



1. Definitions

- 1.1 "Company" means Learning Architects Ltd, its successors and assigns or any person acting on behalf of and with the authority of Learning Architects Ltd.
- 1.2 "Client" means the person/s requesting the Company to provide the Services as specified in any invoice, document or order, and if there more than one person requesting the Services is a reference to each person jointly and severally.
- 1.3 "Services" means all Services (which includes any advice or recommendations, consultancy, facilitation, learning and development coaching, design services, assessment and change management, leadership programmes, strategies, technical service and support, strategic planning, analysis, training, and project management or service sourcing) provided by the Company to the Client at the Client's request from time to time, and includes any goods, files, information, printed or virtual material and data, documents, designs, programmes, strategies, or materials supplied, consumed, created or deposited incidentally by the Company in the course of it conducting, or providing to the Client, any Services.
- 1.4 "Proposal" means the Company's proposal/quotation for the provision of the Services, as prepared thereby and submitted to the Client to describe the actual scope of the Services to be provided, the personnel and other resources proposed to be utilised, and the amount or method of calculation of the Fee and any reimbursable expenses.
- 1.5 "Fee" shall mean the cost of the Services as agreed between the Company and the Client subject to clause 4 of this agreement.
- 1.6 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this agreement, either party's Intellectual Property, operational or technical information, know-how, trade secrets, financial and commercial affairs, contracts, client information, pricing details and other commercially valuable or sensitive information of whatever description which a party regards as confidential, proprietary or of a commercially or personally sensitive nature. It excludes information which:
 - (a) is lawfully in the public domain before is disclosure, or enters the public domain afterwards through an authorised disclosure;
 - (b) becomes available to the receiving party from someone lawfully in possession of it who lawfully discloses it on a non-confidential basis;
 - (c) is rightfully known by the receiving party before disclosure to it.

2. Acceptance

- 2.1 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 the provision of, Services.
- 2.2 These terms and conditions may only be amended with the Company's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Company.
- 2.3 None of the Company's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Company in writing nor is the Company bound by any such unauthorised statements.
- 2.4 Once accepted by the Client, the Proposal shall be deemed to interpret correctly the Client's instructions, whether written or verbal. Where verbal instructions only are received from the Client, the Company shall not be responsible for errors or omissions due to oversight or misinterpretation of those instructions.
- 2.5 This agreement constitutes the entire agreement between the Company and the Client, and the Client hereby acknowledges that no reliance is placed on any representation made by the Company, but not embodied in this agreement.
- 2.6 Any advice, recommendations, information, assistance or service provided by the Company in relation to Services provided is given in good faith, is based on information provided to the Company, and the Company's own knowledge, and experience. Whilst it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Services, human error is possible under these circumstances, and the Company shall make all effort to offer the best solution to the Client.
- 2.7 The Services provided under this agreement do not include, unless otherwise specified in writing by the Company:
 - (a) products and services supplied by a third party. Where the provision of Services requires the Company to obtain products and/or services from a third party, the agreement between the Company and the Client shall incorporate, and shall be subject to, the conditions of supply of such products and/or services to the Company, and the Client shall be liable for the cost in full including the Company's margin of such products and/or services;
 - (b) any direct costs other than the Company's personnel's time and ordinary overheads.
- 2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Change in Control

- 3.1 The Client shall give the Company 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, email address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by the Company as a result of the Client's failure to comply with this clause.

4. Fee and Payment

- 4.1 At the Company's sole discretion the Fee shall be either:
 - (a) as indicated on any invoice provided by the Company to the Client; or
 - (b) the Company's quoted price (subject to clause 4.2) which will be valid for the period stated in this agreement and/or the Proposal or otherwise for a period of fourteen (14) days.
- 4.2 *Additional and/or Varied Services:*
 - (a) The Company agrees that there will be no charge in the preparation of the initial Proposal, which may include Client discussions, project scoping, research, testing and analysis, etc. However, in some instances the aforementioned services may be charged to the Client additionally (at the Company's sole discretion).
 - (b) The Company reserves the right to amend the Fee where there is any variation to the accepted plan of scheduled Services, or instructions/specifications, which will be charged for on the basis of the Company's standard hourly rates (and double such rate for any Services provided outside the Company's normal business hours) and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 At the Company's sole discretion, a non-refundable deposit may be required.
- 4.4 Time for payment for the Services being of the essence, the Fee will be payable by the Client on the date/s determined by the Company, which may be:
 - (a) on provision of the Services;
 - (b) on completion of the Services;

- (c) by way of instalments/progress payments in accordance with the Company's payment schedule;
 - (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 seven (7) days following the date of any invoice given to the Client by the Company.
- 4.5 Payment may be made by bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and the Company.
- 4.6 Unless otherwise stated the Fee does not include GST. In addition to the Fee the Client must pay to the Company an amount equal to any GST the Company must pay for any provision of Services by the Company under this or any other agreement. 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.
- 4.7 The Company and the Client agree that the Client's obligations to the Company for the provision of Services shall not cease until:
- (a) the Client has paid the Company all amounts owing to the Company for the Services; and
 - (b) the Client has met all other obligations due by the Client to the Company in respect of all agreements between the Company and the Client.
- 4.8 Receipt by the Company 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 the Company's ownership or rights in respect of the Services, and this agreement, shall continue.
- 5. Provision of the Services**
- 5.1 The Company may provide the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 5.2 Any time specified by the Company for provision of the Services is an estimate only and the Company will not be liable for any loss or damage incurred by the Client as a result of provision being delayed. However both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that the Company is unable to provide the Services as agreed solely due to any action or inaction of the Client, then the Company shall be entitled to:
- (a) charge the Client additionally for re-providing the Services at a later time and date; or
 - (b) subject to clause 15.3(b), terminate the agreement.
- 5.3 The Client acknowledges that:
- (a) in providing the Services the Company relies on Information provided by the Client, without independently verifying such;
 - (b) the Services are provided to the Client for their sole benefit, and must not be disclosed to, or relied on by, any other party;
 - (c) the Services do not include information and advice relating to tax, accounting and legal matters relating to the implementation of business strategies, and it is recommended that the Client seek the advice of other business advisors suitably qualified in these areas.
- 6. Client's Obligations**
- 6.1 The Client must:
- (a) give the Company access to information (commercial and/or personal) that the Company reasonably requires in order to properly provide the Services to the Client, details of which will be set out in the Proposal and includes access to the Client's address, books, records, databases, personnel and technology systems, etc. ("**Information**");
 - (b) keep the Company informed of any developments (such as a change to Information provided to the Company) that a reasonable person would consider is likely to impact on the Services.
- 6.2 The Client warrants that all Information provided to the Company to be used for the provision of the Services:
- (a) has been obtained legally;
 - (b) is true and correct in every particular;
 - (c) does not infringe copyright, trademark or any other legal rights of another person and/or entity; and
 - (d) does not contain anything which may give rise to any cause of action by a third against the Company (including, but not limited to, material that may cause damage or injury to any person and/or entity); and
 - (e) is not false or misleading and is true in substance and in fact; and
 - (f) does not contain nor constitute a statement that is misleading or deceptive or likely to deceive or to mislead or which is otherwise in breach of a provision of the Fair Trading Act 1986 or any other applicable legislation.
- 7. Risk and Limitation of Liability**
- 7.1 The Company undertakes to act in all professional matters as a faithful consultant to the Client, whose interests will be watched over with skill and care. Notwithstanding:
- (a) any recommendations given to the Client by the Company as part of the provision of the Services are based on information provided by the Client without verification by the Company. The Client acknowledges and agrees that:
 - (i) the Company shall not be held responsible or liable for any form of loss or damage of any nature whatsoever suffered, whether arising directly or indirectly, by the Client or any person related to or dealing with the Client out of, in connection with or reasonably incidental to the provision of the Services by the Company to the Client;
 - (ii) all other conditions, terms, representations and warranties (whether express or implied by law), in respect to the provision of any advice, recommendations, information or services which may be binding on the Company, are excluded.
 - (b) the Company shall only be liable to the Client for the consequences of any negligent act, omission or statement of the Company, and then only to the extent and limitations referred to in clause 7.7.
- 7.2 The liability of the Company to the Client shall expire twelve (12) months from the date of either completion or termination of the Services, unless in the meantime the Client has made a claim in writing to the Company, specifying a negligent act, omission or statement said to have caused alleged loss or damage sustained or sustainable.
- 7.3 Notwithstanding clauses 7.1 and 7.2, the Company shall not be liable for any loss or damage sustained or sustainable by the Client in relation to:
- (a) errors occurring in any goods, materials, documentation, information, etc. not created or prepared by the Company;
 - (b) errors occurring during the course of any services which are not provided by, nor the responsibility of, the Company;
 - (c) the use of any information or advice without the approval of the Company.
- 7.4 The Client agrees that, in view of their nature, the Client's use of the Services is at their sole risk. Whilst the Company will endeavour to ensure that the Services are of a high quality, neither the Company (nor any of their agents, contractors, licensees, employees or third-party providers involved in providing the Services) give any guarantee that the Services will be uninterrupted or free from error. Where necessary for commercial, technical or other reasons:
- (a) any third-party provider connected to the Services may suspend or terminate its connection to the Services; and

- (b) the Services may suspend or terminate their connection to any third-party provider.
- 7.5 The Client agrees that any such suspension or termination referred to in clause (b) above will not constitute a breach of this agreement by the Company and that the Services are provided on an "as is" basis without guarantee of any kind.
- 7.6 The Client further agrees that the Company will not be held liable for any costs, expenses, losses, damages or other liabilities (howsoever arising) which you may incur as a result of a suspension of the Services in accordance with clause (a) above.
- 7.7 The Company shall be under no liability whatsoever to the Client for any indirect, incidental, special and/or consequential loss and/or expense, claim and/or cost (including legal fees and commissions, loss of profit, business, contracts, opportunity, goodwill, reputation and/or anticipated saving) and/or for any loss or corruption of data suffered by the Client arising out of a breach by the Company of these terms and conditions and/or caused by any failure by the Client to comply with their obligations under this agreement (alternatively the Company's liability shall be limited to damages which under no circumstances shall exceed the Fee).

8. Personal Property Securities Act 1999 ("PPSA")

- 8.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all collateral (account), being a monetary obligation of the Client to the Company for Services that have previously been provided and that will be provided in the future by the Company to the Client.
- 8.2 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 the Company may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the collateral (account) in favour of a third party without the prior written consent of the Company.
- 8.3 The Company and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 8.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 8.5 Unless otherwise agreed to in writing by the Company, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 8.6 The Client shall unconditionally ratify any actions taken by the Company under clauses 8.1 to 8.5.

9. Security and Charge

- 9.1 In consideration of the Company agreeing to provide 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, 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).
- 9.2 The Client indemnifies the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Company's rights under this clause.
- 9.3 The Client irrevocably appoints the Company and each director of the Company as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on the Client's behalf.

10. Client's Disclaimer

- 10.1 The Client hereby disclaims any right to rescind, or cancel any agreement with the Company or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Company and the Client acknowledges that the Services are bought relying solely upon the Client's skill and judgment.

11. Claims

- 11.1 The Company shall be under no liability whatsoever unless written notice of any claim, giving full particulars of any alleged error or omission, failure to comply with the Proposal or this agreement, or any loss or damages suffered by the Client, is received by thereby within seven (7) days after completion of the Services.
- 11.2 The failure to notify a claim within the time limits under clause 11.1 is evidence of satisfactory performance by the Company of its obligations.

12. Consumer Guarantees Act 1993

- 12.1 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 do not apply to the provision of Services by the Company to the Client.

13. Intellectual Property and Confidentiality

- 13.1 If during the course of providing the Services, the Company develops, discovers, or supplies the Client with any information, ideas, documentation (including reports, proposals, designs, programmes, strategies, plans, specifications and other materials and aids, etc.), new concepts, products or processes ("**Intellectual Property**") which are capable of being patented, then copyright in that Intellectual Property shall remain the property of the Company, and the Client must not reproduce, copy or use it in any manner without the prior written permission of the Company.
- 13.2 Upon completion of any agreement with the Company, the Client must return to the Company all copies of any Intellectual Property (whether in written, electronic or other form), except as otherwise agreed with the Company. No copies of such Intellectual Property are to be retained, used or passed on to any third party by the Client.
- 13.3 The Client warrants that all designs, specifications, information and instructions to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Client's order. Furthermore, the Client agrees to indemnify, defend, and hold the Company harmless from all loss incurred or suffered by the Company 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 Intellectual Property rights by the Client during its use of the Services.
- 13.4 Each party:
- (a) shall treat all Confidential Information belonging to the other party as confidential and safeguard it accordingly; and
- (b) shall not disclose any Confidential Information belonging to the other party to any other person without the prior written consent of the other party, except to such persons and to such extent as may be necessary for the performance of any agreement between the parties, or except where disclosure is otherwise expressly permitted by the provisions of the such agreement.

- 13.5 The Company is obliged to remain vigilant to, and to advise the Client of, any conflict of interest that may potentially impact or harm the Client. The Company shall take all necessary precautions to ensure that all Confidential Information obtained from the Client under, or in connection with, any agreement:
- (a) is given only to such of its staff and professional advisors of the Company engaged to advise it in connection with the agreement as is strictly necessary for the performance of the agreement (and only to that extent);
 - (b) is treated as confidential and not disclosed (without prior approval) or used by such staff or professional advisors or the Company otherwise than for the purposes of the agreement.
- 13.6 The provisions of clauses 13.4 and 13.5 shall not apply to any Confidential Information received by one party from the other:
- (a) which is or becomes public knowledge (otherwise than by breach of this clause);
 - (b) which was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;
 - (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - (d) is independently developed without access to the Confidential Information; or
 - (e) which must be disclosed pursuant to a statutory, legal or Parliamentary obligation placed upon the party making the disclosure.
- 13.7 The Client:
- (a) shall immediately notify the Company of any breach of security in relation to Confidential Information and all data obtained in the performance of the agreement and will keep a record of such breaches. The Client will use its best endeavours to recover such Confidential Information or data however it may be recorded. The Client will co-operate with the Company in any investigation that the Company considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data;
 - (b) assumes liability for all loss or damage suffered by the Company as a result of breach of confidentiality undertaken by it, by itself or its employees or agents.

14. Default and Consequences of Default

- 14.1 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 the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Client owes the Company any money the Client shall indemnify the Company from and against all costs and disbursements incurred by the Company in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Company's collection agency costs, and bank dishonour fees).
- 14.3 Without prejudice to any other remedies the Company may have, if at any time the Client is in breach of any obligation (including those relating to payment, whether or not the payment is due to the Company) the Company may suspend or terminate the provision of Services to the Client, and any of its other obligations under the terms and conditions. The Company will not be liable to the Client for any loss or damage the Client suffers because the Company has exercised its rights under this clause.
- 14.4 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Client will be unable to make a payment when it falls due;
 - (b) 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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

15. Cancellation and Termination

- 15.1 Either party may, without liability, cancel these terms and conditions or cancel provision of the Services:
- (a) if there is no contract term specified, at any time by giving thirty (30) days' notice to the other party;
 - (b) if a contract term is specified, at any time after the end of the contract term by giving thirty (30) days' notice to the other party;
- 15.2 The Company may, in addition to their right to cancel under clause 15.1:
- (a) do so at any time:
 - (i) prior to the commencement of the Services, by giving notice to the Client, in the event the Company determine it is not technically, commercially or operationally feasible to provide the Services to the Client;
 - (ii) in the event the Client materially breaches these terms and conditions, and such breach is not capable of remedy.
- 15.3 In the event that the Client:
- (a) cancels the provision of Services prior to the expiry of any specified contract term, then the Client shall be liable to pay for the provision of the Services until the expiration of the contract term;
 - (b) fails to give notice of intention to cancel at least thirty (30) days prior to the expiration date of the contract term, the contract term shall automatically renew on a monthly basis, unless cancelled by way of the Client providing the Company with thirty (30) days' notice.
- 15.4 Should the Client, for any reason, cause the Services to be delayed for more than three (3) months after the acceptance date, this agreement will be terminated by the Company (at their sole discretion) and all Services completed, but not billed or paid, will be payable in full within seven (7) days from the date of the submitted invoice.

16. Privacy Act 1993

- 16.1 The Client authorises the Company or the Company's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including 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 the Company from the Client directly or obtained by the Company 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.
- 16.2 Where the Client is an individual the authorities under clause 16.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 16.3 The Client shall have the right to request the Company for a copy of the information about the Client retained by the Company and the right to request the Company to correct any incorrect information about the Client held by the Company.

17. Disclosure

- 17.1 The Client acknowledges that:

- (a) the Company can, and may, refer the Client for products and/or professional services associated with the provision of the Services by the Company. The Client further acknowledges that the Company may expect to derive consideration, either monetary or otherwise, from the referral; and
- (b) a third party may derive consideration, either monetary or otherwise, from the referral; and
- (c) the Company will not obtain, or seek to obtain, any consideration from a third party until such time as the Client has been disclosed of the nature, source and amount of any benefit the Company will receive from the referral; and such details shall be found in the completed prescribed form.

18. General

- 18.1 The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company'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.
- 18.2 These terms and conditions and any agreement to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 18.3 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 the Company nor to withhold payment of any invoice because part of that invoice is in dispute. Any invoice query/dispute will not be recognised if notified outside of seven (7) days from the date of the invoice.
- 18.4 The Company may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 18.5 The Client agrees that the Company may amend these terms and conditions at any time. If the Company makes a change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Client of such change via email. The Client will be taken to have accepted such changes if the Client makes a further request for the Company to provide Services to the Client.
- 18.6 Neither party shall be liable for any default due to fires, explosions, severe weather, industrial disputes, insurrection, requirements or regulations, or any civil or military authority, acts of war (whether declared or not), civil unrest, acts of God, earthquake, flood, riot, embargo, government act, strike, lock-out, storm, terrorism, failure or outage of any telecommunications links or other connections which are beyond the reasonable control of either party.
- 18.7 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.