



# Liaison Care Consultancy

## Standard Terms and Conditions for Services

### 1. Interpretation

- 1.1 In these terms and conditions (and unless expressly stated to the contrary in any Service Agreement) the following expressions shall have the meanings set out beside them:
- "Agreement"** means a Service Agreement accepted by the Client and the Company together with these Conditions;
- "Client"** means the client specified in the Services Agreement or (in the absence of a Service Agreement) who accepts performance of the Services;
- "Company"** means Liaison (trading name for Liaison Financial Services Limited (registered number 6426660)) and its successors and assigns;
- "Commencement Date"** means the date on which the Company commences provision of the Services;
- "Conditions"** means these standard Terms and Conditions for Services and any special terms and conditions agreed in writing between the Client and the Company;
- "Fee"** means the Company's total fee for provision of the Services as set out in the Service Agreement;
- "Final Report"** means the report from the Company to the Client setting out the Company's recommendations;
- "Daily Rate"** means the daily rate stated in the Service Agreement;
- "Fixed Fee"** means (where applicable) the fixed fee stated in the Service Agreement;
- "Hourly Rate"** means the hourly rate stated in the Service Agreement;
- "Membership Fee"** means (where applicable) the membership fee stated in the Service Agreement;
- "Performance Fee"** means (where applicable) any performance fee or contingency fee stated in the Service Agreement;
- "the Revenue"** means HM Revenue & Customs;
- "Savings"** means any financial benefit (whether present or future) to the Client (whether by way of cost saving, repayment, refund, reduced liability, increased revenue or otherwise) identified in a Savings Statement or Final Report including (but not limited to) any financial benefit identified in relation to any contract liabilities, VAT or other taxation or National Insurance;
- "Savings Statement"** means any report from the Company to the Client issued from time to time in relation to Services which identifies any Savings;
- "Service Agreement"** means a service agreement to which these Conditions are attached setting out the services to be performed by the Company which is accepted by the authorised representatives of both the Company and the Client or (in the absence of any such agreement) any written request from the Client for services which is accepted by the Company in writing;
- "Services"** means the services to be performed by the Company for the Client as set out in the Service Agreement or otherwise agreed in writing by the Company and the Client; and
- "VAT"** means Value Added Tax as defined under the Value Added Tax Act 1994 or any sums charged or reclaimed equivalent to Value Added Tax.
- 1.2 The headings in these Conditions are inserted only for convenience and shall not affect their interpretation.
- 1.3 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended from time to time.
- 1.4 Any reference in these Conditions to the singular shall be deemed to include a reference to the plural and vice versa.
- 1.5 Any reference in these Conditions to a person shall include a body corporate, a corporation, a partnership or an unincorporated association.
- 1.6 In the event of any discrepancy between the terms of the Service Agreement and these Conditions, the latter shall prevail.

### 2. Provision of Services

- 2.1 The Company shall provide to the Client, and the Client shall engage the Company to provide the Services, subject to the Conditions. The Conditions shall govern the provision of Services to the exclusion (to the fullest extent permitted by law) of all other terms and conditions whether express, implied, statutory or customary.
- 2.2 No variation to these Conditions or the Service Agreement shall be binding unless agreed in writing between the authorised representatives of the Client and the Company.
- 2.3 The Client shall be responsible to the Company for ensuring the accuracy of the terms of any request for or in connection with Services and for giving the Company any necessary information relating to the Services within sufficient time to enable the Company to provide the Services. For the purposes of calculating any Performance Fee, the Client is responsible for ensuring that any and all necessary information is provided to the Company on or before any date specified in the Services Agreement or otherwise reasonably specified by the Company in writing.
- 2.4 Any instruction (whether written or oral) by the Client to the Company to commence or continue to provide the Services will be deemed to constitute acceptance of the terms of this Agreement by the Client, irrespective of whether the Client's authorised representative has signed the Service Agreement.

### 3. Liability

- 3.1 The following provisions of this clause 3 set out the entire liability of the Company and its employees, agents and contractors to the Client in respect of the provision of the Services and any breach of the Agreement and any representation (other than a fraudulent misrepresentation for which the Company's liability shall be unlimited), statement or tortious act or omission including but not limited to negligence arising under or in connection with the Agreement.
- 3.2 In the performance of the Agreement the Company accepts:
- 3.2.1 unlimited liability for death or personal injury resulting from the Company's negligence; and
- 3.2.2 liability for damage to property resulting from the Company's negligence to a maximum of £2,000,000 per claim or series of claims arising from the same cause, unless otherwise agreed in writing.
- 3.3 Subject to clause 3.2:
- 3.3.1 the Company excludes all and any liability whatsoever that may occur under Section 63 of the Value Added Tax Act 1994;
- 3.3.2 the Company's total liability to the Client arising under this Agreement or in connection with the provision of the Services shall in no circumstances exceed the greater of (i) £30,000 (thirty thousand pounds) or (ii) an amount equal to the Fee paid by the Client for the Services.
- 3.3.3 the Company excludes to the fullest extent permitted by law any condition or warranty which might otherwise be implied by reason of statute or common law or otherwise; and
- 3.3.4 the Company shall have no liability for any loss of profit, loss of business, loss of revenue, loss of goodwill, loss of anticipated savings, loss of data or information (in each case whether such loss is direct, indirect or consequential) or for any indirect, special or consequential loss, howsoever arising, suffered or incurred by the Client and irrespective of whether (i) the Company has been advised, knew or should have known of the possibility of such loss; or (ii) it was caused by the negligence of the Company.
- 3.4 The Company undertakes and agrees to take out adequate insurance cover with an insurer of repute to cover the liability accepted by it under clause 3.2 and on the Client's reasonable written request (and to the extent permitted by such insurer(s)), agrees to produce a copy of the insurance policy or policies and relevant renewal receipts for inspection by the Client.
- 3.5 The Fees are determined on the basis of the exclusions and limitations of liability contained in the Conditions. The Client expressly agrees that these exclusions, limitations and liabilities are reasonable because of the disproportionately high cost to the Company of taking out insurance cover and the likelihood that otherwise the amount of damages that may be awarded to the Client for the Company's negligence or breach of the Agreement may be disproportionately greater than the Fee.

### 4. Fee and Payment

- 4.1 In consideration of the provision of the Services the Client shall pay to the Company the Fee.
- 4.2 Any Performance Fee which is a contingency fee calculated by reference to Savings shall be calculated by reference to Savings identified in a Savings Statement or Final Report.
- 4.3 All payments to the Company shall be made against the Company's invoice, which shall be presented in accordance with clauses 4.3 or 4.4 below, within 30 days of receipt by the Client. Unless otherwise agreed in writing, payment is due for the Services in accordance with this clause 4, notwithstanding any delay that may be encountered by the Client in the commencement, progression or completion of any project which is the subject of the Services.
- 4.3.1 Where a Service Agreement states that the Fee is based on Daily or Hourly Rates, the Company shall invoice the Client for such Services from time to time at the Company's reasonable discretion.
- 4.3.2 Notwithstanding clause 4.4 where the Services are subject (or partly subject) to a Fixed Fee the Company may invoice the Client for the Fixed Fee at the intervals or at the time stated in the Service Agreement.
- 4.3.3 Notwithstanding clause 4.4 (but subject to clauses 4.7 and 6.5) the Company may invoice the Client for any Performance Fee due in relation to any Savings upon the Client receiving the benefit of such Savings provided that where the Client receives part of the benefit of a Saving the Company may invoice the Client for that part of the Fee attributable to the benefit received by the Company.
- 4.4 Unless otherwise stated in the Agreement and subject to clause 4.3 where the Services are subject to a Performance Fee or Fixed Fee, the final invoice may be submitted to the Client following submission of a Final Report to the Client.
- 4.5 Notwithstanding the provision of clause 4.4 if no alternative payment arrangements are specified in the Service Agreement an interim invoice may be submitted at the reasonable discretion of the Company in an amount up to 50% of the Company's reasonable estimate of the total Fee payable by the Client.
- 4.6 All charges and other sums payable by the Client under the Agreement are exclusive of any applicable VAT which shall be payable by the Client in addition to the charge or sum in question.
- 4.7 The Client will use its reasonable endeavours to recover or achieve (or assist in the recovery or achievement) of all Savings. In the event the Client does not comply with its obligations under this clause in respect of any Saving to the reasonable satisfaction of the Company, the Company shall be entitled to invoice the Client for the Fee based on its estimation of the Savings which would have been achieved had the Client used its reasonable endeavours to achieve such Savings.
- 4.8 All payments to be made by the Client to the Company under the Agreement which are not reasonably disputed shall be made in full without any withholding, set-off, restriction or condition and without any deduction for or on account of any counterclaim.
- 4.9 If the Client fails to pay, on the due date set out in clause 4.2, any amount which is payable to the Company pursuant to the Agreement then, without prejudice to clauses 4.10 and 6 the amount shall bear interest from the due date until payment is made (both before and after any judgment) at an annual rate of four per cent per annum over Clydesdale Bank base rate from time to time.



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- 4.10 If the Client fails to make any payment which is properly demanded on the date due then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled:
- 4.10.1 to terminate this Agreement and/or any other agreement between the Company and the Client or to suspend the provision of any Services with immediate effect; and
- 4.10.2 to appropriate any payment made by the Client to such of the Services (or the services supplied under any other agreement between the Client and the Company) as the Company, acting reasonably, may think fit.
- 4.11 Where the Services relate to a project and the Fee has been calculated on the basis of the value of that project then if the project is subsequently cancelled, deferred or significantly reduced in value by the Client after the Services have been performed or substantially performed by the Company, the Fee will be calculated on the basis of the original project value and the Company shall be entitled to raise an invoice on submission of a Final Report.

### 5. Obligations of the Client

- 5.1 The Client shall notify the Company promptly following (and in any event within 14 days of) any Saving being achieved, of the nature and amount of the Saving and provide such supporting information as the Company may reasonably request.
- 5.2 Whilst the Client provides the Services to the Client and thereafter the Client shall allow the Company, during the Client's normal business hours, such access to the Client's premises and the Client's information records and other material relevant to the Services and/or to enable the Company to determine or verify any Saving achieved as the Company may reasonably require. In addition, the Client shall:
- 5.2.1 advise the Company of the rules and regulation in force from time to time for the conduct of personnel at its premises in advance of such rules taking effect;
- 5.2.2 make available such working space and facilities at its premises as the Company may reasonably require;
- 5.2.3 make available appropriate personnel to liaise with the Company; and
- 5.2.4 upon reasonable request, provide any financial, non-financial and supporting information in such format as the Company shall reasonably require to facilitate provision of the Services.
- 5.3 For the avoidance of doubt clauses 5.1 and 5.2 shall survive termination of this Agreement.

### 6. Term and Termination

- 6.1 The Agreement shall come into force on the first to occur of (i) signature by the Client and the Company of the Service Agreement or (ii) the Commencement Date.
- 6.2 The termination of the Agreement and/or the provision of the Services howsoever arising shall be without prejudice to any provision expressed or intended to operate thereafter.
- 6.3 Without prejudice to the Company's rights to terminate the Agreement and/or the provision of the Services in accordance with the provisions of clause 6.4 below the Company shall at any time have the right at its discretion by giving 14 days notice in writing to the Client to terminate all or any of its obligations to provide the Services and/or to seek to re-negotiate the Fee for the Services with the Client. If the parties are unable to agree such revised Fee, the Company may terminate the Agreement and the provisions of clause 6.5 shall apply.
- 6.4 Either party may terminate the Agreement and/or the provision of the Services forthwith by notice in writing to the other if:
- 6.4.1 the other commits a breach of the Agreement which in the case of a breach capable of remedy shall not have been remedied within 30 days of the receipt by the other of a notice from the innocent party identifying the breach and requiring its remedy; or
- 6.4.2 the other has a bankruptcy order made against it or makes an arrangement or composition with its creditors or otherwise takes the benefit of any statute for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory), except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver, manager, administrator or administrative receiver appointed over any of its assets, income or undertaking.
- 6.5 Upon termination (for whatever reason):
- 6.5.1 the Company shall (where the Company considers it appropriate) deliver to the Client a Final Report which shall be the final assessment of the Services performed up to the date of termination and (in the case of any Performance Fee calculated by reference to Savings) the Savings identified;
- 6.5.2 the Client shall remain liable to pay to the Company for all the Services provided by the Company up to the date of termination and, for the avoidance of doubt, in the case of a Membership Fee, without rebate or discount for early termination; and
- 6.5.3 (in the case of a Performance Fee calculated by reference to Savings) the Client shall remain liable to pay to the Company the Performance Fee for Savings achieved after termination of the Agreement in accordance with clause 4.
- 6.6 On termination of Services to which a Performance Fee applies but the Performance Fee cannot be calculated as a result of such termination, the following structure shall apply in place of the Performance Fee:
- A x £1,875.00. Where A = the aggregate number of Adviser Days spent in providing the Services. "Adviser Day" for the purposes of this clause means a day on which an authorised employee or agent of the Company was engaged in the provision of Services for a period of not less than 3 hours.
- 6.7 However the Services are terminated, the Client shall promptly pay to the Company all third party costs and all expenses of the Company reasonably and necessarily incurred in the performance of the Services.
- 6.8 Where the Service Agreement provides that more than one service is to be provided as part of the Services, the Company shall (where the Company considers it appropriate) deliver a Final Report in respect of each particular service.
- 6.9 The Client acknowledges that the provisions of this clause 6 are reasonable and reflected in the Fee which would be higher without such provisions, and the Client will accept such risk and/or insure accordingly.

### 7. Force Majeure

Neither party to this Agreement shall be liable to the other party in any manner whatsoever for any failure or delay or for the consequences of any failure or delay in performing any of its obligations under the Agreement if such failure or delay is due to any cause beyond that party's reasonable control and the party so failing or delayed shall be entitled to a reasonable extension of time for performing such obligations provided that lack of funds howsoever arising shall not be a cause beyond a party's reasonable control.

### 8. General

- 8.1 No waiver by the Company of any breach by the Client or any provision of the Agreement shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 8.2 If any provision or part of a provision of the Agreement is held by any competent authority to be invalid or unenforceable in whole or in part that provision or part of a provision shall be deemed not to form part of the Agreement and the other provisions of the Agreement shall remain in full force and effect.

### 9. Notice

All notices to be given under the Agreement shall be in writing and shall be sent to the respective addresses of the Client and the Company given in the Service Agreement or to such other address as may be notified by either party to the other from time to time.

### 10. Entire Agreement

- 10.1 The Agreement contains the entire agreement between the parties with respect to the Services and supersedes and replaces all prior communications, drafts, agreements, warranties, stipulations, undertakings and agreements of whatsoever nature, whether oral or written, between the parties relating to the Services.
- 10.2 Each party acknowledges that it has not relied upon any representation, warranty, promise or assurance made or given by the other party which is not expressly set out in the Agreement, provided that this shall not exclude any liability which a party would otherwise have to the other in respect of any statements made fraudulently.

### 11. Confidentiality

- 11.1 The Client agrees to keep confidential any and all information provided to it by the Company which is of a confidential nature (with the exception of the information referred to in clause 11.2), including but not limited to any Final Report, the terms of this Agreement and the methodologies which are used by the Company in carrying out the Services ("Confidential Information"). The Client shall not acquire any rights in such methodologies or be entitled to call for detailed explanations of such methodologies. In addition, the Client acknowledges that the Services are provided to it for its exclusive benefit and shall not disclose the Confidential Information to any third party without the prior written consent of the Company which shall not be unreasonably withheld. In the event of a third party claim against the Company as a result of a breach of this clause by the Client, the Client shall indemnify the Company against all liability, actions, proceedings, costs, claims, damages or demands brought or threatened to be brought against it by any such third party, howsoever arising.
- 11.2 The obligations set out in clause 11.1 shall not apply to any information which is publicly available or which becomes publicly available through no act or omission of the Client or which the Client is required to disclose by order of a court or other authorised body of competent jurisdiction.
- 11.3 As between the Company and the Client the Company shall own all intellectual property rights in any Final Report and any methodologies used by the Company in carrying out the Services.

### 12. Data Processing

- 12.1 In this clause the terms "data processor", "personal data" and "processing" have the meanings given to them in the Data Protection Act 1998 ("DPA").
- 12.2 The Client acknowledges that the Company will be acting as a data processor in relation to the processing by the Company as part of the Services of any personal data on behalf of the Client.
- 12.3 The Company will process personal data on behalf of the Client in accordance with the DPA and only to the extent necessary for the purposes of the Service Agreement.
- 12.4 The Company will take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data. Without prejudice to the generality of this obligation, the Company shall comply with ISO/IEC27001.

### 13. Joint and Several

Where the Client is more than one person the liability of such persons under the Agreement shall be joint and several.

### 14. Assignment

The Company shall be entitled to assign, transfer or otherwise deal with its rights under this Agreement or sub-contract or delegate its obligations as it sees fit.

### 15. Lien

Without prejudice to any lien to which the Company may be entitled by law, the Company shall have a general lien over any papers in its possession belonging to the Client, or for which the Client is entitled to call, for payment of the Fee and/or the Company's charges under any other agreement between the Company and the Client.

### 16. Rights of Third Parties

The Contracts (Rights of Third Parties) Act 1999 shall apply to the benefit conferred or purported to be conferred on the employees, agents and contractors of the Company in respect of the exclusions and limitations set out in clause 3 of these Conditions. Except as stated in this clause 15, the Company and the Client do not intend that any of the provisions of the Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to the Agreement.

### 17. Law and Jurisdiction

The Agreement shall be governed by English law. The English courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Agreement.