

# PARK CREATIVE

## TERMS OF SERVICE

### 1. AGREEMENT

- 1.1 These Terms are agreed between the Customer and Park Creative, and apply to the provision of all Services by Park Creative to the Customer.

### 2. DEFINITIONS

- 2.1 The following terms shall have the following meanings:
- Park Creative** means Activate Faith Community Trust trading as Park Creative.
- Customer** means the person or entity purchasing services from Park Creative.
- Customer Requirements** means any requirements, obligations or dependencies set out in a Service Engagement or notified to the Customer from time to time that the Customer is required to undertake or perform for Park Creative to perform the Services.
- Intellectual Property** means all intellectual and industrial property rights and interests (including common law rights and interests) including, without limitation: trade marks, know-how, trade secrets, designs, copyright and patents.
- Fee** means the fee payable for the Services as set out in a Service Engagement, or if there is no Service Engagement, pursuant to Park Creative's standard price list (as may be updated from time to time by Park Creative without notice to the Customer), unless agreed otherwise in writing by Park Creative.
- Service Engagement** has the meaning set out in clause 3.3.
- Services** means any services Park Creative performs or agrees to perform for the Customer from time to time, including without limitation pursuant to a Service Engagement.
- Terms** means these Terms of Service.
- Website** means [www.parkcreative.nz](http://www.parkcreative.nz) and [www.afct.co.nz](http://www.afct.co.nz).
- Worker** means a person employed or engaged by Park Creative to perform the Services, including but not limited to employees and independent contractors.
- Working Day** has the meaning set out in the Property Law Act 2007.

### 3. SERVICES

- 3.1 **How to engage Park Creative:** The Customer may contact Park Creative to discuss their need for services at any time, whether by phone, email, electronic message sent to Park Creative via the Website, or any other means accepted by Park Creative from time to time.
- 3.2 **Proposal:** If Park Creative is able to assist the Customer with their service needs, Park Creative may provide the Customer with a proposal by email (**Proposal**). The Proposal shall include a description of the services to be performed, an estimate of the fee or rates to be charged and any other terms and conditions. A Proposal will expire after 14 days of issue unless otherwise specified, and may be withdrawn or revised at any time prior to acceptance by the Customer. Park Creative is under no obligation to provide a Proposal.
- 3.3 **Acceptance:** The Customer may accept a Proposal in writing, including by email or other electronic means. The Customer's acceptance of a Proposal comprises a binding engagement for the provision of Services by Park Creative to the Customer, subject to these Terms (**Service Engagement**).
- 3.4 **Customer Requirements:** The Customer agrees to perform the Customer Requirements, if any. Park Creative shall not be liable for a failure to perform the Services to the extent

that such failure has arisen in full or in part due to the Customer's failure to perform the Customer Requirements as required by this Agreement. If Park Creative is unable to perform the Services or there is a delay in performing the Services due to the Customer's failure to perform the Customer Requirements, the Customer may still be liable to pay the Fee and/or Park Creative may advise the Customer of any increase in the Fee to complete the Services.

- 3.5 **Order of precedence:** If the terms and conditions of a Service Engagement conflict with these Terms, the Service Engagement will prevail.

### 4. FEES AND PAYMENT

- 4.1 **Fee:** The Customer agrees to pay the Fees for the Services.
- 4.2 **Invoice:** Park Creative will issue an invoice to the Customer for the Fee in accordance with the timing as specified in the Service Engagement, or where none is agreed at the end of the month in which the Services are performed.
- 4.3 **Payment timing:** The Customer agrees to pay each invoice issued by Park Creative by the payment due date specified in the invoice, or where no payment due date is specified within 10 Working Days of the date of invoice, unless otherwise agreed in a Service Engagement.
- 4.4 **Method of payment:** Unless otherwise specified by Park Creative in writing, all invoices for the Services shall be paid by electronic bank transfer to Park Creative's bank account as provided for in Park Creative's invoice.
- 4.5 **Deposit:** The Customer shall pay any deposit specified in a Service Engagement prior to Park Creative commencing the Services. Park Creative shall have no obligation to perform any Services until such deposit is paid, and may cancel any Service Engagement if the deposit is not paid within 3 Working Days of the due date for payment. The deposit is a part payment of the Fee for the Service Engagement, and is non-refundable.

### 5. CANCELLATION

- 5.1 **Cancellation:** Either party may cancel a Service Engagement or these Terms without cause by giving 20 Working Days' notice in writing to the other party. Cancellation of these Terms has the effect of cancelling all Service Engagements.
- 5.2 **Services Provided:** If the Services are cancelled by either party, Park Creative may invoice the Customer for the Services performed up to the date of cancellation.
- 5.3 **Refund:** If the Customer has paid Park Creative in advance for the Services and the Services are cancelled, Park Creative may deduct the Fee payable by the Customer pursuant to clause 5.2, before refunding any remaining balance to the Customer.

### 6. FAILURE TO COMPLY

- 6.1 If the Customer fails to pay an invoice issued pursuant to clause 4.2, or is otherwise in breach of these Terms, Park Creative may, in its sole discretion, without prejudice to and in addition to any other rights and remedies, do any one or more of the following by written notice to the Customer:
- suspend provision of one or more Service Engagements;
  - charge the Customer interest at a rate of the then Official Cash Rate plus 12% per annum, calculated on

**PARK CREATIVE**  
**TERMS OF SERVICE**

a daily basis, from the due date until payment is received by Park Creative;

- (c) terminate the Services (in whole or in part) including without limitation one or more Service Engagements; or
- (d) terminate these Terms.

**7. WARRANTIES**

7.1 **Business purpose:** The parties acknowledge that the Customer is in trade and requires the Services for a business purpose. As such, the parties agree to the extent permitted by applicable law:

- (a) the implied conditions and warranties set out in the Consumer Guarantees Act 1993 are excluded and sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 are excluded;
- (b) Park Creative does not give any warranty, representation, guarantee or condition that any specific results, outcomes or performance can be achieved or expected from the Services; and
- (c) except as expressly set out in these Terms, the Services are provided on an 'as is' basis, and all implied terms, conditions, warranties and representations are excluded.

7.2 **Due diligence:** The Customer acknowledges that it has conducted all due diligence it deems necessary in respect of the Services before entering into a Service Engagement.

**8. LIABILITY**

8.1 **Exclusion:** The Customer agrees that Park Creative will not be liable to the Customer whatsoever for any indirect loss, consequential loss, loss of profit, loss of bargain, loss of business opportunity or exemplary damages suffered by either party or any other person, loss arising out of or flowing from any pre-contractual misrepresentation, forecast or breach of these Terms, whether contemplated by these Terms or not, and whether actionable in contract, tort (including negligence), equity or otherwise.

8.2 **Cap:** If notwithstanding clause 8.1, Park Creative is found liable to the Customer or any third party for any loss or damage, however caused (including through negligence), Park Creative's maximum liability to the Customer in aggregate will be limited to the lesser of:

- (a) the Fees paid to Park Creative for the Services; or
- (b) \$5,000.

8.3 **Indemnity:** The Customer agrees to indemnify and keep Park Creative indemnified against all loss, damages, costs (including, without limitation, loss of profits) and expenses of any kind, whether direct or indirect, which arise from or in connection with (i) the Customer's breach of these Terms, whether in tort, contract, equity or otherwise or (ii) Park Creative taking any of the steps set out in clause 6.1.

**9. HEALTH AND SAFETY**

9.1 **Health and Safety:** The parties acknowledge their respective obligations pursuant to the Health and Safety at Work Act 2015 (**H&S Act**).

9.2 **Co-operation:** Where the parties have a duty in relation to the same matter imposed by or under the H&S Act, the parties shall, so far as is reasonably practicable, consult, co-operate with, and co-ordinate activities with each other.

**10. PERSONAL INFORMATION**

10.1 **Personal information:** Park Creative's collection, use and disclosure of personal information is subject to its privacy policy, a copy of which is available on the Website. The Customer (and its personnel) may have rights under the Privacy Act 2020 to access any personal information that Park Creative holds and to request the correction of such personal information.

10.2 **Marketing:** The Customer consents to Park Creative providing commercial electronic messages to the Customer, unless the Customer opts out by notifying Park Creative in writing or unsubscribing.

**11. CONFIDENTIAL INFORMATION**

11.1 **Confidentiality:** All Intellectual Property and other information belonging to the parties (including but not limited to these Terms) which by designation or by its nature is intended to be treated as confidential will be confidential information for the purposes of these Terms (**Confidential Information**).

11.2 **Disclosure:** No party will without the prior written consent of the other party disclose any Confidential Information to any third party, except as required pursuant to law or a Court of competent jurisdiction or as necessary to provide the Services or enforce these Terms.

**12. INTELLECTUAL PROPERTY**

12.1 **Existing IP:** Each party shall retain ownership of their respective Intellectual Property rights existing prior to entering into these Terms, or created by a party during the Term that is not related to the Services. Each party shall not have any right or claim to the other party's Intellectual Property whatsoever, except as expressly set out within these Terms.

12.2 **New IP:** Park Creative shall own any new Intellectual Property rights created by Park Creative during the Term in relation to the Services (**New IP**).

12.3 **License:** Park Creative grants the Customer a non-transferable, royalty free, perpetual license to use the New IP for its usual business and commercial purposes.

12.4 **Residuals:** Notwithstanding anything in clauses 11 and 12, Park Creative shall be entitled to retain and use for any purpose, without restriction, any general information or know how that it develops or learns in relation to the Services during the Term, whether in relation to performing the Services or otherwise.

12.5 **IP indemnity:** The Customer shall defend, indemnify and hold Park Creative harmless from any and all liabilities, costs (including full costs between solicitor and client), claims and demands, made by any third party, alleging that Park Creative's use of the Customer's Intellectual Property rights while performing the Services has infringed the third party's Intellectual Property rights.

**13. DISPUTE RESOLUTION**

13.1 In the event of any dispute between the parties in relation to these Terms, the parties shall first seek to resolve such dispute by promptly giving notice of such dispute to the other party (**Dispute Notice**) and cooperatively endeavouring to resolve such dispute. If the dispute remains unresolved 10 Working Days after the date the Dispute Notice was provided, the parties shall then seek a resolution through the use of mediation prior to seeking resolution through the Courts.

**PARK CREATIVE**  
**TERMS OF SERVICE**

**14. MISCELLANEOUS**

- 14.1 **Amendments:** Park Creative may make minor amendments to these Terms which do not materially impact the operation of, or an essential term of, the Agreement by notifying the Customer in writing. All other amendments to these Terms will not be effective unless agreed in writing by Park Creative and the Customer.
- 14.2 **Force Majeure:** Park Creative will not be liable for delay or failure in the performance of any of the obligations imposed by these Terms, provided that the cause of such failure or delay is not within the reasonable control of Park Creative.
- 14.3 **Governing Law:** These Terms are governed by the laws of New Zealand. Subject to clause 13, the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.
- 14.4 **Notices:** Any notices required to be given by the parties pursuant to these Terms will be given at the addresses set out in the parties' description, the parties' registered address or other address notified from time to time.
- 14.5 **Assignment:** The Customer will not assign or otherwise transfer or encumber its rights or obligations under these Terms except with Park Creative's prior written consent.
- 14.6 **Waiver:** No waiver of any provision of these Terms will be effective unless such waiver is in writing and signed by Park Creative.
- 14.7 **Survivorship:** Termination of these Terms for any reason will not affect such rights and obligations of the parties as are intended to survive the termination.
- 14.8 **No partnership:** These Terms do not create any relationship of partnership, agency, employment or joint venture between the parties.
- 14.9 **Severability:** Should any part or provision of these Terms be held unenforceable or in conflict with any applicable laws or regulations, the invalid or unenforceable part or provision will be replaced with a provision which accomplishes, to such extent as possible, the original business purpose of the part or provision in a valid and enforceable manner, and the remainder of these Terms will remain binding on the parties.
- 14.10 **Counterparts:** These Terms may be executed in counterparts (which may be electronic copies) and all of which, when taken together constitute the one document.
- 14.11 **Electronic signature:** A party may sign these Terms by way of the application of that party's electronic signature in accordance with Part 4 of the Contract and Commercial Law Act 2017.
- 14.12 **Entire Agreement:** These Terms constitute the sole understanding of the parties and supersedes all prior understandings, written or oral, which will be of no further force or effect.