



Terms of Engagement for Legal Services

1. **Instructions:** It is important that you give us clear and accurate instructions from the very beginning and when you get any new information as the case develops. We will do our best to carry out the agreed instructions and to give you a confidential and friendly service.

When we receive your instructions we will explain your legal options to you. If there is anything that you do not understand please tell us right away so that we can answer your questions. We will then agree with you the actions to be taken.

2. **Updating your Instructions:** We may need to update your instructions from time to time. It is important that you give us instructions when they are needed. If you fail to do this, we cannot make progress. This may affect the outcome and, in some cases, may mean we have no choice but to stop acting for you.

3. **Discussing Expectations:** We will discuss your expectations and tell you whether we think they are realistic. It is important to us that you understand at all times what is happening in your case. To help prevent any confusion or distress on your part, we will give you general information and explain any proceedings regarding your case as it progresses.

4. **Legal Requirements:** Our engagement is subject to these terms and effective upon completion of our normal intake procedures, including but not limited to receipt of any monies on account requested by us and completion of a check for potential conflicts of interest. You represent that you have disclosed and promptly will disclose to us all persons and entities who may have an interest in this matter so that we may avoid any conflict of interest. Further, we may require certain information from you and your affiliates in order to comply with our obligations under applicable anti-money laundering regulations and legislation and our internal policies and you undertake to provide us promptly with true and accurate copies of all such information following our written request for same. Please note that if this information is not received by us in a format that is satisfactory to us, we will be obliged to discontinue acting for you. We are also obliged to report to the Gardai and Revenue Commissioners if we become aware of certain suspicious transactions.

5. **Data Protection:** We may obtain personal data from you for the following purposes:
 - (a) to enable us to provide you with the legal and related services you require and for our administrative purposes;
 - (b) to comply with our know your client / anti-money laundering policies;
 - (c) for business development purposes, including identifying relationships between you and other parties, both within the firm of Flynn O'Driscoll and with any of our affiliated undertakings; and
 - (d) for marketing purposes, including to send you marketing and legal materials which you have requested or which we believe may be of interest to you and to consider you and/or invite you to marketing events, client seminars, hospitality and meetings.

You may contact us at any time to request that your personal information not be used for marketing purposes.

You acknowledge and agree that Flynn O'Driscoll may collect, process and store materials, data, information and content relating to you and/or your business or its principals, affiliates, shareholders, directors, officers, employees and agents ("**Data**") and that such Data may be transferred, disclosed, stored, processed and maintained by us electronically on servers, or in hard copy or original format, in a number of different jurisdictions, including, and outside of, Ireland or the European Economic Area and/or any of the other the jurisdictions where affiliates of Flynn O'Driscoll has a presence. In



this regard, you explicitly consent to the transfer of all materials, Data, information and content relating to your business including (where relevant) with respect of any of its principals, affiliates, shareholders, directors, officers, employees and agents into and out of any such jurisdictions.

6. **Costs of Services:** Our services are charged and applied as follows:

- (a) Unless otherwise agreed our charges are based on a number of factors. These include the time spent dealing with your case or matter and the hourly rates for those persons expected to deal with your case or matter, the complexity of the matter, the urgency of the matter, the difficulty or the novelty of the questions raised, the skill, labour, specialised knowledge and responsibility involved, the number or importance of the documents prepared or examined, the amount or value of any transaction involved, the importance of the case or matter to you, the time reasonably spent by any Solicitor in this Firm on the matter and the places and circumstances in which the case or matter is to be pursued.
- (b) It may be necessary or cost effective as the work continues to have other lawyers with alternative personnel to work on this matter. These rates do not include VAT which is chargeable at 23%. VAT applies to the professional fee and on taxable outlay.
- (c) Every client is individually (as well as collectively) liable to pay the whole of our fees and is responsible for forfeiting the client's obligations set out in this letter and in our Standard Terms of Business.
- (d) All payments made or due by this Firm to third parties relating to this matter will be charged to you at cost.
- (e) You may not be involved in court proceedings now but in the event that you are at some stage in the future I now set out an explanation of court costs.

If you are involved in a case before the Rights Commissioner, Employment Appeals Tribunal or Labour Court you will be responsible for your own costs as none of those fora have the power to award costs in favour of the winning party. Equally, an individual you are in dispute with in any such forum will also have to discharge their own costs so you do not face the liability of two sets of costs before any of these fora. In contrast however, the open courts (ie District, Circuit, High and Supreme Courts) have the authority to award costs against a losing party. Legal costs can be split into two types of costs known as solicitor and own client costs and party and party costs. When you are in receipt of an Order in your favour from an Open Court, that Order only covers party and party costs. Party and party costs are those costs involved in the actual court hearing dates. In other words, usually only counsel's fees are covered and each client bears the cost of the balance of fees incurred in any case. Therefore, it is a significant misnomer for some clients when they hear that they have been made an award of costs as this represents in fact only a portion of their costs.

7. **Disbursements and expenses:** Disbursements include all expenses incurred by us on your behalf such as photocopying, printing, faxes, couriers, travelling expenses, counsel's fees, foreign lawyer's fees, court fees, experts' fees, search fees, registration fees, filing fees, banking administration costs, stamp duty, tax and all other expenses or third party fees paid or incurred by us on your behalf.

Your appointment of us shall be taken as your authority for us to incur such reasonable disbursements in connection with the services which we provide to you. These disbursements will be listed separately when we send you a bill.

We may need an advance payment from you to us in circumstances where certain expenditure or disbursements are required to be made by us on your behalf. Money advanced by you which is not subsequently required for expenses shall be used as a credit against your final bill, provided that, if any amount remains after payment of the final bill, such amount shall be promptly returned to you.



Our bills will also include charges for photocopying, faxes, phone calls and other administrative and communication costs. Where large amounts of printing or photocopying are required by you, we may charge for this separately and this separate expense will be itemised on your bill.

8. **Estimates of Charges and Expenses:** Any estimates in relation to charges or expenses are given in good faith, but are as guidelines only and in no way should be viewed as an agreement to carry out the work at that estimate. Our estimates may be revised as a matter of course where the case develops and where possible we shall inform you if it becomes apparent that our fees are likely to exceed an estimate which we have given. We try to ensure that there are no unexpected charges or expenses when a matter or case is billed by us. Our estimates do not include applicable expenses, disbursements or VAT.
9. **Billings and Payment:** We will aim to invoice you monthly / quarterly in arrears for our fees and disbursements. Payment to our bank account referred to on our invoices is due immediately on the issue of our invoices and in any event, strictly within 30 days of the dispatch of our invoices unless we agree in writing otherwise ("the Credit Period"). The law now provides that unless you are a consumer, interest applies automatically to invoices where payment is not made within thirty days. The applicable interest rate since 1st January 2012 is 8% per annum. We reserve the right to charge interest at 3% above the current base rate of Allied Irish Bank on any amounts outstanding after the Credit Period.

If our invoices are not paid when due, we reserve the right to take any action we consider necessary to protect our position, which may include, deducting the sum owed to us from any money we hold on your behalf; ceasing to work on your behalf on any pending matter until the account is paid in full; terminating our engagement and removing ourselves from the Court record where necessary; taking steps to recover from you any costs still outstanding; and/or retaining any papers or documentation or money which we hold on your behalf pending full payment of the amount owed.

We require payment of our invoices without any deduction or withholding or set-off on account of taxes or other charges of any nature. If any withholding is required by law, you will be responsible for paying such additional amounts as is necessary so that we receive full payment of our invoices.

When you instruct us or at some subsequent point, we may request you to make a payment to us on account of our fees and expenses. Any payment on account will be credited against you and any bills for the work which we carry out.

If you wish to query any bill you should raise your query with the Solicitor specified on the Engagement Letter within fourteen days of the Invoice date. If a third party has agreed to discharge the bills which we issue to you, you will still be required to pay us if the third party fails to do so in accordance with these Terms of Engagement.

10. **Retention of documents:** In general, the firm will retain any file relating to a matter on which the Firm has acted for you for six years after the matter is completed. After that period, our Firm will be entitled to dispose of the file without reference to you.

In any particular matter, you will of course be free to ask us in advance to retain the file for a longer period and/or to take no action in relation to our file without further notification to you. We will retain any title documents in accordance with our security procedures in place from time to time but reserve the right to send them (and any other documents we hold) to you by registered post at the last address you have communicated to us at any time.

When we complete the work concerned we shall, if requested, return to you all the documents and other material loaned by you to us for the purpose of that work. Our working materials, attendances, internal memoranda, all correspondence (including emails) between you and us and other material generated by us in that work will remain our property. Unless agreed otherwise, we will retain all such documents and materials,



normally for a minimum of six years, and we may destroy them without reference to you. We may exercise a lien over (that is retain) any of your property and money we hold for as long as any fees, expenses or disbursements are outstanding.

11. **Electronic Communications:** When using electronic modes of communication, we take reasonable precautions to preserve confidentiality. However, we cannot guarantee confidentiality or non-interference with electronic transmissions and you accept that we cannot be held liable for any breaches of confidentiality or interference in transmission which may occur as a result of electronic communications with us.

You also accept the inherent risks associated with electronic communications (including that messages are not encrypted and are not secure).

We will assume that any email address which you provide or which you use to communicate with us is regarded by you as suitable for all email communications unless you inform us otherwise in writing. If you prefer not to use electronic communications on any particular matter, please let us know.

Although our computer systems make use of virus protection software and we take various measures to reduce the risk of viruses finding their way onto our computers, we are not responsible for any loss or damage caused to you or your computer system directly or indirectly as a result of electronic communication with us.

12. **Our work for you:** Unless we otherwise agree in writing, the Letter and these terms and conditions set forth our entire agreement for rendering professional services to you and any additional persons which may be agreed upon in writing for the current and any future engagements. These terms shall not be capable of variation or amendment orally or by course of conduct. We may at any time and from time to time change, alter, adapt, add or remove portions of these terms and conditions and, if we do so, will post any such changes on our website. Your continued use of our services following any such change shall be deemed and constitutes your acceptance of those changes and you acknowledge and agree to be bound to the current version of the relevant terms and conditions at all times and that unless stated in the current version of the terms and conditions, all previous versions shall be superseded by the current version.

13. **Termination of our Instructions:** We expect to continue to act for you until we finish the work concerned. Either you or we may bring instructions to an end at any time by telling the other. By way of example only, we may cease to act for you if you have failed to give us clear, timely and proper instructions as to how you wish to proceed; if you have failed to pay an invoice by the due date; where you fail to follow our advice; if you instruct us to act unlawfully or unethically; if you indicate that you have lost confidence in us; if you make material misrepresentations about facts relevant to your engagement; where we have an interest in any matter in which we are concerned with another client that is adverse to your interests; if in our reasonable belief the relationship of trust and confidence between Solicitor and client does not exist between us; or if in our reasonable belief our continuing to represent you may cause damage to the professional or personal reputation of our Firm or any of its personnel.

If either of us terminates instructions, you must pay us all fees and disbursements incurred before termination, plus any further fees and disbursements for work necessary to transfer our files to another adviser of your choice. We will be entitled to retain your Deeds, documents and other papers and files until full payment of our outstanding fees accrued, and expenses incurred.

14. **Making a complaint:** Good communication between us will guarantee the best possible outcome. If you wish to make a complaint about any aspect of our service, however, please send it in writing to us and we will review your file without delay. We will then send you a written reply to any requests for information, advising you of any actions that we will be taking in relation to your case.

Any disputes between you, the client and us shall, at our option, be referred to a sole arbitrator to be appointed by agreement, or in default of agreement, by the President of the Law Society of Ireland.

Should we not exercise our option to require arbitration, the Irish Courts shall have exclusive jurisdiction to decide all disputes.

Any arbitration which takes place shall be in Dublin at a venue chosen by the arbitrator and the arbitration proceedings shall be private and confidential. Any such arbitration shall be conducted by the arbitrator in accordance with the UNCITRAL Arbitration Rules in force when the dispute is notified to the arbitrator, unless otherwise agreed.

Any disputes or claims connected with our engagement shall be subject to Irish law.

The law allows us to keep a client's file as security for any costs until we have been paid for our services. We will issue our Bill of Costs to you without delay.

15. **Documentation safekeeping and destruction:** All documentation (including original documentation) that we hold or are requested to hold for you in safekeeping will be held by us at your risk and we accept no responsibility or liability whatsoever or howsoever arising in relation to the storage or destruction or loss of any such documentation. We recommend that you retain a copy of all such documents for your own reference.

Unless you direct us otherwise in writing you authorise and instruct us to destroy without further reference to you all documentation in our possession relating to the matter after the expiration of the relevant prescribed time period in accordance with all statutory and Law Society requirements.

16. **Changes in the Law:** Our advice is given on the basis of the laws in force in Ireland at the date of that advice. Unless you expressly instruct us in writing to do so we are under no obligation to advise, and accept no responsibility whatsoever for advising, in relation to subsequent changes in the laws of Ireland, and the effect, if any, on you. It is possible that changes may occur in the law and its interpretation before our advice is acted upon. WE accept no responsibility for any changes in the law or its interpretation that occur subsequent to our advice being delivered to you.

17. **Standard of care and liability:** Subject to these terms and conditions, the standard of care which we shall exercise (to the exclusion of all other standards implied by law or otherwise, if any, to the utmost extent permitted by law) shall be that of a reasonably competent Irish lawyer practising in Ireland at the relevant time, and any arbitrator appointed pursuant to the "Arbitration and waiver of legal proceedings" section below shall have regard only to such standard.

In circumstances where, because of urgency or otherwise, we are not given specific and comprehensive written instructions or adequate time properly to consider the matter prior to given our advice, we proceed only on the understanding that you recognise and agree that the standard of care which we are obliged to exercise to you shall be only that which is reasonable and appropriate to such circumstances.

We accept no responsibility or liability in respect of our advice save in respect of a final determination of professional negligence, applying the standard of care referred to above, and made against us in an arbitration brought pursuant to the "Arbitration and waiver of legal proceedings" section below) made by an Irish court. Without prejudice to the generality of the foregoing we do not accept responsibility for:

- (a) advice you receive from any other professional adviser in relation to a non legal matter, the laws of any other jurisdiction or your failure to obtain that advice or to obtain that advice to a proper standard;
- (b) any loss or damage or costs or expenses that you may suffer or incur as a result for the inaccuracy or incomplete nature of instructions that you give us or that are purportedly given by or on your behalf, or in the documentation that we receive for review or as a result of any other professional adviser or agent failing properly, completely and promptly to convey our advice to you or for any dishonest, deliberate or reckless misstatements, concealment, or other conduct on the part of any other person;



- (c) any loss or damage that you may suffer as a result of your, or your professional advisers or agents, failing promptly to respond to or act in accordance with advice given by us; or
 - (d) the loss or delay in the mail, or in the case of a fax or email of a failure or a delay in transmission, of any advice, letter or document sent to or received by us for the purpose of sending on to you.
18. **Force Majeure:** We shall not be held liable for any delay or failure to fulfil our obligations to you as a result of causes beyond our reasonable control. Such causes include, but are not limited to, fire, floods, hurricanes, tropical storms, typhoons, acts of God, acts and regulations of any governmental or supranational authority, wars, riots, strikes, lock-outs and industrial disputes.
19. **Obligations to us:** If any losses are incurred by us, or any claims are made by a third party against us, as a result of your failure, act or omission as detailed above, we reserve the right to recover the full amount of any subsequent losses from you on a full indemnity basis. In certain situations, there may be a risk that we will be prejudiced as a result of your arrangements with other advisers to limit their liability to you. This might arise because we are one of several firms of professional advisers advising you and you have agreed a limitation of liability with one or more of your other advisers. If this occurs in circumstances where we would otherwise be jointly and severally liable with those other advisers for a claim, you agree that our position will not be adversely affected by the limitation of that other adviser's potential liability.

We are not advising you with respect to these terms because we would have a conflict of interest in doing so. If you wish to receive such advice, you should consult independent legal advisors of your choice.