

[Insert Date]

[Name]  
[Address]

Dear [Name]

**[Insert description of deal]**

1. This letter sets out the principal terms and conditions on and subject to which [full name of Party A] (**Party A**) is willing to enter into a [insert description of deal] (**Deal**) with [full name of Party B] (**Party B**) subject to the agreement and signing by the parties of a detailed legally binding agreement (**Formal Agreement**).
2. This letter is not exhaustive and is not intended to be legally binding between Party A and Party B except where specifically stated.

**Commercial Terms**

3. [Insert the key commercial terms agreed].

**Time Limits**

4. The parties agree to negotiate in good faith with a view to executing the Formal Agreement on or before [date].
5. Either party may at any time by notice to the other, in writing but not by email, terminate negotiations for the Deal and entry into the Formal Agreement, without having to give any reasons for doing so or incurring any liability to any other party. Such termination shall not affect the continuance in force of paragraphs 8 to 30 inclusive.

**[Key Pre-Conditions]**

6. [State any key pre-conditions to signing the formal agreement]

**[Key Assumptions]**

7. [State any relevant key assumptions]

**Confidentiality**

8. Paragraphs 9 to 11 are legally binding.
9. Each party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party [or of any member of the group of companies to which the other party belongs], except as permitted by paragraph 10.
10. Each party may disclose the other party's confidential information:
  - (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of the evaluation of the Deal and the negotiation of the Formal Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this paragraph 10; and

(b) as may be required by law, court order or any governmental or regulatory authority.

11. No party shall use the other party's confidential information for any purpose other than the evaluation of the Deal and the negotiation of the Formal Agreement.

### **Non-Solicitation of Employees**

12. Paragraphs 13 to 15 are legally binding.
13. Neither party shall, for a period of [12] months from the date of this letter, (except with the prior written consent of the other party) directly or indirectly solicit or entice away (or attempt to solicit or entice away):
- (a) from the employment of that party, any employee of the other party who is employed or engaged in any services which are relevant to the Deal; or
- (b) any customer of the other party who is in receipt of any services which are relevant to the Deal.
14. A party shall not be in breach of paragraph 13(a) or paragraph 13(b) as a result of running a national advertising campaign open to all comers and not specifically targeted at any of the staff or the customers of the other party.
15. If either party commits any breach of paragraph 13, the breaching party shall, without prejudice to any other rights or remedies of the claiming party, on demand, pay to the claiming party a sum equal to one year's basic salary or the annual fee that was payable by the claiming party to that employee, worker or independent contractor plus the recruitment costs incurred by the claiming party in replacing such person.

### **Exclusivity**

16. Paragraphs 17 to 22 are legally binding.
17. Immediately on signing this letter the parties shall terminate, or procure the termination of, any Third Party Negotiations currently taking place.
18. Neither party shall, for a period of [number of days] days from the date of this letter (**Exclusivity Period**), directly or indirectly:
- (a) enter into, re-start, solicit, initiate or otherwise participate in any Third Party Negotiations;
- (b) seek, encourage or respond to any approach that might lead to Third Party Negotiations;
- (c) enter into any letter of intent, agreement, arrangement or understanding (whether or not legally binding) pursuant to any Third Party Negotiations; or
- (d) supply or otherwise disclose any information about itself or any member of its group to a party that wishes, or may wish, to enter into Third Party Negotiations (unless the information is publicly available).
19. The parties shall ensure that their officers, employees, agents, advisers and other representatives[, and members of its group and their respective officers, employees, agents, advisers and representatives,] comply with the undertakings in this paragraph .
20. Each party shall notify the other [in writing but not by e-mail] immediately if, during the Exclusivity Period, it[, or any member of its group,] receives any indication from any third party (including any third party with whom it or any member of its group was having Third Party Negotiations prior to the date of this letter) that such third party wishes to engage in Third Party Negotiations.

21. Each party (**Indemnifying Party**) acknowledges that the other party (**Indemnified Party**) will incur significant costs, fees and expenses by relying on paragraphs 16 to 22 and that if the Indemnifying Party is in breach of any of its obligations under paragraphs 16 to 22 it must (without prejudice to any other remedies the Indemnified Party may have) indemnify and keep indemnified the Indemnified Party for an amount equal to all the [reasonable] costs, fees and expenses which have been or will be incurred by the Indemnified Party in connection with the proposed Deal, including without limitation the costs of negotiation of the Formal Agreement and all related documents[, of conducting due diligence on the Indemnifying Party and [insert other anticipated costs].
22. For the purposes of paragraphs 16 to 22, Third Party Negotiations mean, in relation to either party, any negotiations between that party[, any member of its group] (or any of [its/their] respective agents, employees, advisers or other representatives) and any third party (other than [a member of the other party's group or] an agent, employee, adviser or other representative of the other party [or a member of its group]) for the entry into a commercial arrangement which is similar to or could reasonably be expected to conflict with the Deal.

### **Costs**

23. Paragraph 24 is legally binding.
24. Subject to paragraphs 16 to 22, each party is responsible for its own costs in connection with the proposed Deal, whether or not it proceeds (including without limitation the preparation and negotiation of this letter, the Formal Agreement and any documents contemplated by it).

### **Inadequacy of Damages**

25. Paragraph 26 is legally binding.
26. Without prejudice to any other rights or remedies that either party may have, each party acknowledges and agrees that damages alone would not be an adequate remedy for any breach of paragraphs 8 to 11 or paragraphs 16 to 22 by the other party. Accordingly, the non-defaulting party shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of paragraphs 8 to 11 or paragraphs 16 to 22.

### **Governing Law and Jurisdiction**

27. Paragraphs 28 to 30 are legally binding.
28. This letter, and the negotiations between the parties in connection with the proposed Deal and all disputes or claims arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) will be governed by New Zealand law.
29. The parties irrevocably agree that the courts of New Zealand shall have jurisdiction to settle any dispute or claim that arises out of or in connection with this letter or its subject matter or formation (including non-contractual disputes or claims).
30. This letter is for the benefit of the parties to it and is not intended to benefit, or be enforceable by, anyone else.

**Signed by**  
**[NAME OF DIRECTOR]**  
 for and on behalf of **[PARTY A]**

Signature

We confirm our agreement to the above.

**Signed by**  
**[NAME OF DIRECTOR]**  
for and on behalf of **[PARTY B]**

Signature