

TERMS OF ENGAGEMENT – Valuation/Consultancy Services

As at 1 January 2021

AGREEMENT: Alexander Hayward Ltd (“the Consultant”) and the (“the Client”) agree that the Consultant shall provide valuation and/or consultancy services in respect of the matter instructed (“the Services”) in accordance with the agreed scope of work. Your continued instructions confirm your acceptance of these terms. If you have any questions about them, please contact us.

In providing the Services the Consultant shall use reasonable skill and care and endeavour to meet any agreed timetable. This agreement will replace all or any oral agreement previously reached between the Parties. The Engagement is subject to the following terms:

Fees and Disbursements

- 1.1 The Consultant’s fee shall be calculated on:
 - 1.1.1 The basis of the time required to be spent on the matter by the Consultant and on the levels of specialised knowledge, complexity, importance, urgency, risk, skill and responsibility involved.
 - 1.1.2 If the Consultant and the Client have agreed on a fee for the provision of the Services, then this fee will be as agreed. If the Consultant and the Client have not agreed upon a fee, then the Consultant’s fee will be set by the Consultant in accordance with clause 1.1.1.
 - 1.1.3 Alterations to the scope of the work or delays beyond the control of the Consultant may require a re-negotiation of the Consultant’s fee.
 - 1.1.4 In addition to the Consultant’s fee, the Client agrees to pay all additional disbursements, including (but not limited to) reasonable travel expenses, incurred by the Consultant in providing the Services.
- 1.2 The Consultant may, from time to time, purchase incidental goods and or services that might be reasonably required for the Consultant to perform the Services. The cost of such incidental goods and or services shall be reimbursed from the Client.
- 1.3 The Consultant will issue an invoice for the Consultant’s fee either following completion of the Services or, at the sole discretion of the Consultant, on an interim basis.
- 1.4 All invoices will be due for payment upon date of issue (“the due date”).
- 1.5 The Consultant reserves the right to charge interest on a monthly basis, at a reasonable rate, in respect of account balances not paid on the due date.
- 1.6 If an account is not paid on the due date, then the Consultant may place the account with a debt collection agency. The Consultant may also on-charge any costs incurred in the collection of overdue accounts, including, but not limited to, the costs incurred in the placement of overdue accounts with a debt collection agency.
- 1.7 Acknowledging clause 1.1.1, and subject to clause 1.1.3, the Consultant’s base fee for the Services shall be \$240 per hour plus GST plus disbursements and additional charges in accordance with clauses 1.1.4 and 1.2. The hourly rate fee may change from time to time.

Use and Purpose

- 2.1 All reports and valuations produced as a consequence of the Consultant's Services will be subject to the Consultant's statement of service policies contained in the report and/or valuation ("the Consultant's Statement of Valuation Policies"). A copy of the Consultants Statement of Valuation Policies is **attached** to this Terms of Engagement in Schedule 1.
- 2.2 The Consultant's Services and all valuations and reports produced as a consequence thereof, will be provided solely for the use of the Client. The Consultant disclaims all responsibility and accepts no liability to any other party.
- 2.3 All reports and valuations produced as a consequence of the Consultant's Services will be provided for the specific purpose stated in the report and/or valuation. Any party which relies upon the service provided for an alternative purpose does so at its own risk.
- 2.4 When carrying out the services, the Consultant will not undertake a site or structural survey of the property/properties or a building or site contamination report and the Consultant assumes no responsibility for such matters.
- 2.5 If there is any conflict between this Terms of Engagement and the Consultant's Statement of Valuation Policies, then the terms of the Consultant's Statement of Valuation Policies shall prevail.
- 2.6 All opinions of value expressed by the Consultant and the Consultant's employees, agents and independent contractors shall always be subject to the Consultant's Statement of Valuation Policies.

Further Information

- 3.1 The Client shall provide to the Consultant, free of cost, and as soon as practicable following any request by the Consultant for information, all information in his or her power to obtain which may pertain to the Valuation and/or Consultancy Services.
- 3.2 In providing the information to the Consultant under clause 3.1, the Client shall ensure compliance with the Copyright Act 1994 and shall identify any propriety rights that any other person may have in the information provided.
- 3.3 The consultancy services are completed on the basis that the Client has provided the Consultant with a full and frank disclosure of all information and other facts that may affect the valuation and/or consultancy. The Consultant accepts no responsibility or liability whatsoever for the valuation and/or consultancy unless such a full disclosure has been made.
- 3.4 The liability of the Consultant to the Client in respect of his or her Services for the project, whether in contract, tort or otherwise, shall be limited to the lesser of five times the value of the fees (exclusive of GST and disbursements), or the sum of \$NZ 100,000. The Consultant shall only be liable to the Client for direct loss or damage suffered by the Client as the result of a breach by the Consultant of his or her obligations under this Agreement and shall not be liable for any loss of profits.
- 3.5 The Consultant acknowledges that the Consultant currently holds a policy of Professional Indemnity insurance for the lesser of \$NZ 100,000 or five times the value of the fees (exclusive of GST and disbursements). The Consultant undertakes to use all reasonable endeavours to maintain a similar policy of insurance for six years after the completion of the Services.
- 3.6 Neither the Client nor the Consultant shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on him or her within six years from completion of the Services.
- 3.7 If either Party is found liable to the other (whether in contract, 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.

Ownership

- 4.1 The Consultant shall retain ownership of all reports and valuations provided as a consequence of the Services and all data contained therein.
- 4.2 Subject to the payment of the Consultant's fee, the Consultant shall grant the Client with a non-exclusive, non-sublicensable, non-transferable limited license to use the consultancy service, report and/or valuation solely for the Client's purposes and for the specific purpose stated in the report and/or valuation.
- 4.3 The Client shall have no right to use any reports and valuations provided as a consequence of the Services where the Client has not paid the Consultant's fee.
- 4.4 Neither the whole nor any part of any valuation and/or consultancy report, or any reference to the same, may be included in any published document, circular or statement, or on the internet without the Consultant's written approval as to the form and context in which it may appear.

Other Matters

- 5.1 The Consultant has not, and will not during the term of this Agreement or at any time after it, assume any obligation as the Client's Agent or otherwise which may be imposed upon the Client from time to time pursuant to the Health and Safety at Work Act 2015 ("the Act") arising out of the engagement. The Consultant and the Client agree that, for the purpose of the Act, the Consultant will not be the person who controls the place of work in terms of the Act.
- 5.2 This Terms of Engagement is governed by and interpreted in accordance with New Zealand law, the New Zealand courts shall have exclusive jurisdiction in respect of this Terms of Engagement, and all amounts are payable in New Zealand dollars.
- 5.3 In order for the Consultant to access details of the project from any Authority, the Client must (if applicable) sign and return an appropriate authority form.
- 5.4 The Client may suspend all or part of the Services by notice to the Consultant who shall immediately make arrangements to stop the Services and minimise further expenditure. The Client and the Consultant may (in the event the other Party is in material default, or for any other reason) terminate the Agreement by notice to the other Party. Suspension or termination shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.
- 5.5 The Parties shall attempt in good faith to settle any dispute by mediation.
- 5.6 The Consultant will complete all services in accordance with the Health and Safety Policy and Covid-19 Policy.

Consumer Guarantees Act

- 6.1 The Client and the Consultant agree that where the consultancy and/or the valuation are provided in connection with business, the Consumer Guarantees Act 1993 will not apply. Where there is any conflict between the provisions of this Terms of Engagement and the Consumer Guarantees Act 1993, the provision of the Consumer Guarantees Act 1993 shall apply

Privacy Act

- 7.1 Any personal information collected and held by the Consultant will be used for purposes related to servicing the Client's needs in respect of valuation and/or consultancy or property services. Under the Privacy Act 2020 the Client has the right of access to and correction of personal information about the Client that the Consultant holds.

Agent

- 8.1 Where this Terms of Engagement has been entered into by an 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 accounts due to the Consultant under this Terms of Engagement.

9. Guarantee (if applicable)

- 9.1 In consideration of the Client entering into this Terms of Engagement at the Guarantor's request, the Guarantor:
 - 9.1.1 Guarantees to the Consultant the payment of all fees extended to the Client by the Consultant pursuant to this Terms of Engagement and the full and punctual observance of the client's obligations contained in this Terms of Engagement, and
 - 9.1.2 Indemnifies the Consultant against any loss the Consultant might suffer should this Terms of Engagement be disclaimed by any liquidator or receiver or otherwise on behalf of the Client.

- 9.2 The Guarantor covenants with the Consultant as follows:
 - 9.2.1 No release, delay or other indulgence given by the Consultant to the Client or to the Client's successors or assigns or alteration to the terms of the Terms of Engagement or any other thing whereby the Guarantor would have been released had the Guarantor been merely a surety shall release, prejudice or affect the liability of the Guarantor as a Guarantor or as indemnifier.
 - 9.2.2 As between the Guarantor and the Consultant the Guarantor may for all purposes be treated as the Client and the Consultant shall be under no obligation to take proceedings against the Client before taking proceedings against the Guarantor.
 - 9.2.3 Should there be more than one Guarantor their liability under this guarantee shall be joint and several.

Schedule 1

STATEMENT OF VALUATION POLICIES

The valuation is made on the basis of the description of the property in the report including any undertakings given by the owner in relation to the property and defined in the report.

1. All Consultant's services are provided by Alexander Hayward Ltd solely for the use of the Client.
2. Any valuations are expressed in New Zealand dollars.

Alexander Hayward Limited does not and shall not assume any responsibility to any person other than the client for any reason whatsoever including breach of contract, negligence (including negligent mis-statement) or wilful act or default of themselves or others by reason of or arising out of the provision of this valuation or valuation services. Any person, other than the client, who uses or relies on our service, does so at their own risk.

If applicable, the report is not intended as a structural, site, services or engineering survey neither is it intended to be an environmental liability audit. We do not warrant the land is not subject to statutory rights not recorded on the relevant Record of Title and not apparent from visual inspection of the property. Substances such as asbestos, lead, narcotics, other chemicals, toxic waste or other potentially hazardous materials, could if present, adversely affect the value of the property. The stated value is based on the assumption that there is no material on or in the property that would cause loss in value. The recipient of our report is advised that the valuer is not qualified to detect such substances, quantify the impact or estimate the remedial cost. No historic search of land use has been made. We assume no responsibility in connection with such matters.

In preparing the report we have used all reasonable skills as a valuer, but we are not qualified to assess the stability, load bearing capacity or integrity of the land. Unless otherwise stated, we have not noticed anything during our inspection of the property that would, as a valuer acting reasonably, alert us to any issue in respect of the land's stability, load bearing capacity or integrity. We give no warranty as to those issues.

Any assessment is made on the basis there are no outstanding requisitions from local or central government in respect of the land or improvements and that the property, where relevant, complies with all applicable legislation including but not limited to the Disabled Persons Community Welfare Act 1975, Building Act 2004, Health and Safety at Work Act 2015, Evacuation of Buildings Regulations 1992 and Resource Management Act 1991. We advise we have not obtained a Land Information Memorandum (LIM) but suggest prior to any dealing with this property, such a report be obtained from the Local Authority. We are not qualified to identify either the need for, or the costs of, structural strengthening of non-residential buildings to meet the required 34% of Current Code Building Standard. Survey by an appropriately qualified expert should be undertaken. Any deficiency may have a material impact on our valuation. Should any matter be disclosed by the LIM, surveys or environmental audit we reserve the right to revise our valuation opinion to take account of such matters. Any sketch, plan or map is included to assist the reader in visualising the property. Any aerial photograph is copyright to the issuing Authority. Unless otherwise stated, it is assumed all improvements lie within title boundaries.

The report makes every effort to provide a true valuation of the property as inspected, however the Valuer cannot comment on or make allowance for failure of any element of any structure, or if it contains materials, or design, or building systems, or have a standard of workmanship which effectively does not prevent damage from, or manage the presence of water or moisture to which the structure might reasonably be subjected, nor any consequence arising from such failure.

The valuation has been completed for the specific purpose stated in the report. No responsibility is accepted in the event that the report is used for any other purpose.

The report is relevant as at the date of preparation and to circumstances prevailing at that time. However, within a changing economic environment, returns on investment and values can be susceptible to variation - sometimes over a relatively short time scale. We therefore strongly recommend that before any action is taken involving acquisition, disposal or borrowing, restructuring or any other transaction after two months from the date of the report that you consult us.

Alexander Hayward Limited has a policy of not contracting out of the provisions of the Consumer Guarantees Act. Accordingly, where there is any conflict between any statement in the report and the Consumer Guarantees Act 1993, the latter shall prevail.

Neither the whole nor any part of the valuation report, or any reference thereto, or the valuation assessment contained therein, or the names and professional affiliation of the valuers, may be included in any published document, circular or statement, or on the internet without our written approval as to the form and context in which it may appear. Copyright is held by Alexander Hayward Ltd.