

1. Definitions

- 1.1 “**Client**” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting TPG to provide the Services as specified in any proposal, quotation, order, invoice, or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.2 “**Agreement**” means the terms and conditions contained herein, together with any schedule, quotation, order, invoice or other document or amendments expressed to be supplemental to this Agreement.
- 1.3 “**Confidential Information**” means all information (including, without limitation, any intellectual property) whether oral, written or in graphic or electronic form, that is not generally available to the public at the time of disclosure other than by breach of this Agreement.
- 1.4 “**Cookies**” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when using TPG’s website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.5 “**Documentation**” means any reports, surveys, opinions, information, or any other document provided, utilised, or created incidentally by TPG in the course of it conducting, or providing to the Client, any Services.
- 1.6 “**Fee**” means the price payable for the Services as agreed between TPG and the Client in accordance with this Agreement, and includes any documents, reports, plans or other materials (“Documentation”) provided, utilised, or created incidentally by TPG in the course of it conducting, or providing to the Client, the Services.
- 1.7 “**IP**” means all present and future intellectual and industrial property, whether conferred by statute, at common law, or in equity (including, without limitation, patents, designs, copyright, trademarks, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information and pricing details), whether registered or not, or capable of being registered, and includes any application or right to apply for registration of any of these rights.
- 1.8 “**Letter of Offer**” means TPG’s estimate for the provision of the Services, and which shall specify the scope and nature of the Services which TPG is to provide to the Client and the Fees payable by the Client.
- 1.9 “**Services**” means all Services supplied by TPG to the Client at the Client’s request from time to time.
- 1.10 “**TPG**” means Town Planning Group (NZ) Limited, its successors and assigns.

2. Interpretation

- 2.1 In this Agreement, unless it is stated to the contrary or the context requires otherwise:
- (a) words in the singular shall include the plural (and vice versa), words importing one gender shall include every gender, a reference to a person shall include any other legal entity of whatsoever kind (and vice versa) and where a word or a phrase is given a defined meaning in this Agreement, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning; and
 - (b) a reference to a statute, ordinance, code, or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments, or replacements of any of them (whether of the same or any other legislative authority having jurisdiction); and
 - (c) a reference to dollars (\$), is a reference to New Zealand currency; and
 - (d) the following order of precedence (in descending order) applies to resolve any conflict, ambiguity, or discrepancy in this Agreement:
 - (i) the Letter of Offer; and
 - (ii) this Agreement; and
 - (iii) any schedule or appendix attached hereto.
 - (e) any reference (other than in the calculation of consideration, or of any indemnity, reimbursement, or similar amount) to cost, expense or other similar amount is a reference to that cost exclusive of GST.

3. Acceptance

- 3.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Services provided by TPG.
- 3.2 In the event of any inconsistency between the terms and conditions of this Agreement and any other prior document or schedule that the parties have entered into, the terms of this Agreement shall prevail.
- 3.3 Any amendment to the terms and conditions contained in this Agreement may only be amended in writing by the consent of both parties.
- 3.4 The Client acknowledges that the supply of Services on credit shall not take effect until the Client has completed a credit application with TPG and it has been approved with a credit limit established for the account.
- 3.5 In the event that the supply of Services requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, TPG reserves the right to refuse delivery.
- 3.6 This Agreement, in conjunction with the Letter of Offer, details the scope and timing of the Services. If the Client varies the scope of the Services (including, without limitation, any addition or deletion of the Services) or the timing of the Services, it agrees to do so by prior written notice to TPG, and such varied Services shall be dealt with in accordance with clauses 7.2 and 9.5. In the event the Client and TPG cannot agree a rate and/or an amended completion date in accordance with the aforementioned clauses, TPG shall have no obligation to accept the Client’s variation.
- 3.7 This Agreement sets out the entire agreement and understanding between the Client and TPG relating to its subject matter. All prior agreements and negotiations, representations and communications relating to the same subject matter are superseded by this Agreement.

- 3.8 Where the Client is acting on behalf of any third party, and the Client intends for that third party to be responsible for the payment of the Fee, then in the event that the third party does not pay the Fee when due, the Client acknowledges that they shall be liable for the payment of the Fee as if they had contracted with TPG for the provision of the Services on their own behalf.
- 3.9 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Agreement and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 4. Authorised Representatives**
- 4.1 Notwithstanding clause 3.8 the Client acknowledges that TPG shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to TPG, that person shall have the full authority of the Client to order any Services and/or to request any variation thereto on the Client's behalf. The Client accepts that they will be solely liable to TPG for all additional costs incurred by TPG (including TPG's profit margin) in providing any Services or variation/s requested thereto by the Client's duly authorised representative.
- 5. Errors and Omissions**
- 5.1 The Client acknowledges and accepts that TPG shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by TPG in the formation and/or administration of this Agreement; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by TPG in respect of the Services.
- 5.2 In the event such an error and/or omission occurs in accordance with clause 5.1, and is not attributable to the negligence and/or wilful misconduct of TPG; the Client shall not be entitled to treat this Agreement as repudiated nor render it invalid.
- 6. Change in Control**
- 6.1 The Client shall give TPG not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by TPG as a result of the Client's failure to comply with this clause.
- 7. Fee and Payment**
- 7.1 At TPG's sole discretion the Fee shall be either:
- (a) as indicated on any invoice provided by TPG to the Client; or
 - (b) TPG's estimated Fee (subject to clause 7.2) which will be valid for the period stated in the Letter of Offer, or otherwise for a period of thirty (30) days. The Client acknowledges that the final invoiced Fee can only be ascertained upon completion of the Services; however, variances of more than ten percent (10%) for work completed within the defined Scope will be subject to the Client's approval. In addition to the exclusions outlined in the Letter of Offer, the estimate contained in the Letter of Offer and this Agreement do not provide for the following (unless otherwise stated in writing):
 - (i) any additional work required by the Council or Consenting Authority, or requested by external parties (including, but not limited to, the surveyor, contractor, architect, structural engineer, other professionals, or the Client in respect of work outside the scope and nature of the Services); and
 - (ii) attendance at site meetings, or meetings with council outside the requirements of the findings in the Documentation; and
 - (iii) any work requested by the Client or the Client's representative(s) which is outside of the defined scope of works; or
 - (c) TPG's quoted price (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 7.2 TPG reserves the right to change the Fee:
- (a) to include any Reimbursable Expenses as per clause 8, including where the provision of the Services requires TPG to obtain products and/or services from a third party, and in this instance the Agreement shall incorporate, and shall be subject to, the conditions of supply of such products and/or services to TPG, and the Client shall be liable for the cost in full including TPG's margin of such products and/or services; or
 - (b) if a variation to the Services (including any variation to the Client's brief or specifications) is requested. Such variation shall be ascertained and calculated in accordance with the rates specified in the Letter of Offer (if those rates are applicable to the nature and scope of the variation work required), or if those rates are not specified, at a rate agreed to by the Client and TPG; or
 - (c) where additional costs are incurred by TPG due to unexpected delays, or receipt of approvals or permits, access to an assessment area not being available as was agreed or when pre-arranged, and/or for additional Services which are outside of the agreed scope of works.
- 7.3 Variations will be charged for on the basis of TPG's quotation, and will be detailed in writing, and shown as variations on TPG's invoice. The Client shall be required to respond to any variation submitted by TPG within ten (10) working days. Failure to do so will entitle TPG to add the cost of the variation to the Fee. Payment for all variations must be made in full at the time of their completion.
- 7.4 At TPG's sole discretion a deposit may be required.
- 7.5 Time for payment for the Services being of the essence, the Fee will be payable by the Client on the date/s determined by TPG, which may be:
- (a) before completion of the Services; or
 - (b) by way of instalments/progress payments in accordance with TPG's payment schedule; or
 - (c) payment for approved Clients shall be due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is twenty (20) days following the date of any invoice given to the Client by TPG.
- 7.6 Payment may be made by electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and TPG.

- 7.7 TPG may in its discretion allocate any payment received from the Client towards any invoice that TPG determines and may do so at the time of receipt or at any time afterwards.
- 7.8 The Client acknowledges and agrees that the Client's obligations to TPG for the provision of the Services shall not cease (and where it is intended that any ownership of the Documentation shall pass, it shall not pass until:
- (a) the Client has paid TPG all amounts owing for the Services; and
 - (b) the Client has met all other obligations due by the Client to TPG in respect of all contracts between the parties.
- 7.9 Receipt by TPG of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared, or recognised and until then TPG's ownership or rights in respect of the Services, and this Agreement, shall continue.
- 7.10 The Client shall not be entitled to set off against, or deduct from the Fee, any sums owed or claimed to be owed to the Client by TPG nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify TPG in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as TPG investigates the dispute claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in TPG placing the Client's account into default and subject to default interest in accordance with clause 17.1.
- 7.11 Unless otherwise stated the Fee does not include GST. In addition to the Fee, the Client must pay to TPG an amount equal to any GST TPG must pay for any supply by TPG under this or any other agreement for providing TPG's Services. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Fee. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Fee except where they are expressly included in the Fee.

8. Reimbursable Expenses

- 8.1 TPG shall be reimbursed for all expenses reasonably and properly incurred in connection with the provision of the Services, except where such expenses are specifically stated in writing by TPG as being non-reimbursable. All reimbursable expenses (e.g., typing, copying, travel time, flights, kilometres, communications, couriers, etc.) will be charged and invoiced on a time charge basis for actual time and work hours spent on the Client's project. TPG shall maintain up-to-date records which clearly identify time and expenses incurred in providing the Services to the Client.

9. Provision of the Services

- 9.1 TPG shall:
- (a) perform the Services relating to the Client's project as recorded in this Agreement and the Letter of Offer; and
 - (b) in providing the Services, perform the Services in an efficient and professional manner, engaging personnel with suitable training, experience, and expertise, and exercise the degree of care, skill and diligence reasonably required of a competent professional.
- 9.2 The Client shall:
- (a) provide to TPG, free of charge, as soon as practicable following any request for information, all information in its power to obtain, which may pertain to the Services; and
 - (b) use their best endeavours to provide plans and locate all services at the nominated site (including power, telephone, gas, water, stormwater, and sewer) as soon as practicable following the request by TPG. If the Client does not provide the required information, TPG shall be entitled to obtain such from third parties at the Client's sole cost; and
 - (c) where requested by TPG, obtain any approvals, authorities, licenses, consents, and permits which are required from governmental, territorial, statutory, or responsible authorities for the lawful implementation and completion of the Client's project (where such approvals etc are outside of the scope of TPG); and
 - (d) ensure that it, its employees, agents, and contractors cooperate with TPG, that TPG has access to the applicable locations that TPG may require, and provide all necessary instructions, technical information, and directions in relation to the Services in writing to TPG so as to enable TPG to properly provide the Services and perform its obligations under this Agreement and ensure that such information is complete and accurate. TPG will not accept any liability to the Client, or a third party, in connection with any information provided by the Client that is incomplete or inaccurate unless ensuring the adequacy and accuracy of the information is within the scope of the Services.
- 9.3 The Client may order variations to the Services provided these variations are made in writing or may request TPG to submit written proposals for variation to the Services.
- 9.4 Both parties shall make all reasonable effort to ensure the Services are provided in accordance with this Agreement and take all necessary reasonable steps to minimise any possible delay thereto. However, any time specified by TPG for provision of the Services is an estimate only, and TPG will not be liable for any loss or damage incurred by the Client as a result of any delay. In the event that TPG is unable to provide the Services as agreed solely due to any action or inaction of the Client, then the Client shall pay to TPG a reasonable sum of money to cover the consequential costs, expenses and liabilities suffered by TPG as a result of any delay or suspension.
- 9.5 The commencement date will be put back and/or the duration of the Services extended by whatever time is reasonable in the event that the Client requests a variation to the Services, or TPG claims an extension of time (by giving the Client written notice as per clause 9.6), or where provision of the Services is delayed or suspended (other than as a result of a breach of this Agreement by TPG, or a negligent act or omission of TPG) by an event beyond TPG's control.
- 9.6 The Client and TPG shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any applicable occupational health and safety laws and any other relevant safety standards or legislation. Furthermore, where the working environment is under the control of the Client, it agrees to provide a safe working environment for TPG and its employees, agents, and subcontractors for the purpose of the provision of the Services.
- 9.7 If TPG is required to exercise their professional judgement between the Client and a third party with whom the Client has a contract, then TPG will do so independently and as required by the terms and conditions of that contract.

10. Subcontract

- 10.1 TPG shall be entitled, with the consent of the Client, to engage individuals on a subcontract or consultancy basis, whether or not operating under corporate structure, to assist in the provision of the Services pursuant to the contract.

- 10.2 TPG shall remain liable for the performance of all obligations under these Terms and Conditions including the Services that are subject of a subcontract.
- 10.3 The Client agrees and understands that they have no authority to give any instruction to any of TPG's sub-contractors without the authority of TPG.
- 10.4 The Client acknowledges and accepts that the Client shall be responsibility for all monies payable to other such subcontractor or consultant.
- 11. Personal Property Securities Act 1999 ("PPSA")**
- 11.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 11.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in:
- (a) all Documentation previously supplied by TPG to the Client;
 - (b) all Documentation will be supplied in the future by TPG to the Client and the proceeds from such Documentation as listed by TPG to the Client in invoices rendered from time to time; and
 - (c) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to TPG for Services – that have previously been provided and that will be provided in the future by TPG to the Client.
- 11.3 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which TPG may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, TPG for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Documentation charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Documentation or the proceeds of such Documentation in favour of a third party without the prior written consent of TPG.
- 11.4 TPG and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 11.5 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 11.6 Unless otherwise agreed to in writing by TPG, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 11.7 The Client shall unconditionally ratify any actions taken by TPG under clauses 11.1 to 11.6.
- 11.8 Subject to any express provisions to the contrary (including those contained in this clause 11), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 12. Security and Charge**
- 12.1 In consideration of TPG agreeing to supply Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, and the Client grants a security interest in all of its present and after-acquired property, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 12.2 The Client indemnifies TPG from and against all TPG's costs and disbursements including legal costs of a solicitor and own client basis incurred in exercising TPG's rights under this clause.
- 12.3 The Client irrevocably appoints TPG and each director of TPG as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.
- 13. Defects**
- 13.1 The Client shall within seven (7) days of delivery of the Services or Documentation notify TPG of any alleged defect, shortage in quantity, errors, omissions, or failure to comply with the description or quote. The Client shall afford TPG an opportunity to inspect the Services or Documentation within a reasonable time following delivery if the Client believes the Services or Documentation are defective in any way. If the Client shall fail to comply with these provisions, the Services or Documentation shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect.
- 13.2 For defective Services, which TPG has agreed in writing that the Client is entitled to reject, TPG's liability is limited to either (at TPG's discretion) replacing the Services or rectifying the Services provided that the Client has complied with the provisions of clause 13.1.
- 14. Consumer Guarantees Act 1993**
- 14.1 If the Client is acquiring Services for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Services by TPG to the Client.
- 15. Intellectual Property**
- 15.1 TPG shall retain copyright of all IP prepared by TPG. The Client shall be entitled to use them or copy them only for the Client's project, and the purpose for which they were intended. The ownership of data and factual information collected by TPG shall lie with TPG. The Client may reproduce drawings, specifications, and other documents in which TPG has copyright, as reasonably required in connection with the Client's project, but not otherwise. The Client shall have no right to use any of the Documentation where any part, or all, of the Fee (including any reimbursable expenses payable to TPG) has not been paid in accordance with this Agreement. TPG reserves the right to withdraw the Documentation for Councils and territorial authorities' offices where payment has not been made in accordance with this Agreement.
- 15.2 The Client:

- (a) shall, in providing information to TPG, ensure compliance with the Copyright Act 1994; and
- (b) warrants that all designs, specifications, information, and instructions to TPG will not cause TPG to infringe any patent, registered design, or trademark in the provision of the Services; and
- (c) agrees to indemnify, defend, and hold TPG harmless from all loss incurred or suffered by TPG arising from any claims (including third party claims) or demands against them where such loss was caused by any infringement or alleged infringement of any person's IP rights by the Client during its use of the Services;
- (d) agrees that TPG may (at no cost) use for the purposes of marketing or entry into any competition, any Documentation which TPG has created for the Client.

16. Confidentiality

- 16.1 Subject to clause 16.2, each party agrees to treat as confidential the other party's Confidential Information and agrees not to divulge it to any third party, without the other party's written consent. Furthermore, TPG shall not, without the Client's prior consent, use information provided by the Client for purposes unrelated to the Services.
- 16.2 Both parties agree to:
 - (a) use the Confidential Information of the other party only to the extent required for the purpose it was provided; and
 - (b) not copy or reproduce any of the Confidential Information of the other party in any way; and
 - (c) only disclose the other party's Confidential Information to:
 - (i) employees and contractors who need access to the information and who have agreed to keep it confidential; and
 - (ii) its legal advisers and insurance providers if those persons undertake to keep such information confidential.
- 16.3 Either party must promptly return or destroy all Confidential Information of the other party in its possession or control at the other party's request, unless required by law to retain it.
- 16.4 Confidential Information excludes information:
 - (a) generally available in the public domain, including, but not limited to, information disclosed at the time of lodgement of a resource consent application (without unauthorised disclosure under this Agreement); or
 - (b) required by law, any stock exchange or regulatory body to be disclosed; or
 - (c) received from a third party entitled to disclose it; or
 - (d) that is independently developed.
- 16.5 The obligations of this clause 16 shall survive termination or cancellation of this Agreement.

17. Default and Consequences of Default

- 17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at TPG's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Client owes TPG any money the Client shall indemnify TPG from and against all costs and disbursements incurred by TPG in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, TPG's collection agency costs, and bank dishonour fees).
- 17.3 Further to any other rights or remedies TPG may have under this Agreement, if a Client has made payment to TPG, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by TPG under this clause 17, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Agreement.
- 17.4 Without prejudice to TPG's other remedies at law TPG shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to TPG shall, whether or not due for payment, become immediately payable if:
 - (a) any money payable to TPG becomes overdue, or in TPG's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by TPG;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

18. Termination

- 18.1 Without prejudice to any other remedies TPG may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions TPG may suspend or terminate the supply of Services to the Client. TPG will not be liable to the Client for any loss or damage the Client suffers because TPG has exercised its rights under this clause.
- 18.2 TPG may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice TPG shall repay to the Client any money paid by the Client for the Services. TPG shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 In the event that the Client cancels delivery of the Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by TPG as a direct result of the cancellation (including, but not limited to, any loss of profits).

19. Privacy Policy

- 19.1 All emails, documents, images, or other recorded information held or used by TPG is "**Personal Information**" as defined and referred to in clause 19.3 and therefore considered confidential. TPG acknowledges its obligation in relation to the handling, use, disclosure, and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in the Act and any statutory requirements where relevant in a European Economic Area "EEA" under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). TPG acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by TPG that may result in serious harm to the Client, TPG will notify the

Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.

19.2 Notwithstanding clause 19.1, privacy limitations will extend to TPG in respect of Cookies where the Client utilises TPG's website to make enquiries. TPG agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:

- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to TPG when TPG sends an email to the Client, so TPG may collect and review that information ("collectively Personal Information")

If the Client consents to TPG's use of Cookies on TPG's website and later wishes to withdraw that consent, the Client may manage and control TPG's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the website.

19.3 The Client authorises TPG or TPG's agent to:

- (a) access, collect, retain and use any information about the Client;
 - (i) including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
- (b) disclose information about the Client, whether collected by TPG from the Client directly or obtained by TPG from any other source to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.

19.4 Where the Client is an individual the authorities under clause 19.3 are authorities or consents for the purposes of the Privacy Act 2020.

19.5 The Client shall have the right to request (by e-mail) from TPG, a copy of the Personal Information about the Client retained by TPG and the right to request that TPG correct any incorrect Personal Information.

19.6 TPG will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Agreement or is required to be maintained and/or stored in accordance with the law.

19.7 The Client can make a privacy complaint by contacting TPG via e-mail. TPG will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

20. Service of Notices

20.1 Any written notice given under this Agreement shall be deemed to have been given and received:

- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Agreement;
- (c) by sending it by registered post to the address of the other party as stated in this Agreement;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Agreement (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.

20.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

21. Trusts

21.1 If the Client at any time upon or subsequent to entering into the Agreement is acting in the capacity of trustee of any trust ("Trust") then whether or not TPG may have notice of the Trust, the Client covenants with TPG as follows:

- (a) the Agreement extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
- (b) the Client has full and complete power and authority under the Trust to enter into the Agreement and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c) the Client will not without consent in writing of TPG (TPG will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

22. Limitation of Liability

22.1 The Client indemnifies TPG for any costs or liabilities incurred as a result of a breach of any of the terms and conditions of this Agreement by the Client, and hereby irrevocably releases TPG from all claims (including any cost, expense, loss, damage, claim, liability, action or proceeding, whether or not presently ascertained, immediate, future or contingent, and includes legal costs on a full indemnity basis) suffered or incurred by the Client (or any person claiming through or on behalf of the Client) other than to the extent caused or contributed to by:

- (a) a negligent act or omission of TPG; or
- (b) a breach of, or default under, this Agreement by TPG.

22.2 The liability of TPG to the Client in respect of the Services shall be limited to the greater of three (3) times the value of the Fee or the sum of one hundred thousand dollars (\$100,000). The Client acknowledges that TPG currently holds a policy of Professional Indemnity Insurance for

the amount of two million dollars (\$2M). TPG undertakes to take all reasonable endeavours to maintain a similar policy of insurance for six (6) years after completion of the Services.

- 22.3 Neither party shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on it within six (6) years from completion of the Services.
- 22.4 TPG shall only be liable to the Client, in contract or in tort, for direct loss or damage suffered by the Client as a result of a breach by TPG of its obligations under this Agreement and shall not be liable for any loss of profits. If either party is found liable to the other (whether in contract, tort or otherwise) and/or any third party has contributed to the loss or damage, the liable party shall only be liable to the proportional extent of its own contribution.
- 22.5 TPG has not and will not, during the term of this Agreement or any time after it, assume any obligation as the Client's agent or otherwise which may be imposed upon the Client from time to time pursuant to the Health and Safety at Work Act 2015 arising out of the engagement. TPG and the Client agree that, for the purpose of that Act, TPG will not be the person who controls the place of work in terms of that Act.

23. Dispute Resolution

- 23.1 All disputes and differences between the Client and TPG touching and concerning this Agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two (2) arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

24. General

- 24.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 24.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Queenstown, New Zealand.
- 24.3 Subject to the CGA, TPG shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by TPG of these terms and conditions (alternatively TPG's liability shall be limited to damages which under no circumstances shall exceed the Fee of the Services).
- 24.4 TPG may licence and/or assign all or any part of its rights and/or obligations under this Agreement without the Client's consent.
- 24.5 The Client cannot licence or assign without the written approval of TPG.
- 24.6 TPG may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Agreement by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of TPG's sub-contractors without the authority of TPG.
- 24.7 The Client agrees that TPG may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for TPG to provide Services to the Client.
- 24.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to TPG.
- 24.9 Both parties warrant that they have the power to enter into this Agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent, and that this Agreement creates binding and valid legal obligations on them.