



Conditions of Contract

The Principal agrees to engage the Contractor and the Contractor agrees to provide the Services described in the Schedule.

1. **Services:** The Contractor shall perform the Services as described in the attached Schedule.
2. **Skill:** In providing the Services the Contractor shall exercise the degree of skill, care and diligence normally expected of a competent professional.
3. **Independent Judgment:** Where the Services require the Contractor to certify, decide or use discretion under a contract between the Principal and a third party, the Contractor must act independently, and with professional skill and judgment, and according to the terms of the contract between the Principal and the third party.
4. **Key Personnel:** The Key Personnel for the provision of the Services are as listed in the Schedule. Any change to the Key Personnel requires the written consent of the Principal.
5. **Confidentiality:** The Contractor must keep confidential all information provided by the Principal in relation to this Agreement and not disclose the same without the written consent of the Principal.
6. **Public Statements:** The Contractor must not make any public statements about the Services or this Agreement without the Principal's written approval.
7. **Delay:** If at any time the Contractor's performance falls behind the programme set out in the Schedule then the Contractor shall notify the Principal and, where the delays are due to matters within the control of the Contractor, shall take all practicable steps to remedy such delay.
8. **Information:** The Principal shall provide to the Contractor, as soon as practicable following any request for information, all information in his or her power to obtain which may relate to the Services. The Contractor shall not, without the Principal's prior consent, use information provided by the Principal for purposes unrelated to the Services.
9. **Variations:** The Principal may order variations to the Services in writing or may request the Contractor to submit proposals for variation to the Services. Where the Contractor considers a direction from the Principal or any other circumstance is a Variation the Contractor shall notify the Principal as soon as practicable.
10. **Payment:** The Principal shall pay the Contractor for the Services the fees and expenses at the times and in the manner set out in the Schedule and applicable taxes. All amounts are payable in New Zealand dollars.
11. **Purchase of Goods:** Where Services are carried out on a time charge basis, the Contractor may purchase such incidental goods and/or services as are reasonably required for the Contractor to perform the Services. The cost of obtaining such incidental goods and/or services shall be payable by the Principal provided that the Contractor first obtains the written consent of the Principal. The Contractor shall maintain records which clearly identify time and expenses incurred.
12. **Liability:** Where the Contractor breaches this Agreement, the Contractor is liable to the Principal for reasonably foreseeable claims, damages, liabilities, losses or expenses caused directly by the breach. Neither the Principal nor the Contractor shall be liable to the other under this Agreement for indirect, consequential or special loss, or loss of profit, however arising, whether under contract, in tort or otherwise.

13. **Insurance:** The Contractor shall take out and maintain for the duration of the Services such insurances as are specified in the Schedule.
14. **Contribution to Loss:** If either Party is found liable to the other (whether in contract, tort or otherwise), and the claiming Party and/or a Third Party has contributed to the loss or damage, the liable Party shall only be liable to the proportional extent of its own contribution.
15. **Intellectual Property:** Intellectual property prepared or created by the Contractor in carrying out the Services ("New Intellectual Property") shall be owned by the Principal. Intellectual property owned by a Party prior to the commencement of this Agreement and intellectual property created by a Party independently of this Agreement remains the property of that Party. The ownership of data and factual information collected by the Contractor and paid for by the Principal shall, after payment by the Principal, lie with the Principal.
16. **Termination:** The Principal may suspend all or part of the Services by notice to the Contractor who shall immediately make arrangements to stop the Services and minimise further expenditure. The Contractor may, in the event the Principal is in material default, terminate the Agreement by notice to the Principal. Any suspension or termination shall not prejudice or affect the accrued rights or claims and liabilities of the parties.
17. **Jurisdiction:** This Agreement is governed by the Cook Islands law and the Cook Islands courts have jurisdiction in respect of this Agreement.
18. **Assignment:** The Contractor must not assign, transfer or subcontract all or part of its rights or obligations under this Agreement without the Principal's written consent, such consent to be provided at the Principal's absolute discretion.
19. **General Warranties:** The Contractor represents, warrants and undertakes that:
 - a. it has full power, capacity and authority to execute, deliver and perform its obligations under this Agreement;
 - b. it has and will continue to have, all necessary consents, permissions, licenses and rights to enter into and perform its obligations under this Agreement;
 - c. there are no existing agreements, undertakings or arrangements which prevent it from entering into this Agreement or which would impede the performance of its obligations under this Agreement;
 - d. it has not offered any inducement in connection with the entering into or negotiation of this Agreement; and
 - e. it has not (nor is any of its representative directors or employees) a party to any litigation, proceedings or disputes which could adversely affect its ability to perform its obligations under this Agreement.
20. **Dispute Resolution:** In the event of a dispute arising between the parties in respect of any matter relating to this Agreement, the authorised representatives of the parties must resolve the dispute in the first instance by negotiation. If the dispute cannot be resolved by negotiation within five days of the notice of dispute having been served by one party on the other, the parties may seek resolution under the Arbitration Act 2014.