



Standard Terms & Conditions

1. Engagement

The Client engages Empathy to provide the Services, and Empathy accepts that engagement, on the following terms and conditions.

2. Performance & Delivery

- (a) Empathy shall provide the Services in accordance with a reasonable standard of skill and diligence, subject to any financial, physical, time or other constraints imposed by the Client or reasonably resulting from the nature of the engagement.
- (b) Empathy shall, where practicable, advise the Client of any matter, circumstance or instruction that may affect the timely delivery or quality of the Services and/or constitute a variation to the Services and thereby require an adjustment to the Fee.
- (c) Empathy shall not make any material change to the Services approved in writing by the Client except:
 - (i) With the Client's instruction or agreement; or
 - (ii) Where circumstances or Project issues require Empathy to exercise urgent discretion, and the Client is promptly notified.
- (d) Any timeframes provided by Empathy for completion of the Services or any Phase are indicative estimates only, and any delay shall not entitle the Client to terminate the Agreement or claim remedies.
- (e) The Client agrees to:
 - (i) Provide Empathy with a full brief of the Project requirements and objectives, together with any other information reasonably requested by Empathy to enable Empathy to comply with Empathy's obligations under the Agreement;
 - (ii) Provide Empathy with all components and material (including logos, graphics, text and other materials/data/hardware) as reasonably required for the Services and/or as set out in the Statement of Work; and
 - (iii) Work constructively and in good faith with Empathy in order to resolve any aspects of the Services or the Project, to enable the Services to be provided efficiently.
- (f) The Client acknowledges that Empathy may be required, in the course of providing the Services, to make assessments based on information supplied either by the Client or compiled by others. Empathy will rely on and not verify its accuracy and completeness. The Client agrees that Empathy will not be liable for any loss or damage the Client sustains, directly or indirectly, in connection with Empathy's reliance on that information.

3. Intellectual Property

As part of providing the Services, Empathy may utilise existing Intellectual Property, including or incorporating (as the case may be) Intellectual Property owned by Empathy or Intellectual Property which Empathy is licensed or otherwise permitted to use and/or supply to the Client. The following Intellectual Property ownership and use rights shall therefore apply unless otherwise agreed in writing between the Parties:

- (a) The Client grants Empathy the right, authority and licence to use the Client IP for the sole and exclusive purpose of the Project, on the terms and conditions set out in this Agreement.
- (b) The Client IP remains the property of the Client and/or its licensors. This licence does not convey title or grant any rights of ownership in Client IP to Empathy.
- (c) Empathy grants the Client the right, authority and licence to use the Empathy IP for the sole and exclusive purpose of the Project, on the terms and conditions set out in this Agreement.
- (d) Empathy IP remains the property of Empathy and/or its licensors. This licence does not convey title or grant any rights of ownership in the Empathy IP to the Client.
- (e) Empathy may, at its sole discretion, create new or derivative Empathy IP, or amend, modify, alter, add to, or remove from, the Empathy IP.
- (f) Empathy may suspend or revoke the licence granted in subclause (c) above if the Client fails to make any payment owed to Empathy on time.
- (g) Any Intellectual Property which has been disclosed between the Parties before the commencement of the Agreement shall for all purposes be deemed to have been disclosed under and be subject to all the terms, limitations and conditions of the Agreement.
- (h) The Client shall not sell, assign, sublicense or otherwise transfer or deal with the Empathy IP, except for the Client's use of the Services in accordance with the Agreement.
- (i) Empathy asserts all of Empathy's moral rights in respect of the Services and any reference to the Services shall be accompanied by full attribution to Empathy in a form approved by Empathy.
- (j) The Client warrants that:
 - (i) It is the duly authorised owner or licensee of the Client IP and has the right and authority to licence the Client IP to Empathy on the terms of this Agreement;
 - (ii) There are no existing restrictions or constraints on the Client's right and authority to license the Client IP to Empathy on the terms of this Agreement; and
 - (iii) Empathy is fully entitled to use the Client IP without restriction for the purposes of the Project. Empathy is also permitted, but not obliged, to make incidental usage and copies of those materials, including for working drafts, backups, archiving, and storage.
- (k) Empathy warrants that:
 - (i) It is the duly authorised owner or licensee of the Empathy IP and has the right and authority to licence the Empathy IP to the Client on the terms of this Agreement; and
 - (ii) There are no existing restrictions or constraints on Empathy's and authority to license the Empathy IP to the Client on the terms of this Agreement.
- (l) Any breach of this clause 3 undertaken or permitted by the Client which results in damage to the professional reputation of Empathy shall entitle Empathy to compensation from the Client for that damage in addition to any other remedies available to Empathy.

4. Conditions of Use

- (a) Where one Party ("Licensor") licenses Intellectual Property to the other Party ("Licensee") for use as provided in this Agreement, then provided the Licensee has complied fully with this Agreement, and unless otherwise agreed in writing between the Parties:
 - (i) The Licensor grants the Licensee a perpetual, non-exclusive and non-transferable licence to use the Intellectual Property on the terms set out in this Agreement only;
 - (ii) The Intellectual Property is provided solely for the Licensee's internal use and benefit and only in connection with the Project. The Licensee may not disclose the Intellectual Property to any third person without the Licensor's prior written consent;
 - (iii) Should the Licensee wish to re-use, repurpose or re-present the Intellectual Property for any purpose outside the scope of the Project, the Licensee must seek prior written consent from the Licensor (which shall be granted at the Licensor's sole discretion); and
 - (iv) The Licensee may not modify, amend, redesign, change, crop, manipulate, copy, add new components, create derivative works or extract portions or otherwise alter the original form of the Intellectual Property except with the written consent of the Licensor (and where necessary, its suppliers and licensors). Metadata removal is expressly prohibited.
- (b) Other than as provided in the Statement of Work, Empathy is not obliged to provide the Deliverables in any particular electronic, physical or editable formats, and full copies may (at Empathy's discretion) be provided in any print, electronic or non-editable electronic form.
- (c) Unless specifically recorded in writing as a Deliverable, any aspect of the Services which are 'preliminary work', incomplete or draft works, raw data, field notes, technical files and any non-final products (including plans and sketches), production files/code and technical frameworks remain the property of Empathy and are not licensed or supplied to the Client.
- (d) Empathy may use or develop diagrams, visual or audible content, templates or other tools, documentation or materials (all "Empathy Materials") in providing the Services. If Empathy provides Empathy Materials to the Client:
 - (i) The Client acknowledges that the Empathy Materials were developed for Empathy's purposes and without consideration of any purpose for which the Client might use them, are made available on an "as is" basis for the Client's use only and must not be distributed to or shared with any third party. Empathy makes no representations or warranties as to the sufficiency or appropriateness of the Empathy Materials for any purpose for which the Client may use them; and
 - (ii) If the Client has fully complied with this Agreement, Empathy shall grant the Client a perpetual, non-exclusive and non-transferable licence to use the Empathy Materials for the sole purpose of the Project.

5. Information Use (privacy and confidentiality)

- (a) Empathy shall abide by the Privacy Act 1993 and shall take all practical steps to achieve privacy protection.
- (b) The Parties shall take all reasonable steps to keep secure and private each other's data. The Parties agree not to use Confidential Information relating to this Agreement for any other purpose.

- (c) Empathy shall keep as confidential the Client's details and/or the details of the Services where instructed to do so by the Client, except where it is reasonably necessary to enable Empathy to provide the Services.

6. Fees and Payment

- (a) In some circumstances, the total Fee payable for the Services will not be fixed, specified or known at the time of entering into the Agreement. Empathy is not obliged to provide an estimate for the Fee and the Fee may be calculated by reference to the actual costs incurred, or usual charges, by Empathy whilst carrying out the Services or upon completion of the Services.
- (b) To allow for the circumstances set out in subclause (a) above, Empathy may invoice the Client:
 - (i) Prior to commencing the Services;
 - (ii) Monthly;
 - (iii) At the completion of a Phase;
 - (iv) Upon completion of the Project; or
 - (v) At appropriate milestones as Empathy progressively completes the Services.
- (c) Unless otherwise agreed, the Client shall pay Empathy for all fees, costs and disbursements (plus GST) incurred by Empathy in providing the Services.
- (d) Where a Fee estimate is given for the Services, this reflects Empathy's good faith assessment of the foreseeable work required to complete the Services (and the corresponding Fee), and is not a binding quotation.
- (e) Empathy shall endeavour to provide advance notice of increases to Fees or Fee estimates, but failure to do so will not prejudice or affect Empathy's rights under this clause. Empathy is not obliged to bring any changes to Fee estimates to the attention of the Client.
- (f) The Fee and/or Fee-estimate is subject to reasonable upward adjustment in the event that:
 - (i) After the commencement of the Agreement, the Client changes the scope of Services required;
 - (ii) Through no fault of Empathy, the Services will require more effort and labour to complete than reasonably contemplated (including work in excess of that stated in the Statement of Work);
 - (iii) The cost of providing the Services unexpectedly increases due to circumstances beyond the control of Empathy between the date of the Agreement commences and the date the Services are completed; and/or
 - (iv) After completion of a Phase or any part of the Services, the Client instructs Empathy to alter the Services supplied, or supply alternative Services;
- (g) Unless otherwise agreed in writing, payment of Empathy's invoices are due no later than the 20th day of the month following the date of each invoice.
- (h) Where this Agreement has been entered into by an agent (or Person purporting to be an agent) on behalf of the Client, the agent and the Client shall be jointly and severally liable for the payment of all Fees due to Empathy under the Agreement.
- (i) The Client may not deduct, withhold or offset any sum from the amounts owed to Empathy under the Agreement.
- (j) The Client may not reduce or withhold payment to Empathy because a third party involved in the Project has not carried out their obligations to the Client.
- (k) Any monies paid by the Client may be allocated by Empathy towards any amount owed by the Client.

7. Payment Default

- (a) Any monies not paid in full when due under this Agreement will incur interest at a rate of 2% per month or part month overdue, and Empathy is, in addition, entitled to recover all debt collection costs and related legal expenses (on a solicitor-client basis).
- (b) In the event any monies due from the Client are not paid in full, Empathy reserves the right to immediately suspend the provision of Services to the Client. If the Services are suspended, Empathy shall not be obliged to resume the Services until the amount owing, and any costs incurred in relation to the suspension, are paid in full and Empathy has adequate security for future Fees. Empathy will not be liable to the Client or any Person for losses arising from the suspension of the Services. Nothing in this clause prejudices or otherwise affects Empathy's rights under clause 13 (Termination).

8. Confidentiality

- (a) Unless otherwise agreed in writing, the Parties shall, at all times during and after completion of the Services, keep the following information ("Confidential Information") in whatever form (including electronic) confidential (whether disclosed before or after this Agreement is signed):
 - (i) The other party's Intellectual Property; and
 - (ii) Information relating to the other Party's business.
- (b) The Parties must not use any Confidential Information supplied by the other Party for any purpose other than the performance of the Agreement.
- (c) Confidential Information must be returned or destroyed upon termination of the Agreement or otherwise upon request of the Party that supplied the information.
- (d) The obligations in subclauses (a) to (c) above shall apply except:
 - (i) As authorised in writing by the Party that supplied the information;
 - (ii) As reasonably required on a "need to know" basis to officers, employees, and professional advisers of the Party for the purposes of implementing the Agreement and performing the Services, provided such Persons have agreed to keep the Confidential Information confidential;
 - (iii) As required by law; or
 - (iv) To the extent that any Confidential Information is already or becomes public knowledge, other than as a result of a breach of these Terms.
- (e) Notwithstanding any other provision in the Agreement, where information or material relates exclusively to one Party, nothing in this Agreement shall require that Party to maintain confidentiality in respect of that information or material.

9. Dispute Resolution

- (a) Either Party may raise a dispute by notice in writing to the other Party. The Parties agree to use their best efforts to resolve any dispute which may arise under this Agreement through good faith without-prejudice negotiations.

- (b) If the Parties' nominated contact persons are unable to resolve the dispute within seven (7) Working Days following delivery of the dispute notice referred to in subclause (a) above, the dispute shall be escalated to the Chief Executive Officer (or equivalent) of each Party who shall conduct informal, off-the-record and without-prejudice discussions in good faith seeking to resolve the dispute.
- (c) If, after ten (10) Working Days following escalation the persons described in subclause (b) above have not reached an agreed outcome, the dispute shall be referred to arbitration in accordance with the Arbitration Act 1996. The decision of the arbitrator is final and binding on the Parties.
- (d) Either Party may refer a dispute to arbitration by giving written notice to the other Party recording the details of the dispute and that Party's desire to have the matter referred to arbitration.
- (e) The arbitration shall be heard and determined by one arbitrator, to be agreed upon by the Parties or, failing agreement within five (5) Working Days of the notice given pursuant to subclause (d) above, to be nominated by the President for the time being of the New Zealand Law Society.
- (f) The arbitrator shall adopt, wherever possible, a simplified and expedited procedure, and shall endeavour to complete the arbitration as quickly as possible and, in every case, within four (4) months of the notice given pursuant to subclause (e) above.
- (g) The arbitrator may appoint experts under clause 26 of the First Schedule of the Arbitration Act 1996 or may rely on the arbitrator's own expertise;
- (h) The arbitration shall take place in Wellington, New Zealand;
- (i) The arbitrator shall decide the dispute in accordance with the laws of New Zealand and the arbitration shall otherwise be conducted in accordance with the Act.
- (j) The Parties agree not to commence litigation or any formal claim in respect of this Agreement unless the preceding provisions of this clause have been complied with, provided that nothing shall prevent any Party from taking immediate steps to seek urgent equitable relief in any Court.

10. Indemnity

- (a) Empathy shall indemnify the Client against any liabilities, costs, losses, claims or damages (including legal fees and disbursements on a solicitor-client basis) arising or incurred as a result of any claim brought against the Client by a third party alleging that the Empathy IP infringes the intellectual property rights of that third party (the "Third Party Allegation"), provided that:
 - (i) The Client promptly notifies Empathy in writing of any Third Party Allegation against the Client;
 - (ii) The Client authorises Empathy to assume sole control over the defence of any Third Party Allegation thereafter, together with the right to settle or compromise such claim;
 - (iii) The Client does not make any admission of liability without Empathy's consent; and
 - (iv) The Client makes available to Empathy such information, assistance and authority as may be reasonably requested by Empathy in order to enable Empathy to defend any Third Party Allegation.
- (b) In the event any Third Party Allegation is asserted, Empathy may without limitation and at Empathy's option:
 - (i) Obtain such rights and/or licences from the claimant as may be necessary to enable the Client to continue using the Services which are the subject of the Third Party Allegation; and/or
 - (ii) Modify the Services with respect to which such claim is asserted so as to avoid further claimed infringement by such Person.

- (c) Notwithstanding subclauses (a) and (b) above, Empathy shall not be obliged to indemnify the Client to the extent that any infringement or alleged infringement arises from:
 - (i) Modification or alteration of the Services without Empathy's prior written consent;
 - (ii) Any use of or involving the Services which is not authorised by Empathy;
 - (iii) The Client's request for specific content, where Empathy is not aware that the content requested contravenes a third party's Intellectual Property Rights;
 - (iv) The Client not providing notice in writing as soon as practicable of any Third Party Allegation; and/or
 - (v) The Client not providing Empathy with the option to conduct the defence together with such assistance as required in subclauses (a)(i) to (iv) above.
- (d) The Client undertakes to indemnify Empathy at all times against any liabilities, costs, losses, claims or damages (including legal fees and disbursements on a solicitor-client basis) arising or incurred in any way from or in connection with:
 - (i) The Client's breach of this Agreement;
 - (ii) The Client's use of the Services, except as permitted by this Agreement;
 - (iii) Non-payment of any monies owed under the Agreement when they become due or any action taken by Empathy as a result;
 - (iv) Any unpaid fees and job-related costs of Persons other than Empathy, whether or not the Client is to be reimbursed for such monies;
 - (v) Any claim by a third party against Empathy alleging that the Client IP and/or the Services (excluding Empathy IP) infringes any third party Intellectual Property; and/or
 - (vi) Any claim by a third party against Empathy as a result of or in connection with any breach of the Client's obligations to Empathy, or arising in relation to any contracts or supply arrangements (in which the Client uses, incorporates or relies upon the Services) between the Client and a third party, and such liability, cost, loss and damage shall be monies due under this Agreement. 10. Indemnity

11. Disclaimer

- (a) Except as provided in clause 10, to the fullest extent permitted by law, Empathy shall in no circumstance be liable (whether at common law (including negligence), equity, statute or otherwise) for any damage, costs, expenses, claims, liability, loss or injury caused by the Services supplied, or arising from or in relation to the Agreement, or from a consequence of any act, default or negligence on Empathy's part, its employees, agents or contractors.
- (b) Without limiting sub-clause (a) above, Empathy shall in no circumstance be liable for:
 - (i) Any loss or damage arising by reason of any delay in the completion or performance of the Services;
 - (ii) Any loss or damage arising by reason of Empathy's termination of the Services in accordance with clause 13;
 - (iii) Any loss of profits or loss of revenues resulting from the commercial performance of the Services;
 - (iv) Any indirect or consequential loss of whatever nature; or
 - (v) Any loss resulting from any errors or omissions arising from incorrect information provided by the Client, failure by the Client to provide information, or any oversight or misinterpretation of a Client's verbal instructions.

- (c) Unless otherwise agreed by the Parties in writing, Empathy accepts no responsibility and will not be liable under any circumstances for archiving, storage or backups of any Project-Specific Deliverables (if any) or constituent / preliminary materials.
- (d) Empathy accepts no liability for any claim relating to or arising from any representations, warranties or conditions made or conveyed by any agent or representative of Empathy, which is not expressly confirmed by Empathy in writing.

12. Limitation of Liability

Except as provided in clause 10, Empathy's maximum aggregate liability to the Client for any and all costs, loss or damage suffered by the Client, however caused (including negligence), arising out of or relating to any Services supplied by Empathy, or arising from or relating to the Agreement, shall not exceed the Fee paid by the Client.

13. Termination

- (a) TERMINATION ON NOTICE: This Agreement may, unless otherwise agreed between the Parties in writing, be terminated by:
 - (i) The Client giving four (4) weeks' written notice to Empathy and paying Empathy for the Services undertaken to date. Upon receipt of such notice from the Client, Empathy shall take all reasonable steps to bring the Services to a close and reduce expenditure to a minimum; or
 - (ii) Empathy giving four (4) weeks' written notice to the Client and refunding any fees paid by the Client for any Services not performed.
- (b) TERMINATION FOR CAUSE: Without prejudice to any other right or remedy it may have, whether under this Agreement, under statute or otherwise, either Party may terminate this Agreement by written notice to the other Party if:
 - (i) The other Party is in breach of any term of this Agreement and such breach is not remedied within ten (10) Working Days of notifying the other Party;
 - (ii) The other Party commits an act of bankruptcy or makes any assignment or composition with its creditors;
 - (iii) Liquidation or bankruptcy proceedings are commenced for the other Party; or
 - (iv) The other Party has a receiver, manager or statutory manager appointed.
- (c) SUSPENSION: Where the Services are suspended on the Client's instructions for 30 days or more, the Client must, at the time of suspension, pay Empathy for all Services completed to date.
- (d) CONSEQUENCES OF TERMINATION:
 - (i) Upon suspension of Services or termination of this Agreement, Empathy shall be entitled to payment for all Services undertaken up to the effective date of postponement, suspension or termination (including fees, disbursements and costs incidental to the orderly wind-down of the Services).
 - (ii) If the Client terminates this Agreement other than through breach of this Agreement by Empathy, the Client shall indemnify Empathy against any loss, costs (including costs on a solicitor-client basis), expenses, demands, or liability, suffered or incurred in relation to the Services.
 - (iii) Early termination of the Services will not prejudice or affect the accrued rights or liabilities of each Party to the other.

14. Consumer Guarantees

If the Client is acquiring the Services for business purposes, the Client's rights are subject to this Agreement only and all guarantees, warranties, rights or remedies implied by the Consumer Guarantees Act 1993, sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986, or any similar statutes, are expressly excluded to the maximum extent permitted by law.

15. Contractors, Employees and Suppliers

- (a) Empathy may engage contractors, employees and/or third party suppliers in order to complete the Services, or to provide other services requested by the Client.
- (b) Where Empathy engages contractors and/or third party suppliers at the Client's request, Empathy shall not be liable for the performance or remuneration of those contractors. The Client indemnifies Empathy against all costs, disbursements and other obligations arising from the contractor engagement(s).
- (c) Where third party services are engaged by Empathy and subclause (b) does not apply, Empathy shall use all reasonable endeavours to ensure that the third party services satisfy the performance standards for the Services required by this Agreement. Empathy makes no representation as to, and takes no other responsibility for, the quality or fitness for purpose of third -party services.
- (d) Unless specifically agreed in writing between the Parties, Empathy shall not be responsible for any aspect of project management relating to the Project.

16. Non-solicitation

During the period in which Empathy provides the Services, and for one (1) year following the completion of the Services, the Client will not solicit or engage any contractors or employees of Empathy.

17. Health and Safety

Where Empathy is present on the Client's or other third party's premises for the purposes of the Services:

- (a) The Client shall promptly notify Empathy of any health and safety policies in place on those premises; and
- (b) Empathy shall at all times comply with all reasonable health and safety requirements and safety-related instructions provided by the Client.

18. Force Majeure

Empathy shall not be liable in any way whatsoever for any delay or breach of this Agreement caused directly or indirectly by war, acts of God, strikes, lockouts, labour disputes, riots, government action or interference, fire, earthquake, accidents, interruption to transportation or telecommunications, or any other cause beyond Empathy's reasonable control.

19. Assignment

- (a) The Client may not assign any rights, duties or obligations under the Agreement (including any licence granted) without the prior written consent of Empathy, which shall be granted at Empathy's sole discretion.
- (b) Any licence granted by Empathy under this Agreement will terminate automatically if that licence is assigned to a third party.
- (c) Empathy may assign or novate its rights, duties and obligations under this Agreement by written notice to the Client.

20. Entire Agreement

These Terms, together with the Statement of Work and any other conditions relating to the Services agreed in writing between the Parties, constitute the entire agreement ("Agreement") between the Parties and supersede all prior representations, agreements, statements and understandings, whether verbal or in writing, on the subject matter of this contract.

21. Variation or Waiver

- (a) The provisions of the Agreement, including the scope of Services to be provided, shall not be varied except by agreement between the Parties in writing.
- (b) No right, duty or obligation in the Agreement shall be deemed to be waived except by agreement between the Parties in writing.

22. Survival of Agreement

The covenants, conditions and provisions of the Agreement capable of having effect after the completion of the Services or termination of the Agreement shall remain in full force and effect following completion of the Services or termination of the Agreement.

23. Severability

If any provision or part of any provision of the Agreement is for any reason declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable it shall not affect the legality, validity or enforceability of the other provisions or part provisions of the Agreement and shall be severed from the Agreement so that the remaining provisions or part provisions of the Agreement remain in full force and effect.

24. Good Faith

The Parties agree to act in good faith towards one another and use their best endeavours to comply with the spirit and intention of the Agreement.

25. Governing Law

The Agreement shall be construed in accordance with and governed by the laws of New Zealand and the Client submits to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to the Services and the Agreement, provided that any Party may enforce an arbitration award relating to the Agreement anywhere in the world.

26. Relationship between the parties

- (a) Nothing expressed or implied in the Agreement shall constitute either Party as the partner, agent, fiduciary, employee or officer of, or as a joint venture with, the other Party and neither Party shall make any contrary representation to any Person.
- (b) Unless specifically agreed in writing, no provision of the Agreement shall empower a Party to act on behalf of the other Party in any way, or to incur any liability on behalf of the other.

27. Order of Precedence

If there is a conflict between the Statement of Work and any provisions of these Terms, the Statement of Work shall take precedence.

28. Notices

Notices pursuant to the Agreement can be delivered in person, by email or by post to:

- (a) the Client at the Client's address, as recorded in the Statement of Work, or usual email address; or
- (b) Empathy at Level 2, 276 Cuba Street, Te Aro, Wellington, New Zealand or hello@empathydesign.com.

Addresses for communications may be updated from time to time.

29. Definitions of Capitalised Words

In these Terms, the following meanings apply:

"Agreement" has the meaning described in clause 20;

“Client IP” means any Intellectual Property in Project-Specific Deliverables, all pre-existing Intellectual Property of the Client, and all other proprietary Intellectual Property owned or supplied by the Client, including Intellectual Property supplied by the Client for use by Empathy when providing the Services;

“Client” means the client engaging Empathy to provide the Services and may include any Person(s) acting as an agent and/or behalf of a company and/or trust and/or partnership;

“Deliverables” means the deliverables (if any) described or set out in the Statement of Work;

“Empathy IP” means all Intellectual Property forming part of, or arising from or in relation to, the Services and Empathy Materials, excluding Client IP;

“Empathy Materials” means all materials supplied by Empathy pursuant to the Agreement which are incidental to or associated with the Services, including materials, tools and content developed during the supply of the Services, excluding Deliverables;

“Empathy” means Empathy Limited, a duly incorporated company having its registered office in Wellington, New Zealand;

“Fee” means the total fee payable (including expenses, disbursements and other amounts) by the Client in consideration for the Services and associated rights as detailed in the Agreement;

“Intellectual Property” or “Intellectual Property Rights” means patentable material, patents, copyright, trade marks (including names, labels, get-up, logos, patterns or other identifying marks), designs, rights in software and designs, and any other right granted by operation of law which confers protection on any written or artistic work created by intellectual effort (including, without limitation, rights in graphics, text, processes, music, videos, sounds, pictures, compilations, templates, page layout, digital conversion or other materials) and all associated intangible assets created as a by-product (including, without limitation, brands, trade names, services, methods, techniques, configurations, know-how, confidential information, methods, concepts and ideas);

“Parties” means the Client and Empathy, and “Party” means one of them;

“Person” includes references to any natural person, company, corporation, firm, partnership, joint venture, society, organisation or other group or association of persons (whether incorporated or not), trust, state or agency of state, statutory or regulatory body, local authority, government or governmental or semi-governmental body or agency (in each case whether or not having separate legal personality);

“Phase” means an event or task as described in the Statement of Work to be performed at or by a particular date and time;

“Project” means the Client’s project for which the Services are requested;

“Project-Specific Deliverables” means the deliverables (if any) described in the Statement of Work as “Project-Specific Deliverables”, and any other Deliverables that the Parties agree in writing shall be Project-Specific Deliverables;

“Services” means the services, activities and tasks to be performed and Deliverables to be provided by Empathy, as set out in the Statement of Work, together with all other work to be performed by Empathy to supply the Deliverables and perform its other obligations under the Agreement;

“Statement of Work” means a statement of work, engagement letter, proposal, services order form, and/or Variation Agreement signed by Empathy and the Client, setting out the Services to be supplied;

“Terms” means these Services Terms and Conditions;

“Variation Agreement” means an agreement agreed by both Empathy and Client, setting out variation(s) to the scope of Services, delivery timeframes, Fees and/or any aspect of the Statement of Work;

“Working Days” means days other than Saturday, Sunday, public holidays, or days from 23 December – 6 January (inclusive);

30. General rules of interpretation

- (a) Singular words include the plural and vice versa, and where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (b) References to any Party shall mean and include a reference to that Party, its successor, executors or personal representatives (as the case may be), and transferees.
- (c) Where more Parties than one are covenanting Parties, the covenants expressed or implied in this Agreement bind the covenanting Parties jointly and each of them severally.
- (d) Any reference to legislation, statute, regulation, ruling, code, rules or ordinance includes reference to any modification, substitute for, consolidation or re-enactment of it and any regulation, order in council or other instrument from time to time made or issued under such legislation, statute, regulation, ruling, code, rules or ordinance.
- (e) Headings are for convenience only and do not affect the interpretation of this Agreement except for use as cross-references.
- (f) Any covenant not to do anything shall also constitute an obligation not to suffer, permit, cause or assist any other Person to do that thing.
- (g) Unless otherwise agreed, all dollar amounts in this Agreement are in New Zealand dollars and exclusive of GST and/or any other applicable taxes.