

# **WALKER AND ASSOCIATES**

**(“W&A”)**

## **Terms of Engagement**

The terms contained herein set out the basis upon which W&A provide legal services to its clients. When W&A are instructed by a client to provide legal services in a matter W&A shall send a letter of engagement (“LOE”) to the client recording the legal services which it has been requested to provide (‘the mandate’) and the fees it shall charge in executing the mandate. Before the mandate is executed by W&A the LOE shall be signed and returned to W&A by the client in confirmation that the mandate has been accepted. The execution of the mandate shall be in accordance with the terms set out in the LOE as read with these terms. The LOE and these terms together form the contract between W&A and the client in respect of the execution of the mandate.

### **Communication**

W&A shall communicate with the client using normal, non-encrypted email. This form of email is not secure and there is a risk to the client that if W&A’s communicate confidential information to it in this way. W&A does not accept liability for any communication which is intercepted or otherwise falls into the hands of those other than the intended recipient. For the avoidance of any doubt, the client is solely responsible and liable for all and any consequences that may arise due to the interception of any email correspondence.

### **Fees and Deposits**

W&A shall charge either a fixed fee as set out in the LOE or fees calculated by reference to hourly rates. W&A shall be entitled to call upon the client to pay a deposit from time to time on account of the services to be rendered and/or disbursements to be incurred in the execution of the mandate. If a deposit is called for, W&A shall be entitled to postpone the rendering of the services in terms of the mandate until such time as the deposit has been paid.

In setting its fees and hourly rates, W&A considers :

- the nature and complexity of the work;
- the amount of time spent, knowledge required and responsibility involved;
- the risk associated with the instruction;
- the type and nature of the documents involved; and
- the value of the transaction or subject matter.

Unless otherwise stipulated in the LOE, time spent on a client’s instruction will include, but is not limited to, meetings with the client and others in relation to the matter, time spent travelling and waiting, considering, reviewing, amending and drafting documents, making and receiving telephone calls, correspondence, sending and receiving e-mails, and other requisite attendances.

Unless otherwise agreed to in the LOE, estimates of fees and disbursements given by W&A are a guide to assist the client in budgeting, and should not be seen as a definitive quotation.

If a transaction or other matter does not proceed to completion, W&A fees (together with disbursements) will still be payable. The fees (together with disbursements) of W&A are payable regardless of the outcome of the matter.

Any fixed fee/hourly based fee agreed to in the LOE will not cover any disbursements or additional work not specifically identified when the LOE was executed by the client.

## **Changes to Fees**

W&A's hourly fee rates are reviewed with effect from 1 January each year.

## **Value-added tax, expenses (disbursements), invoicing and payment**

W&A fees exclude value-added tax (VAT), if applicable, and disbursements. VAT, if applicable, will be added at the appropriate rate. Disbursements incurred by W&A will be charged at cost.

W&A shall bill/ invoice the client at the end of each month in which the services are rendered (or disbursement is incurred) or upon conclusion of the mandate, whichever occurs first.

All payments to W&A are to be made electronically into its Nedbank business account as reflected in the invoice. The invoices of W&A are payable within 5 business days of presentation, either by hand or by email. All late payments will attract interest at a rate equal to the published prime overdraft rate of Nedbank Ltd, determined on the first day of each month and capitalised monthly in arrears. In the event of a dispute as to such rate, a certificate by any branch manager of the said bank, whose appointment need not be proved, shall be final and binding on the parties.

W&A shall be entitled to exercise a right of retention (a '*lien*') over all files and documents owned by the client until the invoice, together with outstanding interest, if any, is settled in full.

## **Confidentiality and Disclosure**

W&A have a duty to keep the affairs of its clients and former clients confidential except where disclosure is required or permitted by law or by the clients or former clients concerned. In certain circumstances, such as in order to comply with applicable laws in force from time to time, W&A may be required to provide information relating to a client or former client to regulators in terms of, *inter alia*, the Financial Intelligence Centre Act and the Promotion of Access to Information Act.

## **Conflicts and Confidentiality**

Conflicts between the interest of a client and those of another client may arise. If there is a conflict of interest, W&A might have to cease acting for one or both such clients.

Should this happen, all fees and disbursements and VAT up to the date of termination of the mandate of one or both such clients, will be charged and become due to W&A.

## **Protection of Personal Information Act**

W&A are under an obligation to comply with data protection laws set out in the Protection of Personal Information Act and the regulations promulgated thereunder. The client by giving W&A its personal information consents to W&A processing and storing its information so that W&A may provide the client with legal services and generally administer and take care of its relationship with the client. W&A may disclose the client's information to W&A's third-party service providers or agents for these purposes.

In addition, W&A may contact the client from time to time to inform the client of its services which may include sending to the client newsletters on changes in the law

## **Termination**

Either W&A or the client, as the case may be, may terminate the mandate at any time on reasonable notice given in writing. All fees and disbursements due to W&A up to the date of such termination will be charged and become payable.

## **Independent Services**

When W&A are asked to recommend the services of a third party (such as an advocate, trade mark or patent attorney, accountant or foreign lawyer) it shall always do so in good faith. However, no warranty is given in respect of the standing, ability or the quality of the services of a third party. W&A do not accept liability for that third party's services. In such circumstances the client will have a contract with that third party in respect of that third party's goods or services and will be responsible for the fees and expenses of that third party.

## **Excluded Advice**

Unless specifically agreed with the client in writing in the LOE, W&A's advice to the client will not extend to advice on the tax or financial implications of the work on which W&A are advising the client.

Unless specifically agreed with the client in writing in the LOE, W&A will not keep under review, or re-visit in the future, any advice which W&A give to a client in relation to any instruction.

## **Copyright**

Unless agreed to the contrary in writing, the copyright in all work prepared for a client by W&A shall be owned by W&A who hereby grant the client a non-exclusive right to use such work.

## **Legal Proceedings**

In the event of W&A instituting legal proceedings against the client, the client agrees to pay all legal fees incurred W&A on the attorney and own client scale, including tracing agents fees and collection commission.

## **Limitation of liability**

Notwithstanding any express, implied or tacit term to the contrary in these terms and the LOE, the maximum aggregate liability of W&S, its employees and consultants for any loss or damage, whether direct, indirect, consequential or otherwise, which may be suffered by the client arising from any cause in connection with these terms and the LOE (including, without limitation, any cause in connection with anything done or not done pursuant to these terms and the LOE), whether such loss or damage results from breach of contract (whether material, fundamental or otherwise), delict, negligence or any other cause without limitation and whether these terms and the LOE is cancelled or not, will in no circumstances exceed the fees actually paid to W&A for the services or work contemplated in any particular instruction, unless it is finally determined that the loss or damage was caused by fraud or wilful misconduct on the part of W&A. W&A will not be liable to the client or any cessionary or third party claiming through or on behalf of the client for any punitive damages whatsoever or for any consequential or other loss or damages beyond the maximum liability specified.

Any claims, howsoever arising, must be commenced formally in a court of law within 2 (two) years after the party bringing the claim becomes aware (or ought reasonably to have become aware) of the facts which give rise to the claim and, in any event regardless of the knowledge of the claimant, by no later than 3 (three) years after the date of any alleged breach of contract, delictual act or other act or omission giving rise to a cause of action. This expressly overrides any statutory provision that would otherwise apply.

## **Misrepresentation by client**

Because of the importance the work undertaken by W&A in executing its mandate, the client shall ensure that all relevant, accurate and complete information is furnished to W&A (whether requested or not). Because W&A rely on such information for the purposes of discharging its obligations under these terms and the LOE, W&A shall not be liable for any loss, damage, costs or expenses whatsoever and howsoever caused, incurred, sustained or arising from a failure to disclose such information to it or from incorrect and/or incomplete information furnished to it or from misrepresentations (whether such failure, furnishing and/or misrepresentation is innocent, negligent, reckless or wilful) made to it by the client.

## **Reliance on advice**

Any advice (including but not limited to any report/information) given by W&A to the client - whether verbally or in writing - shall be based on the information supplied by the client to W&A. W&A shall not be liable to the client or to any third party for any damages suffered as a result of the client failing to disclose any relevant information to W&A.

Any advice given by W&A to the client is based on the facts and circumstances of the client. Therefore such advice is given for the sole use of the client to whom it is addressed and may be relied on only by the client. No party other than the client to whom it is addressed shall be entitled to rely on advice given by W&A to the client for any purpose whatsoever.

The client shall be solely responsible for (a) making all management decisions and performing all management functions; (b) designating a competent management member to oversee the services; (c) evaluating the adequacy and results of the services; (d) accepting responsibility for the results of the services; and (e) establishing and maintaining internal controls, including, without limitation, monitoring ongoing activities.

The client indemnifies W&A against any claim by any third party arising from advice given by W&A to the client.

## **Law of the Republic of South Africa**

All advice given by W&A is given on the basis of the laws of the Republic of South Africa. To the extent W&A advise on documents governed by the laws of other jurisdictions, W&A will not be advising on any specific implications of the laws of those jurisdictions.

## **Force Majeure**

W&A shall not be liable to the client if it is unable to render the services in terms of a mandate as a result of any cause beyond its reasonable control. In the event of any such occurrence affecting W&A it shall notify the client as soon as reasonably practicable.

## **Governing Law and Jurisdiction**

The parties irrevocably agree that the courts of the Republic of South Africa shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection

with this agreement or its subject matter or formation (including non-contractual disputes or claims).

## **Interpretation**

These terms are an annexure to the LOE which will be emailed or delivered by hand to the client. These terms form an integral part of the LOE. In the event of a conflict between any of the terms contained herein and those contained in the LOE, the terms contained in the LOE shall prevail to the extent of such conflict.