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TERMS OF ENGAGEMENT – Effective from 5 November 2021

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. In order to provide efficiency, specialist advice and service, our firm is divided into various divisions. It may be that instruction will be delegated to a solicitor or professional other than the solicitor originally instructed.
7. 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.
8. 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

9. 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

10. 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.
11. Under the Privacy Act 1993, we must follow the information privacy principles when we collect, use and disclose information about you ("personal information").
12. 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.
13. 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.
14. 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.
15. 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 30 and 31.

DUTY OF DISCLOSURE

16. 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

17. 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.

18. 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

19. We reserve the right to amend these rates from time to time without reference to you.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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

25. In providing our services to you, we may incur disbursements and payments to third parties on your behalf. You authorise us to incur these disbursements which are reasonably necessary to provide our 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 expert 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).

26. 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)	A fixed charge for the first invoice	\$150.00;
(b)	For any subsequent invoice:	
(i)	Fee under \$100.00	\$35.00
(ii)	Fee for \$100.00 to \$300.00	\$45.00
(iii)	Fee for \$400.00 to \$1,000.00	\$70.00
(iv)	Fee for \$1,000.00 to \$3,000.00	\$100.00
(v)	Fee for \$3,000.00 to \$10,000.00	\$140.00
(vi)	Fee for \$10,000.00 and above	\$250.00

27. 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.
28. 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.
29. 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

30. 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.
31. 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.
32. 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.
33. Nielsen Law accepts payment by cheque, cash, credit card or by direct debt to our trust account.
34. Unless the funds have been provided for a particular purpose, 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.
35. 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. 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.
36. We will provide you with a statement showing you how this money has been spent.
37. Part payment of an account will not be accepted as partial settlement of full amount of the account unless we agree in writing to accept the reduced amount as full settlement.
38. Please contact us immediately if you have any concerns about our account.

FUNDS – TRUST ACCOUNT

39. Nielsen Law operates a trust account. All money received by you or on your behalf will be held to your credit in the trust account. Payments out of the trust account will be made to you or to others with your authority. Written authorisation from you may be required where payment is to be made to a third party.
40. A full record of the Nielsen Law 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 at any time upon your request.
41. In accordance with the Lawyers and Conveyancers Act 2006, monies held in our trust account but which are not placed on call or term deposit will not earn you interest.
42. If requesting a payment from our trust account to be made by direct credit to your account, one of the following authorities will be required:
- (a) Original or faxed bank deposit slip;
 - (b) Signed hand written bank deposit slip;
 - (c) Signed letter;
 - (d) Copy of cheque or bank statement; or
 - (e) Letter from your bank.

Because of audit requirements, text messages and emails are insufficient authorities for this purpose. We may also telephone you to confirm any account details required.

43. If we hold significant funds on your behalf, we will only place the funds on interest bearing deposit, if you have completed and returned the required Common Reporting Standard declaration. The interest received as a consequence of funds being on interest bearing deposit 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.
44. If you fail to complete and return the required Common Reporting Standard declaration, your funds will be held in our trust account and will not earn interest.

CONFLICTS

45. We have procedures in place to deal with issues that arise if the interests of two or more clients conflict.
46. 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.

47. 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.
48. 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

49. 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.
50. Payment of the costs of counsel and experts shall be in accordance with clauses 25-29 and 30-38 above.

COMMUNICATION

51. 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.
52. 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.
53. If you provide us with a facsimile number then information or communications may be relayed to you by facsimile without prior contact with you. If, for reason of the situation of your facsimile machine, or the access that others may have to it, you require to be telephoned first, please let us know.
54. We may also from time-to-time send you information such as client newsletters, updates and other material that may be relevant to you. These may be sent in electronic form to the electronic address details provided by you. Unless you tell us otherwise, we will assume that you agree to receive this information. If you would prefer not to receive such information, or would prefer the information in hard-copy, please let us know.
55. 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

56. 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.
57. 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

58. 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.
59. 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.
60. 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).

61. The enforceability of this agreement is not affected by termination of our engagement.

FILES AND DOCUMENTS

62. We may convert and store copies of any communication between you and us, or any document provided to us or prepared by us, in an electronic format.
63. We may convert hard copy files, documents and records to an electronic format. Where we make such electronic copies of the physical files, we will retain the physical file for a minimum of one (1) year from when our engagement ends (“the Retention Period”), after which the hard copies will be confidentially destroyed. You may notify us at any time prior to the expiry of the Retention Period that you wish to take over storage of your physical file. Prior to delivering any physical file into your possession, we may copy any material on the physical file. We may also remove from the physical file any information that belongs to our firm.
64. We are not obligated to hold files, documents and other records (other than any documents that we hold in safe custody for you), in any format, beyond ten (10) years from when our engagement ends. We reserve the right to destroy and/or delete both physical and electronic files, documents and records after this time.
65. You may also notify us at any time after the Retention Period that you wish to obtain an electronic copy of your file. If we receive a valid request, in writing, for the physical or electronic copy of a file prior to its destruction, we will arrange for it to be delivered into your care. Where the file involves multiple clients, or we are made aware of what we determine to be a legitimate claim to all or part of the file from a third party, we will need the written authority of all the clients and/or the third party, before the file can be released.
66. By instructing us, you authorise us to deal with the files and documents relating to work we do for you in this manner.
67. Where a physical and/or electronic copy of a file is destroyed by us in accordance with the above authority, you release us from all liability whether direct, indirect or consequential, arising out of or flowing from such destruction.

ANTI-MONEY LAUNDERING, FOREIGN ACCOUNT TAX COMPLIANCE ACT, COMMON REPORTING STANDARD AND OTHER LAWS

68. We must comply with our obligations under all laws binding on us, including:
- (a) Anti-money laundering and countering financing of terrorism laws; and
 - (b) Laws relating to tax reporting and withholdings.
69. In order to do so, we may be required to conduct customer due diligence on:
- (a) You;
 - (b) Persons acting on your behalf; and
 - (c) Other relevant persons such as your beneficial owners or persons who have effective control of you a client entity and, in the case of a trust, the beneficiaries of the trust.
70. We may not be able to act or continue acting for you, or to complete trust account transactions for you, until this is completed.
71. We may be required to provide information about you, persons acting on your behalf, and other relevant persons, as described above, to government agencies. We may not be permitted to tell you or such persons if we do provide such information. We may also be required to provide such information to banks with which we place your funds through our trust account, and information

provided to banks may be in turn be passed on by them to tax and other regulatory authorities in New Zealand and offshore.

- 72. Please ensure that any of the persons described above in respect of whom we collect information are aware of and consent to this. Please also ensure that all information provided to us is accurate. We are not responsible to you, or anyone else, for anything done or not done by us (including any provision of information by us to any third party or any withholdings made) in order to comply with our legal obligations.

LAW AND JURISDICTION

- 73. 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.
- 74. You may not assign or transfer any rights or obligations under these terms or any other agreement that we have with you.

AUTHORITY

- 75. 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

- 76. 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.
- 77. 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.
- 78. 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

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

DATED this day of 20

Signature

Name

SCHEDULE ONE - CLIENT DETAILS

Name:

Physical Address:

Postal Address:

Telephone: _____

Mobile: _____

Email: _____

IRD No: _____ *

Registered for GST: Yes/No

Additional Information:

*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:

Physical Address:

Postal Address:

Telephone: _____

Mobile: _____

Email: _____

SIGNED by the guarantor(s):

In the presence of:

Signature

Name

Occupation

Address