

## 1. Definitions

1.1 Unless the context otherwise requires then in construing this agreement:

(a) "Relate" means L G & D A Simons T/A Relate, its successors and assigns or any person acting on behalf of and with the authority of L G & D A Simons T/A Relate.

(b) "Customer" means the person/s requesting Relate to provide the Services as specified in any invoice, document or order, and if there more than one person requesting the Services is a reference to each person jointly and severally.

(c) "Services" means all Services (including, change management, leadership programs, strategies, diversity and inclusion design, coaching, training, strategies and advice, etc.) provided by Relate to the Customer at the Customer's request from time to time, and includes any goods, documents, designs, programs, strategies, or materials supplied, consumed, created or deposited incidentally by Relate in the course of it conducting, or providing to the Customer, any Services.

(d) "Proposal" means Relate's proposal/quotation for the provision of the Services, as prepared thereby and submitted to the Customer to describe the actual scope of the Services to be provided, the personnel and other resources proposed to be utilised, and the amount or method of calculation of the Fee and any reimbursable expenses.

(e) "Fee" means the price payable for the Services as agreed between Relate and the Customer in accordance with clause 6 of this agreement.

(f) "Confidential Information" means all technical information, know-how, financial information, Intellectual Property, and other commercially valuable or sensitive information of whatever description which a party regards as confidential, proprietary or of a commercially or personally sensitive nature. It excludes information which:

(i) is lawfully in the public domain before is disclosure, or enters the public domain afterwards through an authorised disclosure;

(ii) becomes available to the receiving party from someone lawfully in possession of it who lawfully discloses it on a non-confidential basis;

(iii) is rightfully known by the receiving party before disclosure to it.

(g) "Prohibited Content" means any content that:

(i) is, or could reasonably be considered to be, in breach of the broadcasting standards or any other applicable law or applicable industry code; or

(ii) contains, or could reasonably be considered to contain, any misrepresentations; or is, or could reasonably be considered to be, misleading or deceptive, likely to mislead or deceive or otherwise unlawful; or

(iii) is, or could reasonably be considered to be, in breach of any person's intellectual property rights.

## 2. Acceptance

2.1 These terms and conditions may be required to be read in conjunction with the Proposal. If there are any inconsistencies between these documents then the terms and conditions contained therein shall prevail.

2.2 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for, or accepts Services provided by Relate.

2.3 These terms and conditions may only be amended with Relate's consent in writing and shall (subject to clause 2.1) prevail to the extent of any inconsistency with any other document or agreement between the Customer and Relate.

2.4 None of Relate's staff, third-party professionals, or business associates are authorised to make any representations, statements, conditions or agreements not expressed by Relate in writing, nor is Relate bound by any such unauthorised statements unless they are expressly set out in the Proposal.

2.5 This agreement does not create or evidence any form of employment or partnership or a fiduciary relationship of principal and agent between the parties.

## 3. Change in Control

3.1 The Customer shall give Relate not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by Relate as a result of the Customer's failure to comply with this clause.

## 4. Provision of the Services

4.1 Relate shall always use its best reasonable endeavours to provide the Services to the Customer in accordance with good business practice, however:

(a) any time specified by Relate for provision of the Services is an estimate only and Relate will not be liable for any loss or damage incurred by the Customer as a result of any delay;

(b) both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. The Customer acknowledges that failure thereby to provide accurate Information or act in a timely manner, and/or constraints the Customer imposes on Relate, may affect outcomes and/or Relate's ability to provide the Services. In the event that Relate is unable to provide the Services as agreed solely due to any action or inaction of the Customer then Relate shall be entitled to charge a reasonable fee for re-providing the Services at a later time and date.

4.2 The Customer acknowledges that:

(a) in providing the Services Relate relies on Information provided by the Customer, without independently verifying such;

(b) the Services are provided to the Customer for their sole benefit, and must not be disclosed to, or relied on by, any other party;

(c) the Services do not include information and advice relating to tax, accounting and legal matters relating to the implementation of business strategies, and it is recommended that the Customer seek the advice of other business advisors suitably qualified in these areas.

## 5. Customer's Obligations

### 5.1 The Customer must:

- (a) give Relate access to information (commercial and/or personal) that Relate reasonably requires in order to properly provide the Services to the Customer, details of which will be set out in the Proposal and include access to the Customer's address, books, records, databases, personnel and technology systems, etc. ("Information");
- (b) keep Relate informed of any developments (such as a change to Information provided to Relate) that a reasonable person would consider is likely to impact on the Services.

### 5.2 The Customer warrants that all Information provided to Relate to be used for the provision of the Services:

- (a) has been obtained legally;
- (b) is true and correct in every particular;
- (c) does not contain Prohibited Content;
- (d) is not, nor contains, anything that is defamatory of any person or is indecent or obscene; and
- (e) complies with all laws, regulations, codes of practice, guidelines and any applicable standards as determined by any relevant regulatory agency or industry self-regulatory body (e.g. confidentiality, privacy and/or broadcasting laws, etc.); and
- (f) does not infringe copyright, trademark or any other legal rights of another person and/or entity; and
- (g) does not contain anything which may give rise to any cause of action by a third against Relate (including, but not limited to, material that may cause damage or injury to any person and/or entity); and
- (h) is not false or misleading and is true in substance and in fact; and
- (i) does not contain nor constitute a statement that is misleading or deceptive or likely to deceive or to mislead or which is otherwise in breach of a provision of the Fair Trading Act 1986 or any other applicable legislation.

## 6. Fee and Payment

### 6.1 At Relate's sole discretion the Fee shall be either:

- (a) as indicated on any invoice provided by Relate to the Customer; or
- (b) Relate's quoted price (subject to clause 6.2) which will be stipulated in the Proposal and valid for the period stated therein or otherwise for a period of thirty (30) days.

6.2 Relate reserves the right to change the Fee if a variation to the Services (including any variation to the Customer's brief or specifications, such as an extension to the duration of the Services, etc.) is requested, or for any disbursements excluded from the scope of Services specified in the Proposal, and/or the terms and conditions stated herein, that may arise or be required.

### 6.3 Time for payment for the Services being of the essence, the Fee will be payable by the Customer on the date/s determined by Relate, which may be:

- (a) by way of instalments/progress payments in accordance with Relate's payment schedule;
- (b) due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
- (c) the date specified on any invoice or other form as being the date for payment; or
- (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Relate.

6.4 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and Relate.

6.5 Unless otherwise stated the Fee does not include GST. In addition to the Fee the Customer must pay to Relate an amount equal to any GST Relate must pay for any provision of Services by Relate under this or any other agreement. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Fee. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Fee except where they are expressly included in the Fee.

### 6.6 The Customer acknowledges and agrees that the Customer's obligations to Relate for the provision of the Services shall not cease until:

- (a) the Customer has paid Relate all amounts owing for the Services; and
- (b) the Customer has met all other obligations due by the Customer to Relate in respect of all agreements between Relate and the Customer.

6.7 Receipt by Relate of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Relate's ownership or rights in respect of the Services, and this agreement, shall continue.

## 7. Customer's Disclaimer

7.1 The Customer hereby disclaims any right to rescind, or cancel any agreement with Relate or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by Relate and the Customer acknowledges that the Services are bought relying solely upon the Customer's skill and judgment.

## 8. Intellectual Property and Confidentiality

8.1 Where Relate has supplied the Customer with any information, ideas, documentation (including reports, proposals, designs, programs, strategies, sketches, drawings, plans, specifications, manuals and other materials and aids, etc.) during the provision of the Services ("Intellectual Property"), then the copyright in that Intellectual Property shall remain the property of Relate, and the Customer must not reproduce, copy or use it in any manner without the prior written permission of Relate.

8.2 Upon completion of any agreement with Relate, the Customer must return to Relate all copies of any Intellectual Property (whether in written, electronic or other form), except as otherwise agreed with Relate. No copies of such Intellectual Property are to be retained or used by the Customer.

8.3 Each party:

(a) shall treat all Confidential Information belonging to the other party as confidential and safeguard it accordingly; and

(b) shall not disclose any Confidential Information belonging to the other party to any other person without the prior written consent of the other party, except to such persons and to such extent as may be necessary for the performance of any agreement between the parties, or except where disclosure is otherwise expressly permitted by the provisions of the such agreement.

8.4 Relate is obliged to remain vigilant to, and to advise the Customer of, any conflict of interest that may potentially impact or harm the Customer. Relate shall take all necessary precautions to ensure that all Confidential Information obtained from the Customer under, or in connection with, any agreement:

(a) is given only to such of its staff and professional advisors or Relates engaged to advise it in connection with the agreement as is strictly necessary for the performance of the agreement (and only to that extent);

(b) is treated as confidential and not disclosed (without prior approval) or used by such staff or professional advisors or Relates otherwise than for the purposes of the agreement.

8.5 The provisions of clauses 8.3 and 8.4 shall not apply to any Confidential Information received by one party from the other:

(a) which is or becomes public knowledge (otherwise than by breach of this clause);

(b) which was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;

(c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

(d) is independently developed without access to the Confidential Information; or

(e) which must be disclosed pursuant to a statutory, legal or Parliamentary obligation placed upon the party making the disclosure.

8.6 The Customer:

(a) shall immediately notify the Customer of any breach of security in relation to Confidential Information and all data obtained in the performance of the agreement and will keep a record of such breaches. The Customer will use its best endeavours to recover such Confidential Information or data however it may be recorded. The Customer will co-operate with Relate in any investigation that the Customer considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data;

(b) the Customer assumes liability for all loss or damage suffered by Relate as a result of breach of confidentiality undertaken by it, by itself or its employees or agents.

## 9. Limitation of Liability

9.1 Relate undertakes to act in all professional matters as a faithful Relate to the Customer, whose interests will be watched over with skill and care. Notwithstanding:

(a) any recommendations given to the Customer by Relate as part of the provision of the Services are based on Information provided by the Customer without verification by Relate. The Customer acknowledges and agrees that:

(i) Relate gives no representation or guarantee as to the profitability, improvement, growth or other aspects of the Customer's personal life/business;

(ii) all other conditions, terms, representations and warranties (whether express or implied by law), in respect to the provision of any advice, recommendations, information or services which may be binding on Relate, are excluded.

(b) Relate shall only be liable to the Customer for the consequences of any negligent act, omission or statement of Relate, and then only to the extent and limitations referred to in clause 17.2.

9.2 The liability of Relate to the Customer shall expire twelve (12) months from the date of either completion or termination of the Services, unless in the meantime the Customer has made a claim in writing to Relate, specifying a negligent act, omission or statement said to have caused alleged loss or damage sustained or sustainable.

9.3 Notwithstanding clauses 9.1 and 9.2, Relate shall not be liable for any loss or damage sustained or sustainable by a Customer in relation to:

(a) errors occurring in any goods, materials, documentation, information, etc. not created or prepared by Relate;

(b) errors occurring during the course of any services which are not provided by, nor the responsibility of, Relate;

(c) the use of any information or advice without the approval of Relate.

9.4 Information, feedback and discussions do not substitute for the Customer's independent judgement and experience nor expert or legal advice. Relate's focus is to assist the Customer in making informed decisions about their personal life/business by providing objective feedback. Any application of recommendations provided by Relate is at the Customer's discretion. Relate does not warrant or guarantee the success or outcome resulting from the provision of the Services in any particular circumstances, for the Customer or the Customer's personal life/business.

#### 10. Default and Consequences of Default

10.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Relate's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

10.2 If the Customer owes Relate any money the Customer shall indemnify Relate from and against all costs and disbursements incurred by Relate in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Relate's collection agency costs, and bank dishonour fees).

10.3 Without prejudice to any other remedies Relate may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Relate may suspend or terminate the provision of Services to the Customer. Relate will not be liable to the Customer for any loss or damage the Customer suffers because Relate has exercised its rights under this clause.

10.4 Without prejudice to Relate's other remedies at law Relate shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Relate shall, whether or not due for payment, become immediately payable if:

- (a) the Customer breaches these terms and conditions, and provided that the breach is capable of remedy the Customer has failed to remedy that breach within a reasonable period (being not less than two (2) business days) after receiving written notice from Relate requiring them to do so;
- (b) any money payable to Relate becomes overdue, or in Relate's opinion the Customer will be unable to make a payment when it falls due;
- (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

#### 11 Cancellation

11.1 Relate will abide with all New Zealand laws and regulations that apply regarding the Consumers Guarantee Act 1993 and the Fair Trading Act.

11.3 Where claims for a cancellation fall outside of clause 11.1, Relate reserves the right to decline or approve a cancellation request.

11.3 If Relate approves a claim for cancellation it may charge a 30% base cancellation fee plus a fee taking into consideration any work having been done or supplied. Along with this an administration fee may also apply to cover costs involved in accepting the cancellation. All of this is at the discretion of Relate.

11.4 All appointments for one on one coaching require a 48 hour cancellation notice or a 24 hour notice of rebooking to a suitable time for all parties involved. Outside of this notice, clauses 11.1, 11.2, and 11.3 apply.

#### 12. Privacy Act 1993

12.1 The Customer authorises Relate or Relate's agent to:

- (a) access, collect, retain and use any information about the Customer;
  - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
  - (ii) for the purpose of marketing products and services to the Customer.
- (b) disclose information about the Customer, whether collected by Relate from the Customer directly or obtained by Relate from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.

12.2 Where the Customer is an individual the authorities under clause 12.1 are authorities or consents for the purposes of the Privacy Act 1993.

12.3 The Customer shall have the right to request Relate for a copy of the information about the Customer retained by Relate and the right to request Relate to correct any incorrect information about the Customer held by Relate.

12.4 The Customer agrees that Relate may (at no cost) for their own commercial purposes:

- (a) make reference to the Customer as a customer; and
- (b) use collected databases (ether independently or supplied by the Customer).

#### 13. Claims

13.1 Relate shall be under no liability whatsoever unless written notice of any claim, giving full particulars of any alleged error or omission, failure to comply with the Proposal or this agreement, or any loss or damages suffered by the Customer, is received by thereby within seven (7) days after completion of the Services.

13.2 The failure to notify a claim within the time limits under clause 13.1 is evidence of satisfactory performance by Relate of its obligations.

#### 14. Personal Property Securities Act 1999 ("PPSA")

14.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:

- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all collateral (account), being a monetary obligation of the Customer to Relate for Services previously provided (if any) and that will be provided in the future by Relate to the Customer.

14.2 The Customer undertakes to:

- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Relate may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, Relate for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
- (c) not register a financing change statement or a change demand without the prior written consent of Relate.

14.3 Relate and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

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14.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

14.5 Unless otherwise agreed to in writing by Relate, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

14.6 The Customer shall unconditionally ratify any actions taken by Relate under clauses 14.1 to 14.5.

### 15. Security and Charge

15.1 In consideration of Relate agreeing to provide Services, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

15.2 The Customer indemnifies Relate from and against all Relate's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Relate's rights under this clause.

15.3 The Customer irrevocably appoints Relate and each director of Relate as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Customer's behalf.

### 16. Disclosure

16.1 The Customer acknowledges that:

(a) Relate can, and may, refer the Customer for products and/or professional services associated with the provision of the Services by Relate. The Customer further acknowledges that Relate may expect to derive consideration, either monetary or otherwise, from the referral; and

(b) a third party may derive consideration, either monetary or otherwise, from the referral; and

(c) Relate will not obtain, or seek to obtain, any consideration from a third party until such time as the Customer has been disclosed of the nature, source and amount of any benefit Relate will receive from the referral; and such details shall be found in the completed prescribed form.

### 17. General

17.1 The failure by Relate to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Relate's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

17.2 These terms and conditions and any agreement to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Tauranga Court of New Zealand.

17.3 Relate shall be under no liability whatsoever to the Customer for any indirect, incidental, special and/or consequential loss and/or expense (including loss of profit, revenue, business opportunities, etc.) suffered by the Customer arising out of a breach by Relate of these terms and conditions (alternatively Relate's liability shall be limited to damages which under no circumstances shall exceed the Fee).

17.4 The Customer shall not be entitled to set off against, or deduct from the Fee, any sums owed or claimed to be owed to the Customer by Relate nor to withhold payment of any invoice because part of that invoice is in dispute.

17.5 Relate may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

17.6 The Customer agrees that Relate may amend these terms and conditions at any time. If Relate makes a change to these terms and conditions, then that change will take effect from the date on which Relate notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for Relate to provide Services to the Customer.

17.7 Neither party shall be liable for any default for payment or Services, delay, defect or deficiency hereunder to the extent that such default, delay, defect or deficiency is caused by an event of force majeure which affects performance by hindering, delaying or making considerably more difficult the fulfilment of commitments of the party, including any act of God, war, terrorism, fire, flood, storm or other event beyond the reasonable control of either party.

17.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

17.9 The Customer acknowledges and agrees that the obligations set out in clause 8 shall survive the expiration or termination of this agreement.