TEMPLATE SERVICES AGREEMENT – USER NOTES

This is a simple "supplier friendly" B2B services agreement for one-off low value/low risk service supplies.

If the services are high value/high risk or intended to be the subject of multiple orders (e.g. under a statement of work model), you should use an agreement that has been drafted for that purpose (e.g. more "belts and braces").

USING THIS TEMPLATE

The ***User Notes*** and the statements in the footer (all marked in red) are included to assist you to prepare this document. They are for reference only. You should delete all user notes and the statements in the footer from the final form of your document.

The use of [*square brackets*] around black text means that:

- the requested details need to be inserted
- there are different options for you to consider
- the whole clause is optional and you need to consider whether to include it, based on your circumstances and the user notes.

Before finalising your document, check for all square brackets to ensure you have considered the relevant option and deleted the brackets.

If you delete any clause or schedule, remember to cross reference check the document.

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SERVICES AGREEMENT

DATE

PARTIES

[User note: The Agreement assumes that two companies are entering into the Agreement. Different party identifiers will be required for other entities.]

1 [***INSERT FULL LEGAL NAME***], company number [*insert company number*] (**Supplier**)

2 [***INSERT FULL LEGAL NAME***], company number [*insert company number*] (**Client**)

SECTION A: AGREEMENT AND KEY DETAILS

AGREEMENT

The Supplier agrees to provide, and the Client agrees to buy, the Services, and related services, on the terms of the Agreement. The Agreement comprises:

- Section A (Agreement and Key Details), including this cover page and the signature clauses; and
- Section B (General Terms).

KEY DETAILS

[User note: This section should include all of the "job specific" details relating to the services to be provided in sufficient detail to provide certainty to both parties.]

ITEM	DETAIL
Start date of the Agreement	[*On the date both parties sign it/[Insert date]*]. ***[User note: The start date is often the date of the Agreement. However, in some cases the parties may wish to have the Agreement take effect from a future date).]***
End date of the Agreement	The later of [*insert date*] or the date of delivery of all of the Services. ***[User note: While the Agreement will end on the date set out here, the Agreement provides for certain clauses to continue after expiry or termination (e.g. confidentiality and IP).]***
Services	[*Insert description*]. ***[User note: To avoid any dispute as to what is supposed to be provided, this section should set out in detail the***

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ITEM	DETAIL
	services to be provided and any deliverable forming part of the services.]
Requirements	[*Insert any requirement relating to the Services not covered by the general description above or in the General Terms*.]
Fees	NZD[*Insert the Fees for the Services*.] ***[User note: The fees chargeable for the services should be set out in this section, including any cap. E.g. if the work is T&M, the T&M rates should be included, along with any cap. If the work is fixed price, is this to be paid in one lump sum, in milestones or on a monthly basis? This should be set out here.]***
Invoice dates	[*Insert milestones/NA*.] ***[User note: The default position in the Agreement is that where no invoice dates are set out in this section, the Supplier will invoice monthly in arrears.]***

SIGNED

[User note: Assumes two companies are entering into the Agreement. Different signature clauses may be required for other persons.]

SIGNED for and on behalf of ***[INSERT NAME OF COMPANY]*** **LIMITED** by:)
)

Signature of authorised signatory

Print full name of authorised signatory

SIGNED for and on behalf of ***[INSERT NAME OF COMPANY]*** **LIMITED** by:)
)

Signature of authorised signatory

Print full name of authorised signatory

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SECTION B: GENERAL TERMS

1 INTERPRETATION

1.1 **Definitions:** In the Agreement, the following terms have the stated meaning:

TERM	MEANING
Agreement	Section A (Agreement and Key Details, including the cover page and signature clauses) and Section B (General Terms).
Confidential Information	the terms and conditions of the Agreement and any information that is not public knowledge and which is obtained from the other party in the course of, or in connection with, the Agreement. The Supplier's Confidential Information includes Intellectual Property owned by the Supplier.
Fees	the fees set out in the Key Details.
Force Majeure	an event that is beyond the reasonable control of a party, excluding an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care.
Intellectual Property Rights	includes copyright and all rights existing anywhere in the world conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trade marks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity. **Intellectual Property** has a consistent meaning.
Key Details	the Agreement specific details set out in Section A of the Agreement.
Services	the services set out in the Key Details.

1.2 **Interpretation:** In the Agreement:

a clause and other headings are for ease of reference only and do not affect the interpretation of the Agreement;

b words in the singular include the plural and vice versa;

c a reference to:

i a **party** to the Agreement includes that party's permitted assigns; and

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ii **including** and similar words do not imply any limit.

2 OBLIGATIONS

2.1 **General:** In addition to the other obligations of the Agreement:

a the Supplier must provide the Services:

i in accordance with the Agreement, including any requirement set out in the Key Details, and all applicable laws;

ii exercising reasonable care, skill and diligence; and

iii using suitably skilled, experienced and qualified staff; and

b the Client must promptly make decisions (including approvals) and provide the Supplier with all information reasonably required to provide the Services.

3 WARRANTIES

3.1 **General:** The Supplier warrants that the Services will, at the time they are provided, materially conform to any requirement set out in the Key Details.

3.2 **Breach of warranty:** If the Services do not meet a warranty, at the Client's request and at the Supplier's cost, the Supplier must reperform the Services so that they meet or satisfy that warranty. The Supplier's obligation under this clause 3.2 is the Client's sole remedy against the Supplier for breach of warranty.

3.3 **Exclusions:**

a To the maximum extent permitted by law, the Supplier's warranties are limited to those stated in clause 3.1. Any implied condition or warranty (including any warranty under Part 3 of the New Zealand Contract and Commercial Law Act 2017) is excluded.

b The Client agrees and represents that it is acquiring the Services for the purposes of trade. The parties agree that:

i to the maximum extent permissible by law, the New Zealand Consumer Guarantees Act 1993 does not apply to the supply of the Services or the Agreement; and

ii it is fair and reasonable that the parties are bound by the Agreement, including this clause 3.3.

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1 INTELLECTUAL PROPERTY

[User note: Assumes the Client will own newly created IP if any, unless that IP incorporates existing IP or independently developed IP. This is the standard position taken by Clients. If the Supplier is to own any IP created under the Agreement, this clause will need to be modified.]

1.1 **Retained Intellectual Property:** The following Intellectual Property (including any modification, enhancement or derivative work of that Intellectual Property) remains the property of the current owner, regardless of its use in the Services:

a Intellectual Property that existed prior to the date of the Agreement; and

b Intellectual Property that was developed independently of the Agreement.

1.2 **Know-how:** The Supplier may use for its own business purposes, both during and after the term of the Agreement, any general idea, concept, know-how, technique, methodology, and similar Intellectual Property gained or developed by the Supplier while providing the Services [*provided the Supplier does not breach its confidentiality obligations under the Agreement or infringe the Client's Intellectual Property Rights*].

1.3 **Ownership going forward:**

a Subject to clauses 1.1 and 1.2, all new Intellectual Property created or developed by the Supplier in providing the Services, is owned by the Client on payment in full of all of the Fees relating to those Services.

b If new Intellectual Property described in clause 1.3a incorporates Supplier Intellectual Property or any third party material, the Supplier grants or must obtain for the Client an irrevocable, perpetual, non-transferable and fully paid licence to use that Intellectual Property or third party material within New Zealand for the Client's internal business purposes.

2 FEES

2.1 **Fees:** The Client must pay the Fees to the Supplier for providing the Services.

2.2 **Invoicing:**

a The Supplier must provide the Client with valid GST tax invoices on the dates set out in the Key Details, or if there are none, monthly for Services undertaken in the previous month.

b The Fees exclude GST, which the Client must pay on taxable supplies under the Agreement.

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c The Client must pay the Supplier's invoice:

i by the 20th of the month following the date of invoice; and

ii electronically in cleared funds without any set off or deduction.

2.3 **Overdue amounts:** The Supplier may charge interest on overdue amounts. Interest will be calculated from the due date to the date of payment (both inclusive) at an annual percentage rate equal to the corporate overdraft reference rate (monthly charging cycle) applied by the Supplier's primary trading bank as at the due date (or if the Supplier's primary trading bank ceases to quote such a rate, then the rate which in the opinion of the bank is equivalent to that rate in respect of similar overdraft accommodation expressed as a percentage) plus 2% per annum.

3 CONFIDENTIALITY

3.1 **Security:** Each party must, unless it has the prior written consent of the other party:

a keep confidential at all times the Confidential Information of the other party; and

b ensure that any personnel or professional advisor to whom a party discloses the other party's Confidential Information is aware of, and complies with, this clause 3.1.

3.2 **Permitted disclosure:** The obligation of confidentiality in clause 3.1 does not apply to any disclosure or use of Confidential Information:

a for the purpose of performing the Agreement or exercising a party's rights under the Agreement;

b required by law (including under the rules of any stock exchange);

c which is publicly available through no fault of the recipient of the Confidential Information or its personnel;

d which was rightfully received by a party to the Agreement from a third party without restriction and without breach of any obligation of confidentiality; or

e by the Supplier if required as part of a "bona fide" sale of its business (assets or shares, whether in whole or in part) to a third party, provided that the Supplier enters into a confidentiality agreement with the third party on terms no less restrictive than this clause 3.

3.3 **Return of information:** Except to the extent that a party has ongoing rights to use Confidential Information, a party must, at the request of the other party following the expiry or termination of the Agreement, promptly return to the other party or destroy all Confidential Information of the other party in the recipient party's possession or control.

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4 LIABILITY

4.1 **Maximum liability:** The maximum aggregate liability of the Supplier under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not exceed the Fees paid and/or payable by the Client under the Agreement for Services properly provided in accordance with the Agreement.

4.2 **Unrecoverable loss:** Except for the Client's liability to pay the Fees, neither party is liable to the other under or in connection with the Agreement for any loss of profit, data, savings, business, revenue, and/or goodwill, or any indirect, consequential, incidental or special loss or damage of any kind.

4.3 **Unlimited liability:**

a Clauses 4.1 and 4.2 do not apply to limit the Supplier's liability for:

i personal injury or death;

ii fraud or wilful misconduct; or

iii a breach of clause 3.

b Clause 4.2 does not apply to limit the Client's liability for those matters stated in clauses **Error! Reference source not found.** to 4.3aiii.

4.4 **No liability for the other's failure:** Neither party will be responsible, liable, or held to be in breach of the Agreement for any failure to perform its obligations under the Agreement or otherwise, to the extent that the failure is directly caused by the other party failing to comply with its obligations under the Agreement, or by the negligence or misconduct of the other party or its personnel.

4.5 **Mitigation:** Each party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with the Agreement.

5 TERM AND TERMINATION

5.1 **Duration:** Unless terminated under this clause 5, the Agreement starts and ends on the dates set out in the Key Details.

5.2 [***No fault termination:*** *Either party may terminate the Agreement on no less than one month's prior notice to the other party.*] **[*User note: Include this clause 8.2 where it would be useful to terminate the agreement at will. If this clause is retained, the following clause should be titled "Other termination rights".*]**

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5.3 **[*Other t*][*T*]ermination rights:** Either party may, by notice to the other party, immediately terminate the Agreement if the other party:

a breaches any material provision of the Agreement and the breach is not:

i remedied within 10 days of the receipt of a notice from the first party requiring it to remedy the breach; or

ii capable of being remedied;

b has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of external administration, or ceases to continue business for any reason; or

c is unable to perform a material obligation under the Agreement for 30 days or more due to Force Majeure.

5.4 **Consequences of termination or expiry:**

a Termination or expiry of the Agreement does not affect either party's rights and obligations that accrued before that termination or expiry.

b The Client must pay for Services provided before the expiry or termination date.

5.5 **Obligations continuing:** Clauses which, by their nature are intended to survive expiry or termination, including clauses 3, 4, 5, 6, and 7.9, continue in force.

6 DISPUTES

6.1 **Good faith negotiations:** Before taking any court action, a party must use best efforts to resolve any dispute under, or in connection with, the Agreement through good faith negotiations.

6.2 **Obligations continue:** Each party must, to the extent practicable, continue to perform its obligations under the Agreement even if there is a dispute.

6.3 **Right to seek relief:** This clause 6 does not affect either party's right to seek urgent interlocutory and/or injunctive relief.

7 GENERAL

7.1 **Force Majeure:** Neither party is liable to the other for any failure to perform its obligations under the Agreement to the extent caused by Force Majeure, provided that the affected party:

a immediately notifies the other party and provides full information about the Force Majeure;

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b uses best efforts to overcome the Force Majeure; and

c continues to perform its obligations to the extent practicable.

7.2 **Waiver:** To waive a right under the Agreement, that waiver must be in writing and signed by the waiving party.

7.3 **Independent contractor:** The Supplier is an independent contractor of the Client. No other relationship (e.g. joint venture, agency, trust or partnership) exists under the Agreement.

7.4 **Notices:** A notice given by a party under the Agreement must be delivered to the other party via email to an email address notified by the other party for this purpose. If the notice is a notice of termination, a copy of that email must be immediately delivered (by hand or courier) to the Chief Executive or equivalent officer of the other party at the other party's last known physical address.

7.5 **Severability:** Any illegality, unenforceability or invalidity of a provision of the Agreement does not affect the legality, enforceability or validity of the remaining provisions of the Agreement.

7.6 **Variation:** Any variation to the Agreement must be in writing and signed by both parties.

7.7 **Entire agreement:** The Agreement sets out everything agreed by the parties relating to the Services and supersedes and cancels anything discussed, exchanged or agreed prior to the Agreement's start. The parties have not relied on any representation, warranty or agreement relating to the subject matter of the Agreement that is not expressly set out in the Agreement, and no such representation, warranty or agreement has any effect from the Agreement's start. Without limiting the previous sentence, the parties agree to contract out of sections 9, 12A, and13 of the Fair Trading Act 1986, and it is fair and reasonable that the parties are bound by this clause 7.7.

7.8 **Subcontracting and assignment:** Neither party may assign, subcontract or transfer any right or obligation under the Agreement without the prior written approval of the other (not to be unreasonably withheld). The first party remains liable for its obligations under the Agreement despite any approved assignment, subcontracting, or transfer.

7.9 **Law:** The Agreement is governed by, and must be interpreted in accordance with, the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with the Agreement.

7.10 **Counterparts:** The Agreement may be signed in counterparts, each of which constitutes an original and all of which constitute the same agreement. A party may enter the Agreement by signing and emailing a counterpart copy to the other party.

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