

## TERMS OF ENGAGEMENT OF McVEAGH FLEMING ("the firm")

The following terms and conditions apply between us as a firm and you as the client:

### Lawyers

1. Our aim at all times is to provide quality legal services in a prompt, efficient and economical manner. This may involve utilising other partners, solicitors, legal executives or assistants within the firm with the requisite or suitable expertise for the completion of various tasks. In appropriate cases it may also involve utilising the expertise of external Counsel. A partner will be available to oversee all work.
2. We will inform you as soon as possible if we are unable or unwilling to act for you due to a conflict or a potential conflict of interest.
3. On request you are required to provide us with a current residential address and suitable identification, although an alternative address or box number may be given for correspondence. We will report to, and take instructions from you and from any person or entity authorised or reasonably believed by us to be authorised by you to give such instructions.
4. At all times you are obliged to provide us with all or any relevant instructions, information, evidence and documents, and in a timely manner. Any failure to do so may have a material effect on our conclusions and the provision of work, services or representation.

### Fees

5. Unless otherwise agreed by us in writing, our fees will be based on the amount of time spent by partners, solicitors and legal assistants on your file, based on the hourly rate applicable at the time, the seniority of the person dealing with the matter, its complexity, the degree of urgency required, the time spent, and the other principles of charging laid down by the New Zealand Law Society. Usually the time spent on a file is recorded electronically.
6. Each partner, solicitor, legal executive or para-legal has an hourly billing rate based generally on his or her experience and any special expertise. At any time you may request the hourly rate of any partner, solicitor or legal assistant working on your file. We reserve the right to change those hourly rates from time to time.

### Retainer

7. Before commencing work on a matter we shall be able to require an advance against fees, disbursements and other charges. This retainer will be deposited into our trust account, and it may be used to pay any invoice rendered by us or any disbursement on your behalf.
8. We will be entitled to ask you to make further retainer payments from time to time as the matter advances and if the earlier retainer payment has been used. Any remaining balance of the retainer will be returned to you upon the completion of our services.
9. We reserve the right to decline to act if there is a failure or delay in payment of any retainer requested. A non-payment of a retainer may also result in a delay in our undertaking of work or providing services for you, and it may result in our withdrawing our services and representation.

### Accounts

10. Fees, disbursements and other charges will normally be billed monthly, and our invoices are payable on receipt. Our accounts are marked "E & O E" standing for errors and omissions excepted. Unless otherwise agreed by us, accounts rendered to you must be paid in full before we undertake or provide any further work, services or representation.
11. We can also charge interest on demand on all sums billed and unpaid if the payment of any account is overdue, in which case interest accrued from the billed sum's due date(s) will be added, and interest will continue to accrue to the date of payment. This will include all invoices issued after interest has been demanded on any still outstanding accounts, and without any requirement for further demand, until all accounts and default interest have been paid. The interest charged will be at 15 per cent per annum.
12. All costs incurred, including but not limited to debt collection agency charges and legal fees (which may include time spent by partners or solicitors of this firm at their usual hourly billing rate) by us in recovery of our overdue accounts will be payable by you as a fee.
13. We reserve the right to decline to undertake or provide any further work, services or representation due to the non-payment of any account rendered or any delay in payment.

### Disbursements and Office Services Charge

14. In addition to our fees, we are entitled to reimbursement for disbursements and office service fees incurred, including the costs incurred by us in conducting CDD in respect of you as more fully set out in clause 28 of these terms. Common disbursements are Court filing fees, process server fees, Companies Office and Land Titles Office search and registration fees, e-dealing fee, and internal costs in respect of CDD and verification of clients in accordance with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, courier, faxes, toll calls, photocopying and agency charges. Disbursements may also include external Counsel's, expert witnesses', or mediator's fees.
15. Office services charges will be charged for forms, stationery, postage and printing, computer services, faxes, and the like; generally established by reference to a scale of charges based on the fee value of the invoice. Our present scale of charges is as follows (all figures exclusive of GST) but are subject to amendment from time to time, in which case the amended scale of charges will be posted on our website and will apply from the date they are so posted:

Fee	Office Services Charge
\$0.00 to \$500.00	\$43.48
\$501.00 to \$1,000.00	\$86.96
\$1,001.00 to \$3,000.00	\$173.91
\$3,001.00 to \$5,000.00	\$217.39
\$5,001.00 to \$10,000.00	\$304.35
Over \$10,000.00	Fee times 3.5%, divided by 1.15

16. Disbursements may be requested in advance, to be paid prior to the provision of work, services or representation.
17. We use Central Search and Registration (known as CSR) for searching, registration and filing. CSR is a partnership whose owners are associated with the partners of the firm.

### **Joint and Several Liability**

18. If there is more than one person comprising the client, each person is jointly and severally liable for payment in due time of all the firm's accounts and other charges, such as those under clauses 10, 11 and/or 12 of these Terms of Engagement.

### **Moneys Held or Received**

19. For property and financing transactions, you must credit our trust account with the ASB Bank before 10.00 am on the day of settlement with cleared funds for the correct amount.
20. We will be entitled to deduct at any time our fees, disbursements and other charges from any money held or received on your behalf. The raising of an invoice to you is authority for this deduction, and such invoices will be forwarded to you.
21. Any moneys placed on interest earning deposit through our trust account will have deducted 7.5% of the gross interest earned on those moneys in payment of our administration fee for such interest earning facilities. You acknowledge and agree that McVeagh Fleming shall not put funds on interest bearing deposit if you have not completed any requested certification in accordance with clause 29 of these Terms of Engagement.
22. You agree that McVeagh Fleming may charge an annual administration fee on all trust account credit balances it holds on your behalf where that credit balance has been deposited in the trust account of McVeagh Fleming for a period of more than 12 months. You agree that the fee McVeagh Fleming may charge shall be \$50.00 or such lower amount that has been held in the trust account for more than 12 months.

### **Transfers and Payments of Client's Trust Money**

23. If there is more than one person comprising the client the firm is entitled to act on the individual instructions of one of you as to where transfers of or payments from your funds are to be made. You each hereby jointly and severally instruct and authorise the firm to make transfers or payments on such basis. Any variation to this authority must be communicated in writing by you to the firm.

### **Termination of Legal Services**

24. You may terminate our services and representation at any time upon written notice to us. We will render a final account to you, and at all times we will have a lien over your file, papers, information, money held and money received on your behalf until payment in full of all or any accounts.
25. If you make a request to uplift files and documents from McVeagh Fleming, the firm is entitled at its discretion to take and keep photocopies of any such documents and to charge you a reasonable photocopying charge for doing so, which you agree you will pay as a disbursement charged in accordance with these Terms of Engagement together with any reasonable anticipated delivery charge, if applicable, before the documents are uplifted by you, or delivered to you, and pending payment of that photocopying charge (and delivery charge) the firm will be entitled to retain the said documents and files under a lien.
26. We reserve the right to seek to withdraw from our representation with your consent, or by an order of a Court, and otherwise we may decline to act further or withdraw our services on giving notice (whether oral or written) for good cause, including without limitation for any failure to pay an account rendered or due to any delay in payment or a failure to comply with requirements under clauses 27 and 28 of these Terms of Engagement.

### **Information and Privacy Act 2020**

27. We may collect personal information from you, including but not limited to: your name, contact information, location, billing information. This information is collected in order to provide our legal services. You expressly consent to the collection of your personal information. You authorise the firm and any agent appointed by the firm to obtain from any person, entity or company any information that the firm may require in respect of your creditworthiness or any related purpose, including considering any related person's ongoing creditworthiness or other risk assessment by the firm or recovering any outstanding amounts owing to the firm. You expressly consent to and authorise us and our agents to disclose your personal information to any third parties as needed to perform services on your behalf; to regulatory bodies or law enforcement agencies as required by law and to meet our legal or regulatory obligations including, without limitation, for the purposes of the firm's compliance with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and related legislation.

Subject to certain circumstances and exclusions set out in the Privacy Act 2020, you have the right to access all personal information held about you by us. If any of the information is incorrect, you have the right to have it corrected. Subject to all the above, we and our agents shall keep all of your information confidential except where necessary to give effect to your instructions. If there is a breach of privacy involving your personal information, we will comply with any legal obligations in the Privacy Act 2020. Our full Privacy Statement can be viewed on our Website ([www.mcveaghfleming.co.nz/privacy-statement](http://www.mcveaghfleming.co.nz/privacy-statement)).

### **Anti-Money Laundering and Countering Financing of Terrorism Act 2009 ("AML/CFT Act")**

28. You acknowledge that the firm is bound by the requirements of the AML/CFT Act and related legislation and is obliged by that legislation to conduct client due diligence and ongoing customer monitoring ("CDD") and related customer verification and will require you to provide appropriate information to the firm or the agent of the firm appointed to conduct that due diligence in compliance with AML/CFT Act requirements. You agree to promptly provide any and all information required by the firm and/or its agents in order to CDD in accordance with the AML/CFT Act or any other CDD performed as a risk assessment process undertaken by the firm and will pay all of the costs (including agents costs) reasonably incurred by the firm in respect of completing CDD and any later associated due diligence that may be required. You acknowledge that if the firm or its agents acting on the firm's behalf cannot obtain adequate and appropriate CDD information from you or any related person as may be required by the AML/CFT Act, the AML/CFT Act prohibits the firm from commencing an existing relationship with you and the firm may be required to terminate any existing business relationship with you without completing or carrying out any further instructions.

### **Foreign Account Tax Compliance Act (FATCA) and OECD Common Reporting Standard ("CRS")**

29. You acknowledge that McVeagh Fleming is or may be required by law, including, without limitation, the Foreign Account Tax Compliance Act and the OECD Common Reporting Standard, to obtain certain information or certification from clients in respect of their legal or financial status, in particular their taxation status in overseas jurisdictions. You agree that you shall promptly provide all such requested information or complete any certification required by McVeagh Fleming and further acknowledge that McVeagh Fleming may provide that information to its bank and any other organisation or regulatory body to the extent necessary to comply with all relevant legislation.

You acknowledge and agree that due to the requirements of relevant legislation and the requirements of McVeagh Fleming's own bank your funds will not be placed on interest bearing deposit until McVeagh Fleming is provided satisfactory certification from you

in terms of this clause and you shall have no claim against McVeagh Fleming for failure to place funds on interest bearing deposit (or failure to do so promptly) due to any non-compliance by you with the terms of this clause.

#### **Resident Land Withholding Tax**

**30.** If you are selling a residential property and you are deemed by us to be an offshore person for the purposes of the Income Tax Act 2007, you accept that in certain circumstances we are obliged to calculate and deduct from the sale proceeds Resident Land Withholding Tax (RLWT) and account to Inland Revenue Department for such moneys deducted.

#### **Engagement**

**31.** By you engaging our services or continuing to instruct us after receiving or being notified of these Terms of Engagement, and by us providing work, services or representation, you agree to and are deemed to immediately accept the terms and conditions as set out above (unless we receive written notice from you otherwise and such change is expressly agreed to by us in writing).

**32.** No waiver by us of a breach of any Terms of Engagement will be deemed to be a waiver of any other term or subsequent breach.

**33.** These Terms of Engagement constitute the entire understanding between you and us.

#### **Limitation of Liability**

**34.** To the maximum extent permitted by law:

**34.1** Our total liability to you (or to any other person claiming through you, including any executor, assignee or nominee) whether in contract or any other legal ground, including negligence, howsoever arising out of your engagement of us on any matter, or series of related matters, will be limited to the greater of:

- (a) three times the amount of our applicable fee charged (excluding office services charges, disbursements and GST); or
- (b) the amount paid out under any relevant insurance policy held by us, up to a maximum of NZ\$10 million.

**34.2** In no circumstances will we be liable to you for indirect consequential or special losses of any kind.

**34.3** You may not commence any action against us more than one year after that cause of action has arisen.

## INFORMATION FOR CLIENTS

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"). References to "We" and "Us" refer to McVeagh Fleming.

1. **Fees:** The basis on which fees will be charged is set out in our Terms of Engagement. These are available on our website under [www.mcveaghfleming.co.nz](http://www.mcveaghfleming.co.nz) or from us upon request.

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:** We hold professional indemnity insurance that meets or exceeds the minimum standards specified by the Law Society. We will provide you with particulars of the minimum standards upon request.

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 \$100,000.00. 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.

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

If you have a complaint about our services or charges, you should first 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 that person's response to your complaint, you may refer your complaint to the Complaints Management Committee at our firm who may be contacted by letter or by email to [mail@mcveaghfleming.co.nz](mailto:mail@mcveaghfleming.co.nz) with "Complaints Committee" in the subject line.

The Law Society operates the Lawyers Complaints Service and you are able to make a complaint to that service. To do so, phone **0800 261 801** and you will be connected to the nearest Complaints Service Office, which can provide information and advice about making a complaint.

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 shall be advised to you when we are engaged by you to perform services.

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:

- 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 compromising 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.
- Give you clear information and advice.
- 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.
- 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.

If you have any questions, please visit [www.lawsociety.org.nz](http://www.lawsociety.org.nz) or call **0800 261 801**.

7. **Limitations on extent of our Obligations or Liability:** Any limitations on the extent of our obligations to you or any limitation or exclusion of liability are set out in our Terms of Engagement.