

TERMS OF ENGAGEMENT

1. **How these Terms Apply** These Terms of Engagement (**Terms**) are to be read together with the description of the specific Services and any specific exclusions listed in our service proposal, service agreement, any online client onboarding software, any invoice payment terms on your Invoice, and any special terms we may state in our Service Proposal and/or Service Agreement.
2. **Acceptance of these Terms** You are taken to have exclusively accepted and are immediately bound, jointly and severally (where there is more than one client), by these terms of engagement when any one of the following occurs:
 - a. accept a quote/services proposal from any third-party software by any acceptance method including, but not limited to, e-signing or any other electronic acceptance method; and/or
 - b. accept our Services by email confirmation following issuance of a Service Agreement from us; and/or
 - c. accept our Services by paying us any fees; and/or
 - d. issue a purchase order to us,
 and together these terms apply in conjunction with any specific exclusions or additional terms specified in any Service Proposal and/or Service Agreement.
3. **Our Contract** Your acceptance of the Service Proposal and/or Agreement and these general Terms together constitute our agreement with you (this **Contract**). This Contract governs the agreement between **CONDUIT BUSINESS SOLUTIONS LIMITED (Company Number 6388812) (us)** and you, the named client/s in the Service Proposal and/or Service Agreement, in respect of the Services.

DEFINITIONS

4. The following words and expressions shall have the meanings set out below:

Advisor means the natural or incorporated person providing the Services and includes their permitted assigns, transferees, representatives, contractors.

Business Day means a day on which banks are ordinarily open and excludes a Saturday, Sunday or public holiday or any day falling within the period from 24 December to 5 January (both inclusive), irrespective of the days on which work is carried out. Any other reference to a 'day' shall mean a calendar day.

Confidential Information means all information which is written, verbal or electronic that is disclosed by either of the Parties to the other. It includes information that is stated as being 'confidential', 'in confidence', 'restricted' or 'commercial in confidence', and information that is "Personal Information" (as such term is defined by the Privacy Act 2020).

Consulting Materials means materials (including software, drawings, designs, reports, data, framework, template, methodology or process) supplied or developed by the Advisor (or its contractors or personnel) in connection with the Services.

Deliverables means an output resulting from the delivery of the Services. A Deliverable includes, but is not limited to, any Consulting Materials, performance of a service, supply of information or data stored by any means.

Disbursements means any disbursements incurred by the Advisor for software subscriptions, filing fees, registration fees, travel or any other disbursement or expense otherwise agreed to form part of the Services.

Good Industry Practice means the standard of practice generally expected from an experienced, reasonable, and prudent contractor or service provider operating in the Advisor's industry in the same or similar circumstances.

Intellectual Property Rights means all intellectual property rights whether conferred by statute, at common law or in equity, including, but not limited to, copyright, trademarks, designs and/or patents.

New Intellectual Property Rights means Intellectual Property Rights developed under this Contract or as part of the performance of the Services.

Parties means the parties to this Contract and **Party** means either one of them.

Personnel means all individuals engaged by either Party in relation to this Contract or the delivery of Services and includes, but is not limited to, the owner of the Advisor, its directors, employees, subcontractors, or agents.

Pre-existing Intellectual Property Rights means Intellectual Property Rights developed before the date of, or independently from this Contract.

Privacy Act means the Privacy Act 2020 and includes any codes or regulations issued under that Act.

Privacy Breach means any:

- a. unauthorised or accidental access to or use of, or disclosure, alteration, loss, or destruction of any "Personal Information" (as such term is defined by the Privacy Act); and/or
- b. any action that prevents the Client from accessing "Personal Information" (as such term is defined by the Privacy Act) on either a temporary or permanent basis,
- c. whether or not caused by a person inside or outside of the Advisor or attributable in whole or in part to any action by the Advisor, or ongoing.

SCOPE OF SERVICES

5. **Services Proposals and/or Agreements are Indicative Only** The scope of services outlined in a services proposal and/or service agreement is an indication of the services required to complete your project or meet your requirements. This scope is subject to change as your requirements change.
6. **Scope Variations** We will confirm any changes to your services in writing via email. These terms shall apply to any scope increases, alterations or changes.

TERM

7. **Fixed Term Services** This Contract is for the duration of the services, any project or one-off engagement until the agreed completion date or until otherwise terminated by either Party in accordance with these Terms.
8. **Ongoing Services** This Contract is for the duration of any ongoing services and shall continue for the period that the Client continues to accept the performance of the services.

FIXED FEES

9. Where you have selected to engage with us for ongoing services (**Fixed Fees**), the following terms shall apply:
 - a. **Fixed Fees** Any Services delivered under a fixed fee will be limited to delivery of a specific number of activities or hours purchased as described in your service proposal and/or service agreement; and

- b. **Fixed Fee Frequency** The Services under your fixed fee will be performed at the frequency agreed with you; and
- c. **Cancellation of a Fixed Fee** you may cancel your fixed fee by emailing us or replying to a renewal request with at least **thirty (30) calendar days' notice prior to any renewal date or earlier by mutual agreement**; and
- d. **Annual Instalment Fixed Fee Cancellation Fees** Where you cancel a fixed fee and the fees are for annual services payable in monthly instalments and you have received the benefit of such annual services, you remain liable to pay the **full balance of the annual fees**; and
- e. **Fixed Fee Renewal** Any renewal of a fixed fee will be on the current, published price for your chosen service as at the date of renewal; and
- f. **Default of Fixed Fee Payments** Where your applicable Services fixed fee is not paid when it becomes due and payable, or a recurring payment method is rejected or fails, we reserve our rights to suspend delivery of Fixed Fee Services until such arrears have been paid; and
- g. **Out of Scope Services and Fixed Fee** Our fixed fees will list the inclusions and exclusions for the fixed fee option you have selected. You agree that any work or Services requested by you which is not listed as an 'inclusion' in the description of the Fixed Fee scope but which we agree will be performed will be invoiced in addition to the agreed Fixed Fee at our standard rates or subject to a quote.

ADVISOR'S OBLIGATIONS

10. **Standards** The Advisor must supply the Services with due care, skill and diligence and in accordance with Good Industry Practice as would be expected from a leading supplier in the same industry.
11. **Timeliness** The Services must be performed on time except where a delay is caused by the Client.

EXCLUSIONS

12. **Limitations and Exclusions** The following shall apply to the Services:
 - a. **Bookkeeping Services** All and any services relating to bookkeeping are limited to the collection, classification and summary of financial information you supply to the Advisor; and

- b. **Accounting Records** The Advisor accepts no responsibility for the accuracy and completeness of the accounting records and other information you supply to us or for the reliability, accuracy and completeness of the financial information compiled on the basis of those records and information; and
- c. **Accounting Policies** The Advisor accepts no responsibility for the maintenance of adequate accounting records, an adequate internal control structure and the selection and application of appropriate accounting policies within your organisation. The Client is solely responsible to users of the financial information the Advisor compiles; and
- d. **Irregularities** The Services exclude the investigation or reporting of any discovery of internal control weaknesses, errors, illegal acts or other irregularities, including without limitation, fraud, or non-compliance with laws and regulations. However, we will inform you of any such matters which come to our attention during the course of our engagement.

CLIENT OBLIGATIONS

- 13. **Timely and Accurate Information** The Client must ensure that it provides information required by the Advisor in a timely and accurate manner.
- 14. **Decisions** The Client must make decisions and give approvals reasonably required by the Advisor to enable delivery of the Services, within reasonable timeframes.
- 15. **Scope Changes** The Client must notify the Advisor of any scope changes to the Services and/or change to the Client requirements as soon as practicably reasonable.

FEES, INVOICES AND PAYMENT

- 16. **Fee** In consideration for its provision of the Services, the Client will pay to the Advisor the fees set out in the applicable Service Proposal and/or Service Agreement.
- 17. **Advance Fees** The Advisor may request fees in advance on account prior to commencement of Services.
- 18. **Disbursements** The Client will reimburse the Advisor for all Disbursements reasonably incurred by the Advisor in performing the Services.

- 19. **Invoice Frequency** The Advisor shall invoice the Client at the agreed frequency, this being one of the following:

- a. on a specific frequency at agreed hourly rates; or
- b. at an agreed frequency for fixed fees; or
- c. at an agreed frequency or interval for specified milestones or stages of the Services; or
- d. in specified percentages at specific dates.

- 20. **Time and Method for Payment** All amounts specified in an Invoice will require payment on or before the specified due date (**Amounts Owing**). We will issue Invoices to you by email. You may pay by any of the methods specified on the Invoice **except where we specify a recurring payment method for Fixed Fees**.

- 21. **No Set Off or Deduction Payment of Amounts Owing** Amounts Owing which are due and payable must be made without set-off or deduction of any kind. You also agree that you will not be entitled to withhold payment in respect of any undisputed amount.

- 22. **If You Dispute the Amount Owing** If you receive an Invoice and you consider you owe us a lesser amount, you must inform us within **three (3) Business Days** of receiving our Invoice. If you have not within this timeframe, we are entitled to treat any amount stated in our Invoice as an Amount Owing and it remains immediately due and payable. If you do respond and we do not agree, we reserve our rights to use the Dispute Resolution procedures set out in these Terms.

- 23. **Non-Payment of Amounts Owing** If you do not pay an Amount Owing by the due date and we have not commenced any invoice dispute resolution, this amount becomes an Overdue Amount Owing. After a period of **five (5) Business Days** of issuance of our Invoice, we shall have the right to apply late payment interest at **our published rate as at the date of default or 5% (whichever is higher)**. This shall be calculated daily and compound monthly at that rate if we elect to do this. This applies before and after any judgment (if applicable).

24. Debt Collection or Recovery Costs If an Overdue Amount Owing remains unpaid for **fourteen (14) Business Days** or more from the Due Date, we reserve our rights to engage the services of a debt collection agency or solicitor to take proceedings to recover the Overdue Amount Owing. You will be liable for the costs incurred by us in the collection of any unpaid amounts including but not limited to legal costs, debt collection fees and internal administration fees.

25. Administration Fees In the event we are obliged to perform any additional actions to recover any monies owed by you, we reserve the right to apply reasonable administrative fees for phone calls, texts, emails, and in-person visits to follow up and recover any Overdue Amount Owing in addition to any costs or expenses.

SUSPENSION AND TERMINATION OF SERVICES

26. Suspension of Services for Overdue Amounts Owing If there is an Overdue Amount Owing and such default continues for **five (5) Business Days or such other timeframe advised in a Services Agreement** from the Due Date, we shall be entitled to suspend the Services without notice until the arrears have been cleared.

27. Termination of Services Without prejudice to a Party's other remedies at law, each Party has the right to terminate the Services by giving the other **ten (10) Business Days written notice**. This includes any part the Services that remain unfulfilled at the notification date. The terms relating to cancellation fees and/or payment for amounts owing up to the termination date shall apply.

28. Termination for Breach or Insolvency Neither Party shall be liable to the other Party for any delay, loss or damage suffered by it due to the exercise of its rights under this clause, if one or more of the circumstances listed in the following two clauses applies.

29. Breach of these Terms The Services may be terminated by either Party where the other Party is in breach of this Contract and such breach is not remediable or is remediable, but continues and remains unremedied after the expiry of the notice period set out in a default notice, which must be given by the non-defaulting party to the defaulting party, and provide the defaulting party with a reasonable time period to remedy the breach.

30. Insolvency the other Party becomes insolvent or bankrupt, convenes a meeting with its creditors or make an assignment for the benefit of its creditors or a receiver, manager, or liquidator (provisional or otherwise) or similar person is appointed in respect of the Advisor, its business or its assets.

31. Amounts Owing up to Termination The Client must pay the fees up to the date of termination provided that the Client may recover from the Advisor or set off against sums due to the Advisor, any Charges paid in advance for Services or Deliverables that have not been provided.

32. Accrued Rights The termination or expiry of this Contract does not affect any rights of a Party which arose prior to the applicable termination date.

LIABILITY

33. Advisor Liability Cap To the extent permitted by law, the aggregate liability of the Advisor to the Client, whether in contract, tort (including negligence) or otherwise, will be limited to \$500.

34. No Liability for Consequential Loss The Advisor shall not be liable for any indirect, consequential, special or economic loss, cost liability, damage or expenses howsoever arising.

35. Reduction of Liability The Advisor's liability is reduced proportionately to the extent that any such loss or damage was caused or contributed to by any negligent act, omission or default of the Client or the employees or agents of the Client.

INTELLECTUAL PROPERTY

36. Ownership of Pre-existing Intellectual Property Rights Pre-existing Intellectual Property Rights remain the property of their owner. Nothing in or done in connection with this Contract will affect the ownership of any Intellectual Property Rights that arise, or have arisen, independently of the activities of either party in connection with this Contract.

37. New Intellectual Property Rights in Consulting Materials Where the Client has commissioned Consulting Materials to be solely created for the Client's internal use, the clause below shall apply, providing always that the Advisor shall retain ownership of all New Intellectual Property Rights in any framework, template, methodology or process associated with such Consulting Materials.

38. New Intellectual Property Rights in Deliverables All and any New Intellectual Property Rights created in the Deliverables become the property of the Client when they are created, and the Advisor agrees to do all things necessary to give effect to this clause.

39. Licence The Client may use, copy and adapt any materials created as part of any Deliverables and/or the Consulting Materials for any purpose required by it and the Advisor grants to the Client a perpetual, exclusive and royalty-free licence to use, for its organisational purposes, all Intellectual Property Rights in any Deliverables and/or Consulting Materials that are not owned by the Client to receive the full benefit of the Services and Deliverables, and use, copy or modify the Consulting Materials.

40. Advisor Warranties The Advisor warrants that it is legally entitled to grant the licence in the clause above, and the Client's use of anything provided by the Advisor and incorporated in the Services and Deliverables, for the purposes communicated to, or that are or ought to be known by, the Advisor, will not infringe the rights, including Intellectual Property Rights, of any third party.

CONFIDENTIAL INFORMATION

41. Protection of Confidential Information Each Party agrees to not use or disclose the other Party's Confidential Information to any person or organisation other than:

- a. to the extent that use or disclosure is necessary for the purposes of providing the Deliverables or Services or, in the case of the Client, using/receiving the Deliverables or Services; and/or
- b. if the other Party gives prior written approval to the use or disclosure; and/or
- c. if the information has already become public, other than through a breach of the obligation of confidentiality by one of the Parties.

42. Software System Access and Confidentiality Where the Advisor shall require access to an online software system to retrieve data for the performance of the Services, all such information accessed, viewed, downloaded or stored shall be treated as Confidential Information of the Client and is subject to these Terms.

43. Consulting Materials are Confidential Information of the Client Any Consulting Materials not intended for public consumption or display that are prepared for the purposes of this Contract will be deemed to be confidential information of the Client, and not the Advisor.

44. Security Each Party will put in place and maintain adequate security measures to safeguard the other Party's Confidential Information from unauthorised access or use by third parties. Each Party shall:

- a. notify the other Party if it becomes aware of any suspected or actual unauthorised use, copying or disclosure of the other Party's Confidential Information; and
- b. comply with any reasonable direction of the other Party in relation to any suspected or actual breach of the obligations in this clause as the other Party reasonably requests.

45. Obligation to Inform Personnel Each Party will ensure that its Personnel:

- a. are aware of the confidentiality obligations in this Contract; and
- b. do not use or disclose any of the other Party's Confidential Information except as allowed by this Contract.

PRIVACY

46. You authorise us and our agents to collect, use, retain and disclose "personal information" (as defined in Part 1, section 7 of the Privacy Act 2020) about you and your personnel that you or they provide to us for the following purposes:

- a. assessing creditworthiness and exercising our rights and/or performing our obligations under this Contract;
- b. direct marketing purposes (including by email and other electronic means), unless you notify us that you do not wish to receive direct marketing from us;
- c. using the services of credit reporting and debt collection agencies and you consent to us disclosing personal information (including any information about default and repayment history) to a credit reporter, who may hold that information and use it to provide its credit reporting services;

- e. registering any Security Interest under this Contract; and
 - f. the use or transfer of personal information to a Related Company (as such term is defined by Companies Act 1993) in connection with the performance of our obligations or exercise of our rights under this Contract.
- 47.** The clause above is authority and consent from you in accordance with sections in Part 3, Part 7, subpart 1 and all other relevant sections in the Privacy Act 2020.
- 48.** You (if you are an individual) have the right under sections in Part 4, subpart 1 and Part 4, subpart 2 of the Privacy Act 2020 to access, and request correction of, any of your
- a. personal information held by us and if you provide any personal information about a third party (including your Personnel) to us, you confirm that you are authorised to do so by the
 - b. relevant individual and you have informed the relevant individual that they have the right to contact us to access and, if applicable, request correction of any personal information that we hold about them.
- 49.** Each party must keep confidential all Confidential Information, however nothing in these terms prevents a party from disclosing Confidential Information:
- a. in circumstances expressly provided for in this Contract; and/or
 - b. if disclosure is required by law, or Regulator (but only to the extent required); and/or
 - c. if disclosure is reasonably required to enable a party to perform its obligations or enforce its rights under this Contract.
- 50.** We may disclose Confidential Information to a Related Company and their Personnel on a 'need to know' basis, provided that person is under a duty to keep the Confidential Information confidential in accordance with this Contract.
- 51.** If the Services are expected to involve the sharing of any data sets, or other personal information, to you by us, or us to you, we will enter into a separate data protection agreement with you.
- 52.** If you do not provide personal information requested by us, we may not be able to perform our obligations under this Contract.
- 53. Protection of Personal Information** Where the Advisor has access to Personal Information under or in connection with this Contract, the Advisor must:
- a. only use, access, store, process or transmit that Personal Information to the extent necessary to provide the Deliverables or Services or in connection with recovery of debts or unpaid fees; and
 - b. ensure that the Personal Information is protected against loss, access, use, modification, or disclosure that is not authorised by the Client; and
 - c. provide all information and assistance reasonably required by the Client to comply with its obligations under the Privacy Act in relation to this Contract; and
 - d. comply with the Privacy Act and not do anything under this Contract that would cause the Client to breach the Privacy Act.
- 54. Privacy Breaches** If the Advisor becomes aware of any Privacy Breach in relation to this Contract it will notify the Contract Representative as soon as possible and take all reasonable steps:
- a. to identify the person or persons affected; and
 - b. required by the Client to undertake its own investigation; and
 - c. stop, and/or mitigate the impact of, any Privacy Breach and prevent its reoccurrence; and
 - d. the Advisor shall not notify any person of the Privacy Breach without prior written approval of the Client.
- ## DISPUTE RESOLUTION
- 55. Details of the Dispute must be Supplied** If either Party considers that a dispute has arisen in relation to any matter governed by this Contract, that party must give the other party written notice outlining the basis of the dispute (**Dispute Notice**).

56. Dispute must be Discussed The Contract Representative for each Party must then meet to resolve, in which case both Parties will promptly attempt to resolve the dispute by consultation at the lowest practicable level of escalation.

57. Escalation of Dispute If the dispute is not resolved by discussion, meeting and/or other informal means within **ten (10) Business Days** of the date of the Dispute Notice the Parties may agree to submit the dispute to mediation.

58. Mediation If a Dispute is referred to mediation, the mediation will be conducted by:

- a. A single mediator agreed by the Parties or, failing agreement, on the terms of the Resolution Institute Mediation Rules; and
- b. at a fee to be agreed by the Parties or if they cannot agree, at a fee determined by the Resolution Institute; and

59. Obligations Continue If there is a Dispute, each Party will continue to perform its obligations under this Contract as far as practical given the nature of the dispute.

60. Taking court action: Each Party agrees not to start any court action in relation to a dispute until it has complied with the process described in this clause, unless that Party requires urgent relief from a court.

61. Interlocutory Relief Nothing in these terms shall affect either party's right to seek urgent interlocutory relief.

62. Costs and Expenses Each Party will pay its own costs of mediation or alternative dispute resolution under this clause.

NOTICES

63. Requirements All notices must be in writing and delivered by hand or sent by post, courier or email to the recipient Party's address for notices.

64. Receipt of Notices A notice will be considered to have been received when the following has occurred:

- a. if delivered by hand or sent by courier, on the date it is delivered;
- b. if sent by post within New Zealand, on the 5th Business Day after the date it was sent;
- c. if sent by post internationally, on the 9th Business Day after the date it was sent; or

- d. if sent by email, at the time the email enters the recipient's information system and it is not returned undelivered or as an error,

but a notice received after 5pm on a Business Day or on a day that is not a Business Day will be considered to have been received on the next Business Day

VARIATIONS

65. Variations A variation must be agreed by both Parties and recorded in writing and signed by both Parties, or through an exchange of emails, where the signatories or authors have delegated authority to approve the variation.

INTERPRETATION

66. In this Contract, unless the context requires otherwise:

- a. a reference to any monetary amount is to New Zealand currency;
- b. a reference to time is to New Zealand time;
- c. a reference to "includes" is to "includes without limitation" and references to "included" and "including" shall be construed accordingly;
- d. a reference to a Party includes that Party's personal representatives, successors and permitted assigns;
- e. a reference to a person includes a corporation sole and a body of persons, whether corporate or unincorporated;
- f. a reference to a document, statute or regulation includes a reference to that document, statute or regulation as amended or replaced from time to time; and
- g. headings will not be used in the interpretation of this Contract.

GENERAL

67. No misleading statements The Advisor warrants that it has not made any misleading or deceptive statements or omissions influencing the Client's entry into this Contract. A breach of this warranty will be deemed a material breach of this Contract.

68. Consumer Guarantees Act The Client is acquiring the services for the purposes of a business, and the provisions of the Consumer Guarantees Act 1993 are excluded accordingly.

69. Amendments Must be In Writing Amendments to this Contract will not be effective unless they are in writing and are signed by each Party.

70. Independent Contractor Nothing in this Contract constitutes a legal relationship between the Parties of partnership, joint venture, agency, or employment.

71. No representing Neither Party has authority to bind or represent the other Party in anyway.

72. Transfer of rights or obligations The Advisor must not transfer any of its rights or obligations under this Contract without the Client's prior written approval.

73. Severability If and to the extent any provision or part of a provision is illegal or unenforceable, such provision or part of a provision will be severed from this Contract and will not affect the continued operation of the remaining provisions of this Contract.

74. Clauses that remain in force The clauses that by their nature should remain in force on expiry or termination of this Contract are all clauses in the following sections (Dispute Resolution), (Suspension and Termination of Services), (Confidential Information), (Notices), (General) and all Definitions.

75. Entire Agreement This Contract sets out the entire agreement between the Parties. It replaces any previous communications, negotiations, arrangements or agreements that the Parties had with each other relating to the Services before this Contract was signed, whether they were oral or in writing.

76. Waiver If a Party does not immediately enforce its rights under this Contract that:

- a. does not mean that the other Party is released or excused from any obligation to perform at the time or in the future, and
- b. does not prevent that Party from exercising its rights later.

77. Electronic Acceptance The parties agree that any legal requirement may be met by using electronic means in accordance with the Contract and Commercial Law Act 2017. In this clause the term "legal requirement" has the meaning given to it by section 219(2) of the Contract and Commercial Law Act 2017.

78. Signing Not Required It is not necessary for this Contract to be signed unless we insist on it. The Client is bound by these Terms if it continues to act in a way that is consistent with the arrangement and discussions held with the Advisor in relation to the Services, and/or the Advisor has incurred time and expense to commence any part of the Services.

79. Governing Law This Contract shall be governed by the laws of New Zealand and the Parties irrevocably submit to the exclusive jurisdiction of the courts of New Zealand.

END OF TERMS