

GENERAL TERMS FOR CONTRACTORS PROVIDING SERVICES

These General Terms apply to any and all services provided by the Contractor to BPS as agent for the Property Owner. By providing services to BPS the Contractor is deemed to have accepted these General Terms.

1 AGENCY AND APPOINTMENT

1.1 The Contractor acknowledges that BPS is entering this Agreement in its capacity as agent for the Property Owner.

1.2 BPS appoints the Contractor to provide Services during the Term in accordance with the terms of this Agreement.

1.3 By entering into this Agreement or providing services to BPS, the Contractor accepts such appointment and agrees to be bound by the terms of this Agreement.

2 WORK REQUESTS

2.1 BPS will submit a Work Request to the Contractor through the Property Management System when BPS requires the Contractor to provide the Services pursuant to this Agreement.

2.2 A Work Request may be amended or varied at any time by BPS through the Property Management System where the amended or varied services are within the scope of the Services. Any variation to a Work Request must quote the original Work Request number. A variation to a Work Request will not be valid unless it is in writing and agreed by both parties.

2.3 The Contractor will respond to any Work Request or any amendment or variation to a Work Request and will perform the Services within the Response Times set out in Contractor Schedule, or where not set out in the Contractor Schedule, within a reasonable time.

2.4 BPS may issue an Additional Work Request to the Contractor through the Property Management System in respect of additional

services required by BPS which sit outside the scope of the Services.

2.5 Following receipt by the Contractor of an Additional Work Request in accordance with clause 2.4 above, the Contractor will either, subject to clause 2.7, accept the Additional Work Request in the Property Management System, or advise BPS as soon as possible that it is unable to accept the Additional Work Request by declining it in the Property Management System.

2.6 BPS may withdraw or vary an Additional Work Request at any time before it is accepted by the Contractor in the Property Management System.

2.7 Services performed under an Additional Work Request will be charged at the relevant rates set out in the Contractor Schedule or any other rates agreed between the parties prior to the Contractor accepting the Additional Work Request. Once accepted, the Additional Work Request will be deemed to be a Work Request, and any services provided under the Additional Work Request will be deemed to be Services and subject to the terms of this Agreement.

3 FEES

3.1 In consideration for the Contractor providing the Services to BPS, BPS will pay to the Contractor the Fees.

3.2 The Contractor must submit a valid tax invoice for all Fees. Each invoice must include:

- (a) a breakdown of the Fees (if relevant);
- (b) a description of the Services provided;
- (c) the relevant Work Request number (if any); and
- (d) the amount of GST shown separately.

3.3 BPS will pay the Contractor's valid invoice:

- (a) only once the relevant Work Request (if any) is closed by the Contractor in the Property Management System; and
- (b) unless agreed otherwise in the Contractor Schedule, by the 20th of the month following the month in which the invoice was received or in which the relevant Work Request is closed, whichever is the later.

3.4 If BPS disputes an invoiced amount, BPS must, prior to the date the invoice is required to be paid, notify the Contractor in writing identifying the amount in dispute and giving reasons for the dispute. BPS will not be required to pay any bona fide disputed amount (but must pay amounts not in dispute) until such dispute has been resolved.

3.5 All Fees and any other amounts specified in this Agreement are in New Zealand Dollars and are exclusive of GST (if any).

4 SERVICES

4.1 **BPS's Requirements:** The Contractor will:

- (a) provide the Services in accordance with any applicable Work Request and in accordance with the terms of this Agreement;
- (b) comply with all of BPS's reasonable requirements when carrying out the Services;
- (c) meet all KPIs;
- (d) exercise reasonable workmanship, skill, care and diligence in providing the Services;
- (e) ensure that the Services are provided in a manner and at a time which causes the least amount of:
 - (i) disruption to the Property Owners and occupiers of and visitors to the Property as is reasonably possible;
 - (ii) dust, dirt, noise and general disturbance at the Property,

provided that the Contractor agrees that where the Services cannot be provided in such manner or at such time, except where this is due to an emergency situation, it will

obtain BPS's prior written consent to provide the Services in the manner and at the time required.

- (f) comply strictly with the provisions of all relevant legislation, regulations, bylaws, orders, directions, notices, consents, permits and instructions made or given by any person, body or authority having jurisdiction in relation to the provision of the Services including, without limitation, the Building Act 2004 and the Health and Safety at Work Act 2015;
- (g) ensure that provision of the Services does not compromise the security of the Property at any time and follow all security procedures and instructions notified to the Contractor by BPS and/or the Property Owner or occupier.

4.2 The Contractor warrants that:

- (a) it has complied with, and will continue to comply with on an ongoing basis, the requirements of BPS's Health and Safety policies and programmes including, but not limited to, the requirements set out in clause 5; and
- (b) it has acquainted itself with BPS's policies and procedures and any other information provided to the Contractor by BPS concerning the nature, quality and scope of the Services required;

4.3 The Contractor acknowledges that it has had the opportunity to inspect the Property and has undertaken its own due diligence investigations relating to the required Services. The Contractor has based its tender and the Fees payable to provide the Services on its investigations. It has not relied on any representations made by BPS.

4.4 The Contractor will co-operate with the Property Owner and occupier, BPS and its staff and any third party contractors providing services or works to the Property.

4.5 Within the Response Times and at the Contractor's own cost, the Contractor will, within the Remedy Period, make good any defects or omissions in providing the Services. This includes organising the replacement of any defective equipment or item obtained, provided or installed by the Contractor in the provision of the Services,

which requires replacement while under warranty, with equipment or an item of equivalent or better quality.

4.6 Where the Contractor notices any want of repair or defect at the Property in relation to the Services, the Contractor will advise BPS and will remedy the defect as soon as possible or, in the event that such defect may endanger any person, immediately. The Contractor will submit a written report to BPS in respect of the defect and its remediation within 48 hours of remediation being completed.

4.7 The Contractor will do all things necessary to ensure that the benefit of any warranties or guarantees in respect of the Services (including in respect of any items or equipment provided as part of the Services) are vested in the Property Owner.

4.8 Fire protection services providers are to use fireform to request and manage fire systems isolations/systems impairments. The cost(s) of fireform are to be added to the maintenance and testing invoices with zero mark up or margin.

5 HEALTH AND SAFETY

5.1 The Contractor, at its own cost, will comply at all times with the Health and Safety at Work Act 2015 and all regulations, rules, standards, approved codes of practice and any other applicable law relating to health and safety, including the BPS Health and Safety Onboarding Programme and any other BPS policy. Specifically, but without limitation:

- (a) the Contractor will take all practicable steps to ensure the safety of all personnel of BPS, the Contractor and any other persons in connection with the provision of the Services;
- (b) the Contractor will operate a health and safety system which complies with the Health and Safety at Work Act 2015.
- (c) the Contractor must provide evidence if requested that the employees or contractors involved in providing any Services have been adequately trained and have sufficient knowledge and experience of the kind of work, plan or substances that they may be required to carry out or use;

(d) the Contractor will ensure that, before entering the Property, its staff have reviewed an up to date hazard register, and if applicable an asbestos register and hazardous substances inventory for the Property, along with sighting an evacuation / assembly areas plan for each site (upon initial attendance) and any other relevant information in respect of the Property for the purpose of site 'induction' to allow them to provide the Services safely.

(e) all access cards and/or hard keys must be signed out from BPS and returned within 24 hours of the Services being completed. Failure to comply could result in the Contractor being charged for the refitting of all affected locks at the Property.

5.2 Failure to meet any of the requirements set out in clause 5.1 above:

- (a) will constitute a material breach entitling BPS to terminate this Agreement in accordance with clause 9; and
- (b) will entitle BPS to suspend immediately the performance of any part or all of the Services at the Contractor's expense for such period as is necessary and until the Contractor has remedied the breach.

5.3 Prior to providing the Services (or as soon as reasonably practicable thereafter) the Contractor will:

- (a) provide to BPS a completed Health and Safety Programme form in the form required by BPS; and
- (b) pay to BPS the Annual Health and Safety Fee set out in the Contractor Schedule, or if not set out in the Contractor Schedule as set out in the Property Management System or advised by BPS. To a maximum of \$ 1,500 .C.1% of annual billing.

5.4 The Contractor acknowledges its continuing obligation to ensure that BPS is advised of any changes to the information provided to BPS pursuant to this section 5.

5.5 The contractor acknowledges and agrees to the health, safety and general risk related spot checks by Bayleys or a firm representing Bayleys

and Bayleys clients. This will be predominantly focused on induction, site control and loan worker welfare systems and effectiveness.

6 WARRANTIES

6.1 The Contractor warrants and represents to BPS that:

- (a) the Services will be performed to a high standard of workmanship by appropriately qualified and trained personnel, with due care and diligence;
- (b) the Services will comply with the terms of this Agreement and any relevant Work Request;
- (c) the Services will be free from defects in design, material and workmanship and fit for the purpose held out by the Contractor;
- (d) it holds all consents (whether statutory, regulatory or otherwise) required for carrying out the Services and is not in breach of the terms or conditions of such consents and there are no pending or threatened proceedings which might in any way affect those consents; and
- (e) it has no conflict of interest in providing the Services to BPS pursuant to this Agreement, except as disclosed by the Contractor in writing to BPS prior to entering into this Agreement. Without limitation, a breach of this clause constitutes a material breach of this Agreement.

7 INDEMNITIES AND INSURANCE

7.1 To the extent permitted by law, the Contractor will indemnify BPS against any Loss.

7.2 The indemnity contained in clause 7.1, will not apply to the extent that any Loss is due to a default by, or negligence of, BPS.

7.3 The Contractor will arrange and maintain for the duration of the Term an appropriate level of insurance in relation to the performance of its obligations under this Agreement including, without limitation:

- (a) Public and products liability insurance to a level not less than that set out in the Contractor Schedule; and
- (b) Professional indemnity insurance to a level not less than that set out in the Contractor Schedule,

with a reputable insurance acceptable to BPS (such acceptance not to be unreasonably withheld).

7.4 Before commencing the Services, the Contractor will deliver to BPS written evidence that the insurances specified in clause 7.3 have been effected. Subsequently, if requested by BPS at any during the Term, the Contractor will produce evidence that these insurances continue in force.

8 LIMITATIONS

8.1 The Contractor acknowledges and agrees that:

- (a) BPS's liability to the Contractor is at all times limited to and will not exceed the Fee paid to the Contractor for the 12 month period prior to the date upon which the liability arose and the Contractor waives all claims against BPS insofar as any claims exceed the Fee. Without limitation, BPS is in no way liable or responsible for any loss of profits, revenue or business or indirect or consequential injury, loss or damage of whatever type or however arising suffered by the Contractor.

9 TERM, TERMINATION AND EXPIRY

9.1 This Agreement commences on the Commencement Date and continues for the Term, unless terminated earlier in accordance with clauses 9.2, 9.3 or 9.4.

9.2 In the event that:

- (a) Either party is in breach of its material obligations under this Agreement and such breach is unable to be remedied or, if able to be remedied, is not remedied within a reasonable period specified in the written notice given by the other party to the

defaulting party requiring the breach to be remedied, but in no event more than five (5) Working Days; or

(b) Either party suffers an Insolvency Event;

then the party not in default or not the subject of the relevant event may, at its option, terminate this Agreement immediately by written notice to the other party.

9.3 In the event that BPS terminates any other services agreement which it has in place with the Contractor due to BPS may (at BPS's sole discretion) terminate this Agreement immediately by written notice to the Contractor.

9.4 BPS or the Contractor may terminate this Agreement at any time upon giving one month's written notice to the other.

9.5 Except where this Agreement is terminated due to any default by BPS or due to either party suffering an Insolvency Event, the Contractor will complete any Services which were the subject of a Work Request placed by BPS prior to the date of termination of this Agreement.

9.6 The termination of this Agreement will be without prejudice to the rights of either party against the other which have accrued prior to termination. Any clauses intended to survive termination will so survive.

9.7 If the Contractor continues to provide the Services or any other services to BPS after the expiry of the Term, the provision of the Services will be subject to the terms and conditions set out in this Agreement but terminable by either party on twenty (20) Working Days' notice.

10 CONFIDENTIAL INFORMATION

10.1 The Contractor will not at any time (whether during the Term, or after the expiry or termination of this Agreement), either directly or indirectly, use or divulge to any person any of BPS's Confidential Information except:

(a) Strictly as required to carry out its obligations under this Agreement; or

(b) With the prior written consent of BPS; or

(c) Where BPS's Confidential Information is required to be disclosed by law.

10.2 The Contractor will use its reasonable endeavours to ensure that its directors, officers, employees, agents, contractors, representatives, or third parties pursuant to 10.1(a), who are at any time in possession of BPS's Confidential Information do not disclose or permit the disclosure or use of such Confidential Information except as specifically provided in clause 10.1.

11 ASSIGNMENT

11.1 This Agreement may be assigned by BPS to any assignee capable and desirous of undertaking the obligations of BPS under this Agreement provided that such assignee enters into an assignment document with the Contractor under which the assignee agrees to be bound by the terms of this Agreement.

11.2 The Contractor will not subcontract, assign, novate or otherwise transfer or dispose of its rights or obligations under this Agreement without the prior written consent of BPS which may be withheld at BPS's sole discretion.

12 DISPUTE RESOLUTION

12.1 In the spirit of mutual goodwill and co-operation the parties will, from time to time, meet with each other as necessary to discuss in good faith any differences or difficulties which may arise in relation to this Agreement and each party will use its reasonable endeavours to resolve the matter before recourse to arbitration or other legal process.

12.2 In the event of any dispute or difference between the parties as to the construction of or any matter or thing arising out of this Agreement which is not resolved under clause 12.1, then such dispute or difference will be referred to mediation before a mediator (agreed upon by the parties or, if they are unable to agree within 5 Working Days of the parties meeting in accordance with clause 12.1, appointed by the Arbitrators' and Mediators' Institution of New Zealand (AMINZ)).

12.3 Nothing in this Agreement will prevent a party from seeking urgency interlocutory relief.

13 GENERAL

13.1 **Relationship:** Each party is an independent contractor and not a manager, an employee, partner or agent of the other party. Nothing in this Agreement or in the relationship of the parties will be construed as in any sense creating a partnership or any fiduciary obligation between the parties. Except as expressly set out in this Agreement, neither party has the authority to act for or incur any obligation on behalf of the other party or any related company of the other party.

13.2 **Time:** Time is of the essence in the performance by the parties of their obligations under this Agreement.

13.3 **Costs:** Each party will pay its own costs of and incidental to the negotiation, preparation, signing and amending of this Agreement.

13.4 **Notices:** Any notice permitted or required to be given under this Agreement will be in writing and will either be:

- (a) Delivered personally; or
- (b) Mailed; or
- (c) Sent by email;

to the relevant party's Representative at the relevant party's last known address in New Zealand or email address, or in the case of a corporation, to its registered office.

13.5 **Receipt:** Any notice delivered personally will be deemed to have been delivered at the time of delivery or, if delivered on a day which is not a Working Day, at 8.30am on the next Working Day following delivery. Any notice sent by mail will be deemed to have been received on the third Working Day following the date of mailing. Any notice sent by email will be deemed to be received at the time that the email enters the information system of the addressee or, if delivered on a day which is not a Working Day, at 8.30am on the next Working Day following delivery.

13.6 **Waiver:** Any delay, failure or forbearance by a party to exercise (in whole or in part) any right, power or remedy under, or in connection with, this Agreement will not operate as a waiver of such right, power or remedy. A waiver of any breach of any provision of this Agreement will not be effective unless that waiver is in writing and is signed by the party against whom that waiver is claimed. The waiver of any breach will not be, or be deemed to be, a waiver of any other or subsequent breach.

13.7 **Illegality:** If at any time any provision of this Agreement is held by a court of competent jurisdiction to be unreasonable, illegal, invalid or unenforceable for any reason whatsoever, that unreasonableness, illegality or unenforceability will not affect the ability of a party to enforce any other provision of this Agreement and such provision will be modified only to the extent necessary to give effect to the decision of the court.

13.8 **Privity:** For the purposes of the Contract and Commercial Law Act 2017, Part 2, Subpart 1, the Contractor acknowledges and agrees that any agreements, obligations, warranties, and undertakings under this Agreement expressed for the benefit of the Property Owner are enforceable by the Property Owner.

13.9 **Variation to General Terms:** BPS may unilaterally vary the General Terms from time to time. The General Terms applicable to this Agreement will be the latest version of the General Terms available on the Property Management System or on BPS's intranet;

13.10 **Counterparts:** This Agreement may be executed in any number of counterparts (including electronic scanned copies or facsimile copies), each of which is to be deemed an original, but all of which together are to constitute a single instrument.

13.11 **Governing Law:** This Agreement is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of this Agreement.

14 INTERPRETATION

14.1 In this Agreement, the following words have the meanings set out below:

Additional Work Request means a BPS request to the Contractor through the Property Management System for new or additional Services outside the scope of the Services;

Agreement means these General Terms (or, if varied in accordance with clause 13.9, the latest version of the General Terms available on the Property Management System or BPS intranet) together with any Schedules and Annexures attached to these General Terms, Work Requests, and any variations or amendments to the same agreed between the parties;

Annexure means a document annexed to this Agreement;

BPS means Bayleys Property Services Limited [956262];

BPS's Confidential Information means all information provided or made accessible by BPS to the Contractor or any of its representatives, which was marked or notified as confidential or in which there would be a reasonable expectation of confidentiality given the nature of the information, whether obtained before or after execution of this Agreement, and in whatever form or media (including oral, written and electronic material), relating to BPS and its business including BPS's customers and suppliers, but does not include any information:

- (a) that enters the public domain other than as a result of breach of these covenants by the Contractor or any other party to whom BPS's Confidential Information is disclosed by the Contractor; or
- (b) that was already known to the Contractor; or
- (c) that was received by the Contractor from a third party which is not under an obligation of confidentiality in relation to the information disclosed;

Commencement Date means the date that the last party executes this Agreement or the date

upon which the Contractor first provides services to BPS, whichever is the earlier;

Contractor means the contractor providing the Services pursuant to this Agreement;

Environmental Sustainability Goals means BPS's environmental sustainability goals set out in Schedule 2 or advised to the Contractor by BPS from time to time;

GST means goods and services tax chargeable, or to which a person may be liable, under the Goods and Services Tax Act 1985;

Fees mean the fees payable for the Services as set out in the Contractor Schedule or as otherwise agreed in writing between BPS and the Contractor;

Insolvency Event means a party becoming bankrupt or insolvent, being placed in administration, having a liquidator or receiver appointed in relation to any of its assets or that party entering into a composition, arrangement or compromise for the benefit of its creditors, or such similar event.

KPIs means Key Performance Indicators as set out in Schedule 2;

Loss means any losses, liabilities, claims, compensation, penalties, fines, damages, costs or expenses, whether direct or indirect, however caused or arising under or in connection with this Agreement and/or the provision of the Services (whether in contract, tort (including negligence) or otherwise);

Property means the land and buildings in respect of which the Services are provided;

Property Management System means BPS's OPM information management system or any other property management system used by BPS and the Contractor;

Property Owner means the registered proprietor or the lessee of the Property, as the case may be, to whom the Contractor provides the Services;

Remedy Period means the period of time set out in the Contractor Schedule within which the Contractor will remedy all defects in its Services reported to it by BPS, or identified by the

Contractor itself, or if not specified a period of six months;

Representative means a party's representative as set out in the Contractor Schedule or as otherwise notified or updated from time to time to the other party;

Response Times means the response times as defined in the Contractor Schedule or, if not defined such other reasonable response times;

Services means services specified in the Contractor Schedule, a Work Request or Additional Work Request accepted by the Contractor or otherwise requested by BPS and accepted by the Contractor;

Term means the period commencing on the Commencement Date and expiring on the date set out in the Contractor Schedule or on the date upon which the Agreement terminated in accordance with its terms.

Work Request means an instruction or request from BPS to the Contractor through the Property Management System to perform the Services pursuant to this Agreement, and includes any amendment or variation to the relevant instruction or request in accordance with clause 2.2;

Working Day means any day in New Zealand other than a Saturday, Sunday, or public holiday as defined in the Holidays Act 2003, or any day in

the period commencing on 24 December in any year and ending on 5 January in the following year (inclusive).

14.2 In this Agreement, unless the context otherwise requires:

- (a) headings are inserted for convenience only and will not be taken into account in construing the meaning of the terms of this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) one gender includes the other genders;
- (d) references to individuals include companies, trusts, statutory bodies, partnerships, associations, societies, and other entities and vice versa;
- (e) references to any document includes references to that document (and, where applicable, any of its provisions) as amended, varied, notated, supplemented or replaced from time to time;
- (f) references to monetary amounts, money or money's worth are to New Zealand dollars unless specifically stated otherwise;
- (g) (g) any reference to "month" or "monthly" will mean, respectively, calendar month or calendar monthly.