

Terms of Business

Dentons Kensington Swan

February 2020

Welcome.

Thank you for choosing Dentons Kensington Swan to represent you. These Terms of Business and the Engagement Letter form our Engagement Agreement.

Dentons and You

1. The Engagement Letter (which may be in email form) sets out the scope of our representation and identifies you as our sole client. We do not represent any other persons or entities, including your parent, subsidiaries, and affiliates, unless named in the Engagement Letter. Our advice and work is provided solely for your benefit and relates only to the matters set out in the Engagement Letter. These Terms of Business apply as soon as we start acting on your instructions, regardless of whether or not you have signed the Engagement Letter or replied by email to confirm your acceptance of the Engagement Letter. We may vary these Terms of Business at any time by publishing the most current version of these Terms of Business on our website [dentons.co.nz](https://www.dentons.co.nz).
2. Dentons Kensington Swan is a partnership governed by New Zealand law, and is a member of Dentons Group (a Swiss Verein), whose members and their respective subsidiaries and affiliates provide legal services in different locations, each of which is its own Legal Practice (collectively, "Dentons"). For

a list of each Legal Practice by location, see [dentons.com/legalnotices](https://www.dentons.com/legalnotices).

3. This Engagement Agreement is between you and Dentons Kensington Swan only and not any other Dentons Legal Practice or any entity or individual. We will conduct ourselves in accordance with the professional responsibility rules applicable in the jurisdictions in which we render services.
4. Other Dentons Legal Practices represent many clients in different geographies, including entities and individuals that may enter into transactions or have disputes with you. Unless another Dentons Legal Practice is specifically engaged by you or on your behalf, you agree that those representations by other Dentons Legal Practices do not conflict with our representation of you, and that you will not assert that other Dentons Legal Practices are precluded from representing those entities and individuals.
5. We may involve other Dentons Legal Practices to help with your matter. Unless we state otherwise, we will do

so by subcontract and Dentons Kensington Swan will remain as the party to the engagement with you.

Our Working Relationship

6. Effective representation requires open and honest communication. We need you to provide us with clear and timely instructions, relevant information and documents, and make yourself available for consultation.
7. You should carefully check for any insurance policies that might relate to the work we do for you and notify your insurers promptly to protect your rights. Unless you disclose these policies and we agree to advise on them in the Engagement Letter, we are not responsible for advising you about the existence or applicability of any insurance coverage.
8. Unless you request otherwise, we may communicate with you using any reasonable method, including email. Email may not be an absolutely secure method of communication, may be copied and held by various computers as it passes between us, and could be intercepted. Other publicly available unsecured methods

of communication like gmail, hotmail, dropbox, presi and others, while convenient, may be more susceptible to unauthorised access than others. Although we take great care to protect our communications from unauthorised access, viruses, and other associated risks, we cannot guarantee the safety and security of these communications. We recommend that you use private and secure platforms for communication and collaboration but where you choose to use public or unsecured methods of communication you accept the risks of unauthorised access and indemnify and hold us harmless if the security of such methods of communication are breached.

9. Generally, communications between a lawyer and client regarding legal advice are privileged and confidential. You may jeopardise these protections by disclosing communications to others. You agree we are under no duty to disclose to you any information that is confidential to another client or any other person.

Advance Clearance of Conflicts of Interest

10. Each Dentons Legal Practice represents a wide variety of companies and individuals, some of whom may be, for instance, your borrowers, investors, shareholders, creditors, or other parties with conflicting interests in a litigation, arbitration, bankruptcy, insolvency or other matters. These kinds of representations could present conflicts of interest under applicable rules. As a condition of our representation of you, you agree that, without further notice, we may represent other clients in matters, even if they are directly adverse to you, as long as: (1) those matters are not substantially related to our representation of you; or (2) we screen our lawyers and professionals who have such information from any involvement in the adverse representation.
11. To protect your interests, and to enable us to comply with our legal obligations, we will carry out a conflict check before accepting instructions from you. That conflict check will be carried out in accordance with our conflict checking policy, and will involve disclosing sufficient information about you and the proposed instruction to enable us to determine

whether an actual or potential conflict exists. That information will be disclosed within Dentons. By seeking to instruct us, you authorise us to disclose information about you and the proposed instruction and to undertake this conflict check process.

Fees and Costs

12. Details of our hourly rates and/or fees are set out in the Engagement Letter or are available upon request. Our hourly rates may be adjusted from time to time.
13. We will take into account the factors set out in rule 9.1 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (referred to as the Rules of Conduct and Client Care) to ensure that our fees are reasonable and fair to us and you. These factors include:
 - a. the complexity of the matter;
 - b. the skill, specialised knowledge and experience required;
 - c. the responsibility involved;
 - d. the importance of the matter to you and the results achieved;
 - e. the urgency of the matter; and
 - f. the circumstances in which our services were provided.
14. We may charge and you agree to pay for costs including travel, delivery services, imaging, printing, court fees, auditing and assurance services, and other expenses. For items we purchase in bulk or through fixed fee arrangements, such as computerised legal research, technology, and support services, we will charge you a rate reasonably apportioned to you. You agree to pay for third-party costs, such as experts, consultants or local counsel, retained by us on your behalf. In some circumstances, we may advance costs on your behalf and you agree to reimburse us promptly. Alternatively, we may require an advance payment from you to pay for third-party costs.
15. Unless expressly stated otherwise, estimates we provide are presented solely for planning purposes, subject to change, and reflect an assessment of fees or costs if a matter proceeds in accordance with our assumptions. This is neither a floor nor a ceiling on your obligation to pay, as actual expenses may turn out to deviate significantly from the estimate, either favorably or adversely. We will be happy to periodically update an estimate if requested to do so. However, in the

absence of such a request, we undertake no obligation to update or revise any estimate as a matter progresses or as actual fees and costs are realised.

16. All our fees and costs, and the fees and costs of any Dentons Legal Practice, experts or third parties that we state or estimate exclude any sales, use, excise, transfer, value-added or similar taxes, disbursements and our standard administration fee. Such taxes, disbursements and our standard administration fee will be included in our invoices to you and are payable by you. If you or another payor of those fees, costs and taxes is required, on account of any taxes, to make any deduction when paying our invoices, you must increase the overall payment so that we receive a net sum equal to our full invoiced amount.
17. Our policy is to issue interim invoices monthly until completion of each matter, when we will send a final invoice, except that we reserve the right to issue interim bills at any other frequency (including at any stage during an ongoing matter) and to change the frequency of billing and the time for payment. If you disagree with any invoice, please contact us immediately, otherwise we will understand that the invoice is agreeable to you. Our invoices are payable within 14 days of the date the invoice is rendered or within any other timeframe notified by us to you, and you remain responsible for paying them even if you have an arrangement with a third party payor for payment. If, on your instructions, we have agreed to send an invoice directly to a third party payor, and that third party payor fails to pay the invoice by the due date, we will send you an invoice for the same amount, which you must pay within 14 days.
18. We are entitled to require you to pay funds to be held in our trust account on account of our anticipated costs to complete your matter. Such funds will be payable within the timeframe notified by us to you. If, upon completion of your matter, the funds that we hold on account exceed our costs for that matter, we will refund the balance to you.
19. If full payment of any amounts owing by you to us is not received when due, we reserve the right to:
 - a. charge reasonable interest and to hold you responsible for any collection costs, including debt

collection fees and legal fees on a solicitor/client basis; and

b. cease acting for you.

20. Any payments made by you to us must be made in cleared funds.

Trust account

21. We maintain a trust account for all funds that we receive from clients, except those received for payment of our invoices. If we are holding funds on your behalf, we will lodge them on interest-bearing deposit with a trading bank only where it is practical to do so having regard to the amount involved, the amount of interest likely to be earned, our costs of administration, and where you have completed to our bank's satisfaction any request for information relating to the deposit. Where funds are placed on interest-bearing deposit, we charge an administration fee of 6% of the gross interest earned, which will be deducted from that gross interest.

22. You agree that we may deduct any fee, expense, or disbursement for which we have provided you with an invoice, from any funds held in our trust account on your behalf except where we receive the funds from you for a special purpose (other than as security for our fees) and they remain in our trust account for that special purpose.

23. Where we are required by law to make payments on your behalf or as your agent, you agree that we may use your funds held in our trust account for that purpose, which may include payment of any tax to the Inland Revenue Department where required by law. You agree to provide to us upon request any related information that we require in order to comply with any such obligations, and irrevocably consent to us disclosing that information where we are required to do so.

24. We shall have no liability to you for any loss of funds held in our trust account by reason of the insolvency, or any analogous event, of the bank with which we maintain our trust account.

Confidentiality

25. Except as provided in these Terms of Business, we will hold in confidence within Dentons all information concerning you and your business and affairs that we acquire in the course of acting for you. We will not disclose this information to any person outside of Dentons, unless you expressly or impliedly

authorise us to do so, except to the extent required to represent you, comply with our legal obligations, or as permitted by the Rules of Conduct and Client Care.

26. In the course of acting for you, we may collect and hold personal information concerning you. This information may be used by us to provide services to you, to obtain credit or other references, to undertake credit management, and to inform you of issues and developments that may be of interest to you or invite you to relevant client events. You authorise us to obtain from any person, or release to any person, any information necessary for any of those purposes, and you authorise any person to release to us information that we may require for any of those purposes.

27. We may be required to collect, retain, or disclose to a bank, or by law to any competent supervisory or regulatory authority, information or documentation relating to you (including but not limited to information about any country under whose law your organisation is constituted, or if you are an individual, your citizenship and tax residency of any country or countries, or information about the citizenship and tax residency of any country or countries of any controlling persons of entities). You irrevocably authorise us to collect, retain, and release any such information or documentation we hold to a bank or any competent supervisory or regulatory authority, as well as to instruct and provide any information or documentation to any agent who may be instructed to facilitate or assist us with our compliance with all relevant laws and regulations.

28. Information concerning you will be held in accordance with our policies relating to the retention of files and documents. Under the Privacy Act 1993, you have the right of access to, and correction of, your personal information held by us. Please contact us on +64 9 379 4196 or +64 4 472 7877 to access or correct your personal information.

29. We are often asked for information about our experience. You consent to our public disclosure that you are a client and a general description of our work for you.

30. Anti-money laundering, anti-bribery, antiterrorist and similar laws require compliance with client identification, verification, and other rules. We

may not be able to represent you until we have all of the information we need for these purposes.

31. We will handle personal information you send to us about you, your employees, agents, contractors or other individuals in accordance with data protection and privacy standards equivalent to or higher than those required by law. We may transfer such data, including this Engagement Agreement, within Dentons and between locations in order to provide legal services to you and for the other purposes set out in this Engagement Agreement or otherwise notified to, or agreed by, you.

32. We act in accordance with all applicable professional, ethical and business standards and do not tolerate bribery or corruption in any form.

Reliance

33. You are the only party who may rely on our advice. We owe no duty or liability to any other party, including any associated companies, shareholders, directors, employees, or family members. If you want any other party to be able to rely on our advice, our written agreement is required.

34. If, during the course of our engagement, we provide services to entities related to or associated with you, then these Terms of Business apply to those services and you agree to ensure that those entities agree to these Terms of Business.

35. Our advice is not to be referred to in connection with any product disclosure statement, financial statement, or public document without our written consent.

36. 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.

37. Our advice relates only to each particular matter in respect of which you engage us. Once that matter has concluded, we will not owe you any duty or liability in respect of any related or other matters unless you specifically instruct us in respect of those related or other matters.

38. Unless otherwise agreed, we may communicate with you and with others by electronic means. However, we cannot guarantee that

electronic communications or services will not be lost, affected, or interfered with for some reason beyond our reasonable control. We will not be liable for any damage or loss caused thereby.

Your File and Our Records Retention

39. Absent professional obligations or written direction from you to the contrary, we may dispose of all records relating to the representation seven years after we last performed work on the matter, without further notice to you. We need not keep documents containing our lawyers' work product, mental impressions, notes, drafts, and emails and those documents will not be considered to be part of your client file.

Copyright

40. You agree that we own copyright in all works and materials we create for you, unless expressly agreed otherwise in writing.
41. We license you to copy and reproduce all works and materials we create for you for usual business purposes and/or as contemplated by our engagement. If payment of any invoice is not made by the due date, this licence is immediately revoked until payment in full is made.

Limitation of liability

42. To the extent permitted by law, our total liability to you in connection with any matter (or series of related matters) on which you engage us will not exceed:
- if an amount is available to be paid out under our relevant insurance policies in respect of our liability to you, that amount, up to a maximum of NZ\$20,000,000 (including interest and costs)
 - in any other case, an amount equal to five times our related fees (excluding administrative charges, disbursements, and GST).
43. This limitation applies to all matters commenced following these Terms of Business being published to our website dentons.co.nz.
44. If we provide services to any persons or entities related to or associated with you, or to anyone else at your request (whether or not we also advise you) on a matter (or series of related matters) on which you engage us, then our aggregate liability to you and all those entities in respect of that matter (or series of

related matters) will be subject to this limitation (and you will ensure that those entities agree to this).

45. All of the limitations contained in these Terms of Business apply to liability of all kinds, whether in contract, tort (including negligence), equity, or otherwise. In no circumstances will we be liable for any indirect or consequential loss or any loss of revenue, profits, goodwill, business, savings or opportunity.

Termination

46. You may terminate the engagement at any time for any reason. We may terminate the engagement at any time, consistent with our ethical obligations. We expressly reserve the right to stop acting for you, and you expressly consent to our right to terminate, if you fail to pay for amounts invoiced or requested on account of costs. You remain responsible for paying fees and costs related to work performed before the end of the engagement, and we will not be liable for any resulting loss.

Completion of Engagement

47. Our representation of you will end when we have completed the services described in the Engagement Letter, send our final invoice, or, unless otherwise agreed, after six months of furnishing no billable services to you, whichever occurs sooner, without the need for further written confirmation. We may send you information, invitations, or other communications after the completion of our engagement, which do not re-establish a solicitor-client relationship. Any new relationship will require a new Engagement Letter. In such a case, these Terms of Business will apply unless new Terms of Business are agreed to at that time.

Translations

48. If we use or prepare a translation, you should be aware that words and legal concepts used in one language may not have equivalents in another. You should not assume that any translation exactly replicates the original text.

Entire Agreement

49. The Engagement Agreement cannot be modified by any policies, procedures, guidelines, correspondence, or other document from you unless agreed to in writing by a partner of Dentons Kensington

Swan. If there is a conflict between the Terms of Business and the Engagement Letter, the provisions of the Engagement Letter prevail. If any part of the Engagement Agreement is held to be illegal, invalid or unenforceable, it shall not form part of the agreement and the balance shall remain enforceable and shall not be affected.

50. Information relating to the principal aspects of our client service can be found [here](#).

Governing Law

51. Any dispute between us is to be resolved by the New Zealand courts in accordance with New Zealand law.
52. We are qualified to advise on New Zealand law. Subject to clause 53, unless otherwise agreed by us, if we assist you in respect of matters governed by foreign law, we do so on the basis that we do not accept any responsibility (and will not have any liability, whether in contract, tort (including negligence), equity or otherwise) in relation to your legal position under that foreign law.
53. If we instruct another Dentons Legal Practice in relation to your matter, we accept responsibility (and will have liability, whether in contract, tort (including negligence), equity or otherwise) in relation to your legal position under that foreign law to the extent of your instructions and upon the basis set out in the Engagement Letter.