

# OmnicomPRGroup

## GENERAL TERMS AND CONDITIONS OMNICOM PUBLIC RELATIONS GROUP B.V.

### 1. Definitions

- 1.1. In these General Terms and Conditions the following terms written with a capital letter have the definition as specified below.

<b>General Terms and Conditions</b>	these general terms and conditions;
<b>Article</b>	an article in these General Terms and Conditions;
<b>Services</b>	the services to be provided to Client by OPRG as specified in the Agreement in principle consisting of ongoing services ("retained services") and/or services on a project basis;
<b>Order Confirmation</b>	a written confirmation from OPRG to the Client concerning the offered Services, the Fees and the applicable term, possibly in the context of a Framework Agreement;
<b>Client</b>	the natural person, partnership, or legal person with whom OPRG has entered into an Agreement;
<b>OPRG</b>	Omnicom Public Relations Group B.V., registered at the Chamber of Commerce under number 33244543, established in (1183 DJ) Amstelveen at Prof. W.H. Keesomlaan 4 and (2511 CS) The Hague at Plein 20;
<b>Agreement</b>	the agreement between OPRG and Client that is established following written acceptance of the Order Confirmation by Client;

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**Omnicom Public Relations Group B.V. uses the trade names Ketchum, Porter Novelli and FleishmanHillard**

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<b>Parties</b>	OPRG and Client together;
<b>Framework Agreement</b>	a framework agreement between OPRG and Client concerning the Services to be provided to Client by OPRG as are to be determined in each Agreement;
<b>Fees</b>	has the meaning given in Article 6.1; and
<b>Expenses</b>	has the meaning given to it in Article 6.3.

## **2. Applicability**

- 2.1. These General Terms and Conditions apply to all Order Confirmations, Agreements, Framework Agreements, other agreements, deliveries, and other legal relationships between OPRG and Client. Any terms and conditions used by Client are hereby explicitly rejected.
- 2.2. Deviation from these General Terms and Conditions is only possible if this has been agreed between Parties in writing.

## **3. Order Confirmation**

- 3.1. An Order Confirmation is made in writing, is non-binding, and can be withdrawn or changed by OPRG at all times as long as it has not yet been accepted in by the Client.
- 3.2. Without prejudice to Article 3.1 any Order Confirmation shall lapse 5 days after the date of issue of the Order Confirmation as shown in the Order Confirmation if the Client has not duly signed the Order Confirmation and OPRG has not received the signed Order Confirmation within said 5 days.

## **4. Agreement**

- 4.1. Without prejudice to Article 3, the Agreement is established by written acceptance of the Order Confirmation by the Client and the satisfying of the associated conditions.
- 4.2. If the Client changes the Order Confirmation, without OPRG's express prior written approval the signing of the Order Confirmation shall not result in an Agreement.

## **5. Changes to the Agreement**

- 5.1. Changes to the Agreement are only effective if they are expressly agreed between Parties in writing.

## **6. Fees**

- 6.1. OPRG provides its Services against fees as further specified in the Framework Agreement and each Agreement ("**Fees**"). All Fees shall be increased with VAT, Expenses and Data Stack Fee.
- 6.2. The Fees to be paid by Client are determined by the hours spent multiplied with the agreed hourly rates between the parties, unless a total Fee ("fixed Fee") has been included in the Agreement.
- 6.3. The costs for the activities by third parties hired by OPRG ("**Expenses**") are charged to Client, increased with a surcharge of 10% for administration. This surcharge reflects, amongst other things, the added value of collaboration, negotiation with suppliers, obtaining discounts, and refinancing by OPRG.
- 6.4. OPRG is entitled to revise the hourly rates applicable at OPRG once per calendar year, which includes looking for compatibility with the development of the price index.
- 6.5. If there are differences between hourly rates stated on OPRG's website and an Order Confirmation, the hourly rates stated on the Order Confirmation prevail.
- 6.6. OPRG is entitled to charge all price increases of third parties, such as changes to labor wages, cost prices of raw materials, materials, transport, insurance premiums, social security premiums, import rights, and other governmental imposed levies to the Client.
- 6.7. OPRG is entitled to revise the Fees to be paid if the Services increase or if the Client's request a change to the nature or scope of the Agreement or the schedule for execution of the Agreement.

## **7. Data Stack Access and Fees.**

- 7.1. In performing the Services under this Agreement, Omnicom Public Relations Group BV Netherlands will access the Data Stack ("**Data Stack**"), defined as a suite of third-party licensed tools that collectively enhance quality and speed of data used to inform the following four key areas: (i) audience insights, (ii) cultural insights, (iii) influencer and media targeting, and (iv) listening to support planning and reporting. Individual tools in the Data Stack may change over time as new tools become available or need change, but the Data Stack will always be comprised of tools selected to inform these four areas.
- 7.2. In addition to the Fees Client agrees to pay OPRG a "**Data Stack Fee**" which is an amount equal to three percent (3%) of total Fees under the Agreement for OPRG's access to the Data Stack on Client's behalf. The Data Stack Fee is added to each invoice and is calculated based on the Fees billed in the applicable invoice.

- 7.3. The Client does not receive a license nor has access to the Data Stack directly. OPRG will access the Data Stack in the performance of the Services and OPRG will provide data and intelligence to Client gained from the use of the Data Stack.
- 7.4. All data and information received by Client from OPRG through or from the Data Stack will be used by Client solely for Client's own internal business purpose unless OPRG authorizes other uses in writing.
- 7.5. The Data Stack Fee does not include charges for other data sources outside of the tools in the four areas comprising the Data Stack as stipulated in Article 7.1. If Client approves OPRG's use of such other data sources those data charges will be deemed Expenses and shall be invoiced to Client accordingly.

## **8. Payment and Payment Conditions**

- 8.1. Unless agreed otherwise, OPRG shall bill in accordance with the billing schedule included in the Agreement.
- 8.2. All bills from OPRG are required to be paid within 30 days after the date of billing, without settlement, deduction, suspension, or delay.
- 8.3. Payment must be made to the bank account provided by OPRG.
- 8.4. If Client does not pay the amounts owed to OPRG within the period determined in Article 8.1, the Client shall be in default by operation of law.
- 8.5. Client owes OPRG a payment of the statutory commercial interest over the (part of the) payment that is not carried out within the period provided in Article 8.1 from the moment the period provided in Article 8.1 expires until the day of complete payment, as well as restitution of all costs OPRG has incurred to collect their claim, both legal and extralegal with a minimum of 15% of the unpaid billing amount.
- 8.6. In the event of non-timely payment, OPRG is entitled to suspend compliance with the Agreement until the moment of complete payment of any unpaid bill of the Client.
- 8.7. Every bill is immediately due in the event that Client is declared bankrupt, requests suspension of payment, there is preventive seizure of assets, and if the Client is dissolved.
- 8.8. OPRG reserves the right, in case 1) credit insurers decline coverage, or revise or withdraw coverage on Client or 2) Client's credit rating (through Euler Hermes or other source) adversely changes, to change the requirements as to terms of payment under this Agreement (including the right to require payment in advance) for Agency's fee and third party costs.

## **9. Execution of the Agreement**

- 9.1. All periods and dates regarding the delivery of Services indicated by OPRG are target dates and an indication. Exceeding the periods and/or dates does not constitute non-performance by OPRG and does not provide the Client with rights to complete or partial suspension, dissolution of the Agreement, or damages.
- 9.2. If a specific consultant is assigned to Client, OPRG retains the right to appoint a different consultant.
- 9.3. If OPRG requires approval from Client for carrying out specific Services or to incur specific costs under the Agreement and the Framework Agreement where applicable, OPRG may assume that every person working at or for the Client who provides the previously mentioned permission is authorized to do so. OPRG is not responsible for any delay in the execution of Services if the previously mentioned approval is not provided in time or because the person concerned is unavailable.

## **10. Intellectual Property Rights**

- 10.1. After Client has paid OPRG all outstanding amounts under the Agreement, OPRG shall transfer all its intellectual property rights, including copyrights, on all results of executed Services, including messages, tweets, text, pictures, videos, sound recordings, and artwork, to Client if possible.
- 10.2. After Client has paid OPRG all outstanding amounts under the Agreement, OPRG shall make efforts where possible to have third parties provide a license to Client for the intellectual property rights on results of the executed Services that belong to third parties under conditions to be agreed between OPRG and that third party.
- 10.3. Client shall only use the previously mentioned intellectual property rights of the executed Services for the purpose they were made as specified in or apparent from the Agreement.
- 10.4. The aforementioned intellectual property rights regarding results from executed Services in any case do not include intellectual property rights: (i) intellectual property rights on results of the Services that have been developed independently of the Services; (ii) intellectual property rights that exist before the Services commence; and (iii) knowhow obtained by OPRG as part of the provision of Services under the Agreement.
- 10.5. Client indemnifies OPRG against all claims of third parties concerning the intellectual property rights on the materials or data provided by Client, which are used in the execution of the Agreement.

## **11. Force Majeure**

- 11.1. OPRG is not liable for delays or non-performance of obligations under the Agreement that are the direct or indirect result of circumstances or causes outside its control.
- 11.2. If the activities under the Agreement cannot or can only partly be executed due to force majeure, OPRG shall contact the Client to come to an arrangement if possible.
- 11.3. Force majeure in any case includes the circumstance that OPRG cannot deliver in accordance with the Agreement because activities at third parties hired by OPRG have not been carried out or not in a timely manner.
- 11.4. In case of force majeure, the delivery and other obligations of OPRG may be suspended by OPRG. If this period in which OPRG's compliance with the obligations is not possible due to force majeure exceeds 60 days, both parties are entitled to dissolve the agreement without there being an obligation to payment of damages.
- 11.5. If, when the force majeure occurs, OPRG has already partly met its obligations, OPRG is entitled to separately bill that which has been carried out or delivered. The Client is obliged to pay this bill in that case.

## **12. Liability and Indemnity**

- 12.1. OPRG is not liable for the damages suffered by Client, unless there is an attributable shortcoming in OPRG's compliance with their obligations under the Agreement. In that case they are only liable for the resulting direct damages.
- 12.2. OPRG is not liable for indirect damages and causal damages, including but not limited to consequential damages, lost profits, missed savings, loss of data, and business interruption.
- 12.3. OPRG is, with due consideration of that which is determined in this Article 12, only liable for damages up to a maximum amount that is paid for this by OPRG's liability insurer. In cases the insurer does not offer coverage, the liability of OPRG is limited to the maximum amount that OPRG has charged to Client in the six months prior to the attributable shortcoming through fees exclusive of VAT and amounts charged by OPRG for purchased activities by third parties.
- 12.4. The entitlement to payment of damages expires if the Client has not claimed them in time, this being within 30 days after the damages have manifested. The client must therefore take all measures for prevention and/or limitation of damages.
- 12.5. The Client indemnifies OPRG against claims from third parties towards OPRG regarding the use of all results of the executed Services, except where and insofar as OPRG would

be liable towards Client on the basis of the Agreement if the payment were established by the Client.

- 12.6. OPRG is not liable for any damages if the damages are due to intent, gross fault, or can otherwise culpable acts by or on behalf of the Client. This includes damages caused by faults in the goods supplied by Client and caused by incorrect or incomplete data provided by Client.
- 12.7. OPRG cannot invoke any limitation of its liability as meant under this Article 12 if the damages concerned are due to its deliberate recklessness, this includes intent and the deliberate recklessness of its management.

### **13. Conflict of Interests**

- 13.1. OPRG has internal procedures to manage conflicts of interests between its (potential) clients. In the event that OPRG, a client, or potential client identifies a conflict situation, OPRG shall inform the (potential) clients concerned of the conflict situation and recommend a separate advisory relationship in order to protect the (commercial) confidentiality. In general, separate consultants and advisory teams shall be appointed, hard-copy and electronic files shall be separated, and separate facilities for client communications shall be provided in the event of a conflict situation, this under the supervision of OPRG's management or its legal advisers.

### **14. Termination**

- 14.1. Each party can terminate the Agreement towards the end of a calendar month with due consideration of a notice period of 3 (three) months.
- 14.2. Unless agreed otherwise, in the event of termination of the Agreement in accordance with Article 14.1: (i) all ongoing services ("retained services") shall end per the date the Agreement ends and (ii) all services on project basis shall be continued until the end date of the project as stated in the Agreement and the General Terms and Conditions shall remain fully applicable.
- 14.3. OPRG is entitled to terminate the Agreement with immediate effect if the Client does not meet its obligations under the Agreement and the General Terms and Conditions.
- 14.4. Each party is entitled to terminate the Agreement with immediate effect and without any further notice being required if: (i) the other Party is declared bankrupt or requests suspension of payment; (ii) the assets of the other Party are seized; or (iii) if the other Party is dissolved or its organization is disbanded. That which is determined in Article 14.1 applies if Client terminates the Agreement thusly.

14.5. The Client is entitled to request amendment or cancellation of some or all plans, schedules or work in progress under the circumstance of significant business or market change. The Client will reimburse the OPRG for any charges, expenses, fees, costs, remuneration actually incurred of the accepted services. In case of early termination by the client of some or all plans, the client is obligated to pay to the Agency an cancellation fee in the amount of 50% of the agreed upon fee related to the terminated plan(s), increased by the out of pocket expenses not included in the agreed upon fees already incurred by the Agency at the time of termination by the Client. The Agency reserves the right to negotiate if the aforementioned causes significant difficulty towards the Agency.

## **15. Staff**

15.1. The Client shall provide all necessary support for the execution of the activities of employees of OPRG and the third parties OPRG has hired for the execution of Services if they are carrying out activities at the offices of Client on behalf of the Agreement.

15.2. The Client is not permitted to hire employees of OPRG as well as employees of third parties hired for the execution of the Services or have these employees work for them in any other way, directly or indirectly, without prior written permission from OPRG for as long as the relationship between Client and OPRG continues as well as a year after this ends.

15.3. In the event of infringement of the prohibition of article 15.2 of the Terms and Conditions the Client shall forfeit to OPRG a fine payable forthwith and at once, without a warning or notice of default being required, amounting to € 20.000,- per infringement and a fine of € 1.000,- for each day or part thereof that the infringement continues, without prejudice to the right of OPRG to claim full damages instead of such a fine. Payment of the fine will not discharge the client from the obligations stipulated in article 15.2 of the Agreement that has been violated.

## **16. Confidentiality**

16.1. Each Party is obliged to secrecy concerning all confidential information they receive about the other Party and which is not already in the public domain. Parties also impose this obligation on their employees as well as third parties hired by them for the execution of the Agreement between Parties.

16.2. Information is in any case confidential if this is indicated as such by one of the Parties.

## **17. Protection of Personal Data**



17.1. For the application of this Article 16 the following terms have the following definitions:

**"Personal Data of the Client"** means Personal Data

- (i) that are delivered to OPRG by or on behalf of Client; and/or
- (ii) that are obtained or created by OPRG on behalf of the Client in relation to the execution of Services,  
And which in any case are processed by OPRG in relation to the execution of Services;

**"Controller"** has the meaning as determined in the GDPR;

**"Legislation concerning the Protection of Personal Data"** means the following, as is altered, expanded, or re-introduced or replaced from time to time:

- (i) Directive 2002/58/EG concerning Privacy and Electronic Communication;
- (ii) Regulation (EU) 2016/679 (the "**GDPR**") on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;
- (iii) all national laws and regulations that enact or supplement the European legislation named under (i) and (ii);
- (iv) all codes of conduct and guidelines imposed by national regulatory authorities concerning the laws, regulations, and European legislation referred to in (i) - (iii) above.

**"Processor"** has the meaning as determined in the GDPR;

**"Data Subject"** has the meaning as determined in the GDPR;

**"EU Legislation"** means all laws that are effective in the European Union, or any legislation that is effective in a member state of the European Union, including the data protection legislation;

**"Loss"** means loss, damage, liabilities, claims, demands, actions, fines, convictions, costs, and expenses (including reasonable legal and other professional costs);

**"Processing and Processed"** have the meaning as determined in the GDPR;

**"Personal Data"** has the meaning as determined in the GDPR;

**"Personal Data Breach"** has the meaning as determined in the GDPR; and

**"Supervisory Authority"** has the meaning as determined in the GDPR.

17.2. If a provision in this Article 16 conflicts with any other provision in this Agreement, the provision in this Article 16 prevails in terms of this contradiction.

17.3. Parties confirm that if the Services consists of the Processing of Client's Personal Data by OPRG, OPRG shall act as Processor in terms of such Processing and the Client as Controller.

- 17.4. If, as a result of the provision of Services by OPRG, a Party is of the opinion that the relationship between them is no longer in line with the intent of the Parties set out in Article 16.3, this Party shall inform the other Party thereof and Parties shall in good faith negotiate and agree the steps necessary to confirm the intent of Parties.
- 17.5. Each Party shall meet the obligations that are imposed by the applicable Legislation for the Protection of Personal Data with regards to the Personal Data of Client that are Processed by this Party as a part of the Services.
- 17.6. Each Party ensures that when the Services require that Client's Personal Data are Processed, the description of the Services shall contain the following information:
  - (i) the object and duration of the processing;
  - (ii) The nature and the purpose of the processing;
  - (iii) a description of the categories of Client's Personal Data that are Processed; and
  - (iv) a description of the categories of data subjects whose data are part of the Client's Personal Data which this Article 16 refers to.
- 17.7. OPRG shall only Process Client's Personal Data in accordance with Client's written instructions, including transfer of Client's Personal Data outside the European Economic Area, unless EU Legislation is applicable to OPRG which obliges OPRG to processing, in which case OPRG shall inform Client of that legal obligation, unless the EU Legislation prohibits this informing for serious reasons of general interest.
- 17.8. OPRG shall inform Client if, in their opinion, Client's instructions to OPRG under Article 16.7 forms a breach of Legislation on the Protection of Personal Data.
- 17.9. OPRG ensures that all persons authorized to Process Client's Personal Data are bound by a confidentiality obligation.
- 17.10. OPRG shall execute technical and organizational measures to ensure that Client's Personal Data, given the risks involved in Processing by OPRG or its sub-processors, are appropriately protected, taking into consideration the factors and measures determined in Article 32 of the GDPR.
- 17.11. OPRG shall inform Client of a Personal Data Breach as quickly as is reasonably possible after becoming aware of this breach.
- 17.12. Taking into consideration the nature of the Processing, OPRG shall, insofar as possible, assist Client with appropriate technical and organizational measures in order to meet their obligation to answer requests for execution of the rights of Data Subjects under the GDPR.

- 17.13. Taking into consideration the nature of the Processing and the information available to OPRG, OPRG shall assist Client in meeting its obligations under the following Articles of the GDPR:
- (i) Article 32 (Security of processing);
  - (ii) Articles 33 and 34 (Notification and communication of a Personal Data Breach);
  - (iii) Article 35 (Data protection impact assessment); and
  - (iv) Article 36 (Prior consultation by the Client of the Supervisory Authority).
- 17.14. After completion of the Services for which the Processing of Client's Personal Data was necessary (completely or partly), OPRG shall, depending on Client's choice, delete Client's Personal Data in OPRG's possession or under their control, unless EU Legislation obliges OPRG to store Client's Personal Data.
- 17.15. OPRG shall, upon Client's request, make all information available to Client that is necessary for showing a Party's compliance with the obligations determined in Article 17 and shall provide access for and assistance with audits and inspections carried out by or on behalf of Client.
- 17.16. Client guarantees that:
- (i) the provision of Client's Personal data to OPRG by or on behalf of Client for the purposes of Processing by OPRG and its approved sub-processors, when such Processing is permitted by Client, will be in accordance with the Data Protection Legislation; and
  - (ii) Client's instructions to OPRG in implementation of Article 16.7 will be in accordance with Data Protection Legislation.
- 17.17. When OPRG is obliged to provide Client or third parties assistance in accordance with Articles 16.7 up to and including 16.15 upon Client's request (including having an audit or inspection carried out and/or supplying information), such assistance shall exclusively be provided at Client's account and expense, except when assistance is a direct result of a breach by OPRG of one of their obligations under this Article 16, in which case the costs of such assistance shall be borne by OPRG.
- 17.18. Regardless of any other provisions in this Article 16, OPRG is entitled to outsource any part of the services which require the Processing of Personal Data to third parties, provided that the third party binds themselves to this Article 16, equal, or more or less similar provisions.
- 17.19. When, in accordance with the provisions of Article 82 of the GDPR, both parties are responsible for the action, or inaction, resulting in the remuneration of Losses by a Party, or both Parties, each Party shall only be liable for the part of the Losses that are in proportion with their respective responsibilities.

## **18. Transfer of Rights and Obligations**

- 18.1. The rights and/or obligations under any Agreement, Framework Agreement and these General Terms and Conditions cannot be transferred nor can any assurances be attached to them. Each transference or assurance in breach of this Article 18.1 is void.
- 18.2. In deviation of Article 18.1, OPRG is entitled to transfer their claims for payment under this Agreement or place assurances on these.

## **19. Applicable Law and Dispute Regulation**

- 19.1. Dutch law applies to each Agreement, the Framework Agreement, these General Terms and Conditions, and all (future) agreements that are related to this.
- 19.2. All disputes between parties resulting due to or in relation with each Agreement and the Framework Agreement must first be exclusively settled by the competent court in The Hague, without prejudice to the right of OPRG to submit the dispute to any other competent court if they wish.

## **20. Final Provisions**

- 20.1. If one or more Articles in these General Terms and Conditions are or become completely or partly void at any time, all other provisions in these General Terms and Conditions shall remain fully in effect. Parties shall determine a new provision as a replacement which gives shape to the intent of the Agreement and these General Terms and Conditions as much as possible.