

# LEYTON UK STANDARD TERMS & CONDITIONS

We outline below our standard terms and conditions (V.0223) which apply to the provision of services described in the Letter of Engagement which collectively constitute a legally binding agreement between us. We are Leyton UK Limited (a company registered in England and Wales under company number 06977112) and shall be referred to hereunder as “we”, “our” or “us”. You are named in the Letter of Engagement and shall be referred to hereunder as “you” or “your”. Collectively you and us may be referred to as “the Parties”. If you are unsure as to the legal implications of this agreement you should seek your own independent legal advice. In agreeing to these, you are acknowledging that you have not been induced into entering into this agreement by advice from us pertaining to its implications or your obligations hereunder.

**1)** We will provide the services described in the Letter of Engagement (“the Services”) for the initial minimum term referred to therein. That initial minimum term and any subsequent term shall be referred to hereunder as “the Term”). We shall supply the Services with reasonable skill and care and in accordance with best industry practice prevailing from time to time. Our Services are specific to the UK only, and unless otherwise agreed do not include wider corporation tax matters, foreign taxes or other UK taxes/relief not covered by the Services. Further, you acknowledge that the Services do not constitute legal or financial advice, or tax or professional advice beyond that specified in the Letter of Engagement.

## Your Obligations

**2)** You agree that our engagement shall be exclusive for the Term insofar as the provision of the Services is concerned and that you will not engage any other supplier to provide services to you that equate to the Services described in the Letter of Engagement.

**3)** Save where you have expressly stated otherwise in writing you agree that each individual who purports to instruct us on your behalf has the authority to do so. You further agree that in the absence of express assent to these terms we are entitled to hold you bound by them should

you subsequently instruct us (verbally or in writing) to commence work required to undertake the Services.

**4)** You acknowledge that we will undertake client due diligence checks which will include searches against your Directors, Partners, Members, Persons with Significant Control and majority Shareholders (as applicable) so that we may satisfy our obligations under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and Proceeds of Crime Act 2002.

**5)** You agree to provide us with timely, accurate, complete and up-to-date information and/or documentation (which shall represent constituent parts of “Customer Materials”) when requested so that we may perform the Services. You further agree to supply any information and/or documentation required in order for us to complete our client due diligent checks described above. We may defer commencement or progression of the Services until any requested information and/or documentation is received from you, and that where such deferment is necessary you agree we will not be in breach of contract.

**6)** Where you supply us with Customer Materials you warrant the accuracy of the same and agree that you have permission and authority to share all constituent parts with us. You further agree to hold us and our personnel harmless in the event

there are errors or omissions (whether innocent, negligent or fraudulent) contained within any constituent parts supplied by you.

7) You agree that where you notify us of an intention not to file a claim for tax relief or energy savings (as appropriate) for any Accounting Period falling within the Term, you will provide separate written undertakings to that effect if requested. You further agree to provide us with documentary evidence of your Company Tax Return for that Accounting Period if requested.

8) Where the Services relate to a claim for tax relief or energy savings, you agree to notify us within 14 days of submission of the claim, and again within 14 days of your receipt of any response or communication from HMRC or the relevant authority or energy savings provider (as may be appropriate). You further agree to furnish us with evidence of the relief if requested.

9) Where the Services relate to the review or drafting of a grant application, you agree to notify us within 14 days of you receiving outcome of your application from the grant provider. You further agree to furnish us with evidence of the grant funding awarded if requested.

## Personal Data

10) You agree that we are each controllers of personal data. You further agree that personal data and our collective respective obligations, rights and expectations in relation to personal data shall be governed by the UK data protection legislation in force from time to time. Our Privacy Notice can be found at: <https://leyton.com/uk/leyton-uk-ltd-privacy-notice/> and where you provide us with personal data belonging to third parties, you warrant that you will direct those individuals to our Privacy Notice.

## Invoicing

11) We shall raise an invoice upon completion of the work described in the Letter of Engagement or other relevant the appropriate stages as described in the Letter of Engagement or otherwise as permitted by these terms. We shall raise invoices for any and all Accounting Periods falling within the Term for which we have provided Services. Our fees described in these terms and in our Letter of Engagement are exclusive of VAT unless otherwise stated.

12) You agree to discharge all invoices within 30 days of dispatch. You further agree that any requests for information from HMRC or any informal or formal enquiry of your claim by HMRC or other tax supervisory body shall not entitle you to delay or withhold payment.

13) Where we agree to vary the payment terms detailed above we reserve the right to apply contractual interest on amounts due calculated at 4% above the current Bank of England Base Rate which you agree to pay.

14) If your tax relief claim is awarded at an amount less than we specified in our Report, or if the energy consumption used by you in the savings calculation are subsequently adjusted by your energy supplier, we agree to refund or credit (as appropriate) you the same proportion by which your claim was reduced. Where you have discharged our invoices by that point we agree to refund you the difference within 14 days of you notifying (see above). Where you have not yet been invoiced or paid your invoice, we will raise a credit note for the difference or an invoice for the reduced fee (whichever is most appropriate).

## Indemnities

**15)** You agree that we shall be entitled to recover from you all reasonably incurred legal fees, costs and expenses incurred by us in seeking to enforce the payment unpaid fees, on an indemnity basis.

**16)** We agree that you shall be entitled to recover from us all reasonably incurred legal fees, costs and expenses incurred by you in seeking to enforce any reimbursement due to you as described above on an indemnity basis.

## Termination for Convenience

**17)** This agreement shall otherwise renew at the end of each Term for successive periods of the same length and for provision of the same Services at the same cost until either party notifies the other in writing of its desire to terminate for convenience by giving the other written notice not less than 60 (Sixty) days prior to expiry of the Term.

## Termination for Non-Performance

**18)** Where you have failed to provide Undertakings or any information and/or documentation requested to enable us to deliver the Services, we may serve notice upon you to perform. You agree that where there is non-performance on your behalf we may treat the Services as completed for the relevant Accounting Period and (at our discretion) any subsequent Accounting Periods.

**19)** In the event of non-performance we shall raise an invoice in the sum of the greater of £3,500 (excluding VAT) or 60% of the anticipated tax savings relevant to the unperformed Accounting Period or Periods, which you agree to discharge within 30 days of dispatch.

**20)** Where you have prevented us from completing Services pertaining to energy savings that we may render an invoice calculated with reference the previous 12 months of available invoices in order to invoice for the remainder of the Term. The calculation applied shall be (MPAN/MRPN total kWh most recent 12 months) x (months unpaid in contract) x (discount achieved by provision of the Services).

**21)** Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other if:

**a.** The other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;

**b.** The other party commits a material breach of any term of this agreement and (if such breach is remediable) fails to remedy that breach within 30 days of being notified in writing to do so; or

**c.** The other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement.

## Termination for reasons of solvency

**22)** Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other if:

**a.** The other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability

ty to pay its debts, enters into a voluntary arrangement (being an individual, a company or a limited liability partnership) or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of s123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986; or

**b.** The other party applies to the court for, or obtains, a moratorium under part A1 of the Insolvency Act 1986; or

**c.** An order is made, for or in connection with the winding up of the other party where that other party is a limited company or limited liability partnership (other than for the sole purpose of a scheme for a solvent amalgamation of that other party); or

**d.** An application is made to the court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, other the other party where that other party is a limited company or limited liability partnership.

**23)** For the avoidance of doubt, it is agreed that termination or expiry of the agreement shall not affect the accrued rights or liabilities of either party.

## **Intellectual Property Rights**

**24)** The Parties agree that Intellectual Property Rights ("IPR") means any and all copyright, rights in inventions, patents, know-how, trade secrets, trademarks and trade names, service marks, design rights and registered design, rights in get-up, database rights and rights in data, topography right, service mark, application to register any of the aforementioned rights, right of

confidence, the right to sue for passing off, utility, models, domain names and all similar rights, and any other intellectual or industrial property right of any nature whatsoever in any part of the world and, in each case whether registered or not:

**a.** including any applications to protect or register such rights; and

**b.** including all renewals and extensions of such rights or applications; and

**c.** whether vested, contingent or future, and wherever existing.

**25)** You agree that we and our licensors (where applicable) shall retain all ownership of IRP in the Services, excluding your Customer Materials. It is further agreed that upon payment of our fees in full and in cleared funds we will grant you a perpetual, non-exclusive, irrevocable, worldwide licence of the IPR contained in any documentation prepared by us in the provision of the Services so that you may use the same:

**a.** for the completion for the purposes of your tax relief claim, grant application or energy savings application (as appropriate); or

**b.** for sharing with your professional advisers; or

**c.** for you to use, copy and store that documentation for your own internal business purposes.

**26)** The grant of IPR described above is contingent on your discharging all fees owing in relation to the Accounting Period for which the Services apply. You agree that you will not use or onward supply IPR until you have discharged our fees in full and in cleared funds even in instances where you might be in possession of deliverables resulting from our Services.

**27)** All IPR in the Customer Materials provided by you shall vest and remain vested with you and/or your third party licensors. You agree to grant us perpetual, non-exclusive, irrevocable, worldwide, royalty-free licence to use your IPR which we agree shall be used only for providing the Services, sharing with our professional advisors (such as lawyers, regulators or insurers) and for incorporating extracts into documentation created for you. For the avoidance of doubt, we have no intention or desire to use your IPR for any other purpose unrelated to the provision of the Services to you.

### **Confidential Information**

**28)** For the purpose of the following, it is agreed that "Confidential Information" means any and all information imparted or obtained under or in connection with this agreement which is of a confidential nature relating to the business or prospective business of any of the Parties including but not limited to patents and patent applications, trade secrets and copyrighted information, proprietary information and ideas, technical information, techniques, sketches, drawings, works of authorship, models, inventions, know-how, processes, templates, apparatuses, equipment, algorithms, software programs, software source documents, and formulae related to the current, future, and proposed products and Services of each of the Parties, and including, without limitation, their respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, investors, employees, business and contractual relationships, business forecasts, sales and merchandising, marketing plans and information the disclosing party provides regarding third Parties.

**29)** No party shall use the other's Confidential Information for any purpose of than to exercise its rights and perform its obligations under or in connection with this agreement.

**30)** Neither party may disclose the other's Confidential Information to any third party outside of its corporate or group structure without the prior approval of the other party except where that information is already in the public domain through no wrong-doing of either party.

**31)** It is agreed that a party's Confidential Information shall not be deemed to include information that:

- a.** is or becomes publicly known other than through any act or omission of the receiving party; or
- b.** was in the other party's lawful possession before the disclosure; or
- c.** is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- d.** is independently developed by the receiving party, as shown by written evidence; or
- e.** is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

**32)** Each party agrees to take all reasonable steps to ensure that the other's Confidential Information to which it has access to is not disclosed or distributed by its employees or agents in violation of the terms of this agreement. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by a third party.

33) The Parties agree that these clauses relating to Confidential Information shall survive expiry or termination of the agreement.

## **Liability**

34) You agree that we shall not be liable for any tax credits lost or loss of income or opportunity arising from your failure to provide accurate information and/or documentation.

35) You agree we shall not be liable to you in relation to or arising from any interest or penalty payable by you to HMRC or any other relevant authority in circumstances where HMRC or relevant authority has initiated an enquiry of your tax relief claim and has concluded that repayment of the tax relief is required, except to the extent that such interest or penalty is caused by our negligence, misrepresentation or breach of this agreement.

36) You agree that our total liability in contract or tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation or non-contractual claims, shall be limited to the cap described below for each contract year falling within the Term. The cap shall be the greater of:

- a. The total fees paid by you during the 12 months immediately preceding the date on which the claim arose; or
- b. The sum of £50,000.

37) Nothing in this agreement limits any liability which cannot legally be limited included (but not limited to) liability for:

- a. Death or personal injury caused by negligence; and
- b. Fraud or fraudulent misrepresentation.

38) For the avoidance of doubt it is agreed that the foregoing does not negate the respective obligations of the Parties insofar as indemnifying the other for reasonably incurred legal fees, costs and expenses incurred in seeking to enforce the payment unpaid fees / reimbursement due under this agreement.

## **Assistance outside of the scope of the Services**

39) In the event HMRC raises an informal or formal enquiry into claim for tax relief for an Accounting Period(s) for which we provided the Services, we agree to support, guide and assist you in defending your claim up to and including notification of closure of that enquiry. Where you have paid all and any fees owing to us under this agreement and where you are not otherwise in breach of our standard terms we agree to provide this additional support without further charge.

40) Except by express agreement, we shall not be compelled to make any filings on your behalf with HMRC or other relevant authority or supplier.

## **Miscellaneous Provisions**

41) Should one or more of these provisions prove to be invalid, illegal or unenforceable in any respect then it will be severed from the rest of the agreement so that it is ineffective to the extent that it is invalid, illegal or unenforceable and the remaining provisions or part of the agreement shall remain in full force and effect.

42) The failure by either party to enforce any provision of these terms or to exercise any right in respect thereto shall not be construed as constituting a waiver of such provision or right.

43) Each party shall at all times comply, and shall ensure that its personnel comply, with respect to

the performance of these terms, with the relevant law concerning bribery and corruption including but not limited to the Bribery Act 2010 and shall not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK.

**44)** Each party shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015 (as amended or updated from time to time), and shall not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 (as amended or updated from time to time) if such activity, practice or conduct were carried out in the UK.

**45)** You agree we may assign or subcontract any or all of our rights and obligations under the agreement to a member of our group for so

long as we remain a member of our group.

**46)** These terms and the documents referred therein constitute the entire agreement between the Parties on the subject matter hereof and it shall not be amended, altered or changed except by a further agreement in writing signed by the Parties hereto.

**47)** The Parties agree that it has conducted its own due diligence of the other and that the mutual expectations, obligations and responsibilities herein will not fail and are not contingent upon factors not completed at the point of contracting.

**48)** Notwithstanding your location you agree that any dispute or claim arising out of or in connection with these terms shall be governed by and construed in accordance with the law of England and Wales. You further agree to irrevocably submit to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with these terms.