

# SilkFern Law

## Lawyers

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Nelson Chiu Leung Wu (LLB, BCom, BHB)

3 September 2021

Clients of Birdsey & Associates, Lawyers

Dear Clients,

### Our Terms of Engagement with You – General Affairs

1. Thank you for looking Nick Birdsey's email. I provide the following engagement letter as an indication of the terms should you wish to engage the services of SilkFern Law.
2. **Legal Services** - We are pleased to provide you the following legal services – General Affairs.
3. **Staff** - The names and titles of staff of the firm who will have responsibility for the legal work are:
  - 3.1. Day to day responsibility Nelson Wu
  - 3.2. Responsible Director / Lawyer Nelson Wu
  - 3.3. Other staff may also be involved in providing legal services, where appropriate.
4. **Fees** –
  - 4.1. Unless the matter is a fixed fee service or a fee estimate with terms have been provided, our fee will be calculated based on time spent charged at our hourly rates, and adjusted where appropriate for other factors permitted by the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (such as complexity, urgency, specialized knowledge, responsibility, importance and the results achieved and risk involved).
  - 4.2. The hourly charge out rates is/are:
    - (a) Nelson Wu \$350 plus GST;
  - 4.3. All fees and charge out rates in this letter are plus GST, office expenses and disbursements.
5. If you have any questions regarding the above please let us know. If at any time you have any concerns or wish to provide feedback about our service, please do not hesitate to contact Nelson Wu. If we cannot resolve your concerns directly through our internal complaints service you may make a complaint to the Lawyers Complaints Service. Details are provided in the attached information.

6. We are **enclosing** our client care information in respect of this retainer, including our basis of charging, general information about the service you can expect from us as your lawyers, and also our standard terms of engagement.
7. **Regulatory compliance** – We are obliged to comply with relevant laws including resident withholding tax, anti-money laundering and the countering of financing of terrorism, common reporting standards and USA foreign account tax compliance act. We may be required to complete client due diligence or enhanced due diligence on you or associated persons by making requests for information from you. If satisfactory we will be able to commence legal work and if already commenced to complete the matter. Should the information not be provided, is considered to be potentially inaccurate, misleading or contravenes any law, we have the right to refuse or terminate this engagement.
8. Unless we hear from you, we will assume you are happy with our terms and information in this letter.
9. Once again, we thank you for your instructions and look forward to working with you.
10. Should you have any queries please contact us.

Yours faithfully

**SilkFern Law**

Nelson Wu  
(Director)  
[nelson@silkfernlaw.com](mailto:nelson@silkfernlaw.com)  
021 0843 7547



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***By signing and returning copy of this letter, I / we acknowledge and agree to the terms of Engagement, and for you to proceed to act on my / our instructions.***

\_\_\_\_\_  
Client signature

Date

2021

## TERMS OF ENGAGEMENT

### 1. General

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- 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. By instructing us to provide you with legal services, you are deemed to have accepted the Terms and the liability to pay the account that we will invoice for work done together with the service fee and any disbursements in relation to the engagement.

### 2. Services

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- 2.1. The services we are to provide for you (**Services**) are outlined in our 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

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- 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.
- 3.3. You agree that we may provide you from time to time with other information that may be relevant to you, such as newsletters and information bulletins. At any time you may request that this not be sent to you.

### 4. Financial

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#### 4.1. Fees:

The basis upon which we will charge our fees is set out in our engagement letter.

- 4.1.1. If the engagement 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.
- 4.1.2. Where requested and based on information you provided prior to the fee estimate, our fee estimate is a guide only and is not a fixed fee quote. Should the scope of work change as a result of further information and or if issues arise, or if the estimate will be exceeded, we will advise you of the reasons and obtain further instructions from you.

- 4.1.3. 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 our engagement 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.
- 4.1.4. 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

- 4.2.1. In providing the Services we may incur disbursements and payments to third parties on your behalf. You authorise us to incur these disbursements (which may include such items such as search fees, court filing fees, registration fees, agency or document service fees, travel and courier charges) which are reasonably necessary to provide the Services. You also authorise us to make payments to third parties on your behalf which are reasonably required to 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).
- 4.2.2. We reserve the right to request prepayment or an approximate amount to cover these expenses prior to incurring any expenses. If you request we instruct any other person (including Barrister, Counsel or another practitioner) we reserve the right to require payment of that person's estimate fees into our trust account beforehand. by instructing that person, we undertake to pay that person's fees and accordingly require funds in order to be able to provide that undertaking.
- 4.2.3. To enable we can make timely settlement payments, any other payments or honour any professional undertakings that requires you or any party related or associated with you to contribute any funds into our trust account for such settlement or payments, we rely on you, your related or associated party shall make such payments to us:
- 4.2.3.1. by **same day cleared payments** (requiring the paying bank to urgently email confirmation directly to us that the funds are paid by same day cleared payment); or
- 4.2.3.2. by the NZ registered bank making electronic payment to our trust account and urgently providing an email confirmation directly to us that such funds are "**cleared and will not be reversed**"; or
- 4.2.3.3. by electronic payment into our trust account from you, your related or associated parties **at least three (3) clear working days prior to the date** of settlement or payment, subject to AML requirements,

the failure of which may mean that we are unable to make timely payment for settlement or other payment.

## 4.3. Office service charge fee (Administrative expenses)

In addition to disbursements, we may charge a fee of 8% of our invoice 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.

#### **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 14 days of the date of the invoice, unless alternative arrangements have been made with us.

4.6.1. You authorise 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. Generally business, property and similar transactional matters will be billed at the time of settlement or on completion of the work.

4.6.2. If you have difficulty in paying any of our accounts, please contact us promptly so that we may discuss payment arrangements.

4.6.3. If your account is overdue we may:

4.6.3.1. require interest to be paid on any amount which is more than 14 days overdue, calculated at the rate of 5% above the overdraft rate that our firm's main trading bank charges us for the period that the invoice is outstanding;

4.6.3.2. stop work on any matters in respect of which we are providing services to you;

4.6.3.3. require an additional payment of fees in advance or other security before recommencing work;

4.6.3.4. 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.

4.6.4. Payments may be made by electronic means through a registered NZ bank to the firm's bank account **12-3030-0031784-000** in the name of SilkFern Law Limited trading as SilkFern Law.

#### **4.7. Fees and disbursements in advance**

We may ask you to pre-pay amounts to us, or to provide security for our fees and expenses. We may do this, on reasonable notice, at any time.

#### **4.8. 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. Unless specified, an estimate excludes GST, disbursements, service fee and expenses.

#### **4.9. 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.

#### **4.10. Trust Accounting:**

We operate a trust account. All money received from you or on your behalf will be held to your credit in our trust account.

4.10.1. Payments out of the trust account will be made either to you or to others with your authority. Written authorisation from you (and if we are acting for more than one of you, from all of you) will be required when payment is to be made to a third party. Before making a payment to another account we may require verification of the account details by provision of (for example) a copy of a deposit slip, cheque or bank statement showing the account number, a signed authority from you including the bank account details, or a signed letter from the relevant financial institution providing bank account details.

4.10.2. A full record of our trust account is kept at all times. A statement of trust account transactions detailing funds received and payments made on your behalf will be provided to you periodically and at any time upon your request.

4.10.3. Unless it is not reasonable or practicable to do so, when we hold significant funds for you for more than a short period of time we will place them on call deposit with a bank registered under section 69 of the Reserve Bank of New Zealand Act 1989. Interest earned from call deposits, less withholding tax and an interest administration fee payable to us of 10% of the gross interest, will be credited to you.

### **5. Confidentiality and personal information**

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#### **5.1. 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:

5.1.1. to the extent necessary or desirable to enable us to carry out your instructions;

5.1.2. as expressly or impliedly agreed by you;

5.1.3. as necessary to protect our interests in respect of any complaint or dispute; or

5.1.4. to the extent required or permitted by law.

#### **5.2. Confidential information**

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.

### **5.3. 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. (Note: if you have a privacy statement on your website include reference to this)

### **5.4. Authority to disclose**

Subject to clause 5.1, 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.

### **5.5. Disclose name and address**

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.

### **5.6. Keeping of information**

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 Nelson Wu.

### **5.7. 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.

### **5.8. Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML), Financial Transactions Reporting Act 1996 and other regulatory compliance (CRS / FATCA) (Regulatory Laws)**

5.8.1. Regulatory Laws require we obtain your identification, proof of address and any other details before we are permitted to provide services to you. You authorise us to electronically verify your information in accordance with our requirements for AML

5.8.2. You agree to promptly provide us with all relevant information we lawfully request from you, associated persons and entities to satisfy the Regulatory Laws and you consent we may conduct customer verification checks and any other relevant checks or searches. This may include requesting AML source of wealth (SOW) and or source of funds (SOF) and you agree we may contact your advisors for verification of SOW / SOF.

5.8.3. Should you wish to have funds on any interest bearing deposit (IBD) or we are required to place funds on IBD under the NZ Law Society Rules, you agree to first complete the necessary forms and provide any further relevant information from time to time.

- 5.8.4. You agree to advise us whether you have held any government, quasi government, local or international office, whether you have any relationship or tax liability or obligations with the United States of America.

## **6. Documents, records and information**

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- 6.1. We will keep a record of all important documents which we receive or create on your behalf on the following basis:
- 6.1.1. 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).
- 6.1.2. 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.
- 6.1.3. 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.
- 6.2. 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.
- 6.3. 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.
- 6.4. 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.
- 6.5. 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.
- 6.6. 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.

## **7. Conflicts of interest**

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- 7.1. 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.
- 7.2. 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.

## **8. Duty of care**

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- 8.1. 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.
- 8.2. Our advice is not to be referred to in connection with any prospectus, financial statement, or public document without our written consent.
- 8.3. 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.
- 8.4. 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.
- 8.5. 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.

## **9. Limitations on our obligations or liability**

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- 9.1. 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 amount available to be payable under the Professional Indemnity Insurance held by the firm.

## **10. Limited scope retainers**

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- 10.1. You may want to directly take greater control over your legal affairs and instruct us to provide a limited retainer service. This means that you request we provide a defined and limited / discreet retainer or service, and accordingly we do not owe you a broader duty of care beyond that limited service, notwithstanding any other term of the engagement. As our services are unbundled that will limit our liability to you and we will not be responsible for issues outside the limited retainer. We have the right to consider whether it is possible to act in such a limited retainer service within the Lawyers and Conveyancers Act (Conduct and Client Care) Rules 2008, and to advise if we can act in this way for you or not.
- 10.2. In any situation where it is advisable or recommended that a client or an associated person (such as a Guarantor) take independent legal advice, we will advise them to do so. If they choose not to do so, then our responsibilities are limited to an explanation of the terms of any document to be signed by them and the witnessing of their signatures to any such document. We will not provide any advice to them about the advisability of entering into any such transaction or arrangement. Where a client has received external advice in respect of some aspect of a transaction, such as financial advice from a mortgage broker or financial adviser, and we are instructed to implement those arrangements, for example by preparing loan documents, then we do not advise on the suitability of those arrangements. They fall outside the scope of our retainer. Our responsibility is limited to implementing the arrangements in terms of the instructions given to us.

## **11. Termination**

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- 11.1. You may terminate our retainer at any time.

- 11.2. 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.
- 11.3. If our retainer is terminated you must pay us all fees, disbursements and expenses incurred up to the date of termination.

## **12. Feedback and complaints**

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- 12.1. 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 the Partner responsible for your business or Nelson Wu.
- 12.2. If you have any concerns or complaints about our services, please raise them as soon as possible with the person to whom they relate. 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 the Partner responsible for your business or with Nelson Wu. We will inquire into your complaint and endeavour in good faith to resolve the matter with you in a way that is fair to all concerned.
- 12.3. 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](http://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](http://www.lawsociety.org.nz/for-the-community/lawyers-complaints-service/how-to-make-a-complaint)

Email: [complaints@lawsociety.org.nz](mailto:complaints@lawsociety.org.nz)

## Client Care Information

(In addition to the **attached** Terms of Engagement)

<p>Law Society's client care and service information</p>	<p>The Law Society's client care and service information is set out below.</p> <p>Whatever legal services your lawyer is providing, he or she must:</p> <ul style="list-style-type: none"> <li>• act competently, in a timely way, and in accordance with instructions received and arrangements made;</li> <li>• protect and promote your interests and act for you free from compromising influences or loyalties;</li> <li>• discuss with you your objectives and how they should best be achieved;</li> <li>• provide you with information about the work to be done, who will do it, and the way in which the services will be provided;</li> <li>• charge you a fee that is fair and reasonable, and let you know how and when you will be billed;</li> <li>• give you clear information and advice;</li> <li>• protect your privacy and ensure appropriate confidentiality;</li> <li>• treat you fairly, respectfully, and without discrimination;</li> <li>• keep you informed about the work being done and advise you when it is completed;</li> <li>• let you know how to make a complaint, and deal with any complaint promptly and fairly.</li> </ul> <p>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.</p> <p>If you have any questions, please visit <a href="http://www.lawsociety.org.nz">www.lawsociety.org.nz</a> or call 0800 261 801.</p>
<p>Insurance</p>	<p>We hold professional indemnity insurance which is at or exceeds the minimum standards set by the Law Society.</p>
<p>Lawyers' Fidelity Fund coverage</p>	<p>The Law Society maintains the Lawyers' Fidelity Fund for the purpose of providing clients of lawyers with protection against loss arising from theft by lawyers. The maximum amount to an individual</p>

	<p>claimant is limited to \$100,000. 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.</p>
<p>Lawyers Complaints Service</p>	<p>If you have a complaint about the services you have received from our firm please contact Nelson Wu.</p> <p>If we have been unable to resolve a complaint or concern you may contact:</p> <p>The Lawyers Complaints Service</p> <p>Phone: 0800 261 801</p> <p>Website: <a href="http://www.lawsociety.org.nz/for-the-community/lawyers-complaints-service/concerns-form">www.lawsociety.org.nz/for-the-community/lawyers-complaints-service/concerns-form</a></p> <p>Email: <a href="mailto:complaints@lawsociety.org.nz">complaints@lawsociety.org.nz</a></p>