

## **TERMS OF ENGAGEMENT AND INFORMATION FOR CLIENTS**

This document identifies the standard terms on which we do work for our clients (“Terms”) and includes information we are required to tell you under the New Zealand Law Society’s Rules of Conduct and Client Care for Lawyers (“Client Care and Service Information”).

### **1 General**

- 1.1 These Terms apply to any current engagement and also to any future engagement, whether or not we provide you with another copy of them (unless we agree in writing to any changes to these terms). We are entitled to change these Terms from time to time, in which case we will notify you that we have amended our Terms. Our relationship with you is governed by New Zealand law and New Zealand courts have exclusive jurisdiction.

### **2 Services**

- 2.1 The services we are to provide for you (the Services) are outlined in our letter of engagement along with any further instructions that you provide to us in writing (or that we record in writing).
- 2.2 For each new job we do for you we will give you a letter of engagement outlining what we will do for you on that job and the solicitor with overall responsibility for that job.
- 2.3 In order to provide you with efficient advice and services and to provide the most cost-effective service, it may be that part or all of your instructions will be delegated to other professionals in our firm.

### **3 Communications**

- 3.1 We will obtain from you contact details, including email address, postal address and telephone numbers. We may provide documents and other communications to you by email (or other electronic means). You will advise us if any of your contact details change.
- 3.2 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.
- 3.3 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. At any time you may request that this not be sent to you.
- 3.4 Although we have virus protection software and security protocols in place, electronic communications can contain viruses or other defects or be subject to interception or interference (“corruption”). We do not accept responsibility for, and will not be liable for any damage or loss caused in connection with, or as a result of, the corruption of an electronic communication.
- 3.5 You agree to immediately notify us of any unauthorised use of your email address or other verification information, or any other breach of security.

### **4 Who We Will Accept Instructions From**

- 4.1 Unless you let us know otherwise:

- a if you are a couple, we can accept instructions from either of you;
  - b if you are a trust, we can accept instructions from any of your trustees or officers;
  - c if you are a partnership, we can accept instructions from any of your partners or officers;
  - d if you are a company, we can accept instructions from any of your directors or employees or any other person you have authorised to instruct us; and
  - e if you are a body corporate or incorporated society, we can accept instructions from any person holding themselves out as being authorised by the officers to instruct us.
- 4.2 We can, at our discretion, accept instructions by post, telephone, text message, email, or any other means from you.
- 4.3 We are not required to ask about or confirm any instructions, including payment instructions with you, but we may choose to do so.

## 5 Confidentiality and Personal Information

- 5.1 **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 (e.g. Inland Revenue, the Financial Markets Authority, and other government agencies who have the power to compel us to provide information we have about you); or
  - e the Rules of Client Conduct and Care for Lawyers permit us to; or
  - f required to be provided to our Trust Account Auditors and/or Professional Indemnity Insurance Underwriters.
- 5.2 Confidential information concerning you will as far as practicable be made available only to those within our firm who are providing legal services for you.
- 5.3 **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 make contact with 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.
- 5.4 Subject to clause 5.1, 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.
- 5.5 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.
- 5.6 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 our Practice Manager.
- 5.7 **FATCA/CRS:** If we hold funds in our trust account on your behalf (including any judgment, sale proceeds, settlement amount, or any other money), you authorise us to:
- (i) Provide any information we hold relating to your United States Foreign Accounts Tax Compliance Act (FATCA) or Common Reporting Standards (CRS) status, or other FATCA or CRS matters to Inland Revenue and to our banks if they request information to be able to meet their FATCA or CRS obligations; and

- (ii) If you do not provide such information we request, report your non-response, identity and reportable balance to our banks and Inland Revenue (who will in turn pass this information to the relevant foreign tax authority).

Please ask us if you would like more information about FATCA or CRS.

## 6 Financial

### 6.1 Hourly Rates:

Our hourly rates as follows:

| Name              | Status          | Hourly Rate (GST excl.) |
|-------------------|-----------------|-------------------------|
| Paul Adams        | Consultant      | \$390.00                |
| Debbie Bryan-Lamb | Partner         | \$380.00                |
| Karen Poff        | Partner         | \$380.00                |
| Sandy Gilmete     | Partner         | \$380.00                |
| Andrew Ward       | Partner         | \$380.00                |
| Jonathon Amtmann  | Associate       | \$280.00                |
| Teena Malik       | Staff Solicitor | \$140.00                |
| Nicola McLeish    | Legal Executive | \$220.00                |
| Heather Davidson  | Law Clerk       | \$220.00                |
| Julie Munro       | Law Clerk       | \$160.00                |
| Bjarnee Dunn      | Legal Executive | \$220.00                |
| Olivia Dean       | Law Clerk       | \$160.00                |

6.2 **Fees:** Our fees will be fair and reasonable for the work involved, and will be based on the following factors, as are permitted by the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (Rules):

- a the time and labour involved;
- b the skill, specialised knowledge, and responsibility required;
- c the importance of the matter to the client and the results achieved;
- d the urgency and the circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by you;
- e the degree of risk assumed by the lawyer in undertaking the services, including the value or amount of any property involved;
- f the complexity of the matter and the difficulty or novelty of the questions involved;
- g the reasonable costs of running a practise;
- h the experience, reputation and ability of the lawyer;
- i the possibility that the acceptance of the particular retainer will preclude engagement of us by other clients;
- j whether the fee is fixed or conditional;
- k any quote or estimate of fees we have given you;
- l any fee agreement (including a conditional fee agreement) entered into between you and us;
- m the fee customarily charged in the market and locality for similar legal service.

6.3 If the 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 in accordance with the required fee factors. 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.

6.4 Where our fees will be calculated on an hourly basis, the hourly rates of the people we expect to undertake the work are available on request. 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.

- 6.5 **Disbursements and Third-Party Expenses:** 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, forms and travel and courier charges) 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). We may require you to pay us the amount of any disbursements or third-party expenses that we will incur before we make the payment on your behalf. Any disbursements or third-party expenses incurred 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). Any amount that you have already paid to us for those disbursements or third-party expenses will show as a credit on our statement.
- 6.6 **Office Service Charge Fee (Administrative expenses):** In addition to disbursements, we may charge a GST inclusive fee of up to 6% of our fee to cover 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, storage, stationery, postage (excluding courier fees which are charged as a disbursement) and telephone and text message costs.
- 6.7 **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. Unless we state otherwise our fees, estimates and hourly rates do not include GST or office expenses and disbursements, which are payable by you.
- 6.8 **Invoices:** We may 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.
- 6.9 **When our invoices are due:** Payment of our invoices is due by the 20<sup>th</sup> day of the month following the date of our invoice unless alternative arrangements have been made with us. If you will have difficulty in paying any of our accounts, please contact us as soon as you receive our account so that we can discuss this with you. On occasion if agreement is reached in advance we may consider payment arrangements that are acceptable to you and us.
- 6.10 **Payment of our invoices by deduction and overdue accounts:**
- 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 your account, or any part of it, is overdue we may:
    - i require interest to be paid on any amount which is overdue, calculated monthly on the outstanding balance of the debt until payment is made in full. Interest will be charged at 18% per annum or at such lower rate as we may agree on. The minimum monthly charge will be \$5.00;
    - ii stop work on any matters in respect of which we are providing services to you until our account is paid in full;
    - iii require an additional payment of fees in advance or other security before recommencing work;
    - iv refer your account to a debt collection agency for recovery;
    - v refer your outstanding account to a Credit Control Agency; and

- vi 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.
  - c. If you are paying your account through payment arrangements that have been agreed to by us and you fail to make an agreed payment, we reserve the right to immediately require payment of all costs owing to us in addition to the actions identified in Clause 6.10 b.
- 6.11 **Payment methods:** We prefer payment by electronic banking direct to our trust account number 03 0931 0251780 01. We will provide you with a client reference number so that your payment is credited straight to your account with us. We **do not** have eftpos or credit card facilities. We reserve the right to refuse payments made by cash and to require you to deposit these funds into our bank account yourself.
- 6.12 **Security or 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.
- 6.13 **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.
- 6.14 **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.
- 6.15 **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 7.5% of the interest, will be credited to you. If we have your IRD number you can elect to have withholding tax deducted at your applicable rate. If we do not have your IRD number we are required to deduct it at the default rate (which may be higher than your actual rate).
  - d You acknowledge that we cannot place your funds in an interest-bearing deposit if you have not provided us with any information we request relating to your FATCA and CRS

status. We are not responsible for obtaining the best interest rate available or for any loss of interest you suffer as a result of our failure or delay in placing your funds in an interest-bearing deposit.

## **7 Payment Instructions from You**

- 7.1 When you give us payment instructions you agree that we do not have a duty to verify the recipient's details including their bank account (and any other information) provided. You also agree that we are entitled to rely on, and may act on, any payment instruction which has been or reasonably appears to have been sent by you and you warrant that the recipient's details that you have provided to us are accurate and complete in all respects.
- 7.2 We can decline to act on payment instructions from you where we consider that we have a good reason to do so (for example, where acting on such instructions might result in a breach of the law, the instructions are unclear or contradictory, or we suspect the instructions are unauthorised, forged or fraudulent).
- 7.3 We will only pay funds to an overseas bank account if the recipient does not have a New Zealand bank account.

## **8 Verification of identity, source of funds and credit checks**

- 8.1 We are required by law to verify your identity and, in some circumstances, the source of funds for a transaction.
- 8.2 We may carry out reasonable credit checks on you from time to time. You authorise us to collect information about you (including customer due diligence information and credit reports), to obtain, exchange, hold and use such information, and to make any other enquiries we think appropriate to:
  - a confirm information provided to us about you is true;
  - b undertake initial and on-going customer due diligence and monitoring in accordance with the Anti-Money Laundering and Countering Financing of Terrorism Act (AML/CFT);
  - c enforce debt and legal obligations (including recovery of money owed to us); and
  - d comply with other legal obligations we may have,
- 8.3 You authorise any person (including credit reporters) to disclose information (including credit information) to us in response to such enquiries.
- 8.4 You accept that we may use customer due diligence services (including electronic based services from a third party) to verify your identity and conduct other customer due diligence or monitoring required under AML/CFT, and that we may use credit reporting services to credit check you, and that when we use such services:
  - a the other third party or credit reporter (each a Service Provider) will exchange information about you for that purpose and the Service Provider may hold information on its system and use it to provide their customer due diligence service or credit reporting service (as the case may be) to their other customers;
  - b we may use the Service Provider's services in the future for any authorised purpose (including in relation to ongoing customer due diligence or the provision of credit). This may include using the Service Provider's monitoring services to receive updates if information held about you changes; and
  - c if you default in your payment obligations to us, information about that default may be given to credit reporters and given by credit reporters to their other customers.

## **9 Documents, Records and Information**

- 9.1 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.
- 9.2 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 1993 or any other law. We may charge you our reasonable costs for doing this.
- 9.3 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.
- 9.4 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 7 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.
- 9.5 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.
- 9.6 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.

## **10 Conflicts of Interest**

- 10.1 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 Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (Rules). This may result in a situation arising where we have a conflict of interest.
- 10.2 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.

## **11 Duty of Care**

- 11.1 Our duty of care is to you and not to any other person. We owe no liability to any other person, including for example any directors, shareholders, associated companies, employees or family members 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.
- 11.2 Our advice is not to be referred to in connection with any prospectus, financial statement, or public document without our written consent.
- 11.3 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.

11.4 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.

11.5 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.

## **12 Limitations on our Obligations or Liability**

12.1 To the extent allowed by law, our aggregate liability to you (whether in contract, tort, equity or otherwise) in connection with our Services is limited to the amount available to be payable under the Professional Indemnity Insurance held by the firm.

## **13 Termination**

13.1 You may terminate our retainer at any time by giving us reasonable notice.

13.2 We may terminate our retainer in any of the circumstances set out in the Rules including the existence of a conflict of interest, non-payment of fees, failure to provide instructions, you give us instructions that require us to breach any professional obligation or mislead or deceive us in a material respect.

13.3 If our retainer is terminated you must pay us all fees, disbursements and expenses incurred up to the date of termination. Before you take your records, you need to pay our fees for the work we have done for you. We may keep a copy of any records you take.

## **14 Enforceability of These Terms**

14.1 The enforceability of these terms is not affected by:

- a the ending of our engagement; or
- b any changes to our partners or the incorporation of our firm.

## **15 Professional Indemnity Insurance**

15.1 We hold professional indemnity insurance that meets or exceeds the minimum standards specified by the New Zealand Law Society. We will provide you with details of the minimum standards upon request.

## **16 Lawyers Fidelity Fund**

16.1 The New Zealand Law Society maintains the Lawyers Fidelity Fund for the purposes 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 \$100,000.00. It does not cover loss where you have instructed us to invest money on your behalf (subject to limited exceptions set out in the Lawyers and Conveyancers Act).

## **17 Feedback and Complaints**

17.1 Client satisfaction is one of our primary objectives and feedback from clients is helpful to us. If you would like to comment on any aspect of the service provided by us, including how we can improve our service, please contact the Partner responsible for your business or our Practice Manager, Nicola McLeish.



- 17.2 If you have any concerns or complaints about our services, please raise them as soon as possible with the person to whom they relate. They will respond to your concerns as soon as possible. If you are not satisfied with the way that that person has dealt with your complaint, please raise the matter with the Partner responsible for your business or with our Practice Manager, Nicola McLeish. We will inquire into your complaint and endeavour in good faith to resolve the matter with you in a way that is fair to all concerned. Nicola may be contacted as follows:
- a by email to [nicola@wardadams.nz](mailto:nicola@wardadams.nz);
  - b by letter; or
  - c by telephoning Nicola on (03) 218 2833.
- 17.3 If you are not satisfied with the way we have dealt with your complaint the New Zealand Law Society has a complaints service to which you may refer the issue. You can call 0800 261 801 number for guidance, lodge a concern or make a formal complaint.

## **18 Client Care and Service Information**

- 18.1 The following statement describes some of our professional obligations to you:  
Whatever legal services your lawyer is providing, he or she must:
- Act competently, in a timely way, and in accordance with instructions received and arrangements made;
  - Protect and promote your interests and act for you free from comprising influences or loyalties;
  - Discuss with you your objectives and how they should best be achieved;
  - Provide you with information about the work to be done, who will do it and the way the services will be provided;
  - Charge you a fee that is fair and reasonable and let you know how and when you will be billed;
  - Protect your privacy and ensure appropriate confidentiality;
  - Treat you fairly, respectfully and without discrimination;
  - Keep you informed about the work being done and advise you when it is completed; and
  - Let you know how to make a complaint, and deal with any complaint promptly and fairly.
- 18.2 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.  
If you have any questions please visit [www.lawsociety.org.nz](http://www.lawsociety.org.nz) or call 0800 261 801.

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