

WORLD COUNCIL OF OPTOMETRY
MEETING OF THE GOVERNING BOARD
4 DECEMBER 2009

Agenda item 15

**PROPOSED SERVICE LEVEL AGREEMENT WITH COLLEGE OF
OPTOMETRISTS**

1. Introduction

- 1.1 The WCO secretariat was relocated to offices in the College of Optometrists on 1st July 2008 and the WCO was incorporated as a private limited company in the UK on 1st July 2009.
- 1.2 A Service Level Agreement (SLA) setting out the level of services which the WCO can expect/require from the College of Optometrists has been produced and it is enclosed for comment and agreement by the Governing Board members.

2. Proposed Service Level Agreement

- 2.1 The SLA is proposed for 3 years initially, with 12 months written notice for both the WCO and College of Optometrists of termination of the Agreement. Regular performance reviews are proposed (see section 2 of the proposed Service Level Agreement) and a review of service provision has already been undertaken. This included review of financial, IT, communications and event organisation support and advice to WCO.
- 2.2 The proposed SLA has been circulated to members of the Executive Committee for comment and comments from the Executive Committee meeting on 3rd December will be reported to the Governing Board members.
- 2.3 One comment has already been made that the WCO/WOF should ensure that that all costs to be incurred on its behalf by the College, such as legal or accountancy fees, should be notified to the WCO and agreement confirmed in advance of such costs being incurred. To ensure this, it is recommended that paragraph 2.4 include a reference to 'The College will provide and regularly update on a quarterly basis a list of estimates of all costs payable by WCO/WOF as listed under section 3'.
- 2.3 Governing Board members are asked to agree any amendments to the SLA and to authorise the Executive Director to sign the final version of the SLA on behalf of the WCO.

Caroline Hyde-Price

Executive Director

25^h November 2009

Dated

2009

**The College of Optometrists
and
World Council of Optometry
and World Optometric Foundation**

SERVICE LEVEL AGREEMENT

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THIS AGREEMENT is dated

2009

- (1) The **College of Optometrists** (Company Number RC000753) whose registered office is at 42 Craven Street, London WC2N 5NG (Registered Charity Number 1060431) (**'the College'**); and
- (2) **World Council of Optometry** (Company Number 6950128 whose registered office is at 42 Craven Street, London WC2N 5NG (**'WCO'**))
- (3) **World Optometric Foundation** at World Council of Optometry, 42 Craven Street, London WC2N 5NG (**'WOF'**)

RECITALS

(A) The College is a registered charity with the following objects:

- *The improvement and conservation of human vision;*
- *The advancement for the public benefit of the study of, and research into, optometry, ophthalmic optics and related subjects and the publication of the results thereof;*
- *The promotion and improvement for the public benefit of the science and practice of optometry, ophthalmic optics and related subjects;*
- *The maintenance for the public benefit of the highest possible standards of professional competence and conduct on the part of the members of the College.*

(B) WCO is company limited by guarantee with the following objects:

- (a) the enhancement and development of primary eye and vision care by Optometrists;
- (b) the promotion of high standards of education and practice by Optometrists including by the promotion of international coordination of Optometrists;
- (c) the provision of support to aid programmes directed at the provision of eye and vision care to societies in need; and
- (d) the promotion of the advancement of the science of Optometry.

WCO is in the process of applying for registration as a charity.

(C) WOF is a foundation registered in the United States of America foundation registered in the United States of America with the following objects:

- a) To facilitate the enhancement and development of eye and vision care worldwide while respecting the concept of optometry as defined by the World Council of Optometry
- b) To hold, invest, reinvest and generally administer the funds, making both principal and income available for the advancement and development of eye and vision care worldwide, based upon appropriate authorisation from the Board of Trustees of this Foundation

(D) The College submitted a bid (**'the Bid'**) to WCO to provide secretariat services to WCO and WOF in furtherance of its objects.

(E) The bid was accepted by WCO and the WCO relocated to the United Kingdom on 1st July 2008

- (F) This service level agreement (**'this Agreement'**) sets out the terms on which the College will provide services to WCO and WOF.

OPERATIVE PROVISIONS

1. Interpretation

- 1.1. In this Agreement, unless the context otherwise requires:
- 1.1.1. any reference to this Agreement or any other documents includes reference to this Agreement, its recitals and its Schedules or such other documents as varied, amended, supplemented, extended, restated and/or replaced from time to time;
 - 1.1.2. any reference to a recital, clause, sub-clause or Schedule is to a recital, clause, sub-clause or Schedule (as the case may be) of or to this Agreement and references within a schedule to paragraphs are to paragraphs of that schedule unless otherwise specified;
 - 1.1.3. use of the singular includes the plural and vice versa;
 - 1.1.4. use of any gender includes the other genders;
 - 1.1.5. any reference to a **'person'** includes a natural person, firm, government, state, partnership, company, corporation, association, organisation, institution, foundation, trust or agency (in each case whether or not having separate legal personality);
 - 1.1.6. any reference to a statute, statutory provision or subordinate legislation (**'legislation'**) shall (except where the context otherwise requires) be construed as referring to such legislation as amended and in force from time to time and to any legislation which re-enacts or consolidates (with or without modification) any such legislation; and
 - 1.1.7. any reference to a party is to a party to this Agreement and shall be deemed to be a reference to or include, as appropriate, its lawful successor, assignee or transferee.
- 1.2. The table of contents, the recitals and the headings in this Agreement are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.
- 1.3. The Bid and the Business Plan do not form part of this Agreement and shall not be legally binding upon either party.
- 1.4. Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

2. Provision of Services

- 2.1. The College shall for a period of 3 years from the date of this Agreement provide to WCO and WOF the services set out in Schedule 1 (**'the Services'**). At the end of that period the parties shall together consider whether to continue the provision of the Services for a further period or periods.
- 2.2. In providing the Services the College shall:
- 2.2.1. use all reasonable skill and care;

- 2.2.2. carry out all reasonable directions WCO and WOF may impose;
- 2.2.3. give WCO and WOF such information and advice regarding the Services as WCO and WOF may reasonably require.

2.3. In consideration for the provision of the Services, WCO and WOF shall:

- 2.3.1. pay to the College such costs as may be agreed from time to time between the parties in accordance with clause 2.4;
- 2.3.2. follow all reasonable instructions and directions of the College in order to facilitate the delivery of the Services;
- 2.3.3. give the College such information and advice as the College may reasonably require.

2.4. Unless otherwise agreed from time to time by the parties, the costs of the provision of the Services, including, but not limited to, those set out in Schedule 3, shall be payable by WCO and WOF. Such costs may be paid directly by WCO or WOF or may be paid by the College on behalf of WCO or WOF.

2.5. The College shall submit invoices to WCO and WOF monthly in arrears in respect of costs incurred by the College on behalf of WCO and WOF during the month accompanied by a schedule setting out the details of those costs.

2.6. WCO and WOF shall pay each of the College's invoices within 30 days of the date of the invoice being issued to such bank account as the College shall notify to WCO or WOF.

2.7. The College shall also prepare a record of the costs incurred by WCO and WOF directly in each month. This report shall be sent to WCO and WOF after the end of each month.

2.8. WCO and WOF may carry out performance reviews in accordance with the procedure set out in Schedule 2 and the parties shall operate and engage with such procedure in good faith.

3. **Entire Agreement**

3.1. This Agreement constitutes the entire agreement and understanding of the parties and supersede any previous agreement between them relating to the subject matter of this Agreement.

3.2. WCO and WOF acknowledge and agree that in entering into this Agreement, they do not rely on and will have no remedy in respect of any statement, representation, warranty, collateral agreement or other assurance (whether made negligently or innocently) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. Nothing in this clause will, however, operate to limit or exclude any liability for fraud.

4. **Termination**

4.1. Either party may immediately terminate this Agreement on written notice to the other party if:

- (a) the other party commits any continuing or material breach of any of the provisions of this Agreement and, in the case of such a breach which is capable of remedy, fails to remedy the breach within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
 - (b) an encumbrancer takes possession or an administrative receiver is appointed over any of the property or assets of the other party;
 - (c) the other party makes any voluntary arrangement with its creditors or becomes subject to an administration order; or
 - (d) the other party becomes insolvent or goes into liquidation under the provisions of any statutory requirement or voluntarily (except for the purposes of an amalgamation, reconstruction or other reorganisation).
- 4.2. If the Agreement is terminated by the College under clause 4.1, the College shall be entitled to all costs properly and reasonably incurred by the College up to and including the date of termination which are directly related to the Services and which the College using all reasonable endeavours is unable to mitigate.
- 4.3. Either party may terminate this agreement on 12 months' notice in writing.
- 4.4. Clauses 4 and 6 of this Agreement shall remain in full force and effect notwithstanding the termination of this Agreement.

5. Notices

- 5.1. Any notice given under this Agreement must be in writing and signed by or on behalf of the party giving it.
- 5.2. Any notice or document to be given or delivered under this Agreement must be given by delivering it personally or sending it by pre-paid first class post, or recorded delivery, or fax to the address and for the attention of the relevant party as follows:
- 5.2.1. to the College at:
42 Craven Street,
London WC2N 5NG
For the attention of the Chief Executive
 - 5.2.2. to WCO and WOF at:

42 Craven Street
London WC2N 5NG
For the attention of the Executive Director
- or such other address as either party may notify to the other.
- 5.3. Any such notice will be deemed to have been received if delivered personally, at the time of delivery provided that if delivery occurs before 9.00 am on a working day, the notice will be deemed to have been received at 9.00 am on that day; and if delivery occurs after 5.00 pm on a working day, or at any time on a day that is not a working day, the notice will be deemed to have been received at 9.00 am on the next working day. In the case of pre-paid first class or recorded

delivery post, at 9.00 am on the second working day after posting and in the case of fax, at the time of transmission.

- 5.4. In proving service, it will be sufficient to prove that delivery was made or that the envelope containing the notice or document was properly addressed and posted as a prepaid first class or recorded delivery letter or that the fax message was properly addressed and transmitted, as the case may be.
- 5.5. A notice given or document delivered under this Agreement will not be validly given or delivered if sent by e-mail.

6. **Confidentiality**

Neither party shall, without the prior written consent of the other, during or after the termination of this Agreement disclose to any third party any confidential information, including financial information, relating to the other party that is acquired as a result of the provision of the Services.

7. **Rights of Third Parties**

A person who is not a party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

8. **Further Assurance**

The parties shall (at their own expense) promptly execute and deliver all such documents and do all such things as the parties may from time to time reasonably require for the purpose of giving full effect to the provisions of this Agreement.

9. **Miscellaneous**

- 9.1. The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies.
- 9.2. Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power) except as otherwise provided in this Agreement.
- 9.3. Neither party shall acquire any rights in or to the other party's goodwill, trade marks, know-how, copyrights or other intellectual property rights of any kind whatsoever as a result of this Agreement provided that the College may, in the provision of the Services, use the trade-marks, know-how, copyright and other intellectual property rights of the Academy including its name and logo.
- 9.4. If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, it shall not affect the other provisions of this Agreement which shall remain in full force and effect.

9.5. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, and all the counterparts together shall constitute one and the same instrument.

10. **Variation**

No variation or purported variation to this Agreement shall be effective unless the same is made in writing and signed by the parties.

11. **Governing Law**

This Agreement shall be governed by and construed in all respects in accordance with the laws of England and the parties submit themselves to the exclusive jurisdiction of the English courts.

This Agreement has been entered into on the date stated at the beginning of it.

SCHEDULE 1

The Services

The College shall provide the following services on the basis that the precise scope of each service and any variation to it shall be agreed in writing between the parties from time to time.

1. Compliance:

- 1.1 preparation of management accounts and financial statements, liaison with the College's auditors;
- 1.2 provision of company secretarial services including, but not limited to, preparation and submission of forms and annual returns to the Registrar of Companies;
- 1.3 liaison with the Charity Commission for England and Wales including preparation and submission of Charity Commission annual returns and forms;
- 1.4 provision of advice and assistance in relation to compliance with fiscal requirements including completion of tax returns and liaison with Her Majesty's Revenue and Customs.

2. Membership services:

- 2.1 maintenance of membership database (but not updating contact details);
- 2.2 support with administration of education and training events for WCO members and others, including support for the WCO secretariat in the operation and delivery of WCO and WOF events (but not regular meetings), including but not exclusively the General Delegates Meeting, the World Conference on Optometric Education and the World Congress on Optometric Globalisation.

3. Publicity:

- 3.1 development and maintenance of WCO website, including provision of training/updating for WCO staff in the management of the website

4. Office Facilities and Services:

- 4.1 provision of such office facilities and services as may be reasonably required by WCO and WOF from time to time.

5. Such other services as may be agreed by the parties from time to time.

SCHEDULE 2

Performance Review of the Services

1. The purpose of a performance review shall be to ascertain whether to identify any ways in which the Services can be improved.
2. At any time (but not more than once in any year) WCO may serve on the College a notice specifying the date or dates of a performance review, which shall not be earlier than 20 days after service of the notice.
3. The performance review shall take place on the date or dates specified in the notice or such other dates as the parties may agree. Unless the parties agree otherwise, a performance review shall last for no more than two days and the parties shall strive to complete it in one day.
4. The performance review shall be carried out at any places specified in the notice at which the Services are provided or at such other places as the parties may agree.
5. During the performance review the College shall make available to WCO all relevant information and shall use all reasonable endeavours to make available for interview such of its personnel as WCO (acting reasonably) may have specified in its notice.
6. During the performance review WCO shall identify any failings that are immediately apparent and shall seek the comments of the College. The parties shall also discuss any aspect of the Services that they think can be improved, the means of doing so and any effect that adopting such means would have on the costs payable by WCO.
7. Within one working week of the performance review WCO shall prepare a written report setting out its findings and shall provide such report to the College for comment.

SCHEDULE 3

Costs Payable by WCO and WOF

1. Professional fees incurred by the College on behalf of WCO or WOF or incurred by WCO or WOF including, but not limited to, legal fees, accounting and auditing fees, with the exception of the legal costs for the establishment of WCO as a private limited company and charity in the UK;
2. Costs associated with the operation and on-going development of the website of WCO;
3. Salary and other employment costs of such WCO staff as may be agreed by the College and WCO from time to time;
4. Travel and travel-related accommodation costs and other expenses incurred by members of the Governing Board, committee members and staff of WCO and the staff of the College in the performance of the Services in accordance with any Standing Orders in Force from time to time;
5. Costs of provision of refreshments at WCO meetings and events;
6. Telephone, printing and stationery costs;
7. Bank charges.

Signed by
for and on behalf of
The College of Optometrists

.....
Bryony Pawinska
Chief Executive

Signed by
for and on behalf of
World Council of Optometry

.....
Caroline Hyde-Price
Executive Director

Signed by
For and on behalf of
World Optometric Foundation

.....
Caroline Hyde-Price
Permanent Trustee