

**[INSERT DATE] 2017**

(1) **THE ACC LIVERPOOL GROUP LIMITED**

and

(2) **[INSERT NAME OF COMPANY]**

**FREELANCER AGREEMENT (VIA LIMITED COMPANY)**

**THIS AGREEMENT** is dated ..... 2017 and is made

**BETWEEN:**

- (1) **THE ACC LIVERPOOL GROUP LIMITED** incorporated and registered in England and Wales with company number 05204033 whose registered office is at Kings Dock, Liverpool Waterfront, Liverpool, Merseyside, L3 4FP England, UK (**ACC**);
- (2) **[INSERT NAME OF COMPANY]** incorporated and registered in England and Wales with company number **[INSERT COMPANY NUMBER]** whose registered office is **[INSERT ADDRESS]** (the **Company**).

**IT IS AGREED:**

**1. Interpretation**

1.1 The definitions and rules of interpretation in this clause apply in this Agreement (unless the context requires otherwise).

**ACC Property** means all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the business or affairs of ACC or its customers and business contacts (including any Confidential Information), and any equipment, keys, hardware or software provided by ACC for the Company's or the Individual's (or any of the Individuals') use during the Engagement, and any data or documents (including copies) produced, maintained or stored by the Company or the Individual on ACC'S or the Company's or the Individual's (or any of the Individuals') computer systems or other electronic equipment during the Engagement;

**Capacity** means as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity;

**Commencement Date** means **[INSERT COMMENCEMENT DATE] OR [the date this Agreement is signed by the parties];**

**Confidential Information** means information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and/or finances of ACC for the time being confidential to ACC and trade secrets including, without limitation, technical data and know-how relating to the business of ACC or any of its suppliers, customers,

agents, distributors, shareholders, management or business contacts, and including (but not limited to) information (including any Intellectual Property Rights) that the Company or the Individual(s) creates, develops, receives or obtains in connection with the Engagement, whether or not such information (if in anything other than oral form) is marked confidential;

**Data Protection Legislation**

means the Data Protection Act 1998 and, from the date on which it comes into force and for so long as it is in force, the General Data Protection Regulation (Regulation (EU) 2016/679);

**Engagement**

means the engagement of the Company by ACC on the terms of this Agreement;

**[Expiry Date]**

means [INSERT EXPIRY DATE]<sup>1</sup>;

**Insurance Policies**

means [commercial general liability insurance cover;] [professional indemnity insurance cover,] [employer's liability insurance cover] [and public liability insurance cover];

**Intellectual Property Rights**

means patents, rights to inventions, copyright and related rights, moral rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world;

**Individual(s)**

means [INSERT INDIVIDUAL CONSULTANT'S (OR CONSULTANTS') NAME(S)]

**Services**

the services provided by the Company or the Individual(s) in a consultancy capacity for ACC as more particularly described in the Schedule 1;

**Working Day**

eight (8) hours per day[, excluding a one (1) hour lunch break,] on any required working day (including

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<sup>1</sup> NB: Optional wording, to be included if the engagement is to continue for a specified term.

weekends and bank holidays);

- 1.2 The headings in this Agreement are inserted for convenience only and shall not affect its construction.
- 1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, replacement or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 1.6 The Schedule to this Agreement forms part of (and is incorporated into) this Agreement.
- 1.7 Any reference in this Agreement to 'in writing' or 'written' shall include email.

## 2. **Term of engagement**

- 2.1 ACC shall engage the Company and the Company agrees to make the Individual(s) available to ACC to provide the Services to ACC on the terms of this Agreement.
- 2.2 The Company agrees to, and (where relevant) shall procure that the Individual(s) shall, comply with the terms of this Agreement including, without limitation, the duties and obligations detailed in clause 3.
- 2.3 The Engagement shall [commence] **OR** [be deemed to have commenced]<sup>2</sup> on the Commencement Date and shall continue [until the Expiry Date, on which date this Agreement shall automatically terminate, unless terminated earlier] **OR** [unless and until terminated]<sup>3</sup>:
  - (a) as provided by the terms of this Agreement; or
  - (b) by either party giving to the other not less than [thirty (30) days] prior written notice.

## 3. **Duties and obligations**

- 3.1 During the Engagement the Company shall, and where appropriate shall procure that the Individual(s) shall:
  - (a) provide the Services with all due care, skill and ability and use best endeavours to promote the interests of ACC;

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<sup>2</sup> NB: If the engagement commenced prior to the Agreement being signed, then the latter option should be selected.

<sup>3</sup> NB: If the engagement is to continue for a specified term, then the first option should be selected. If the engagement is for an unspecified term, then the second option should be selected.

- (b) ensure that in providing the Services it will co-operate as far as may be reasonably necessary with ACC's employees and ensure that it will carry out the Services in such a way as to cause no unreasonable or unnecessary disruption to the routine and procedures of ACC, its employees, visitors or other consultants;
  - (c) comply with all rules and regulations from time to time issued by ACC relating to the use and/or security of the premises where the Services are provided;
  - (d) comply with all reasonable standards of safety and with ACC's Health, Safety and Welfare Policy and all other health and safety procedures from time to time in force at the premises where the Services are provided and report to ACC any unsafe working conditions or practices. For the avoidance of doubt this shall include the following standard operation procedures (SOP's): [TO BE INSERTED];
  - (e) comply with ACC's policies on social media, data protection, ICT, dress code, conduct and behaviour and substance misuse (as updated from time to time); and
  - (f) comply with ACC's anti-corruption and bribery policy and procedures and all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010. Failure to comply with this sub-clause 3.1(f) may result in the immediate termination of this Agreement.
- 3.2 If the Individual (or any of the Individuals) is(are) unable to provide the Services due to illness or injury, the Company shall advise ACC of that fact at least one (1) day before the Engagement is due to start or, if the Engagement has already started, as soon as reasonably practicable. For the avoidance of doubt, no fee shall be payable in accordance with clause 5 in respect of any period during which the Services are not provided.
- 3.3 Unless specifically authorised to do so by ACC in writing, neither the Company nor the Individual(s) shall:
- (a) have any authority to incur any expenditure in the name of or for the account of ACC;  
or
  - (b) hold themselves out as having authority to bind ACC.
- 3.4 ACC shall notify the Company of any material change to ACC's needs or requirements under this Agreement. The Company shall, and shall procure that the Individual(s) shall, use all reasonable endeavours to accommodate any such changes in the Services, provided that the Company shall be entitled to payment for additional Fees reasonably arising from any such changes. Any changes to the Services and corresponding changes in the Fees that are agreed under this clause 3.4 shall be agreed between the parties in writing in advance.
- 3.5 [To the extent that the Company or the Individual(s) is(are) required to provide their own equipment in respect of the Engagement ("**Equipment**"), the Company shall (or, as applicable, shall procure that the Individual shall) at all times ensure that the Equipment is: (i) in good working order and suitable for the purposes for which it is used in relation to the Services; (ii) conforms to all relevant United Kingdom safety standards and all other relevant requirements; and (iii) is appropriately insured. ACC accepts no liability whatsoever for any loss of, or damage to, such Equipment, except to the extent caused by ACC's negligence in

which case ACC's liability shall be limited to the repair or replacement value of the relevant Equipment. Nothing in this Agreement is intended to limit or exclude ACC's liability in respect of any liability which cannot be limited or excluded as a matter of law.]

#### 4. **Supervision and Evaluation**

4.1 ACC retains the sole right to control and direct the manner in which the Services described herein are to be performed.

#### 5. **Fees**

5.1 ACC shall pay the Company a fee of £[INSERT AMOUNT] per Working Day exclusive of all applicable taxes.

5.2 The Company shall procure that each Individual submits a timesheet to ACC at the end of each assignment that the Individual is engaged in respect of. The time sheet shall detail the days and hours worked by the Individual during the assignment and must be signed by the Head of Production and Technical. Time taken travelling to and from the Individual's office base at the start and end of the working day must not be included.

5.3 At the end of each calendar month, the Company shall submit to ACC an invoice which gives details of the days and hours worked by the Individual(s) during the month, the Services provided and the amount of fees payable for the Services during that month.

5.4 In consideration of the provision of the Services, ACC shall pay each undisputed invoice, submitted by the Company in accordance with clause 5.2, within thirty (30) days of receipt.

5.5 ACC shall be entitled to deduct from the fees (and any other sums) due to the Company any sums that the Company or the Individual(s) may owe to ACC at that time.

5.6 Payment in full or in part of the fees claimed under clause 5 shall be without prejudice to any claims or rights of ACC against the Company or the Individual(s) in respect of the provision of the Services.

#### 6. **Other activities**

6.1 Nothing in this Agreement shall prevent the Company or the Individual(s) from being engaged, concerned or having any financial interest in any Capacity in any other business, trade, profession or occupation during the Engagement provided that such activity does not cause a breach of any of the Company's or the Individual's (or any of the Individuals') obligations under this Agreement.

#### 7. **Confidential information**

7.1 In the course of the Engagement the Company and the Individual(s) will have access to Confidential Information and in acknowledgement of this the Company shall, and shall procure that the Individual(s) shall, comply with the restrictions in this clause 7.

7.2 The Company shall not, and shall procure that the Individual(s) shall not, (except in the proper course of their duties) either during the Engagement or at any time after the termination or expiry of this Agreement, use or disclose to any third party (and shall use their best

endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to:

- (a) any use or disclosure authorised by ACC or required by law; or
- (b) any information which is already in, or comes into, the public domain otherwise than through the Company's or the Individual's unauthorised disclosure.

## **8. Data protection**

8.1 The Company shall procure that the Individual (each of the Individuals) consents to ACC holding and processing data relating to the Individual for legal, personnel, administrative and management purposes and in particular to the processing of any "sensitive personal data" (as defined in the Data Protection Legislation) relating to the Individual including, as appropriate:

- (a) information about the Individual's physical or mental health or condition as applicable to the Individual's provision of the Services or otherwise in connection with the Engagement;
- (b) the Individual's racial or ethnic origin or religious or similar beliefs in order to monitor compliance with equal opportunities legislation; and
- (c) information relating to any criminal proceedings in which the Individual has been involved, for insurance purposes and in order to comply with legal requirements and obligations to third parties.

8.2 The Company shall, and shall procure that the Individual(s) shall, comply with ACC's data protection policy and relevant obligations under the Data Protection Legislation Act and associated codes of practice when processing personal data relating to any employee, worker, customer, client, supplier or agent of ACC.

## **9. Intellectual property**

9.1 The Company warrants to ACC that it has obtained from the Individual(s) a written and valid assignment of all existing and future Intellectual Property Rights arising from the provision of the Services by the Individual(s) and a written irrevocable waiver of all the Individual's (or each of the Individuals') statutory moral rights in such works, to the fullest extent permissible by law, and that the Individual has (or each of the Individuals have) agreed to hold on trust for the Company any such rights in which the legal title has not passed (or will not pass) to the Company. The Company agrees to provide to ACC a copy of this assignment on or before the date of this Agreement.

9.2 The Company hereby assigns to ACC all existing and future Intellectual Property Rights arising from the provision of the Services to the fullest extent permitted by law. Insofar as they do not vest automatically by operation of law or under this Agreement, the Company holds legal title in these rights and inventions on trust of ACC. The Company agrees (and confirms that the Individual has (or each of the Individuals have) given written undertakings in the same terms to the Company) to promptly execute all documents and do all acts as may, in the opinion of ACC, be necessary to give effect to this clause 9.

## 10. **Company's warranties**

- 10.1 The Company represents and warrants to ACC (and confirms that where applicable that the Individual has (or each of the Individuals have) given written warranties in the same terms to the Company) that:
- (a) it is not, nor will it during the term of this Agreement, become a managed service company, within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003;
  - (b) the Individual is entitled to work in the United Kingdom without any additional immigration approvals and the Company will notify ACC immediately if this entitlement ceases during the Engagement; and
  - (c) neither the Company nor the Individual will breach any court order, or existing or former terms of employment or engagement (whether express or implied), by reason of entering into this Agreement, performing the Services or complying with any of the Company's duties and obligations under this Agreement and the Company undertakes to fully indemnify ACC on a continuing basis against any claims, costs, damages, liabilities or expenses which ACC may incur as a result if the Company or Individual is in breach of any such obligations.

## 11. **Insurance and liability**

- 11.1 The Company shall have liability for and shall indemnify ACC for any loss, liability, costs (including reasonable legal costs), damages or expenses arising from any breach by the Company or the Individual(s) of the terms of this Agreement including any negligent or libellous act, omission or default in the provision of the Services and shall accordingly maintain in force during the Engagement full and comprehensive Insurance Policies.
- 11.2 The Company shall ensure that any Insurance Policies are taken out with reputable insurers acceptable to ACC and that the level of cover and other terms of insurance are acceptable to and agreed by ACC.
- 11.3 The Company shall on request supply to ACC copies of such Insurance Policies and evidence that the relevant premiums have been paid.
- 11.4 The Company shall comply with all terms and conditions of the Insurance Policies at all times. If cover under the Insurance Policies shall lapse or not be renewed or be changed in any material way or if the Company is aware of any reason why the cover under the Insurance Policies may lapse or not be renewed or be changed in any material way, the Company shall notify ACC without delay.

## 12. **Termination**

- 12.1 Notwithstanding the provisions of clause 2.3, ACC may terminate the Engagement with immediate effect with no liability to make any further payment to the Company (other than in respect of amounts accrued before the date of termination of this Agreement) if at any time:

- (a) the Individual (or any of the Individuals):

- (i) commits any gross misconduct affecting, or which is likely to affect, the business of ACC;
  - (ii) is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed);
  - (iii) is declared bankrupt or makes any arrangement with or for the benefit of her creditors or has a county court administration order made against him under the County Court Act 1984;
  - (iv) is incapacitated (including by reason of illness or accident) from providing the Services for an aggregate period of [6 weeks] in any [52 week] consecutive period; or
  - (v) ceases to be eligible to work in the United Kingdom; or
- (b) the Company or the Individual (or any of the Individuals) (as applicable):
- (i) commits any serious or repeated breach or non-observance of any of the provisions of this Agreement or refuses or neglects to comply with any reasonable and lawful directions of ACC;
  - (ii) is in the reasonable opinion of ACC negligent or incompetent in the performance of the Services;
  - (iii) commits any fraud or dishonesty or acts in any manner which in the opinion of ACC brings or is likely to bring the Company, the Individual or ACC into disrepute or is materially adverse to the interests of ACC;
  - (iv) commits any breach of ACC's policies and procedures in force from time to time; or
  - (v) commits any offence under the Bribery Act 2010.

12.2 The rights of ACC under clause 12.1 are without prejudice to any other rights that it might have at law to terminate the Engagement or to accept any breach of this Agreement on the part of the Company or the Individual(s) as having brought the Agreement to an end. Any delay by ACC in exercising its rights to terminate shall not constitute a waiver of these rights.

### 13. **Obligations on termination**

13.1 The Company shall, and shall procure that the Individual(s) shall:

- (a) immediately return to ACC any ACC Property in its possession, including any original or copy documents obtained in the course of providing the Services; and
- (b) irretrievably delete any Confidential Information or other information relating to the business of ACC stored on any magnetic or optical disk or memory, and all matter derived from such sources which is in its possession or under its control outside the premises of ACC,

in each case, at any time on request by ACC and in any event immediately on termination or expiry of this Agreement.

#### **14. Status and Tax Obligations**

- 14.1 This Agreement constitutes a contract for the provision of services and not a contract of employment.
- 14.2 The relationship of the Company to ACC will be that of independent contractor and nothing in this Agreement shall render either the Company or the Individual (or any of the Individuals) an employee, worker, agent or partner of ACC.
- 14.3 The Company undertakes to, and (where relevant) shall procure that the Individual(s) shall, account to HMRC, and bear sole responsibility for, the payment of any income tax, national insurance contributions, VAT or other taxes which may be found due from the Company or the Individual(s) in relation to the Services or any payments made under this Agreement.
- 14.4 The Company shall, upon request, promptly provide information or other evidence to ACC which demonstrates that the Company or the Individual(s) (as applicable) has complied with clause 14.3
- 14.5 ACC may, upon request, provide HMRC (or any other department or agency of the government) with information (including any information or evidence received from the Company under clause 14.4) regarding the Services provided and any payments made to the Company under this Agreement.
- 14.6 The Company shall be fully responsible for and shall indemnify ACC on continuing basis for and in respect of:
- (a) any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services by the Company or the Individual(s) (including any interest, penalties, costs and expenses incurred or payable in connection with, or in consequence of, any such liability), provided that such liability is not incurred or increased as a result of undue delay or negligence on the part of ACC, and provided the recovery is not prohibited by law; and
  - (b) any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Company or the Individual(s) against ACC arising out of or in connection with the provision of the Services.
- 14.7 ACC may at its option satisfy such indemnity (in whole or part) by way of deduction from any payments due to the Company.

#### **15. Notices**

- 15.1 Any notice given under this Agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally, or sending it by pre-paid recorded delivery or registered post to the relevant party at its registered office for the time

being (or other such address as is notified by one party to the other party from time to time) or by sending it by email to the email address notified by the relevant party to the other party. Any such notice shall be deemed to have been received:

- (a) if delivered personally, at the time of delivery;
- (b) in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting or at the time recorded by the delivery service; and
- (c) in the case of email, at the time of transmission.

15.2 In proving such service it shall be sufficient to prove that the envelope containing the notice was addressed to the address of the relevant party and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery or registered post or that the notice was transmitted by email to the email address of the relevant party.

## 16. **Entire agreement**

16.1 Each party on behalf of itself acknowledges and agrees with the other party that this Agreement constitutes the entire agreement and understanding between the Company and ACC and supersedes any previous arrangement, understanding or agreement between them, whether written or oral, relating to the Engagement.

16.2 Each party acknowledges that in entering into this Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

16.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

16.4 Nothing in this clause shall limit or exclude any liability for fraud.

## 17. **Variation**

No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.

## 18. **Counterparts**

This Agreement may be executed in any number of counterparts, each of which, when executed, shall constitute a duplicate original, and all the counterparts together shall constitute one agreement.

## 19. **Third party rights**

19.1 A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

20. **Governing law and jurisdiction**

20.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

20.2 The parties irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and delivered and takes effect on the date stated at the beginning of it.

## SCHEDULE 1

### Services

ACC may offer work to the Individual(s) from time to time as [Freelance Production Technician]. The Individual(s) will usually report to [INSERT POSITION OF MANAGER].

The precise description and nature of the work may be varied with each assignment and the Individual may be required to carry out other duties as necessary to meet business needs. The Company will be informed of the requirements at the start of each assignment.

[THIS SHOULD INCLUDE THE FOLLOWING MATTERS:

- *details of the work to be carried out;*
- *the location(s) where the services are to be performed;*
- *reporting procedure;*
- *any milestones for completion of particular projects; and*
- *whether the services will need to be provided to any other group companies.]*

**EXECUTED AS A DEED BY THE ACC ).....  
LIVERPOOL GROUP LIMITED**

) [SIGNATURE OF DIRECTOR]

Acting by **[NAME OF DIRECTOR]** a director,  
in the presence of: )

.....

[SIGNATURE OF WITNESS]

Name .....

Address .....

.....

Occupation .....

**SIGNED AS A DEED BY [NAME OF ).....  
COMPANY] in the present of:**

) [SIGNATURE OF COMPANY]

)

.....

[SIGNATURE OF WITNESS]

Name .....

Address .....

.....

Occupation .....