

# TERMS OF BUSINESS FOR DEBT MANAGEMENT SERVICES



## 1) AUTHORISATION

The full name, address and contact details of the firm is set out on the bottom of this document.

Our firm is authorised in Ireland under Part V of the Central Bank Act 1997 (as amended) to provide debt management services for remuneration.

Our firm is subject to the following Codes of Conduct and regulatory regulations issued by the Central Bank of Ireland. These codes offer protection to our clients and all the codes can be found on the Central Bank's website [www.centralbank.ie](http://www.centralbank.ie): Consumer Protection Code 2012, Minimum Competency Code 2011, Fitness & Probity Standards and Authorisation Requirements and Standards for Debt Management Firms.

Our firm is also subject to the following legislation: Anti-Money Laundering and Data Protection Legislation.

## 2) INTRODUCTION

First Choice Financial Services DAC is an Irish Designated Activity Company. References in these Terms of Business (the Terms) and your separate engagement letter (the Engagement Letter) to "we" or "us" refer to First Choice Financial Services DAC.

Reference to "you" or "your" shall refer to each and every party of Engagement Letter (other than us). Services shall mean the services which we provide or are required to provide) to you. The Terms apply to Services delivered or due to be delivered by us to you (unless otherwise agreed in writing) subject to the Engagement Letter which generally sets out the Services to be delivered by us and fees to be charged by us for the Services. The Engagement Letter will prevail to the extent that there is any conflict between it and the Terms.

The Terms will apply from the commencement of your retention of us for the entire period of this engagement (for the purposes of the Terms being our engagement to provide the Services).

This engagement may be terminated by either party by notice, with immediate effect, in writing to the regular correspondence address of the other party marked for the appropriate director or contact.

**First Choice Financial Services DAC**  
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Email: [info@fcfs.ie](mailto:info@fcfs.ie)  
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**Dublin Office**  
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**You First Choice for:**

- Life Insurance & Retirement Planning
- Investments
- Mortgages
- Debt & Banking Consultancy

Directors: B. White, C.A White – Company Registration No: 330271 – VAT No. 63502710  
First Choice Financial Services DAC is regulated by the Central Bank of Ireland

Termination will not affect accrued rights, existing commitments or any contractual provision intended to survive termination and will be without penalty or other additional payment save that you will pay: (a) fees to the date of termination; (b) any additional expenses necessarily incurred by us as a result of you terminating this engagement; (c) any fees of professional or other third party advisers we have incurred or are liable for in connection with the Services.

### **3) OUR FEES AND INVOICING ARRANGEMENTS**

In addition to our fees as set out in the Engagement Letter, we will also charge for any disbursements and we will apply value added tax on fees and disbursements at the applicable rates. An estimate of fees given by us in an Engagement Letter is not an agreement to perform the Services for a fixed price or within a fixed period. If a repayment plan proposed on our client's behalf is unsuccessful, there is no refund on fees.

We will be entitled to submit interim invoices for the Services and disbursement as work progresses. Invoices are payable within 7 days of presentation. We reserve the right to add interest at a rate of 2% a year over 3-month EURIBOR (Euro Inter Bank Offered Rate) for the time being, on any invoice that remains unpaid 30 days after presentation.

### **4) YOUR RESPONSIBILITIES TO US**

It is your responsibility to (i) ensure we receive complete, accurate and timely information and assistance, (ii) carry out any other obligations ascribed to you or your agents or employees or others under your control and (iii) provide us with the information we request within a reasonable time in order that we can provide the Services in a timely manner.

We will not be responsible for the consequences of any delay or failure to meet these responsibilities and any such delay or default may result in additional fees for which invoices may be raised, whether or not the Services were originally undertaken or a fixed fee basis.

You agree that any commercial decisions that you make are not within the scope of our duty of care and in taking such decisions you must take into account the restrictions on the scope of our work and other factors, commercial and otherwise, of which you are your other advisers are, or should be, aware from sources other than our work.

You are responsible for you and your business' legal and regulatory compliance.

### **5) OUR RESPONSIBILITIES TO YOU**

We are committed to providing the Services with reasonable skills and care and in a timely manner.

Save as otherwise expressly provided in the Terms, any implied term and any liability, which may arise by law is hereby expressly excluded to the fullest extent permissible by law. We make no warranties (whether express or implied) such as, but not limited to, warranties of merchantable quality or fitness for purpose or use, or warranties of any products or any of the Services save to the extent required by law.

The nature and content of our advice will necessarily reflect the scope and limitations of this engagement, the amount and accuracy of information provided to us and the timescale within which

advice is required. If, at your request, we provide our advice in an abbreviated format or timescale, you accept that you will not receive all the information you would have done had we provided a full written report or had more time to carry out the work.

If general advice is provided, its applicability will depend on the particular circumstances in which it is to be used (of which we might not be aware) and should be viewed accordingly. Specific advice should always be sought in particular transactions and comprehensive material provided to us. Our advice is provided for the purpose of this engagement and we disclaim any responsibility for its use for a different purpose or in a different context.

We shall not be under any obligation in any circumstances to update any advice, report or any product of the Services, oral or written, for events occurring after the advice, report or product concerned has been issued in final form.

No advice, opinion, statement of expectation, forecast or recommendation supplied by us as part of the Services shall amount to any form of guarantee that we have determined or predicated future events and circumstances.

We will not normally verify or check information provided to us by you, or by others, and you acknowledge that we are entitled to rely on such information when undertaking the Services.

If it becomes necessary to engage any third-party adviser on your behalf (such as a solicitor, valuer, accountant etc.) we will seek your approval and you acknowledge that we will not be liable for the advice or Services rendered by such third party. It will be your responsibility to pay fees and expenses of such third parties. Unless otherwise agreed, all such third-party advisers will be engaged by you and not us. You shall fully indemnify us for all liabilities, costs and expenses we incur as a result of the engagement of third-party advisers in relation to the Services.

We shall act on instructions given by you or any person you have nominated in writing to us that can give instructions on your behalf.

## **6) INFORMATION AND CONFIDENTIALITY**

Our reports, letters, information and advice to you are given in confidence solely for the purpose of this engagement and cannot be relied on by any person or entity apart from you. They are provided on the condition the you undertake not to disclose them or their contents, or any other confidential information made available to you by us during the course of our work, to any third party (being a party other than those to whom the report, letter, information or advice is addressed) except to your legal advisers, without our prior written consent. We disclaim all responsibility for any consequence whatsoever should any such third party rely on any report, letter, information or advice without our written consent that it may do so. Our only responsibility is that which is owed to you in the context of this engagement as at the date on which our report or other advice is given to you. You agree to notify us immediately of any unauthorised disclosure or use of this confidential material and agree to take all action to prevent any further disclosure of such materials.

Neither we nor you will be prevented from disclosing confidential information (a) which is or becomes public knowledge other than by a breach of an obligation of confidentiality, (b) which is or becomes known from other sources without restriction on disclosure; or (c) which is required to be disclosed by law or any professional or regulatory obligation.

While our relationship is confidential, and confidentiality and discretion are fundamental to our relationship with clients and their affairs, we are pleased to set out our confidentiality commitments as follows:

1. We will hold all confidential information and documents furnished by you in relation to your business and affairs (Confidential Information) confidentially and will not disclose it to any person or use it for any other purposes, nor will we disclose our appointment to provide advice and services to you except, in any such case, as may be necessary and appropriate in the proper course of our services in relation to you or except as set out in this letter or otherwise agreed by you.
2. We will not discuss any Confidential Information with any employee or adviser of yours except to the extent requested or indicated by you.
3. To comply with the 2012 Consumer Protection Code (as amended) we are required to keep your file for 6 years after we have ceased providing our services to you. This applies to both electronically held and paper-based data and records. The information comprising your file in the aforementioned formats will be kept in a secure location and upon expiration of the 6-year period we will dispose of it in a secure manner.
4. In accordance with normal practice, our obligations under this letter do not: (a) apply to Confidential Information which, at the time of disclosure, is already in the public domain or (b) apply where a disclosure of Confidential Information is required by law or by Governmental or regulatory authority.

In this letter, reference to our agents means to our offices, employees and professional advisers.

## **7) KNOWLEDGE AND CONFLICTS**

Our employees, directors and agents, collectively or individually, who are or are involved in providing the Services (the Engagement Team) shall not be required, expected or deemed to have knowledge of any information known to our other employees, directors and agents who are not members of the Engagement Team (the other First Choice Financial Services DAC Persons).

Our employees, directors and agents may be delivering services or advice to, or be approached to deliver services or advice to, another party or parties (such as, for example, financial institutions, banks and lenders) who (i) has or have interests which do or could compete or conflict with your interests or (ii) you owe money and/or have given security to or (iii) who are or become party to joint ventures arrangements, co-ownerships, profit sharing arrangements, partnerships or any other form of investment vehicle or business relationship with you and/or your family member(s) or corporate vehicle(s) (a Conflicting Party or Conflicting Parties). All our employees, directors, and agents are and shall remain free to deliver services to any Conflicting Party, except where the interests of the Conflicting Party actually conflict with your interests specifically and directly in relation to the subject matter of the Services and we are aware of such conflict. In the event of such an actual specific and direct conflict where we consider (in our absolute discretion) that your and /or the Conflicted Party's

or Conflicting Parties' interests are likely to be prejudiced and we are not be satisfied that the situation can be managed, the Engagement Team shall not deliver services to the Conflicting Party and Other First Choice Financial Services DAC Persons may only deliver services to the Conflicting Party where appropriate Barriers are put in place. Barriers meaning safeguards designed to facilitate the protection of each client's interests including (for example) separate teams, their geographical and operational separation and/or access control over data, computer servers and electronic mail systems. The operation of such Barriers shall constitute sufficient steps to avoid any risk of a breach of our duty of confidence to you. Where a party has engaged us to advise it before you have done so, and subsequent circumstances change, we may consider that, even with the Barriers operating, your interests are likely to be prejudiced and we may not be satisfied that the situation can be managed. In that event we may have to terminate this engagement and we shall be entitled to do so with immediate effect, but we shall consult you before doing so.

## **8) LIMITATION OF OUR LIABILITY**

"Claim" or "Claims" shall include actual or threatened claims or proceedings of any sort (whether for losses, damages, interest, cost or other relief), arising out of (or relating to) any act, omission or default arising out of (or in relation to) the Services including, without limitation, claims of breach of contract, negligence, or other torts, including breaching of statutory or other duty, but not including claims for death and personal injury or other claims to the extent that limitation or exclusion of liability for such claims is prohibited by law.

You agree that any claim shall be brought only against First Choice Financial Services DAC and that no Claim in relation to the Services will be or can be brought personally against any of our employees, shareholders, agents or directors.

You agree that you will take all reasonable, immediate and necessary steps to mitigate any loss you suffer as a result of any error or omission on our part and notify us immediately of any potential or actual claim and that we will have no liability in the event of your failure to fully and promptly meet your obligations in that regards.

Any liability to you or to any other party, which might otherwise be implied or incorporated in the Terms by reason of statute or common law or otherwise, is hereby expressly excluded to the fullest extent permissible by law.

Our total liability for Claims under this engagement shall be limited to the amount of fees actually paid to us in respect of the Services.

## **9) INDEMNITY**

In connection with the foregoing you agree to indemnify and hold harmless First Choice Financial Services DAC and its partners, directors, officers, agents, consultants and employees (each an Indemnified Party), to the full extent lawful, from and against any losses, claims, liabilities (or actions, including shareholders actions, in respect thereof) related to or arising out of this engagement, or our role in connection therewith, brought by any third party, and will reimburse any Indemnified Party for all reasonable expenses (including reasonable legal fees) as they are incurred by First Choice Financial Services DAC or any such other Indemnified Party in connection with investigating, preparing or defending any such action or claim; provided, however, that the provisions of this paragraph will not

apply to any claims, liabilities, losses, damages or expenses which have resulted primarily from the bad faith or gross negligence of an Indemnified Party hereunder.

An Indemnified Party shall give written notice as promptly as reasonably practicable to you of any claim made against it in respect of which indemnity may be sought hereunder together with reasonable details of the nature of such claim. You may participate at your expense in the defence of such claim in which case such Indemnified Party shall supply you with appropriate information and consult with you and your advisers in relation to the conduct of such defence although any decision as regards the conduct of such claim is at the sole discretion of the Indemnified Party; provided, however, that the Indemnified Party shall not admit liability in relation to such claim or settle such claim without your prior written consent which consent shall not be unreasonably withheld and provided that if such consent, having been requested, is withheld for more than thirty (30) days, it shall be deemed granted. Conversely, you will not, without First Choice Financial Service DAC prior written consent which shall not be unreasonably withheld, settle or admit liability in relation to a pending claim in respect of which indemnification may be sought hereunder unless you release all Indemnified Parties from all liability or obligation. If such consent, having been requested, is withheld for more than thirty (30) days, it shall be deemed granted.

## **10) DATA PROTECTION AND PRIVACY**

**First Choice Financial Services DAC** are subject to the requirements of the General Data Protection Regulation 2018 and the Irish Data Protection Act 2018. We are committed to protecting and respecting your privacy. We wish to be transparent on how we process your data and show you that we are accountable with the GDPR in relation to not only processing your data but ensuring you understand your rights as a client.

The data which you provide to us will be held on a computer database and paper files for the purpose of arranging transactions on your behalf. The data will be processed only in ways compatible with the purposes for which it was given and as outlined in our Data Privacy Notice, this will be given to all our clients at the time of data collection.

We will ensure that this Privacy Notice is easily assessable. Please refer to our website [www.fcfs.ie](http://www.fcfs.ie) if this medium is not suitable we will ensure you can easily receive a copy by; hard copy, telephonic environment. (pre-recorded).

We would also like to keep you informed of any insurance, investment and any other services provided by us which we think may be of interest to you. We would like to contact you by way of letter, email or telephone call. If you do not wish to receive such market information, please indicate your preference using the tick the boxes provided on page 5 of the Letter of Engagement document included in this pack.

Please contact us at [info@fcfs.ie](mailto:info@fcfs.ie) if you have any concerns about your personal data.

## **11) INTELLECTUAL PROPERTY RIGHTS**

We retain all ownership, copyright and the intellectual property rights in everything developed, designed or created by us either before or during the course of an engagement including systems, investment structures, methodologies, software, know-how and working papers. We also retain all ownership copyright and other intellectual property rights in all reports, written advice or other materials provided by us to you, although you will have the full right to distribute copies of these

materials within your own organisation, and to professional advisers instructed by you for the purpose of this engagement. If you wish to distribute copies of these materials outside your own organisation or professional advisers, you must obtain our express permission.

You agree to ensure that any use of works in your possession or control during the engagement do not infringe the intellectual property rights of any third parties.

## **12) OWNERSHIP OF BOOKS AND PAPERS AND ELECTRONIC COMMUNICATION**

All documents in whatever form, paper, electronic (including without limitation, e-mails) or otherwise such as (for example, but without being an exhaustive list) working papers, letters, memoranda, file notes of, meetings and telephone calls, draft computations and returns etc. and copies of other original documents which we create or which we receive either as principal or in our own right or as agent for you belong to us. For the avoidance of doubt, we do not assert such ownership rights to documents such as, for example, title documents, original banking or security documents entered into by you, original invoices and other original primary accounting records, tax deduction certificates etc. belonging to you, but we may retain possession of them by exercising a lien because our fees remain outstanding after becoming due for payment.

Unless otherwise agreed, we may communicate by email, via the internet or other electronic media or provide information to you in electronic form. Because of the internet the risks associated with such media we cannot guarantee the security and integrity (or freedom from computer viruses) of any electronic communications or information sent or received in relation to this engagement.

## **13) RESPONSIBILITY FOR LEGAL DOCUMENTS**

For the avoidance of doubt, although you may wish to comment on the commercial aspects of legal documents that may be drawn up by lawyers in connection with the engagement, we will not be involved in their drafting and/or preparation as we believe this is within the realm of the professional business of lawyers. Further, whilst every care will be taken in the advice we give in relation to any information contained in such documents, such advice and/or comment should not be taken as settling the documents, which will have been drafted by your lawyers. Accordingly, we cannot accept liability or responsibility for any loss or damage suffered as a result of any defect in such documents arising from their drafting, preparation, completion or the mechanics of putting them into effect.

## **14) FORCE MAJEURE**

Neither we nor you shall be liable in any way for failure to perform our respective obligations under this engagement if the failure is due to causes outside the reasonable control of the party which has failed to perform.

## **15) SEVERANCE OF TERMS**

If any of the Terms is invalid or unenforceable, the remainder of the Terms will continue in full force and effect.

## **16) ENTIRE AGREEMENT**

With respect to this Engagement, our engagement letter and the Terms constitute the entire agreement between us and supersede all prior agreements, proposals, oral and written

representations and negotiations. Nothing in the Terms makes us your agent or partner or establishes a joint venture between you and us.

A person who is not a party to this engagement shall have no rights to enforce any of the Terms or the terms of the Engagement Letter save that, to the extent that First Choice Financial Services DAC so consents, any Indemnified Party may enforce and rely on any of the Terms or the terms of the Engagement Letter as though it were a party to them.

## **17) GOVERNING LAW AND JURISDICTION**

The Terms and this engagement shall be governed and construed in accordance with the laws of Ireland and any Claim shall be subject to the exclusive jurisdiction of the Irish courts. Each party irrevocably waives any right it may have to object to an action being brought in those Courts, to claim that the action has been brought in an inconvenient forum, or to claim that those Courts do not have jurisdiction.

## **18) STATUTORY AND REGULATORY OBLIGATIONS**

You understand and accept that, we may be required in certain circumstances, by law or by Regulations or by Professional Bodies to which we belong, to make reports to regulatory and law enforcement authorities or to such bodies, or to disclose documents or information or take other action, as a result of information received by us or matters which come to our attention during the course of this engagement. Where appropriate and permitted we will advise you in advance of any action we may be required to take.

The provision of the Services is a prescribed activity for purposes of the Criminal Justice Act, 1994 (as supplemented and amended) and as such, we are subject to the anti-money laundering procedures and other obligations set out in the Act.

The obligation to check client identity means that we are likely to request from you, and retain, certain information and documentation and for these purposes to make searches of appropriate databases.

## **19) COMPLAINTS PROCEDURE**

You can make a verbal or written complaint to us about any service, which is covered by these Terms of Business, provided by First Choice Financial Services DAC to you. Such complaints can be referred to Mr Barry White, the Compliance Officer of our firm, who will also be your contact point in relation to the ongoing investigation of your complaint.

We will:

- Acknowledge your complaint in writing within 5 business days of receipt of the complaint.
- Investigate your complaint.
- Provide you with a regular written update on the progress of the investigation of your complaint at intervals of not greater than 20 business days.
- Attempt to resolve your complaint within 40 business days of having received the complaint; where the 40 business days has elapsed, and the complaint is not resolved, we will inform you

of the anticipated timeframe within which we hope to resolve the complaint and of your right to refer the matter to the Financial Services Ombudsman,

- Within 5 working days of the completion of our investigation of your complaint, we will advise you of the outcome of the complaint in writing and, if appropriate, explain the terms of any offer or settlement being made. We will also inform you of your right to refer the matter to the Financial Services Ombudsman.

**First Choice Financial Services, DAC. is regulated by the Central Bank of Ireland**

These terms of business are effective from **October** 2018