

General Terms of Business

These General Terms of Business (“**General Terms**”) apply to the delivery of services by KPMG to a client pursuant to a letter enclosing these General Terms and recording the engagement (“**the Engagement Letter**”).

Definitions

Services means the services to be delivered by us under the Engagement Letter.

KPMG or **we** (or derivatives) means the KPMG contracting party as identified by the Engagement Letter.

Engagement Team means KPMG Persons (excluding corporate bodies) involved in delivering the Services.

you (and derivatives) means the addressee (or addressees) of the Engagement Letter.

Services Contract means the contract formed by the Engagement Letter and these General Terms, together with any appended other terms applicable to the Services (“**Additional Terms**”).

KPMG Persons means the KPMG contracting party, each and all of our partners or directors, employees and agents, together with any other body associated with us and each and all of its partners, directors, employees and agents and “**KPMG Person**” shall mean any one of them.

Other KPMG Person(s) means, collectively or individually, KPMG Persons who are not members of the Engagement Team.

agents (when referable to KPMG) means persons whom we authorise to act on our behalf or whom we treat as our employees, and for whose conduct we accept responsibility, in connection with the Services.

Other Beneficiaries means any person or organisation identified in and for whom you sign the Engagement Letter (other than you) as a beneficiary of the Services or any product thereof.

Our responsibilities

1. The Engagement Letter shall set out the Services to be delivered by us and associated matters and may vary these General Terms.
2. The Services shall be delivered with reasonable skill and care.
3. We shall form an Engagement Team, to include individuals (if any) named in the Engagement Letter. We may substitute any who are named for others of equal or similar skills but we shall consult you before doing so.
4. We may acquire sensitive information concerning your business or affairs while delivering the Services (“**Confidential Information**”). We shall preserve the confidentiality of Confidential Information and we shall not disclose it beyond the Engagement Team unless permitted by you or by this clause. We shall comply with the confidentiality standards of the ICAEW and we shall adhere to the confidentiality restrictions of any other UK authority with powers over us, as well as any obligations imposed on us by English law. We shall be entitled to comply with any requirement of English law, the ICAEW, or any other UK regulatory body with powers over us, to disclose Confidential Information. Information relating to you, to our relationship with you, and to the Services, including Confidential Information, may be shared by us with Other KPMG Persons, and may be accessed by other parties who facilitate the administration of our business or support our infrastructure. We shall remain responsible for preserving confidentiality if Confidential Information is shared with Other KPMG Persons or accessed by such other parties. We may remove, or arrange for the removal of, names and any other identifiers from Confidential Information and then use such anonymised information for lawful purposes chosen at our discretion. This clause shall not apply where Confidential Information properly enters the public domain. This clause shall not prohibit our disclosure of Confidential Information, in confidence, to our professional indemnity insurers or advisers.

For the purposes of marketing or publicising or selling our services we may wish to disclose that we have performed work (including the Services) for you, in which event we may identify you by your name and we may indicate only the general nature or category of such work (or of the Services) and any details which have properly entered the public domain.
5. We may supply written advice or confirm oral advice in writing or deliver a final written report or make a final oral presentation. We may also supply oral, draft or interim advice or reports or presentations but in such circumstances our written advice or our final written report shall prevail. No reliance shall be placed by you on anything draft or interim. Where you wish to rely on anything provided orally, you shall inform us and we shall supply final documentary confirmation.
6. We shall not be obliged to update any advice, report or other product of the Services, oral or written, for events occurring after the advice, report or product concerned has been issued in final form.

7. Any product of the Services in any form or medium shall be supplied for your benefit and information only. Save as may be required by law or by a competent regulatory authority (in which case you shall, unless prohibited by law, inform us in advance), it shall not be copied, referred to or disclosed by you, in whole (save for your own internal purposes) or in part, without our prior written consent. You shall not quote our name or reproduce our logo in any form or medium without our prior written consent. You may disclose in whole any product of the Services to your legal and other professional advisers if seeking advice in relation to the Services, provided that when doing so you inform them that (i) disclosure by them (save for their own internal purposes or where compelled) is not permitted without our prior written consent, and that (ii) to the fullest extent permitted by law we accept no responsibility or liability to them in connection with the Services.
8. Any advice, opinion, statement of expectation, forecast or recommendation supplied by us shall not amount to any form of guarantee that we have determined or predicted future events or circumstances.

Ownership

9. We shall retain ownership of the copyright and all other intellectual property rights in the product of the Services, whether oral or tangible, and ownership of our working papers. You shall acquire ownership of any product of the Services in its tangible form on payment of our Charges. For the purposes of delivering services to you or other clients, KPMG, the Engagement Team and Other KPMG Persons shall be entitled to use, develop or share with each other knowledge, experience and skills of general application gained through performing the Services.

Our charges

10. We shall render invoices in respect of the Services comprising fees, outlays and VAT thereon (where appropriate), plus any overseas taxes that might be payable thereon or deductible therefrom ("**Our Charges**"). Details of our Charges and any special payment terms shall be set out in the Engagement Letter. Our fees shall be based on the degree of responsibility of Engagement Team members involved in delivering the Services, their skill and time spent by them and the nature and complexity of the Services. Outlays include both directly incurred costs and an amount, equal to 2.5% of the value of time, to cover incidental expenses. Our Charges may differ from any prior estimates or quotations.
11. In return for the delivery of the Services by us, you shall pay our Charges (without any right of set-off), on presentation of our invoice or at such other time as may be specified in the Engagement Letter.

- 11.1 We may charge interest on any outstanding balances at the statutory rate from time to time in force (this rate applying after as well as before any court award or judgement in our favour in respect of outstanding balances).
- 11.2 If the Services Contract is terminated or suspended, we shall be entitled to payment for outlays incurred and to payment of fees for Services performed, plus VAT thereon (where appropriate). Our fees shall in this event be calculated by reference to our hourly rates at the time of performance of the Services.
- 11.3 Where there is more than one addressee of the Engagement Letter, unless the Engagement Letter provides otherwise, all of you shall be liable to pay our Charges in full separately and together as a group.
- 11.4 If we are required by any court or regulatory body in any proceedings or forum in which we are not a party or participant but you are, or if we are required by a parliamentary select committee or body, to provide information or to produce documents relating in any way to the Services, you shall pay our costs incurred in preparing for and responding to any such requirement at our standard rates applicable at the time of responding, together with outlays including legal expenses, and VAT thereon (where appropriate).

Your responsibilities

12. Where there is more than one of you, this clause applies to each of you separately and not collectively. Notwithstanding our duties and responsibilities in relation to the Services, you shall retain responsibility and accountability for managing your affairs, deciding on what to do after receiving any product of the Services, implementing any advice or recommendations provided by us, and realising any benefits requiring activity by you.
13. Where you require us or the nature of the Services is such that it is likely to be more efficient for us to perform Services at your premises or using your computer systems or telephone networks, you shall ensure that all necessary arrangements are made for access, security procedures, virus checks, facilities, licences or consents (without cost to us).
14. You shall not, directly or indirectly, solicit the employment of any of our partners, directors or employees, involved in performing the Services, during performance or for a period of 3 months following their completion or following termination of the Services Contract, without our prior written consent. This prohibition shall not prevent you at any time from running recruitment advertising campaigns nor from offering employment to any of our partners, directors or employees who may respond to any such campaign.

Information

15. To enable us to perform the Services, you shall supply promptly all information and assistance and all access to documentation in your possession, custody or under your control and to personnel under your control where required by us. You shall use your best endeavours to procure these supplies where not in your possession or custody or under your control. You shall inform us of any information or developments which may come to your notice and which might have a bearing on the Services. You shall supply information in response to our enquiries (if any) to enable us to comply with our statutory responsibilities to make disclosures to relevant authorities in respect of money laundering and any other criminal activity that we may encounter during performance of the Services and any such disclosures may include Confidential Information.
16. We may rely on any instructions, requests or information supplied, orally or in writing, by any person whom we believe to be authorised by you to communicate with us for such purposes. We may communicate with you by electronic mail where any such person wishes us to do so, on the basis that in consenting to this method of communication you accept the inherent risks, that to the extent permitted by law we may intercept such communications in order to monitor them for internal compliance or other statutory purposes, and that you shall perform virus checks. We may at your request send documents to an electronic storage facility hosted or controlled by you or at your direction, in which event you shall be responsible for security and confidentiality at such facility.
17. We may receive information from you or from other sources in the course of delivering the Services. To the fullest extent permitted by law, we shall not be liable to you for any loss or damage suffered by you arising from fraud, misrepresentation, withholding of information material or relevant to the Services or required by us, or other default relating to such information, whether on your part or that of the other information sources, unless such fraud, misrepresentation, withholding or such other default is evident to us without further enquiry.

Knowledge and conflicts

18. In clauses 18 to 24 "**Barriers**" means safeguards designed to facilitate the protection of each client's interests and may include (for example): separate teams, their geographical and operational separation and/or access controls over data, computer servers and electronic mail systems.
19. The Engagement Team shall not be required, expected or deemed to have knowledge of any information known to Other KPMG Persons which is not known to the Engagement Team.

20. The Engagement Team shall not be required to make use of or to disclose to you any information, whether known to them personally or known to Other KPMG Persons, which is confidential to another client.
21. KPMG Persons may be delivering services to, or be approached to deliver services to, another party or parties who has or have interests which compete or conflict with yours (a "**Conflicting Party**" or "**Conflicting Parties**").
22. KPMG Persons are and shall remain free to deliver services to Conflicting Parties, except that where the interests of the Conflicting Party conflict with yours specifically and directly in relation to the subject matter of the Services: the Engagement Team shall not deliver services to the Conflicting Party; and Other KPMG Persons may only deliver services to the Conflicting Party where appropriate Barriers are put in place. The effective operation of such Barriers shall constitute sufficient steps to avoid any real risk of a breach of our duty of confidence to you.
23. We seek to identify Conflicting Parties in the circumstances set out in clause 22. If you know or become aware that a KPMG Person is advising or proposing to advise such a Conflicting Party, you shall inform us promptly.
24. Where a party has engaged us to deliver services before you have done so and subsequently circumstances change, we may consider that, even with Barriers operating, your interests are likely to be prejudiced and we may not be satisfied that the situation can be managed. In that event we may have to terminate the Services Contract and we shall be entitled to do so on notice taking effect immediately on delivery but we shall consult you before we take that step.

The Services Contract

25. The Services Contract sets out the entire agreement and understanding between you and us in connection with the Services. Without affecting KPMG's responsibilities for other services it is engaged to perform on terms agreed separately in writing, the Services Contract supersedes and relieves you and KPMG from liability (if any) that might otherwise arise for any prior agreements, understandings, arrangements, statements or representations (unless made fraudulently) as to any facts or matters relating to you or to KPMG or the Services. Any modifications or variations to the Services Contract must be in writing and signed by each of us. If there is any inconsistency between the Engagement Letter and any other elements of the Services Contract, the Engagement Letter shall prevail. If there is any inconsistency between these General Terms and Additional Terms that may apply, the Additional Terms shall prevail.

Third party rights

26. Save where the Services Contract confers benefits on KPMG Persons who are not the KPMG contracting party, no-one shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any part of the Services Contract. We and you may rescind or vary the Services Contract without anyone else's consent. Other Beneficiaries (if any) shall acquire rights under the Services Contract through signature by the addressee of the Engagement Letter on their behalf.

Circumstances beyond your or our control

27. Neither we nor you shall be in breach of our contractual obligations or incur any liability to the other if we or you are unable to comply with the Services Contract as a result of any cause beyond our or your reasonable control. In the event of any such occurrence affecting one of us, that one shall be obliged as soon as reasonably practicable to notify the other, who shall have the option of suspending or terminating the operation of the Services Contract on notice taking effect immediately on delivery.

Waiver, assignment and sub-contractors

28. Failure to exercise or enforce any rights shall not amount to a waiver of such rights.

29. No-one shall have the right to assign the benefit (or transfer the burden) of the Services Contract to another party.

30. Subject to clauses 4 and 39, we shall have the right to appoint sub-contractors to assist us in delivering the Services but where any such sub-contractors are not KPMG Persons we shall consult you before doing so. Where we appoint sub-contractors under this clause, we may share Confidential Information with them and for all purposes in connection with the Services Contract we shall accept responsibility for their activities which shall form part of the Services.

Limitations on our liability

31. Our liability in connection with the Services Contract and the Services shall be limited in accordance with this clause.

In the particular circumstances of the Services set out in the Engagement Letter and subject to clause 33 and clause 34 below,

- the aggregate liability to you and to Other Beneficiaries of each and all KPMG Persons,
- in contract or tort or under statute or otherwise,
- for any loss or damage suffered by you (or by any such other party) arising from or in connection with the Services or the Services Contract,
- however the loss or damage is caused, including if caused by our negligence but not if caused by our fraud or other deliberate breach of duty,

shall be limited to the amount specified in the Engagement Letter.

32. Where there is more than one beneficiary of the Services ("Beneficiary") the limitation on our liability agreed under clause 31 to each Beneficiary shall be apportioned by them amongst them. No Beneficiary shall dispute or challenge the validity, enforceability or operation of clause 31 on the ground that no such apportionment has been so agreed or that the agreed share of the limitation amount apportioned to any Beneficiary is unreasonably low. In this clause, "Beneficiary" shall include you and Other Beneficiaries.

33. Subject always to the aggregate limitation on our liability in clause 31 above, our liability shall in aggregate be limited to that proportion of the total loss or damage, after taking into account contributory negligence (if any), which is just and equitable having regard to the extent of our responsibility for the loss or damage concerned, and the extent of responsibility of any other person also responsible or potentially responsible ("**Other Person**"). In order to calculate the proportionate share of our liability, no account shall be taken of any matter affecting the possibility of recovering compensation from any Other Person, including the Other Person having ceased to exist, having ceased to be liable, having an agreed limit on its liability or being impecunious or for other reasons unable to pay, and full account shall be taken of the responsibility to be attributed to any Other Person whether or not it is before the competent court as a party to the proceedings or as a witness.

34. We accept the benefit of the limitations in clauses 31, 32 and 33 above on our own behalf and in so doing we confer benefits on all KPMG Persons involved in delivering the Services.

Any parts of the Services Contract which do or may exclude or limit our liability in any respects shall not apply beyond the extent permitted by law.

35. This clause shall apply to claims arising from or under the Services Contract.

35.1 You and Other Beneficiaries shall not bring any claim against any KPMG Person or anyone else except the KPMG contracting party in respect of loss or damage suffered by you or by Other Beneficiaries arising out of or in connection with the Services. This restriction shall not operate to limit or exclude the liability of the KPMG contracting party for the acts or omissions of anyone involved in delivering the Services.

35.2 Any claim from you or Other Beneficiaries in respect of loss or damage suffered as a result of, arising from or in connection with the Services Contract, whether in contract or tort or under statute or otherwise, must be made

- if Services have been delivered, within four years of the date of the activity giving rise to the claim
- if the Services Contract has been terminated, within four years of the date of termination (subject to the bullet above)
- if the claim relates to our unauthorised disclosure of Confidential Information, within four years of the date on which the unauthorised disclosure took place

and in any of these cases that shall be the date when the earliest cause of action (in contract or tort or under statute or otherwise) shall be deemed to have accrued in respect of the relevant claim. For the purposes of this clause a claim shall be made when court proceedings are commenced.

Third parties

36. If you breach any of your obligations under the Services Contract and there is any claim made or threatened against us by a third party, you shall compensate us and reimburse us for and protect us against any loss, damage, expense or liability incurred by us which results from or arises from or is connected with any such breach and any such claim. If any payment is made by you under this clause you shall not seek recovery of that payment from us at any time. In this clause “us” shall include all KPMG Persons and “you” shall include Other Beneficiaries.

Termination

37. Each of us can terminate the Services Contract or suspend its operation by giving 30 days’ prior notice in writing to the other at any time. Termination or suspension under this clause shall not affect any rights that may have accrued for either of us before termination or suspension and all sums due to us shall become payable in full when termination or suspension takes effect.
38. Any part of these General Terms which by its nature or implicitly or to give effect to its purpose is to continue in force after expiry or termination of the Services Contract shall survive, such as (for example) restrictions on use or confidentiality or terms protecting against liability.

Data protection

39. The definitions and interpretations in the Data Protection Act 1998 (“**the Act**”) shall apply to this clause. We shall process or arrange for processing of personal data on your behalf for the purposes of delivering the Services. For such purposes we shall have your authority to do so in accordance with this clause. We shall act on your instructions only (given for such purposes) and we shall comply at all times with the seventh principle in Part 1 of Schedule 1 to the Act as if applicable to us directly. We may also process or arrange for processing of personal data in order to support the maintenance of quality and

standards in our work or to facilitate the administration of our business or to support our infrastructure. We shall answer your reasonable enquiries to enable you to monitor our compliance with this clause. We shall not sub-contract our processing of personal data (unless to KPMG Persons or other parties who are required to take equivalent measures when processing personal data) without your prior written consent.

Notices

40. Any notice under the Services Contract shall be given in writing and delivered by pre-paid first class post (or pre-paid overseas equivalent) to or left at our respective addresses appearing in the Engagement Letter (or such other address as may be notified in writing). Notices delivered by post shall be deemed to have arrived, where posted from and to addresses in the UK, on the second working day and where posted from or to addresses overseas, on the tenth working day, following the date of posting.

Severability

41. Each clause or term of the Services Contract constitutes a separate and independent provision. If any provisions of the Services Contract are judged by any court or authority of competent jurisdiction to be void or unenforceable, the remaining provisions shall continue in full force and effect.

Capacity

42. You agree to and accept the provisions of the Services Contract on your own behalf and as agent for Other Beneficiaries. You shall procure that any Other Beneficiaries shall act as if they had each signed a copy of the Engagement Letter and agreed to be bound by the Services Contract. However, you alone shall be responsible for payment of our Charges.
43. We accept your agreement to and acceptance of the terms of the Services Contract (save for clauses 31, 32 and 33 above) on our own behalf and in so doing we confer benefits on all KPMG Persons.

Regulated activities

44. Where the Services (or part of the Services) amount to “regulated activities” under the Financial Services and Markets Act 2000, or activity that is regulated by the Solicitors Regulation Authority, we shall inform you and set out the implications in the Engagement Letter or elsewhere in writing and Additional Terms shall apply.

Law and jurisdiction

45. The Services Contract shall in all respects be subject to and governed by English law and all disputes arising on any basis from or under the Services Contract shall be subject to the exclusive jurisdiction of the English courts.

Feedback on our performance

46. We aspire to embed in our culture the attributes that we feel distinguish our brand and contribute to the difference that you experience when you engage KPMG. We may invite you to provide feedback on our performance so that we can measure to what extent we meet our goals. If you wish to discuss the Services or complain about them, you are invited to contact any partner or director named in the Engagement Letter. If your problem is not resolved, you should contact David Matthews, our UK Head of Quality & Risk Management, by e-mail to david.matthews@kpmg.co.uk or by writing to him at 15 Canada Square, London E14 5GL or through our website at <http://www.kpmg.co.uk/clientcare> where you can also find details of information about us that we are required by regulations to make available to you. We investigate any complaints promptly and do what we can to resolve difficulties. If you are still not satisfied, you can refer the matter to the ICAEW and (in respect of “regulated activities” and ancillary services) to the Financial Ombudsman Service and to the Legal Ombudsman in respect of activity that is “reserved legal activity” or “legal activity” under the Legal Services Act 2007, or any complaint that the Legal Ombudsman considers to be about a legal service.