

# Fixinc Program Terms & Conditions

These Terms and Conditions ("Agreement") represent a binding agreement between Fixinc Consulting Partners Limited (NZBN 9429047125490), trading as 'Fixinc,' (hereby known as 'Fixinc', 'us', 'our', 'we') and the Client (the company named on the Proposal connected to this Agreement). By engaging in our consulting programs and services, you acknowledge your understanding of, and agreement to, the terms outlined herein. These terms serve as a foundation for the professional collaboration between Fixinc and the Client, ensuring clear guidelines for the provision of services, payment obligations, and expectations on both sides. It is essential that you review and comprehend these terms before proceeding with our consulting programs.

This Agreement encompasses a range of clauses that address critical aspects of our engagement, including project duration, payment structure, service provision, confidentiality, intellectual property, and other key considerations. We've also taken into account the various scenarios that may arise during our partnership, such as changes in project scope, Client-related delays, and the provision of additional services.

Please be aware that these terms are mutually agreed upon and designed to foster a productive and transparent collaboration. Any additional specific items or clauses that may need to be added or modified will be done so with your approval, ensuring that the terms remain aligned with the evolving needs of both parties.

It is our commitment at Fixinc to deliver high-quality consulting services that meet your expectations and contribute to your success as a truly resilient organisation. We appreciate your trust in our expertise, and we look forward to a fruitful partnership.

Should you have any questions or require further clarification on any aspect of these terms, please do not hesitate to reach out to us. Your understanding and adherence to these terms are crucial to the effective and successful execution of our consulting programs.

Thank you for choosing Fixinc as your consulting partner.

## 1. Application

- a. By accepting Goods and/or Services from Fixinc, the Client is considered to have agreed to the relevant terms outlined in this Agreement (including any Schedule), regardless of whether the Client has formally executed this Agreement. In cases where a specifically negotiated Supply Contract has been established between Fixinc and the Client concerning the Goods and/or Services, the terms specified in the existing Supply Contract will govern the purchase, superseding these terms.
- b. References to a party includes that party's authorised representatives, successors and permitted assigns.

## 2. Project Implementation Period

- a. Project Duration: The project implementation period begins on the date of the Engagement Meeting between Fixinc and authorised representatives of the Client's company and within the period agreed henceforth within the 'Engagement meeting'.

- b. **Maximum Project Duration:** All projects are not to exceed a 12-month period from commencement date agreed during the Engagement Meeting. In the event that a project exceeds this timeframe, the Client may be subject to additional costs or an increase in the hourly rate, proportional to inflation costs or relevant index.
  - c. **Client-Related Delays:** Fixinc cannot be held responsible for delays in project completion caused by actions, inactions, or information provided by the Client. Any delays attributable to the Client may result in an extension of the project duration and potential adjustments to associated fees.
  - d. **Program Scope Agreement:** All program details and timescales will be mutually agreed upon during the Engagement Meeting between Fixinc and the Client. The Engagement Meeting serves as a pivotal point for finalising the scope, objectives, and deliverables of the program.
- 3. **Fee Structure and Excessive Time**
  - a. **Fee Structure:** The fee provided to the Client encompasses the program's required hours, resources, or products. All time devoted to the program, whether for planning, execution, or evaluation, is considered within this fee structure.
  - b. **Excessive Time Clause:** Should the program necessitate an excessive amount of time beyond the predetermined scope as a result of the Client's enforced delay (as noted in clause 2c), the Client may be required to bear additional costs. Fixinc will communicate any such circumstances and potential additional charges to the Client for approval before proceeding.
- 4. **Payment Terms**
  - a. **Establishment Fee:** For invoices \$20,000 and over, the Client agrees to pay Fixinc a non-refundable establishment fee equivalent to 30% of the total project fee, as outlined in the fee proposal. For amounts under \$20,000, the total amount is due within 14 days of the invoice date or on a date that is accepted by Fixinc in writing and in line with the Client's payment terms. If Client payment terms are not provided to Fixinc, the Client will be invoiced 100% of the program fees unless the 3 month split of fee as noted in 4.a.i, through 4.a.iv is requested by the Client to Fixinc.
    - i. **Overdue Establishment Fee:** In the event that the establishment fee remains unpaid for a period of 7 days beyond the due date, Fixinc reserves the right to suspend the Client's program. Furthermore, initially scoped dates and schedules may be subject to removal and/or modification, at Fixinc's discretion.
    - ii. **Establishment Fee (Month 1):** An initial payment of 30% of the total project fee, referred to as the "Establishment Fee," is due upon the Client's acceptance of these terms and due within 14 days of the invoice date.
    - iii. **Second Payment (Month 2 / 35%):** The second payment, amounting to 35% of the total project fee, shall be due on the 20th day of the month immediately following the establishment fee invoice date.

- iv. Third and Final Payment (Month 3 / 35%): The third and final payment, also totalling 35% of the total project fee, is due on the 20th day of the second month following the establishment fee payment.
  - b. Invoice and Payment Due Date: The establishment fee shall be invoiced within two working days upon the Client's acceptance of these terms and conditions by date and signature via the fee proposal. The Client is required to remit payment for the establishment fee within 14 days of the invoice date.
  - c. Consequences of Late Payment: Failure to make payment by the stipulated due dates may result in delays to the project timeline, at the discretion of Fixinc. Fixinc reserves the right to suspend project work, reschedule project milestones, or take other appropriate actions to address late payments. It is the Client's responsibility to ensure the timely remittance of these instalments in accordance with the specified due dates. Failure to do so may result in penalties, an interest fee of 10% of the overdue invoices total due amount calculated daily, and suspension of the program activities.
  - d. Additional Taxes and GST: Fixinc will charge additional taxes for Goods and Services (GST) where applicable and required by law, depending on the jurisdiction of services rendered and the total amount will be reflected in your invoices. If your organisation is tax exempt from taxes or GST for any reason, you must provide evidence of this to Fixinc prior to the invoice being charged.
  - e. Payment Method: Payment must be made to the nominated bank account as specified on the Client's invoice. Any bank fees or charges incurred for international payments to Fixinc's bank account may be borne by the Client.
  - f. Purchase Orders or Supplier Contracts: If the Client requires Fixinc to register as a Supplier (or similar) and / or obtain a purchase order number or identification ('PO number'), the Client understands this must be shared with Fixinc within the invoice due date period and any delays incurred as a result do not override the terms of clause 4.0. It is the sole responsibility of the Client to obtain a PO number in a timely manner for Fixinc accounts (this can be emailed to [accounts@fixinc.org](mailto:accounts@fixinc.org) once obtained).
  - g. Unpaid Invoices Exceeding 60 days: If invoices remain unpaid for a period in excess of 60 days, Fixinc may seek legal action and remedies to collect payments owed and all services will be cancelled indefinitely at any stage of the program's progress inline with the terms set out in clause 10.0 of the Fixinc Cancellation policy.
5. Travel Expenses
- a. Travel Costs: The travel expenses may include but are not limited to transportation fees, accommodation charges, and meal expenses necessary for the Fixinc member/s presence at the Client's site, calculated from the Fixinc Head Office location. Fixinc is committed to charging fair and reasonable travel expenses that are relevant to the program and Client's location in relation to a Fixinc office.

- b. **Client's Right to Decline:** The Client reserves the right to decline the incurring of travel expenses related to the project. This decision must be communicated in writing to Fixinc before any travel arrangements are made by Fixinc. In the absence of written communication indicating the Client's decision to decline such expenses, Fixinc may proceed with necessary travel arrangements as required for the project.
    - i. In the event the Client declines the incurring of travel expenses, Fixinc may be required to change the scope of work and complete specific items virtually.
  - c. **Expense Standards:** All travel expenses will be incurred in accordance with reasonable business standards and practices.
  - d. **Expenses Approval:** The Client reserves the right to review and approve the proposed travel arrangements and associated costs. Before incurring any travel expenses on behalf of the Client, Fixinc shall obtain the Client's prior written approval. Fixinc will endeavour to calculate an approximate travel expense cost off of available quotes presented to Fixinc, however the Client accepts fluctuations in price out of Fixinc's control between this period and purchase. Any fluctuations above ten percent (10%) of the original cost will be communicated to the Client for further approval.
  - e. **Receipts and Invoices:** Fixinc will provide the Client with timely and accurate documentation of all incurred travel expenses. Such documentation shall include receipts, invoices, and any other relevant supporting documents that are provided from the third party supplier relating to the travel expense.
  - f. **Payment of Expenses:** The Client agrees to pay the accumulated travel expenses promptly upon receipt of the monthly billing statement and within the due date specified on the invoice. Failure to process a payment within the due date may result in suspension of the Program required to consider travel.
  - g. **Modification of these Terms and Conditions:** Fixinc reserves the right to modify the travel expense policy at any time, provided that reasonable notice is given to the Client of at least thirty (30) days.
  - h. **Date of Modification:** Any changes to the policy will not affect travel expenses incurred prior to the effective date of the modification.
6. **Fixinc Loyalty Program**
- a. **Fixinc Loyalty Program Clauses:** These clauses outline the terms and conditions of the Fixinc Loyalty Program ("Loyalty Program"), provided by Fixinc, and made available to the Client as part of the broader Program's Terms and Conditions.
  - b. **Complimentary Loyalty Program:** Fixinc provides the Client with a complimentary Loyalty Program curated and managed by Fixinc on behalf of the Client. The Loyalty Program is designed to enhance the Client's experience and engagement with Fixinc and is an integral part of our collaboration.
  - c. **Loyalty Rewards:** The Loyalty Program consists of multiple, flexible, and random rewards associated with the Client's Program with Fixinc. These rewards may

include complimentary items that are made up of Loyalty Points, which have a value equivalent to a predetermined percentage of each dollar spent with Fixinc.

- d. Changes to Loyalty Program Terms: Fixinc reserves the right to change the terms and conditions of the Loyalty Program at any time. Any such changes will be communicated to the Client through the most effective means available at the time, which may include email notifications, website updates, or other forms of communication.
- e. Earning Loyalty Points: The Client can earn Loyalty Points for various reasons, including but not limited to: Participating in Programs with Fixinc, Timely payment of invoices, Providing Purchase Order (PO) numbers on time, referring Fixinc as a credible supplier to similar businesses or partners, Sharing Fixinc and the collaboration/program on social media channels, Linking to the Fixinc website via the Client's website, providing a logo and permission to share the Client's logo on the Fixinc website.
  - i. A full list of activities and their associated points can be found on the Fixinc website, Client portal, or can be requested via email.
- f. Redemption and Accumulation of Points: the Client can either "cash" or "bank" Loyalty Points. "Cashing" allows them to redeem their current points in exchange for complimentary program items. "Banking" points enables the accumulation of points for future use.
- g. Expiration of Loyalty Points: Client Loyalty Points will only expire if the Client cancels any and all Programs or work with Fixinc, thereby terminating the professional relationship. As of 2023, Loyalty Points do not expire and can be accumulated indefinitely, provided the Client maintains an active business relationship with Fixinc.
- h. Program Start Date: The Fixinc Loyalty Program formally commenced on November 1st, 2023. Clients on Programs leading up to that date are not eligible for Loyalty Points unless otherwise agreed by a Director of Fixinc.
- i. Points Transfer: Loyalty Points cannot be transferred to external parties. However, they can be shared within departments, subsidiaries, subject to prior review and approval by Fixinc.
- j. Calculation of Points: The calculation of Loyalty Points is at the sole discretion of Fixinc, and the Client agrees to abide by the points assigned as per Fixinc's determination.
- k. Program Cancellation: Fixinc reserves the right to cancel the Loyalty Program at any time, with at least 30 days' notice to the Client. In the event of program cancellation, the Client's accumulated Loyalty Points will be paused but remain valid until used.
- l. These Loyalty Program clauses are incorporated into the broader Program's Terms and Conditions and are binding upon the Parties. By participating in the Fixinc Loyalty Program, the Client agrees to abide by these terms and conditions. Fixinc and the Client enter into this agreement willingly and with full understanding.

## 7. Health & Safety Compliance

- a. Site Compliance: If any Fixinc personnel enters the Client's premises while carrying out the Client's Program, Fixinc, and its relevant personnel, are committed to full compliance with the Client's site-specific requirements. This compliance shall be in accordance with the most recent site agreement, if any, executed between Fixinc and the Client.
- b. Occupational Health & Safety (H&S) Responsibility: Fixinc acknowledges the importance of the Client's premises having specific occupational health and safety (H&S) and environmental policies, procedures, and conditions of entry. Fixinc agrees that these measures should be reviewed in conjunction with this Agreement before accessing the site.
- c. H&S Documentation: The Client understands that no Fixinc employee, contractor, or registered nominated persons will enter the Client's premises without prior receipt of the Client's Health and Safety documentation. Fixinc shall ensure that this documentation is shared and received before their personnel's arrival.
- d. Client's Right to Enforce Compliance: In the event of any breach of H&S or environment-related obligations by Fixinc or its personnel, the Client reserves the right, without prejudicing its other rights under this Agreement, to require Fixinc and/or its personnel to immediately suspend the supply performance and/or leave the premises.

## 8. Service Fees and Specifications

- a. Fee Acceptance: Fees are based on the acceptance of all services outlined in the Fee Proposal and are subject to the specifications.
- b. The scope of services is detailed in the Quote section of your proposal and all costs associated are inline with these services only.

## 9. Service Provision and Delays

- a. Service Hinderance: Should the Client hinder the provision of prescribed services within 12 months from the commencement date, and for subsequent 12-month periods, the affected services may be forfeited, with associated fees still payable.
- b. Scope Change and Additional Work: Any work requested by the Client that falls outside the scope defined in the 'Quote' section of the Client's proposal will be considered additional work. This additional work will necessitate the creation of a separate proposal ID outlining the scope, objectives, and deliverables of the requested additional work.
- c. Additional Fees: The Client acknowledges that additional work may incur extra fees. These fees will be detailed in the additional proposal ID and are separate from the fees associated with the initial program or this proposal.
- d. Work Pause for Additional Work: In the event that additional work is requested during the course of an ongoing program, Fixinc reserves the right to temporarily pause the execution of the additional work until the initial or relevant program is satisfactorily progressed.

- e. **Proposal Acceptance:** The Client's approval of the additional proposal ID indicates acceptance of the scope and associated fees for the requested additional work. Work on the additional work will commence upon receipt of the Client's approval and agreement to the terms outlined in the additional proposal ID.

#### 10. Cancellation and Changes

- a. **Cancellation Policy:** Fixinc reserves the right to impose a cancellation fee of 50% of the total session fee if a training activity is cancelled within 7 working days of the confirmed date after the Engagement Meeting. A full fee applies for cancellations made within 24 hours of the training event. These fees are fair and reasonable to cover costs and time associated with the preparation of the Client's Program.
- b. **Change of Services:** Any changes to the services or variances from the specifications outlined in the approved Fee Proposal after service commencement must be agreed upon in writing by Fixinc and may lead to a fee adjustment or an additional proposal as mentioned in clause 5.4.
- c. **Cancellation Request and Reason:** In the event that the Client requires the cancellation of a program initiated with Fixinc, such a request must be made in writing by a key representative of the Client's organisation. The written request should clearly specify the reasons for the cancellation.
- d. **Acknowledgment of Remaining Fees:** The Client acknowledges and agrees that the remaining fees payable are proportionate and fair, considering Fixinc's incurred expenses and costs associated with the execution of the Program up to the point of cancellation.
- e. **Option to Restart the Program:** In the event of cancellation, the Client retains the option to restart the program at a later date. However, it is important to note that doing so will be subject to new terms, a revised Proposal ID, and associated costs. Fixinc will endeavour to take into account mitigating factors and previous Programs as consideration when creating a new fee proposal.

#### 11. Services and Contact

- a. **Service Agreement:** Services, as defined in the attached Fee Proposal, will be rendered in accordance with the requirements specified in the signed Fee Proposal, prepared by Fixinc and signed by the Client's authorised representative.
- b. **Authorised Signature:** Fixinc assumes that any signature affixed to this Agreement or related documents is by an authorised representative of the Client's company, vested with the authority to bind the company to the terms herein.
- c. **No Responsibility for Incorrect Signatures:** Fixinc does not bear responsibility for the accuracy or correctness of the signature provided. The Client acknowledges that it is their responsibility to ensure that the signatory has proper authorization. Fixinc assumes all signatures provided are authorised to commence work.
- d. **Payment Obligations:** Regardless of the accuracy of the signature, the payment obligations outlined in this Agreement shall remain valid and enforceable. Any



payment commitments initiated by the Client's signature, whether accurate or not, are subject to the terms and conditions specified in this Agreement.

- e. Designated Contact: The Client is to designate a suitable contact person to provide necessary information to Fixinc and coordinate Fixinc's activities on the designated site/s at all times.
  - i. Fixinc reserves the right to have continued access to a relevant and authorised member of the Client's company at all times during the program's implementation period. It is the Client's responsibility to ensure that a representative of the Client is available during the program's entire schedule between reasonable business hours.
- f. Advice-Only Nature: The consulting services provided by Fixinc are advisory in nature and are not intended as directives or guarantees of specific outcomes. The advice offered is based on professional judgement and industry expertise, and the implementation of such advice is at the discretion of the Client.
- g. No Claims for Disruptive Events: The Client acknowledges and agrees that Fixinc shall not be held liable for any existing, historic, or future claims arising from the outcome of any disruptive event or impact on the Client's business. Fixinc's advice and services are not intended to predict or control the outcome of such events.
- h. Client's Control over Future Events: The Client acknowledges that any events, decisions, or actions taken by the Client, whether in relation to the consulting services provided by Fixinc or otherwise, are entirely within the Client's control. Fixinc does not possess the ability to influence or direct the outcome of such events, decisions, or actions.
- i. No Responsibility for Event Outcomes: The Client acknowledges that Fixinc cannot be held responsible for any outcomes, positive or negative, resulting from future events or circumstances, whether related to the services provided under this specific program or otherwise.

## 12. Use of Client's Logo and Materials:

- a. Request of Materials: Fixinc wishes to use all Client logos and similar materials in promotional assets including but not limited to the Fixinc website, Fixinc social media accounts, Google (Google My Business), and email marketing.
- b. Consent and Agreement: Fixinc shall not use any of the Client's materials, including but not limited to the Client's logo and registered business name, in any promotional materials without the Client's prior written consent. The terms herein define the initial agreement by Fixinc regarding the use of such materials.
- c. Website Usage: When approved by the Client, Fixinc is granted permission to use the Client's logo on its website for promotional purposes. The Client shall provide a high-quality version of their latest logo for this purpose.
- d. Social Media and Content: Fixinc may use the Client's logo in social media presentations and materials. However, any specific content, imagery, media, or similar that mentions or refers to the Client will not be made public without the Client's prior review and written approval.



- e. **Third-Party Channels:** Fixinc may use the Client's materials, including the logo, on third-party channels such as publications, industry bodies, emails, and advertising. However, Fixinc will not do so without the Client's prior awareness and written approval.
- f. **Logo Modification:** Fixinc may modify the Client's logo limited to change of colour to align with Fixinc's branding. Such modifications will be presented to the Client for review and written approval.
- g. **Review and Feedback:** The Client has the right to review all materials before their use by Fixinc. Furthermore, the Client may provide feedback or a testimonial about their work or program with Fixinc, which Fixinc will promote across its channels.
- h. **Authorised Sign-Off:** In the event the Client agrees to collaborate and share materials, an authorised member of the Client's company, who is authorised to sign off on marketing materials, must be provided to Fixinc, including their name, phone number, and email.
- i. **Termination:** In the event the Client wishes to terminate any relationship, program, project, engagement, or similar with Fixinc, Fixinc shall promptly remove all materials related to the Client from its website. However, Fixinc cannot guarantee the removal of materials from external sources such as social media or external articles.
- j. **Linking and Attribution:** Fixinc shall make every reasonable effort to provide appropriate and relevant links back to the Client's website or social media channels in any materials where the Client's logo or materials are used.
- k. **Assessment of Other Client Materials:** The Client has the right to assess any other Fixinc client materials that are promoted across Fixinc's channels. This assessment is based on the understanding that such materials are publicly accessible to all, and the Client may review them to ensure there are no conflicts between businesses.

### 13. Privacy Statement

- a. **Data Security and Cyber Resilience:** Fixinc has implemented rigorous cyber resilience protocols to safeguard the Client's data. However, Fixinc cannot be held responsible for any malicious acts, breaches, or unauthorised access that may compromise the security or confidentiality of the Client's data.
  - i. Fixinc will endeavour to notify the Client within reasonable time if Fixinc is made aware of any breach of the Client's data.
- b. **Data Handling and Privacy Policy:** All terms governing the collection, storage, and processing of data are detailed in Fixinc's comprehensive Privacy Policy, which can be accessed on Fixinc's official website. The Privacy Policy provides specific information about data handling practices, data retention, and data protection measures.
- c. **Data Collection and Use:** As part of the Program, Fixinc may collect and process relevant Client data using nominated tools and methods, where appropriate.

Fixinc is committed to the responsible and lawful handling of this data for the purpose of executing the Program effectively.

- d. **Client's Right to Data:** The Client retains the right to access their data collected during the Program or request its removal at any time. However, the Client acknowledges that such actions may result in the suspension or interruption of the Program, as the data may be integral to its execution.
- e. **Data Retention:** Fixinc will retain Client data only for the duration necessary to achieve the objectives of the Program and in compliance with legal requirements. Upon the completion of the Program or upon the Client's request, Fixinc will securely dispose of or anonymize the data in accordance with the Privacy Policy.
- f. **Third-Party Data Sharing:** Fixinc will not share or disclose Client data to third parties without the express consent of the Client, unless required by law or for the legitimate purposes of the Program. When third-party sharing is necessary, Fixinc will ensure data privacy and security by imposing confidentiality agreements and security measures.
- g. **Data Breach Notification:** In the event of a data breach that affects the confidentiality or integrity of Client data, Fixinc will take prompt action to mitigate the breach and notify the Client as required by applicable data protection laws.
- h. **Data Transfer and International Law:** Fixinc may transfer Client data across international borders as required by the nature of the Program. Fixinc will ensure that any such transfers comply with data protection laws and regulations applicable to the regions involved.
- i. **Amendments to Privacy Policy:** Fixinc reserves the right to update its Privacy Policy as necessary to reflect changes in data protection laws and practices. Any substantial changes to the Privacy Policy will be communicated to the Client.
- j. **Contact for Data Concerns:** For any inquiries or concerns regarding data privacy, security, or the Privacy Policy, the Client may contact Fixinc's designated Data Protection Officer.

#### 14. Intellectual Property

- a. **Ownership of Intellectual Property:** Copyright and Intellectual Property in all advice, reports, specifications, calculations, and other documents provided by Fixinc will be vested and remain vested in Fixinc. The Client has a licence to use such Intellectual Property for implementing advice given as part of the services.
- b. **Client's Intellectual Property (IP):** In the course of providing consulting services, Fixinc may require access to the Client's intellectual property (IP) or proprietary information. Fixinc is committed to implementing best practice procedures and safeguards to ensure the security and confidentiality of the Client's IP.
- c. **Security Measures:** Fixinc employs rigorous security measures to protect the Client's IP. These measures include industry-standard encryption, access controls, and regular security assessments to maintain the integrity and confidentiality of the Client's IP.

- d. No Responsibility for Unauthorised Access: While Fixinc takes every precaution to safeguard the Client's IP, the Client acknowledges and agrees that Fixinc cannot be held responsible for unauthorised access, data breaches, or breaches of security caused by bad actors or external threats beyond Fixinc's control.
- e. Non-Disclosure Agreement (NDA): Upon request, Fixinc is prepared to sign a separate Non-Disclosure Agreement (NDA) with the Client. The NDA would outline specific terms and conditions related to the protection of confidential information and intellectual property.
- f. Privacy Policy and Terms and Conditions: Fixinc's Privacy Policy and Terms & Conditions are available on our website and govern our approach to data protection and the terms of our engagements. The Client is encouraged to review these documents for further insights into our practices and obligations.

#### 15. Confidentiality

- a. Confidential Information: Each party will treat the other party's confidential information as such and will not disclose, copy, reproduce, or make use of it except as required for the execution of the services or with prior written approval.
- b. Confidential Information: The Client acknowledges that during the course of our engagement, they may gain access to confidential information, trade secrets, proprietary methods, and other private materials belonging to Fixinc ("Confidential Information").
- c. Non-Disclosure Obligation: The Client undertakes not to disclose, distribute, reproduce, or share any Confidential Information of Fixinc without explicit written consent from Fixinc.
- d. Protection of Trade Secrets: The Client shall exercise due diligence in safeguarding Fixinc's trade secrets and ways of doing business, refraining from any action that could compromise or misappropriate these valuable assets.
- e. Consent for Sharing: If the Client intends to share any Confidential Information or proprietary materials, they must obtain express written consent from Fixinc prior to such sharing.
- f. Legal Measures for Violations: The Client acknowledges that any unauthorised disclosure or misuse of Fixinc's Confidential Information may result in legal action to protect Fixinc's interests and seek appropriate remedies.

#### 16. Non Disclosure Agreement

- a. Interpretation: In this Agreement the following words and expressions shall have the following meanings:
  - i. "The Purpose" means discussions and negotiations relating to Fixinc partner program.
  - ii. "Confidential Information" means any information which is made available by or on behalf of the Disclosing Party to the Receiving Party which the Receiving Party knows to be confidential (whether because it has been characterised as such by the Disclosing Party or otherwise), whether such information is made available directly or indirectly (by way of example only,

- by inspection) and whether made available orally, in writing, magnetically, by electronic transmission, or by any other means.
- iii. “Disclosing Party” means in relation to any Confidential Information whichever of the parties hereto shall have disclosed that information to the other party and references to the Disclosing Party shall be deemed to include any party which is wholly or partly owned or controlled by such party or related to or affiliated with such party in any way.
  - iv. “Receiving Party” means in relation to any Confidential Information whichever of the parties hereto shall have received that information from the other Party and references to the Receiving Party shall be deemed to include any officer, employee and professional adviser of the Receiving Party.
- b. Undertaking: Each Party acknowledges that the Confidential Information is a valuable, special and unique asset of the Disclosing Party and agrees that for a period of 3 years from the date the Confidential Information is disclosed the Receiving Party will:
- i. keep secret and confidential all Confidential Information received by it;
  - ii. use the Confidential Information received;
  - iii. not use, copy, adapt, alter, disclose or part with possession of or apply the Confidential Information or any portion of it for any purpose other than the Purpose without the prior written approval of the Disclosing Party in each instance;
    - 1. not at any time copy, disclose, or otherwise make available to any third party any of the Confidential Information without the prior written consent of the Disclosing Party in each instance (even if such party is under a similar restriction on disclosure with the Disclosing Party), other than:
    - 2. to those of the Receiving Party's directors, officers or employees who need to know such Confidential Information in order to fulfil the Purpose and who have been made aware of and accept the provisions of this undertaking; and
    - 3. to those of the Receiving Party's professional advisers who have been made aware of and accept the provisions of this undertaking;
  - iv. use at least the same degree of care to protect the confidentiality of all Confidential Information it receives as it uses to protect its own confidential information including by securely storing all Confidential Information in its custody or control. However in no event shall the Receiving Party use less than a reasonable degree of care to protect Confidential Information received from the Disclosing Party;
  - v. at the request of the Disclosing Party return or destroy at the Receiving Party's own expense the Confidential Information received by it together with any copies in its possession or control or in the possession or control

of its directors, officers, employees or professional advisers, and shall erase any Confidential Information in any materials or documentation prepared or which has been recorded in all media, and the Receiving Party shall provide a declaration signed by a duly authorised officer certifying that all such Confidential Information has been destroyed or returned.

- c. No Application: The undertakings at clause 16.a to 16.b.v above shall not apply to any Confidential Information which:
  - i. is in the public domain at the date of its disclosure or subsequently becomes public knowledge in any way other than in breach of this Agreement;
  - ii. the Receiving Party can show to have been in its possession prior to receipt from the Disclosing Party;
  - iii. has been is now or later is independently developed by the Receiving Party without use of or resort to the Confidential Information and can be so proven by written records;
  - iv. the Receiving Party is required to disclose by any court order or government or regulatory action, provided that the Receiving Party gives the disclosing party at least ten days written notice of such order or action.
- d. Considerations: If only a portion of the Confidential Information falls within sub-clauses 16.c.i to 16.c.iv then the undertakings at clause 16.a to 16.b.v shall not apply only to that portion.

#### 17. Indemnification and Liability

- a. Indemnification: Each party agrees to indemnify, defend, and hold harmless the other party from and against any liabilities, claims, demands, damages, losses, or costs, including reasonable legal fees, arising from:
  - i. Wilful acts, omissions, or gross negligence;
  - ii. Misconduct or breach of statutory obligations; or
  - iii. Any material breaches of this Agreement.
- b. Limitation of Liability: Fixinc's liability under this Agreement shall be limited as follows:
- c. Coverage Limits: Fixinc's total liability for any claims, including but not limited to professional errors, omissions, or public liability, is limited to the maximum indemnity provided under its insurance policies:
  - i. Professional Indemnity: Up to NZD \$1,000,000 per claim.
  - ii. Public Liability: Up to NZD \$2,000,000 per claim, including personal injury and property damage.
- d. Exclusions: Fixinc shall not be liable for:
  - i. Indirect, consequential, or incidental damages, including loss of profits, business, or revenue.
  - ii. Claims resulting from fraud, intentional misconduct, or exclusions explicitly outlined in Fixinc's insurance policies.

- e. **Statutory Liability:** Coverage for unintentional breaches of statutory obligations, such as the Privacy Act and Fair Trading Act, is limited to NZD \$1,000,000, excluding penalties under health and safety laws.
- f. **Insurance Representation:** Fixinc represents that it holds comprehensive liability insurance covering professional indemnity, public liability, and statutory liability within the limits specified above. The Client acknowledges and agrees that:
  - i. Fixinc's total liability is limited to the coverage amount specified by its insurer.
  - ii. All claims are subject to the policy's terms, conditions, deductibles, and exclusions.
- g. **Claims and Notification:** Both parties agree to:
  - i. Notify the other party of any incident or claim promptly and no later than five (5) business days after becoming aware of the incident.
  - ii. Cooperate in good faith in the investigation, mitigation, and resolution of such claims.
- h. **No Admission of Liability:** Neither party shall make any admission of liability or agree to any settlement without the prior written consent of the other party, which shall not be unreasonably withheld.
- i. **Third-Party Claims:** Fixinc's liability for third-party claims, including those involving contractors or affiliates, is limited to the extent of indemnification provided under its insurance coverage. Vicarious liability claims will also adhere to the limitations set forth herein.

#### 18. Warranty and Termination

- a. **Limited Warranty:** Fixinc provides no warranties or guarantees regarding service performance except as required by law or explicitly stated in the agreement.
- b. **Client's Obligations:** If the Client fails to proceed with services or provide necessary information within a specified timeframe, Fixinc may terminate the agreement, with costs payable by the Client.

#### 19. Force Majeure

- a. **Affected Parties:** A party affected by a Force Majeure Event (Affected Party) is not liable to the other to perform any obligations under this Agreement to the extent that such failure is caused or due to a Force Majeure Event provided that:
  - i. the Affected Party has made all reasonable efforts to minimise the effects such events may have on the performance of its obligations under this Agreement, and;
  - ii. given the other party prompt notice (as soon as reasonably possible and no later than five business days after the Affected Party becomes aware that a Force Majeure Event has taken place or is likely to take place) of the full particulars of the Force Majeure Event including the nature of the event, an estimate of its likely duration, the obligations affected by it and the extent of its effect on those obligations, and the steps taken or to be

taken to rectify it (if possible) or minimise the impact of the Force Majeure Event.

- b. **Obligations to All Parties:** The obligations under this Agreement are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.
- c. **Force Majeure Effects:** The affected party must use its best endeavours to remove, overcome or minimise the effects of the Force Majeure Event as quickly as possible. For the avoidance of doubt, this does not require a party to settle any industrial dispute in any way that it considers inappropriate. During any period in which the affected party is not performing obligations because of a claimed Force Majeure Event, the other party may (but is not obliged to) obtain the Goods and/or Services from any other source without incurring any liability to the affected party.
- d. **No Liability:** If a Force Majeure Event continues for more than 20 days (unless otherwise agreed by the parties in writing), either party may terminate this Agreement by giving at least 14 days' notice to the other party. In the event of termination under this clause, neither party is liable to the other except to the extent of any rights or obligations which accrued before the termination.

#### 20. Governing Law and Entire Agreement

- a. **Governing Law:** This agreement shall be governed by the laws of New Zealand.
- b. **Entire Agreement:** This Fee Proposal, Terms & Conditions, Privacy Policy and supporting documents constitute the entire agreement and supersede all prior agreements and negotiations.

#### 21. Modification and Survival

- a. **Modification:** No modification, amendment, waiver, or termination of this agreement is binding unless confirmed in writing by both parties.
- b. **Survival:** Any warranties, indemnities, or licences made under this agreement survive its termination.