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FACTSHEETS

Terms of appointment for a NED

09 May 2019

Note:

a) The terms applicable to a non-executive director will be affected particularly by the Company's Articles of Association, which must be checked. The Articles may modify or exclude the standard clauses of the model articles in the Companies (Model Articles) Regulations 2008 (or, for some older companies, Table "A").

b) Wording in square brackets is provisional, to be deleted or adapted as appropriate.

c) References to the UK Corporate Governance Code in the footnotes are to the revised Code that is effective from 1st January 2019.

d) As well as the Code it is advisable to be familiar with the Guidance on Board Effectiveness produced by the Financial Reporting Council (FRC Guidance).

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1. Appointment

1.1 Your appointment as a non-executive director of the Company will commence with effect on and from [date]. The appointment is subject to the Articles of Association of the Company as amended from time to time. [In accordance with the Articles you will be subject to reappointment at the next Annual General Meeting of the Company[1]] [and thereafter to annual/periodic re-election[2]]

(1) Check whether this applies under the Company's Articles of Association

(2) Check whether this applies under the Company's Articles of Association. Directors of companies subject to the UK Corporate Governance Code may be subject to re-election at regular intervals. See Section 3 and particularly 3.18 of the Code

1.2 [Your appointment is for an initial period of [3 years] subject to earlier termination by you or by the Company in accordance with Clause 8 below].

1.3 [The performance of individual directors, and of the Board and its committees, is subject to annual evaluation by the Board as described in the Company's Annual Report[3]].

(3) This clause is only required for companies subject to the UK Corporate Governance Code. See Section 3.21 of the Code

1.4 [Following your appointment you will receive an induction, including the opportunity to meet major shareholders[4]].

(4)There is no specific reference to induction in the new Code but it remains good practice and would support Principle 1.D and particularly 1.3 and 1.5 - see also the FRC Guidance

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2. Duties

2.1 You will, unless prevented by illness or other good and sufficient cause, attend [all] meetings of the Board of Directors of the Company and [all] meetings of any Committees or Sub-Committees to which you are appointed and in addition you will attend all General Meetings of the Company[5]. If you are unable to attend any meeting you are requested to send your apologies for absence.

(5) Normally directors are entitled under the Company's Articles of Association to attend and speak at shareholders' meetings, whether or not they hold any shares.

2.2 In addition to your duties under Clause 2.1 above you may also be asked to attend other functions, meetings or events relating to the Company from time to time and, subject to your availability, you may from time to time be consulted by the Chairman or other directors on matters to which your experience, knowledge or skills are of relevance.

2.3 You will undertake your duties to the best of your skill and ability and will discharge your responsibilities as a director of the Company in good faith in the interests of the Company, and in compliance with the statutory duties of a director under the Companies Act 2006.

2.4 You will also comply with the Company's policies and procedures, so far as they are applicable to your functions as a non-executive director of the Company.

2.5 You will devote such time and attention as is necessary for the proper discharge of your responsibilities as a director and the effective performance of your duties [but subject thereto you will not be expected to devote more than [X] half-days in any period of [6 months] to your functions as a non-executive director[6]].

(6) See UK Corporate Governance Code Section 2.15

2.6 Except as specifically authorised by the Board you have no personal authority to commit the Company or to enter into any legally binding obligation on behalf of the Company or to exercise any powers of the Company.

2.7 You will promptly report to the Chairman or (as appropriate) another director of the Company any wrongdoing on your part or on the part of any employee or director of the Company of which you become aware.

2.8 If you are required to register yourself or your personal service company with HM Revenue & Customs as a "Trust or Company Service Provider" under the Money Laundering Regulations 2007, you will be responsible for effecting such registration and for compliance with other requirements of the Money Laundering Regulations 2007 and applicable legislation.

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3. Fees and Expenses

3.1 Your remuneration as a non-executive director will be [such amount as may from time to time be voted by the Company in general meeting] or [at the rate of £ X per annum or such higher amount as may from time to time be determined by the Board within the limits of the directors' remuneration from time to time voted by the Company in general meeting][7] which shall accrue from day to day and be payable by equal [monthly instalments in arrear] or [quarterly instalments in arrear at the end of [March, June, September and December] in each year] during the continuance of your appointment.

(7) Check how directors' remuneration is determined under the Company's Articles of Association and adapt the wording of this clause as necessary

3.2 Subject to the production of receipts or other reasonable evidence of expenditure the Company will reimburse all travelling and other out of pocket expenses properly incurred by you in connection with your duties as a non-executive director.

3.3 [You will not be entitled to any additional fees or other emoluments for holding office as a non-executive director of any subsidiary of the Company].

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4. Confidentiality

4.1 You will not while you hold office as a director of the Company or at any time after you have ceased to hold office:

- use for your own benefit or the benefit of any other person, firm, company or organisation, nor
- disclose to any person, firm, company or organisation, nor
- divulge or publish any secret or confidential information[8] relating to the Company or its business or affairs or to any subsidiary or subsidiary undertaking of the Company or its business or affairs except in the proper performance of your duties, or with the prior authorisation of the Board, or as required by law.

(8) Legal protection of confidential information is somewhat limited although information that amounts to a trade secret will be protected by the Trade Secrets (Enforcement etc.) Regulations which came into force from 9th June 2018. The protection may be improved if the types of information which are regarded as confidential can be specified and the confidential nature of that information stressed.

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5. Other Obligations

5.1 You will provide all necessary information to enable the Company to comply with the statutory requirements in respect of its register of directors[9] [and to comply with all requirements of the UK Listing Authority[10]].

(9) See Sections 161 to 165 Companies Act 2006.

(10) The wording in square brackets is only applicable to companies with a Stock Exchange listing

5.2 [You will comply with [the Company's rules relating to share dealings by directors and their families in accordance with] the "Model Code for Securities Transactions by Directors" issued by the UK Listing Authority, and procure compliance, so far as you are able, by your spouse and any other persons affected[11]].

(11) This clause is only applicable to companies with a Stock Exchange listing

5.3 [You undertake that you will have sufficient time available to fully discharge your duties to the Company. You undertake that you have disclosed to the Board any other significant commitments, with a broad indication of the time involved, and will

inform the Board of subsequent changes[12]].

(12) This clause is desirable in all cases but only required for companies subject to the UK Corporate Governance Code. See Section 2.15

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6. Insurance Cover Indemnity and Access to Independent Advice

6.1 [The Company has arranged and intends to maintain directors' and officers' liability insurance cover in respect of legal action against its directors[13]].

(13) There is no specific reference to liability insurance in the new Code but maintaining directors and officers liability insurance is considered good business practice

6.2 Subject to and in accordance with the Company's Articles of Association[14] you will be indemnified by the Company against losses, expenses and liabilities incurred by you as a director in the actual or purported execution and/or discharge of your duties or in relation to them, including (in each case) any liability incurred by you in defending any civil or criminal proceedings in which judgment is given in your favour or in which you are acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on your part, or in connection with any application in which the court grants you, in your capacity as a director, relief from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company or any subsidiary of the Company [or of the Company's holding company].

(14) Check that the Company has power under its Articles of Association to give this indemnity

6.3 [You are entitled to obtain independent professional advice at the Company's expense where you judge this necessary to discharge your responsibilities as a director[15]].

(15) There is no specific reference to independent legal advice in the new Code but depending on the circumstances of the company it may be considered good business practice

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7. Data Protection

7.1 It will be necessary for the Company to record, keep and process personal data relating to you, on computer and/or in hard copy form, for administration and management purposes. The Company may need to disclose such data to others including its employees, associated companies and their employees, the Company's professional advisers, HM Revenue & Customs and other authorities. In certain circumstances it may be necessary for the Company to transfer data about you to countries outside the European Economic Area. Collection and processing of information relating to you will be in accordance with the Company's privacy notice/

which is available on the Company's intranet [OR available from [insert JOB TITLE or POSITION]. Before taking up your appointment you will be asked to sign and date a copy of the Company's privacy notice. If you are required to handle personal data of third parties as part of your appointment you must do so in compliance with the Company's data protection policy and privacy standards copies of which will be provided to you.

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8. Termination

8.1 Your appointment will terminate:

a. If you resign as a director, which you may do at any time by giving written notice to the Company; or
b. If you vacate office or are removed from office as a director in accordance with the Company's Articles of Association; or
c. [If the Board resolves to give you not less than [X] months[s] notice to terminate your appointment on the expiry of which you shall resign as a director of the Company and from all offices which you hold in any subsidiary of the Company[16]]; or
d. [If you:
   i. commit a material breach of your obligations under these terms of appointment; or /li>
   ii. act in a manner which, in the reasonable opinion of the Board, brings or is likely to bring you or the Company into disrepute or is materially adverse to the interests of the Company; or and the Board resolves to terminate your appointment with immediate effect, upon which you shall resign as a director of the Company and from all offices which you hold in any subsidiary of the Company[16]].
e. *(16) This will depend on the Company's Articles of Association. The paragraph will be unnecessary if the Articles provide machinery for the removal of directors by the Board. Most private companies do not have such provisions in their Articles and directors can only be removed by the shareholders. The procedures for this under s.168 Companies Act 2006 are cumbersome and protracted*

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9. Company's Property and Records

9.1 Following the termination for any reason of your appointment you will at the request of the Company return any property of the Company in your possession or under your control, including any electrical or electronic equipment and any security pass and keys, and deliver to the Company all documents and records (in electronic or hard copy form) in your possession or under your control, whether confidential or not, which relate to the Company's business or affairs or to any subsidiary or subsidiary undertaking of the Company or its business or affairs, and you will not retain any copies of or extracts from such documents or records.

9.2 If you have any information relating to the Company or work carried out for the Company which is stored on a computer that does not belong to the Company, this must be disclosed to the Company and the Company shall be entitled to download the information or work and/or supervise its deletion from the computer concerned.

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10. [Post Termination Restriction][17]

(17) If you are intending to include a restrictive covenant you are strongly advised to take legal advice before doing so.

By signing these terms of appointment and accepting fees as a non-executive director of the Company you agree that in order to protect the confidential information, trade secrets and business connections of the Company to which you have access as a result of your appointment, you will not (without the prior written consent of the Company) directly or indirectly and in any capacity (whether as director, shareholder, consultant or otherwise) for a period of [6] months after the termination of your appointment in competition with the Company carry on or be engaged or in any way interested in any company or business that provides (or is intending to provide) goods or services that are the same as or similar to those provided by the Company.]

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11. Entire Agreement

This letter is the entire agreement relating to your appointment. All, if any, previous agreements, assurances or understandings whether written or oral relating to your appointment are null and void.

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12. Changes to this letter

No changes to the terms of your appointment contained in this letter will be valid unless in writing and signed by or for and on behalf of both parties.

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13. Law and Jurisdiction

Any dispute that arises in relation to your appointment or the terms of this letter shall be governed and construed in accordance with the law of England and Wales and subject to the exclusive jurisdiction of the courts of England and Wales.

Signed by [.....] a director
For and on behalf of [Company]

Date .....

I confirm and agree to the terms of my appointment as a non-executive director of the Company as set out above.

Signed .....

Name .....

Date .....

IoD support for non-executive directors

Your value as a NED will be largely determined by the experience and abilities you already possess. But it is important to understand that being responsible for the governance of a business is increasingly a specialist occupation which requires knowledge of the UK corporate governance code and the unique position the role of director (both executive and non-executive) occupies in the law.

IoD Professional Development

IoD Professional Development (https://www.iod.com/training) offers a range of courses, including many open to non-members, which concentrate on the role of NED (see Role of the Non-Executive Director (https://www.iod.com/training/open-courses/role-of-the-non-executive-director)) or enhance a particular aspect of the NED's role.

IoD Professional Development courses can also round out your knowledge, for example:

Finance for Non-Financial Directors (https://www.iod.com/training/open-courses/finance-for-non-financial-directors)

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