

Terms of Business

Dentons Kensington Swan

Welcome to Dentons.

September 2023

Dentons and You

1. The Engagement Letter, which may be in email form, ("Letter") identifies our only client(s) in this matter ("you" and "your"), as well as any specific limitations on those that may instruct us, and the scope of our representation of you. Except as provided in the Letter, we do not represent any other persons or entities, including your parent, subsidiaries, and affiliates. Our advice and work is provided solely for the benefit of our client(s) identified in the Letter, which together with these Terms, form our Engagement Agreement ("Agreement") with you, and applies as soon as we start acting on your instruction, regardless of when and whether you sign the 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 part of Dentons Group (a Swiss Verein), whose members and their subsidiaries and affiliates (each, a "Dentons Legal Practice") provide legal and related services around the world (collectively, "Dentons"). The identity of each Dentons Legal Practice providing legal services in a particular country may be found at [dentons.com/legal-notice](https://www.dentons.com/legal-notice).

3. The Agreement is between you and the specific Dentons Legal Practice named in the Letter only ("we", "us", or "our") and not with any other Dentons Legal Practice; any individual partner, employee, or agent; or any other Dentons entity.

4. Other Dentons Legal Practices represent clients including entities and individuals that

may enter into transactions or have disputes with you or your related entities. Unless otherwise agreed in writing, you agree that Dentons' representations in other countries do not conflict with our representation of you in this country, and that you will not assert that Dentons Legal Practices in other countries are precluded from representing those entities and individuals.

5. We may involve different Dentons Legal Practices or others to help with your matter. Unless we state otherwise, we will do so by subcontract and we will remain responsible for reporting to you and invoicing for all the work performed on the matter. In such circumstances, you agree to your data and documents being disclosed.

Our Working Relationship

6. Effective representation requires open and honest communication throughout our relationship. We need you to give clear and timely instructions, provide relevant information and documents, and make yourself available for consultation.

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

8. We may communicate with you through various forms of electronic communications. While we take great care to protect our communications from unauthorised access, viruses and other associated risks, we cannot guarantee their safety and security. We recommend that you use secure platforms for

communication and collaboration, and we discourage use of unsecure third-party services. Where you choose to use such services, you accept the risks of unauthorised access and indemnify and hold us harmless if the security of such methods of communication are breached.

9. 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 provide copies of these policies to us and we commit to advise on them in the Letter, you agree we are not responsible for advising you about the existence or applicability of any insurance coverage.

Advance Clearance of Conflicts

10. We represent a wide variety of entities and individuals, some of whom may be, for instance, your borrowers, investors, shareholders, creditors, insurers, vendors, customers, competitors, or other parties with conflicting interests in a litigation, arbitration, bankruptcy, insolvency, business transaction, or other matters. As a condition of our representation of you, you agree that, without further notice, we and other Dentons Legal Practices may represent other clients in matters, even if they are directly adverse to you, as long as (a) those matters are not substantially related to our representation of you; or (b) we establish information barriers preventing communication of confidential information we have received from you that might be relevant to such matters. Of course, we will not use any confidential information received from you in any way inconsistent with our ethical responsibilities.

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. Our billing rates are set out in the Letter or are available upon request, but may be adjusted from time to time. You will be charged the rates in effect at the time services are performed.

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, which may include a standard charge for administration costs. For items we purchase in bulk or through fixed fee arrangements, such as computerised research, technology and support services, we will charge you a rate reasonably apportioned to you. You agree to pay costs to any third parties retained by us on your behalf, including experts, consultants and local counsel. In some circumstances, we may advance costs on your behalf and you agree to reimburse us within 30 days. We may not hold originals of receipts for costs, which may be available only in electronic form.

15. Any estimate creates neither a floor nor a ceiling on your obligation to pay. Actual fees and costs may deviate significantly. We undertake no obligation to update a prior estimate.

16. All of our fees and costs, as well as those from any other Dentons Legal Practice or third parties, exclude any sales, services, use, excise, transfer, value-added, GST or similar

taxes. Those taxes will be included in our invoices to you and are payable by you. If you or another payor 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 bill monthly, except that we reserve the right to issue an interim bill 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 full payment is not received when due, we reserve the right to suspend services, terminate our representation, withdraw, retain custody of any of your property including client files, charge reasonable interest as we may determine, and hold you responsible for any collection costs, including reasonable attorneys' fees.

18. In adversarial proceedings, you agree that as of 90 days before any scheduled trial or arbitration date (or a later time that we may make such request), all fees and costs incurred up to that point will be paid and you will either provide us with a deposit (or augment any existing deposit) or make another satisfactory arrangement to ensure payment of all fees and costs estimated to be incurred from that point through the end of trial or arbitration.

Trust account

19. 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.

20. 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.

21. 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.

22. 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.

Privacy and Data Protection

23. We Process Personal Data in accordance with Data Protection Legislation and as set forth at [dentons.com/privacy-policy](https://www.dentons.com/privacy-policy) ("Privacy Notice") and this Agreement. Reference to "Personal Data" means any information about an identifiable individual. Reference to "Data Protection Legislation" means the Privacy Act 2020 and other applicable law relating to the Processing of Personal Data and/or the protection of an individual's privacy. Reference to "Data Controller" or "Agency," "Data Processor," "Process" or related terms shall have the meanings ascribed under Data Protection Legislation. Under the Privacy Act 2020, you have the right of access to, and correction of, your Personal Data held by us. Please contact us on +64 9 379 4196 or +64 4 472 7877 to access or correct your Personal Data.

24. In the course of acting for you, we may Process Personal Data and other data about you (including information about you if you are not an individual) (together "Data") to the extent necessary to provide you with services, as well as manage our business, such as for the purposes of obtaining credit or other references, undertaking credit management, informing you of issues and developments that may be of interest to you or inviting you to relevant client events. You authorise us to obtain from any person, or release to any person, any information necessary for any of these purposes, and you authorise any person to release to us information that we may require for any of these purposes.

25. We also may be required to collect, use, and disclose to financial institutions (such as banks and insurance providers), or to any competent supervisory or regulatory authorities, your Data (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) to fulfil legal and regulatory obligations, to detect, investigate and prevent crime and to pursue our legitimate interests as permitted by applicable laws. You irrevocably authorise us to collect, retain, and release any such Data 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.

26. We also Process Data in order to understand how you use our services and websites and in order to send you (and any other individuals within the organization you represent) direct marketing communications by post, telephone, email, or other electronic means, unless you tell us not to.

27. Where we Process Personal Data in connection with the provision of services to you, we do so as a separate and independent Data Controller, meaning that we take responsibility for our Processing of the data in compliance with Data Protection Legislation. You remain responsible for complying with Data Protection Legislation in relation the Personal Data you Process and will fulfil all the requirements necessary to be able to share Personal Data with us. We will not Process Personal Data on your behalf as a Data Processor, unless otherwise agreed in writing.

28. To the extent that you provide us with Data about a third party individual ("Third Party PI"), for the express purpose of Processing that Third Party PI on your behalf, we will:

- a. hold that information on your instructions for the purpose of providing services and advice to you;
- b. employ security safeguards in respect of the Third Party PI which are equivalent to those we have in place to protect other information within our systems;
- c. promptly notify you if such Third Party PI is the subject of a notifiable privacy breach (as that term is defined by the Privacy Act 2020) and provide you with co-operation and assistance in respect of such a breach; and
- d. provide you with co-operation and assistance, at your cost, in relation to any complaint or request made in respect of the Third Party PI.

29. You warrant that you are authorised to disclose Data to us, for our retention, use and disclosure in the manner described in our Privacy Notice, this Agreement, and otherwise as required or permitted by the Data Protection Legislation.

30. Unless you are exempted from your obligations under applicable Data Protection Legislation, you confirm to us that, you will reasonably communicate our Privacy Notice to those individuals whose Personal Data you provide to us. Any Personal Data supplied by us to you may be used only for the expressed purposes for which that information is provided to you.

31. Dentons ensures that appropriate technical and organizational measures are implemented against unlawful or unauthorised Processing of Personal Data, and against the accidental loss of, or damage to, Personal Data.

32. We may share your Data, as required and as we deem necessary, with other Dentons entities, with our external suppliers and other third parties, including parties we may appoint on your behalf in the course of acting for you. This may involve the transfer of Data across borders to other jurisdictions. We will do so in a manner that preserves the privacy and the confidentiality of the information, in accordance with applicable laws, and we will ensure that appropriate data processing arrangements, data transfer mechanisms, and other safeguards are in place as required. You understand and acknowledge that we use electronic document, knowledge and client management systems, artificial intelligence capabilities and tools, as well as platforms and cloud technology that may be owned and/or managed by such parties, to store and Process client related documentation and data.

33. You authorise us to retain and hold your Data on our client files in hard copy or electronic format, for so long as those client files exist and you confirm that it is reasonable for us to do so.

34. We are often asked for information about our experience. You consent to our disclosure that you are a client, as well as a general description of our work for you. In addition you authorise us to disclose Data about you, and the work we do for you, to Dentons for the purposes of enhancing the services we provide to you, and efficiently managing the business of Dentons.

Financial Crime and Other Regulation

35. We do not tolerate bribery or corruption. In some jurisdictions, the law may require reporting of knowledge or suspicion that certain criminal offences have been committed, regardless of whether a client or third party committed the offence. In these circumstances, we may not be able to discuss these reports with you because of those

restrictions and we may have to stop acting for you. You agree that Dentons is not responsible for any adverse impact you may suffer as a result of compliance with these laws and regulations.

36. Our anti-money laundering, anti-bribery, anti-terrorism and sanctions policies may require us to carry out due diligence on our clients and, where applicable, anyone who instructs us on the client's behalf, and review that due diligence on an ongoing basis. These policies are in compliance with the various laws and rules applicable in the locations in which we operate and also based on our risk assessment. These policies may apply to you and any individuals who instruct us on your behalf and we may not be able to represent you (or continue to represent you) until we have all of the information we need for these purposes. We will process any such information in accordance with any applicable laws.

37. We follow all applicable governmental sanctions requirements. We may not be able to receive payments from certain countries or may be required to make report of such payments. You agree to inform us immediately if you or your directors, officers, shareholders or beneficial owners are, or become, subject to sanctions or are located or resident in a sanctioned location, and agree that in such a case we may terminate our representation of you without liability.

Files and Documents

38. We may maintain a client file relating to our representation of you. That client file will be maintained electronically, and may also be maintained in hard copy format. Absent legal requirements or written agreement with you to the contrary, we may dispose of the client file and other records relating to our representation of you seven years after we last performed work on the matter without further notice to you. Documents containing our work product, mental impressions, notes, drafts, and emails will not be considered part of the client file. Following written request and payment for involved costs, we may provide a copy of the client file to you. We are authorised by you to retain on our client file, until disposal, copies of documents, records and emails that belong to you in order for us to refer to those documents records and emails for the purpose of defending any complaint or claim by you or other proceedings against us.

39. Copyright and all other intellectual property rights in all documents, software and other work products Dentons supplies to you will stay vested in Dentons. You are granted a license to use and copy such work products but only in respect of the matters for which

they were supplied to you. If payment of any invoice is not made by the due date, this license may be immediately revoked until payment in full is made.

40. 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.

End of Representation

41. You may terminate our representation of you at any time for any reason. We may terminate our representation of you 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 for prospective fees and costs. You remain responsible for paying fees and costs related to work performed before the end of the representation, and we will not be liable for any resulting loss.

42. If not terminated otherwise, our representation of you will end when we have completed the services described in the Letter; send our final invoice; or, unless otherwise agreed in writing, after six months of furnishing no billable services to you, whichever occurs sooner without further written confirmation. Any new representation may at our discretion require a new Letter, notwithstanding any communications or administrative actions after that period.

General; Limitation of Liability

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

44. While we will exercise reasonable care and skill in all matters undertaken by us, we do not guarantee any particular outcome for this engagement. Our professional fees and your obligation to pay for them in full are not dependent or contingent upon the business or commercial outcome of your matter. We shall also not be providing, obtaining or reviewing on your behalf any non-legal advice (including but not limited to business, commercial, financial, technical, insurance, accounting, broking, actuarial, environmental, or information technology) or technical matters (such as engineering specifications or financial calculations), except where you and we expressly agree to do so. Where documents that we draft, or on which we comment, include provisions covering such matters, you should review those provisions, or arrange for other suitably qualified advisers

to do so, to satisfy yourself that you meet commercial objectives.

45. Any advice provided by us is our 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.

46. 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.

47. To the extent permitted by law, Dentons' total liability to you in connection with any matter (or series of related matters) on which you engage us will not exceed: (a) 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); or (b) in any other case, an amount equal to five times our related fees (excluding administrative charges, disbursements, and taxes).

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

49. 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 the limitations contained in these Terms (and you will ensure that those entities agree to this).

50. If we are acting for more than one person or entity on your matters, you agree that we can accept instructions from any of you, unless otherwise agreed in writing. We may terminate the Agreement where, in our sole opinion, there is or may be a conflict of interest between any of you, or if we would otherwise be obliged to act in a manner contrary to the interests of one of you. By entering into the Agreement, you each agree to immediately notify us if there is any dispute or a conflict of interest which arises between you while we act for you. Your liability to us under our Agreement is joint and several. You may request us to apportion any bill between you,

but this will not affect your joint and several liability to us.

51. You will not refer to our advice in connection with any financial statement or public document unless otherwise agreed in writing.

52. The Agreement cannot be modified by any policies, procedures, guidelines, correspondence, or other document from you unless otherwise agreed to in writing by a partner of this Dentons Legal Practice. If there is a conflict between these Terms and the Letter, the provisions of the Letter control. If any part of the 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.

53. We do not intend any of the Terms, other than those dealing with our limitation of liability, to be enforceable by any person who is not a party to the Agreement. We do not require consent from third parties to rescind, vary, waive, assign, novate or otherwise dispose of all or any of our respective rights or obligations under the Agreement.

54. Any reference to "partner" means a partner, shareholder, member, consultant, or employee with equivalent standing, experience, or qualifications and does not create or imply that an actual partnership exists.

55. Unless otherwise agreed in the Letter: (a) the Agreement shall be governed by the laws of the jurisdiction where the Dentons Legal Practice being a party to the Letter is located; and (b) any claim, dispute or difference relating in any way to the Agreement (including any question regarding its existence, validity or termination), shall be subject to the courts of that jurisdiction.

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