

### Introduction

These terms and conditions (“**Terms**”) apply to work undertaken for you by Business Advisory Accounting & Tax Services Limited (including its executive management, staff, sub-contractors and related entities) (“**BAS/we/us**”). The terms will apply except where we have otherwise agreed with you in writing. “**You**” means our client as identified in an engagement letter or otherwise agreed. Where you are a company or other corporate or unincorporated entity, we act only for you. We do not act for your shareholders, directors or members unless we expressly agree otherwise.

These Terms, the Engagement Letter, including all Appendices (together called **this Agreement**) will apply to all work we undertake for you with respect to this engagement. You accept and agree to this Agreement by continuing to instruct us. If there is any conflict between these Terms and the Engagement Letter, then these Terms will prevail (except in circumstances where the Engagement Letter refers to and modifies a specific provision of these Terms).

In providing the services, we may use people and other resources of other BAS firms or related parties (**Affiliates**, being any entity controlled by, controlling or under common control with BAS’ shareholders), but the obligation to provide the services remains with us.

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### Term

This Agreement will apply from the commencement date stated in the Engagement Letter or, where no commencement date is stated, from the date on which you accept the Engagement Letter. The terms recorded in this letter will remain in force until varied by us in writing to you, or until cancelled by either of us by notice in writing to the other.

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### Services

We will provide the services as specified in our engagement letter (“**services**”). You are responsible for determining that the scope of the services is sufficient to meet your needs. We will use all reasonable commercial efforts to provide the Services in an efficient and timely manner and maintain the appropriate professional standard, using reasonable care, skill and expertise.

The conduct of any engagement will be in accordance with the standards, rules and ethical requirements of the Association of Chartered Certified Accountants (ACCA) and New Zealand Institute of Chartered Accountants.

We do not accept any responsibility for the accuracy and completeness of the accounting records and other information you supply to us or for the reliability, accuracy and completeness of the financial information compiled based on those records and information. We also do not accept any responsibility for the maintenance of adequate accounting records, an adequate internal control structure and the selection and application of appropriate accounting policies by you. You are solely responsible to users of the financial information we compile. You will be required to review and approve the final returns or reports for reasonableness and correctness, and you will need to understand the importance and risks of signing income tax returns or other statutory compliance engagements as being true and correct statutory records.

The information you are to supply and any other information that we consider necessary to complete the engagement must be provided on a timely basis so that the engagement can be completed on a timely basis.

Our engagement does not include the investigation or discovery of internal control weaknesses, errors, illegal acts or other irregularities, including without limitation, fraud, or non-compliance with laws and regulations. However, we will inform you of any such matters which come to our attention during our engagement. If, for any reason, we are unable to complete the compilation of your financial information, or we consider the information to be misleading, we may refer to such matters within our compilation report or we may determine, at our sole discretion, not to issue a report.

We can report to you regularly and a completion date can be provided if necessary. Unless otherwise agreed in writing, any timetables set will be for planning and management purposes only and will not be contractually binding upon us. Unless specifically stated to the contrary in the engagement letter:

- We may allocate appropriate executive staff, partners, staff and sub-contractors to perform the services and may replace any personnel named in the engagement letter with personnel of similar skills
- Our services do not involve an audit or examination conducted in accordance with New Zealand auditing standards and we will not express an opinion on any financial statements or information taken nor provide any opinion on the achievability of prospective financial information. We will rely on the information that you provide and will not verify that information;
- Our services do not include the provision of legal advice or legal due diligence services; if the services depend upon laws, regulations or interpretations by Government agencies, we are not responsible for any changes in those laws, regulations or interpretations (whether having retrospective effect) which occur after the date of our report and are not required to notify you of such changes;
- We are not responsible for the work of any other person who you engage to perform work in conjunction with our services;
- Where the words Examination, Compilation, Review, Opinion, Assurance or Agreed Upon Procedures are used to specify any services those words have the meanings assigned to them in professional standards of the Association of Chartered Certified Accountants.

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### Independence

Independence is not a requirement for a compilation engagement. If we are aware that we are not independent of you, this fact will be stated in our report. However, we will not conduct a comprehensive review to determine whether we are, or are not, independent of you. We will consider that we are not independent if we participate in decisions of management regarding the compiled financial information.

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### Reliance on our work

Any advice given will be based on our understanding of the statute, case law and practice as at the date of the advice. Therefore, any subsequent changes in the law and practice may affect its conclusions. It is also possible that others, including the Inland Revenue Department and the Courts, could reach conclusions that differ from those expressed in our advice. This is particularly relevant for tax advice due to the nature of tax law.

We are under no legal obligation to update the advice for events occurring after the advice has been given, including subsequent changes in law, judicial decisions or Inland Revenue policy changes and do not undertake to do so. You should ask us to confirm advice previously given if you want to repeat a transaction or if an action that we have advised on is delayed. We accept no responsibility for different outcomes arising from such changes.

It is our policy to set out in writing (which may be by e-mail) any advice on which you may wish to rely. In many cases, our advice will include a summary of our understanding of the facts or background on which our advice is based. It is important that you tell us if you think this summary does not accurately reflect the facts since our analysis of the transaction and resulting advice may then change.

During the supply of our Services, we may supply oral, draft, interim or ad hoc advice, reports or presentations but in such circumstances our written advice or final written report will take precedence. No reliance should be placed by you on any oral, draft, interim or ad hoc advice, reports or presentations. We accept no liability for any such oral, draft, interim or ad hoc advice, reports or presentations. Where you wish to rely on oral advice or an oral presentation, you must inform us at the time the oral advice or oral presentation is given, and we will provide written confirmation of the advice. You will be free to follow or to disregard, in whole or in part, any recommendations we may make. You will be responsible for any & all decisions regarding the implementation of any of our recommendations. However, if you should elect not to implement our recommendations, you will thereby waive any claim for a refund of any fees. The services are intended for the addressee of the engagement letter only and should not be relied upon by management of, or advisers to, the addressee in their personal capacities.

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### Disclosure of our work

We understand that the intended use and distribution of the financial information we will compile is for meeting your income tax requirements. If this should change in any material respect, you will inform us immediately. The services are provided for your use only. We will not accept any responsibility to any person, other than you, for the contents of the financial information and statement(s) and income tax

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returns. No person should rely on the financial statements without having an audit or review engagement conducted. You must not disclose any report or other information provided as part of the services to any other person without our prior written consent. You must not use our name relating to any prospectus, information memorandum or other offer or marketing document, whether public or private, without our prior written consent.

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#### **Non-disclosure Rights**

Tax advice is subject to non-disclosure rights under the Tax Administration Act 1994 and may also be subject to legal privilege. If so, the Inland Revenue cannot require you to provide all the advice given to them. You should not disclose tax advice to any other party, including the Commissioner of Inland Revenue and any of his/her officers without first obtaining professional advice. If the Inland Revenue request documentation, please seek advice as to what you are required to disclose. Disclosure to any other person may void the non-disclosure right.

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#### **Fees**

It is important to us that you understand the basis upon which our fees are calculated, the times when fees and disbursements will be invoiced and our expectations for payment. Unless otherwise agreed, our fees are normally based on hours worked charged at rates appropriate to the work performed and the levels of expertise required, including the:

- Time and labour expended;
- Levels of skill, specialised knowledge and responsibility involved;
- The importance of the matter to you and the results achieved;
- The urgency and circumstances in which your matter is carried out;
- The complexity of the matter and the difficulty or novelty of the issues involved;
- The number and importance of the documents prepared and considered; and
- The reasonable costs of running a practice.

We can provide a fixed price or estimate for tasks or projects which can be adequately defined. Any fixed price given will be binding on us in accordance with the terms of any Price Agreement. Estimates given will be a guide only and will not constitute a fixed price. Fixed prices or estimates will depend on the accuracy, timeliness, completeness, relevance, and reliability of records and information provided by you. You agree to pay reasonable professional fees and expenses, including legal fees and expenses, in complying with or challenging any legally enforceable notice or demand issued by a third party including any government department or any court or tribunal in relation to or about the services.

We acknowledge that clients do not like receiving large unexpected or unexplained bills. We aim to address this in four ways:

- Most of the accounting work we undertake for clients is charged on an hourly basis - so we are generally able to estimate the time we'll need for most jobs. We do not invoice according to fee limitation. If you'd like an estimate before we start your work, please don't hesitate to ask. But please note that an estimate is not a fixed fee and we reserve the right to alter the estimate by 10.0% either way. We will inform you as soon as possible if any major variance is likely to result.
- We invoice when a job has been completed or at month-end so that large invoices don't accumulate.
- We fully narrate our invoices with comprehensive explanations of the assignment or work undertaken.
- By prior negotiation and criteria acceptable to both you and us we may be willing to perform certain assignments for a fixed fee. The assignment and the fee for the work must be agreed in writing prior to the work being started. A deposit for fifty percent of the negotiated fee must be paid before the work is started, with the balance being paid on completion.

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#### **Disbursements**

In addition to our fees, we will charge disbursements that are necessary to effectively carry out "the services". Disbursements, representing a service charge of 3.0% (up to a maximum of \$30.00) to cover our costs in respect of office supplies, postage and courier charges, computer consumables, secretarial support and telecommunications, will be added to our invoice(s). Travel will be charged at prevailing IRD allowances per kilometre.

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#### **Invoices**

Invoices will be rendered monthly for time incurred within that month. In instances where the Services have not been completed by month end, a progress invoice will be rendered.

Invoices are payable in accordance with the terms specified on the invoice unless otherwise agreed in writing. Our invoices are typically due for payment upon receipt. If your account remains unpaid and there is no satisfactory explanation for non-payment, we may do any or all the following:

- Charge interest on overdue amounts at the rate of 5% over the current 90-day bank bill rate or such other rate as may be stipulated in the Engagement Letter;
- Add an administration fee of \$25.00 plus GST for each statement or reminder we send you (not exceeding 1 fee per 14 days);
- Start proceedings to recover the amount owed, plus default interest and any collection costs incurred. It is our policy to commence legal proceedings if our fees remain unpaid after 30 days unless an arrangement plan is approved by us. All costs (including without limitation debt collection fees and our solicitor's legal expenses) incurred by us in recovering or attempting to recover payment of any debt owed by you to us will be payable by you upon demand;
- Cease to do any further work for you, including (but not inclusive of) postponing filing your tax returns & withhold your papers & files until all accounts are paid.

If we agree to address an invoice to another person, you will be required to pay that invoice if the other person does not. We are always prepared to discuss the amount of any invoice with you. If you have any questions or concerns, please contact the person responsible for the management of your matter.

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#### **Tax Refunds**

You agree that we will have a general authority to deposit funds belonging to you (including income tax and GST refunds) to our trust account. Funds in our trust account will be handled according to the rules of ACCA including the professional standards issued by the ACCA Council. To the extent permitted by those rules and the professional standards, we may apply funds held in trust in satisfaction of amounts owing to us by you.

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#### **Information**

You will provide us promptly with accurate & complete information reasonably required for the proper performance of the Services, including access to appropriate members of your staff, records, information technology, systems and premises. We will be entitled to rely upon the accuracy of all information provided by you, or by others on your behalf, without independently verifying it. You must notify us promptly if any information provided by you is rendered untrue, unfair or misleading. If required, you must take all necessary steps to correct any communication or document issued which contains, refers to or is based upon such information.

Information made available by you, or by others on your behalf, to or which is otherwise known by, any of our personnel who are not engaged in the provision of the services will not be deemed to have been made available to those of our personnel who are engaged in the provision of the services to you. We have no duty to disclose information to you which is not actually known by those working on your matter, even though that information may be relevant to you.

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#### **External Information**

In advising you we may rely on, or provide you with, external information or public records (eg, government agencies or registers). This information may not always be accurate or complete. We do not accept responsibility and will not be liable for any direct or indirect damage or loss caused by errors or omissions in external information or public records.

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#### **Liability limitation**

We will be liable to you for net losses, damages, costs or expenses (losses) caused by our gross negligence or wilful default, except:

- We will not be liable if such losses are due to the provision of false, misleading, incorrect or incomplete information or documentation by you, our reliance on instructions provided by you, or due to any acts or omissions of any person other than BAS;
- We will not be liable to you for accidental, incidental, indirect, special, punitive or consequential damages or for loss of profits or savings, even if BAS has been advised of, knew or should have known of the possibility of such damage or loss;
- We will have no liability for any statements, representations, guarantees, conditions or warranties (together representations) arising from communications (oral or written) which are not expressly contained in this Agreement. All representations to exercise reasonable care or render our Services with due care and skill which may otherwise be implied by statute, common law or custom are expressly excluded; and

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- The aggregate liability of BAS, whether to you or any third party, of whatever nature, whether in contract, tort or otherwise, for any losses (including interest) whatsoever and howsoever caused arising from or in any way connected with this engagement shall not exceed 2 (two) times the fees invoiced under this engagement letter.

We will have no other liability of any nature, whether in contract, tort or otherwise, for any losses, caused, arising from or in any way connected with our engagement.

You agree that our liability for all loss or damage suffered by you (in aggregate) (whether direct, indirect or special) relating to our engagement will be limited to the amount of professional fees paid to us for the Services or such other maximum amount as stated in our Engagement Letter. You agree to release us from all claims arising relating to the Services to the extent that our liability in respect of such claims would exceed this amount. If the Services were provided in respect of more than one financial year the fee on which the liability amount is based will be the fee paid in respect of the financial year in respect of which the act or omission occurred.

You agree that all claims against us, whether in contract, tort, negligence, equity or otherwise, must be formally commenced within 12 months after the party bringing the claim becomes aware (or ought reasonably to have become aware) of the fact which gave rise to the action and in any event no later than two years after any alleged breach of contract, tort, negligence, equity or other cause of action arises. Where this Agreement applies to more than one Client, the limitation of liability contained in this clause must be allocated among these Clients. Such allocation is a matter to be resolved by those Clients.

You agree to look only to BAS or the insurance maintained by us to satisfy our obligations or liabilities to you under this Agreement or otherwise. None of our Affiliates, nor ours or our Affiliates' officers, partners or Personnel will be liable for our obligations to you. You will not commence any action or proceeding against any such persons for the purposes of enforcing your rights under this Agreement. This clause is intended to be for the benefit of, and enforceable by, those persons described in this clause for the purposes of the Contracts (Privity) Act 1982.

This clause may be amended without the need to obtain the consent of any of those persons.

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#### **Equitable sharing of liability**

Subject to the maximum aggregate liability specified in the "Liability limitation" clause, our aggregate liability shall be limited to that proportion of the total damage for which we are responsible. Each party shall bear only that part of any loss or damage that is proportionate to the loss or damage it has directly caused. In determining responsibility for loss or damage caused, account shall be taken of any loss or damage that is reasonably attributable to any third party. Nothing in these terms and conditions affects the rights, obligations or remedies of the parties under the Contributory Negligence Act 1947 or the Law Reform Act 1936.

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#### **Indemnity**

You agree to indemnify us:

- Against all losses, claims, costs, expenses, actions, demands, damages, liabilities or any other proceedings, incurred or suffered by us, including in respect of any claim by a third party (whether in contract, tort, or otherwise), arising from any breach by you of your obligations under this Agreement or because of any action we take in good faith;
- Against all losses, claims, costs, expenses, actions, demands, damages, liabilities or any other proceedings, incurred or suffered by us in respect of any claim by a third party (whether in contract, tort, or otherwise) from your use of our work product; and
- From any liabilities we may have to you or any 3rd party because of reliance by us on any information provided by you or any of your representatives, which is false, misleading, incorrect or incomplete or as a result of the failure to provide information which was material information held in your possession or control.

The indemnities in this clause will include all costs incurred by us regarding such liability or claim, including legal costs, the time of BAS Personnel and the costs of any expert engaged by us to assist in dealing with the claim or liability in any way.

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#### **Confidentiality**

The conduct of this engagement is in accordance with the professional standards, rules and ethical requirements of the Association of Chartered Certified

Accountants and New Zealand Institute of Chartered Accountants. Information we obtain during this engagement is subject to confidentiality requirements, in addition to our obligations under the Privacy Act 1993. We will not disclose that information to other parties, without your express consent, except as required by law or professional obligations.

However, as members of the Association of Chartered Certified Accountants and the New Zealand Institute of Chartered Accountants, we are subject to and bound by the disciplinary procedures and rules of the Institute, and our work and files are subject to the practice review rules of the Institute under which compliance with professional standards by members is monitored. These procedures and rules require us to disclose to the Institute, its reviewers and/or its disciplinary bodies our files and work papers including client information. By allowing us to undertake this engagement (whether or not you sign this letter), you acknowledge that, if requested, our files relating to this engagement will be made available to the Institute, its reviewers and/or its disciplinary bodies. We assure you that the same ethical standards regarding confidentiality that we adhere to apply equally to the Institute's reviewers.

You agree not to disclose confidential information about us or our concepts or techniques unless required to do so by law. Where appropriate, we may use in internal and external publicity material the credentials obtained in doing work for you. We will only publicly claim credit for our work for you where we have your permission to do so, which may be given generally for the work we do for you. However, unless you expressly forbid us doing so, we may refer to our work for you in proposals (or other similar submissions to prospective clients).

BAS will use your personal information to continually enhance the range of value-added products and services that we can provide to you (such as, but not limited to, data analytics, data forensics, business intelligence, and benchmarking services). In using and sharing your personal information BAS will take all practical steps to ensure that it is de-identified and aggregated so that your personal information and privacy is protected.

The use of your personal information, and the products and services that arise from that use, is solely for the benefit of BAS clients. BAS will not sell or trade personal information to third parties or allow such third parties to use that personal information. BAS will not disclose identifiable confidential information acquired during conducting professional work unless required by law or where there is a professional right or duty to disclose the information.

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#### **Ownership and destruction of working papers**

Material that you provide to us remains yours and will be returned to you when the engagement is completed. Work papers that we create remain our property. However, if your affairs at some time in the future are handled by another Chartered Accountant, we will make available, as required by the Code of Ethics, such information regarding your affairs that is essential to enable your new Chartered Accountant to perform the services we previously provided.

Our work may involve the collection of personal information relevant or incidental to the engagement. Any such information will be held at our offices and will be retained for as long as may be relevant to the engagement, and, except where otherwise noted in this letter, will only be used or disclosed for purposes related to the engagement. Individuals concerned will be able to contact us to access information held concerning them and, if necessary, seek correction to that information. By signing this engagement letter, you confirm we have authority to communicate with and obtain information from any third party (including the Inland Revenue Department) if the information sought is relevant to our engagement.

We will store tax records that we hold on your behalf for a period of seven years after the applicable balance date. At the end of that period, unless you ask us to send that information to you, the records will be destroyed using a secure document destruction service.

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#### **Intellectual property rights**

Intellectual property rights in all documentation, systems, materials, methodologies and processes (tools) brought to and utilised by BAS in relation to the services or created during providing the services, and in all working papers and reports, remain vested in BAS.

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Subject to the requirement to treat confidential information as confidential any spreadsheet, database, system, technique, methodology, idea, concept, information or know-how developed during the contract may be used in any way we deem appropriate, including by or for our clients, without any obligation to account to you. In the case of documentation or software prepared by BAS for you we may, on termination or completion of the contract, retain one copy of such information as a professional record or our involvement.

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#### **Communication**

During our performance of the Services we may wish to send messages and documents electronically. You acknowledge that electronic communication carries with it the possibility of inadvertent misdirection, interception or non-delivery of confidential material. If you do not consent to the use of electronic communication during providing the Services, you should notify us in writing.

We do not accept responsibility and will not be liable for any damage or loss caused relating to the interception or corruption of an electronic communication or if it contains a virus. We will not be liable for any damage or loss arising because of any unauthorised copying, recording, reading or interference with that document, for any delay or non-delivery of any document and for any damage caused by your system or any files by that message or document.

We produce electronic newsletters and conduct seminars for clients, which cover a range of topics. We may add you to our database so that you will receive newsletters and invitations to seminars that we consider will be useful to you. However, please let us know if you do not want to receive any such correspondence.

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#### **Other engagements**

Nothing in this contract prevents BAS from providing services to other clients if we take reasonable steps to ensure that each client's confidential information is not disclosed to other clients. This contract is separate from other engagements that we may perform for you or for other clients and we have no obligations to utilise knowledge gained from such other engagements when performing the services under this contract.

By entering into this Agreement and providing the services, we do not assume a responsibility to you in relation to any reports or opinions that we may have provided under separate engagements, including statutory audit reports, or in relation to any other work that we may have performed for any other client, whether or not that client is the subject of the services.

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#### **Circumstances outside the Parties' control**

Neither party will be liable to the other for any failure to fulfil obligations caused by circumstances outside its reasonable control.

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#### **Assignment**

Neither party may assign, transfer, charge or otherwise deal with its rights or Partial invalidity obligations under the contract without the prior written consent of the other party, except that each may transfer its respective rights and obligations to a partnership or legal entity authorised to take over all or part of its business.

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#### **Resolving disputes**

If at any time you would like to discuss how the Services can be improved or you would like to make a complaint, please contact us. We will investigate any complaint promptly to resolve the difficulties.

In the event of a dispute, or where fees remain unpaid beyond the due date, we reserve the right to suspend provision of the Services until the dispute is resolved or the fees are paid. The suspension of the Services will not affect your obligation to pay us for Services rendered to the date of suspension. This Agreement is governed by New Zealand law. Both parties agree to irrevocably submit any disputes arising under this Agreement first to mediation and then to the exclusive jurisdiction of the Courts of New Zealand. The parties undertake to use all reasonable efforts in good faith to resolve any dispute which arises between them. If the parties fail to resolve the dispute, then the parties will try to settle their dispute by mediation before resorting to litigation. In the unfortunate circumstance that a disagreement arises between us over our fees, if the matter cannot be resolved amicably by discussion (which is the preferred option) then we both agree to use the Fees Resolution Service of the New Zealand Institute of Chartered Accountants to resolve the matter.

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#### **Variation**

No variation of this Agreement will be valid unless confirmed in writing by authorised signatories of the parties on or after the date of signature of the Engagement Letter, provided that these Terms may be amended by us and the amended Terms shall apply to any engagement entered after we notify you of the amended Terms.

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#### **Termination and Assignment**

If either party commits a breach of this Agreement and fails to remedy the breach within 14 days of receiving written notice, the party giving the notice may cancel this Agreement on written notice, without prejudice to any other right it may have in the circumstances. In any case this Agreement may be terminated by either party on written notice to the other party. You must pay our fees for work done and for other charges incurred up to the time of termination. You may not assign or transfer any of your rights or obligations under this Agreement. If we have custody of any documents owned by you that are otherwise required by law to be held at our premises, you will ensure that the place at which they must be held is changed to your or some other address prior to the end of our appointment unless otherwise agreed.

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#### **Entire agreement**

These Terms, the Engagement Letter and any Price Agreement record our entire understanding and agreement relating to the matters dealt within them. This Agreement supersedes all previous understandings or agreements (whether written, oral or both) between us relating to such matters.

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#### **Partial invalidity**

If any provision of this Agreement is or becomes invalid or unenforceable, that provision will be deemed deleted from this Agreement. The invalidity or unenforceability of that provision will not affect the other provisions of this Agreement. All the other provisions will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.

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#### **Definitions**

Words not defined elsewhere in these Terms have the meaning set out below.

**Appendices** mean the appendices or attachments to the Engagement Letter.

**Client** means you and all other entities and group companies you instruct us to act for under this Agreement.

**Engagement Letter** means the engagement letter in any form including email and any Appendices.

**Price Agreement** means an agreement to provide specific services to you at a fixed price and which is expressly stated to be a fixed price agreement.

**Personnel** means principals, other employees, consultants and contractors.

**Services** means the services set out in our Engagement Letter.

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