



## LDE Terms of Engagement

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1. The Consultant shall perform the Services as described in the attached documents.
2. Nothing in this Agreement shall restrict, negate, modify or limit any of the Client's rights under the Consumer Guarantees Act 1993 where the Services acquired are of a kind ordinarily acquired for personal, domestic or household use or consumption and the Client is not acquiring the Services for the purpose of a business or commercial gain.
3. The Client and the Consultant agree that where all, or any of, the Services are acquired for the purposes of a business or commercial gain the provisions of the Consumer Guarantees Act 1993 are excluded in relation to those Services.
4. The party signing this contract, in consideration of the Consultant entering into the contract with the Client, acknowledges and agrees they are entering into this contract in their personal capacity as well as on behalf of the Client and further acknowledges and agrees it is jointly and severally liable with the Client as a principal debtor to the Consultant and confirm they are authorised to bind the Client under this Agreement.
5. Any party to this Agreement that signs these terms on line, by doing so confirms that they are bound in all capacities to these terms and conditions as if they had signed the terms and conditions as original copies.
6. The Client grants to the Consultant an agreement to mortgage over the Property to secure the amount owing from time to time to the Consultant for the contract. The Client shall, if required, execute in favour of the Consultant, a registerable mortgage in the standard All Obligations Auckland District Law Society form used from time to time with such modifications as the Consultant or Consultant's solicitor deem necessary over the Property to secure the due payment of all the money payable by the Client to the Consultant under this agreement, and pay all costs incurred by the Consultant in preparation, execution and registration of the mortgages referred to above. The term "Property" shall also include any additional, replacement or substitute property owned by the Client during the term of this agreement.
7. The Client or Agent acting on behalf of the Client shall provide to the Consultant, free of cost, as soon as practicable following any request for information, all information in its, his or her power to obtain which may relate to the Services and/or the Project Address at any reasonable time during the operation or this agreement. The Consultant shall not, without the Client's prior consent (unless required by law), use or release information provided by the Client for purposes unrelated to the Services. In providing the information to the Consultant, the Client shall ensure compliance with the Copyright Act 1994 and shall identify any proprietary rights that any other person may have in any information provided.
8. The Client or Agent acting on behalf of the client will be responsible for making the land at the Project Address available for testing, inspection and any other matters the Consultant considers reasonable and appropriate from time to time at all reasonable times, including, but not limited to, notification of any people associated with the Project Address that are relevant to this project; for providing information regarding any possible services to the site and through the Project Address.
9. All rights of entry, services information and consents (other than those provided by us under this agreement), to enable completion of the commission, shall be secured by the Agent or the Client.

10. Correction of any damage to or reinstatement of any underground services, subsurface soil, rock, groundwater, surface water, buildings, surfaces, platform, structure and/or vegetation arising from the work is outside the terms of this agreement.
11. The Consultant shall not be liable for and the Client will fully indemnify the Consultant for any loss or damage whatsoever arising from a breach of this agreement by the Consultant, directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.
12. The Client may order variations to the Services in writing or may request the Consultant to submit proposals for variation to the Services. Where the Consultant considers a direction from the Client or any other circumstance is a Variation the Consultant shall notify the Client as soon as practicable. Such Variations shall not form part of the terms between the Consultant and the Client until they are recorded in writing and signed by the parties.
13. The Client will inform the Consultant immediately of any unforeseen changes, new developments, or other issues that impact and influence this project and provide the Consultant with all information relating to the same as it may be in the direct or indirect control of the Consultant, so that the Consultant can inspect, consider and adjust appropriately.
14. The Client shall pay the Consultant for the Services the fees and expenses at the times and in the manner set out in the attached documents. Where this Agreement has been entered by an agent (or a person purporting to act as agent) on behalf of the Client, the agent and Client shall be jointly and severally liable for payment of all fees and expenses due to the Consultant under this Agreement.
15. All amounts payable by the Client shall be paid upon receipt of the relevant invoice being mailed to the Client. Late payment shall constitute a default, and the client shall pay default interest on overdue amounts from the date that the payment falls due at a rate of 2% per month and in addition the costs of any actions taken by the Consultant to recover the debt, including but not limited to legal costs on a solicitor to client basis and the Consultant's time and expense in resolving the default by the Client.
16. Where Services are carried out on a time charge basis, the Consultant may purchase such incidental goods and/or Services as are reasonably required for the Consultant to perform the Services. The cost of obtaining such incidental goods and/or Services shall be payable by the Client. The Consultant shall maintain records which clearly identify time and expenses incurred copies of which will be made available to the Client upon request.
17. The Consultant retains all rights whatsoever, including but not limited to intellectual property, copyright and ownership of all data, information, drawings, specifications reports and any other documents whatsoever obtained, derived and prepared by the Consultant in the course of the Works. The Client shall be entitled such them or copy them only for the Works to which the Services relate and the purpose for which they are intended. The ownership of data and factual information collected by the Consultant and paid for by the Client shall, after payment by the Client in full, lie with the Client. The Client may reproduce drawings, specifications and other documents in which the Client has ownership, as reasonably required in connection with the Project, but not otherwise without the prior written consent of the Consultant in its unfettered discretion. The Client shall have no right to use any such documents where any or all of the fees and expenses to the Consultant remain outstanding and all reports, data, information and advice shall be deemed invalid and the Consultant will not be legally bound by it in any way whatsoever.
18. Where the Consultant breaches this Agreement, the Consultant is liable to the Client for reasonably foreseeable claims, damages, liabilities), losses or expenses caused directly by the breach. The Consultant shall not be liable to the Client under this Agreement for the Client's indirect, consequential or special loss, or loss of profit, however arising, whether under contract, in tort or otherwise.

19. The maximum aggregate amount payable, whether in contract, tort or otherwise, in relation to claims, damages, liabilities, losses or expenses, shall be five times the fee (exclusive of GST and disbursements) but in any event not greater than \$NZ250,000.
20. Without limiting any defences, a Party may have under the Limitation Act 2010, neither Party shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on a Party within 6 years from completion of the Services.
21. The Consultant acknowledges that the Consultant currently holds a policy of Professional Indemnity insurance for the amount of liability under clause 19. The Consultant undertakes to use all reasonable endeavours to maintain a similar policy of insurance for six years after the completion of the Services.
22. If either Party is found liable to the other (whether in contract, tort or otherwise), and the claiming Party and/or a Third Party has contributed to the loss or damage, the liable Party shall only be liable to the proportional extent of its own contribution and in any event the Consultant's liability shall be limited as set out in these terms.
23. The Consultant and the Client will be aware of, and comply with, any relevant obligations imposed on them under the Health and Safety at Work Act 2015 (the "Act"). The Consultant has not and will not assume any duty imposed on the Client from time to time pursuant to the Act arising out of this engagement.
24. The Client may suspend all or part of the Services by notice in writing to the Consultant who shall immediately make arrangements to stop the Services and minimise further expenditure. The Client and the Consultant may (in the event the other Party is in material default) terminate the Agreement by notice to the other Party. Suspension or termination shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.
25. The Parties shall attempt in good faith to settle any dispute by mediation.
26. This Agreement is governed by the New Zealand law, the New Zealand courts have jurisdiction in respect of this Agreement, and all amounts are payable in New Zealand dollars.
27. The Client and the Consultant each agree that they shall not, during the provision of the Services and for a period of 6 months following either completion of the Services or termination of the Services by either party, solicit or entice away from employment any employee of the other who was involved in either the provision or receipt of the Services.
28. The Client shall not assign any of its rights or obligations under these terms and conditions without the prior written consent of the Consultant, such consent which shall not to be unreasonably withheld if the following conditions are fulfilled:
  - (a) the Client is not in breach of any of its obligations under these terms and conditions (including, but not limited to the obligation to pay the Consultant in accordance with the contract price); and
  - (b) a deed of assignment and novation (to be prepared by the Consultant's lawyer at the cost of the Client) is executed by all relevant parties and delivered to the Consultant.
29. Where the Client is a New Zealand registered limited liability company:
  - (a) the written consent of the Consultant is required (which shall not be unreasonably withheld or delayed) where there is any change in the legal or beneficial ownership of its shares or where there is a change in the effective management and control of the company; and
  - (b) it has the power to enter into the contract with the Consultant, it has obtained all necessary authorisations to enable it to be bound by these terms and conditions and it is solvent.
30. These terms and conditions remain in force notwithstanding any neglect, forbearance or delay in enforcement. The Consultant shall not be deemed to have waived any term or condition unless such waiver shall be in writing and signed by the director of the Consultant and any such waiver shall apply only to the particular transaction to which it refers.

31. If any clause or provision of these terms and conditions shall be held illegal or unenforceable by any judgment of any Court or Tribunal having competent jurisdiction, such judgment shall not affect the remaining provisions of the terms and conditions and the balance of which shall remain in full force and effect as if such clause or provision held to be illegal or unenforceable had not been included.
32. The Client authorises the Consultant to:
  - (a) Collect, retain and use this information for the purpose of assessing the Client's creditworthiness and suitability; and
  - (b) Disclose information about the Client, whether collected from the Client directly or from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit report (which will involve the credit reporting agency providing information about the Client to the Consultant).
33. The Consultant, in its sole and unfettered discretion may decline to contract with the Client in the event the credit report is unsatisfactory
34. The Client hereby confirms that it understands that the credit reporting agency:
  - (a) May hold the Client's information on their credit reporting database and use it for providing credit reporting services, and they may disclose the Client's information to their subscribers for the purpose of credit checking or debt collection; and
  - (b) As part of providing a credit report, may check the Ministry of Justice fines database for any overdue fines the Client may have.