

## TERMS OF ENGAGEMENT

### 1 Background

1.1 These Terms of Engagement will govern our relationship with you, subject always to any express written agreement to the contrary.

### 2 Services

2.1 We will be responsible for providing legal advice to you. We do not provide taxation or financial advice, though we may arrange third party experts to do so if requested.

2.2 At the outset of a matter we will inform you of the names and status of the people in our firm who will have the general carriage of or overall responsibility for the services we provide.

2.3 Any advice given by us may not be relied on by any other person unless we agree to that in writing.

2.4 Our name and advice may not be used in connection with any public document without our written consent.

2.5 When our instructions on a matter are completed our representation of you will end. We will not be obliged to:

- (a) notify you of any subsequent change of law; or
- (b) provide any further services related to that matter.

### 3 Confidential Information

3.1 We will not disclose to any other person any confidential information which we obtain as your lawyers except to the extent authorised by you or required by law or the New Zealand Law Society Rules of Conduct and Client Care for Lawyers (**NZLS Rules**). The NZLS Rules can be found on line at [www.lawsociety.org.nz](http://www.lawsociety.org.nz).

### 4 Conflicts

4.1 We will comply with the NZLS Rules in respect of conflicts of interest.

4.2 Please inform us as soon as possible in the event you believe that we have a conflict of interest or that a conflict of interest may arise.

4.3 Unless a disqualifying conflict of interest exists, our acting for you will not restrict us from acting for another client in relation to any separate matter, even if that other client's interests may be adverse to yours.

### 5 Fees and Disbursements

5.1 Generally our fees are based on the time taken to complete the work and any other relevant factors specified by the New Zealand Law Society. Apart from time, other factors which may be taken into account in setting our fee include:

- The urgency with which the matter is required to be completed;
- The degree of specialised knowledge required;
- The degree of risk assumed by us in undertaking the services including the value of any property involved; and
- The complexity of the matter.

5.2 Our firm's schedule of hourly rates for solicitors and other members of professional staff are based on levels of experience, specialisation and professional attainment.

5.3 A charge for office expenses and administration costs may be levied at a rate of no more than 2.5% of our fee. The charge is for photocopying, postage, telephone calls and other office expenses.

5.4 The time spent by us on your behalf for which you will be charged will include:

- Personal and telephone attendances upon you;
- Correspondence with you;
- Considering the law and facts of your matter;
- Reading and considering incoming letters, emails, papers and documents;
- Preparing papers;
- Correspondence with solicitors and third parties;
- Instructing enquiry agents and experts;
- Attendances on your behalf;
- Time spent on travelling.

### 6 Accounts

6.1 In any matters of an ongoing nature we will send you monthly accounts.

6.2 Our accounts are due for payment 14 days after the date of the account unless prior arrangements are made with us in writing.

6.3 You authorise us to deduct our fees, expenses or disbursements from any funds held in our trust account on your behalf where we have provided an invoice.

6.4 If your accounts remain outstanding after 30 days, we may choose to suspend work until appropriate arrangements are made to bring the account back into good standing.

6.5 We may at our option charge interest on overdue accounts at the rate of 15% per annum from the date the account fell due for payment until it is paid in full.

6.6 In providing services, we may incur disbursements or have to make payments to third parties on your behalf. These would be included in our invoice to you when the expense is incurred. We may require an advance payment for the disbursements or expenses which will be incurring on your behalf.

6.7 Goods and services tax is payable by you on our fees and charges.

6.8 Keegan Alexander does not generally accept payments in cash and prefers all payments to be made electronically. Prior arrangements must be made for cash deposits.

### 7 Settlement Monies

For property and financing transactions where payment of monies is due by you, we require clear funds for the correct amount to be deposited with us before banking closes on day before the settlement.

### 8 Retention of Files and Documents

8.1 You authorise us (without further reference to you) to destroy all physical files and documents held for you, seven years after our engagement ends, or earlier if we have converted those files and documents to an electronic format. Electronic records may be deleted seven years after our engagement ends.

**9 Limit of Liability and Period for Bringing any Claim**

9.1 To the maximum extent permitted by law our maximum aggregate liability for any loss or damage suffered by you, whether arising in contract, negligence, equity, or otherwise, is limited to the lesser of (i) \$1,000,000 or (ii) five times the maximum aggregate total of our fees (excluding barrister's fees and other disbursements) charged and paid over any 12 month period of our retainer on the relevant matter.

9.2 You may not bring any claim against us, including any claim for contribution or indemnity, regardless of its basis in law or its form, more than 12 months after the date of the act or the omission upon which the claim is based.

9.3 The "late knowledge" provisions in the Limitation Act 2010 do not apply.

9.4 This clause 9 is for the benefit of any staff member or barrister engaged, retained or instructed by us to assist you with your matter and will apply to them with such modifications as are required to confer on them the maximum benefit of this clause permitted by law. In applying clause 9.1 to any claim against a barrister, the reference to fees in clause 9.1 shall be read as being a reference to that barrister's fee.

**10 Credit Checking and Reporting**

10.1 We may wish to obtain a credit report on you to assist us in making a decision as to whether we extend you credit. You agree that we may obtain a credit check and that we may use your personal information for that purpose.

10.2 You acknowledge that:

- (a) The credit reporting agency will hold information received from us on their systems and use it to provide their credit reporting service.
- (b) The credit reporting agency may give the information to other customers.
- (c) If you default in your payment obligations to us, information about that default may be given to the credit reporting agency and the credit reporting agency may give information about your default to other customers.

**11 Trust Account**

11.1 Our firm maintains separate trust accounts for all funds which it receives from or holds on behalf of clients.

11.2 Significant funds held for you may be placed on interest earning deposit with a registered bank and we may charge an administration fee of 6% of the net interest earned. If we deposit funds on your behalf, we will need either your IRD number or a copy of your interest withholding tax exemption certificate. It is your responsibility to provide us with these details.

11.3 We may deduct from funds held on your behalf in our trust account any fees (including the administration fee referred to at clause 11.2), costs or disbursements for which we have provided an invoice and any RWT or NRWT levied on deposits. RWT and NRWT which is deducted is paid to the Inland Revenue Department.

**12 FATCA and CRS**

12.1 Under the United States Foreign Account Tax Compliance Act (FATCA) and the OECD Common Reporting Standard (CRS) Keegan Alexander is required to collect and supply certain information to banks which operate its trust accounts. When opening a file for you Keegan Alexander will request that you provide certain certifications and consents to enable Keegan Alexander to comply with its FATCA and CRS obligations. In the event that you do not

provide such certifications, Keegan Alexander may not be in a position to undertake trust account transactions for you and, in particular, will not be able to hold moneys on interest-bearing deposit.

12.2 Certifications and consents provided may be provided by us to our bank and any other party entitled to it under the treaties applicable to FATCA and CRS.

**13 AML/CFT Compliance**

13.1 Under the Anti-Money and Countering Financing of Terrorism Act 2009 Keegan Alexander is or will be obliged to undertake due diligence in relation to you and your identity and, in some circumstances, the source of your funds and the reasons for any transaction you are undertaking. You must if requested provide full disclosure in relation to such matters.

13.2 When opening a file for you the following information is likely to be requested:

- (i) In the case of an individual, a passport or driver's license and proof of current address;
- (ii) In the case of a company, certified copy of a certificate of incorporation and any other constitutional documents;
- (iii) In the case of a trust, certified copy of the trust deed;
- (iv) In the case of any other entity certified copy of its relevant constitutional documents; and
- (v) In the case of any entity or person who controls a company, trust or other entity, the same information referred to above.

13.3 Copies of the foregoing information will be retained with your files and may be disclosed to the Department of Internal Affairs and the other party charged with the administration of the AML/CFT legislation.

**14 Termination**

14.1 You may terminate this agreement at any time.

14.2 We may terminate this agreement in the circumstances permitted by the NZLS Rules.

14.3 You must pay us for the services we have provided, and all expenses we have incurred, up to the date of termination.

14.4 If this agreement is terminated, we may retain copies of documents or records which we deliver to you or to another lawyer. If we do this, we will pay the cost of producing copies.

**15 Intellectual Property**

15.1 We retain all ownership rights in all intellectual property of any kind created by us for you. You may not reproduce our intellectual property or provide it to a third party without our express consent.

**16 Electronic Communications**

16.1 We may communicate with you and others at times by electronic means. These communications can be subject to interference or interception or contain viruses or other defects. We do not accept responsibility for, and will not be liable for any damage or loss caused in connection with, or as a consequence of, the corruption of an electronic communication.

**17 Governing Law**

17.1 New Zealand law governs our relationship and New Zealand Courts have exclusive jurisdiction, to which we both submit.