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## **TERMS OF ENGAGEMENT – Effective from 1 April 2017**

### **INTRODUCTION**

The purpose of these Terms of Engagement is to set out our professional relationship with you in accepting and actioning your instructions.

### **AGREEMENT**

1. These standard terms will apply whenever you engage Nielsen Law to act for you, subject to any different or additional terms agreed in writing. You accept and agree to these standard terms by continuing to engage us.
2. It is expressly acknowledged that in accepting these terms, you agree that these terms shall apply to all related entities in which you have an interest and for whom we accept instructions, including:
  - (a) Partnerships;
  - (b) Trusts;
  - (c) Companies; and
  - (d) Related companies, as defined in s 2(3) of the Companies Act 1993.

### **SCOPE OF WORK AND OUR ROLE**

3. We will provide you with the legal services that you request or that we agree on, unless a conflict of interest or other factors prevent us from doing so. If this is the case we will contact you immediately.
4. Usually we will confirm and record our understanding of your instructions in an engagement letter. If this letter does not reflect your instructions please let us know immediately.
5. We will use due care and skill and will act in accordance with your instructions subject to any ethical and/or legal duties.
6. We provide our advice to you only. Other people or entities (including those closely associated with you) who want to rely or act on our advice can do so only if we both agree in writing.
7. When your instructions on a matter are completed, our representation will end. We will only advise you further on issues arising from the matter (for example, implementation and other dates or changes in relevant law) if you specifically engage us to do so. We will not be under any obligation to continue to provide advice.

### **CONFIDENTIALITY**

8. For us, client confidentiality is of the utmost importance. We do not disclose any confidential information obtained as a result of acting for you unless required or authorised by you, or by law or the Law Society's Rules of Conduct and Client Care for Lawyers.

### **USE OF PERSONAL INFORMATION**

9. Any information that you give us is treated as confidential information and is passed only on to staff who are actually working on your matter. We may also need to disclose this information to:

- (a) our service entities or agents; and
- (b) other organisations (including other parties in the matter) and government agencies responsible for processing transactions;

but only as needed to carry out your instructions and our professional duties (including our duties as explained in these terms) or as required by law.

10. Under the Privacy Act 1993, we must follow the information privacy principles when we collect, use and disclose information about you ("personal information").
11. We may collect personal information from your instructions and while acting for you. This will include personal information about people who are employees, directors or principals of yours. We ask you to help us to make sure that these people are aware that our acting for you may involve collection of personal information about them.
12. If we do not collect this personal information, we may not be able to carry out your instructions. In most cases, anyone can request access to personal information we hold about them.
13. We may also use contact details and other information (for example, subjects you are interested in) to keep you informed about developments in relevant areas of law, other legal services or seminars we offer. If you do not want your personal information used for this purpose, please let us know.
14. You agree, in accepting these terms, that we are authorised to perform credit checks to confirm your credit worthiness, either directly or through our authorised agents. We may also perform further credit checks in the event that our fees are unpaid as required under clauses 27 and 28.

#### **DUTY OF DISCLOSURE**

15. We have no duty to disclose information to you which is not actually known by those working on your matter, even though that information may be known to other staff, and may be relevant to you.

#### **CALCULATION OF FEES**

16. At Nielsen Law, legal fees are calculated in accordance with the principles of charging established by the New Zealand Law Society. In setting our fees we take into account the following factors:
  - (a) the time and labour expended;
  - (b) the skill, specialised knowledge, and responsibility required to perform the services properly;
  - (c) the importance of the matter to you and the results achieved;
  - (d) the urgency and circumstances in which your matter is undertaken and any time limitations imposed including those imposed by the client;
  - (e) the degree of risk assumed by the lawyer in undertaking the services, including the amount or value of any property involved;
  - (f) the complexity of the matter and the difficulty or novelty of the questions involved;
  - (g) the experience, reputation and ability of the lawyer;
  - (h) the possibility that the acceptance of the particular retainer will preclude engagement of the lawyer by other clients;
  - (i) whether the fee is fixed or conditional (whether in litigation or otherwise);
  - (j) any quote or estimate of fees given by the lawyer;
  - (k) any fee agreement (including a conditional fee agreement) entered into between the lawyer and the client;
  - (l) the reasonable costs of running a practice; and

(m) the fee customarily charged in the market and locality for similar legal services.

17. Where we charge based on time and attendances, the appropriate hourly rates of our team are as follows:
- |     |                              |                     |
|-----|------------------------------|---------------------|
| (a) | Partner                      | \$350.00 - \$425.00 |
| (b) | Associate                    | \$340.00 - \$400.00 |
| (c) | Senior Staff Solicitor       | \$290.00 - \$330.00 |
| (d) | Intermediate Staff Solicitor | \$270.00 - \$300.00 |
| (e) | Junior Staff Solicitor       | \$180.00 - \$250.00 |
| (f) | Law Clerk                    | \$150.00 - \$180.00 |
| (g) | Administrative staff         | \$70.00 - \$100.00  |
18. We reserve the right to amend these rates from time to time without reference to you.
19. If appropriate, we will give you an estimate of what we expect the fees will be for your matter. This will be a guide only and is not a fixed quote. If there is a need to revise the estimate, we will advise you of the factors giving rise to the revision.
20. If the engagement letter specifies a fixed fee, we will charge this for the agreed scope of our services. Work which falls outside that scope will be charged on an hourly rate basis. We will advise you as soon as reasonable practicable if it becomes necessary for us to provide services outside the agreed scope and if requested, give you an estimate of the likely amount of further costs.
21. We will also, at your request, tell you the amount of fees incurred to date, or we can let you know when fees reach a certain level.
22. For a variety of reasons, some instructions are not completed. If this occurs, we will charge you for the work undertaken and costs incurred up to the time of termination.
23. In some instances, we may be required to incur additional time or expense following the termination or completion of a matter. We will charge you for this in the normal way.

#### **DISBURSEMENTS**

24. Our charges include disbursements incurred on your behalf.
25. We apply a standard charge on all invoices for our general office expenses, including office administration, printing, photocopying, facsimile, phone charges, storage costs (for up to 7 to 10 years), license fees and courier costs. This charge will be calculated as follows:
- |     |                                   |          |
|-----|-----------------------------------|----------|
| (a) | Fee under \$100.00                | \$35.00  |
| (b) | Fee for \$100.00 to \$300.00      | \$45.00  |
| (c) | Fee for \$400.00 to \$1,000.00    | \$70.00  |
| (d) | Fee for \$1,000.00 to \$3,000.00  | \$100.00 |
| (e) | Fee for \$3,000.00 to \$10,000.00 | \$140.00 |
| (f) | Fee for \$10,000.00 and above     | \$250.00 |
26. Additional disbursements include out-of-pocket expenses such as travel and accommodation costs, registration and filing costs, court charges, extensive photocopying (that is, 100 pages or more), deliveries, routine on-line searches, enquiries and matters of a similar nature. These expenses will be passed on to you at cost.

27. Disbursements also include payments made on your behalf such as fees of agents, experts, outside counsel and other professionals. Where you have instructed us to engage such third parties then you will, upon demand, pay to us the fees billed to us by that third party.
28. You will also be charged GST at the current rate as required by law unless you are zero-rated or exempt for the purposes of GST.

## **BILLING AND ACCOUNTS**

29. We will issue regular bills of costs (usually monthly, on completion of the matter or on termination of our engagement) unless otherwise agreed. Payment is due 14 days from the date of the invoice. Unpaid accounts may incur penalty interest at our banker's unauthorised overdraft rate plus 5% per annum.
30. If your account remains unpaid and there is no satisfactory explanation for non-payment we:
  - (a) will not release your papers and files until all accounts are paid;
  - (b) will charge interest on any unpaid amount, at the rate charged by our bankers on unauthorised overdraft rate plus 5% per annum;
  - (c) may refer the unpaid account to a debt collection or credit listing agency;
  - (d) may start proceedings to recover the amount owed, plus interest, and any collection costs incurred; and
  - (e) may do no further work for you.
31. Even if you expect another party to reimburse you for our fees and/or charges, we have no recourse to any person other than you, and so look to you for payment, even if reimbursement is delayed or you fail to get reimbursed.
32. We shall be entitled to deduct fees and disbursements owing to us from monies held in our trust account on your behalf on provision of an invoice.
33. We may ask you for a payment in advance for disbursements payable to third parties on your behalf and/or as security for professional fees.
34. This money will be held in our trust account on your behalf and will be used to pay:
  - (a) any charges as they are due; and
  - (b) ourselves, immediately after sending you our account.
35. We will provide you with a statement showing you how this money has been spent.
36. If we hold significant funds on your behalf, we will place the funds on interest bearing deposit. The interest received as a consequence will be payable to you, unless otherwise discussed. An administration fee of 6% of the interest will be charged to meet our costs in this respect, with a minimum fee of \$25 applying. The maximum fee shall be no more than \$500.
37. Please contact us immediately if you have any concerns about our account.

## **CONFLICTS**

38. We have procedures in place to deal with issues that arise if the interests of two or more clients conflict.
39. We may accept instructions from other clients or potential clients working in the same or competing markets and whose commercial interests conflict with your own, where you have agreed, or as long as those instructions:
  - (a) are not substantially related to any active matter on which we are acting for you; and

- (b) do not involve us using confidential information we have obtained from you.
40. It is possible that a legal conflict of interest may arise in a matter on which you have instructed us. If this happens, we will contact you as soon as possible. As a result, we may be required to refer you to another law firm.
  41. If we stop acting for you or have not been instructed by you on a matter, we may act for other clients whose interests are contrary to your own, as long as we:
    - (a) do not hold confidential information belonging to you that is relevant to the matter; or
    - (b) have taken steps to keep your information confidential.

#### **LITIGATION, EXPERTS AND SPECIALIST MATTERS**

42. For litigation and matters requiring specialist advice, we will retain the services of experts and/or outside counsel to act on your behalf where appropriate.
43. We reserve the right to charge a service fee of not less than 12.5%, calculated as a percentage of counsel and/or the expert's fee, where we instruct such a party on your behalf.
44. Payment of the costs of counsel and experts shall be in accordance with clauses 25, 27 and 29-35 above.

#### **E-MAIL**

45. We use e-mail for timely and efficient correspondence with our clients and other parties. If you prefer us not to, please let us know so that other arrangements can be made.
46. As e-mails are not always secure, or may have defects (such as viruses), we do not accept responsibility and will not be liable for any damage or loss caused by an e-mail that is intercepted, or has a virus or other defect.
47. If you have any concerns regarding the authenticity of any communication or document purportedly sent by us, please contact us immediately.

#### **USE OF EXTERNAL INFORMATION AND PUBLIC RECORDS**

48. We often have to obtain and rely on external information or public records (for example, government agencies or registers) to carry out your instructions. This information may not always be accurate or complete.
49. We do not accept responsibility and will not be liable for any direct or indirect damage or loss caused by errors or omissions in external information.

#### **TERMINATION**

50. You may end our engagement by giving us reasonable written notice at any time. You must pay our fees for work done and for other charges incurred up to the time of termination.
51. We may end our engagement, at any time before the completion of your matter, by giving you reasonable notice. We may also end our engagement if our fees and charges are not paid when due.
52. If we become unable to act for you, all outstanding fees and other charges (up to the time of termination) will be billed to you. When you pay your account you have a right to uplift your file. Until your account is paid we have a right to keep any of your property in our possession (this is called a solicitor's lien).
53. The enforceability of this agreement is not affected by termination of our engagement.

**FILES AND DOCUMENTS**

- 54. At the end of your matter we will keep your file and documents for the minimum period stipulated by any relevant legislation. At the end of this period we may destroy your file and documents. All files and documents will be destroyed in a confidential manner.
- 55. If you do not want this to occur, you must contact us to arrange to uplift your files and documents.

**LAW AND JURISDICTION**

- 56. These terms and any other agreement we have with you are:
  - (a) governed by New Zealand law;
  - (b) subject to the exclusive jurisdiction of the New Zealand courts; and
  - (c) binding on you and your executors, administrators and successors.
- 57. You may not assign or transfer any rights or obligations under these terms or any other agreement that we have with you.

**AUTHORITY**

- 58. Where our instructions are to act on behalf of a company or other similar legal entity, you confirm that you have the authority to issue the instructions on behalf of the company or other entity and that the company or other entity will be bound by these terms of engagement.

**GUARANTEE**

- 59. It is acknowledged that where the client is a company or other separate legal entity, we require the client's obligations to be guaranteed by a natural person.
- 60. Where the name of a guarantor is completed in the Schedule to this agreement, then that person guarantees full payment of the client's fees and disbursements in terms of this agreement.
- 61. It is acknowledged that clause 15 of these terms applies to any guarantor of the obligations imposed by these terms.

**ACCEPTANCE OF TERMS OF ENGAGEMENT**

- 62. By instructing us to provide you with legal services you are deemed to have accepted these terms of engagement.
- 63. Confirmation of acceptance is acknowledged below.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

## SCHEDULE ONE – CLIENT DETAILS

Name:

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Physical Address:

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Postal Address:

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Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_

Mobile: \_\_\_\_\_ Email: \_\_\_\_\_

IRD No: \_\_\_\_\_ \*

Registered for GST: Yes/No

Additional Information:

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\*Where we hold funds on your behalf, resident withholding tax will be incurred on any interest earned.  
Providing your IRD No. will ensure that the RWT is taxed at the correct rate.

## SCHEDULE TWO – GUARANTOR DETAILS

Name:

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Physical Address:

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Postal Address:

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Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_

Mobile: \_\_\_\_\_ Email: \_\_\_\_\_

**SIGNED** by the guarantor(s):

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*Signature*

In the presence of:

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*Name*

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*Occupation*

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*Address*





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## **CLIENT CARE INFORMATION – Effective from 1 April 2017**

Set out below is the information required by the *Rules of Conduct and Client Care for Lawyers of the New Zealand Law Society* ("Law Society").

1. **Fees:**

The basis on which fees will be charged and when payment of fees is to be made is set out in our Standard Terms of Engagement.

We may deduct from any funds held on your behalf in our trust account any fees, expenses or disbursements for which we have provided an invoice.

2. **Professional Indemnity Insurance:**

Our professional indemnity insurance is \$2,000,000.00, cover for any one claim, with one automatic re-instatement of \$2,000,000.00. The excess is below 2% of the indemnity limit.

3. **Lawyers Fidelity Fund:**

The Law Society maintains the Lawyers Fidelity Fund for the purpose of providing clients of lawyers with protection against pecuniary loss arising from theft by lawyers. The maximum amount payable by the Fidelity Fund by way of compensation to an individual claimant is limited to \$100,000. Except in certain circumstances specified in the Lawyers & Conveyances 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.

4. **Complaints:**

We maintain a procedure for handling any complaints by clients, designed to ensure that the complaint is dealt with promptly and fairly.

If you have a complaint about our services or charges, you may refer your complaint to the person in our firm who has overall responsibility for your work.

If you do not wish to refer your complaint to that person, or you are not satisfied with the person's response to your complaint, you may refer your complaint to Mr David Nielsen.

**He may be contacted as follows:**

- (a) by letter at PO Box 1108, Hamilton 3240;
- (b) by email at [david@nielsenlaw.co.nz](mailto:david@nielsenlaw.co.nz);
- (c) by telephone at (07) 838 9949;

(d) by facsimile at (07) 838 1661.

The Law Society also maintains a complaints service and you are able to make a complaint to the service. To do so you should contact the Waikato Bay of Plenty branch of the Law Society.

**The Executive Officer of the Society may be contacted as follows:**

(e) by letter at PO Box 180, Hamilton 3240;

(f) by email at *wbopdls@clear.net.nz*;

(g) by telephone at (07) 838 0264;

(h) by facsimile at (07) 834 2537.

**5. Persons Responsible for the Work:**

The names and status of the person or persons who will have the general carriage of or overall responsibility for the services we provide for you are set out in our letter of engagement.

**6. Client Care and Service:**

The Law Society client care and service information is set out below.

Whatever legal services your lawyer is providing, he or she must:

- (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 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.

The obligations lawyers owe to clients are described in the *Rules of Conduct and Client Care for Lawyers*. Those obligations are subject to other overriding duties, including duties to the courts and to the justice system.