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## **TERMS OF ENGAGEMENT** **(SCANLEN AND HOLDERNESS)**

Thank you for considering Scanlen & Holderness for your legal services needs. We look forward to working with you.

### 1. **SERVICES TO BE RENDERED**

We confirm that you have engaged us to perform the following legal services on your behalf:

### 2. **HOUR RATE OR TIME BASIS, WITH VALUE ON COMPLETION OF MATTER**

The starting point for determining the fees you will be charged in this matter will be the time spent on the matter. In determining the chargeable time for a matter, we include telephone calls, meetings, preparation time, sending correspondence, receiving and reviewing correspondence, drafting documents, travel time, reviewing documents and files, research, court appearances and generally all time spent in providing legal services to you in the matter.

The time charge rates for a matter will depend on the charge-out rate of the lawyer or lawyers doing the work. The charge rate(s) for the lawyer(s) who will be involved in your matter is (are):

Charge rates may be changed from time to time. If you have any questions about charge rates, do not hesitate to ask.

Interim bills will be based on the amount of time spent on the matter to the time the interim bill is sent. When determining time, we use a segment system. The minimum time for any attendance is one segment. Ten segments make an hour.

Your final account may be adjusted up to a fair and reasonable amount, based on various factor, including:

- (a) the complexity of the matter or the difficulty or novelty of the questions raised; or
- (b) the place where, the time at which and the circumstances in which the work has been done; or
- (c) where the money or property is involved, its amount or value;
- (d) the importance of the matter to the client; or
- (e) the seniority and experience of the legal practitioner; or
- (f) the nature of the matter, including its difficulty and urgency; and the need for special skills or services; or

- (g) the results obtained;
- (h) the customary charges of other lawyers of equal standing in similar matters and circumstances; or
- (i) any estimate given to you by us;
- (j) the direct costs we incur in providing the services.

If you have any questions about these charges, please don't hesitate to contact us as we want you to have a full understanding of the basis on which you will be charged for these services.

### 3. **LAW SOCIETY GUIDE**

The Law Society of Zimbabwe has a guide of reasonable fees chargeable by lawyers for specified mandates. The fees differ depending on factors listed above. That guide is available in our office should you wish to peruse it. Other firms base their charges on that guide. Although we have taken the guide into account, you agree that our fees will be based on our cost structure and therefore on our tariff. That tariff is, generally, above the guide contained in the Law Society of Zimbabwe guide.

### 4. **DISBURSEMENTS**

Disbursements are payments we make to third parties to carry your matter forward. Some examples for disbursements are charges for long distance telephone calls and long distance fax transmissions, courier charges, bank charges, photocopying charges, travel expenses, transcriptions, court filing fees, process service fees, surveys, search and certificate fees and generally any other payments we must make to third parties on your behalf. You will be responsible for paying our disbursements on your matter. You will also be responsible for paying VAT on the disbursements, where applicable.

### 5. **DEPOSITS**

Unless special arrangements are made, we require our clients to pay a deposit to cover the fees and disbursements for the work to be done. This money is kept in a trust account, is used for disbursements as they are incurred, and is applied for payment of fees when accounts are rendered. When an account is rendered, you may be asked to bring the retainer back up to its previous level. You agree that although under normal circumstances this money may not be appropriated and transferred to business account, we may appropriate the money in anticipation of work to be performed and transfer it to business account as long as the amount transferred does not exceed a fair estimate, based on our rates, of the cost of work to be done during the 30 days immediately following such transfer. In other words, the firm may, in its discretion, treat the deposit as an upfront advance settlement in respect of services to be performed and appropriate it thirty or less days prior to the provision of services.

### 6. **ACCOUNTS**

Legal matters sometimes take considerable time to resolve. To keep you informed as to how much the matter is costing you and to allow us to continue to carry on business while the matter proceeds, you will likely receive interim accounts. When your matter is completed, you will receive a final account.

All accounts, including interim accounts, are due when rendered.

There is a miscellaneous expenses charge of 2% of the value of any account. It is recommended by the Law Society of Zimbabwe.

7. **THE ENGAGEMENT AGREEMENT**

We want to handle your legal matter in a prompt and effective manner. We hope you will let us know if there is any way we can improve on the service we provide to you.

As the client, you will decide the general direction your matter will follow. Before taking any major step in your matter, we will ask for your instructions on how you want to proceed. We will usually make a recommendation but the final decision will be yours. We will then provide the legal services necessary to carry out your instructions.

We can make no promises or guarantees as to the outcome of your matter. We will, however, give you our considered opinions and provide you with competent legal services.

8. **COMMUNICATION**

Communication will be very important in our relationship. If you ever feel you do not fully understand what is going on, please call or make an appointment for a meeting. If you have any information that might be of assistance to us in handling your matter, call and let us know.

We will report to you from time to time by letter, telephone call or in person. You will receive copies of most correspondence sent and received and documents prepared on your matter. If you do not understand a document or correspondence you receive from us, please call.

It is your responsibility to provide us with current information about where you are living and how we can get in touch with you.

9. **CONFIDENTIALITY**

Most communications between solicitor and client are confidential. This confidentiality is known as the "attorney and client privilege." Because of it, you can give us all the facts relevant to your matter without fear that prejudicial information will become public. We cannot be compelled by the tax department, the police, the government or the courts to divulge information that is subject to attorney/client privilege.

The attorney/client privilege is your privilege, not ours, so only you can waive it.

Not all attorney/client communications are privileged. The privilege only arises when the client reveals information in confidence to obtain legal advice or services. Information you give us that is not privileged is treated as confidential. Our ethical rules define the limited circumstances in which confidential information can be disclosed.

If you have any questions about privilege or confidentiality, please don't hesitate to ask them.

10. **INTELLECTUAL PROPERTY RIGHTS**

We retain all copyright and other intellectual property rights in everything developed, designed or created by us either before or during the course of an engagement including systems, methodologies, software, knowhow and working papers.

We also retain all copyright and other intellectual property rights in all reports, written advice or other materials provided by us to you, although the fees you pay us allow you to use those materials for the purposes for which they were created under this engagement.

11. **OUR LIABILITY**

We will not be liable to you for any consequential or indirect or punitive loss and damage.

12. **LIMITATION OF LIABILITY**

You agree that our total liability in respect of any loss should be limited to the lower of the figures produced by the operation of the following two sections.

13. **CAP**

Our liability to you in respect of breach of contract or breach of duty or fault or negligence or otherwise whatsoever arising out of or in connection with this engagement will be limited in total to not greater than the total amount of the fees charged by us to you under this engagement to cover claims of any sort whatsoever arising out of or in connection with this engagement.

14. **PROPORTIONALITY**

Our liability to you in respect of breach of contract or breach of duty or fault or negligence or otherwise whatsoever arising out of or in connection with this engagement will be limited to that proportion of the loss or damage (including interest and costs) suffered by you, which is agreed between us or ascribed to us by a Court of competent jurisdiction allocating proportionate responsibility to us having regard to the contribution to the loss and damage in question of any other person responsible and/or liable to you for such loss and damage.

For the purpose of assessing the contribution to the loss and damage in question of any other person pursuant to the preceding paragraph, it is agreed that no account should be taken of any limit imposed or agreed on the amount of liability of such person by any agreement (including any settlement agreement) made before or after the loss and damage in question occurred.

15. **THE TIME FOR BRINGING ANY CLAIMS**

Any claim whatsoever arising out of or in connection with this engagement will be brought against us within one month of the act or omission alleged to have caused the claim.

16. **OUR STAFF**

You undertake that during the course of this engagement and for a period of 12 months following its conclusion you will not:

- i solicit or entice away (or assist anyone else in soliciting or enticing away) any member of our professional staff with whom you have had dealings in connection

with this engagement during the 12 months immediately prior to your approach;  
or

- ii employ any such person or engage them in any way to provide services to you.

This undertaking will not apply in respect of any member of our staff who without having been previously approached directly or indirectly by you responds to an advertisement placed by you or on your behalf.

## 17. TRUST ACCOUNTS

We maintain a separate bank account for money we hold in trust for our clients. The account is designated as a trust account.

The Law Society has established very strict standards for lawyers' trust accounts. Trust accounts are reviewed annually by a professional accountant and the results of the review are reported to the Law Society. The Law Society also conducts spot audits.

In most cases, the interest on trust accounts goes to the Law Society Compensation Fund and is used to compensate victims of theft and fraud by lawyers. Unless specifically agreed in writing, we do not pay any interest on any money deposited with us and we assume no obligation to perform any investment services for any client. We prefer not to hold money that is not immediately required for our mandates. Whenever you deposit money with us, we shall conclude from that act that you waive all interest income on it. This applies even when interest accrues on amounts in our trust account. All interest belongs to the fund or us or to us and the fund.

If you decide to end our relationship, we will render a final accounting covering unbilled time, other charges and disbursements. You will have to pay this account and all other outstanding accounts before we will release the file.

As an agent we have a right at law to terminate our agency at any time.

We sincerely hope we will work harmoniously and effectively with you. As stated above, we look forward to working with you.

**SCANLEN & HOLDERNESS**