

1. Definitions

- 1.1 “Scale Up” means Scale Up Accounting Ltd, its successors and assigns, together with the duly authorised servants, agents, associates or contractors of Scale Up Accounting Ltd.
- 1.2 “You” means you as a client of Scale Up, whether you are an individual or other legal entity, and includes any officer, servant, agent or employee of you, or partner or co-trustee with you, who, whether orally or in writing, requests Scale Up to provide you with the Services. In the event that any such person requests the Services, then the term “You” shall be deemed to include you and such person(s) jointly and severally.
- 1.3 “Consultant” means any person or persons engaged by Scale Up to provide specialised work or services on behalf of You.
- 1.4 “Documentation” means any goods, documents, reports, drawings or materials supplied, consumed, created or deposited by Scale Up in the course of performing, or providing You with, the Services. Documentation may be retained by Scale Up in electronic form only and Scale Up shall be under no obligation to retain any original paper documents that may be in the possession of Scale Up.
- 1.5 “Fee” means the Fee payable by You for the Services in accordance with clause 5 of these Terms and Conditions.
- 1.6 “Personal Information” refers to personal information about or concerning You and has the same meaning as defined by the Privacy Act 2020 or by any other legislation that authorises or requires the collection, handling, storage, use or disclosure of personal information and data.
- 1.7 “Services” means all Services provided by Scale Up as requested by You from time to time.

2. Acceptance

- 2.1 You agree to be irrevocably bound by these Terms and Conditions immediately You consent to the provision of the Services.
- 2.2 Our engagement is governed by New Zealand law. The New Zealand courts have non-exclusive jurisdiction in relation to any dispute between us.

3. Change in Control

- 3.1 You shall provide Scale Up with not less than fourteen (14) days prior written notice of:
- (a) any proposed changes in ownership of You; or
 - (b) any proposed changes in officers, partners, trustees or in management of You; or
 - (c) any proposed changes in the nature of the business or business practice conducted or implemented by You; or
 - (d) any other proposed changes in relevant details including but not limited to changes to the name, business address, email address(es), telephone or fax number(s) of You.
- 3.2 You shall be liable for any and all loss or damage suffered by Scale Up arising as a direct or indirect result of the failure of You to comply with any part of clause 3.1.

4. Services

- 4.1 These Terms and Conditions may only be amended with the written consent of Scale Up and are to be read in conjunction with the Letter of Engagement provided by Scale Up to You. In the event that there is an inconsistency between these Terms and Conditions and the said Letter of Engagement, then the Letter of Engagement shall prevail and take precedence to the extent necessary to resolve any such inconsistency or ambiguity.

5. Fee and Payment

- 5.1 At the sole discretion of Scale Up, the Fee shall be comprised of either:
- (a) The total fee(s) indicated on invoices provided by Scale Up to You in respect of the Services; or
 - (b) Subject to clause 5.3, a written quoted fee(s) provided by Scale Up and accepted by You in writing within thirty (30) days of the date of the quotation(s).
- 5.2 You acknowledge and agree that Scale Up shall charge You the Fee for the Services based on the following:
- (a) The value of time spent by Scale Up in the provision of the Services calculated by applying an hourly rate(s) fixed at the sole discretion of Scale Up and agreed to by You.
 - (b) In recognition of such matters as the urgency involved in providing the Services, Scale Up reserves the right to charge an additional fee(s) where appropriate determined at the sole discretion of Scale Up and agreed to by You.
 - (c) Scale Up reserves the right to charge, at the sole discretion of Scale Up, a reasonable premium or further fee based on the value of the transaction to You and/or additional responsibility assumed by Scale Up in providing the Services.
 - (d) In the event that Scale Up is unable to complete the Services as agreed solely due to any action or inaction on the part of You, then Scale Up shall be entitled to charge You an additional and reasonable fee for completing the Services at a later time and date.
 - (e) Scale Up reserves the right to include in the Fee any out-of-pocket expenses or disbursements which shall be charged to You at cost and in respect of which You agree to make reimbursement.
- 5.3 In circumstances where Scale Up has provided You with a written quoted fee(s) for the Services, and where You have accepted the same in writing within thirty (30) days of the date of the quotation(s), then Scale Up shall be bound by the quoted fee(s), with the exception that:
- (a) Scale Up shall not be so bound in respect of Services or work carried out by Scale up for You which are in addition to the Services that are the subject of the quotation.
 - (b) In the event that You request, either orally or in writing, changes or variations to the Services which are the subject of the quotation, then Scale Up reserves the right to provide You with an amended quotation to reflect the additional cost of the work involved in such changes or, alternatively, to charge You, in addition to the quoted fee(s), a further Fee in accordance with clause 5.2.
- 5.4 At the time You agree to the provision of the Services, Scale Up may, at the sole discretion of Scale up, require You to immediately pay to the trust account of Scale Up a sum of money to cover all or part of expenses, disbursements, outgoings and fees that may be incurred or charged by Scale Up in the provision of the Services. Any such monies paid by You shall be receipted and in due course accounted for in invoices issued by Scale Up to You in respect of the Services.
- 5.5 Time for payment for the Services being of the essence, the Fee shall be payable by You on the date/s advised in the Letter of Engagement or other correspondence provided by Scale Up to You, which date/s shall be either:
- (a) on completion of the Services; or
 - (b) in the case of instalments or progress payments, on the date(s) specified in the payment schedule provided to You by Scale Up; or
 - (c) the date being twenty (20) days following the end of the month in which a statement is provided by Scale Up to You; or

- (d) the date specified on any invoice or other document provided by Scale Up as being the date for payment; or
 - (e) failing notice to the contrary, the date which is seven (7) days following the date of any invoice provided to You by Scale Up.
- 5.6 You shall not be entitled to set off against or deduct from the Fee any sums owed or claimed to be owed to You by Scale Up, nor to withhold payment of any invoice provided to You by Scale Up because part of that invoice is disputed by You.
- 5.7 Payment of the Fee shall be made by You by way of cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to three and a half percent (3.5%) of the Fee), or by any other method as agreed to between You and Scale Up.
- 5.8 Unless otherwise stated, the Fee shall be in New Zealand Dollars and shall not include GST. In addition to the Fee, You shall pay to Scale Up the following:
- (a) An amount equal to any GST that Scale Up must pay in respect of the provision of the Services to You. You shall pay such GST without deduction or set-off and at the same time and on the same basis as You pay the Fee.
 - (b) In addition, You shall pay any other taxes and duties that may be applicable in addition to the Fee, except where such are expressly included in the Fee.
- 5.9 Receipt by Scale Up of any form of payment from You, other than cash, shall not be deemed to be full or part payment of the Fee or GST until that form of payment has been honoured, cleared or recognised. Until such time, Scale Up reserves all the rights of Scale Up in respect of the Services and pursuant to these Terms and Conditions.
- 5.10 In respect of any invoices issued by Scale Up to You which are overdue for payment by 30 days or more, Scale Up reserves the right to charge You an administration fee of \$100 per month in respect of collection costs, or 2.5% of the overdue amount, whichever sum is the greater.

6. Provision of Services

- 6.1 Scale Up shall exercise all reasonable skill, care and diligence in the performance of the Services in accordance with the Chartered Accountants Australia and New Zealand (CAANZ) Rules, Code of Ethics, Professional and Engagement Standards.
- 6.2 Any time specified by Scale Up for the provision of the Services to You shall comprise or be an estimate only, and Scale Up shall not be liable for any loss or damage incurred by You as a result of any delay that may occur in the delivery of the Services, no matter what the cause. However, Scale Up and You agree to take all reasonable steps to ensure that the Services are provided and completed in a timely fashion and in accordance with the terms of the Letter of Engagement issued by Scale Up to You.
- 6.3 You acknowledge and agree that in providing the Services, Scale Up relies on Information provided by You without independently verifying such and that:
- (a) the Services are provided by Scale Up for the sole benefit of You and must not be disclosed to, or relied upon by, any other party without the express written consent of Scale Up;
 - (b) the Services do not include information and advice relating to financial and legal matters, including matters relating to the implementation of business strategies, and that accordingly it is recommended by Scale Up that You seek the appropriate advice of other business advisors suitably qualified in these areas.
- 6.4 Scale Up will retain all Documentation for a period of seven (7) years after creation and may destroy or dispose of any Documentation held after that time. You may at any stage request electronic copies of the Documentation held by Scale Up.
- 6.5 You acknowledge and agree that Scale Up shall communicate with You solely by way of email, unless You instruct otherwise. You accept that communication by email may be subject to difficulties and hazards inherent in electronic distribution and that Scale Up cannot warrant against delays or errors in the transmission of data between You and Scale Up. You agree that, to the maximum extent permitted by law, Scale Up shall not be liable for any loss or damage which You may suffer as a result of internet interruptions that are beyond the control of Scale Up and which result in delays or errors in the transmission of instructions and/or confirmations between You and Scale Up.
- 6.6 We will endeavour to record all advice on important matters in writing.

7. Risk

- 7.1 You acknowledge and agree that, irrespective of whether Scale Up retains ownership of the Documentation, all risk for the Documentation shall pass to You upon delivery of the Documentation to You and shall remain with You until such time as Scale Up may retake possession of the Documentation.
- 7.2 You further agree that, prior to delivery of the Documentation, You shall take out and put in place appropriate risk insurance to cover potential loss of and damage to the Documentation. Scale Up reserves the right to seek and recover from You compensation or damages for any loss suffered by Scale Up as a result of a failure by You to arrange proper or appropriate insurance in accordance with clause 7.1.
- 7.3 Scale Up shall not be held liable for any loss, corruption, or deletion of files or data caused directly or indirectly by Scale Up including, but not limited to, the unintended introduction or spread of malware. It shall be the sole responsibility of You to back-up and protect any data which may be important, valuable, or irreplaceable to You prior to Scale Up providing You with the Services.

8. Title

- 8.1 Scale Up and You agree that ownership of Documentation shall not pass to You without the written consent of Scale Up and not in any event until such time as:
- (a) You have paid Scale Up the Fee and any other amounts owing by You in connection with the Services; and
 - (b) You have met all obligations owed by You to Scale Up arising in connection with any contract between Scale Up and You.
- 8.2 Scale Up and You further agree that:
- (a) At any time prior to Scale Up receiving from You payment of the Fee in full, Scale Up may give notice in writing to You to return to Scale Up any of the Documentation provided to You in the provision of the Services. Upon such notice being given by Scale Up, any rights of You to obtain ownership or any other interest in the Documentation shall cease; and
 - (b) If You fail to return Documentation to Scale Up as and when requested, then Scale Up or the agents of Scale Up may enter land and premises owned, occupied or used by You, or enter any premises where the Documentation is held for or on behalf of You, and take possession of the Documentation, and You hereby agree to indemnify Scale Up in full in respect of any demand, claim, loss or damage made against or incurred by Scale Up resulting or arising directly or indirectly as a result of any action by Scale Up under this clause.

9. Client's Disclaimer

- 9.1 You hereby disclaim any right to rescind` or cancel any contract with Scale Up or to sue for damages or to claim restitution arising out of any unintentional misrepresentation made to You by Scale Up.

10. Errors and Omissions

- 10.1 If, prior to the due date for payment of an invoice for the Services, You consider that the Services contain an error or omission, then You shall immediately notify Scale Up in writing of such alleged error or omission, and allow Scale Up a reasonable opportunity to remedy the Services, if such is necessary or required. If You fail to comply with this clause, then the invoice for the Services shall be deemed payable in full by You as per the terms of the invoice.
- 10.2 You agree that, where You allege that the Services contain an error or omission, Scale Up shall exercise sole discretion as to whether the Services require remedy. You further agree that the liability of Scale Up for such error or omission shall, at the sole discretion of Scale Up, be limited to replacing the Services or remedying the Services. Nothing in this clause shall affect the obligations of You under clause 10.1.

11. Consumer Guarantees Act 1993

- 11.1 You acknowledge that if You are acquiring the Services for the purposes of a trade or business, then the provisions of the Consumer Guarantees Act 1993 do not apply to the Services provided to You by Scale Up, and that warranties under that Act are excluded.

12. Confidentiality / Intellectual Property

- 12.1 Scale Up and You agree that all information, ideas and intellectual property (“confidential information”) communicated by and shared between them shall remain strictly confidential to Scale Up and You and shall not be communicated or divulged to any third party without the written consent of Scale Up and You as the case may be. Scale Up and You agree not to copy any confidential information supplied and to return or destroy such information or copies thereof upon request.
- 12.2 Notwithstanding the obligation to maintain strict confidentiality in respect of all confidential information pursuant to clause 12.1, Scale Up and You acknowledge and agree that confidential information may be disclosed to legal and other professional advisors or as may be required by law and may, with the written consent of the parties, be disclosed to the extent necessary for the proper performance of the Services.
- 12.3 Where Scale Up has developed software, spreadsheets, training materials, databases, proposals, tender documents and other electronic tools in providing the Services to You, then the copyright in those software, spreadsheets, training materials, databases, proposals, tender documents and other electronic tools shall remain vested in Scale Up, and shall not be used by You in any manner whatsoever without the express written consent of Scale Up.
- 12.4 You hereby warrant that any software, spreadsheets, databases, other electronic tools or instructions provided by You to Scale Up do not and shall not infringe any patent, registered design or trademark (“infringement”), and You hereby agree to indemnify Scale Up in full for and in respect of any demand, claim, proceedings, expense, loss or damage made or commenced against or incurred or suffered by Scale Up arising directly or indirectly as a result of such infringement or alleged infringement by Scale Up in the provision of the Services.
- 12.5 Scale Up shall retain copyright in all original work created, undertaken or developed by Scale Up for You in the provision of the Services unless and until Scale Up agrees otherwise in writing.
- 12.6 We are required to comply with all applicable by-laws, rules, regulations, professional and ethical standards and guidelines of Chartered Accountants Australia and New Zealand and the New Zealand Institute of Chartered Accountants (NZICA). These requirements include the NZICA Code of Ethics, which among other things contains confidentiality requirements. In accordance with these requirements, we will not disclose information we obtain in the course of this engagement to other parties, without your express consent, except as required by:
- (a) laws and regulations (for example, disclosures required under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (including to a third-party auditor) and as required by the Common Reporting Standard).
 - (b) professional obligations including:
 - o the provisions of the NZICA Code of Ethics that apply if we become aware of actual or potential ‘non-compliance with laws and regulations’ (NOCLAR). Where any such non-compliance poses substantial harm (such as adverse consequences to investors, creditors, employees or the public), we may be required to disclose the matter to an appropriate level of management or those charged with governance and/or an appropriate authority.
 - o the provisions of the NZICA Rules and Professional Standards that subject us to practice review, trust account audits, investigations and disciplinary procedures. These rules require us to disclose to NZICA, its practice reviewers and/or its disciplinary bodies our files and workpapers including client information. In accepting this engagement you acknowledge that, if requested, our files related to this engagement, may be made available to NZICA, its practice reviewers and/or its disciplinary bodies. Employees and contractors of NZICA are also bound by confidentiality under contract and by the NZICA Code of Ethics.

13. Default and Consequences of Default

- 13.1 In respect of invoices provided to You by Scale Up and which remain unpaid, interest shall accrue daily, from the date when payment becomes due until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at Scale Up’s sole discretion such interest shall compound monthly at such a rate) both before and after any judgment arising from default by You.
- 13.2 You agree that, in the event that You owe Scale Up any money, You shall indemnify Scale Up in full from and against all expenses, costs and disbursements incurred by Scale Up in recovery of such money (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Scale Up’s collection agency costs, and bank dishonour fees).
- 13.3 Further to any other rights or remedies Scale Up may have under these Terms and Conditions, if You make payment to Scale Up by credit card and the transaction is for any reason subsequently reversed, then You shall be liable to Scale Up for the amount of the reversed transaction in addition to any further costs incurred by Scale Up under this clause 13 in respect of money owed or default by You.
- 13.4 Without prejudice to any other remedies Scale Up may have, if at any time You are in breach of any obligation owed by You to Scale Up under these Terms and Conditions, including obligations relating to payment, then Scale Up may suspend or terminate the provision of the Services to You and any other obligations owed by Scale Up to You under these Terms and Conditions or pursuant to the Letter of Engagement or other agreement. Scale Up shall not be liable to You for any loss or damage suffered by You as a direct or indirect result of Scale Up exercising rights under this clause.
- 13.5 Without prejudice to Scale Up’s other remedies at law, Scale Up shall be entitled to cancel all or any part of the Services and all amounts owing by You to Scale Up shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable by You to Scale Up becomes overdue, or in Scale Up’s opinion You will be unable to meet such payments as they fall due; or
 - (b) You become insolvent, convene a meeting with creditors of You, or propose or enter into an arrangement with creditors of You, or make an assignment for the benefit of creditors of You; or

(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of You or any asset(s) of You.

14. Cancellation

- 14.1 Scale Up may cancel the Letter of Engagement or any contract with You to which these Terms and Conditions apply or cancel the provision of the Services at any time before the Services are completed by giving written notice to You. Upon giving such notice, Scale Up shall repay to You any sum paid by You on account in respect of the Fee, less any amount owed by You for the Services provided. Scale Up shall not be liable for any loss or damage whatever arising from such cancellation.
- 14.2 In the event that You cancel the provision of the Services, and Scale Up has not acted in breach of any of obligations owed to You by Scale Up under these Terms and Conditions, then You shall be liable for any loss incurred by Scale Up (including, but not limited to, any loss of profits) as a result of, and up to the time of, cancellation.

15. Privacy Act 2020

- 15.1 You authorise Scale Up to access, collect and retain Personal Information which may include but shall not be confined to details of the name, address, email address, telephone number of You and any information relating or connected to the use by You or the provision of the Services.
- 15.2 You warrant that You have obtained any and all necessary authorizations and consents to enable Scale Up to collect, hold and use Personal Information for the purposes set out in clause 15.3
- 15.3 Scale Up may use Personal Information for any purpose which is stated to You by Scale Up at the time Personal Information is collected or which You authorise or for any of the following purposes:
- (a) Providing the Services, or connected with the Services;
 - (b) Concerning or related to the obligations of You and the rights of Scale Up under these Terms and Conditions or Letter of Engagement;
 - (c) Providing You with information concerning the Services or the services or products offered by Scale Up or related entities or third parties which in the opinion of Scale Up may be of interest to You;
 - (d) Assisting in the performance of activities by Scale Up including communicating and managing relationships with stakeholders
 - (e) Undertaking any form of data analysis or sharing by or on behalf of Scale Up in a manner that makes no reference to You or reveals identifiable characteristics of You;
 - (f) Communicating with You;
 - (g) Complying with the legal obligations of Scale Up.
- 15.4 You acknowledge and agree that, for the purposes set out on clause 15.3, Scale Up may disclose Personal Information of or concerning You:
- (a) To Scale Up or to persons within or comprising Scale Up;
 - (b) To You or to persons within or comprising You;
 - (c) To third parties to enable the provision of services and products to You and Scale Up;
 - (d) To third parties to enable data analysis and sharing in a manner that that makes no reference to You or reveals identifiable characteristics of You;
 - (e) To comply with any legal obligations of Scale Up; or to facilitate any demand, claim or legal proceedings; or to protect the rights of Scale Up: or where Scale Up is authorised or required by law to make such disclosure.
- 15.5 You shall have the right to access Personal Information held by Scale Up and the right to request correction of Personal Information held by Scale Up.
- 15.6 Scale Up shall disclose Personal Information only in accordance with the provisions of the Privacy Act 2020.
- 15.7 You and Scale Up acknowledge and agree that failure by You to provide Personal Information when requested by Scale Up may result in Scale Up being unable to provide the Services or comply with the obligations of Scale Up under these Terms and Conditions or Letter of Engagement, and may have other consequences which will be notified to You at the time of request for Personal Information by Scale Up. Scale Up shall have no liability to You for failure to provide the Services or for any breach of these Terms and Conditions caused by or arising from a failure by You to provide Personal Information immediately when requested by Scale Up.

16. Security and Charge

- 16.1 In consideration of Scale Up agreeing to provide the Services, You charge all of the rights, title and interest (whether joint or several) of You in any land, realty or other assets capable of being charged, owned by You either now or in the future, to secure the performance by You of the obligations of You under these Terms and Conditions including, but not limited to, the payment of any money.
- 16.2 You indemnify Scale Up from and against all Scale Up's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the rights of Scale Up under these Terms & Conditions.
- 16.3 You irrevocably appoint Scale Up or the authorised representative as the true and lawful attorney/s of You to perform all necessary acts to give effect to the provisions of clause 16.1 including, but not limited to, signing any document on behalf of You.

17. Personal Property Securities Act 1999 ("PPSA")

- 17.1 You acknowledge and agree that:
- (a) these Terms and Conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Documentation and/or collateral (account) – being a monetary obligation of You to Scale Up for the Services – previously provided (if any) and that will be provided in the future by Scale Up to You.
- 17.2 You undertake to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Scale Up may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Scale Up for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
 - (c) not to register a financing change statement or a change demand without the prior written consent of Scale Up.
- 17.3 Scale Up and You agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and Conditions.
- 17.4 You waive the rights of You as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 17.5 Unless otherwise agreed to in writing by Scale Up, You waive the right of You to receive a verification statement in accordance with section 148 of the PPSA.

17.6 You shall unconditionally ratify any actions taken by Scale Up under Parts 9 & 10 of the PPSA.

18. Lien

18.1 Where You have provided any of Documentation to Scale Up for Scale Up to provide the Services and Scale Up has not received or been tendered the whole of the Fee, or the payment has been dishonoured, Scale Up shall have:

- (a) a lien on the Documentation; and
- (b) the right to retain the Documentation whilst Scale Up is in possession of the Documentation until such time as payment has been made in full; and
- (c) the lien of Scale Up shall continue despite the commencement of proceedings, or judgment for the Fee having been obtained; and
- (d) Scale Up shall be under no obligation to release the Documentation to You if You are in default of payment except as may be required by any law or statute.

19. Liability Limitations

19.1 Scale Up shall be under no liability whatsoever to You for any direct or indirect loss, consequential loss, costs and/or expenses (including loss of profit) suffered or incurred by You arising out of a breach by Scale Up of these Terms and Conditions and, in any event, Scale Up shall not under any circumstances be liable to You in damages for a sum(s) that exceeds in aggregate the limit of liability specified in Scale Up's Professional Indemnity Insurance, details of which may be provided to You at any time upon request.

19.2 You agree to indemnify Scale Up, and in particular the duly authorised servants, agents, associates or contractors who comprise or are part of Scale Up, against and in respect of any demand, claim, proceedings, costs and expenses arising out of any alleged or actual breach of Scale Up of these Terms and Conditions and in respect of any liability for loss or damage suffered by You or other party arising as a result of such breach or negligence on the part of Scale Up, including liability for loss and damage that exceeds the limit of liability specified in clause 19.1.

20. Dispute Resolution

20.1 If a dispute arises between You and Scale Up relating to the Services or these Terms and Conditions or Letter of Engagement, then the party alleging the dispute must immediately serve a notice to the other clearly describing the matters in dispute and their desired outcome ("the Dispute Notice").

20.2 Following service of the Dispute Notice, You and Scale Up must act in good faith and endeavour to resolve the dispute amicably and as soon as possible.

20.3 If the dispute is not resolved in terms of clause 20.2 within 10 business days of service of the Dispute Notice, then either party may serve a Notice in writing on the other party requiring that the dispute be referred to mediation ("the Notice").

20.4 Upon service of the Notice, the parties shall endeavour to agree on a mediator and shall submit the matter in dispute to the mediator. The parties shall share the mediator's fees and expenses equally and meet their own costs. All discussions in mediation shall be without prejudice and no aspect of the mediation shall be referred to in any later proceedings with the exception of any decision of the mediator that is binding on both parties pursuant to clause 20.5.

20.5 You and Scale Up may at any stage agree to invite the mediator to give a decision to determine the dispute. The mediator's decision shall in such a case be binding on both parties unless within 5 business days of receipt of the decision either party notifies the other in writing that it rejects the mediator's decision.

20.6 If, within a period of 28 business days following service of the Notice pursuant to clause 20.3, the parties have been unable to agree the appointment of a mediator or if, within the same period of 28 business days from service of the Notice, mediation has not occurred and/or the dispute has not been resolved, then either party may commence legal proceedings and refer the dispute to the Courts for resolution.

20.7 You hereby agree that no payment that is due and payable to Scale Up under clause 5.5 of these Terms and Conditions shall be withheld on account of the dispute or by reason of the existence of the dispute.

21. General

21.1 If any provision or part of these Terms and Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

21.2 These Terms and Conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.

21.3 Scale Up may license or sub-contract all or any part of rights and obligations of Scale Up under these Terms and Conditions without the consent of You.

21.4 You agree that Scale Up may amend these Terms and Conditions at any time. If Scale Up makes a change to these Terms and Conditions, then that change will take effect from the date on which Scale Up notifies You of such change. You shall be taken to have accepted such if You make a further request for Scale Up to provide the Services to You.

21.5 Scale Up and You shall not be liable for any default or breach of these Terms and Conditions which are due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of Scale Up and You.

21.6 The failure by Scale Up to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision by Scale Up, nor shall such affect Scale Up's right to subsequently enforce that provision.

21.7 You hereby acknowledge and agree that Scale Up may receive a referral fee or incentive from a third party in respect of or arising from or connected with the provision of the Services to You.

21.8 You warrant that You have the power and authority to agree to and be bound by these Terms and Conditions and that You have obtained all necessary authorisations to allow You to do so. You warrant that You are not insolvent and You agree that these Terms and Conditions create legally binding and valid obligations on You.

22. Disclosure and information gathering

22.1 Scale Up may be legally required by the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 ('AML') to obtain certain information and documents from You to verify the identity of You and in certain circumstances the source of funds.

Scale Up Accounting Ltd – Terms & Conditions of Trade

- 22.2 You acknowledge that Scale Up may be required by law to obtain information about You (for example, to verify the identity of You and the source of funds) and that when information is requested from You, You will provide all such information to Scale Up without delay.
- 22.3 You acknowledge that Scale Up shall have no liability to You in the event that Scale Up is unable to conduct any transaction or perform the Services because You have not provided Scale Up with the required information to the satisfaction of Scale Up.
- 22.4 You acknowledge that Scale Up may be required by law to disclose information about certain transactions (for example, where disclosure is required by AML legislation or if Scale Up believes that a transaction is suspicious).
- 22.5 If Scale Up is required to make such disclosure, Scale Up shall do only do so to an appropriate person/agency and only to the extent reasonably necessary for the required purpose. You consent to Scale Up making such disclosure without notification to You
- 22.6 In accepting this engagement, you provide us with your express consent to disclose your information to:
- (a) our service providers (see clause 23) or regulatory bodies to the extent required to perform our services in respect to this engagement;
 - (b) our professional advisors or insurers to the extent required to protect our interests in respect to this engagement;
 - (c) our external peer reviewer to the extent required to review this engagement;

We will take reasonable steps to ensure any such recipient (other than a regulatory body) keeps such information confidential on the same basis we maintain in respect to your information (see clause 8).

We may retain your information during and after our engagement to comply with our legal requirements or as part of our regular IT back-up and archiving practices and also for professional reasons (e.g. to perform the work under this engagement or to comply with our professional and ethical obligations). We will continue to hold such information confidentially.