

The terms and Conditions (“the Terms”) together with any engagement letter and any fee estimate sent to you, form the initial Contract between **AORAKI LEGAL 2018 LIMITED** (“*Aoraki*”) and the client (“*You*”). Unless otherwise agreed in writing, any subsequent services performed by Aoraki Legal will be provided by on the basis of the Contract, including the Terms below.

## 1 Client Care and Service

Under the Lawyers and Conveyancers (Lawyers Conduct and Client Care) Rules 2008, *Aoraki* must:

- (a) Act competently, in a timely way, and in accordance with instructions received and arrangements made.
- (b) Protect and promote your interests and act for you free from compromising influences or loyalties.
- (c) Discuss with you your objectives and how they should best be achieved.
- (d) Provide you with information about the work to be done, who will do it, and the way the services will be provided.
- (e) Give you clear information and advice.
- (f) Protect your privacy and ensure appropriate confidentiality.
- (g) Treat you fairly, respectfully and without discrimination.
- (h) Keep you informed about the work being done and advise you when it is completed.
- (i) 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 (“the Rules”). 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.lawyers.org.nz](http://www.lawyers.org.nz) or call the New Zealand Law Society on 0800 261 801.

## 2 Terms and Termination

The Contract will continue until all the Services have been provided unless sooner terminated. Either party may terminate the Contract by written notice or if the other party fails to remedy a material breach of the Contract such as recorded in clause 8(h) below. Termination will not affect your obligations to pay *Aoraki*’s fees for all Services performed up to termination. *Aoraki*’s fees for all Services performed up to termination must be paid by You prior to uplifting your records and *Aoraki* may retain copies of your documents and records.

If we terminate the retainer we will give you reasonable notice so that you can arrange alternative representation and we shall give you reasonable assistance to find another lawyer. Any of the

terms and conditions of the engagement letter or the Terms that are intended to apply after completion of the Services will continue to apply following termination.

### **3 Suspension of Service**

We reserve the right to stop work on your retainer if interim accounts are not paid on time or a request for information or action remains unsatisfied.

### **4 Guarantee from You**

While You have instructed us at the commencement of this engagement, it is conceivable that as this matter progresses instructions from time to time may be taken from other entities (such as companies, other corporate bodies, family trusts) and third party individuals associated with You or established during the course of this engagement at your request. In such instances these Terms will apply to the receipt of such instructions, *and you unconditionally guarantee to Aoraki the performance by the entity and/or individual(s) of all obligations expressed or implied in the Contract.*

### **5 Services**

Aoraki will provide the services specified in any initial engagement letter or, as subsequently agreed and set out, in any replacement or supplementary engagement letter (“the Services”). The Services may include advice and recommendations, but it is understood and agreed that all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by You. Either Aoraki or You may request changes to the Services. Each agrees to work together to enable each party to assess the impact of any requested changes on the cost, timing or any other aspect of the Services.

### **6 Information**

You will provide in a candid, full and timely fashion all information and documents reasonably required to enable Aoraki to provide the Services. Unless otherwise required pursuant to the engagement, Aoraki will have no responsibility to independently verify the accuracy of such information and documents. Aoraki will not be liable for any loss or damage arising from any inaccuracy, incompleteness or other defect in any information or documents supplied by You.

### **7 Workpapers / Files**

- (a) The workpapers produced by Aoraki in the course of its work in providing the Services are the property of Aoraki. Aoraki shall be entitled to retain its work papers and copies of any documents provided to it in the course of performing its Services.
- (b) On commencing the Services Aoraki will open a file. This is the property of Aoraki. The file retained will be stored and kept for at least seven years. After that period of time the file may at Aoraki’s sole discretion be destroyed. If You send to Aoraki any papers which ultimately form part of that file but which are to be returned to You, You must advise Aoraki accordingly at the time these papers are supplied.
- (c) You may however request a copy of the file subject to the payment of reasonable photocopy charges. You are welcome to uplift a copy of your file provided that all fees and expenses have been paid. Please give Aoraki reasonable notice before collecting your file should you wish to do so (also refer to condition (e) below).

- (d) In respect of Deeds or documents, these are the property of You. Aoraki reserves the right to retain those Deeds and documents until all monies due for costs, office services or disbursements are paid. Aoraki's position in this regard is contrary to the usual common law position which would otherwise exist.
- (e) There may be circumstances where files are archived and stored off site in these circumstances we reserve the right to charge a fee for the service of retrieving those files. The quantum of the fee will be calculated in terms of the reasonable fee factors set out in Chapter 9 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 at paragraph 9.1. In particular the factors specified in sub paragraphs (a) time (c) importance and (d) urgency will apply. Agreement to the fee will be a prerequisite of any file release from archives in those circumstances.

## **8 Fees and Payment**

- (a) (i) Either before or after the commencement of the Services, or on any change in the Services Aoraki may, at its discretion, or will, if so required by You, provide an estimate and/or agree with You the total fees for the Services.
- (ii) Where the services provided are complex or involve in particular litigation (such as Family Court litigation whether that litigation is under the Care of Children Act 2004, the Domestic Violence Act 1995, the Property (Relationships) Act 1976 or the Protection of Personal and Property Rights Act 1988 or at common law by way of example) the rendering of regular interim invoices will be compliance with the provision of updated estimates. Updated estimates will be provided on request in addition to the regular interim invoices.
- (b) All fees charged will be based on the New Zealand Law Society requirement that all professional fees shall be fair and reasonable having regard to the interests of both You and Aoraki. In setting fees, a number of factors will be taken into account including not only the amount of time devoted by the Directors and staff to the Services, but the urgency and circumstances in which the matter is undertaken and time limitations imposed (including those imposed by You), the amount or value of the money or property involved, the degree of complexity and resulting skill, specialized knowledge and responsibility required to perform the work, the experience, reputation and ability of the Directors and staff involved, and estimate given, the results achieved and any other criteria that are relevant and approved by the NZ Law Society.
- (c) In providing services we may incur disbursements or have to make payments to third parties on your behalf. These will be included in our invoice to you when the expense is incurred. We may ask you to pay money into our trust account in advance to cover such payments. Aoraki also charges a GST inclusive file service fee of 6% of our fee to cover office expenses such as tolls, faxes and photocopying expenses. We will charge you separately for all other disbursements including forms and courier charges.

- (d) In the situation where funds are received by us on your behalf in respect of the instructions (whether wholly or in part), we shall deduct the fees directly from the funds held. The acceptance of these terms of engagement is a direction pursuant to S110 of the Lawyers and Conveyancers Act 2006 to so deduct the fees from the funds held. An invoice will be promptly provided to You in person or by post in the event that such deductions are made. The balance of funds held (if any) shall be paid to You by direct credit (verification of your bank account details will be required by way of a printed bank deposit slip).
- (e) Regardless of the nature or type of Services being provided to You, Aoraki reserves the right to render interim accounts in respect of which the provisions of paragraph 8(f) shall apply.
- (f) Aoraki may at its discretion require funds to be paid on account before it incurs out of pocket expenses.
- (g) Our standard terms of payment are 14 days from the date the invoice is rendered. Failure to make payment within 14 days from the invoice date will result in interest being charged at the rate of 2% per month on any amount outstanding.
- (h) Failure to pay fees on time may, at Aoraki's discretion, lead to suspension of the Services (including Aoraki's right to refuse to settle a property, loan, commercial or other transaction), or termination of the engagement. All reasonable fees up to suspension or termination shall be and remain payable, notwithstanding the suspension or termination.
- (i) We reserve the right to take action to recover any unpaid accounts. In the event we are forced to undertake such action, we reserve the right to recover all costs associated with such recovery from You.

## **9 Confidentiality**

- (a) Aoraki will not disclose to third parties any confidential information relating to the Services unless either authorised by You or compelled by law, or as is necessary to provide the Services.
- (b) Unless Aoraki has agreed in writing, no advice or information provided to You is to be made available, directly or indirectly to any third party, or shall be used or relied upon by any third party. Aoraki will have no liability to any such third party. You indemnify Aoraki against any third party claim arising from its release of any such Aoraki advice or information.

## **10 Professional Indemnity Insurance**

Aoraki holds 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.

**11 Lawyers Fidelity Fund.** The Law Society maintains the Lawyers Fidelity Fund for the purposes 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 & 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. This is only a short summary of the major provisions in the Lawyers & Conveyancers Act 2006 relating to the Lawyers Fidelity Fund. If you would like further information please ask us.

## **12 Investment**

From time to time Aoraki may receive on behalf of You various funds. Unless otherwise instructed, or the quantum of the funds retained is so minimal as to not warrant investment, all funds will if practicable be deposited to Your credit in an interest bearing deposit account within Aoraki's Trust Account. All interest accrued less usual Resident Withholding Tax and Accounts Department handling commission, at a rate of 7% of net interest accrued, will be for the credit of You.

## **13 Indemnity**

In the event Aoraki becomes involved in any claim (including actual or threatened litigation of whatever form) in relation to the Services, Aoraki will immediately notify You. You agree, to the extent permitted by law, to indemnify Aoraki, its Directors and employees in all respects including its reasonable costs and expenses involved in defending any such actual or threatened litigation. Where legal counsel is retained for these purposes, those costs, will be met by You. Aoraki will use its best endeavours to agree the quantum of any such costs recognising the need to respond to such litigation on a prompt and reasonable basis. You agree to meet the costs of Aoraki for reasonable time incurred by its Directors and staff and any other reasonable costs and expenses in relation to any inquiry or proceeding initiated by any person.

## **14 E-mail**

While we use standard virus checking software, we accept no responsibility for viruses or anything similar in any emails or any attachments which come from Aoraki. We also do not accept any responsibility for any changes to, or interception of, any email or any attachment after it leaves our information systems. We do not accept liability for any loss arising from non-receipt of any communication including email communications.

14.1 In the new millennium there has been a substantial shift in communication methodology. Correspondence is now principally by electronic means. The perception is that this method of communication is urgent and must be responded to urgently in all circumstances. Aoraki and its employees will by necessity "triage" these communications into routine, non-urgent, and urgent and having regard to other commitments and time constraints respond accordingly. Clients should not have an expectation that all email correspondence is urgent merely because of transmission by electronic means.

## **15 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 letter of engagement.

## **16 No Assignment or Benefit**

You may not assign the benefit of the Services to any third party without the written consent of Aoraki. For the avoidance of doubt the sole beneficiary of the Services under this Contract is You. No other party is intended to take a benefit under the Contracts (Privity) Act 1982.

## **17 Health and Safety**

The Health and Safety at Work 2015 obliges Aoraki to take all practical steps to ensure the health and safety of its staff engaged on any assignment. Aoraki and You will be mutually responsible to

ensure the safety of Aoraki staff and to see no risk of harm or harm is caused to them in Your workplace. You shall ensure that the Act is fully complied with when Aoraki personnel visit Your worksites.

**18 Governing Law**

Aoraki and You agree that the Contract and their relationship is governed by New Zealand law – the New Zealand Law Society, Legal Complaints Review Officer and the New Zealand Courts have non-exclusive jurisdiction.

**19 Entire Agreement**

The Contract, including these Terms, subject to any further conditions set out in writing, forms the entire agreement between Aoraki and You. No previous discussions, proposals, correspondence, understandings or other communications, whether written or oral, shall have contractual effect subsequent to the engagement letter. Only written variations signed on behalf of Aoraki shall have effect to vary the Contract.