

TERMS OF ENGAGEMENT

1 General

- 1.1 These Standard Terms of Engagement (**Terms**) apply to any current engagement and also to any future engagement, whether or not we send you another copy of them. We are entitled to change these Terms from time to time, in which case we will send you amended Terms.
- 1.2 Our relationship with you is governed by New Zealand law and New Zealand courts have exclusive jurisdiction.
- 1.3 Unless otherwise agreed, you will receive an email (**Engagement Letter**) for each new instruction which provides information on what we will do for you and who will be responsible for undertaking the work you have instructed us to do.

2 Services and Scope

- 2.1 The services we are to provide for you (the **Services**) are outlined in our Engagement Letter along with any further instructions that you provide to us in writing (or that we record in writing).
- 2.2 We will seek to ensure that the Services are undertaken in the most efficient and cost-effective manner by the appropriate person with the appropriate experience. Part or all of your instructions may be delegated to other professionals in our firm.
- 2.3 In providing the Services, we are not qualified to and will not give you investment advice, nor tax or accounting or insurance advice, nor any advice relating to overseas jurisdictions. You should obtain any such advice from a person qualified to provide that advice to you. We can help you to engage a suitably qualified professional if you require any such advice.

3 Your Instructions

- 3.1 Unless otherwise agreed, you authorise us to, and we may accept instructions:
- (a) from either of you if you are a couple;
 - (b) from any of the trustees if you are a trust;
 - (c) from any of the partners if you are a partnership;
 - (d) from any of your directors, officers or employees if you are a company;
 - (e) from any of your officers if you are a body corporate or incorporated society; and
 - (f) in all cases, from any person or entity which you have authorised to instruct us in relation to the Services.

4 Communications

- 4.1 We will obtain from you contact details, including email address, postal address and telephone numbers. You will advise us if any of your contact details change. Our usual method of communication is via email and we may provide documents and correspondence to you by email (or other electronic means).
- 4.2 We will report to you periodically on the progress of any engagement and will inform you of any material and unexpected delays, significant changes or complications in the work being undertaken. You may request a progress report at any time.
- 4.3 You agree that we may provide you from time to time with other information that may be relevant to you, such as newsletters and information bulletins. You may request that this not be sent to you at any time.

5 Fees and Charges

- 5.1 **Fees:** Unless otherwise agreed in writing with you, we charge on a time and attendances basis, and otherwise as set out

in these Terms. The basis upon which we will charge our fees may be expanded on in our Engagement Letter.

- (a) If our Engagement Letter specifies a fixed fee, we will charge this for the agreed scope of the Services. Work which falls outside that scope will be charged on an hourly rate basis. We will advise you as soon as reasonably practicable if it becomes necessary for us to provide services outside of the agreed scope and, if requested, give you an estimate of the likely amount of the further costs.
- (b) Where our fees are calculated on an hourly basis, the hourly rates of the people we expect to undertake the work are set out at 5.2 below. Any differences in those rates reflect the different levels of experience and specialisation of our professional staff. Time spent is recorded in six-minute units.
- (c) Hourly fees may be adjusted (upwards or downwards) to ensure the fee is fair and reasonable to take into account matters such as the complexity, urgency, value and importance of the Services. Full details of the relevant fee factors are set out in Rule 9 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (**Rules**).
- (d) Our hourly charge out rates are subject to review on 1 April annually which will take into account promotions of our staff and other matters we consider relevant.

5.2 **Hourly Rates:** Our hourly rates are included in the Terms of Engagement emailed to you with our Engagement Letter at the commencement of our most recent instruction from you.

5.3 **Disbursements:** In providing the Services we may incur disbursements and payments to third parties on your behalf. You authorise us to incur these disbursements (which may include such items such as search fees, court filing fees, registration fees, courier charges and travel costs) which are

reasonably necessary to provide the Services. You also authorise us to make payments to third parties on your behalf which are reasonably required to undertake the Services (which may include items such as experts' costs or counsel's fees). These will be included in our invoice to you, shown as "disbursements" when the expenses are incurred (or in advance when we know we will be incurring them on your behalf).

5.4 **Office Service Charge Fee (Administrative expenses):** In addition to disbursements, we may charge a fee to cover our out of pocket costs which are not included in our fee and which are not recorded as disbursements. These include items such as photocopying and printing, postage and phone calls.

5.5 **GST:** Our Services will usually attract Goods and Services Tax (**GST**). If this is the case, GST is payable by you on our fees and charges.

5.6 **Invoices:** We will send interim invoices to you, usually monthly, and on completion of the matter, or termination of our engagement. We may send you invoices more frequently when we incur a significant expense or undertake a significant amount of work over a shorter period of time.

5.7 **Payment:** Invoices are payable within 14 days of the date of the invoice, unless alternative arrangements have been made with us.

(a) You authorise us to deduct our fees and other expenses from funds held in our trust account on your behalf on provision of an invoice to you, unless those funds are held for a particular purpose.

(b) If you have difficulty in paying any of our accounts, please contact us promptly so that we may discuss payment arrangements.

(c) If your account is overdue, we may:

- (i) require interest to be paid on any amount which is more than 14 days overdue, calculated at the rate of 1.5% per month;

- (ii) stop work on any matters in respect of which we are providing services to you;
- (iii) require an additional payment of fees in advance or other security before recommencing work;
- (iv) recover from you in full any costs we incur (including on a solicitor/client basis) in seeking to recover the amounts from you, including our own fees and the fees of any collection agency.

(d) Payment may be made by payment to our bank account number provided in our invoice, or by credit card. A service fee of 2.5% of the total amount invoiced will be applied to any payment made by credit card.

5.8 **Fees and disbursements in advance:** We may ask you to pre-pay amounts to us, or to provide security for our fees and expenses. We may do this, on reasonable notice, at any time.

5.9 **Estimates:** You may request an estimate of our fee for undertaking the Services at any time. If possible we will provide you with an estimate (which may be a range between a minimum and a maximum amount or for a particular task or step). An estimate is not a quote. Any significant assumptions included in the estimate will be stated and you must tell us if those assumptions are wrong or change. We will inform you if we are likely to exceed the estimate by any substantial amount. Unless specified, an estimate excludes GST, disbursements and expenses.

5.10 **Third Parties:** Although you may expect to be reimbursed by a third party for our fees and expenses, and although our invoices may at your request or with your approval be directed to a third party, you remain responsible for payment to us in accordance with these Terms if the third party fails to pay us.

5.11 **Trust Accounting:** We operate a trust account. All money received from you or on

your behalf will be held to your credit in our trust account.

(a) Payments out of the trust account will be made either to you or to others with your authority. Written authorisation from you (and if we are acting for more than one of you, from all of you) will be required when payment is to be made to a third party. Before making a payment to another account we may require verification of the account details by provision of (for example) a copy of a deposit slip, cheque or bank statement showing the account number, a signed authority from you including the bank account details, or a signed letter from the relevant financial institution providing bank account details.

(b) A full record of our trust account is kept at all times. A statement of trust account transactions detailing funds received and payments made on your behalf will be provided to you periodically and at any time upon your request.

(c) Unless it is not reasonable or practicable to do so, when we hold significant funds for you for more than a short period of time, we will place them on call deposit with a bank registered under section 69 of the Reserve Bank of New Zealand Act 1989, subject to your having completed to the bank's satisfaction any request for information relating to the deposit or certification required by the bank. Interest earned from call deposits, less withholding tax and an interest administration fee payable to us of 5% of the gross interest earned, will be credited to you.

6 Confidentiality and Personal Information

6.1 **Confidence:** We will hold in confidence all information concerning you or your affairs that we acquire during the course of acting for you. We will not disclose any of this information to any other person except:

- (a) to the extent necessary or desirable to enable us to carry out your instructions; or
- (b) as expressly or impliedly agreed by you; or
- (c) as necessary to protect our interests in respect of any complaint or dispute; or
- (d) to the extent required or permitted by law.

6.2 Confidential information concerning you will as far as practicable be made available only to those within our firm who are providing the Services for you.

6.3 **Personal information and Privacy:** In our dealings with you we will collect and hold personal information about you. We will use that information to carry out the Services and to contact you about issues we believe may be of interest to you. Provision of personal information is voluntary but if you do not provide full information this may impact on our ability to provide the Services. Please refer to our privacy policy by following the link [here](#).

6.4 Subject to 6.1, you authorise us to disclose, in the normal course of performing the Services, such personal information to third parties for the purpose of providing the Services and any other purposes set out in these Terms.

6.5 We may disclose your name and address to third parties such as credit agencies to perform a credit reference or to undertake credit management or collection processes if it is reasonable to do so.

6.6 The information we collect and hold about you will be kept at our offices and/or at secure file storage sites (including electronic

file storage sites) elsewhere. If you are an individual, you have the right to access and correct this information. If you require access, please contact us.

6.7 **Verification of identity:** The Anti-Money Laundering and Countering Financing of Terrorism Amendment Act 2017 requires us to collect from you and to retain information required to verify your identity. We may therefore ask you to show us documents verifying your identity (such as a passport or driver's licence). We may retain copies of these documents. We may perform such other customer verification checks as to your identity and checks as to the source of any funds associated with any transaction to which the Services relate as we consider to be required by law.

7 Documents, Records and Information

7.1 We will keep a record of all important documents which we receive or create on your behalf on the following basis:

- (a) We may keep a record electronically and destroy originals (except where the existence of an original is legally important such as in the case of wills and deeds).
- (b) At any time, we may dispose of documents which are duplicates, or which are trivial (such as emails which do not contain substantive information), or documents which belong to us.
- (c) We are not obliged to retain documents or copies where you have requested that we provide them to you or to another person and we have done so, although we are entitled to retain copies for our own records if we wish to do so.

7.2 We will provide to you on request copies or originals (at our option) of all documents to which you are entitled under the Privacy Act 2020 or any other law. We may charge you our reasonable costs for doing this.

7.3 Where we hold documents that belong to a third party you will need to provide us with

that party's written authority to uplift or obtain a copy of that document.

- 7.4 Unless you instruct us in writing otherwise, you authorise us and consent to us (without further reference to you) to destroy (or delete in the case of electronic records) all files and documents in respect of the Services six years after our engagement ends (other than any documents that we hold in safe custody for you or are otherwise obliged by law to retain for longer). We may retain documents for longer at our option.
- 7.5 We may, at our option, return documents (either in hard or electronic form) to you rather than retain them. If we choose to do this, we will do so at our expense.
- 7.6 We own copyright in all documents or work we create in the course of performing the Services but grant you a non-exclusive licence to use and copy the documents as you see fit for your own personal or commercial use. However, you may not permit any third party to copy, adapt or use the documents without our written permission.

8 Compliance

- 8.1 We are obliged to comply with all laws applicable to us in all jurisdictions, including (but not limited to):
- (a) anti-money laundering and countering financing of terrorism laws; and
 - (b) laws relating to tax and client reporting and withholdings.
- 8.2 We may be required to undertake customer due diligence on you, persons acting on your behalf and other relevant persons such as beneficial owners and controlling persons. We may not be able to begin acting, or to continue acting, for you until that is completed. We are entitled to charge you for our attendances in meeting our obligations set out in 8.1.
- 8.3 To ensure our compliance and yours, we may be required to provide information about you, persons acting on your behalf or other

relevant persons to third parties (such as government agencies). There may be circumstances where we are not able to tell you or such persons if we do provide information.

- 8.4 Please ensure that you and/or any of the persons described previously are aware of and consent to this. It is important to ensure that all information provided to us is accurate. If the information required is not provided, or considered by us to be potentially inaccurate, misleading, or in contravention of any law, we may terminate or refuse to enter into an engagement.

9 Conflicts of Interest

- 9.1 We are obliged to protect and promote your interests to the exclusion of the interests of third parties and ourselves as set out in the Rules. This may result in a situation arising where we have a conflict of interest.
- 9.2 We have procedures in place to identify and respond to conflicts of interest or potential conflicts of interest. If a conflict of interest arises, we will advise you of this and follow the requirements and procedures set out in the Rules. This may mean we cannot act for you further in a particular matter and we may terminate our engagement.

10 Duty of Care

- 10.1 Our duty of care is to you and not to any other person. We owe no liability to any other person, including for example (when acting for a company) any directors, shareholders, associated companies or employees unless we expressly agree in writing. We do not accept any responsibility or liability whatsoever to any third parties who may be affected by our performance of the Services or who may rely on any advice we give, except as expressly agreed by us in writing.
- 10.2 Our advice is not to be referred to in connection with any prospectus, financial statement, or public document without our written consent.

10.3 Our advice is opinion only, based on the facts known to us and on our professional judgement, and is subject to any changes in the law after the date on which the advice is given. We are not liable for errors in, or omissions from, any information provided by third parties.

10.4 Our advice relates only to each particular matter in respect of which you engage us. Once that matter is at an end, we will not owe you any duty or liability in respect of any related or other matters unless you specifically engage us in respect of those related or other matters.

10.5 Unless otherwise agreed, we may communicate with you and with others by electronic means. We cannot guarantee that these communications will not be lost or affected for some reason beyond our reasonable control, and we will not be liable for any damage or loss caused thereby.

11 Insurance and Limitation on Liability

11.1 We hold professional indemnity insurance which exceeds the minimum standards set by the New Zealand Law Society (**NZLS**).

11.2 To the extent permitted by law, our aggregate liability to you (or any other person) in connection with our Services (or series of related matters) is limited to the greater of:

(a) the amount available to be paid out under the Professional Indemnity Insurance held by us from time to time; or

(b) an amount equal to five times the amount of our fees charged (excluding our service fees, disbursements and GST) up to a maximum of \$5,000,000,

(Maximum Liability).

11.3 The limitation in 11.1 applies to liability of any kind, whether in contract, tort (including negligence), equity, statute or otherwise. We will not have to pay you more than the Maximum Liability in any circumstance.

11.4 The Maximum Liability shall apply to any persons (such as a couple, partnership or any person or entity related to or associated with you) so that the Maximum Liability will be the aggregate liability to any such person or entity (and you will ensure that those persons and entities agree to this).

12 Termination

12.1 You may terminate our retainer at any time by notice in writing to us.

12.2 We may terminate our retainer in any of the circumstances set out in the Rules including (but in no way limited to) the existence of a conflict of interest, non-payment of fees, and failure to provide instructions.

12.3 If our retainer is terminated for any reason, you must pay us all fees, disbursements and expenses incurred up to the date of termination.

13 Complaints

13.1 Client satisfaction is one of our primary objectives in providing the Services to you. If you have any concerns or complaints about our Services, please raise them as soon as possible with the person to whom they relate and that person will respond to your concerns as soon as possible.

13.2 If you are not satisfied with the way that that person has dealt with your complaint, or you would prefer to raise the matter with another person, please contact the Principal responsible for providing the Services. We will review your complaint and endeavour in good faith to resolve the matter with you in a way that is fair to all concerned.

13.3 If you are not satisfied with the way we have dealt with your complaint, NZLS has a complaints service to which you may refer the issue. You can contact the NZLS about any complaint by telephoning 0800 261 801 or by email to complaints@lawsociety.org.nz. Please also see the link [here](#) to the NZLS website for further information about how to make a complaint.

14 NZLS's client care and service information

14.1 NZLS's client care and service information is set out below. In providing the Services, we will:

- (a) act competently, in a timely way, and in accordance with instructions received and arrangements made;
- (b) protect and promote your interests and act for you free from compromising influences or loyalties;
- (c) discuss with you your objectives and how they should best be achieved;
- (d) provide you with information about the work to be done, who will do it, and the way in which the services will be provided;
- (e) charge you a fee that is fair and reasonable, and let you know how and when you will be billed;
- (f) give you clear information and advice;
- (g) protect your privacy and ensure appropriate confidentiality;
- (h) treat you fairly, respectfully, and without discrimination;
- (i) keep you informed about the work being done and advise you when it is completed; and
- (j) let you know how to make a complaint, and deal with any complaint promptly and fairly.

14.2 The obligations lawyers owe to clients are described [here](#). Those obligations are subject to other overriding duties, including duties to the courts and to the justice system.

14.3 If you have any questions, please visit www.lawsociety.org.nz or call 0800 261 801.

15 Lawyers Fidelity Fund

15.1 NZLS maintains the Lawyers' Fidelity Fund for the purpose of providing clients of lawyers with protection against loss arising from theft by lawyers. The maximum amount to an individual claimant is limited to \$100,000. Except in certain circumstances specified in

the Lawyers and Conveyancers Act 2006, the Fidelity Fund does not cover a client for any loss relating to money that a lawyer is instructed to invest on behalf of the client.

16 Legal Aid

16.1 This section 16 applies to legally aided clients only.

16.2 Legal aid is governed by the Legal Services Act 2011 and the associated regulations. Legal Aid is administered through the Ministry of Justice.

16.3 We will submit invoices in relation to your grant of aid to the Ministry of Justice/Legal Services Commissioner and provide you with copies. The Ministry of Justice/Legal Services Commissioner will write to you about any conditions or repayment obligations that you may have in relation to the grant of legal aid and your rights as an applicant or recipient of legal aid. You should be aware that legal aid is not always free and in some cases must be repaid. You should read these letters carefully and keep them for later reference.

16.4 You must let the Ministry of Justice/Legal Services Commissioner know if there is any change in your and/or your partner's contact details, employment status, family circumstances or financial details.