

(Effective 21 February 2024)

TERMS OF ENGAGEMENT

1 GENERAL

- 1.1 These Standard Terms of Engagement (**Terms**) apply to any current engagement and also to any future engagement, whether or not we send you another copy of them. We are entitled to change these Terms from time to time, in which case we will send you amended Terms. Our relationship with you is governed by New Zealand law and New Zealand courts have exclusive jurisdiction.
- 1.2 Unless we agree otherwise in writing, your acceptance of our terms of engagement binds you in your personal capacity and binds any entity on whose behalf you provide us with instructions for.
- 1.3 We will take your initial and continued instructions as your acceptance of these terms of engagement.

2 SERVICES

- 2.1 The services we are to provide for you (the **Services**) are outlined in our email or letter of engagement along with any further instructions that you provide to us in writing (or that we record in writing).
- 2.2 In order to provide you with efficient advice and services and to provide the most cost-effective service, it may be that part or all of your instructions will be delegated to other professionals in our firm.

3 COMMUNICATIONS

- 3.1 We will obtain from you contact details, including email address, postal address and telephone numbers. We may provide documents and other communications to you by email (or other electronic means). You will advise us if any of your contact details change.
- 3.2 We will report to you periodically on the progress of any engagement and will inform you of any material and unexpected delays, significant changes or complications in the work being undertaken. You may request a progress report at any time.

4 FINANCIAL

- 4.1 **Fees:** The basis upon which we will charge our fees is set out in our engagement email or letter.
- a. The following rates per hour will apply (note other people with other charge-out rates may work on your file from time to time):
- | | |
|-------------------------------------|----------|
| (i) Director (Marshall Andrew Bird) | \$600.00 |
| (ii) Director (Aimee Yang) | \$375.00 |
| (iii) Solicitor | \$280.00 |
| (iv) Legal executive | \$225.00 |
| (v) Law clerk | \$225.00 |
| (vi) Administrator | \$175.00 |
- b. If the engagement email or letter specifies a fixed fee, we will charge this for the agreed scope of the Services. Work which falls outside that scope will be charged on an hourly rate basis. We will advise you as soon as reasonably practicable if it becomes necessary for us to provide services outside of the agreed scope and, if requested, give you an estimate of the likely amount of the further costs.
- c. Where our fees are calculated on an hourly basis, the hourly rates of the people we expect to undertake the work are set out in clause 4.1a and our engagement email or letter. Any differences in those rates reflect the different levels of

experience and specialisation of our professional staff. Time spent is recorded in six-minute units.

- d. Hourly fees may be adjusted (upwards or downwards) to ensure the fee is fair and reasonable to take into account matters such as the complexity, urgency, value and importance of the Services. Full details of the relevant fee factors are set out in Rule 9 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008(Rules).

4.2

Disbursements and third party expenses: Unless we agree otherwise in writing, you are required to engage any expert or third party professional directly and we are not responsible for the payment of any invoices rendered by the expert or third party professional in relation to your matter. If in providing the Services we incur disbursements and payments to third parties on your behalf, you authorise us to incur these disbursements (which may include such items such as council rates, water charges, title search fees, e-dealing registration fees, court filing fees, travel and courier charges) which are reasonably necessary undertake the Services (which may include items such as experts' 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). You authorise us to make payments of the disbursements.

4.3

Office service charge fee (administrative expenses): In addition to disbursements, we may our estimated office expenses incurred for your matter, whichever is greater, to cover out of pocket costs which are not included in our fee, and which are not recorded as disbursements. These include items such as photocopying and printing, postage and phone calls. Please refer to page 5 of our Terms of Engagement.

4.4

GST: Our services will usually attract Goods and Services Tax (GST). If this is the case, GST is payable by you on our fees and charges.

4.5

Invoices: We will send interim invoices to you, usually monthly, and on completion of the matter, or termination of our engagement. We may send you invoices more frequently when we incur a significant expense or undertake a significant amount of work over a shorter period of time.

4.6

Payment: Invoices are payable within 7 days of the date of the invoice, unless alternative arrangements have been made with us.

- a. You irrevocably authorise and instruct us to deduct our fees and other expenses from funds held in our trust account on your behalf on provision of an invoice to you, unless those funds are held for a particular purpose.
- b. Where we have instructed/retained any barrister to act on your behalf, you irrevocably authorise and instruct us to:
- (i) deduct any such barrister's fees and other expenses from funds held in our trust account on your behalf on provision of the barrister's invoice to you, unless those funds are held for a particular purpose; and
- (ii) disclose to the barrister the amount held in our trust account on your behalf.
- c. If you have difficulty in paying any of our accounts, please contact us promptly so that we may discuss payment arrangements.
- d. If your account is overdue we may:
- (i) require interest to be paid on any amount which is more than
- 7 days overdue, calculated at the rate of 12% per annum (calculated daily, monthly compounding) for

	the period that the invoice is outstanding;		money.
	(ii) stop work on any matters in respect of which we are providing services to you;	4.11	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, you remain responsible for payment to us in accordance with these Terms if the third party fails to pay us.
	(iii) require an additional payment of fees in advance or other security before recommencing work;		
	(iv) issue a further invoice for all of our outstanding work in progress on your matter, which will be immediately due and payable;	5	FEE DISPUTE
	(v) recover from you in full any costs we incur (including on a solicitor/client basis) in seeking to recover the amounts from you, including our own fees and the fees of any collection agency.	5.1	If you wish to dispute any invoice of ours you must do so in writing to us before the due date for payment of the invoice, specifying the grounds for the dispute in reasonable detail and setting out the amount you consider is due.
e.	Payment may be made by bank transfer, as set out on the applicable invoice.	5.2	On the due date for the invoice you must pay us the amount you have stated that you consider is due, and must pay into the trust account of another solicitor the balance of the invoice.
f.	You authorise us to disclose information about to you any solicitor, debt collector or debt buyer in the event that you default on payment under these Terms.	5.3	That solicitor will hold the funds for you on trust and will provide an engagement letter to you in respect of those funds.
g.	To avoid doubt, you are deemed to have specifically directed us to deduct such funds held in our trust account (under clause 4.6(a) and 4.6(b)) unless such funds are subject to prior specific disbursement instructions (such as the repayment of third party lenders and so forth) other than the general disbursement of any net balance to you.	5.4	The balance will be applied in accordance with the resolution of the dispute over the invoice.
4.7	Fees and disbursements in advance: We may ask you to pre-pay amounts to our trust account, or to provide security for our fees and expenses (i.e., require a 'retainer' to be paid) by depositing funds to our trust account. We may do this, on reasonable notice, at any time.	5.5	If you do not follow the above steps you are deemed to have accepted that the invoice is payable in full.
4.8	Trust account and interest-bearing deposit account: Where you deposit funds to our trust account, you irrevocably authorise and instruct us to deduct any fees and disbursements for which we have provided an invoice (including, where we have instructed a barrister to act on your matter, any fees and disbursements for which the barrister has provided an invoice to us) from amounts held on your behalf in our trust account (unless, when you paid the funds to our trust account, you instructed us, in writing, that the funds were for a specific purpose) pursuant to clause 4.6(a) and/or 4.6(b). We will not hold funds in an interest-bearing account unless specifically instructed by you and agreed by us.	5.6	Any dispute will be dealt with as a complaint using the procedure described in clauses 13 and 14.
4.9	Estimates: You may request an estimate of our fee for undertaking the Services at any time. If possible, we will provide you with an estimate (which may be a range between a minimum and a maximum amount or for a particular task or step). An estimate is not a quote. Any significant assumptions included in the estimate will be stated and you must tell us if those assumptions are wrong or change. We will inform you if we are likely to exceed the estimate by any substantial amount.	6	CONFIDENTIALITY AND PERSONAL INFORMATION
4.10	Liability for payment: Each client named in our letter of engagement is jointly and severally liable to us under these Terms. If the client is a company, then each person who signs these Terms on the company's behalf acknowledges and agrees that he or she has asked us to supply services to the company, and, in consideration of us supplying services to that company, agrees:	6.1	Confidence: 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 guarantee the company's payment to us of all money it (from time to time) owes;		a. to the extent necessary or desirable to enable us to carry out your instructions; or
	b. that he or she can be treated by us as a principal debtor for that money; and		b. as expressly or impliedly agreed by you; or
	c. to indemnify us against all costs, losses, and liabilities we incur or suffer because the company fails to pay us that		c. as necessary to protect our interests in respect of any complaint or dispute; or
			d. to the extent required or permitted by law.
		6.2	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.
		6.3	Personal information and privacy: In our dealings with you we will collect and hold personal information about you. We will use that information to carry out the Services and to make contact with you about issues we believe may be of interest to you. Provision of personal information is voluntary but if you do not provide full information this may impact on our ability to provide the Services.
		6.4	Subject to clause 6.1, you authorise us to disclose, in the normal course of performing the Services, such personal information to third parties for the purpose of providing the Services and any other purposes set out in these Terms.
		6.5	We may disclose your name and address to third parties such as credit agencies to perform a credit reference or to undertake credit management or collection processes if it is reasonable to do so.
		6.6	The information we collect and hold about you will be kept at our offices and/or at secure file storage sites (including electronic file storage sites) elsewhere. If you are an individual, you have the right to access and correct this information. If you require access, please contact Aimee Yang.

- 6.7 **Verification of identity:** The Financial Transactions Reporting Act 1996 requires us to collect from you and to retain information required to verify your identity. We may therefore ask you to show us documents verifying your identity (such as a passport or driver's licence). We may retain copies of these documents. We may perform such other customer verification checks as to your identity and checks as to the source of any funds associated with any transaction to which the Services relate as we consider to be required by law.
- 6.8 **Compliance:** Please refer to section 7 'Compliance' regarding information that may be required to be provided to third parties.
- 7 DOCUMENTS, RECORDS, AND INFORMATION**
- 7.1 We will keep a record of all important documents which we receive or create on your behalf on the following basis:
- We may keep a record electronically and destroy originals (except where the existence of an original is legally important such as in the case of wills and deeds).
 - At any time, we may dispose of documents which are duplicates, or which are trivial (such as emails which do not contain substantive information), or documents which belong to us.
 - We are not obliged to retain documents or copies where you have requested that we provide them to you or to another person and we have done so, although we are entitled to retain copies for our own records if we wish to do so.
- 7.2 We will provide to you on request copies or originals (at our option) of all documents to which you are entitled under the Privacy Act 1993 or any other law. We may charge you our reasonable costs for doing this.
- 7.3 Where we hold documents that belong to a third party you will need to provide us with that party's written authority to uplift or obtain a copy of that document.
- 7.4 Unless you instruct us in writing otherwise, you authorise us and consent to us (without further reference to you) to destroy (or delete in the case of electronic records) all files and documents in respect of the Services 7 years after our engagement ends (other than any documents that we hold in safe custody for you or are otherwise obliged by law to retain for longer). We may retain documents for longer at our option.
- 7.5 We may, at our option, return documents (either in hard or electronic form) to you rather than retain them. If we choose to do this, we will do so at our expense.
- 7.6 We own copyright in all documents or work we create in the course of performing the Services but grant you a non-exclusive licence to use and copy the documents as you see fit for your own personal or commercial use. However, you may not permit any third party to copy, adapt or use the documents without our written permission.
- 8 COMPLIANCE**
- 8.1 We are obliged to comply with all laws applicable to us in all jurisdictions, including (but not limited to):
- Anti-money laundering (AML) and countering financing of terrorism (CFT) laws; and
 - Laws relating to tax and client reporting and withholdings.
- 8.2 We may be required to undertake customer due diligence on you, persons acting on your behalf and other relevant persons such as beneficial owners and controlling persons. We may not be able to begin acting, or to continue acting, for you until that is completed.
- 8.3 To ensure our compliance and yours, we may be required to provide information about you, persons acting on your behalf or other relevant persons to third parties (such as government agencies). There may be circumstances where we are not able to tell you or such persons if we do provide information.
- 8.4 Please ensure that you and/or any of the persons described previously are aware of and consent to this. It is important to ensure that all information provided to us is accurate. If the information required is not provided, or considered by us to be potentially inaccurate, misleading, or in contravention of any law, we may terminate or refuse to enter into an engagement.
- 9 CONFLICTS OF INTEREST**
- 9.1 We are obliged to protect and promote your interests to the exclusion of the interests of third parties and ourselves as set out in the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (Rules). This may result in a situation arising where we have a conflict of interest.
- 9.2 We have procedures in place to identify and respond to conflicts of interest or potential 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 Rules. This may mean we cannot act for you further in a particular matter and we may terminate our engagement.
- 10 DUTY OF CARE**
- 10.1 Our duty of care is to you and not to any other person. We owe no liability to any other person, including for example any directors, shareholders, associated companies, employees or family members unless we expressly agree in writing. We do not accept any responsibility or liability whatsoever to any third parties who may be affected by our performance of the Services or who may rely on any advice we give, except as expressly agreed by us in writing.
- 10.2 Our advice is not to be referred to in connection with any prospectus, financial statement, or public document without our written consent.
- 10.3 Our advice is opinion only, based on the facts known to us and on our professional judgement, and is subject to any changes in the law after the date on which the advice is given. We are not liable for errors in, or omissions from, any information provided by third parties.
- 10.4 Our advice relates only to each particular matter in respect of which you engage us. Once that matter is at an end, we will not owe you any duty or liability in respect of any related or other matters unless you specifically engage us in respect of those related or other matters.
- 10.5 Unless otherwise agreed, we may communicate with you and with others by electronic means. We cannot guarantee that these communications will not be lost or affected for some reason beyond our reasonable control, and we will not be liable for any damage or loss caused thereby.
- 11 LIMITATION ON OUR OBLIGATION OR LIABILITY**
- 11.1 To the extent allowed by law, our aggregate liability to you (whether in contract, tort, equity or otherwise) in connection with our Services is **limited to the total amount of our fees (excluding GST) rendered to you for our Services on the applicable matter.**
- 12 TERMINATION**
- 12.1 You may terminate our retainer at any time.
- 12.2 We may terminate our retainer in any of the circumstances set out in the Rules including the existence of a conflict of interest, non-



payment of fees, and failure to provide instructions.

- 12.3 If our retainer is terminated you must pay us all fees, disbursements and expenses incurred up to the date of termination.

13 FEEDBACK AND COMPLAINTS

- 13.1 Client satisfaction is one of our primary objectives and feedback from clients is helpful to us. If you would like to comment on any aspect of the service provided by us, including how we can improve our service, please contact us by email at info@birdyang.co.nz.

- 13.2 If you have any concerns or complaints about our services, please raise them as soon as possible with the person to whom they relate, with reference to our Complaint Procedure set out in clause 14. They will respond to your concerns as soon as possible. If you are not satisfied with the way that that person has dealt with your complaint, please raise the matter with Marshall Andrew Bird or Aimee Yang. We will inquire into your complaint and endeavor in good faith to resolve the matter with you in a way that is fair to all concerned.

14 COMPLAINT PROCEDURE

- 14.1 How we handle complaint:

- a. You may communicate your complaint to us by a phone call, text message or email or post. We will acknowledge receipt of your complaint within 5 working days of receiving your complaint.
- b. We will invite you to a meeting in person or by telephone to try to resolve your complaint, within 5 working days of sending you the acknowledgement letter.
- c. Within 5 working days of the meeting, we will write to you to confirm what took place and any solutions or remedies agreed with you.
- d. If it is not possible to hold a meeting with you, we will send you a detailed written reply to your complaint, within 25 working days of sending you the acknowledgement letter.
- e. If you are still not satisfied, you should contact us again. If we both agree, we can try to arrange:
 - (i) For the complaint to be reviewed by another lawyer who is familiar with client care and complaints; or
 - (ii) For independent mediation or dispute resolution facilitation to be conducted by a local organization.

- 14.2 If you are still not satisfied

- a. If you are not satisfied with the way we have dealt with your complaint the New Zealand Law Society has a complaints service to which you may refer the issue. You can call the 0800 number for guidance, lodge a concern or make a formal complaint. Matters may be directed to:

Lawyers Complaints Service
PO Box 5041
Wellington 6140
New Zealand
Phone: 0800 261 801

To lodge a concern: www.lawsociety.org.nz/for-the-community/lawyers-complaints-service/concerns-form

To make a formal complaint:

www.lawsociety.org.nz/for-the-community/lawyers-complaints-service/how-to-make-a-complaint

Email: complaints@lawsociety.org

THE ABOVE TERMS OF ENGAGEMENT ARE ACCEPTED:

Client's signature: _____

Client's name: _____

Date signed : _____ / _____ /2024

Client's signature: _____

Client's name: _____

Date signed : _____ / _____ /2024

Client's signature: _____

Client's name: _____

Date signed : _____ / _____ /2024

Client's signature: _____

Client's name: _____

Date signed : _____ / _____ /2024

Client's signature: _____

Client's name: _____

Date signed : _____ / _____ /2024

Disbursements inclusive of GST charged only if applicable

ADLS Forms and Fees	\$25.00	Various on type of form
Bank Cheque Fee	\$6.00	
Bank Fees	\$5.00	
Courier Fees	\$12.00	Average – will vary depending on type
LINZ – E-dealing Auto Registration Fee (each)	\$90.00	
LINZ – Search Fee (each)	\$6.000	
LINZ – Manual Search Fee	\$25.00	
Companies Office Incorporation Fee	\$120.75	
Companies Office – Name Reservation Fees	\$11.50	
Companies Office Annual Return Fee	\$57.20	
LIM Fees	\$295.00	Usual cost of non-urgent DCC LIM
PPSR Search Fees	\$2.30	
PPSR Financing statement registration	\$16.10	

Office Expenses \$90 (Inclusive of GST) (Standard fees over \$1,000)

Telecommunications Charges	\$20.00
Photocopying and Printing	\$35.00
Stationary, File storage and Sundry	\$35.00

Registries Service Fees (charged only if applicable)

LINZ – registration fee (each)	\$15.00
LINZ – search fee (each)	\$5.00
ADLS – forms (each) = 50% of the cost	50%

Office expenses can be less depending on nature of instruction Average \$90 inclusive of GST.

We reserve the right to charge extra for large volumes of printing/photocopying at \$0.20 plus GST per page. Colour printing/photocopying is \$1 plus GST per page.

AML/CFT Costs

In addition to our fee, we will charge an on-off fee of \$100 plus GST per individual for standard AML Customer Due Diligence ("CDD") compliance. If we are required to go beyond standard CDD, for instance if we are required to make enquiries regarding your source of wealth and/or source of funds, or make repeated requests for proof of identity information and/or documentation from you, we will charge you on a time engaged basis for this additional compliance and include such charges in our first account. We will work with you to minimise these costs.

\$175 +GST administration fee for each Prescribed Transaction Report we are required to file. We encourage you to use a NZ bank account when transacting with us to avoid this fee.