

Standard Terms of Engagement for Rad Surveying Ltd

1. Standard Terms

- 1.1 These Standard Terms of Engagement (Terms) apply to all services provided by Rad Surveying Ltd (the Firm) to the client (the Client), unless separate terms of engagement have been agreed by both parties. These Terms will apply to any current engagement but also to any future engagement whether or not they have been sent to the Client. The Client does not need to sign any formal documentation to indicate acceptance of these Terms and the Agreement. It will be assumed from the Client continuing to engage the Firm.
- 1.2 The Terms will be available on the Firm's website. The Firm may change these Terms from time to time; in which case the Firm will publish the updated terms on its website.
- 1.3 If the Construction Contracts Act 2002 applies to the Services undertaken, then these Terms are subject to that Act.

2. Definitions

- 2.1 In these Terms and any subsequent Agreement, unless the context otherwise requires:

Agreement means the Engagement Communication, the Terms, together with any other communication that is material to the engagement;

Business Day means a day other than a Saturday, a Sunday, a national public holiday or the regional anniversary day in the place where the Firm has its principal place of business and any shut down period imposed by the Firm;

Client means the party who is named as such in the Engagement Communication and for whom the Firm will perform the Services;

Client's Intellectual Property means all intellectual property rights owned by the Client and provided to the Firm for the purposes of carrying out the Services or the Works.

Contractor means a person or entity that the Client engages to carry out the whole or part of the Works and includes any subcontractor engaged by a Contractor.

Deliverables means all work produced or resulting from the Firm's services including, but not limited to concepts, designs, drawings, specifications, plans, studies, applications, reports, emails, models, calculations, data, photographic images, video images, videography, software and documentation collated, prepared or created in any medium by the Firm in carrying out the Services and provided to the Client as deliverables or in support of deliverables.

Engagement Communication means any written communication between the Client and the Firm that outlines material matters for Firm's involvement in the Client's project. Typically this will include the scope of the Services, date of commencement, timeframes, key deliverables, basis for fees, information requirements, assumptions, and any other material matters. The Engagement Communication may include a copy or a link to these Terms.

Fee Estimate means the fee estimate provided by the Firm to the Client (if any).

Firm means Rad Surveying Limited.

LINZ means Land Information New Zealand;

Other Consultants means a person or entity (other than the Firm) the Client engages to carry out other consulting or advisory or legal services related to the Services. It does not include a Contractor.

Pre-existing Intellectual Property means all intellectual property rights owned by the Firm or any third party and provided or used by the Firm in carrying out the Services.

Regulated Authority means any regulator, authority or regulatory body which includes: any local authorities, national authorities, and any other bodies which have a regulatory function and includes for the avoidance of doubt, LINZ;

Services means the services that the Firm will provide to the Client for the Client's project that have been outlined in the Engagement Communication;

Site means the physical site that is the subject of the Client's project and to which the Services are typically targeted;

Specialist Services means the provision of services using specialist equipment or services that may require specialist skills to be provided;

Specialist Services Schedule means a schedule described as a Specialist Service Schedule provided by the Firm to the Client setting out the terms of which are provided by the Firm;

Subconsultants means a person or entity, engaged by the Firm, to assist in the provision of the Services.

Suppliers means a person or entity that designs and installs infrastructure necessary for the fulfilment of the Client's project (for example power supply, telecommunications or gas utilities), but who typically design and install those services themselves.

Third Party means any other person or entity as the context requires, including a Contractor and Other Consultants, but excluding Subconsultants.

Terms means these standard terms.

Works means the physical and other works (if any) relating to the Services, to be carried out by a Contractor or by the Client, including goods and equipment to be supplied to the Client.

2.2 The terms **Payment Claim**, **Payment Schedule** and **Progress Payment** have the meanings given to them in section 5 of the Construction Contracts Act 2002.

3. Provision of Services

3.1 The Firm will:

- 1.1.1 provide the Services to the Client;
- 1.1.2 use its best endeavours to provide the Services in the timeframes indicated by the Firm (if any);
- 1.1.3 advise the Client promptly if additional briefing or information is required from the Client to avoid any delay to the provision of Services or Works;
- 1.1.4 subject to clause 3.3, act for the Client;
- 1.1.5 subject to clause 9, comply with all reasonable instructions issued by the Client in relation to the Agreement.

3.2 In providing the Services the Firm will use the degree of skill, care and diligence reasonably expected of a professional consultant providing services similar to the Services.

3.3 Where the Services require the Firm to certify, decide or use discretion under a contract between the Client and a Third Party, the Firm must act independently, and with professional skill and judgment, according to the terms of the contract between the Client and the Third Party.

3.4 Provision of the Services is subject to any financial, physical, time or other restraints imposed by the Client or a Regulatory Authority or necessarily resulting from the nature of the project.

3.5 The Firm may subcontract parts of the Services without the prior written consent of the Client, but if it does it will oversee the duties and responsibilities of the Subconsultant.

3.6 The Firm may direct and/or co-ordinate the work of Other Consultants where required by the Services. The Firm will not be responsible for any act, omission, error or negligence of any Other Consultant, whether such Other Consultant was engaged by the Firm on the Client's behalf or recommended to the Client by the Firm.

3.7 The Firm may instruct the Contractor and/or vary the Works to the extent necessary to complete the Services.

3.8 Where a conflict of interest or potential conflict of interest is identified the Firm shall consult with the Client and seek to either manage or avoid the conflict.

4. Obligations of the Client

- 4.1 The Client must pay the Firm for the Services according to these Terms.
- 4.2 Provision of the Services is subject to the Client providing all information, decision making and services including the services of Other Consultants required by the Firm without delay from time to time. The Client shall declare any proprietary rights any other person may have in information provided by the Client and pay any royalties or fees required to be paid for the Firm to use such information.
- 4.3 The Client must co-operate with the Firm and not obstruct the proper performance of the Services, including:
- 1.1.6 allowing the Firm, or obtaining for the Firm (where the Client is not the landowner or legal occupier), reasonable access to the Site and other locations associated with the Services,
 - 1.1.7 obtain and pay for all investigations, data, analysis and reports that are recommended by the Firm or required by a Regulatory Authority,
 - 1.1.8 obtain and pay for all consents, certificates, approvals, authorities, licenses and permits that are needed to lawfully complete the Services and carry out the Works,
 - 1.1.9 either carry out the Works or cause the Works to be carried out in compliance with all consents, certificates, approvals, authorities, licenses and permits,
 - 1.1.10 communicate promptly with the Firm via the Firm's preferred medium (being email).
- 4.4 Where required to fulfil the Services, the Client may arrange and must pay for the services provided by Other Consultants, Regulated Authorities or Suppliers. The Client shall be responsible for the services or work performed by Other Consultants.
- 4.5 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.

5. Fees and other amounts to be paid

Fees

- 5.1 The fees for all services provided by the Firm to the Client will be calculated in the manner set out in the Engagement Communication. If no basis of charging has been agreed, the Firm may charge the Client a fair and reasonable fee. Factors relevant to determining a fair and reasonable fee include:
- 1.1.11 The time spent, specialist expertise, and complexity involved.
 - 1.1.12 The urgency requested and applied.
 - 1.1.13 How much responsibility and risk the Firm is taking on.
 - 1.1.14 How important and valuable the work is to the Client and the results the Firm achieved.
 - 1.1.15 Market rates and the reasonable costs of running the Firm's business.
- 5.2 If the Engagement Communication specifies a fixed fee, subject to clause 5.3, the Firm will charge this for the agreed scope of the Services. Work which falls outside that scope will be charged on an hourly rate basis. The Firm will advise the Client as soon as reasonably practicable if it becomes necessary for the Firm to provide services outside of the agreed scope or if the Services have been affected as contemplated by clause 5.3 and, if requested, give the Client an estimate of the likely amount of the further costs.
- 5.3 If the Firm has given a fixed fee or a fee estimate, the Firm reserves the right to alter its fee (and revise any fee estimate) where the Services are affected because of:
- 5.3.1 a lack of precision in the Client's instructions, or the Client provides more detailed instructions after a fixed fee or fee estimate is given,
 - 5.3.2 if the Client requires any changes which affect the scope of the project or the proposed program for the Services,

- 5.3.3 an unforeseen matter arising affecting the effort required to complete the project or provide the Services or the project extends beyond the original proposed timeframe,
- 5.3.4 where a notable or significant assumption is not correct,
- 5.3.5 where the Client fails to comply with its obligations under the Agreement,
- 5.3.6 delays or inefficiencies created by another party,
- 5.3.7 the accuracy of information given to the Firm,
- 5.3.8 where changes are made to any legislation (including subordinate laws, Regulated Authority documents and policies) which affects the provision of Services, or
- 5.3.9 where any other change occurs which affects the supply of the Services by the Firm.

Disbursements and Third Party Expenses

- 5.4 In performing the Services, the Firm is authorised to incur and pay disbursements, external expenses and fees to third parties on behalf of the Client. Examples are travel costs, LINZ fees, Council fees, surveying consumables, and Other Consultant's fees.
- 5.5 When requested by the Firm, the Client shall pay to the Firm all disbursements, external expenses, and fees reasonably incurred, paid or payable by the Firm in relation to the project or on behalf of the Client. These may be charged in advance by the Firm.

Administrative Fees

- 5.6 The Firm will charge the Client an administrative fee of up to 3% of the Firm's fee component to cover out of pocket costs which are not included in the Firm's fee and which are not separately itemized as disbursements.
- 5.7 Goods and services tax (**GST**) chargeable pursuant to the Goods and Services Tax Act 1985 (**GST Act**) will be added to the fees in relation to any part of the fees that is for a taxable supply under the GST Act.

6. Estimates

- 6.1 The Firm may provide a fee estimate for the Services. Any estimate is based on the Firm's experience with similar work and is not a fixed quote. An estimate is indicative only and the actual fee will be determined in accordance with clause 5. The Firm will revise any estimate given when requested by the Client but is not required to do so and the fees charged by the Firm will remain payable by the Client unless otherwise determined under this Agreement. Unless specified, an estimate excludes GST, disbursements and expenses.

7. Invoices

- 7.1 The Firm will issue a GST invoice to the Client for its fees and charges. This will usually be monthly but may be done on or just before a project milestone, in advance of incurring a cost for the Client, on termination or suspension of the Services or shortly after completion of the project.

8. Payment

- 8.1 Where the Client is a joint venture, each party to the joint venture shall be jointly and severally liable for payment of all fees and expenses due to the Firm under this Agreement.
- 8.2 Where this Agreement has been entered into by an agent (or a person purporting to act as agent) on behalf of the Client, the agent and Client shall be jointly and severally liable for payment of all fees and expenses due to the Firm under this Agreement.
- 8.3 The Firm may issue monthly Payment Claims under the Agreement.

Due date

- 8.4 The Client shall pay the amount set out in the invoice by the 20th of the month following the date of the invoice (or any other date specified by the invoice) however, the due date may be varied by the Firm in writing at the time of delivering the invoice.

Overdue payments

- 8.5 If the Client fails to pay the invoice by the due date, then the Firm may:
- 1.1.16 For invoices that were prepared in anticipation of project milestones, suspend Services until payment is made;
 - 1.1.17 For all other invoices that remain unpaid 7 days after the due date, give written notice to the Client specifying the default. If payment is not made in full 14 days after the due date the Firm may suspend Services until payment is made.
- 1.2 Interest may be charged by the Firm on all overdue payments at the rate of 2% p.a. above the rate at which the Firm's bank charges for overdrafts.
- 1.3 The Client will indemnify the Firm against any costs, expenses and charges incurred or suffered by the Firm in recovering any unpaid amounts, including costs on a solicitor client basis.

Disputed invoices

- 1.4 Where the nature of the Services is such that it is covered by the CCA and the Firm has issued a Payment Claim in accordance with the CCA, the provisions of the CCA shall apply. In all other cases, if the Client, acting reasonably, disputes an invoice, or part of an invoice, the Client must promptly give the reasons for withholding the disputed amount and pay any undisputed amount in accordance with clause 8.4.

9. Variations

- 9.1 The Client may vary the Services by giving written notice to the Firm or may request the Firm to propose a variation to the Services. The Firm may also propose variations to the Services by giving written notice. The written notice must include the particulars of the variation.
- 9.2 On receiving a request to propose a variation from the Client, or where it wishes to propose a variation, the Firm may notify the Client of:
- 9.2.1 the estimated fees or change to the existing estimated fees or the basis on which the fee is to be calculated in order to accommodate the variation;
 - 9.2.2 any impact on the Services; and,
 - 9.2.3 the new estimated completion date for the Services.
- 9.3 The Client will then have 5 Business Days' to notify the Firm if it wishes to proceed with the proposed variation. If no notice is given in that time period the Client is deemed to have rejected the proposed variation. If the Client accepts the proposed variation, the Agreement is deemed to be varied accordingly.
- 9.4 Where an instruction or direction is given to the Firm by the Client which is not in writing or is not expressly stated to be a variation and the Firm considers that the instruction or direction involves a variation to the services, then the Firm will treat the instruction as a variation request to which this clause applies.

10. Termination

- 10.1 The Client may terminate the Agreement for any reason by notice in writing to the Firm. As soon as this notice is received, the Firm will stop the Services.
- 10.2 The Firm may terminate the Agreement and stop providing the Services if the Firm, in its sole discretion, considers that it has good cause to. Good cause might include failure to pay fees on time, misleading conduct, not cooperating on health and safety, not giving instructions in necessary timeframes, acting against advice. The Firm will give reasonable notice of termination under this clause.
- 10.3 In the event of a termination of the Agreement, the Client shall pay all outstanding fees (including fees and disbursements incurred on behalf of the Client), all fees for work done up to the date of the termination and any actual and reasonable costs

and expenses associated with or incurred in relation to the Agreement including time and attendances related to termination of the Agreement, together with any other amounts specified in the Engagement Communication as payable on such a termination.

- 10.4 Termination of the Agreement shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.

2. Events beyond control

- 10.5 The Firm may suspend or delay the Services if it is unable to perform the Services due to an event or circumstance which is beyond its reasonable control including, but not limited to, act of God, extreme weather conditions, work stoppage or other labour hindrance, public mains electrical supply failure, cyber event, fire, flood, storm, explosion, earthquake, landslide, epidemic and quarantine restriction.
- 10.6 In circumstances where the Services or part of the Services have to be suspended or delayed, the Firm will be allowed extra time to complete the Services and such extra time should be reasonable in the circumstances.
- 10.7 If there is a reasonable likelihood that the Services are not able to be recommenced or if the suspension continues for more than 6 months, then this Agreement may be terminated by the Firm and clause 10.3 will apply.
- 10.8 If the Firm's ability to perform the Services is materially dependent on the availability and active involvement of its Director (in the Firm's sole discretion), and that individual becomes incapacitated due to death, illness, injury, or other unforeseen circumstance such that they are unable to carry out the Services (in whole or in material part), the Firm may, by written notice to the Client:
- 2.1.1 suspend performance of the Services for a period not exceeding 60 days, during which time the Firm will consider whether the Services can reasonably be completed by alternative personnel; or
 - 2.1.2 if, in the Firm's reasonable opinion, the Services cannot be completed to a professional standard without the involvement of the Director, terminate this Agreement immediately upon written notice.
- 10.9 In the event of such suspension or termination, the Firm will be entitled to payment for all Services pursuant to clause 10.3, and the Firm will not be liable for any loss or damage arising from the suspension or termination under this clause.

11. Intellectual Property

- 11.1 All intellectual property (including copyright) in the Deliverables, held in any medium, whether electronic or otherwise is owned by, and belongs to, the Firm, unless otherwise agreed in writing.
- 11.2 Subject to clause 12.4 the Firm maintains control of all Deliverables but grants the Client a non-exclusive, non-transferable, limited licence to use the Deliverables 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 to distribute the Deliverables for promotional purposes.
- 11.3 All Pre-existing Intellectual Property shall remain the property of the original owner. The Client's Intellectual Property shall remain the property of the Client. The Firm hereby grants to the Client or agrees to procure the grant to the Client of, an unrestricted royalty-free licence to use and copy Pre-existing Intellectual Property to the extent reasonably required to enable the Client to make use of the Services or use, adapt, update or amend the Works. The Client hereby grants to the Firm, an unrestricted royalty-free licence to use and copy the Client's Intellectual Property provided to the Firm to the extent reasonably required to enable the Firm to provide the Services.
- 11.4 The Client's rights in relation to the Deliverables or to any licence in respect of Pre-existing Intellectual Property are conditional upon, on each occasion, the Client having paid all amounts due and payable to the Firm in accordance with this Agreement concerning the Services which produced the Deliverables or made use of the Pre-existing Intellectual Property. Until such payment is made, the related Deliverables in whatever medium will remain the property of the Firm.
- 11.5 The Firm is not liable for any use or reliance on the Deliverables or Pre-existing Intellectual Property by the Client or any third party for a purpose other than that for which they were prepared.
- 11.6 The ownership of data and factual information collected by the Firm and paid for by the Client, shall, after completion of the Services and payment by the Client of all fees due for all Services, vest in the Client.

- 11.7 Notwithstanding clause 12.6, in all cases where the Firm has made use of the New Zealand Cadastral Survey Database on the Client's behalf, new cadastral survey information (both raw data, written and graphical information) collected in the course of providing the Services shall be uploaded by the Firm in digital format to the New Zealand Cadastral Survey Database (currently administered by LINZ).

12. Privacy Act 2020

- 12.1 Subject to the Privacy Act 2020, the Client authorises the Firm:
- 12.1.1 to retain and record any personal information ascertained in connection with the Agreement;
 - 12.1.2 to collect, store, use, and disclose information about the Client and its staff for any purpose relating to the Agreement, including but not limited to, assessing the Client's credit worthiness, enforcing these Terms, marketing to the Client, research and performing the Services, and any other purpose notified to the Client at the time the information is collected or which is authorised by the Privacy Act 2020.
- 12.2 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.
- 12.3 Where the Client is an individual; the Client has rights of access to, and correction of, its personal information as provided for in the Privacy Act 2020. Where the Client is a body corporate or employs staff the Client will ensure that its staff are aware of (and, if requested by the Privacy Act 2020, agree to) the collection of personal information contemplated by this clause and of the access and correction rights available under the Privacy Act 2020.

13. Confidentiality

- 13.1 Confidential information supplied to a party to the Agreement, or of which a party becomes aware as a result of that party's dealings in connection with the operation of the Agreement, remains the property of the originating party. The parties agree to treat confidential information as strictly confidential and not to use or attempt to use any of the confidential information in any manner or for any purpose other than to fulfil its obligations described in the Agreement.
- 13.2 The Client acknowledges that employees of the Firm are subject to the rules of New Zealand Institute of Surveyors (operating as Survey and Spatial New Zealand) and in particular the Conduct of Members policy (the Policy). The Client acknowledges that the Firm may be required to disclose information about the Client (that may be personal or confidential) under the Policy and authorises that disclosure without further reference to the Client.
- 13.3 If the Client's auditors, advisors or marketers ask the Firm for information, the Firm is authorised to provide that information (including confidential information) and the Client will pay the Firm its fee for that work.

14. Consumer Guarantees Act 1993

- 14.1 Nothing in these Terms affects the Client's rights under the Consumer Guarantees Act 1993.
- 14.2 If, however, the Client acquires services for the purposes of trade or business, then the Client acknowledges that, to the maximum extent permitted by law, the provisions of the Consumer Guarantees Act 1993 do not apply to the Agreement.

15. Health and Safety

- 15.1 Each party will comply with its obligations under relevant health and 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.
- 15.2 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.
- 15.3 In addition, the parties will consult, co-operate and co-ordinate its activities with the Contractors and Suppliers on the Site, so far as is reasonably practicable, in relation to health and safety.

16. Liabilities, Insurance and Indemnities

Limits of Liability

- 16.1 Notwithstanding any other provision of the Agreement, and to the maximum extent permitted by law, the total aggregate liability of the Firm to the Client for damages or losses (in contract, tort or otherwise, including negligence) in any way connected with the Services or the project is limited to the lesser of five times the amount of the fees or \$100,000. In addition, to the maximum extent permitted by law, in no event will the Firm be liable for any indirect, consequential or special loss or damage (including loss of profit), or for any loss of savings, opportunities or data.
- 16.2 If either party is found liable to the other (whether in contract, tort or otherwise) and the claiming party and / or a third party has contributed to the loss or damage, the liable party shall only be liable to the proportional extent of its own contribution.
- 16.3 To the maximum extent permitted by law, the Firm will not be liable to the Client for any loss or damage resulting from or connected with the Services or the project occurring after six years from the earlier of the date the Services were completed or termination of the Agreement.
- 16.4 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 the Agreement.
- 16.5 Neither the Firm nor the Client will be liable for any act, omission or failure under the Agreement (except failure to meet an obligation to pay money) if that act, omission or failure arises directly from an event or circumstances beyond the reasonable control of the party concerned, including, without limitation, extreme weather conditions, cyber events, civil disruption or industry wide industrial action.
- 16.6 To the extent the Firm reasonably relies on information, documents, or data provided by any Other Consultant for the purpose of delivering the Services, the Firm shall not be liable to the Client for any loss, damage, or delay arising from any inaccuracy, defect, or deficiency in such information, documents, or data, unless the Firm knew or ought reasonably to have known that the information was materially defective.

Insurance

- 11.5 The Firm must take out and maintain for the duration of the Services:
- 11.5.1 professional indemnity insurance for an amount not less than the amount referred to in clause 17.1 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
- 11.5.2 public liability insurance for the minimum amount of cover specified in the Engagement Communication.
- 11.6 The Firm must use reasonable endeavours to keep the professional indemnity cover required by the Agreement in force for six years after the completion of the Services or termination of the Agreement.
- 11.7 If required by the Client, the Firm must provide certificates evidencing the insurance cover required by these Terms.

Indemnity

- 11.8 To the fullest extent permitted by law, the Client indemnifies and shall keep indemnified the Firm from and against any and all claims, liabilities, losses, damages, costs or expenses (including legal costs on a solicitor and client basis) arising out of or in connection with:
- 11.8.1 Any claim by the Client or a third party in relation to any act, omission or default of any Other Consultant.
- 11.8.2 Any reliance placed by the Firm on information or advice provided by any Other Consultant in connection with the Services.
- 11.8.3 Any claim made by a landowner or occupier in relation to the Firm's access to, or performance of the Services on land or property that is not owned or occupied by the Client.
- 11.8.4 Any breach by the Client of any consents, certificates, approvals, authorities, licenses and permits in relation to the Client's project.

12. Dispute Resolution

- 12.5 If there is a dispute between the parties, then the parties agree to meet in good faith in the first instance in order to use their best endeavours to resolve the dispute.
- 12.6 If the parties are unable to reach agreement, then the parties will pursue mediation. The parties will agree on a suitable person to act as mediator.
- 12.7 If the parties fail to agree on the identity of the mediator within 10 Business Days of the dispute being referred to mediation, the mediator will be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc (**Institute**), upon the application of any party.
- 12.8 If the Dispute is not resolved by mediation in accordance with the above provisions 10 Business Days' after a mediation conference, then the Dispute will be referred to and finally resolved by arbitration.
- 12.9 The arbitration will be conducted in accordance with the Arbitration Protocol of the Institute, the tribunal of which will consist of one arbitrator agreed to by the parties. If the parties fail to agree on the identity of the arbitrator within 10 Business Days from the date upon which the Dispute is referred to arbitration then the arbitrator will be appointed by the Institute. In either case, the arbitrator must not be a person who has participated in any informal dispute resolution procedure in respect of the dispute. The place of the arbitration will be in held in the geographical location of the Firm's principal place of business.
- 12.10 Each party will bear its own costs in relation to any dispute resolution and the parties agree that they will continue to perform their obligations under the Agreement.
- 12.11 Pending final resolution of any dispute, neither of the parties will make any press release, public announcement or statement concerning the subject matter of the dispute to any person (except as expressly or by implication authorised in this Agreement).
- 12.12 This clause 18 does not restrict or limit the right of either party from taking immediate steps to obtain relief before an appropriate court, or to terminate the Agreement where the Agreement provides such a right.
- 12.13 If the Construction Contracts Act 2002 applies to the Agreement, then either party may refer the dispute to adjudication. The parties may agree to suspend the dispute resolution process under clause 18 at any stage due to any adjudication proceedings, but in the absence of such agreement the provisions of clause 18 will continue to apply.

13. General Provisions

- 13.5 In this Agreement, a reference to a Schedule is to a schedule provided with the Engagement Communication.
- 13.6 Each party to the Agreement will do all things reasonably required by any other party to effectively carry out and give effect to the terms and intentions of the Agreement.
- 13.7 To complete the Services, the Firm will retain copies of important records, documents and information (**Records**) it receives or creates for the Client. Unless the Client instructs the Firm in writing otherwise, the Client hereby authorises and consents to the Firm (without further reference to the Client) to destroy (or delete in the case of electronic records) all Records in respect of the Services five (5) years after this Agreement ends (other than any Records that the Firm is otherwise obliged by law to retain for longer). The Firm may retain Records for longer at its option.
- 13.8 Any notice or other communication to be given under the Agreement must be in writing, in English, and delivered by hand (including by courier), or sent by post or email to the relevant address noted in the Engagement Communication. All notices given in accordance with the Agreement will be deemed to have been delivered as follows:
- 13.8.1 if it is delivered by hand (including by courier), at the time of delivery to a person authorised or reasonably appearing to be authorised to accept deliveries on behalf of the receiving Party;
- 13.8.2 if posted, at the expiration of seven Business Days after the pre-paid envelope containing the same was delivered into the custody of the postal authorities; or
- 13.8.3 if communicated by email, at the time the sender's email system records that the email was successfully dispatched to the named recipient and provided that the sender's computer system has not received an automated response that the email has not been delivered,

provided that where any such delivery or transmission occurs after 5.00 pm on a Business Day or on a day which is not a Business Day, delivery will be deemed to occur at 9.00 am on the next following Business Day.

- 13.9 The Agreement is binding on and will enure to the benefit of the parties and their respective successors. The parties must not assign or transfer all or part of their rights or obligations under the Agreement without the prior written consent of the other party.
- 13.10 The Agreement constitutes the entire agreement between the Client and the Firm for the performance of the Services by the Firm. The Agreement supersedes all previous negotiations, representations and warranties except as may be expressly incorporated into the Agreement or is part of an Engagement Communication.
- 13.11 Failure by a party to enforce at any time any one or more of the terms or conditions of the Agreement is not a waiver of that party's right to subsequently enforce at any time any one or more of the terms or conditions of the Agreement.
- 13.12 Termination shall not prejudice or affect accrued rights or claims and liabilities of the parties up to the effective date of termination. Clauses 8, 12, 14, and 17 shall survive the termination of this Agreement.
- 13.13 This Agreement is to be governed by and construed in accordance with the laws of New Zealand.