

# GEORGE HAY & COMPANY (WESTMINSTER) LLP

## TERMS OF BUSINESS

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These Terms of Business (updated May 2018) set out the terms on which we are to act for you and should be read in conjunction with our current letter of engagement. All work is carried out under these terms except where changes are expressly agreed in writing.

### **1. PROFESSIONAL RULES AND PRACTICE GUIDELINES**

- 1.1. We will observe and act in accordance with the bye-laws, regulations and ethical guidelines of the [Institute of Chartered Accountants in England and Wales] and accept instructions to act for you on the basis that we will act in accordance with those guidelines. In particular you give us the authority to correct errors made by HM Revenue and Customs (“HMRC”) where we become aware of them. We will not be liable for any loss, damage or cost arising from our compliance with statutory or regulatory obligations. Copies of these requirements are available for your inspection at our offices. The requirements are also available on the internet at: [\[www.icaew.com/en/members/regulations-standards-and-guidance\]](http://www.icaew.com/en/members/regulations-standards-and-guidance)

### **2 CONFLICTS OF INTEREST, INDEPENDENCE AND CONFIDENTIALITY**

- 2.1 You agree that we may reserve the right to act during this engagement for other clients whose interests are or may be adverse to yours, subject of course to the obligations of confidentiality referred to below. We confirm that we will notify you immediately should we become aware of any conflict of interest to which we are subject in relation to you. Where conflicts are identified which cannot be managed in a way that protects your interests then we regret that we will be unable to provide further services.
- 2.2 If there is a conflict of interest that is capable of being addressed successfully by the adoption of suitable safeguards to protect your interests then we will adopt those safeguards. Where possible this will be done on the basis of your informed consent.
- 2.3 If we become aware of a dispute between the parties who own or are in some way involved in the ownership and / or management of the entity, it should be noted that the addressee of our letter of engagement is our client (for example, the company / LLP / charity / trust / pension scheme / club / partnership / sole trader or, in the case of a personal tax client, the individual) and we would 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 place for which we send correspondence for the attention of the management of the entity. If conflicting advice, information or instructions are received from different members of management, we will refer the matter back to those charged with governance of the entity and take no further action until they have agreed the action to be taken.
- 2.4 We confirm that where you give us confidential information we shall at all times keep it confidential, except as required by law or as provided for in regulatory, ethical or other professional pronouncements (such as by our insurers, or part of an external peer review) applicable to our engagement. 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.
- 2.5 We reserve the right, for the purpose of promotional activity, training or for other business purpose, to mention that you are a client. As stated above, we will not disclose any confidential information.

- 2.6 You agree that it will be sufficient compliance with our duty of confidence for us to take such steps as we in good faith think fit to preserve confidential information both during and after the termination of this engagement.
- 2.7 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. We shall only be responsible 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.

### **3 OTHER SERVICES**

- 3.1 We will only assist with implementation of our advice if specifically instructed and agreed in writing.
- 3.2 The terms under which we provide our services are dealt with in a separate letter of engagement. We will also agree in a separate letter of engagement the provision of any services relating to investment business advice as defined by the Financial Services and Markets Act 2000.
- 3.3 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 or licensed by a Designated Professional Body, as we are not. However, as we are licensed by ICAEW, we may be able to provide certain limited investment services where these are complementary to, or arise out of, the professional services we are providing to you.

### **4 QUALITY CONTROL**

- 4.1 As part of our ongoing commitment to providing a quality service, our files are periodically subject to an independent quality control review. Our reviewers are highly experienced and professional people and, of course, are bound by the same requirements for confidentiality as our principals and staff.

### **5 DATA PROTECTION**

- 5.1 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).
- 5.2 We shall each be considered an independent data controller in relation to the client personal data. 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.
- 5.3 You shall only disclose client personal data to us where:
- (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 [www.georgehay.com](http://www.georgehay.com) 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.
- 5.4 Should you require any further details regarding our treatment of personal data, please contact Marino Achilleos.
- 5.5 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 (available at [www.georgehay.com](http://www.georgehay.com)) contains further details as to how we may process client personal data.
- 5.6 For the purpose of providing our services to you, pursuant to our engagement letter, we may disclose the client personal data to 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.
- 5.7 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.
- 5.8 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:
- (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 our processing of their personal data;
  - (ii) 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

- (iii) 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.

5.9 Upon the reasonable request of the other, we shall each co-operate 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.

## **6 LIMITATION OF THIRD PARTY RIGHTS**

6.1 A 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.

6.2 The advice, which we give you, is for your sole use and does not constitute advice to any third party to whom you may communicate it unless we have expressly agreed in the letter of engagement that a specified third party may rely on our work. We accept no responsibility to third parties, including any group company to whom the letter of engagement is not addressed for any aspect of our professional services or work that is made available to them.

## **7 LIMITATION OF LIABILITY**

7.1 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. 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 or your failure to act on our advice or respond promptly to communications from us or any public sector body (such as HMRC).

7.2 You agree to hold harmless and indemnify us, our principals, subcontractors and staff, to the fullest extent permitted by law, for any loss suffered by you arising from any misrepresentation (intentional or unintentional) supplied to us 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 or staff personally.

7.3 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.

7.4 Our work is not, unless there is a legal or regulatory requirement, to be made available 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.

## **8 APPLICABLE LAW**

8.1 These Terms of Business, in conjunction with any additional letters of engagement shall be governed by, and construed in accordance with, English law. Each party agrees that the Courts of England shall have exclusive jurisdiction in relation to any claim, dispute or difference

concerning these Terms of Business in conjunction with any letter of engagement and any matter arising from it. Each party irrevocably waives any right it may have to object to an 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.

## **9 FEES AND COMMISSIONS**

- 9.1 Our fees are based upon the degree of responsibility and skill involved, the importance and value of the advice that we provide, the level of risk, and the time necessarily occupied on the work.
- 9.2 If we provide you with an estimate of our fees for any specific work, then the estimate will not be contractually binding unless we explicitly state that this will be the case. Unless otherwise agreed to the contrary our fees do not include the costs of any third party, counsel or other professional fees.
- 9.3 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.
- 9.4 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 work for you will be added to our invoices where appropriate.
- 9.5 In some cases, you may be entitled to assistance with your professional 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. Other than where such insurance was arranged through us you will need to advise us of any such insurance cover that you have. You will remain liable for our fees regardless of whether all or part are liable to be paid by your insurers.
- 9.6 Fees are due for payment within 30 days of the date on the invoice.
- 9.7 All queries on fee accounts rendered by us must be raised in writing within 14 days of the account being issued. Any account received by you and not queried in writing within 14 days will be deemed to be accepted as a reasonable charge for the work done.
- 9.8 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 also reserve the right to terminate our engagement and cease acting for you on giving written notice if payment of any fees billed is unduly delayed. We intend to exercise these rights only where it is fair and reasonable to do so.
- 9.9 If a client company, LLP, trust, or other entity is unable or unwilling to settle our fees we reserve the right to seek payment from the individual (or parent entity) giving us instructions on behalf of the client and we shall be entitled to enforce any sums due against the group, entity or individual nominated to act for you.
- 9.10 Insofar as we are permitted to do so 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 are paid in full.
- 9.11 In some circumstances commissions or other benefits may become payable to us, in respect of

introductions to other professionals or transactions which we arrange for you. If this happens, you will be notified in writing of the amount, the terms of payment and receipt of any such commissions or benefits. The same applies where the payment is made to or the transactions are arranged by a person or business connected with ours.

- 9.12 If it becomes necessary for us to liaise with, or make a report to a regulator or public sector body, as a result of any statutory duty imposed upon us by legislation or other regulation, including after our engagement has ended, we reserve the right to charge for work undertaken in accordance with these reporting duties.
- 9.13 If, for any reason it becomes necessary for us to withdraw from the engagement, our fees for work performed up to that date will be payable by you.

## **10 THE BEST SERVICE**

- 10.1 We wish to provide a high quality of service which is both efficient and effective at all times. If at any time you would like to discuss with us how our service to you could be improved or if you are concerned with the service which you are receiving please let us know by telephoning one of the partners.
- 10.2 We undertake to consider any comments carefully and promptly and to do all we can to explain the position to you. We undertake to do everything reasonable to resolve any problems and if you are still not satisfied you may, of course, take up matters with the Institute of Chartered Accountants in England and Wales (“ICAEW”).

## **11 RETENTION OF AND ACCESS TO RECORDS**

- 11.1 You have a legal responsibility to retain documents and records relevant to your financial affairs. During the course of our work we will collect information from you and others relevant to your tax and financial affairs. We will return any original documents to you following the completion of the assignment. Documents and records relevant to your affairs are required by law to generally be retained six years from the end of the accounting period.
- 11.2 Whilst certain documents may legally belong to you, we intend to destroy correspondence and other papers that we store, which are more than ten years old, other than documents which we consider to be of continued significance. If you require retention of any documents for any longer period, you must notify us of that fact in writing.

## **12 ELECTRONIC AND OTHER COMMUNICATION**

- 12.1 Electronic communications are capable of non-receipt, delayed receipt, inadvertent misdirection or interception by third parties and therefore, we do not accept any responsibility for changes made to such communications after their despatch. It may, therefore, be inappropriate to rely on advice contained in an e-mail without obtaining written confirmation of it. As electronic communication is not totally secure, we do not accept responsibility for any errors or problems that may arise through the use of electronic communications and all risk connected with sending sensitive information relating to the entity are borne by you. If you do not agree to accept this risk (which will achieve greater efficiency and lower costs), you should notify us in writing that e-mail is not an acceptable means of communication, and we will communicate by paper mail, other than where electronic submission is mandatory.
- 12.2 It is the responsibility of the recipient to carry out a virus check on any e-mails and attachments received. However, we do use virus-scanning software to reduce the risk of viruses and similar damaging items being transmitted through e-mails or electronic storage devices.
- 12.3 Any communication by us with you sent through the United Kingdom postal system is deemed

to arrive at your postal address two working days after the day that the document was sent.

### **13 PROVISION OF SERVICES REGULATIONS 2009**

- 13.1 In accordance with the disclosure requirements of the Provision of Services Regulations 2009, our professional indemnity insurer is Axis Speciality Europe SE, of 60 Great Tower Street, London, EC3R 5AZ. 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 brought in any court in the United States of America or Canada.’
- 13.2 Details of our audit registration can be viewed at [www.auditregister.org.uk](http://www.auditregister.org.uk) for the UK under reference number C003471743, and [www.cro.ie/auditors](http://www.cro.ie/auditors) for Ireland, under reference number L003471913. We confirm that we are Statutory Auditors eligible to conduct audits under the Companies Act 2006.

### **14 CLIENTS’ MONEY REGULATIONS**

- 14.1 We may, from time to time, hold client money on your behalf. The money will be held in trust in a client bank account, which is segregated from the firm’s funds. The account will be operated, and all funds dealt with, in accordance with the Clients’ Money Regulations of the Institute of Chartered Accountants in England and Wales. Fees paid by you in advance for professional work to be performed and clearly identifiable as such shall not be regarded as clients’ money.
- 14.2 All client monies will be held in an interest-bearing account. To avoid excessive administration, interest will only be paid to you where the amount earned on the balances held on your behalf in any calendar year exceeds £25. If the total sum of money held on your behalf is enough to give rise to a significant amount of interest or is likely to do so, then we will put the money in a designated interest-bearing client bank account and pay the interest to you. Subject to any tax legislation, interest will be paid gross.
- 14.3 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, the ICAEW Client Money Regulations permit us to pay those monies to a registered charity.

### **15 CLIENT IDENTIFICATION**

- 15.1 As with other professional services firms, we are required to identify our clients for the purposes of UK anti-money laundering legislation. We may request from you, and retain, such information and documentation as we require for these purposes and / or 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.

### **16 STAFF**

- 16.1 Our staff are assigned to you on the mutual understanding that neither party will offer employment to, nor employ, the staff of the other who have been involved during the assignment, or dealing with you, within 12 months unless written consent has been obtained from either party. If such consent is given either party reserves the right to bill an appropriate fee of 25% of annual salary on appointment plus VAT.

### **17 INTELLECTUAL PROPERTY RIGHTS**

- 17.1 We will retain all copyright in any document prepared by us during the course of carrying out the engagement save where the law specifically provides otherwise.

## **18 TERMINATION OF AGREEMENT**

- 18.1 Each of us may terminate this agreement by giving not less than 21 days' notice in writing to the other party except where you fail to cooperate with us or we have reason to believe that you have provided us or HMRC 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 prior to termination.
- 18.2 In the event of termination of this contract, 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.

## **19 DISENGAGEMENT**

- 19.1 Should we resign or be requested to resign we will normally issue a disengagement letter to ensure that our respective responsibilities are clear. This will also assist in ensuring an efficient handover between professional advisers. Should we have no contact with you for a period of one year or more we may issue to your last known address a disengagement letter and hence cease to act.

## **20 INTERPRETATION**

- 20.1 If any provision of our letter of engagement or 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 letter of engagement or appendices, the relevant provision in the letter of engagement or schedules will take precedence.