

## Terms and Conditions

### 1. Definition

- 1.1 "We", "The Company", "Our" and "Us" means Guardian Recovery Limited whose registered office is 4 Tustin Court, Port Way, Preston, PR2 2YQ. Guardian Recovery Limited is registered in England number 6637708.
- 1.2 "You", "Your", and "The Client" means the party engaging the Services of The Company.
- 1.3 "Services" means any of the activities carried out by Us on behalf of You; these Services may include executing pre-legal debt collection strategies, tracing absconded debtors, providing Litigation Management and bespoke credit management assistance. We may sometimes require the assistance of agents when providing Services.
- 1.4 "Litigation Management" means the assistance given to You by Us in the preparation of legal claims, negotiations and enforcement activities. Litigation Management does not include attendance and representation by Us on Your behalf at Court Hearings or any other Hearing.
- 1.5 "Debt" means the debt passed by You to Us for the provision of Services and "Debt" shall be construed accordingly.
- 1.6 "Debtor" means the party responsible for payment of the Debt.
- 1.7 "Historic Debt" means Debt passed by You to Us for the provision of Services at the inception date of the Agreement.
- 1.8 "New Debt" means Debt passed by You to Us for the provision of Services after the passing of Historic Debt, or where no Historic Debt is passed, after the commencement date of the Agreement.
- 1.9 "Agreement" means a contract that commences on the commencement date of the Agreement and continues for the whole of the Agreement Period for the provision of Services over the Service Period for the specified quantity of Historic Debts plus the facility for the provision of Services over the Service Period for a quantity of New Debts equivalent to the quantity of Historic Debts. Where no Historic Debt quantity is specified then the quantity of Debt cases is defined by the lower of the quantity of Debt cases passed by You within 7 days of the date of the Agreement and 10. The provision of Services is subject to our fair usage policy at all times. Our fair usage policy may be found at [www.guardrec.co.uk/terms-and-conditions/client-terms-conditions](http://www.guardrec.co.uk/terms-and-conditions/client-terms-conditions).
- 1.10 "Agreement Period" means a period of 12 calendar months commencing on the commencement date of the Agreement.
- 1.11 "Service Period" means a period that begins on the date the Agreement is signed by You and continues for the whole of the time taken to pursue the Debtor until such time the Debt is identified as legally irrecoverable or We identify no realistic opportunity for recovery.
- 1.12 "Agreement Fee" means the charge agreed between You and Us to facilitate the execution of the Agreement over the Service Period. The Agreement Fee does not include costs and fees arising from sources external to Us.
- 1.13 "2 Year Premium" means a term separately selected and applied to the Agreement which extends its Agreement Period from 12 calendar months to 24 calendar months.
- 1.14 "Payment Arrangement" means the Debtor is settling the Debt or has entered into an arrangement to make Payment of the Debt by way of more than one instalment.
- 1.15 "Collection Charge", "Collection Charges" and "Commission" means the amount payable to Us for successful recovery of Debt included within every Payment made by the Debtor whether to You or Us.
- 1.16 "Payment", "Paid", "Collected" means cash, cash equivalent, credit, return of goods, Payment Arrangement or any reciprocal arrangement.
- 1.17 "Cleared Funds" means 5 working days following deposit into Our clients' deposit bank account for all receipts except receipts processed through card merchant services where Cleared Funds means 5 working days following the expiry of the merchant service provider's claw-back period.
- 1.18 "Prematurely" means before the Debt is Paid either to You or Us whether by way of a Payment Arrangement or otherwise.
- 1.19 "Written Notice" means a letter sent by recorded delivery by You to Us at Our registered office stated in 1.1 above or email sent to [customerservices@guardrec.co.uk](mailto:customerservices@guardrec.co.uk).
- 1.20 "Debt Recovered" means any of the following:
  - 1.20.1 Payment of the Debt in full.
  - 1.20.2 Payment of the Debt in part (whether subject to an Agreed Settlement or not).
  - 1.20.3 Acknowledgment of the Debt by the Debtor whether or not Payment is made by the Debtor and received by You or Us or any other 3<sup>rd</sup> party.

- 1.20.4 The entering into a Payment Arrangement between You and the Debtor, whether or not for the full amount of the Debt or for an Agreed Settlement whether or not Payment is made by the Debtor and received by You or Us or any other 3<sup>rd</sup> party.
- 1.20.5 The offering of a Payment Arrangement by the Debtor for the full amount of the Debt that We have advised You to accept whether or not Payment is made by the Debtor and received by You or Us or any other 3<sup>rd</sup> party.
- 1.21 "Agreed Settlement" means an agreement by You to accept an amount less than the Debt in full and final settlement of the Debtors liabilities in that regard, whether by Payment Arrangement or otherwise.
- 1.22 "Insolvent" means has entered into any insolvency proceedings such as liquidation, bankruptcy, individual voluntary arrangement, debt relief order and other similar proceedings.
- 1.23 "Good Debt" means: -
- 1.23.1 Debt where the Debtor has not registered a dispute either verbally or in writing.
- 1.23.2 Debt where the Debtor has not at any time absconded or been made subject of a bankruptcy, liquidation, dissolution, voluntary arrangement or similar proceedings.
- 1.23.3 Debt where We have received all information requested from You and has not been prematurely closed. Such information must include the Debtor's most recent address and connecting telephone number.
- 1.23.4 Debt not excluded by virtue of clause 8.3.
- 1.23.5 Debt in excess of £300.
- 1.24 "Service Level Guarantee" and "SLG" means the measure to which Our performance under the terms of this Agreement shall be determined.
- 1.25 "Money Back Guarantee" and "MBG" means the guarantee that applies to the 2 Year Premium type only.

## **2. Agreement**

- 2.1 These terms and conditions are governed by English Law and We and You both agree to submit to the non-exclusive jurisdiction of the English Courts.
- 2.2 Please read these terms and conditions carefully before entering into the Agreement. If You have any queries or uncertainties as to Your rights under these terms and conditions, please communicate these to Us in writing to the address above within 7 days of the date of this Agreement.
- 2.3 We intend to rely upon the written terms set out here. If these terms do not correspond with Your understanding of our terms and conditions then You must notify Us in writing within 7 days of the date of this Agreement.
- 2.4 Any representation made by any officer, employee or agent of The Company shall not be relied upon by You unless such representation is incorporated into the contract in writing and confirmed in writing by a director of The Company.
- 2.5 We reserve the right to alter the terms of this Agreement with reasonable written notice.
- 2.6 You may not alter the terms of this Agreement without Our express written consent; such written consent can only be given by a director of The Company.
- 2.7 You have the right to change Your mind about engaging Our Service. This Agreement may be cancelled by You giving Written Notice within 7 days of the date of signing "the cooling off period". An administrative charge of £25 plus, where Services have commenced, £10 per Debt case will be levied on Agreements cancelled under this clause. We shall not be liable to refund any portion of the Agreement Fee where written notice cancelling the Agreement is received by Us after 7 days of the date of signing this Agreement.

## **3. Services**

- 3.1 The Services shall commence: -
- 3.1.1 Upon receipt of cleared funds in payment of the Agreement Fee; or
- 3.1.2 Upon receipt of the Agreement signed by an authorised representative of You; or
- 3.1.3 Upon receipt of particulars of Debt; or
- 3.1.4 Upon any other written agreement between You and Us.
- 3.2 We reserve the absolute right and discretion to cease the provision of Services without refund of the Agreement Fee where after applying reasonable care and judgment We consider Debt to be irrecoverable. We undertake not to cease the provision of Services without exhausting all reasonable avenues of opportunity and We undertake not to cease the provision of Services under this clause without notification to You.

- 3.3 We reserve the absolute right and discretion to cease to pursue and withdraw from any litigation at any time in which case We may offer to You a referral to one of more of Our approved partners whose fees are separately chargeable to the Agreement Fee paid and payable by You to our approved partners directly. Our partners will notify you in advance of their fees and charges and You will be responsible for their instruction should You so wish. Nothing in this clause prevents you from declining Our offer of referral and obtaining Your own independent legal advice.
- 3.4 We may seek other legal advice on Your written instruction and upon being in receipt of cleared funds sufficient to meet the costs involved.
- 3.5 We do not provide separate written updates to Debt case progress. Debt case progress is published in real time through Our website and Our client portal facility. You will be issued separately within 7 days of the commencement of this Agreement with a username and password to access this portal together with instructions of how to do so.

#### **4. Debt Recovery**

- 4.1 We maintain a separate clients' account with Our bankers for the processing of Debtor funds on Your behalf.
- 4.2 We will always keep a clear and transparent tracking system of Your Debtor's funds paid to Us.
- 4.3 Any monies received as Cleared Funds and processed through Our clients' account will be held for a minimum period of 90 days before being accounted to You and We reserve the right to recover Our reasonable costs incurred for the processing of funds through Our clients' account. Aggregate monies to be accounted to You of less than £200 may be held at Our discretion until aggregate monies to account to You exceed £200.
- 4.4 Where the fast track payments option has been chosen, identified by the appropriate box marked with an 'X' on the services schedule to this Agreement then the period of 90 days referred to in clause 4.3 above is shortened to 60 days.
- 4.5 We may at Our discretion hold any funds recovered in excess of the minimum period referred to in clause 4.3 (or clause 4.4 as applicable) where further risk is identified which could lead to monies received being recalled or repaid.
- 4.6 We retain the right to receive all interest payments from Our bankers in respect of Your recovered funds held on clients' deposit.
- 4.7 We may at Our discretion enforce the Late Payment of Commercial Debts (Interest) Act 1988 as amended and supplemented by the Late Payment of Commercial debts (Regulations) 2002 and the Late Payment of Commercial Debts Regulations 2013 on outstanding commercial Debt unless otherwise agreed in writing (a copy can be found at [www.payontime.co.uk](http://www.payontime.co.uk)). Such written agreement can only be issued by a director of The Company.
- 4.8 Fees, Commission and Collection Charges due to Us will be charged on all Debt Collected for You, whether in whole or in part, in accordance with the current rates set in this Agreement and all charges, with the exception of court fees, will be subject to VAT at the current prevailing rate.
- 4.9 This Agreement includes Litigation Management subject to Our fair usage policy. Our fair usage policy may be found at [www.guardrec.co.uk/terms-and-conditions/client-terms-conditions](http://www.guardrec.co.uk/terms-and-conditions/client-terms-conditions).

#### **5. Credit Management Assistance**

- 5.1 We will, on written application, provide You with other credit management services tailored to Your specific requirements and for which additional fees are payable by You except where agreed otherwise between You and Us. Such agreements must be made in writing and signed by a director of The Company.
- 5.2 Such services may include sales ledger management, outsourcing of credit control functions, the instruction of field agents, Litigation Management or general consultancy and for which You will be liable for all incumbent overheads, disbursements and charges whatsoever incurred by Us or Our agents at the prescribed rates notified separately in writing with You.
- 5.3 A credit check service is included as part of this Agreement and includes a number of credit checks equal to the number specified on the schedule to this Agreement. The provision of credit checks is subject to our fair usage policy at all times.

#### **6. Client Liabilities**

- 6.1 The debt recovery Service relies upon the provision of accurate and bona fide information. You warrant that all Debt referred to Us for collection is true and valid. You warrant that the contact details of the Debtors are accurate and agree to indemnify Us against Our reasonable costs in establishing the Debtor(s)

whereabouts and We reserve the right to reclassify Debt as not Good Debt while the Debtor(s) whereabouts are determined.

- 6.2 We may require additional information from You to enable Us to collect Debt. Any request for additional information from Us to You should be produced as soon as possible. In the event that You fail to provide such information after the expiry of 14 days following request We reserve the right to re-assign the age of Debt, reclassify Debt as not Good Debt and adjust the Commission and Collection Charge rates accordingly.
- 6.3 We expressly exclude any liability for any delay in the provision of Services where the full and precise details of Debt information reasonably required for Us to be able to provide Services including the identity and current address of the Debtor have not been, and/or are not able to be, provided by You.
- 6.4 Where You receive any Payment directly in respect of Debt assigned for collection by Us, You will immediately notify Us with full details. We shall then charge normal Collection Charges and Commissions as if Payment of that Debt had been to Us.
- 6.5 Where You instruct Us to commence or continue any form of legal action, You are responsible for checking the accuracy of information contained within all documentation and submissions. You are liable for all charges, costs, fees and disbursements of whatever nature relating to such action whether payable directly or incurred or billed to Us. We shall not be liable for any losses or damages arising out of any incorrect information contained in such legal proceedings.
- 6.6 You shall indemnify Us and keep Us indemnified against all liabilities of whatever nature brought or made against Us arising from Our provision of Services to You.
- 6.7 You shall immediately upon notification and without reservation, deduction or set-off return any debtor funds forwarded to You where those funds are recalled from Us by the Debtor's bankers, card service provider or other third party.

## **7. Prices and Charges**

- 7.1 The prices and charges payable by You are those quoted prior to the commencement of Services unless separately agreed in writing.
- 7.2 Where prices and charges are not quoted, We undertake as far as is reasonable and possible to notify You of any extraordinary or additional charges before such charges are incurred or likely to be incurred.
- 7.3 All fees and charges are quoted net of VAT at the prevailing rate where applicable.
- 7.4 We reserve the right to deduct Fees, Charges and Commissions from all direct Payments received on Your behalf.
- 7.5 Our standard payment terms on invoices raised by Us to You are payment upon receipt of invoice unless agreed in writing with a director of The Company. We shall deduct from aggregate funds recovered from Your Debtor(s) and accountable to you sums sufficient to settle any unpaid sums due from You to Us before the accounting of any residual funds to You in accordance with clause 4.3.
- 7.6 We may charge interest at 8% above Bank of England Base Rate on late payment of Our invoices in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Regulations (2002) and the Late Payment of Commercial Debts Regulations 2013. We may charge interest at 8% on late payment of Our invoices which fall outside the scope of the Late Payment of Commercial Debts legislation.
- 7.7 Collection Charges shall be charged by Us at the rate of 37.5% on Debt Recovered and shall be: -
  - 7.7.1 Where Payment is made in full calculated by reference to the Debt after the addition of allowable interest and charges irrespective of whether the Payment is made to You or Us or any other 3<sup>rd</sup> party; or
  - 7.7.2 Where Payment is made in part (whether under a Settlement Agreement or otherwise), calculated by reference to the amount paid or agreed to be paid whether or not Payment is made by the Debtor and received by You or Us or any other 3<sup>rd</sup> party; or
  - 7.7.3 Where a Payment Arrangement is entered in to, or we advise that a proposal for a Payment Arrangement made by the Debtor should be accepted, whether or not Payment is made by the Debtor and received by You or Us or any other 3<sup>rd</sup> party; or
  - 7.7.4 Where the Debt is acknowledged in full or in part, calculated by reference to the amount acknowledged by the Debtor, whether or not Payment is made by the Debtor and received by You or Us or any other 3<sup>rd</sup> party; or
  - 7.7.5 Charged at any other rate agreed in writing between You and Us. Such written agreement can only be issued and authorised by a director of The Company.
- 7.8 In the event that any Debtor account is closed Prematurely (which for the avoidance of doubt includes Debtor accounts closed through termination of the Agreement) then We are entitled to recover Our

reasonable costs, Collection Charges and Commissions for Services rendered in line with clause 7.7. If the account is closed prior to Debt Recovered then We are entitled to charge the lower of the sum of £125 or the amount of Collection Charges and Commission We would otherwise be entitled to calculated in accordance with clause 7.7 had the Debt been recovered. For the avoidance of doubt where any Debtor account is closed prematurely and the conditions of clauses 7.7.1 to 7.7.5 inclusive are satisfied then We are entitled to charge the full amount of Collection Charges and Commission We would otherwise have been entitled to calculated in accordance with clause 7.7.

- 7.9 You are responsible for the payment of all Collection Charges to Us. We shall deduct Collection Charges from Debt recovered and paid to Us before accounting of funds to You and We shall raise an invoice to You for Collection Charges where Debt is paid to You or any other 3<sup>rd</sup> party.
- 7.10 We shall seek to recover Collection Charges in addition to the recovery of the Debt due from the Debtor.
- 7.11 We make no guarantee that Collection Charges will be recovered in addition to the Debt.
- 7.12 We reserve the right to vary the Collection Charge rate at Our discretion: -
  - 7.12.1 Upon reasonable written notification to You in respect of the Agreement; and
  - 7.12.2 In respect of any individual Debt.
- 7.13 Commission shall be charged by Us at the rate specified on the schedule to this Agreement and shall be charged against Payment received after the addition of allowable interest and charges irrespective of whether the Payment is made to You or Us.
- 7.14 Commission shall be charged separately to Collection Charges and you are responsible for the payment of all Commission to Us at all times and We shall deduct Commission from Debt recovered and paid to Us before accounting of funds to You and We shall raise an invoice to You for Commission where Debt is paid to You or any other 3<sup>rd</sup> party.

## **8. Limitation of Liability**

- 8.1 We shall not be liable for any adverse costs, claims or demands made against You as a result of Our Services.
- 8.2 We shall not be considered liable nor to be in breach of the Agreement should the performance of Our Services be hindered by such circumstances beyond Our reasonable control, including but not limited to acts of God, strikes, accidents, war, equipment failure, data corruption or any other calamity and We shall be entitled to a reasonable extension of Our obligations including, where applicable, Our Service Level Guarantee in order to proceed.
- 8.3 You warrant that all Debt referred to Us is true and valid and without reservation indemnify Us for all and any losses incurred where We act in good faith and Debt is proven not to exist in whole or in part, should prove to be fraudulent or subject to liquidation, bankruptcy, Individual voluntary arrangement or similar insolvency proceedings. Where it later transpires that Debt was Paid prior to Our instruction You will be charged normal fees, collection charges and commissions calculated in accordance with clauses 7.7 to 7.14 inclusive as if the Debt was Paid during Our instruction.
- 8.4 Where the Debtor is proven to be Insolvent after Debt has been referred to Us, collections activity will cease and details of the Debtor's insolvency will be provided to You. We shall not be liable to refund the Agreement Fee in any circumstances where a Debtor is proven to be Insolvent.
- 8.5 Where We require additional information from You in order to maintain or advance Services in respect of Debt this must be provided as soon as possible. In the event that You fail to provide such additional information within 14 days of request and/or inhibit the work intended to be done by Us then Debt will no longer be classified as Good Debt and We reserve the right to freeze Services, including where applicable Our Service Level Guarantee, until such time as such additional information is provided.
- 8.6 We reserve the right, without liability to You, to cease Services on any Debt referred to Us either prior to the commencement of Services or at any time during the provision of Services. We undertake not to terminate Services unreasonably and without notification to You. Reasonable cessation includes, but is not limited to, non-payment of our fees and charges, conflicts of interest, vulnerable Debtor and suspicion of fraud or fraudulent activity. Where cessation of services arises because of failure by You to provide reasonable requested information (including but not limited to requests for additional supporting debt documentation and information and reply to dispute) then we reserve the right to raise charges in accordance with clause 7.8.
- 8.7 We make no guarantee to recover Debt either in whole or in part. We do not accept any liability to refund the Agreement Fee or any other fees paid by You whether to Us or any third party in the event of an unsuccessful recovery. This clause does not affect, where applicable, Our Service Level Guarantee.

## **9. Insolvency**

- 9.1 We reserve the right to terminate the Agreement without liability to You should it be discovered You are Insolvent.
- 9.2 We reserve the right to suspend Services and without liability to You if it is proven beyond reasonable belief that You are the subject of bankruptcy / winding up proceedings, an administration order, an individual voluntary arrangement, a debt relief order or any other legal instrument or process that could potentially jeopardise Your assets and solvency.

## **10. Right of Termination**

- 10.1 You may terminate the Agreement without refund at any time by giving not less than 30 days written notice and We reserve the right to raise charges in accordance with clause 7.8.
- 10.2 We reserve the right to terminate the Agreement at any time and without refund if You continue to be in breach of any of the terms of the Agreement after reasonable attempts at remedy remain unsatisfied and We reserve the right to raise charges in accordance with clause 7.8.
- 10.3 We reserve the right to terminate the Agreement at any time for any other reason. Where We exercise this right a refund of the Agreement Fee will be made on a pro-rata basis after the deduction of charges raised in accordance with clause 7.8. The pro-rata charge shall be calculated on a time elapsed basis with a maximum duration of 12 months except where the MBG applies in which case the maximum duration is amended to 24 months.
- 10.4 Where the Agreement is terminated in accordance with the provisions of clause 10.1 or clause 10.2 and the Agreement Fee is being paid by way of instalment then You must immediately pay to Us the future payments due under the instalment arrangement together with any other fees and charges that may have been raised.

## **11. Service Level Guarantee**

- 11.1 The SLG applies to Good Debt only. Where a Debt is no longer classified as Good Debt the SLG will be suspended until such time as the Debt is reclassified as Good Debt whereupon the SLG will resume.
- 11.2 The SLG is to be applied to each individual Good Debt and the guarantee offered under the SLG is applied to that individual Debt and Fee paid for that Debt only.
- 11.3 Debt Recovered immediately satisfies Our obligation under the SLG.
- 11.4 The SLG guarantees to You that for each Good Debt We shall attempt to establish contact with the Debtor a minimum of 75 times during the first 128 working days of a Good Debt being referred to Us for the provision of Services. The inception date for the purposes of the SLG is deemed to be the date on which the first contact attempt is made.
- 11.5 For any individual Good Debt We guarantee that We shall perform Services to the minimum standard offered by the SLG. Where We do not perform Services to the minimum standard offered by the SLG We guarantee to refund to You 110% upon claim of the Agreement Fee paid for referral of that individual Good Debt.
- 11.6 Your claim of refund under the SLG must be submitted in writing and be made within 90 days of the expiry of the SLG period. We are not liable for refund to claims made under the SLG after this time.

## **12. Money Back Guarantee**

- 12.1 The Money Back Guarantee applies only where the 2 Year Agreement is chosen and identified by the appropriate box marked with an 'X' on the schedule to this Agreement.
- 12.2 The Money Back Guarantee will never apply where only Historic Debt is chosen for Services provided by Us.
- 12.3 No refund shall be made by Us under the provision of the SLG until determination of refund under the MBG is determined at the end of the 2 year term. Where refund under the MBG is to be made then this refund will supersede all claims for refund under the SLG and no refund under the SLG will apply.
- 12.4 We agree to refund to You the Agreement Fee after the expiry of the full two year term of the Agreement, and subject to the provision of clause 6.3, where: -
  - 12.4.1 You have paid the Agreement Fee in full; and
  - 12.4.2 The Agreement has been allowed to lapse; and
  - 12.4.3 Your request for refund has been made within 3 months of the expiry of the Agreement; and
  - 12.4.4 The aggregate value of Good Debt referred to us exceeds £20,000; and
  - 12.4.5 More than 6 Good Debts are referred to us; and
  - 12.4.6 Referral of Good Debt must be made within the first 18 months following the signing date of this Agreement and must not have been prematurely closed by You; and

12.4.7 We fail to obtain Payment by the expiry of the term of this Agreement of aggregate Debt values equal to at least the Agreement Fee multiplied by 1.5.

12.5 No refund of the Agreement Fee will be made where The Agreement is terminated prior to the expiry of the terms of the Agreement by either Us or You except under the provisions of clauses 2.7 and 10.3.

### **13. Expiry of Agreement**

13.1 60 days and 30 days prior to the Expiry of the Agreement We may issue to You a written invitation to renew for a further Agreement Period of 12 calendar months.

13.2 At the expiry of the Agreement the Agreement will automatically renew for a further 12 calendar months if you fail to respond to the invitation to renew issued in accordance with clause 13.1. Where the Agreement renews then we shall charge You a Renewal Premium.

13.3 Where the Agreement is allowed to lapse, We will continue to provide Services for Debts We are already providing Services unless written instruction to cease is provided by You. We reserve the right to recover Our reasonable costs for work completed on the Debtor accounts. Such costs shall not exceed collection charges calculated in accordance with clause 7.8.

13.4 Where the Agreement is allowed to lapse and any Debtor has entered into a Payment Arrangement We will continue to administer the Payment Arrangement unless written instruction to cease is provided by you. We reserve the right to recover Our reasonable costs for work completed on the Debtor accounts. Such costs shall not exceed collection charges calculated in accordance with clause 7.8.

### **14. Paying by Direct Debit**

14.1 If paying by direct debit, please note that Guardian Recovery Ltd has appointed the BACS Approved Direct Debit Bureau, Eazy Collect Services Limited (<http://www.eazycollect.co.uk>), to collect your payments. Guardian Recovery will be shown on your bank statement for these direct debit payments.