



SKILLS CONSULTING GROUP LIMITED:

TERMS OF SERVICE

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Effective: 1 August 2021

AGREEMENT

These Terms of Service set out the general terms and conditions that apply when Skills Consulting Group Limited is supplying services to You or purchasing services from You. It outlines what You can expect from us, what we expect from You, and everything You must agree to before Your services can be provided.

These Terms of Service may be amended by Skills from time to time. Any Statements of Work or Service Schedules that are in force at the time will be deemed to be operational under the amended terms. By continuing to use the Services, you accept the amended Terms of Service.

A separate Statement of Work or Service Schedule will be agreed for the specific Services.

1. SERVICE LEVELS

1.1 **Mutual Obligations:** We both agree to:

- (a) act in good faith and honestly in their dealings with each other.
- (b) discuss matters affecting this Agreement or the delivery of the Services, whenever necessary; and
- (c) notify each other immediately of any actual or anticipated issues that could significantly impact on the Services.

1.2 **The supplier of Services** agrees to:

- (a) exercise reasonable skill and care in providing the Services including the use of a sufficient number of appropriately experienced, qualified, competent, trained, and efficient personnel where required, and always act in an ethical and professional manner, and in accordance with applicable legislation, regulations and generally accepted practice within its profession or area of expertise;
- (b) complete and provide the purchaser each Service and the Deliverables in the agreed timeframe;
- (c) at its own cost, make good any errors, omissions, defects, or faults in the Services which the purchaser notifies it of and carry out and complete the remedial work to the purchaser's satisfaction no later than 7 Business days after receiving notification;
- (d) not bind or commit the purchaser to any agreement, arrangement, or transaction without prior written consent; and
- (e) not make any public comment about the purchaser without the purchaser's prior written consent.
- (f) maintain appropriate insurance for the term of any Statement of Work or Service Schedule entered into under these terms.

1.3 **The purchaser of services** agrees to:

- (a) provide all information in its possession that is necessary to enable the supplier to fulfil its obligations under this Agreement.
- (b) make decisions and give approvals reasonably required by the supplier to enable delivery of the Services, within reasonable timeframes; and
- (c) pay the Fees and any relevant Expenses for the Services in accordance with the Statement of Work or Service Schedule.

1.4 **Health and Safety:** We agree to meet all our respective obligations under applicable health and safety legislation.

2. PAYMENT

- 2.1 Fees:** The Fees and Expenses payable for the Services under this Agreement are set out in the Service Schedule.
- 2.2 Administration Costs:** There is no fee payable by either party to the other for routine administration and preparation time for the delivery of the Services.
- 2.3 Disputed Invoices:** If one party genuinely disputes any portion of any amount appearing as payable on any invoice issued by the other under this Agreement:
- (a) that party will notify the other party of such dispute at the earliest reasonable opportunity;
 - (b) the undisputed portion of that invoice will remain payable on the due date for payment under clause **Error! Reference source not found.**; and
 - (c) the party that raised the dispute will not be obliged to pay the disputed portion of that invoice until the dispute has been resolved by agreement between us or, in the absence of such agreement, in accordance with clause 9.

3. COMMUNICATION AND REPORTING

Communication and reporting requirements will depend on the services being purchased and will be specified in the relevant Statement of Work or Service Schedule.

4. CONFIDENTIALITY

We each agree that we will not, either during the Term or after the termination or expiry of the Agreement disclose to any person, use for our own purposes, or use to the detriment of the other party any Confidential Information which we obtain during or incidental to the performance of Services, except:

- 4.1 Law:** as required by law;
- 4.2 Consent:** with the other party's prior written consent; or
- 4.3 Need-to-Know:** to the extent reasonably required by this Agreement (and, without limiting the effect of this clause, we may disclose Confidential Information only to our officers, employees, or professional advisers, on a "need to know" basis, as is reasonably required for the implementation of this Agreement and only after each such person has signed a written undertaking, in favour of the other party, to maintain confidentiality in respect of that Confidential Information, to the same extent as is required of You).

5. NO CONFLICT OF INTEREST

- 5.1 Warranty:** We each warrant that, at the time of entry into a Statement of Work or Service Schedule under these terms of Service, we have no Conflict of Interest with the other party in providing the Services.
- 5.2 Best Efforts:** During the Term, we will each do our best to avoid situations that may lead to a Conflict of Interest arising.
- 5.3 Notification:** Each of us must notify the other of any potential or actual Conflict of Interest immediately upon becoming aware of it.

5.4 Conflict of Interest: For the purposes of this clause, a Conflict of Interest means if a party or its staff's personal or business interests or obligations do or could conflict or be perceived to conflict with its obligations under this Agreement. It means that its independence, objectivity, or impartiality can be called into question. A Conflict of Interest may be:

- (a) where the conflict currently exists;
- (b) where the conflict is about to happen or could happen; or
- (c) where other people may reasonably think that a person is compromised.

6. PRIVACY

Any personal information we obtain from each other in performing the Services may only be collected, held, used, and distributed in accordance with the Privacy Act 2020, and any replacement legislation.

7. INTELLECTUAL PROPERTY

7.1 Existing Intellectual Property: You are the owner of any of Your existing Intellectual Property, and Skills is the owner or licensee of any of Skills' existing Intellectual Property.

7.2 New Intellectual Property: The ownership rights of any Intellectual Property developed in connection with this Agreement will belong to Skills. You agree that You do not by this Agreement and will not otherwise have or acquire any rights in or to any Intellectual Property which is owned by Skills.

7.3 Warranties: Each party warrants that the Services, or any part of them, it provides under this Agreement will not infringe any Intellectual Property Rights belonging to any third party.

8. NON-SOLICITATION

During the term of the Agreement, and for twelve (12) months thereafter, neither party and/or its sub-contractors or assignees will solicit any engagement that directly competes with Services offered by the other, with clients that it comes into contact with as a result of providing Services unless it can show a prior working relationship with that client in the last twenty four (24) months. If You can show a prior working relationship with the client Skills requires notification before the start of any Services You provide.

9. DISPUTE RESOLUTION

9.1 You or Skills may, at any time when there is a genuine dispute relating in any way to this Agreement, give notice to the other party specifying the subject matter of the Dispute and requiring that we meet within 10 Business Days after delivery of the Dispute Notice, to attempt to resolve the Dispute.

9.2 If we fail to resolve the Dispute at the Dispute Resolution Meeting, or if either You or Skills fails or refuses to attend the Dispute Resolution Meeting within the 10 Business Day period referred to in clause 9.1, or at the time and venue agreed in writing between the parties, we will immediately be deemed to have submitted the Dispute to mediation by a single mediator agreed upon in writing by them or (if they are unable to agree on

a mediator within 5 Business Days after the submission to mediation) nominated by The Resolution Institute. In the event of any submission to Mediation:

- (a) the mediator will not be acting as an expert or as an arbitrator;
- (b) the mediator will determine the procedure and timetable for the Mediation; and
- (c) the parties will share equally the cost of the Mediation.

9.3 Legal Proceedings: No party may issue any legal proceedings relating to any Dispute, unless that Party has first taken all reasonable steps to comply with clauses 9.1 and 9.2.

10. INDEMNITY

If Skills incurs any loss, damage, costs or claims, including any claims by third parties for infringement of third party rights, as a result of your breach of these Terms, then You agree to indemnify Skills to the full extent of any direct or indirect loss for any such breach.

11. LIABILITY

11.1 Exclusions: A party (**First Party**) will not be liable to the other party (**Second Party**) under or in connection with this Agreement (whether in contract, tort or otherwise) in respect of any:

- (a) indirect, consequential, or special Loss suffered or incurred by the Second Party as a direct or indirect result of a breach by the First Party of any of its obligations under this Agreement;
- (b) loss of profit, revenue, opportunity, or goodwill, in each case whether direct, indirect, or consequential; or
- (c) loss suffered or incurred by the Second Party, to the extent to which this results from any act or omission by the Second Party.

11.2 Limitation of Liability: Subject to clause 11.3, the maximum aggregate liability of either party to the other party under or in connection with this Agreement (whether in contract, tort or otherwise) is limited to the greater of:

- (a) 5 times the total Fees paid and/or payable by Skills to You under this Agreement.

11.3 No Exclusion or Limit: The exclusions and limitations of liability recorded in clauses 11.1 and 11.2 will not apply to:

- (a) Skills' obligation to pay the Fees and any Expenses in accordance with this Agreement;
- (b) deliberate breach or misconduct or gross negligence;
- (c) any liability of You under clauses 4 (Confidentiality), 0 (Privacy) or 7 (Intellectual Property);
- (d) any fraudulent, intentionally tortious, or unlawful acts or omissions of wilful misconduct;
- (e) any repudiation of this Agreement; or

- (f) any injury to, or death of, any person or damage to any of the other party's property caused by negligence or wilful default.

12. WARRANTIES

12.1 Reciprocal Warranties: Each party warrants to the other party that:

- (a) it has full power and capacity to execute, deliver, and perform its obligations under, these Terms of Service;
- (b) it is not aware of any fact or circumstance which would, or might reasonably be expected to, prevent it from performing its obligations under this Agreement, at the times and in the manner contemplated by this Agreement; and
- (c) all information disclosed by it for the purposes of this Agreement is, or will be when disclosed, complete and accurate in all material respects.

13. FORCE MAJEURE

13.1 Force Majeure: Neither You nor Skills will be liable for any act, omission, or failure to fulfil an obligation under this Agreement if this arises from any cause reasonably beyond You or Skills' control including acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, governmental action after the date of this Agreement, fire, communication line failures, power failures, earthquakes, or other disasters (**Force Majeure**).

13.2 Notification: The party that cannot fulfil its obligations due to a Force Majeure will immediately notify the other in writing of the reasons for its failure to fulfil the obligations, and the effect of such failure. They will also use all responsible endeavours to avoid or remove the cause of the failure and perform its obligations under this Agreement.

13.3 Termination: If a Force Majeure continues for 30 consecutive days, either party may terminate this Agreement immediately on written notice.

14. GENERAL TERMS

14.1 Governing Law: The laws of New Zealand will apply to this Agreement.

14.2 Non-waiver: No waiver of any breach of this Agreement or any provision contained in this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of this Agreement or any other provision contained in the Agreement. No extension of time for performance of any duty or obligation shall be deemed to be an extension of time for performance of any other duty or obligation.

15. INTERPRETATION

15.1 Definitions: In this Agreement, unless the context otherwise indicates:

Agreement means these Terms of Service and any Statement of Work or Service Schedule for the supply or purchase of particular services.

Business Day means a day except a Saturday or a Sunday or a statutory public holiday in the country where the services are delivered;

Confidential Information means all information or data, in any form or medium whatsoever, relating to us and/or you which by its nature, or by the circumstances of its disclosure, is, or could reasonably be expected to be, regarded as confidential.

Deliverables mean the Services delivered as stated in the Statement of Work or Service Schedule;

Expenses mean any actual and reasonable agreed out-of-pocket costs incurred by Skills or you in the delivery of the Services as set out in the Statement of Work or Service Schedule;

Fees mean the total amount stated in the Statement of Work or Service Schedule payable by you to Skills, or by Skills to you, excluding any Expenses;

GST means goods and services tax levied under the Goods and Services Tax Act 1985, and any similar value added or sales tax imposed in the relevant jurisdiction, at the rate prevailing from time to time, including any tax levied in substitution for such tax, but excluding any penalties or interest payable in respect of such tax;

Intellectual Property means trademarks, rights in domain names, copyright, patents, registered designs, circuit layouts, rights in computer software, databases and lists, rights in inventions, confidential information, knowhow and trade secrets, operating manuals, quality manuals and all other intellectual property, in each case whether registered or unregistered (including applications for the grant of any of the foregoing), and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world, including the goodwill associated with the foregoing and all rights of action, powers and benefits in respect of the same;

Services means the services as described in the Statement of Work or Service Schedule;

Statement of Work or Service Schedule means the document setting out the Services to be supplied or purchased under these Terms from time to time;

Term has the meaning given in any applicable Statement of Work or Service Schedule.

You means the party engaging with Skills under a Statement of Work or Service Schedule as either a supplier of services to, or a purchaser of services from, Skills.