

## TERMS OF ENGAGEMENT OF NEW BALKANS LAW OFFICE

January 2014 Edition

### **1. NBLO and you**

1.1 New Balkans Law Office (also referred to as "we" or "NBLO") is an operating name of Nikolov and Shoylev, a lawyers' partnership registered in Bulgaria under Sofia Bar Registered No 2300034110 and with Bulstat No 176474308 as well as an operating name for its affiliate, Legal Services EOOD, a company registered in Bulgaria under No 202331677.

1.2 Legal Services EOOD (or any of its successors or assigns) represent a collective of Bulgarian lawyers (the "Lawyers") one or more of whom may be appointed to assist you for some or all of the engagement, directly or through a lawyers' partnership, including the lawyers' partnership of Nikolov and Shoylev described above. Such appointment will be described in written correspondence between you and us.

1.3 References to "you" or "your" are to the entity or person instructing us in relation to a matter or such other entity or person as you and we may agree shall be treated as our client on that matter.

### **2. These Terms of Engagement**

2.1 These are the terms ("Terms of Engagement") which will apply to the services ("Services") which we and any appointed Lawyer will provide to you in relation to any matter on which you instruct us, unless otherwise agreed.

2.2 When you instruct us and the Lawyers on a new matter, we shall normally send you a letter either by post or by email (a "Retainer Letter") confirming your instructions, save where the instructions constitute repeat business. The terms of that letter (if any) and these Terms of Engagement will be incorporated in the contract between you, us and the Lawyers ("the Retainer") for that matter.

2.3 In the event of any inconsistency between the Retainer Letter and these Terms of Engagement, the Retainer Letter shall prevail.

### **3. Scope of our services**

3.1 The Services to be provided will be described in the Retainer Letter or will otherwise be agreed between us in writing at the outset of the matter and may be varied by written agreement during the course of the matter. The Services will not include advice on tax-related issues or the tax implications of any transaction or course of action unless (and then only to the extent that) this is expressly agreed at the commencement, or during the course, of a matter.

4. **Benefit of our services**

4.1 Unless otherwise expressly agreed in writing, the Services are provided solely for the benefit of you as the client of the appointed Lawyer. NBLO does not accept responsibility for the legal advice of the appointed Lawyer who will have direct liability for their advice to you. Lawyers are obligated under their local laws to obtain professional indemnity insurance cover so as to be admitted to practice. We accept no responsibility to anyone else.

5. **Your responsibilities**

5.1 In order to carry out the Services in a prompt, effective and professional manner, we and the appointed Lawyer(s) shall require your full co-operation and assistance throughout the duration of the Retainer. This may, for example, include the provision of information and documentation requested by us; compliance with any applicable timescales or time limits; and the provision of prompt instructions by you. Payment of any bill is required within 30 days of our sending the bill to you unless a shorter period is specified in a written communication to you (see in further detail clause 9) prior to or at the time of our sending such bill.

6. **People responsible for your work**

6.1 We shall notify you at the outset of the matter and may contact you further from time to time (normally in the Retainer Letter) of the appointed Lawyer(s) who will be assisting you on the matter, and whom you should contact for other matters. By accepting these Terms of Engagement, you authorise us to seek advice from, and involve on a matter, such Lawyers and/or other staff at NBLO, as we deem appropriate.

7. **Charges and expenses**

7.1 Unless otherwise agreed, our fees will be calculated by reference to the time spent by the appointed Lawyer(s) involved on the matter. Time spent on your affairs will include (but will not be limited to): meetings with you and others; any time spent travelling; considering, preparing and working on papers; internal consultations as between fee-earners relating to the matter; written and electronic correspondence; undertaking legal research; and making and receiving telephone calls. We shall normally notify you at the outset of the matter (generally in the Retainer Letter) of the current relevant hourly rates for the Lawyer(s) involved in your matter.

7.2 The hourly rates applicable to our chargeable time are reviewed from time to time and we shall notify you of any changes in these rates.

7.3 In addition to the time spent, in calculating our fee, we may take into account a number of other factors: these include the complexity of the issues, the speed at which action must be taken/urgency of the matter, the expertise or specialist knowledge that the matter requires and, if appropriate, the value of the asset or

subject matter involved. We normally expect these factors to be adequately covered by the hourly rates of which you will be notified. The rates may, however, be subject to an upwards revision, subject to your agreement.

7.4 In the absence of agreement to the contrary, your initial instructions to us will constitute your authority for us to incur all reasonable disbursements and expenses (such as search fees, stamp duty, specialist lawyers' fees, Court fees, experts' fees, notarial fees and courier fees), and you agree to reimburse us for them. If in our professional judgement we consider it necessary to do so, we shall consult with you before incurring any such expenditure. We also reserve the right to charge for the cost of telephone calls, photocopying and facsimile transmissions and other communication facilities and for the reasonable expenses of travel, accommodation and meals whilst working on your behalf. No separate charge is made for secretarial time.

7.5 NBLO may agree to provide (as may be indicated from time to time in either a further written agreement or in other correspondence between us) payment processing services for the payment of disbursements on your behalf. In the course of such provision, NBLO entities may receive funds which they dispense as required in accordance with your instructions, whether or not such instructions are specific to the disbursement or cover it by necessary implication of other express instruction. In cases where NBLO agrees to make such disbursements and to process funds, a fee shall be payable to NBLO for doing so. This fee may be paid either out of your funds for disbursement, provided you agree, or by separate payment to NBLO invoiced appropriately.

7.6 VAT and any other indirect and / or consumption tax, if applicable, may be chargeable on our fees; on disbursements paid by us on your behalf; and on any processing or other administrative services NBLO provides.

## **8. Estimate of costs**

8.1 Where possible, we shall provide you with an estimate of the likely overall costs in relation to a matter. Unless otherwise agreed by us in writing, any estimate or quotation of costs does not amount to a promise or agreement that we shall perform our services within a fixed time or for a fixed fee.

8.2 We and/or the appointed Lawyer(s) shall notify you if any estimate of time and/or fees that we have given to you needs to be revised because unforeseen additional work becomes necessary or because of delays or unanticipated problems which are beyond our control or because your requirements or other circumstances have changed.

8.3 If for any reason a matter does not proceed to completion, we shall charge you for work done and expenses incurred, unless otherwise agreed.

## **9. Billing arrangements**

- 9.1 We shall normally bill you monthly, unless otherwise notified. Each bill will state the period which it covers. However, if we incur any significant disbursements, we may send you a bill for those at any time. We reserve the right to require payment on account of costs and disbursements (including in particular for payment of taxes or fees to government officials and / or notaries).
- 9.2 Payment of any bill is due within 30 days of our sending the bill to you, unless otherwise notified in writing. If any element of a bill is queried, that part of the bill which is not subject to query is to be paid within the 30 days from our sending of the original bill. If you have any queries on any bill, please raise them with us as soon as possible.
- 9.3 If you do not pay the bill within 30 days of our sending it to you, we reserve the right to charge you interest on the amount outstanding on a daily basis from the date payment is due. Interest will be calculated at an annual rate which is the lower of (a) 4% per year above the Base Interest Rate from time to time of First Investment Bank AD, published in its Interest Rate Bulletin at <http://www.fibank.bg/> and (b) the applicable rate for payment of interest on judgment debts on judgments issued in Bulgaria.
- 9.4 We shall be at liberty at any time to apply any sums held or received by us on account for you against any outstanding amounts owed by you to us, whether or not the sums on account relate to any matter where there are outstanding amounts owed by you to us.
- 9.5 If any amount owed to us remains outstanding for more than 30 days after the despatch of the relevant bill, then until all amounts which you owe us have been paid, we reserve the right to cease acting for you with immediate effect and to retain documents and papers belonging to you, together with our own records.

## **10. Confidential information**

- 10.1 Subject to any legal or professional requirements for the time being in force which are applicable to lawyers practising in any of the locations in which NBLO provide advice, the following provisions shall apply.
- 10.2 We and the Lawyers owe an overriding duty of confidentiality to all clients and former clients and may in some circumstances owe a duty of confidentiality to other persons as well. Accordingly, you acknowledge that we and the Lawyers shall not be required to disclose to you, or use on your behalf, any confidential documents or information in our possession if to do so might be a breach of our duty of confidentiality.
- 10.3 You agree that we may disclose your confidential information if and to the extent that,
- (a) such disclosure is required by law or,
  - (b) such disclosure is authorised by you or,

- (c) such disclosure is permitted by the professional rules applicable to Lawyer(s) acting on your matter.

## 11. **Conflicts of interest**

- 11.1 Subject to any legal or professional requirements for the time being in force which are applicable to lawyers practising in any of the countries in which NBLO provide advice the following provisions shall apply.
- 11.2 Before accepting your instructions we and the appointed Lawyer(s) shall endeavour to ascertain that there is no conflict of interest which, in our professional judgment, would render it inappropriate for the appointed Lawyer(s) to act for you.
- 11.3 Having accepted instructions to act for you in respect of any matter we and the appointed Lawyers(s) shall not knowingly act for any other client in respect of that same matter unless you have expressly or impliedly agreed that we may do so. We and the appointed Lawyers(s) shall, however, be free to act for any other client, whether generally or in respect of any other matter, even though there is or may be a conflict between your interests (including in particular your commercial interests) and those of the other client, unless we and the appointed Lawyers(s), in our professional judgment, consider that it would be inappropriate so to act.
- 11.4 None of the provisions in this clause 11 shall detract from the duty of confidentiality which we and the appointed Lawyers(s) owe to you.

## 12. **Restriction on Retaining, etc NBLO Lawyers, Staff or Experts**

- 12.1 You will not, directly or indirectly, retain the services of, employ or solicit in any way NBLO Lawyers, staff or experts (whether those who have worked on your matter or not), whether individually or in any combination. This restriction will apply for a period of 12 months from the termination (as defined below) of our relationship.

## 13. **Limitations and Exclusions of Liability**

- 13.1 NBLO's aggregate liability to you and all Associated Persons arising out of or in connection with the Retainer shall be limited to £10,000 (the "Liability Cap"). For the avoidance of doubt, the appointed Lawyer(s) will maintain their own professional indemnity insurance and these Terms of Engagement do not purport to limit the liability of such Lawyer(s).
- 13.2 NBLO's aggregate liability to you and all Associated Persons in respect of all claims by you and all Associated Persons arising out of or in connection with the Retainer (including claims for legal costs), whether arising as a result of our negligence or otherwise, shall be limited to the amount of the Liability Cap.

“Associated Person” means any person who is not our client in relation to the Retainer but who we agree shall be entitled to rely upon or receive our services in relation to the Retainer.

13.3 The limitations and exclusions in this clause 12 will not operate to limit or exclude any liability for fraud, dishonesty, or reckless disregard of professional obligations or any liability which cannot be lawfully limited or excluded.

**14. Liability insurance cover**

14.1 Where you instruct us to advise you in connection with any potential liability on your part, you should ascertain (if appropriate, with the assistance of your brokers) whether you are (or may be) covered by any relevant insurance in respect of either your potential legal liability and/or legal costs and expenses.

**15. Experts, consultants and other specialist lawyers**

15.1 If we consider it necessary to engage on your behalf any consultant, expert or specialist lawyer in connection with any particular matter we shall normally consult you before making any appointment in order to discuss the person, firm or company to be appointed and the terms of their retainer.

15.2 We shall not be responsible for the services provided by any such consultant expert or specialist lawyer engaged on your behalf. You will be directly responsible for their fees and expenses.

**16. Copyright**

16.1 Unless we expressly agree otherwise, the copyright in the original materials which we generate for you belongs to us, but the fee which you pay for our work permits you to make use of that material for the purposes for which it was created.

**17. Retention and storage of documents, etc.**

17.1 Subject to any agreement to the contrary, during the course of any matter we shall retain such documents (which expression includes anything in which information is recorded, whether on paper, electronically or otherwise) or copies thereof as in our professional judgment it is proper to retain, and for this purpose we may make or keep copies of such documents (whether in electronic or microfilm form or otherwise) and destroy other versions of those documents.

17.2 Subject to any agreement to the contrary, at the completion of a matter we shall (and shall request that the appointed Lawyer(s) shall),

- (a) at your request return to you any documents to which you are entitled or, if you so request, store any such documents in safe custody,
- (b) otherwise retain such documents relating to the matter or copies thereof, as in our professional judgment it is proper to retain, and for this purpose we may make or keep copies of such documents (whether in electronic or microfilm form or otherwise) and destroy other versions of those documents,
- (c) at your request return to you any property (such as exhibits, models, etc) to which you are entitled, and otherwise retain such property as in our professional judgment it is proper to retain,

provided always that we shall not be obliged to keep such retained documents or property relating to your matter for more than one year after completion of the matter. After this time, unless we agree otherwise, we may then dispose of the documents and property without further reference to you.

17.3 If we receive a request from you within one year after completion of the matter we shall return any retained documents or property to which you are entitled.

17.4 We do not normally make a charge for retrieving retained documents or property in response to continuing or new instructions to act for you. We do, however, reserve the right to make a charge based on the time we spend on reading documents, writing letters or undertaking other work necessary to comply with the instructions. A charge will also be made for any safe custody storage.

## **18. Electronic communications**

18.1 Unless instructed otherwise, we shall assume that we may communicate with you by e-mail. Documents sent to you by e-mail will not be encrypted. If you have a requirement for a greater level of security in electronic communications, please notify us of this and we will endeavour to agree with you and implement a mutually acceptable e-mail protocol, incorporating encryption standards.

## **19. Termination**

19.1 You may terminate your instructions to us in writing at any time but we shall be entitled to retain your papers and documents whilst there is money owing to us in respect of our charges and expenses.

19.2 We may decide to cease acting for you only with good reason; for example, if we are unable to obtain clear or proper instructions on how we are to proceed, if it is clear that you have lost confidence in the manner in which we are carrying out our work, if you do not pay our bill or comply with our request for payment on account, if you give us instructions which conflict with our rules of professional conduct, or if in our professional judgment we consider that it would be inappropriate to continue to act for you. We shall give you reasonable notice of our intention to cease acting on your behalf.

19.3 If you or we decide that we shall no longer act for you, you agree to pay our outstanding charges and expenses, including those not yet billed.

## **20. Publicity**

20.1 Unless otherwise agreed, we may disclose to third parties that you are or have been a client. We may also disclose to third parties that we are acting for you or have acted for you on a matter, if information about that matter is in the public domain or you specifically consent to that disclosure.

## **21. The UK Financial Services and Markets Act 2000**

21.1 NBLO does not provide investment advice. Nothing we say or do is intended or should be understood as advice to you or to anybody on the investment merits of acquiring or disposing of particular investments or as an invitation or inducement to engage in investment activities; nor do we act as brokers of investment transactions. NBLO is not authorised by the Financial Services Authority under the Financial Services and Markets Act 2000.

## **22. Authority to give instructions**

22.1 Unless instructed otherwise, we shall assume that all of your employees, directors and officers (if any) who give us written instructions are authorised to do so. Further, if you retain us as agent for a third party, or purport to do so, you warrant that you have the authority of that third party so to retain us.

## **23. Raising queries or concerns with us**

23.1 If you have any queries or cause for complaint about the services we provide to you, please raise these in the first instance with your Matter Co-ordinator (being the first person nominated in Clause 2 of your Retainer Letter). If that does not resolve the problem to your satisfaction, or if you would prefer, please take the matter up with NBLO's Managing Director. We shall investigate your complaint promptly and carefully and do what we reasonably can to resolve the difficulties.

## **24. Severability**

24.1 If any term of the Retainer Letter, or any part of such term, is or becomes illegal, invalid or unenforceable in any respect, then the remainder of the Retainer will remain valid and enforceable.

## **25. Contracts (Rights of Third Parties) Act 1999**

25.1 Unless expressly provided none of the terms of the Retainer shall be enforceable by any person who is not a party to it. The parties to the Retainer may by agreement rescind or vary the Retainer without requiring the



consent of any other person who, not being a party to the Retainer, may have any right to enforce any term thereof.

**26. Force majeure**

26.1 We shall not be liable to you if the Lawyer(s) are unable to perform the Services as a result of any cause beyond our or their reasonable control. In the event of any such occurrence affecting us we shall notify you as soon as reasonably practicable.

**27. Law and jurisdiction**

27.1 The Retainer shall be subject to and governed by the Laws of England and Wales. Subject to clause 29, any dispute arising out of or in connection with the Retainer shall be subject to the exclusive jurisdiction of the High Court of Justice, The Strand, London, England.

**28. Arbitration**

28.1 Any dispute arising out of or in connection with the Retainer shall, at our election, be referred to arbitration, unless such reference is precluded by law. Such election shall be made by notice in writing to that effect. We shall give such binding notice once the dispute has arisen, and within 28 days of a written request by you for us to make the election. If, without making such request, you issue any legal proceedings against us in respect of any such dispute, we may still elect for arbitration by notice to that effect given to you within 28 days of service of the proceedings on us, in which event you will take no further steps in the proceedings other than to procure their dismissal or stay.

28.2 Where we have given notice that we have elected for the dispute to be referred to arbitration, it will be referred to and resolved by arbitration in accordance with the rules of the London Court of International Arbitration for the time being in force ("the LCIA Rules"), save as amended by this clause. The language of the arbitration shall be English. The place and seat of the arbitration shall be London. Copies of the LCIA Rules can be provided on request.

**29. Application of these terms and amendments**

29.1 These terms supersede any earlier terms of business we may have agreed with you and, in the absence of express agreement to the contrary, shall apply to the services referred to in the Retainer Letter (if any) and all subsequent services which we provide to you.

29.2 From time to time, it may be necessary for us to amend or supersede these terms by new terms. Where this is the case, we shall notify you in writing of the proposed changes and, unless we hear from you in writing to

the contrary within 14 days after such notification, the amendments or new terms will come into effect from the end of that period.