

# HaysMac LLP Standard Terms of Business

The following standard terms of business ("**Standard Terms of Business**") apply to all engagements accepted by HaysMac LLP. All work carried out by us is subject to these Standard Terms of Business except where changes are expressly agreed in writing. Please ensure that you periodically check our website for any changes to these Standard Terms of Business.

The services we will provide to you ("**Professional Services**") will be set out in the Engagement Letter (as that term is defined in the Engagement Letter). Where we provide Ancillary Services (as defined in Schedule 1 to these Standard Terms of Business) the terms of Schedule 1 apply to your use of such services.

Our agreement with you ("**Agreement**") therefore comprises of:

- a) the Engagement Letter (including its appendices); and
- b) these Standard Terms of Business (including Schedule 1) as amended from time to time.

We may take your: (i) signing the Engagement Letter and returning it to us; (ii) proceeding to instruct us; or (iii) relying upon advice from us (whichever is earlier), as your acceptance of the Agreement.

The terms of the Agreement prevail over any other terms and conditions that you may seek to impose or incorporate, whether as part of a purchase order procedure or otherwise, and (to the fullest extent permitted by law) that are implied by trade, custom, practice, course of dealing or otherwise.

The terms of the Agreement are applicable to all types of entities (e.g. individuals, companies, LLPs, charities, friendly societies, academies, pension schemes, etc). Any reference therefore to director or company should be interpreted as appropriate for the entity type (e.g. partner, trustee, governor, charity, LLP, etc.).

We (like many other limited liability partnerships) call our members "partners" rather than use the legal term "members". However, legally they are not partners and do not have joint and several personal liability to you. All liability is the sole responsibility of HaysMac LLP and you agree not to bring any claims against individual partners or employees.

## **1 Professional obligations**

- 1.1 Details of the firm's professional registrations can be found at [www.haysmac.com/about-us](http://www.haysmac.com/about-us).
- 1.2 We will observe and act in accordance with the bye-laws and regulations of The Institute of Chartered Accountants in England and Wales (ICAEW) together with their code of ethics. We accept instructions to act for you on this basis. In particular you give us authority to correct errors made by HM Revenue and Customs (HMRC) where we become aware of them. We will not be liable for any loss, damage or cost arising from our compliance with statutory or regulatory obligations.

### ***Professional indemnity insurance***

- 1.3 In accordance with the disclosure requirements of the Provision of Services Regulations 2009, our lead professional indemnity insurer is W. R. Berkley Syndicate Management

Terms effective from 1 January 2025

Limited, 14th Floor, 52 Lime Street, London EC3M 7AF. The territorial coverage is worldwide.

## **2 Investment services**

2.1 Since we are not authorised by the Financial Conduct Authority ("**FCA**") then we may have to refer you to someone who is authorised if you need advice on investments. However, as we are licensed by the ICAEW, we may be able to provide certain investment services that are complementary to, or arise out of, the professional services we are providing to you.

2.2 Such advice may include:

- advising you on investments generally, but not recommending a particular investment or type of investment;
- referring you to a Permitted Third Party (PTP) (an independent firm authorised by the FCA), assisting you and the PTP during the course of any advice given by that party and commenting on, or explaining, the advice received (but not make alternative recommendations). The PTP will issue you with his own terms and conditions letter, will be remunerated separately for his services and will take full responsibility for compliance with the requirements of the Financial Services and Markets Act 2000;
- advising you in connection with the disposal of an investment, other than your rights in a pension policy or scheme;
- advising and assisting you in transactions concerning shares or other securities not quoted on a recognised exchange;
- assisting you in making arrangements for transactions in investments in certain circumstances; and
- managing investments or acting as trustee (or donee of a power of attorney) where decisions to invest are taken on the advice of an authorised person.

2.3 For corporate clients we may also, on the understanding that the shares or other securities of the company are not publicly traded:

- advise the company, existing or prospective shareholders in relation to exercising rights, taking benefits or share options, valuations and methods of such valuations;
- arrange any agreements in connection with the issue, sale or transfer of the company's shares or other securities;
- arrange for the issue of new shares; and
- act as the addressee to receive confirmation of acceptance of offer documents etc.

2.4 In the unlikely event that we cannot meet our liabilities to you, you may be able to claim compensation under the Chartered Accountants' Compensation Scheme in respect of exempt regulated activities undertaken.

## **Financial Promotions**

- 2.5 To enable us to provide you with a proper service, there may be occasions when we will need to contact you without your express permission concerning investment business matters. For example, it may be in your interests to sell a particular investment and we would wish to inform you of this. We may therefore contact you in such circumstances, but would only do so in our normal office hours. We shall of course comply with any restrictions you may wish to impose which you notify to us in writing.

## **3 Commissions or other benefits**

- 3.1 In some circumstances, commissions or other benefits may become payable to us or to one of our associates in respect of transactions we or such associates arrange for you, in which case you will be notified in writing of the amount and terms of payment. You consent to such commission or other benefits being retained by us or, as the case may be, by our associates, without us, or them, being liable to account to you for any such amounts.

## **4 Client monies**

- 4.1 Unless we have previously agreed to do so, we will not hold money on your behalf. In the event that we have previously agreed to hold such money, we hold it in trust in a client bank account, which is segregated from the firm's funds. The account is operated, and all funds dealt with, in accordance with the Clients' Money Regulations of the ICAEW.
- 4.2 In order to avoid an excessive amount of administration, interest will not be paid on balances held on your behalf.
- 4.3 We will return monies held on your behalf promptly as soon as there is no longer any reason to retain those funds. In the unlikely event of us holding any unclaimed monies we reserve the right to pay such monies to a registered charity in line with the guidelines set out in the Clients' Money Regulations referred to above. We will not do this unless we have been unable to contact you for at least five years and we have taken reasonable steps to trace you and return the monies.

## **5 Groups**

- 5.1 Where our appointment is by a parent company on behalf of a Group or particular Group companies, the parent company confirms that the terms of the Agreement apply to all Group entities to which we are appointed. Whilst fee invoices may be addressed to either the parent company or the relevant Group company or entity, both parties remain jointly and severally liable until they are settled.
- 5.2 For the purposes of the Agreement, "**Group**" shall mean in relation to that company and every other company which from time to time is or becomes a subsidiary or holding company of that company or a subsidiary of any such holding company (and the terms "**subsidiary**" and "**holding company**" shall have the meanings given to them by Section 1159 of the Companies Act 2006).

## **6 Personnel**

- 6.1 We reserve the right to determine which of our staff and partners are allocated to an engagement and, where named individuals are not available, we will supply substitutes of equivalent quality and experience.

## **7 Non-solicitation of personnel**

- 7.1 You will not solicit, or endeavour to solicit, in any way the services of any of our staff or partners with whom you have had dealings in connection with any engagement in the twelve months prior to your approach. This provision shall not be effective if the member of staff or partner responds to a general recruitment campaign. Should you breach this provision and employ or engage any such staff or partners during this period, we reserve the right to charge you a fee equal to 30% of the total annual profit share or remuneration package, including benefits, payable by us to the staff or partner at the time that their employment with us ceases. You acknowledge that this is a fair and reasonable term representing a genuine pre-estimate of the loss caused to us by your employing or engaging any of our partners or members of staff.

## **8 Fees**

- 8.1 Our fees are computed on the basis of time spent on your affairs by the partners, our staff and sub-contractors or consultants, and on the levels of skill and responsibility involved. Disbursements represent travel, accommodation and other expenses incurred in dealing with your affairs.
- 8.2 You agree that we may commence work immediately following receipt of your instructions. If you wish to terminate our engagement, you will be liable to pay all of our fees (or a proportionate part of our fees where we have agreed a fixed fee, depending on the work done), and all expenses and disbursements incurred or committed to at the time of effective termination plus any applicable VAT or other sales tax.
- 8.3 If it is necessary to carry out work outside the responsibilities agreed with you for each service, we will advise you in advance. Any additional work will involve additional fees. Accordingly, we would like to point out that it is in your interests to ensure that your records etc. are completed to the agreed stage.
- 8.4 Where our fees are calculated by time spent this will be charged to you at the applicable hourly rate which are subject to review from time to time in order to reflect market conditions. If we agree with you any special fee arrangements that are favourable to you, these arrangements are conditional on prompt payment of all of our invoices.
- 8.5 From time to time, prior to commencing work on a particular matter, we may request money on account up front. Any request for money on account shall be made at our discretion but may include circumstances where the fees for a particular matter are expected to be significant or where you are a new client.
- 8.6 Invoices are payable in full (including disbursements) in accordance with the terms set out on the invoice. If you do not accept that an invoiced fee is fair and reasonable you must notify us within 21 days of receipt, failing which you will be deemed to have accepted that payment is due.
- 8.7 The lack of a purchase order number being quoted on our invoice shall only entitle you to delay payment in circumstances where we have previously agreed in writing to quote such numbers in order to facilitate your payment processes and you have provided us with the relevant purchase order number at the time of giving instructions in relation to the engagement. You need to agree in advance with the relevant partner dealing with your matter if you would like for us to use a particular billing portal or system, such as Serengeti. Failure to agree such shall not entitle you to delay payment.

- 8.8 We reserve the right to charge interest on overdue accounts at the current rate under the Late Payment of Commercial Debts (Interest) Act 1998 or other prevailing and relevant legislation. We also reserve the right to terminate the Agreement and cease acting if payment of any fees billed is unduly delayed.
- 8.9 If a client company, trust or other entity is unable or unwilling to settle our fees, we reserve the right to seek payment from the individual (or parent company) giving us instructions on behalf of the client, and we shall be entitled to enforce any sums due against the group company or individual nominated to act for you.
- 8.10 Insofar as we are permitted to do so by law or by professional guidelines, we reserve the right to exercise a lien over all funds, documents and records in our possession relating to all engagements for you until all outstanding fees and disbursements are paid in full.
- 8.11 In the event that this firm ceases to act in relation to your affairs you agree to meet all reasonable costs of providing information to your new advisers. In particular you agree to meet these costs where we are required by law to provide information to a successor firm.

## **9 Expenses Disbursements and Third Parties**

- 9.1 If, in carrying out the Professional Services, we incur expenses, such as couriers, photocopying, certain search fees (which may include an administration fee), printing, postage, travelling and telephone charges, these expenses will normally be charged to you in addition to our fees. If you would like more information about the cost of these expenses, please contact the relevant partner looking after your matter.
- 9.2 In addition, we may incur liabilities to third parties in respect of services supplied to you, which are often referred to as “disbursements”. In all cases, you will be responsible for all sums charged by such third parties including any applicable VAT or other sales tax. Where disbursements are payable upfront or on a short timescale we may at our discretion require you to make this payment to us before we incur the disbursement with the relevant third party.

## **10 Termination**

- 10.1 You have the right to terminate the Agreement (or part thereof in respect of individual Professional Services) for any reason by giving not less than 60 days’ notice in writing, at any time.
- 10.2 You have the right to terminate the Agreement immediately on written notice to us if:
- a) we commit a material breach of any of our obligations under the Agreement that is not capable of remedy; or
  - b) having been given notice by you in writing to, within a period of not less than 30 days, remedy a breach, and/or desist from any action that constitutes a breach, and have failed to remedy the breach and/or desist from the relevant action within that time period.
- 10.3 If you terminate the Agreement (whether in whole or in part), you will be liable to pay all of our fees (or a proportionate part of our fees where you have terminated part of the Agreement or we have agreed a fixed fee, depending on the work done), and all expenses and disbursements, which have been incurred or committed to up to the time of the termination is effective, plus any applicable VAT or other sales tax.

- 10.4 You may choose to terminate the Agreement (or part thereof) by using the 'model form' wording set out below (which we are obliged to provide to clients who purchase our services as 'consumers') or by providing us with any other clear written statement explaining that you wish to terminate the Agreement (or part thereof).

FAO [Insert name of Partner]  
HaysMac LLP  
10 Queen Street Place  
London  
EC4R 1AG

I hereby give you notice to terminate the engagement dated [ ] for the supply of [complete as appropriate] services.

[Signature]

[Print your full name]  
[Insert your address]  
Date: [ ]

- 10.5 We are entitled to terminate the Agreement immediately on written notice to you:

- (a) in the circumstances set out in these Standard Terms of Business, including pursuant to clause 8.8, 10.6 and/or 10.7; or
- (b) if any guarantee provided in relation to your obligations is withdrawn by the giving of notice, or if any event or act occurs which vitiates the guarantee or otherwise renders it void or unenforceable; or
- (c) if you fail to give us timely and adequate instructions, so that we are unable to conduct any of your matters properly and expeditiously; or
- (d) if you insist on a course of action which requires us to act contrary to our responsibilities as accountants or which would lead to a breakdown of the relationship of trust and confidence which is essential for the proper handling of accountancy matters; or
- (e) if there is a breakdown of trust and confidence between you and us; or
- (f) if, as appropriate, you become insolvent, enter into liquidation or bankruptcy, or any insolvency, liquidation or bankruptcy procedures are commenced against you, or you pass a resolution for your own winding up or insolvency, or you become unable to pay your debts as they fall due, or any receiver, administrator or similar person is appointed in respect of any of your assets, or you enter into any arrangement or composition with your creditors (including for the avoidance of doubt any voluntary arrangement), or you have ceased trading, or any similar or equivalent event occurs in relation to any guarantor who has provided a guarantee in relation to your obligations (unless a replacement guarantee is provided by an alternative guarantor acceptable to us); or
- (g) you fail to comply with any term of the Agreement; or

- (h) if you object to a processing activity under clause 20 below, and that objection in our reasonable view serves to fundamentally undermine our ability to provide that part of the service to you which is affected by that processing activity.
- 10.6 Should you fail to pay our invoices or a request for payment on account when they become due, we reserve the right to suspend, or terminate, our Professional Services until such invoices or requests have been fulfilled. We will give you notice of our intention to suspend or terminate such Professional Services. We are not liable for any loss or damage whatsoever incurred by you as a result of any such suspension or termination.
- 10.7 In order for us to provide you with a high quality service on an ongoing basis it is essential that you provide us with relevant records and information when requested and we reserve the right to terminate the Agreement in the event that you fail to co-operate with us in providing us with such records and/or information.
- 10.8 Where we are providing audit services to you, we will assume that we will be undertaking the subsequent financial period's audit unless you have confirmed to us, in writing, to the contrary, that you will be appointing new auditors, on the earlier of the date we issue our audit report and the next financial period end. In the event such notice is not provided you will be liable for all costs incurred and committed to in relation the subsequent financial year's audit and allocated staff time that cannot be redeployed to other chargeable work.
- 10.9 If we or you terminate this Agreement or part thereof, we will normally issue a disengagement letter setting out our respective responsibilities from the date of termination.

## **11 Retention**

- 11.1 During the course of our Professional Services we will collect information from you and others acting on your behalf and will return any original documents to you following the preparation and audit of your financial statements and returns. You should retain these records for 6 years from the 31 January following the end of the tax year to which they relate. You should retain them for longer if HMRC enquire into your tax return.
- 11.2 Subject to any papers which have been returned to you we will retain records relating to the matter on which we are instructed for seven years after the matter has been completed and would intend to destroy correspondence and other papers and records thereafter unless those documents and records need (in our opinion) to be retained. We may, for example, need to retain documents and records to meet our professional indemnity insurance or other insurance obligations, because there is a dispute, proceedings or an investigation or an enquiry or proceedings by a tax authority or Regulator. If you require retention of any document you must notify us of that fact in writing.
- 11.3 We reserve the right to convert information records and data irrespective of ownership, into electronic format (for example, digital images). If you require information returned then you agree that we may supply it either in electronic format or as a print of the image.

## **12 Conflicts of interest and independence**

- 12.1 We reserve the right to deliver services to other clients whose interests might compete with yours or are or may be adverse to yours, subject to clause 13 below. We confirm that we will notify you immediately should we become aware of any conflict of interest involving us and affecting you unless we are unable to do so because of our confidentiality obligations. We have safeguards that can be implemented to protect the interests of different clients if a conflict arises. Where conflicts are identified which cannot be managed

in a way that protects your interests then we regret that we will be unable to provide further services.

### **13 Confidentiality**

- 13.1 We confirm that where you give us confidential information, we shall at all times keep it confidential, except as required by law or as provided for in regulatory, ethical or other professional statements relevant to our engagement.
- 13.2 You agree that, if we act for other clients who are or who become your competitors, to comply with our duty of confidentiality it will be sufficient for us to take such steps as we think appropriate to preserve the confidentiality of information given to us by you, both during and after this engagement. These may include taking the same or similar steps as we take in respect of the confidentiality of our own information.
- 13.3 In addition, if we act for other clients whose interests are or may be adverse to yours, we will manage the conflict by implementing additional safeguards to preserve confidentiality. Safeguards may include measures such as separate teams, physical separation of teams, and separate arrangements for storage of, and access to, information.
- 13.4 You agree that the effective implementation of such steps or safeguards as described above will provide adequate measures to avoid any real risk of confidentiality being impaired.
- 13.5 We may, on occasions, subcontract work on your affairs to other tax or accounting professionals. The subcontractors will be bound by our client confidentiality terms.
- 13.6 If we use external or cloud based systems, we will take all reasonable steps to ensure that confidentiality of your information is maintained.
- 13.7 We reserve the right, for the purpose of promotional activity, training or other business purposes, to mention that you are a client. As stated above, we will not disclose any confidential information.

### **14 Quality control**

- 14.1 As part of our ongoing commitment to providing a quality service, our files are periodically subject to an independent regulatory or quality review. Our reviewers are highly experienced and professional people and are, of course, bound by the same requirements of confidentiality as our principals and staff.

### **15 Dealing with HMRC**

- 15.1 When dealing with HMRC on your behalf we are required to be honest and to take reasonable care to ensure that your returns are correct. To enable us to do this, you are required to be honest with us and to provide us with all necessary information in a timely manner. For more information about 'Your Charter' for your dealings with HMRC, see [www.hmrc.gov.uk/charter/index.htm](http://www.hmrc.gov.uk/charter/index.htm). To the best of our abilities, we will ensure that HMRC meet their side of the Charter in their dealings with you.
- 15.2 We will take account of the steps and checks suggested by HMRC in their 'Agent Toolkits'. While use of the Toolkits is voluntary, we will ensure that our quality control procedures match or enhance the suggestions in the Toolkits so that, in the unlikely event that HMRC consider any of your tax returns with which we assist to be inaccurate, we will be able to help you demonstrate to HMRC that reasonable care has been taken in the preparation of the return, thereby significantly reducing the possibility of an inaccuracy penalty being imposed. To further reduce the possibility of an inaccuracy penalty, you will remain



responsible for maintaining good quality supporting records for each return, for providing us with all relevant information and explanations and for acting on any advice that we give you.

## **16 Help us to give you the right service**

- 16.1 We are committed to providing you with a high quality service that is both efficient and effective. If at any time you would like to discuss with us how our service to you could be improved, or if you are dissatisfied with the service you are receiving, please let us know, by contacting our Complaints Partner, David Cox, on 020 7969 5564 or at [complaints@haysmac.com](mailto:complaints@haysmac.com).
- 16.2 We undertake to look into any complaint carefully and promptly and do all we can to explain the position to you. If we do not answer your complaint to your satisfaction you may of course take up the matter with the ICAEW.

## **17 Applicable law**

- 17.1 The Agreement is governed by, and construed in accordance with, English law. The Courts of England will have exclusive jurisdiction in relation to any claim, dispute or difference concerning the Agreement and any matter arising from it. Each party irrevocably waives any right it may have to object to any action being brought in those courts, to claim that the action has been brought in an inappropriate forum, or to claim that those courts do not have jurisdiction.
- 17.2 If any provision in the Agreement, or their application, are found to be invalid, illegal or otherwise unenforceable in any respect, the validity, legality or enforceability of any other provisions shall not in any way be affected or impaired.

## **18 Changes in the law, in practice or in public policy**

- 18.1 We will not accept responsibility if you act on advice previously given by us without first confirming with us that the advice is still valid in light of any change in the law or your circumstances.
- 18.2 We will accept no liability for losses arising from changes in the law or the interpretation thereof that occur after the date on which the advice is given.

## **19 Internet communication**

- 19.1 Unless you instruct us otherwise we may, where appropriate, communicate with you and with third parties via email or by other electronic means. However, internet communications are capable of data corruption and therefore we do not accept any responsibility for changes made to such communications after their despatch. It may therefore be inappropriate to rely on advice contained in an e-mail without obtaining written confirmation of it. We do not accept responsibility for any errors or problems that may arise through the use of internet communication and all risks connected with sending commercially sensitive information relating to your business are borne by you. If you do not agree to accept this risk, you should notify us in writing that e-mail, or use of our online services, is not an acceptable means of communication. If you so notify us, there may be circumstances in which we are unable to provide some of our services as anticipated.
- 19.2 It is the responsibility of the recipient to carry out a virus check on any attachments received.

- 19.3 If you request that we access, download documents from, or upload documents to, your account on a file sharing or cloud website ("**Client Website**"), you agree that:
- (a) we have not advised you in connection with the selection or use of the Client Website;
  - (b) you have specifically instructed us to use the Client Website in connection with our engagement and you recognise that the Client Website may not be secure and/or may be unavailable from time to time;
  - (c) you assume all the risks and liabilities arising from the use of the Client Website to the fullest extent permissible by law. You accept that we shall not be liable for any loss or damage, howsoever arising whether in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise, arising out of or in connection with any unavailability of the Client Website, any unauthorised access to the Client Website or our use of the Client Website; and
  - (d) you will reimburse us in full for any losses, costs and expenses we may suffer or incur as a consequence of the use of the Client Website.
- 19.4 You agree that we may use audiovisual telecommunication technology (for example Skype, Zoom, MS Teams or any other similar communication) and electronic file sharing systems (for example Dropbox or any other similar file sharing system) when acting for you. If you would rather we did not do so, please notify your HaysMac contact. Further, for security reasons, please refrain from communicating or attempting to communicate with us using social media platforms such as WhatsApp.

## **20 Data Protection**

### **Provision of services as a controller**

- 20.1 To enable us to discharge the Professional Services, including but not limited to any Ancillary Services as set out in Schedule 1 (the "**Engagement**") and for other related purposes including but not limited to updating and enhancing client records, analysis for management purposes and statutory returns, staff management and supervision, crime prevention and detection, investigations and litigation, and legal and regulatory compliance ("**Related Purposes**") we may obtain, use, process and disclose Personal Data about you / your business / company / partnership / its officers and employees and the Personal Data of your customers and clients and their workers, directors and employees.
- 20.2 We confirm when processing data for the Engagement, and for Related Purposes, we act as a data controller and as such we will comply with applicable Data Protection Legislation.
- 20.3 We rely on you to comply with any and all Data Protection Legislation which is applicable to any Shared Personal Data and are entitled to assume that any Shared Personal Data has been collected and disclosed to us in accordance with your obligations pursuant to such legislation.
- 20.4 In addition, we rely on you to comply with Data Protection Legislation when processing Personal Data about our employees, members, directors, workers, agents and contractors (Our Personal Data) in the course of the Engagement or otherwise when doing business with us

- 20.5 We and you will take appropriate technical and organisational measures designed to protect against unauthorised, or unlawful, processing, or the accidental loss, or destruction of, or damage to, any Shared Personal Data or to Our Personal Data.
- 20.6 In carrying out the Engagement (or the Related Purposes) we may appoint sub-contractor data processors who will process the Shared Personal Data on our behalf and at our direction and also may appoint or share data with other controllers (whether as joint controllers or in common with us). Recipients of the Shared Personal Data may include (but may not be limited to) HMRC, regulatory bodies, legal and other advisers, crime and law enforcement agencies, and IT service providers.
- 20.7 If you are based in the EEA please note that it may be necessary during the Engagement or for the Related Purposes to transfer the Shared Personal Data to countries outside the EEA.
- 20.8 If either of us becomes aware or reasonably suspects that any breach of security leading to the accidental or unlawful destruction, loss, alteration unauthorised disclosure of, or access to any Shared Personal Data or to Our Personal Data (as the case may be) we shall notify the other of any such breach within 48 hours and then provide such assistance to the other as may reasonably be required to ensure that we and you comply with our respective reporting obligations in connection with any such incident ("**Relevant Assistance**").
- 20.9 Similarly, we shall provide Relevant Assistance to each other should either of us become aware of any Data Subject Rights' Request concerning the Shared or Our Personal Data and will notify the other of any such Request within 48 hours of receipt.

#### **Provisions of services as a processor**

- 20.10 Where we act as a data processor, for example, where we operate a payroll service for you, we will:
- Only act on the written instructions of you, the controller.
  - Ensure that our staff and any sub processors are subject to a contractual duty of confidence in relation to their handling of the Shared Personal Data.
  - Take appropriate measures to ensure the security of processing of the Shared Personal Data.
  - Only engage sub-processors with your prior consent and ensure that the sub processor enters into a written contract containing provisions which replicate the obligations set out in this clause 20.10.
  - Assist you, the controller in providing subject access and allowing data subjects to exercise Data Subject Rights.
  - Assist you, the controller in meeting your obligations under applicable Data Protection Legislation in relation to the Shared Personal Data in connection with security of processing, notification of personal data breaches or the need to conduct data protection impact assessments.
  - Delete or return all Shared Personal Data to you, the controller as requested at the end of the Engagement.

- Submit to audits and inspections of systems and processes which are relevant to the performance of the service which we provide to you as a processor only and, provide you, the controller with information required to ensure that we are meeting obligations as a processor in relation to the Shared Personal Data, and tell you, the controller immediately if we are asked to do something which would infringe our or your obligations under Data Protection Legislation.

## **Definitions**

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

**Data Protection Legislation:** shall mean all applicable laws rules and regulations relating to the processing of personal data and the privacy of electronic communications in the United Kingdom, as amended, replaced or updated from time to time including the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003), the Data Protection Act 2018 and UK GDPR.

**Personal Data:** shall have the meaning given to it in the UK GDPR.

**Shared Personal Data:** shall mean Personal Data about you, your members, officers, or partners (as the case may be) your employees, contractors, and workers, (Staff) and the Personal Data of your customers or clients and their Staff that you may share with us (or which others on your behalf provide to us) or we may obtain for the Engagement or for Related Purposes.

**Data Subject Rights Request:** shall mean any request pursuant to Articles 15-21 UK GDPR and Data Subject Rights shall be construed accordingly.

## **21 Limitation of third party rights**

- 21.1 Persons who are not party to this agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 21.2 Our work is not, unless there is a legal or regulatory requirement, to be made available to third parties without our written permission. The advice we give you is for your sole use and is confidential to you and will not constitute advice for any third party to whom you may communicate it, unless we have expressly agreed in writing that a specified third party may rely on our work. We accept no responsibility to third parties, including any Group company to whom the Engagement Letter is not addressed, for any aspect of our Professional Services or work that is made available to them.

## **22 Client identification**

- 22.1 We wish to draw to your attention our obligations under the United Kingdom's anti-money laundering and counter terrorist financing legislation. Under this legislation we are required to identify our clients and individuals with a beneficial interest of more than 25%. We may also need to make enquiries about your sources of wealth and funds. We are also required to keep the identification and verification details up to date. We may not

undertake engagements or continue to act if you are unable to comply with these obligations.

- 22.2 The legislation also requires us to make reports to the relevant authorities if we know, suspect or have grounds for suspecting that an individual or entity is engaged in money laundering or financing terrorism. We are generally prohibited by law from disclosing to you that we have made such a report.

## **23 Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standards**

- 23.1 Unless agreed specifically in an Engagement Letter, we are not responsible for your compliance with the International Tax Compliance (United States of America) Regulations 2013, produced as a result of FATCA. In particular, we are not responsible for the categorisation of any UK entity into either a Financial Institution (FI) or an active or passive Non-Financial Foreign Entity (NFFE) nor, if a Financial Institution, for its registration with the US Internal Revenue Service (IRS) and subsequent submission of the required annual returns to HM Revenue & Customs.
- 23.2 However, if requested to do so we can provide advice on the completion of the forms supplied by Financial Institutions under these Regulations, or under Common Reporting Standards, and used by them to determine the status of an entity. We can also provide advice on setting up the appropriate systems to identify and report on your clients or beneficiaries who are foreign citizens affected by FATCA or Common Reporting Standards.

## **24 General limitation of liability**

- 24.1 In respect of any term agreed between you and us as to the exclusion or limitation of our liability to you, references to "**us**" or "**we**" shall, for the avoidance of doubt, include all representatives, members, partners, principals, consultants, employees, officers, directors or agents of HaysMac LLP, and references to liability shall include any personal liability of any of the aforesaid persons.
- 24.2 We refer you to the cap on our liability set out in the Engagement Letter. That limit applies to all our liability for services provided under the Engagement Letter, no matter how many parties to whom we accept liability. Where we act for multiple parties, the limit will be shared between all of those parties and any other party we agree in writing to assume a duty of care to in the Engagement Letter. It will be entirely a matter for you how you apportion the sharing of the limit of liability and you shall be under no obligation to inform us of any apportionment. If no such apportionment is agreed, you shall not dispute the validity, enforceability or operation of the limit of liability on the grounds that (for whatever reason) no such apportionment was agreed.
- 24.3 We will not be liable for any losses incurred as a result of any errors, failures or unavailability of software provided by third parties other than as set out in Schedule 1.
- 24.4 Subject to clause 24.9, you agree that we are not responsible for:
- a) loss or corruption of data;
  - b) any losses to the extent caused by: (i) the provision by you or your representatives of false, inaccurate, misleading or incomplete data, information or documentation; (ii) the failure to act promptly on our advice or respond to communications; (iii) the acts or omissions of you or your representatives; or (iv) delay or failure to perform our obligations where delay or failure is caused by circumstances outside our reasonable control.

- c) the content of any data you upload to a third party platform, or any access needed to do so;
  - d) loss of profit, goodwill, reputation, revenue, opportunity or anticipated savings, or wasted management or staff time;
  - e) punitive or exemplary damages; or
  - f) indirect or consequential loss.
- 24.5 We exercise reasonable skill and care to ensure that our advice is valid at the time that it is provided. We will not accept responsibility if you act or refrain from acting on: (i) the basis of any draft advice or documentation provided by us before it has been finalised; or (ii) advice previously given by us without first confirming with us that the advice is still valid in light of any change in the law or in your circumstances. We will accept no liability for losses arising from changes in law or the interpretation thereof or in your circumstances that occur after the date on which the advice is given.
- 24.6 Where any loss is suffered by you for which we would otherwise be jointly and severally liable with any third parties, the extent to which such loss shall be recoverable by you from us, as opposed to the third party, shall be limited so as to be in the proportion to our contribution to the overall fault for loss, as agreed between the parties, or in the absence of agreement, as finally determined by the relevant court (ignoring for these purposes the ability of the third party to pay or any limitation of liability that you might have agreed with such third party). Where our proportionate liability has not been determined by a court, an expert shall determine the extent of the responsibility of any third party for the loss and the corresponding reduction in our liability, and the expert's determination shall be final. Any judgment in favour of you shall be deemed to be fully and finally satisfied when paid, after making any reduction in our liability as determined by the expert together with any costs awarded in your favour by the expert.
- 24.7 If, as a result of any exclusion or limitation of liability agreed by you with any other person the amount which we are able to claim as a contribution from such other person, in connection with any claim by you against us arising out of or in connection with the Professional Services provided under the Engagement Letter is reduced, our liability to you in respect of such claim shall be reduced by the amount of such reduction.
- 24.8 No representative, member, partner, principal, consultant, employee, officer, director or agent of any entity belonging to HaysMac LLP shall incur any personal liability to you in any circumstances, and you agree not to sue, commence, prosecute or cause to be commenced or prosecuted any action, suit or other proceeding against the aforesaid parties, who may enforce and rely on this clause to the same extent as if they were a party to this agreement, and nothing in this agreement shall exclude their rights under the Contracts (Rights of Third Parties) Act 1999. You acknowledge that all written and oral communications from our representatives, members, partners, principals, consultants, employees, officers, directors and agents are provided for and on behalf of HaysMac LLP and no undertaking or commitment given therein is binding on them.
- 24.9 Nothing in the Agreement excludes or limits our liability for: (i) death or personal injury caused by our negligence; or (ii) fraud or fraudulent misrepresentation; or (iii) liability that cannot be excluded due to any law applicable to the Agreement.
- 24.10 Any advice that we provide as part of our services is provided to you as our client and we will not be liable for any losses suffered by a third party arising out of or in connection with our services including as a result of any reliance placed by such third party on advice we have provided to you as part of our services. You agree to indemnify us and our

agents in respect of any claim (including any claim for negligence) arising out of any unauthorised disclosure by you or by any person for whom you are responsible of our advice and opinions, whether in writing or otherwise to any third party. This indemnity will extend to the cost of defending any such claim, including payment at our usual rates for the time that we spend in defending it.

- 24.11 You will not hold us, our partners and staff, responsible, to the fullest extent permitted by law, for any loss suffered by you arising from any misrepresentation (intentional or unintentional) supplied to us orally or in writing. This applies equally to fraudulent acts, misrepresentation or wilful default on the part of any party to the transaction and their directors, officers, employees, agents or advisers. However, this exclusion shall not apply where such misrepresentation, withholding or concealment is or should (in carrying out the procedures which we have agreed to perform with reasonable care and skill) have been evident to us without further enquiry.
- 24.12 By: (i) signing the Engagement Letter; (ii) proceeding to instruct us; or (iii) relying upon advice from us you agree that you have given proper consideration to the limits in this clause 24 and accept that they are reasonable in all the circumstances. If you wish to discuss the limits, you should contact us before signing the Engagement Letter, providing us with instructions or relying upon our advice.

## **25 Intellectual property rights and use of our name**

- 25.1 We will retain all intellectual property rights in any document prepared by us during the course of carrying out the engagement except where the law specifically states otherwise. We hereby grant you a non-transferrable, royalty free, licence to use the intellectual property rights contained within such documents for the purpose of receiving the benefit of the Professional Services.
- 25.2 You are not permitted to use our name in any statement or document that you may issue unless our prior written consent has been obtained. The only exception to this restriction would be statements or documents that in accordance with applicable law are to be made public.

## **26 Draft/interim work or oral advice**

- 26.1 In the course of delivering the Professional Services we may provide advice or reports or other work products in draft or interim form, or orally. However, final written work products will always prevail over any draft, interim or oral statements. Where you request it, we will provide you with written confirmation of matters stated orally.

## **27 MSI Global Alliance (“MSI”)**

- 27.1 The firm is a member of MSI, an international association of independent legal and accounting firms. Each firm is a separate and independent legal entity and is not liable for the acts or omissions of any other member firm, and as such has no liability for the acts or omissions of any other member firm.

## **28 Interpretation**

- 28.1 If any provision of the Agreement is held to be void for whatever reason, then that provision will be deemed not to form part of this contract, and no other provisions will be affected or impaired in any way. In the event of any conflict between: (i) these Standard

Terms of Business (excluding Schedule 1); the Engagement Letter; and Schedule 1 to these Standard Terms of Business, the document listed highest below will prevail:

- a) the Engagement Letter;
- b) Schedule 1 to these Standard Terms of Business;
- c) these Standard Terms of Business (excluding Schedule 1).

## **29 Internal disputes within a client**

29.1 If we become aware of a dispute between the parties who own the business, or who are in some way involved in its ownership and management, it should be noted that our client is the business and we would not provide information or services to one party without the express knowledge and permission of all parties. Unless otherwise agreed by all parties, we will continue to supply information to the registered office/normal place of business for the attention of the directors/proprietors. If conflicting advice, information or instructions are received from different principals in the business, we will refer the matter back to the board of directors/the partnership and take no further action until the board/partnership has agreed the action to be taken.

## **30 Retention of papers**

30.1 You have a legal responsibility to retain documents and records relevant to your financial affairs. During the course of our work we may collect information from you and others relevant to your tax and financial affairs. We will return any original documents to you if requested. Documents and records relevant to your tax affairs are required by law to be retained as follows:

### ***Individuals, trustees and partnerships:***

- with trading or rental income: five years and 10 months after the end of the tax year;
- otherwise: 22 months after the end of the tax year.

### ***Companies, Limited Liability Partnerships, pension schemes and other corporate entities:***

- six years from the end of the accounting period.

30.2 Although certain documents may legally belong to you, we may destroy correspondence and other papers that we store electronically or otherwise that are more than seven years old, except documents we think may be of continuing significance. You must tell us if you wish us to keep any document for any longer period.



## **HaysMac LLP**

### **Schedule 1 – Ancillary Services**

This Schedule applies in relation to your use of any online service which we provide or procure the provision of (“**Ancillary Services**”). We may use third parties to provide part, or all, of each Ancillary Services (in each case a “**Third Party Supplier**”).

We shall procure your access to the Ancillary Services and shall use or procure the use of reasonable commercial endeavours to keep the Ancillary Services operational. The Ancillary Services are offered from a central location as a shared generic solution. The Ancillary Services are not specifically maintained for you. Where you access the Ancillary Services, our Cookie Policy shall also apply to your use of the Ancillary Services.

#### **1 Licence**

1.1 We grant you, or shall procure the grant to you of, a personal, revocable, non-assignable, non- sub-licensable right to use the Ancillary Services for your own internal business purposes, during the period that we make the Ancillary Services available to you. Such use shall always be subject to the maximum number of users indicated to you, compliance with our reasonable instructions from time to time, and the Usage Restrictions set out below (as well as the Standard Terms of Business in general).

#### **2 Fees**

2.1 The fees for Ancillary Services (if any are referred to in our Engagement Letter) are charged on a monthly basis and are payable in arrears and otherwise in accordance with the Standard Terms of Business. We are entitled once each year to increase our fees for the Ancillary Services and shall notify you of any changes at least 30 days before they become effective.

#### **3 Availability, Modifications and Maintenance**

3.1 We or a Third Party Supplier may modify the Ancillary Services from time to time to improve or change the functionalities and correct errors. We or a Third Party Supplier shall make every effort to solve errors in the Ancillary Services, but we do not warrant that all errors can be corrected.

3.2 The relevant Third Party Supplier will give you notice of any modification to the Ancillary Services, or anticipated maintenance windows, via a communication in the Ancillary Services login page, or through the Third Party Supplier’s website.

3.3 We strive to achieve high standards of availability but, unless otherwise expressly agreed with you in writing, do not guarantee that the Ancillary Services will be entirely uninterrupted or error free.

#### **4 Warranties**

4.1 Except as expressly and specifically set out otherwise, you acknowledge and agree that the Ancillary Services are provided on an “as is” and “as available” basis. All warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the HaysMac LLP Standard Terms of Business in relation to the Ancillary Services.

## **5 Reliance**

- 5.1 HaysMac LLP is not responsible for the correctness and completeness of the information or materials uploaded by you using the Ancillary Services or your compliance with accounting regulations. While Ancillary Services may include some data validation tools, the responsibility to ensure the accuracy of data uploaded lies with you. Information that is incorrectly or incompletely entered into the Ancillary Services cannot be recognised as such by the Ancillary Services.
- 5.2 Any services we provide (including Ancillary Services) may rely upon the information or materials you provide using the Ancillary Services. Errors in such information or materials may cause errors in our core service for which we do not take responsibility. You assume sole responsibility for the results obtained from the use of the Ancillary Services, except where caused by our negligence or breach.
- 5.3 We shall have no liability for any loss or damage caused by errors or omissions in any information entered into the Ancillary Services by you or by us on your behalf other than where we enter such information without reasonable care and skill.

## **6 Usage Restrictions**

- 6.1 Your use of the Ancillary Services must not be unlawful, breach the rights of third parties or have a detrimental impact on the Ancillary Services.
- 6.2 You shall not access, store, distribute or transmit any viruses, or any documentation or other material during the course of your use of the Ancillary Services that:
- is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - facilitates illegal activity;
  - depicts sexually explicit images;
  - promotes unlawful violence;
  - is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
  - is otherwise illegal or causes damage or injury to any person or property.
- 6.3 You shall not:
- attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Ancillary Services in any form or media or by any means; or
  - attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Ancillary Services; or
  - access all or any part of the Ancillary Services in order to build a product or service which competes with the Ancillary Services; or

- license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Ancillary Services available to any third party except to those users authorised by us; or
- attempt to obtain, or assist third parties in obtaining, access to the Ancillary Services, other than as provided under these Standard Terms of Business; or
- not use, or misuse, the Ancillary Services in any way which may impair the functionality of the Ancillary Services, or any other systems used to deliver the Ancillary Services or impair the ability of any other user to use the Ancillary Services; or
- attempt to gain unauthorised access to any materials other than those to which you have been given express permission to access or to the computer system on which the Ancillary Services are hosted.

6.4 You shall indemnify HaysMac LLP against all liabilities, costs, expenses, damages and losses (including legal costs and expenses) suffered or incurred by us arising out of or in connection with: (i) any breach of the Usage Restrictions, Usage Requirements or Confidentiality provisions of this Schedule; (ii) any third party claim arising out of or in connection with your unauthorized use or adaptation of the Ancillary Services; or (iii) claims from third parties that are based on an allegation that the information saved and/or exchanged by you through the Ancillary Services is unlawful.

## **7 Usage Requirements**

- 7.1 The Ancillary Services (or a part thereof) may be provided by a Third Party Supplier. By using the Ancillary Services you agree to be bound by the terms and conditions of those Third Party Suppliers providing the Ancillary Services and such terms and conditions are deemed incorporated into the Agreement by this reference.
- 7.2 You must keep all user codes and passwords secret in relation to the Ancillary Services. As soon as you know or have reason to suspect that user codes or passwords have fallen into the hands of unauthorised persons, you shall immediately inform us.
- 7.3 You must change any password you use to access the Ancillary Services at least every 2 months.
- 7.4 You shall take reasonable measures to ensure that you use customary security software that should as a matter of good practice be installed on a computer, such as anti-virus, anti-spam, anti-spyware, anti-malware, anti-phishing and firewall software, as well as the security that we or our Third Party Suppliers make available.
- 7.5 We may make a reserve copy of the data you submit to the Ancillary Services for the purposes of back up procedures, but please ensure that you retain your own copy of such data.
- 7.6 Neither we nor any Third Party Supplier is permitted to use your data from the Ancillary Services that you share with us, other than to provide services to you. However, you agree we and our Third Party Suppliers are permitted to use data that you share with us: (i) in anonymous form for statistical purposes or to improve service provision; and (ii) to monitor the correct functioning of the Ancillary Services or to test the correct functioning of an update of Ancillary Services.

## **8 Intellectual Property Rights**

- 8.1 The provision of the Ancillary Services does not imply any transfer of intellectual property rights. You grant HaysMac LLP and any Third Party Supplier a perpetual, royalty-free, non- exclusive, irrevocable, transferable, world-wide licence to use any materials or information you upload to the Ancillary Services, for the purpose of providing the Ancillary Services, including the backup and monitoring of such services, and use of the data in anonymous form for statistical purposes. All rights of whatever nature in such materials or information belong to you.
- 8.2 Whenever you upload material or information to us via the Ancillary Services, you must comply with the Usage Restrictions and Usage Requirements set out above.
- 8.3 You acknowledge that all intellectual property rights in Ancillary Services belong to us or the relevant Third Party Supplier.

## **9 Liability**

- 9.1 For the avoidance of doubt the liability exclusions and limits set out below apply to the Ancillary Services. Professional services are separately addressed under the Standard Terms of Business to which this Schedule is attached.
- 9.2 You agree that neither we nor a Third Party Supplier shall be liable for losses set out at clause 24.4 of the Terms however arising in connection with the Ancillary Services.
- 9.3 Subject to the remaining provisions of this section, in the event of any claim arising in respect of an engagement or series of connected engagements in relation to the Ancillary Services, our maximum aggregate liability to you shall not in respect of any Year exceed the greater of: i) £1,000; and ii) the total fees paid or payable by you to us for the Ancillary Services in respect of that Year, and we each agree that this represents a fair maximum limit of our liability to you. A 'Year' means the period of one year starting on the date of the Engagement Letter for the relevant engagement of Ancillary Services (or the start of service provision for that engagement, if earlier), and each year starting on the anniversary of that date, as applicable.
- 9.4 By instructing us to provide the Ancillary Services you are agreeing to this limitation on any claim for negligence, breach of duty or otherwise, and whether in tort, contract or otherwise arising in connection with the Ancillary Services and which shall also include all other related costs including legal fees, interest etc.
- 9.5 Where we use Third Party Suppliers, or have otherwise instructed third party suppliers to provide Ancillary Services to you from time to time, HaysMac LLP's liability to you shall be limited to losses arising directly from any failure by us to take reasonable care in carrying out your instructions in relation to the engagement of such persons and/or any failure to take reasonable care in relation to project management services that we have agreed to undertake on your behalf in relation to the provision of such Ancillary Services.
- 9.6 We acknowledge that the limit in respect of our total aggregate liability will not apply to any acts, omissions or representations that are in any way criminal, dishonest or fraudulent on the part of the HaysMac LLP, its members or employees.
- 9.7 Please refer to clause 24 of the Standard Terms of Business which contains further information about our limitation of liability.

## **10 Confidentiality**

- 10.1 Any information that passes through the Ancillary Services will be shared with the provider of that Additional Service. For each Additional Service, we have agreements in place with the relevant Third Party Supplier to protect the confidentiality of such information. These agreements allow for the Third Party Supplier to disclose such information to its employees, officers, representatives or advisers who need to know such information for the purpose of carrying out its obligations in relation to the Ancillary Services, along with as may be required by law, court order or any governmental or regulatory authority.

## **11 Data Protection**

- 11.1 Please see clause 20 of the Standard Terms of Business which explains our position as data controller or data processor and our respective rights and obligations.

## **12 Termination**

- 12.1 We will use reasonable endeavours to ensure continuity in any Ancillary Services, and that a reasonable notice period will be provided before any Ancillary Services are terminated.
- 12.2 As Ancillary Services are, in part, provided to HaysMac LLP by Third Party Suppliers, they are therefore subject to termination or suspension at any time. In most scenarios we expect to have at least three months' notice of termination of Ancillary Services.
- 12.3 Upon us receiving (or issuing) a notice of termination of an Additional Service from, or to, a Third Party Supplier, we will provide as much notice of such a termination to you as is reasonably practicable, and will, if appropriate, use reasonable endeavours to engage a new Third Party Supplier to provide an equivalent service and to administer a seamless transition to the new Third Party Supplier. However we may, on occasion, for technical or other reasons suspend the service provision.
- 12.4 The provision of Ancillary Services shall also terminate upon us ceasing to provide professional services in relation to your business affairs.
- 12.5 After termination of your access to the Additional Service we will at your request and expense (provided that agreement has been reached by you and us on the conditions thereof), make your data available to you, or procure such availability, in a generally accessible file format. You agree that our liability for the availability, completeness, integrity or possibilities for use of such data is entirely excluded.

## **13 Remedies**

- 13.1 If it becomes apparent that the information that is saved in or exchanged via the Ancillary Services is unlawful, we reserve the right to delete such information or block the access to it.

## **14 Force Majeure**

- 14.1 We shall not be in breach of the Agreement, nor liable for any failure or delay in performance of the Ancillary Services arising from or attributable to force majeure. Force majeure includes a failure of any of our suppliers, government measures or instructions,

strikes, power cuts, internet or telephone interruptions and other circumstances beyond our reasonable control.

## 15 Additional Service Specific Terms Client Portal

15.1 Where we make available to you a portal to enable you to upload and share with us online accounting, tax and other related information (the “**Client Portal**”) the following additional terms apply:

- We currently provide the Client Portal at no additional cost to you but reserve the right to start charging for the Client Portal upon the provision of 30 days’ written notice to you (which may be given within the Client Portal).
- Where the Client Portal contains links to other sites and resources provided by third parties (such as HMRC), these links are provided for your information only. Such links should not be interpreted as approval by us of those linked websites or information you may obtain from them. We have no control over the contents of those sites or resources and shall have no liability in respect of your use of such sites or resources.
- We process the personal information that you provide directly to us or upload to the Client Portal in our capacity as a data controller.
- Our Third Party Supplier’s typical scheduled maintenance hours for the Client Portal is 5am – 8am and 7pm – 10pm UK time and the Third Party Supplier will endeavour to provide three business days’ notice to you of planned maintenance. However, it may not always be possible to give you notice in an emergency.
- In addition and subject to the liability provisions above, we shall have no liability to you unless you have served notice in writing of any facts or circumstances which give rise to a claim, within 2 years of the date you either become aware of such facts or circumstances or, if earlier, the date you ought to reasonably have become aware of them.