

# Terms of Service

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These Terms and Conditions are a legally binding agreement between you either an individual, group or entity (the “Client”, “User”, “You”, or “Your”) and Oyster New Zealand Limited (“Company”, “We”, “Us”, or “Our”) owner and operator of [www.oyster.co.nz](http://www.oyster.co.nz) and all subdomains (“Website” or “Site”) and provider of the Oyster Services as set out in detail in these Terms and Conditions.

By using Website, Site or Services, you represent and warrant to the Company that you have read and agree to be bound by these Terms and Conditions, Privacy Policy, Plans and Packages which are incorporated herein by reference (hereinafter collectively referred to as “Agreement”, “Terms and Conditions” or “Terms”). If you do not agree with any provisions of this Agreement, please do not use the Website, Site or purchase any Services offered by the Company.

The Website, Site and Services hereinafter collectively referred to as “Oyster Services” is made available to you by the Company under this Agreement and in accordance with the laws of New Zealand.

Some Oyster Services may have additional terms than those outlined hereunder. When you make use of those Oyster Services, you agree to abide by such additional terms. Please take note - in the event of any conflict between these terms and the terms governing your use of a specific Oyster Service with its own terms, the latter terms will take precedence with respect to your use of that Oyster Service.

## Accessing the site and oyster services

The Website and Oyster services are not targeted at Users who are under the age of 18 years. In the event that you are under 18 years of age, you are not authorized to use our Website or provide any personal information to us through this Site. By accessing our Website and creating an account, you agree that you will use the Website and Oyster Services in accordance with any and all applicable laws and regulations. Where you enter into this Agreement on behalf of another individual, group or other organization, you represent and warrant to the Company that you have the authority to act on behalf of that individual, group or organisation and to bind that individual, group or organisation to this Agreement. You are required to agree to and accept these Terms in order to access and use the Website and Oyster Services.

## Oyster Services

The Company offers lead generation and online marketing services to real estate agents in Auckland, New Zealand. All references to “Oyster Services” in this Agreement refers to the services offered by the Company and as defined hereunder:

## **1. Video Marketing Service**

The Company will create a video suitable for marketing a property for sale to prospective purchasers. The video is first uploaded to the Company’s Youtube channel and optimised for search before the video link along with a link to the video file on Google Drive is provided to the Client to share on other advertising channels. Clients can purchase Standard or Premium Video Package offered by the Company with optional upgrades offering additional services.

The Client is purchasing a single video per project of a property for the purpose of marketing that property. A service provider authorized by the Company will spend a fixed amount of time on the Site (as set out in Video Packages below). The Company in its sole discretion may allow more time for some productions without charging Clients any extra fee and our authorized service provider may, in our sole discretion shoot additional footage off site as time allows. Please note that any ‘B’ Roll and offsite footage will be recorded in compliance with New Zealand Law on property and privacy rights. To learn more, please visit the following link: <https://www.privacy.org.nz/the-privacy-act-and-codes/privacy-act-and-codes-introduction/>. All drone footage is shot in compliance with New Zealand aviation laws regarding UAV aircraft and in keeping with CAA rules around Shielded Operations. To learn more about CAA rules, please visit the following link: <https://www.caa.govt.nz/rpas/>. A video marketing service will be deemed complete once the Company has provided the Client with the video links to share on their own advertising channels. It is the responsibility of the Client to communicate the necessary approvals to the Company in order to complete the video marketing services. If no final communication or approval are provided to the Company after 7 days beyond the provision of the video marketing services, the Company reserves the right to assume that all work is complete and to invoice client the outstanding amount. (if not already collected) Please note that all views and opinions expressed and statements made by any person or party in, on or in connection with the content of the video marketing services are not the views or opinions of the Company and the Company accepts no liability for any such content. The Company will use its best efforts to produce and deliver the video marketing services in a professional and timely manner. The Company accepts no liability for delays or unforeseen complications not resulting from the actions or omissions of the Company. The Company is not liable for loss of digital artwork, photographs, footage or audio-visual media or visual/audio defects due to equipment malfunction or failure.

**Price of Video Marketing Service** - The Price remains current and any change in pricing will be communicated prior to the commencement of any new work. If there is significant delay or postponement to completing the services due to action or

non-action by the Client, or by any other factors beyond the control of the Company and such delays extend beyond one month from the date of this agreement, the Company reserves the right to recalculate the Price to cover ongoing expenses and rising costs. Should the Client need to arrange multiple shooting days then a call back fee as outlined in the table below will apply. Please note that the Company reserves the right to charge additional fees for video marketing services under certain circumstances, including but not limited to: additional hours spent on site (over and above the allotted time), if a client makes creative change request in the final deliverable, call back due to bad weather conditions and weekend call out charges. All additional fees are charged in accordance with the fees table below.

At a base level the Price will be comprised of one or more of the following components for Standard and Premium packages. For more information on the differences between Standard & Premium video package, please visit [www.oyster.co.nz](http://www.oyster.co.nz):

**Cancellations and rescheduling by Client**

In the event the client decide to cancel the shoot session or change the session date, they must notify the Company no fewer than 24 hours prior to the arranged shoot. Failure to notify the Company more than 24 hours may result in a late cancellation fee as outlined in the table below.

<b>Standard Video Package Purchased Per Month</b>		
Item	Investment (Exc. GST)	Investment (Inc. GST)
1 – 9 videos per month	\$93.03 per video	\$106.99 per video
10 – 19 videos per month	\$83.73 per video	\$96.29 per video
20+ videos per month	\$74.43 per video	\$89.59 per video
<b>Optional Upgrades</b>		
Landing Page Creation and hosting	\$649.99 ( + \$49.99 per month after the first month for hosting & maintenance)	\$747.49 (+ \$57.49 per month after the first month for hosting & maintenance)
Online Ads Campaign	3 pricing options  1. \$399.99 2. \$649.99 3. Custom (client to custom budget over \$649.99)	3 pricing options  1. \$459.99 2. \$747.49 3. Custom (client to set custom budget over \$747.49)

<b>Additional Costs (May be incurred)</b>		
Creative change requests/revision fee	+\$60	+\$69
For changes to the video (apart from obvious error by service provider)		

<b>Premium Video Package Purchased Per Month</b>			
Item	Restriction	Investment (Exc. GST)	Investment (Inc. GST)
<b>Regular Properties</b>			
1 – 9 videos per month up to 300sqm (dwelling)	Up to 90 minutes on site per video	\$335.64 per video	\$385.99 per video
10 – 19 videos per month up to 300 sqm (dwelling)	Up to 90 minutes on site per video	\$302.08 per video	\$347.39 per video
20+ videos per month up to 300sqm (dwelling)	Up to 90 minutes on site per video	\$268.51 per video	\$308.79 per video
<b>Large Properties</b>			
Properties between 300 and 500 sqm (single dwelling)	Up to 2 hours on site	+\$108.70	+125.00
<b>Very Large Properties</b>			
More than 500sqm or extra dwellings on the same site	By negotiation	By negotiation	By negotiation
<b>Optional Upgrades</b>			
Drone Upgrade for aerial stills and video	Shielded Operations Only	+\$159.99	+\$183.99

Professional Script Writing	Up to 300 words	+\$106.95	+\$122.99
Professional Voice over recording	Up to 300 words	+\$280.86	+\$322.99
Landing Page Creation and Hosting		\$649.99 ( + \$49.99 per month after the first month for hosting & maintenance )	\$747.49 (+ \$57.49 per month after the first month for hosting & maintenance)
Online Ads Campaign		3 pricing options 1. \$399.99 2. \$649.99 3. Custom (client to custom budget over \$649.99)	3 pricing options 1. \$459.99 2. \$747.49 3. Custom (client to set custom budget over \$747.49)
<b>Additional Costs (May be incurred)</b>			
Additional hours on site	Per hour	+ \$96.09	+ \$110.50
Creative change requests / revision fee	For changes to the video (apart from obvious errors by service provider)	+ \$129.59	+\$149.03
Callback due to weather or late cancellation fee		+ \$129.59	+\$149.03
Weekend call out Fee		+ \$60.86	+ \$69.99

Payments for video marketing services - The Client's can easily purchase a video marketing package from our website and pay online using any major credit or debit card. The Company currently uses secure Stripe payment processor to process online payments. Alternatively, Clients can contact us to request video marketing services and we will provide an invoice for all work completed up to the date of invoice. Clients can either pay the billed amount using their credit card by clicking the pay now button on the invoice or pay directly into the Company's bank account. The Client is obligated to pay the invoice in full before the due date stated on the Invoice

and according to payment terms specified on the invoice. If during the course of undertaking the video marketing services, there is a significant delay or postponement to completing the video marketing services due to action or non-action by the Client, or by any factor beyond the control of the Company, the Company reserves the right to invoice for part payments for all work completed or undertaken up to that date. If delays extend beyond one month from the date when the video marketing services were ordered by the Client, the Company reserves the right to recalculate the Price to cover ongoing expenses and rising costs. The Client agrees to pay all outstanding balances before the due date, as stated on the Invoice. Any failure on the part of the Client to pay the full invoiced amount by the due date will result in Client incurring penalties on such unpaid amount. The penalty fee will be calculated at 5% of the total overdue amount plus 60 cents per day, for every day beyond 30 days after the invoice date plus an administration fee of \$69. If overdue balances remain unpaid after 60 days, the Company will engage the services of a debt collection agency to recover all amounts owed by the Client. Client agrees to pay, in addition to amounts due, any and all costs incurred by the Company as a result of such action, including reasonable attorneys fees. In this case, no new work will be started by the Company until the payment for previous projects (including any late fees) is received in full. In the unlikely event of an error on the invoice the Company reserves the right to withdraw and reissue a new invoice.

Creative Decisions - The Company retains full and sole discretion with respect to all creative decisions in connection with the video marketing services. This includes selection of shots to include in the video and music played in the video. The Company will endeavour to incorporate the views of the Client (including the Company's sub-contractors such as graphic designers etc) with respect to creative decisions. However, the Company will make all decisions in all things and at all times in accordance with the Company's view of the best interests of the final product. Due to the short timeframe for production, the Client will make all creative requests known at the time of the shoot. Likewise requests for omissions or inclusions must be made prior to or during the shoot. The Company accepts no liability or obligation for inclusions and omissions raised after the shoot. Should the Client insist on changes they agree to pay the revision costs as outlined in the [Video Package Pricing](#). All music licensing by the Company will be done only in full accordance with the New Zealand Law on copyright protection and in keeping with the terms and conditions of relevant online video hosting platforms.

Intellectual Property Rights -

- The Company agrees to transfer ownership and copyright of the final finished product(s) to the Client. Transfer of ancillary copyrights to items not owned or created by the Company is not included in this transfer. These ancillary items include production music that has been licensed exclusively for use within the finished product and voiceover rights. The Client understands that these ancillary third party elements require additional licensing if used for additional purposes or productions.

- Full payment of the price transfers copyright entitlements of the finished product to the Client subject to the following conditions:
- The Company retains full and sole ownership of all rough, raw, unedited, initial, unfinished, draft, partial or related artwork, footage, sounds, images or material.
- The Company retains the right to utilize all or part of the final product for its own marketing and promotional purposes.
- The Company retains the right to all “B” roll footage of neighbourhoods, parks, shopping centres, beaches or any other footage not of the subject proper and reserves the right to reuse that footage in other productions.
- The Client understands that third party element such as voiceover and music which are not owned by the Company, but licensed exclusively for this project are not included in any transfer of copyright.

Consent and Release - It is solely the responsibility of the Client to inform and obtain the consent of the property owner prior to requesting any video marketing services that will feature a property on different online platforms. The Client is solely responsible for ensuring that the property owner has granted requisite release and granted their consent to allow the Company, its employees or contractors to:

- Enter the premises for the purposes of shooting a video of the premises and to take any audio/video and photographs suitable and required for the purposes of delivering the video-marketing services depicting the property (“video content”).
- To use any and all video content for any commercial and promotional purposes as required to render the video marketing services to the Client in all media, throughout the world and in perpetuity.

The Client must ensure that the property owner is aware that they do not have any rights to any video content and they must release and discharge the Company and its assigns from any claims, demands, or causes of action that the property owner may have against the Company by reason of anything contained in the video content, or any of the aforementioned uses, including any claims based on the right to privacy, the right of publicity, copyright or any other right.

Monthly Reports - If an online advertisement campaign is run for the video, the Company will provide Clients with a monthly performance report with all relevant statistics and a video report that talks you through the various statistics.

## **2. Social Media Service**

The Company offers social media marketing and management services to Clients to suit their unique business needs including but not limited to:

- Content Creation and Posting - the Company will create and schedule posts on Client's third-party social media accounts: Facebook, Twitter, LinkedIn, Instagram and Google+ pages.
- Online Ads Campaign - the Company will create and publish Ads on Facebook, Twitter, LinkedIn, Instagram, Google Adwords and Youtube on behalf of the Client as well as perform A/B tests to find most effective ads. Please note the specific third party platforms for online ad campaigns and allocated budget will be specifically agreed upon with clients before they acquire this service.
- Engagement - the Company will respond to messages, comments, mentions on Client's social media accounts and interact in groups/communities on behalf of the Client by sharing / retweeting others' posts. Influencer outreach along with following back followers on Twitter are also tasks performed.

Monthly Reports - The Company will provide Clients with a monthly performance report with all relevant statistics and a video report that talks you through the various statistics.

Client Responsibilities - In order for the Company to deliver the aforementioned Social Media Services and Deliverables, the Client agrees to provide the Company access to the following tools and information:

- a. Full access to Client's social media pages - Username and passwords for relevant social media accounts.
- b. Client agrees to turn off two factor authentication on any social media accounts being managed by the Company.
- c. Client will inform the Company about its target demographics.
- d. Client will inform the Company about which suburbs they wish to target in Auckland

The Client further agrees to allow the Company the permission to render its services and deliverables as well as implement any suggestions made by the Company which are essential to deliver the aforementioned Social Media Services and Deliverables.

Authorization and Liability Waiver - By providing access to its social media accounts, the Client gives the Company, its employees and/or subcontractors full authorization to use the Client's social media account to upload images, videos, text, comment, respond to messages, engage fans/followers and launch any online ad campaigns on behalf of the Client. The Client understands that by authorizing the Company to use its social media accounts, the Client is authorizing the Company, its employees or subcontractors to assume the Client's identity during all interactions through the Client's social media account. Although the Company, its employees and subcontractors will always exercise caution and their best judgement when interacting with Client's fans, followers or customers through the Client's social media account, there is a potential risk of unforeseeable consequences for Client's reputation. The Client hereby waives any right to hold the Company, its employees



and/or subcontractors liable for any damage, claim or liability arising from or associated with any action taken by the Company, its employees and/or subcontractors on behalf of the Client.

Disclaimer of warranties and Limitation of Liability

The Company neither represents nor warrants that our efforts in rendering Social Media Marketing services as outlined in this Agreement will generate leads, increase sales or profits for Client's business. The Company will not be liable to the Client or any third-party for any claims arising from the use of Oyster Services including but not limited to:

- Any loss of profits;
- Any loss of anticipated savings;
- Any loss of business opportunity or goodwill;
- Any loss of data;
- Any loss of followers on Client's social media pages;

If the applicable law does not allow such limitation of liability, the total liability of the Company towards the Client shall not exceed the total amount paid by the Client to the Company during the month when the claim first arose.

Prices and Payment - All social media service prices are available on request. Users are required to contact the Company to discuss their own needs and budget. Unless expressly agreed otherwise, all payments and cancellations for monthly social media services will be governed by Payment Policy as outlined in this Agreement.

**3. Search Engine Optimization Service ("SEO")**

The Company offers SEO services that aim to provide the Client with preferential positioning in specific Search Engines by adopting a strategy which includes but is not limited to:

- Link-building / Business Listing Submissions
- Real Estate Site Listing Submissions
- Technical SEO including but not limited to redirects, SSL and other industry best practices.
- On-page optimization.
- Content Calendar and Strategy
- Optimization of Map Listings
- Google Search Console and Analytics installation
- Perform Keyword Research

Unless expressly agreed otherwise, for the purposes of the present agreement, Search Engine refers to Google.

Monthly Reports - The Company will provide Clients with a monthly performance report with all relevant statistics and a video report that talks you through the various statistics.

### Client Responsibility

The Client agrees to provide the Company access and authorization to the following:

- a. Administrative access to the Website
- b. Authorization to take any steps for the purpose of optimization
- c. Authorization to use client logos, trademarks, website images for the purposes of rendering SEO services
- d. Google Search Console
- e. Google Analytics

Disclaimer of Warranties - Unless expressly stated otherwise hereunder, the Company neither represents nor warrants any specific results and search engine rankings for Client's website as a result of SEO services rendered by the Company. SEO services does not deliver instant results and Client understands and accepts that SEO services can take from six to twelve months to deliver any visible results. The Company does not warrant that the Search Engine Optimization services will meet the Client's expectations or business requirements. We are unable to offer any guarantees for any specific search engine ranking for your website. All SEO services are rendered by the Company on an "AS IS" basis and without any warranties of any nature, express or implied. The Client's use of Oyster services is solely at its own risk.

Client accepts - The Company has no control over the policies of Google's Search Engine. The Client's website may be excluded from Google's search engine at any time at the sole discretion of the search engine.

Prices and Payment - All SEO service prices are available on request. Users are required to contact the Company to discuss their own needs and budget. Unless expressly agreed otherwise, all monthly payments and cancellations for SEO services will be governed by Payment Policy as outlined in this Agreement.

## **4. Content service**

The Company offers various online Content services to Clients including but not limited to:

- Creation of Blog Posts
- Creation of LinkedIn Articles
- Creation of Ebook
- Creation and maintenance of landing pages
- Creation of promotional video with stock video/audio or a professional custom video shoot.

Approval of content - The Company will offer the Client an opportunity to review and approve any Blog posts, LinkedIn Articles, Ebook, landing page content ("content"), videos created by the Company before publishing such content on any online

channel. It is solely the responsibility of the Client to review and request any modification in the content within three days from the time of delivery. The Company will offer up to two free revisions for any content created by the Company, its employees or subcontractors and any further revisions will result in additional costs that will be communicated to the Client on a case-by-case basis. If the Client does not request any modification within three days from the time of delivery, the work will be deemed to have been accepted and approved by the Client.

Client responsibility and acceptance - The Client agrees to provide the Company access to Client's logo, trademarks and other intellectual property on the landing page and in other content delivered by the Company. The Client represents and warrants to the Company that the Client has the requisite intellectual property rights in all content provided to the Company including but not limited to text, images, audio and video content. The Client indemnifies and hold harmless the Company, its employees and subcontractors from any claims or legal actions arising from or related to the content provided by client or uploaded by the client on its landing pages or other web accounts. Where delay occurs due to any reason that cannot be attributed to the Company, the Company reserves the right to request the client to make payment for services rendered.

Right to Content - Subject to the payment of all amounts due and payable by the Client to the Company, the Client will receive full rights to use any content created by the Company for the Client under the Content Service. Notwithstanding the foregoing, the Client may not resell any content created by the Company for the Client without the express written consent of an authorized representative of the Company.

Ongoing Hosting and management of Landing Pages - The creation, hosting and management of landing pages is a recurring service and subject to payment of monthly service fee as quoted by the Company upon Client application. The Client will have access to all leads generated by the Landing pages, however, any failure on the part of the Client to pay the monthly fees for hosting and management of landing pages may result in suspension or termination of this service. The Company reserves the right to delete the Client's landing page and email list in the event the Client cancels the service or in the event of any non-payment of outstanding fees. The Company also reserves the right to contact any leads generated from the Landing pages to improve the service delivery to its Client base and determine hot prospects for its Client base. We use third-party application [www.landingi.com](http://www.landingi.com) to offer our landing page service to you. These third-party applications are governed by their own terms and conditions. By accepting to use our landing page creation and management service, you also agree to abide by the terms and conditions of Convertri. To learn about the terms and conditions of Convertri, please visit: <https://www.convertri.com/termsfuse>.

Prices and Payment - All content service prices are available on request. Users are required to contact the Company to discuss their own needs and budget. Unless

expressly agreed otherwise, all payments and cancellations for monthly content services will be governed by Payment Policy as outlined in this Agreement.

## 5. Online Ads

The Company offers services to promote Client's business via online advertising through various third-party platforms and tools which include but are not limited to:

- Facebook
- Twitter
- LinkedIn
- Youtube
- Google Adwords
- Instagram

The online advertisements on these third-party platforms are governed by their own terms of service which are not controlled by the Company.

Authorization - The Client gives the Company, its employees and/or subcontractors full authorization to create and launch online advertisement campaigns to promote the Client's business to the target audience on behalf of the Client. The Client understands that by authorizing the Company to launch an online ad campaign, the Client is authorizing the Company, its employees and/or subcontractors to assume the Client's identity during such Campaign. Although we will act with highest levels of professionalism when launching any ad campaign on behalf of our Client, there is a potential risk of unforeseeable consequences for Client's reputation. The Client hereby waives any right to hold the Company, its employees and/or subcontractors liable for any damage, claim or liability arising from or associated with any action taken by the Company, its employees and/or subcontractors on behalf of the Client.

Prices and Payment - All online ad service prices are available on request and include the advertisement budget that will be used to advertise Client business on the third-party platforms. Unless expressly agreed otherwise, all payments and cancellations for monthly online ad services will be governed by Payment Policy as outlined in this Agreement.

Monthly Reports - The Company will provide Clients with a monthly performance report with all relevant statistics and a video report that talks you through the various statistics.

## Lead Generation Packages

The Company offers four lead generation packages to suit different Client needs and budgets. To view the lead generation package, please visit [www.oysteer.co.nz](http://www.oysteer.co.nz) [INSERT THE LINK TO WEB PAGE WITH THE PACKAGES]. Each service listed in the Lead

Generation package is governed by its own additional terms as set out above and all payments and cancellations of lead generation packages are in accordance with the Payment policy outlined below.

## **Client Exclusivity**

For our clients' best interests, we exclusively provide lead generation packages to one agent in a real estate branch/office\* at a time.

The only exception is when a branch/franchise manager/owner decides to purchase a branch lead generation package for 3 or more agents in their office. This would only be accepted with consent from the agent already using our lead generation packages.

Furthermore, in this case, your real estate office would enjoy exclusivity benefits from Oyster as we will no longer be offering or approving lead generation packages to other real estate agents or real estate branches in the entire suburb. This excludes existing agents from the other branches who are already using our lead generation packages.

## **Oyster Membership**

Oyster offers free and paid membership options to Users who wish to access online courses and training materials. With free membership Users can access limited content by logging into their private account on the Website, whereas with paid membership Users gain unlimited access to all the online courses, training material and other helpful content.

### Paid membership payment policy

Users can either select a monthly or annual membership plan and pay online using their credit card or debit card. All online payments are processed by secure Stripe payment processor. You will be billed when you first register as a paid member and each month or year thereafter (depending on your plan) on an automatically recurring basis until you choose to cancel your membership. Please note that the membership fee is fully earned on the payment day and we do not offer any pro-rata refunds should you choose to cancel your membership before the end of your billing cycle.

You must cancel your membership before the end of your current billing cycle to avoid billing for the next term. If you wish to cancel your membership, you must notify us via email at [support@oyster.co.nz](mailto:support@oyster.co.nz) with the word "Membership Cancellation" in the subject line.

In the event we are unable to process your membership fee to renew your plan for the new billing cycle, We will attempt to contact you. If you fail to make the payment within 72 hours from the time we contact you, we reserve the right to downgrade your account until such time that we receive the full outstanding membership fee.

The Company reserves the right to modify any plans, membership fees, payment and cancellation policy at any time by amending these Terms. In the event of any change in membership fees which requires you to pay higher fees, than you paid in the last billing cycle, we will give you at least thirty (30) days notice before billing you the increased amount. Such notice will be deemed to have been given on the date we send the notification email to you. If you do not agree with such change in membership fees, your sole remedy is to cancel your paid membership.

#### INFORMATION DISCLAIMER

PLEASE NOTE - THE INFORMATION INCLUDING ANY, ADVICE OR RECOMMENDATIONS THAT ARE PART OF OUR ONLINE COURSES AND TRAINING MATERIAL ARE FOR YOUR GENERAL INFORMATION PURPOSES ONLY AND NOT INTENDED AS MARKETING ADVICE. WE ASSUME NO RESPONSIBILITY FOR ANY CONSEQUENCE RELATING DIRECTLY OR INDIRECTLY TO ANY ACTION OR INACTION YOU TAKE BASED ON THE INFORMATION, SERVICES, OR OTHER MATERIAL MADE AVAILABLE BY THE COMPANY.

### **Oysteer Credit**

In addition to all the applicable terms and conditions of this Agreement, any Oysteer Credits purchased/earned by Clients through the Website will also be governed by these terms and provisions as described hereunder, if you do not agree with these terms please do not purchase Oysteer Credits:

- Oysteer Credit Value - One Oysteer Credit is equal to One New Zealand Dollar.
- Redeeming Oysteer Credit – We will charge the amount of the Oysteer Credit to your account at the time of purchase. Any personal information that you provide us at the time of the purchase or redemption of Oysteer Credits will be governed by our Privacy Policy. You can only redeem Oysteer Credits to purchase a service that is available at [www.oysteer.co.nz](http://www.oysteer.co.nz). Should you wish to acquire a service that either exceeds or is below the amount of Oysteer Credits you have available, you may become liable or entitled to settle the balance with the Company through your Oysteer account. PLEASE NOTE THAT YOUR OYSTEER CREDITS MAY EXPIRE ON THE DATE SPECIFIED BY THE COMPANY AT THE TIME OF PURCHASE IF ANY.
- Limitations – You may not redeem your Oysteer Credit for cash-back, you may not sell your Oysteer Credits to third-party, you may not transfer the Credits to another account, you may not return your Oysteer Credits and/or request refund. If applicable law entitles you to claim cash-out, you must contact us at [support@oysteer.co.nz](mailto:support@oysteer.co.nz) with the words “refund request” in the subject line. You may not use our Oysteer Credits for any commercial purposes including but not limited to marketing, advertising or promoting through any third-party digital or print media without the express written consent of the Company. We are not obligated to honor any Oysteer Credits obtained from unauthorized sellers or resellers. You may not use our Oysteer Credits in any manner that implies that the Company endorses or sponsors any person, business product or service without our express consent.

## **Payment Policy**

The Company currently offers monthly, quarterly and bi-annual (“Plans”) for all four lead generation packages. All lead generation packages, plans and accompanying fees are listed on our Website at [www.oyster.co.nz](http://www.oyster.co.nz).

All plans are billed monthly. You will be billed according to your selected plan. Please note that all plans will automatically renew at the end of each term until you or the Company choose to cancel the Agreement.

Clients takes full responsibility for the payment of any and all applicable taxes that are not specifically included in the Lead Generation Package.

The Company currently accepts payment through secure Stripe payment gateway and the Clients can pay online using any major credit or debit card. By selecting to pay online, you further agree to abide by the terms and conditions of our chosen third-party payment processors. To learn more about the legal policies and practices of Stripe please click [here](#).

Please note that although the lead generation package fees are billed monthly, all fees are fully earned by the Company on the date of Client purchase of selected plan.

Should you wish to cancel your plan you must notify us via email at [support@oyster.co.nz](mailto:support@oyster.co.nz) with the words “Cancellation” in the subject line. You will become liable for the payment of the remaining period of your selected package plan and this amount will be deducted from your credit/debit card. In the case of automatically recurring monthly plan, you must cancel your plan before the end of the current cycle to avoid billing for the next cycle. It is solely your responsibility to ensure that you backup any and all data that you wish to access at a later stage before cancelling your plan.

In the event we are unable to process your payment to renew your monthly plan for the new billing cycle, We will attempt to contact you. If you fail to make the payment within four days from the time we contact you, we reserve the right to suspend or terminate provision of Oyster Services to you until such time that we receive the all outstanding fees due.

The Company reserves the right to modify any plans, package fees, payment, cancellation and refund policy at any time by amending these Terms.

## **Cancellation by Company**

We reserve the right to cancel or suspend delivering Oyster Services if we find that:

- You have violated any provisions of this Agreement including non-payment of fees due and payable;
- Your conduct is harmful to the Company or any of its Users; or
- We cease our business operations for any reason.

## **Refunds for Oyster Services**

Unless the Company is in material breach of this Agreement or required to do so by applicable law, we do not offer any refunds apart from our Money back guarantee for the first 2 months on Lead Generation Packages services. This offer is only available for a limited time to a select few clients.

With our Lead Generation Packages services, If you've not received any leads in the form of email addresses from us within the first 2 months of your payment, you are free to cancel our lead generation package service and claim your money back provided we are advised by email in the 2 month period.

Note - All funds spent on third party services such as Facebook ads, Google ads, etc. are non-refundable. Additionally, if you were rewarded by our team with special offers or freebies (services performed or tools provided access to) during our working period, this will be cancelled/recovered from you upon cancellation.

With our quarterly or bi-annual fixed term plans, you may still opt to claim your money back for the first two monthly payments within the first 2 months of the initial payment for a lead generation package so long as no desirable results were achieved in the form of leads.

Should we decide to offer you a full or partial refund for any Oyster Services, we will process such refund via the original payment mechanism and it will be made to the account from where the original payment was received. We are unable to offer you any assurances as to the time-frame of refunds reaching your account.

## **Account Set up and Safety**

You can browse through our marketing website without signing up but to purchase any of the video marketing or lead generation packages offered by the Company, you must register an account at [www.oyster.co.nz](http://www.oyster.co.nz). You are required to provide us with correct and current information at the time of account registration. You agree that you will provide us with complete and accurate information during the registration process. In the event of any material change in your account details, you can either change these once logged in and by accessing your profile page ("My Oyster") or contact us at [support@oyster.co.nz](mailto:support@oyster.co.nz) with the words "Account details" in the subject line.

Your account is access controlled and as with all access controlled services, the system relies upon the User to protect their login credentials. You accept that you are solely



responsible for any activity that occurs on your account and you agree that you will maintain the confidentiality of your login credentials.

You also agree that you will never use another User's account for any purposes whatsoever. You release us from any liability arising from or related to any unauthorized access to your account. In the event of any security breach or suspicious activity, you must immediately notify us at [support@oyster.co.nz](mailto:support@oyster.co.nz). You hereby release us from any liability, claim or action arising out of or associated with any loss resulting from such security breach. You understand that your decision to use Oyster Services is entirely at your own risk.

The Company reserves the right to introduce any new paid services, features and functionalities without giving any notice to you. You accept and acknowledge that any paid functionality will be governed by our provisions governing payment, refunds and cancellations of services as outlined in this Agreement.

We may access your account and the information that you have provided us, for support, maintenance or for any security-related or business reasons that we in our sole discretion deem fit.

We reserve the right to immediately suspend or terminate your Account if we discover that you have provided inaccurate, fraudulent or incomplete information to us during your account registration or anytime thereafter.

## **Use of third-party applications**

You understand and agree that the Company makes use of third party services ("third-party applications") to deliver services to Clients. These third-party applications are owned and operated by: [Google, Inc](#); [Slack Technologies, Inc](#); [Trello, Inc](#); [Plutio.com](#); [Architect Labs Ltd.](#); [ActiveCampaign, Inc](#); [Xero \(NZ\) Ltd](#); [Hootsuite Media, Inc](#); [PromoRepublic Oy](#); [Buffer](#); [ContentStudio, Pvt. Ltd](#); [SERanking Ltd](#); [LogMeIn Contracting Entities](#); [PageOneTraffic Ltd](#); [Easy Hi Ltd](#); [Noble Samurai Pty Ltd](#); [Rocketium](#); [Zapier](#); [Pie Sync NV](#); [Viral Loops](#); [VYPER.IO](#); [AWS](#); [Digital Kickstart](#); [Backly](#); [Replug, Pvt. Ltd](#); [Cloudflare, Inc](#); [PixelMe](#); [ConvertFox, Inc](#); [internetnerd group B.V](#); [Notion Labs Inc](#); [Acuity Scheduling, Inc.](#); [Omnify](#); [Big Picture Technologies, Inc.](#); [Emarky B.V.](#); [Sps-software.net](#); [ID Scout SRL](#); [Elegant Themes, Inc.](#); [Elasticode Optimization Technologies](#); [Invanto](#); [Convertflow, Inc.](#); [Datability Technologies Private Limited](#); [UNLESS](#); [SparrowApps Inc](#); [FUBSZ LLC](#), hereinafter referred to as "Third Party Service Providers". These Third Party Service Providers have their own terms and conditions and privacy policy that govern the use of such third-party applications and the services that they provide. When you use Oyster Services, you also agree to abide by the Terms and Conditions including but not limited to privacy policies, disclaimers, warranties and limitation of liability of such Third Party Service Providers. You acknowledge and agree that these Third Party Service Providers may change their terms and conditions or discontinue or modify their services at any time without providing any notice to you. Your decision to use these services is entirely at your own risk. You understand that Oyster's

use of Third Party Service Providers does not constitute an endorsement or assumption of liability for their conduct. Your use of such Third Party Applications is at your own risk and you hereby release the Company and the Third Party Service Providers from any and all claims, actions and liability arising from or associated with your use of such Third Party Applications and Oyster Services.

## **Acceptable use and restrictions**

You understand and agree that:

- You will familiarize yourself with all applicable laws and regulations;
- You will use the Oyster Services in accordance with this Agreement;
- You will pay all amounts due and payable by you to the Company by the payment method selected by the Company;
- You will take full responsibility for all actions taken under your account;
- It is solely your responsibility to obtain all requisite authorization, consent and approval from all relevant parties before you enter into any agreement with the Company or use the Oyster Service;
- You represent and warrant to the Company that you have the legal right to upload any content that you upload/log using the Oyster Service;
- You will immediately notify the Company of any change in any information or any issues that you encounter during your use of the Oyster Services;
- In the event of any dispute, you agree to notify us immediately with detailed description of the dispute and make your best effort to assist us in expeditious resolution of dispute.

### **You understand and agree that you will not:**

- Upload / log or post any offensive, illegal, obscene, degrading, misleading text, images, videos or any other media through the use of Oyster Service;
- modify, adapt, translate, or reverse engineer any portion of our website;
- use any robot, spider, site scraping/retrieval application or other automated routine in order to scrape any data/information from any part of our website (without prior consent by Us);
- collect any information about other Users by any means and for any purpose;
- reformat or frame any portion of our website without the express written consent of the Company;
- submit any content or material on any third-party sites, that falsely express or imply that such content or material is sponsored or endorsed by the Company;
- transmit any viruses, defects, Trojan horses or other items of a destructive nature;
- take any action that imposes, or may impose in our sole discretion, an unreasonable or disproportionately large load on our IT infrastructure;
- create user accounts under false or fraudulent pretences.

## **Information Disclaimer**

ALL INFORMATION ON THE WEBSITE IS MADE AVAILABLE FOR GENERAL INFORMATIONAL PURPOSES ONLY AND IT IS NOT INTENDED TO BE USED AS BUSINESS OR MARKETING ADVICE. EACH BUSINESS IS UNIQUE AND REQUIRES ITS OWN MARKETING PLAN AND STRATEGY. YOU ARE HEREBY ADVISED TO UNDERTAKE YOUR OWN INDEPENDENT RESEARCH BEFORE IMPLEMENTING ANY MARKETING STRATEGIES IN YOUR BUSINESS. WE DO NOT WARRANT, GUARANTEE OR ASSUME RESPONSIBILITY FOR ANY INFORMATION INCLUDING TEXT, AUDIO/VIDEO CONTENT THAT YOU FIND ON THE WEBSITE AND WE WILL NOT BE HELD RESPONSIBLE FOR ANY LOSS OR DAMAGE ARISING FROM OR CONNECTED WITH THE USE OF SUCH INFORMATION. ACCORDINGLY, ANY DECISION YOU TAKE BASED ON ANY INFORMATION / CONTENT YOU RECEIVE THROUGH THE WEBSITE IS SOLELY AT YOUR OWN RISK.

## **Modifications**

We are constantly adding and improving Oyster Services to enhance our offering to our Clients. We as well as all Third Party Service Providers that we use, reserve our respective rights to introduce new services, features and functionality, modify existing features, amend any provision of this Agreement or Third Party Terms and Conditions as well as the right to discontinue any service in our sole discretion. Any changes in services, features and functionality of website or third-party applications will become effective from the date of implementation. Where we make any amendments to this Agreement, we will notify you by updating the last updated date on the top of this Agreement. Please take the time to review these terms regularly to familiarise yourself of any material changes. Please note that we do not have any obligation to notify you of any change in the Terms and Conditions of Third Party Service Provider and it is solely your responsibility to periodically review the Terms and Conditions of such Third Party Service Providers to familiarise yourself of any changes in their Terms.

You release the Company any liability arising from your failure to review such modified Terms.

## **Feedback**

If you have ideas or suggestions on how we can improve Oyster Service offering, please feel free to share your views with us by sending us an e-mail at the address below. For purposes of full disclosure and avoidance of any conflict, please note that when submit your suggestion/ideas, you are granting us full and exclusive rights, at our discretion, to use, disclose and otherwise exploit your ideas and suggestions, either by inclusion in our current Service offering or creation of a new Oyster Service, in whole or part, without any restriction or compensation to you now or ever in future.

Contact us

email: [feedback@oyster.co.nz](mailto:feedback@oyster.co.nz)

## **Disclaimer and Limitation of liability**

ALL OYSTEER SERVICES ARE PROVIDED BY THE COMPANY ON AN “AS IS” AND “AS AVAILABLE BASIS” WITHOUT ANY REPRESENTATION OF WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE COMPANY DISCLAIMS ALL WARRANTIES THAT ARE NOT EXPRESSLY REFERENCED HEREIN, INCLUDING BUT NOT LIMITED TO, WARRANTY THAT THE SERVICE WILL UNINTERRUPTED, ERROR FREE OR ANY WARRANTIES AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF OYSTEER SERVICES. NOTWITHSTANDING THE FOREGOING, WHERE THE LIABILITY OF THE COMPANY CANNOT BE EXCLUDED BY APPLICABLE LAW, IF PERMITTED BY THE APPLICABLE LAW, THE COMPANY AT IT SOLE DISCRETION SHOULD HAVE THE OPPORTUNITY TO RE-SUPPLY THE SERVICE OR REPAY THE COST OF THE OYSTEER SERVICES THAT THE CLIENT CONTRACTED THE COMPANY TO PERFORM. YOU ACCEPT THAT YOUR USE OF OYSTEER SERVICES IS SOLELY AT YOUR OWN RISK.

ANY CLAIM AGAINST THE COMPANY, ARISING FROM THIS AGREEMENT OR THE USE OF OYSTEER SERVICES, MUST BE BROUGHT BY THE CLIENT WITHIN SIX (6) MONTHS FROM THE DATE WHEN THE CLAIM FIRST AROSE. ANY FAILURE ON THE PART OF THE CLIENT TO BRING THE CLAIM WITHIN THE SIX MONTH PERIOD WILL RESULT IN WAIVER OF CLIENT’S RIGHT TO BRING SUCH ACTION AT A LATER STAGE. IN NO EVENT SHALL THE TOTAL LIABILITY OF THE COMPANY, ITS DIRECTORS, SHAREHOLDERS, EMPLOYEES AND CONTRACTORS FOR ANY LOSS OF PROFITS, LOSS OF DATA, LOSS OF OPPORTUNITY, COSTS INCURRED IN PROCURING SUBSTITUTE SERVICES OR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATED TO THE PROVISION OF OYSTEER SERVICES SHALL EXCEED THE TOTAL AMOUNT PAID BY THE CLIENT TO THE COMPANY DURING THE MONTH WHEN THE CLAIM FIRST AROSE.

## **Indemnity**

You agree to release, defend, indemnify, and hold harmless the Company, its founders, affiliates, subsidiaries against any claims, liabilities, charges, damages, losses, and expenses, including, without limitation, reasonable legal and accounting fees, arising out of or in any way connected with:

- (i) the violation of these Terms by you,

(ii) Your gross negligence or willful misconduct, or

(iii) the infringement by you, or any third party using your Oyster Account, of any intellectual property or other right of any person or entity.

The Company shall indemnify, defend and hold harmless Users against any and all claims, liabilities, charges, damages, losses, and expenses, including, without limitation, reasonable legal fees, raised by third party and incurred by the foregoing in connection with, arising out of or in any way connected with:

(i) Company's breach of this Agreement, representation or warranties offered under this agreement.

(ii) Any negligent or wilful misconduct of the Company.

## **Dispute Resolution**

In the event of any dispute, the Client and the Company agree to take all reasonable steps for amicable resolution of such dispute. Client agrees that the Client/or their authorized representative will provide a written summary of the dispute to the Company as soon as the dispute arise along with their proposed resolution. The Company agrees to respond to the Client dispute within fourteen (14) days from the date of receipt of dispute summary and either agree to the proposed resolution or propose an alternative resolution in writing to the Client. If the Client is satisfied with Company's proposed resolution, the agreement must be communicated to the Company within seven (7) days from the date of receipt of Company's response. The Company's written response shall be deemed in the nature of settlement discussion and shall not be admissible in any further proceeding. If the Company and the Client are unable to resolve the dispute, they may participate in binding arbitration by an arbitrator chosen by the parties and the arbitration to be conducted in Auckland, New Zealand and in accordance with the contract laws of New Zealand. If the parties do not agree to opt for binding arbitration, they may seek legal recourse in the Court of law in accordance with this Agreement.

## **Confidentiality**

The Company agrees to hold all Client information in strict confidence. For the purposes of this agreement 'Confidential Information' refers to any information marked as 'confidential' by the Client at the time the Client shared that information with the Company and includes any written contracts entered into between the Company and the Client and Client's business methods.

Confidential Information will not include any information which:

- a. is or becomes generally known to the public by any means other than a breach of the obligations of Company;
- b. was previously known to Company or rightly received by the Company from a third party;
- c. is independently developed by the Company; or
- d. is subject to disclosure under court order or other lawful process.

Company agrees not to make Client's confidential information available in any form to any third party or to use such Confidential Information for any purpose other than as specified in this Agreement. All Client confidential information shall remain the sole and exclusive property of the Client. Notwithstanding termination or expiration of this Agreement, Company acknowledges and agree that its obligations of confidentiality with respect to Confidential Information shall continue in effect for a total period of two (2) years from the effective date of this agreement.

### **Release for Marketing Purposes**

The Client expressly grants the Company, its successors and assigns the unrestricted right to use the Client's name (individual or entity) and relationship with the Company for any commercial, promotional / marketing purposes that the Company may undertake to promote Oyster Services. The Client agrees that Client's name may be combined with images, texts, graphics in a manner that the Company deems fit and that would not harm the reputation of the Client.

The Client hereby releases the Company and discharges the Company and its successors and assigns from any claims, demands, or causes of action that the Client may have against the Company by reason of anything contained in any of the aforementioned uses, including any claims based on the right to privacy, the right of publicity, copyright, libel, defamation or any other right. The Client acknowledges and agree that the Client is not entitled to receive any form of payment from the Company and/or its successors and assigns.

THE COMPANY RESERVES THE RIGHT BUT IS UNDER NO OBLIGATION TO KEEP THE ANY OF CLIENT'S PAST DATA AFTER CANCELLATION OF OYSTEER SERVICES.

### **Assignment**

The Company may subcontract any of Oyster Services or any part thereof without the prior consent of the Client, provided that the subcontracting does not relieve the Company of any obligations under this Agreement. Neither Party may assign any rights, benefits or obligations under this Agreement, except those expressly stated herein, or any part thereof without the express written consent of the other Party.

### **Governing Law**

This agreement shall be governed and construed by the laws of New Zealand. Any claims arising out of this Agreement must be brought in a court of competent jurisdiction, located in Auckland, New Zealand.

### **Severability**

If applicable law finds any provision of this Agreement to be unlawful, void, or for any reason unenforceable, then such provision will only be limited to the minimum extent necessary and such limitation will not impact the validity and enforceability of the remainder of this Agreement.

### **Force Majeure**

Neither the Company nor the User will be held liable for failure to perform any of its obligations towards the other if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalisation, government sanction, blockage, embargo, labor dispute, strike, lockout or any interruption or any failure of electricity or server, system, computer, internet or telephone service.