

1. Definitions

- 1.1 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **“Consultant”** means Transport Specifications Limited, its successors and assigns or any person acting on behalf of and with the authority of Transport Specifications Limited.
- 1.3 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Consultant to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Client, is a reference to each Client jointly and severally; and
(b) if the Client is a partnership, it shall bind each partner jointly and severally; and
(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.4 **“Goods”** means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by the Consultant in the course of it conducting, or supplying to the Client, any Services.
- 1.5 **“Services”** means all Services supplied by the Consultant to the Client at the Client’s request from time to time.
- 1.6 **“Confidential Information”** means information of or relating to the Client, or any of the trade secrets, know-how, business, technical, strategic, commercial, contractual or other information, methods, pricing structure, business transactions, financial affairs or other information relating to the Client (including but not limited to, **“Personal Information”** such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) or of any Client associated with it (including by way of joint venture) which the Consultant in its capacity as Consultant has received, obtained, become aware of or possessed and which is not lawfully in the public domain or available to, and legally and properly obtained by the Consultant from a source other than the Client or independently acquired or developed by the Consultant without violating any of the Consultant’s obligations under this Contract or any law and without the use of any Confidential Information.
- 1.7 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when using the Consultant’s website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.8 **“Price”** means the price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Services as agreed between the Consultant and the Client in accordance with clause 5 of this Contract.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Services provided by the Consultant.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Services on credit shall not take effect until the Client has completed a credit application with the Consultant and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Services requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, the Consultant reserves the right to refuse delivery.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that the Consultant shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
(a) resulting from an inadvertent mistake made by the Consultant in the formation and/or administration of this Contract; and/or
(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Consultant in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Consultant; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Client shall give the Consultant not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by the Consultant as a result of the Client’s failure to comply with this clause.

5. Price and Payment

- 5.1 At the Consultant’s sole discretion the Price shall be either:
(a) as indicated on any invoice provided by the Consultant to the Client; or
(b) the Price as at the date of delivery of the Services according to the Consultant’s current price list; or
(c) the Consultant’s quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 The Consultant reserves the right to change the Price if a variation to the Consultant’s quotation is requested. Variations will be charged for on the basis of the Consultant’s quotation, and will be detailed in writing, and shown as variations on the Consultant’s invoice. The Client

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- shall be required to respond to any variation submitted by the Consultant within ten (10) working days. Failure to do so will entitle the Consultant to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.3 In addition to the payment of the Price, the Client shall reimburse the Consultant for all reasonable expenses incurred by the Consultant in the performance of the Services. Such expenses include, but shall not be limited to, costs for travel and attendance to meetings, mobile and long-distance telephone calls, fax, printing, photocopy and freight costs. The Client shall be entitled to request and receive such evidence as it may reasonably require of the type and amount of such expenses.
- 5.4 At the Consultant's sole discretion a deposit may be required.
- 5.5 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by the Consultant, which may be:
- (a) by way of instalments/progress payments in accordance with the Consultant's payment schedule;
 - (b) payment for approved Clients shall be due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Consultant.
- 5.6 Payment may be made by cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and the Consultant.
- 5.7 The Consultant may in its discretion allocate any payment received from the Client towards any invoice that the Consultant determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Consultant may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Consultant, payment will be deemed to be allocated in such manner as preserves the maximum value of the Consultant's Purchase Money Security Interest (as defined in the PPSA) in the Services.
- 5.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Consultant nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Consultant an amount equal to any GST the Consultant must pay for any supply by the Consultant under this or any other agreement for providing the Consultant's Services. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6. Provision of the Services**
- 6.1 The Consultant will provide the Services in a competent and professional manner as and when requested by the Client.
- 6.2 When providing the Services, the Consultant shall comply with any workplace and security guidelines, and any other instructions specified by the Client whilst on the Client's premises.
- 6.3 The Consultant may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 6.4 Any time specified by the Consultant for delivery of the Services is an estimate only and the Consultant will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that the Consultant is unable to supply the Services as agreed solely due to any action or inaction of the Client then the Consultant shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.
- 7. Risk**
- 7.1 Irrespective of whether the Consultant retains ownership of any Goods all risk for such items shall pass to the Client as soon as such items are delivered to the Client and shall remain with the Client until such time as the Consultant may repossess the Goods. The Client must insure all Goods on or before delivery.
- 7.2 The Consultant reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Goods as a result of the Client's failure to insure in accordance with clause 7.1.
- 8. Title**
- 8.1 The Consultant and the Client agree that where it is intended that the ownership of Goods is to pass to the Client that such ownership shall not pass until:
- (a) the Client has paid the Consultant all amounts owing for the Services; and
 - (b) the Client has met all other obligations due by the Client to the Consultant in respect of all contracts between the Consultant and the Client.
- 8.2 Receipt by the Consultant of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Consultant's ownership or rights in respect of the Goods shall continue.
- 8.3 It is further agreed that:
- (a) the Client is only a bailee of the Goods and must return the Goods to the Consultant immediately upon request by the Consultant;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Consultant and must pay to the Consultant the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of sale of the Goods on trust for the Consultant and must pay or deliver the proceeds to the Consultant on demand;
 - (d) the Client should not convert or process the Goods or intermix them with other goods, but if the Client does so then the Client holds the resulting product on trust for the benefit of the Consultant and must dispose of or return the resulting product to the Consultant as the Consultant so directs;

- (e) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Consultant; and
- (f) the Client irrevocably authorises the Consultant to enter any premises where the Consultant believes the Goods are kept and recover possession of the Goods.

9. Personal Property Securities Act 1999 (“PPSA”)

- 9.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
 - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Client to the Consultant for Services – that have previously been supplied and that will be supplied in the future by the Consultant to the Client.
- 9.2 The Client undertakes to:
 - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Consultant may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, the Consultant for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Consultant.
- 9.3 The Consultant and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 9.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 9.5 Unless otherwise agreed to in writing by the Consultant, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 9.6 The Client shall unconditionally ratify any actions taken by the Consultant under clauses 9.1 to 9.5.
- 9.7 Subject to any express provisions to the contrary (including those contained in this clause 9), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

10. Security and Charge

- 10.1 In consideration of the Consultant agreeing to supply Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 10.2 The Client indemnifies the Consultant from and against all the Consultant’s costs and disbursements including legal costs of a solicitor and own client basis incurred in exercising the Consultant’s rights under this clause.
- 10.3 The Client irrevocably appoints the Consultant and each director of the Consultant as the Client’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client’s behalf.

11. Defects

- 11.1 The Client shall inspect the Services on delivery and shall within seven (7) days of delivery notify the Consultant of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford the Consultant an opportunity to inspect the Services within a reasonable time following delivery if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 11.2 For defective Services, which the Consultant has agreed in writing that the Client is entitled to reject, the Consultant’s liability is limited to either (at the Consultant’s discretion) replacing the Services or rectifying the Services provided that the Client has complied with the provisions of clause 11.1.

12. Consumer Guarantees Act 1993

- 12.1 If the Client is acquiring Services for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Services by the Consultant to the Client.

13. Confidentiality and Conflicts of Interest

- 13.1 The Consultant and its employees, directors, agents and contractors will:
 - (a) keep all Confidential Information and all data information and reports derived from it secret and confidential, except to the extent that the Consultant is required by any law, Court, government authority, or stock exchange to divulge it;
 - (b) keep as Confidential Information the identity of any sources of any such information;
 - (c) take all reasonable precautions to maintain the secrecy and prevent the disclosure of any Confidential Information;
 - (d) not disclose any Confidential Information to any third party without first obtaining the written consent of the Client except to the extent necessary for the Consultant’s performance of its obligations under this Contract and always with prior consultation with the Client;
 - (e) not use the Confidential Information for any purpose other than providing the Services; and
 - (f) where requested by the Client shall return the Confidential Information (including all copies and reproductions) and destroy all electronic records of the Confidential Information at the conclusion of this Contract (or if sooner requested).
- 13.2 The Consultant’s obligations under this clause 13 shall survive the termination of this Contract until such time as the Confidential Information is in the public domain other than by act or omission of the Consultant.
- 13.3 The Consultant shall not, and shall ensure that its employees, directors, agents and contractors do not, directly or indirectly, acquire, serve or promote any interest in conflict with the interest of the Client in relation to any matter to which the Services may relate without first notifying the Client of such conflict in which case the Client will have the option to immediately terminate this Contract.

14. Reporting

- 14.1 In providing the Services, the Consultant shall follow the instructions of, and report in the first instance to, the project director or such persona as the Client's management may designate as being the appropriate instructor and recipient of the Services for any particular project.
- 14.2 The Consultant shall comply with the lawful instructions of the Client at all times and shall act in relation to the provision of the Services at all times in the best interests of the Client.
- 14.3 As part of the Price the Consultant will deliver to the Client one original of any report generated by the Consultant along with an electronic copy containing the report in Microsoft Office suite.

15. Intellectual Property

- 15.1 Unless expressly agreed to otherwise in writing between the parties:
- (a) copyright and other intellectual property rights in all documentation, Goods and other things capable of ownership commissioned and paid for by the Client as part of the Services shall vest in the Client provided however that the Client grants a non-exclusive, royalty free licence to the Consultant for the future use of any such intellectual property rights developed by the Consultant; and
 - (b) the Consultant shall only grant a non-exclusive, royalty free licence to the Client to use all other things provided as part of the Services in which the Consultant holds the intellectual property rights for the exclusive purposes of the specific project to which the provision of the Services apply.
- 15.2 The Client warrants that all designs, specifications or instructions given to the Consultant will not cause the Consultant to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Consultant against any action taken by a third party against the Consultant in respect of any such infringement.

16. Default and Consequences of Default

- 16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Consultant's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Client owes the Consultant any money the Client shall indemnify the Consultant from and against all costs and disbursements incurred by the Consultant in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Consultant's collection agency costs, and bank dishonour fees).
- 16.3 Further to any other rights or remedies the Consultant may have under this Contract, if a Client has made payment to the Consultant, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Consultant under this clause 16, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 16.4 Without prejudice to the Consultant's other remedies at law the Consultant shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Consultant shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Consultant becomes overdue, or in the Consultant's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by the Consultant;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

17. Cancellation

- 17.1 Without prejudice to any other remedies the Consultant may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Consultant may suspend or terminate the supply of Services to the Client. The Consultant will not be liable to the Client for any loss or damage the Client suffers because the Consultant has exercised its rights under this clause.
- 17.2 The Consultant may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice the Consultant shall repay to the Client any money paid by the Client for the Services. The Consultant shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.3 In the event that the Client cancels delivery of the Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Consultant as a direct result of the cancellation (including, but not limited to, any loss of profits).

18. Privacy Policy

- 18.1 All emails, documents, images or other recorded information held or used by the Consultant is Personal Information as defined and referred to in clause 18.3 and therefore considered confidential. The Consultant acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Consultant acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Consultant that may result in serious harm to the Client, the Consultant will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 18.2 Notwithstanding clause 18.1, privacy limitations will extend to the Consultant in respect of Cookies where the Client utilises the Consultant's website to make enquiries. The Consultant agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;

- (b) tracking website usage and traffic; and
- (c) reports are available to the Consultant when the Consultant sends an email to the Client, so the Consultant may collect and review that information ("collectively Personal Information")

If the Client consents to the Consultant's use of Cookies on the Consultant's website and later wishes to withdraw that consent, the Client may manage and control the Consultant's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

- 18.3 The Client authorises the Consultant or the Consultant's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by the Consultant from the Client directly or obtained by the Consultant from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 18.4 Where the Client is an individual the authorities under clause 18.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 18.5 The Client shall have the right to request the Consultant for a copy of the Personal Information about the Client retained by the Consultant and the right to request the Consultant to correct any incorrect Personal Information about the Client held by the Consultant.

19. Service of Notices

- 19.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 19.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

20. Trusts

- 20.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Consultant may have notice of the Trust, the Client covenants with the Consultant as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not without consent in writing of the Consultant (the Consultant will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

21. Liabilities

- 21.1 The Consultant agrees to comply with all statutes, regulations and government decrees applicable to the provision of Services pursuant to this Contract. The Consultant is responsible for the payment of any fine for failure to comply with any statute, regulation or government decree.
- 21.2 The Consultant warrants that any estimates, opinions, conclusions or recommendations shall be reasonably held or made as at the time provided. The Client accepts and acknowledges however, that neither the Consultant nor its advisors, agents, officers or employees make any representation or warranty as to the accuracy or reliability of any estimates, opinions, conclusions, recommendations (which may change without notice) or other information provided as part of the Services and, to the maximum extent permitted by law, the Consultant disclaims all liability and responsibility for any direct or indirect loss or damage which may be suffered by any recipient through relying on or use of any estimates, opinions, conclusions, recommendations or other information provided by the Consultant as part of the Services. The parties further agree that, except for as otherwise specifically provided for in this Contract, the Consultant will not be liable in contract, tort (including negligence) or otherwise to compensate the Client for any loss, injury or damage, whether consequential or otherwise, arising from this Contract or the provision of the Services and the Client shall indemnify the Consultant against such legal action instituted against the Consultant by any third party in respect of any decision made by the Client in reliance upon the estimates, opinions, conclusions or recommendations provided in good faith by the Consultant.
- 21.3 The Consultant takes no responsibility for, nor do they warrant, the work of any third-party.

22. Arbitration

- 22.1 Any dispute, doubt or question arising between the parties hereto touching the construction, meaning or terms contained or implied in this Contract, or the rights or liabilities of the parties hereto, shall be referred to the arbitration of a single arbitrator in the case where the parties can agree upon one and failing agreement to the arbitration of two arbitrators, one to be appointed by the Client and one to be appointed by the Consultant or in the case of the disagreement of such two arbitrators to their umpire to be appointed by the arbitrators before entering

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upon the reference and in either case in accordance in all respects with the provisions contained in the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force.

23. General

- 23.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Albany Court of New Zealand.
- 23.3 The Consultant shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Consultant of these terms and conditions (alternatively the Consultant's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 23.4 The Consultant may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 23.5 The Client cannot licence or assign without the written approval of the Consultant.
- 23.6 The Consultant may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Consultant's sub-contractors without the authority of the Consultant.
- 23.7 The Client agrees that the Consultant may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Consultant to provide Services to the Client.
- 23.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 23.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.