

## Terms and conditions of business

### INTRODUCTION

1. These terms of business contain important provisions that govern our relationship with you. They may not be varied unless agreed in writing and signed by a Director or Associate Director of Whitehead Monckton.
2. As from 28<sup>th</sup> May 2018 all work we do for you is governed by these terms of business and any agreed written variation. This is an important document so please keep it for future reference.

### WHITEHEAD MONCKTON

3. In these terms of business "we" or "our" refers to Whitehead Monckton Limited, a company registered in England & Wales under company no. 08366029 whose registered office is at 5 Eclipse Park, Sittingbourne Road, Maidstone, Kent, ME14 3EN, trading as 'Whitehead Monckton' ("the Company"). We are a Solicitors practice authorised by the Solicitors Regulation Authority in England & Wales. Our registration number is 608279.
4. Your relationship is solely with the Company which has sole legal liability for the work done for you and any act or omission in the course of that work. No Director, Associate Director, consultant or employee of the Company will have any personal legal liability for that work whether in contract, tort or negligence. In particular, the fact that a Director, Associate Director, consultant or employee signs any letter, email or other document in his or her own name in the course of carrying out that work does not mean he or she is assuming any personal legal liability for that communication.
5. We use the word "Director" to refer to a director of the Company who may be a solicitor or legal executive.

### OUR RELATIONSHIP

6. We value our relationship with you and welcome any suggestions you may have for its improvement. Unless our work involves the resolution of a dispute, **when the special terms on page 5 will apply**, we will not appoint an agent or subcontract our work to anyone else without your consent.

#### Who does your work?

7. Work will be done by those able to do it competently and cost-effectively. These may be solicitors, legal executives, trainee solicitors or paralegals and their status will be confirmed to you in our letter of engagement. If they are not Directors or other senior managers, they will be appropriately supervised. We will agree who handles your work and not make changes unless it is necessary, e.g. to bring in specialist help or if someone leaves. We will inform you if this happens.

#### Supervisor

8. One of our Directors or other senior managers has been appointed to be the Supervisor with responsibility for the overall supervision of the work we do for you. Their name will be given to you in our engagement letter. Please contact him or her if you have any questions.

### Availability

9. Reception services are available from 8.30am to 6.00pm and our lawyers are typically available between 9.00am and 5.15pm on weekdays (excluding bank holidays) but we always try to be available outside these hours where necessary.

### YOUR WORK

10. We will agree the scope of the work we will do for you at the outset and confirm this in our letter of engagement. Where possible, we will agree a timetable for the work to be completed, advise you if this needs to be changed as the matter progresses and explain why. We are not responsible for matters that are outside the scope of the agreed work, or for anything that would not normally be considered part of a solicitor's duty in relation to that work.
11. If we agree to do other work not covered by the work agreed at the outset (as detailed in our engagement letter) then we will charge for this extra work in line with the charging structure detailed in our engagement letter.
12. Unless we have specifically agreed to do so in writing, these instructions do not include the giving of tax advice.

### Our liability & insurance policy

13. Despite our best efforts we may make a mistake, by which we mean a breach of our duties to you. If we do, and are liable to compensate you, **you agree that our liability is limited** in the following respects:
  - it is the Company that is liable, not an individual Director or member of staff;
  - you agree to make no claim against an individual except for fraud. You and we intend that this clause is for the benefit of, and shall be enforceable by, the Directors and staff under the Contracts (Rights of Third Parties) Act 1999;
  - **our maximum liability for any mistake (except for fraud) is £10 million including contractual and statutory interest** (unless we agree a different amount with you in writing);
  - this overall limit applies whether the mistake affects just one piece of work we do for you or several, so long as it is the same or a similar mistake;
  - for the purpose of the overall limit, more than one mistake on a matter or transaction is considered as one error;
  - we are liable for loss that we cause directly and for any indirect or consequential loss or loss of anticipated profit or other benefit, **where that total liability does not exceed £10 million**. Otherwise we have no liability for any indirect or consequential loss or loss of anticipated profit or other benefit;
  - we are not liable to the extent that our mistake results from something you do or fail to do (such as giving us the wrong information, or not giving us information at the time we ask for it);
  - if others are also responsible for your loss, our liability is limited to our fair share of the proportion which is found to be fairly and reasonably due to our fault, whether or not you are able to recover the rest

from the others. We shall not be liable to pay you the proportion which is due to the fault of another party. This clause is subject to the minimum £3 million restriction on limiting liability prescribed by the Solicitors Regulation Authority;

- these limits on our liability shall apply to work done under this contract and any future work unless we agree different terms with you;
- we shall not be liable for any loss arising from or connected with our compliance with any statutory obligation which we may have, or reasonably believe we may have, to report matters to the relevant authorities under the provisions of the anti-money laundering legislation;
- we believe the limitations on our liability set out in this section are reasonable having regard to our assessment of:
  - the amount of any likely liability to you if we make a mistake;
  - the availability and cost of professional indemnity insurance; and
  - possible changes in the future availability and cost of insurance;

but we are happy to discuss the limit with you if you consider it insufficient for your purposes, and if appropriate we may then consider whether we are able to provide a higher limit at extra cost.

14. These limits apply to the extent that they are permitted by law. We cannot, for example, avoid full liability if our mistake causes death or personal injury.
15. If any part of this section of our terms which seeks to limit liability is found by a court to be void or ineffective on the grounds that it is unreasonable or does not accord with any professional obligation, the remaining provisions shall continue to be effective.
16. If you think we have made a mistake you agree that we have no liability for any breach of our duties to you unless you let us know in writing about the mistake within 24 months of you becoming aware of it, and start any legal proceedings about it within 12 months of giving us that written notice.
17. We carry professional indemnity insurance to cover these liabilities. Details of our qualifying professional indemnity insurers and a copy of our policy is available on request. This insurance covers our practice carried on from our offices in England and Wales and will extend to acts or omissions wherever in the world they occur.

**Our duty to you**

18. We have a duty to act on your reasonable instructions, subject to our legal and professional duties as solicitors. Our relationship is with you, and we owe a duty of care only to you. No other person may rely on our advice or on these terms without our prior written agreement.
19. If you are giving us instructions to act on behalf of a company, it is your responsibility to advise us of any changes to the company's management or director structure, to ensure that we continue to act on instructions of an authorised person.

**CONFIDENTIALITY**

20. We will keep all information about you and your business confidential and not disclose it to anyone outside the Company without your consent. You do however consent to that disclosure:
  - in the proper handling of your work;
  - on a confidential basis to auditors who make random checks of files;
  - to our bankers to facilitate payments on your behalf;
  - to our professional indemnity insurers;
  - where compelled by professional regulations or by law, such as a court order;
  - on a confidential basis to any external provider of administration services;
  - on a confidential basis to financial advisors where such advice may be appropriate.
21. If we must disclose information, or you ask us to object to disclosure, we will charge for the work involved.
22. You accept that we must comply with the law and professional rules about money laundering and proceeds of crime. We therefore have to check the identity of all individual clients and verify their address. This personal data will be held in accordance with the data protection rules outlined in Clause 57.
23. In the case of a company, we are required to check not only the identity of every executive director and verify their address but also all shareholders who own 25% or more of the company's issued share capital.
24. It will therefore be necessary for you and anyone else we have to identify to produce the original of one document from each of the following two categories:

**Proof of Identity – for example (the document MUST include a photograph)**

- Current valid passport
- National identity card
- Validated National Insurance number
- Current driving licence
- For companies – incorporation certificate and copy Passport and/or Driving Licence and proof of address from at least one Director

**Proof of Address – for example (no more than 3 months old)**

- Utility Bill
- Council Tax bill
- Bank/Credit Card statement

25. If the above provisions are likely to cause any difficulties please let us know as soon as possible so that we can try and agree some other way of you producing evidence of your identity.
26. We also have to report any activity that we suspect may involve the proceeds of crime without telling you. We may in some circumstances have to stop acting for you as a result of the anti-money laundering legislation. The proceeds of crime are defined very widely and include, for example, money gained as a result of unlawful tax

avoidance or through the evasion of payment of any similar charges or duties. Our duty to report may override any duty of confidentiality that we owe you, and legal professional privilege (your right to refuse disclosure of documents relating to advice given to you) may not apply in these circumstances.

27. We also follow Law Society guidelines and restrict the amount of cash we are prepared to receive from clients. **Our limit is currently £500.** Please contact your Supervisor if you think this may be a problem. If you exceed this limit by depositing cash direct with our bank, we reserve the right to charge for any additional checks we deem necessary regarding the source of the funds.

#### Publicity

28. We both agree not to issue any publicity material or information to the media about our relationship and the work we are doing without the other's consent, save where the information is already in the public domain.

#### Email

29. We routinely use email to communicate, and whilst we have normal levels of security in place, you accept the risk that email communications may not be secure.

#### CHARGES

30. We will agree the basis of charging in advance and will confirm this in writing to you. This could be based on the amount of time we spend on your work, be for a fixed sum or under a conditional fee agreement ('no win, no fee'). Our aim is to be entirely open with you. We review our charges annually, usually from 01 April.

#### Time charges

31. Where we agree to charge on a time basis, our fee is calculated by multiplying the time spent, recorded in six-minute units, by the hourly charging rates of those working for you. The relevant hourly rates are given in our letter of engagement. We will let you know if these rates change (for example through promotion or at the annual review of the rates). Hourly charging rates are based mainly on the level of skill and experience of the person involved in your matter.
32. We will always provide you with an estimate of what your costs may amount to and update this estimate as the work proceeds. In doing so we will inform you if any unforeseen additional work becomes necessary (for example due to difficulties or if your requirements or the circumstances change significantly during the course of the matter). We will also inform you of the estimated cost of that additional work in writing before any extra charges and expenses are incurred.
33. **You may set a limit on the charges and expenses to be incurred.** This means that you authorise us to incur costs up to that agreed limit without the need for us to refer back to you. We will inform you as soon as it appears that the limit may be exceeded and will not exceed that limit without first obtaining your consent.
34. If, for any reason, a matter does not proceed to completion, we will charge you for the work done and the expenses incurred up to the point the matter ends.

#### Time charged

35. We normally charge for time spent on your work in:
- meetings;
  - travelling (where that time cannot be usefully spent on work for others);
  - reading, preparing, negotiating and working on documents;
  - research;
  - dealing with mail (letters, faxes and email);
  - making and receiving telephone calls;
  - attending court or other formal proceedings, including waiting time;
  - preparing notes of meetings, of telephone calls and of proceedings;
  - complying with professional and statutory requirements (e.g. money laundering regulations).
36. Routine letters and emails that we write and receive and telephone calls that we make and receive will each be charged at 6 minutes. Other letters, emails and telephone calls will be charged on a time basis.
37. In addition to the time spent, we may take into account a number of other factors such as the complexity of the issue, the speed at which action must be taken, the expertise and specialist knowledge that the case requires and, if appropriate the value of the property or subject matter involved. If these additional factors are applied in addition to the hourly rate, these will be mentioned in the accompanying letter.
38. The time charged may also include anticipated time as well as time spent.

#### Additional charges

39. Whilst routine overheads are included in our agreed charges, we may charge you for non-routine photocopying and for generation of certain other documents. We will let you know in advance if this is necessary and obtain your consent before proceeding.

#### Expenses (sometimes called Disbursements)

40. You are responsible for paying expenses we incur on your behalf e.g. Land Registry, Companies House and court fees, searches, barristers' and experts' fees, travel, couriers and printing/binding costs etc. They are added to your invoice at cost. **Where they exceed £100 we will ask for money on account and must receive it before we will incur the cost.** We try to give an estimate of such expenses before they are incurred.

#### Travel and accommodation

41. Where we need to travel for your work we do so by the most appropriate means. Hotel accommodation is of a suitable business standard. Actual costs are charged, apart from travel by car where a standard mileage charge applies. Details are available on request.

#### VAT

42. VAT is payable on fees and expenses at the applicable rate.

## BILLING ARRANGEMENTS

43. We will send you invoices on a monthly basis so you can monitor how your costs are being incurred then a further invoice when the work has been or is about to be completed. This will apply unless we have agreed in writing a different billing frequency with you or only to invoice you at agreed stages during the work. Such arrangements are set out in our letter of engagement and may only be varied with our agreement in writing.

44. We may pay any outstanding invoice by deduction from money we hold on your behalf (including money received from others).

45. You are responsible for the payment of our costs even if another person has agreed to pay them for you.

### Money on account

46. It is normal practice to ask clients to often pay sums of money on account of the charges and expenses we expect to incur. We may also request further payments on account of such charges and expenses as the matter progresses. When we put these payments towards your bill(s) we will then send you a receipted bill. We will offset any such payment against your final bill but it is important you understand that your total charges and expenses may be greater than any advance payments.

47. If you do not make such a payment on account when asked to do so, we shall be entitled to stop working for you until the payment has been made.

### Overdue invoices or missed payments

48. **All invoices must be paid within 14 days without exception.** Also, if we have agreed to accept payments by standing order or in stages then they must be made on time in accordance with that agreement. If any of these are missed then we will charge interest on the overdue amount. Interest will be charged on a daily basis at the official rate payable on judgment debts (which is usually close to standard commercial rates) and we may also be entitled to:

- recover any costs we incur in collecting the overdue amount;
- do no further work for you until we are paid in full (or we may choose not to do any further work for you at all); &
- retain all papers until we are paid in full.

### Queries

49. If you have a query on an invoice, please discuss it with the person who is dealing with your work as soon as possible. If you are not satisfied, please follow the procedure outlined under 'COMPLAINTS' below.

## HOLDING YOUR MONEY

50. If we hold money on your behalf, we will place it in a bank account ('client account') designated for clients' money that meets the requirements of the Solicitors' Accounts Rules. Our main bankers are Lloyds Bank Plc, but we also hold accounts with other banks from time to time and will provide details on request.

51. It is unlikely that we will be liable for losses resulting from a banking failure. If you suffer loss of money held in our client account due to failure of the bank and we

make a claim on your behalf under the Financial Services Compensation Scheme (FSCS) we will, subject to your consent, give certain information about you to the FSCS to help them identify amounts to which you and other clients are entitled.

52. The FSCS indemnity is generally available to individuals only, but some small businesses may also be eligible. You should note that the FSCS indemnity limit applies to each individual. Accordingly, if you hold other money in the same bank the limit will be whatever the indemnity limit is at the time in total (i.e. your other money will be aggregated with the money we hold for you in that bank). Remember that some deposit-taking institutions have several brands or trade names. The limit applies per institution, not to each brand. You should check either with your bank, the Financial Conduct Authority or a financial adviser for more information.

53. If at the end of the matter we are still holding some client account money after payment of all our fees and expenses then we will return this to you. If we cannot find you and the amount we are holding is less than £50 then, after reasonable steps have been taken to try to return the money to you, we have your authority to give this money to a charity of our choosing.

### Transfer of money

54. Where we have to transfer money on your behalf we cannot do so until the money has cleared the banking system. If the money has not been cleared we will not make the payment for you. We may charge you an administration fee for such money transfers.

### Interest on client monies

55. As part of carrying out your instructions, we may need to hold your money in our client account. In these circumstances, we have an obligation to pay interest on that money at a fair and reasonable rate and are required to have an interest payment policy.

56. We aim to pay interest as required by rule 22 of the SRA Accounts Rules 2011. Our policy is based on the previous rules which applied under the Solicitors Accounts Rules 1998 except that the de minimus figure is £50.00. A copy of our policy is available on request.

## DATA PROTECTION

57. We comply with current data protection legislation. We store and process personal data about our clients to enable us to perform the contract that we are about to enter into or have entered into with you, or where it is necessary for our legitimate interests and your interests and rights do not override these. In most circumstances we are able to supply you with copies of the information we store about you and your business on request, unless the request is manifestly unfounded or excessive.

58. Your rights and our obligations, and the details of who to contact if you have a question, regarding your personal data can be found in our Privacy Notice which can be found here: [www.whitehead-monckton.co.uk/privacy](http://www.whitehead-monckton.co.uk/privacy). We strongly recommend that you read this notice.

59. You accept that to enable us to comply with our regulatory obligation to check your identity, to make credit decisions about you and to prevent fraud, we may



search the electoral roll and files of credit reference agencies who will record credit searches on your file.

#### Communication

60. We send out news of services, seminars or items of interest to our clients. We may send these by post or by e-mail. If you would like to receive such communications from us, please either tick the opt in box at the bottom of the engagement letter supplied with these terms of business, or tell our Marketing team by emailing [mandycoltham@whitehead-monckton.co.uk](mailto:mandycoltham@whitehead-monckton.co.uk).

#### PAPERS AND DOCUMENTS

##### Storage

61. We will store the original of your deeds, securities and other important documents such as Wills, Codicils, Powers of Attorney etc. for eighty years from when we send you our final bill. We do not presently charge for this service but reserve the right to do so. We shall write to you if this happens so you can decide what to do.
62. We will digitally scan all other papers when your final invoice has been paid and then immediately destroy the hard copy file. The digital scan will be retained by us in accordance with our file retention and data protection policies. Should you wish to have a digital copy of these scanned records you may do so at any time upon giving us reasonable notice at a single charge of £30 plus VAT. Should you wish to receive a hard copy of these scanned records you may do so at any time upon giving us reasonable notice at a printing charge of 25p per sheet of paper plus VAT.
63. On completion of these instructions we are entitled to hold on to all your papers and documents while money is still owing to us.

##### Copyright

64. We own the copyright in any work we create which will not be transferred to you although you have our licence to use our work for the purposes for which it was created. We have the right to be identified as the author of the work and to object to any misuse of it.
65. We may wish to store any counsel's opinion or other document created in the course of our work for you in our Know How system. You agree that we may do so unless you have told us in writing that you object. If we store any documents in this way we will ensure the system is secure, confidentiality is maintained and that any identifying references are removed.

#### EQUALITY AND DIVERSITY

66. The Company is committed to promoting equality and diversity in all of its dealings with clients, third parties and employees. Please contact us if you would like a copy of our equality and diversity policy.

#### ANTI-BRIBERY

67. The Company takes its responsibilities to comply with anti-bribery legislation extremely seriously. If you would like to see a copy of our anti-bribery policy, please ask.

#### COMPLAINTS

68. If you are unhappy about any aspect of the service you have received or about any invoice you should contact

the person with day-to-day responsibility for your matter. If you remain dissatisfied then you should contact your Supervisor in writing or by telephone with full details of your complaint. Their contact details will be found in your letter of engagement. We will investigate the matter promptly and thoroughly and provide a written response. We will also provide a copy of our complaints procedure on request. If you are still unhappy, you can ask our Complaints Director to review the handling of your complaint and report back to you in writing.

69. All solicitors must attempt to resolve problems that may arise with their services. It is therefore important that you immediately raise any concerns you have with us. We value you and would not wish to think you have reason to be unhappy with us.
70. If for any reason we are unable to resolve any problem between us you may be entitled to complain to the Legal Ombudsman who can be contacted at PO Box 6806 Wolverhampton WV1 9WJ, by email at [enquiries@legalombudsman.org.uk](mailto:enquiries@legalombudsman.org.uk) or by telephone on 0300 555 0333. Ordinarily, you cannot use the Legal Ombudsman unless you have first been through our complaints procedure and you bring your complaint to the attention of the Ombudsman within 6 months of receiving our final determination of your complaint.
71. The Ombudsman will usually expect you to allow us 8 weeks to resolve the matter before he will consider your complaint, although he does have discretion to waive this in certain circumstances. See [www.legalombudsman.org.uk](http://www.legalombudsman.org.uk) for further information about the timeframe and eligibility for the Ombudsman service. If your complaint concerns an invoice you may also apply to the court for an assessment under Part III of the Solicitors Act 1974.

#### ENDING OUR RELATIONSHIP

72. You may ask us to stop acting for you at any time. If so, please confirm that in writing. We may choose to stop acting for you, but only if we have good reason to do so (for example, if you do not give us instructions, or do not make a payment when due, or if a conflict of interest arises) when we will give you as much notice as we can. If we stop acting for you, we are still entitled to be paid for what we have done, and may keep your papers until we have been paid.

#### JURISDICTION

73. These terms and our relationship will be governed by English Law. We each submit to the exclusive jurisdiction of the English courts.

#### DISPUTE RESOLUTION

Where we do work involving the resolution of a dispute:

##### Legal costs and expenses

74. You are responsible for our charges and expenses whether you win or lose the dispute. Even if you are successful you may not be able to recover any of them from the other party, which will almost certainly be the case if the other party receives public funding.
75. A successful outcome will **not** normally give you a full indemnity for your costs and ordinarily you could expect

to recover no more than 50% - 65% of your actual costs incurred in the case (however, this figure is merely an estimate by way of example and the proportion recovered will vary in every case).

- 76. If you lose the proceedings (or if you discontinue them without agreeing otherwise with your opponents), you will probably have to pay your opponent's costs, as well as your own.
- 77. Even if you are successful, your opponent may not be ordered to pay your costs. If your opponent is ordered to pay your costs, then those costs will be assessed by the Court and it is unlikely that you will recover the full amount of your costs.
- 78. If during a case the court orders you to pay another party's legal costs and expenses, they will normally be payable within 14 days of the order being made. If you fail to pay, you risk losing your case.
- 79. Such costs will be payable by you in addition to our own charges and expenses. We will discuss with you whether our charges and expenses and your liability to pay another party's charges and expenses may be covered by insurance and if not, whether it would be advisable for you to have insurance to meet the other party's charges and expenses.

**Third party payment of legal costs**

- 80. If another person has agreed to pay all or part of our charges or expenses you remain liable for those costs. You accept we may keep that third party informed about the progress of any dispute and the costs and expenses which are incurred. You will also remain liable for all our costs whether or not the third party has given us an undertaking from their solicitors. In most cases where an undertaking is received that undertaking is honoured but not always. If it is not or if the contribution is not received then you must pay the full amount of the fees we have incurred on your behalf.
- 81. Third party funding may be provided by your employer, professional body, Trades Union or legal expenses policy. Legal expenses policies are often added to Household or Motor Insurance policies. If we have not been notified about third party funding we will proceed on the basis that no such funding is available to you.

**Public funding ("Legal Aid")**

- 82. We do not undertake any work which is funded by the Legal Services Commission (formerly "Legal Aid"). If you believe that you may be eligible for public funding and you have not already discussed this with us then you must notify us immediately, otherwise we will proceed on the basis that you have chosen not to apply for public funding even if you might be eligible.

**Third party access to court documents**

Print Name.....

Signature.....

Dated.....

- 83. Under court rules, third parties can ask the court for copies of any statement of case that we send to court on your behalf. Statements of case are the documents in which we set out your claim or defence. We will assume, unless you tell us otherwise, that you agree to this. If you are concerned about information in statements of case becoming public knowledge then it is important you let us know as in some cases the court will agree to restrict access to these documents.

**Decisions and Instructions**

- 84. You authorise us to make routine or administrative decisions on your case without asking you first although we will keep you informed. Dispute resolution, in particular litigation, is subject to detailed rules/deadlines and we are not responsible if you fail to give us instructions in time to comply with them.

**INVESTMENT SERVICES**

- 85. We are not authorised by the Financial Conduct Authority (FCA) to carry out investment business. We may therefore refer you to an advisor who is authorised by the FCA and help you and the advisor during the course of any work they do.
- 86. That advisor may be Raymond James Investment Services (a company authorised by the FCA) who provide both advisory and investment services with whom we have established a relationship. You will be given their terms and conditions and they will take full responsibility for keeping to the requirements of the Financial Services and Markets Act 2000. You will pay them separately for their services.
- 87. We have no financial interest in RJIS and do not receive any introductory commission or referral fees from this company, although we do receive a share of revenue from the work they do for our clients.
- 88. In asking a financial advisor to help you, we may give them information in connection with your affairs which they reasonably ask for so they can provide the advice. In providing this information, we will do our best to make sure that it is complete and accurate and you agree not to withhold any information that we may reasonably ask you for in connection with the advice being sought.

**AGREEMENT**

- 89. Unless otherwise agreed these terms of business apply to any future instructions you give us.
- 90. Your continuing instructions will amount to your acceptance of these terms and conditions of business. Even so, we ask that you please sign and date the enclosed copy of this document and return it to us immediately. We reserve the right not to do any work until this has been done. We can then be confident that you understand the basis upon which we will act for you.

Print Name.....

Signature.....

Dated .....