# ***PART 4 – OPTIONAL PARAGRAPHS***

***Additional paragraphs for insertion into a letter of engagement in relation to specific additional other services.***

1. CORPORATE SERVICES *for example as a separate schedule*
	1. **Company secretarial**
		1. A [private company] [limited liability partnership] is required to file its financial statements at Companies House within nine months of the year end. The company will be liable to a fine if it fails to do so. We accept no responsibility for fines or regulatory action taken against the directors if the statutory financial statements are not available for filing.
		2. We have agreed to act as your agent, and to:
2. submit the financial statements to the Registrar of Companies;\*
3. complete and submit the company’s confirmation statement;
4. complete and submit any other forms which are required by law to be filed at Companies House, provided that you keep us fully informed of any relevant changes or events which are required to be notified to Companies House, within one week of the change or event;\* and
5. maintain the statutory books.\*

***\*delete as appropriate***

* + 1. ***Where appropriate,*** [You have agreed to complete all the returns which are required by law to be filed at Companies House, for example, the confirmation statement and the notification of changes in directors. We will, of course, be pleased to advise you on these and any other company secretarial matters, if requested.]
1. CONSULTANCY SERVICES *for example as additional paragraphs in a schedule*
	1. **Further assistance we can provide**
		1. There are many other areas in which we can be of assistance, and we will be pleased to discuss any matters with you. These other services include:
2. reports in support of returns or claims, eg, insurance company certificates, government grants, etc;\*
3. advice on financial matters;\*
4. management accounting, including such matters as cash flow statements, costing systems, etc, and advice on management;\*
5. advice on the selection and implementation of computer systems;\*
6. investigations for special purposes, eg, acquisitions of other businesses or examination of specific aspects of your business;\* and
7. advice on the selection and recruitment of staff.\*

***\*delete as appropriate***

1. INVESTMENT SERVICES *for example as additional paragraphs in a schedule*

***Note: Only DPB licensed and FCA authorised firms can make an introduction for a client to obtain advice on, or arrange, insurance contracts or pensions. The introduction itself is an exempt regulated activity. See Part 3 of the*** [***DPB Handbook***](https://www.icas.com/__data/assets/pdf_file/0011/469676/DPB_investment-business-handbook.pdf)***.***

* 1. **Referral to a Permitted Third Party (PTP)**
		1. If you require advice on investment business, which we are unable to give as we are not authorised by the Financial Conduct Authority, we can introduce you to …………………… ***insert name*** [who are a PTP authorised by the Financial Conduct Authority] [a suitable PTP]. ***Note: If the firm identifies the PTP to whom business is referred in an engagement letter or terms of business, the PTP must be asked to approve the wording as a financial promotion***. [………………… ***insert name*** is an associated business to the practice, and one in which we have a financial interest].
		2. The PTP will issue you with their own terms and conditions letter, will be remunerated separately for their services [and will take full responsibility for compliance with the requirements of the Financial Services and Markets Act 2000]. [We will act as introducers and would be pleased to comment on, or explain any advice received [and, if required, attend any meetings with you].]
		3. [We will receive [an introductory fee] [commission] which is based on ……..…… ***insert basis (eg %)*** of the commission received [or the fee charged] by the PTP, and of which they will advise you directly].………………… ***insert example*** [We will inform you when any [introductory fee] [commission] is received and agree with you how this is to be dealt with at that time.] ***If amounts are being rebated or shared with the client or the amount relates to exempt regulated activities***.] [You consent to our retaining such amounts and we shall not be required to account to you for them. ***Note: Although this phraseology can be useful for an introduction to a permitted third party, it will not be sufficient to obtain permission to retain commission in respect of exempt regulated activities if the firm is licensed under the DPB arrangements***.] [We do not receive any income from the PTP] [but benefit from the profit made by that firm]. [The income received by that firm in respect of advice given to you will be advised to you by the PTP directly.]

		**Refer also to the Terms of Business section 4**
	2. **Financial promotions**
		1. 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. [We would however only do so in our office hours of .………………… ***insert office hours].*** We shall, of course, comply with any restrictions you may wish to impose which you notify to us in writing.

***At the point in the letter where the client signs, there should be a specific reference to the above paragraph. See Part 4, Schedule 1 of the*** [***DPB (Investment Business) Handbook***](http://www.icaew.com/en/membership/regulations-standards-and-guidance/dpb-handbook)***.***

1. CONSUMER CREDIT SERVICES *for example as additional paragraphs in a schedule*

***Note: ICAS has arrangements in place which enable firms to provide consumer credit services without the need for authorisation from the Financial Conduct Authority (FCA). If firms meet the eligibility criteria, then such activities can be undertaken, provided that they are undertaken as set out in the*** [***DPB (Consumer Credit) Handbook***](https://www.icas.com/__data/assets/pdf_file/0005/236264/Designated-Professional-Body-Consumer-Credit-Handbook.pdf)***.***

* 1. **Status disclosure**
		1. We are regulated by the Institute of Chartered Accountants of Scotland (ICAS) to provide certain credit-related services where these are complimentary to or arise out of the professional services we are providing to you. Such services may include [.………………… ***where known specify the nature of any activities].*** If, duringthe provision of professional services to you, you need advice beyond what we are permitted to do, we may have to refer you to someone who is authorised by the Financial Conduct Authority, as we are not.
	2. **Financial promotions**
		1. 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 credit-related matters. We may therefore contact you if appropriate. [We would however only do so in our office hours of .………………… ***insert office hours].*** We shall, of course, comply with any restrictions you may wish to impose which you notify to us in writing.

***At the point in the letter where the client signs, there should be a specific reference to the above paragraph. See Part 4, Schedule 1 of the*** [***DPB (Consumer Credit) Handbook***](https://www.icas.com/__data/assets/pdf_file/0005/236264/Designated-Professional-Body-Consumer-Credit-Handbook.pdf)***.***

1. LIMITATION OF LIABILITY *include in the engagement letter*
	1. **Claim limitation**

***Additional wording to be included in the letter of engagement if a practitioner wishes to limit their liability in respect of a claim. You should consider whether this is suitable and, if necessary, take legal advice.***

* + 1. We have discussed with you the extent of our liability to you in respect of the professional services described in this engagement letter (the professional services). Having considered both your circumstances and our own, we have reached a mutual agreement that £…………….….. ***insert amount*** represents a fair maximum limit to our liability.
		2. In reaching this agreement it is also agreed that:
1. in the event of any claim for loss or damage arising from the professional services, you have agreed that the sum of £…………….….. ***insert amount*** represents the maximum total liability to you in respect of the firm, [its] [principals] [directors] [members] [and staff]; this maximum total liability applies to any and all claims made on any basis and therefore includes any claims in respect of breaches of contract, [delict] [E&W – tort] (including negligence) or otherwise in respect of the professional services and shall also include interest;
2. we confirm 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 firm, [its] [principals] [directors] [members] [or employees] or any other liabilities that cannot be lawfully limited or excluded; and
3. you have agreed that you will not bring any claim of a kind that is included within the subject of the limit against any of our [principals] [directors] [members] [or employees] on a personal basis.
4. Alternative Data Protection Clauses
*to replace data protection section 7 in the terms of business*

***The default terms of business section on data protection (section 7) assumes that you are a data controller for your engagement.

If you consider yourself to be either:***

* ***a data processor or***
* ***a joint controller,***

***then replace the data protection paragraphs with the applicable ones below, amending as necessary.***

***Information on data processors and data controllers is available from the*** [***ICO website***](https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/controllers-and-processors/what-are-controllers-and-processors/) ***and also within the*** [***ICAS Guide to preparing for GDPR***](https://www.icas.com/regulation/guidance-and-helpsheets/preparing-for-gdpr)***.***

### Data Processor *alternative data protection clauses*

***There may be certain circumstances in which you are engaged as a data processor. The following wording is given as an example of alternative wording for section 7 of the terms of business where a firm acts as a data processor in respect of a client. It is based on the standard engagement letter helpsheet and terms of business. It may not be applicable in every case or be in line with the method of operation of your practice and may consequently need addition or amendment.***

***Example provisions which contain the minimum legal requirements are given below, and you will need to adapt this wording as necessary to reflect the circumstances of your engagement. There may also be occasions when a client will wish their own data processing terms to apply, and provided the agreement contains the minimum legal requirements any other provisions are a matter for you and your client to agree.***

* 1. In this clause [7]:

‘client personal data’ means any personal data provided to us by you, or on your behalf, for the purpose of providing our services to you, pursuant to our engagement letter with you;

‘data protection legislation’ means all applicable privacy and data protection legislation and regulations including PECR, the GDPR and any applicable national laws, regulations and secondary legislation in the UK relating to the processing of personal data and the privacy of electronic communications, as amended, replaced or updated from time to time;

‘controller’, ‘data subject’, ‘personal data’, ‘personal data breach’, ‘processor’, ‘process’ and ‘supervisory authority’ shall have the meanings given to them in the data protection legislation;

‘UK GDPR’ means the Data Protection Act 2018 as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 which merge the previous requirements of the Data Protection Act with the requirements of the General Data Protection Regulation ((EU) 2016/679); and

‘PECR’ means the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003).

* 1. We shall both comply with all applicable requirements of the data protection legislation. This clause [7] is in addition to, and does not relieve, remove or replace, either of our obligations under the data protection legislation.
	2. We both acknowledge that for the purposes of the data protection legislation, you are the data controller and we are the data processor. Schedule .....***insert schedule reference*** sets out the scope, nature and purpose of processing by us, the duration of the processing and the types of personal data and categories of data subject.
	3. In respect of the client personal data, unless otherwise required by applicable laws or other regulatory requirements, we shall:
	4. process the client personal data only in accordance with your lawful written instructions, in order to provide you with the services pursuant to our engagement with you and in accordance with applicable data protection legislation;
	5. disclose and transfer the client personal data to [members of our firm’s network,] our regulatory bodies or other third parties (for example, our professional advisors or service providers) as and to the extent necessary in order to provide you with the services pursuant to our engagement with you in relation to those services;
	6. disclose the client personal data to courts, government agencies and other third parties as and to the extent required by law;
	7. maintain written records of our processing activities performed on your behalf which shall include:
1. the categories of processing activities performed;
2. details of any cross border data transfers outside of theUnited Kingdom (UK) ; and
3. a general description of security measures implemented in respect of the client personal data;
	1. maintain commercially reasonable and appropriate security measures, including administrative, physical and technical safeguards, to protect against unauthorised or unlawful processing of any client personal data and against accidental loss or destruction of, or damage to, such client personal data.
	2. return or delete all the client personal data upon the termination of the engagement with you pursuant to which we agreed to provide the services;
	3. ensure that only those personnel who need to have access to the client personal data are granted access to it and that all of the personnel authorised to process the client personal data are bound by a duty of confidentiality;
	4. notify you if we appoint a sub-processor (but only if you have given us your prior written consent, such consent not to be reasonably withheld or delayed) and ensure any agreement entered into with the relevant sub-processor includes similar terms as the terms set out in this clause [7];
	5. where we transfer the client personal data to a country or territory outside the UKto do so in accordance with data protection legislation;
	6. notify you promptly if:
4. we receive a request, from or on behalf of a relevant data subject, to exercise their data subject rights under the data protection legislation or a complaint/any adverse correspondence in respect of the processing of their client personal data; or
5. we are served with an information or assessment notice, or receive any other material communication in respect of our processing of the client personal data from the Information Commissioner’s Office or any other supervisory body;
	1. notify you, without undue delay, in the event that we reasonably believe that there has been a personal data breach in respect of the client personal data;
	2. at your cost and upon receipt of your prior written notice, allow you, on an annual basis and/or in the event that we notify you of personal data breach in respect of the client personal data, reasonable access to the relevant records, files, computer or other communication systems, for the purposes of reviewing our compliance with the data protection laws.

* 1. Without prejudice to the generality of clause [7.2], you will ensure that you have all necessary appropriate consents and notices in place to enable the lawful transfer of the client personal data to us.
	2. Should you require any further details regarding our treatment of personal data, please contact our data [protection manager/data protection officer/head of privacy or otherwise … ***delete/adapt as relevant***].

***As the firm is acting as a data processor in this case, the following schedule, adapted as appropriate will also be required.***

#### Schedule [X]

This [Schedule [X]] includes certain details of the Processing of Customer Personal Data as required by Article 28(3) of the GDPR.

1. **Subject matter and duration of the processing of client personal data**

The subject matter and duration of the processing of the client personal data are set out in the [engagement letter between us… ***adapt as relevant***].

1. **The nature and purpose of the processing of client personal data**

[*Please specify the nature and purpose of the processing* ***adapt as relevant***]

1. **The types of client personal data to be processed**

Personal Data

……..***insert as relevant***

***Please insert the types of personal data being processed (e.g. full name, date of birth, nationality etc).***

Special Category Personal Data

……..***insert as relevant***

***Please identify any special category data which is being processed. This includes personal data revealing: racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.***

1. **The categories of data subject to whom the client personal data relates**

……..***insert as relevant***

***Please specify the categories of data subject this will apply to, for example*: *employees of the client, customers of the client, suppliers of the client.***

1. **Your obligations and rights**

Your obligations and rights are set out in the [engagement letter between us… ***adapt as relevant***]

### Joint controller *alternative data protection clauses*

***There may be an occasion where you are considered a ‘joint controller’ for the purpose of the data protection legislation. This will arise in circumstances where you and your client together (as data controllers) jointly determine the purposes and means of the data processing. For example, in the context of a joint project or consortium arrangement, you may be working with another professional services firm which is your client (or vice versa) and in that case it may be that both you and your ‘client’ are joint data controllers.***

***In the event that you and your client are considered joint controllers, in accordance with the data protection legislation you must determine appropriate wording to cover the following and substitute this wording for the wording in section 7 of the terms of business:***

* 1. Determine with the client which of you will be responsible for each of your obligations under the data protection legislation (such as the provision of privacy notices to data subjects);

Specify your duties in your arrangement which should:

* + 1. include a point of contact for data subjects;
		2. reflect each of your roles in relation to the data subjects;
		3. make your arrangement available to the data subjects to which it will be applicable; and
		4. allow data subjects to exercise their data subject rights pursuant to the data protection legislation against each of the data controllers.

***Where you are a joint controller of personal data with a client, you should also consider whether additional provisions are required to cover your respective responsibilities under the data protection legalisation to enable your compliance with it.***