

TERMS AND CONDITIONS

1. INTERPRETATION

1.1 The definitions in this clause apply to these Terms:

Customer/You: shall mean the person, company or organisation that we provide the Services to in this Agreement.

Customer Material: any marketing or product or service materials and other goods of the Customer.

Force Majeure Event: shall have the meaning given in Clause 10 below.

Agreement: shall mean the contract for services between PHD In Communications Limited trading as Verbatim Call Centres and the Customer comprising the Agreement Form and these Terms.

Agreement Confirmation: shall refer to the point at which we receive your signed Agreement Form (whether by E-signature or paper format) which following our acceptance described at 2.6 below, shall form a binding contract.

RPI: the retail prices index (all items) or any successor index.

Scope: means the standard and any additional bespoke Services agreed with You

Services: the services that we are providing to you in accordance with the Agreement

Service Charge: shall be the service charges, call plan charges and other fees and charges set out (or at the rates) in the Agreement Form

Terms: the terms and conditions set out in this document and any additional terms recorded in the Agreement.

We/Us/Verbatim: PHD in Communications Limited trading as Verbatim Call Centres (Co. No. 03285594) with its registered office at Venture West, Greenham Business Park, Newbury, Berks, RG19 6HN and its successors and assigns

Writing or written: includes faxes and e-mails.

1.2 Headings do not affect the interpretation of these Terms and in these Terms the singular includes the plural and the opposite applies.

1.3 This Agreement shall apply to all Services ordered by You from Us.

2. BASIS OF SUPPLY OF SERVICES

2.1 The Agreement is the whole agreement between You and Us for the supply of the Services and shall apply to the exclusion of any purchase or other terms proposed or presented by You.

2.2 Please check that the details in the Agreement Form are complete and accurate before You commit yourself to the Agreement. If You think that there is a mistake, please make sure that You ask Us to confirm any changes in writing, as We only accept responsibility for statements and representations made in writing by our authorised employees or agents.

2.3 Please ensure that You read and understand these Terms before submitting a signed Agreement Form, because You will be bound by the Terms once an Agreement comes into existence between Us, in accordance with clause 2.6.

2.4 Any information on our website is to provide You with an approximate idea of the Services We provide and the website does not form part of the Agreement between You and Us or any other contract between You and Us for the supply of the Services.

2.5 If any of these Terms are inconsistent with any term of the Agreement Form the Agreement Form shall prevail.

2.6 The submission of an Agreement Form by You is an offer by You to enter into a binding contract with Us, subject to it and these Terms, which We are free to accept or decline at our absolute discretion. A legally binding Agreement will take effect when we notify you of our acceptance of the Agreement Form in writing (the "Commencement Date"). We shall assign a client code to the Agreement and inform you of it. Please quote the client code in all subsequent correspondence with Us relating to the Agreement.

2.7 This Agreement is for a term of three months commencing on the Commencement Date, subject to clause 11.1 below. The Agreement will automatically renew for a further period of three months at the end of each three month period, unless a party gives notice in accordance with 11.1.

2.8 The Services (and billing) will begin on the Commencement Date, unless otherwise agreed in writing.

3. QUALITY OF SERVICES

3.1 Unless We are prevented from doing so by a Force Majeure Event, We will provide Services which:

- (a) conform in all material respects with our description of them;
- (b) are carried out with reasonable care and skill;
- (c) are fit for any purpose We say the Services are fit for, or for any purpose for which You use the Services and about which You have informed Us, or We could reasonably expect You to use the Services; and
- (d) comply with all applicable statutory and regulatory requirements for supplying the Services in the United Kingdom.

3.2 These Terms apply to any replacement Services We supply to You in the unlikely event that the original Services do not conform with these Terms.

3.3 You must provide Us, in sufficient time, with any information and instructions relating to the Services as are necessary to enable Us to provide the Services in accordance with these Terms.

3.4 If You do not provide, or You provide Us with incomplete, incorrect or inaccurate information or instructions, We may cancel the Agreement by giving You written notice, or We may make an additional charge of a reasonable sum to cover any extra work that is required.

3.5 We are only able to provide the Services on the basis of the information which You provide to Us (including but not limited to the “owner” and other current staff contacts) and it is therefore essential that you notify Us in writing immediately if there are any errors or changes in the “owner”, other staff contacts or any other relevant information.

4. PROVISION OF SERVICES

4.1 We will supply the Services to You from the Commencement Date.

4.2 Our duties shall consist of such the following Services as are included in the Agreement Form accepted by Us: the receiving of incoming telephone calls, fax, e-mail messages intended for You, web-based enquiries and the dispatch to You of such messages by telephone, fax, SMS, e-mail or post. From time to time and on your instruction, We will make outbound telephone calls as defined in the applicable Agreement Form.

4.3 We will make every effort to complete the Services on time but there may be delays due to circumstances beyond our reasonable control. In this case We will complete the Services as soon as reasonably possible. We may have to suspend the Services if We have to deal with technical problems, or to make improvements to the Service. We will let You know in advance where this occurs, unless the problem is urgent or an emergency.

4.4 Equipment and Software: All software and hardware in whatever form provided by Us for the purposes of the Customer using the Services (“Verbatim Property”) remains the property of Us and is subject to this sub-clause, 4.5 and Clause 7. We grant you a non-exclusive, non-transferable licence to use any such software for the purpose of using the Services and for no other purpose. You shall not reproduce the software and shall keep it in confidence and shall not make any modifications to it.

4.5 All Verbatim Property will be at your risk from delivery and you undertake to insure it (and keep it insured) against all commercial risks to its full replacement value and to account to Us for any insurance proceeds in the event of a claim. You undertake to keep the Verbatim Property in good condition and secure and to return it to Us immediately on demand or on termination of the Agreement.

5. COMPLAINTS AND REMEDIES

5.1 If You consider that We have breached the Agreement, You must notify Us in writing within 7 days of the alleged breach. You must give Us a reasonable opportunity to remedy the breach. We will respond to your notification within a period of 7 -14 days.

5.2 If our response resolves the matter to your reasonable satisfaction, the breach will be considered remedied and any dispute shall be deemed finally settled, without You having any further recourse or remedy.

5.3 If our response does not resolve the matter to your reasonable satisfaction, it will be referred to Mediation before either party can refer the matter to court.

6. ADVERTISING

6.1 You undertake not to use our address and/or any telephone number terminating at our offices in the press, in publications or in products save for those telephone numbers that We may supply to You for such purpose within the Scope of the Agreement.

7. INTELLECTUAL PROPERTY RIGHTS AND THIRD PARTY DATA

7.1 The copyright, design right and all other intellectual property rights in (a) any Verbatim Property provided to You and (b) any materials and other documents or items that We prepare or produce for You in connection with the Services (“Reports”) will belong to Us absolutely. We license you on a non-exclusive basis to use and copy the Reports solely for the internal purposes of your business.

7.2 All third party data provided to Us by You shall, as regards Us, belong to You and shall be used by Us in order to fulfil our obligations under this Agreement. We accept no liability for the accuracy or updating of third party data that has been provided to Us by You.

7.3 In all instances where We are required to, We comply with the Data Protection Act 1998 (the “Act”) and our obligations hereunder do not prohibit Us from sharing data with government departments and similar bodies including the police and law enforcement agencies, the Courts (on production of a valid court order), foreign tax and customs authorities and other authorised persons or bodies. For the purposes of the Act, You will be the data controller and We will be the data processor.

8. SERVICE CHARGES AND PAYMENT

8.1 The Service Charges are invoiced monthly in advance by Direct Debit or by any other method as may be agreed between Us from time to time. Excess telephone calls and e-mail management fees are invoiced monthly in arrears.

8.2 All Service Charges under this Agreement shall be subject to VAT at the prevailing rate.

8.3 All invoices submitted by Us shall be treated as agreed unless You notify Us of any discrepancies within 7 days of the date of the invoice. The undisputed parts of invoices must be paid by the due date.

8.4 Excess call charges will be levied per call once the monthly call allowance has been exceeded. These charges will be levied monthly at the agreed rate. If the free call allowance is not used in one month it can be carried forward to the next month only – for example M1 rollover may only be used in M2 and not accumulated and carried over to M3 and M4.

8.5 We reserve the right to charge for receiving and checking incoming messages intended for You regardless of the method of receipt.

8.6 All sums due to Us under this Agreement shall be payable by You immediately on the date of the invoice or, in the case of direct debit, within 15 days from the date of the invoice and interest shall accrue on all overdue sums at the rate of 5% above the base rate of Lloyds Bank Plc from time to time applicable until payment in full.

8.7 The initial Service Charges or rates are in the accepted Agreement Form.

Notwithstanding this, after a full calendar month (as defined at 11.1) We reserve the right to review the Service Charges or rates and adjust them (whether up or down) to ensure that You are on the best Services plan taking into account actual call volumes subject to the following:

(a) Any revised Services plan will not be further reviewed or adjusted until it has been allowed to run for three full months; and

(b) Any revised Services plan will be subject to this Agreement unless specifically agreed otherwise and confirmed in writing.

8.8 In addition to clause 8.7, once an Agreement has been running for a period of not less than 12 months, We reserve the right to review the Service Charges rates which we may at our discretion increase by the change in RPI over that period or 5% (whichever is the greater) subject to Us giving You 30 days' notice before the increase takes effect. Further reviews and increases will thereafter occur annually.

8.9 We may, at our discretion, assign to You or change a credit limit. In the event the aggregate value outstanding from You exceeds this limit We reserve the right to terminate the Agreement by notice to You taking effect immediately

8.10 During the period that any payment under this Agreement remains outstanding when due, without prejudice to our other rights and remedies, We may suspend the performance of Services for You, without liability, We shall be entitled to be paid all sums due under this Agreement immediately and we may exercise our rights to terminate this Agreement.

8.11 In the event We consider that You have not adhered or will not adhere to these Terms or that we will not be able to provide the Services to You, for whatever reason, We reserve the right to terminate this Agreement by notice to You, taking effect immediately.

8.12 You agree to fully indemnify Us for all legal and other costs and expenses, loss, damage and liability that We may suffer or incur in enforcing any provision of this Agreement or taking any legal proceedings against You to recover any sums outstanding under this Agreement or being subject to such proceedings by a third party against Us in relation to any breach of this Agreement by You.

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9. LIMITATION OF LIABILITY

9.1 We will only receive Customer Material on the basis that you insure it for its full replacement value whilst in our possession. In the absence of negligence on our part, We do not accept liability for loss, damage, cost or expense relating to Customer Material in our possession regardless of circumstances.

9.2 We do not accept liability for the accuracy of any third party data provided to Us by You nor do We accept any liability that may arise from the use of such data and in providing such data You warrant that You have obtained all appropriate consents and permissions of the third parties concerned to use their data for any purposes which You intend for Us to use it.

9.3 If We fail to comply with these Terms, We shall not be responsible for any losses that You suffer or incur as a result, except for those losses which We could reasonably foresee would result from the failure to comply with these Terms.

9.4 You specifically accept that We shall have no liability to You if You are in breach of these Terms, including but not limited to clauses 3.5, 6, 7 and 8.

9.5 Subject to clause 9.6:

9.5.1 We shall not under any circumstances whatsoever be liable to You, whether in contract, tort (including negligence), breach of statutory duty or otherwise for any loss of contracts or goodwill, loss of profit or revenue or for any indirect or consequential loss or damages arising under, in connection with or as a consequence of the Agreement.

9.5.2 Our liability to You in respect of all other loss and damage arising under, in connection with or as a consequence of the Agreement, whether for breach of contract, tort (including negligence), breach of statutory duty or otherwise, shall in no circumstances exceed a limit per claim (or series of connected claims) of the Service Charge for the month in which the alleged breach occurred.

9.6 Nothing in this Agreement shall limit or exclude in any way our respective liabilities for:

- (a) death or personal injury caused by negligence; or
- (b) fraud or fraudulent misrepresentation; or
- (c) any other matter for which it would be illegal or unlawful for to exclude or attempt to exclude liability.

9.7 This clause shall survive termination of the Agreement.

10. EVENTS OUTSIDE OUR CONTROL

10.1 Neither You nor Us shall be liable for any loss or damage which may be suffered by the other due to causes or circumstances beyond the first party's reasonable control including but not limited to acts of God, weather, failure or interruption to power / telephone / internet supply, flood, drought, lightening, fire strike, lock out, trade disputes, government action, riot or terrorism.

11. TERMINATION AND REVIEW

11.1 We will provide Services under the Agreement for a minimum of three months and in the absence of written notice described herein the Agreement will automatically continue after the initial three months. Thereafter, You may terminate the Agreement upon the expiry of not less than three full months of the year notice in writing, such notice being on the notepaper of the Customer and signed by an authorised officer of the Customer. For the avoidance of doubt, a "full month of the year" means any 1 of the 12 months in a year. For example, if your Agreement commenced on 10 January, You would be entitled to first give notice on 9 April and assuming You do so before 30 April your notice period will expire 31 July.

11.2 Termination will not affect either party's outstanding rights or duties, including our right to recover from You any money You owe Us under these Terms.

11.3 For the avoidance of doubt, during any notice period, You remain bound by the terms of this Agreement and for the Service Charges We shall make for our Services during that period. We reserve the right to calculate such Service Charges on the average use during the previous three full months (and such sum will include monthly and usage charges) instead of the actual Service Charge incurred during the notice period

12. ASSIGNMENT

We shall have the right to assign or otherwise delegate all or any of our rights and obligations under this Agreement.

13. CONFIDENTIALITY

13.1 We shall treat all messages and calls as confidential. However, as stated at

7.3 above, should we be served with an appropriate Court Order we shall make disclosures required by such an Order and/or disclosures as may be required by law enforcement agencies.

14. NOTICES

14.1 Any notice, invoice or other document issued by Us shall be deemed to have been delivered if left at or sent by first class post, fax or e-mail (which includes e-mailing of invoices) to the address or number given in the Agreement unless otherwise advised by You. Our address for service is shown on the Agreement Form. Hand delivered, fax and email notices take effect on delivery and postal notices, two days after posting.

15. CALL RECORDING

15.1 All of our telephone calls are recorded for training and monitoring purposes. In the event You request that all calls including the transferred leg be recorded then We are able to do so but only in instances where this is specifically agreed within the Scope of the Agreement. This is subject to an additional charge.

16. GENERAL

16.1 If any Court or competent authority decides that any of the provisions of these Terms are invalid, unlawful or unenforceable to any extent, the Term will, to that extent only, be severed from the remaining Terms, which will continue to be valid to the fullest extent permitted by law.

16.2 The Agreement sets out the entire agreement between the parties relating to its subject matter. The Agreement can only be varied by a written document signed by both parties.

16.3 If We fail, at any time while these Terms are in force, to insist that You perform any of your obligations under these Terms, or if We do not exercise any of our rights or remedies under these Terms, that will not mean that We have waived such rights or remedies and will not mean that You do not have to comply with those obligations. If We do waive a default by You, such will not mean that We waive any

subsequent default by You. No waiver by Us of any of these Terms shall be effective unless We expressly say that it is a waiver and we tell you so in writing.

16.4 You agree that You will not use the Services for any improper, immoral or illegal purpose and You confirm that such use constitutes grounds for immediate termination of the Services and this Agreement by Us.

16.5 You agree not to send or deliver or cause to be delivered to our premises any noxious, harmful, illegal, immoral, perishable, dangerous or bulky items/material and in the event of such delivery We reserve the right to refuse to accept the items/material or to return it to you at your cost and risk.

16.6 These Terms shall be governed by English law and, subject to clause 16.7, You and We both agree to the exclusive jurisdiction of the English courts

16.7 If any dispute arises in connection with this Agreement, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure ("Mediation"). Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing ("ADR notice") to the other party to the dispute requesting a mediation. A copy of the request should be sent to CEDR. Unless otherwise agreed, the mediation will start not later than 28 days after the date of the ADR notice. No party may commence any court proceedings in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and the mediation has terminated.