



TERMS AND CONDITIONS OF ENGAGEMENT

1. PREAMBLE

- 1.1. These Terms and Conditions (as published on the Brian Wilken Attorneys website) mirror the terms and conditions of our standard Mandate Agreement ("the mandate") and which sets out the terms and conditions upon which Brian Wilken Attorneys Inc ("BWA" / "the Attorney") shall act on the client's behalf. By the client's signature to the mandate, the client appoints BWA with power of substitution to render professional legal services to the client, which shall include the right to prosecute or defend proceedings in any competent court and on the client's behalf to take all necessary steps in connection with and matters relating thereto.
- 1.2. By the client's signature to the mandate, the client acknowledges that he/she/it/they have understood all the terms and conditions contained in the mandate, that any queries regarding the mandate have been dealt with and that the client understands the obligations created therein and as recorded in these terms and conditions.
- 1.3. BWA's office hours are from 08h00 to 16h30, Monday to Friday.
- 1.4. The parties each choose as their *domicilium citandi et executandi* (i.e. their addresses for receiving legal notices and other communications) under this document at the address as set out on page 1 above. It is the client's responsibility to notify BWA of any changes to the client's contact details.
- 1.5. This document contains the whole agreement between BWA and the client and no amendments to this document will be valid unless they are in writing and signed by both parties.

2. AUTHORITY

By his/her/its signature to the mandate, the client agrees that -

- 2.1. The Attorney is entitled to charge fees on the attorney-and-client scale for services rendered to

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SUITE 4
21 THE BROADS
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DIRECTOR

BRIAN WILKEN

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COMPANY REG NUMBER: 2016/242392/21

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the client, whether such service is rendered prior to or after the date of signature of the Mandate (of if a Mandate is signed at all), and that the client undertakes and agrees to pay the Attorney's fees as set out in the mandate unless otherwise agreed, in writing, with the Attorney and on delivery of the work commissioned by the client and for which the invoice in question relates. If funds are held in Trust by the Attorney, then the client authorises the Attorney to deduct fees and disbursements from such deposit, as and when such fees have been billed to the client's account;

- 2.2. the fees on an attorney-and-client scale will be calculated as set out in paragraph 7 hereunder;
- 2.3. certain attendances will be charged at a reduced rate at the sole discretion of the Attorney;
- 2.4. the tariffs set out hereunder shall, with the discretion of the Attorney, automatically escalate from 1 March of each calendar year, at a rate of no more than 7,5% per annum unless specifically otherwise agreed. The increase is based not only on inflation, but also on the greater experience of the practitioner;
- 2.5. the client understands and agrees that **BRIAN WILKEN** will supervise all work carried out in the client's matter, but that he will at all times be working with a team of professional persons who may undertake the actual running and day-to-day operations of the matter;
- 2.6. the client agrees that, by the nature of the matter in which the Attorney represents them, it will be necessary to incur certain disbursements on his / her behalf and also to brief counsel (advocates);
- 2.7. the client confers upon the Attorney the right to incur the costs of reasonable disbursements, i.e. sheriff's fees, counsel's fees and correspondent's fees (where applicable), experts and assessors; who the Attorney shall be entitled to appoint when he deems it necessary, as principal *vis a viz* such service providers;
- 2.8. the client acknowledges that there might be instances where the Attorney and a senior *alternatively* a junior candidate attorney will attend to the matter at the same time and that the relevant charge will be made for such attendances;

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- 2.9. the terms and conditions regarding payment as set out herein shall survive the cancellation/termination of the mandate and / or these terms and conditions.

3. DISPUTES REGARDING FEES/DISBURSEMENTS

3.1 Should any dispute arise regarding, *inter alia*, -

- 3.1.1 whether any service was rendered by the Attorney to the client; and/or;
- 3.1.2 the time expended by the attorney; and/or
- 3.1.3 the interpretation of any clause in the mandate and / or these terms and conditions; and/or
- 3.1.4 the amount charged by the attorneys to the client; and/or
- 3.1.5 any other dispute arising out of the provisions of these terms and conditions and / or the mandate,

both the Attorney and the client unconditionally and irrevocably agree that the dispute shall be referred to the Legal Practice Council for assessment, irrespective whether or not the matter is of a litigious or non-litigious nature and within 10 days of the Parties not being able to conclude same between them.

3.2. The decision of the Fee Assessment Committee constituted by the Legal Practice Council shall be final and legally binding on the parties and in such event, each party shall be obliged to perform any obligation found to be owing by one party to the other within 21 days from date of the finding made. Either party will have the right to take the decision of the assessment committee on review to the Council, subject to the right of review in terms of the Rules of the Legal Practice Council.

4. RENDERING OF ACCOUNTS

The client agrees that –

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- 4.1. the Attorney shall render to the client interim accounts of fees and disbursements until the conclusion of the matter;
- 4.2. the accounts shall set out a short description of the work done by the Attorney together with the total number of hours (where applicable) spent in execution thereof. Insofar as disbursements are concerned, the client shall be entitled to request supporting documentation thereof should same not be included with the account;
- 4.3. if the client does not object in writing to any account within 15 (fifteen) calendar days from date of the particular account; the client will be deemed to have waived any right which he/she/it may have in respect of that particular account and that the client will also then be deemed to have accepted that the Attorney's account is fair and reasonable;
- 4.4. The client may, at any time, request that any account be explained with further detail and specification than that which was contained in the initial account to the client. Within 30 (thirty) days of such a request, the attorney will supply the client with a detailed specified account. In the event of the total of such detailed specified account being higher than the total of the account with which the client was first presented, the client accepts responsibility to pay such higher amount;
- 4.5. the client acknowledges and agrees that it is the client's duty to ensure that the client is in receipt of an invoice and/or monthly statement. Unless the Attorney is advised to the contrary by the 15th calendar day following the month when the work was carried out, the client shall be deemed to have received his/her/its account and will be liable for the amounts set forth therein.

5. PAYMENT OF ACCOUNTS

- 5.1. The client agrees that the Attorney's accounts are payable **upon presentation** to the client.
- 5.2. The attorney is not a registered credit provider and does not offer any payment terms to the client.
- 5.3. In the event of the Attorney recovering any amounts on the client's behalf, be it in the matter in

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respect of which the client has signed a mandate, or any other matter in respect of which the Attorney acts on the client's behalf, the Attorney shall be entitled to set-off against such amount collected, any fees and/or disbursements owing to the Attorney, howsoever arising and regardless of whether such fees and/or disbursements are owing as a result of the matter in respect of which a mandate is signed or any other matter in respect of which the Attorney acts for the client.

5.4. In the event of it being necessary to institute proceedings against the client for the recovery of any fees or disbursements, the client agrees to be liable for the costs of such proceedings, which said costs shall be charged on the attorney-and-client scale as more fully set out in this agreement.

6. DEPOSIT

6.1. Prior to the commencement of any work by the Attorney, a deposit in an amount as directed by BWA must be paid into the Trust Bank Account of BWA. The Trust Banking details of BWA will be made available to the client at the initial consultation to the matter and will never change.

6.2. The client undertakes and agrees to ensure that proof of payment of the deposit is transmitted to the Attorney.

6.3. The client accepts that a such deposit is utilised and that the Attorney will from time to time require the client to top up the deposit so as to cover future fees and disbursements.

6.4. The client's failure to furnish the Attorney with a deposit and/or to deposit further amounts as and when required and/or make payment of the client's account timeously, will result in the Attorney being entitled to cease all work on the client's matter until such time that the deposit is paid or topped up alternatively until the account is paid in full (as the case may be).

6.5. The attorney may, in his absolute discretion, waive the necessity to pay a deposit.

7. FEES CHARGED

7.1. The client hereby agrees and accepts that the following Attorney's hourly billing rates shall apply,

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unless otherwise agreed (wholly at the discretion of the Attorney) and which rate is recorded as being:

Brian Johann Wilken	: R2500.00 per hour or part thereof (ex VAT);
Associate	: R1750.00 per hour or part thereof (ex VAT);
Candidate Attorney	: R750.00 per hour or part thereof (ex VAT);

- 7.2. The client further acknowledges and accepts that Value Added Tax (VAT) at a rate of 15% will be added to all Fees and disbursements and that the Fees may incorporate research time, travelling time and time generally and productively spent on progressing the Client's matter.
- 7.3. The above fee schedules will apply to all items attended to by the Attorney on behalf of the client except for:
- 7.3.1. R75.00 per telephone call received or made (including text/sms messages). Any lengthy telephone calls (i.e. the duration of which is longer than 6 minutes or one-tenth of an hour) will be billed as telephone consultations to the client and will be charged on a time basis. Any reduction in fees for telephone calls made will be wholly at the discretion of the Attorney.
- 7.3.2. R35.00 per text message (sms/whatsapp/etc) received or transmitted. Any reduction in fees for text messages made will be wholly at the discretion of the Attorney.
- 7.3.3. R75.00 per letter sent (i.e. a formal letter) and received. Where letters require drafting, having regard to the complexity of the matter, the letter will be charged on a time scale.
- 7.3.4. A charge of R 5.50 will be levied for each page copied.
- 7.3.5. In circumstances where we are obliged and/or requested to open an interest-bearing account (investment account) on your behalf, a charge of R 1 000.00 will be levied for the opening of such account and the administration thereof will be charged from time to time as an attendance, at the rate of R75.00 per attendance. Kindly take note that

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the Legal Practise Counsel of South Africa is entitled to 5% (five percent) of any interest earned on such interest-bearing accounts on your behalf.

7.3.6. In the event that the Attorney has to attend to the client's matter after hours or on weekends (except where it is by the Attorney's own choice) the Attorney shall be entitled to charge the client at one and a half times the rates set out above.

7.4. Interest on overdue accounts

Interest will be charged on overdue accounts at the rate of 2% above the prime rate charged, from time to time, by ABSA Bank Limited. The client agrees that the interest is charged on overdue accounts and constitutes interest *a tempore mora* and not interest in terms of the National Credit Act.

8. FICA COMPLIANCE

8.1. The Financial Intelligence Centre Act, 2001 ("FICA") was enacted as part of the fight against money laundering and unlawful activities. This legislation is consistent with the laws passed in many countries around the world. FICA obliges Brian Wilken Attorneys Inc to identify and verify client information, as well as to keep a record of this information and the stipulated supporting documents. To this end, we require the assistance of all our clients and kindly request that the information and documents set out below be furnished to us.

INDIVIDUAL

- ❖ Original certified copy of Identity Document (SA Citizens) / Passport (Foreign Nationals)
- ❖ Copy of utility bill (showing physical address)
- ❖ Copy of SARS document (Income tax number)

COMPANIES

- ❖ Copy of certificate of Incorporation
- ❖ Copy of utility bill of company or Notice of Registered Office & Postal Address

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- ❖ Business name if different from registered name
- ❖ Copy of SARS document (Income tax number / VAT number) of company
- ❖ Original certified copy of Identity Document / Passport / Driver's license of authorized person and / or CEO
- ❖ Copy of utility bill of the authorized person and CEO (showing physical address)
- ❖ Copy of utility bill and original certified copy of Identity Document of each person with shareholding of 25% or more in the company

TRUSTS

- ❖ Copy of Trust Deed
- ❖ Copy of Letters of Authority issued by the Master of the High Court
- ❖ Copy of utility bill of the trust (showing physical address)
- ❖ Copy of SARS document (Income tax number / VAT number) of trust
- ❖ Original certified copy of Identity Document / Passport / Driver's license of the authorized person and each trustee, beneficiary and founder
- ❖ Copy of utility bill of the authorized person and each trustee, beneficiary and founder

CLOSE CORPORATIONS

- ❖ Copy of Founding Statement & Certificate
- ❖ Business name if different from registered name
- ❖ Copy of the utility bill of the company (showing physical address)
- ❖ Copy of SARS document (Income tax number / VAT number of close corporation)
- ❖ Original Certified copy of Identity Document / Passport / Driver's License of authorized person
- ❖ Copy of utility bill of the authorised person (showing physical address)

9. COOLING OFF PERIOD

The client understands and agrees that, in terms of the Consumer Protection Act, 68 of 2008, should the client decide not to make use of the Attorney's services, the client has the right to cancel this fee mandate agreement by providing the Attorney with **written** notice of the client's intention to do so, within five (5) days of the signing this fee mandate agreement. Should the client not provide the Attorney with such

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written notice aforesaid, and following the 5-day “cooling off” period, the terms of this fee mandate agreement shall become final and binding.

10. RETURN OF MANDATE TO ATTORNEY

The client agrees and undertakes to return the mandate signed to the Attorney within five (5) days from date of receipt thereof. The terms of the mandate shall be binding from the date of the first consultation alternatively the date on which the first instruction is sent to the Attorney. The client agrees that in the event that the client fails to return the mandate, the terms of the Mandate shall be deemed to be in terms of an oral agreement between the parties and shall be binding on the parties from the date of the initial consultation alternatively instruction received and as if the mandate has been signed.

11. TERMINATION OF MANDATE AND THESE TERMS AND CONDITIONS

- 11.1. Without prejudice to BWA’s other rights and remedies, any termination of the mandate and / or these terms and conditions of BWA will be on written notice to BWA by the client, such notice to be delivered either by way of hand delivery, courier or electronic mail.
- 11.2. Should BWA elect, for any reason, to terminate the mandate and / or these terms and conditions by written notice to the client; same will be transmitted to the client by means of the same methods recorded in clause 11.1 above.
- 11.3. Where the terms and conditions and / or this mandate have been terminated, by either the client or BWA; a reconciliation of all outstanding fees will be done and transmitted to the client in the form of an account / invoice. Upon receipt of the same from BWA, the client will be obliged to make payment of the said outstanding sum as specified in these terms and conditions and / or the Mandate which includes the attorney deducting same from any amounts still held by the attorney in Trust and at that time.

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