

WSAS Terms of Business

- **We** will provide the **services** to **you** on the terms of this **agreement**.
- **You** are responsible for providing all **relevant information** to **us**.
- **We** will be entitled to receive **remuneration** for providing the **services** as specified in this **agreement**.
- Either party can terminate the relationship by giving 60 days' notice in writing, in addition to other specific termination rights.
- **Our** liability to **you** under this **agreement** is limited.

1. Introduction

- 1.1. This **agreement** sets out the terms and conditions on which **we** will provide **our services** to **you**.
- 1.2. Unless otherwise agreed in writing with **you**, this **agreement** applies to all **services we** provide to **you**. This agreement takes precedence over any other agreement items or conditions contained or referred to in any document or communication used or provided by **you to us** from time to time. **You** will be taken to have accepted this **agreement** by continuing to instruct **us**, unless otherwise agreed in writing with **you**.

2. Our Responsibilities

- 2.1. **We** will perform **our services**:
 - 2.1.1. with reasonable care and skill and with integrity, with competent and suitably experienced personnel to carry out the work;
 - 2.1.2. based upon the demands and needs that **you** have expressly advised to **us**.
- 2.2. Our role is limited to the agreed **services**.

3. Your responsibilities

- 3.1. **You** shall provide **us** promptly all reasonable and necessary assistance, including access to all information, which **we** consider to be relevant to enable **us** to perform the **services**.
- 3.2. In doing so, **you** shall update information previously provided to **us** where there has been a material change to that information which affects the scope or performance of the **services** by **us**. **We** shall not be liable for any losses, damages, costs or expenses arising out of errors due to the provision to **us** of false, misleading or incomplete information or documentation or due to any acts or omissions of any other person.

4. Changes, Transfers and Cancellations

- 4.1. Changes **you** require to be made to agreed dates (or locations) for site-based training courses, audits and consultancy shall be informed by **you to us** as soon as practicable. We will endeavour to meet alternative dates on a best efforts basis. It may be necessary for **us** to review **our** remuneration for the work, for example if consultancy or inhouse training courses are cancelled by **you** at short notice ie within 48 hours of delivery, then **we** may charge a cancellation fee.
- 4.2. **We** will make best efforts to meet the agreed dates for site visits for audits, in house training courses and consultancy. It may be necessary for **us** to move dates due to force majeure

events or specific resource constraints or conflicts. If this occurs, we will endeavour to inform **you** as soon as practicable and find acceptable alternative dates.

4.3. Cancellations of trainee participation in public **training courses**:

- 4.3.1. can be initially informed verbally but must be confirmed in writing (letter or electronic).
- 4.3.2. cancellations 14 or more days from the date of the public **training course** have no cancellation fee;
- 4.3.3. cancellations providing between 14 and seven days written notice may have an administrative fee of \$50 plus GST per trainee;
- 4.3.4. cancellations providing between 7 and 2 days written notice may have an administrative fee of 50% of course fees plus GST per trainee;
- 4.3.5. cancellations providing less than 2 days written notice may have an administrative fee of 75% of course fees plus GST per trainee;
- 4.3.6. cancellations at or after course commencement or non-attendance of trainees may incur a cancellation fee of 100% plus GST of course fees per trainee.

4.4. Cancellation fees may be reduced or waived:

- 4.4.1. if **you** can substitute the cancelled trainee with an alternative trainee.
- 4.4.2. if it is possible for **you** to reallocate the trainee to another of **our** public training courses.
- 4.4.3. if there are extenuating circumstances for the cancellation or withdrawal which **we** consider are reasonable grounds for reducing or waiving cancellation fees.

4.5. **We** reserve the right to cancel, reschedule or alter public training courses. If this occurs, **we** will endeavour to inform **you** as soon as practicable and find acceptable alternative dates.

5. Our Remuneration

- 5.1. **Our** fees are based on an be an agreed fixed fee as per a specific written engagement or as per our standard pricing schedule for work. Fees may be inclusive or exclusive of administration fees or expenses and this will be documented in the agreement.
- 5.2. Alternatively, if agreed in writing **our** fees may be based on hourly rates which take account of the experience of employees assigned to the engagement or on **our** standard pricing schedule. If the engagement is terminated for any reason, **we** shall be entitled to **our** fees incurred until the date the engagement is terminated.
- 5.3. **We** may also charge administration fees to cover administration expenses and disbursements.
- 5.4. Expenses, including travel and subsistence, and goods and services purchased on **your** behalf, may be charged to **you** at cost.
- 5.5. **We** will usually invoice you after delivery of services and we may invoice you at the end of each month or as otherwise agreed. **We** will send a final invoice after completion of the work.

6. Invoices and GST

- 6.1. **We** will charge **GST** as required by New Zealand law and any quote, estimation or invoice which **we** may provide to **you** shall be deemed to exclude **GST**, unless agreed in writing.
- 6.2. **We** only accept payment by cheque or bank deposit as specified on **your** invoice. Cash or credit card are not accepted means of payment.
- 6.3. Payment is due on the date specified in the invoice.

7. Limitation of Liability

- 7.1. **We** will provide the **services** with reasonable care and skill. All representations (whether express or implied) and all other implied conditions, warranties and terms as to the provision of the **services** are otherwise excluded to the extent permitted by law.

- 7.2. To the extent permitted by law **we** will not be responsible or liable for:
- 7.2.1. Any consequential, incidental, indirect or special damage or loss of any kind including, but not limited to, loss of profits, loss of revenues, loss of anticipated savings, loss of data, loss of reputation, loss of goodwill, loss of opportunities and loss of business.
 - 7.2.2. The supply, by **you** or others, of incorrect or incomplete information, or supply of appropriate, relevant or timely information.
 - 7.2.3. Any failure or delay on **our** part where it is due to a Force Majeure Event.
 - 7.2.4. The default, negligence, error, omission or lack of care on the part of any person other than **ourselves**.
 - 7.2.5. Any losses, costs, damages or liabilities arising from, or in connection with, any parts, materials or components installed and/or maintained by any person other than **ourselves**.
- 7.3. **Our** aggregate liability (including interest and costs) in respect of any claim arising, under or in connection with this **agreement** or the **services**, shall be limited (to the extent permitted by law) to the lesser amount of five (5) times the fee payable by **you** or NZ \$1,000,000.
- 7.4. **You** acknowledge that all audits, observations, objectives, advice and recommendations made by **us** in providing the **services** are made in good faith on the basis of the information available to **us** at the time, and achieving the objectives, advice or recommendations will depend, among other things, on **your** actions, over which **we** have no control.
- 7.5. Any claims arising under this **agreement** must be made within twelve (12) months after the **services** have been performed.

8. Confidentiality

- 8.1. Subject to any relevant law, and **our** obligation to provide the **services**, **we** will keep all confidential information that **we** receive from **you** confidential and will use it solely in connection with the provision of the **services** or otherwise for the purpose for which it was disclosed to **us**.
- 8.2. **our** confidentiality obligation does not apply where:
- 8.2.1. **you** have given written permission otherwise;
 - 8.2.2. disclosure is required to satisfy legal obligations or regulatory requirements;
 - 8.2.3. such information is in the public domain.

9. Non-Dissemination of Material

Our communications with **you**, **your** employees or agents, whether written or oral are provided solely for **your** information and use in connection with any engagement and must not be used for any other purpose without our prior written consent. No other party is entitled to rely on any of **our** reports, information or advices for any purpose whatsoever, and **we** disclaim any responsibility to any such third party who has had communicated to them the report, information or advice provided by **us** to you as part of any engagement. **You** indemnify us from any liability **we** may have to **you** or any third party as a result of any information supplied to **us** by **you** or any of **your** agents, where such information and documentation is false, misleading or incomplete.

10. Your Information

- 10.1. **We** will hold any personal information that **you** provide to **us** in accordance with the **Privacy Act** and any other privacy or data protection laws regulating the collection, storage, use and disclosure of "personal information" as defined in the **Privacy Act**. Any such information that **we** request from **you** will be used pursuant to the provision of the **services**.
- 10.2. Unless **you** instruct **us** not to do so, **we** may also contact **you** in connection with other products or services that **we** feel may be of interest or benefit to **you**.

- 10.3. **You** have the right to access and correct any of **your** personal information that **we** hold. **We** reserve the right to charge for reasonable costs incurred responding to requests for personal information.

11. Intellectual Property

- 11.1. All proprietary rights in any documents, data, reports or other material prepared by **us** that form part of the **services** and were prepared specifically and solely for **you** will vest in **you**.
- 11.2. Any pre-existing intellectual property rights (including copyright and know-how) in documents, discoveries, designs, inventions, methodology, data, computer programs, reports or other material prepared by **us** that form part of the **services** (including but not limited to report formats, report templates and our calculations and formulas used in producing reports) remain our property. Also, any documents, designs, inventions, data and computer programs developed by **us** while providing the services to **you**, but that do not form part of the **services**, remain **our** property.
- 11.3. Unauthorised copies of the **Health and Safety Manual** in either paper or electronic form shall not be taken.

12. Electronic Communications

We may correspond with **you** by electronic communication unless **you** instruct **us** not to do so. **We** may email to **you** information legally required to be provided to **you**. In such a case, **you** consent to receiving this information with an electronic signature. Electronic communications are not always secure and they may be read, copied or interfered with in transit. **We** are not responsible for any of the risks associated with electronic communication, including loss of data.

13. Health and Safety

In providing **you** with the **services**, **we** will comply with **our** obligations under the **Health and Safety at Work Act** and **we** expect **you** to assist **us** in doing so. Where **we** visit **you** this includes **you** ensuring, so far as reasonably practicable, that the safety of **our** people is not put at risk. Where required, both parties will consult, coordinate and cooperate with each other in respect of shared duties under the **Health and Safety at Work Act** so far as is reasonably practicable.

14. Conflicts of Interest

Occasions may arise where either **we**, one of **our** clients, or one of **our** service or product providers may have a potential conflict of interest in connection with the **services** **we** provide to **you**. If this occurs and **we** become aware that a potential conflict exists, **we** will contact **you** and work together to find a suitable solution.

15. Force Majeure Event

If either party becomes aware of a Force Majeure Event affecting that party, it must notify the other party as soon as practicable. In the event the Force Majeure Event impacts upon **us**, **we** will implement plans in order to minimise the probability that delivery of the **services** is affected by the Force Majeure Event. This may include changes to the **remuneration** resulting from the action taken.

16. Termination

- 16.1. Either party can terminate this **agreement** by providing the other party with 60 days' written notice of termination (expiring after any agreed fixed term of **our** appointment).
- 16.2. This **agreement** may be terminated with immediate effect by either party in the event of:
- 16.2.1. insolvency of the other party; or
 - 16.2.2. breach of regulatory requirements, laws or rules in respect of bribery or corruption by the other party.

- 16.3. Termination of this **agreement** will not, unless otherwise provided in this **agreement**, affect the provisions relating to limitation of liability (clause 7), confidentiality (clause 8), non-dissemination of material (clause 9), **your** information (clause 10), and intellectual property (clause 11).

17. Disputes

- 17.1. If **you** have any complaint in respect to **us**, or are not satisfied with the **services you** have received from **us**, **we** want to hear about it so that **we** can investigate **your** concerns quickly and fairly.

18. General

- 18.1. **Our** relationship with **you** is governed by New Zealand law and the New Zealand Courts have exclusive jurisdiction.
- 18.2. If any term of this **agreement** is, or becomes, or is found to be invalid or unenforceable, in whole or in part, under any law:
- 18.2.1. Such term or part will be read down or interpreted and enforced to the extent permissible; or (if this is not possible); and
- 18.2.2. Such term or part will to that extent be deemed not to form part of this **agreement** and the legality, validity and enforceability of the remainder of the **agreement** will not be affected or impaired.

19. Definitions

In this **agreement**, unless the context requires otherwise, the following terms are as defined below:

- 19.1. **Agreement** – these terms of business.
- 19.2. **Force Majeure Event** – an event beyond the relevant party's reasonable control, including any act of God or nature, war or terrorism, riot, civil disturbance, national emergency, epidemic, action or inaction of a government or regulatory authority and strike or other industrial action.
- 19.3. **GST** – good and services as set out in the Goods and Services Tax Act 1985.
- 19.4. **Health and Safety at Work Act** – Health and Safety at Work Act 2015.
- 19.5. **Health and Safety Manual** – **WSAS** produced Health and Safety Manual to support Health and Safety activities for you.
- 19.6. **Privacy Act** – Privacy Act 1993.
- 19.7. **Relevant Information** – accurate and complete information and facts in relation to the **services**.
- 19.8. **Remuneration** – a fee from you for our services.
- 19.9. **Services** – the provision of **services to you** including any audits, seminars, training courses, consultancy, recommendations, supply of Health and Safety Manuals, meeting room hire, and catering.
- 19.10. **Trainee** – Participant in one of our training courses.
- 19.11. **Training Course** – Training course provided by us as part of our services. This may be a in house course or a public course.
- 19.12. **WSAS** – WSAS Limited (trading as Work Safe Advisory Services), also referred to as **we/us/our**.
- 19.13. **You** – a **WSAS** client who instructs **us** or for whom **we** may provide **services**.

20. Interpretation

In this agreement, unless the context requires otherwise:

- a. words in the singular include the plural and vice versa;
- b. a reference to a person includes an individual, body corporate, trust, partnership, unincorporated body or other entity;
- c. a reference to a party is to a party to this **agreement** and includes the party's executors, administrators, successors and permitted assigns;
- d. a reference to a document (including this **agreement**) is a reference to that document as amended, novated, supplemented or replaced from time to time;
- e. a reference to a clause, schedule, annexure, appendix or attachment is to a clause, schedule, annexure, appendix or attachment to this **agreement** and a reference to this **agreement** includes any schedules, annexures, appendices and attachments;
- f. a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- g. unless agreed in writing, all promises and obligations of the parties under this **agreement** are given and incurred jointly and severally by each party;
- h. where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
- i. the words "including" and similar expressions are not words of limitation
- j. headings are for convenience only and do not affect interpretation; and
- k. no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this **agreement** or any part of it.