Powle & Hodson LAWYERS

TERMS OF ENGAGEMENT

These Terms of Engagement (*Terms*) apply in respect of all work carried out by Powle & Hodson Limited (*we*, *our* and *us*) for you, except to the extent that we otherwise agree with you in writing.

1. **Our Duties**

1.1. Our duties as lawyers are set out in detail in the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 and include:

(a) upholding the rule of law and facilitating the administration of justice in New Zealand;

(b) being independent in providing legal services to our clients;

(c) acting in accordance with all fiduciary duties and duties of care owed by us as lawyers to our clients; and

(d) (subject to overriding duties as officers of the High Court and any statutory duties) protecting the interests of our clients.

2. **Your Instructions**

2.1. To help us in providing cost-effective and commercially focused legal advice, you must:

(a) give us clear and full instructions about your situation and objectives and the scope and type of work you wish us to undertake for you;

(b) provide all relevant and correct information and materials reasonably necessary for us to do that work (including other advice you receive) and within a reasonable time frame to enable us to complete the necessary work for you;

(c) make us aware of your time constraints and fee expectations; and

(d) let us know of any change in circumstances, or your instructions.

3. **Services**

3.1. The services which we are to provide for you are as outlined in our Letter of Engagement and the Confirmation of Instructions sheet which we will forward with it.

4. **Financial**

4.1. **Fees**: We will charge a fair and reasonable fee for all work we do for you, taking into account the time and labour expended, and the skill, specialised knowledge and responsibility required to perform the services property, the urgency and circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by you, the degree of risk assumed by us during the services, including the amount or value of any property involved, the experience, reputation and ability of the lawyer, any estimate of fee given and the fee customarily charged in the market for locality for similar legal services. Where our fees are calculated on an hourly basis, the hourly rates will be provided to you in the instruction sheet.

The differences in those rates reflect the experience and specialisation of our professional staff. Time spent is recorded in 6-minute units, with time rounded up to the next unit of 6 minutes. These rates are subject to variation from time to time. Our fees are reviewed annually on 1 April and may change according to respective experience levels. Any estimate given is a guide only and, not a fixed quotation.

All estimates and other indications of our fees (such as a schedule of rates) are limited to our professional fees and do not include NZ GST, other fees or disbursements, unless expressly stated.

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

Our invoices may include an office administration service charge to cover the cost of routine copying, printing, binding, telephone expenses. Courier expenses will be billed separately.

We are required to complete anti-money Laundering checks on you, your company or trust (if applicable). We have the ability to use the technology use provided by First AML and for each person who is verified in this way, there is a fee of $65.00 per individual or $245.00 for a company/trust. This is a one-off fee unless something changes within the entity that requires a new AML review.

4.3. **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, nevertheless you remain responsible for payment to us if the third party fails to pay us.

4.4. **GST**: GST is payable by you on our fees and charges.

4.5. **Invoices**: We may send interim invoices to you, usually monthly and/or on completion of the matter, or termination of our engagement. We may also send you an invoice when we incur a significant expense for you.

4.6. **Payment**: Other than on a conveyancing transaction, when we expect payment to be made by deduction on settlement, invoices are payable within 14 days of the date of the invoice, unless alternative arrangements have been made with us. Payment is to be made by direct lodgement to our trust account with ASB Bank – **12-3110-0061166-02** in New Zealand dollars. If you do not pay an invoice by the due date, we may charge interest on the overdue amount at the rate of **10% per annum**, calculated daily from the due date until payment is received in full (both before and after judgment), and compounded monthly. You will also be liable for any costs incurred by us in recovering overdue amounts, including debt collection agency fees and legal costs on a solicitor-client basis.

4.7. **Fraud Prevention:** Because hacking events are occurring more frequently, please do not act on any communication (from us or otherwise) that asks you to transfer or deposit money above $10,000 without telephoning (on a known or separately verified number) the apparent sender of that communication to confirm the authenticity of the account details provided and any instructions. You may wish to also consider checking for amounts less than this on a case-by-case basis.

In order to best minimise the risk of fraud, we recommend you call one of the identified team members, preferably

Brenda on our main line number 09 3003295, to confirm the trust account details before completing the funds transfer. However any payments to our firm are only to be paid to the ASB Bank account number detailed in 4.6 above.

4.8. **Guarantee:** Where we are acting for a Company or Trust, we may require that the director(s) and/or shareholder(s) of the Company or the trustees of the Trust (*Guarantors*) provide us with a guarantee in respect of the Company's or Trust's obligations in respect of payment of our fees and expenses as these terms of engagement. This means that if the Company does not pay what is owed to us, the Guarantors agree to pay those amounts. This guarantee will continue until all amounts owing to us have been paid in full. We may ask the guarantor(s) for payment without first having to take steps against the Company.

4.9. The Guarantee is for the benefit of and may be enforced by the us. Should there be more than one Guarantor, their guarantee will be joint and several.

5. Anti-Money Laundering, Tax Reporting and Withholding, Other Laws and Sanctions

5.1. We may undertake customer due diligence and other information gathering procedures as required to comply with any anti-money laundering, tax or financial reporting or other applicable laws (*Information Gathering*). Our information Gathering may relate to you and persons associated with you, including beneficial owners, persons who have or may have effective control over you, members of your governing body and persons acting on your behalf (*Relevant Persons*).

5.2. You must provide us (or our relevant service providers) with the information and documentation we request for the purposes of Information Gathering. We may disclose that information to our relevant service providers or, where instructed or requested by you, to third parties such as your accountant or real estate agent. Our relevant service providers may use that information, or disclose that information to third parties, for the purpose of fulfilling our obligations.

5.3. You must ensure that each Relevant Person is aware of, and consents to, our collection, holding and disclosure of information. You must ensure that all information provided to us concerning you and any Relevant Person is accurate and (where relevant) complete.

5.4. We may:

(a) refuse to act for you;

(b) stop or suspend, or be required to stop or suspend, providing services to you; or

(c) be unable to handle or complete trust account transactions for you;

until Information Gathering is completed, all statutory or regulatory requirements have been complied with, or if we suspect a relationship or transaction is unusual or may breach any applicable law.

5.5. We may be required to provide information about you or any Relevant Person to:

(a) tax and other regulatory authorities and we may not be permitted to tell you or such persons that we have done that; and/or

(b) banks we transact with as your agent, or with which we deposit money on trust for you. That information may be passed on by those banks to tax and other regulatory authorities in New Zealand and offshore.

5.6. Where we are liable to pay any withholding tax in respect of any matter on which you engage us, you will indemnify us for the amount of that tax, together with any interest, penalties or other costs we incur.

5.7. By instructing us you confirm that you, your shareholders, trustees, directors, officers and subsidiaries are not, and have not at any time been, subject to any economic or financial sanctions, or any threat of economic of financial sanctions. You must inform us immediately if this position changes.

5.8. We are not liable to you, or anyone else, for anything done or not done by us in order to comply with our legal obligations.

5.9. We are only qualified to advise on New Zealand law. If we assist you in respect of matters governed by foreign law, we have no liability in relation to your legal position under that foreign law.

5.10. We give our advice in English. If we provide a translation into any other language then the English version prevails in the event of any inconsistency.

6. Communications

6.1. **To you**: Communications will be sent to the address and contact person you advise us, or any other address or contact person we may reasonably infer from your instructions.

6.2. **To us:** Correspondence should be sent to us at our business address (set out on our letterhead and website). Please direct your communications to the person working on your file.

6.3. **Method**: Unless requested otherwise, communications may be by telephone or email (including documentation). We will not however be liable for any corruption or interception of emails, attachments or their disclosure or use, or any subsequent changes made to them or to any draft documents.

6.4. **Emails**: We scan emails and attachments for viruses before sending e-mails to you and request that you take reasonable steps to prevent sending us emails or attachments containing viruses, or which would be harmful to our IT systems.

6.5. If you receive any email from us but are not the intended recipient: please (i) do not read, copy, disclose or use the contents in any way; and (ii) notify us immediately by return email and destroy the email and attachments.

7. Confidentiality

7.1. 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) to the extent required by law or by the Law Society's Rules of Conduct and Client Care for Lawyers.

7.2. 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. You authorise us to share your information with your other professional advisers such as your accountant.

7.3. We will not disclose to you, confidential information which we have in relation to any other client.

7.4. In respect of your information, you authorise us to provide any information we hold relating to your United States Foreign Accounts Tax Compliance Act (*FATCA*), Common Reporting Standard (*CRS*) or Anti-Money Laundering (*AML*) status, or other FATCA, CRS or AML matters, to Inland Revenue, our bank and the Department of Internal Affairs, if necessary, to comply with FATCA, CRS and AML obligations.

7.5. You acknowledge that if you do not provide any of the information we request, we may 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, CRS and/or AML.

7.6. You understand that we are unable to commence work for you if we cannot complete our required client due diligence for AML purposes.

8. **Termination**

8.1. You may terminate our services at any time.

8.2. We may terminate the provision of our services to you in any of the circumstances set out in the Law Society's *Rules of Conduct and Client Care for Lawyers.*

8.3. If you terminate our services, you must pay us all fees due up to the date of termination and all disbursements and expenses incurred up to that date, including the reasonable costs of arranging for your file to be uplifted.

9. **Retention of files and documents**

9.1. You authorise us (without further reference to you) to destroy all files and documents for this matter (other than any documents that we hold in safe custody for you) 7 years after our engagement ends, or earlier if we have converted those files and documents to an electronic format.

9.2. We must, on request, provide to you all the documents we hold to which you are entitled, provided that:

(a) we may take a complete copy of them;

(b) we will provide the documents to you only after you have paid all of our invoices on all matters and all of the costs associated with provision of the documents, including the cost of any reasonably necessary review of the documents, on a time and attendance basis.

9.3. You acknowledge that we have a lien on all files and deeds which we are holding for you until all fees and expenses which you owe to us have been paid.

9.4. If, at any time during or after the term of this agreement, you instruct us to transfer our file to another law practice or provide you or another party with a copy of the file or particular documents, we will be entitled to charge to you the cost of doing so, calculated in accordance with this agreement, including professional fees at our hourly rates for reviewing and preparing the file.

9.5. All working papers, internal memoranda, file notes, drafts, precedents, research materials, word copies of documents, electronic working versions, and other working copies of documents created or maintained by us in connection with the engagement remain our property and, to the extent permitted by law, our intellectual property. Unless otherwise required by law, we are not obliged to provide those materials to you.

10. **Conflicts of Interest**

10.1. We have procedures in place to identify and respond to 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 Law Society's *Rules of Conduct and Client Care for Lawyers*.

10.2. Where we act for you as a bidder, an adviser or financier to a bidder, in a competitive sale process, you agree that we may act for other bidders, advisers or financiers in that sale process. We will not be obliged to tell you whether we act for any other such party, and we will not be obliged to disclose their identity. The lawyers working on your matter will not work for any other bidder, adviser or financier, unless you consent otherwise. We will establish an information barrier in respect of each client.

11. **Duty of Care**

11.1. Our duty of care is to you and not to any other person. No advice we give, or work we do, is for the benefit of any third party. Before any other person may rely on our advice, we must expressly agree to this.

12. **Trust Account**

12.1. We maintain a trust account for all funds which we receive from clients (except monies received for payment of our invoices). If we are holding significant funds on your behalf, we will normally lodge those funds on interest bearing deposit with our bank however before doing so, we will require you to provide an IRD number or your interest withholding tax exemption. Otherwise, the bank will deduct RWT (Resident Withholding Tax at the non-declaration rate of 45%). To enable us to deposit your funds on interest bearing deposit, you will need to complete the documentation required by our bank.

12.2. Where we hold funds in our trust account on deposit for you, we may charge a commission of up to 5% of the gross interest earned.

12.3. Where we receive an electronic communication from you (or purported to be from you) and that communication includes a direction or request to transfer funds which we hold on your behalf, we may elect not to make that transfer until we have independently verified, to our satisfaction, that direction or request by other means other than electronic communication. We will not be liable for any damages or loss caused by or connected with our refusal to act on any electronic communication comprising a direction or request to transfer funds where we have not been able to independently verify that direction or request to our satisfaction.

12.4. Where we make payments from our Trust account to you or to any third party nominated by you, we will make the payment in New Zealand dollars unless we have received your instructions that require otherwise.

12.5. Where we make or receive any international money payments over $1,000, you authorise and accept that we are required to file a report to the New Zealand Financial Intelligence Unit arm of the New Zealand Police. Such reports will be filed at your expense.

12.6. Where we make any international money payments at your request, the cost of making such payments, as charged by our bank and or the receiving bank, will be charged to you.

13. Limitations

13.1. We do not give general commercial or business advice, only legal advice and services performed or rendered in the conduct of a lawyer.

13.2. We do not advise you on the quality of any investment in property, or indeed any other investment.

13.3. We are not financial advisers and no advice we give is a "financial adviser service" or an "investment planning service" as described in the *Financial Adviser's Act 2008*.

13.4. Our advice is limited to New Zealand law, and does not extend to your affairs in other jurisdictions.

13.5. The work we do is subject to:

(a) the accuracy of information supplied by you, third parties, or on public registers; and

(b) any disclaimers or limitations we expressly make (whether or not in writing) or which are implied by the nature of, or commonplace for, that type of work.

14. General

14.1. These Terms apply to any current engagement and also to any future engagement, whether or not we send you another copy of them.

14.2. We are entitled to change these Terms from time to time, in which case we will publish the amended Terms on our website.

14.3. Our relationship with you is governed by New Zealand law and New Zealand courts have non-exclusive jurisdiction.

Powle & Hodson LAWYERS

Client Service Information

We are committed to complying with the Rules of Conduct and Client Care for Lawyers. To assist you, the following information describes some key elements of those rules, and explains some recourse you have as a consumer of legal services.

Client Care and Service

Whatever legal services we are providing, we 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 far 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 your 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.

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 either discuss them with us or contact the New Zealand Law Society (*Law Society*) at www.lawsociety.org.nz, or on 0800 261 801.

Complaints

We have complaints procedures that are designed to ensure that any complaint is dealt with promptly and fairly.

If you have a complaint about our services or charges, please talk to the person you usually deal with or the director responsible for your work.

The Law Society also maintains a complaints service and you can make a complaint to that service by calling 0800 261 801 or by emailing complaints@lawsociety.org.nz.

Professional Indemnity Insurance

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

Lawyers' Fidelity Fund

The Law Society maintains the Lawyers' Fidelity Fund to provide protection against client losses arising from theft by lawyers. The most the Fidelity Fund can compensate you is NZ$100,000. The Fidelity Fund will not usually cover loss relating to money a lawyer is instructed to invest on behalf of a client.