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Private & confidential

Folkestone & Hythe District Council,
Civic Centre,
Castle Hill Avenue,
Folkestone, Kent.
CT20 2QY

Your ref

Contact [REDACTED]

29 March 2023

Dear [REDACTED]

Financial advice for the Otterpool Park Garden Town Project

We set out below the terms of the engagement of KPMG LLP (“KPMG” or “we”) to carry out work in connection with financial advice for the Otterpool Park Garden Town Project (the ‘Project’).

Any work performed in connection with the engagement before the date of this letter will also be governed by the terms and conditions of this letter.

1 Scope of Work

We have discussed and agreed with you the scope of our work which is set out in full in Appendix 1. Attention is drawn to the limitations in the scope of our work set out therein.

Any agreed developments in the scope of our work as the engagement progresses are to be made and agreed solely between Folkestone & Hythe District Council and us and will be recorded in writing and will be subject to the terms set out in this letter unless otherwise agreed in writing.

The procedures we will use to perform the work set out in this engagement letter will not constitute an audit or review made in accordance with any generally accepted auditing standards accordingly no assurance will be expressed. Furthermore, unless otherwise agreed with you and set out in the scope of this letter, we will not perform any procedures to verify or otherwise establish the reliability of any of the information to which our services relate.

KPMG will deliver the Services set out in this engagement letter as an independent contractor and will not discharge any responsibilities of Folkestone & Hythe District Council, whether legal or regulatory or arising under any contract. Responsibility for discharging all Folkestone & Hythe District Council obligations rests with your

management, being anyone with executive or governance responsibilities at Folkestone & Hythe District Council.

In particular, therefore, and at all times:

- KPMG will not act in any capacity equivalent to a member of management or as an employee of Folkestone & Hythe District Council.
- KPMG may provide observations to Folkestone & Hythe District Council's management during the engagement but management will be solely responsible for evaluating such observations and determining what actions (if any) should be taken by Folkestone & Hythe District Council in response.
- KPMG will not form part of Folkestone & Hythe District Council's internal control structure.
- KPMG will not direct, manage or supervise any Folkestone & Hythe District Council or third party personnel.

KPMG will be responsible for delivering the Services. Folkestone & Hythe District Council will be responsible for:

- Determining the objectives, scope, and adequacy of the Services having regard to the purposes for which Folkestone & Hythe District Council has commissioned them.
- Designating a management-level individual or individuals with suitable skills, knowledge and experience who will have responsibility at all times for overseeing the progress of any Folkestone & Hythe District Council project to which the Services relate and addressing issues as they arise. This individual or individuals will be authorised and required by Folkestone & Hythe District Council:
 - To demonstrate familiarity with all relevant business objectives, functions, processes or divisions.
 - To procure the provision to KPMG of all relevant information and documentation and access to personnel as may be required in connection with the Services.
 - To evaluate information provided by KPMG, and to make management decisions based on such information.
 - To provide appropriate internal communications regarding all matters relevant to the Services.

- Evaluating the adequacy of the Services performed and addressing any findings, observations, and recommendations made by KPMG.
- Accepting responsibility for the actions, if any, to be taken as a result of the Services.
- Establishing and maintaining internal controls and monitoring ongoing activities.

You should note that any product of our services shall not constitute recommendations to you as to whether or not you should proceed with the Project any particular course of action.

2 Reporting

During the course of the engagement we may supply oral, draft or interim advice or reports or presentations of our interim findings arising from our work in accordance with the relevant sections of Appendix 1 to Folkestone & Hythe District Council.

Following completion of our work in accordance with the relevant sections of Appendix 1 we shall report formally in writing and orally to Folkestone & Hythe District Council. Our report will present the findings of our work for the purpose of assisting you with your enquiries in connection with the Project.

We will indicate within our report(s) the sources of the information presented and will satisfy ourselves, so far as possible, that the information presented is consistent with other information which is made available to us in the course of our work in accordance with the terms of this engagement letter. We will not, however, seek to establish the reliability of the sources by reference to other evidence, except as may be specifically agreed in writing between us.

In this paragraph, 'report' includes in addition to our final reports, any oral, draft or interim advice or reports or presentations of our interim findings ('draft reporting'), but, for the avoidance of doubt, any use of any draft reporting must take account of the oral, draft or interim nature of such draft reporting and the circumstances of its provision. Any report will be provided for your internal use only, which includes distribution amongst your and your affiliates' directors, officers and employees who need to have access to or to discuss the report in connection with their responsibilities. You may also disclose the report to your affiliates, for the purposes of assisting you in relation to the report, provided that (a) such affiliates agree not to disclose the report (save as permitted by clause (ii) below) and agree that KPMG accepts no duty or liability to them and (b) you remain responsible to us for any breach of these terms by an affiliate. In this paragraph "affiliate" means any legal entity that, directly, or indirectly, controls, or is controlled by, or is under common control with you. Reports may not be disclosed to any other party without our prior written consent except that

you may also (i) provide a copy of a report to your legal and other professional advisers for the purposes of your seeking support or advice in connection with the subject matter of the report, provided that in such case you inform such advisers that they receive the report only to support or advise you, that we accept no duty or liability to them and the report is to be treated as confidential; and (ii) disclose a report as required by law or by a competent regulatory authority (in which case you shall, if permitted by law or regulation, promptly inform us).

3 Timetable

A timetable covering the delivery of our services and the assumptions on which it is based will be drawn up and agreed between us prior to the commencement of our Services. However, for the purposes of this engagement and our charges set out below, we understand that the Services (as described in Appendix 1) will be carried out over the course of a 6 week period.

We shall use all reasonable endeavours to meet the agreed timetable.

Our work will be dependent upon receiving without undue delay full co-operation from all relevant officials of Folkestone & Hythe District Council and their timely disclosure to us of all information as we may need for the purposes of our work.

4 KPMG resources

Senior members of the engagement team are set out below.

- [REDACTED], Engagement Lead
- [REDACTED], Engagement Manager

You acknowledge that we may, at our option, make changes at any time to our team and add, substitute or remove any individual – and that we provide no assurance that any individual will remain part of or will join our team.

5 Our charges

Fee for financial advice and tax services (as set out in Appendix 1)

On the basis of information currently available to us, the commercial assumptions set out in Appendix 1, the timetable as set out above and our understanding of your requirements, we estimate that our overall charge for the services in section 1 of our scope of work set out in Appendix 1 will be £88,172.50 (excl. VAT).

Fee for out of scope services

Our normal hourly rates in operation when the work is performed and out of scope from the work set out in Appendix 1. Details of those currently in force are as follows:

GRADE / JOB TITLE	DAILY RATE (£)
Partner	£ [REDACTED]
Director	£ [REDACTED]
Principal consultant / Associate Director	£ [REDACTED]
Senior consultant / Manager	£ [REDACTED]
Consultant / Assistant Manager	£ [REDACTED]

Outlays, VAT and changes

In addition to the above we will also include all applicable VAT in connection with our invoices.

In the event that we incur additional costs due to any change in the scope of our work, delays in the provision of information or delays in the timetable, we will notify you of this immediately and discuss with you the implication for our fee.

Billing arrangements

We will provide you with monthly summaries of our costs to date and we will issue our invoices on a monthly basis.

Should you notify us that you have ceased your interest in the Project we will invoice you for our time costs incurred up to the date we are instructed to cease work.

Invoices will be payable on presentation.

6 Terms of Businesses

We accept this engagement and will commence work on the basis that our General Terms of Business, as set out in Appendix 2, will apply to this work and govern our relationship with you. The tax element of this work is also subject to the Additional Terms: Tax services. This letter is the 'Engagement Letter' mentioned in our General Terms of Business.

Disclosure and use of reports: In this paragraph, 'report' includes in addition to our final reports, any oral, draft or interim advice or reports or presentations of our interim findings ('draft reporting'), but, for the avoidance of doubt, any use of any draft

reporting must take account of the oral, draft or interim nature of such draft reporting and the circumstances of its provision. Any report will be provided for your internal use only, which includes distribution amongst your and your affiliates' directors, officers and employees who need to have access to or to discuss the report in connection with their responsibilities. You may also disclose the report to your affiliates, for the purposes of assisting you in relation to the report, provided that (a) such affiliates agree not to disclose the report (save as permitted by clause (ii) below) and agree that KPMG accepts no duty or liability to them and (b) you remain responsible to us for any breach of these terms by an affiliate. In this paragraph "affiliate" means any legal entity that, directly, or indirectly, controls, or is controlled by, or is under common control with you. Reports may not be disclosed to any other party without prior written consent except that you may also (i) provide a copy of a report to your legal and other professional advisers for the purposes of your seeking support or advice in connection with the subject matter of the report, provided that in such case you inform such advisers that they receive the report only to support or advise you, that to the fullest extent permitted by law we accept no duty or liability to them and the report is to be treated as confidential; and (ii) disclose a report as required by law or by a competent regulatory authority (in which case you shall, if permitted by law or regulation, promptly inform us).

As noted above, our Services and any product of the Services attributable to us are confidential. This letter is also confidential between you and us. Any disclosure of the Services or any product of the Services beyond what is permitted by this letter, and any disclosure of this letter beyond you and us, will or may prejudice substantially this firm's commercial interests. A request for our consent to any such wider disclosure may result in our agreement to these disclosure restrictions being lifted in part. If you receive a request for disclosure of the product of our work or this letter under the Freedom of Information Act 2000 or the Freedom of Information (Scotland) Act 2002, having regard to these actionable disclosure restrictions you should let us know and you should not make a disclosure in response to any such request without first consulting us and taking into account any representations that we might make.

Disclosure of certain arrangements to the tax authorities: In certain circumstances we may be obliged to provide details of our advice to a tax authority. This includes but is not limited to requirements under the European Union (EU) Directive on Administrative Cooperation ('DAC6') published on 25 May 2018 as Council Directive 2018/822 and transposed into local law by EU Member States and some other jurisdictions.

If the Services include advice which we consider is subject to disclosure under law to a tax authority under DAC6 or any other relevant disclosure provision we may make a disclosure to the relevant tax authority and this may include confidential information. The information may be exchanged between tax authorities.

If permitted to do so by law, we will endeavour to inform you of any such disclosure resulting from the Services, as soon as possible prior to being made. This includes disclosures that we become aware may be made by members of the KPMG network in relation to the Services. We will make good faith efforts to discuss the contents of any such disclosure with you in advance. In relation to DAC6, we will endeavour to share with you a draft disclosure for comment prior to submission. We will consider reasonable comments but reserve the right to ultimately determine whether and to what extent any such disclosure shall be made.

Limitations on our liability: Our liability to you in connection with the provision of the Services and all claims arising in connection to it shall be limited, on the basis set out in our General Terms of Business, to a maximum aggregate of £1,000,000.

7 Debriefing

On completion of the engagement, as part of our commitment to the quality of our service, we would welcome the opportunity to receive your views on the work carried out by ourselves and the service delivered.

8 Agreement

Please confirm your agreement and acceptance of the terms of this letter and the attachments by signing and returning to us. If there are any aspects that you wish to discuss, please let us know.

Yours faithfully



 - Director

KPMG LLP



I have read and understood the terms and conditions of this letter and attachments and I agree to and accept them for and on behalf of Folkestone & Hythe District Council, by whom I am duly authorised:

Signature 

Name 

Position Director Corporate Services & S151 Officer

Date 30th March 2023

Appendix 1 Scope of Services (Financial and Tax)

KPMG will produce a report containing advice on the following lines of enquiry:

(i) Revised business plan review :

The Folkestone & Hythe District Council requires financial advice and analysis over the life of the project in relation to :-

- Potential Cash Outflows/ Investment required in the Project together with sensitivity analysis.
- Potential Cash inflows/ Financial returns from the Housing Development together with sensitivity analysis.
- Analysis of the likely MRP set aside, to be made the Council over the life of the project based on the most financially effective methodology allowed under the MRP Regulations.
- Analysis of the net returns required from the project to eliminate/minimise the impact of the MRP set aside upon the Council's budget over the life of the project.
- An assessment about whether it would be financially beneficial for the Council to incur the infrastructure investment capex directly to minimise the impact of MRP under the Regulations.
- An assessment of the financial benefits/disadvantages of providing funding loans to Otterpool LLP within the context of MRP.
- An assessment of the risks arising from the project.

The Folkestone & Hythe District Council also requires the following financial and commercial advice :-

- An assessment of the robustness of the Business Plan presented.
- A review of the supporting advice from LLP advisors.
- A review of the assumptions made within the business plan and their sensitivity to market changes.
- A review of the findings of Homes England independent assessment of the LLP's financial model (if obtained from HE).
- An assessment of the alternative options presented by the LLP as Option B in the Business Plan.
- A headline assessment of alternative funding and partnering options as outlined above.
- Tax advice on the Option to Tax land and resulting VAT implications.
- State Aid advice on the Funding agreements.

(ii) Homes England Proposal:

- A red flag review of the draft HoTs, comparing key commercial terms against your requirements and HE's proposed role in the scheme.
- Comment on the structure and treatment of land transfers between parties, the treatment of amounts received by the Council, including the impact of the equalisation clause, SDLT, VAT recoverability, and the treatment of costs for tax and accounting purposes.

(iii) Stewardship Vehicle (SV):

- Set out the financial, tax and accounting implications of setting up and operating alternative structures and forms of the vehicle; including tax impacts of any land transfers and amounts received by the Council; and advise on steps that should be taken.
- Comment on the SV financial model and provide commentary on whether the assumptions are commercially sound.

(iv) Places for People JV:

- Commentary based on a commercial review of the proposed HoTs and other key documents and the due diligence undertaken to date.
- Review the financial considerations and the underlying assumptions, and comment on its value to the Council with input from your appointed valuers.

(v) Strategic Land Agreement and Phased Delivery Strategy:

- Comment on financial and tax aspects of the SLA and PDS, to optimise Council risk/reward trade-offs, tax efficiency and accounting outcomes.



Appendix 2: General Terms of Business and Additional Terms: Tax services
(subsequent pages)

General Terms of Business

1. Definitions

“Additional Terms” means any other terms applicable to the Services included with or referenced in the Engagement Letter.

“Agreement” means the contract formed by the Engagement Letter, these General Terms, and any Additional Terms.

“Affiliates” means any legal entity that, directly or indirectly, controls, or is controlled by, or is under common control with you.

“Charges” means the fees, expenses and applicable taxes payable for the Services.

“Confidential Information” means any information that has been or will be made available, directly or indirectly, by one Party to the other in connection with the Services, that is marked or communicated as confidential or whose nature is such that a recipient would reasonably consider it confidential, including, without limitation, business plans, proposals, product development details, methodologies, software code and specifications and financial information. Confidential Information excludes Excluded Information.

“Deliverable” means any advice, report or other product of the Services provided to you in any form.

“Engagement Letter” means the letter sent to you referencing these General Terms.

“Engagement Team” means the KPMG Persons who are individuals delivering the Services.

“Excluded Information” means information that: (i) is or becomes generally available in the public domain through no fault of either the receiving Party or those to whom the receiving Party has disclosed the Confidential Information; or (ii) was or becomes known to the receiving Party free of any obligation of confidence from a third party entitled to make such disclosure; or (iii) was developed by a Party independently of the other’s Confidential Information.

“General Terms” means these terms and conditions.

“IPRs” means all intellectual property rights including all rights in and to inventions, utility models, patents, copyright, trade marks, logos, trade and business names, rights in designs, rights in computer software, database rights, moral rights, rights in confidential information (including know-how and trade secrets) in every case whether registered or unregistered and all similar or equivalent rights or forms of protection (whether now or in the future) anywhere, and references to **“IPR”** means any of them.

“KPMG” or **“we”** (and derivatives) means KPMG LLP (a UK limited liability partnership) or the KPMG contracting party that issues the Engagement Letter.

“KPMG Persons” means KPMG, and all of our members, employees, suppliers and agents together with any entity associated with us and all of

its partners, directors, employees and agents, and **“KPMG Person”** means any of them.

“Other Beneficiaries” means any person identified in the Engagement Letter as a beneficiary of the Services or any Deliverable other than you.

“Party” means either of KPMG and you and **“Parties”** shall mean both KPMG and you.

“person” means individuals, corporate and unincorporated bodies.

“Services” means the services to be delivered by us under the Engagement Letter.

“you” (and derivatives) means the addressee(s) of the Engagement Letter and, if the context requires, Other Beneficiaries.

2 The Agreement

2.1 This Agreement sets out the entire agreement between the Parties in connection with the Services and extinguishes all previous agreements, promises, representations and understandings between the Parties to the extent only that they relate to its subject matter.

2.2 In entering into this Agreement, neither Party has relied on any statement, representation, assurance or warranty (made innocently or negligently) unless it is set out in this Agreement.

2.3 If there is any inconsistency between the Engagement Letter and any other part of this Agreement, the Engagement Letter prevails to the extent necessary to resolve the inconsistency. If there is any inconsistency between these General Terms and any Additional Terms, the Additional Terms prevail to the extent necessary to resolve the inconsistency.

2.4 Any changes to this Agreement must reference this Agreement, be in writing and signed by all Parties.

3 Our responsibilities

3.1 The Services shall be delivered with the reasonable skill and care expected from a skilled and experienced person engaged in providing services similar to the Services, in a similar context, and in compliance with applicable laws.

3.2 We try to minimise changes to the Engagement Team, but, where necessary, we may change team members for others of equivalent skills and we shall try to give you reasonable notice of any changes.

3.3 When we work at your premises we shall comply with applicable site policies communicated to us.

4 Your responsibilities

4.1 You shall provide (and procure that your personnel and suppliers provide), in a timely manner, cooperation, information, documents

and access to personnel, premises, systems and facilities, as we reasonably need or request and you shall obtain all necessary licences and permissions. You shall provide a safe and appropriate working environment and perform any actions required of you in this Agreement.

4.2 You shall tell us of any changed circumstances or information that may have an impact on the Services and ensure that the personnel involved have the required skills and information.

4.3 You are responsible and accountable for managing your affairs, deciding on what to do after receiving any Deliverable and implementing any advice or recommendations.

5 Ownership of Deliverables

5.1 We own all IPRs in any Deliverable, except to the extent that the Deliverables incorporate your or third party pre-existing intellectual property which you or they shall continue to own.

5.2 You may use (including making and distributing copies of) any Deliverable (whether in hard or soft copy) from delivery to you up until the last permitted day for payment of our Charges. On full payment of our Charges, you shall own the Deliverable (in hard and soft copy), subject to the terms of this Agreement.

6 Our advice and use of information

6.1 We may provide advice orally, in draft or interim form, but our last written advice or final written report supersedes anything provided earlier.

6.2 You should not rely on any draft or interim advice. If you want to rely on our oral advice, let us know and we will provide it in writing. You should only rely on our written advice.

6.3 We may rely on any instructions, requests or information supplied by any person whom we reasonably believe to be authorised by you for such purpose.

6.4 If we receive information from you or from other sources in connection with the Services, we may rely upon it without independent verification.

6.5 Unless a part of the Services, we will not update the Services or the Deliverables after we have delivered the final Deliverables.

6.6 We cannot predict future events or circumstances, and you should not interpret our advice, forecasts or recommendations as a guarantee of any outcome.

6.7 Unless otherwise agreed, our Deliverables are provided for your internal use only. They may not be disclosed to any other party without our prior written consent except as required by law or by a competent regulatory authority (in which case you shall, if permitted by law or regulation, promptly inform us).

6.8 You may disclose the Deliverables to your Affiliates for support purposes and to your insurers, legal and other professional advisers if seeking advice in relation to the Services, provided that you tell them that: (i) the Deliverables are confidential (unless the Agreement states that they are not confidential); and (ii) to the fullest extent permitted by law, we accept no liability to them in connection with the Services or the Deliverables.

6.9 We may use information we obtain performing the Services, anonymised and/or aggregated so that no personal data or commercially sensitive information is disclosed, for development of know-how, benchmarking, analytics, quality assurance and other purposes related to our business.

7 Confidentiality

7.1 The Parties shall keep each other's Confidential Information confidential and use it only to perform or receive the Services or for exercising their rights or performing their obligations under this Agreement and for corporate governance purposes. Each Party will protect the Confidential Information it receives as it would protect its Confidential Information, and exercise at least a reasonable standard of care.

7.2 We comply with the confidentiality standards of the Institute of Chartered Accountants in England and Wales ("ICAEW") and with any obligations imposed by law or applicable regulator.

7.3 Unless you tell us otherwise in writing, we may share Confidential Information with your other advisers in connection with the Services. The Parties may disclose Confidential Information if required by law or regulation but only to the extent required, and the Party intending to make any such disclosure will provide the other with notice of the disclosure if permitted by law or regulation. The Parties may disclose Confidential Information to their legal advisors and insurers in relation to any dispute concerning this Agreement.

7.4 We will retain your Confidential Information in accordance with our record retention policy. We may share information relating to you and the Services (including Confidential Information) with KPMG Persons and our subcontractors and it may be accessed by parties who facilitate our business who shall be under obligations of confidentiality at least equivalent to this Agreement. We remain responsible to you if Confidential Information is shared with such parties.

8 Our Charges

8.1 Unless otherwise agreed in the Engagement Letter, we shall invoice you monthly in arrears for the Charges together with any taxes payable on or deductible from them. You will pay our invoice within 30 days of the invoice date without set-off.

8.2 If this Agreement is terminated early, we shall be entitled to payment of our Charges for Services performed up to the date of termination. In this event, unless agreed otherwise in writing, our Charges will be calculated at our agreed hourly rates (or, if none are agreed, our standard rates) at the time the Services were performed, provided that such Charges shall not exceed any fixed fee in the Engagement Letter.

8.3 Where there is more than one addressee of the Engagement Letter, unless the Engagement Letter provides otherwise, each of you shall be jointly and severally liable to pay our Charges.

8.4 If we are required by law, or a regulatory or parliamentary body in any proceedings, forum, or investigation (in which we are not a party or participant but you are) to provide information or produce documents relating to the Services, you shall pay our fees incurred in satisfying such requirements based on our standard

Additional Terms: Tax Services

Where the Services include assisting you with tax matters, the following terms below apply. In performing the Services we shall comply with the Professional Conduct in Relation to Taxation guidelines of the ICAEW in conjunction with the Chartered Institute of Taxation (“**Professional Guidance**”). “**Tax Authority**” means the relevant tax authority/authorities for the Services provided under this Agreement.

As KPMG LLP is a multi-disciplinary practice regulated by the Solicitors Regulation Authority we can, if requested by you and when appropriate to do so, try to ensure that any tax advice provided under the Agreement benefits from legal advice privilege. If you want us to put these arrangements in place you must tell us in writing before we deliver any Services to you under this Agreement, so that appropriate terms applicable to legal services can also be applied.

Compliance work

1. If the Services include our preparation and submission on your behalf of returns to a Tax Authority:
 - 1.1 You shall promptly supply all relevant information and documentation. We shall present returns to you to verify before we send them to the Tax Authority. You shall sign to confirm that it is correct and complete to the best of your knowledge and belief and to approve submission to the Tax Authority by us. You retain responsibility for the correctness and completeness of returns and for the payment of any tax liability.
 - 1.2 We may send returns, claims, elections, applications or forms (“**Submissions**”) to a Tax Authority electronically. If a failure in or interruption in the Tax Authority’s online services affects our ability to send Submissions, we shall use reasonable endeavours to make the submission by other means, but, to the fullest extent permitted by law, we shall not be liable for the consequences of any resulting delay or failure in arrival of Submissions at the Tax Authority.

Commissions

2. Where commissions or other benefits (“**Commissions**”) become payable to us in respect of the Services, we shall inform you of the amount and terms of payment. We shall be entitled to retain Commissions and reduce our Charges proportionately.

Provision of Services to Trusts and Trustees

3. Where the Services are delivered to the Trustees of a Trust in connection with tax matters concerning the Trust or concerning the Trustees in their capacity as such: (i) we may treat any one of the Trustees as a person authorised to communicate with us; and (ii) unless you inform us in writing that we may not rely on communications from such a person, we may assume that any such person deals with us with the authority of all the Trustees.

Provision of Services relating to individuals

4. Where you are an individual, you shall notify us of all employments and directorships held by you, your spouse, your spousal equivalent and any dependants, including a general description of the role performed. You shall promptly notify us of any changes to this information.

Global Mobility Services

5. The Services may include preparation and submission of returns to Tax Authorities on behalf of one or more of your employees (the “**Employee**”). To enable us to prepare returns on the Employee’s behalf, you shall use best endeavours to procure that the Employee promptly supplies all relevant information and documentation (including the information and notifications referred to in clause 4 above, as if that clause were addressed to the Employee). We shall present returns to the Employee for verification before sending them the relevant Tax Authorities.

We may need to obtain the Employee’s consent to disclose any information to you that you may require to determine the Employee’s tax position (e.g. regarding confidential financial matters beyond employment income). You shall explain the arrangements outlined in this clause 5 to the Employee and answer any questions arising. You shall inform the Employee that they are responsible for the correctness and completeness of returns prepared on their behalf and for the payment of any tax liabilities.

Disclosure of certain arrangements to the tax authorities

6. In certain circumstances, we may have to disclose details of our advice to a Tax Authority. To the fullest extent permitted by law, we are not liable to you for any consequences that may result from or be connected with such disclosure.

US Tax Advice

7. If the Services include “**US Tax Advice**”, which is advice on a transaction or event, the consequences of which may be reflected on a US tax return required to be submitted by you or any person or entity (whether or not associated with you), US federal and state tax regulations may require taxpayers to disclose to the Internal Revenue Service (**IRS**) and applicable US state tax authorities, their participation in any reportable transaction(s). You shall inform us if you determine that any matter covered by the Services is required to be disclosed to the IRS or US state authorities as a reportable transaction.
8. Notwithstanding any other terms of the Agreement, if the Services include US Tax Advice, US federal and state tax regulations may require us to disclose information on reportable transactions to the IRS and any applicable state tax authority, and to retain certain details with respect to the transactions.

US Tax Advice: no confidentiality in certain circumstances

9. Where:

- whether now, in the future, you are, or you are an affiliate of, an entity that is registered with the United States Securities and Exchange Commission (“**SEC**”) and you are (or such affiliate is) audited by a KPMG Person (you are an “**SEC Registered Audit Client**”); or
- the Services involve the delivery of US Tax Advice;

then your obligations of confidentiality under the Agreement shall not apply to the product of our Services relating to tax matters (“**Tax Deliverable**”) (although other products of our Services remain subject to those obligations) and no provision in this Agreement is or is to be construed as a condition of confidentiality in relation to such Tax Deliverable. In particular, you (and your employees, representatives or agents) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of any transaction within the scope of the Services and all related materials (including opinions and tax analyses) provided to you. In this clause the term “**affiliate**”

is interpreted as that term is used by the SEC with reference to auditor independence standards.

10. If you are an SEC Registered Audit Client or the Services involve the delivery of US Tax Advice and we are providing a Tax Deliverable, you shall promptly inform us of any conditions of confidentiality imposed at any time by other advisers with respect to any transaction on which our advice is requested that will be relevant to a product of tax services.
11. Where clause 9 above applies, any Tax Deliverable released to you is supplied by us on the basis it is for your benefit and use only. If you refer to or disclose any Tax Deliverable in whole or part to any third party you must (where legally permissible to do so) inform the recipient in writing and obtain the recipient's written acknowledgement that (i) the recipient will place no reliance upon the Tax Deliverable and (ii) the recipient will not hold us liable for any liability arising in connection with the Services. No acknowledgement is required for your affiliates.

Survival on termination

12. Clauses 6, 7, 8, 9, 11 and 12 of these Additional Terms survive expiry or termination of the Agreement.

rates at the time and any reasonable costs, reasonable expenses and VAT.

- 8.5 Unless otherwise agreed, where we provide services on a rate card, those rates shall increase on each anniversary of the date of the Engagement Letter by the change in the RPI All Items Index published by the ONS (or if that index has been replaced by its nearest equivalent index) over the previous 12 months.

9 Managing conflicts of interest

- 9.1 KPMG Persons may be delivering services to, or approached to deliver services to, or act for another party or parties during and after this engagement with interests that conflict with yours (a “**Conflicting Party**” or “**Conflicting Parties**”).
- 9.2 KPMG Persons may deliver services to Conflicting Parties, but where the interests of any Conflicting Party directly conflict with yours in relation to the Services then the Engagement Team shall not deliver services to the Conflicting Party and KPMG Persons that are not members of the Engagement Team may only deliver services to the Conflicting Party where appropriate Barriers are in place. Where this process is followed and such Barriers are in place, you agree this will be sufficient to manage such conflict.
- 9.3 “**Barriers**” means reasonable safeguards to facilitate the protection of our clients’ interests, through information handling procedures and deployment of professionals.

10 Third parties and their rights

- 10.1 KPMG Persons (who are not the KPMG contracting Party) may exercise rights given them in this Agreement.
- 10.2 The Parties may end or vary this Agreement without anyone else’s consent, including any Other Beneficiaries.
- 10.3 Other Beneficiaries (if any) acquire rights and become subject to obligations under this Agreement through signature by the addressee of the Engagement Letter on their behalf.

11 Circumstances beyond your or our control

- 11.1 No Party shall be in breach of its obligations under this Agreement or incur liability to the other due to causes beyond their reasonable control.
- 11.2 If such an event occurs, the affected Party shall, as soon as reasonably practicable, notify the other, who may suspend or terminate this Agreement by giving seven days’ notice, taking effect if the affected Party has not recommenced the performance of its obligations in that period.

12 Waiver, assignment and sub-contractors

- 12.1 Failure by a Party to exercise or enforce any rights under this Agreement is not a waiver of such rights.
- 12.2 No Party may assign the benefit of this Agreement.
- 12.3 We may use sub-contractors to assist in delivering the Services, but we remain responsible to you for performing the Services. Where any sub-contractor is not a KPMG Person we will notify you first.

13 Limitations on our liability

- 13.1 Our entire liability and that of any KPMG Person under this Agreement, for all claims connected to it, in contract, tort (including negligence), statutory liability or otherwise shall be limited to the amount in the Engagement Letter or, if no amount is set out, to three times the total fees that have been paid or are payable under this Agreement.
- 13.2 We (including KPMG Persons) exclude liability for loss of profits, goodwill, anticipated savings or wasted time and for indirect or consequential losses.
- 13.3 If other persons are liable to you for any loss or damage for which we or any KPMG Person are also liable, then our (including KPMG Persons) liability to you is limited to the sum we ought to pay having regard to our responsibility for that loss or damage, and we will not be liable for losses attributable to the other persons.
- 13.4 Neither you nor any Other Beneficiaries shall bring any claim against any KPMG Person except KPMG in respect of loss or damage suffered by you in connection with this Agreement or the Services. This clause is enforceable by any KPMG Person.
- 13.5 Nothing in this Agreement excludes or restricts our liability for fraud, fraudulent misrepresentation, for death or personal injury resulting from our negligence, or for any other liability that may not be excluded or limited by law.

14 Termination

- 14.1 Either you or we can terminate this Agreement by giving at least 30 days’ prior notice to the other. Termination shall not affect any rights accrued before termination.
- 14.2 We may terminate this Agreement immediately if: (i) there is a change of law, rule, regulation or professional standard, or circumstances arise that KPMG reasonably believes would cause the relationship between the Parties to violate such law, rule, regulation or professional standard or would prejudice any KPMG Person’s ability to comply with applicable auditor independence requirements; or (ii) we believe a conflict of interest cannot be managed, but in that case we shall first consult you.
- 14.3 Clauses 1, 4, 5, 6, 7, 8, 9, 10.1, 12.1, 13, 14.3, 15, 18, 19 and 20 shall survive termination of this Agreement, together with any other provision stated to survive termination or which, by implication, is intended to survive.

15 Data protection

- 15.1 “**DP Legislation**” means the General Data Protection Regulation (EU 2016/679), the Data Protection Act 2018 and any legislation that amends, re-enacts or replaces it in the United Kingdom. The definitions and interpretations in the DP Legislation apply to this clause.
- 15.2 This clause 15 applies to personal data provided to us by you or on your behalf in connection with the Services (“**Personal Data**”).
- 15.3 You warrant and represent that you have any necessary consent, provided any necessary notice and done all things required under the DP Legislation to disclose Personal Data to us in connection with the Services. You must tell us in writing if you provide us with

special category data. We shall act as a Controller and perform the Services in accordance with the DP Legislation.

- 15.4 We will take appropriate technical and organisational steps to protect against unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data.
- 15.5 We shall process the Personal Data (i) to provide the Services; and (ii) to meet our legal and regulatory obligations. We may share Personal Data with our subcontractors and other parties who facilitate our business. We will only disclose Personal Data where it is required in connection with such purposes and in compliance with DP Legislation.
- 15.6 We shall, to the extent permitted by DP Legislation, notify you promptly: (i) upon receiving a request for Personal Data or other request from a data subject, or if we receive any claim, complaint or allegation relating to the processing of the Personal Data; (ii) upon becoming aware of any breach of security leading to the destruction, loss or unlawful disclosure of the Personal Data in KPMG's possession or control.
- 15.7 Upon request, each Party shall provide the other with information relating to its processing of Personal Data as reasonably required for the other to satisfy its obligations under DP Legislation.

16 Notices

- 16.1 Any notice under this Agreement shall be in writing which includes email, except as set out in this clause. Any notice alleging breach or terminating this Agreement must be delivered by first class registered post (or overseas equivalent) to or left (and signed for) at our respective addresses in the Engagement Letter (or another address as notified in writing) addressed to the lead persons of the relevant Party named in the Engagement Letter and copied to the Parties' respective General Counsel.

17 Capacity

- 17.1 You agree to the provisions of this Agreement on your own behalf and as agent for any Other Beneficiaries.

18 Legal and regulatory compliance

- 18.1 Each Party is responsible for making any notifications, registrations and disclosures required of it by law or regulation.

- 18.2 Notwithstanding any other provision in this Agreement, each Party agrees that the other may make any notifications, registrations and disclosures required by law or regulation.

19 Disputes, law and jurisdiction

- 19.1 If the Parties cannot resolve any dispute by negotiation, they shall try to resolve it using the Centre for Effective Dispute Resolution's ("CEDR") model mediation procedure.
- 19.2 If the Parties cannot agree on the joint appointment of a mediator within ten business days of initiating the mediation procedure (or any longer agreed period), they shall make a joint request to CEDR to nominate the mediator.
- 19.3 If the Parties resolve the dispute, their agreement shall be put in writing and shall be binding once it is signed by or on behalf of the Parties.
- 19.4 Failing agreement, a Party may invite the mediator to provide a non-binding opinion in writing.
- 19.5 Each Party shall bear its costs of mediation, and the fees and all costs of the mediator shall be borne in equal proportions unless the mediator directs otherwise.
- 19.6 Subject to the above process, this Agreement and all disputes arising on any basis from, under or in connection to it shall be governed by English law and subject to the exclusive jurisdiction of the English courts.
- 19.7 Referral of a dispute to mediation shall not prevent any Party from seeking an injunction or other equitable relief.

20 Feedback

- 20.1 If you want to comment on the Services to someone who is not involved in their delivery or management of your account, please contact our UK Chief Risk & Legal Officer at 15 Canada Square, London E14 5GL or through our [website \(https://home.kpmg.com/uk/en/home/misc/complaints.html\)](https://home.kpmg.com/uk/en/home/misc/complaints.html).
- 20.2 We investigate and try to resolve any complaints promptly. If you are not satisfied, you can refer the matter to the ICAEW and, in respect of "regulated activities" and ancillary services, to the Financial Ombudsman Service or, in the case of legal services, the Legal Services Ombudsman.