lexington, KY 40502

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F +1 859.268.6327  
I www.amwater.com





1750 Pennsylvania Avenue, NW  
Suite 1003  
Washington, DC 20006  
Tel: 202 442-2000  
Fax: 202 442-2001

April 20, 2004

Bruce M. Larson  
Director, Security Programs  
Kentucky-American Water Company  
1025 Laurel Oaks Road  
Voorhees, NJ 08043

RE: LETTER OF AGREEMENT ("**LOA**") TO PROVIDE PROFESSIONAL  
SERVICES

Dear Mr. Larson:

PA Government Services Inc. ("PA") is pleased to offer its assistance to Kentucky-American Water Company (KAWC) for preparation and presentation of testimony and related services supporting the rate hearing in Kentucky related to recovery of security expenditures for the Lexington, Kentucky water system of KAWC.

By signing the second page of this LOA, you authorize PA to perform the work described above, which will be invoiced on a time and materials basis. The billing rate for Ken Rubin is \$365 per hour, and the rate for Paul Whitaker is \$145 per hour. Travel and other project expenses will be subject to your prior approval, and will be invoiced at cost. The terms and conditions that govern this agreement are at Attachment A; they are the same terms that are included in our October 30, 2003 VSAT contract. The period of performance of this LOA is March 30, 2004 - December 31, 2004.

PA's Project Manager, Ken Rubin, is responsible to you for satisfying our project work commitment. He may be reached by telephone at (202) 442-2377. Matters of a business or contractual nature should be directed to my attention. My direct line is (202) 442-2412.

This LOA, Attachment A and written proposal documents, if any, comprise our whole and complete agreement. There are no other promises, terms or conditions referring to the subject matter. In the case of any discrepancy between any proposal and this LOA and Attachment, then this LOA and Attachment A shall govern. Please complete, sign and return this letter to my attention at facsimile (202) 442-2450. We will return a fully executed copy for your files.

Thank you for including PA in your work plans, and please don't hesitate to call either our Project Manager or me should you have any questions or concerns.

Yours truly,

A handwritten signature in black ink, appearing to read "David J. Casella".

David J. Casella  
Corporate Counsel

Parties signing this LOA warrant that they are duly authorized to sign on behalf of their respective organizations.

KENTUCKY-AMERICAN WATER  
COMPANY

By: Roy W. Mundy II

Name: Roy W. Mundy II

Title: President

Date: 4/23/04

PA GOVERNMENT SERVICES INC.

By: John R. Armstrong

Name: John R. Armstrong

Title: Vice President

Date: 5/20/04



## Attachment A

### Standard Terms and Conditions

These Terms of Business have been entered into between PA GOVERNMENT SERVICES INC. ("PA") and KENTUCKY-AMERICAN WATER COMPANY ("Client") (together the "Parties") as of the signature dates included in the Letter of Agreement.

#### 1. PA's Obligations

- 1.1 PA will perform the services (the "Services") as set out in the agreement (the "Agreement") entered into by PA and the Client which, for the avoidance of doubt, includes these Terms of Business, with reasonable care and skill in accordance with good practice within the consulting industry, using appropriately qualified staff.
- 1.2 PA will so far as it is practical use the consultants identified to the Client in the Proposal. However, PA may replace these personnel with consultants of equivalent skills and experience (including third party consultants), subject to the Client's prior written consent, not to be unreasonably delayed, made conditional or withheld.
- 1.3 PA will use reasonable endeavors to meet agreed or estimated timescales.

#### 2. Client's Obligations

- 2.1 The Client will provide such facilities, materials, information and resources for the performance of the Services as reasonably requested by PA. The Client will liaise with PA as appropriate during the performance of the Services and shall respond quickly to PA's reasonable requests for consultation, information, decisions and approvals.

#### 3. Fees and Payment

- 3.1 All fees and charges due under the Agreement are exclusive of VAT, sales and use and similar taxes of any kind.
- 3.2 All fees and charges referred to in the Agreement are payable upon presentation of the invoice. Interest may be charged in respect of any invoice unpaid within 30 days.
- 3.3 Without prejudice to its other rights, the Client agrees to make payment to PA of all sums due without reduction or deferment on account of any claim, counterclaim or set-off.

#### 4. Forecasts and Recommendations and Third Party Services

- 4.1 Statements made by PA relating to the Services, and all surveys, forecasts, recommendations and opinions (together "Forecasts") in any proposal, report, presentation or other communication by PA are made in good faith on the basis of information available at the time. Forecasts are not a representation, undertaking or warranty as to outcome or achievable results.
- 4.2 PA may, during its performance of the Services, make statements about or recommendations of third party software, equipment or services. No warranty shall be attributable to PA with respect to such software, equipment or services, and the Client shall look solely to the warranties and remedies provided by any such third party with whom it may contract.

#### 5. Confidentiality

- 5.1 PA and the Client each undertake to keep confidential information received from, or on behalf of the other Party in relation to the Agreement, whether orally, electronically or in permanent form ("Confidential Information"). Either Party may disclose Confidential Information to its employees, subcontractors and advisors, and those of other companies in its Group, on a need-to-know basis who are in all cases contractually obliged to the disclosing Party (including within an employment contract) to keep the information confidential. "Group" means companies which control, are controlled by or are under common control with one of the Parties.
- 5.2 Confidential Information excludes any information which is (i) in the receiving Party's possession at the time of disclosure (other than by breach of the Agreement); (ii) received from a third party (other than one whom the receiving Party knows or should reasonably assume is not entitled to disclose it); (iii) published before or after the date of disclosure through no fault of the receiving Party; (iv) independently developed by the receiving Party without the use of the Confidential Information; or (v) required to be disclosed by law or a competent regulatory authority. In the event that confidential information is required to be disclosed under section (v), PA shall provide Client with prompt notice of any such order to give Client the opportunity to assert any objection or defense to the disclosure prior to PA complying with such order.

#### 6. Intellectual Property and Rights of Use

- 6.1 "IP" means all forms of intellectual property, including, without limitation, property in and rights under registered and unregistered copyright, domestic and foreign patents, conceptual solutions, circuit layout rights, performance rights, design rights, designs, database rights, trade names, registered and unregistered trademarks, service marks, corporate names, internet domain names, trade dress, brand names, computer programs, trade secrets, methodologies, ideas, processes, inventions, methods, tools and know-how, formulae and recipes and entitlement to make application for formal or otherwise enhanced rights of any such nature.
- 6.2 IP and rights to IP owned by any Party on the date of the Agreement ("Background IP") shall remain the property of that Party.

## Standard Terms and Conditions

- 6.3 The Client hereby grants to PA a royalty-free, non-exclusive, non-transferable licence to use the Client's Background IP as required to allow PA to perform its obligations under the Agreement.
- 6.4 IP developed by PA in the course of performing the Services ("Foreground IP") and rights to such IP will be owned by PA. Upon termination of the LOA and on receipt of payment in full by PA, PA will grant to the Client a royalty-free, non-exclusive, non-transferable licence to use any Foreground IP and PA's Background IP required for the Client to use the results of the Services for the purposes set out in the Proposal. The licence will be terminable by PA for any act not expressly authorised by this clause.
- 6.5 PA warrants that to the best of PA's knowledge and belief the results of the Services shall not infringe the copyright of any third party.
- 6.6 PA does not conduct any searches of registrable IP, and thus does not warrant that any such IP will be outside the scope of any patent or other IP registration.
7. Liability
- 7.1 PA accepts liability without limitation for death or personal injury to any person due to its negligence or the negligence of its employees.
- 7.2 PA accepts liability for physical damage to or loss of the Client's tangible property, including loss of data, if the damage or loss is due to PA's negligence or breach of contract. For the purposes of this clause, liability will be capped at US\$750,000 in respect of any one incident or series of connected incidents and is further capped at a maximum aggregated amount of US\$3,000,000 in respect of all claims falling within the ambit of this clause 7.2.
- 7.3 In respect of any liability other than those falling within clauses 7.1 and 7.2 above, PA's total liability arising out of or in connection with the Agreement shall not exceed in aggregate 150% of the fees paid by the Client.
- 7.4 PA shall not in any circumstances be liable to the Client whether in contract, tort (including negligence) or otherwise for:
- (i) Any loss of profit, loss of contracts, loss of benefit, loss of anticipated savings, loss of reputation, loss of goodwill or loss of use suffered or incurred directly or indirectly by the Client;
  - (ii) Any consequential or indirect loss or damage howsoever arising and of whatsoever nature; and
  - (iii) Any punitive or exemplary damages.
- 7.6 Nothing in this Clause 7 shall limit the liability of either Party for fraud or deceit.
- 7.7 Each Party shall have the obligation to prove, minimise and mitigate all losses claimed under this Agreement
8. Indemnities
- 8.1 The Client agrees to indemnify PA against any third party claim brought against PA in respect of any injury, damage or loss occasioned by the Client or a third party's use or operation of the results of the Services without PA's approval, regardless of whether that third party claim is brought against PA in contract, tort (including negligence) or otherwise whatsoever.
9. Force Majeure
- 9.1 Neither Party will be liable for any breach of the Agreement which results from that Party being prevented, hindered or delayed from observing or performing its obligations under the Agreement by an act beyond its reasonable control. The Party so affected will, as soon as reasonably possible, give notice to the other Party of the occurrence of such event.
10. Termination
- 10.1 The Agreement may be terminated by either Party at any time:
- (a) on ten days' written notice to the other Party; or
- 10.2 The Agreement may be terminated by PA in the event that payment due to PA is outstanding more than 30 days from presentation of invoice.
- 10.3 Termination will not affect any accrued rights and liabilities arising out of the Agreement.
- 10.4 Where PA is entitled to terminate the Agreement it may, instead, elect (without prejudice to PA's other rights and remedies including its right to terminate) to suspend performance by giving written notice to that effect to the Client.
11. Term
- 11.1 The term of the Agreement shall be from the date of signing the Agreement until the date that the Services performed thereunder are completed, unless terminated as described in clause 10 hereof



## Standard Terms and Conditions

unless terminated as described in clause 10 hereof.

### 12. General

- 12.1 Non-Solicitation – Both Parties undertake, during the performance of the Services and for six months from their completion, not directly or indirectly to solicit any of the other Party's employees (whether as an employee or an independent contractor) who is or has been concerned with or engaged in the performance of the Services. This clause 12.1 will not prevent either Party from advertising for staff in public media.
- 12.2 Counterparts – The Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.
- 12.3 Third Party Beneficiaries – Unless expressly stated otherwise in the Agreement, each Party intends that the Agreement shall not benefit or create any right or cause of action in or on behalf of any person other than the Parties. Notwithstanding the foregoing, the Agreement shall be binding upon and inure to the benefit of the Parties' successors and permitted assigns.
- 12.4 Assignment – Neither party will assign the Agreement or any right arising under it without PA's prior written consent.
- 12.5 Publicity – Neither Party will make any public statement or release any public material relating to the Services or their performance under the Agreement without the prior written consent of the other Party. PA may include the Client's name on its published list of clients. PA may also refer to the Services without mentioning the Client by name.
- 12.6 Entire Agreement – Subject to clause 5.3, the Agreement (including, for the avoidance of doubt, these Terms of Business), together with the Schedule of Charges and the Proposal contain the entire understanding and agreement of the Parties with respect to the subject matter thereof. There is no express or implied prior understanding, warranty, representation or undertaking which is not included in or superseded by the Agreement. PA and the Client agree that all implied terms relating to fitness for purpose implied both by statute and by law hereby are excluded.
- 12.7 Amendment – Any amendment to the Agreement will only be valid if it is agreed to by both Parties in writing.
- 12.8 Waiver – Delay or omission by a Party in exercising its rights or remedies hereunder will not be deemed a waiver of any such right or remedy.
- 12.9 Notice – Notices and other communications to be served under the Agreement shall be in writing and shall be deemed given when (i) delivered by hand, (ii) one (1) business day after mailed, to the addressee, if sent by Express Mail, Fed Ex, or other express delivery service (or two (2) business days, if mailed to a destination outside the United States), (iii) three (3) business days after mailed, to the addressee, by regular mail delivery of the U.S. Postal Service, or (iv) on receipt of a transmission report, if sent by facsimile (in all cases in the absence of evidence of earlier delivery), to the addressee at the address set forth in the Agreement.
- 12.10 Severability – If any of the provisions of the Agreement is judged to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of the Agreement will not in any way be affected or impaired thereby.
- 12.11 Governing Law – The Agreement will be governed by and construed in accordance with the laws of the State of New Jersey, regardless of the law that might be applied under principles of conflicts of laws.
- 12.12 Jurisdiction – Any legal action or proceeding with respect to the Agreement may be brought in the courts of the State of New York or of the United States of America for the Southern District of New York and, by execution and delivery of the Agreement, each Party hereby accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts. Each Party further irrevocably consents to the service of process out of any of the aforementioned courts in any action or proceeding by the mailing of copies thereof by guaranteed overnight courier to such Party at its address set forth in the Agreement, such service to become effective seven (7) business days after such mailing. Nothing in the Agreement shall affect the right of PA to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against the Client in any other jurisdiction. Each Party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with the Agreement brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.