

**Standard Terms of Business (Business Recovery)**

Last Revised 1 November 2019

The following standard terms of business apply to all engagements accepted by Menzies LLP. All work carried out is subject to these terms except where changes are expressly agreed in writing.

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Menzies LLP is a limited liability partnership registered in England and Wales under number OC336077 to carry out audit work and is regulated for a range of investment business activities by the Institute of Chartered Accountants in England and Wales. Menzies Corporate Finance Limited is regulated by the Financial Conduct Authority for the conduct of corporate finance activities and is registered in England and Wales under number 04149097. Their registered office is at 1st Floor, Midas House, 62 Goldsworth Road, Woking, Surrey GU21 6LQ.

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## **1 Menzies LLP**

- 1.1 Menzies LLP is a limited liability partnership incorporated in England and Wales with registered number OC336077 and any reference in this document to "we", "us", "the firm" or "Menzies LLP Chartered Accountants", is a reference to Menzies LLP.
- 1.2 The word "partner" is a title and describes Menzies individuals who are members of Menzies LLP. A list of the members is available for inspection at the offices of the firm.

## **2 Professional obligations**

- 2.1 We will observe and act in accordance with the bye-laws and regulations of the Insolvency Practitioners Association, together with their code of ethics. Copies of these requirements are available for inspection in our offices. We accept instructions to act for you on this basis. In particular you give us authority to correct errors made by HM Revenue and Customs 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.

### *Professional indemnity insurance*

- 2.2 In accordance with the disclosure requirements of the Provision of Services Regulations 2009, our professional indemnity insurers are administered by Marsh Limited, of Tower Place, Lower Thames Street, London EC3R 5BU. 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.

## **3 Investment services**

- 3.1 Since we are not authorised by the Financial Conduct Authority then we may have to refer you to someone who is authorised if you need advice on investments.

## **4 Commissions or other benefits**

- 4.1 Commissions or other benefits may sometimes become payable to us in respect of introductions to other professionals or transactions we arrange for you, in which case you will be notified in writing of the amount, the terms of payment and receipt of any such commissions or benefits. The nature of the engagement and professional judgement would determine the frequency and detail required to ensure compliance with the code of ethics. You consent to such commissions or other benefits being retained by us without our being liable to account to you for any such amounts.

## **5 Client monies**

- 5.1 We may, from time to time, hold money on your behalf. Such 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 Client Money Regulations of the Insolvency Practitioners Association.
- 5.2 In order to avoid an excessive amount of administration, interest will only be paid to you where the amount of interest that would be earned on the balances held on your behalf in any calendar year exceeds £25. Any such interest would be calculated using the prevailing rate applied by Lloyds Bank Plc for small deposits subject to the minimum period of notice for withdrawals. Subject to any tax legislation, interest will be paid gross.

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If the total sum of money held on your behalf exceeds £10,000 for a period of more than 30 days, or such sum is likely to be held for more than 30 days, then the money will be placed in a separate interest-bearing client bank account designated to you. All interest earned on such money will be paid to you. Subject to any tax legislation, interest will be paid gross.

### **6 Fees**

- 6.1 Our fees are computed on the basis of time spent on your affairs by the Partners and our staff, including sub-contractors or consultants where necessary, and on the levels of skill and responsibility involved. Disbursements represent travel, accommodation and other expenses incurred in dealing with your affairs.
- 6.2 If it is necessary to carry out work outside the responsibilities outlined in this letter, we will advise you in advance. Any additional work will involve additional fees. Accordingly we would like to point out that it is in your interests to ensure that your records etc. are completed to the agreed stage.
- 6.3 We will arrange to invoice at periodic intervals during the course of the year and would remind you that all invoices rendered are due for settlement within 30 days. Invoices are payable in full (including disbursements) in accordance with the terms set out on the invoice.
- 6.4 Any query over a fee rendered must be raised in writing to us within 30 days of the date of the fee note. If no query is so raised within this period the fee will be due and payable without any right of further explanation, amendment or dispute.
- 6.5 Furthermore we reserve the right to charge interest and to apply collection charges for late payment pursuant to 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.
- 6.6 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.
- 6.7 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.
- 6.8 In the event that we cease to act in relation to your company's affairs you agree to meet all reasonable costs of providing information to the company's new advisers. In particular you agree to meet these costs where we are required by law to provide information to a successor firm.

### **7 Retention of records**

- 7.1 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 acting on your behalf and will return any original documents to you on completion of the assignment if requested, unless we are required by law or by professional guidelines to retain these ourselves. Documents and records relevant to your tax affairs are required by law to be retained as follows:

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### ***Individuals, trustees and partnerships:***

- with trading or rental income: five 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:***

- six years from the end of the accounting period.

7.2 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, other than documents which we consider to be of continuing significance or those that may need to be kept for a longer period as required by the applicable legislation. You must notify us in writing if you wish us to retain any document for a longer period. Our privacy notice contains further information on data retention. See [www.menzies.co.uk/legal](http://www.menzies.co.uk/legal).

## **8 Conflicts of interest and independence**

- 8.1 We reserve the right during our engagement with you to deliver services to other clients whose interests might compete with yours or are or may be adverse to yours, subject to 9 below. We confirm that we will notify you immediately should we become aware of any conflict of interest involving us and affecting you 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.
- 8.2 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 below.

## **9 Confidentiality**

- 9.1 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 statements relevant to our engagement.
- 9.2 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.
- 9.3 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.
- 9.4 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.
- 9.5 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.

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9.6 If we use external or cloud based systems, we will ensure confidentiality of your information is maintained.

9.7 This clause applies in addition to our data protection obligations.

### 10 Quality Control

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

### *Dealing with HM Revenue & Customs*

10.2 When dealing with HM Revenue & Customs 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 HM Revenue & Customs, see [www.hmrc.gov.uk/charter/index.htm](http://www.hmrc.gov.uk/charter/index.htm). To the best of our abilities, we will ensure that HM Revenue & Customs meet their side of the Charter in their dealings with you.

### 11 Help us to give you the right service

11.1 We are committed to providing you with a high quality service that is both efficient and effective. 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, by telephoning your engagement partner or the firm's Senior Partner, Julie Adams.

11.2 We undertake to look into any complaint carefully and promptly and to do all we can to explain the position to you. We will acknowledge your letter within five working days of its receipt and endeavour to deal with your complaint within eight weeks. If you feel that we have given you a less than satisfactory service, we undertake to do everything reasonable to address your concerns. If you are still not satisfied, you may of course bring the matter to the attention of our regulator, the Insolvency Practitioners Association, via the Insolvency Complaints Gateway by either: (a) calling the Insolvency Service Enquiry Line on 0300 678 0015; (b) completing and emailing the online complaints form on the Insolvency Service website; or (c) completing the online complaints form and posting it to IP Complaints, The Insolvency Service, 3rd Floor, 1 City Walk, Leeds LS11 9DA. If the complaint relates to a Northern Ireland insolvency appointment then please contact the Insolvency Practitioners Association, Valiant House, 4-10 Heneage Lane, London EC3A 5DQ.

11.3 In order for us to provide you with a high quality service on an ongoing basis it is essential that you provide us with relevant records and information when requested, reply to correspondence in a timely manner and otherwise follow the terms of the agreement between us set out in this Standard Terms of Business and associated engagement letter. We therefore reserve the right to cancel the engagement between us with immediate effect in the event of:

- failure to pay our fees by the due dates;
- either party being in breach of their obligations where this is not corrected within 30 days of being asked to do so.

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### 12 Applicable law

- 12.1 These Standard Terms of Business and the associated engagement letter are governed by, and construed in accordance with, English law. 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. 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.
- 12.2 If any provision in this Standard Terms of Business or any associated engagement letter, or its application, are found to be invalid, illegal or otherwise unenforceable in any respect, the validity, legality or enforceability of any other provisions shall not in any way be affected or impaired.

### 13 Changes in the law, in practice or in public policy

- 13.1 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, public policy or your circumstances.
- 13.2 We will accept no liability for losses arising from changes in the law or the interpretation thereof, practice, or public policy that are first published after the date on which the advice is given.

### 14 Internet connection

- 14.1 Unless you instruct us otherwise we may, where appropriate, communicate with you and with third parties via email or by other electronic means including a secure client portal. However internet communications are capable of data corruption 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. We do not accept responsibility for any errors or problems that may arise through the use of internet communication and all risks connected with sending commercially sensitive information relating to your business are borne by you. If you do not agree to accept this risk, you should notify us in writing that e-mail is not an acceptable means of communication.
- 14.2 It is the responsibility of the recipient to carry out a virus check on any attachments received.

### 15 Data protection

- 15.1. 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', 'processor', 'data subject', 'personal data', 'special category 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

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

- 15.2. Unless otherwise specified in our engagement letter, we shall each be considered an independent data controller in relation to the client personal data.
- 15.3. We shall both comply with all applicable requirements of the data protection legislation. This clause is in addition to, and does not relieve, remove or replace, either of our obligations under the data protection legislation.
- 15.4. Without prejudice to the generality of clause 1.2, 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. You may use or refer to our Privacy Notice located at [www.menzies.co.uk/legal](http://www.menzies.co.uk/legal) to advise relevant data subjects of our use of their data under this engagement.
- 15.5. 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 order to provide you with the services pursuant to our engagement with you and in accordance with applicable data protection legislation;
  - b. disclose and transfer the client personal data to members of our firm's network, our regulatory bodies or other third parties (for example, our professional advisors or service providers) as and to the extent necessary in order to provide you with the services pursuant to our engagement with you in relation to those services;
  - c. disclose the client personal data to courts, government agencies and other third parties as and to the extent required by law;
  - d. where we transfer the client personal data to a country or territory outside the EEA, do so in accordance with data protection legislation;
  - e. 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.
  - f. as a data controller, process the client personal data 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, located at [www.menzies.co.uk/legal](http://www.menzies.co.uk/legal), contains further details as to how we may process client personal data. Letters of engagement may also outline how client personal data is processed specifically in relation to the applicable service.
- 15.6. In respect of the client personal data, provided that we are legally permitted to do so, we shall notify you:
  - a. without undue delay and in any event, within 72 hours of becoming aware that it relates to you where 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.
  - b. without undue delay in the event that 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 Office).

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- 15.7. 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
- 15.8. Should you require any further details regarding our treatment of personal data, please contact our data protection representative, whose details can be found in our Privacy Notice at [menzies.co.uk/legal](http://menzies.co.uk/legal).

### **16 Limitation of third party rights**

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

### **17 HLB International**

- 17.1 The HLB International network comprises independent member firms in many countries, many of which use HLB as part of their business name. All member firms are associated with HLBI by reason of their membership, but are separate legal entities.
- 17.2 No member firm or other contact has authority to enter into any legal obligations on behalf of HLBI or any other member, nor is any member firm or contact an agent of, or in partnership with, HLBI or any other member firm. By introducing you to any firm, HLBI does not accept any liability for work, which the firm carries out on your behalf and you must make your own contractual arrangements directly with them.
- 17.3 You agree, as the client, that each firm you appoint has sole liability for the work covered by their engagement. You undertake not to bring any proceedings or make any claim whatsoever against any other member of HLBI or against HLBI itself, in relation to the work covered by each agreement.

### **18 Client identification**

- 18.1 In common with other professional services firms, we are required by the Proceeds to Crime Act 2002 and the Money Laundering Regulations 2017 to:
- maintain identification procedures for clients, beneficial owners of clients and persons purporting to act on behalf of clients;
  - maintain records of identification evidence and the work undertaken for the client ; and
  - report, in accordance with the relevant legislation and regulations.

We have a statutory obligation under the above legislation to report to the National Crime Agency (NCA) any reasonable knowledge or suspicion of money laundering. Any such report must be made in the strictest confidence. In fulfilment of our legal obligations, neither the firm's principals nor may staff enter into any correspondence or discussions with you regarding such matters.

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- 18.2 If we are not able to obtain satisfactory evidence of your identity and where applicable that of the beneficial owners, we will not be able to proceed with the engagement.

### 19 Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standards

- 19.1 Unless agreed specifically in a separate engagement letter, we are not responsible for your compliance with the *International Tax Compliance (United States of America) Regulations 2013*, produced as a result of FATCA. In particular, we are not responsible for the categorisation of any UK entity into either a Financial Institution (FI) or an active or passive Non-Financial Foreign Entity (NFFE) nor, if a Financial Institution, for its registration with the US Internal Revenue Service (IRS) and subsequent submission of the required annual returns to HM Revenue & Customs.

### 20 General Limitation of liability

- 20.1 We will provide services as outlined in this letter with reasonable care and skill. Our liability to you is limited to losses, damages, costs and expenses caused by our negligence or wilful default. 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. Further, we will not be liable to you for any delay or failure to perform our obligations if the delay or failure is caused by circumstances outside our reasonable control.
- 20.2 You will not hold us, our partners and staff, 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 partners or employees personally. This applies equally to fraudulent acts, misrepresentation or wilful default on the part of any party to the transaction and their directors, officers, employees, agents or advisers. However, this exclusion shall not apply where such misrepresentation, withholding or concealment is or should (in carrying out the procedures which we have agreed to perform with reasonable care and skill) have been evident to us without further enquiry. This applies equally to fraudulent acts, misrepresentation or wilful default on the part of any party to the transaction and their directors, officers, employees, agents or advisers. However, this exclusion shall not apply where such misrepresentation, withholding or concealment is or should (in carrying out the procedures which we have agreed to perform with reasonable care and skill) have been evident to us without further enquiry.
- 20.3 You have agreed that you will not bring any claim in connection with services we provide to you against any of our partners or employees personally.
- 20.4 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. You agree to indemnify us and our agents in respect of any claim (including any claim for negligence) arising out of any unauthorised disclosure by you or by any person for whom you are responsible of our advice and opinions, whether in writing or otherwise. This indemnity will extend to the cost of defending any such claim, including payment at our usual rates for the time that we spend in defending it.

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### **21 Intellectual property rights and use of our name**

- 21.1 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.
- 21.2 You are not permitted to use our name in any statement or document that 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.

### **22 Interpretation**

- 22.1 If any provision of our engagement letter or terms of business is held to be void for whatever reason, then that provision will be deemed not to form part of this contract, and no other provisions will be affected or impaired in any way. 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.

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

- 23.1 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/normal place of business for the attention of the directors/proprietors/partners/trustees. 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. In certain cases, we reserve the right to cease acting for the business/client entirely.

### **24 Disengagement**

- 24.1 If we resign or are asked to resign, we may issue a disengagement letter to ensure that our respective responsibilities are clear or notify you in writing of our resignation.

### **25 Draft/interim work or oral advice**

- 25.1 In the course of our providing services to you we may provide advice or reports or other work products in draft or interim form, or orally. However, final written work products will always prevail over any draft, interim or oral statements. Where you request it, we will provide you with written confirmation of matters stated orally.

### **26 Probate-type services**

- 26.1 The Register of ICAEW accredited probate firms specifies whether or not the firm is licensed or authorised by the ICAEW for non-contentious probate services.
- 26.2 As we are licensed/authorised for the reserved legal activity of non-contentious probate, in the unlikely event that we cannot meet our liabilities to you, you may be able to seek a grant from ICAEW's Probate Compensation Scheme. Generally, applications for a grant must be made to ICAEW within 12 months of the time you become aware, or reasonably ought to have been aware of the loss. Further information about the scheme and the circumstances in which grants may be made is available on ICAEW's website: [www.icaew.com/probate](http://www.icaew.com/probate).

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**Standard Terms of Business (Business Recovery)**

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- 26.3 If you would like to talk to us about how we can improve our service to you, or if you are unhappy with the service you are receiving, please let us know by contacting the firm's Senior Partner, Julie Adams or the Head of Legal Practice in a licensed firm, David Truman. We will consider carefully any complaint that you may make about our probate services as soon as we receive it and will do all we can to resolve the issue. We will acknowledge your complaint within five business days of its receipt and endeavour to deal with it within 8 weeks. Any complaint should be submitted to us by letter.
- 26.4 If we do not deal with it within this timescale or you are unhappy with our response you may of course take the matter up with the Legal Ombudsman. Complaints to the Legal Ombudsman should be made within six years of the act or omission or within three years of you becoming aware of the issue, and in either case within six months of our written response to your complaint to us. The contact details for the Legal Ombudsman are:

Letter: Legal Ombudsman, PO Box 6806, Wolverhampton, WV1 9WJ

E-mail: [enquiries@legalombudsman.org.uk](mailto:enquiries@legalombudsman.org.uk)

Telephone: 0300 555 0333

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