

Brandsitters.

BRANDSITTERS LIMITED

Professional Services

Agreement



INTRODUCTORY PAGE

PART ONE: INTRODUCTION

- A. Brandsitters Limited, which has its registered office at Level 4, 287/293 Durham Street North, Christchurch Central, Christchurch, 8013, is a creative digital marketing company ("**Brandsitters**").
- B. The Client is *Beach Road Estates Limited* which has its registered office at 16 Southwark Street, Christchurch Central, Christchurch, 8011 NEW ZEALAND ("**Client**" or "**the Client**" or "**you**" or "**your**").
- C. Brandsitters has agreed to provide certain services to the Client and the Client has agreed to receive those services, on the terms and conditions set out in this Agreement.

PART TWO: SUMMARY & KEY TERMS

Services The services to be provided by Brandsitters to the Client are set out in the Scope of Work, annexed at Schedule A.

Fees Fees will be charged as per agreed retainer.

Term From the Commencement Date until *30 days notice of termination or retainer, or completion of project.*

PART THREE: EXECUTION

Signed for and on behalf of **[client]** by its authorised signatory:

Signature

Print name

SCHEDULE A: SCOPE OF WORK



Category	Provision
Services to be provided and process to be followed	
Brandsitters' obligations	Brandsitters will: <ul style="list-style-type: none">• Be responsive to Reasonable Client Instructions (see clause 3 of the Terms and Conditions) received by Brandsitters pursuant to this Agreement.• Deliver the Services on-time and within an acceptable margin of initial estimates provided.• Proactively communicate any delays in Service delivery.
The Client's obligations	The Client will: <ul style="list-style-type: none">• Provide Reasonable Client Instructions.• Be available for questions regarding new instruction briefs via email or phone or video chat.• Subject to clause 5.7 of the Terms and Conditions, ensure Brandsitters' invoices are paid on-time each month.• Provide Brandsitters with documentation, branding information, research, advertising insights, access to data and other information that will help Brandsitters in the provision of the Services.• Perform any sub-editing or copywriting unless otherwise arranged.
Commencement Date	[insert date]
Term	From the Commencement Date through to [date] OR [event] .
Brandsitters' contact details	Name: Email: info@brandsitters.co.nz Contact hours: Working Days Phone #: [insert]
Client contact details	Name: [insert] Email: [insert] Contact hours: [insert] Phone #: [insert]
Pricing and invoicing	Deposit A deposit of 30% of the total estimated Fee is required. Fees



Category	Provision
	<p>The Fees payable under this Agreement will be as set out in the Introductory Page, Part 2 of this Agreement, under the heading 'Fees'.</p> <p>Invoicing</p> <ul style="list-style-type: none">• Services will be invoiced monthly. Invoicing will be based on the hourly rates set out above.• Interim invoices may be sent where Brandsitters considers in its sole discretion that it has taken on significant expense on behalf of the Client.
Additional expenses	<p>Additional expenses may arise from time to time to enable Brandsitters to provide the Services. These may include, without limitation, advertising expenses, equipment hire, materials cost, printing, fonts, stock images, photography, illustration, travel, accommodation, couriers, postage, and toll calls (Additional Expenses).</p> <p>By instructing Brandsitters to provide the Services, you agree to Brandsitters incurring Additional Expenses and other required charges on your behalf necessitated by your instruction. Brandsitters:</p> <ul style="list-style-type: none">• Will aim to inform you of such Additional Expenses and other required charges at the earliest possible instance.• May elect (but is not obliged to) pay Additional Expenses on your behalf upfront, in which case Brandsitters will invoice these Additional Expenses to you after the fact. <p>You acknowledge that in all circumstances, regardless of when payment is made by Brandsitters, Additional Expenses will be invoiced to you directly and Brandsitters bears no liability or responsibility for such Additional Expenses.</p>
Other	<p>When providing the Services, Brandsitters may use agents, sub-contractors or other third parties as it chooses in its sole discretion.</p> <p>Acceptance of this Scope of Work is conditional on acceptance of the Brandsitters Terms and Conditions (attached).</p>



SCHEDULE B: BRANDSITTERS TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1. **Definitions:** The expressions which follow are given these meanings unless the context in which they are used requires a different meaning:

(a) **Agreement** means these Terms and Conditions together with the Scope of Work and Introductory Page, as may be amended from time to time.

(b) **Commencement Date** means the date set out in Schedule A.

(c) **Confidential Information** means information that is designated as confidential or which by its nature is clearly confidential, includes (without limitation) any information concerning the technology, technical processes, business processes, procedures, Personal Information, business affairs, financial affairs and finance of either party, its customers, employees and suppliers, and:

(i) may take the form of documents, technical specifications, unpublished patent specifications, data, drawings, plans, processes, photographs, databases, computer software in any form and data storage or memory in, and items of, computer hardware; or

(ii) may take the form of oral descriptions, demonstrations, or observations; and

(iii) includes (without limitation) information which is in transit to/from, supplied to, stored by, processed or marked for destruction by either party.

(d) **Fees** mean the fees payable under this Agreement as set out in the Introductory Page, Part 2 of this Agreement, under the heading 'Fees'.

(e) **Force Majeure Event** means any cause affecting the performance by a party of its obligations under this Agreement arising from acts, events or omissions beyond its reasonable control, including acts of God, riots, war, acts of terrorism, malicious acts of damage, fire, storms, earthquakes, epidemics or pandemics (including, for the

avoidance of doubt, pandemics or epidemics of novel coronavirus "Covid-19"), failure of the public electricity supply and any acts of a government authority arising as a result of any such event.

(f) **GST** means the goods and services tax imposed under the Goods and Services Tax Act 1985 or any equivalent goods or service tax that replaces it.

(g) **Intellectual Property Rights** means any of these rights, namely:

(i) patents, trademarks, rights in designs, get-up, trade, business or domain names, copyrights including rights in computer software and databases (including database rights) and topography rights (in each case whether registered or not and, where these rights can be registered, any applications to register or rights to apply for registration of any of them), and where applicable any goodwill therein; and

(ii) rights in inventions, know-how, trade secrets and other confidential information; and

(iii) any other intellectual property rights which may exist at any time in any part of the world.

(h) **Personal Information** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained from the information or opinion, which is received by Brandsitters from any source in connection with the performance of Brandsitters' obligations under this Agreement.

(i) **Privacy Law** means the Privacy Act 2020 (including any subsequent or amending legislation), all other applicable legislation in any jurisdiction, principles, codes, and policies relating to the collection, use, disclosure, storage or granting of access rights to any Personal Information.

(j) **Scope of Work** means each and any proposal, statement of work or engagement letter agreed with the Client



which is annexed to this Agreement and/or to which this Agreement relates.

- (k) **Services** means the services to be provided and responsibilities owed by Brandsitters to the Client as set out in a Scope of Work.
- (l) **Term** has the meaning ascribed to it in the Scope of Work.
- (m) **Terms and Conditions** means these Brandsitters terms and conditions of trade.
- (n) **Working Day** means any day other than:
 - (i) a Saturday, Sunday or a public holiday in Auckland, New Zealand; or
 - (ii) any day falling in Brandsitters' Christmas shut down period, which will be communicated by Brandsitters to the Client annually.

1.2. **Interpretation:** Unless the context requires a different interpretation, the following rules shall be used to interpret this Agreement:

- (a) any reference to a provision of a statute includes references to: (a) that provision as amended, extended or applied by any other provision regardless of whether the other provision became law before or after this Agreement; (b) any re-enactment of that provision (with or without change); and (c) any regulation, order, code of practice or similar thing having the force of law made (before or after this Agreement) under that provision or any provision falling within (a) or (b) above;
- (b) words used in the singular tense should be interpreted to include the plural tense and vice versa. Words which refer to one gender should be interpreted to include other genders;
- (c) any use of the word "including" will not be limited by the words that follow; and
- (d) the headings in this Agreement do not affect its interpretation.

2. SCOPE OF WORK

2.1. **Scope of Work:** Brandsitters will provide the Client with the Services as set out in an agreed Scope of Work. Any Services (or related tasks

or deliverables) not explicitly stated in a Scope of Work are excluded, unless agreed otherwise by the parties in writing.

2.2. **Precedence:** To the extent that a Scope of Work conflicts with these Terms and Conditions, the Scope of Work will have precedence and the relevant provisions of the Terms and Conditions should be construed accordingly.

3. REASONABLE CLIENT INSTRUCTIONS

3.1. **Reasonable Client instructions:** To help Brandsitters in providing the Services, the Client must:

- (a) give Brandsitters clear and full instructions about their situation and objectives and the scope and type of work the Client wishes Brandsitters to undertake for the Client;
- (b) provide all relevant and correct information and materials reasonably necessary for Brandsitters to do that work (including other advice the Client receives);
- (c) make Brandsitters aware of the Client's time or budget constraints; and
- (d) let Brandsitters know of any change in circumstances.

3.2. **Failure to provide reasonable Client instructions:** The Client acknowledges that Brandsitters will only commence work upon explicit instructions and will cease work at any time where instructions cannot be reasonably obtained and accept no responsibility for any consequences of these actions.

4. QUALITY AND WARRANTIES

4.1. Subject to the remainder of this section, this Agreement is to be read subject to the Consumer Guarantees Act 1993 ("**CGA**").

4.2. Pursuant to section 43 of the CGA, where you are acquiring the Services for a business purpose, you agree with Brandsitters that: they are supplied and acquired in trade; you and we contract out of the provisions of the CGA; and it is fair and reasonable that you and Brandsitters are bound by this section 4.2.

4.3. Brandsitters will use reasonable skill and care in providing the Services. Where any Services do not meet those standards and you notify Brandsitters in writing of any deficiency within 5 business days of receiving them, your sole



remedy will be that we will fix the defect at our cost, at our sole discretion, by re-performing the defective Services.

4.4. To the extent permitted by law, all other warranties and guarantees, including the guarantees contained in the CGA, are expressly excluded. Without limiting that sentence, you agree that:

(a) except as this Agreement provides, Brandsitters shall be under no liability to you; and

(b) your remedies for misrepresentation, repudiation or breach are dealt with by the express provisions of this Agreement. This section excludes and/or overrides Sections 35 to 49 (inclusive) of the Contract and Commercial Law Act 2017 (CCLA) in its entirety.

5. PRICE AND PAYMENT

5.1. **Fees:** Subject to clause 4.2 the Fees will be: as agreed in advance with you and set out on the Scope of Work; or, if not so agreed, in accordance with our current pricing rates at the time of Service delivery. If you request any variations to the Services, and we agree to vary the Services accordingly, you will pay us the variation costs as determined by us in our sole discretion and these will form part of the Fees.

5.2. **Subject to Change:** Where costs increase due to circumstances outside of Brandsitters' control, Brandsitters may reasonable increase the Fees. Any quotation or agreement to limit costs to a certain amount made prior to the commencement of work are based on the assumption that no complications arise. If complications arise, the quoted amount is subject to change, however Brandsitters agrees to alert you at the earliest possible instance.

5.3. **Disbursements and expenses:** In providing the Services, Brandsitters may incur Additional Expenses, disbursements, or make payments to third parties, on the Client's behalf. These will be included in Brandsitters' invoice to the Client when the disbursement/expense is incurred. Brandsitters may require an advance payment for disbursements or expenses which Brandsitters will be incurring on the Client's behalf.

5.4. **GST:** GST is payable by the Client on Brandsitters' fees and charges. All prices or fees exclude GST except where expressly stated.

5.5. **Invoices:** Brandsitters may send interim invoices to the Client, usually monthly and/or on completion of the Services or termination of the Services or as set out in a Scope of Work. Brandsitters may also send the Client an invoice when Brandsitters incurs a significant expense for the Client.

5.6. **Payment:** All invoices are payable on or before 7 days from the date noted on the invoice. Where an invoice is not paid on the due date, Brandsitters may charge interest on the overdue amount, calculated daily at the rate of twelve (12%) per annum. The Client will pay all costs and expenses incurred by Brandsitters in the recovery of any amount owing from the Client to Brandsitters (including legal fees on a solicitor-client basis).

5.7. **Disputed invoices:**

(a) If the Client considers, acting reasonably, that any invoiced Services have not been supplied materially in accordance with the Agreement, the Client may raise a dispute about the relevant invoice. Such a dispute must be notified to Brandsitters in writing via email to natalie@brandsitters.co.nz with the words "*IMPORTANT: INVOICE DISPUTE*" in the subject line.

(b) The Client must pay the undisputed portion of the invoice in accordance with clause 5.6 and notify Brandsitters of such dispute within seven days of receiving the invoice.

(c) If Brandsitters agrees with the issue the Client has raised, Brandsitters will issue a credit note for a proportional deduction to the invoice. If Brandsitters disagrees, Brandsitters will notify the Client of the disagreement and the Client must pay the full amount of the invoice by the due date.

(d) Either party may refer any invoice disagreement to dispute resolution under clause 12.

5.8. **Withholding Services on overdue accounts:** If the Client has an outstanding debt on their account and has not agreed on an arrangement to make payment, Brandsitters may refuse to provide any further Services and Brandsitters accepts no responsibility or liability for any loss, costs or damages incurred by or claimed against the Client in such a case.

6. COMMUNICATIONS



- 6.1. **To the Client:** Communications will be sent to the Client address and contact person set out in the Scope of Work, or to the person that the Client advises Brandsitters of in writing from time to time.
- 6.2. **To Brandsitters:** Correspondence should be sent to the Brandsitters email address and contact person set out in the Scope of Work, or to the person that Brandsitters advises the Client of from time to time, as well as to Brandsitters' Christchurch address which is 225 High Street, Christchurch Central.
- 6.3. **Method:** Unless requested otherwise, communications may be by pre-paid courier post or telephone and email. Brandsitters will not however be liable for any corruption or interception of emails or attachments. A notice:
- (a) sent by pre-paid courier post will be deemed to be delivered three Working Days after the day on which it was posted;
 - (b) given by telephone will be deemed to be delivered on the Working Day the notice was successfully given (or the immediately following Working Day if transmitted after 5pm); and
 - (c) given by email will be deemed to be delivered on the Working Day one hour after the email is sent or the immediately following Working Day if transmitted after 5pm, unless a return email is received by the sender within that one-hour period stating that the addressee's email address is wrong or that the message cannot be delivered. Any email notice provided must have the subject line *"IMPORTANT: NOTICE UNDER AGREEMENT WITH BRANDSITTERS"*.
- 6.4. **Emails:** Brandsitters scans emails and attachments for viruses before sending e-mails to the Client and the Client must take reasonable steps to prevent sending Brandsitters emails or attachments containing viruses, or which would be harmful to Brandsitters or Brandsitters systems.

7. CONFIDENTIALITY

- 7.1. **Hold in confidence:** Brandsitters will hold in confidence all Confidential Information that Brandsitters acquires during the course of performing the Services. Brandsitters will not

disclose the Confidential Information to any other person (including third parties) except:

- (a) to the extent necessary or desirable to enable Brandsitters to perform the Services; or
- (b) to the extent required by law.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1. **Existing/Background Intellectual Property Rights:** All Intellectual Property Rights respectively owned by a Party prior to the commencement of this Agreement ("**Background IPRs**") remain the property of that Party, and nothing in this Agreement confers any waiver, transfer or assignment of ownership in respect of Background IPRs.
- 8.2. **New/Foreground Intellectual Property Rights:** Brandsitters agrees that all Intellectual Property Rights in any deliverables which come into existence as a result of Brandsitters' performance of Services ("**Foreground IPRs**") shall vest in the Client upon creation and payment of full fees and due expenses. This includes any Foreground IPRs in any enhancements, modifications or adaptations to the website or the Client's existing content, materials, modules, techniques or templates by Brandsitters.
- 8.3. **Use by Brandsitters:** Notwithstanding clause 8.2, all examples of work created on the Client's behalf by Brandsitters alongside the Client's name and identity may be used by Brandsitters for the purposes of its portfolio, marketing, promotion and advertising its business on its website and any event related to the promotion of Brandsitters' services.

9. TERMINATION

- 9.1. **Termination:** Brandsitters may terminate this Agreement immediately where: any of the following occurs: (i) an application is made to bankrupt you or put you into liquidation or a receiver is appointed to any of your assets; (ii) a Court judgment is entered against you and remains unsatisfied for seven (7) days (each an "**Insolvency Event**"); (iii) you are late in paying any amount due to Brandsitters; (iv) you breach this Agreement; or (v) for any reason, Brandsitters is unable to deliver the Services to you within a reasonable period of time.
- 9.2. **Action on termination:** If this Agreement is terminated, you must:



- (a) pay Brandsitters all fees due up to the date of termination and all disbursements and expenses incurred up to the termination date; and
- (b) if Brandsitters has agreed a term with you, provided Brandsitters is not in default, pay Brandsitters all fees that would have been due and owing had the Agreement continued in full force and effect up until the expiry of the agreed term.

You acknowledge that the amount recoverable by us under section 9.2 is a reasonable pre-estimate of loss based on the estimated pricing set out in the Scope of Work and section 9.2 does not operate as a penalty.

- 9.3. **Survival:** Any indemnity or obligation of confidence under this Agreement is independent and survives termination of this Agreement. Any other term by its nature intended to survive termination of this Agreement survives termination of this Agreement, including, without limitation, clauses 1, 4, 6, 7, 8, 9, **Error! Reference source not found.**, 10, 11 and 12.

10. PRIVACY

10.1. **Authorisation:** You:

- (a) authorise Brandsitters to collect, use, retain and disclose personal information about you and your customers for Brandsitters' business purposes;
- (b) acknowledge that at all times personal information will be handled in accordance with Privacy Law and Brandsitters' privacy policy, which can be found at <https://www.brandsitters.co.nz/privacy-policy>;
- (c) agree to take all necessary steps to ensure that you operate within the requirements of applicable Privacy law including by obtaining any necessary consents to share personal information with us as may be reasonably required by this Agreement; and
- (d) where requested by us, assist us in discharging our obligations under applicable Privacy Law and not do or omit to do anything that may cause us to breach applicable Privacy Law.

11. LIMITATIONS

- 11.1. **Reasonable care:** Brandsitters shall exercise reasonable care in providing the Services but shall not be responsible for the accuracy of the Services based on information supplied by the Client or by third parties.
- 11.2. **Limitation of liability:** Brandsitters' total liability in contract, tort (including negligence), misrepresentation or otherwise in relation to this Agreement, including in respect of the Services, will be limited to the value of the Fees paid by you to Brandsitters.
- 11.3. **Exclusions:** To the maximum extent permitted by law Brandsitters will not be liable for: (i) any loss of profits, revenues, business information, or contracts or any indirect, special, incidental, punitive, exemplary, or consequential loss or damage nor (ii) any losses arising from your subsequent use or misuse of the Services including (without limitation): (a) your negligence, or that of your agents or employees; (b) abnormal working conditions; or (c) any alteration of the Services. You indemnify Brandsitters from and against any liability to your customers or any other third parties.
- 11.4. **Time for claims:** Brandsitters will not be liable to the Client in respect of any claim unless the Client has notified Brandsitters of that claim within six months of the event giving rise to the claim being reasonably discoverable.

12. DISPUTES

- 12.1. **Negotiation:** Both parties will use their best efforts to resolve any disputes that may arise. In the first instance, the Client and Brandsitters' senior representatives will attempt to resolve the dispute through good faith negotiations. Such good faith negotiations are to be held in person at Brandsitters' office, or the office of Brandsitters' lawyers, in Auckland, New Zealand. If government mandated restrictions prevent such negotiations occurring in person, then they will take place via audio visual link organised by Brandsitters.
- 12.2. **Mediation:** If the dispute is not resolved within 15 Working Days of it first arising, either party may refer the dispute to Resolution Institute for mediation at a fee to be shared equally. If the parties cannot agree on the identity of the



mediator, the mediator and will be chosen by the President of the Resolution Institute.

- 12.3. **Litigation:** Neither party will commence litigation against the other party without first following the dispute resolution process specified in this clause 12.
- 12.4. **Interlocutory relief:** Nothing in this clause 12 will prevent either party from taking immediate steps to seek urgent equitable relief before a New Zealand court.

13. **FORCE MAJEURE**

- 13.1. **Cause outside control:** Brandsitters will not be liable for any delay in meeting or for failure to meet its obligations due to a Force Majeure Event. You will pay any additional costs Brandsitters incur as a result of a Force Majeure Event provided that Brandsitters will consult with you in advance of incurring such additional costs and use reasonable endeavours to minimise them.

14. **GENERAL**

- 14.1. **Assignment:** Brandsitters may assign any or all of its rights or responsibilities under this Agreement without the Client's consent.
- 14.2. **Amendment:** Brandsitters may amend this Agreement from time to time by giving the Client notice in writing.
- 14.3. **No waiver:** No delay in enforcement or extension of time or failure to exercise any right will be deemed to be a waiver of any right by either party. No waiver of an earlier breach will be construed as a waiver of a later breach.
- 14.4. **Governing law:** Brandsitters' relationship with the Client is governed by New Zealand law and New Zealand courts have exclusive jurisdiction.
- 14.5. **Independent contractor:** Brandsitters is an independent contractor to the Client. This Agreement does not create a joint venture, agency, trust, or partnership relationship between Brandsitters and the Client.
- 14.6. **Counterparts:** This Agreement may be executed in any number of counterparts each of which when executed by one or more of the parties hereto shall constitute an original but all of which shall constitute one and the same instrument.
- 14.7. **Enforceability:** If any clause (or part of a clause) of this Agreement should be found not to be valid, lawful, or enforceable or if the law

changes so that it becomes invalid, unlawful or unenforceable to any extent the clause (or part affected) will be treated as having been deleted from the remaining terms of this Agreement which will continue to be valid.

- 14.8. **Entire agreement:** This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. This Agreement supersedes any previous agreement between the parties relating to the subject matter thereof.