



LDE Terms of Engagement

1. In this Agreement, unless the context otherwise requires:
 - (a) References to any legislation or to any provision of any legislation shall include any modification or re-enactment of, or any legislative provision substituted for, and all legislation and statutory instruments issued under such legislation or such provision;
 - (b) Words denoting individuals shall include body corporates and unincorporated associations and vice versa;
 - (c) Words denoting any gender shall include all genders;
 - (d) Any reference to a person shall be deemed to include that person's personal representatives;
 - (e) An agreement, covenant or undertaking on the part of or in favour of two or more persons binds or is for the benefit of them severally;
 - (f) References to clauses and schedules are references to clauses and schedules in this Agreement;
 - (g) Headings and marginal notes where used in this Agreement are inserted for convenience or reference only and do not affect the interpretation of this Agreement;
 - (h) The following definitions apply:

"Agreement" means this agreement, including these terms of engagement and the Services attached to these terms of engagement.

"Business Day" means a day (other than a Saturday, Sunday or Public Holiday) on which major banks are open for business in Auckland.

"Charges" means all amounts payable by the Client to LDE in accordance with clause 16.

"Client" means the party stated in the Services attached to this Agreement and all agents, consultants and permitted assigns of the Client.

"Client's Materials" means Client may reproduce drawings, specifications, and other documents in which the Client has ownership, as reasonably required in connection with the Services.

"Debts" means all Charges, Supplementary Services Charges and costs, whatsoever, payable by the Client to the LDE.

"Due Date" means the due date for payment of the Charges.

"LDE" means LDE Limited and its employees and permitted assigns undertaking the Services.

"Materials" includes but is not limited to all intellectual property, copyright and ownership of all data, information, drawings, specifications reports, and any other documents or information whatsoever obtained, derived and prepared by LDE in the course of providing the Services.

"Objection Time" means the close of business Three working days after LDE grants notice to the Client that it requires Variation(s) to the Services.

"Property" means the subject property identified in the Services as provided in security for the Services and any additional, replacement or substitute property owned by the Client during the term of this Agreement.

"Project Address" means the project address, being the address specified in the Services.

"Services" means the services described in the documents attached to these terms of engagement.

"Supplementary Services" means where the Services are carried out on a time charge basis, on instruction from the Client or as provided in the Services.

"Supplementary Services Charge" means the cost of the Supplementary Services plus a minimum additional charge of 10% of the Supplementary Services costs.

"Variation" means variations to the Services in accordance with clause 13.
2. LDE shall undertake and perform the Services described under and in respect of this Agreement.
3. This Agreement is conditional on the LDE, in its sole and unfettered discretion, obtaining a satisfactory credit report on the Client. In the event the Client's credit report fails to be satisfactory, in the LDE's sole discretion, LDE may cancel this Agreement and no party shall have any right or claim against the other.
4. The Client hereby confirms that it understands the credit reporting agency:

- (a) May hold the Client's information on their credit reporting database and use it for providing credit reporting services, and they may disclose the Client's information to their subscribers for the purpose of credit checking or debt collection; and
- (b) As part of providing a credit report, may check the Ministry of Justice fines database for any overdue fines in the name of the Client, or a controlling person of the Client.
5. Nothing in this Agreement shall restrict, negate, modify or limit any of the Client's rights under the Consumer Guarantees Act 1993 where the Services acquired are of a kind ordinarily acquired for personal, domestic or household use or consumption and the Client is not acquiring the Services for the purpose of a business or commercial gain.
6. The Client, and LDE agree that where all, or any of, the Services are acquired for the purposes of a business or commercial gain the provisions of the Consumer Guarantees Act 1993 are excluded in relation to those Services.
7. Any party to this Agreement that signs this Agreement electronically, subject to the provisions of the Electronic Transactions Act 2002, are bound in all respects and capacities by the terms and conditions of this Agreement as if this Agreement was signed on its original form.
8. The party signing this Agreement on behalf of the Client, in consideration of LDE entering into this Agreement with the Client, acknowledges and agrees they are entering into this contract in their personal capacity as well as on behalf of the Client and further acknowledge and agree they are jointly and severally liable with the Client, as a principal debtor to LDE, and confirm they are authorised to bind the Client, under this Agreement.
9. At any reasonable time during this Agreement, the Client shall provide, and all at no cost, to LDE all information in its, his or her power, as soon as practicable following any request for such information, in relation to the Services and/or the Project Address. In providing the information to LDE, the Client shall ensure compliance with the Copyright Act 1994 and shall identify any proprietary rights that any other person may have in any of the information provided by the Client.
10. The Client and/or the Agent will be responsible for securing access to, or making the land at the Project Address available for testing, inspection and any other matters LDE considers reasonable and appropriate from time to time and at all reasonable times, including, but not limited to:
- (a) notification of any people associated with the Project Address that are relevant to the Services;
- (b) for providing information regarding any possible further services to the site at the Project Address;
- (c) obtaining all rights of entry, services information and consents (other than those provided by LDE under this Agreement), to enable completion of the Services.
11. The Client indemnifies LDE from all liability in respect to any damage or necessary correction of or any damage to or reinstatement of any underground services, subsurface soil, rock, groundwater, surface water, buildings, surfaces, platform, structure and/or vegetation arising from the Services, which are all outside of the scope and terms of this Agreement, and any remedy or reinstatement of the same required by the Client of LDE, shall all be additional costs to the Client from the amounts agreed to by the Client and LDE under this Agreement.
12. The Client fully indemnifies LDE for any loss or damage, whatsoever, arising from a breach of this Agreement by the Client, directly or indirectly, or arising out of, resulting from, in consequence of, contributed to, or aggravated by asbestos in whatever form or quantity located at the Project Address.
13. Where LDE considers a direction from the Client, or any other circumstance, is a Variation, LDE shall notify the Client as soon as practicable in writing of the proposed Variation ("LDE Variation"). Such Variation shall not form part of the terms of the Agreement between LDE and the Client until the Variation is recorded and approved, in writing by the Client (electronic approval is acceptable, subject to the requirements of the Electronic Transactions Act 2002). Where the Client does not submit an objection to LDE in respect to the LDE Variation within the Objection Time, LDE may deem the LDE Variation accepted and LDE is authorised to proceed with the Services, which shall include LDE Variations.
14. The Client will inform LDE immediately of any unforeseen changes, new developments, or other issues that impact and influence the Services and provide LDE with all information relating to the same, be it in the direct or indirect control of LDE, so that LDE may inspect, consider and adjust the Services appropriately and seek Variation to the Services which will be conducted in the same way as Client Variations under clause 13 above.
15. The Client shall pay LDE for the Services (including all the fees and expenses) at the times and in the manner set out in the Services attached. Where this Agreement has been entered into by the Agent (or a person purporting to act as Agent) on behalf of the Client, the Agent and Client shall be jointly and severally liable for payment of all fees and expenses due to LDE for the Services under this Agreement, including but not limited to all legal costs on a solicitor to client basis.
16. All amounts payable, and Charges, by the Client are due for payment on delivery of an invoice from LDE to the Client by the Due Date. Late payments shall constitute a default. The Client shall pay default interest at a rate of 2% per month on all overdue amounts from the Due Date. In addition, the costs of any action taken by LDE to recover any debt shall include, but not limited to, legal costs on a solicitor to client basis and LDE's time and expense in resolving the default by the Client.

17. When the Client is in default according to Clause 16, the Client grants LDE an agreement to mortgage the Property from the Client to LDE, to secure the amount owing. The Client shall, if required, execute in favour of LDE, the documents necessary to register the Mortgage in the standard and latest version of an All Obligations Auckland District Law Society form used from time to time, with such modifications as LDE, or LDE's solicitor, deem necessary, over the Property to secure the due payment of all the money payable by the Client to LDE under this Agreement, and pay all costs incurred by LDE in preparation, execution and registration of the Mortgage(s). In consideration of LDE entering into this Agreement and the Client granting LDE the right to Mortgage the Property, the Client hereby irrevocably nominates, constitutes and appoints LDE to be the true and lawful attorney for the Client to register the Mortgage, comply insofar as it affects the Property, including but not limited to doing all things and executing all documents, necessary to facilitate the registration of the Mortgage within a Landonline workspace and obtain the consent of any chargeholder, mortgagee, or other encumbrancee required for the execution or registration of the Mortgage.
18. Where the Services are carried out on a time charge basis, on instruction from the Client or as provided in the Services, LDE may purchase such Supplementary Services, being incidental goods and/or services, as are reasonably required for LDE to perform the Services. The cost of obtaining such Supplementary Services shall be payable by the Client as a Supplementary Services Charge, incurring a minimum additional charge of 10% of the Supplementary Services costs. LDE shall maintain records to clearly identify the Supplementary Services costs, including time and expenses incurred, copies of which shall be available to the Client on request and calculations provided for all Supplementary Services Charges.
19. LDE shall retain ownership of all Materials and rights whatsoever of such Materials, including but not limited to intellectual property, copyright and ownership of all data, information, drawings, specifications reports, and any other documents whatsoever obtained, derived and prepared by LDE in the course of the Services. Materials are not assigned to any person or entity, and may not be distributed, operated or copied for any commercial purpose other than as defined in the Services, nor incorporated in any other work or publication whether in hard copy, electronic or any other form without prior written consent of LDE. The Client shall only be entitled to copies of the Materials for use in respect to the Services only. The Client shall only obtain ownership of the Materials on payment by the Client in full, of all Debts, including all Charges, Supplementary Services Charges and costs, whatsoever, payable by the Client to LDE. The Client's Materials may be reproduced, such as drawings, specifications, and other documents in which the Client has ownership, as reasonably required in connection with the Services, but not otherwise in respect to the Materials, without the prior written consent of LDE, which may be withheld in its unfettered discretion. For avoidance of doubt, the Client shall have no right to use the Materials if any Debts remain outstanding after the Due Date and all Materials shall be deemed invalid, the Client shall be in breach of this Agreement, and pursuant to clause 25 of this Agreement, LDE is released from all liability or obligations under this Agreement and this Agreement shall be at an end.
20. LDE prepares the Services for the sole use and benefit of the Client and for a specific purpose(s), each as expressly stated in the Services. No other party may rely on the Services without the prior written consent of LDE. LDE undertakes no duty, and accepts no responsibility to any third party who may act in reliance on the Materials or the Services under this Agreement. The Services are prepared based on the Client's description of its requirements and LDE's experience, having regard to the assumptions that LDE can reasonably be expected to make following sound professional principles. In the event LDE relies on information provided by the Client, and/or a third party contracted by the Client, in preparing the Materials or delivering the Services, the Client indemnifies LDE from all loss, damages or liability. Subject to conditions specified by LDE in writing, the Client may only transmit, reproduce or disseminate the Materials in their entirety.
21. Where LDE breaches this Agreement, LDE is only liable to the Client for reasonably foreseeable claims, damages, liabilities, losses or expenses caused directly by the breach. LDE shall not be liable to the Client under this Agreement for the Client's indirect, consequential, special loss, or loss of profit, however arising, whether under contract law, in tort, or otherwise. The maximum aggregate amount payable, whether in contract law, tort or otherwise, in relation to claims, damages, liabilities, losses or expenses, shall be five times the Costs (exclusive of GST and disbursements) but in any event not greater than \$NZ250,000. Without limiting any defences, a party may have under the Limitation Act 2010, neither party shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on the other party to this Agreement within 6 years from completion of the Services.
22. The Client acknowledges that LDE currently holds a Professional Indemnity insurance policy for liability under Clause 21. LDE undertakes to use all reasonable endeavours to maintain a similar insurance policy for six years after the completion of the Services.
23. If either Party is found liable to the other (whether in contract law, tort or otherwise), and the claiming party and/or a third party has contributed to the loss or damage, the liable party shall only be liable to the proportional extent of its own contribution, and in any event, LDE's liability shall be limited as provided under this Agreement.
24. LDE and the Client will be aware of, and comply with, any relevant obligations imposed on them under the Health and Safety at Work Act 2015. LDE has not and will not assume any duty imposed on the Client from time to time pursuant to the Health and Safety at Work Act 2015 arising out of this Agreement.
25. The Client may suspend all or part of the Services by notice in writing to LDE who shall immediately make arrangements to halt the Services and minimise any further expenditure chargeable to the Client. The Client and LDE may (in the event the other party is in material default) terminate this Agreement by notice in writing to the defaulting party. Suspension or termination of this Agreement, or the Services, and it shall not prejudice or affect the parties' accrued rights or claims and liabilities.

26. The Parties shall attempt in good faith to settle any dispute by mediation, except in pursuit of payment of the Debts, whereby LDE may immediately seek relief from the Court.
27. This Agreement is governed by the laws of New Zealand the New Zealand Courts have jurisdiction in respect of this Agreement, and all amounts are payable in New Zealand dollars only.
28. The Client and LDE each agree that they shall not, during the provision of the Services and for a period of 6 months following either completion of the Services or termination of the Services, or this Agreement, by either party, solicit or entice away from employment any employee of the other party who was involved in either the provision, or receipt, of the Services.
29. The Client shall not assign any of its rights or obligations under This Agreement without the prior written consent of LDE, such consent which shall not be unreasonably withheld if the following conditions are fulfilled:
 - (a) The Client is not in breach of any of its obligations under this Agreement (including, but not limited to the obligation to pay LDE Charges, Supplementary Services Charges, costs and /or Debts); and
 - (b) A deed of assignment and novation (to be prepared by LDE's lawyer at the cost of the Client) is executed by all relevant parties and delivered to LDE.
 - (c) Where the Client is a New Zealand registered limited liability company:
 - (i) the written consent of LDE is required (which shall not be unreasonably withheld or delayed) where there is any change in the legal or beneficial ownership of its shares or where there is a change in the effective management and control of the company; and
 - (ii) it has the power to enter into the contract with LDE, it has obtained all necessary authorisations to enable it to be bound by these terms and conditions and it is solvent.
30. These terms and conditions remain in force notwithstanding any neglect, forbearance or delay in enforcement. LDE shall not be deemed to have waived any term or condition under this Agreement, unless such waiver shall be in writing and signed by a director of LDE and any such waiver shall apply only to the particular transaction defined in writing to which it refers.
31. LDE shall not, without the Client's prior written consent (unless required by law), use or release information provided by the Client for purposes unrelated to, and only as necessary to protect LDEs interests in respect of any complaint or dispute, and to carry out the Services under this Agreement. However, the Client authorises LDE to:
 - (a) Collect, retain and use this information for the purpose of assessing the Client's creditworthiness and suitability; and
 - (b) Disclose information about the Client, whether collected from the Client directly or from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit report (which will involve the credit reporting agency providing information about the Client to LDE).
32. LDE is not liable under this Agreement where an event occurs that impedes LDE's ability to provide the Services, including exceptional weather conditions, fire, earthquake or act of nature, war, strikes, riots, civil commotion, vandalism, nuclear explosion and/or fallout, pandemics, acts of government, and any event which is normally covered by a policy of general insurance and LDE may in its sole discretion cancel this Agreement if LDE deems such an event defined under this clause 32 effects the terms of this Agreement to such an extent there is a material possibility the event may cause LDE material loss.
33. If any clause or provision of this Agreement shall be held illegal or unenforceable by any judgment of any Court or Tribunal having competent jurisdiction, such judgment shall not affect the remaining provisions of this Agreement and the balance of which shall remain in full force and effect as if such clause or provision held to be illegal or unenforceable had not been included.
34. This Agreement records, including the Services, provides the entire understanding and agreement relating to the matters dealt with in this Agreement. This Agreement supersede all previous understandings or agreements (whether written, oral or both), other than as provided by written Variation.
35. If any provision of this Agreement can be read in a way that makes it illegal unenforceable or invalid, then that provision, or part thereof, is deemed to be severed from this Agreement and shall not affect the validity or enforceability or any other provisions of this Agreement.
36. Before engaging LDE, and accepting the terms of this Agreement, the Client acknowledges and confirms is has had sufficient time to consider the terms of the Agreement and Services and to obtain all necessary advice on the same, including but not limited to independent legal advice.