

# GIBSON HEWITT LIMITED

## Terms and Conditions of Business

- 1 These terms and conditions (the **Terms and Conditions**) apply to the services (the **Services**) which we will provide to you and which are set out in the attached letter of engagement (the **Letter of Engagement**). The Letter of Engagement and Terms and Conditions form the basis of our business relationship with you and are referred to as the **Contract**. The Contract comprises the whole agreement between Gibson Hewitt Limited and you relating to the Services. The Contract replaces and overrides any previous communications, understandings, correspondence, proposal or presentation whether written or oral. By sending us instructions and or by asking us to start performing the Services, you are agreeing to accept these terms.
- 2 Definitions**
  - 2.1 For the avoidance of doubt, **we** and **our** refers to Gibson Hewitt Limited, and **you** and **your** refers to the party or parties to whom the Letter of Engagement is addressed.
- 3 General Matters**
  - 3.1 You confirm that you have all the necessary powers and have obtained all the necessary authorisations, consents and approvals to validly and lawfully enter into this Contract.
  - 3.2 Amendment to the Terms and Conditions may only be made by a specific paragraph in the Letter of Engagement referring to a numbered clause of the Terms and Conditions. In the event of a conflict between the Terms and Conditions and the Letter of Engagement, the Letter of Engagement will prevail.
  - 3.3 Either party may initiate changes to the Services and such changes as may be agreed will be set out in a supplementary letter to the Letter of Engagement and will form part of the Contract.
  - 3.4 The terms of the Contract which expressly or by implication are intended to survive its termination or expiry will survive and continue to bind all parties.
  - 3.5 If any provision of this Contract should not be valid, in whole or in part, it will be deemed not to form part of the Contract and the enforceability of the remainder of the Contract will not be affected.
- 4 Regulatory Matters**
  - 4.1 Nothing in the Contract will prevent us from complying with any law or statute or the regulations of any relevant professional body to which we are associated.
  - 4.2 In the course of our work, we may perform certain Services which are regulated by a regulatory authority. If the services are or become a regulated activity, we will communicate with you further, with a view to complying with the relevant regulations.
- 5 Client Assistance**
  - 5.1 In order for us to achieve the standards of service set out in the Letter of Engagement and, if appropriate, to represent your interests properly, we need your co-operation. Please provide any information requested by us as soon as possible, otherwise we may not be able to progress the engagement.
  - 5.2 You will use all reasonable skills, care and attention to ensure that all the information we require is provided on a timely basis and is accurate and complete. You also undertake to notify us immediately if you subsequently learn that the information provided to us is incorrect, inaccurate, or not capable of being relied upon.
  - 5.3 Results of our work will largely be based upon information supplied by you or on your behalf and we will not corroborate or verify the information provided unless this is specified in the Letter of Engagement. Although the Services may involve analysis of financial information and accounting records, we do not carry out audit work, in accordance with generally accepted auditing standards or give tax advice and, as a result, we assume no responsibility for and make no representations about the accuracy or completeness of any financial information, tax status or liability.
  - 5.4 You agree that the Services are not designed to and are not likely to reveal fraud or misrepresentation. Accordingly, we cannot accept responsibility for failing to detect fraud or misrepresentation by any party whatsoever.
  - 5.5 We are working with you in the role of advisers and we will not, under any circumstances, be required to direct your affairs, the sole responsibility for which remains with the directors, proprietors and senior management.
  - 5.6 We will not provide any specialist services such as legal, regulatory or other services unless this is specified in the Letter of Engagement.
- 6 Fees**
  - 6.1 Fee arrangements will be set out in the Letter of Engagement and, to the extent that the Letter of Engagement is silent on the matter, the following terms will apply.
    - 6.1.1 Time for payment of fees and expenses will be of the essence.
    - 6.1.2 We will bill you at the end of the assignment or, if the assignment takes more than six weeks to complete, we will bill you on a monthly basis.
    - 6.1.3 Our invoices are payable within seven days of the invoice date.
    - 6.1.4 To the extent that our invoices are not paid by the due date, we are entitled to charge interest at the prevailing libor rate on unpaid sums.
    - 6.1.5 All sums due in connection with the services which may comprise fees, expenses, or other sums, will be subject to the appropriate rate of Value Added Tax as applicable.

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## Terms and Conditions of Business (cont'd)

6.2 Any fee estimate given by Gibson Hewitt Limited will be given in good faith but will not be contractually binding.

### 7 Confidentiality

7.1 We and you agree that any confidential information received from the other will be used only for the purposes of providing or receiving the Services under this or any other contract between us. Except as provided below, neither party will disclose the other's confidential information to any third party without the written consent of the other.

7.2 Notwithstanding the above clause, we will be entitled to disclose confidential information about you as follows:

7.2.1 in accordance with the terms of the letter of engagement;

7.2.2 to our insurers or legal advisors; or

7.2.3 to any third party, to the extent that this is required by any court, governmental department or regulatory authority or where we have a legal duty to disclose.

7.3 In this latter case, we will endeavour to give you notice of the circumstances and the need to disclose certain information.

7.4 Clause 7.1 shall not apply to either of us in relation to information to the extent that we can show:

7.4.1 that the information was already, or has subsequently become, published or publicly available for use other than through a breach of this Contract or of any confidentiality obligation owed by the other party;

7.4.2 that the information was already lawfully in our possession (without restriction on its disclosure or use) before we obtained the information in connection with this Contract or the negotiations leading up to it;

7.4.3 that the information has subsequently lawfully been disclosed to us (without restriction on its disclosure or use) by a person who is not a party to this Contract and who itself lawfully obtained the information and is not under any obligation restricting its disclosure or use; or

7.4.4 from our records that we had derived the same information independently of that obtained by us in connection with this Contract or the negotiations leading up to it.

7.5 The disclosure of confidential information internally within Gibson Hewitt Limited is approved for whatever purpose.

### 8 Data Protection

8.1 We are registered under the Data Protection Act 1998 (the **Act**) and fully endorse and adhere to the principles of it. By your acceptance of the Contract, you agree to us maintaining personal data in accordance with the Act. In order to perform the Services, we will need to process personal data (such as contact details for you or individuals in your organisation) for this and other related purposes (including updating client records, crime prevention, legal and regulatory compliance) and may need to disclose this information to third parties. All data supplied to us will be processed in accordance with the Act and we request that you comply with data protection legislation in relation to all personal data supplied by us.

### 9 Your Responsibility for Third Parties

9.1 You will be wholly responsible for the work and fees of any third party engaged by you in connection with the Services. Unless specified in the Letter of Engagement, we will not be responsible for managing or reviewing services delivered by third parties.

### 10 Our Responsibility for Third Parties

10.1 As part of the performance of the Services, it may be necessary for us to take specialist advice from a third party (a **Sub-contractor**) and we shall be entitled to do so provided that we remain liable to you for the work to be performed by the Sub-contractor. For the purposes of the Contract, any references to our employees also apply to Sub-contractors.

10.2 Notwithstanding the confidentiality clause above, we may disclose information concerning your business to our Sub-contractors provided that they have agreed to maintain as confidential information acquired by them during the provision of the Services.

### 11 Reports and Advice

11.1 During the performance of the Services, we may provide interim reports and advice. Any reports and advice are based upon partial completion of the Services. Consequently, these are not our final views or conclusions and cannot be relied upon as such. You agree that we do not assume a duty of care to you, or any other party to whom we have agreed to assume a duty of care, in respect of interim reports and advice. The final results of our work and our definitive conclusions will be contained in our final report. This report will be signed in manuscript by a Partner, on behalf of Gibson Hewitt Limited, and will not bear any qualification within its title, header or footer.

11.2 Any report issued or advice given by us is provided solely for your use and only in connection with the purpose specified in the Letter of Engagement. Unless otherwise provided in the Letter of Engagement, you will not disclose or publish the contents of our report or advice to any third party without our prior written consent. At your request, we will consider third party disclosure which will be at our sole discretion and we may allow such disclosure, refuse it or allow it with conditions at our discretion. Under no circumstances, regardless of consent, will we assume any responsibility to any third party to which disclosure may be made. Nothing in these Terms and Conditions of Business shall confer any rights or other benefits on any third parties and the Contracts (Rights of Third Parties) Act 1999 shall not apply.

11.3 You agree that you will maintain our reports and advice confidential.

11.4 The terms upon which our advice may be disclosed to your advisors are as follows:

11.4.1 our advice is confidential;

11.4.2 our advice is only appropriate for the purposes of the Services contemplated in the Letter of Engagement; and

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## Terms and Conditions of Business (cont'd)

11.4.3 we accept no duty of care whatsoever to advisors to whom our reports and advice are disclosed.

11.5 You agree to take reasonable steps to ensure that these terms are understood by your advisors.

### 12 Indemnity

12.1 You agree to indemnify us and any of our Connected Persons from and against any losses, claims, demands, costs, charges, expenses or liabilities (or actions, investigations or other proceedings in respect of these) which we or such Connected Persons may suffer or incur or which may be made against us or such Connected Persons relating to or arising directly out of or in connection to the engagement and will reimburse us for all costs and expenses (including legal and other professional fees) which are incurred by us in connection with investigating or defending any such claim or proceeding.

12.2 This indemnity will not apply to the extent that it is finally judicially determined that the relevant loss, claim, demand, damages, costs, charges, expenses or liabilities resulted from our negligence or default.

12.3 For the purposes of this clause, Connected Persons means any of our holding companies, subsidiaries or subsidiary undertakings and any director, officer, employee, agent or controlling person (as defined by the securities law of any jurisdiction) of ours or our holding companies, subsidiaries or subsidiary undertakings.

### 13 Working for Other Parties

13.1 You agree that we will not be prevented or restricted by virtue of our relationship with you from providing services to other parties.

### 14 Conflicts of Interest

14.1 Whilst we have established procedures to identify situations where a conflict of interest might arise, we cannot guarantee that we will identify all such situations. If we become aware of a conflict of interest which can be addressed by segregation, we will put in place a barrier to preserve confidentiality and to ensure that the advice we give and the reports which we issue are independent. If we become aware of a conflict of interest which cannot be addressed and we form the view that we cannot continue our engagement with you, we will be entitled to terminate the Contract under Clauses 17.3 and 17.5 below.

14.2 It is our policy not to use confidential information supplied by you for the benefit of any other party and consequently, it follows that we will not use confidential information obtained from any other party for your advantage.

14.3 If, after commencement of the Contract, you become aware of any potential conflict concerning the provision of the Services, you agree to notify us immediately.

### 15 Quality of Work and Liability

15.1 We will use reasonable skill and care in the provision of the Services.

15.2 You agree that it is reasonable for Gibson Hewitt Limited to limit its liability in connection with the provision of the Services, except as noted below.

15.3 The aggregate liability of Gibson Hewitt Limited, its directors, partners, agents and employees or any of them to pay damages for loss or damage, including consequential loss suffered by you, if a direct result of breach of contract, negligence, or any other tort by us in connection with the Services, will be limited to that proportion of your actual loss which was directly and solely caused by us. Subject to the clause below, our liability will not, in any circumstances, exceed the aggregate limit set out in the Letter of Engagement. Where our Letter of Engagement is addressed to more than one party, the limit of liability specified in the Letter of Engagement will be the aggregate limit to be allocated between the parties in whatever proportions they agree between themselves. Even if no such agreement is made, none of you will dispute the validity, enforceability or operation of the limit of liability.

15.4 Under no circumstances will we be liable to pay any damages to you for losses arising out of or in any way connected with your acts or omissions or those of anyone acting on your behalf.

15.5 We will only accept liability without limit for;

15.5.1 death or personal injury caused by our negligence or the negligence of our employees acting in the course of their employment;

15.5.2 any fraudulent misrepresentations made by us, upon which you can be shown to have relied which predated the Letter of Engagement; and

15.5.3 any other liability which by law we cannot exclude or limit.

15.6 Nothing in this clause shall in any way confer greater rights than either of us would otherwise have at law.

15.7 You agree that no legal proceedings arising from or in connection with the Contract will be commenced against any of our directors, partners or employees personally. Should any legal proceedings arise from or in connection with the Contract, you agree these will be brought against Gibson Hewitt Limited.

15.8 You further agree that any claims, howsoever arising, must be formally commenced within two years after the party bringing the claim becomes aware of the facts which give rise to the claim. This expressly overrides any statutory provision which would otherwise apply.

### 16 Suspension

16.1 At any time during the term of the contract, either of us may give immediate notice suspending the Services in the event that;

16.1.1 issues exist or arise which, materially and adversely affect one party's ability to perform its duties and obligations under the Contract; or

16.1.2 either of us becomes aware that the other has failed to disclose to it information which that party considers to be material to the performance of its duties and obligations under the Contract.

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16.2 If performance of the contract is suspended pursuant to the above clause, we will be entitled to reasonable fees for the services provided prior to suspension.

16.3 In the event that performance of the contract is resumed, we will be entitled reasonably to vary our fees for the resumed performance of the contract.

### 17 Termination

17.1 At any time during the term of the Contract, either of us may terminate the Contract for whatever reason upon the expiry of 28 days, notice to be given in writing to the other commencing on the date when that notice of termination is sent.

17.2 Either of us may terminate the Contract forthwith by notice in writing to the other if the duties and obligations under the Contract have been suspended for more than 28 days.

17.3 We may terminate the Contract at any time without notice for any of the reasons set out below and, in such circumstances, we shall not be required to give a reason for the termination other than referring to this clause:

17.3.1 if we do not receive payment from you of any invoice within 21 days of the due date in accordance with the Terms and Conditions;

17.3.2 if you fail to produce satisfactory evidence of identity within one week of us requesting it;

17.3.3 if we know, suspect or have reasonable grounds to suspect that you are engaged in unlawful activity; or

17.3.4 if we become aware that a conflict of interest exists.

17.4 Either party may terminate the Contract on written notice with immediate effect if the other party commits a material breach of the terms of the Contract which is irredeemable or if redeemable, is not remedied within 30 days of a written request to remedy it.

17.5 Upon termination of the Contract, each of us will upon written request by the other return to the other all property and documentation of the other that is in its possession, except that we will be entitled to retain one copy of any documents which we require to maintain a professional record of our provision of the Services. Upon termination, you will pay forthwith upon request all fees and expenses due in respect of the services provided up to the date of termination together with our reasonable costs and expenses incurred in connection with the termination of the Contract.

17.6 For the avoidance of doubt, the date of termination will be the date upon which the Contract or any period of notice expires or the date upon which any party is deemed to have received a notice terminating the contract with immediate effect.

17.7 Termination of the Contract will be without prejudice to any accrued rights of all parties.

### 18 Electronic Communications

18.1 During the provision of the Services, the parties may communicate electronically with each other. All parties recognise that systems and procedures cannot guarantee that transmissions will be unaffected by outside influences. In connection with electronic communications, all parties:

18.1.1 recognise that electronic communication cannot be guaranteed to be secure, virus free or unaffected by transmission;

18.1.2 accept the risks of and authorise electronic communication between themselves;

18.1.3 agree to use commercially reasonable virus checking procedures before sending information electronically;

18.1.4 agree that each will be responsible for its own electronic communication systems, and;

18.1.5 agree that no party will have a claim against any other party for any reason arising out of electronic communications in connection with the Services.

18.2 The exclusion of liability in the above clause will not apply to the extent that any liability arises out of acts, omissions or misrepresentations which are in any case criminal, dishonest or fraudulent on the part of either party's respective directors, partners, agents or employees.

### 19 Ownership

19.1 We own the intellectual property rights in any systems, techniques, methodologies, ideas, concepts, information and know how developed during our performance of the Contract. We own the intellectual property rights in our working papers, reports and letters. You may make copies of our reports and letters but only for use in accordance with the provisions of this Contract.

### 20 Environmental Issues

20.1 We will not give advice on environmental issues nor will we perform an environmental audit as part of our services. You agree that environmental issues and their impact are excluded from the services unless otherwise agreed in the Letter of Engagement.

### 21 Gibson Hewitt Limited People

21.1 You agree not to directly or indirectly solicit the services of any people contracted to Gibson Hewitt Limited in connection with the Services (including any director, partner, employee, agent or sub-contractor) during the term of the Contract or within the 12 months after completion or termination of the Contract. We agree not to solicit the services of any of your employees during the period of the Contract or within the 12 months post completion or termination.

### 21.2 Professional Liability Cover

In accordance with the disclosure requirements of the Provision of Services Regulations 2009, our professional indemnity insurer is Allied World Assurance Company (Europe) plc 3rd Floor, 30 St Mary Axe, London, EC3A 8BF, United Kingdom. The territorial

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## Terms and Conditions of Business (cont'd)

coverage is worldwide excluding United States of America and Canada and any country, territory or jurisdiction in which American or Canadian law is applicable.

### 22 Assignment

22.1 Neither of us may transfer or assign any rights or obligations under this Contract without the prior written consent of the other party.

### 23 Notices

23.1 Any written notice issued in connection with this Contract may be delivered in person, by post or by facsimile transmission. Notices to us at our address will be marked for the attention of the engagement partner referred to in the Letter of Engagement. Notices to you will be delivered to the address last notified by you, for the attention of the person or persons to whom the letter of engagement is addressed.

23.2 Any notice sent by post will be deemed to have arrived on the second working day after despatch and any notice sent by fax or served personally will be deemed to have arrived on the day following despatch.

### 24 Force Majeure

24.1 In this Contract, Force Majeure means industrial disputes and any other circumstance beyond the reasonable control of the party affected by it and includes, in our case, telecommunications failure, power supply failure, computer breakdown, failure to meet delivery requirements and absence of staff due to illness or injury.

24.2 Neither of us will be liable for any failure to perform, or delay in performing, any of our obligations (other than payment and indemnity obligations) if and to the extent that the failure or delay is caused by Force Majeure and the time for performance of the obligation, the performance of which is affected by Force Majeure, shall be extended accordingly.

24.3 If the party claiming relief under Clause 24.1 is prevented by the Force Majeure from wholly or substantially performing its obligations under this Contract for a continuous period of more than 28 days, the other party shall be entitled to terminate this Contract immediately by notice to the party claiming relief under Clause 24.1. Neither party shall be liable to the other because of such termination but you shall pay any of our invoices that are outstanding under this Contract and a reasonable sum (which shall include all reasonable expenses incurred) in respect of any work undertaken by us under this Contract prior to termination in respect of which we have not already issued an invoice to you.

### 25 Complaints

25.1 If you are dissatisfied with the services you are receiving, please contact the engagement partner disclosed in the Letter of Engagement. If you would prefer to deal with someone else, please contact Lynn Gibson located at 5 Park Court, Pyrford Road, West Byfleet, Surrey KT14 6SD (telephone 01932336149, fax 01932 336150). We will carefully consider any complaint we receive and, if we believe that we have given a less than satisfactory service, we will take all reasonable steps to put it right. If you remain unsatisfied, you should contact The Insolvency Complaints Gateway by visiting their website at <https://www.gov.uk/complain-aboutinsolvency-practitioner> or Email: [ip.complaints@insolvency.gsi.gov.uk](mailto:ip.complaints@insolvency.gsi.gov.uk); or send by Post: The Insolvency Service, IP Complaints, 3rd Floor, 1 City Walk, Leeds LS11 9DA; Telephone: 0300 6780015 - calls are charged at between 1p and 10.5p per minute from a land line; for mobiles, between 12p and 41p per minute if you're calling from the UK.

### 26 Money Laundering

26.1 In order to comply with the Money Laundering Regulations 2007 and to satisfy our procedures for taking on new clients, you agree to provide evidence of your identity. Although we will be able to commence work before we receive this evidence, we require that you produce it within one week of our requesting it. If you do not provide satisfactory evidence of identity, we will be entitled to terminate the Contract without notice and recover from you our costs up to the date of termination.

26.2 We are obliged under the Proceeds of Crime Act 2002 to submit a report to the National Crime Agency if we know, suspect or have reasonable grounds to suspect, that you are engaged in money laundering, drug trafficking or the provision of financial assistance to terrorism. We are not permitted to tell you that we have made a report. In this connection, we will be entitled to terminate the Contract without notice.

### 27 Governing Law and Dispute Resolution

27.1 Unless otherwise provided in the Letter of Engagement, this Contract will be governed by and interpreted in accordance with English law.

27.2 If any dispute arises between us, we will attempt to resolve the dispute in good faith by negotiation. In the event that negotiation is unsuccessful, the parties agree to try to resolve matters through alternative dispute resolution procedures. If the dispute cannot be resolved through these means, all parties agree that the English courts will have exclusive jurisdiction in connection with the resolution of the dispute. Our firm is committed to carrying on its business fairly, openly and honestly. Our business culture is one where bribery is never acceptable.