

THREE60 CONSULT LIMITED
(trading as THREE60 CONSULT)
TERMS OF ENGAGEMENT

1 General

- 1.1 These Standard Terms of Engagement (Terms) apply when we, Three60 Consult, provide Employment Relations Services (Services) to you, our client, unless otherwise agreed in writing. These terms apply whenever you ask us to act for you on a matter for both current and future engagements and replaces any previous terms of engagement (whether written or implied) for the provision of Services.
- 1.2 We may from time to time amend these Terms and Conditions and will advise you accordingly in writing or we may publish updated terms on our website. The change will bind you in respect of any matters on which we act for you, after notification or publication of the change.
- 1.3 We will treat you as having accepted this agreement if you continue to instruct us after you receive it.
- 1.4 If you do not require Three60 Consult to act on your behalf, please inform us immediately either in writing or by email to info@three60consult.co.nz
- 1.5 These Terms of Engagement are governed by New Zealand law and subject to the exclusive jurisdiction of New Zealand courts.
- 1.6 Unless otherwise agreed in writing, you will not transfer or assign your rights or obligations under these Terms, or in relation to any engagement of us on any matter.

2 Scope of Services

- 2.1 The Services we provide for you will correctly fall within the scope of your instructions to us, along with any further instructions that you provide to us in writing (or that we record in writing).
- 2.2 We will use all reasonable efforts to provide the Services in an efficient and timely manner, using all due care and skill in doing so.
- 2.3 On most occasions we will allocate appropriate staff to perform the Services and if required, replace any staff with personnel of similar skill. If you have concerns about the support they provide, please contact the Directors directly.
- 2.4 As our client, you may wish to limit or increase the scope of Services we provide. However, in so doing, it may be necessary for us to conduct a conflict check before we accept any substantial change to your instructions.
- 2.5 Three60 Consult is only qualified to advise on New Zealand employment relations matters. If we agree to assist you in matters governed by foreign employment relations practice, we do so only on your understanding that we do not accept any responsibility in relation to your legal position.

3 Your Responsibilities

- 3.1 To enable us to carry out our work, you agree:
- a To provide good communication and a shared understanding of your instructions and expectations.
 - b To provide us promptly with such accurate and complete information as is reasonably required for the proper performance of our Services, including as necessary, access to appropriate members of staff, records, information technology (IT) systems and premises.
 - c To provide us with reliable information and documents from you/others on your behalf, that are true, correct and complete.
 - d To provide us with information in sufficient time for the engagement to be completed within any time limits agreed or imposed.
 - e That you accept responsibility for any failure to provide us with all relevant records and information.
 - f That we can approach any third parties as may be appropriate, for information that we consider necessary.
 - g To keep us informed of any major, unusual or sensitive information that relates to your matter(s).
 - h If anything occurs after information is provided to us by you/others on your behalf, that renders such information untrue, unfair or misleading, you will promptly notify us and, if required by us, take all necessary steps to correct any communication or document issued which contains, refers to, or is based upon such information.
 - i That where we have relied on external information or public records, we will not be liable for any direct or indirect damage or loss caused by errors or omissions in such external information records.

4 Communications

- 4.1 We will obtain from you contact details, including email address, postal address and telephone numbers. We may provide documents and other communications to you by email (or other electronic means). If you have a preferred email address or other method of communication, please let us know. You will advise us if any of your contact details change.
- 4.2 We cannot guarantee that these communications will not be lost or affected for some reason beyond our reasonable control, and we will not be liable for any damage or loss caused thereby. We will not accept any responsibility nor be liable for any damage or loss caused by errors or omissions in information obtained from third parties. Additionally, we do not accept any liability for the loss caused by non-receipt of any other form of communication.
- 4.3 We will report to you periodically on the progress of any engagement and will inform you of any material and unexpected delays, significant changes or complications in the work being undertaken. You may request a progress report at any time.

- 4.4 You agree that we may provide you from time to time with other information that may be relevant to you, such as newsletters and information bulletins. At any time you may request that this not be sent to you.

5 Financial

- 5.1 **Fees:** The basis upon which we will charge our fees is set out in the email that initiates these terms of engagement.
- a If the above email specifies a fixed fee, we will charge this for the agreed scope of the Services. Work which falls outside that scope will be charged on an hourly rate basis, by the hour or part thereof. We will advise you as soon as reasonably practicable if it becomes necessary for us to provide Services outside of the agreed scope and, if requested, give you an estimate of the likely amount of the further costs.
 - b Hourly rates are subject to review and may be amended from time to time. We will advise you prior to undertaking any of your work, if the rate has changed.
 - c Apart from time and labour expended, other factors that may be taken into account in setting our fee are the skill, specialised knowledge, experience, reputation and responsibility of the personnel required to properly perform the service, the complexity, urgency, value and importance of the work to you and the results achieved.
- 5.2 **Disbursements and Third Party Expenses:**
- a In addition to our fee, you are responsible for payment of any additional costs we incur on your behalf. These include but are not limited to cost of materials, travel, accommodation, parking and courier charges, registration and filing fees such as for the Employment Relations Authority, court charges, fees of agents, experts and other professionals. These are charged on at the amount charged to us. These will be included in our invoice to you, shown as “disbursements”.
 - b Road travel costs for motor vehicles are charged at the current IRD standard mileage rate plus GST.
- 5.3 **GST:** Goods and Services Tax (GST), if any, is payable by you on our fees and charges. Unless we state otherwise, our rate and/or estimates of costs, do not include GST.
- 5.4 **Invoices:** We will send interim invoices to you, usually monthly, and on completion of the matter, or termination of our engagement. We may send you invoices more frequently when we incur a significant expense or undertake a significant amount of work over a shorter period of time. Any queries in relation to an invoice should be raised within ten (10) working days to enable prompt resolution of any issues.
- 5.5 **Payment:** Interim invoices and statements will be emailed to you on a monthly basis. Payments are due no later than the 20th day of the month following date of the invoice, unless alternative arrangements have been made with us. We may also issue an invoice on completion of each matter, termination of our engagement or when we incur a significant expense. For a number of reasons, some instructions are not completed. If this happens we will charge you for the work completed and any costs incurred up to the time of termination. In some circumstances we may incur additional time or expense following the completion or termination of a matter and this will be charged for in the normal way.

- a Payment may be made by direct credit into bank account number: 06-0996-0064249-00. Please state the invoice number in the reference, e.g. Inv 123.
- b If you have difficulty in paying any of our accounts, please promptly contact the Three60 Consult office or your key consultant.
- c If your account is overdue and there is no satisfactory explanation for non-payment, we may:
 - i require interest to be paid on any amount which is more than 14 days overdue, calculated at the rate of 5% above the overdraft rate that our company's main trading bank charges us for the period that the invoice is outstanding;
 - ii stop work on any matters in respect of which we are providing Services to you;
 - iii require an additional payment of fees in advance or other security before recommencing work;
 - iv recover from you in full any costs we incur in seeking to recover the amounts from you, including our own fees and the fees of any collection agency.

5.6 **Fees and disbursements in advance:** We may ask you to pre-pay amounts to us, or to provide security for our fees and expenses. We may do this prior to work commencing, or with reasonable notice, at any time. You authorise us:

- a To debit against amounts pre-paid by you; and
- b To deduct from any amounts pre-paid by you, any fees, expenses or disbursements for which we have provided an invoice.
- c Third parties: Although you may expect to be reimbursed by a third party for our fees and expenses, and although our invoices may at your request or with your approval be directed to a third party, you will nonetheless remain responsible for payment to us if the third party fails to pay us.
- d If the Mediator, ERA, or Court makes an order that you pay another party's legal costs (e.g. should you lose the case), those costs are separate to and additional to those payable to us in respect of the matter.

5.7 **Estimates:** You may request an estimate of our fee for undertaking the Services at any time. If possible we will provide you with an estimate which is indicative only and will not be binding upon us. An estimate is not a quote. Any significant assumptions included in the estimate will be stated and you must tell us if those assumptions are wrong or change. We will inform you if we are likely to exceed the estimate by any substantial amount. Unless specified, an estimate excludes GST, disbursements and expenses. In some cases, due to the nature of the work, we will not be able to provide in advance, an estimate for our work. Upon request, we can inform you periodically of fees you have incurred or when your fees reach a specific amount.

6 Confidentiality and Personal Information

6.1 **Confidentiality:** Client confidentiality is of utmost importance to us. We will hold in confidence all information obtained from you during the course of acting for you. We will not disclose any of this information to any other person except:

- a to the extent necessary or desirable to enable us to carry out your instructions; or
 - b as agreed by you; or
 - c as necessary to protect our interests in respect of any complaint or dispute; or
 - d to the extent required or permitted by law.
- 6.2 Confidential information concerning you will as far as practicable be made available only to those within our company who are providing Services for you.
- 6.3 **Personal information and Privacy:** In our dealings with you we will collect and hold personal information about you in accordance with the Privacy Act 1993. We will use that information to carry out the Services and to make contact with you about issues we believe may be of interest to you. Provision of personal information is voluntary but if you do not provide full information this may impact on our ability to provide the Services.
- 6.4 Subject to clause 6.1, you authorise us to disclose, in the normal course of performing the Services, such personal information to third parties for the purpose of providing the Services and any other purposes set out in these Terms.
- 6.5 If we are required to disclose information to a third party (e.g. for regulatory purposes or official information request), we will endeavour to notify you of such request for disclosure (where practicable) and we will ensure that disclosure of the information is lawful, fair and limited to the information legally required to satisfy the request.
- 6.6 The information we collect and hold about you will be kept at our offices and/or at secure file storage sites (including electronic file storage sites) elsewhere. If you are an individual, you have the right to access and correct this information.
- 6.7 Your personal information is only accessible to authorised staff and is protected by appropriate security measures. Those security measures include limits on access to electronic databases where your personal information is stored and 'password protected' where appropriate.
- 6.8 We will only hold your personal information for as long as the information is needed. Personal information no longer required to be held by us will be securely destroyed.
- 6.9 If we discover that there has been a breach of your privacy, or unauthorised access, use or disclosure of your personal or confidential information, we will notify you of such breach and take immediate steps to retrieve the information (if that is possible), secure the information and use all reasonable endeavours to minimise any loss or harm to you as a result of such breach.
- 6.10 In addition to the measures outlined in clause 6.9 in the event of a breach, we will analyse the cause of the breach and take all reasonable measures to prevent a similar breach in the future.

7 Documents, Records and Information

- 7.1 We will keep a record of all important documents which we receive or create on your behalf on the following basis:
- a We may keep a record electronically and destroy originals (except where the existence of an original is legally important).

- b At any time, we may dispose of documents which are duplicates, or which are trivial (such as emails which do not contain substantive information), or documents which belong to us.
 - c We are not obliged to retain documents or copies where you have requested that we provide them to you or to another person and we have done so, although we are entitled to retain copies for our own records if we wish to do so.
- 7.2 We will provide to you on request copies or originals (at our option) of all documents available to us, to which you are entitled under the Privacy Act 1993 or any other law. We may charge you our reasonable costs for doing this.
- 7.3 Where we hold documents that belong to a third party you will need to provide us with that party's written authority to uplift or obtain a copy of that document.
- 7.4 Unless you instruct us in writing otherwise, you authorise us and consent to us (without further reference to you) to destroy (or delete in the case of electronic records) all files and documents in respect of the Services, six years after completion of the matter (other than any documents that we hold in safe custody for you or are otherwise obliged by law to retain for longer). We may retain documents for longer at our option.
- 7.5 At your request or if we are obliged to, we will destroy your files and related documents where reasonably practicable for us to do so and we are not otherwise obliged to retain them. If we do destroy any files for such purposes, any liability we may have in relation to such, will be deemed to have been waived and will end. You will indemnify and hold us harmless against any such liability to a third party.
- 7.6 We may, at our option, return documents (either in hard or electronic form) to you rather than retain them. If we choose to do this, we will do so at our expense.
- 7.7 We own copyright in all documents or work we create in the course of performing the Services but grant you a non-exclusive licence to use and copy the documents as you see fit for your own personal or commercial use. However, you may not permit any third party to copy, adapt or use the documents without our written permission.

8 Data Retention and Security

- 8.1 Any data that we hold on your behalf will only be retained for a period of six years from the time that our Services to you have been terminated.
- 8.2 Unless we are legally required to retain your data, we will delete or anonymise your data upon receipt of your request to do so.
- 8.3 We only retain electronic versions of documents which are stored in the cloud in Microsoft data centres. Cloud storage is certified with ISO 27001 (Information Security Management), ISO 27017 (Cloud Security), ISO 27018 (Cloud Privacy and Data Protection), ISO 22302 (Business Continuity Management).
- 8.4 We have on-site data back-up facilities for retention of client files/documentation. Cloud data is cached and stored locally on each Associates' computer.
- 8.5 Where we believe that access to your files requires an extra measure of security, password protection will be applied to these files.

- 8.6 We will maintain appropriate and effective data security controls to prevent unauthorised access, use or disclosure of your data.
- 8.7 Your data is only accessible to authorised staff and is protected by appropriate security measures. We will use all reasonable measures to ensure that transfer and storage of your data is secure.
- 8.8 In the event that we discover that the data held by us has been compromised or breached by unauthorised access, we will notify you of such breach and take immediate steps to remedy the breach (if that is possible), re-secure the data and use all reasonable endeavours to minimise any loss or harm to you as a result of such breach.
- 8.9 In addition to the measures outlined in clause 8.8 in the event of a breach, we will analyse the cause of the breach and take all reasonable measures to prevent a similar breach in the future.

9 Conflicts of Interest

- 9.1 We may have clients or potential clients who compete in the same business as you and whose commercial and/or legal interests may conflict with yours. If a conflict of interest arises we will advise you of this. This may mean we cannot act for you further in a particular matter and we may terminate our engagement. Alternatively, you agree that provided we do not use any confidential information we have received from you, we may represent other clients in similar businesses.

10 Ownership

- 10.1 We retain ownership of the intellectual property rights relating to the provision of the Services and our working papers.
- 10.2 We may from time to time provide you with software, spreadsheets and other intellectual property for use with, or to assist with the provision of, our Services. Such software, spreadsheets and other intellectual property provided by us to you is provided for your own use and must not be copied, distributed or used for any other purpose. We will not be liable for any damage or loss incurred by you as a result of your use of any software, spreadsheets and other intellectual property as contemplated by this clause.

11 Duty of Care

- 11.1 Our duty of care is to you and not to any other person. We owe no liability to any other person, including for example any directors, shareholders, associated companies, employees or family members unless we expressly agree in writing. We do not accept any responsibility or liability whatsoever to any third parties who may be affected by our performance of the Services or who may rely on any advice we give, except as expressly agreed by us in writing.
- 11.2 Our company name and advice or opinions are not to be referred to in connection with any public document without our written consent.
- 11.3 Our advice is opinion only, based on the facts known to us and on our professional judgement, and is subject to any changes in the law after the date on which the advice is given. We are not liable for errors in, or omissions from, any information provided by third parties.

- 11.4 Our advice relates only to each particular matter in respect of which you engage us. Once that matter is at an end, we will not owe you any duty or liability in respect of any related or other matters unless you specifically engage us in respect of those related or other matters.

12 Limitation of Liability

- 12.1 To the extent allowed by law, our aggregate liability to you (whether in contract, tort, equity or otherwise) in connection with our Services is limited to the amount available to be payable under the Professional Indemnity Insurance held by the firm.

13 Our Staff

- 13.1 You agree that during the provision of the Services, and for the period of six months after, you will not make any offer of employment to any of our staff involved in the provision of Services, without our prior written consent.
- 13.2 You agree that should you employ any of our staff involved in the provision of the Services during the provision of the Services, and for a period of six months after, you will pay us a fee equal to 20% of the remuneration package offered to the person concerned.

14 Health and Safety

- 14.1 We will comply with all statutes, regulations, by-laws and other lawful requirements of New Zealand, including the Health and Safety at Work Act 2015.
- 14.2 We agree to comply with any health, wellbeing and safety requirements and your policies while providing the Services to you.
- 14.3 We shall:
- a take all reasonably practicable steps to ensure our safety and other persons affected by our activity.
 - b never be under the influence of drugs and alcohol while performing the Services and shall not smoke cigarettes on your sites.
 - c abide at all times by your reasonable safety requirements, including (where relevant) with regard to the safe use of tools and machinery and the use of safety equipment and protective clothing.
 - d report to you any hazards we discover in the work place as soon as reasonably practicable.
 - e co-operate with and assist you in investigations that may occur as a result of any incidents causing or having the potential to cause personal injury in the workplace at your request.
- 14.4 We shall report any accidents/injuries or near misses which arise out of or in the course of performing the Services to you as soon as practicable after the accident occurs, giving the following information:
- a the date, time and location of the accident;

- b the activity in which we were engaged at the time the accident occurred;
- c the general nature of any injuries suffered; and
- d the names of any other people in the vicinity of the accident who may have witnessed what took place.

14.5 In the event that we fail to abide by the above conditions, you may take such action as is deemed necessary, including the termination of these Terms without any liability of any kind or suspension of work being carried out by us without any liability of any kind until such time as compliance is achieved and/or undertakings obtained to your satisfaction, that future compliance will occur.

15 Termination

- 15.1 This agreement continues until either party terminates it by giving verbal or written notice, within a reasonable notice period, to the other.
- 15.2 If our Services are terminated you must pay us all fees, disbursements and expenses incurred up to the date of termination.
- 15.3 The enforceability of this agreement is not affected by termination or by any changes to the staff or Directors of Three60 Consult.

16 Feedback and Complaints

- 16.1 Client satisfaction is one of our primary objectives and feedback from clients is helpful to us. If you would like to comment on any aspect of the service provided by us, including how we can improve our service, please contact the employee responsible for your business, or our CEO or Director (see contact details in clause 16.2 below).
- 16.2 If you have a complaint about our Services, please raise them as soon as possible with the person to whom they relate. If you are not satisfied with the way your complaint has been handled, contact either our CEO – Anna Jones, anna@three60consult.co.nz or Director – Paul Diver, paul@three60consult.co.nz. We will enquire into your complaint and endeavour in good faith, to resolve the matter with you in a way that is fair to all concerned.