

Master Terms of Business

1. This Agreement

- 1.1 This Agreement sets out the terms on which we will provide Services to you. We will treat you as having accepted this Agreement if you continue to instruct us after you receive it.

2. Our Services

- 2.1 We will provide the Services described in the Letter. We will use all reasonable efforts to complete the Services within any agreed time frame but time frames are not legally binding.
- 2.2 Except as expressly agreed in writing before providing a particular Service, the Services do not include:
- (a) financial reporting;
 - (b) advice regarding the financial accounting treatment of any transaction;
 - (c) any opinion on the achievability of prospective financial information;
 - (d) legal advice or legal due diligence services; or
 - (e) detection of fraud or misrepresentation (and accordingly we do not accept responsibility for detecting fraud or misrepresentation whether by directors, management, staff or external parties).
- 2.3 We will use reasonable efforts to ensure that our Representatives named in the Letter provide the Services. However, we may replace or reassign any Representative at any time with a Representative of similar skill.

3. About Deloitte

- 3.1 We are a Member Firm of DTTL. You acknowledge that:
- (a) each Member Firm is a separate and independent legal entity;
 - (b) the Services are provided to you by us and not by any other Member Firm, (even if we use other Member Firms to help us to provide the Services in accordance with clause 3.2 below); and
 - (c) no Member Firm is liable for any other Member Firm's acts or omissions, except as expressly set out in clause 3.2 below.
- 3.2 Sometimes we may use other Member Firms to help us to provide the Services and Representatives from those Member Firms may be in contact with you directly for that purpose. If we use other Member Firms, we alone will be responsible for any work undertaken by those other Member Firms.
- 3.3 To the extent permitted by law, you agree that:
- (a) no other Member Firm or any of our Representatives will have any liability to you (whether in contract, tort (including negligence) or otherwise) under or in connection with this Agreement and/or the Services; and
 - (b) you will not bring any claim, demand or proceedings under or in connection with this Agreement and/or the Services against any other Member Firm or any of our Representatives.

4. Our Work

- 4.1 Our Work is for your exclusive use and must be used by you only for the Purpose. Unless we give our consent:
- (a) our Work must not be used for any other Purpose or made available to anyone else, except your Professional Advisers;
 - (b) our Work may not be relied on by anyone other than you; and
 - (c) you must not name us or refer to us, our Work or Services in any written materials, other than to your Professional Advisers, in any publicly filed documents or as required by law.
- 4.2 If you provide a copy of any Work to any of your Professional Advisers, or any other person with our consent, you must ensure that they are aware of and comply with the limits placed on the use and disclosure of our Work (including that they may not rely on the Work) and treat our Work as confidential.
- 4.3 You acknowledge that use of or reliance on our Work by a person other than you may expose us, our Representatives and Member Firms to a claim from a person with whom we have no relationship or whose interests we have not considered in providing the Services. You will indemnify us, our Representatives and/or Member Firms against any Loss we, our Representatives and/or Member Firms suffer or incur as a result of any distribution to, use of and/or reliance on, any Work by a third party.
- 4.4 The signed copy of our Report is the definitive version of our advice, subject to any qualifications in that version. You may not rely on any other Work or oral comments or advice. We do not undertake to update any Report after we have issued the final Report to you.
- 4.5 To comply with our professional standards we must retain as our own property our Work, together with copies of all Information provided to us in the course of us performing the Services. In the absence of other statutory or regulatory requirements or instructions from you, it is our normal practice to destroy correspondence and other papers that are more than seven years old.
- 4.6 We take our ethical obligations seriously. We have internal anti-bribery and corruption policies that outline the requirements applicable to our operations under anti-bribery and corruption laws, including but not limited to applicable New Zealand laws, the United States Foreign Corrupt Practices Act of 1977 and the United Kingdom Bribery Act 2010.

5. Our Fees

- 5.1 The Fees and the basis on which they are calculated are set out in the Letter. Any estimate of the Fees for the Services will be based upon our assessment of the work involved, taking account of any assumptions set out in the Letter. Unless we have agreed otherwise in the Letter, our Fees may be adjusted if the Services prove more complex or time consuming than expected. We may also change the Fees where:
- (a) an Unexpected Event occurs; or

- (b) there is a change in the scope of the Services we provide to you (including as a result of an Unexpected Event); or
 - (c) you do not accept this Agreement within three months of the date of the Letter.
- 5.2 You agree to pay us:
- (a) the Fees for the Services plus GST (if applicable);
 - (b) any expenses we incur in providing the Services to you, such as travel costs. We will charge these expenses to you at cost and tell you about them beforehand if they are anything other than incidental; and
 - (c) all costs and expenses (including internal time costs) we suffer or incur if we are required to provide Information about you or the Services to comply with (or challenge) any statutory obligation, court order or compulsory process.
- 5.3 Fee estimates are indicative only and are not legally binding.
- 5.4 We will generally invoice you monthly in arrears. You agree to pay any undisputed portions of our invoice within 21 days of the date of the invoice even if there is a dispute between us about that invoice or another invoice. Where amounts remain due and unpaid we may charge you related collection costs (including legal fees) and interest at an annual rate of 2% over the Official Cash Rate of the Reserve Bank of New Zealand ruling on the date payment is due.
- 5.5 We may suspend or terminate our Services or withhold any Information or any Work if you do not pay our invoices on time.
- 6. What You Agree To Do**
- 6.1 You are responsible for:
- (a) determining that the Services described in the Letter are adequate for your particular purposes and needs;
 - (b) providing us with all reasonable and necessary assistance so that we can provide the Services to you, such as timely and reasonable access to your premises, facilities, networks, Information and Representatives;
 - (c) designating one or more competent Representatives who possess suitable skill, knowledge, and/or experience to oversee the Services;
 - (d) making timely decisions in connection with the Services;
 - (e) providing us with accurate and complete Information;
 - (f) providing us with all Information that is relevant to the Services, even if the same Information has been given to us previously during another engagement;
 - (g) updating any Information where there has been a material change to that Information;
 - (h) operating and managing all accounting, internal control or management information systems (unless you expressly engage us to do so in writing); and
 - (i) any other responsibilities you agree to, including those set out in the Letter.
- 6.2 You acknowledge that:
- (a) our ability to provide the Services depends on you meeting your responsibilities under this Agreement; and
 - (b) we will rely on your Information, the decisions you make and any approvals you give.
- 6.3 Should you wish any of our Representatives to attend your board meetings and contribute in an advisory role, you agree that doing so does not in any way entail our Representatives acting in the capacity of a director. Your board and management remain solely responsible for all aspects of governance, oversight and all decisions in relation to your business.
- 7. Our Responsibility To You**
- 7.1 To the extent permitted by law, our total liability to you under or in connection with this Agreement (whether in contract, tort (including negligence) or otherwise) is limited to five times the amount of the Fees paid in respect of the Services. In the case of continuous Services provided by us, "the Fees" means the fees charged by us for the relevant Services in the twelve months preceding the occurrence of the event, act or omission giving rise to the claim.
- 7.2 The limit of liability set out above applies to all Addressees as a group. You agree not to dispute the limit if you are unable to agree on how it will be allocated between you.
- 7.3 We will only be liable to you for the proportion of the legally payable amounts that we have caused. We will not be liable for any Loss to the extent it is caused by an Unexpected Event.
- 7.4 We will not be liable for any Consequential Loss.
- 7.5 If you are not satisfied with our Services, you will provide us with the opportunity to re-perform them or resolve the issues that have arisen before taking any further action.
- 7.6 Any claim against us must be brought within 12 months of the occurrence of the event, act or omission giving rise to the claim.
- 8. Conflict Of Interest**
- 8.1 We have relationships with many clients. If, after this Agreement starts, we identify circumstances that could cause us to have a conflict of interest, we will evaluate the potential conflict and, depending on the circumstances, apply appropriate safeguards to manage it. However, you acknowledge that we may need to terminate this Agreement if we are unable to resolve or manage a conflict of interest satisfactorily.
- 9. Termination**
- 9.1 Either of us may terminate this Agreement:
- (a) at any time by giving the other written notice; or
 - (b) immediately if the other becomes insolvent or otherwise ceases to carry on business or commits any material breach of this Agreement that is either incapable of being remedied or is not remedied within 14 days of receipt of a notice requiring the breach to be remedied.
- 9.2 If this Agreement is terminated, you agree to pay us the Fees for any work we have done, and any other agreed amounts or expenses we have incurred, up to the date of termination. You also

- agree to pay us any costs or expenses payable pursuant to clause 5.2(c), whether before or after the date of termination.
- 9.3 Any provision of this Agreement that is expressly or by implication intended to survive termination will survive, including clause 3, *About Deloitte*; clause 4, *Our Work*; clause 5, *Our Fees*; clause 9.2, *Termination*, clause 11, *Confidentiality*; clause 13, *Intellectual Property*; clause 15, *Dispute Resolution* and clause 17, *General*.
- 10. Tax Services**
- 10.1 Where we provide Tax Advice to you in written form on a confidential basis that written Tax Advice may qualify as a 'tax advice document' that is not required to be disclosed to the Inland Revenue in terms of the Tax Administration Act 1994. We do not place any limitations on your disclosure of such Tax Advice. However if you choose to disclose such Tax Advice your rights to claim non-disclosure may be forfeited.
- 10.2 Under the applicable tax legislation, it is the taxpayer who has the ultimate responsibility for the correctness of the tax returns. For this reason you agree that:
- the responsibility for the accuracy and completeness of the return(s) remains with you. An authorised representative will be required to review and sign the return(s) prior to filing with Inland Revenue;
 - the preparation by us of the return(s) does not result in the expression of an audit or review opinion or provide any other form of assurance on the respective return(s); and
 - no reference will be made by us to further source documentation or invoices to substantiate the Information supplied by you.
- 10.3 The Services are not binding on any government, tax or other regulatory authority or the courts of any jurisdiction. We do not guarantee that any government, tax or other regulatory authority or court will agree with the Tax Advice provided to you in connection with the Services. The Services will be performed taking into account relevant tax legislation in force at the time the Services are provided to you. Any changes in the applicable tax legislation after the Services have been provided to you may affect the validity or correctness of the Tax Advice provided. We are under no responsibility to inform you of any such changes.
- 11. Confidentiality**
- 11.1 Each of us agrees to protect and keep confidential any Confidential Information that is given to us by the other.
- 11.2 We will only use or disclose your Confidential Information to provide the Services to you and we may also disclose your Confidential Information:
- to other Member Firms and our Representatives who will only use and disclose it to provide the Services to you;
 - as required by law, DTTL's quality review processes or our professional obligations;
 - to our own professional advisers, service providers and insurers on a confidential basis; or
- to anyone else, on a confidential basis, where you agree first that we may do so.
- 11.3 You agree that we may aggregate your Information and use and disclose that Information in de-identified form as part of research and advice, including benchmarking services.
- 11.4 Subject to clauses 4.5, 5.5 and 12.1, we will return your Confidential Information, or destroy it, at any time at your request.
- 12. Personal Information and Electronic Communication**
- 12.1 We will collect, store and disclose any Personal Information provided to us in connection with the Services in accordance with the Privacy Act 1993. Please refer to our [Privacy Policy](#) for details of your rights to access and request correction of any Personal Information that we hold about you.
- 12.2 If you provide us with any Personal Information of a third party, you confirm that you have collected that Personal Information in accordance with the Privacy Act 1993 and the individual concerned has:
- authorised the disclosure to and use of their Personal Information by us for the purpose for which you disclose it to us; and
 - has been informed of their right to access and request correction of their Personal Information.
- 12.3 You authorise us to communicate with you and others electronically. If you have any doubts about the authenticity of any communication or document purportedly sent by us, please contact us immediately.
- 13. Intellectual Property**
- 13.1 Unless we agree otherwise, we will retain ownership of the Intellectual Property in our Work and, other than Reports, we have no obligation to provide our Work to you or any other person.
- 13.2 Subject to payment of our Fees and other charges, we give you a royalty-free, perpetual, world-wide licence to use and reproduce any Reports for the Purpose.
- 13.3 You agree we can use your logos and marks on our Work, unless you tell us otherwise.
- 14. Health and safety**
- 14.1 You agree to comply with the Health and Safety at Work Act 2015 and all regulations, rules, standards, approved codes of practice and any other applicable law relating to health and safety.
- 14.2 You agree to identify and advise us and our Representatives of all hazards which arise in your workplace and which may present a risk to Representatives while providing the Services. You agree to manage those risks, so far as is reasonably practicable, by either eliminating or mitigating those risks.
- 14.3 You agree to notify WorkSafe New Zealand and us of any notifiable event (as defined in the Act) arising out of the conduct of your business which concerns any Representative.
- 14.4 We agree to consult, co-operate and co-ordinate activities where we share health and safety duties in relation to the same matters.

15. **Dispute Resolution**

- 15.1 Each of us agrees to use reasonable endeavours to resolve any dispute that arises in connection with this Agreement by mediation before bringing a legal claim or starting legal proceedings against the other. Nothing in this clause 15, *Dispute Resolution*, prevents either of us from taking immediate steps to seek interlocutory, equitable or other urgent relief before a New Zealand court.

16. **Entire Agreement**

- 16.1 This Agreement is the entire agreement between us. It supersedes all prior communications, negotiations, representations, undertakings, arrangements and agreements, either oral or written between us. Any changes to this Agreement must be agreed to in writing by both of us.
- 16.2 For the purposes of section 5D of the Fair Trading Act 1986 (**FTA**), we both acknowledge and agree that we are contracting out of sections 9, 12A and 13 of the FTA in respect of all matters covered by this Agreement.
- 16.3 To the extent permitted by law, we exclude all warranties, representations, conditions and terms, either express or implied, in relation to the Services.

17. **General**

- 17.1 Neither of us may transfer, subcontract, assign or novate this Agreement without the prior written consent of the other. However, we may transfer, subcontract, assign or novate our rights and/or obligations under this Agreement to any entity in Deloitte New Zealand and we may subcontract to any Member Firm in accordance with clause 3.2.
- 17.2 Each of us agrees that, during the term of this Agreement and for a period of six months after it ends, neither of us will directly or indirectly solicit for employment a Representative of the other. However, both of us may advertise or recruit generally in the media.
- 17.3 We are engaged as an independent contractor. Neither of us is an agent or representative of or has the authority to bind the other. This Agreement is not intended to constitute a partnership, agency, employment, joint venture or fiduciary relationship between us.
- 17.4 If any of the terms of this Agreement are not legally enforceable then that term or the relevant part of it will either be amended, where possible, to make it enforceable or ignored, but in all other respects this Agreement will have full effect.
- 17.5 A waiver by one of us of a breach by the other party of any term of this Agreement does not operate as a waiver of another term or a continuing breach by the other of the same or any other term of this Agreement.
- 17.6 Where this Agreement refers to our Representatives or Member Firms, it is intended to confer a benefit on each Representative and Member Firm, enforceable by them, in terms of the Contracts (Privity) Act 1982 and the law of any relevant jurisdiction.
- 17.7 Each of us will, within a reasonable time of being requested by the other, do all things and execute

all documents that are reasonably necessary to give full effect to this Agreement.

- 17.8 This Agreement is governed by the laws of New Zealand and each party submits to the exclusive jurisdiction of the courts of New Zealand.

18. **Definitions**

- 18.1 In this Agreement the following words have the meanings set out below:

Addressee means each person to whom the Letter is addressed.

Agreement means the Letter and the Terms.

Annexure means a schedule or document which is annexed to the Letter and identified as a schedule, annexure or attachment to the Letter.

Confidential Information means any information designated as confidential or which might reasonably be expected, based on its content or circumstances of disclosure, to be confidential, including:

- (a) the terms of this Agreement and the details of the Services and any Work; and
 - (b) trade secrets and information or material which is proprietary to a party,
- but excludes any information that:
- (a) is independently acquired or developed without the benefit or use of the other party's confidential information; and
 - (b) is disclosed with the other party's prior written consent, including in accordance with this Agreement.

Consequential Loss means any:

- (a) loss of profits, revenue, anticipated savings or business opportunity;
- (b) damage to goodwill;
- (c) loss or corruption of data or systems; and
- (d) Loss which is indirect, consequential, special, punitive, exemplary or incidental,

arising under or in connection with this Agreement and/or the provision of the Services.

Deloitte New Zealand means the New Zealand partnership that is a Member Firm of Deloitte and each of the entities under the New Zealand partnership's ultimate control and any of their respective predecessors, successors or assignees.

Deloitte Service Provider means the Deloitte New Zealand entity entering into the Agreement as identified in the Letter.

DTTL means Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee.

Existing Material means any methodologies, technologies or other proprietary information either in existence at or prior to the date of this Agreement or developed by us independently of the Services.

Fees means the fees for the Services as stated in, or calculated in accordance with, the Letter.

GST means tax imposed by the *Goods and Services Tax Act 1985*.

Information means any information, documents, materials, facts, instructions or Confidential Information provided to us by you or your Representatives or anyone else at your request.

Intellectual Property means all industrial and intellectual property rights throughout the world, whether or not registered or capable of registration, including copyright, trade marks, designs, programming codes, trade secrets, know-how and circuit layouts in our Work.

Letter means the engagement letter between us to which the Master Terms of Business are attached, including any replacement or supplementary engagement letter.

Loss means any losses, liabilities, claims, compensation, penalties, fines, damages, costs or expenses (including internal time costs, interest and taxes where applicable), however caused or arising under or in connection with this Agreement and/or the provision of the Services (whether in contract, tort (including negligence) or otherwise).

Member Firm means DTTL, and any partnership or entity that is a member of the DTTL network operating under the name "Deloitte", "Deloitte & Touche", "Deloitte Touche Tohmatsu" or other related name, and each of DTTL's and such partnership's or entity's controlled entities, predecessors, successors, assignees, partners, principals, members, owners, directors, employees and agents, including Deloitte New Zealand.

Personal Information has the meaning given to it in the Privacy Act 1993.

Privacy Policy means our privacy policy available at <http://www2.deloitte.com/nz/en/legal/privacy.html>

Professional Advisers means your professional advisers, such as your accountant or auditor, who are assisting you in relation to the Services but excludes any investor, agent, intermediary, underwriter, syndicate participant, lender or other financial institution or anyone who may provide you with any credit enhancement or credit rating.

Purpose has the meaning given to it in the Letter or our Work, or where both are silent on this, the purpose for which we provide our Work to you.

Report has the meaning given to it in the Letter, or where the Letter does not set out a specific report, means any final form documents, reports or deliverables we provide to you as a result of the Services or this Agreement.

Representative means:

- (a) any officer, employee, consultant, agent, contractor or subcontractor of either of us, who is involved in the Services or other activities to which this Agreement relates; and
- (b) in the case of a Deloitte Service Provider, includes any partner, officer, employee, consultant, agent, contractor or subcontractor of a Member Firm who is involved in the Services or other activities to which this Agreement relates in accordance with clause 3.2.

Services means the services described in the Letter and any other services unless we have otherwise agreed in writing.

Tax Advice means any advice, whether written or oral, relating to tax, tax structuring or tax treatment provided by us as a result of the Services.

Terms means these Master Terms of Business.

Unexpected Event means any occurrence, failure or delay under or in connection with this Agreement that is caused or contributed to by an act, omission or event that is beyond our reasonable control, including any:

- (a) act, omission or breach of this Agreement by you;
- (b) failure of, problem with, or unauthorised access to, the technology infrastructure or environment used by us or our service providers including software defects or errors; and
- (c) interference, interception or corruption of an electronic communication.

us means the Deloitte Service Provider or both you and the Deloitte Service Provider, as the context requires.

we and **our** means the Deloitte Service Provider.

Work means any work provided to you and/or created in the course of providing the Services (in any form, whether in final or draft and whether prepared alone or in conjunction with you or any other person), including Existing Material, Reports, e-mails, notes and working papers.

you and **your** means each Addressee and where applicable, each Addressee's Representatives or Professional Advisers.

18.2 In this Agreement, a reference to:

- (a) a party includes its successors and permitted assigns;
- (b) "including" shall be construed as "including, without limitation";
- (c) our consent shall mean our prior written consent (including by e-mail), with any conditions that we may impose, at our absolute discretion;
- (d) agreement between the parties, means express agreement in writing (including by e-mail);
- (e) the singular includes the plural and vice versa;
- (f) the word person includes an entity, a firm, a body corporate, an unincorporated association or an authority;
- (g) a statute includes amendments to that statute and any statute to the extent passed in substitution for that statute; and
- (h) dollars or \$ means New Zealand dollars.

18.3 If there is any conflict between these Terms and any other part of this Agreement, the following order of priority will apply: (i) the Letter; (ii) the Annexure; and (iii) the Terms.

19. **Your Feedback**

- 19.1 We value your feedback. We aim to obtain a regular assessment of our performance and we will always be pleased to hear any suggestions as to how our service can be improved. If you wish to make a complaint, please contact your usual Deloitte contact or, alternatively, Andrew Button, Risk Leader, c/o Deloitte, Private Bag 115-033, Auckland, 1140, New Zealand or abutton@deloitte.co.nz

Effective from 6th December 2016