

## STANDARD TERMS OF BUSINESS (effective May 2018)

The following terms of business apply to all engagements accepted by Exceed Accountants Limited. All work is carried out under these terms except where changes are expressly agreed in writing.

### 1. Applicable law

Our engagement letter, the schedules of services and our standard terms and conditions of business are 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 this engagement letter and any matter arising from it on any basis. Each party irrevocably waives any right it may have 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.

### 2. Client identification

As with other professional services firms, we are required to identify our clients for the purposes of the 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.

### 3. Clients' money regulations

We may, from time to time, hold 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 the institute. (ICAEW)

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 £25.00. 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.

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 firm cease to practise, then we may pay those monies to a registered charity.

### 4. Commissions or other benefits

In some circumstances we may receive commissions or other benefits for introductions to other professionals or transactions we or such associates arrange for you. Where this happens we will notify you in writing of the amount and the 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 as described below will not be reduced by the amount of the commissions or benefits. When we 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.

### 5. Complaints

We are committed to providing you with a high quality service that is both efficient and effective. However, should there be any cause for complaint in relation to any aspect of our service please contact Anthony Phillips or Gerhard Visagie. We agree to look into any complaint carefully and promptly and do everything reasonable to put it right. If you are still not satisfied you can refer your complaint to our professional body, the Institute of Chartered Accountants in England and Wales.

### 6. Confidentiality

Communication between us is confidential and we shall take all reasonable steps to keep confidential your information except where we are required to disclose it by law, by regulatory bodies, by our insurers or as part of an external peer review. Unless we are authorised by you to disclose information on your behalf this undertaking will apply during and after this 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.

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.

### 7. Data Protection

7.1 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).

7.2 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.

7.3 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 <http://www.exceedca.com/privacy-policy>

(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.

7.4 Should you require any further details regarding our treatment of personal data, please contact our data protection manager.

7.5 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 <http://www.exceedca.com/privacy-policy>) contains further details as to how we may process client personal data.]

7.6 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 firm'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.

7.7 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.

7.8 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:

(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.]

7.9 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.

## 8. Disengagement

Should we resign or be requested to resign we will normally issue a disengagement letter to ensure that our respective responsibilities are clear. Should we have no contact with you for a period of 12 months or more we may issue to your last known address a disengagement letter and hence cease to act.

## **9. Conflicts of interest and independence**

We will inform you if we become aware of any conflict of interest in our relationship with you or in our relationship with you and another Client unless we are unable to do so because of our confidentiality obligations. We have safeguards that can be implemented to protect the interests of different Clients if a conflict arises. 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.

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. We reserve the right to provide services for other Clients whose interests are not the same as yours or are adverse to yours subject of course to the obligations of confidentiality referred to above.

## **10. Electronic and other Communication**

Unless you instruct us otherwise we may, where 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 through emails or electronic storage devices. However electronic communication is not totally secure and we cannot be held responsible for damage or loss caused by viruses nor for communications which are corrupted or altered after despatch. We also cannot accept any 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 where 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 that the document was sent.

## **11. Fees and payment terms**

Our fees may depend not only upon the time spent on your affairs but also on the level of skill and responsibility and the importance and value of the advice that we provide, as well as the level of risk.

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 that will be the case.

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.

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.

We will bill monthly and our invoices are due for payment within 7 days of issue. 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.

Unless otherwise agreed to the contrary our fees do not include the costs of any third party, counsel or other professional fees.

It is our normal practice to ask Clients to pay by monthly direct debit and to periodically adjust the monthly payment by reference to actual billings.

We reserve the right to charge interest on late paid invoices at the rate of 3% above bank base rates under the Late Payment of Commercial Debts (Interest) Act 1998. We also reserve the right to suspend our services or to cease to act for you on giving written notice if payment of any fees is unduly delayed. We intend to exercise these rights only where it is fair and reasonable to do so.

If you do not accept that an invoiced fee is fair and reasonable you must notify us within 21 days of receipt, failing which you will be deemed to have accepted that payment is due.

If a Client company, trust or other entity is unable or unwilling to settle our fees we reserve the right to seek payment from the individual (or parent company) giving us instructions on behalf of the Client and we shall be entitled to enforce any sums due against the Group Company or individual nominated to act for you.

## **12. Implementation**

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

## **13. Intellectual Property Rights**

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.

## **14. Interpretation**

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

#### **15. Internal disputes within a Client**

If we become aware of a dispute between the parties who own or are in some way involved in the ownership and management of the business, it should be noted that our Client is the business 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 registered office for the attention of the directors/proprietors. If conflicting advice, information or instructions are received from different directors/principals in the business we will refer the matter back to the board of directors/the partnership and take no further action until the board/partnership has agreed the action to be taken.

#### **16. 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 Services Authority (FSA), as we are not. However, as we are licensed by the Institute of Chartered Accountants in England and Wales, we may be able to provide certain investment services that are complementary to, or arise out of, the professional services we are providing to you.

In particular, we may

- advise you on investments generally, but not recommend a particular investment or type of investment;
- refer you to a Permitted Third Party (PTP) (an independent firm authorised by the FSA), assist you and the PTP during the course of any advice given by that party and comment on, or explain, the advice received (but not make alternative recommendations). The PTP will issue you with his own terms and conditions letter, will be remunerated separately for his services and will take full responsibility for compliance with the requirements of the Financial Services and Markets Act 2000;
- advise you in connection with the disposal of an investment other than your rights in a pension policy or scheme;
- advise and assist you in transactions concerning shares or other securities not quoted on a recognised exchange;
- assist you in making arrangements for transactions in investments in certain circumstances; and manage investments or act as trustee (or donee of a power of attorney) where decisions to invest are taken on the advice of an authorised person.

We may also if applicable, on the understanding that the shares or other securities of the company are publicly traded:

- advise the company, existing or prospective shareholders in relation to exercising rights, taking benefits or share options, valuations and methods of such valuations;
- arrange any agreements in connection with the issue, sale or transfer of the company's shares or other securities;
- arrange for the issue of new shares; and
- act as the addressee to receive confirmation of acceptance of offer documents etc.

To enable us to provide you with a proper service, there may be occasions when we will need to contact you without your express permission concerning investment business matters. For example, it may be in your interests to sell a particular investment and we would wish to inform you of this. We may therefore contact you in such circumstances, but would only do so in our normal office hours. We shall of course comply with any restrictions you may wish to impose which you notify to us in writing.

In the unlikely event that we cannot meet our liabilities to you, you may be able to claim compensation under the Chartered Accountants' Compensation Scheme in respect of exempt regulated activities undertaken.

#### **17. Lien**

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.

#### **18. Limitation of third party rights**

The advice and information we provide to you as part of our service is for your sole use and not for any third party to whom you may communicate it unless we have expressly agreed in the engagement letter that a specified third party may rely on our work. We accept no responsibility to third parties, including any group company to whom the engagement letter is not addressed, for any advice, information or material produced as part of our work for you which you make available to them. A party to this agreement is the only person who has the right to enforce any of its terms and no rights or benefits are conferred on any third party under the Contracts (Rights of Third Parties) Act 1999.

#### **19. Period of Engagement and termination**

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

Each of us may terminate our agreement by giving not less than 14 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 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.

In the event of termination of our 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.

#### **20. Professional rules and statutory obligations**

We will observe and act in accordance with the bye-laws, regulations and code of ethics of the Institute of Chartered Accountants in England and Wales and accept instructions to act for you on this basis. In particular you give us the authority to correct errors made by 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. You can see copies of these requirements in our offices. The requirements are also available on the internet at [www.icaew.com/regulations](http://www.icaew.com/regulations).

## **21. Quality control**

As part of our on-going commitment to providing a quality service, our files are periodically reviewed by an independent regulatory or quality control body. These reviewers are highly experienced and professional people and, of course, are bound by the same rules for confidentiality our principals and our staff.

## **22. 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.

## **23. Retention of papers**

You have a legal responsibility to retain documents and records relevant to your financial affairs. During the course of our work we may collect information from you and others relevant to your tax and financial affairs. We will return any original documents to you [if requested]. Documents and records relevant to your tax affairs are required by law to be retained as follows:

- Individuals, trustees and partnerships:
  - with trading or rental income: 5 years and 10 months after the end of the tax year;
  - otherwise: 22 months after the end of the tax year;
- Companies, Limited liability Partnerships and other corporate entities:
  - 6 years from the end of the accounting period;

Whilst certain documents may legally belong to you, we may destroy correspondence and other papers that we store electronically or otherwise that are more than seven years old, except documents we think may be of continuing significance. You must tell us if you wish us to keep any document for any longer period.

## **24. The Provision of Services Regulations 2009**

Our professional indemnity insurer is International General Insurance Holdings, Forum House, 15-18 Lime Street, London, EC3M 7AN and Novae Underwriting Limited of 71 Fenchurch Street, London EC3M 4HH. 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 or Canada.

## **25. Limitation of Liabilities**

We will provide services as outlined in our Engagement Letter with reasonable care and skill. However, to the fullest extent permitted by law, we will not be responsible for any losses, penalties, surcharges, interest or additional tax liabilities where you or others supply incorrect or incomplete information, or fail to supply any appropriate information or where you fail to act on our advice or respond promptly to communications from us or the tax authorities.

You will not hold us responsible, 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 directors or employees personally.

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.

## **26. CAP**

Subject to the provisions of the following section, our liability in respect of breach of contract or breach of duty or fault or negligence or otherwise, howsoever arising out of or in connection with this engagement shall be limited to a multiple of twenty times the value of our fee in connection with the engagement on which the claim arises to cover claims of any sort whatsoever, including interest and costs. This provision shall have no application to any liability for death or personal injury or other liability for which exclusion or restriction is prohibited by law or to liability arising as a result of fraud on our part.

Any claim for breach of contract, breach of duty or fault or negligence or otherwise whatsoever arising out of or in connection with this engagement shall be brought against us within six years of the act or omission alleged to have caused the loss in question.

## **27. Proportionality**

Our liability to you in respect of breach of contract or breach of duty or fault or negligence or otherwise whatsoever arising out of or in connection with this engagement shall be limited to that proportion of the loss or damage (Including interest and costs) suffered by you, which is ascribed to us by a Court of competent jurisdiction allocating proportionate responsibility to us having regard to the contribution to the loss and damage in question of any other person (loss and damage having the same meaning as in the Civil Liability (Contribution) Act 1978). This provision shall have no application to any liability for death or personal injury or any other liability for which exclusion or restriction is prohibited by law or to liability arising as a result of fraud on our part.

## **28. Help us give you the best service**

We wish to provide a high quality of service 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 dissatisfied with the service you are receiving, please let us know.

We undertake to look into any complaint carefully and promptly and do all we can to explain the position to you. If we do not answer your complaint to your satisfaction you may of course take up the matter with the Institute.

### **29. Force Majeure**

Neither party to this agreement shall be liable in any way for failure to perform our respective Obligations under this engagement if the failure is due to causes outside the reasonable control of the party which has failed to perform.

### **30. Changes in the law**

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 the light of any change in the law or your circumstances.

We will accept no liability for losses arising from changes in the law or the interpretation thereof that are first published after the date on which the advice is given.

### **31. Our Employees**

You shall not entice or endeavour to entice away from us or employ any person under a contract of employment with us, without our prior consent, during the period of the engagement or within a period of twelve months from the date of termination of the engagement, whether alone or jointly with or as principal partner, agent, director, employee or consultant of any other person, firm or corporation, and whether directly or indirectly in competition with any of our businesses carried on during the period of engagement or Within a period of twelve months of the termination of the engagement.

In the event of one of our employees accepting an offer of employment with you or any entity connected with you (including employment or use whether under a contract of service or for services), a fee shall be payable by you to us calculated at the rate of 20% of the employee's first year salary package (including benefits). VAT will be charged in addition to the fee.

### **32. Your responsibilities**

In relation to our work on your behalf it is your responsibility to provide us with all information requested, within the timescales agreed between us. Where it is necessary for us to perform work outside the responsibilities set out in Appendix I to this letter, may we remind you that this will involve additional time being spent on your affairs and will therefore involve additional fees.

You will remain responsible for any decisions, which you make as a result of our advice and regard must be had to any restrictions on the scope of our work and to other factors, commercial and otherwise. of which you and your advisers are, or should be, aware by means other than our work.