

**KINLEY LEGAL**  
**TERMS OF ENGAGEMENT (JANUARY 2021)**

1. Application and Interpretation

- 1.1 Kinley Legal ('us' or the 'practice') accepts instructions on the following standard terms and conditions ('terms'), which are governed and construed in accordance with the laws of the Isle of Man.
- 1.2 These terms apply to all matters, in which we act for you, irrespective of whether you have accepted them expressly. Should you have any questions about any term or aspect of our service, please contact the person having overall conduct of your matter.
- 1.3 In cases where we have provided you with a copy of these terms translated into a language other than English, in the event of any conflict between the version in that language and the English original, the latter shall prevail.

2. Terms of effective service

- 2.1 We reserve the right to vary our terms at our discretion. Such variations shall take effect upon written notice to you and your continuing to instruct us.
- 2.2 On receiving your initial instructions we will write to you to confirm their scope and the terms, on which we accept them, including the director having overall conduct of your matter. If any substantive changes arise later, we will inform you at the time.
- 2.3 Accepting your instructions, we assume that you are the principal rather than an agent for any other person. Notwithstanding that we may agree to issue invoices to and accept payment from another party, you will be primarily responsible for such payment.
- 2.4 To enable us to provide legal services of the requisite standard in a time- and cost-efficient manner, you agree to respond to our requests for information and instructions without delay. In particular, please note that the relevant legislation and regulations compel us to operate anti-money laundering and countering terrorist financing procedures. Before accepting instructions and as work continues, we must discharge our professional obligations as to obtaining evidence of your identity as our client (and, if you have made clear that you are acting as agent, the identity of your principal) and the source of funds paid to us. You agree to respond to any requests we make in order to carry out such procedures and provide the necessary documents.
- 2.5 Our services are provided on the basis that we will carry out work which you have instructed as and when we have capacity to do so in the normal course of business, which subject to the complexity of the matter will usually be within 10 working days after your instruction and completion of our client acceptance procedures. In cases where greater urgency is required, you will notify us of the urgency at the time of instruction. In accordance with paragraph 4.1 of these terms, in cases of urgency you agree we may charge a supplementary fee to prioritise your instructions.
- 2.6 The applicable anti-bribery and anti-corruption legislation prohibits us from making, offering, promising to make, demanding or accepting (i) a payment or transfer of anything of value or (ii) any advantage, including the provision of any service, gift or entertainment on our behalf or on behalf of any client, as an inducement into any activity (or inactivity) for any improper purpose or business advantage that is illegal, unethical or a breach of trust. We operate the relevant policies prohibiting such conduct by our management and employees with all parties. If we find that any activities would breach applicable laws or our policies, we may terminate our contract with immediate effect.
- 2.7 The law requires us in certain circumstances to report to appropriate state authorities any evidence or suspicion of money laundering, terrorist financing, bribery or corruption, and prohibits us from notifying our client of the fact that a report has been made.
- 2.8 Our advice will be based on our understanding of the applicable law and practice as of the date of advice and to the extent that they are relevant to the facts presented to us and your instructions. Any subsequent changes in law and practice may therefore affect our conclusions. Unless we have specifically agreed with you to do so, we will be under no obligation to update our advice for any subsequent changes in the law or practice or for any changes or omissions in the facts as presented to us or in your instructions.
- 2.9 Our engagement includes our right to sign on your behalf such documents as may be necessary for us to work on your matter.

### 3. Conflicts of interest

- 3.1 When first instructed, we will carry out checks on the other parties involved in the matter or transaction to ascertain if their interests conflict with yours or our own in that particular matter.
- 3.2 Subject to our duty to protect your confidentiality, we reserve the right to act for other clients, who may be in competition with you or whose interests may not otherwise coincide with yours, on matters unrelated to those, in which we are acting for you or, with the consent of all the parties, in matters, in which we are acting for you.

### 4. Our fees and charges

- 4.1 Save where we agree a fixed fee for work within a defined scope, we will charge you an hourly rate specified below and calculated in six-minute units. Our fees are normally calculated by reference mainly to the time spent by our fee earners on your matters, although other factors such as urgency and complexity may also be used in determining our fee. The calculation of time spent on a matter covers all work carried out (including, for example, e-mails, letters, telephone calls and file administration).
- 4.2 We are subject to legal and regulatory duties in relation to your matter. As such, we carry out certain due diligence and other necessary procedures when opening a new matter file for a client. We levy a new file compliance fee of GBP50 per matter where we have assessed the matter as not relevant business for AMLCFT purposes under the provisions of the Proceeds of Crime Act 2008, or GBP300 where we have assessed the matter as relevant business. Our assessment as to whether or not a matter is relevant business is final.
- 4.3 We will also charge you for any disbursements reasonably incurred by us on your behalf (whether specifically authorised by you or not).
- 4.4 In addition, VAT will be collected where applicable in respect of our fees and disbursements.
- 4.5 Where possible and subject to our engagement letter, at the start of a matter and as necessary as the matter progresses, we will give you an estimate of the fees, the amount of our remuneration, which you are likely to have to pay. You acknowledge that any estimate as to the total of our fees is given only as a guide on the basis of the information then known to us. An estimate is not to be regarded as a fixed quotation unless we specifically so agree in writing. In some matters, we may be able to give a firm quotation if so requested.
- 4.6 We usually issue our invoices monthly or regularly as a matter progresses, as well as on its completion. Our invoices will include any disbursements paid and expenses incurred, in addition to our professional fees. We may ask you for payments in advance on account of anticipated fees, disbursements and expenses.
- 4.7 Except where marked to the contrary, our invoices are payable upon receipt and in any event within 14 days after issue. In the event of non-payment, we will be entitled to charge interest on the amount outstanding at a rate of eight per cent per annum starting from the date of the invoice. We will not have any obligation to carry out any further work for you on any matter until the outstanding amounts have been paid.
- 4.8 Where funds belonging to you (irrespective of whether they were received directly from you) are kept on our account, we reserve the right to deduct from them our professional fees, disbursements and expenses without your prior approval.
- 4.9 Section 23 of the Advocates Act 1995 of the Isle of Man gives you the right to seek assessment of our fees in certain circumstances by either the court or an assessor nominated by the Isle of Man Law Society.
- 4.10 If your matter cannot be completed or if you withdraw your instructions to us, we will invoice you for all work done to that event (and all disbursements paid and expenses incurred). In such circumstances, we will also charge for work reasonably done, disbursements paid and expenses incurred in connection with the closure of our file and (if appropriate) the transfer of the matter to another adviser.
- 4.11 Where appropriate, we will discuss with you whether you are eligible for and/or should apply for public funding (Legal Aid) and whether or not your costs may be covered by insurance or any employer, or other legal expenses scheme. We do not act in matters funded by Legal Aid. If other third party funding is provided, it is your duty to comply with the terms and conditions of the relevant third party and inform us and the third party immediately of any changes in your circumstances relevant to those terms (including in particular any change in your financial circumstances).
- 4.12 In circumstances where our client is a person or entity whose solvency we have been unable to verify, for instance a newly-formed company, we may in our discretion require a specified third party personally to guarantee the payment of our fees and other expenses. Where such a guarantee is required, it shall be in writing and constitute a supplement to our engagement letter.

## 5. Client funds

- 5.1 You agree only to pay us money in settlement of an invoice, and all money received becomes our money upon receipt.
- 5.2 We do not operate a pooled client account or hold client funds under any circumstances.

## 6. Storage of documents

- 6.1 Following the conclusion of a matter, we will store files and their contents for such time as we judge reasonable. Unless you have requested otherwise and we have specifically agreed in writing, we will normally store correspondence and documents electronically for a period after completion of the matter, and hard copies of correspondence and documents will be sent for secure destruction. Files will normally be stored in electronic form for not less than five years. After expiry of that period the material may be erased without further reference to you, unless you have previously asked us in writing to retain it for longer and we have agreed in writing. We may agree in writing to hold title deeds and similar items indefinitely. We may charge a fee for the production or storage of such documents.
- 6.2 We will exercise an advocates' lien and will keep all or any papers, documents and correspondence without releasing copies to you at any time while there is money owing to us for our fees and disbursements.

## 7. Communication

- 7.1 Our e-mail is transmitted through the internet and is not encrypted. Accordingly, its security and confidentiality cannot be guaranteed. We cannot guarantee that an e-mail sent by you to us, or by us to you, or to any other intended recipient, will reach its intended recipient in the form sent, or at all. You should seek confirmation of safe receipt of urgent or sensitive e-mail by contacting the recipient by telephone.
- 7.2 Unless you instruct us otherwise, you agree that we may correspond with you or on your behalf by e-mail and you accept that such communications may not be secure or confidential and that they may not necessarily reach their intended recipient and that we cannot accept responsibility for any loss which you may suffer as a result of the use of e-mail for communications. If you instruct us to ensure that our communication must be encrypted, we may obtain digital certificates in the Isle of Man at your expense and subject to the availability of appropriate IT service within the timescale you require. It is not a guarantee of absolute security, but it is a security enhancing measure.
- 7.3 Unless you advise us to the contrary, if you contact us by e-mail we shall assume that you request us to correspond with you by e-mail thereafter, on the basis that you will accept responsibility for any loss you may suffer as a result. These terms of engagement apply to any e-mail sent to you. Any content in an e-mail which does not relate to the official business of the firm is neither given nor endorsed by it.
- 7.4 We regularly carry out virus checks on our computer systems and on data and communications received electronically. However, we advise you to carry out your own virus checks on all your systems, data and communications (whether in the form of computer disc, e-mail, internet or otherwise). We accept no responsibility for viruses which may enter your system or data by these or other means.
- 7.5 We will deal with routine communications received by e-mail in the same manner as communications received by post or by hand rather than with an additional degree of urgency. We do not accept service of documents or any communications by fax.

## 8. Use of your data and information

- 8.1 You consent to the processing by us of your personal data including, without limitation, where (1) the provision of the data is necessary for the performance of an agreement between us and/or for any pre-contractual obligations thereto, (2) the processing is necessary for compliance with a legal obligation to which you are subject, and (3) the processing is necessary for the purposes of legitimate interests pursued by you or by a third party.
- 8.2 As a registered controller of personal data, we may process your personal data or any other data we receive in connection with your matter, including personal data of your employees or representatives, as is reasonably necessary to comply with your instructions and/or the Data Protection Act 2018, the GDPR and LED Implementing Regulations 2018 and other data protection legislation in the Isle of Man or to enhance our services to you.
- 8.3 You will have the duty to ensure that, before your employees or representatives disclose their personal data to us, they consent to us processing their personal data. We will deal with requests relating to their personal data through you.
- 8.4 Subject to compliance with applicable law, you have the right to request a copy of your personal data in our possession (for which we may charge a small fee) and correct any inaccuracies it contains.

- 8.5 You have the right to withdraw your consent to our processing of your personal data by giving us notice in writing. This does not affect our duties to comply with the applicable law.
- 8.6 We will treat your personal data and other client information as confidential in accordance with our professional obligations and, save where such information is in the public domain or we have your consent to do so, will disclose such data and information to competent authorities when required by law to do so. You further agree that we may disclose such data and information to our bankers as is reasonably required by them to verify any payment we receive from you or make to you or on your behalf for their own anti-money laundering, risk and regulatory purposes.
9. Limitation of liability
- 9.1 Your agreement with us is for the provision of legal services by the practice rather than by any individual director or other employee of the practice with whom you may deal. It is the responsibility of the practice to ensure that all services provided to you are carried out with reasonable care and skill. The practice accepts responsibility for any failure on the part of its directors or other employees to exercise such care and skill in the course of their work. Therefore, any claim arising out of your dissatisfaction with any services provided by us should be, and may only be, directed against the practice itself rather than against any individual director or other employee. The practice maintains professional indemnity insurance cover, currently to a limit of GBP4,000,000. If you believe this to be insufficient cover for your particular transaction, please tell us: we will then (at your expense) seek an additional level of cover. Unless otherwise specifically agreed with us in writing, our liability for any claim will be limited to the insurance cover we hold from time to time.
- 9.2 In some cases, we will refer you to other lawyers or professionals and may, where appropriate, instruct them on your behalf. In so doing we will exercise reasonable care in selecting such persons, but we will not be responsible for any act or omission on their part in the provision of their services to you. If we are required to instruct outside counsel, experts, agents, consultants and/or foreign lawyers on your behalf, we will normally seek your consent before instructing them.
10. Quality assurance
- 10.1 Should you wish to raise any query or complaint in relation to our services, in the first instance, please contact the fee earner having overall conduct of your matter. Our complaints officer is Christopher Kinley, the managing director of the practice.
- 10.2 If you have not been able to resolve your query or complaint satisfactorily directly with us, please note that you have the right to raise it with the Isle of Man Law Society, 13 Mount Havelock, Douglas, Isle of Man IM1 2QG.
- 10.3 Under certain circumstances you may have a right to make a complaint to regulatory authorities outside the Isle of Man. We ask that you note paragraph 13 of these terms (Advice on the law of more than one jurisdiction) as it relates to the handling of any complaint made to regulatory authorities outside the Isle of Man.
11. Termination of our relationship
- 11.1 You may withdraw or vary your instructions to us at any time by reasonable notice in writing.
- 11.2 We may withdraw from acting for you on giving you reasonable notice in writing where we have grounds to do so (including your failure or that of persons associated with you to make due payments or provide proper instructions/information to us and/or a risk of breach of our professional duties or applicable law). In particular, our declining to act for you 'for professional reasons' shall constitute sufficient explanation of the appropriate grounds.
12. Third party rights
- 12.1 Unless otherwise specifically agreed in writing, only you are the party to the contract with us, and nothing in these terms confers any rights on any person pursuant to the Contracts (Rights of Third Parties) Act 2001 of the Isle of Man. Neither you nor we can assign any rights or obligations under the contract.
- 12.2 All information and advice that we give you is intended for your sole use and not for disclosure to third parties without our consent in writing. We do not accept any responsibility toward any third party relying on the advice or services we provide to you. We retain copyright in all material originally produced by us.
13. Advice on the law of more than one jurisdiction
- 13.1 Our fee earners may be qualified to practice as lawyers not only in the Isle of Man, but also in England and Wales and other jurisdictions. We only accept instructions as Isle of Man advocates subject to Isle of Man regulation, unless we have explicitly agreed in our engagement letter to act in a particular matter as English

solicitors or other foreign lawyers. We will not be deemed to be acting as English solicitors or members of any other legal profession outside the Isle of Man simply by virtue of the fact that in a matter we advise on matters of English or other foreign law, or in relation to a foreign matter.

- 13.2 You agree that in respect of all matters where we are acting as Isle of Man advocates and have not agreed in our engagement letter that we are acting as English solicitors or other foreign lawyers, all queries or complaints about our service and our professional duties toward you shall be submitted through Isle of Man regulatory channels as set out in these terms, and not to any regulatory or supervisory authority in England and Wales or any jurisdiction other than the Isle of Man.
- 13.3 You agree that we never hold money in our client monies account or otherwise on trust for or otherwise on behalf of clients in our capacity as English solicitors or other foreign lawyers. We will hold money held in our client monies account exclusively in our capacity as Isle of Man advocates, subject to the provisions of the Advocates Accounts Rules 2008 of the Isle of Man and our terms.

#### 14. Payments

- 14.1 If you are making a payment to settle an outstanding invoice, funds should be paid by means of one of the methods of payment we can accept in relation to that invoice. Details of acceptable methods of payment, and where applicable Office Account details, are included on our invoice. Due to banking restrictions and our policies, available payment methods for an invoice may depend on your location and the type of work you have instructed.
- 14.2 If you have been asked to make a payment in advance or on account of our fees generally rather than specifically in relation to an invoice, the funds should be transmitted to our relevant Client Account, details of which we will provide to eligible clients upon request.
- 14.3 All payments should be made for receipt in pounds sterling (GBP) unless otherwise agreed by us.
- 14.4 If we agree at your request to return your funds to you, we will send them to the same account from which we received them, unless you provide us to our satisfaction with full explanation and details of the new destination of funds you may have asked us to use. Discharge of our duties under the anti-money laundering and countering terrorist financing legislation and other applicable law is not limited to this term.
- 14.5 We may, in our discretion, include as a disbursement on our invoice a charge in respect of either (1) such charges as may be levied by relevant banks and payment processors in respect of receiving or transmitting any payment from or to you or between us and any third party where we do so on your behalf, or (2) our reasonable pre-estimate of the costs of such payment. In relation to a payment to our Client Account, you authorise us to deduct any bank or transmission charges from the amount received.

#### 15. Contentious matters

- 15.1 The provisions of this paragraph 15 apply in relation to matters involving litigation in the courts of the Isle of Man.
- 15.2 The Rules of the High Court 2009 of the Isle of Man govern the conduct of civil litigation in the courts in the Isle of Man. We will provide detailed guidance on how these rules affect the handling of your particular dispute, where appropriate, but certain matters of general application of which you should be aware are contained in this paragraph 15.
- 15.3 The court places considerable emphasis on seeking to avoid litigation by **voluntary exchange of information** and attempts to negotiate settlement before an action begins. If the court later considers a party to have acted unreasonably in providing or not providing information and documents relating to a proposed claim there may be adverse costs consequences. In addition, the court has power to order production of specified documents before an action has begun.
- 15.4. A **Statement of Truth** will be required in a Statement of Case and most other documents used in litigation. The Statement of Truth verifies that the person making the statement believes that the facts stated in the document are true and amounts to evidence. In the case of documents submitted on behalf of a company or corporation, the Statement of Truth will require to be made by a senior person in the company or corporation. In the case of a partnership, it will have to be made by a partner or a person having control or management of the partnership business. We can sign a Statement of Truth on your behalf. However, if we do so it will be taken as a statement by you that we have been authorised to sign as confirming your belief that the facts stated in the document are true. If a false statement is made in a Statement of Truth, the person who made or authorised it could be subject to contempt of court proceedings. We will need to consider carefully with you who should make or authorise any Statement of Truth which may have to be made in relation to any litigation.
- 15.5 It is typically possible for **non-parties to the proceedings to obtain from the court copies of documents that have been filed at court**. There are procedures available in limited circumstances for us to apply for

a court order on your behalf restricting such access. Please advise us should you wish us to make such an application.

- 15.6 **Disclosure of documents** is an important part of the litigation process. In particular, relevant documents (which are very widely defined) must not be destroyed and care should be taken about the creation of documents in the future. All officers and employees and any other agents concerned in the litigation should be informed in relation to these issues. It will be necessary for a named individual to make a statement regarding the search for documents which may be the subject of disclosure. We will need to discuss with you who would be the appropriate person to make this statement.
- 15.7 The court is very keen to encourage the parties to use methods of **alternative dispute resolution** (“ADR”), including mediation, in cases where this is appropriate. In many cases, the court will want to know whether the parties have considered the use of ADR and in certain circumstances can effectively require the parties to adopt it. We have experience of the use of ADR and will be happy to discuss with you whether, and if so when, it is appropriate to consider using it.
- 15.8 Litigation is always both expensive and risky. Even if you are successful, the other side may not be ordered to reimburse all the fees and disbursements which you have paid us or it may not be possible to recover them in full. In any event, you will also be responsible for paying the fees and disbursements of seeking to recover any costs that the court orders the other side to pay. If you lose the case or part of it, the court may order you to pay another party’s costs. We will of course inform you immediately if any costs order is made against you. Any such costs will be payable by you in addition to our fees and disbursements. We will discuss with you whether our fees and disbursements and your liability for another party’s costs may be covered by insurance and, if not, whether it would be advisable for you to try to take out insurance to meet the other party’s costs. Finally, you should be aware that if the other side is publicly funded (legally aided) it is very unlikely that you will be able to recover any of our fees and disbursements, even in the event you win the case.
- 15.9 If our fees are being funded **by a third party** on your behalf, you need to have a clear understanding of your relationship with the person or organisation paying those fees. If you need our help in clarifying that relationship, please ask. Please also note that we are likely to have to provide information concerning your case to the person or organisation paying our fees and that by agreeing to these terms of engagement you are authorising us to release such information as may be required.