

# PEARSON & MAWER -- TERMS OF BUSINESS

**TO: *Client Name here***

**Date of issue: JUNE 2019**

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These terms of business (updated May 2019) set out the terms on which we are to act for you and should be read in conjunction with our current engagement letter and associated appendices. All work is carried out under these terms except where changes are agreed in writing.

If any provision of our engagement letter and associated appendices or terms of business is judged 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 including the associated appendices, the relevant provision in the engagement letter and associated appendices will take precedence.

## **1. Applicable law**

1.1 This engagement letter shall be governed by, and construed in accordance with, English law. The courts of England shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning this engagement letter (including the firm's terms of business) 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

## **2. Limitation of liability**

2.1 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, subject to a maximum liability as noted in paragraph 2.8. 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.).

2.2 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.

2.3 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.

2.4 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.

2.5 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.

2.6 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 that advice to be confirmed in writing.

2.7 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.

2.8 This firm's liability as defined in paragraph 2.1 which has arisen from an action or inaction by the firm is limited to £100,000 irrespective of whether this gives rise to one or multiple claims.

## **3. Professional rules and practice guidelines**

3.1 We will observe and act in accordance with the bye-laws, regulations and ethical guidelines of the Institute of Financial Accountants (IFA) and accept instructions to act for you on the basis that we will act in accordance with those guidelines.

3.2 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:  
<https://www.ifa.org.uk/media/783996/Code-of-Ethics-final-080118.pdf>

#### **4. Conflicts of interest, independence and confidentiality**

- 4.1 You agree that we may 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.
- 4.2 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.
- 4.3 If we become aware of a dispute between the parties who own or are involved in the ownership or management of the entity or partnership, we will not provide information or services to one party without the express written permission of all other parties. Also, unless otherwise agreed by all parties we will continue to supply information to the client, defined as the address of our engagement letter to their normal place of business for the attention of the management of the entity or partnership. 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 or partnership and take no further action until they have agreed on the course of action to be taken.
- 4.4 Where you give us confidential information we shall keep it confidential, except as required by law or as provided for in regulatory, ethical or other professional pronouncements.
- 4.5 We may, on occasions, subcontract work to other professionals. Our subcontractors will be bound by our client confidentiality terms.
- 4.6 In the event of illness or permanent incapacity, we have made provision for your affairs to be looked after by our appointed alternate, you agree to them having access to our records which relate to you, if such a circumstance should arise.
- 4.7 We reserve the right, for the purpose of advertising, training or for other business purposes, to mention that you are a client, we will not disclose any confidential information.
- 4.8 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.

#### **5. Quality control**

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

#### **6. Data protection**

- 6.1 The Data Protection Act (DPA) 2018 and the General Data Protection Regulations (GDPR) contain a number of requirements in relation to the processing of personal data.
- 6.2 We take your privacy and the privacy of the information we process very seriously. We will only use your personal information and the personal information you give us access to under this engagement to administer your account and to provide the services that you have requested from us.
- 6.3 A copy of our privacy notice setting out our approach to handling your information can be found on our website
- 6.4 Any personal data received from you to comply with our obligations under The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017) will be processed only for the purposes of preventing money laundering or terrorist financing. No other use will be made of this personal data unless use of the data is permitted by or under an enactment other than the MLR 2017, or we have obtained the consent of the data subject to the proposed use of the data.

#### **7. Secure communication and data transfer**

- 7.1 We will communicate or transfer data using the following means:

- Post
- portal : 'CCH OneClick'
- emails which are neither password-protected nor encrypted only with permission granted by you prior to sending.

- 7.2 If you agree to us corresponding with you by email that is neither encrypted nor password protected, you hereby accept the risks associated with this form of communication

## **8. Fees and commissions**

- 8.1 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.
- 8.2 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.
- 8.3 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.
- 8.4 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.
- 8.5 If you pay your fees to us through our monthly easy payment plan, by Direct Debit, these payments are credited to your Account with us and will be used to offset our charges on an on-going basis. The monthly payments will not necessarily be in line with our invoicing for the work we undertake, as the timing of when we complete the work may vary and invoices may well not be issued on the anniversary of your payment plan. Therefore your account will be on-going and we will review the payments annually and advise you of a new monthly amount which will reflect the level of work undertaken during the previous 12 months plus any additional charges for the forthcoming 12 months. In the event that our appointment as your Accountant ceases, for whatever reason, we reserve the right to calculate any outstanding monies owed to us for any ad-hoc work we have undertaken and recorded that may not necessarily have been invoiced prior to the termination date and we reserve the right to request a balancing payment, whether through the Direct Debit method or other means, to clear your debt with us. In the event that after our final reconciliation of invoices to work scheduled on your account results in a Credit, we will issue a refund.
- 8.6 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.
- 8.7 If our services are not paid for by monthly direct debit, all Fees are due for payment strictly within 7 days of the date on the invoice.
- 8.8 All queries regarding our invoices must be made in writing within 5 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.
- 8.9 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 by giving written notice if payment of any invoice is unduly delayed. We intend to exercise these rights only where it is fair and reasonable to do so.
- 8.10 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.
- 8.11 We reserve the right to exercise a "particular" lien over all funds, documents and records in our possession, which relate to work undertaken for which there are outstanding fees and disbursements
- 8.12 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, we will notify you in writing of the amount, the terms of payment and receipt of any such commissions or benefits. [The fees you would otherwise pay 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 the commission retained, we will apply the HMRC concession which allows VAT to be calculated on the net fee after deduction of the commission.] [Your express written consent, which has been separately provided, to commission or other benefits being retained by us means we are not liable to account to you for these benefits. If you do not agree to this arrangement, we will only be able to retain any benefits if you give your full and informed consent on each occasion, having received full disclosure of the amounts involved.]
- 8.13 Regarding your affairs, if it becomes necessary for us to communicate with a regulator or public sector body, as a result of any statutory duty imposed upon us, we reserve the right to charge for time taken to fulfil these reporting duties, irrespectively of whether any communications occur during our engagement or after it has been terminated.

## **9. The best service**

- 9.1 We aim 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 [Insert name].

- 9.2 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 Financial Accountants (IFA).

Institute of Financial Accountants  
CS111, Clerkenwell Workshops  
27-31 Clerkenwell Close  
Farringdon  
London  
EC1R 0AT

#### **10. Retention of and access to records**

- 10.1 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.
- 10.2 Our policy is to destroy correspondence and other documents relating to your affairs that legally belong to us, which are more than six years old, other than documents which we consider to be of continued significance. Whilst we continue to act for you documents that legally belong to you will be retained for the same period, however, if you require retention of any documents for any longer period, you must notify us of that fact in writing. On cessation of appointment we reserve the right to destroy documents that legally belong to you after six months if you have not collected them.

#### **11. Provision of Services Regulations 2009**

- 11.1 In accordance with the disclosure requirements of the Provision of Services Regulations 2009, details of our professional indemnity insurer are provided on our website [www.pmaccountants.co.uk](http://www.pmaccountants.co.uk)

#### **12. Clients' Money Regulations**

- 12.1 We do not, and will not, hold any client money.
- 12.2 Monies paid in advance or by Direct Debit in advance, are not considered to be client money.

#### **13. Client identification**

- 13.1 We are required to identify our clients for the purposes of UK anti-money laundering and anti-terrorist financing 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 this engagement.

#### **14. Investment advice**

- 14.1 If during the provision of professional services to you, you require advice on investments, we will have to refer you to someone who is authorised by the Financial Conduct Authority (FCA), or is an appointed representative of an organisation who is authorised by the FCA or licensed by a designated professional body, as we are not.

#### **15. Intellectual property rights**

- 15.1 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.

#### **16. Your right to cancel**

**The following section is only applicable if you meet the legal definition of a consumer.**

- 16.1 You have the right to cancel this contract within 14 days without giving any reason. The cancellation period will expire after 14 days from when we receive your written agreement to this engagement. To exercise this right, you must provide us with a clear statement sent in the post or by email. To meet the cancellation deadline, it is sufficient for you to have sent your communication which confirms cancellation before the cancellation period has expired.
- 16.2 A right to cancel form is available from our website [website address] [attached], however, there is no requirement for you to use this form, only for us to give you access to a suitable form.
- 16.3 If you cancel this contract under your right to cancel, we will reimburse to you all payments received from you. We will make the reimbursement without undue delay and not later than 14 days after the day on which we are informed about your decision to cancel this contract. We will make the reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of the reimbursement.

16.4 We will provide services during the cancellation period only if you instruct us to start work before the expiry of the cancellation period in writing. If you have asked us to begin the performance of services during the cancellation period, you will be liable to pay for the work performed during this period.

**17. Termination of engagement**

17.1 This engagement may be terminated by either party giving not less than 14 days' written notice to the other party, except where you fail to cooperate with us or where we suspect that you have provided us or a regulatory or government body including HMRC with misleading information, in which case we may terminate this engagement immediately. Termination will be without prejudice to any rights that may have accrued to either of us prior to termination.

17.2 In the event of termination of this engagement, we will endeavour to agree with you arrangements for the completion of work in progress, 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.

17.3 On withdrawal from this engagement, our fees for work performed up to that date will be payable by you.

**18. Disengagement**

18.1 Should we withdraw from the engagement, we will normally issue a disengagement letter to ensure that respective responsibilities of both parties are clear. This will also help in ensuring an efficient handover between professional advisers.

18.2 Should we have no contact with you for a period in excess of one year we may issue a disengagement letter to your last known address and hence cease to act.