

## CLIENT ENGAGEMENT CONDITIONS

### Obligations of the Firm

1. Boundary Consultants Ltd ("the Firm") must perform the Services using reasonable skill, care and diligence subject to any financial, physical, time or other restraints imposed by the Client or necessarily resulting from the nature of the project. The Firm may subcontract parts of the Services with the prior written consent of the Client. The subcontracting of any parts of the Services shall not relieve the Firm from any liability or obligation under the Agreement.

### Obligations of the Client

2. The Client shall provide to the Firm, free of cost, as soon as practicable following request, all information requested which is within the Client's power to obtain.
3. The Client must co-operate with the Firm and not obstruct the proper performance of the Services, including allowing the Firm reasonable access to the site and other locations associated with the Services.
4. As soon as the Client becomes aware of anything that will materially affect the scope or timing of the Services, the Client must inform the Firm in writing. The firm may suspend the Services if it is unable to perform the service due to an event or circumstance which is beyond its reasonable control including, but not limited to, act of God, work stoppage or other labour hindrance, electrical supply failure, asbestos discovery.

### Fees and Payments

5. All fee estimates supplied to the Client by the Firm will be provided based on the request by the Client for the work carried out and as detailed within the written estimate/quote. Any work or Services provided outside the original contract or quote not originally detailed in the quote or contract will be completed and invoiced separately on discussion and agreement with the Client. Using the Firms standard Extra work prices.
  - 5.1 The Firm reserves the right to alter its fee (and revise any fee estimate) where the Services are affected as a result of:
    - 5.1.1 a lack of detail in the Clients instruction after the fee estimate is given, or more detail is provided after the estimate is given
    - 5.1.2 if the Client changes the scope of the project or the proposed program for the service
    - 5.1.3 an unforeseen matter arising the effort required to complete the Service or the project extends beyond the original proposed time-frame
    - 5.1.4 where the Client fails to comply with its obligations under the Firms contract.
    - 5.1.5 where changes are made to any legislation (including subordinate laws) which affects the provision of services.
6. Upon request from the Firm the Client shall immediately pay to the Firm all disbursements and external expenses incurred, paid or payable by the Firm on behalf of the Client. If the firm pays external fees and disbursements on the clients behalf, the client may be liable for a 10% handling fee.
7. The Firm may charge the Client, generally by way of monthly progress claims, on the agreed fee basis, or if no basis of charging has been agreed, the Firm may charge the Client a fair and reasonable fee. The Firm may also render interim fee accounts.
8. The Client shall pay the invoiced amounts in full within 7 days of the date of the invoice. Alternatively the Firm may accept payment on the 20<sup>th</sup> of the month following the invoice if arranged with the Firm. Please note, plans and documents will only be released after full payment of the account is made. If any account is in dispute, the undisputed portion of the account shall be payable in accordance with the normal terms of payment as described herein. Payment of the disputed portion may be withheld provided the matter is brought to the Firm's attention as soon as it is discovered. A letter of explanation setting out the particulars of this dispute should be sent to the Firm within 7 days of the dispute arising.
9. If any payment is overdue by 14 days or more the Firm may demand payment within 7 days. If the Client does not pay within 7 days the Firm does not have to supply any more Services.
10. If any payment is not made as provided above, without prejudice to any other rights and remedies the Firm may have in respect of recovery of the unpaid amounts, the amount or amounts unpaid shall be liable to carry interest, from the original due date to the date of payment, at the rate of 2% per calendar month.
11. The Client shall pay all costs, expenses and charges including legal costs on a solicitor and own client basis that are incurred by the Firm in recovering any money owing to it by the Client.
12. The Customer hereby agrees to grant a registrable mortgage over any property the Client or Guarantor may own until the account is paid in full, on terms identical to those for the time being standard to the Auckland District Law Society.

### Liability and Insurance

13. Limit of Liability:
  - 13.1 The firm will not be liable for any loss of profit by the client or for damages or losses (in contract, tort or otherwise, including negligence) or for an indirect or consequential loss or damage

- 13.2 If notwithstanding clause 13.1 of this agreement, the firm is found liable for damages or losses any liability of the firm in any way connected with the services or the project is limited to:  
The lesser of five times the value of the fees or \$100,000.  
The Firm will not be liable for any damage or losses in any way connected with the Services or the project that may be made unless proceedings are commenced within six years of the services being performed.
- 13.3 The Firm will not be liable for any damage or losses in any way connected with the Services or the project if the Firm stops supplying Services under clause 9 of this agreement.
- 13.4 If the Client has engaged the Firm to perform Services which the Client has contracted to provide to a third party (the Principal) the Firm's liability to the Principal is likewise limited and the Client warrants that it is the Principal's agent for the purpose of this agreement.
14. The Firm must effect and maintain for the duration of the Services:
- 14.1 Professional indemnity insurance for an amount of not less than the amount referred to in clause 13 of this agreement in respect of any single occurrence and in the aggregate for liability arising from a breach of professional duty whether owed in contract, tort or otherwise or by reason of any act or omission by the Firm; and
- 14.2 Public liability insurance with a minimum cover of \$1,000,000.00
15. The Firm must use reasonable endeavours to keep the professional indemnity cover required by this agreement in force for six years after the termination of this agreement.
16. If required by the Client, the Firm must provide certificates evidencing the insurance cover required by this Agreement.

## Variations

17. The Client may request variations to the Services in writing and may request the Firm to make proposals for variation to the Services which may include a variation to the fees for the Services, if necessary.

## Health and Safety

18. Each party will comply with its obligations under relevant health & safety legislation, including the Health and Safety at Work Act 2015, all regulations, by-laws, codes of practice and any other standards which are applicable to workplace health and safety.
19. In particular, the Client will take reasonably practical steps within its control to ensure that the Site is safe and free of hazards. The Firm will report to the Client any hazards identified by the Firm that could give rise to reasonably foreseeable risks to health and safety. The Client will take appropriate action to, where reasonably practicable, eliminate or, if not possible, mitigate, risk from such hazards.
20. In addition, the Client will consult, co-operate and co-ordinate its activities with the Firm and any other contractors on the Site, so far as is reasonably practicable, in relation to health and safety.

## Copyright of documents

21. All intellectual property (including copyright) in the Documents or any other works produced or resulting from the Firm's services, is owned by, and belongs to, the Firm.
22. The Firm maintains control of all Documents until full payment of the fees has been made by the Client, at which point the Firm grants the Client a limited licence to use the Documents for the project and the Client's business. The license will not extend to any of the Client's affiliates unless written express permission is granted by the Firm. Without prior written consent, the Firm does not authorise the Client (nor does it grant a licence thereof to allow the Client or any affiliate) to distribute the Images nationally or internationally for promotional purposes.
23. Any publication of the Images outside of the Client's business may only be undertaken with the prior written consent of the Firm and any licence granted will not allow the Client to tamper with, edit or manipulate the Images in anyway.
24. The ownership of data and factual information collected by the Firm and paid for by the Client, shall, after payment by the Client, vest in the Client.

## Consumer Guarantees Act

25. If the Client is obtaining the Services for business purposes the provisions of the Consumer Guarantees Act 1993 are excluded in relation to the Services. If the Client is not obtaining the Services for business purposes then to the extent that any provision in this agreement is inconsistent with the Consumer Guarantees Act the provisions of the Act will prevail.

## Personal Information

26. The Client authorises the Firm to collect, retain and use personal information about the Client, including the information contained in this agreement, for the purposes of assessing the Client's credit worthiness, administering the Firm's rights against the Client or marketing any Services provided by the Firm. The Client may request access to and correction of any personal information and the Firm will comply with its obligations under the Privacy Act 1993.

- 27. Any personal information collected and held by the Firm will be kept at the Firm's premises or such other places as the Firm holds its Client information, which may include the use of cloud storage (which may be in New Zealand or overseas). The Firm may use a third party (including an overseas provider) to store and process personal information on behalf of the Firm.

### Disputes

- 28. If a dispute arises under this agreement or concerning its subject matter, either party may at any time give written notice to the other requesting that a meeting take place to seek to resolve the dispute. The parties will then meet within five business days of the notice and endeavour to resolve the dispute in good faith. If such meeting does not take place within five business days of the notice or if after five business days of the meeting the dispute remains unresolved, either party may pursue its rights at law.
- 29. Clause 28 does not restrict or limit the right of either party from taking immediate steps to obtain relief before an appropriate court, or to immediately terminate this agreement where this document provides such a right.

### Termination and Suspension

- 30. The Client may suspend all or part of the Services or terminate this agreement by notice to the Firm in writing who shall immediately make arrangements to stop the Services and minimise further expenditure. Suspension or termination shall not prejudice or affect accrued rights or claims and liabilities of the parties, including the payment of all fees and other costs payable to the Firm up to the effective date of suspension or termination and all further fees and costs incidental to the orderly termination of the Services.
- 31. The Firm may suspend all or part of the Services or terminate this agreement by notice in writing to the Client. Suspension or termination shall not prejudice or affect accrued rights or claims and liabilities of the parties, including the payment of all fees and other costs payable to the Firm up to the effective date of suspension or termination and all further fees and costs incidental to the orderly termination of the Services.

### Guarantee

- 32. The shareholders, directors and guarantors named below hereby irrevocably guarantee the due and punctual payment of all moneys owing by the Client to the Firm. It is acknowledged that the Firm is not obliged to pursue its remedies against the Client but may proceed in the first instance directly against any or all of the shareholders, directors and/or guarantors. If more than one their liability shall be joint and several.

### Force Majeure

- 33. Neither the Firm nor the Client will be liable for any act, omission or failure under this agreement (except failure to meet an obligation to pay money) if that act, omission or failure arises directly from a force majeure event (being circumstances beyond the reasonable control of the party concerned, including, without limitation, extreme weather conditions, civil disruption or industry wide industrial action).

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Signed by the Client(s) .....

Signed by the director(s) .....

Guarantor(s) (if relevant)

**Signed for..... (the Firm).....**