

**Version: 8 May 2019**

## **GILSON GRAY TERMS OF BUSINESS**

### **1. LEGAL STATUS OF THIS DOCUMENT**

This document is the standard terms of business of Gilson Gray, referred to as the "Gilson Gray Terms of Business" or simply "these Terms".

These Terms are intended to have contractual effect, as set down below. The Privacy Policy attached to these Terms forms part of the Terms.

These Terms are in addition to a letter of engagement or, in the case of estate agency services, a mandate (both are referred to herein as an "Engagement Letter") and together these Terms and the Engagement Letter form a contract for the provision of services to you ("our services"). Both documents set out the formalities of working with us and should be read in conjunction. If there is any conflict between our Engagement Letter and this document, then the provisions of the Engagement Letter will prevail.

These Terms will apply to everything we do for you now and in the future, until we write to notify you otherwise, but different work may be subject to different Engagement Letters.

The contract formed by these Terms and an Engagement Letter are subject to Scots Law and the Courts in Scotland shall have exclusive jurisdiction over any dispute relating to them.

Unless otherwise specified in these Terms or the Engagement Letter, or agreed by us in writing, no third party may enforce any of these Terms or the Engagement Letter.

### **2. WHO ARE THE PARTIES?**

The party providing our services is Gilson Gray LLP, a limited liability partnership incorporated in Scotland with registered number SO304731 **have their registered office at: 29 Rutland Square, Edinburgh, Scotland, EH1 2BW (referred to in these Terms as "GG", "we", "our" or "us")**.

Our services are being provided only to the client identified in the Engagement Letter (referred to in these Terms as "you" and, as the context requires "your").

Where the Engagement Letter states that we are providing estate agency services, then we will engage Gilson Gray Property Services LLP (a limited liability partnership with registered number SO304732 and having its registered office at 29 Rutland Square, Edinburgh, EH1 2BW). GG is a member of Gilson Gray Property Services LLP and participates in its profits, including profit generated by its estate agency services. Gilson Gray Property Services LLP, will carry out marketing services for property and other services as it may agree with GG. Estate agency services will be

29 Rutland Square, Edinburgh EH1 2BW T 0131 516 5354 F 0131 516 5378 LP 31 Edinburgh 2 DX Edinburgh 5  
160 West George Street, Glasgow G2 2HG T 0141 530 2021 F 0141 530 2035 LP 14 Glasgow 6 DX Glasgow 10  
33 Westgate, North Berwick EH39 4AG T 01620 893481 F 01620 894442 DX DX541245 North Berwick

E [info@gilsongray.co.uk](mailto:info@gilsongray.co.uk) [gilsongray.co.uk](http://gilsongray.co.uk) Company No. SO304731 VAT No. 180772300



subject to an additional estate agency mandate which will form part of the Terms. For the purposes of providing estate agency services, Matthew Gray and Robert McGregor, members of Gilson Gray Property Services LLP, are authorised signatories of GG.

This contract is between you and GG, notwithstanding that the service may be supplied by personnel employed by Gilson Gray Financial Services LLP (a limited liability partnership incorporated in Scotland with registered number SO304881 and having its registered office at 29 Rutland Square, Edinburgh, EH1 2BW) or Gilson Gray Property Services LLP. This contract is personal to you and may not be assigned or transferred without the prior written consent of GG.

If we merge with another firm or transfer our business to another entity, all benefits, rights and liabilities arising from or under this contract will automatically transfer to the new entity.

### **3. REGULATORY AUTHORITY AND FINANCIAL SERVICES ADVICE**

Gilson Gray LLP is a Scottish law firm. It is regulated by the Law Society of Scotland. Certain of its solicitors are also qualified as English solicitors, meaning that they are authorised and regulated by the Solicitors Regulation Authority in England (the "SRA") in respect of activities carried out in England, although Gilson Gray LLP is not itself authorised and regulated by the SRA. "Gilson Gray" is a trading name of Gilson Gray LLP.

Gilson Gray LLP is not authorised under the Financial Services and Markets Act 2000 or by the Financial Conduct Authority ("FCA") to provide investment advice. Gilson Gray LLP is licensed to carry on incidental financial business by the Law Society of Scotland, meaning that it can provide limited investment services if they are incidental to the professional services it is otherwise providing. Gilson Gray LLP is included on a FCA register (accessible as at [www.fsa.gov.uk/register/home.do](http://www.fsa.gov.uk/register/home.do) or by contacting the FCA on 0845 606 9966) to allow it to carry out insurance mediation, which is broadly the advising on, selling and administration of insurance contracts, and this part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by the Law Society of Scotland. Compensation arrangements are available in respect of the carrying on of incidental financial business, including insurance mediation activities by Gilson Gray LLP, in terms of Gilson Gray LLP's professional indemnity insurance under the Law Society of Scotland's Master Policy and to the Scottish Solicitors Guarantee Fund.

Gilson Gray LLP may refer you to Gilson Gray Financial Management LLP for the provision of financial advice. Gilson Gray LLP is a member of Gilson Gray Financial Management LLP and participates in its profits, which will include profit generated by financial advice referred to it by Gilson Gray LLP. Gilson Gray LLP will not pass that profit to you.

Gilson Gray LLP has no holding, direct or indirect, representing more than 10 per cent of the voting rights of or the capital in an insurance undertaking. No insurance undertaking, nor parent of an insurance undertaking has a holding, direct or indirect representing more than 10% of the voting rights of or capital in Gilson Gray LLP. You may request a copy of the list of insurance undertakings from which its selected insurance policies are taken, if the contract of insurance provided has not been

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selected on the basis of a fair analysis of the market.

#### **4. USE OF THE TITLE "PARTNER"**

GG is not a partnership for legal purposes and, as such, neither has partners within the strict legal definition of that term. In particular, GG has no individuals jointly and severally liable for its obligations.

Gilson Gray LLP uses the word "partner" to refer to a member of Gilson Gray LLP or an employee or consultant of Gilson Gray LLP who is a lawyer with such standing and qualifications that Gilson Gray LLP considers the use of the term appropriate in order to describe their competence.

#### **5. GENERAL TERMS OF BUSINESS**

##### Full Information and timeous instructions

You agree to advise us of all matters in your knowledge that may affect our advice to you. You agree to provide such information and instructions for us timeously, allowing us reasonable time to advise you and consider matters arising. We will not be responsible for advice, or losses you may suffer following advice, if it relates to circumstances you do not disclose to us or if your instructions or provision of information to not allow sufficient time to address issues that arise.

##### Refusing Instructions or Conflict of Interest

In some circumstances, we may be unable to take on your work or require to withdraw from acting for you. This is most likely where there is a conflict with an existing client. We will advise you as soon as we can after becoming aware of a conflict or other reason not to withdraw from acting for you.

##### Contact

You must make yourself available to sign documents upon our reasonable request. You must keep in touch with us to allow us to meet any critical dates affecting our advice to you. You must advise us of any change to your contact details, such as a new address, e-mail or phone number.

##### Responsible Partner

The partner identified in the Engagement Letter will agree which of our staff members will complete your work, depending on the level of expertise the partner considers is required.

##### Communication and reporting

Unless you advise us to the contrary, we will normally communicate by email and/or telephone. We cannot and do not guarantee that email is completely secure or confidential.

We monitor emails for internal policy reasons and may record or monitor telephone calls for future reference, training or other internal purposes.

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### Deadlines

Given the nature of our advice, meeting a deadline is not normally within our control and will depend on the degree of co-operation we get from you, other parties and their advisers. The preparation of paperwork also involves an element of unknown time due to research needs or complexity. Time will not be of the essence in the delivery of any of our advice. This paragraph is not intended to affect our professional duties to you, including (where applicable) to any other solicitor or a court.

### Instructions

The matters upon which we are instructed are set down in the Engagement Letter and may be amended or expanded at your written request. Any change to our instructions will require to be confirmed by us.

Unless we expressly state to the contrary, we will not provide tax or accounting advice.

We shall not be responsible for any failure to advise on matters outside the scope of our engagement. Unless specifically agreed in the Engagement Letter, our advice will be based on the Law of Scotland.

If you need advice regarding the laws of another jurisdiction we will assist you in identifying appropriate foreign qualified lawyers and to maintain a coordinating or management role in relation to their involvement. However, in the absence of express prior written agreement to the contrary, we will not provide advice in connection with a matter not governed by Scots Law or (where specified in the Engagement Letter and provided by a qualified English solicitor) English Law.

### Liability

Our liability for any loss or damage you suffer caused by us in the course of providing our services to you will be limited to the lesser of the amount specified in our Engagement Letter and £15 million. This is in aggregate of all your claims in relation to our advice specified in the Engagement Letter.

However, in no event will we be liable for any indirect or consequential loss, loss of profits, loss of goodwill, loss of opportunities or economic loss. Such liability is hereby excluded.

Further, advice given is given by us to you only and only in relation to the particular circumstances of your instructions. In no event will we be liable for the use of such advice by any other person without our express prior written consent, or your reliance upon such advice in other circumstances. Such liability is hereby excluded.

Our liability will be further limited to a just and equitable proportion of the total loss having regard to the extent of your own responsibility and that of any other party, regardless of ability to pay. Where other parties are involved in a matter giving rise to a claim and have limited their limit liability, then our liability will be limited to an amount which would have applied had they not so limited their liability.

Nothing in these terms shall exclude or limit our liability for death or personal injury caused by our negligence or fraud.

We will not be liable for any losses you incur as a consequence of acting upon or following our advice, or as a consequence of any other provision of our services to

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you, when you have failed to provide accurate instructions and documentation, accurate information or to complete documentation in good time.

We do not accept any liability in respect of the advice provided by any foreign qualified lawyers we may engage or work with on your behalf, even where recommended by us. Any advice they provide will be on the basis that they are separately engaged by you, either by direct instruction or through us as agents on your behalf.

#### Liability for Deadlines and Dates

We will not be responsible for losses arising as a consequence of your failure to deliver or register documents by a particular deadline. Some documents require to be delivered or registered by a particular time. Where we are delivering or registering documents for you, we will not be responsible for losses arising as a result of a failure to register or deliver such documents unless you have given us all such documents in their final form sufficiently in advance of the relevant deadline in order to allow us to easily meet that deadline. In particular, we will not be liable for any loss arising from a failure to meet a closing date for a property transaction if we have insufficient time between receiving your instructions and the closing date to make an offer or bid (although we will endeavour to do so). Further, we will not diarise or issue reminders for dates relevant to your work, such as lease review or break dates.

#### Opinion

Our advice may involve us expressing an opinion as to commercial or legal risk. You accept that this is an expression of opinion only and not a statement of fact, and not a recommendation of a course of action. Any decision made by based on our opinion is your responsibility.

#### GG Staff Liability

You acknowledge that you are instructing GG and GG alone will provide services to you.

Accordingly, GG shall be solely liable to you for any wrongful and/or negligent acts or omissions of any member, partner, director, officer, employee or consultant of GG or Gilson Gray Financial Management LLP or Gilson Gray Property Services LLP ("GG Staff") in the course of their providing advice or services to you on behalf of GG

No member of GG Staff assumes any personal responsibility to you and, accordingly, no member of GG Staff shall owe you a personal duty of care. Neither Gilson Gray Financial Management LLP nor Gilson Gray Property Services LLP will be under any liability to you whatsoever.

You agree that you will not bring any claim whether in contract, tort, delict, under statute or otherwise against Gilson Gray Financial Management LLP and/or Gilson Gray Property Services LLP and/or any member of GG Staff. Rather, your sole right of action will be against GG. Gilson Gray Financial Management LLP, Gilson Gray Property Services LLP and any member of GG Staff will be entitled to enforce this provision of these Terms.

#### Indemnity

You agree to indemnify us against any claims, liabilities or expense we incur as a result of acting for you, except to the extent caused by our negligence or fraud.

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### Copyright

We retain copyright and other intellectual property rights in all documents prepared by us but grant you an irrevocable, royalty free licence to use documents transferred to you and forming part of our advice to you.

## **6. COMPLAINTS**

If you have any concerns about either our service or our fees please raise them with the partner identified in the Engagement Letter, or alternatively Rosie Walker, who is our Client Relations Manager. She can be reached at: Gilson Gray LLP, 29 Rutland Square, Edinburgh, Scotland, EH1 2BW; by phone at: 0131 516 5354; and by email at: [rwalker@gilsongray.co.uk](mailto:rwalker@gilsongray.co.uk).

If we are unable to resolve your complaint, you may have the right to refer it to the Scottish Legal Complaints Commission (the "SLCC"). There are strict time limits within which you must submit a complaint to the SLCC. Where we first provided you with a service in relation to the matter you are complaining about on or after 1 April 2017, the time limit is generally three years from the date you were last provided with a service in relation to that piece of work. Further details of the time limits can be found at <https://www.scottishlegalcomplaints.org.uk/making-a-complaint/advice-and-information/time-limits.aspx>

The SLCC can be contacted on 0131 201 2130, by email at [enquiries@scottishlegalcomplaints.org.uk](mailto:enquiries@scottishlegalcomplaints.org.uk) or by post at The Stamp Office, 10-14 Waterloo Place, Edinburgh EH1 3EG.

## **7. FEES**

Any estimate for work to be carried out is not intended to be fixed unless we expressly say so. We will ensure that the difference between an estimate and a fixed fee is made clear to you. Where it is not, then the fee is not intended to be fixed.

Our fees are usually calculated on the basis of time spent on the matter at the hourly rates of the people involved per the Engagement Letter. Time will include: all time spent on your job including meetings with you and others, any time spent travelling, considering and preparing documents, research, preparation of any detailed costs calculations, correspondence, making and receiving telephone calls and other work or time spent dedicated to your advice.

We may at our discretion, charge 2% of the work-in-progress that we bill to cover post-transactional work and incidental expenses ("posts and incidents") such as (but not limited to) travel, parking or filings with registrars (to the extent not billed separately).

We may on occasion, should we consider it appropriate, refer you to third parties that may provide services complementary or supplementary to our own. We may receive reward, including payment of a fee, for said referral which will not be passed on to you.

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## **8. OUTLAYS, DISBURSEMENTS AND VAT**

The following expenses will be invoiced at cost unless otherwise agreed (together with VAT where applicable) and are payable on receipt:

- All charges and disbursements incurred from third parties, such as search or report fees; Bank transfer fees.
- Travelling expenses incurred travelling to or from meetings, including mileage at 45p per mile, overnight accommodation and rail or fares. Internal rail travel within the UK lasting more than three hours per standard timetables, and travel overseas over four hours, may be business class. We will also charge a fee of £30 per head per night for sustenance. Receipts for such expenses will be provided on request.

Where possible, we will endeavour to agree travelling expenses before they are incurred.

We also reserve the right to charge for providing additional facilities or administration specific to you (for example, conference calls, on-line reporting or due diligence hosting, volume printing or copying, CD and physical bible production), and other office expenses incurred specifically on your behalf. These expenses will normally be added to your final invoice but may at our discretion be billed separately and at any time.

Value Added Tax (VAT) will, where applicable, be added to our fees at the prevailing rate. The VAT registration number for Gilson Gray LLP is 180 7723 00.

## **9. PAYMENTS**

### Payment to Account

We reserve the right to request payment on account of our fees or expenses. This may be before or at commencement of working for you, or during the provision of on-going advice. Where a payment on account is requested, payment will be a condition of our working for you.

### Expenses and Outlays

Where we incur expenses or outlays on your behalf we may require their immediate payment, regardless of any arrangements in respect of payment of our fees. We may ask for a payment to cover expenses and outlays, and you authorise us to use funds passed to us to incur such expenses and outlays for that purpose.

### Currency

Unless otherwise agreed, we will bill monthly in £ sterling.

### Credit/Debit Cards

We accept payment by credit or debit card.

### Purchase Orders

Where we are instructed to carry out work for you, you will not be entitled to withhold or delay payment to us because you require a purchase order or other administrative

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paperwork for your own systems or records.

#### Time for Payment

Payment is due within 14 days of that date of an invoice. If the invoice remains outstanding for more than 21 days we reserve the right to charge interest at the rate payable on judgment debts (currently 8% per annum) from the date of issue until payment.

If a bill remains unpaid after 28 days or you fail to make a payment on account within 14 days of our request to do (or a due date identified to you as a condition of our providing services to you) so we reserve the right to suspend the provision of our services to you until payment has been received.

#### Taxation

Fees which are not agreed in advance may be subject to independent assessment by the Auditor of Court. This is "Taxation". You are entitled to require our file to be taxed. The file is then passed to a specialist law accountant who will determine a fair and reasonable fee (taking into account all circumstances, including the factors influencing fees outlined above). The resulting fee may be higher or lower than that we originally propose. If lower, we will pay the cost of Taxation. If the same or a higher fee, then you will pay the cost of Taxation plus the higher fee (if any).

#### Abort Fees

If we are advising on a transaction that does not complete, then (in the absence of any agreement to the contrary) we reserve the right to bill you for work-in-progress incurred up to the point that we become aware that the matter is not completing.

#### Joint and Several Liability

When we receive instructions from, or on behalf of, more than one person or company to deal with any particular matter, each person or company for whom we are acting will be separately responsible for payment of the full amount of our fees and expenses regardless to whom the bill is addressed. This is "joint and several" liability and allows us to seek payment of the full bill from one party, who then may look to the others for redress.

#### Personal liability of Directors of Limited Companies/Members of Limited Liability

##### Partnerships

When we receive instructions from Limited Companies or Limited Liability Partnerships, the Directors and/or Members (as the case may be) therein shall each personally, jointly and severally, unconditionally and irrevocably (until all sums due to us have been paid) (a) guarantee the payment of all sums due to us by their company/limited liability partnership; and (b) agree that the foregoing guarantee shall not be discharged or affected by (1) anything that would not have discharged or affected them if they had been a principal debtor instead of a guarantor, and (2) any waiver, failure to enforce or giving of time by us.

#### Deduction from Monies Held

Any money held by us on your behalf may be taken in payment or part payment of any of our invoices whether overdue or not.

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### Lien

The law entitles us to retain any money, papers or other property belonging to you, which properly come into our possession pending payment of our costs, whether or not the property is acquired in connection with the matter for which costs are incurred.

### Client Funds

Client money held by us on your behalf is subject to interest provisions set out in the Solicitor's Account Rules of the Law Society of Scotland. Where funds are held on deposit for you, we may receive payment from the Bank in connection with that deposit for which we shall not account to you. We will account to you for any interest earned on invested funds.

Whilst we will always use reasonable endeavours to ensure that client money held by us is invested in appropriate banks or other financial institutions we do not accept any liability for any losses or associated costs which may arise as a result of any failure, restructuring or insolvency of any financial institution used. We shall not be liable for any loss of your funds held in accordance with these terms due to the failure of a Bank.

### Cash

We do not accept cash delivered to an office. If cash is paid into our bank account, we reserve the right to charge for any checks we consider necessary regarding the source of the funds. If we receive money from you which needs to be returned, it will be sent to the same account from which it came. We will not pay out money on your behalf unless we hold cleared funds from you.

We will not be liable to you for losses arising from any delay caused clearing. It is your responsibility to ensure that any payments take clearing time into account.

We will not be liable to you for losses arising from delay caused identifying the client account or matter for funds that are received without proper identification. It is your responsibility to ensure that transfer payments are properly documented so as to identify the matter for which payment is intended. In the absence of such identification, a payment will be applied against your oldest debt to us.

### Bank Transfers: Timing

We will endeavour to make bank transfers, assuming we hold money on your behalf, timeously and to your instructions. However, you confirm that we will not be liable to you for any loss or harm you may suffer as a result of a delay in receipt. We cannot guarantee or ensure that a payment, once instructed, will be received at a particular time. This may be due to delays in the banking system or the operation of bank protocols to investigate payments. This applies even where you have given or requested a deadline.

## **10. LEGAL AID**

Legal aid is help towards the costs of legal advice and representation, for those who qualify, paid for out of public funds. It is designed to help individuals on low and modest incomes gain access to the legal system. It includes Legal Advice and Assistance. That covers a wide range of matters and pays for advice from a solicitor. Legal aid provides funding for a solicitor to put the case in court and some tribunals.

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We do not normally undertake Legal aid work. If you wish to apply for Legal Aid, you should consult another firm of solicitors.

The only exception is that we will undertake Legal aid work in connection with applications for the appointment of a Guardian and certain personal injury claims, but this is by agreement with you.

## **11. STORAGE**

### Electronic Files

We may not maintain a paper file for the matters upon which we provide advice. Where this is the case, correspondence and file material will be retained in an electronic format. Any papers belonging to you which remain in our possession after the conclusion of your matter which you have not specifically asked us to return to you will be stored in this manner and the originals destroyed. Such non-paper files will normally be retained for a minimum of ten years (although we reserve the right to change our storage arrangements at any time).

### Paper Files

Paper files will normally be retained in storage according to their subject matter for the periods recommended by the Law Society of Scotland. Storage of paper files is on the understanding that we have your authority to destroy any papers after the expiry of our appropriate storage period without further reference to you. This does not apply to documents or deeds deposited with us for safe custody. We shall take reasonable care of documents and deeds deposited with us but we shall not be responsible to you or any other party for loss or damage to such documents and deeds due to events beyond our control.

### Off-Site Storage

We archive our files off site with a storage company at no additional cost to you. We do not normally charge you for retrieving papers or documents from storage when it is in relation to continuing or new instructions. However, we reserve the right to make a charge at all other times. The charge would be based upon the time and cost of retrieving the stored papers or documents including the printing of electronically stored files together with any time spent reviewing the files to ascertain which documents belong to you and any third party, photocopying and any other associated costs of delivering the file to you.

## **12. DATA PROTECTION**

We will need to store personal information about you and individuals within your business in order to provide you with legal services and we may disclose that information to third parties who provide services to us and/or where it is necessary in the course of acting for you. Our obligations and your rights in terms of data protection are as set out in our Privacy Policy, which is attached to these Terms of Business.

The basis of our processing your data is as set out in the Privacy Policy and a legitimate business interest in providing services to you, and/or your consent (where obtained) and/or as required by law. You are the principal source of your personal data as specified in the Privacy Policy. We may obtain other information through

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searches of public registers or in the course of providing services to you.

Each of Gilson Gray LLP, Gilson Gray Property Services LLP and Gilson Gray Financial Management LLP operate a common client database and you authorise the disclosure of information about you and individuals within your business held by any one of them to the other two in accordance with our Privacy Policy.

Your information will not be passed to any other third party for marketing purposes.

### **13. ANTI-MONEY LAUNDERING REGULATIONS**

Current anti-money laundering legislation requires that we obtain satisfactory evidence of a new client's identity including any beneficial owner(s) of corporate entities and trusts. We may also need to make enquiries regarding the purpose of your transaction and the source of any funds. If we are not satisfied regarding these issues then we may cease to act for you.

We may make electronic checks to satisfy identification requirements and by agreeing these terms and instructing us, you authorize us to make such checks without further referral to you.

All solicitors are required to comply with anti-money laundering regulations when taking on new clients. For individuals, we need to obtain evidence of their identity and home address. For companies, we need to obtain evidence of the identity and address of the shareholders in the company holding 25% or more of the shares. We also need identification for the business. For individuals, proof of identity is ideally by way of photographic ID such as a passport or full photo driving license with paper counterpart, and proof of address is ideally by way of correspondence from an official source (such as a bank statement or utility bill) that is current and not more than three months out of date. We would be very grateful if you could provide us with ID papers as soon as possible.

If it would be more convenient to post them after a meeting then please do so and we will ensure that it is returned by recorded delivery. However, we can only accept original documents in the post where we have met with you (as we can then confirm your identity). If you cannot meet with us, then the originals of your documents should be certified by another solicitor.

Please note that we need to see the original ID documents, and that professional regulations can limit the extent of work that can be carried out when the ID is outstanding.

### **14. TERMINATION**

You may terminate your instructions to us in writing at any time.

We will only decide to stop acting for you if we have reasonable grounds to do so. Examples of reasonable grounds include: failing to provide adequate and timely instructions, providing instructions which we are unable to fulfil, failing to pay any of our invoices when due or make payments on account of costs within the agreed timescale or the breakdown of the solicitor/client relationship.

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If we decide to cease acting for you, we will inform you in writing and provide an explanation for our decision. Unless specifically agreed otherwise, following termination we will send you a final invoice.

## **15. MATTERS RELATING TO COURT WORK**

This section only applies if you have instructed Gilson Gray LLP to advise in connection with a litigation matter.

Payment of our account is your responsibility even if the Court orders another party to contribute to your legal expenses (in England & Wales, legal costs). The amount of recoverable legal expenses is a matter for argument and the Court's discretion. In many cases there is a delay between the order made and the expenses being recovered, due to the system of assessment applied (called "Taxation" by an Auditor). The Court can make an order for payment of expenses against any party at any stage of the proceedings. It is usual however, for a successful party to obtain the benefit of an order for payment of expenses from an unsuccessful litigant, although it must be appreciated that it is possible that the Court may not make an order or the other party may not be able to pay the expenses awarded. A Court order entitling a successful litigant to recover all of its legal expenses of the proceedings is extremely rare. 50 to 60% is a reasonable working indication. Whether or not expenses are recovered from your opponent, you remain liable for all our fees and outlays. It is usual for a successful litigant to be left with a residual liability for expenses. It is not correct to assume that if your action is successful you will be relieved from all expenses liability. If recovery action is needed to recover any expenses subject to a Court order, you will be responsible for our charges and expenses in respect of such recovery.

If you succeed in your action against a party in receipt of Legal Aid, in most cases it is unlikely that you will be able to recover any of your expenses. If you are in receipt of such funding, then in most cases it is unlikely you will be ordered to pay your opponent's expenses unless your financial circumstances permit. If you have legal expenses insurance, you must claim against your insurer immediately as insurers will not usually cover our fees until they have accepted your claim and agreed to nominate us as their solicitors. You will still be responsible for our legal fees and outlays in any event and, if for any reason your insurer refuses to pay our legal fees and outlays, we will look to you for settlement. Please note that insurers rarely pay bills before completion of the case. Whilst we will try to agree interim payments with your insurer, if they refuse we must reserve the right to send interim invoices to you direct. The primary liability for payment of our legal fees and outlays remains with you even where we contract, on your behalf, with a third party on the basis that you will be indemnified by them in respect of all or part of our legal fees and outlays.

If you withdraw from an action, your opponent is entitled to an order from the Court for you to pay expenses. You would be entitled to have those expenses assessed by an Auditor through a process called "Taxation". Only in exceptional cases will an order for payment of expenses be made against unsuccessful parties in proceedings before employment tribunals and in these cases you should assume there will be no recovery of your expenses, even if you are successful. The procedure in other tribunals and in arbitrations is different and we will advise you in that regard, when appropriate.

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## **16. FORCE MAJEURE**

We will not be liable to you for any loss you may suffer, or any breach of our obligations to you, caused by an event outwith our reasonable control including (without limitation) acts of God (such as flood, drought, earthquake or natural disaster), epidemic or pandemic, a terrorist attack or civil commotion (such as war, riot, threat of or preparation for war, conflict, sanctions, or an embargo or breaking off of diplomatic relations); any nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority affecting our ability to work for you (including, without limitation, import or export restrictions, quotas, unanticipated licensing requirements or similar), any collapse of buildings, fire, explosion or accident, any labour or trade dispute (including strikes, industrial action or lock-outs), non-performance by suppliers of sub-contractors or interruption or failure of utility and services. Intervention by third parties in the delivery or transfer of goods, documents or cash will be a force majeure event. In such circumstances, the time for a performance shall be extended by a period sufficient to allow us to meet our obligations. This will be without liability to us.

## **17. SEVERABILITY**

In the event that any of these conditions is found to be invalid or unenforceable then it shall be deemed to be amended to such extent as would make it valid and enforceable (for example, by reducing its duration or scope of application). If it is not possible to amend such condition then it will be deemed to be deleted from these conditions without affecting the ability of any other terms, and these conditions shall be deemed amended accordingly.

## **18. ALTERNATIVE DISPUTE RESOLUTION**

We recognise that Alternative Dispute Resolution Regulations have implemented ADR/EDR Directive 2013/11/EU to promote alternative dispute resolution as a means of redress for consumers in relation to unsatisfactory services. We have however chosen not to adopt an ADR process, and if you have any concerns about the services you receive from this firm you should contact the firm's Client Relations Manager.

## **19. ON-LINE FRAUD WARNING AND DISCLAIMER**

Fraudsters target transactions involving law firms. A common fraud is to impersonate either a law firm, or its client, and to seek to change account details for the transmission or receipt of funds. You should be vigilant and guard against on-line fraud. We will not change our bank account details during the course of a transaction and not by e-mail. Please check account details with us in person before transmitting funds. For payments to you, we may require additional confirmation of your account details. We will not be liable for losses you suffer (to the extent permitted by law) as a result of account changing fraud.

## **20. YOUR RIGHT TO CANCEL**

If you are a consumer, you may have the right to cancel your agreement to use our services. This is a right only available to consumers (typically those not engaged in

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business) under the Consumer Contract (Information, Cancellation and Additional Charges) Regulations. If this applies to you then: (a) you may cancel up to 14 days after a contract has been formed between us. (The contract is formed when you sign this letter or instruct us to work on your behalf); and (b) by instructing us to carry out work during the cancellation period you agree to pay any fees (at our hourly rate) or outlays incurred prior to any subsequent cancellation. Should you wish to cancel within the 14 day period, please sign here

\_\_\_\_\_ and return this page to us. This is a cancellation form.



# Privacy Policy

*Last Updated: 24 May 2018*

## PRIVACY POLICY: SUMMARY

Thank you for using Gilson Gray. Gilson Gray is split into three separate legal entities, being Gilson Gray LLP, a Limited Liability Partnership, registered in Scotland with company number SO304731 and having our registered office at 29 Rutland Square, Edinburgh EH1 2BW (providing legal services), Gilson Gray Property Services LLP, a Limited Liability Partnership, registered in Scotland with company number SO304732 and having our registered office at 29 Rutland Square, Edinburgh EH1 2BW (providing estate agency and related property services) and Gilson Gray Financial Management LLP, a Limited Liability Partnership, registered in Scotland with company number SO304881 and having our registered office at 29 Rutland Square, Edinburgh EH1 2BW (providing financial management and related financial services). This privacy policy applies to all of these entities and for ease of reference, when we refer to “Gilson Gray”, we refer to the particular legal entity with whom you are engaging unless expressly stated to the contrary.

Your privacy is important to us. This Privacy Policy is where we explain to you what personal information is collected when you instruct us to provide you with legal services, property services or financial management services, how it is collected, how we may use that information, where we store it, how long we store it for, and how we protect it. We will also explain your rights in relation to your personal information.

This policy applies whether you are our client or not.

Please read the following carefully to understand our views and practices regarding your personal information and how we may collect it and treat it.

If you are using our website ([www.gilsongray.co.uk](http://www.gilsongray.co.uk)), you will be referred to **Our Cookie Policy**: which explains more about how we may collect personal information about you via cookies (it also explains what cookies are) and **Our Retention Policy**, which confirms how long we may hold onto your personal information.

If you have any questions please do not hesitate to contact us at

[dataprotection@gilsongray.co.uk](mailto:dataprotection@gilsongray.co.uk)

or, if you prefer to call or write to us, then you can find our contact details at the bottom of this policy.

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This is page a summary of our full policy, which follows.

## WHO WE ARE

We are GILSON GRAY LLP, GILSON GRAY PROPERTY SERVICES LLP and GILSON GRAY FINANCIAL MANAGEMENT LLP. We are registered in Scotland as limited liability partnerships with the registered numbers SO304731, SO304732 and SO304881 respectively.

Our registered offices are at 29 Rutland Square, Edinburgh, EH1 2BW.

A list of all relevant members is open to inspection at our registered office. Gilson Gray LLP is regulated by the Law Society of Scotland.

But, for the purposes of this Privacy Policy, it's just easier if we refer to ourselves as "**we**" or "**us**".

## WHAT THIS PRIVACY POLICY GOVERNS

This Privacy Policy applies to any services we are providing to you, any use of our websites, or any other services that we may provide to you (we'll just call these "**our services**" for short). The services we provide (and which we contract to provide) are legal, estate agency or property, or financial management services.

In the context of this Privacy Policy "**personal information**" means information which, on its own or in combination with other information, can be used to identify you, in particular by reference to an identifier such as your name, your address, or location data. This Privacy Policy will govern how we may use that personal information.

We will collect, store and process your personal information the basis of one or more of four legal basis: your consent; legitimate interests; to perform a contract; or, as required by law.

Because we are a business located in Scotland the personal information that you give us or that we collect from you will be held under Scottish data protection legislation (but we'll just refer to this as "**the legislation**"). The legislation requires that we tell you that we are a **data controller** for your personal information or, in other words, we determine the purposes for which and the manner in which any of your personal information are, or are to be, processed by us.

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## INFORMATION WE MAY COLLECT

We will collect the following information about you from various sources as follows:

### **Information you give to us:**

You may give us personal information about you by filling in forms on our site (or sites operated for us by property listing companies such as the ESPL, Rightmove or Zoopla) or by corresponding with us by phone, e-mail or otherwise. This includes information you may provide to us when you register to use our sites, subscribe to our services, search our sites, participate in any discussion boards or other social media functions on our sites, enter a competition, promotion or survey, and when you report a problem with our site.

The information you give us may include your name, address, e-mail address, phone number, IP address, financial and credit card information, personal description, CV or resume, and photograph (as the case may be).

### **Telephone Calls**

We record telephone calls. We have a legitimate business need to do so, to help provide services to you and that this protects both our interests by confirming advice and instructions. We are also obliged by law or regulation to record certain calls (for example, certain calls relating to financial transactions).

Calls are normally deleted three years after they were recorded. This period has been determined to allow a record to be kept of calls on long-running matters, particularly as some instructions or obligations may not be implemented in full until some time after a transaction is settled.

### **Email**

We operate a Microsoft Outlook system for our emails and any autocomplete details for your email will only be stored for the duration of the transaction for which we are instructed and a period of no more than 12 months after you last have contact with us. Autocompleted email addresses are reviewed annually and will be deleted if not used for at least 12 months. We have formed the view that we have a legitimate business need to hold such details, as it facilitates the provision of services to you.

### **Information we receive from other sources:**

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We may receive information about you if you use any of the other sites we operate or the other services we provide. Data collected from any of the other sites we operate may be shared internally and combined with data collected on this site. We are also working closely with third parties (including, for example, business partners, and sub-contractors in technical, payment and delivery services, analytics providers, search information providers, and credit reference agencies) and may receive information about you from them.

### **IF YOU MAKE AN ENQUIRY BUT DON'T BECOME A CLIENT**

Should you contact us and pass us personal data, but then decide not to proceed with a transaction or instruction, then we will still retain your data for a time. We often find that prospective clients who initially do not proceed later come back to instruct us on another transaction. For that reason, if you haven't become one of our clients, and we haven't been in touch for 12 months, then we would look to delete your contact details from our system.

### **HOW WE MAY USE YOUR PERSONAL INFORMATION**

When you give us your personal information then we may use it to:

- Carry out our obligations from any contracts entered into between you and us and to provide you with information about our products and services that you request from us
- Provide you with information about other goods and services we offer that are similar to and incidental to those that you have already purchased or enquired about or to notify you about changes to our products or services

The main purposes or activities for which we will process your data are as follows:

<b><u>Purpose/Activity</u></b>	<b><u>Lawful basis for processing</u></b>
Establishing and administering a client database, including making notes of calls, time recording, correspondence and preparing documents	(a) Performance of a contract with you, by recording work done and connecting to internal documents
Internal record keeping	(a) Performance of a contract with you (in connection, in particular, with billing) (b) Required by law. Necessary to comply with a legal obligation (our professional rules require us to track time worked for a client) (c) Necessary for our legitimate interests (to keep our records updated and to study how customers use our products/services)



Undertaking checks with third parties (in particular, credit and ID checks)	(a) Performance of a contract with you (b) Required by law. Necessary to comply with a legal obligation (our professional rules require us to carry out certain checks on ID)
Exchange of internal information between our three group businesses (Gilson Gray LLP, the law firm, Gilson Gray Property Services LLP, the estate agent, and Gilson Gray Financial Management LLP, the financial advisors)	(a) Performance of a contract with you (as we may need to involve sister businesses to provide all services you require)  (b) Required by law.  (c) Necessary for our legitimate interests (as the three businesses operate a joined approach to customer service)
Contacting any third parties, including lenders and other professional and solicitors working on a matter, who may represent other parties with interests contrary to yours, and providing correspondence and documentation prepared on your behalf	(a) Performance of a contract with you (this is an intrinsic part of our work for you)
Prevention and detection of crime (and the prosecution of criminal activities)	(a) Performance of a contract with you (b) Required by law. Necessary to comply with a legal obligation. Legislation and professional rules place obligations upon us in respect of these matters. (c) Necessary for our legitimate interests (for running our business)
Progressing transactions	(a) Performance of a contract with you
Sending promotional e-mails which we think you may find interesting (only with your express consent)	(a) Performance of a contract with you (b) Necessary for our legitimate interests (to study how customers use our products/services, to develop them and grow our business)
Contacting you for market research purposes	(a) Performance of a contract with you (b) Necessary for our legitimate interests (to study how customers use our products/services, to develop them and grow our business)
Compliance with applicable laws and regulations	(a) Required by law. Necessary to comply with a legal obligation
Processing payment for the purchase of our products and/or services	(a) Performance of a contract with you (b) Necessary for our legitimate interests (to recover debts due to us)



Undertaking anti-money laundering, identity and credit checks	(a) Performance of a contract with you (b) Necessary to comply with a legal obligation
Monitoring negative media and business financial performance	(a) Performance of a contract with you (b) Necessary for our legitimate interests (to study how customers use our products/services, to develop them and grow our business)
Providing information to agents or subcontractors so that they can assist us with providing the Website and/or the services	(a) Necessary for our legitimate interests (for running our business, provision of administration and IT services, network security, to prevent fraud and in the context of a business reorganisation or group restructuring exercise) (b) To perform a contract with you (where the contract relates to conveyancing and the agent or subcontractor is involved in lending or property listing services) (c) Necessary to comply with a legal obligation
Providing or receiving information from third parties providing ancillary services or support to legal transactions (such as lending panel managers, who pass instructions from banks, or on-line portals for the management of legal instructions or estate agency websites (such as but not limited to ESPC, Rightmove or Zoopla). Such transfer will be on the basis that we have either a processing agreement in place or have reviewed the policies of such third party, and so we consider that there is adequate protection for your personal data.	(a) Necessary for our legitimate interests (for running our business, provision of administration and transaction support services, to prevent fraud, to reduce both our costs or group restructuring exercise) (b) To perform a contract with you (where the contract relates to other arrangements or services you have made with third parties, such as the listing of your property with an estate agent or arranging a mortgage with a lender) (c) Necessary to comply with a legal obligation

Each individual lawful basis outlined above is intended to be a single and sufficient justification for our processing of your relevant information.

We may carry out associated processing of your data where we believe we have a legitimate interest to do so, where required by law, to perform our services to you or fulfil a contract, and/or with your consent.

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The policy goes into more detail about some of the processing we carry out.

## **Marketing**

We will not use your personal information for marketing purposes unless you have explicitly consented to being marketed to.

If you are receiving marketing communication in error then please get in touch with us and we apologise for any inconvenience caused.

## **DISCLOSURE OF YOUR INFORMATION**

We may share your personal information with any member of our group, which means our subsidiaries, our ultimate holding company and its subsidiaries. The reason for this is that different parts of our business or group are responsible for different functions within our business and we need to be able to freely pass your personal information within these various business units.

Although we may share your personal information within members of our group, this does not mean that we will use it for direct advertising or marketing purposes. We will not contact you unless it is necessary for us to get in touch with you. For example, we may need to get in touch with you if we need to follow-up with you or if you asked us to provide you with further information about our services. We may contact you about services ancillary to a matter upon which we are instructed (for example, mortgage advice if you are buying a property).

In some cases we may disclose your information with select third-parties, on the basis that such disclosure is needed to provide our services to you or to implement a contract between us or to fulfil our professional obligations or as required by law. The third parties include:

- Credit reference agencies for the purpose of assessing your credit score where this is a condition of us entering into a contract with you
  - Debt collection agencies where you have breached a condition of any contract entered between us and you.
  - A purchaser of our assets, if substantially or all of our assets are acquired by a third party, in which case personal information held by us about you may be one of the transferred assets
  - If we are under a duty to disclose or share your personal information in order to comply with any legal obligation, or in order to enforce our agreements with you, or to protect our rights, property, or safety of our customers, our employees, or others
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## WHERE WE STORE YOUR PERSONAL INFORMATION

The personal information that we collect from you will be stored within the United Kingdom. We will not transfer your personal information outside of the European Economic Area. Whilst we use cloud based storage, we have elected to ensure that all data is stored on data centres based within the United Kingdom. If we are using any software applications which are not based within the European Economic Area, we will seek separate and explicit consent from you before sharing any personal data or any sensitive personal data with that particular software supplier.

All personal information you provide to us is stored on our secure servers. Where practical and reasonable we will encrypt communication between our site and you using Secure Socket Layer/Transport Layer Security technology. Where we have given you (or where you have chosen) a password which enables you to access certain parts of our site, you are responsible for keeping this password confidential. We ask you not to share a password with anyone.

Unfortunately, the transmission of information via the Internet is not completely secure. Although we will do our best to protect your personal information, we cannot guarantee the security of your data transmitted from our site and any transmission is at your own risk. Once we have received your personal information, we will use strict procedures and security features to try to prevent unauthorised access. In particular, note that we cannot encrypt your email address as it is required to allow messages to be sent to you.

### YOUR RIGHTS 1: NOT TO PROCESS

You have the right to ask us not to process your personal information.

You can exercise your right at any time by contacting us. If you consented to us collecting and/or processing your personal information, but have changed your mind then you can get in touch with us about erasing the personal information we hold about you.

Please be aware that, even if we receive a request from you to delete your personal information, it may be that we cannot entirely remove all of your personal information. This is usually because we have a legitimate interest to hold onto some of that personal information, for example, if you have an ongoing contract with us or there are outstanding payments due by you to us or if we are obliged to maintain information by law or professional conduct rules – but we'll let you know.

Deleting information may also mean we can no longer provide services to you.

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## **YOUR RIGHTS 2: ACCESS TO INFORMATION AND OTHER RIGHTS**

The legislation gives you the right to access a copy of the personal information that we hold about you.

In order to request a copy you need to submit a request to our Data Privacy Manager – details on how to get in touch can be found at the end of this Privacy Policy.

However, we can't just release your personal information to anyone. We can only release your personal information to you – it's a legal requirement. Therefore, it is important for us to ensure that we confirm your identity before we can release any personal information.

If you send us a request to provide you with a copy of your personal information then we may ask you to provide some identification. We may ask you to provide a copy of your current and valid passport and/or driving licence plus a utility bill (that is no more than 3 months old) and has your current address. We may also ask you to visit one of our offices or obtain a solicitors or notary publics' confirmation of your identification.

All of this might sound very onerous but please understand that we have an obligation to protect your personal information and we need to be certain that it is being released to the right person.

You also have the right to ask us to rectify errors in any information we hold, to ask us to erase information we hold or to object to our processing of your information. (The law gives you an additional right to object to automated decision making about you, but we do not do that).

If you want to exercise these other rights we may ask for your ID in the same way as we would if you wanted to access information – we need to know the right person is asking.

### **WHAT IF I DO NOT CONSENT OR WITHDRAW CONSENT?**

If you do not consent to us collecting your personal information then we cannot guarantee the full provision of services and cannot be held responsible or liable to you for any reduction or restriction in access to our other services.

### **HOW LONG WILL YOU HOLD ONTO MY PERSONAL INFORMATION?**

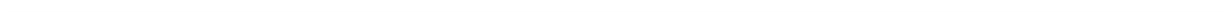
Depending on how you engage with us or the types of services that we provide you it may be necessary for us to store your personal information for shorter or longer periods of time. The Law

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Society of Scotland have indicated that all active files shall be retained for a period of 10 years from the conclusion of the transaction that we are dealing with on your behalf. In most circumstances, we will keep your information for this period.

You can find details on how long we may hold onto your personal information on our Retention Policy which can be found on our website ([www.gilsongray.co.uk](http://www.gilsongray.co.uk))





## **OTHER PERSONS' INFORMATION**

If you pass us information about another person, we may ask you to confirm that they have consented to us having that information. You should not give us information without the consent of its subject.

## **CHANGES TO OUR PRIVACY POLICY**

We may need to change this Privacy Policy if it's necessary for legal reasons or to reflect changes to our services. In any case, the provisions of this Privacy Policy may be changed without prejudice to your rights. When we change our Privacy Policy we will make the updated Privacy Policy available on our site and we will also update the "Last Updated" date.

Once we change our Privacy Policy, it will become legally binding on you 30 days after we post it on our site. During that period you're welcome to contact us if you have questions about the changes.

## **CONTACT US**

If you have any questions, comments or requests regarding our Privacy Policy then please do not hesitate to get in touch with us. To make things easier we would appreciate it if your queries were addressed to our Data Privacy Manager:

**Derek Hamill**  
**Data Privacy Manager**  
**Gilson Gray LLP**  
**29 Rutland Square**  
**Edinburgh**  
**EH1 2BW**  
**United Kingdom**

[dataprotection@gilsongray.co.uk](mailto:dataprotection@gilsongray.co.uk)

**Telephone: +44 (0)131 516 5354**

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