

POPPLETON & APPLEBY

TERMS AND CONDITIONS OF BUSINESS



1. Definitions

- 1.1. "Poppleton & Appleby" or "we" or derivatives: Churchill Corporate Solutions LLP, Limited Liability Partnership registered in England and Wales, partnership number OC393802 whose registered office is situated at St Crispins House, St Crispins Way, Haslingden, Lancashire, BB4 4PW.
- 1.2. "Client Party" or "you" or derivatives: the addressee(s) of the Engagement Letter.
- 1.3. "Deliverables": the letters, reports, information, advice or opinions given by us in connection with the services.
- 1.4. "Engagement Letter": the letter that incorporates these terms and conditions of business together with these terms of conditions of business or as may be varied from time to time in accordance with clauses 4.1 and/or 4.2.
- 1.5. "Insolvency Proceedings": any proceedings under the Insolvency Act 1986, the Insolvency Rules 1986, the Administration of Insolvent Estates of Deceased Persons Order 1986 (SI1986 No.1999), the Insolvent Partnerships Order 1994 (SI1994 No. 2421) or the Limited Liability Partnership Regulations 2001 which are the subjects of the Engagement Letter.
- 1.6. "Information": all documents, information and assistance, IT systems and infrastructure that we may require to undertake the services.
- 1.7. "Services": the services delivered to the client party by Poppleton & Appleby and which are detailed in and are subject to the terms of the Engagement Letter.
- 1.8. "Transaction": the actual or proposed transaction or matter in connection which the services are to be provided.
- 1.9. The services will be provided by an English Limited Liability Partnership registered in England & Wales. We retain use of the traditional title of Partner to indicate an individual who is authorised to commit the relevant corporate entity.

2. Limitation of Liability

- 2.1. The following clauses limit the amount of any liability owed to the client party by Poppleton & Appleby in respect of any negligence, default or breach of duty or breach of trust occurring in the course of the provision of services pursuant to the Engagement Letter.
- 2.2. Where any person (as defined below) whether or not that person is or could be made party to or witness in any relevant proceedings is also liable to the client party for or has otherwise caused or contributed to all or part of the same loss or damage as Poppleton & Appleby (a "responsible person"), and/or where the client party itself has contributed to such loss or damage Poppleton & Appleby's liability shall be limited to such amount as is just and equitable having regard for the extent to which each of Poppleton & Appleby, any such responsible person and the client party is liable for, or has otherwise caused or contributed to such loss or damage. Any limitation, exclusion or restriction (however arising) on the liability of any responsible person and any other matter (whensoever arising) including inability to pay or insolvency affecting the possibility of recovering compensation from any responsible person shall be ignored in determining whether and to what extent that responsible person is liable to the client party for or has caused or contributed to such loss or damage.
- 2.3. Neither Poppleton & Appleby nor the client party shall unreasonably resist the joinder to the proceedings or the calling as a witness in the proceedings of any responsible person.
- 2.4. In "person" means any corporate body, individual or other person including (a) any director or employee of the client party (b) persons associated with the client party (c) persons providing or who have provided finance or services to the client party including other professionals and (d) any governmental or regulatory authority or body where such governmental or regulatory authority or body is in breach of duty whether statutory or otherwise and irrespective of whether such authority or body has in respect of the relevant loss or damage any statutory immunity from liability for damages but excluding the client party itself and Poppleton & Appleby as so determined.
- 2.5. If the effect of clause 2.2 and 2.6 would be to limit Poppleton & Appleby's liability to less than such amount as is fair and reasonable as determined in accordance with that section this clause shall have the effect as if it limited Poppleton & Appleby's liability to such amount as is fair and reasonable as so determined.
- 2.6. Poppleton & Appleby's aggregate liability in respect of all claims binding shall be limited to the amounts specified in the Engagement Letter or if no amount is specified there to £1million if the transaction value is equal to or less than £1million and otherwise to £1million plus one third of the excess of the transaction value over £1million to a maximum total limit of aggregate liability of £3 million.
- 2.7. It is further agreed that in order to give effect to the agreed principle that we shall not be liable more than once in respect of any loss or damage the client party may suffer arising out of the engagement of the subject of the Engagement Letter. Any amount otherwise payable to a client party by reason of a claim under the Engagement Letter in respect of any such loss or damage shall be reduced by any amount paid to that client party in respect of the same loss or damage by reasonable claim under any Letter of Engagement entered

into between ourselves and the client party for the provisions of services or otherwise.

- 2.8. Where there is more than one client party the limited liability specified above will have to be allocated between the client parties. It is agreed that such allocation will be entirely a matter for the client parties provided always that if (for whatever reason) no such allocation is agreed no client party shall dispute the validity enforceability or operation of the limit of liability on the ground that no such allocation was agreed. For the avoidance of doubt the aggregate of all such allocations shall not exceed the limit applicable pursuant to clause 2.6 above.
- 2.9. Any claim must be formally commenced within 2 years after the party bringing the claim becomes aware (or ought reasonably to have become aware) of the facts which give rise to the action and in any event no later than 4 years after the cause of action arises. This provision expressly overrides any statutory provision that would otherwise apply.
- 2.10. Except as expressly provided therein no person other than a client party may enforce the Engagement Letter by virtue of the Contracts (Rights Of Third Parties) Act 1999. Notwithstanding any benefits or rights confirmed by the Engagement Letter on any third party by virtue of the Contracts (Rights Of Third Parties) Act 1999 the parties to the Engagement Letter may have agreed to vary or rescind the Engagement Letter without any third parties' consent.
- 2.11. These provisions do not apply in relation to (a) death or personal injury (b) loss and damage arising from fraud on our part and (c) any other situation in which the limitation or our liability is prohibited by law.
- 2.12. Under the provisions of The Provision of Services Regulations 2009 we have professional indemnity insurance with Allianz which is reviewed on an annual basis.

3. Engagement Terms

- 3.1. All services provided by Poppleton & Appleby for the client party will be in accordance with the Engagement Letter subject to any subsequent written variation agreed by an authorised representative of Poppleton & Appleby and the client party. If for whatever reason that does not happen we will treat the fact that you have instructed us to commence the services as deemed agreement.
- 3.2. The Engagement Letter replaces and supersedes any previous proposal discussion correspondence representation or agreement between us in relation to the services and forms the whole agreement between us in relation to the same. This clause shall have the effect of excluding the liability of any party to the Engagement Letter for any misrepresentation (other than a fraudulent misrepresentation) made prior to the date of the Engagement Letter.
- 3.3. Amendment to these terms and conditions of business may be made only by specific reference to the relevant clause in these terms and conditions of business. In the event of a conflict between these terms and conditions of business and the letter incorporating these terms and conditions of business the letter will prevail only to the extent of such conflict.
- 3.4. The obligations of each addressee of the Engagement Letter of these terms and conditions of business are several such that no one addressee has any liability or responsibility for the actions or default of another.
- 3.5. You or we may terminate the engagement pursuant to the Engagement Letter by written notice at any time without penalty though if this occurs whether at your behest or ours before the services have been completed Poppleton & Appleby shall be entitled to its fees expenses disbursements and VAT to the date of termination.
- 3.6. The terms of the Engagement Letter will apply to any services whether such services were performed or provided before or after the signing of the Engagement Letter.

4. Changes In Scope

- 4.1. Should you require any services in addition to the services from time to time we would be pleased to discuss any request with you. However prior to accepting or imposing any contractual terms that would commit you to providing or obtaining any deliverables from us please discuss the matter with us first. Following such discussions we will advise whether or not we are willing to undertake any services in addition to the services and if so the terms on which such services would be undertaken.
- 4.2. Any agreement to provide additional services will include the payment of reasonable additional fees and a reasonable additional period within which to provide such services.

5. Fees And Expenses

- 5.1. Unless otherwise specifically agreed between you and us and set out in the Engagement Letter our fees will be charged on one of, or a combination of the basis set out in the Poppleton & Appleby Charging, Expenses and Disbursements Policy Statement.
- 5.2. Expenses incurred including travelling and subsistence and goods and services purchased in connection with the services will be recharged to the client party or the entity subject to the insolvency proceedings.

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- 5.3. All fees and expenses will be subject to VAT (or exempt from VAT) in accordance with VAT Regulations and guidance.
- 5.4. In respect of charges incurred and payable prior to the commencement of the insolvency proceedings time for payment of such fees disbursements and expenses shall be of the essence and where applicable you agree to pay promptly all sums due under the Engagement Letter. A VAT invoice will be issued on receipt of payment.
- 5.5. We may charge interest on any outstanding balances at the rate prescribed from time to time in accordance with section 6 of the Late Payment Of Commercial Debts (Interest) Act 1998.
- 5.6. Fee estimates given by us are given in good faith but will not be contractually binding.
- 6. Working For Other Parties**
- 6.1. The functions and duties that Poppleton & Appleby undertakes on behalf of the client party shall not be exclusive in that nothing in the Engagement Letter shall prevent or restrict Poppleton & Appleby from carrying on its profession or business. In particular you acknowledge that Poppleton & Appleby reserves the right to act at any time (including this engagement) for other clients who may be competitors of yours or in respect of whom issues of commercial conflict may arise.
- 7. Conflicts of Interest**
- 7.1. In accordance with relevant ethical requirements we have put in place procedures to identify situations where a specific legal or ethical conflict of interest may arise. However we cannot be certain that our procedures will identify all such situations in part because it is difficult to anticipate what you would regard as a conflict. If you are or become aware of any potential conflict affecting our provision of the services you will notify us immediately.
- 7.2. Where a specific legal or ethical conflict, actual or potential is identified and we believe that implementing appropriate procedures can properly safeguard your interests we will promptly notify you (subject only to clause 8 and to any obligations we may owe to third parties), explain the safeguards to be implemented and obtain your consent to their implementation. There may however be circumstances where we consider that your position cannot be safeguarded and in such circumstances the services may be terminated. In order to maintain confidentiality we may not be able to explain all the reasons for terminating the services.
- 8. Confidentiality**
- 8.1. Subject to clause 9 below (a) you and we shall each (and will each use our respective reasonable endeavours to procure that our respective partners directors officers agents contractors and employees shall) at all times keep confidential and shall not use except in conjunction with the performance of the services or otherwise as reasonably necessary for the purposes of the transaction or as expressly stated in the Engagement Letter or subsequently agreed to in writing or as otherwise required or permitted or permissible in law or by regulation any deliverables and/or information obtained or given in connection with the services or transaction (together "permitted disclosure"). Each party to the Engagement Letter is solely responsible for ensuring the proper presentation of any permitted disclosure; (b) both you and we accept no liability to any other party who is shown or gains access to any deliverables or information; (c) on the basis set out in clause x.x both you and we each agree to accept responsibility for and hold the other's agents harmless from any claim (including any claim for negligence) arising out of any unauthorised disclosure by either you or us or others respectively engaged by either you or us of deliverables or information. This undertaking will extend to the cost of defending any such claim; and (d) you will keep confidential any methodologies and technology used by us to carry out the services. Poppleton & Appleby retains copyright of all such material provided to you.
- 9. Compulsory disclosures**
- 9.1. Clause 9 shall not prohibit disclosures required by law or by the rules of any competent governmental or regulatory body or disclosures made for the purposes of pursuing any legitimate claims that you may have against us or (as the case may be) we may have against you or other persons.
- 9.2. You agree to reimburse any reasonable costs we may incur in complying with any such disclosure requirement relating to any of our Services to you imposed in any proceedings or regulatory process not involving any substantive claim or proceeding against us, provided that we promptly notify you in writing of any such requirement (unless prohibited by law from so doing) and reasonably cooperate with you in any efforts to protect against such disclosure.
- 12.3. Our review may or may not discover matters that are not apparent to us from reasonable enquiry.
- 12.4. In relation to information technology systems we make no representation or warranty that our advice is complete or that any action you take or do not take as a consequence of our advice will result in the functionality and/or performance of your information technology systems.
- 13. Discovery of Fraud**
- 9.3. Clause 9 shall not prohibit the disclosure of any Information or Deliverables where it is reasonably necessary for the purposes of: (a) notifying insurers concerning any actual or potential dispute relating to the Services; or (b) resolving any actual or potential dispute relating to the Services or in connection with any defence advanced in any proceedings in any jurisdiction. Each Party shall take all possible steps to preserve confidentiality of Information and/ or Deliverables in all filings with the applicable court.
- 9.4. Clause 9 shall also not prohibit the disclosure of any information which is within the public domain, or which is obtained from a third party who is entitled to disclose it publicly, and shall cease to apply to any information which subsequently enters the public domain except as a result of a disclosure which is contrary to these provisions.
- 9.5. The provisions of clauses 8 and 9 shall continue in full force and effect notwithstanding the termination of the engagement the subject of the Engagement Letter or the completion of the Services.
- 10. Information Relevant To The Services**
- 10.1. When reasonably requested by us you accept responsibility for making available to us and/or granting full access to as and when required all relevant information. You will ensure that all such information is complete and accurate.
- 10.2. You agree to grant us a royalty free licence to use your intellectual property rights to the extent necessary for the provision of the services. Such a licence shall expire automatically upon termination of the engagement the subject of the Engagement Letter provided that such termination shall not require us to return any information provided to us in connection with the provision of the services.
- 10.3. To the extent that such information is not in your control or possession you will use your best endeavours to procure that the required information is made available to us.
- 10.4. You undertake to notify us promptly if anything occurs within a reasonable time after information has been provided to us to render any such information untrue, unfair or misleading. You also undertake (if required by us) to take all reasonable steps to correct any document announcement or communication issued containing, referring to, or based upon any such information.
- 10.5. You acknowledge that information made available by you or otherwise known to individuals within Poppleton & Appleby who are not engaged in the provision of the services shall not be deemed to have been made available to the individuals within the corporate entity engaged in the provision of the services. Further we shall not be obliged to disclose to you nor to take into account in providing the services any information if to do so might breach obligations owed to other persons or the rules of any governmental or regulatory authorities.
- 11. Other Professional Advisors**
- 11.1. In relation to the provisions of the services it may be necessary or desirable to instruct other professional advisors. Where such advisors are required before the commencement of insolvency procedures you shall be responsible for the appointment of such other professional advisors and their fees and expenses unless otherwise stated in the Engagement Letter.
- 11.2. We shall have no liability for the non-delivery or non-performance of such other professional advisors (other than our express agents). Additionally we shall not be liable for the acts, omissions, misrepresentations or error of any third party supplier introduced or recommended by us.
- 11.3. Where other professional advisors are instructed we will place reliance on their opinion and we will refer to their opinion and our reliance upon it in any deliveries as appropriate.
- 12. Nature of the Services**
- 12.1. During the period covered by the Engagement Letter, we will not necessarily seek to verify the accuracy of the information provided to us. In many cases we will accept the explanations and assurances we receive from the directors, officers and employees of the entity the subject of this engagement.
- 12.2. We will however satisfy ourselves that such information is consistent with other information provided to us. We may also request written confirmation from relevant persons that such information provided to us is complete and accurate and that any deliverables are factually accurate and contain all matters of significance within the scope of the Engagement Letter.
- 13.1. We will not be responsible for detecting fraud or misrepresentation (whether by the client party, its management, employees or third parties).
- 13.2. We will not be responsible for the consequences of any deficiency in information provided in the course of our provision of services.
- 14. Recommendations**
- 14.1. Neither the services nor our findings shall in any way constitute recommendations regarding the completion of the proposed transaction. You are responsible for determining

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whether the scope of the services is sufficient for your purposes in the context of your wider investigations and due diligence. If we were to perform additional procedures or extend the scope of the services into other areas we might identify other matters that may affect the services.

15. **Compliance**

15.1. Poppleton & Appleby and the client party shall each ensure that it has and/or shall obtain all authorisations consents and approvals of any governmental or the regulatory body or authority as are necessary to enable it to engage in the transaction and carry on the activities in respect of which the services are provided.

15.2. Each party will ensure that it together with all its directors, officers, employees and agents will at all times comply with all applicable legal and regulatory provisions of which it is, or should reasonably be aware in any jurisdiction including the United Kingdom to the extent applicable.

16. **Communication & Meetings**

16.1. We shall keep you informed on the progress of the services and give warning of all matters that we consider to be of significance to you and where appropriate your advisors as they arise during the course of the provision of the services.

16.2. Draft deliverables may represent work in progress and provide views in respect of which we have not received full and accurate information. Accordingly draft deliverables will not constitute Poppleton & Appleby's definitive opinions and conclusions and we will not be liable to the client party (or anyone else) whether in contract talks or otherwise for the content or use of any draft deliverables. We will not be liable to the client party (or anyone else) whether in contract talks or otherwise for oral advice provided during the provision of the services.

16.3. We shall be under no obligation to update any deliverables issued in final form.

17. **Electronic Communication**

17.1. We each agree to communicate electronically over the internet including email communications.

17.2. We shall each be responsible for protecting our own systems and interests and neither of us shall be responsible to the other on any basis (contracts talks or otherwise) for any loss damage or omission in any way arising from the use of electronic data (including email) as a form of communication.

18. **Ownership Of Papers And Intellectual Property**

18.1. All correspondence and papers in our possession or control and generated for our internal purposes (including our working papers) or addressed to us relating to the services or the subject matter of the services shall be our sole property.

18.2. We retain all copyright and other intellectual property rights in everything developed by us either before or during the course of the provision of the services including rights in all deliverables.

19. **Custody**

19.1. Where we provide custody of title documents belonging to you we: (a) will charge for such services separately from our other fees on the basis stated in the section title fees; (b) will provide you with annual statements or records of title documents; and (c) may appoint sub custodians to undertake the arrangements for the custody of your title documents.

20. **Client Money**

20.1. Client money bank accounts are maintained by Poppleton & Appleby in compliance with the client money rules of the Insolvency Practitioners Association.

21. **Force Majeure**

21.1. Neither of us will be liable to the other for any delay or failure to fulfil obligations caused by circumstances outside our reasonable control.

22. **Assignment**

22.1. Neither of us may transfer nor assign any rights or obligations under the Engagement Letter without the prior written consent of the other party.

22.2. Notwithstanding clause 21.1 we may use sub-contractors where we consider it appropriate to do in connection with the provision of the services and you hereby authorise us to release such information we consider necessary to enable any such sub-contractors to perform the tasks requested of them. For the avoidance of doubt no use of sub-contractors will affect our duties or obligations to you under the Engagement Letter in any way and clause 10 shall not apply in relation to any such use of sub-contractors.

23. **Quality Assurance**

23.1. As a matter of routine we carry out quality assurance procedures on the work performed by our staff and partners. If at any time you wish to discuss with us how our services to you could be improved or if you are dissatisfied with the services you are receiving please let us know by writing to the contact point set out in the Engagement Letter.

23.2. We undertake to look carefully and promptly into any complaint and to do all we can to explain the position to you, responding within 14 days of receipt of your complaint. If we have given you a less than satisfactory service we would like the opportunity to do what we can to put it right. Ultimately you may take up matters with our regulators via the complaints gateway at <https://www.gov.uk/complain-about-insolvency-practitioner>.

24. **Data Protection Act 1998**

24.1. Under the Data Protection Act 1998 certain information provided to us by you may not be disclosed by us to any third party without your prior written consent. There may be circumstances noted above where you may require services provided by third parties. For these purposes you hereby authorise us to release such information as may be necessary for that third party to deliver such services to you.

24.2. Otherwise we agree that in relation to any personal data you may provide to us in the course of our work we shall act as data processors and shall process such data in accordance with your instructions and keep such information confidential and secure.

25. **Document Retention Policy**

25.1. Files and other papers electronic or otherwise relating to your matters including certain documents that may legally belong to you will be stored for such a time as we judge reasonable or for such time as we are required by law so to do but in any event for a period of not less than 12 months beyond the conclusion of the insolvency proceedings after which time we may destroy them without further reference to you.

26. **Timetable**

26.1. We will discuss with you the nature and timing of the programme of work we intend to carry out and the most effective way of implementing it. Deadlines for completing the various aspects of the services will be agreed following such consultation. The timetable for completion of the services assumes that the information we require to carry out the services will be made available in good order on a timely basis.

27. **English Law**

27.1. UK legal jurisdictions allow parties to choose the law applicable to a contract. The Engagement Letter and any insolvency proceedings subject to the Engagement Letter will be subject to English law. If the Engagement Letter or any matter arising from it involves law in other jurisdictions we shall enlist the services of suitably qualified advisors.

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