

Voyage

Terms of Trade

Prepared by: VYG Limited

17.01.2022

Version 2.0

The Parties Agree

1. Definitions and Interpretation

1.1 Definitions: In this agreement, unless the context otherwise requires:

Additional Services means services outside the scope of the Services requested by the Client and agreed to by the Service Provider.

Additional Terms means the additional provisions contained in the schedules and any annexures to this Agreement.

Agreement means this contract, and includes the schedules (including the Additional Terms) and any annexures to it or documents incorporated by reference.

Business Day means a day (other than a Saturday, Sunday or a public holiday) on which registered banks are open for business in New Zealand.

Client means the party specified in the signed service agreement.

Commencement Date means the date specified in the signed service agreement.

Confidential Information means all data and information exchanged between the Service Provider and the Client in connection with this Agreement, but excludes information:

- a. which is in or which subsequently enters the public domain other than as a result of a breach of this Agreement;
- b. known to the recipient on the date of its receipt;
- c. which, at any time, is received in good faith by the recipient from a third party who has lawful possession of such information and a right to disclose the same
- d. which is disclosed pursuant to legal requirement or order.

Fees mean the fees payable to the Service Provider for the provision of the Services as detailed in the signed service agreement.

General Terms and Conditions means the provisions contained in this contract, excluding the Additional Terms.

Information Privacy Principles means the information privacy principles set out in The Privacy Act 1993, any applicable code of practice as defined in, and approved under the Privacy Act 1993 and any applicable privacy policy adopted by the Service Provider from time to time.

Intellectual Property means all intellectual property rights, including all copyright, patents, trademarks, design rights, trade secrets, domain names, know-how and other rights of a similar nature, whether registrable or not and whether registered or not, and any applications for registration or rights to make such an application.

Project Intellectual Property means all Intellectual Property created, developed, discovered, brought into existence or otherwise acquired by the parties, under the Agreement.

Rates means the rates charged on an hourly basis payable to the Service Provider for the provision of the Services.

Term means the period specified in the signed service agreement.

Services means the services specified in the signed service agreement.

Service Provider means VYG Limited.

1.2 Interpretation: In this Agreement, unless the context indicates otherwise:

- a. headings are for ease of reference only and will not affect this agreement's interpretation;
- b. references to a party or a person includes any form of entity and their respective successors, permitted assigns and representatives;
- c. singular includes plural and vice versa;
- d. "includes" means includes without limitation;
- e. amounts are in New Zealand Dollars and exclude every tax and duty; and
- f. each schedule and any annexure or attachment forms part of this Agreement.

1.3 Additional Terms to prevail: If there is any conflict between a provision in the Additional Terms and the General Terms and Conditions, the Additional Terms shall prevail.

2. Term

2.1 Term: This Agreement will commence on the Commencement Date and will remain in force for the duration of the Term subject to:

- a. earlier termination or expiry in accordance with the provisions of this Agreement;
- b. renewed in accordance with the provisions of this Agreement.

2.2 Renewal: Provided that neither party is in default under this Agreement, this Agreement shall be renewed for a further Term at the expiry of each preceding term unless earlier terminated by either party by giving no less than one (1) calendar month prior to the expiry of the then-current term.

3. Services

3.1 Scope of Services: The Service Provider shall provide the Services.

3.2 Quality of Services: The Service Provider shall provide the Services using standard of care, skill and diligence that would reasonably be expected from an experienced provider in New Zealand of services that are similar to the Services.

3.3 Inability to provide Services: If, at any time during the Term, the Service Provider is unable or is likely to become unable, for whatever reason, to provide any or all of the Services, the Service Provider must immediately notify the Client of that fact.

3.4 Completion of Services: The Client shall grant the Service Provider a reasonable extension of time to complete the Services where completion of any part of the Services is delayed by matters beyond the control of the Service Provider and/or the Client has requested Additional Services.

3.5 Additional Services: Additional Services shall be charged at the Service Provider's standard Rates, unless specified otherwise in the Schedule.

3.6 Access to Information: The Client shall provide and accommodate, at its cost, any request for data and information reasonably made by the Service Provider necessary for the performance of the Services.

4. Fees and Rates

4.1 Fees and Rates: The Fees and/or Rates payable in respect of this Agreement are specified in the Schedule.

4.2 Payment for Services: Payment of Fees and/or Rates for the Services must be paid in full prior to the Commencement Date, unless specified otherwise in the Schedule and upon receipt of the tax invoice for the Services.

4.3 Payment for Additional Services: The Service Provider shall invoice the Client for the Additional Services.

4.4 Payment Terms: The Client shall pay the invoiced amount to the Service Provider within 10 Business Days of receipt of the invoice unless agreed otherwise by the Service Provider.

4.5 Expenses and Disbursements: Expenses or other disbursements incurred in the course of providing the Services will be in addition to the Fees and Rates for the Services and Additional Services and invoiced to the Client with a 15% surcharge on costs incurred by the Service Provider.

4.6 Interest on Overdue Invoices: The Client shall, on demand by the Service Provider, pay interest at a rate of 20% per annum calculated on a daily basis on any overdue amount. The Client shall be liable for all costs incurred as part of any debt recovery action the Service Provider may take.

5. Indemnity

5.1 The parties agree to indemnify the other party and each of its officers, employees and agents against any loss, damage, claim, action or expense (including legal expense) which the indemnified party suffers as a result of any of the following:

- a. a breach of this Agreement by the indemnifying party;
- b. inaccuracy of any materials or information supplied by the indemnifying party; and
- c. an infringement of any right of any third party (including any intellectual property rights) or any laws by use of any materials or information supplied by the indemnifying party.

6. Liability

6.1 The Service Provider shall not be liable to the Client for any loss, damage, claim, action or expense suffered by the Client arising out of or connected with the performance or failure of performance of the Services and Additional Services unless written notice is given to the Service Provider for a claim within six (6) months of the date of such loss or damage suffered by the Client and the maximum amount of liability for the aggregate for all such claims shall be limited to the amount actually paid to the Service Provider in the immediately preceding six (6) month period.

7. Confidentiality

7.1 **Use of Confidential Information:** The parties must use and reproduce Confidential Information only to perform each party's obligations under this Agreement and neither party shall, without the prior written consent of the other, disclose to any third party or use the Confidential Information for any other purpose.

7.2 **Ownership of Confidential Information:** Confidential Information will remain the property of the party supplying the Confidential Information (or any part of it) must be returned to the supplying party on termination or expiry of this Agreement.

8. Privacy

8.1 The Service Provider acknowledges that it will be bound by the Information Privacy Principles.

9. Intellectual Property

9.1 **Intellectual Property Rights:** Nothing in this Agreement constitutes a transfer to the other party of any Intellectual Property rights.

9.2 **Project Intellectual Property:** The Service Provider will own all Project Intellectual Property. The Client will give written notice to the Service Provider prior to the delivery of all or part of the Services, if the Purchaser considers that

all or part of the Project Intellectual Property arising from the delivery of the Services should be owned by the Client and if the Service Provider agrees, then the Project Intellectual Property specified in the notice is owned by the Client.

10. Termination

10.1 Termination of Agreement without cause: The Client may terminate this agreement by giving no less than one (1) calendar month written notice of termination to the Service Provider and upon payment of the amount equivalent to the Fees payable for the remainder of the then current Term and all other amounts payable to the Service Provider.

10.2 Termination of Agreement by the Service Provider: The Service Provider may at its sole discretion terminate this Agreement and/or suspend for any definite or indefinite period of time provision of the Services and/or Additional Services by giving written notice of termination to the Client if:

- a. the Client is in arrears for more than 10 Business Days after payment has become due, unless the Client has given written notice within five (5) Business Days of receipt of the invoice that it disputes the invoiced amount;
- b. the Client fails to remedy, to the satisfaction of the Service Provider, any breach of this Agreement (which in the opinion of the Service Provider is able to be remedied) within 10 Business Days after the date on which the Service Provider issues the Client a written notice requiring the breach to be remedied;
- c. the Client breaches any material provision of this Agreement and in the reasonable opinion of the Service Provider such breach cannot be remedied;
- d. the Client commits any act or does anything that is contrary to prevailing community standards which bring the reputation of the Client into disrepute and as a consequence the Service Provider believes that its continued association with the Client will be prejudicial or otherwise detrimental to its reputation;
- e. the Client enters into liquidation or a receiver is appointed or becomes subject to any form of insolvency administration or arrangement, or in the case of an individual, becomes bankrupt or enters into a scheme or arrangement with creditors.

10.3 Consequences of Termination or Expiry: Termination or expiry of this Agreement will not prejudice any right of action or remedy which may have accrued to either party to it prior to termination or expiry.

11. Non-Exclusivity

11.1 The Service Provider reserves the right to work for or accept retainers from other parties which may compete directly or indirectly with the Client's business.

12. Non-Solicitation

12.1 The Client warrants that it will not during the term of this Agreement and for a period of six (6) months following termination of this Agreement, directly or indirectly solicit, canvass or entice any employee away from the Service Provider.

13. General

13.1 No assignment: The Client may not assign or transfer its rights under this Agreement without the prior written consent of the Service Provider.

13.2 Legal costs: Each party is responsible for its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.

13.3 Amendment: Any variation to the terms and conditions of this Agreement must be recorded in writing and agreed to by the parties.

13.4 Waiver and exercise of rights: A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

13.5 Severability: If any provision of this Agreement is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and, if that is not possible, the provision shall, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.

13.6 Entire Agreement: This Agreement contains the entire understanding between the parties and shall supersede all previous representations, negotiations and commitments whether verbal, in writing or otherwise.

13.7 Relationship of parties: This Agreement is not intended to create a partnership, joint venture or agency relationship between the Client and the Service Provider.

13.8 Force Majeure: Neither party will be liable for any delay or failure in performance of its obligations under this Agreement if the delay or failure is due to any cause outside its reasonable control including force majeure will, act of God and act of Government. The performance of the parties under this agreement shall then be suspended for as long as any such event shall prevent the affected party from performing its obligations under this Agreement. This clause does not apply to any payment obligations.

14. Notices

14.1 Notices: Any notice given under this Agreement shall be post registered post, courier or by email as follows:

- a. to the Client, at the address set out in the Schedule; and
- b. to the Service Provider at the address set out in the Schedule.

14.2 Change of Client's address: If the Client's contact details change, it must notify the Service Provider.

14.3 Time of delivery: A notice or document is taken to be delivered or served in accordance as follows:

- a. in the case of delivery in person or by courier, when delivered;
- b. in case of delivery by registered post, two (2) Business Days after the date of posting;
- c. in the case of email on the Business Day following the day on which it was sent.

14.4 After hours communication: Any notice or document delivered or deemed to be delivered after 5pm in the place of receipt or on a day other than a Business Day is taken as having been delivered at 9am on the next Business Day.

15. Governing Law

15.1 This Agreement is governed by and is to be construed in accordance with the laws of New Zealand and to submit to the exclusive jurisdiction of the courts or tribunals of New Zealand for any disputes arising out of or in connection with this Agreement.

15.2 Where the Client has its registered offices or principal place of business outside of New Zealand, the Service Provider may in its sole discretion elect to issue or file a claim or proceeding in the courts or tribunals of the overseas jurisdiction, in which case this Agreement shall be governed by the laws of the overseas jurisdiction in which the claim or proceeding is issued or filed and the parties agree to submit to that jurisdiction for determination of disputes arising out of or in connection with this Agreement.

16. Dispute Resolution

16.1 With the exception of the dispute referred to in clause 16.1(e), if any dispute arises between the parties concerning this Agreement, the parties agree that:

- a. they shall negotiate in good faith with the objective of reaching an acceptable commercial solution to the problem;
- b. if such an agreed solution cannot be reached to the satisfaction of both parties within 10 Business Days of the dispute being notified in writing to the other, the parties shall within a further 10 Business (or within such further period as they may agree is appropriate) refer the dispute to mediation;
- c. in the event the parties cannot agree on a mediator, a mediator shall be appointed by the President of the New Zealand Law Society at the request of either party;
- d. while any such dispute remains unresolved the parties agree to continue the performance of the agreement to the extent that such performance is possible given the nature of the dispute; and
- e. the preceding dispute resolution procedures to not apply to any dispute relation to payment of the Service Providers charges for services provided to the Client.

17. Survival

17.1 Clauses 4, 5, 6, 7, 8, 9, 12, 15 and 16 and any other provisions that by the nature or intent of their terms shall survive the termination or expiry of this Agreement.

Additional Terms

The parties agree that the following additional terms shall apply in respect of each of the services to be provided by the Service Provider.