

## TERMS OF ENGAGEMENT

### INFORMATION ABOUT THESE TERMS OF ENGAGEMENT

Our relationship with you is covered by:

- our **letter of engagement**, which sets out the terms specific to your matter, including the services we will provide and our fees; and
- these standard **terms of engagement**, which apply to all of our client engagements. We provide a wide range of services to our clients, so you may find some of these standard terms are not relevant to the services we provide you.

While we have provided a summary of the terms below, it is important that you read the full terms and let us know if you have any questions. We would be delighted to discuss them with you.

### OVERVIEW OF KEY TERMS

- By instructing us you are deemed to have accepted these terms. Please read these terms in full and let us know if you would like any changes before we start work (clause 1)
- Our advice is from the Jackson Russell partnership for your use only (clauses 2 and 18)
- We are lawyers – we do not provide investment, tax, financial, valuation or accounting advice (clause 2)
- You and we can end your engagement by reasonable notice (clause 2)
- Our fees are based on a number of factors – including complexity, value and urgency (clause 7)
- We pass on to you (without a margin) costs we incur when acting for you, and a matter opening fee (clause 8)
- We usually invoice monthly. If you do not pay our fees by the due date we can charge interest and costs (clauses 9 and 10)
- If we place funds on interest bearing deposit for you we may deduct an administration charge (clause 10)
- Keeping your information confidential is paramount to us. However, we may need to share your information in the course of providing you with our services, or if we are required by law – we will let you know where we can (clauses 4 and 12 and our privacy policy)
- We retain copyright in the documents we draft, to protect the substantial intellectual property we hold (clause 14)
- We have strict conflict of interest rules to protect our clients (clause 16)
- Our fees have been agreed on the basis our liability is limited – if you want to change this our fees will increase (clause 17)
- We are NZ lawyers and do not advise on or accept responsibility for foreign legal matters (clause 20)
- We do not accept responsibility or liability for information provided by government or other third parties (clause 22)
- We have professional duties to you as your lawyers. Attached to these terms for your information is a copy of the statutory lawyers' Client Care and Service Information

#### 1. INTRODUCTION

These terms will apply to all of our engagements with you, unless we agree in writing to any different terms before we start work.

These terms are our standard terms. Please read them together with our letter of engagement, which is specific to the services we will provide you.

In these terms, "we", "our" or "us" refers to Jackson Russell. We are a New Zealand partnership. A list of our partners is available on our website, [www.jacksonrussell.co.nz](http://www.jacksonrussell.co.nz).

References to "you" or "your", refer to the addressee(s) of our letter of engagement.

#### 2. SCOPE OF OUR ENGAGEMENT

We will provide you with advice and legal services that properly fall within your instructions to us.

Our engagement is with you. Any advice applies to you only and is not intended to be relied on or provided to any third party. We do not accept responsibility for any loss or damage that may be suffered by any third party in respect of the legal or related services we provide to you.

We do not provide investment, tax, financial, valuation or accounting advice. Nor do we advise on the benefits, quality or otherwise of any particular activity or any proposed investment, purchase or venture.

Our engagement will end when either:

- (a) you give us reasonable notice in writing; or
- (b) we give you reasonable notice in writing. Our ability to end our engagement is subject to the *Rules and Conduct and Client Care for Lawyers (the RCCC)*. The RCCC allows us to terminate an engagement for good cause in certain circumstances (Rule 4.2).

You will pay our fees and other charges incurred up to the time of termination. We will only advise you further on issues arising from the matter (e.g. implementation, future dates and requirements, changes in relevant law) if you expressly engage us to do so in writing.

When our engagement ends the provisions of these terms which expressly or by implication are intended to survive the termination of our engagement will survive and continue to bind both us and you.

#### 3. OUR LEGAL COMPLIANCE

We are required to comply with all laws and regulations binding on us, including the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**AML/CFT**), the Privacy Act 2020 (**Privacy Act**) the United States Foreign Account Tax Compliance Act (**FATCA**), Common Reporting Standards (**CRS**) and other laws relating to tax and withholdings.

##### **AML/CFT compliance**

You acknowledge that, before we can act for you or complete any trust account transactions for you, we are required by the AML/CFT to verify

your identity, and in some cases, the source of funds for a transaction. If you are a company or trust, we may also need to verify the identity of anyone acting on your behalf and your beneficial owners or persons with effective control of you.

In most cases, we will use APLYiD, an electronic identity verification service to verify your identity. To verify your identity, you will need to provide your passport (or other government issued photographic ID). You may also need to provide evidence of your address, such as a recent utility bill.

We may hold an electronic copy of the report issued by APLYiD and/or any other evidence you provide us on our system for future reference.

We may suspend our services and/or delay or block any trust account transactions for you without notice if:

- (a) the required information has not been provided; or
- (b) it is suspected that the business relationship or transaction is unusual or may breach any applicable law.

Under AML/CFT we must report any suspicions of money laundering or other criminal activity to the relevant external authorities. We may not be allowed to tell you if we make such a report. We will not be liable to you for the consequences of any such report or any other report made in compliance with our legal obligations.

#### **4. COLLECTION AND USE OF CLIENT INFORMATION**

You authorise us to collect, use and disclose personal information about you and your representatives (including making enquiries and to taking all steps we consider appropriate) for the following purposes:

- (a) complying with applicable laws and regulations binding on us, including undertaking customer due diligence and monitoring in accordance with the AML/CFT and our obligations under FATCA and CRS;
- (b) identifying you and verifying any information you give (or information we may collect from other sources) with third parties for the purposes of fraud prevention or the AML/CFT;
- (c) carrying out reasonable credit checks to make credit decisions affecting you (including debt collection) or for the requirements of the AML/CFT. This will require us to give your information to the credit reporting agency as well as the credit reporting agency providing information about you to us;
- (d) assisting our bank, the IRD and other government agencies to meet their legal obligations by providing any AML/CFT, FATCA or CRS information we hold about you to them on request;
- (e) enforcing debt and legal obligations;
- (f) conducting your matter, including communicating with you and providing you with advice;
- (g) for administration purposes, including setting you up as a client and informing you about relevant legal updates;
- (h) carrying out our business, which includes planning and training, research and analysis; and
- (i) for any related purpose in connection with the above or any other purpose listed in our Privacy Policy.

By instructing us you are deemed to warrant that all information you provide to us for the purposes of AML/CFT or CRS or any other matter is true and correct.

#### ***Our Privacy Policy***

We may disclose information we retain about you to third parties in accordance with our Privacy Policy, which you can find at <https://www.jacksonrussell.co.nz/Privacy+Policy.html>. Our Privacy Policy also includes more details on how we collect, use and where we store your personal information, as well as who you can contact if you have a question or complaint, or wish to access or correct your personal information.

#### **5. FUNDS IN ADVANCE**

There may be occasions where, before we undertake or continue work on your matter, we require you to provide us with funds in advance for payment of disbursements or for our anticipated fees. Funds paid in advance will be held in our trust account and you authorise us to use

any such funds to pay any disbursements (including Barrister and expert retainers and costs) as they fall due, as well as our fees immediately upon us rendering an account.

#### **6. INTEREST BEARING DEPOSIT**

Where your matter involves the sale of land, a business, shares, assets or any other matter that results in payment of funds, we normally lodge those funds on interest bearing deposit (**IBD**). In most circumstances, before we can place client monies on IBD in our trust account, we must first hold a signed 'Self-certification and consent to release of client information form' (**SCF**) as required by FATCA and CRS as supported by the Tax Administration Act 1994. We reserve the right to require a SCF for all IBD transactions.

#### **7. OUR FEES**

Our fees are based on a number of factors, including:

- (a) time and attendance, charged at our current hourly rates (plus GST);
- (b) the skill, specialised knowledge and responsibility required;
- (c) the complexity of the matter and the difficulty or novelty of the issues involved;
- (d) the urgency and circumstances in which the matter is carried out;
- (e) the value or amount of property involved; and
- (f) the number and importance of documents prepared and considered.

Please be aware that if we are required to work under urgency or outside of normal business hours to meet your objectives, we are entitled to increase our fee.

#### **8. DISBURSEMENTS AND OTHER CHARGES**

In addition to our fees for legal and related services, we will charge you:

- (a) a matter opening fee. Our basic matter opening fee is \$50 and applies if we are not required to undertake client due diligence to open your matter. If we need to undertake client due diligence, you will instead be charged a CDD matter opening fee, of:
  - a. \$80 per individual or couple;
  - b. \$175 per company (for simple company structures); or
  - c. \$250 per trust that we are required to verify.Where the identity verification requirements are complex (for example where overseas persons are involved or where a company has a complex ownership structure), your CDD matter opening fee will be charged based on our costs of undertaking the client due diligence. We may also (at our discretion) charge you our basic matter opening fee to cover our costs for opening each subsequent matter after your initial onboarding;
- (b) for any disbursements which are incurred as your agent. Disbursements include out of pocket expenses required by your matter such as registration and filing costs, bank fees and charges, Court charges, service agent fees, online search fees, and travel and accommodation costs;
- (c) office expenses at the standard rates set out in the appendix; and
- (d) administration charges in respect of all incoming and outgoing international payments over NZ\$1,000.

We may increase these fees from time to time to reflect our increased costs. All these fees exclude GST (if applicable).

#### **9. BILLING**

To help you budget, we issue interim accounts, usually monthly, while work is in progress, with a final bill at the end of a matter or transaction.

#### **10. PAYMENT OF OUR FEES**

Payment of an account is due 14 days from the date of the account, unless we agree otherwise in writing. If you chose to pay your account by credit card, you agree to pay the credit card service fees we incur.

Although you may expect to be reimbursed by a third party for our fees and expenses, and/or you may direct that our accounts be sent to a third party, you remain responsible for payment.

Where we place your client monies on IBD, you authorise us to deduct an administration charge of 5% of the interest derived and/or deduct our

fees, disbursements and other charges prior to the funds being distributed.

We may charge interest on any amount which is not paid by the due date at a rate of 12% per annum accruing monthly at 1% on the balance outstanding on the last day of the month. You agree to pay all collection costs (on a full solicitor/client basis) until the debt is paid in full.

If an account is not paid by the due date for payment, we may cease working on your matter until payment is received. Alternatively, we may cease working for you altogether. We may retain custody of your papers or files until all accounts are paid in full (including interest).

If our engagement is terminated, you will pay all fees (including un-rendered accounts) and disbursements up until that time.

#### **11. ENGAGEMENT OF PROFESSIONAL SERVICE PROVIDERS**

From time to time it may be appropriate to engage the services of another service provider or expert. This may include engaging a specialist Barrister or obtaining the advice of a specialist expert. You will be responsible for payment of the costs of the service provider or expert and you may be asked to enter into a cost agreement directly with them.

#### **12. CONFIDENTIALITY**

Client confidentiality is of paramount importance to us. We will not disclose any confidential information obtained from you to any other person, and will not disclose to you any confidential information received from another client or prospective client, unless required by law or by the *Rules and Conduct and Client Care for Lawyers*.

#### **13. FILES AND DOCUMENTS**

You authorise us to destroy all files and documents (other than any documents that we hold in safe custody for you) 10 years after our engagement ends, or earlier if we hold or have converted the documents to electronic format or you have requested us to. If we destroy any files or documents at your request prior to our usual destruction date, we will not be liable to you for any resulting loss and you will indemnify us for any liability to third parties relating to your matter, files and documents.

Documents that we may offer to hold in safe custody for you will be limited to the following:

- (a) wills and letters of wishes;
- (b) deeds of lease and related deeds; and
- (c) powers of attorney and enduring powers of attorney.

#### **14. COPYRIGHT**

Copyright of all documents drafted by us will remain our property at all times unless we agree otherwise in writing and signed by a Partner of Jackson Russell. You are entitled to use the documents for the specific purpose for which they have been prepared by us but for no other purpose.

#### **15. EMAILS**

Email is a common means by which we may communicate with you and other parties. Email is not secure. Email may also contain defects, such as viruses. We will not be responsible for:

- (a) any damage or loss caused by an email containing a defect;
- (b) any unauthorised interference or interception with emails after transmission; or
- (c) any delay or non-delivery of emails.

We may email you information we think is relevant to you (such as newsletters) from time to time. You can opt out of receiving these emails by contacting us.

Please contact us immediately if you doubt the authenticity or any email or document appearing to be sent by us.

#### **16. CONFLICTS**

From time to time we are asked to act for clients whose commercial and/or legal interests conflict. We have policies and procedures for

dealing with these issues. We may accept instructions from other clients or potential clients operating in the same or competing markets and whose commercial interests conflict with your own, provided those instructions do not involve the use of confidential information we have obtained from you. We will inform you as soon as possible if a legal conflict of interest arises between your interests on any matter on which you have instructed us and those of any other client who we are also acting for, and we will follow our policies and procedures.

#### **17. LIMITATION OF LIABILITY AND INDEMNITY**

We limit our liability to you. Our maximum liability to you arising out of your engagement with us (whether arising in contract, tort (including negligence), equity or otherwise) is limited to five times the total fees paid by you to us for that engagement in the case of non-recurring work, or five times the annual fees paid in the case of recurring work (excluding our service charge, disbursements and GST) (**Liability Cap**). Our Liability Cap:

- (a) applies to the maximum extent permitted by law;
- (b) does not apply to any breach by us of our obligations under the Consumer Guarantees Act 1993, if you are engaging us to provide services to you as a consumer. If we are providing services to you for your business, you agree that the Consumer Guarantees Act 1993 does not apply to our engagement;
- (c) is our total liability to all addressees, where there is more than one addressee in our engagement letter (and it is your responsibility to allocate our Liability Cap between yourselves); and
- (d) has been factored into our fees and is a fundamental term of our engagement with you.

If we provide services to any persons or entities related to or associated with you or to anyone else at your request (whether or not we also advise you) on a matter (or series of related matters) on which you engage us, then our aggregate liability to you and all those persons and entities in respect of that matter or matters will be subject to the Liability Cap (and you will ensure that those persons and entities agree to this).

Notwithstanding the remainder of this clause 17, we are not responsible for, and will have no liability:

- (a) for any consequential or indirect loss, or loss of profit; or
- (b) for any loss or liability caused or contributed to by you or any third party, including (without limitation) loss that is caused or contributed to by inaccurate or incomplete information supplied by you or third parties (including public records and expert witnesses), or because you did not receive, read or action a communication we sent you.

To the maximum extent permitted by law, you agree to indemnify us, our partners, and our staff, and to hold each harmless against any liabilities, losses, expenses and other costs, including legal costs and the cost of our professional time (at our usual rates) reasonably incurred in connection with any claims, inquiries, investigations or similar matters whether made against us, them or you by any third party arising out of or in any way connected with the services. This term is for the benefit of us, our partners, employees, contractors and subcontractors, who may enforce this term under the Contract and Commercial Law Act 2017, Part 2, Subpart 1.

#### **18. CONTRACT SOLELY WITH JACKSON RUSSELL**

You agree that in relation to the services and the letter of engagement, your relationship is solely with us. Accordingly, you agree not to bring a claim of any nature against any of our employees, contractors or subcontractors. This term is for the benefit of our employees, contractors and subcontractors, who may enforce this term under the Contract and Commercial Law Act 2017, Part 2, Subpart 1.

#### **19. INSURANCE AND LAWYERS' FIDELITY FUND**

We hold professional indemnity insurance that meets the standards specified from time to time by the New Zealand Law Society.

The Law Society maintains a Lawyers' Fidelity Fund which exists to provide compensation of up to \$100,000 per claim for clients who suffer a pecuniary loss arising from the theft by a lawyer of money or other

valuable property entrusted to the lawyer. The fund will not pay compensation in respect of money invested on behalf of the client.

## 20. FOREIGN LAW MATTERS

We are only qualified to advise on (and can therefore only advise on) matters of New Zealand law. If we assist you on matters governed by foreign law, we do so on the basis that we do not accept responsibility in relation to your legal position under that foreign law. We recommend that you obtain specific foreign legal advice.

## 21. EVENTS OUTSIDE OUR CONTROL

If an event outside our reasonable control occurs, we may be unable to perform your services or the performance of your services may be delayed. In these circumstances, we will:

- notify you of the delay or non-performance;
- perform your services remotely, where possible; and
- take all steps within our power to perform the services for you as promptly and fully as possible.

An “event outside our reasonable control” includes (without limitation) events such as an emergency, accident, illness or outbreak of disease, requirement to comply with an order of a government or any other authority, or the inability to access our systems due to an event outside our reasonable control.

## 22. GENERAL

In advising you we may rely on or provide you with information obtained from third parties (e.g. government agencies, registers, experts or witnesses). We do not accept responsibility or liability for any damage or loss caused by errors or omissions in that information.

These terms of engagement and any other agreement we have with you are governed by New Zealand law and are subject to the exclusive jurisdiction of the New Zealand Courts.

You may not transfer or assign your rights or obligations under these terms or in relation to any engagement of us on any matter.

The enforceability of these terms of engagement will not be affected by termination of our engagement or by any changes to the Partners of Jackson Russell.

## 23. CONCERNS AND COMPLAINTS

If you do not consider that your matter has been handled appropriately, please contact the responsible Partner or our General Manager on:

email: [generalmanager@jacksonrussell.co.nz](mailto:generalmanager@jacksonrussell.co.nz)

phone: +64 9 300 6934

address: PO Box 3451, Auckland 1140, New Zealand

We will respond to your concern in writing and/or will request a meeting with you to discuss your concern.

If you are not satisfied with the outcome, then you have the right to address your concern through the New Zealand Law Society’s Complaints 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 on making a complaint.

## APPENDIX – OFFICE EXPENSES

We charge office expenses at the following standard rates (all excluding GST).

Invoice value	Office expense charge
\$0 - \$1,000	\$25
\$1,001 - \$2,000	\$50
\$2,001 - \$3,000	\$75
\$3,001 - \$4,000	\$100
\$4,001 - \$6,000	\$150

Invoice value	Office expense charge
\$6,001 - \$8,000	\$200
\$8,001 - \$10,000	\$250
\$10,001 - \$12,000	\$300
\$12,001 - \$14,000	\$350
\$14,001 - \$16,000	\$400
\$16,001 - \$18,000	\$450
\$18,001 - \$20,000	\$500

## CLIENT CARE AND SERVICE INFORMATION

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 and Conduct and Client Care for Lawyers*. They are subject to other overriding duties, including 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.