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## THE SERVICE

*A service to professional firms in respect of acquisitions, disposals and mergers.*

Our Service is provided in accordance with our terms of business below.

The Service provided by Owens Professional Partnership Ltd is to act as an independent intermediary between professional firms seeking opportunities for acquisition, sale, merger or other Arrangement.

We will endeavour to effect an Introduction to professional firms with common interests while at the same time remaining independent.

Please note that the third party to whom we effect an Introduction will also be our client and will be engaged on the same terms and conditions of business.

**WE ARE NOT ACTING AS AGENT FOR ANY CLIENT NOR DO WE HAVE AN ABILITY TO CREATE LEGAL RELATIONS ON BEHALF OF ANY CLIENT OR CONTRACTING PARTY.**

## 1 Interpretation

1.1 **“Client”** means the person, firm or company who appoints the Consultant to provide the Service

**“Consultant”** means Owens Professional Partnership Limited (Company Registration Number 06113433) trading as Owens Professional

**“Service”** means the Service agreed to be provided by the Consultant for the Client as set out above.

**“Conditions”** means the Consultants’ terms of business set out in this document

**“Contract”** means the contract for the provision of the Service between the Consultant and the Client

**“Associate”** means any subsidiary, parent or associated company, firm or undertaking

**“Contracting Party”** means any party having entered into an Agreement with the Client or any Associate of the Client

**“Agreement”** means any agreement between the Client or any Associate of the Client and a Contracting Party giving rise to an Arrangement or a Service Contract, whether in writing or otherwise and whether the Client considers itself or its Associate legally bound by its terms or not

**“Arrangement”** means and includes the sale or purchase of any asset whether tangible or intangible (including a share in a business) of the Client or any Contracting Party or any Associate of the Client or of a Contracting Party, the merger, de-merger, amalgamation or reconstruction of the business (or a significant part of the business) or the share capital of the Client or a Contracting Party or any Associate of the Client or of a Contracting Party, or the establishment of any other link and/or overtly permanent relationship between the Client and a Contracting Party or with or between any Associate of the Client or a Contracting Party

**“Service Contract”** means any contract of service or contract for services with or between the Client and any Contracting Party or with or between any Associate of the Client or any Contracting Party whether such services are provided by or to the Client or the Contracting Party or any Associate of the Client or the Contracting Party

**“Introduction”** means the identification of a third party to the Client as a prospective Contracting Party whether by name or by the giving of any other information whether or not such third party was previously known to the Client

**“Gross Income”** means all fees, charges, costs, commissions, sales and other income whatsoever for the last completed financial year or if that is less than 12 months the period of 12 months immediately preceding the date of Agreement including without limitation any such income of any Associate

**“Total Consideration”** means the aggregate of all sums paid or agreed to be or capable of being paid whether by or to the Client or by or to a Contracting Party or an Associate of the Client or on its or their behalf or at its or their direction in or in connection with an Arrangement and whether in cash, loan notes, dividends, earn outs, salary, fees, charges or other emoluments, discharge or assumption of liabilities contributions to or repayment of capital accounts or otherwise howsoever and including the fair market value of any goods and/or services for which no actual money changes hands the goods and/or services being provided in addition to or in place of a financial consideration and whether paid, transferred or provided before, on or after the completion of any Agreement

**“Gross Remuneration”** means the gross annual remuneration paid pursuant to a Service Contract including but not limited to salary, wages, fees, charges, costs, commissions, retainers, bonuses, the value of benefits in kind and all other taxable emoluments to which the party providing the services is entitled within the period of twelve months from the commencement of the Service Contract

**“Client Information”** means any information whether given orally or in writing provided by the Client relating to the Service

**“Third Party Information”** means any information whether given orally or in writing provided by any Contracting Party or prospective Contracting Party

**“Writing”** includes facsimile transmission and comparable means of communication

*The headings in these conditions are for convenience only and shall not affect their interpretation.*

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## 2 Appointment

- 2.1 The Client engages the Consultant to provide the Service and the Consultant agrees to provide the Service subject to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions. Any changes or additions to the Service or to these Conditions must be agreed in writing between the Consultant and the Client.
  - 2.2 Where the Client appoints the Consultant to provide the Service with a view to a sale by the Client or Associate of the Client, the Client shall not any time before the expiry or termination of the Contract employ retain, engage or appoint any other person, firm or company to provide any service that competes with the Service provided by the Consultant whether such service is to be provided before or after the expiry or termination of the Contract.
  - 2.3 The Client acknowledges and agrees that the third party to whom the Consultant effects an Introduction will also be a client of the Consultant and are bound by these terms.
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## 3 Client Information

- 3.1 The Client shall at its own expense supply the Consultant with all necessary Client Information relating to the Service within sufficient time to enable the Consultant to provide the Service in accordance with the Contract. The Client shall ensure the accuracy of all Client Information.
  - 3.2 The Client shall at its own expense retain duplicate copies of all Client Information and insure against its accidental loss or damage. The Consultant shall have no liability for such loss or damage howsoever caused.
  - 3.3 The Client warrants that all Client Information when provided is complete, correct, accurate and up to date and shall indemnify and keep the Consultant indemnified from and against all loss (including any indirect special or consequential loss) damage, costs, claims, expenses and other liability whatsoever which arise out of or in connection with the provision of information by the Client or from the disclosure or use of such information to or by any third party.
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## 4 Third Party Information

- 4.1 The Consultant shall not be responsible for verifying the truth, completeness or accuracy of any Third Party Information or other information provided to the Client and such Third Party Information and other information shall (unless the contrary be proved) be deemed to be provided by the Consultant in good faith and without any liability whatsoever on the part of the Consultant, its servants or agents. Accordingly the Client must not rely on any Third Party Information or other information provided by the Consultant and must use all such Third Party Information and other information solely for its own purposes in determining whether or not to pursue an Introduction.
- 4.2 The Client shall be solely responsible for verifying the truth, completeness and accuracy of any Third Party Information or any other information provided by the Consultant and shall by itself and its professional advisers exercise all due diligence in discharging its responsibilities under this clause 4.

## 5 Confidentiality

- 5.1 The Consultant agrees to keep the Client Information secret and confidential and not at any time for any reason whatsoever to disclose Client Information to any third party except that any information may be disclosed by the Consultant to Contracting Parties or prospective Contracting Parties to such extent as may be reasonably necessary for the purposes contemplated by the Contract subject to the Consultant using its reasonable endeavours to ensure that the person in question keeps the same confidential and does not use the same except for the purposes for which the disclosure is made.
- 5.2 The Client agrees to keep, and ensure that its personnel shall keep, secret and confidential all Third Party Information and other matters brought to its or their attention in connection with the provision of the Service by the Consultant and not at any time for any reason to disclose or to permit any Third Party Information or other matters to be disclosed to any third party but to use such Third Party Information or other matters solely and exclusively for its own purposes in determining whether or not to pursue an Introduction.
- 5.3 The obligations of confidence contained in this clause 5 shall not apply to Client Information or Third Party Information or other information which:
- 5.3.1 is in the possession of and is at the free disposal of the Recipient or is published or is otherwise in the public domain prior to the receipt of such Client Information or Third Party Information or other information by the Recipient; or
  - 5.3.2 is or becomes publicly available on a non-confidential basis through no fault of the Recipient; or
  - 5.3.3 is received in good faith by the Recipient from a third party who, on reasonable enquiry by the Recipient claims to have no obligations of confidence to the Client or as the case may be the Consultant or any Contracting Party or any Associate of the Client or the Contracting Party in respect of it and who imposes no obligations of confidence upon the Recipient.
- 5.4 In this clause 5 "Recipient" means in relation to Client Information the Consultant and in relation to Third Party Information the Client.
- 5.5 The obligations of the parties under this clause 5 shall survive the expiry or termination of the Contract for whatever reason.
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## 6 Fees and Charges

- 6.1 Where the Service relates to:
- 6.1.1 an Arrangement for a sale by the Client or Associate of the Client, the Consultant shall not charge the Client for the provision of the Service.
  - 6.1.2 an Arrangement for a purchase by the Client or Associate of the Client, the Consultant's Charges shall be paid by the Client.
  - 6.1.3 an Arrangement comprising a merger between the Client and another client of the Consultant, the Client shall be jointly and severally liable with that other client for the payment of the Consultant's Charges.
- 6.2 The Consultant's Charges shall be:
- 6.2.1 in the case of an Arrangement five per cent (5%) of:
    - 6.2.1.1 the Gross Income of the company firm business or undertaking or part or parts thereof sold or agreed to be sold pursuant to the Agreement for the Arrangement or, where the Arrangement is for the sale of a share in a business or undertaking, a proportion of the Gross Income of such business or undertaking equal to the share of the business or undertaking being sold; or
    - 6.2.1.2 the lesser of the Gross Income of the Client or of the Contracting Party where the Arrangement does not involve the sale of the whole or any part of or share in any company firm business or undertaking; or
    - 6.2.1.3 the Total Consideration whichever shall be the greater
  - 6.2.2 in the case of a Service Contract, for each and every partner or employee concerned the sum of Five Thousand Pounds (£5,000) or Five Per Cent (5%) of that persons Gross Remuneration whichever shall be the greater and
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shall be payable by the party being the Client or the Contracting Party to whom or for whom or to or for whose Associate, the services the subject of the Service Contract are provided;

*For the avoidance of doubt, where the Contracting Party is also a client of the Consultant, the Consultant's Charges will not exceed the charges stated above and in no event will a double charge be made.*

- 6.3 In determining the Consultant's Charges there shall be disregarded the effect of any possible claw back whether as a result of a contractual claim or otherwise and the value of any retention, whatever the contingency, and assuming that the total possible consideration capable of passing does pass at the time of Agreement and that all targets for earn outs or otherwise should be achieved.
- 6.4 The Consultant's Charges are exclusive of any Value Added Tax for which the Client or the Contracting Party as applicable shall be additionally liable at the applicable rate from time to time.
- 6.5 The Consultant shall be entitled to invoice the Client and/or the Contracting Party:
- 6.5.1 in the case of an Arrangement at any time on or after the Agreement for the Arrangement is made or the commencement of the Arrangement whichever shall be the earlier;
  - 6.5.2 in the case of a Service Contract at any time on or after terms for such Service Contract are agreed or upon the commencement of such Service Contract, whichever shall be the earlier;
- 6.6 The Consultant's Charges and any additional sums shall be paid (together with any applicable Value Added Tax and without any set off or other deduction) within 14 days of the Consultant's invoice.
- 6.7 If payment is not made on the due date, the Consultant shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgement) at the rate of four per cent (4%) above the base rate from time to time of Barclays Bank Plc from the due date until the outstanding amount is paid in full.
- 6.8 The Client shall be liable to pay the Consultant's Charges in accordance with these Terms of Business even if:
- 6.8.1 Agreement for an Arrangement or Service Contract is reached after the expiry or termination of the Contract if the introduction of the Contracting Party to the Client was effected by the Consultant before the expiry or termination of the Contract and/or
  - 6.8.2 Agreement for an Arrangement or Service Contract is reached during the subsistence of or after the expiry or termination of the Contract if the Agreement therefor was reached or resulted wholly or in part from any act or thing done before the expiry or termination of the Contract by a third party or by the Client in breach of clause 2.2 above.
- 6.9 The Client shall forthwith upon any Agreement being reached with a Contracting Party forward a true and complete copy of such Agreement (where such agreement is in writing) or a true and complete summary of the terms of such Agreement (where the terms of such Agreement have not been reduced to writing) to the Consultant and shall permit the Consultant or its duly appointed representatives to inspect all such documents, records and accounts and take copies thereof at all reasonable times to enable the Consultants charges to be determined.

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## 7 Warranties and Liabilities

- 7.1 The Consultant warrants to the Client that the Service will be provided using reasonable care and skill.
- 7.2 The Consultant shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any materials or information whether supplied by or to the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form or arising from their late arrival or non-arrival or any other fault of the person supplying such materials or information.
- 7.3 Except in respect of death or personal injury caused by the Consultant's negligence, or as expressly provided in these Conditions, the Consultant shall not be liable to the Client by reason of any representation (unless fraudulent),

or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit, loss of revenue or anticipated savings, or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of the Consultant, its servants or agents or otherwise) which arise out of or in connection with the provision of the Service and the entire liability of the Consultant to the Client under or in connection with the Contract shall not exceed an amount equal to the Consultant's Charges paid or payable by the Client for the provision of the Service in respect of which the claim is made and in all other cases £10,000 except as expressly provided in these conditions.

7.4 The Consultant shall not be liable to the Client or be deemed to be in breach of the contract by reason of any delay in performing, or any failure to perform, any of the Consultant's obligations in relation to the Service if the delay or failure was due to any cause beyond the Consultant's reasonable control.

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## 8 Termination

8.1 Either party shall be entitled to terminate the Contract at any time by giving not less than three months written notice to the other.

8.2 Either party may (without limiting any other remedy) at any time terminate the Contract by giving written notice to the other if the other commits any breach of these Conditions and (if capable of remedy) fails to remedy the breach within 30 days after being required by written notice to do so, or if the other goes into liquidation, or (in the case of an individual or firm) becomes bankrupt, makes a voluntary arrangement with his or its creditors or has a receiver or administrator appointed.

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## 9 General

9.1 These Conditions and the description of the Services agreed by the Consultant and the Client constitute the entire agreement between the parties in respect of the Service. The agreed terms supersede any previous agreement representation or understanding and may not be varied except in writing between the parties. All other terms and conditions, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

9.2 Any notice required or permitted to be given by either party to or under these conditions shall be in writing addressed to the other party's registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

9.3 No failure or delay by either party in exercising any rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party as to any breach by the other party shall be considered as a waiver of any subsequent breach of the same or any other provision.

9.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and of the remainder of the provision in question shall not be affected.

9.5 Nothing in these conditions shall create, or be deemed to create a partnership between the Parties and the Consultant does not act nor does it purport to act as agent for the Client or any Contracting Party or prospective Contracting Party.

9.6 No term of the Contract may be enforced by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999

9.7 English Law shall apply to the Contract and the parties agree to submit to the non-exclusive jurisdiction of the English Courts.