

Terms of Business

Effective March 2010

1. General

- 1.1 The terms set out in these terms of business (**these terms**) apply to all dealings between Fladgate LLP and the person (including for the purpose of these terms any company, corporation, partnership or other incorporated or unincorporated body) to whom our services are supplied (**you**). In these terms references to **we**, **us** and **our** are references to Fladgate LLP and any successor or assignee.
- 1.2 Your contract is with Fladgate LLP, a limited liability partnership. With effect from 1 April 2008 the partnership known as Fladgate Fielder transferred its business to Fladgate LLP. In these terms of business and elsewhere, unless the context otherwise requires any reference to Fladgate Fielder from 1 April 2008 is to be treated as a reference to Fladgate LLP.
- 1.3 These terms of business supersede any earlier terms of business we may have provided to you.
- 1.4 Fladgate LLP is a body corporate which has "members". We have decided to retain the traditional title of "partner" to describe members of Fladgate LLP. There is however no partnership between the members or employees or between the members or the employees and Fladgate LLP. A reference in these terms or elsewhere (whether in writing or orally) to a person being a "partner" is a reference to that person in their capacity as a member of Fladgate LLP. Any reference to an employee, consultant, agent or sub-contractor of Fladgate LLP includes an employee, consultant, agent or subcontractor of a company providing services to Fladgate LLP.
- 1.5 There is no contract between you and any member, employee or consultant of Fladgate LLP. Any advice given to (or other work done for) you by a member, employee or consultant of Fladgate LLP is given (or done) by that person on behalf of Fladgate LLP and not in his or her individual capacity and no such person assumes any personal responsibility to you for the advice or other work. All correspondence and other communications sent to you in the course of our work, whether signed by a member, consultant or employee will for all purposes be treated as having been sent on behalf of Fladgate LLP.
- 1.6 You agree that, to the extent permitted under any applicable law, if, as a matter of law, a duty of care, or any other duty, liability or obligation, would otherwise be owed to you by any member, employee or consultant of Fladgate LLP, such duty is excluded and you agree that you will not bring any claim – whether on the basis of breach of contract, tort (including without limitation negligence), breach of statutory duty or otherwise howsoever – against any member, employee or consultant of Fladgate LLP in respect of any loss or damage that you or any person or company associated with you suffer or incur, directly or indirectly, in connection in any way with any advice given to or other work done for you.
- 1.7 Accordingly any claim that you wish to make can only be made against Fladgate LLP and not

against a member, employee or consultant of Fladgate LLP.

- 1.8 Each member, employee and consultant of Fladgate LLP will be entitled to the benefit of these provisions under the Contracts (Rights of Third Parties) Act 1999 but Fladgate LLP's contract with you may be varied from time to time or terminated without the consent of any such person.
- 1.9 When you instruct us in relation to any new matter or case we will normally send you a letter confirming your instructions (an **engagement letter**). The terms of an engagement letter (if any) and these terms will together form a contract between you and us in relation to that matter or case. If there is any conflict between them, the engagement letter terms will prevail over these terms.

2. The Proceeds of Crime Act 2002 (POCA)

- 2.1 We must, when acting for you, establish your identity. It is a condition of our engagement that you supply us with such identification information and details, including any relevant identification information for any third party providing funds for any transaction, as we may properly request from time to time. You will be responsible for any costs incurred by us in confirming your identity. If we are not given satisfactory information in sufficient time we will be obliged to terminate the engagement. In that event you will be charged for the work done up to the time we stop acting.
- 2.2 POCA also imposes on us a wide statutory obligation to report to the relevant authorities circumstances, of which we have knowledge or suspicion, that another person is engaged in certain criminal activities (including acquiring and possessing the proceeds of any crime). If we make a notification to the relevant authorities, we will not be able to inform you of this fact and may not be able to proceed with the engagement unless we receive the appropriate consent. Consent, if given, may take up to 39 days to obtain. If consent is refused, we will, by law, be unable to tell you why we cannot proceed.
- 2.3 Where we terminate our engagement under this paragraph we will be entitled to charge our appropriate fees for the work carried out to the date of termination, notwithstanding that we have been unable to complete the engagement.
- 2.4 No funds will be accepted into our client account until we are satisfied with the source of such funds and that the party remitting such funds has complied with our money laundering policies.
- 2.5 We will not be liable for any loss, damage, delay, costs, penalties or other losses incurred by you resulting from or in connection with the compliance by us with our statutory duties (or in acting as we may reasonably believe we are required to do).

3. Financial services

- 3.1 We are not regulated by the Financial Services Authority.
- 3.2 Occasionally the work that we carry out for you involves investments and so we may refer you to someone who is authorised to provide any

- necessary advice. However, as we are regulated by the Solicitors Regulation Authority for the purposes of the Financial Services and Markets Act 2000 we can provide certain limited services in relation to investments if they are closely linked with the legal services we are providing to you.
- 3.3 We are included on the register maintained by the Financial Services Authority so that we can carry on insurance mediation 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 Services Authority website at www.fsa.gov.uk/register.
- 4. Our responsibilities**
- 4.1 We will provide the agreed services with reasonable skill and care and in a timely manner subject to the engagement letter and these terms.
- 4.2 The work we carry out for you will necessarily reflect the circumstances in which the work is carried out. By way of example only, where work is carried out in restricted timescales or unusual circumstances, you accept that we may be unable to provide you with the same level of written advice or confirmation as may be appropriate where such restrictions or circumstances do not exist.
- 4.3 Our work and advice will cover the agreed services for the purpose expressly made known to us by you. In the absence of specific instructions from you accepted by us in writing, we will not be obliged to provide, and can accept no liability for, advice or work beyond the scope of the agreed services or in relation to factors of which we were not made aware.
- 5. Your responsibilities**
- 5.1 You must provide us with timely, accurate and up to date information relating to the agreed services and notify us promptly of any material change in information or circumstances.
- 5.2 We will be entitled to rely on information which you give us without further verification unless expressly agreed otherwise.
- 5.3 You accept that we will be entitled to treat the person or persons instructing us as being fully authorised by you to do so, including in respect of accepting these terms and the terms of any engagement letter.
- 5.4 We expect you to check all information and documents sent by us to you where it is apparent from the circumstances, or indicated by us, that you should do so and to notify us promptly of any incorrect statements or information of which you become aware.
- 5.5 You must tell us as soon as possible if matters are or become particularly urgent or require action by a specific time.
- 5.6 You accept that we may rely and act on advice or information provided directly, or through you, by other specialist advisers acting on your behalf.
- 5.7 Our role is to act as legal adviser. You will be solely responsible for all commercial, financial or business decisions that you make.
- 6. Fee structure**
- 6.1 Our fees will be calculated on a fair and reasonable basis having regard to competitive fee rates in the legal services market in which we operate, the nature and extent of the agreed services and the overall circumstances.
- 6.2 Except where we have agreed to charge fees based on the value element related to the transaction, the primary element in calculating our fees is likely to be the time spent by fee earners on the agreed services. We will notify you of appropriate fee earner rates, which will vary from time to time, during the course of our work and keep you updated with an indication of total time costs incurred where a longer transaction or process is involved.
- 6.3 We will try, to the extent possible, to give you an indication or projected range for our fees, but in the absence of our express agreement to the contrary, such indications or projections are not agreed fees or quotations and will be subject to change to reflect other factors. In that respect you will be able to assist in keeping fees to lower levels by providing prompt and relevant information and responses to us and keeping the brief to the agreed services. You accept that if there are additional factors of which we could not reasonably have been aware, additional negotiations required, or a change in the proposed timescale, our fees will need to reflect these factors.
- 6.4 In addition to time costs, we are entitled to reflect in our fees additional factors such as the urgency or speed of action required, the novelty or complexity of the issues involved, the place where the work is undertaken, unsocial hours worked by personnel (not limited to fee earners) (whether necessarily or at your request), and the overall value or importance of the work to you.
- 6.5 You should bear in mind that our work will involve notes of meetings, telephone calls, file reviews, preparation for meetings, briefing meetings for appropriate delegation and other instances where the time involved may not be immediately apparent to you.
- 6.6 You agree that we may also charge for subsequent work provided that is undertaken by us at your request or necessarily as a result of action taken by you relating to the assertion of client privilege on your behalf or requiring us to provide information to your other professional advisers, auditors, governmental or other bodies, or the like.
- 6.7 All indications of costs are given subject to the addition of a services fee to reflect specific communication costs, copying, printing and scanning costs, search costs, courier charges, fees of counsel or other specialist advisers, enquiry agent/process server fees, court fees, document 'bible' (including on CD-ROM) production costs, and other expenses incurred on your behalf in carrying out the agreed services together with travel and subsistence costs where appropriate (including the cost of providing food and drink for meetings where work spans normal meal times) (all here referred to as **disbursements**).
- 6.8 Our fees and disbursements will be charged with the addition of VAT at the applicable rate from time to time. Our invoices may only be addressed to the party instructing us and to whom we provide the agreed services.
- 6.9 Where we act for more than one client in relation to a matter, each client will, unless otherwise agreed by us, be jointly and severally liable for our charges. If we agree that each client's responsibility for our charges will be limited to a certain proportion of the total, and one or more clients should then cease to instruct us through insolvency or otherwise, you agree that the share of our charges which would otherwise have been payable by those ceasing to instruct us will become the responsibility of the remaining clients on a pro rata basis.
- 7. Payment of fees and money held in client accounts**
- 7.1 Our accounts are due for payment within one month of delivery unless otherwise agreed.
- 7.2 You will be responsible for payment if a third party who is due or has agreed to pay on your behalf fails to do so.
- 7.3 Payment in relation to these terms means the receipt by us of cleared funds in our bank account covering the relevant fees, disbursements and VAT.
- 7.4 We may, at our discretion, as a condition of acting or continuing to act for you, require payment on account of fees and disbursements and/or

- payment of interim accounts immediately on delivery. Unless otherwise agreed with us, we will require payment for transactional work before completing the transaction and our fees are not conditional on completion.
- 7.5 Where funds are held by us in or sent to our client account on your behalf, you authorise us to make payment by deduction from such funds.
- 7.6 Where payment is not made in accordance with agreed terms, we reserve the right to charge interest and/or to cease further work (whether in respect of the particular matter upon which the relevant fees were charged or any other work being carried out by us for you) on informing you to that effect, in which case we accept no liability for any loss caused to you as a direct or indirect result of such delay. Interest where chargeable will be at the rate equivalent to that payable at the time on judgment debts.
- 7.7 We do not accept any liability for loss of client funds in the event of a banking failure.
- 8. Client service and complaints policy**
- 8.1 If you have any problem or complaint in relation to our services or our bills which you are unable to resolve with the partner responsible for the work or the partner who normally has overall responsibility for your work, you should raise the matter by letter marked 'Private and Confidential for the attention of the Chairman'. The Chairman or other partner designated by us from time to time for such purpose will then investigate the issue, take such action as we consider appropriate in accordance with our complaints procedure, and report back to you as soon as possible.
- 8.2 If, after the above procedure has been followed, you are dissatisfied with our response, you may approach the Legal Complaints Service (**LCS**) which has a complaints and redress scheme. More information about the LCS can be found at www.legalcomplaints.org.uk or by calling their helpline on 0845 608 6565.
- 8.3 If you have a complaint about our bills you may follow the procedure set out at 8.1; you may also have the right to object to the bill by making a complaint to the LCS whose details are set out above and/or by applying to the court for an assessment of the bill under Part III of the Solicitors Act 1974.
- 9. Files and documents**
- 9.1 We may destroy physical copies of documents once we have made electronic copies for our file. You must make specific arrangements with us if you wish papers to be retained in physical copies.
- 9.2 We will retain files and papers (including those in electronic form) relating to your affairs in storage on your behalf for such period as we consider to be reasonable (which period will be a minimum of six years), but have the right to destroy them without reference to you after such period. You must make specific arrangements with us if you wish papers to be retained.
- 9.3 When requested to do so, we will make available to you such papers (including deeds) as we may be legally and professionally required to deliver. We may make a charge for the printing, handling costs and any professional time reasonably involved and may require payment as a condition of delivery of such papers.
- 9.4 We have a general and particular lien (right of retention) over any of your property, deeds and other papers (including electronically stored material) in or coming into our possession in respect of payments due to us. If payment remains outstanding, we may, after reasonable notice to you, enforce such lien by sale or otherwise dealing with all or any part of such property or papers as we consider appropriate.
- 10. Confidentiality, copyright, third parties and data protection**
- 10.1 Subject to paragraph 10.2, where information provided to us by you or by us to you clearly appears or is stated to be confidential we will take and require you to take such steps as are reasonably appropriate in good faith to protect such information from wrongful disclosure to or misuse by third parties. Disclosure will not be prevented where the information in question becomes public knowledge (unless it has become so in breach of this paragraph) or is disclosed by others not subject to restriction or was known by us prior to disclosure by you. We may disclose information to our suppliers as part of the provision of the agreed services to you, where such suppliers are subject to similar obligations of confidentiality.
- 10.2 Our advice to and correspondence with you may be legally privileged in certain circumstances. We may however be under a statutory duty to disclose certain facts or information to third parties and to co-operate with any official investigations or enquiries relating in whole or part to any work we have done for you. In that case our statutory duties may override our duties to you. We will endeavour, where practicable and unless precluded by law, to notify you immediately of any such event and to take reasonable and proper steps to protect your interests pending your further instructions.
- 10.3 Except where otherwise agreed, the fact that we act for you professionally will not be deemed confidential and may be disclosed to clients or prospective clients. We may act for other parties whose interests may be in competition or opposed to yours provided that we do not in doing so use information obtained from you to your detriment.
- 10.4 We retain copyright and other applicable intellectual property rights in all processes and materials developed by us either before or during the course of our work for you including, but not limited to, reports, memoranda, advice in writing, original documents, methodologies and software. These materials may be used by you in and during the course of the project, transaction or case which is the subject of the agreed services but are not to be further used or reproduced in any form without our prior written consent. You agree that any documents or materials provided to us in the course of the agreed services may be copied and stored electronically.
- 10.5 Communications from us to you should not be disclosed or passed on to any third party without our prior written consent where marked confidential or where it is apparent from the circumstances that such communication is intended only for you. We accept no liability for any disclosure by you to any third party without such consent and will require you to make good to us any costs or liability incurred in dealing with any claim from any such third party.
- 10.6 We will hold, and you consent to our holding and processing, your personal data to enable us to provide services to you (including the agreed services), maintain and operate our practice to necessary standards, and to make you aware of our services and of events we think may be of interest to you. In order to do so, you agree that we may disclose personal data to third parties including third parties outside the European Economic Area. If you do not wish to receive information from us about us and our services, you should notify our Head of Marketing. Where you are a corporate body, you agree to ensure that you have the consent to the above in relation to the personal data of your officers and staff which we are given. Where you provide us with personal data of third parties without their knowledge, such data will only be used for the purpose of the agreed services.
- 10.7 If we are required to take specific steps to comply with data protection, privacy or freedom of

information laws in relation to information obtained in the course of providing our services to you, you agree to pay additional fees in respect of the time spent by professional staff in taking such steps.

11. Electronic communication

- 11.1 Although we take considerable precautions to protect our electronic networks, we cannot guarantee the security or integrity of such communication, and cannot accept any liability for degradation, viruses or other infections. You nevertheless agree that we may communicate with you by fax and e-mail.
- 11.2 E-mail communications to and from our members, employees and consultants may be monitored, intercepted or read as part of the management of our business before or after their receipt or transmission to the intended recipient.

12. Limitation on our Liability

- 12.1 This paragraph contains restrictions on our Liability to you in the event that you bring a claim against us. Accordingly, you should read and consider this paragraph carefully.
- 12.2 We will only provide our services under these terms to you and we neither assume nor will have any Liability to any third party arising from the provision of such services.
- 12.3 In this paragraph 12, **Liability** means our entire liability (including any liability for the acts or omissions of our members, consultants, employees, agents and subcontractors) to you in respect of any loss or damage caused to you, including any arising from:
 - 12.3.1 breach of duty to you;
 - 12.3.2 breach of our contract with you; or
 - 12.3.3 any representation, statement, or tortious (including negligent) act or omission under or in connection with the services we provide to you.
- 12.4 Except where expressly set out in these terms, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 12.5 Nothing in these terms or elsewhere excludes or limits our Liability:
 - 12.5.1 for death or personal injury caused by our negligence;
 - 12.5.2 for any matter for which it would be illegal for us to exclude or attempt to exclude our Liability;
 - 12.5.3 for fraud or fraudulent misrepresentation; or
 - 12.5.4 for our reckless disregard of our professional obligations.
- 12.6 We will not be liable for any loss or damage suffered by you arising from any fraudulent or negligent act or omission, misrepresentation or default:
 - 12.6.1 on your part;
 - 12.6.2 on the part of any of your agents; or
 - 12.6.3 on the part of any other third party acting on your behalf.
- 12.7 We will have no Liability for:
 - 12.7.1 any loss or damage that you may suffer as a result of any change in the law, or in the interpretation of the law, that occurs after we have given our advice to you;
 - 12.7.2 any tax advice, or any failure to give tax advice, unless such tax advice is an integral or clearly specified part of the agreed services. Tax for this purpose includes all elements of national, international, local governmental or other taxation, imposition of duty, VAT, stamp duty or other levy or charge; or
 - 12.7.3 any advice, materials or information provided by us which are reproduced in any form or otherwise used or relied on by you in breach of, or at variance with, any of these terms or any other terms of our engagement or for a purpose different

from the one for which they were originally provided.

- 12.8 We reserve the right to specify in the engagement terms an appropriate limit on our Liability, which will always be subject to paragraph 12.5.
- 12.9 If we are providing the agreed services to more than one person, then any limit on our Liability pursuant to paragraph 12.8 and the engagement terms will be apportioned equally amongst each of the persons to whom we provide such agreed services.
- 12.10 If, in connection with the provision of the agreed services, you make arrangements with other advisers to limit their liability to you in circumstances where we would otherwise be jointly and severally liable with those other advisers for a claim, we will not be adversely affected and our Liability to you will not be increased by the limitation of those other advisers' potential liability.
- 12.11 The invalidity or ineffectiveness of any of these terms or any other terms of our engagement will not affect the validity and enforceability of the remaining terms.

13. Third parties, applicable law and jurisdiction

- 13.1 Except for the rights of our members, consultants and employees that are expressly set out in paragraph 1.8, no third party may have the benefit of, or the right to enforce, these terms, the engagement letter, or any other term of our engagement.
- 13.2 These terms and the engagement letter are governed by English law.
- 13.3 We and you submit to the non exclusive jurisdiction of the English courts in respect of any claims we may bring against you and to the exclusive jurisdiction of the English courts in respect of any claims you may bring against us.

14. Practice management standards – LEXCEL

- 14.1 Fladgate LLP has achieved LEXCEL accreditation to ensure that we comply in all respects with the Law Society's Practice Management Standards. This involves annual audits of a very small sample of client files by outside auditors who are approved by the Law Society. By agreeing to these terms and conditions, you give your consent to our files relating to your business being made available to the auditors for this purpose. If you have any objection to our file relating to any matter of yours being audited for this purpose, please inform us in writing as soon as possible.
- 14.2 The following points which safeguard your interests are adhered to:
 - 14.2.1 the auditors are required to give an undertaking of confidentiality to us before proceeding with an audit;
 - 14.2.2 you may withdraw your consent to audit at any time by giving us written notice, either generally or in relation to a specific matter, without having to give a reason. Alternatively, the person responsible for the work within Fladgate LLP may decide that because of its nature it is not appropriate for your file to be seen by outside auditors. In both these circumstances the auditors will be informed accordingly and the file(s) excluded; and
 - 14.2.3 refusal of consent does not in any way affect the conduct of the case or the quality of the work carried out by the firm.

March 2010