

# TERMS OF BUSINESS

**Contract Date** means the date you signed our Client Declaration

**Cancellation Period Ends** 14 days from the Contract Date (if applicable)

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## 1. Holden Smith Law

1.1 Holden Smith Law ('the Firm') is constituted as a Limited Company registered in England and Wales with Company Number 11628264:

(a) Registered Office: **329 Wakefield Road Denby Dale HD8 8RX**

(b) Phone Number: **01484 556677**

(c) Email: **hello@holdensmith.co.uk;**

(d) Web Site: **www.holdensmith.co.uk;**

(e) Value Added Tax ("VAT") number: **313 0609 48**

(f) Authorised and Regulated by the Solicitors Regulation Authority (SRA) under Identity Number: **654648**

1.2 In these Terms of Business all first person terms such as 'we', 'us' and 'our' refer to the Firm and not to any Director, Consultant or Employee personally or to any combination of Directors, Consultants or Employees collectively. By entering into this Contract, you are entering into a contract with the Firm and not with any Director, Consultant or Employee personally or with any combination of Directors, Consultants or Employees collectively. The fact that an individual Director, Consultant or Employee signs in his or her own name any letter or other document in the course of carrying out his or her work does not mean he or she is assuming any personal legal liability for that letter or document. No reference to a 'Partner' is to imply that any person is carrying on business with others in partnership for the purposes of the Partnership Act 1890.

1.3 We are bound by various professional rules of conduct which can be viewed at [www.sra.org.uk/](http://www.sra.org.uk/) or by writing to 'Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN' or calling the Solicitors Regulation Authority's contact centre on **0370 606 2555** (inside the UK), 08:00 to 18:00, Monday, Wednesday, Thursday and Friday or 09:30 to 18:00 on Tuesday.

1.4 A list of Directors is available for inspection at our registered office, together with a list of those non Directors who are referred to as Partners. We may from time-to-time use the word 'Partner' to refer to a Director or an Employee or Consultant of the Firm with equivalent standing and qualifications.

1.5 The SRA Indemnity Insurance Rules, in force from time to time, require us to take out and maintain Professional Indemnity Insurance with participating insurers. Information about the compulsory layer of Professional Indemnity Insurance we carry, including the contact details of our insurers and the territorial coverage of our insurance, are available in hard copy at our registered office.

## 2. Terms of Business

2.1 These Terms of Business may not be varied unless agreed in writing and signed by a Director. They should be read in conjunction with our Client Care Letter which sets out the basis on which we act for you and any documents referred to in that letter. Together these form the 'Contract' between us relating to each matter on which we advise you.

2.2 These terms, including the limits on our liability in clause 13, shall apply to all work done by us for you (and any work to be done in the future) unless we otherwise notify you in writing.

2.3 If any term of this Contract is inconsistent with our legal obligations under the relevant laws then the relevant laws shall apply instead of those terms.

## 3. Excluded Advice

3.1 We do not advise on the laws and regulations of jurisdictions other than England & Wales (which for these purposes includes the law of the European Union as applied in England & Wales).

3.2 Whilst we have a degree of understanding of taxation relevant to an individual or corporate entity or value added tax or other taxation, we are not qualified to give any taxation advice in any form and you should take the professional advice of a taxation accountant or your own accountant. If you authorise us to proceed with the transaction, we will proceed on the basis you have sought appropriate professional advice. If you wish us to help you appoint an appropriate accountant please ask.

3.3 We do not tolerate tax evasion, or the facilitation of tax evasion in any circumstances, whether committed by or facilitated by a client, our employees or associated persons or companies. We are committed to fighting tax evasion and have policies and procedures in place to detect and prevent the facilitation of tax evasion offences in accordance with the provisions of the Criminal Finances Act 2017.

3.4 We do not advise on competition law, nor do we provide financial advice generally, or comment upon the commercial viability of any transactions upon which we advise.

## 4. Your Duty to Retain and Preserve Documents

4.1 If now, or at any time in the future, any matter on which we act for you is the subject of formally contested proceedings, whether in the courts or other tribunals, you will almost certainly have to disclose documents, including electronic documents, relevant to the matter. You should ensure that you do not destroy or allow to be destroyed any documents that relate to such matter in any way (however slight you believe the connection may be), as your position in such proceedings could be seriously compromised if you do so.

## 5. Copyright

5.1 Unless we agree otherwise, all copyright which exists in the documents and other materials that we create whilst carrying out work for you will remain our property. You have the right to use such documents and materials for the purposes for which they are created, but not otherwise.

5.2 If you use such documents for any purpose other than that for which they were created we are not responsible to you for any losses that you may suffer as a result.

5.3 Unless otherwise required by law or court order, you agree not to make our work, documents or materials available to third parties without our prior written permission. Our work is undertaken for your benefit alone and we are not responsible to third parties for any

aspect of our professional services or work that you make available to them.

## 6. Client Satisfaction

6.1 We operate strict client care and quality policies and always aim to provide you with the highest level of legal expertise and to be available, approachable, understandable, prompt and courteous.

6.2 We will keep you informed about all important developments in your case and we will respond to your letters, emails and telephone calls promptly and efficiently.

6.3 The majority of our clients are very happy with the service we provide them, but in the event that you have any cause for concern, including about a bill, then please be aware that you are entitled to make a complaint, and that you can do so by contacting our designated complaints handler, James Smith who is a Director of this firm. We take all feedback from clients seriously and operate a Complaints Handling Procedure, a copy of which is available upon request.

6.4 We are usually able to deal with any concerns you have promptly and to your satisfaction, but if this is not the case, you will be able to make a complaint to the Legal Ombudsman provided you do so within six months of the end of our internal complaints procedure if you are still not satisfied with the outcome.

6.5 In addition, there are time limits for bringing a complaint to the Legal Ombudsman, linked to the date of the act or omission giving rise to a complaint or the date on which you should reasonably have known there were grounds for a complaint. The relevant time limits are set out in the version of the Legal Ombudsman's Scheme Rules in force from time to time and may only be extended by the Legal Ombudsman in exceptional circumstances. Currently the time limits are that you will normally need to bring a complaint to the Legal Ombudsman within six months of receiving a final written response from us about your complaint or within six years of the act or omission about which you are complaining occurring (or if outside of this period, within three years of when you should reasonably have been aware of it). Generally, the Legal Ombudsman deals with complaints relating to acts or omissions that happened after 5 October 2010. If you wish to bring a complaint to him, you should refer to the version which is in force at the time of your complaint. The Rules can be accessed at: <http://www.legalombudsman.org.uk/downloads/documents/publications/Scheme-Rules.pdf>.

6.6 You should also be aware that, when your complaint relates to a bill, the Legal Ombudsman will not consider your complaint while your bill is being assessed by a court.

6.7 A complainant to the Legal Ombudsman must be one of the following:

- (a) An individual;
- (b) A micro-enterprise as defined in European Recommendation 2003/361/EC of 6 May 2003 (broadly, an enterprise with fewer than 10 staff and a turnover or balance sheet value not exceeding €2 million);
- (c) A charity with an annual income less than £1 million;
- (d) A club, association or society with an annual income less than £1 million;
- (e) A trustee of a trust with a net asset value less than £1 million; or a personal representative or the residuary beneficiaries of an estate where a person with a complaint died before referring it to the Legal Ombudsman.

6.8 If you are not, you should be aware that you can only obtain redress by using our Complaints Handling Procedure or by mediation or arbitration, or by taking action through the Courts.

6.9 Legal Ombudsman Contact Details:

- (a) Address: **PO Box 6806, Wolverhampton, WV1 9WJ**
- (b) Telephone: **0300 555 0333**
- (c) Email: **[enquiries@legalombudsman.org.uk](mailto:enquiries@legalombudsman.org.uk)**
- (d) Website: **[www.legalombudsman.org.uk](http://www.legalombudsman.org.uk)**

6.10 The Firm is committed to ensuring that all employees give their full co-operation to the Legal Ombudsman in the event of any dispute or complaint against the Firm.

## 7. Fixed Fee Services

7.1 Where our Client Care Letter states that we are charging on a fixed fee basis, additional services may be provided on request and (unless otherwise agreed by us in writing) will be charged at our standard hourly rates as set out in our Client Care Letter plus expenses (if any) and VAT.

## 8. Hourly Rate Services

8.1 Where our Client Care Letter states that we are charging on an hourly basis, the hourly rate varies according to the experience and expertise of the person dealing with the matter. The rates which apply to each matter are set out in our Client Care Letter.

8.2 The time spent on your matter for which you will be charged includes meetings with you and others, travelling, waiting, researching and considering, writing and receiving correspondence, making and receiving telephone calls, preparing and working on documents, and making file notes.

8.3 The time spent on your matter is recorded as units of one tenth of an hour. Therefore, this is the minimum amount of time we will charge for any piece of work undertaken on your matter.

8.4 Once a year, we review our hourly rates. We will notify you in writing of any increase.

8.5 We will add VAT to our fees at the rate that applies when the work is done.

## 9. All Services

9.1 All expenses which we incur in working on your matter will be payable by you in addition to our fees. Examples of these expenses include but are not limited to Land Registry and Companies House fees; search fees; Stamp Duty Land Tax (and similar taxes); fees charged by experts, agents, couriers and barristers; court fees; travel expenses and subsistence; international telephone calls; use of on-line databases; and telegraphic transfer fees. VAT is payable on certain expenses, which you will need to pay in addition.

9.2 If we have provided to you a written estimate of the total charges, it is given only as a guide to assist you in budgeting and should not be regarded as a fixed quotation unless otherwise agreed in writing. We will inform you if any unforeseen - but significant - additional work becomes necessary.

9.3 It is often impossible to tell at the outset what the overall cost of a matter will be. If this is the case we will provide you with as much information as possible at the start and keep you updated as the matter progresses. If a precise figure cannot be given at the outset, we shall explain the reason to you and give you the opportunity to set a ceiling figure beyond which you do not want us to act without your consent or we shall agree a review date with you on which we shall try to give you more information about the likely overall cost.

9.4 We will usually submit bills monthly but may choose to submit bills at other intervals during the course of working on your matter. We may also submit a bill on or at any time after conclusion of the matter or at the end of this Contract. Unless otherwise agreed, our bills are payable within 28 days of the delivery of the bill. All bills, whenever they are submitted, will be for final bills for the period to which they relate but this does not prevent us from invoicing you for expenses for that period on a subsequent bill.

9.5 We may also ask you at any time to pay money in advance of any fees and expenses being incurred by us (known as 'payment on account'). If we ask you to make a payment on account, we will not be obliged to undertake any further work on your matter until you have made that payment (and if you do not make the payment we may cease acting for you).

9.6 Where we decide to extend credit to you by carrying out urgent work on your matter after the money you have paid on account has all been used, you agree to remain liable for our fees regardless of whether or not we give you advance notification that we are going to extend credit to you.

9.7 It is your responsibility to tell us when first instructing us if you have any form of insurance cover (such as legal expenses insurance) that you think will pay our fees. You must also tell us when first instructing us if there is a third party who may pay our fees. If a third party agrees to pay all or part of our bills, you will remain responsible to us for payment until those bills have been paid in full.

9.8 If we are advising more than one person (usually individuals, companies or other entities) we will, unless otherwise agreed by us in writing, act for those persons jointly and severally. If we are asked to deliver bills only to one person, those bills will nevertheless be payable in full by all other persons we act for under this Contract.

9.9 If you are instructing us jointly in relation to any matter it is your responsibility to tell us at the outset of this Contract if you require more than one person to give us instructions in relation to that matter. Otherwise, we will accept instructions from any one person and will not be responsible to any other person for any losses they may suffer as a result.

9.10 If you are a company or other commercial entity it is your responsibility to tell us at the outset of this Contract if you require more than one Director (or equivalent) to give us instructions.

9.11 Late Payment of Bills

(a) Unless otherwise agreed, our bills are payable within 28 days of the delivery of the bill. If we do not receive payment during this time, we reserve the right to charge you interest thereafter as follows:

- (i) If you are a private client, we may charge you interest (on a daily basis) on the unpaid element of the bill (at a rate no higher than

the rate payable on judgment debts at the date of this Contract);

- (ii) If you are a commercial client, we may charge you interest under the Late Payment of Commercial Debts (Interest) Act 1998 plus a fixed sum under the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002;
- (b) We may refuse to undertake any further work for you (whether in respect of the matter to which the bill relates or any other matter on which we are acting for you) until that bill is paid and/or we may stop acting for you; and
- (c) We may retain any papers or documents belonging to you, together with our own records.

9.12 Should you make a payment by way of cheque or credit card and that payment subsequently not be honoured then we will inform you in writing and request funds be made available for the payment to be re-presented. The Firm reserves the right to charge you a fee for administration and any charge imposed by the bank for re-presenting your payment. Until such time as the payment is cleared into our accounts the provisions of clause 9.11 may apply.

9.13 If you have any queries in respect of any element of a bill, you should still promptly pay all other elements of the bill.

9.14 Where we hold money for you, whether because you have made a payment on account or we otherwise receive funds on your behalf, we may use this money toward payment of our bills. We will always advise you when this is being done. If we take any security for our fees, whether from you or any third party, this shall not affect any rights we have (or which we may have) to retain your papers.

9.15 If you wish to make a complaint about one of our bills, you may do so by using the Firm's Complaints Procedure (copy available on request). You may also have a right to object to a bill by making a complaint to the Legal Ombudsman and/or applying to the court for an assessment of the bill under part III of the Solicitors Act (1974). The contact details for the Legal Ombudsman can be found at clause 6.9.

#### **10.Costs & Funding: Litigation/Contested Matters**

10.1 The Firm recognises the need for flexibility in funding litigation, particularly where there is a possibility that you will have to contribute to the other side's legal costs and expenses. At the outset we will investigate with you the best way of paying for your legal representation.

#### **11. Storage of Documents and Deeds**

11.1 We retain all documents relating to your matter (other than any documents which are in your possession or returned to you) for at least six years from the conclusion of our involvement in the matter and in accordance with Law Society guidance and relevant legislation. You agree that we may destroy them after that time. We will not destroy documents you ask us to deposit in our deeds store.

11.2 If you ask us to retrieve documents from storage there is a charge, which is normally £25 plus VAT for each matter, although we will not normally charge that fee if we retrieve documents to enable us to carry out further work for you. We will charge, however, for any work necessary to comply with instructions given by you in connection with retrieved documents. Unless otherwise agreed with you in writing, those charges will be at our hourly rates applicable at the relevant time and those charges will be applied on the same basis as set out in clause 8.

#### **12. Financial Services**

12.1 The Law Society of England and Wales is a designated professional body under Part XX of the Financial Services and Markets Act 2000 (as amended) which means that we may carry on certain regulated activities without being regulated by the Financial Conduct Authority. This means that we may be able to provide limited financial services to you where such services arise out of, or are complementary to, the provision of legal services.

12.2 The Law Society is the designated professional body for the purposes of the Financial Services and Markets Act 2000, but responsibility for regulation has been delegated to the Solicitors Regulation Authority (the independent regulatory body of the Law Society), and responsibility for handling complaints has been delegated to the Legal Ombudsman. The contact details for the Solicitors Regulation Authority can be found at clause 1.3 and the contact details for the Legal Ombudsman can be found at clause 6.9.

12.3 The limited regulated activities that we carry out are issuing certain insurance policies, such as after the event legal expenses insurance, defective title insurance and other property indemnity insurance (such as breach of covenant, absence of easement, lack of planning permission, unknown rights and covenants policies).

12.4 We are not authorised by the Financial Conduct Authority. However, we are included on the register maintained by the Financial Conduct Authority so that we can carry on insurance mediation distribution activity, which is broadly the advising on, selling and

administration of insurance contracts. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by the Solicitors Regulation Authority. The register can be accessed via the Financial Conduct Authority website at

[www.fca.org.uk/firms/financial-services-register](http://www.fca.org.uk/firms/financial-services-register)

12.5 Any insurance policy arranged by us on your behalf, shall, in our opinion, be adequate to meet your needs, but you are hereby informed that we do not recommend any policy over and above any other and that it is your responsibility to check that you are satisfied with the excess levels, exclusions, limitations and other policy terms. We do not conduct a fair analysis of the insurance market prior to arranging insurance policies. We do not have any voting rights or capital invested in any of the insurers we may introduce you to. You can request details of the insurance undertakings with which we conduct business at any time.

12.6 You hereby agree to provide us with details of any relevant existing insurance policies you may have and you agree that we shall not be liable to you for any losses you sustain as a result of your failure to provide us with such details.

#### **13. Limitation of Liability**

13.1 You agree that the limitations on our liability as set out in this Contract are reasonable having regard to the nature of your instructions and the work involved and the availability and cost of professional indemnity insurance. We are, however, happy to consider options to increase these limitations, should you so require (which may result in an increase to our fees).

13.2 We will undertake the work relating to your matter with reasonable skill and care.

13.3 We accept liability without limit for the consequences of fraud by us or any of our Employees which is affected in their capacity as Employees and for any other liability which we are not permitted by law or rules of professional conduct to limit or exclude. If any part of this Contract which seeks to exclude, limit or restrict liability (including provisions limiting the amount we will be required to pay or limiting the time you have to bring a claim) is found by a court to be void or ineffective for any reason, the remaining provisions shall continue to be effective.

13.4 We will not be liable under this Contract or laws of negligence for any deficiencies in the work we have undertaken if and to the extent that deficiencies are due to any false, misleading or incomplete information or documentation which has been provided to us (whether by you or any third party) or due to the acts or omissions of you or any third party. However, where any failure by us to identify any such false, misleading or incomplete information (or any failure by us to inform you that we have identified such information or any failure to act on your resulting instructions) constitutes negligence then we shall, subject to the other provisions of this Contract, remain liable for such failure.

13.5 Despite anything else contained in this Contract, we are not under any obligation to act for you (or to continue to act for you) if to do so would breach any laws or professional rules. Therefore, we will not be responsible or liable to you for any loss which you or any other party may suffer as a result of our refusal to proceed with your matter where we would be in breach (or we reasonably believe that we would breach) of our legal obligations or our professional rules.

13.6 Except as stated in clauses 13.3 and 13.12, the total aggregate liability of the Firm to you under or in connection with this Contract (including any addition or variation to it), whether for breach of contract, negligence, breach of statutory duty, or otherwise, shall not exceed £3,000,000.00 (three million pounds).

13.7 Where we are instructed jointly by more than one party, the limit on our liability applies, in total, to all of you collectively (including anyone claiming through you or on your behalf).

13.8 You agree that you will not bring any claims or proceedings in connection with this Contract against our Salaried Partners, Consultants or Employees personally, unless (and to the extent that) you are otherwise permitted to do so by law or our professional rules. Our Salaried Partners, Consultants and Employees may enforce this clause even though they are not parties to this Contract (but despite having such rights, this Contract may be varied or ended without their consent).

13.9 Proceedings in respect of any claim against us must be commenced within six years after you first had (or ought reasonably to have had) both the knowledge for bringing an action for damages and the knowledge that you had the right to bring such an action and in any event no later than six years after any alleged breach of contract, negligence or other cause of action. This provision expressly overrides any statutory provision which would otherwise apply; it will not increase the time within which proceedings may be commenced and may reduce it.

13.10 If we and any other party or parties are liable to you together in respect of the same claim, then we shall only be liable to pay you

the portion which is found to be fair and reasonable having regard to the level of our default. Therefore, we shall not be liable to pay you the portion which is due to the fault of such party, even if you do not recover all or any money from such other party for any reason.

13.11 If we are liable to you and any other party or parties would have been found liable to you together with us in respect of the same claim if either:

- (a) You had also brought proceedings or made a claim against them; or
- (b) We had brought proceedings or made a claim against them for a contribution towards our liability, then any sum due from us to you shall be reduced by the proportion for which such other party or parties would have been found liable had those proceedings been brought or those claims been made.

13.12 Nothing in this Contract excludes or limits the liability of the Firm for:

- (a) Death or personal injury caused by negligence;
- (b) Fraud or fraudulent misrepresentation; or
- (c) Any liability if and to the extent that it is not permissible in law for such liability to be limited or excluded.

#### 14. Client Money

14.1 Subject to certain conditions set out in Rule 22 to 25 of the SRA Accounts Rules a sum in lieu of interest must be accounted to clients when it is fair and reasonable to do so in all the circumstances.

14.2 Our policy seeks to provide for a fair and reasonable outcome for both our clients and this practice.

14.3 Our policy on interest shall be kept under review. The policy may change if the Bank of England base rate increases or decreases.

14.4 The rate of interest available on client accounts is significantly lower than the rate of interest which can be obtained on other bank or building society accounts. This reflects the fact that immediate access is required to client accounts in order to comply with the accounts rules and to facilitate the smooth completion of transactions. It is therefore unlikely that the funds will attract as much interest as if you had invested those funds yourself.

14.5 All interest arising from cleared funds held on behalf of a trust will be credited to the trust whether those funds are held in a general client account or a separate designated client account (formerly known as a Designated Deposit Account).

14.6 For cleared funds paid into general client accounts, the practice shall account for interest unless one of the following circumstances applies:

- (a) The amount of interest calculated on the balance held is £20.00 or less; or
- (b) The client money was held in cleared funds in client account for a period of five working days or less.

14.7 All other clients shall be paid interest at the rate payable upon the practice's client account from time to time, unless there are specific circumstances which lead the client to contract out of the right to receive interest payments (for example where the client agrees the practice may keep interest payments to remunerate the practice for acting as stakeholder in the transaction or where the client's religious beliefs prohibit the receipt of interest).

14.8 In certain circumstances a separate designated client account will be opened on behalf of clients. All interest arising from funds held in separate designated client accounts will be credited to the client.

14.9 Where sums of money are held in relation to separate matters for the same client, the money relating to the different matters shall be treated separately unless it is fair and reasonable in the circumstances to consider the sums together.

14.10 Interest will not accrue on any advances from the practice under rule 14(2)(b) of the accounts rules to fund a payment on behalf of a client or trust in excess of funds held for that client or trust.

14.11 Where a client fails to present a cheque to his or her bank for payment we will not recalculate any amount due to the client unless it is fair and reasonable to do so, for example if the cheque has been sent to an incorrect address.

14.12 We will usually account to you for interest arising under our policy at the conclusion of your matter, but might, in some cases, consider it appropriate to account to you at intervals throughout.

14.13 Unless otherwise agreed by us in writing, if we receive any sums to hold on your behalf (whether received directly from you or from a third party) then we may deposit such money into an account or accounts with any bank or financial institution (a "deposit provider" which expression shall include bank, financial institution or clearing house through which transfers are made) of our choosing. We confirm that we comply with any applicable laws and any applicable rules of a regulatory authority in respect of the making of any such deposits.

14.14 We shall not be liable for any loss which you or any third party may suffer in connection with an Insolvency Event occurring in relation to any deposit provider with whom we have deposited funds or through whom transfers are made, save if and to the extent that any such loss was caused by or contributed to by any breach by us of clause 14.13.

14.15 In clause 14.14 an "Insolvency Event" means:

- (a) Any deposit provider is unable or admits inability to pay its debts as they fall due (or is deemed to be or declared to be unable to pay its debts under applicable law), suspends or threatens to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties or commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
- (b) The value of the assets of any deposit provider is less than its liabilities (taking into account contingent or prospective liabilities);
- (c) A moratorium is declared in respect of any indebtedness of any deposit provider;
- (d) Any corporate or government action, legal proceedings or other procedure or steps taken in relation to:
- (i) The suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any deposit provider;
- (ii) A composition, compromise, assignment or arrangement with any creditor of any deposit provider;
- (iii) The appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of any deposit provider or any of its assets;
- (iv) Enforcement of any security interest (however so described) over any assets of any deposit provider; or
- (v) The prevention or restriction (whether by way of freezing order or otherwise) of a deposit provider's ability to dispose of, deal with or diminish the value of its assets or any of them;
- (e) Any event analogous to those set out in clause 14.15(d) occurs in any jurisdiction in respect of any deposit provider.

14.16 If an Insolvency Event occurs in relation to any deposit provider which holds money that we have deposited on your behalf, you agree that we may, where applicable, disclose to the Financial Services Compensation Scheme ("FSCS") all relevant details in our possession about you and the money that we hold on your behalf with such a deposit provider. However, if you do not wish us to make any such disclosure, please notify us by writing to our Data Protection Compliance Officer, David Bancroft at our registered office. Please note that by withholding consent to our disclosure of your details to the FSCS in such circumstances, you may forfeit any right you may have to receive compensation from the FSCS where an Insolvency Event occurs in relation to a deposit provider holding money which we have deposited on your behalf. Compensation for deposits is limited to £85,000 for any individual's total deposit with that service provider, including any personal finances. Further information regarding the FSCS can be found at [www.fscs.org.uk](http://www.fscs.org.uk), telephone number 020 741 4100.

#### 15. Confidentiality, Privacy Notice & Data Protection

15.1 You also have the right to lodge a complaint with the ICO in the event that you believe we have mishandled your personal data. Please see the ICO's website for details of their complaints handling process. <https://ico.org.uk/for-the-public/>.

15.2 We keep information passed to us confidential and respect your right to privacy. We will keep your personal information confidential except to the extent that it is necessary to disclose it by law or to comply with a regulatory or legal process or where we need to process the information to provide a product or service that you have requested. We have procedures designed to ensure that personal data is used only by appropriately authorised and trained personnel and to safeguard such information against accidental loss or unauthorised disclosure.

15.3 If you are an individual, you have a right under the Data Protection Regulations to obtain the personal data that we hold on you. Should you have any queries concerning this right, please contact our Data Protection Officer. We will comply with your access rights without delay and within a month in any event. Providing you with access to the personal data we hold about you is free of charge although we may charge or refuse a request if it is deemed to be manifestly unfounded or excessive. If we refuse a request, we will tell you why and how you may complain about our decision.

15.4 We will retain your personal data for a period in accordance with Law Society guidance and relevant legislation.

15.5 If on your authority we are working with other professional advisers or lawyers, we will assume that we may disclose any relevant

aspect of your matter to them.

15.6 We may in some cases consult credit reference agencies in order to assess your creditworthiness. If you are an individual, we require your consent before we do this. Your continuing instructions to us will constitute your consent to us carrying out such a search. Details of the credit agency we use are available on request. We will keep that information strictly confidential unless otherwise required by law or court order.

15.7 Where we act for you and your lender we have a duty to fully reveal to your lender or HM Revenue and Customs all relevant facts about your purchase, your mortgage and what makes up the purchase price. Your continuing instructions amount to your consent to us to disclose all relevant information to your lender and to HM Revenue and Customs. This includes any difference between your mortgage application and information you or we receive during the transaction including any cash back payments or discount schemes or other incentives that the seller is providing or allowing or giving to you.

15.8 You must disclose all information which may affect your liability for stamp duty land tax or other stamp duty (duty) as we can then ensure you pay the correct duty. If you fail to disclose all information (and if in doubt please disclose it as it can be discounted if it is not relevant) you must accept full liability for any penalties or action or other proceedings that any authority may take against you for failing to disclose information which resulted in a duty or greater liability to pay such duty.

15.9 Where you provide us with fax or computer network addresses for sending material to, we will assume, unless you tell us otherwise, that your arrangements are sufficiently secure and confidential to protect your interests.

15.10 The Internet is not secure and there are risks if you send sensitive information in this manner or you ask us to do so. Data we send by email is not routinely encrypted, so please tell us if you do not want us to use email as a form of communication with you or if you require data to be encrypted.

15.11 We will take reasonable steps to protect the integrity of our computer systems by screening for viruses on email sent or received. We expect you to do the same for your computer systems.

15.12 The Firm may become subject to periodic checks by Law Society approved Consultants and/or Assessors. This could mean that your file is selected for checking, in which case we would need your consent for the checking to occur. All such checks are conducted by individuals who have provided the Firm with a Confidentiality Agreement. Your acceptance of these Terms of Business amounts to your consent to make your file available for checking. If you do not want us to make your file available for checking you must notify us and we will mark your file accordingly. If you refuse to give us consent to checks, your refusal will not affect the way your case is handled in any way.

15.13 We may correspond with you by email unless you advise us in writing that you do not wish us to do so. You acknowledge that email may not be secure. Email will be treated as written correspondence and we are entitled to assume that the purported sender of an email is the actual sender and that any express or implied approval or authority referred to in an email has been validly given. You consent to us monitoring and reading any email correspondence travelling between you and any mail recipient at the Firm.

15.14 We will aim to communicate with you by such method as you request. More often than not this will be in writing, but may be by telephone if it is appropriate. We may need to virus check disks or e-mails, but unless you withdraw consent we may communicate with others when appropriate by e-mail or fax but we cannot be responsible for the security of correspondence and documents sent by e-mail or fax.

## 16. Referrals to Third Parties

16.1 If we recommend that you use a particular firm, agency or business, we shall do so in good faith and because we believe it to be in your best interests. If we recommend that you use a particular firm, agency or business that can only offer products from one source, we shall notify you in writing of this limitation. We will pay to you any commission that we receive from any particular firm, agency or business that we recommend you use.

16.2 If we recommend that you use a particular firm, agency or business, we shall not be liable to you for any advice you may be given by that firm, agency or business and you are advised that if that firm, agency or business is not another firm of solicitors you will not be afforded the regulatory protection of the Solicitors Regulation Authority (SRA) or of the SRA's Code of Conduct and SRA Indemnity Insurance Rules, nor shall you be entitled to the benefit of the SRA Compensation Fund.

## 17. Hours of Business

17.1 Our offices are open between 9.00am and 5.00pm, Monday to Friday, excepting bank holidays. We do not provide an out of office

or emergency service to clients. The person responsible for your matter may, at his or her absolute discretion, provide you with a mobile telephone number, and may endeavour to take your telephone calls outside of office hours, but nothing he or she says should be interpreted as an agreement to routinely deal with your matter or to take your telephone calls outside of office hours.

## 18. Anti- Money Laundering

### 18.1 Identity Checks

- (a) We shall inform you in our Client Care Letter whether the Anti Money Laundering Legislation applies to you.
- (b) All solicitors are obliged to carry out customer due diligence ("CDD") in accordance with the UK anti-money laundering and counter-terrorist financing regime. This includes us obtaining and keeping documentary evidence of the identity of clients and gaining an understanding of their financial status and normal business affairs.
- (c) In the case of individuals (including Directors, Secretaries and Share Holders of a Company or Members of a Limited Liability Partnership), we require to see and keep a photocopy of a Passport, Photo Driving Licence, or National Identity Card (or similar document) as evidence of your identity and a recent utility or council tax bill (or similar type of document as additional evidence of your address. We need to see original documents and will discuss with you acceptable documents and methods of certification if the original is not available. Any personal data received from you will be processed only for the purposes of preventing money laundering or terrorist financing, or as permitted under the Data Protection Regulations. In some circumstances we may use online identity checking services to verify your identity.
- (d) For all companies we will carry out a search of Companies House (or similar registry in foreign jurisdictions) and may ask for further information.
- (e) For non-listed companies and other organisations, we will also require the evidence for individuals for one or more Directors, Company Secretaries, Shareholders, Partners or other persons authorised to represent the organisation.
- (f) For other legal entities we will inform you of the evidence required to confirm identity.

### 18.2 Disclosure to the Authorities etc.

- (a) We are in certain circumstances obliged under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and Proceeds of Crime Act 2002 ("POCA") as amended by the Serious Organised Crime and Police Act 2005 ("SOCPA") to make a report to the National Crime Agency ("NCA") where we are suspicious that any matter or transaction in which we are instructed involves the proceeds of criminal conduct. We may be prohibited by law from informing you or anyone else when such a report has been made, and it is possible that we may not be allowed to proceed with the transaction or matter concerned until NCA gives us permission to do so. We may not be permitted to tell you anything about any of these circumstances should they occur.
- (b) If any term or provision of these terms of business or our Client Care Letter is inconsistent with complying with our legal obligations under Anti-Money Laundering Legislation, our legal obligations will override the inconsistent term which shall be deemed modified accordingly.
- (c) We will not accept any liability for any loss caused to you or any other party as a result of our refusal to proceed with a matter or transaction or otherwise complying with our legal obligations.

### 18.3 Cash Payments

- (a) We will not accept payments from you in cash of over £500.00 regardless of whether the payment is to settle our bill, to pay money on account, or in respect of transactions we may be acting upon (such as sales and purchases of businesses or property).
- (b) For the avoidance of doubt the £500.00 cash limit applies to each matter in which we are acting for you and not just to each transaction relating to that matter.
- (c) We shall not be liable to you for any losses you may suffer as a result of any refusal by us to accept cash payments of over £500.00.

## 19. Equality & Diversity

19.1 We are committed to promoting equality and diversity in all of our dealings with clients, third parties and employees. Please contact us if you would like a copy of our Equality and Diversity Policy.

19.2 If you have any special requirements in relation to the way in which you would like us to handle your work, (for example, if you consider yourself to have a disability) please let us know.

## **20. Rights of Third Parties**

20.1 Except as stated otherwise in clause 13.8, a person who is not a party to this Contract shall not be entitled to enforce any of its terms.

## **21. Applicable Law, etc.**

21.1 These terms and our Client Care Letter shall be governed by, and interpreted in accordance with English law. Any disputes or claims concerning this Contract and any matters arising from it shall be dealt with only by the courts of England and Wales.

21.2 If we or you do not enforce our respective rights under this Contract at any time it will not prevent either us or you from doing so later.

21.3 If any provision of this Contract is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Contract which shall remain in full force and effect.

## **22. Termination**

22.1 You may end this Contract (and therefore, your instructions to us) at any time by writing to us by post, fax or email (see clause 1 of these terms for details). However, we may be entitled to keep all of your documents and deeds while there is money owing to us (including fees and expenses which have not yet been billed).

22.2 We may end this Contract (and, therefore, cease acting for you) in relation to any matter or all matters of yours but only on reasonable written notice and for good reason. Examples of a good reason include where you have not given us sufficient instructions, where you have not provided appropriate evidence of identification or we reasonably believe that the relationship between you and us has broken down.

22.3 If your matter does not conclude, or we are prevented from continuing to act because of our legal obligations or our professional rules, we will charge you for any work we have actually done. Our charges will be based on our hourly rates set out in this Contract (and where a fixed fee has been agreed, the charges will not exceed that fixed fee).

22.4 If we cease acting for you, we shall (where relevant) inform the court or tribunal that we no longer act for you and shall apply to be removed from their records. We may charge you for doing so at our hourly rates applicable at the relevant time and those charges will be applied on the same basis set out in clause 8 and for any expenses which we incur on the same basis – also set out in clause 8.

## **23. Cancellation Rights**

23.1 If you are an individual consumer (and not a business entity) and if our contract with you is a 'distance contract' or an 'off premises contract', you have the right to cancel this Contract within 14 days of conclusion of this Contract (the 'cancellation period'). 'Conclusion of this contract' means 14 days from the 'Contract Date', defined at the beginning of this Contract. This right exists in accordance with The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. Please refer to the 'Cancellation Notice' at clause 24 below for further information about your right to cancel and the conditions attached to the same.

23.2 Where clauses 23.1 and 24 apply, we will not start work on your file for 14 days from the Contract Date. If you would like our service to start within 14 days of the Contract Date, please sign the enclosed Client Declaration, mark the relevant box stating your wishes and return a copy to us.

23.3 Where clauses 23.1, 24 and 23.2 apply, then once we have started work on your file within the cancellation period, on your instruction, you will be charged for any work done if you then cancel your instructions. You will have to pay us an amount which is proportionate to the work completed until we receive notice of cancellation from you, in comparison with the full coverage of this Contract. These charges will be applied on the same basis as set out in clause 8 of this Contract and where a fixed fee has been agreed, the charges will not exceed that fixed fee.

## **24. Cancellation Notice**

24.1 This Notice is applicable to you if you are an individual acting for purposes wholly or mainly outside your trade, business, craft or profession and this Contract between the Firm (as the trader) and you (as the consumer) is a 'distance contract' or an 'off-premises' contract.

24.2 A 'distance contract' means a contract concluded between a trader and a consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded.

24.3 An 'off premises contract' means a contract between a trader and a consumer which is any of these:

- (a) A contract concluded in the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader;
- (b) A contract for which an offer was made by the consumer in the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader;
- (c) A contract concluded on the business premises of the trader or through any means of distance communication immediately after the consumer was personally and individually addressed in a place which is not the business premises of the trader in the simultaneous physical presence of the trader and the consumer;
- (d) A contract concluded during an excursion organised by the trader with the aim or effect of promoting or selling goods or services to the consumer.

24.4 If you are unsure whether cancellation rights apply to you, please contact us immediately upon receipt of these Terms of Business.

A copy of these Terms of Business is available in larger print. Please contact us if you require a copy.

# INSTRUCTIONS FOR CANCELLATION

## Right to cancel

You have the right to cancel this contract within 14 days without giving any reason.

The cancellation period will expire after 14 days from the day of the conclusion of the contract (the 'Contract Date' at the beginning of this Contract).

To exercise the right to cancel, you must inform us, **Holden Smith Law** at **registered office** or **hello@holdensmith.co.uk**, of your decision to cancel this contract by a clear statement (e.g. a letter sent by post, fax or e-mail). You may use the attached 'Cancellation Form', but it is not obligatory.

To meet the cancellation deadline, it is sufficient for you to send your communication concerning your exercise of the right to cancel before the cancellation period has expired.

## Effects of cancellation

If you cancel this contract, we will reimburse to you all payments received from you, including the costs of delivery (except for the supplementary costs arising if you chose a type of delivery other than the least expensive type of standard delivery offered by us).

We will make the reimbursement without undue delay, and not later than –

(a) 14 days after the day on which we are informed about your decision to cancel this Contract.

We will make the reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of the reimbursement.

If you requested to begin the performance of services during the cancellation period, you shall pay us an amount which is in proportion to what has been performed until you have communicated us your cancellation from this Contract, in comparison with the full coverage of the contract.

## CANCELLATION FORM

**COMPLETE, DETACH AND RETURN THIS FORM ONLY IF YOU WISH TO CANCEL THIS CONTRACT.**

To Holden Smith Law

I/We [\*] hereby give notice that I/We [\*] cancel my/our [\*] contract for the supply of the following service [\*]:

Matter Number (located at the top of the Client Care Letter/ Client Declaration) .....

Ordered on [\*] /  
received on [\*]: .....

Name of consumer(s): .....

.....

Address of consumer(s): .....

.....

.....

Signature of consumer(s): .....  
(only if this form is  
notified on paper):

.....

Date: .....

[\*] Delete as appropriate.