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Concerto IP Limited: Standard Terms & Conditions

Definitions

In this document, **We**, **Us** and **Our** refer to Concerto IP Limited; references to anything done, or to be done, in writing are references to it, respectively, having been written, or to be written, and, respectively, sent, or to be sent, by email, hand or otherwise; and the expressions below have the following meanings:

Agreement: these Standard Terms & Conditions in their present iteration.

AML: the *Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations, 2017*, the *Proceeds of Crime Act 2002*, the *Terrorism Act, 2000*, any re-enactment of any of the foregoing and any similar legislation in or for the United Kingdom or for another jurisdictions relevant to Instructions.

Code: the [professional code of conduct](#) and [litigator's code of conduct](#) both prescribed by IPReg.

Contract: refers to the contract mentioned in the final line of Paragraph 1.1 or Paragraph 1.2 (as the case may be).

Days: days (including weekends) other than public holidays observed in England.

Documents: documents (electronic or otherwise; originals or copies) over which We have custody, power or control.

Engagement: any engagement between You and Us where You instruct Us to act for You on a Project (including any such engagement limited at any time to part only of the Project).

Engagement Letter: any document We send You which particularizes and/or, if and when agreed, varies this Agreement for the purposes of a particular Matter or Matters it identifies.

Fee Agreement: a written fee agreement as referred to in Paragraph 4.1.

File: a collection of Your Documents in one or more parts organised as reasonably required for Us to perform and record an Engagement.

Instructions: any request, direction or instruction on a Matter which You or someone authorised to do so give or gives Us and is acknowledged by Us in writing or otherwise verifiable.

IPReg: the Intellectual Property Regulation Board.

Matter: a matter comprised in a Project, as the latter expression is defined below.

New Terms: new terms and conditions, replacing or supplementing or otherwise amending, those in force immediately previously, whether the new terms and conditions are in the form of an Engagement Letter, a new Agreement or both.

Open-Ended Fee Tariff: an open-ended fee arrangement as referred to in Paragraph 4.1.

Other Documents: Documents relating to an actual or potential business development or financial transaction between us or to a dispute between us; drafts not shared with You or, on your behalf, any other person; and text messages.

Partner: a person or organisation with whom We cooperate to provide You with services (the expression having its commercial meaning without holding out a legal partnership to exist between Us and that person or organisation), including any such person who is not Our employee and who works with Us as a self-employed contractor and may be styled "Consultant".

Project: a project comprised of at least one Matter, in the case of plural Matters those Matters being connected by a common goal¹, which project may be described in an Engagement Letter.

RTPA99: the Contracts (Rights of Third Parties) Act 1999.

Terms: this Agreement, as modified by any New Terms.

You: you as the contracting party to Terms, namely Our client.

Your Documents: Documents reasonably required to perform and/or record an Engagement, not being Other Documents.

¹ By way of illustration, a project may, for example (i) comprise preparing a UK application for intellectual property protection which We file on your instructions, as one Matter, and prosecution of the application through subsequent official procedures as another, the common goal being grant of protection sought or (ii) be comprised of a programme whose goal is to provide intellectual property protection for different subject-matters of, or aspects of, the project and/or of more than one kind and/or in or for more than one jurisdiction. Should You require additional illustration, We shall be pleased to respond to your written request.

1. Commencement of Terms, acceptance of Instructions, termination, related matters

Terms in the case of existing clients

- 1.1.** If, on the notification date of this Agreement, You have a relationship with Us governed by Terms, this Agreement constitutes proposed New Terms; the New Terms are hereby notified to You and will be deemed to apply as follows:
- The New Terms commence from the earlier of:
 - Our receipt of your written or oral agreement to those New Terms (We will record in writing any oral agreement) and
 - the date 10 Days immediately following the notification date of those New Terms (if You do not accept the New Terms, You must notify Us in writing as soon as possible and, in any event, within that period of 10 Days); and
 - The New Terms, on commencement, shall apply as follows:
 - To all Projects ongoing at the notification date of the New Terms and
 - To all new Projects on which We accept Instructions on a Matter only after the notification date of the New Terms and
 - To each Matter as a contract separate from any other Matter.

Terms in the case of new clients

- 1.2.** If, on the notification date of this Agreement, You do not have a relationship with Us governed by Terms and You wish to give Us new Instructions, this Paragraph 1.2 applies as follows, instead of Paragraph 1.1:
- Terms commence from the first occasion on which:
 - You have agreed Our Terms and
 - We have accepted your new Instructions; and
 - Terms, on commencement, shall apply as follows:
 - to the Matter to which your new Instructions relate and
 - to each of every other Matter on which We receive Instructions We accept and
 - to each Matter as a contract separate from any other Matter.
- 1.3.** You may agree Our Terms in writing or orally (We will record in writing any oral agreement). However, You are otherwise deemed to have agreed Terms as if You had done so in writing on the notification date of this Agreement, if and when:
- You have given Instructions, and
 - We have sent You notification of this Agreement mentioning your Instructions, the Matter(s) or the Project, and
 - 10 Days have passed immediately following the date of the later of the latter two events without You telling Us in writing that You disagree with the Terms or that your acceptance of them is conditional.

Changing Terms

- 1.4.** We reserve the right to propose New Terms at any time, sending You notification of the New Terms.
- 1.5.** The New Terms will be deemed to apply as stated in Paragraph 1.1 above.

Engagement Letters, Application of Conflicts of Interest Policy

- 1.6.** Terms apply as follows:
- Your agreement as a new client to this Agreement and your agreement as an existing client to this Agreement as comprised in New Terms constitutes your agreement also to any Engagement Letter notified to You at the same time as this Agreement or at the same time as notification of the New Terms (as the case may be).
 - In the exceptional circumstances described in Paragraph 6 of Our Conflicts of Interest Policy, Terms apply in the limited manner set out in that Paragraph 6.

Our acceptance of Instructions

- 1.7.** We may decline or accept Instructions in writing but, subject to Paragraph 6 of Our Conflicts of Interest Policy, We are deemed to have accepted Instructions when:
- We have expressly acknowledged that We have received them, and
 - You have agreed Terms, and either:
 - 10 Days have passed immediately following the date of the later of the latter two events without Our telling You in writing that We decline the Instructions or that Our acceptance of them is conditional, or
 - We implement a material part of the Instructions or undertake in writing to do so.

What constitutes “notification” and “notification date” for the purposes of this Paragraph 1

- 1.8.** For the purposes of this Paragraph 1, notification of this Agreement, Terms or New Terms means an email sent to You which email provides either **(i)** a hyperlink in the footer and/or message body of the email or **(ii)** an attachment, which hyperlink or attachment, when opened, provides access directly or indirectly to an instance of this Agreement, Terms

or New Terms; the notification date of such email is the date the notification was sent to its addressee.

Termination of Engagements

- 1.9. You are entitled wholly or partly to terminate any Engagement by telling Us in writing, We may do so by giving You a reasonable amount of prior written notice.

2. Professional standards and Financial Governance

- 2.1 On all Matters, We will represent You according to Code. In particular, We undertake to:

- practise competently, conscientiously, objectively and with integrity and
- put your interests foremost while observing the law and Our duty to the court and
- safeguard your confidential information, not disclosing it to any third party without your written permission or required by law (in accordance with the undertakings set out in [Confidentiality](#))
- disclose to You all information We possess of material relevance to your Instructions unless precluded from doing so by confidentiality obligation or law.

- 2.2 We accept a duty of care for organisation and safe-keeping of Your Documents in Files. You are entitled to have any Your Document(s) You specify sent or otherwise made available to You within a reasonable time of your written request. We require funds on account for Our copying and other costs of dealing with your request, and for professional time (if any) spent or to be spent in discharging Our duty of care to You in connection with your request or its execution.

- 2.3 Funds You provide from which We are not entitled, or not yet entitled, to draw down funds as Our own will be held for You in a “*client trust bank account*” as client monies held to your order pending Our becoming so entitled. Subject to the next sentence below, and to any agreement in writing with You, if You are indebted to us at the date of a notice to You in writing giving You notice of at least 7 Days of our intention to draw down on those funds an amount no greater than that indebtedness, We are deemed to be so entitled at the end of those 7 Days. In the case of client monies You provide on account with respect to prospective implementation of Instructions:

- such monies (“On Account Monies”) are releasable to Us in accordance with the next two bullet points below in settlement of fees earned by Us, and disbursements incurred by Us on your behalf (together “Charges”), in respect of Our partial or complete implementation (as the case may be) of Instructions to which the monies relate;
- We may execute settlement on your behalf by drawdown of On Account Monies on invoicing You those Charges;
- in the case of, and to facilitate stage release of On Account Monies reflecting, stage implementation of Instructions, such invoicing will include one or more invoices each for an interim amount for settlement as a pre-condition of any further implementation by Us of the Instructions.

3. Document retention and conflicts of interest policies

- 3.1. These policies are set out in the following documents:

- (1) [Looking after Your Documents](#) and (2) [Conflicts of Interest Policy](#).

4. Our Fees, allocation of Instructions

- 4.1. In terms of the fees You are liable to pay Us for services and disbursements under Engagements:

- A written fee agreement (“Fee Agreement”)² may be agreed between us:
 - Indicating:
 - a fixed or range-bound fee, for defined work and disbursements, and any conditions to which it is subject, or
 - an indicative cost estimate, which We will not exceed without your agreement except insofar as the Fee Agreement indicates, and any conditions to which it is subject, or
 - for *ad hoc* advice over an agreed period.
- For services and disbursements outside the scope of any Fee Agreement, an open-ended fee arrangement (“Open-ended Fee Tariff”)² will apply in which the cost to You of the Engagement:
 - varies with the amount of time for which We are engaged on the Engagement, and
 - is determined as set out in Paragraphs 4.2 to 4.5 below.

- 4.2. An Open-ended Fee Tariff applies to all services and disbursements which fall outside the scope of any Fee Agreement (either because there is no Fee Agreement or, if there is a Fee Agreement, because that agreement does not cover those services and/or those disbursements). We will rely on You to be aware that professional work not covered within a Fee Agreement will be separately and additionally charged to You and to check with Us if You are in doubt.

- 4.3. Our charges in the case of an Open-ended Fee Tariff are determined as follows:

- professional work which falls in the category of standard activities may be charged as standard charges, and

² See [About Fee Formats and What counts as Professional Work](#) for illustrations

- charges for all other professional work will be determined by recording the time it took in 0.1-hour units rounded up and multiplying the total time by Our normal or notified hourly rates (find out Our normal [hourly rates](#)³, and
 - all disbursements incurred to your account will have been properly incurred and will be charged to You after their amount has been determined as follows:
 - where a Partner carries out professional work in providing services of a UK or European Patent Attorney or a UK trade mark attorney, by recording the time it took in 0.1-hour units rounded up and multiplying that time by Our normal or notified hourly rates (find out Our normal [hourly rates](#)³) (or by a different method agreed with You in writing);
 - where a Partner provides a different service, by adding to the Partner’s charge to Us a commission of 25% (or a different commission agreed with You in writing);
 - for any other disbursements item, by on-costing to You the total cost of its provision and a profit element, both determined at Our discretion on a basis which is reasonable for the item;
 - in the case of services provided by a Partner, We will normally add increments **(i)** representing Our time expended in engaging with the Partner in connection with the service and **(ii)** to manage any FX risk.
- 4.4.** From the date Terms apply, You are liable for Our charges:
- For services and disbursements within the scope of any Fee Agreement;
 - For services and disbursements under an Open-ended Fee Tariff:
 - namely, Our charges for all professional work which it is reasonable in Our view to carry out, together with all disbursements it is reasonable in Our view to incur, to discharge Our:
 - duty of care to You arising from your Instructions, including (without limitation) Our providing You with information, initial advice on options open to You (with or without costings) or comment on your Project, or performing any of the activities mentioned in the document hyperlinked in Paragraph 4.5 below, and
 - duty to the court or any official body in connection with the Project in question, Our having given You notice of that duty to it if practicable.
- 4.5.** In general, all the time We spend on your behalf is professional work, whether within or outside a Fee Agreement, and We will record all that time in Our systems. It may take various forms ([About Fee Formats and What counts as Professional Work](#)) and may be performed by qualified professionals, professional assistants with less than full qualification or support personnel, to which persons We will allocate tasks at Our discretion.
- 4.6.** We will render charges (plus VAT where applicable) by invoice (sent electronically, unless agreed otherwise or technically not practical) monthly unless We consider a different frequency to be appropriate.
- 4.7.** To the extent an invoice does not already contain a breakdown of action taken and disbursements incurred, We will provide such a breakdown if a written request received is by Us within 28 Days of invoice date.
- 5. Credit management, discontinuity of representation**
- 5.1.** Any invoice We send You must be paid by the date (the “Payment Date”) which **(i)** it or a notice sent You no later than the invoice dispatch date states (eg “*on day of receipt*”) or, if no such date is so-stated, **(ii)** is the date which falls 28 Days immediately following the date the invoice was sent to You. You agree that, at 17:00 UK time on the Payment Date of an invoice, that invoice has been reviewed, and is owed, due and fully payable by You.
- 5.2.** If an invoice has not been paid according to Paragraph 5.1 without Our written agreement, We may:
- after notifying You that the invoice is overdue, suspend representation⁴, no services being provided, and your interests being at risk, during any such suspension,
 - charge You [statutory interest](#) and costs permitted by statute for recovering late payments, and
 - use lawful means to recover amounts You owe.
- 6. Instructions, your obligation to provide information and materials, Our responsiveness**
- 6.1.** By accepting Our Terms, You agree:
- to: provide Instructions and supply information or material We have requested, in each case within any reasonable term We have specified in writing (if We so specify); ensure that any such information or material is correct; and review documents We prepare, notifying Us in writing if and, as far as reasonably possible in what way, any such document is incomplete, inaccurate, indicates a material misunderstanding by Us or is not understood by You,
 - and that:
 - if We have required more than one thing from You, We may not implement your Instructions until We have received all of them,
 - You understand that piecemeal and/or delayed provision of Instructions, information and/or materials will add meaningfully to costs You are liable to pay Us, notwithstanding any Fee Agreement and

³ Link may not be enabled on mobile devices and with some operating systems. In such cases, We rely on You to ask Us by other means for this information.

⁴ We will normally give You notice of suspension of representation in addition to the notice provided by Paragraph 5.2 above.

- You have reviewed the hyperlinked information at the following link: [11 Tips for Managing the Engagement](#).
- 6.2.** Subject to Paragraph 8.1 below, Instructions may be written or oral. We will acknowledge in writing all Instructions.
- 6.3.** Remittance of funds does not constitute Instructions but a separate written remittance advice provided by email and unequivocally indicating the precise purpose of the funds will be treated as Instructions having effect on the later of the date on which We receive it and the date on which We receive the funds.
- 6.4.** We will accept Instructions only from persons We believe are properly authorised. We will seek confirmation from such a person if We receive Instructions from someone who We reasonably suspect is not authorised.
- 6.5.** We shall record, inform You of and monitor all action deadlines known to Us to be materially applicable to any Matter. Except where urgency does not permit, We will seek Instructions in good time for You conveniently to provide timely Instructions. We will promptly implement actionable Instructions We accept.
- 6.6.** Unless We have expressly agreed otherwise in writing, no third party is entitled to rely on any professional service We give You.

7. Special conditions

- 7.1.** We may, at any time, make implementation, or further implementation, of Instructions subject to special condition(s) We reasonably consider necessary to enable or assist Us in any Engagement(s), whether the special condition(s) **(i)** require(s) your provision (in particular, but without limitation, in a particular manner and/or by a particular time) of information, authorization, documentation, funds (eg to bring your account into line with Paragraph 5.1 above and/or with a credit limit We determine is appropriate) or response to an AML request (see Paragraph 10.3) or **(ii)** make(s) any other reasonably necessary requirement. Any such special condition will be notified to You in writing, shall take effect as a term of the Contract on giving that notification and is not, and shall not be treated as, New Terms.

8. Communications, contact information

- 8.1.** Unless agreed in writing otherwise, We shall communicate with You, and expect You to communicate with Us, by email, telephone, other electronic means and/or personal attendance (or, exceptionally, by hard copy or specimen provision). We may ignore text messages for the purposes of Our duty of care, unless otherwise individually agreed by Us in writing, whilst recognising they may have a place in helpful informal communications. We may make audio recordings of conversations between us, in particular to assist implementation of Instructions and noting of information You provide.
- 8.2.** We will take reasonable steps to ensure communications with You via electronic means (eg the internet) are secure and free from elements posing risk to the communications or your IT systems. We rely on You to take equivalent steps.
- 8.3.** You agree to notify Us in writing of changes to your contact information whilst this Agreement is in force.
- 8.4.** You agree that any communication directed to a physical or virtual address (eg an email address or telephone number) previously notified by You to Us, or customarily used by Us, as an address for communication with You shall (unless We have received written notice from You of a replacement such address) be deemed to be notice to You of the contents of the communication.

9. Complaints

- 9.1.** If You complain to Us that You are dissatisfied with Our services and/or conduct, We will deal with your complaint following Our [Complaints Procedure](#), whose objectives are to:
- ensure We promptly and properly investigate your complaint and
 - encourage oral discussion, if You wish and
 - achieve conciliation, restoration of mutual confidence and a full written response.

If You are dissatisfied at close of Our complaints procedure, You are entitled to complain to the Legal Ombudsman (regarding service) and/or IPReg (about conduct). [Help Making an Official Complaint](#) (including contact information for these bodies) will assist You so doing.

10. Data Protection Act 2018 (“DPA18”), UK GDPR, AML

- 10.1.** We will comply with DPA18 and UK GDPR whenever We process any “personal data”.
- 10.2.** Our policy with respect to data privacy is set out in Our [Data Protection & Privacy Policy](#).
- 10.3.** To comply with AML, We must undertake periodic investigations into clients, and must report to relevant authorities any activities which appear suspicious. You agree to comply with Our AML requests.

11. Covenant against certain activities, treating another person as Our client

- 11.1.** Unless You have Our written agreement, You undertake and covenant not to do any of the following things:
- solicit, contract with, participate in contractual relations or treat with any Partner:
 - whilst there is an Engagement between us, or
 - within a period of 12 months after the Engagement has ended, unless You first do so as a matter of reasonable necessity within the 2 months following its ending (provided in that case that You have, prior to any contact with the Partner in that 2 months period) given Us written notice of your intended contact and obtained Our written acknowledgement of it; or
 - where We have given You any professional service in relation to any subject-matter:

- conduct any intellectual property exercise in relation to that, or different, subject-matter reliant on that professional service, or cause, assist, procure or suffer such conduct by another person to whom You have communicated its, or any part of its, content, unless in each instance that exercise is carried out or supervised by an IPReg-regulated IP professional; or
- communicate any content of any professional service We give You to any third party without at the same time notifying that third party of the provisions of Paragraph 6.6 above.

11.2. If You request Us, with respect to the whole or part of any Project, to treat another person as responsible for payment of the whole or part of Our charges, instead of yourself, You are nevertheless liable under Paragraph 4.4 above for Our charges (in particular, for the avoidance of doubt, Our charges arising from Instructions on that Project You give Us after the request) except to the extent Terms apply to that other person making that person liable for them instead (and provided that the other person discharges his liability for them in accordance with Paragraph 5.1 above).

12. Professional indemnity insurance, liability limitations and exclusions, indemnities, responsibility

12.1. In accordance with Our current business policy, at the date of the notification to You of this Agreement, We maintain professional indemnity insurance cover for an insured sum of £2 million sterling, as follows: **(i)** for claims arising in the jurisdictions of the United States of America, that insured sum in the aggregate, inclusive of defence costs and expenses and **(ii)** for claims arising in jurisdictions other than in the United States of America, that insured sum each and every claim, defence costs in addition,

12.2. We shall use reasonable endeavors to maintain professional indemnity insurance cover in accordance with Code and to review cover annually for the purposes of policy renewal, in particular to determine whether to maintain the same level of sum insured or to increase or decrease it.

12.3. You acknowledge and agree to:

- the limitations on and exclusions from Our liability arising out of or in connection with any Engagement and
- the indemnities on your part,

in each case as set out in the following document: [Liability Limitations and Exclusions, Indemnities](#) (which forms part of this Agreement and in which We draw your attention to Paragraph 3.2 thereof, in particular).

12.4. You agree that **(i)** none of Our directors or employees assumes any personal responsibility for any part of any Engagement between us and **(ii)** no mention of any of Our directors or employees by name or other identifier in any document (electronic or otherwise; original or copy), database or otherwise in relation to or in connection with your affairs, Our business or any Engagement or potential Engagement, is to be construed as indicating or implying any such assumption of personal responsibility by the director or employee so mentioned, any other of Our directors or employees or Our directors as a class or Our employees as a class.

13. RTPA99, applicable law and jurisdiction, hyperlinked documents, other matters

13.1. Subject to Paragraph 5.3 of the document to which Paragraph 12.3 above refers, RTPA99 does not apply to Terms and no person not party thereto (including any employee, officer, agent, representative or sub-contractor of a party) shall have the right (under RTPA99 or otherwise) to enforce any of its provisions.

13.2. Hyperlinks in the body of this Agreement are intended to enable You to access documents carrying Our logo (each an “Our Document”), to request certain fee information or to access other information. Our Documents may include hyperlinks to other documents carrying Our logo (each a “Further Document”) and to other information. We have tested once that all hyperlinks referred to above function on a desktop PC operating Microsoft Windows 10. If You are unable to access Our Documents, Further Documents, the fee information or other information referred to above in this Paragraph 13.2 (or any part of the foregoing), You must notify Us in writing; We shall send You on written request any of Our Documents, any of Further Documents and any of the fee information (and any of the other information it is reasonably within Our power lawfully to supply) which You have been unable to access. Unless We have received such notification before Terms commence or before New Terms are deemed to apply (as the case may be), You are deemed to have considered fully all of Our Documents and all of Further Documents, together with all of the fee information and all of the other information referred to above in this Paragraph 13.2 and to have agreed Terms (or New Terms, as the case may be) after having done so.

13.3. Our Documents, Further Documents and the footnotes appearing in this document are part of this Agreement (except the one of Our Documents referenced by hyperlink following the third bullet point of Paragraph 9.1 (which is for information purposes only) but headings in this Agreement are not part of this Agreement.

13.4. Terms shall be construed under English law. The English courts shall have exclusive jurisdiction to resolve any dispute arising under them.

13.5. No variation of Terms is valid unless done in accordance with this Agreement or is agreed in writing by the parties.