

Service Agreement Terms of Business

(Version 4.0)

Introduction

At Gemstone, we are committed to being entirely transparent in all that we do, where possible avoiding jargon and communicating in plain English, thereby ensuring our customers are fully comfortable with our service offering.

Whilst we understand that to achieve our aims it does mean that we cover a lot within our conditions of business, please do take time to read them carefully.

In so doing, it is our belief that you will over time consider the decision to use Gemstone to regain financial control as probably the best you have ever made.

Glossary of terms & abbreviations.

Cleared Funds - means any monies received by Gemstone into our Client Bank Account for credit to your DMP, which have not been returned unpaid (whether by Debit Card, Standing Order, Cheque, Bank Giro Credit or any other means) in accordance with our banker's instructions over payment clearance times.

Client Bank Account – means a protected bank account opened by Us into which all client funds are paid. The money held within this facility is not used for the purpose of Gemstone Financial Management Ltd.'s own business.

Creditors – means the people or organisations in respect of which You have advised Us You owe money to and who are included in the DMP but excluding any debts or payments due to people and/or organisations referred to in clause 6.2.

DMP (Debt Management Plan) – means the schedule prepared by us using information supplied by You setting out your DI and Living Expenses together with a schedule of payments to the Creditors and detailing the Monthly Payment.

DI (Disposable Income) – means the money You make available to Us on a monthly basis throughout the life of the DMP, and is calculated by Us taking your total Living Expenses away from your Net Income based upon figures supplied by You. This may be subject to change from time to time.

Fees – means the Initial Fee, OMF and/or any other fees or charges payable by You to Us under this Service Agreement, an estimate of which is set out in the communication covering the Welcome booklet issued by Us and in accordance with the relevant references set out in these Terms of Business.

Fixed Fee – means the Initial Fee together with the first twelve OMFs due after the payment of the Initial Fee.

Initial Fee – means a sum equal to two Monthly Payments, which is paid by You to Us upon entering into this Service Agreement and which is a set up fee for the Services. This is not refundable unless it is subject to clause 2.3, and which is not paid to the Creditors and is not applied to reduce your indebtedness.

LOA (Letter of Authority) – means the letter attached to these Terms of Business, by which You give Us authority to contact your Creditors, enabling Us to perform the Services.

Living Expenses – means any essential household expenditure falling due within a normal calendar month that You require as a minimum to cover your day-to-day living requirements (e.g. Rent / Mortgage, Utility Bills, Council Tax, Hire Purchase, Housekeeping etc.) and which are not covered in the DMP.

Monthly Payment – means the total amount that is paid every month by You to Us in accordance with your DI throughout the DMP comprising the Monthly Repayment to be made to your Creditors, and the OMF and any other payments as instructed or agreed with You. For the avoidance of doubt, this does not include the Initial Fee.

Monthly Repayment – means that part of the Monthly Payment to be paid by Us on your behalf to your Creditors.

Net Income – means the amount You and / or your household receive on a monthly basis excluding relevant tax.

OMF (Ongoing Monthly Fee) – means the monthly amount payable by You to Us for the Services being the sum of £45 per month but excluding the Initial Fee.

Pro-Rata Distribution – means the allocation by Us of the monies made available by You for payment to the Creditors calculated to take account of:

- a) the limited ability You have to meet interest and/or capital payments due to the Creditors,
- b) the generally accepted basis upon which most creditors in the United Kingdom expect to receive payments under such schemes, and
- c) the usual expectation of creditors to rank equally with other creditors under such schemes.

Service Agreement - means the agreement between You and Us made in accordance with these Terms of Business and / or any amendments thereto agreed between Us and You in writing.

Services - means the services We agree to provide You with under this Service Agreement.

Term – means the period of time running from the start of this Service Agreement (as explained in clause 2) until You repay all of the Creditors in full, an estimate of which is set out in the initial correspondence covering the Welcome booklet issued by Us and in accordance with clause 2. The estimate is calculated by taking your Monthly Payment, less our Fees, divided into the total balance owed as supplied by You, assuming no interest or charges are added by the Creditors.

Terms of Business – means the conditions contained within this Service Agreement and on which we conduct business.

Unsecured Debts – means the debts that are not secured against a specific item(s) / possession(s) owned by you.

Us or We - means Gemstone Financial Management Limited, whose registered address is One Cranmore, Cranmore Drive, Shirley, Solihull B90 4RZ or anyone to whom We transfer our obligations and rights under this Service Agreement.

You - means you, the person entering into this Service Agreement and named in the DMP.

1. Acceptance

- 1.1 You appoint Us and We agree to act on your behalf as debt negotiators, debt adjusters and to provide the Services.
- 1.2 This Service Agreement will start when You confirm your acceptance of these Terms of Business either by telephone or by returning the completed LOA or if earlier, the day when We receive all or part of the Initial Fee from You.

2. Term & Cancellation

- 2.1 The Service Agreement will continue for the Term, unless cancelled in accordance with these Terms and Conditions.
- 2.2 The Term is an estimate, and it is important for You to understand that if your DI reduces, the balances provided to us are incorrect, more debts are added to plan or your Creditors add charges, interest or any other costs, the Term will increase.
- 2.3 In the event that prior to receiving any appropriate written information You either (a) are specifically asked to commit by entering into a contract with Us by telephone, and You agree to do so and / or (b) You make a Cleared Funds payment, You shall be granted 7 working days (excluding Saturdays, Sundays and Bank Holidays) to cancel this Service Agreement (also see clause 1.2). You must notify Us in writing of your wish to cancel in accordance with this clause by registered post to our registered address stating that You wish to cancel. Upon receipt of your notice to cancel We will then refund to You within 28 days any Fees already paid to Us that are held as Cleared Funds and clause 4.5 shall not apply. For the avoidance of doubt, You are not entitled to a cancellation period if You commit to enter into a contract with Us following receipt of appropriate written information.
- 2.4 In the event that 2.3 is effective, We shall not commence work on your behalf until 7 working days has expired from the start of the Term. If You wish Us to provide the Services immediately upon the start of the Term You must notify Us in writing, such notice to be sent to our address by post whereupon your right to cancel in accordance with clause 2.3 above shall be waived.
- 2.5 This Service Agreement shall last for a minimum period of 14 months from the start of the Term as set out above in clause 1.2.
- 2.6 You may cancel this Service Agreement at any time provided that such cancellation is in writing and sent to our address (listed in the glossary definition of 'Us' and 'We') by registered post.
- 2.7 Only You and not a third party may effect cancellation of this Service Agreement, in the absence of appropriate written authority or Power of Attorney.
- 2.8 If You cancel this Service Agreement after 14 months no Fixed Fee is due. For the avoidance of doubt any Initial Fee and/or OMF's paid by You up to the date of cancellation will not be refunded to You.
- 2.9 If You cancel this Service Agreement within 14 months from the start of the Term You will be liable to pay the Fixed Fee less any Initial Fee and/or OMF's paid up to the date of cancellation, within 28 days of the date of cancellation unless You are subject to the exclusions as set out below in clause 2.10. Where two or more persons have entered into this Service Agreement, all persons named in the DMP are jointly and severally liable for all Fees.
- 2.10 You will be released from clause 2.9 if any of the following circumstances prevail:
 - a. You exercise your rights granted by Us under Clause 2.3;
 - b. You provide proof satisfactory to Us that You become unable to maintain a minimum payment of at least £90 per month due to unemployment or long-term illness for a period of at least 4 months;
 - c. You provide proof satisfactory to Us that you are now able to and are maintaining the full normal monthly payments to your creditors such that Your debts would be repaid in full within the time they would be under Your DMP with Us.
 - d. You are able to repay your debts fully via Us; or
 - e. You are released from your obligations by Us in writing.

- 2.11 Should You fail to make payment of the Fixed Fee due to Us and outlined in clause 2.9 we reserve the right to charge You for all the costs incurred by Us in obtaining payment from you of the Fixed Fee. If You fail to pay these fees upon request, We reserve the right to debit your bank account with any fees due using any valid debit card details previously provided to Us by You.
- 2.12 We reserve the right to cancel this Service Agreement in writing at any time We consider it prudent to do so, such notice to be sent by standard post to the last address You have advised Us is your contact address. Thereafter We shall no longer act on your behalf.
- 2.13 If We cancel this Service Agreement within the first 14 months for the following reasons:
 - 2.13.1 You default on 2 or more Monthly Payments, or
 - 2.13.2 We become aware of You supplying Us with false information or
 - 2.13.3 You have compromised our position by not adhering to the terms of this Service Agreement in any way,You remain liable for the Fixed Fee less any Initial Fee and/or OMF's received by Us at the date of cancellation.
- 2.14 If We cancel this Service Agreement within the first 14 months from the start of the Term on grounds other than those referred to clause 2.13 above, You will not be liable for the Fixed Fee. For the avoidance of doubt, any Initial Fee and/or OMF's paid by You up to the date of cancellation will not be refunded to You.
- 2.15 When this Service Agreement ends (for whatever reason):
 - a. our duties and obligations under this Service Agreement will come to an end;
 - b. your liability to the Creditors will continue to the extent that any amounts You owe to the Creditors remain outstanding over and above the repayments made to them under the DMP.

3. What We Will Do

- 3.1 We will provide You with a debt negotiation service.
- 3.2 Upon receipt of the Initial Fee in Cleared Funds and the contract commencement We will prepare a DMP. This will indicate a Disposable Income and a Monthly Payment that We believe You can afford. It will also include an estimate of the total Fees payable by You to Us for the Services, which We provide under this Service Agreement, and an estimate of how long it will take You to repay the Creditors. It should be noted that any estimates are based on information either You or the Creditors have supplied and assumes that the Creditors will freeze interest and not impose further account charges that We, of course, cannot guarantee. Due to changing circumstances and/or amended information supplied by You or the Creditors, the DMP may be subject to revision.
- 3.3 Once the contract commences We will notify the Creditors of our involvement and We shall attempt to negotiate with the Creditors, where appropriate, to accept the Monthly Repayments from Us on your behalf. In addition, We shall attempt to gain their agreement to either suspend or withdraw any recovery (or similar) proceedings, which they may already have taken against You or may have threatened to bring against You. We shall endeavour to further negotiate interest and charges concessions on your behalf (also see clause 6.5).
- 3.4 We will endeavour to provide as much support and assistance to You as We can based on our professional expertise and experience of dealing with Creditors.
- 3.5 If your circumstances change and You are unable to meet the payments set out in the DMP We shall attempt to renegotiate with the Creditors and arrange with You a revised DMP. In addition, We shall periodically review your situation, normally on an annual basis but sometimes earlier if appropriate. Upon review, We shall prepare and issue a revised DMP to You and the Creditors if this is appropriate.

- 3.6 We shall provide You with a statement each month or following Pro-Rata Distribution of funds to the Creditors unless your account with Us is in arrears. Details will include the Monthly Repayments made to them and the Fees that we have charged You.
- 3.7 We shall keep You informed of all material communications between the Creditors and Us, and We shall deal with all communications from your Creditors to Us (or to You and provided by You to Us) appropriately and promptly.

4. Payments

- 4.1 You will pay Us the Initial Fee upon acceptance of the terms of this Service Agreement in accordance with clause 1.2 above. You will also pay the Monthly Payments, any applicable Fees agreed within these Terms of Business and any other Fees agreed in writing between You and Us for any additional services provided.
- 4.2 If in any month You pay Us an amount that is less than the Monthly Payment agreed at that time, We reserve the right not to make the Monthly Repayments to the Creditors as described in sections 3 and 5 if there are insufficient funds to make the payments at a level normally accepted by the Creditors.
- 4.3 We reserve the right to suspend the Services, if at any point the Monthly Payments are in arrears by two months. The Services will be resumed upon the discharge of all the Monthly Payments outstanding subject to prior cancellation of this Service Agreement
- 4.4 When You start your DMP and pay our Initial Fee You may fall into arrears (or further into arrears) with the Creditors due to the necessity to cancel their payments (e.g. Standing Order, Direct Debit etc.). Unless the Creditors agree to freeze interest or any other charges, this will lead to an increase in the total amount of debt You have to repay to those Creditors. This may also affect your credit rating, which might make it difficult for You to obtain further credit facilities in the foreseeable future (typically, until your debts are fully repaid). Records in respect of your credit rating are retained for 6 years.
- 4.5 Subject to clause 2.3, if You require a refund under any circumstances from Cleared Funds held by Us, there will be a £10 fee levied to cover administration costs. For the avoidance of doubt this fee is in addition to the Initial Fee, Fixed Fee and/or OMFs.
- 4.6 No refund of Fees paid shall be made unless (a) We accept that We have failed in our duty of reasonable care and skill (under section 13 of the Supply of Goods and Services Act) or (b) It is deemed by a judicial or other competent authority to be appropriate.
- 4.7 If any Cleared Funds are held by Us following the cancellation of this Service Agreement by either party, then a full refund will be made less any Fees due to Us (e.g. Fixed Fees) within 28 days of termination.
- 4.8 The onus is on You to ensure We receive money paid to Us by You.
- 4.9 Should You arrange to pay Us by Debit Card or Direct Debit and Your payment falls due on a Saturday, Sunday or Bank Holiday, We will attempt to take Your payment on the last working day before the due date.
- 4.10 If in any month You fail to make a full payment or We are unable to collect the Monthly Payment from You, We are entitled to collect payment of the OMF by any payment means We hold for You.

5. Your Money In Our Hands

- 5.1 All payments that We receive from You in Cleared Funds will be paid directly into our Client Bank Account. The only payments which We will make out of our Client Bank Account are:
- 5.1.1 payment of our Fees; and
- 5.1.2 any other payments as instructed or agreed with You.
- 5.2 We will distribute the Monthly Repayments amongst the Creditors in accordance with the DMP normally within five working days of receipt of the Monthly Payment from You in Cleared Funds. If there is a delay in any payment which is not beyond our control, We shall take the appropriate action to put You in the position You would have been in if the payment had been made within five working days in Cleared Funds and shall make good any additional interest which has accrued and any default charges that have been applied to the account as a result of the delay.
- 5.3 If there is any money We hold for You in the Client Bank Account that We for any reason are unable to refund to You following cancellation of this Service Agreement, We shall write to You at the last address you notified to us as your contact address. If after 6 months following termination of this Service Agreement We have not received your written instructions as to where You wish us to send such money We will transfer these funds into our own account and have no further obligation to pay this money to You.

6. What We Cannot Do

- 6.1 We do not lend You money or offer You any credit facilities.
- 6.2 We will not, unless by prior agreement by Us with the Creditor to whom the secured debt is owed, provide the Services in relation to secured credit (e.g. mortgages, hire purchase agreements) utility bills (e.g. water, gas bills etc.) or Living Expenses (e.g. Council Tax, Rent etc.). These bills are to be paid by You in accordance with the DMP agreed.
- 6.3 We are not solicitors and cannot give You any legal advice.
- 6.4 We shall not be liable under any circumstances for any loss, damage or expenses suffered or incurred by You arising from or in any way connected to Us performing our obligations under these Terms of Business.
- 6.5 Whilst We will always endeavour to negotiate payment concessions and terms with the Creditors in accordance with section 3, We cannot stop the Creditors from continuing to charge You interest and other charges. If charges and interest continue then the Term will be extended. In addition, collection action (including default notices and litigation) can ensue and We cannot guarantee that any existing, current or future recovery proceedings will not be taken against You, possibly incurring further costs.
- 6.6 We reserve the right to exclude any debts that are less than three months old at the time this Service Agreement commences or certain other debts at our discretion. We will inform you of any debts we wish to exclude and will thereafter revise the DMP.
- 6.7 We will not arrange for anybody to attend any court hearing on your behalf unless We expressly agree with You to do so and, if so, We will charge an additional fee for such service as agreed with You in advance of the court hearing.

7. What You Will Do

- 7.1 You must provide Us with full, accurate and truthful details in any communication with Us. This includes but is not limited to the information you supply in respect of your Net Income, expenditure, dependants, Creditors, assets, County Court Judgements and legal action being taken or threatened. You must, where possible, send to Us copies (see clause 10.2) of documents to confirm these details.
- 7.2 You must make the agreed Monthly Payments to Us in accordance with the DMP.
- 7.3 You will sign any relevant LOA so that We may carry out our obligations under this Service Agreement.
- 7.4 You must allow Us to negotiate on your behalf with your Creditors.
- 7.5 You will notify Us of any changes within your contact details including postal address, email address or contact telephone numbers.
- 7.6 If at any time you are not happy with the Services We are providing, You undertake to give us the opportunity to rectify the situation by adopting our complaints procedure, which is available upon request.
- 7.7 If a debt of yours with your existing bankers renders it advisable or necessary to open a new bank account then You agree to do the same.
- 7.8 We must be kept informed of any Creditors that contact You directly by telephone. Similarly, they should be reminded of our involvement and politely referred to Us.
- 7.9 You must send Us copies (see clause 10.2) of all correspondence You receive from your Creditors so that We can deal with them on your behalf.
- 7.10 You must never ignore communication from Us or your Creditors or their appointed representatives. If at any time You feel concerned by their contact or consider it to be oppressive in any way (due to frequency, type etc.) then You should always let us know immediately.
- 7.11 During the Term You must not make any payments directly to your Creditors unless You have notified Us in advance that You propose to do so and We have agreed that such payment can be made.
- 7.12 You must tell Us if your circumstances have or are due to change so that if You become unable to maintain the level of Monthly Payments or You can increase your level of Monthly Payments We may make the necessary adjustments to your DMP. We will require two weeks notice from You to make any amendments to any direct debit or debit card arrangements You make for payment of the Monthly Payments to Us.
- 7.13 During the Term You must not take out further credit, use any existing credit facility or spend any money over and above the Living Expenses as described in your DMP, thereby increasing your debts.
- 7.14 Should any existing Creditor approach You with a view to re-negotiating the terms of an individual or multiple debts, You must not enter into this agreement without first notifying Us and discussing the matter fully.

8. Confidentiality

- 8.1 We agree to keep confidential all information received from or about You. We will not pass this information to anyone else without your express permission, except in line with our data protection statement contained in section 9 or in the normal course of our duties under this Service Agreement (e.g. Creditors and / or their authorised representatives etc.).

9. Data Protection

- 9.1 Please read the statements / clauses below carefully as they explain what personal information We collect about You and how We use this information
- 9.2 We collect personal information about You both directly from You when You apply for our Services and from your Creditors as authorised by You. We may also collect further information as a result of managing your DMP.

- 9.3 We will use your personal information to provide our Services to You, and in particular to:
 - a. prepare and issue to You your DMP;
 - b. negotiate with your Creditors on your behalf; and
 - c. keep You informed about your DMP and our Services
- 9.4 Subject to section 9.5 We may also use your personal information to contact You to provide You with details of other products and services which We think may be of interest to You, including those offered by selected third parties. We may share personal information with these selected third parties and they may contact You directly to provide You with details of such products and services.
- 9.5 You may let Us know if You do not want Us to use or disclose your personal information as set out above in section 9.4 by indicating in writing at any time to the Data Protection Manager at our address quoted previously.
- 9.6 Other than as set out above We will only disclose your personal information to the extent required by law, court order or as requested by other government or law enforcement authority, or to any company or other entity to whom we either transfer or subcontract any or all of our obligations to You under this Service Agreement.
- 9.7 You may contact Us by writing at any time to the Data Protection Manager at our address for further information, or if you want to request a copy of the personal information which We hold about You or to ask Us to amend any inaccurate information held by Us. If you request a copy of the personal information that We hold about You we will charge You a Fee of £10.
- 9.8 We may record and monitor your calls to Us to help Us to improve our service and for contractual purposes.

10. Other terms

- 10.1 All Fees are inclusive of any relevant Value Added Tax (VAT) or other sales tax.
- 10.2 You should keep copies of all documentation sent to Us because we carry out all our work on computer-scanned document images to improve efficiency. At the end of this Service Agreement we will return to you a copy of any documents you have sent us upon request and payment of our £10 administration Fee.
- 10.3 We may transfer our rights and obligations under this Service Agreement by giving You written notice of such a transfer.
- 10.4 Save in respect of notices referred to in clauses 2.3, 2.6 and 2.12 notices sent under this Service Agreement, shall be valid if sent by second-class post.
- 10.5 This Service Agreement sets out the entire agreement and understanding between You and Us, and supersedes all prior agreements, understandings or arrangements (whether oral or written) relating to the provision of the Services.
- 10.6 You acknowledge that You have entered into this Service Agreement in reliance only on the representations, warranties and promises specifically contained or incorporated in this Service Agreement and, except as expressly set out in this Service Agreement, We shall have no liability in respect of any other representation, warranty or promise made prior to the start of this Service Agreement unless it was made fraudulently.
- 10.7 If any provision within this Service Agreement is deemed by a judicial or other competent authority to be void or otherwise unenforceable, the remaining provisions of this Service Agreement shall remain in force.
- 10.8 We shall not be deemed in breach of this Service Agreement or otherwise liable to You if We are prevented or hindered from performing our obligations under this Service Agreement by reason of any event beyond our reasonable control.
- 10.9 By entering into this service agreement, You authorise Us or any appointed representative to complete checks via credit reference agencies for any reason deemed appropriate, (for example fraud protection or tracing purposes).
- 10.10 Gemstone Financial Management Ltd reserves the right to reasonably vary these terms and conditions giving 30 days notice in writing.
- 10.11 English Law governs this Service Agreement.