

# **PHIBBS & CO**

## **CHARTERED ACCOUNTANTS**

### **Terms of Engagement**

#### **1. Services**

We will provide the services described in our engagement letter. We will use our best endeavours to carry out our obligations in accordance with the timescale set out in our engagement letter. However, unless both parties specifically agree otherwise in writing, the dates contained in our engagement letter are indicative dates intended for planning and estimating purposes only and are not contractually binding. Either of us may request changes to the Services as set out in the engagement letter or changes to any other aspect of the Terms of Business. Changes must be requested in writing with sufficient detail to enable the other party to assess the impact of the requested change on the cost, timing, and other aspect of the Services. Both of us agree to work together to consider and, if appropriate, agree any changes. Until a change is agreed in writing, the latest agreed terms still apply.

#### **2. Reports and advice**

We will report to you in accordance with the terms set out in the engagement letter. You will make copies of the report available to those people referred to in our engagement letter but, unless required by law, you must not provide the report or copies of it to any third party without first obtaining our written consent. Such consent will only be granted on the terms we deem appropriate which will include that we accept no duty or responsibility to any other party who may seek to rely on our report. In some cases appropriate releases from third parties may be required. You acknowledge that no reliance shall be placed on draft reports, conclusions, or advice, whether oral or written, issued by us as they may be subject to further work, revision and other factors which may mean that such drafts are substantially different from any final report or advice issued.

#### **3. Information**

You agree to provide in a timely fashion all information and documents reasonably required to enable us to provide the Services. Unless otherwise stated in the engagement letter, we will not independently verify the accuracy of such information and documents, and we will not be liable for any loss or damage arising from any inaccuracy or other defect in any information or documents supplied by you.

#### **4. Confidentiality**

Subject to our responsibility to respond to queries directed to us by the Inland Revenue Department we will maintain confidentiality with respect to the business records, taxation affairs and personal/private affairs of those listed in the engagement letter. In the absence of specific instructions from you (oral or written), copies of the financial statements and/or returns of income will be provided only to you and the Inland Revenue Department, and to other such persons as we are required to by law to disclose them. Neither of us will disclose confidential information about the other without the other's consent. Confidential information includes but is not limited to our working papers, any proposal or tender document, information, methodologies and documents that are not in the public domain. Exceptions to this are disclosures to legal advisers, disclosures required by law and disclosures necessary for the proper performance of the Services. On termination of this contract for any reason each of us agrees to return any property of the other (including any confidential information). However, for our internal quality or audit purposes, we are entitled to retain one copy of any document or other material upon which the Service is based.

## **5. Intellectual Property**

Intellectual property rights in all pre-existing training materials and methodologies utilized in providing the Services or incorporated into a report of other material provided to you remain vested in Phibbs & Co. Limited.

## **6. Access to Working Papers**

The working papers for this engagement, including electronic documents and files, are our property and constitute confidential information. We will notify you as soon as practicable (unless restricted by law) where we receive a legally compelling notice or request for access to our working papers from a third party.

## **7. Liabilities**

We shall use reasonable skill and care in the provision of the services set out in the engagement letter. However, we have discussed with you, and you agree, that in unlikely event that we fail to do so, the liability of Phibbs & Co. Limited for loss or damage arising from, or in relation to, the services whether arising from breach of contract, tort or otherwise, of its directors and staff, will in no circumstances exceed five times the assignment fee in the aggregate. We have also agreed with you that this limitation of liability extends to both the engagement contained in this letter and any variation or addition to it, and to claims arising from breach of contract, negligence or in any other way. Where services are provided in connection with business, the guarantees implied by the Consumer Guarantees Act will not apply. Where you have rights under the Consumer Guarantee Act, nothing in this paragraph limits those rights. To the extent permitted by law you will indemnify us, our directors and employees against any liability, loss, cost, or expense they incur as a result of any claim or demand by a third party which relates in any way to the Services, or any deliverable provided by Phibbs & Co. Limited under this contract.

## **8. Circulation of Report**

Our report, advices or other deliverables under our engagement are not intended for publication (including on a website), distribution or circulation outside yourself, and should not be used by you for any other purpose other than the purpose that you have communicated to us in writing before commencement of the engagement or as otherwise agreed by us in writing. We do not accept responsibility for losses caused to any person as a result of the circulation, reproduction or use of a document contrary to this paragraph.

## **9. Use of software**

We may use or develop software, including spreadsheets, databases, and other electronic tools (tools) to assist us to provide the services. If we provide these tools to you, you acknowledge that (except where these tools are a specific deliverable under this engagement letter) they were developed for our purposes and without consideration of any purpose for which you may use them, are made available on an "as is" basis for your use only and must not be distributed to or shared with any third party. We make no representations or warranties as to the sufficiency or appropriateness of the tools for any purpose for which you or a third party may use them.

## **10. Communications**

We will communicate with you electronically. Electronically transmitted information cannot be guaranteed to be secure or error free and it can be adversely affected or unsafe to use. We will use commercially reasonable procedures to check for the most commonly known viruses before sending information electronically, but we will not be liable to you in respect of any error, omission or loss of confidentiality arising from or in connection with the electronic communication of information to you.

## **11. Fees and Payment**

Our fees are calculated on the basis of the anticipated time required to be spent on the assignment by our directors and staff and on the levels of skill and responsibility involved. If we have agreed on a fee for the provision of services then this will be set out in the engagement letter. Alterations to the scope of work or delays beyond the control of Phibbs & Co. Limited may require a re-negotiation of fees. Our performance is dependent on you carrying out your responsibilities as set out in these terms of engagement and the engagement letter. Should this not occur, it may lead to an increase in our fees depending upon the extent to which we have to perform more work ourselves or reschedule our commitments to deliver the agreed Services.

You agree to pay our reasonable travel and accommodation costs incurred in connection with our services. We also charge a service fee of 5% to cover costs in respect of photocopying, postage, tolls, taxes, filing fees, stationery, couriers and mileage. Any special expense arrangement will be agreed.

Our invoices will be issued either on a fortnightly basis reflecting the status of the assignment or following completion of the assignment. All invoices will be due for payment within 7 days of issue. Phibbs & Co. Limited reserves the right to charge interest on a monthly basis, at a reasonable rate, in respect of account balances not paid within sixty (60) days from the date of issue. We may also on charge any costs incurred in the collection of overdue fees including, but not limited to, the costs incurred in the placement of the overdue fees with a debt collection agency.

All our fee estimates exclude GST.

## **12. Practice Review**

Chartered Accountants of New Zealand requires practitioners to be subject to review from time to time in order to ensure that professional standards are being maintained. Reviews are based on a sample of files and your file may be selected by the Reviewer for examination. The Reviewer is officially appointed by the Institute and is bound by declarations of secrecy, meaning utmost confidentiality is maintained. Furthermore, the Reviewer is the only person from the Institute who has access to your records and no copies are made, but the review could include anonymous reference to information provided by you. If you have any questions about practice review, please do not hesitate to contact us.

## **13. Administration of Client Bank Accounts**

For any bank accounts we are required to administer, or for any cheques to be signed on your behalf, we will ensure:

- All payments are approved by a Director
- Appropriate segregation of duties,
- Payments are only approved when supported by your authorization
- A report will be sent to you each month advising details of payments made

In the event of the bank not honoring a payment on your account due to a lack of funds, we will not be responsible or held liable for the funds not paid to the recipient. Notwithstanding the above, in the event that the recipient should seek retribution from us for the unpaid funds, you will indemnify us for any monies lost.

## **14. Payroll**

Where we are to be responsible for administering your payroll function, we will ensure;

- We have on file details of the approved salary/ wage rates and appropriate written authorities for employee deductions;

- We have your written approval of payroll before payment. If it is not possible to obtain your approval before payment, a letter will be sent to you after payment, advising details and seeking confirmation;
- All payments are approved by a Director
- Appropriate segregation of duties,
- Under no circumstances would we be involved in the preparation of cash payrolls.

## **15. General**

Neither party will be liable to the other for failure to fulfill obligations caused by circumstances outside its reasonable control.

Either party may terminate this contract at any time by giving at least 14 days notice to the other, provided that Phibbs & Co. Phibbs Limited may terminate this contract immediately if it has a professional objection to any proposed course of action by you or to any instructions you give us in relation to the Services. On termination, Phibbs & Co. Limited shall be entitled to be paid for work that has been performed up to the date of termination, in accordance with its standard hourly rates, subject to any agreed upper limit.

For the duration of our engagement, and for 12 months after its termination or completion, you will not employ, or procure a third party to employ, any employee of ours who has taken part in the performance of the Services.

If you offer employment to such an employee, and if we give our consent, and if the employee accepts the offer, then you pay a recruitment fee to us. The recruitment fee will be calculated at 20% of the relevant employee's gross annual package.

We will not be prevented or restricted by anything in the contract from providing services for other clients.

A failure or delay by a party in exercising a power or right given to it under this contract does not operate as a waiver of that power or right; nor does a single or partial exercise of a power or right prevent any other or further exercise of it. A waiver by a party of a power or right given to it under this contract does not affect any other provision of this contract.

Neither party may, nor shall have the power to, assign or otherwise deal with its rights or obligations under this contract without the prior written consent of the other party, except that Phibbs & Co. Limited may without consent assign or novate this contract to a successor to the business of Phibbs & Co. Limited to which this contract relates.

If there is any conflict or discrepancy between the terms of these Standard Terms and Conditions and our engagement letter or proposal, the terms of our engagement letter or proposal will prevail in that order.

The contract comprising our Letter of Engagement and these Terms of Engagement forms the entire agreement between us relating the Services. It replaces and supersedes any previous proposals, correspondence, understandings or other communications whether written or oral in respect of the Services.

The contract between us shall be governed by and interpreted in accordance with the laws of New Zealand. The Courts of New Zealand shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning the contract and any other matters arising.

**Phibbs & Co Limited**

14 May 2021