

GENERAL TERMS

1.0 DEFINITIONS

"Contract": means the Contract pursuant to which the Company shall carry out services for the Client comprising the Proposal and these General Terms.

"Company": means Applied Support Services Limited.

"Client": means the organisation, company or individual using the services of the Company.

"GST": means Goods and Services Tax prescribed under the Goods and Services Tax Act 1985.

"Proposal": means documentation of the terms of reference of a contract plan, contract tasks, contract costs and contract timetable and is valid for 30 days following the date of the proposal.

"Report": means the documentation of the findings of research after investigation, and/or project planning after consultation, or grant application documentation forms and supporting information.

"Services": means all consulting Services carried out by the Company for the Client including preparation of a Proposal, carrying out the terms of any contract arising therefrom, and the production of a Report.

2.0 CONTRACT TERMS OF REFERENCE

2.1 Contract terms of reference and other data provided by the Client remain the property of the Client.

2.2 If the Client has not prepared written documentation of the Contract terms of reference specifying the contract work or tasks to be undertaken, then the Company will charge the Client, on a time spent basis, for the preparation of any documentation which identifies Contract terms of reference, including the identification of contract tasks, contract costs and contract timetables, the (Proposal), unless the Client has received a written statement from the Company to the contrary.

2.3 Proposals and quotations provided by the Company at the request of the Client and without an agreed payment remain the property of the Company.

2.4 Should the Client, following receipt of the Proposal, make use of the Proposal to obtain quotations from third parties, or make use of the Proposal for preparing terms of reference for use by third parties or make use of the Proposal for the purposes of an employment description then the Company shall be entitled to invoice the Client for the full cost incurred in the preparation of the Proposal.

3.0 RESEARCH FINDINGS, PROJECT PLANS, GRANTS

3.1 All research findings, project plans, grant applications and processed information arising out of performance of the Services become the property of the Client on receipt of all payments due to the Company. Unless prior or written consent of the Client has been obtained, no such findings or processed data will be discussed by the Company with any third party.

3.2 The research techniques, templates and methods used by the Company do not become the property of the Client who has no exclusive right to their use.

3.3 All records, information, templates and other information prepared by the Company, other than the Report, shall be the property of the Company. The Company reserves the right in some situations, including applications for government grants, to supply the Client with a read only copy of the Report.

3.4 After a Report has been submitted to the Client, the Client shall be entitled within one year of completion of the report to obtain from the Company duplicate copies of data on which the report is based with the Client to bear the costs of preparing such duplicates.

3.5 The Company shall, when presenting the Report make a clear distinction between the results themselves and the Company's interpretation of the data and the consequent recommendations.

4.0 TERMS OF PAYMENT

4.1 Unless the Company quotes to provide the services on a fixed price basis, all services will be charged for on the basis of actual time spent by the Company in performing Services. Prior to the commencement of Services the Company will quote an hourly, daily, or some other rate as agreed between the Client and Company, for fees chargeable to the Client. This rate will not alter for a period of six months following the commencement of Services. Fees are quoted exclusive of G.S.T., which will be added to all fees.

4.2 The initial estimate of hours for the provision of the Services may vary according to the circumstances of the project. Should circumstances alter that estimate the Company will notify the Client before proceeding. The Company shall only perform Services beyond the initial estimate or quote on instructions from the Client.

4.3 The Company will invoice the Client on completion of the Services, or at monthly intervals, or bi-monthly intervals, or weekly intervals, for fees, services and expenses chargeable to the Client including any third party charges, third party fees, goods or services chargeable to the Client or the project. Payment is due to the Company within 7 days of the invoice [Due Date].

4.4 If the monies are not paid within 10 days after the Due Date, our debt collection agent may charge you a fee equal to 25% of the unpaid portion of the price, but not less than \$25.00. Where the total debt collection agency costs, legal and other costs arising from the collection of any amount owing exceeds the debt collection fee charged, our debt collection agent is also entitled to recover such additional costs from you. The clause is intended to be for the benefit of and enforceable by our debt collection agent under the Contracts (Privacy) Act 1982.

4.5 The company will withdraw services or goods to which the non-payment relates until payment for all outstanding invoices are received in full.

4.6 The Company's quoted daily, hourly or any other rate as agreed between the Client and the Company, is quoted exclusive of expenses and disbursements. Any quotation or estimate of expenses is given exclusive of G.S.T. These expenses include, but are not limited to, photocopying and printing charges, telephone toll charges, data communications charges, postage, travel to client premises, out of town accommodation, out of town living expenses, air travel, car parking, and third party charges.



APPLIED SUPPORT SERVICES MANAGEMENT CONSULTING

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Business & Marketing Plans
Government Business Grants
Facilitation & Training
Business Templates
Project Management

5.0 DUTIES OF THE COMPANY

The duties of the Company to the Client are specified in the Proposal.

6.0 DUTIES OF THE CLIENT

When the Company requires access to information or to an employee, customers or advisors of the Client in order to undertake and complete the Services identified in the Proposal then the Client will grant the Company such access. The Client is responsible for ensuring all information passed onto the Company in the performance of its Services is accurate, correct and true.

7.0 CONFIDENTIALITY

All confidential information and material relating to the Client shall not be divulged except to persons wholly or substantially engaged in the performance of the Services including sub-contractors, who need such information or material in order to effectively carry out the work.

7.1 Foundation for Research Science & Technology

The Company is a consultant of the Foundation. In the course of exercising functions associated with that position the Company has been or will be provided with information which is the property of the Foundation, or other persons, or the Client. The Company has agreed to be bound by certain duties of confidentiality, non-use and declaration of possible conflict of interest in respect of the information. Copies of this Confidentiality Agreement, made in September 1997, are available from the Foundation, P O Box 12 240, Wellington.

8.0 ADVERTISING

The Company will not use the Client's name for media release or advertising without the prior written approval of the Client.

9.0 TERMINATION

9.1 Either party may terminate the Contract upon notice in the following circumstances:

- (a) If the Client shall commit a breach of its duties.
- (b) If either party shall breach any confidence which the one party receives or has disclosed to it in error and which is not intended for that party.
- (c) If the other Party shall become bankrupt or suffer any execution or restraint to be levied over any assets or enter into any agreement or composition with its creditors or become insolvent or shall have a receiver or liquidator appointed.
- (d) If the Client terminates the Contract following the commencement of Services by the Company, for reasons other than 9.1(a), 9.1(b) or 9.1(c) above, then the Client shall pay the Company all fees and expenses due and payable to the date of the notice of termination and all administrative costs incurred by the Company following the discontinuation of services.

9.2 Upon termination by the Company the Client shall pay to the Company all fees and expenses due and payable to the date of the notice from the Company.

9.3 While the parties shall be entitled to terminate the Contract immediately for the reasons above described it is agreed that such rights shall be subject to an obligation where reasonable to give notice of any alleged breach of the Contract to the other party and to give that other party an opportunity to rectify the breach in a reasonable prescribed time. Each party shall give the other not less than 21 days notice of any intention to commence legal proceedings.

10.0 LIMITATION OF LIABILITY

10.1 Except for any express warranties the Company shall be under no liability in respect of defects in software, consumables or equipment provided.

10.2 The maximum total liability of the Company, if any, arising out of the supply of Services shall be limited in all circumstances to the total charges to the Client for the Services provided by the Company and paid for by the Client in the 3 month period preceding the date of the event giving rise to the liability.

10.3 The Company shall not be responsible for any special, incidental, indirect or consequential damages, nor for any lost profits, procurement costs, work done in connection therewith, nor for any injury resulting from the Company's provision of goods or Services, nor any claims against the Company by the Client or any other party, nor any claim arising other than primarily out of the negligence or misconduct of the Company, and the Client hereby agrees to indemnify the Company in respect of any such action by any third party.

10.4 The Company provides professional advice on preparing Research and Development (R&D) plans, budgets, implementation schedules and project monitoring and control. The Company provides advice on establishing evidence that R&D activities meet the IRD's criteria for systematic, investigative and experimental, (SIE) activities. The Client is responsible for making the judgement that an SIE activity is required. The Company does not provide professional advice on tax or accounting matters as such. For advice on tax and accounting matters the Client should consult with the Inland Revenue Department. Sections of the "Annual Rates, Business Taxation, KiwiSaver, and Remedial Matters Bill" will remain in public consultation, or are still subject to the decision of the Commissioner, and may remain so until 2010.

11.0 FORCE MAJEURE

11.1 The Company shall not be liable for any failure or delay in complying with its responsibilities caused in whole or in part by force majeure which shall be defined to mean act of God, natural disaster, strike, lock-out, fire, inability to obtain materials or shipping space, breakdown or destruction of plant or carrier, delay of carrier, any Government acts or regulations, including export or import bans, or any other cause beyond the control of the party alleging force majeure if that party has exercised reasonable care and due diligence to avoid such occurrence.

12.0 GENERAL

12.1 These General Terms are governed by the Laws of New Zealand and subject to the jurisdiction of the courts of New Zealand.

12.2 Headings to these General Terms are inserted for the ease of reference only and form no part of the General Terms.

12.3 Any notice sent by pre-paid post to the last known address of the addressee shall be deemed to have been given 2 working days after posting or the following working day if sent by email, fax or telex.

12.4 The Client, after 7 working days of receipt of these General Terms is deemed to have accepted these General Terms unless the Company receives written notification to the contrary.

12.5 Quotations and estimates remain valid for a period of thirty days following the date of the quotation or estimate.

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Business & Marketing Plans
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