

## **Terms of business (data processor)**

**Updated May 2018**

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

### **1. Applicable law**

- 1.1. Our engagement letter 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 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.
- 1.2. 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.

### **2. Client identification**

- 2.1. 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. If we are not able to obtain satisfactory evidence of your identity, we will not be able to proceed with the engagement.

### **3. Confidentiality**

- 3.1. 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.
- 3.2. 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. These may include taking the same or similar steps as we take in respect of the confidentiality of our own information.

- 3.3. 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.
- 3.4. 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.
- 3.5. 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.
- 3.6. If we use external or cloud-based systems, we will take all reasonable steps to ensure confidentiality of your information is maintained.
- 3.7. We reserve the right, for the purpose of promotional activity, training or for other business purposes, to mention that you are a client. As stated above, we will not disclose any confidential information.

#### **4. Conflicts of interest**

- 4.1. 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. If conflicts are identified which cannot be managed in a way that protects your interests, 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, we will adopt those safeguards. In resolving the conflict, we would be guided by ICAEW's Code of Ethics, which can be viewed at [icaew.com/en/membership/regulations-standards-and-guidance/ethics](https://www.icaew.com/en/membership/regulations-standards-and-guidance/ethics). During and after our engagement, you agree that we reserve the right to act for other clients whose interests are or may compete with or be adverse to yours, subject, of course, to our obligations of confidentiality and the safeguards set out in the paragraph on confidentiality above.

#### **5. Data protection**

- 5.1. In this clause:

'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', 'personal data breach', 'processor', 'process' and 'supervisory authority' 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 both comply with all applicable requirements of the data protection legislation. This clause 5 is in addition to, and does not relieve, remove or replace, either of our obligations under the data protection legislation.
- 5.3. We both acknowledge that for the purposes of the data protection legislation, you are the data controller and we are the data processor. Appendix I of your engagement letter sets out the scope, nature and purpose of processing by us, the duration of the processing and the types of personal data and categories of data subject.
- 5.4. 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 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 5;
- (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; or
  - (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);
- (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 you 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.

5.5. Without prejudice to the generality of clause 5.2, 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.

5.6. Should you require any further details regarding our treatment of personal data, please contact our Data Protection Officer, Alison Godfrey, at [alison@godfreywilson.co.uk](mailto:alison@godfreywilson.co.uk).

## **6. Electronic and other communication**

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

6.2. 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 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 when electronic submission is mandatory.

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

## **7. Fees and payment terms**

- 7.1. Our fees are based on the time spent on your affairs (including telephone calls, letter writing and meetings) by our staff. Fees will usually be charged in accordance with the estimate provided to you before we commence our work. However, we reserve the right to charge additional fees should we find that additional work is necessary to complete the work assignment.
- 7.2. If it is necessary to carry out work outside the responsibilities outlined in our engagement letter it will involve additional fees. Accordingly we would like to point out that it is in your interests to ensure that your records are completed to the agreed stage. The fees and the scope of such work will be agreed with you in advance of the work.
- 7.3. We normally invoice at the end of each month for work done during that month. For audits and year-end accounts we normally invoice in 2 instalments: 50% at the end of the fieldwork and 50% when the final accounts are sent to you. All fees are subject to VAT and are payable within 30 days of issue. Any queries concerning invoices should be raised with us within 14 days of the date of issue of the invoice. Invoices are payable in full (including disbursements) before the report is signed and the financial statements are made available.
- 7.4. 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 if payment of any fees billed is unduly delayed.
- 7.5. In the event that this firm ceases to act in relation your company's affairs, you agree to meet all reasonable costs of providing information to the company's new advisors. In particular, you agree to meet these costs even where we are required by law to provide information to a successor firm.

## **8. Help us to give you the best service**

- 8.1. We are committed to providing you with a high quality service that is both efficient and effective. If, at any point 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 by contacting your engagement partner.

- 8.2. We undertake to look into any complaint carefully and promptly and to 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 our professional body, ICAEW.

## **9. Intellectual property rights and use of our name**

- 9.1. We will retain all intellectual property rights in any document prepared by us during the course of carrying out the engagement except where the law specifically states otherwise.
- 9.2. 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.

## **10. Interpretation**

- 10.1. If any provision of our engagement letter or terms of business is held to be void, 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.

## **11. Internal disputes within a client**

- 11.1. If we become aware of a dispute between the parties who own the business, or who are in some way involved in its ownership and management, 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/trustees. If conflicting advice, information or instructions are received from different directors or principals in the business, we will refer the matter back to the board of directors/trustees and take no further action until the board has agreed the action to be taken.

## **12. Investment advice**

- 12.1. Investment business is regulated by the Financial Services and Markets Act 2000. 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.

## **13. Lien**

- 13.1. Insofar as we are permitted to so by law or by 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.

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

- 14.1. 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.

#### **15. Period of engagement and termination**

- 15.1. 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.
- 15.2. 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.
- 15.3. 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 will not be required to carry out further work and shall not be responsible or liable for any consequences arising from termination.

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

- 16.1. We will observe and act in accordance with the bye-laws, regulations and Code of Ethics of ICAEW and will accept instructions to act for you on this basis. In particular you give us the authority to correct errors made by HMRC if 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 online at [icaew.com/en/membership/regulations-standards-and-guidance](http://icaew.com/en/membership/regulations-standards-and-guidance).
- 16.2. We confirm that we are statutory auditors eligible to conduct audits under the Companies Act 2006. When conducting audit work, we are required to comply with the Ethical and Auditing Standards issued by the FRC, which can be accessed online at <http://www.frc.org.uk/auditors/audit-assurance/standards-and-guidance/2016-auditing-standards>. We are also required to comply with the Audit Regulations and Guidance which can be accessed at [icaew.com/en/technical/audit-and-assurance/working-in-the-regulated-area-of-audit](http://icaew.com/en/technical/audit-and-assurance/working-in-the-regulated-area-of-audit).

## **17. Quality Control**

- 17.1. 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.
- 17.2. When dealing with HMRC on your behalf we are required to be honest and to take reasonable care to ensure that your returns are correct. To enable us to do this, you are required to be honest with us and to provide us with all necessary information in a timely manner. For more information about 'Your Charter' for your dealings with HMRC, visit [www.gov.uk/government/publications/your-charter](http://www.gov.uk/government/publications/your-charter). To the best of our abilities, we will ensure that HMRC meet their side of the Charter in their dealings with you.

## **18. Reliance on advice**

- 18.1. 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.

## **19. Retention of records**

- 19.1. 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, but may retain copies on our files for the purpose of fulfilling the services you have instructed us to provide.
- 19.2. Although 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 in writing if you wish us to keep any document for any longer period.
- 19.3. On disengagement, when you cease to be a client, we will retain documents and files relating to your affairs for 12 months. After 12 months we will destroy all documents and files, unless you tell us in writing that you would like us to retain them for a longer period.

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

- 20.1. We are registered to carry on audit work in the UK and Ireland by ICAEW. Details of our audit registration can be viewed at [www.auditregister.org.uk](http://www.auditregister.org.uk) for the UK and [www.cro.ie/auditors](http://www.cro.ie/auditors) for Ireland.
- 20.2. Our professional indemnity insurer is QBE, of Plantation Place, 30 Fenchurch Street, London, EC3M 3BD. 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.

## **21. Timing of our services**

21.1. 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.

## **22. Further information**

22.1. If you require further information or have any queries regarding our business terms and conditions, please contact our compliance manager, Alison Godfrey:

Godfrey Wilson Limited  
5<sup>th</sup> Floor, Mariner House  
62 Prince Street  
Bristol  
BS1 4QD

0117 971 3445

[alison@godfreywilson.co.uk](mailto:alison@godfreywilson.co.uk)