

## Part F | General Conditions

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### 1. THE SERVICES

- 1.1 **Performance:** The Consultant will perform the Services in accordance with the Agreement.
- 1.2 **Professional Standard:** In performing the Services, the Consultant will use the degree of skill, care and diligence reasonably expected of a professional design consultant providing services similar to the Services (**Professional Standard**).
- 1.3 **Conflict of interest:** Where a conflict of interest exists, arises or may potentially arise, the Consultant shall promptly disclose the conflict to the Client.

### 2. STAGES

- 2.1 **Stages:** If the Services will be provided in Stages, as specified in Parts B1 (Project Establishment) to B9 (Other Services):
  - (a) on completion of the Concept Design Stage and each subsequent Stage specified in Part B (Scope of Services), the Consultant will request the Client's approval prior to it commencing any Services for the Stage that follows or commencing any Other Services;
  - (b) subject to clause 11, the Client must notify the Consultant in writing of any issues arising with the Service Deliverables produced for the current Stage of which it is aware prior to giving its approval as requested under clause 2.1(a); and
  - (c) subject to clause 11, the Client's written approval to proceed to the next Stage will be evidence of the Client's acceptance of and satisfaction with the Service Deliverables produced at the end of the current Stage.
- 2.2 **Contract Administration and Site Observation:**
  - (a) If Part B7 (Contract Administration) specifies that the Consultant will carry out Contract Administration, the Consultant will act as required by the relevant Building Contract in accordance with the Professional Standard.
  - (b) If Part B8 (Site Observation) specifies that the Consultant will carry out Site Observation, the Consultant will provide reasonable assistance to the Contractor in interpreting the Service Deliverables provided that any instruction given to the Contractor will be deemed to be given by the Client.
  - (c) The Consultant will have no obligation to instruct, direct or advise the Contractor or the Client during the construction of the Works, unless Part B7 (Contract Administration) specifies the Consultant will carry out Contract Administration or Part B8 (Site Observation) specifies the Consultant will carry out Site Observation, or a Variation is agreed or determined in accordance with clause 7.
  - (d) No Site Observation or Contract Administration performed will render the Consultant liable for the Works executed and completed by the Contractor, except to the extent of a defect in the Service Deliverables.

### 3. CLIENT'S BRIEF

- 3.1 **Client's Brief:** A high-level summary of the requirements for the Project as at the date of this Agreement is stated in Part A (Project information). If not included in Part A (Project information), the Client will provide the Client's Brief on request by the Consultant. The Consultant will assist the Client to develop the Client's Brief, if required as Services for a Stage in Part B (Scope of Services) or if agreed as a Variation in accordance with clause 7.

### 4. CONSTRUCTION BUDGET

- 4.1 **Construction Budget and Concept Design Stage:** If a Construction Budget is specified in Part A (Project information), the Consultant will use reasonable endeavours in accordance with the Professional Standard to develop the Service Deliverables up to the Concept Design Stage in a manner that is consistent with the specified Construction Budget.
- 4.2 **Modifications to Construction Budget:** The Client may notify the Consultant in writing of any required modifications to the Construction Budget at any time during the Services. The parties will together review the impact of any such notified modification on the Service Deliverables.
- 4.3 **No warranty:** The Consultant does not warrant that the Works will be able to be constructed within the Construction Budget specified in Part A (Project information) or any modified Construction Budget notified under clause 4.2.

## 5. CLIENT ASSISTANCE

5.1 **Assistance and co-operation:** The Client will provide, free of charge, all reasonable assistance and cooperation to the Consultant to enable it to carry out the Services, including by:

- (a) providing all information reasonably required relating to the Site;
- (b) allowing the Consultant reasonable access to the Site;
- (c) responding to any request for instructions or decisions within a reasonable time to avoid delay in the Consultant's provision of Services in accordance with any indicative or agreed timeframes; and
- (d) providing timely feedback to the Consultant on iterations of the Service Deliverables for further design development.

5.2 **Client information:** The Client warrants the accuracy of all information provided by the Client to the Consultant including in relation to existing structures. To the extent that any inaccurate information provided by the Client or sourced from Authority records results in additional work for the Consultant, such circumstances and work will be a Variation under clause 7. The Client acknowledges that any undisclosed or inaccurately documented information relating to the Site or Project may result in an increase in Fees and the Construction Budget.

## 6. REPRESENTATIVES, KEY PERSONNEL, SUB-CONSULTANTS AND SEPARATE CONSULTANTS

### 6.1 Representatives:

- (a) The Client will appoint the Client's Representative named in Part E (Agreement for Services and Parties) to administer the Agreement on its behalf. The Client's Representative is authorised to give instructions and issue notices on behalf of the Client and the Client will be bound by those instructions and notices. If no Client Representative is named in Part E (Agreement for Services and Parties), the Client must appoint the Client's Representative and notify the Consultant of the appointment prior to the Consultant's commencement of the Services.
- (b) The Consultant will appoint the Consultant's Representative named in Part E (Agreement for Services and Parties) to administer the Agreement on its behalf. The Consultant's Representative is authorised to receive instructions and issue notices on behalf of the Consultant, unless otherwise advised in writing by the Consultant.
- (c) Either party may replace their respective Client's Representative or Consultant's Representative at any time by giving notice in writing to the other party specifying the replacement and their contact details.

6.2 **Key Personnel:** If any Key Personnel are specified in Part E (Agreement for Services and Parties), the Consultant agrees that the Key Personnel will be involved in the Service Deliverables and may only be replaced with the written consent of the Client (such consent not to be unreasonably withheld) or if the Key Personnel cease to be available to the Consultant.

6.3 **Sub-Consultants:** The Consultant may engage any third party Sub-Consultants to carry out parts of the Services provided that this will not relieve the Consultant of any liability or obligation under this Agreement.

### 6.4 Separate Consultants:

- (a) The Client may engage Separate Consultants for the Project and will notify the Consultant of any Separate Consultants it engages.
- (b) The Consultant will cooperate with the Separate Consultants and, if specified in Part B (Scope of Services, the Consultant will coordinate the services of the Separate Consultants. Unless otherwise specified in this Agreement, the Fee for coordination of all Separate Consultants will be a Time Charge in accordance with Part C (Fees, disbursements and payment).
- (c) The Client is solely responsible for giving instructions to the Separate Consultants, and the Client will ensure that the Separate Consultants are aware that the Consultant is not entitled to give instructions on behalf of, or bind, the Client.
- (d) The Client will ensure that the Separate Consultants cooperate and provide all information required by the Consultant to carry out the Services in a timely manner. If the Consultant suffers any delay in completing the Services or incurs additional costs arising from the activity of the Separate Consultants or information provided by them, such circumstances will be a Variation under clause 7.
- (e) The Consultant is not responsible for any services or work provided by a Separate Consultant.

## 7. VARIATIONS

- 7.1 **Variations to the Agreement:** The terms of the Agreement may only be varied by the agreement in writing of both parties.
- 7.2 **Client requested Variations to Services:** The Client may request variations to the Services, including additional services. The parties will use reasonable endeavours to agree in writing any such requested variations.
- 7.3 **Variation by circumstance:** If circumstances arise that were not expected and considered by the Consultant before entering into the Agreement, such circumstances will be a Variation.
- 7.4 **Client directions or circumstances:** If the Consultant considers that any direction or instruction from the Client, or any other circumstance is a variation to the Services, the Consultant will notify the Client as soon as practicable. If the Client does not agree that the direction, instruction or circumstances is a variation, the Client will promptly notify the Consultant in writing and the matter will be resolved in accordance with clause 17. The Consultant may suspend the applicable Services or all of the Services until the matter is determined in accordance with clause 17.
- 7.5 **Agreed or determined Variations:** If the parties agree a variation to the Services in writing under clause 7.2 or a direction, instruction or other circumstances is determined to be variation in accordance with clause 7.3 or 7.4 (**Variation**), the timing and/or the Fee for the Services will be adjusted in accordance with clause 7.6, and recorded in writing to reflect that Variation. The Consultant will not be required to action or incorporate the Variation into the Services until such time as the relevant adjustment is recorded in writing.
- 7.6 **Valuation of Variations:** Unless otherwise agreed in writing, the Consultant's rates stated in Part C (Fees, disbursements and payment) will apply to the valuation of all Variations.

## 8. FEES, INVOICES AND PAYMENT

- 8.1 **Fee:** The Fee for the Services is set out in Part C (Fee, disbursements and payment).
- 8.2 **Disbursements and costs:** The Consultant's entitlement to disbursements, administrative, travel and other costs incurred in the performance of the Services is set out in paragraph 4 of Part C (Fee, disbursements and payment).
- 8.3 **Invoices:** The Consultant may invoice the Client for the Services at the times stated in paragraph 5.1 of Part C (Fee, disbursements and payment), or monthly if unstated.
- 8.4 **Payment date:** The Client must pay all undisputed invoices by the time for payment stated in paragraph 5.2 of Part C (Fee, disbursements and payment), or within 20 Working Days if unstated, without set-off or deduction.
- 8.5 **Disputed amounts:** Where the Client disputes any part of an invoice:
- (a) if the invoice has been issued as a payment claim in accordance with the CCA, the provisions of the CCA will apply, and a payment schedule must be provided by the Client within 10 Working Days of receipt of the payment claim; and
  - (b) in any other case, the Client must pay any undisputed part of the invoice and provide full details of the basis for the dispute in writing to the Consultant by the due date for payment under clause 8.4. If no details of any dispute are provided within that time, the Client will be deemed to have accepted the invoice in full.
- 8.6 **Default interest:** Late payment of any amount due and payable by the Client is a default. The Client must pay to the Consultant default interest on any such overdue amount at the rate of 1.5% per month, compounding monthly, from the date payment falls due to the date of payment. The Client must also pay the costs of any actions taken by the Consultant to recover the debt, including legal costs on a solicitor/client basis.

## 9. HEALTH AND SAFETY

- 9.1 **Health and safety:**
- (a) The Consultant will ensure, in accordance with the Professional Standard, that it is aware of, and complies with, all of the obligations imposed on it under the HSWA, any health and safety codes of practice, standards and guidelines published by WorkSafe New Zealand.
  - (b) The Consultant has not and will not assume any duty imposed on the Client or the Contractor under the HSWA.
  - (c) The Client will provide to the Consultant details of any known health and safety risks relevant to the Site or the Services.
  - (d) The Client will, as far as reasonably practicable, eliminate or (if elimination is not practicable) minimise any risks on the Site. The Consultant may suspend the Services as reasonably required until the Client has complied with this clause 9.1(d).

- (e) The Consultant will comply with all health and safety requirements and policies of the Client, any health and safety plan of the Contractor in relation to the Site.
- (f) The parties agree to cooperate, consult and coordinate with each other and with any other PCBU in relation to the Project to enable compliance with obligations under the HSWA.

9.2 **Directions on Site:** Unless otherwise agreed between the parties in writing, the Consultant will have no authority to direct any person on the Site other than its own personnel, Sub-Consultants, agents or invitees at the Site at the request of the Consultant.

## 10. INTELLECTUAL PROPERTY

10.1 **Intellectual property rights in Service Deliverables:** All intellectual property rights in the Service Deliverables will be owned by the Consultant.

10.2 **Pre-existing intellectual property rights:** Pre-existing intellectual property rights owned by a party prior to entry into this Agreement or performance of the Services will remain the property of that party. Each party confirms to the other that its pre-existing intellectual property will not infringe the intellectual property rights of any third party.

### 10.3 Intellectual property licences:

- (a) The Consultant grants to the Client a sub-licensable, non-exclusive, non-transferrable licence to use, copy, modify and communicate the Service Deliverables and its pre-existing intellectual property rights to the extent reasonably required to enable the Client to make use of the Services for the Works and the Project on the Site only, subject to the Client complying with its obligations under this Agreement, including payment of all Fees.
- (b) The licence in clause 10.3(a) does not permit the Client to use, copy, modify or communicate any Service Deliverables for:
  - (i) the development of any land other than the Site, unless the Consultant has given its prior written consent for the Client to do so (and if any such consent is given, the Consultant may require a royalty for such re-use); or
  - (ii) the design of any additions or alterations to the completed Works by someone other than the Consultant, unless the Consultant has given its prior written consent for the Client to do so (which consent which shall not be unreasonably withheld).
- (c) The Client grants to the Consultant a sub-licensable, non-exclusive, non-transferrable, royalty-free licence to use, copy, modify and communicate its pre-existing intellectual property to the extent reasonably required to enable the Consultant to provide the Services.

### 10.4 Provision of Service Deliverables on completion or termination:

- (a) On completion of all Services under the Agreement or earlier termination in accordance with clause 15, and subject to payment of all Fees, the Consultant will provide the Client with one copy of the Service Deliverables in hardcopy or non-editable electronic format. The Consultant will not be required to provide the Service Deliverables in editable electronic format.
- (b) If the Agreement is terminated in accordance with clause 15 prior to the completion of all Services, without limiting clause 10.3(a), the Client shall only be entitled to use, copy, modify and communicate the Service Deliverables that have been fully completed and detailed as at the date of termination. The Client shall not be entitled to use partially completed Service Deliverables, including for further development by a third party, without the Consultant's prior written consent, which may be given subject to conditions.

10.5 **Changes to Service Deliverables:** The Client may not make or authorise any change to the Service Deliverables without the Consultant's prior written consent.

10.6 **Use of Service Deliverables during disputes:** The licences to the Client under this clause 10 are only valid if all invoices are paid in full. The Client may not use any of the Service Deliverables where any amounts invoiced by the Consultant are overdue or there is an unresolved dispute in respect of the Fees, and the Consultant will have no liability in respect of the Client's inability to use Service Deliverables in those circumstances.

10.7 **Operation and maintenance Service Deliverables:** The Client agrees that it will comply with all guidelines and requirements which may form part of the Service Deliverables specified by the Consultant in relation to the operation, maintenance, cleaning, repair or other use of any structure or other item designed by the Consultant as part of the Works in relation to the Project or Site and shall provide such guidelines or manuals to any other relevant third parties.

## 11. DEFECTS

- 11.1 **Notice:** The Client will notify the Consultant in writing within 20 Working Days of the Client becoming aware of any defects in the Service Deliverables or Services. If the Client does not notify the Consultant within this time, the Client waives any claim it may have against the Consultant (whether in contract, tort or otherwise) in relation to the relevant defects.
- 11.2 **Liability:** The Consultant will not be liable for any losses caused by the use of the Service Deliverables after the Client has become aware of the issue and before the Consultant has remediated the defect in the Service Deliverable (if reasonably possible).

## 12. INSURANCE

- 12.1 **Insurance:** The Consultant agrees that it will hold professional indemnity insurance cover for a sum of not less than \$250,000, and public liability insurance for a sum not less than \$1,000,000.
- 12.2 **Professional indemnity insurance:**
- (a) The Consultant will use reasonable endeavours to maintain professional indemnity insurance cover for a period of six years from the earlier of the date of completion of the Services or the date of termination in accordance with clause 15.
  - (b) The Client may request the Consultant's professional indemnity cover be increased and if the Consultant agrees to increase the cover, the Client shall be responsible for meeting the cost of the additional insurance premium and any other costs relating to the increase.

## 13. LIABILITY

### 13.1 Liability of the Consultant:

- (a) To the extent permitted by law, the Consultant's maximum aggregate liability to the Client (whether in contract, tort or otherwise) will be an amount equal to the lesser of \$250,000 or five times the Fee payable under this Agreement.
- (b) The Consultant's liability to the Client for any breach of this Agreement will be limited to any reasonably foreseeable claims, damages, liabilities, losses or expenses caused directly by the breach.
- (c) If a Variation reduces or changes the Services, or the Services are suspended or the Agreement is terminated prior to completion of the Services, any liability of the Consultant to the Client will apply only in respect of those Services actually completed and only to the extent that the Variation or the reduced portion of the Services completed has not compromised or denied the Consultant the chance to properly provide the Services or amend, fully detail or finalise any Service Deliverables forming part of the completed Services, or otherwise mitigate any loss to the Client.
- (d) If the Consultant is liable to the Client (whether in contract, tort or otherwise) and the Client, a Separate Consultant and/or the Contractor has contributed to the loss or damage, the Consultant's liability will be reduced to the extent the loss or damage results from the acts or omissions of the Client, the Separate Consultants and/or the Contractor (as applicable).
- (e) The Consultant will not be liable to the Client for any damages, losses or expenses incurred by the Client as a result of: (i) any delay; (ii) any changes made by the Client, a Separate Consultant, the Contractor or other third party to the Service Deliverables; or (iii) any change to, or removal of, any relevant Project consents, without the Consultant's prior written approval.
- (f) The Consultant will not be liable to the Client for any indirect losses (including consequential losses), nor any loss of revenue, profits or anticipated savings suffered by the Client.
- (g) Without limiting any defences under the Limitation Act 2010 or any other law, the Consultant will not be liable to the Client for any loss or damage occurring after six years from the date of completion of the Services or earlier termination in accordance with clause 15.

- 13.2 **No liability to others:** The parties' liability under this Agreement will only be to each other and each party disclaims responsibility for any liability to any other person. If the Site is transferred, leased or assigned to any third party, the Consultant will not have any liability to that third party.

## 14. SUSPENSION

- 14.1 **Suspension of Services:** Without limiting the Consultant's rights under the CCA, if any invoiced amounts remain overdue and unpaid by the Client under this Agreement, the Consultant may, by two Working Days' notice in writing to the Client, suspend the Services and withhold the Service Deliverables. The Consultant will recommence the Services as soon as practicable following the Client's payment in full of the overdue amounts. The Consultant will not be liable to the Client for any losses incurred by the Client due to such suspension.

## 15. TERMINATION

- 15.1 **Termination for insolvency:** Either party may terminate all or part of the Agreement by five Working Days' notice in writing to the other party if the other party suffers an insolvency event, including the appointment of a receiver, administrator, manager or liquidator, or if a party has a winding up order made against it or other analogous event if that party is a body corporate) or commits an act of bankruptcy (if the other party is a natural person).
- 15.2 **Termination by Client:** The Client may terminate all or part of this Agreement by five Working Days' notice in writing to the Consultant, without providing any reason. If such termination is for reasons other than a breach by the Consultant of this Agreement, then without limiting clause 15.4, the Client must pay to the Consultant:
- (a) any loss of profits suffered by the Consultant due to the termination;
  - (b) any costs committed by the Consultant prior the date of termination; and
  - (c) any other reasonable costs the Consultant incurs due to the termination.
- 15.3 **Termination by Consultant:** The Consultant may terminate all or part of this Agreement by five Working Days' notice in writing to the Client, if:
- (a) the Client is in material breach of this Agreement and has failed to remedy the breach within a reasonable period of time following the Consultant's notice in writing requiring it to do so;
  - (b) the Client has not paid the Fee in accordance with clause 8.4 within 15 Working Days of the due date; or
  - (c) the Consultant reasonably considers that there has been a breakdown in the working relationship between the Consultant and the Client.
- 15.4 **Consequences of termination:** Termination will not:
- (a) relieve the Client of any obligation to make payments of any part of the Fee (based on Time Charges, if applicable, or otherwise on a fair and reasonable basis), disbursements, costs, default interest and invoices that are payable to the Consultant under this Agreement; or
  - (b) prejudice or affect the accrued rights or claims and liabilities of the parties.

## 16. FORCE MAJEURE EVENT

- 16.1 **Force Majeure Event:** If either party is delayed in, or prevented from, carrying out any of its obligations under this Agreement (other than payment of money) due to any circumstances beyond its reasonable control (including acts of government, interference by a third party or natural disaster) (**Force Majeure Event**), the affected party will notify the other party in writing and will be excused from performance of those obligations for as long as, and to the extent that, the prevention or delay lasts.
- 16.2 **Mitigation:** The affected party must take all reasonably practicable steps to limit the effects of the Force Majeure Event on the performance of its obligations under this Agreement.

## 17. DISPUTES

- 17.1 **Disputes:** The parties will attempt to settle any dispute in relation to the Agreement by negotiation between them as soon as reasonably practicable after a notice of the dispute has been issued.
- 17.2 **Mediation:** The parties may, at any time, refer the dispute to resolution by mediation by a mediator agreed between the parties or appointed by the President of Arbitrators' and Mediators' Institute of New Zealand (**AMINZ**) and in accordance with the mediation protocol of AMINZ current at the time mediation is commenced.
- 17.3 **Arbitration:** If the parties fail to settle a dispute within 60 Working Days of the dispute being notified, then either party may refer the dispute to arbitration in the city stated in Part E (Agreement for Services and Parties) or, if not stated, Auckland, for final and binding resolution. The Arbitration will be conducted in accordance with the Arbitration Act 1996 and the arbitration rules of AMINZ current at the time arbitration is commenced, by a sole arbitrator. The arbitrator will be appointed by agreement between the parties within 10 Working Days of the written notice of referral or, failing agreement, by the President of AMINZ or its successor body, or any nominee of the President. The costs of arbitration will be met in accordance with section 6 of the Arbitration Act 1996.
- 17.4 **Other rights:** Nothing in this clause 17 prevents either party from seeking urgent interlocutory relief or referring a dispute to adjudication under the CCA.

## 18. CONFIDENTIALITY AND PRIVACY

- 18.1 **Confidentiality:** Each party (and the Guarantor, if clause 20 applies) must keep confidential all information disclosed or obtained under or in relation to the Agreement and must not use nor disclose the information except for the purpose of complying with, or enforcing, the Agreement, or as permitted by clause 18.3 or with the prior written consent of the other party (or the Guarantor, if applicable).
- 18.2 **Exclusions:** The obligations of confidentiality do not extend to information that:
- (a) the recipient can show is in or has become part of the public domain other than as a result of a breach of its obligations of confidentiality;
  - (b) was independently disclosed to the recipient by a third party who is not under an obligation of confidence in relation to the information; or
  - (c) is required to be disclosed under any applicable law, or by order of a court or governmental body or other competent authority.
- 18.3 **Privacy:**
- (a) The Client (and the Guarantor, if clause 20 applies) authorises the Consultant to:
    - (i) access, collect, retain and use any information about the Client (or the Guarantor, if applicable) for the purpose of assessing the creditworthiness of the Client (or the Guarantor, if applicable); and
    - (ii) disclose information about the Client (or the Guarantor, if applicable), whether collected by the Consultant or obtained from any other source, as may be necessary or desirable for the purpose of the Consultant's exercise of any rights in connection with this Agreement or for credit reporting.
  - (b) The Client (and the Guarantor, if applicable) will be entitled to access such information about the Client (or the Guarantor, if applicable) and request correction of any information held in accordance with the Privacy Act 2020.

## 19. PROMOTIONAL MATERIAL

- 19.1 **Credit by Client:** If required by the Consultant, the Client must credit the Consultant or the Consultant's Representative (as nominated by the Consultant) in any form of promotional material by the Client relating to the Services, Works or the Project.
- 19.2 **Promotion by Consultant:** The Consultant may use any design and drawing Service Deliverables, and any photographic images of the Works, for the Consultant's professional and promotional purposes (including for any industry award entries), provided that neither the Client's name nor the exact address of the Site will be disclosed by the Consultant without the Client's prior written consent.
- 19.3 **Signage:** The Consultant may display a promotional sign on or near the Site prior to and during the execution of the Works.

## 20. GUARANTEE

- 20.1 **Guarantee:** If required by Part E (Agreement for Services and Parties), in consideration of the Consultant entering into this Agreement, the Guarantor unconditionally and irrevocably guarantees and undertakes to the Consultant the due and punctual performance by the Client of all obligations, duties, undertakings, warranties and covenants (whether express or implied) that the Client is required to observe or perform under this Agreement (**Guaranteed Obligations**), including an obligation to pay the Fee and any disbursements, costs, default interest and invoices that are payable (**Guarantee**).
- 20.2 **Indemnity:** To the extent permitted by law, the Guarantor indemnifies the Consultant against any loss, damage, cost, expense (including legal expenses on a solicitor-client basis), or liability which the Consultant may incur or suffer:
- (a) as a result of any failure by the Client to perform any of the Guaranteed Obligations; or
  - (b) where, due to any failure by the Client, any of the Guaranteed Obligations or the Agreement is/are or becomes invalid or illegal, void, voidable, unenforceable or ineffective.
- 20.3 **Consultant debtor:** As between the Guarantor and the Consultant, the Guarantor will be deemed a Consultant debtor and the Consultant may demand the performance of any of the Guaranteed Obligations under the Agreement from the Guarantor, without first taking any enforcement steps against the Client or exhausting other areas of recovery.
- 20.4 **Payment by Guarantor:** The Guarantor will make all payments to the Consultant under this Guarantee immediately on demand.

- 20.5 **Continuing obligation:** The Guarantee is a continuing obligation that continues until the Client has satisfied and performed, in full, all Guaranteed Obligations. The Guarantee will not be released or adversely affected by: (i) the variation of any term of the Agreement, or the assignment of the benefit of it or novation of it (in whole or in part); (ii) the Consultant's failure to exercise any of its rights or remedies against the Client; or (iii) or any other act, matter or thing which under the law relating to sureties would or might, but for the provision of this clause 20.5, release the Guarantor from its obligations or liabilities under clause 20 (whether in whole or in part).

## 21. GENERAL

### 21.1 Notices:

- (a) Any notice or other communication to or by a party (or the Guarantor, if applicable) to this Agreement must be in writing addressed to the person at the address or email address stated in Part E (Agreement for Services and Parties) or to any other address later notified by the party to the sender. The notice given in accordance with this clause is deemed to be given by the sender and received by the addressee:
  - (i) if delivered in person, when delivered to the addressee;
  - (ii) if posted, within 5 Working Days after the date of posting to the addressee whether delivered or not; or
  - (iii) if sent by email, at the time the sender's email system confirms that the email was sent to the email address of the recipient (unless the recipient proves that, contrary to the sender's email confirmation, the email was not sent or was not properly sent to the recipient's email address); and
- (b) Despite clause 21.1(a), if a notice or communication is served after 5pm or on a day that is not a Working Day, it shall be deemed to have been received at 9am on the next Working Day.

- 21.2 **Assignment:** Neither party has the right to assign this Agreement without the prior written consent of the other party. The Client's consent may not be unreasonably withheld.

- 21.3 **Entire agreement:** This Agreement contains the entire understanding and agreement between the parties concerning the subject matter and supersedes all previous oral or written representations or statements by either party.

- 21.4 **No reliance:** The Client enters into this Agreement entirely in reliance on the Client's own skill and judgment and not in reliance on any conduct, statement or warranty made by the Consultant or any other party.

- 21.5 **Severability:** If any clause in this Agreement is found by any court of law to be invalid or otherwise not binding on the parties, or if the parties between them agree that one or more clauses is no longer to have effect, the rest of the clauses in this Agreement shall continue in full force and effect.

- 21.6 **No waiver:** If either party delays or does not exercise any right or remedy under this Agreement, it is not a waiver of that right or remedy.

- 21.7 **Relationships:** Nothing in this Agreement shall be construed as creating a relationship of partnership, employer and employee or principal and agent between the Client and the Consultant. No party has any authority to bind the other or act on its behalf except to the extent expressly provided for in this Agreement.

- 21.8 **Joint and several liability:** If the Client is made up of two or more individuals or entities then each of them will be bound jointly and severally by the Client's obligations under this Agreement.

- 21.9 **Governing law:** This Agreement and the Services contemplated by it are governed by the laws of New Zealand and each party submits to the jurisdiction of the New Zealand courts.

- 21.10 **Survival:** The obligations of the parties under the following clauses: Confidentiality, Intellectual Property, Liability, Defects and Termination survive expiry or termination of this Agreement for whatever reason.

- 21.11 **Further assurances:** Each party will make all applications, execute all documents and do or procure all other acts or things reasonable and necessary to implement and carry out its obligations under and the intention of this Agreement.

- 21.12 **Priority:** In the case of ambiguity or conflict between the documents comprising the Agreement, the documents shall be read in the order of priority set out in Part E (Agreement for Services and Parties).

### 21.13 Laws:

- (a) **Fair Trading Act:** If the Client is in trade and the Services are provided and acquired in trade, the parties agree that clauses 21.3 and 21.4 are fair and reasonable and the parties agree to contract out of sections 9, 12A, 13, and 14(1) of the Fair Trading Act 1986.
- (b) **Consumer Guarantees Act:** If the Services are provided for the Client's business purposes, the parties agree that the Consumer Guarantees Act 1993 is not applicable to the Services.

- (c) **Construction Contracts Act:** The parties agree that this Agreement is a construction contract for "related services" for the purposes of the CCA and that the CCA, to the extent applicable to the Services, will apply to this Agreement.

## 22. DEFINITIONS

22.1 **Definitions:** In this Agreement, unless the context otherwise requires, the following definitions will apply:

**Agreed Build Cost** means the amount (exclusive of GST) agreed between the Consultant and the Client (both acting reasonably) as the cost to build the Works.

**Agreement** means this agreement between the Consultant and the Client for the provision of the Services, comprising the documents listed in Part E (Agreement for Services and Parties), as it may be varied in accordance with its terms from time to time.

**Authorities** means the regional or local authorities that are required to provide regulatory sign-off and inspections for the Project, as specified in Part D2 (Regional or Local Authorities).

**Building Contract** means the contract to be entered into by the Contractor and the Client for the construction of the Works.

**Building Contract Price** means the price (exclusive of GST) agreed between the Client and the Contractor for the Contractor's performance of the Works, as specified in the Building Contract.

**CCA** means the Construction Contracts Act 2002.

**Client** means the client as specified in Part E (Agreement for Services and Parties).

**Client's Brief** means the outline of the Client's objectives and requirements for the Services (which may be developed from any initial, high-level requirements specified in Part A (Project information)), and as updated and provided by the Client to the Consultant in writing from time to time.

**Client Representative** means the person specified as the Client's Representative in Part E of this Agreement or any other person nominated by the Client and notified in writing to the Consultant in accordance with clause 6.1(a).

**Concept Design** means the concept design Stage of the Services that the Consultant will perform under the Agreement, if specified in Part B2 – Concept Design.

**Consultant** means the consultant as specified in Part E (Agreement for Services and Parties).

**Consultant's Representative** means the person specified as the Consultant's Representative in Part E (Agreement for Services and Parties) or any other person nominated by the Consultant to be the Consultant's Representative in accordance with clause 6.1(b).

**Contract Administration** means the Building Contract administration Stage of the Services that the Consultant will perform under the Agreement, if specified in Part B7 (Contract Administration).

**Construction Budget** means the amount nominated by the Client and specified in Part A (Project information) as being the estimated cost to build the Works, excluding: (i) GST; (ii) the Fee; (iii) any fit-out or furnishings; (iv) any Separate Consultants' costs; and (v) any Authority fees and costs.

**Contractor** means the person or entity to be engaged by the Client under the Building Contract to execute and complete the whole or a part of the Works (the scope of which will be determined and notified by the Client to the Consultant), and the term includes any subcontractor engaged by the Contractor.

**Developed Design** means the developed design Stage of the Services that the Consultant will perform under the Agreement, if specified Part B4 (Developed Design).

**Detailed Design and Documentation** means the detailed design and documentation Stage of the Services that the Consultant will perform under the Agreement, if specified Part B5 (Detailed Design and Documentation).

**Determined Build Cost** means the amount (exclusive of GST) determined by the Independent Quantity Surveyor as the estimated cost to build the Works.

**Fee** means the fee for the Services as determined in accordance with Part C (Fees, disbursements and payment).

**Fixed Lump Sum** has the meaning given in Part C (Fees, disbursements and payment).

**General Conditions** means the terms and conditions included in this Agreement as specified in Part F (General Conditions).

**Guarantee** has the meaning given in clause 20.1.

**Guaranteed Obligations** has the meaning given in clause 20.1.

**Guarantor** means the person or entity named as the guarantor in Part E (Agreement for Services and Parties) that provides the Guarantee.

**GST** means goods and services tax under the Goods and Services Tax Act 1985.

**HSWA** means the Health and Safety at Work Act 2015, and all related regulations, codes of practice and rules.

**Independent Quantity Surveyor** means the quantity surveyor agreed by the parties as the independent quantity surveyor to be engaged by the Client (at its cost) to provide the Determined Build Cost (but is not a Separate Consultant).

**Key Personnel** means the people named as the key personnel of the Consultant as specified in Part E (Agreement for Services and Parties) or any other person nominated by the Consultant and notified in writing to the Client from time to time.

**Percentage** has the meaning given in Part C (Fees, disbursements and payment).

**Preliminary Design** means the preliminary design Stage of the Services that the Consultant will perform under the Agreement, if specified Part B3 (Preliminary Design).

**PCBU** means a person conducting a business or undertaking as defined in the HSWA.

**Professional Standard** has the meaning given in clause 1.2.

**Project** means the project as generally described in Part A (Project information), and includes the Works for the Project.

**Project Tender** means the Project tender Stage of the Services that the Consultant will perform under the Agreement, if specified in Part B6 (Project Tender).

**Other Services** means the other Services that the Consultant will perform under the Agreement, as specified in Part B9 (Other Services).

**Separate Consultants** means the other consultants that the Client engages directly to provide services for the Project, as specified in Part D1 (Separate Consultants) (but does not include the Consultant or the Contractor).

**Service Deliverables** means the designs, drawings, documents, reports, materials, data, methodologies and other information, including in electronic form, collated, prepared or created by the Consultant (or any Sub-Consultants) in providing the Services.

**Services** means the services to be provided by the Consultant (or its Sub-Consultants on its behalf) as specified in Part B (Scope of Services), subject to any Variations to such Services.

**Site** means the land owned or controlled by the Client on which the Works for the Project are intended to be built as specified in Part A (Project information).

**Site Observation** means the Site observation Stage of the Services that the Consultant will perform under the Agreement, if specified in Part B8 (Site Observation).

**Stage(s)** means a stage of the Services specified in Part B (Scope of Services), being Project Establishment, Concept Design, Preliminary Design, Developed Design, Detailed Design and Documentation, Project Tender, Contract Administration, Site Observation or Other Services (as applicable).

**Special Conditions** means the amendments agreed between the Consultant and the Client to the General Conditions or such other stated document comprising this Agreement as listed in Part E (Agreement for Services and Parties), as specified in Part G (Special Conditions).

**Sub-Consultants** means any person or entity engaged by the Consultant under a subcontract to assist in the provision of the Services.

**Time Charge** has the meaning given in Part C (Fees, disbursements and payment).

**Time Charge Estimate** has the meaning given in Part C (Fees, disbursements and payment).

**Variation** means a change to the Services (including any Stages or timing) or the Client's Brief.

**Works** means all of the built works relating to the Services necessary and required for the completion of the Project, or part of the Project, to be performed by the Contractor.

**Working Day** means a calendar day other than any Saturday, Sunday, public holiday, anniversary day in the province in which the Site is located or any day falling within the period from 24 December to 5 January both inclusive, irrespective of the days on which work is carried out.

## Part G | Special Conditions

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The General Conditions or such other stated document comprising this Agreement as listed in Part E (Agreement for Services and Parties), are amended as set out in these Special Conditions.

Are included / are not included in the agreement as listed below:

- SC 1. Any additional works requested by the client or builder will be taken as confirmation to proceed at the hourly rates outlined in this fee proposal. This includes site visits during construction.
- SC 2. All items not explicitly outlined in the scope of works above are be considered outside the scope of this fee agreement and will be charged at a time/cost rate as outlined in the "Hourly Rates" section of this fee agreement.
- SC 3. Detailing of specifically designed engineering. Unless instructed otherwise, this detailing will be undertaken by the structural engineer when a structural engineer is engaged by the client.
- SC 4. Provision of requests for information (RFI) responses beyond errors and omissions in relation to the scope of works is excluded from the fee and will be charged at a time/cost rate as outlined in the "Hourly Rates" section of this agreement.