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# AUCKLAND DISTRICT LAW SOCIETY

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## AGREEMENT FOR LEGAL SERVICES with

McMahon Butterworth Thompson ("the Firm")

### AGREEMENT

The Client (as described in this agreement) and the Firm agree that the Firm is to provide legal services to the Client in accordance with the details in the Schedule and on these Terms and Conditions.

So that the Firm will provide legal services to the Client, and at the request of the Client, the Guarantor (as described in this agreement) guarantees the performance of the obligations of the Client to the Firm and in particular will pay to the Firm any amount due to the Firm from the Client.

#### Limitation on the Use of this Form

You are licensed to use this form for one execution copy only. If you require more than one counterpart copy of the form for execution, you must obtain a further original copy from Auckland District Law Society. You may not photocopy or reproduce an uncompleted copy of this form and use it as an original copy.

**SCHEDULE**

Date:

**THE CLIENT**

Name(s):

Physical address:

Postal address:

Telephone:

Fax:

Mobile:

Email:

Registered for GST: YES / NO

GST No:

**Signed by the client(s)** .....

in the presence of

Witness name ..... Signature .....

Witness address .....

Witness occupation .....



**THE GUARANTOR**

Name(s):

Physical address:

Postal address:

Telephone:

Fax:

Mobile:

Email:

**Signed by the guarantor(s)** .....

in the presence of

Witness name ..... Signature .....

Witness address .....

Witness occupation .....

## INSTRUCTIONS

The Client instructs the Firm to act as the Client's lawyers generally as set out in this Agreement for Legal Services, and specifically as follows:

**Note: If instructions are lengthy or complex they may be continued in an annexure which shall form part of this Agreement.**

### FIRM'S CHARGES (See clauses 3 and 4 of Terms and Conditions)

*Hourly rate(s) where appropriate:*

Partner/Director: \$	plus GST	Other lawyer: \$	plus GST
Legal executive: \$	plus GST	Other staff: \$	plus GST

*Best estimate where appropriate:*

\$ plus GST, agency fees, and disbursements. (This figure represents the Firm's **best estimate** of the costs to carry out the Client's instructions).

### CREDIT LIMIT (See clause 5 of Terms and Conditions)

\$

**AMOUNT TO BE PAID TO THE FIRM'S TRUST ACCOUNT IN ADVANCE TOWARDS COSTS** (See clauses 6, 7, and 8 of Terms and Conditions.)

\$

### PROFESSIONAL INDEMNITY ARRANGEMENTS OF THE FIRM

The Firm does ~~not~~ (strike out the part not applicable) hold indemnity insurance that meets or exceeds the minimum standards specified by the Law Society.

### COMPLAINTS PROCEDURE

The Firm has a complaints procedure. Any complaint the Client has about the Firm's dealings with the Client must be made initially to the person in charge of complaints procedures, who then must discuss the complaint in detail with the Client at the earliest opportunity.

If the Client is dissatisfied with the outcome of the initial discussion, then the Client must write to the Firm setting out the Client's complaint and reasons for dissatisfaction, as well as the Client's reasoned proposal for resolution of the complaint.

On receipt of a written complaint,

**[Firm to complete details of Firm's complaints procedures here]**

**By reference to the partner responsible for or undertaking your work**

If the client is unsatisfied with the result of the Firm's complaint procedures, then the Client has the right to lodge a written complaint with the New Zealand Law Society's complaints service – details of which are available on [www.adls.org.nz](http://www.adls.org.nz).

### LAWYERS' FIDELITY FUND

If the Instructions involve or result in the Firm being entrusted by the Client with money or other valuable property, the Client is protected by the Lawyers' Fidelity Fund if the money or property is taken by theft by the Firm or any of its employees or agents. Claims on that Fund are limited to \$100,000 for any one theft.

## TERMS AND CONDITIONS

### 1. Client's Instructions

- 1.1. The Firm will act in the Client's best interests to carry out the Client's instructions.
- 1.2. The Firm reserves the right to cease to act where the Client cannot or will not provide instructions required in addition to those specified under the heading "Instructions", or where the Firm is of the opinion that the Client has misled or deceived the Firm in any material way.
- 1.3. The Firm will take reasonable steps to keep the Client informed of the steps taken to carry out the Client's instructions.
- 1.4. By instructing the Firm the Client accepts liability to pay the accounts that the Firm will render for work done together with all disbursements incurred in respect of the Client's instructions.

### 2. What are the Firm's Obligations to the Client?

- 2.1. The Rules of Conduct and Client Care for Lawyers of the New Zealand Law Society require that in all events, subject to the duties of the Firm and its members to the courts and to the justice system, the firm and each of its lawyers must:
  - (1) act competently, in a timely way, and in accordance with any arrangements made between the Client and the Firm;
  - (2) protect and promote the Client's interests and act for the Client free from compromising influences or loyalties;
  - (3) discuss the Client's objectives and how they should best be achieved;
  - (4) provide the Client with information about the work to be done, who will do it and the way in which the Firm's services will be provided;
  - (5) charge the Client a fee that is fair and reasonable, and let the Client know when the Client will be billed;
  - (6) give the Client clear information and advice;
  - (7) protect the Client's privacy and ensure appropriate confidentiality;
  - (8) treat the Client fairly, respectfully, and without discrimination;
  - (9) keep the Client informed about the work being done and advise when it is completed;
  - (10) let the Client know if the Instructions are of the sort where the Client may be eligible for legal aid and if so whether the Firm is prepared to undertake the work in the Instructions if paid by legal aid;
  - (11) let the Client know how to make a complaint, and deal with any complaint promptly and fairly.

### 3. How does the Firm charge?

- 3.1. The Firm's fees are charged in accordance with guidelines laid down by the Rules of Conduct and Client Care of the New Zealand Law Society. In fixing the fee the Firm is entitled to take account of considerations such as:
  - (1) the time and labour spent;
  - (2) the skill, specialised knowledge and responsibility required;
  - (3) the importance of the matter to the Client and the results achieved;
  - (4) the urgency and circumstances in which the work is undertaken and any time limits, including time limits imposed by the Client;
  - (5) the degree of risk assumed by the Firm in undertaking the services including the amount or value of any property involved;
  - (6) the complexity of the matter and the difficulty or novelty of the questions involved;
  - (7) the experience, reputation, and ability of the personnel carrying out the work;
  - (8) the possibility that the acceptance of the instructions will preclude employment of the Firm by other clients;
  - (9) the reasonable costs of running a law practice.

### 4. Estimate of Costs

- 4.1. Any costs estimate will be the Firm's "best guess" as to what the fees and other costs are likely to be. If the work does not proceed as the Firm had expected due to unexpected complications, or if the work proves more complicated than originally anticipated, the Firm will charge for all additional work.
- 4.2. If it appears that the estimate will be exceeded, the Firm will advise the Client of the reasons and obtain further instructions from the Client.

### 5. Credit Policy

- 5.1. The Client may be allocated a credit limit which will be:
  - (1) confidential between the Client and the Firm (and persons such as barristers and expert witnesses instructed by the Firm with the consent of the Client);

- (2) the total amount that the Firm will allow to be owed or due to it by the Client at any time;
- (3) able to be increased or decreased or withdrawn by the Firm at any time;
- (4) The Firm has the right to make reasonable and confidential credit enquiries from an appropriate information provider. The Client and the Guarantor (as appropriate) will sign the attached authorisation to permit the Firm to make such enquiries;
- (5) The Firm may stop doing work (and instruct others to stop doing work) for the Client if the Client's credit limit is exceeded or if payment is not received by the Firm within 7 days of issue of the Firm's invoice. The Firm will have no liability for any loss suffered by the Client when work is stopped for this reason.

**6. When will the Client be billed?**

- 6.1. Generally property matters may be billed at the time of settlement or on completion of the work. The Firm may require the Client to make a payment or payments to it for the provision of legal services under this agreement prior to final billing of any matter.
- 6.2. For other matters the Firm may bill the Client on a regular basis.

**7. What about out of pocket payments the Client has to make?**

- 7.1. Payments may have to be made to other people for work to be done, for example filing fees, search fees, agency fees and similar payments (called disbursements). The Firm is not required to pay these amounts for the Client unless the Firm receives payment from the Client first. The Firm has the right to ask for these specific amounts or for an approximate amount to cover these expenses to be paid in advance to ensure that the Firm is not out of pocket.
- 7.2. If the Firm instructs any other person (including Counsel or another lawyer) the Firm has the right to require payment of that person's estimated fees into the Firm's trust account beforehand. By instructing that person, the Firm undertakes an obligation to pay that person's fees and accordingly requires to be protected for them. The Firm may require the Client to enter a payment arrangement directly with that person.

**8. When does the Client have to pay?**

- 8.1. The Firm's accounts are all due within 7 days of issue of the Firm's invoice. If the Firm is holding any money for the Client, the Client authorises the Firm to deduct the account from that money after having provided the Client with a dated invoice.

**9. Joint and Several Liability**

- 9.1. If there is more than one person comprising the Client, each person is jointly and severally liable for payment in due time of all the Firm's accounts and other charges such as those under clause 10.

**10. What if the Client cannot pay on time?**

- 10.1. If the Client anticipates difficulty in the payment of any account, the Client must contact the Firm immediately and discuss arrangements for payment. The provisions of clause 5 may apply.
- 10.2. Interest is payable on any account more than 7 days overdue. Interest shall be calculated at the rate of 5% above the Firm's bank overdraft rate applying at the date payment became due.
- 10.3. If the Firm has to take steps to recover any unpaid account, the costs of recovery (including debt collectors' charges) are all payable by the Client.

**11. Guarantor**

- 11.1. Where the name of a guarantor is completed on the front page of this agreement, then that person personally guarantees full payment of any amount due to the Firm from the Client in terms of this agreement.

**12. Lien**

- 12.1. Where work has been done by the Firm but the Firm has not been paid by the Client, then the Firm has the right to retain the original documents and the correspondence on the Client's files until such time as all outstanding fees, disbursements and other expenses have been paid. This is known as a lien. This will be particularly important in circumstances where the Client decides for whatever reason to instruct another law firm. The Client must pay all outstanding fees, disbursements and other expenses before the Firm releases the Client's files to the Client's new solicitors. Alternatively that other law firm may be obliged to give an undertaking to the Firm to pay all outstanding fees and disbursements before the Client's file is released.

**13. Retention of Records**

- 13.1. Files and documents will be retained by the Firm for a period of 10 years after which they will be destroyed.
- 13.2. Subject to the lien in paragraph 12 and if the Client wishes to inspect these or requires copies to be made, a charge may be made for this.

**14. Confidentiality**

- 14.1. The Firm will hold all information concerning the business and affairs of the Client in strict confidence, and will not divulge such information except where required or permitted to do so by law, or the Client expressly or impliedly authorises the Firm to make such disclosure.



SECURITY FOR COSTS

- 1 In consideration of the professional legal services provided under the Agreement the Client and/or the Guarantor irrevocably grants to each of the principals or directors of the Firm a:
(1) mortgage over the land described below;
(2) power of attorney to execute on behalf of the Client and/or the Guarantor a registrable all obligations mortgage (Memorandum number 2007/4238) to secure the Firm's unpaid fees and disbursements over all of the Client's or Guarantor's (as the case may be) estate and interest in the land described below.
2 The Firm has the right to lodge a caveat against the title to the land.
3 If the Client or Guarantor is a company, in consideration of the professional legal services provided under the Agreement the Client and/or Guarantor irrevocably grants to each of the principals or directors of the Firm:
(1) an all obligations general security agreement (GSA) over all of the assets of the Company. For the avoidance of doubt this agreement shall constitute a security agreement for the purpose of section 36 of the Personal Property Securities Act 1999;
(2) a power of attorney to execute on behalf of the Client and/or the Guarantor a GSA over all assets of the company and to register the GSA under the Personal Property Securities Act 1999 to secure the Firm's unpaid fees and disbursements.
4 The principal sum under the mortgage or the GSA will be the amount of fees due by reference to the relevant tax invoice(s) and all disbursements, agency charges and other charges together with interest at the rate set out in clause 10. All costs of and incidental to the preparation of the mortgage or GSA, preparation of the caveat and all registration and other fees incurred by the Firm (including incidental recovery costs) will be deemed to be included in the principal sum secured by the mortgage or GSA. The date of advance will be the date the costs were due for payment or any subsequent date nominated by the Firm. Interest shall accrue on a daily basis.

DESCRIPTION OF LAND AGREED TO BE CHARGED:

DATE

Client name ..... Signature .....
in the presence of
Witness name ..... Signature .....
Witness address .....
Witness occupation .....

Guarantor name ..... Signature .....
in the presence of
Witness name ..... Signature .....
Witness address .....
Witness occupation .....

Firm name McMahon Butterworth Thompson ..... Signature .....
in the presence of
Witness name ..... Signature .....
Witness address .....
Witness occupation .....



**PRIVACY ACT 1993  
AUTHORISATION**

**FIRM NAME:** McMahon Butterworth Thompson

The Client confirms it has instructed the Firm to provide legal services.

The Client acknowledges that the Firm may wish to make enquiries of the Client to establish the Client's credit worthiness.

The Client hereby authorises the Firm to collect and hold personal information from any source the Firm considers appropriate to be used for the purposes of determining credit worthiness, debt collection purposes or any other related purpose.

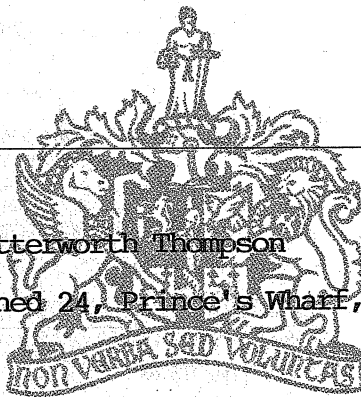
Where a guarantor has signed below, the Guarantor similarly authorises the Firm to collect and hold personal information for the purposes of determining credit worthiness, debt collection purposes or any other related purpose.

It is confirmed that the Client and, if applicable the Guarantor, has a right of access and may request correction of any personal information held by the Firm about the Client and the Guarantor respectively.

**DATE**

<b>Client name</b> .....	<b>Signature</b> .....
in the presence of	
<b>Witness name</b> .....	<b>Signature</b> .....
<b>Witness address</b> .....	
<b>Witness occupation</b> .....	

<b>Guarantor name</b> .....	<b>Signature</b> .....
in the presence of	
<b>Witness name</b> .....	<b>Signature</b> .....
<b>Witness address</b> .....	
<b>Witness occupation</b> .....	



**THE FIRM**

Name: **McMahon Butterworth Thompson**

Physical address: **Level 1, Shed 24, Prince's Wharf, 147 Quay Street, Auckland**

Postal address: **PO Box 106 073, Auckland 1143**

Telephone: **+64 9 302 2766** Fax: **+64 9 302 2767**

Mobile: Email: **mcmahon@mbtlawyers.co.nz**  
**howard@mbtlawyers.co.nz**

**Signed for and on behalf of the firm** .....

Contact name: .....

Position: .....