

[insert date]

**BY EMAIL:** insert name (email address)

Dear [insert full name of Advisor]

### **BEACHHEAD ADVISOR AGREEMENT**

Thank you for agreeing to support New Zealand Trade and Enterprise (**NZTE**) and our customers looking to grow internationally. We are really happy to have you onboard!

To make this as straightforward as possible, we've put the key details in this Covering Letter and all the extra details are in the attached Beachhead Advisor Terms and Conditions. In order to move forward, we both need to sign this Agreement.

Please note that you have an ongoing requirement to declare any conflicts of interest for any engagement across the term of the Agreement. If any potential, perceived, or actual conflict arises, please notify us by email, and we can work together to manage the conflict.

By agreeing to support NZTE, you warrant that you are legally able to work for us (i.e. you have an appropriate residency status or work visa).

### **KEY TERMS**

**Start Date:**

**End Date:**

**Fees (hourly rate and currency):**

**Any other important terms:**

Please do not hesitate to get in contact if you have any questions. We are looking forward to working with you.

Kind regards,

[insert name]

[insert role]

E [insert email] T [insert number]

# BEACHHEAD ADVISOR TERMS AND CONDITIONS

(version: June 2023)

## 1. GUIDE FOR INTERPRETING THIS AGREEMENT

1.1 **Definitions:** Unless the context shows that a different meaning is clearly intended, in this Agreement:

“**Advisor**” is the person or entity that the Covering Letter is addressed to;

“**Agreement**” means these Beachhead Advisor Terms and Conditions and the Covering Letter;

“**Agreement Manager**” means, in relation to NZTE, the person who signs the Covering Letter on behalf of NZTE (or other point of contact as informed by NZTE);

“**Business Day**” means any day that is not a Saturday or Sunday or a public holiday (as that term is defined in the Holidays Act 2003) in Wellington, New Zealand;

“**Confidential Information**” of a party or NZTE Customer means any information that is provided by that party or NZTE Customer (the “**Disclosing Party**”) to the other party (or to the Advisor if the Disclosing Party is an NZTE Customer) (the “**Recipient**”) that a reasonable person would consider to be confidential or the Disclosing Party identifies in writing at the time of transmission as being confidential, except that information shall not be Confidential Information if:

- (a) that information is available to the public; or
- (b) the Recipient already has that information when it first receives it from the Disclosing Party; or
- (c) a third party provides that information to the Recipient (unless the third party directly or indirectly received the information as a result of a disclosure by the Recipient);

“**Conflicting Interest**” means, in relation to the Advisor, any interest that the Advisor may have that provides a material incentive, or could be perceived to provide a material incentive, for the Advisor to act in relation to this Agreement in a manner that is inconsistent with the interests of NZTE or an NZTE Customer. A Conflicting Interest, for each engagement under this Agreement, may be:

- Financial (could gain some financial benefit or loss beyond the Fees due to a financial stake in the relevant NZTE Customer or its competitors (e.g. shares in a competitor);
- Gifts/Hospitality (has received gifts or hospitality of a value greater than \$200 from competitor of relevant NZTE Customer or the NZTE Customer);
- Professional (has professional contacts with another organisation, association, or trust, which may conflict with the relevant NZTE Customer);
- Relationships (has family or extended family relationships, acquaintances or friendships that could be perceived as a conflict (e.g. by working for a competitor of the relevant NZTE Customer));
- Non-Financial (has a position or authority in relation to a relevant NZTE Customer or its competitors that could be used to influence or make decisions that lead to any form of personal gain for you, a member of your family or personal associates); or
- Other (any other actual, potential, or perceived conflict);

“**Covering Letter**” is the letter attached to these Beachhead Advisor Terms and Conditions;

“**Deliverable**” is any output that is provided to NZTE or an NZTE Customer as part of the Services;

“**End Date**” means the date specified in the Covering Letter, except that if a party extends this Agreement by agreement in writing or terminates this Agreement early under clause 12, the End Date shall be adjusted accordingly;

“**Expenses**” means reasonable expenses that have been incurred by the Advisor in performing the Services and are within the description in clause 6.3 that NZTE will reimburse;

“**Fees**” means the amounts, payable by NZTE to the Advisor, for the delivery of the Services as set out in the Covering Letter;

“**GST**” means goods and services tax under the Goods and Services Tax Act 1985 and any other goods and services tax payable in relation to the Services;

“**Intellectual Property Rights**” means an intangible asset consisting of rights in human knowledge, brands, words, ideas or the creative expression of ideas, including, for example, copyrights, patents and rights in relation to trade marks, company names, domain names or designs;

“**NZTE Customer**” means any organisation with a pre-existing relationship with NZTE that NZTE introduces to the Advisor for the purpose of delivering the Services, and “**NZTE Customers**” has a corresponding meaning;

“**Services**” means the services described as such in this Agreement;

“**Start Date**” means the date specified in the Covering Letter;

“**Valid Invoice**” means an invoice that clearly displays its date of issue, NZTE’s name and address, all GST or VAT to be paid by NZTE, the Advisor’s name and GST or VAT number (if the Advisor has one), is clearly marked 'Invoice', and names this Agreement and a description of the Services supplied, including calculations and explanations for the Fees and Expenses claimed; and

“**VAT**” means any value added tax payable in relation to the Services.

## 2. HOW LONG THIS AGREEMENT RUNS FOR

- 2.1 **Term:** This Agreement starts on the Start Date and continues until the End Date, unless terminated early under clause 12 or extended under clause 2.2.
- 2.2 **Variation or Extension:** The parties may agree to vary or extend this Agreement at any time. Any variation or extension of this Agreement must be in writing.

## 3. ADVISOR’S RESPONSIBILITIES AND THE SERVICES

- 3.1 **Advisory Services:** The Advisor will provide advisory services as agreed between the parties from time to time to NZTE and/or NZTE Customer(s). These advisory services may include:
- (a) sharing knowledge and experience;
  - (b) evaluating business models and market expansion plans;
  - (c) providing feedback on those plans either in writing or verbally;

- (d) identifying strengths and possible areas for consideration while discussing possible steps to address any gaps in those plans;
- (e) facilitating workshops to support customers;
- (f) providing access to international executive level networks at the Advisors' discretion;
- (g) attending NZTE events and workshops; and
- (h) any other services reasonably requested by NZTE.

3.2 **Strictly Advisory:** The role of a Beachhead Advisor is strictly advisory. Accordingly, the Advisor agrees:

- (a) the Advisor is not a director of any NZTE Customer's business and has no voting, decision-making or veto rights, nor any power to direct, manage, control or administer NZTE Customers;
- (b) NZTE and NZTE Customers have absolute discretion to accept or disregard any recommendations an Advisor may make in carrying out the Services;
- (c) NZTE retains all decision-making powers relating to direction, management, control and administration of and assistance or support provided to any NZTE Customer by the Advisor; and
- (d) the Advisor shall not give any legal, financial or accountancy advice to NZTE or an NZTE Customer and shall remind NZTE Customers to get their own advice in relation to those areas.

3.3 **Manner of working:** In performing the Services, the Advisor must:

- (a) fully cooperate and proactively communicate with NZTE and the relevant NZTE Customer;
- (b) have proper regard to local customs and work practices;
- (c) comply with any reasonable directions of NZTE and the relevant NZTE Customer relating to its delivery of the Services;
- (d) not do or fail to do anything that would, or would be likely to, bring New Zealand's Government, NZTE, or NZTE Customer into disrepute or be adverse to New Zealand's international relations; and
- (e) not appoint a third party to perform the Services without the prior written consent of NZTE.

3.4 **Conflicts of interest:** The Advisor must take reasonable steps to identify any Conflicting Interest that it has and if the Advisor becomes aware of any such Conflicting Interest, it must:

- (a) give NZTE notice of that Conflicting Interest as soon as reasonably practicable; and
- (b) follow the reasonable directions of NZTE to manage that Conflicting Interest.

#### 4. GENERAL OBLIGATIONS FOR BOTH PARTIES

4.1 **No surprises:** Each party must notify the other as soon as reasonably practicable of any actual or anticipated issues that could:

- (a) materially impact on the Services or the reputation of NZTE or relevant NZTE Customer; or
- (b) generate media attention about this Agreement (including, to avoid doubt, any issue that could damage the reputation of the Advisor and thereby raise media questions about the existence of a contractual relationship between NZTE and the Advisor).

4.2 **Cooperation:** The parties must:

- (a) comply with all applicable laws, regulations and codes of conduct, including health and safety obligations; and
- (b) consult, cooperate and coordinate with the other party and any NZTE Customer in relation to health and safety matters, including the allocation of their respective tasks and responsibilities.

4.3 **Discretion:** The parties acknowledge and agree that:

- (a) NZTE does not guarantee a certain number of engagements or hours across the Term of this Agreement; and
- (b) the Advisor is not required to accept services in respect of an NZTE Customer.

## 5. ADVISOR WARRANTIES

5.1 **Warranties:** The Advisor warrants to NZTE that:

- (a) it is not aware of any fact or circumstance that would, or might reasonably be expected to, prevent the Advisor from fully performing its obligations under this Agreement;
- (b) all information that the Advisor has disclosed to NZTE in relation to this Agreement (including in any proposal that led to the Advisor being engaged for this Agreement) is complete and accurate in all material respects and that the use of that information will not breach the Intellectual Property Rights of any other person; and
- (c) neither NZTE's nor an NZTE Customer's use of the Services under this Agreement will infringe the Intellectual Property Rights of any third party.

5.2 **Continuing:** The Advisor gives the warranties under clause 5.1 continuously throughout the term of this Agreement.

## 6. FEES AND EXPENSES

6.1 **Fees and Expenses:** Subject to the provisions of this clause 6, NZTE will:

- (a) pay the Advisor the Fees; and
- (b) reimburse the Advisor for the Expenses.

6.2 **Fees:** The following terms apply to Fees:

- (a) the Fees are chargeable for each full hour that the Advisor delivers the Services;
- (b) Fees are not payable for time spent in travel to and from meetings or workshops;

- (c) any time spent performing preparation or administrative work should be the actual and reasonable time necessary, based on the nature of the relevant engagement, and must be detailed on the invoice.

6.3 **Expenses:** The following terms apply to Expenses:

- (a) for any expenses (including flights, taxis, meals etc), which an Advisor is reasonably required to incur in order to deliver the Services), the Advisor must get NZTE's prior approval (contact your Agreement Manager for NZTE's rules on acceptable expenses);
- (b) itemised receipts for all claims are required within one month after the expenses have been incurred;
- (c) itemised receipts should outline the nature of the work performed, along with original receipts.

6.4 **Timing of payments:** NZTE will endeavour to pay Fees and Expenses for which it receives a Valid Invoice within 10 Business Days.

6.5 **VAT and GST:** Unless otherwise indicated:

- (a) any Fees stated in this Agreement are exclusive of any VAT or GST; and
- (b) where VAT or GST is payable by NZTE, it shall be added to any Fees.

## 7. RECORDS, REPORTS AND INFORMATION

7.1 **Information provision:** The Advisor must give NZTE any records or other information relating to the Services that NZTE reasonably requests within any timeframes reasonably requested by NZTE and in a format that is usable by NZTE.

7.2 **Return of NZTE Materials:** When this Agreement expires or is terminated:

- (a) if a request is made by NZTE, the Advisor will provide copies of all documents and materials they hold relating to the Services; and
- (b) after providing the materials to NZTE (if requested), the Advisor will take all reasonable steps to permanently dispose of all NZTE and NZTE Customer information held by them.

## 8. NATURE OF RELATIONSHIP

8.1 **Independence:** The parties are independent of each other and:

- (a) nothing in this Agreement constitutes a legal relationship between the parties of partnership, joint venture, agency, or employment; and
- (b) neither party has authority to bind or represent the other party in any way or for any purpose.

8.2 **Responsible for own obligations:** The Advisor will be responsible for their own tax obligations, including reporting and payment requirements. To avoid doubt, this means NZTE will not withhold or deduct any taxes in respect of payments made to an Advisor.

8.3 **Consent required for subcontracting:** The Advisor must not enter into an arrangement with someone else to deliver any part of the Services without NZTE's prior written approval.

8.4 **Limit on NZTE responsibility:** Although NZTE arranges engagements between NZTE Customers

and the Service Provider under this Agreement, NZTE and NZTE Customers are independent of each other and NZTE has no responsibility whatsoever for the actions or inactions of NZTE Customers and no liability to the Advisor in relation to those actions or inactions.

## 9. NON-SOLICITATION

- 9.1 **Consultancy or commercial engagement with NZTE Customers:** NZTE is responsible for managing the engagement between NZTE Customers and the Advisor. During the Term of this Agreement, if the Advisor is contacted directly by an NZTE Customer to which it has provided advisory services, the Advisor must not provide any services or undertake any other work for that NZTE Customer without NZTE's prior written consent.
- 9.2 **Board or Governance role:** During the Term of this Agreement, the Advisor is required to obtain prior written consent from NZTE before entering into any advisory board role or governance engagement with any NZTE Customer to which it has provided advisory services

## 10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 **No change to Intellectual Property Rights:** Nothing in this Agreement shall change the ownership of any Intellectual Property Rights.
- 10.2 **Licence:** To the extent that NZTE or an NZTE Customer would otherwise breach the Advisor's or a third party's Intellectual Property Rights by receiving and enjoying the benefits it could reasonably expect from the Services, the Advisor grants NZTE and each relevant NZTE Customer a non-exclusive, irrevocable, perpetual, worldwide, non-transferable licence to do those things that would allow it to receive and enjoy those benefits.
- 10.3 **IP indemnity:** The Advisor indemnifies NZTE and any relevant NZTE Customer against any expenses, damage or liability incurred by NZTE or the relevant NZTE Customer in connection with any third party making a claim that, if upheld, would mean the warranty in clause 5.1(c) was incorrect.

## 11. CONFIDENTIALITY AND PUBLICITY

- 11.1 **Confidentiality undertaking:** Subject to clause 11.2, in relation to any Confidential Information received by a Recipient, the Recipient undertakes to the Disclosing Party that it will:
- (a) receive and hold the relevant Confidential Information in confidence, and not disclose it to any person, for so long as it remains Confidential Information; and
  - (b) put in place and maintain reasonable security measures to prevent any unauthorised person from using or accessing the Confidential Information in its possession or control.
- 11.2 **Permitted Disclosures:** A Recipient may disclose Confidential Information:
- (a) if required by law;
  - (b) to the extent authorised by the Disclosing Party;
  - (c) to its employees, professional advisers, auditors, service providers and independent

contractors who have a specific need to have access to the Confidential Information in the course of their work for the Recipient and are legally obliged to the Recipient to keep it confidential; and

- (d) where the Recipient is NZTE:
  - (i) if the information is not a trade secret, to a Minister of the Crown (or to the office of the relevant Minister for provision to the Minister) that requests the information (noting that even trade secrets may, in some circumstances, need to be disclosed to a Minister under clause 11.2(a)); or
  - (ii) to the extent reasonably required for NZTE and any NZTE Customer to receive the full contemplated benefit of the Service.

11.3 **Notification of confidentiality:** If a Recipient discloses Confidential Information in reliance on clause 11.2, it must ensure that each person to whom it discloses the Confidential Information is made fully aware of the confidential nature of the information.

11.4 **Discussion:** If a Recipient proposes to disclose Confidential Information under clause 11.2(a) or 11.2(d), it must, to the extent reasonable under the circumstances, notify the Disclosing Party before disclosing and inform the Disclosing Party when the information has been disclosed.

11.5 **Enforcement:** If a Recipient discloses Confidential Information under clause 11.2(c), it must take reasonable steps to ensure that the person the information is disclosed to keeps it confidential.

11.6 **Publicity:** The Advisor may disclose the existence of this Agreement but must obtain NZTE's or the NZTE Customer's prior written approval before otherwise referring to NZTE or the NZTE Customer or this Agreement (including its subject matter) in any publication or public activity.

11.7 **Profile:** NZTE may request the Advisor to complete a profile, which NZTE may publish on its website and share with NZTE Customers and other relevant stakeholders.

## 12. TERMINATION AND EXPIRY

12.1 **No fault termination by NZTE:** NZTE may terminate this Agreement:

- (a) at any time by giving 20 Business Days' notice to the Advisor; or
- (b) immediately by giving notice to the Advisor if a change in New Zealand Government policy or appropriation means NZTE is no longer permitted to procure the Services.

12.2 **No fault termination by Advisor:** The Advisor may terminate this Agreement at any time by giving 20 Business Days' notice to NZTE.

12.3 **Termination for Advisor breach:** NZTE may terminate this Agreement immediately, by giving notice, if the Advisor:

- (a) ceases for any reason to continue in business or to continue in that part of its business that includes some or all of the Services;
- (b) is in breach of any of its obligations under this Agreement and the breach cannot, in the reasonable opinion of NZTE, be remedied or mitigated to NZTE's reasonable satisfaction within 10 Business Days;



- (c) breaches a warranty under clause 5;
- (d) repeatedly fails to perform or comply with its obligations under this Agreement, regardless of whether those obligations are minor or significant;
- (e) does something, or fails to do something, that, in NZTE's reasonable opinion, results in damage to the reputation or business of NZTE or the New Zealand Government, or will do so if NZTE continues its contractual relationship with the Advisor; and/or
- (f) has a Conflicting Interest that in NZTE's reasonable opinion is so material as to impact adversely on the delivery of the Services, NZTE or the New Zealand Government; or
- (g) provides information to NZTE that it knows, or ought to know, is misleading or inaccurate in any material respect.

**12.4 Termination for NZTE non-payment:** If NZTE fails to make a payment due under this Agreement and the amount payable is not subject to a dispute raised by NZTE, the Advisor may:

- (a) give written notice of the payment failure to NZTE; and
- (b) terminate this Agreement immediately, by giving notice at any time that is:
  - (i) more than 10 Business Days after the date that NZTE receives the relevant notice under clause 12.4(a); and
  - (ii) before NZTE has made the relevant payment.

**12.5 Effect on rights:** The termination or expiry of this Agreement does not affect those rights of each party that accrued prior to the End Date or relate to any breach or failure to perform an obligation under this Agreement that arose prior to the time of End Date.

**12.6 Effect on obligations:** Neither party shall have any obligations under this Agreement after the End Date other than:

- (a) obligations that arise as a result of the rights referred to in clause 12.5; and
- (b) obligations under the following clauses:
  - (i) clauses 7.1, 10, 11, 12.5, 12.6, 12.7 and any other clauses that, by their nature, are clearly intended to continue in force past the End Date; and
  - (ii) clause 13 to the extent it relates to clauses referred to in clause 12.6(b)(i),

which shall continue in full force and effect.

**12.7 Fees and Expenses paid in advance:** If any Fees or Expenses were paid in advance, the Advisor must refund them as soon as reasonably practicable after the End Date to the extent they relate to Services that were not performed, or expenses that the Advisor was not committed to, prior to the End Date.

### **13. GENERAL**

**13.1 No transfer:** Neither party may transfer its rights or obligations under this Agreement without the prior written consent of the other party (not to be unreasonably withheld).

13.2 **Privity:** For the purposes of section 12 of the Contract and Commercial Law Act 2017, clauses 3.1, 3.2, 3.3, 4.2, 5.1(c), 7.2, 9, 10, and 11 of this Agreement are intended to confer an enforceable benefit on NZTE Customers.

13.3 **Governing law and jurisdiction:** This Agreement is governed by and shall be construed in accordance with New Zealand law and both parties submit to the non-exclusive jurisdiction of the New Zealand courts.

**SIGNATURES**

In signing this Agreement, each party acknowledges that it has read and agrees to be bound by it. The date of this Agreement is the later of the two dates below.

For and on behalf of **NZTE:**

For and on behalf of the **ADVISOR:**

\_\_\_\_\_  
Signature

Name: [X]

Position: [X]

Date:

\_\_\_\_\_  
Signature

Name: [X]

Position: [X]

Date:

Released under the Official Information Act 1982