

## **Carter Collins Myer Ltd – Terms & Conditions – September 2020**

### **Applicable law and dispute resolution**

The engagement letter, together with the schedule(s) of services and these terms of business, is governed by, and should be construed in accordance with, English law. Each party agrees that the Courts of England will have exclusive jurisdiction in relation to any claim, dispute or difference concerning the engagement letter and any matter arising from it on any basis. Each party irrevocably waives any right to object to any action being brought in those Courts, to claim that the action has been brought in an inappropriate forum, or to claim that those Courts do not have jurisdiction.

The parties agree that, in the event of a dispute or alleged breach, they will work together in good faith to resolve the matter internally and then, if necessary, to use a mutually agreed alternative dispute resolution technique prior to resorting to litigation.

We will not accept responsibility if you act on advice previously given by us without first confirming with us that the advice is still valid in light of any change in the law or in your circumstances. We will accept no liability for losses arising from changes in the law, or the interpretation thereof, that occur after the date on which the advice is given.

### **Interpretation**

If any provision of the engagement letter, schedule(s) of services or these terms of business is held to be void, then that provision will be deemed not to form part of this contract. In the event of any conflict between these terms of business and the engagement letter or schedule(s) of services, the relevant provision in the engagement letter or schedule(s) of services will take precedence.

### **Client identification**

As with other professional service companies, we are required to identify our clients for the purposes of the UK anti-money laundering legislation. We may request from you, and retain, and you will provide to us, such information and documentation as we require for these purposes, and you authorise us to make searches of appropriate databases. If we are not able to obtain satisfactory evidence of your identity, we will not be able to proceed with the engagement.

### **Period of engagement and termination**

Unless otherwise agreed in the engagement letter, our work will begin when we receive your implicit or explicit acceptance of that letter. Except as stated in that letter, we will not be responsible for any work done or advice given before that date.

Each of us may terminate our agreement by giving not less than 21 days' notice in writing to the other party except if you fail to cooperate with us or we have reason to believe that you have provided us with misleading information, in which case we may terminate this agreement immediately. Termination will be without prejudice to any rights that may have accrued to either of us before termination.

We reserve the right to terminate the engagement between us with immediate effect in the event of: your insolvency, bankruptcy or other arrangement being reached with creditors; an

independence issue or change in the law which means we can no longer act; failure to pay our fees by the due dates; or either party being in breach of their obligations if this is not corrected within 30 days of being asked to do so.

In the event of termination of this engagement, we will endeavour to agree with you the arrangements for the completion of work in progress at that time, unless we are required, for legal or regulatory reasons, to cease work immediately. In that event, we shall not be required to carry out further work, and shall not be responsible or liable for any consequences arising from termination.

In the event of early termination of this engagement, our fees will include time and other costs necessarily incurred to bring the engagement to an orderly conclusion.

We reserve the right to levy a charge for providing access to our working papers to a successor company, either where we are legally obliged to do so or at your specific request.

Should we resign or be requested to resign, we may issue a disengagement letter to ensure that our respective responsibilities are clear. Should we have no contact with you for a period of twelve months or more, we may issue to your last known address a disengagement letter and thereby cease to act.

### **Professional rules and statutory obligations**

We will observe and act in accordance with the bye-laws, regulations and ethical guidelines of our various professional bodies and accept instructions to act for you on the basis that we will act in accordance with those guidelines. We will not be liable for any loss, damage or cost arising from our compliance with statutory or regulatory obligations.

### **Confidentiality**

Unless we are authorised by you to disclose information on your behalf, we confirm that if you give us confidential information we will, at all times during and after this engagement, keep it confidential, except as required by law or as provided for in regulatory, ethical or other professional pronouncements applicable to us or our engagement.

You agree that, if we act for other clients who are or who become your competitors, to comply with our duty of confidentiality it will be sufficient for us to take such steps as we think appropriate to preserve the confidentiality of information given to us by you, both during and after this engagement. This may include taking the same or similar steps as we take in respect of the confidentiality of our own information.

In addition, if we act for other clients whose interests are or may be adverse to yours, we will manage the conflict by implementing additional safeguards to preserve confidentiality. Safeguards may include measures such as separate teams, physical separation of teams, and separate arrangements for storage of, and access to, information.

You agree that the effective implementation of such steps or safeguards as described above will provide adequate measures to avoid any real risk of confidentiality being impaired.

We may, on occasions, subcontract work on your affairs to other tax or accounting professionals. The subcontractors will be bound by our client confidentiality terms.

You agree that we may discuss your affairs openly with any other of your advisors unless you expressly instruct us to the contrary.

We reserve the right, for the purpose of promotional activity, training or for similar business purposes, to mention that you are a client. We will not disclose any confidential information.

If we use external or cloud-based systems, we will ensure confidentiality of your information is maintained. We may occasionally need to make available certain of your data held on our systems to our software suppliers in order to resolve processing problems that we may encounter. You authorise us to disclose to our software suppliers such information and data that we hold in order that they may investigate and rectify any problems we have experienced with your data during its processing, unless you expressly instruct us to the contrary.

### **Data Protection**

In this clause, the following definitions shall apply:

‘client personal data’ means any personal data provided to us by you, or on your behalf, for the purpose of providing our services to you, pursuant to our engagement letter with you;

‘data protection legislation’ means all applicable privacy and data protection legislation and regulations including PECR, the GDPR and any applicable national laws, regulations and secondary legislation in the UK relating to the processing of personal data and the privacy of electronic communications, as amended, replaced or updated from time to time;

‘controller’, ‘data subject’, ‘personal data’, and ‘process’ shall have the meanings given to them in the data protection legislation;

‘GDPR’ means the General Data Protection Regulation ((EU) 2016/679); and

‘PECR’ means the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003).

We shall each be considered an independent Data Controller in relation to the client personal data which we may obtain in order to deliver our contractual services. Each of us will comply with all requirements and obligations applicable to us under the data protection legislation in respect of the client personal data.

You shall only disclose client personal data to us where either:

(i) you have provided the necessary information to the relevant data subjects regarding its use (and you may use or refer to our privacy notice available at <https://www.uk-ccm.com/disclaimer> for this purpose);

(ii) you have a lawful basis upon which to do so, which, in the absence of any other lawful basis, shall be with the relevant data subject’s consent; and (iii) you have complied with the necessary requirements under the data protection legislation to enable you to do so.

Should you require any further details regarding our treatment of personal data, please in the first instance contact Andrew Barker.

We shall only process the client personal data:

(i) in order to provide our services to you and perform any other obligations in accordance with our engagement with you;

(ii) in order to comply with our legal or regulatory obligations; and (iii) where it is necessary for the purposes of our legitimate interests and those interests are not overridden by the data subjects' own privacy rights. Our privacy notice contains further details as to how we may process client personal data.

For the purpose of providing our services to you, pursuant to our engagement letter, we may disclose the client personal data to members of our company's network, our regulatory bodies or other third parties (for example, our professional advisors or service providers). The third parties to whom we disclose such personal data may be located outside of the European Economic Area (EEA). We will only disclose client personal data to a third party (including a third party outside of the EEA) provided that the transfer is undertaken in compliance with the data protection legislation.

We shall maintain commercially reasonable and appropriate security measures, including administrative, physical and technical safeguards, to protect against unauthorised or unlawful processing of the client personal data and against accidental loss or destruction of, or damage to, the client personal data.

In respect of the client personal data, provided that we are legally permitted to do so, we shall promptly notify you in the event that:

(a) we receive a request, complaint or any adverse correspondence from or on behalf of a relevant data subject, to exercise their data subject rights under the data protection legislation or in respect of our processing of their personal data;

(b) we are served with an information, enforcement or assessment notice (or any similar notices), or receive any other material communication in respect of our processing of the client personal data from a supervisory authority as defined in the data protection legislation (for example in the UK, the Information Commissioner's Officer); or

(c) we reasonably believe that there has been any incident which resulted in the accidental or unauthorised access to, or destruction, loss, unauthorised disclosure or alteration of, the client personal data.

Upon the reasonable request of the other, we shall each cooperate with the other and take such reasonable commercial steps or provide such information as is necessary to enable each of us to comply with the data protection legislation in respect of the services provided to you in accordance with our engagement letter with you in relation to those services.

Where we act as Data Processors:

We shall both comply with all applicable requirements of the data protection legislation. This clause is in addition to, and does not relieve, remove or replace, either of our obligations under the data protection legislation.

We both acknowledge that for the purposes of the data protection legislation, you are the data controller and we are the Data Processor.

In respect of the client personal data, unless otherwise required by applicable laws or other regulatory requirements, we shall:

(a) process the client personal data only in accordance with your lawful written instructions, in order to provide you with the services pursuant to our engagement with you and in accordance with applicable data protection legislation;

(b) disclose and transfer the client personal data to members of our company's network, our regulatory bodies or other third parties (for example, our professional advisors or service providers) as and to the extent necessary in order to provide you with the services pursuant to our engagement with you in relation to those services;

(c) disclose the client personal data to courts, government agencies and other third parties as and to the extent required by law;

(d) maintain written records of our processing activities performed on your behalf which shall include:

- (i) the categories of processing activities performed;
- (ii) details of any on cross border data transfers outside of the European Economic Area (EEA); and
- (iii) a general description of security measures implemented in respect of the client personal data;

(e) maintain commercially reasonable and appropriate security measures, including administrative, physical and technical safeguards, to protect against unauthorised or unlawful processing of any client personal data and against accidental loss or destruction of, or damage to, such client personal data.

(f) return or delete all the client personal data upon the termination of the engagement with you pursuant to which we agreed to provide the services;

(g) ensure that only those personnel who need to have access to the client personal data are granted access to it and that all of the personnel authorised to process the client personal data are bound by a duty of confidentiality;

(h) notify you if we appoint a sub-processor (but only if you have given us your prior written consent, such consent not to be reasonably withheld or delayed) and ensure any agreement entered into with the relevant sub-processor includes similar terms as the terms set out in this clause;

(i) where we transfer the client personal data to a country or territory outside the EEA to do so in accordance with data protection legislation;

(j) notify you promptly if:

- i. we receive a request, complaint or any adverse correspondence from or on behalf of a relevant data subject, to exercise their data subject rights under the data protection legislation or in respect of the client personal data;

- ii. we are served with an information or assessment notice, or receive any other material communication in respect of our processing of the client personal data from a supervisory body (for example, the Information Commissioner's Officer); or
- iii. in our reasonable opinion, an instruction infringes Data Protection legislation:
  - (k) notify you, without undue delay, in the event that we reasonably believe that there has been a personal data breach in respect of the client personal data;

(l) at your cost and upon receipt of your prior written notice, allow you, on an annual basis and/or in the event that we notify you of personal data breach in respect of the client personal data, reasonable access to the relevant records, files, computer or other communication systems, for the purposes of reviewing our compliance with the data protection laws and.

(m) not alter, copy, duplicate or change client personal data without your written authority.

You hereby explicitly acknowledge and consent that we may make use of cloud computing services to store Personal Information and other data relating to you. We will use commercially reasonable security technologies (such as encryption, password protection and firewall protection) to protect this Personal Information and other data from unauthorised disclosure. You, however, acknowledge and agree that it is impossible for us to guarantee the security of the Personal Information and other data with absolute certainty and that the use of cloud computing services may therefore entail certain risks. In addition to the provisions set out in Article 82 of the GDPR, we shall only be responsible, subject to any limitation of liability clause included in the body of the engagement letter, if it has finally judicially been determined that we did not take commercially reasonable measures to protect the Personal Information and other data from unauthorised disclosure.

Without prejudice to the generality of this clause, you will ensure that you have all necessary appropriate consents and notices in place to enable the lawful transfer of the client personal data to us.

Should you require any further details regarding our treatment of personal data, please contact Andrew Barker.

### **Electronic and other communication**

Unless you instruct us otherwise we may, if appropriate, communicate with you and with third parties via email or by other electronic means. The recipient is responsible for virus checking emails and any attachments.

With electronic communication, there is a risk of non-receipt, delayed receipt, inadvertent misdirection or interception by third parties. We use virus-scanning software to reduce the risk of viruses and similar damaging items being transmitted in emails or by electronic storage devices.

Nevertheless, electronic communication is not totally secure and we cannot be held responsible for damage or loss caused by viruses or for communications which are corrupted or altered after despatch. Nor can we accept liability for problems or accidental errors relating to this means of communication, especially in relation to commercially sensitive material. These are risks you must bear in return for greater efficiency and lower costs. If you do not wish to accept these risks, please let us know and we will communicate by paper mail, other than when electronic submission is mandatory.

Any communication by us with you sent through the post is deemed to arrive at your postal address two working days after the day on which the document was sent.

### **Fees and commissions**

Our fees are based upon the degree of responsibility and skill involved, the importance and value of the advice that we provide, the risk level, and the time necessary to complete the work.

Where we provide you with an estimate of our fees, then the estimate will not be contractually binding unless we state that this will be the case. Unless agreed to the contrary our fees do not include the costs of any third party, counsel or other professional fees.

Where requested we may indicate a fixed fee for the provision of specific services or an indicative range of fees for a particular assignment. It is not our practice to identify fixed fees for more than a year ahead as such fee quotes need to be reviewed in the light of events. If it becomes apparent to us, due to unforeseen circumstances, that a fee quote is inadequate, we reserve the right to notify you of a revised figure or range and to seek your agreement thereto.

Fees are charged separately for each of the main classes of work we perform for you and will be billed at appropriate intervals during the course of the year. Our fees are exclusive of VAT which will be added where it is chargeable.

Any disbursements we incur on your behalf and expenses incurred in the course of carrying out our engagement will be added to our invoices where appropriate.

You may be entitled to assistance regarding the payment of our fees, particularly in relation to any investigation into your tax affairs by HMRC. Assistance may be provided through insurance policies you hold or via membership of a professional or trade body. Until settled, you remain liable for our fees regardless of whether all or part are liable to be paid by your insurers.

Fees are due for payment within 30 days of the date on the invoice.

All queries regarding our invoices must be made in writing within 21 days of the invoice date. Any invoice received by you and not queried will be deemed to be accepted as a reasonable charge for our services.

We reserve the right to charge interest on overdue accounts at the current rate under the late Payment of Commercial Debts (Interest) Act 1998.

We reserve the right to terminate our engagement immediately if fees remain unpaid at the due date.

If, as a client, you are a non-natural person and are unable or unwilling to settle our fees we reserve the right to seek payment from the natural person (or parent entity) who gave us instructions on your behalf and we shall be entitled to enforce any fees due against them.

If you decide to disengage from us part way through an accounting or tax period, we reserve the right to charge you such time we have spent on your affairs at the point of disengagement based upon the degree of responsibility and skill involved, the importance and value of the advice that we provide, the risk level, and the time necessary to complete the work.

## **Lien**

Insofar as we are permitted to by law or professional guidelines, we reserve the right to exercise a lien over all funds, documents and records in our possession relating to all engagements for you until all outstanding fees and disbursements, including any relevant interest, are paid in full.

## **Commissions and other benefits**

In some circumstances, we may receive commissions or other benefits for introductions to other professionals, or in respect of transactions which we arrange for you. Where this happens, we will notify you in writing of the amount and terms of payment, and receipt of any such commissions or benefits. The same will apply where the payment is made to, or the transactions are arranged by, a person or business connected with ours. The fees you would otherwise pay will not normally be reduced by the amount of the commissions or benefits. Where, exceptionally, we do reduce the fees that we would otherwise charge by the amount of commission retained, we will apply the HMRC concession which allows VAT to be calculated on the net fee after deduction of the commission.

## **Client money**

We may, from time to time, hold money on your behalf. Such money will be held in trust in a non-interest bearing client bank account, which is segregated from the Company's funds. You accept responsibility for the security of the money so held, and we will not be responsible to you for such money if the bank in question is unable to meet its responsibilities. The client bank account will be operated, and all funds dealt with, in accordance with the Clients' Money Regulations of our professional bodies.

Any charges rendered by the bank on the operation of the client bank account relating to the money held in that account on your behalf, or on a separate client bank account designated to you, will be deducted as incurred.

We will return monies held on your behalf promptly, as soon as there is no longer any reason to retain those funds. If any funds remain in our client account that are unclaimed, and the client to which they relate has remained untraced for five years, or we as a company cease to practise, we may pay any such unclaimed monies to a registered charity.

## **Reliance on advice**

We will endeavour to record all advice on important matters in writing. Advice given orally is not intended to be relied upon unless confirmed in writing. Therefore, if we provide oral advice (for example during the course of a meeting or a telephone conversation) and you wish to be able to rely on that advice, you must ask for the advice to be confirmed by us in writing.

## **Implementation**

We will only assist with implementation of our advice if specifically instructed and agreed in writing.

## **Intellectual property rights**

We will retain all intellectual property rights in any document prepared by us during the course of carrying out the engagement, save where the law specifically provides otherwise.

You are not permitted to use our name in any statement or document you may issue unless our prior written consent has been obtained. The only exception to this restriction would be statements or documents that, in accordance with applicable law, are to be made public.

Nothing in the engagement letter, schedule(s) of services or these terms of business shall be construed so as to prevent Carter Collins & Myer Limited from using techniques, expertise and ideas gained during the performance of the engagement in the furtherance of other client work. Such use must not result in a disclosure of confidential information in breach of the Data Protection provisions above or an infringement of any of your intellectual property rights.

### **Internal disputes within a client**

In this clause:

“Entity” means the client as defined in the engagement letter, where the client is other than a sole individual;

“the Parties” means the individual(s) or other entity (or entities) who comprise the client, or are involved in the ownership or management of the client, and “Party” shall be construed accordingly; and

“the Main Contact” means the Party or Parties from whom we normally accept instructions in relation to the Entity.

If we become aware of a dispute between the Parties, it will normally be the case that our client is the Entity rather than any particular Party. Consequently, we will not provide information or services to one Party without the express knowledge and permission of all Parties.

Unless otherwise agreed by all Parties, we will continue to supply information to the normal contact address of the Entity for the attention of the Main Contact.

If we receive conflicting advice, information or instructions from different Parties, we will refer the matter back to the Main Contact as appropriate, and take no further action until the Main Contact has instructed us as to the action to be taken.

### **Investment advice**

If, during the provision of professional services to you, you need advice on investments, we may have to refer you to someone who is authorised by the Financial Conduct Authority, as we are not.

### **Limitation of liability**

We will provide our professional services with reasonable care and skill. Our liability to you is limited to losses, damages, costs and expenses caused by our negligence, wilful default or breach of contract, subject to a maximum liability as noted below

However, to the fullest extent permitted by law, we will not be responsible for any losses, penalties, surcharges, interest or additional tax liabilities arising from the supply by you or others of incorrect

or incomplete information, or yours or others' failure to supply any appropriate information (at all or on a timely basis) or your failure to act on our advice or respond promptly to communications from us or any public sector body (such as HMRC, Companies House etc.).

We cannot be responsible for matters outside our control such as delay by a government department in dealing with an enquiry, IT failures by government departments etc.

Professional advice is often time critical and we will not accept responsibility if you act on advice given by us on an earlier occasion without first confirming with us that the advice is still valid in light of any change in law or your circumstances. Furthermore, we will not accept any liability for losses arising from change in the law or the interpretation thereof that are first published after the date on which we gave advice.

You agree to hold harmless and indemnify us, our principals, subcontractors, consultants and staff, to the fullest extent permitted by law, for any loss suffered by you arising from any misrepresentation (intentional or unintentional) provided by you orally or in writing in connection with this agreement.

You have agreed that you will not bring any claim in connection with services we provide to you against any of our principals, subcontractors, consultants or staff personally.

Our work is not, unless there is a legal or regulatory requirement, to be disclosed to third parties without our written permission and we will accept no responsibility to third parties for any aspect of our professional services or work that is made available to them. Any person who is not party to this agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This clause does not affect any right or remedy of any person, which exists or is available otherwise than pursuant to that Act.

You agree to indemnify us and our agents in respect of any claim (including any claim for negligence) arising out of any unauthorised disclosure by you, or by any person for whom you are responsible, of our advice and opinions, whether in writing or otherwise. This indemnity will extend to the cost of defending any such claim, including payment at our usual rates for the time that we spend in defending it.

Other than where we act as an independent examiner in respect of a charity the company's liability as defined above which has arisen from an action or inaction by the company is limited to the fee paid for the work engaged and fully paid for by you irrespective of whether this gives rise to one or multiple claims. Regarding independent examination on charities our liability is unlimited.

### **Retention of papers**

You have a legal responsibility to retain documents and records relevant to your affairs for the relevant statutory period. During the course of our work, we may collect information from you and others relevant to your financial affairs. We will return any original documents to you if requested, on the understanding that you will retain them for the relevant statutory period.

Although certain documents may legally belong to you, we may destroy correspondence and other papers that we store, electronically or otherwise, which are more than 6 years old, except documents we think may be of continuing significance. You must tell us, in writing, if you require the return of any specific documents, or the retention of them for a longer period.

## **Employees**

'Related Party' or 'Related Parties' in this clause shall include your related parties or connected parties, including but not limited to your parent, subsidiaries, any holding companies, any subsidiary of any holding company, assigns, transferees, representatives, principals, agents, officers, directors, and entities in which you share common directorships, partnerships, memberships or shareholdings.

Our members of staff are allocated to work on your affairs on the understanding that you and your Related Parties will not offer employment to, nor employ, or solicit employment of any of our members of staff who have either been involved during our assignment, or with whom you have been dealing in any other capacity, unless our prior written consent is obtained. Whether or not such consent is given, we reserve the right to invoice you 30% (plus VAT) of the annual salary of the member of staff under his or her employment with you or your Related Party (to be disclosed by you or your Related Parties without delay). You shall pay such invoice within 30 days of receipt. The invoice shall be payable by you notwithstanding the fact that any offer or employment was not on your behalf and was by a Related Party.

## **Independence of the parties**

In connection with this engagement, each party is an independent contractor and as such will not have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose, except as agreed in writing.

## **Delay in enforcement of terms**

The delay or failure by any party to exercise or enforce any of its rights under this engagement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

## **Provision of Services Regulations 2009**

In accordance with the disclosure requirements of the Provision of Services Regulations 2009, our professional indemnity insurer for accountancy and tax work is CFC Underwriting Limited, of 85 Gracechurch Street, London, EC3V 0AA. The territorial coverage is worldwide excluding professional business carried out from an office in the United States of America or Canada and excludes any action for a claim bought in any court in the United States of America or Canada.

In accordance with the disclosure requirements of the Provision of Services Regulations 2009, our professional indemnity insurer for will writing services is Hiscox Insurance Company Limited of 1 Great St Helens, London, EC3A 6HX. The territorial coverage is worldwide excluding professional business carried out from an office in the United States of America or Canada and excludes any action for a claim bought in any court in the United States of America or Canada

## **The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013**

Where this engagement is with a private individual, we confirm that, where the Regulations apply, we have complied with the provisions of Regulations 9 to 14 and Regulation 16.

## **Quality control**

As part of our ongoing commitment to provide a quality service, our files are periodically reviewed by an independent regulatory or quality control body. These reviewers are highly experienced professionals and are bound by the same rules of confidentiality as our principals and staff.

If you have concerns with the service you have received please email: [james.green@uk-ccm.com](mailto:james.green@uk-ccm.com) with the full details of your situation and we will respond to you within 21 days.

### **Timing of our service**

If you provide us with all information and explanations on a timely basis in accordance with our requirements, we will plan to undertake the work within a reasonable period of time to meet any regulatory deadlines. However, failure to complete our services before any such regulatory deadline would not, of itself, mean that we are liable for any penalty or additional costs arising.