



This document for: **This document is for Businesses or Entities purchasing Architectural Services for Business Purposes, whether to on-sell directly or use to undertake construction works on another Persons behalf.**

Document ID: **DOC9921**
Document Title: **General Provisions of Agreement**

Document Date: **10 January 2020**

This document is to be read in conjunction with
“Instruction for Architectural Services, Document ID DOC8743”

ABOUT THIS DOCUMENT:

This is an important document, You, the Client, should read it thoroughly and keep it in a safe place as it describes the General Provisions (Terms) of the Agreement between you and your Architectural Services Provider. If you have questions you should contact your Architectural Services Provider immediately or gain independent advice.

This document forms part of your Contract with your Architectural Services Provider and shall not be subject to change without first being referred for legal consultation by representatives of all parties to the agreement.

HOW TO CONTACT YOUR ARCHITECTURAL SERVICES PROVIDER:

The Architectural Services Provider values its Clients and aims to deliver the best service possible. If you have any questions about your design, building or need more information, please contact your Architectural Services Provider on the details below.

Provider: The Drawing Room

Contact: Micheal Carswell

Phone: +64 7 552 4653

Email: micheal@thedrawingroom.nz

Post: PO Box 6058
Tauranga 3142

{start: General Provisions of Agreement}

GENERAL PROVISIONS OF AGREEMENT

Section 1 | Introduction

You, the Client and the Provider, named in the Document Titled "Instruction for Architectural Services, Document ID: DOC8743", hereby agree to be bound by the General Provisions of Agreement outlined in this document and any other tags, notes or terms on any other enclosed schedule, form, subcontractors quote, variation to contract, or change order. The General Provisions of Agreement shall become effective immediately following providing any form of Instruction to the Provider, or any monetary payment being received from, or on behalf of, the Client by the Provider.

The "Contract" between the Client and the Provider shall be made up of the following documents:

- 1) Instruction for Architectural Services, Document ID: DOC8743, herein also referred to as DOC8743; and
- 2) Conceptual Drawings, Scheme Plan and Specification, if any, and
- 3) Any associated Separates Consultants quotes, if any, and
- 4) Any associated signed Change Order documents, if any, and
- 5) General Provisions of Agreement (This Document)

This document, and the aforementioned documents, shall form the Contract between the Client and the Provider named in DOC8743.

Section 2 | Definitions

In these documents and in all dealings between the Client and the Provider, and in all associated documents, unless the context expressly states otherwise, the following terms shall mean:

"Activity" includes manufacture, assembly, use of the structure for any the purpose of repair, decommissioning, dismantling, demolition and/or disposal.

"Arbitration" has the meaning defined by the Arbitration Act 1996, as may be amended or substituted.

"Provider" the company providing Architectural Services named as the Provider in DOC8743.

"Providers Fee" is the amount or amounts stated in in this Agreement as being payable by the Client to the Provider for the Agreed Services.

"Agreed Services" is the services to be provided by the Provider to the Client as identified in DOC8743 and in the General Provisions of Agreement (This Document).

"Agreement" shall mean the agreement between the Client and the Provider consisting of this document and all attachments listed in Section 1 of this document.

"Brief" is the written statement by the Client summarising their expressed requirements, preferences and priorities, in sufficient detail for the Provider to carry out the Agreed Services.

"Budget" is the target Cost of the Contract Works as nominated by the Client.

"Calendar Day" means every day including Saturdays and Sundays, all statutory holidays, unsuitable weather days and the holiday period over Christmas and New Year as set by the Provider.

"Client" is the person named as the Client in DOC8743.

"Disbursements" is reimbursement costs to be paid by the Client to the Provider for incidental items over and above the hourly charge out rate and/or fee that are required to complete the task. This shall include but not be limited to Travel at \$0.78 per kilometre and all council charges or fees.

"Guarantor" means any person who has signed the guarantee as requested by the Provider or enclosed in this agreement.

"GST" means the goods and services tax payable under the Goods and Services Act 1985, as may be amended or substituted. All dollar amounts in this Agreement exclude GST.

"Law" means any Act of Parliament, regulation, by-law, order, code, licence, permit, approval, regulatory instrument or any other subordinate instrument, or any other legally binding direction or requirement, as each of those may be amended,

"Lump Sum Fees" is fees calculated by assessing the quantum of work to be undertaken by the Provider at any stage of service.

"Margin" shall have the meaning of the percentage value between the cost price and sale price of the product, Services or Service Materials when calculated starting with the sale price and removing the percentage of Margin to provide the cost price. For clarification purposes and the avoidance of doubt, the following formula should be used to apply margin to a cost price to find the agreed Client purchase price: $(\text{cost price}) \div (1 - \text{Margin \%}) = \text{Agreed Client Purchase Price}$.

"PCBU" has the meaning given in the Health and Safety at Work Act 2015, as may be amended from time to time.

"Percentage Fees" fees calculated by multiplying the percentage fee rate agreed between the Provider and the Client and the Adjusted Cost of Contract Works or if that is not available, the Budget. For the purposes of fee calculation, the cost of old materials are calculated as if these materials were new, and the cost of goods and services provided by the Client are calculated as if provided by the Contractor.

"Person or person" an individual, partnership, body of persons, firm, company or organisation whether corporate or not.

"Project" is the Project identified in DOC8743 and any subsequent amendments.

"Separate Consultants" is the consultants contracted by and paid by the Client and whether listed as Separate Consultant or not.

"Services" is any duty or labour completed by the Provider on behalf of, or directly for, the Client, whether by express Client instruction or not.

"Services Materials" are any and all drawings, emails, clarifications, change orders, variations and other documents or materials of any nature, including in electronic form, prepared by the Provider and/or Sub-consultants in carrying out the Agreed Services.

"Sub-consultants" are the consultants contracted by and paid by the Provider and specifically described to the Client as Sub-consultants.

"Site" is the land, building and other places made available by the Client, where the Contract Works are to be carried out.

"Time Charge Fees" are fees calculated by multiplying the hours of service provided by the agreed hourly time charge rate for each service provider. Unless otherwise stated the agreed hourly rate shall be a minimum of \$299 plus GST, travel and disbursements.

"Working Day" means every day excluding Saturdays and Sundays, all statutory holidays, Primary School Holidays, unsuitable weather days and a six (6) week period over Christmas and New Year starting the week prior to Christmas or at another time as set by the Provider.

"Workplace" means a place where work is being carried out, or is customarily carried out, under or in relation to this Agreement and includes the Site.

"You" shall mean the Client or Purchaser of the services described in the document DOC8743.

A reference in this Agreement to any person or party in the singular shall include the plural, and in the plural shall include the singular, and shall include reference to persons of both genders, and to Agreement parties whether in person, in partnership or a company or companies, incorporated society or other body or bodies recognised as a legal entity by statute.

Section 3 | The Brief

- 3.1 The Client agrees to provide the Provider with a Brief which clearly defines:
 - a) the Client's requirements, preferences and priorities for the Project;
 - b) the purpose for the structure, and the types of activities and tasks likely or intended to be carried out on the Site and in relation to the structure;
 - c) the safety requirements and objectives for the Project; and
 - d) all information reasonably available to the Client that relates to the Site and is reasonably necessary for the Provider to perform the Agreed Services in accordance with this Agreement.
- 3.2 The Client acknowledges that the Providers fees and charges exclude; GST, Territorial Authority charges, Separate Consultants' fees, hard/soft fit-out, printing, disbursements, or items supplied by others.
- 3.3 The Provider will use reasonable endeavours to design within the brief provided by the Client, however the Provider is instructed by the Client by providing a Brief to use their degree of skill to manipulate and alter the design as at the Providers sole discretion.
- 3.4 The Provider does not Guarantee in any way that the designed building, structure or project is able to be constructed within the Clients Budget. The Provider makes no commitment at anytime to the designs adherence to cost.
- 3.5 The Provider shall be responsible only for providing drawings containing information contained within the NZS3604 and the Building Code Clauses Acceptable Solutions (AS1) only. All other matters shall be by Separate Consultants, including Building Code Clauses described as VM1, and provided to the Provider as whole documents including all CAD details. Where the Separate Consultant does not include CAD details and these are required to be drawn by the Provider, an hourly charge of \$299 plus GST and disbursements (if any) shall be payable by the Client.

Section 4 | Authority

- 4.1 Prior to any Services starting:
 - a) Where the Client is an entity or multiple persons, the Client shall provide the Provider with a singular contact person to which the Provider shall communicate solely. Such person shall have the fully Authority of the Client to make decisions on the Clients behalf and provide instruction to the Provider.
 - b) The Client shall provide authorisation to the Provider for the Provider to act as Agent for the Client with respect to the Territorial Authority applications, if deemed so applicable by the Provider.
 - c) The Client shall provide instruction to the person who's details are listed as the Provider in DOC8743 or such person as the Provider nominates throughout the course of the relationship.

Section 5 | Levels of Service

- 5.1 Material change to the Providers Services Materials will not be made by the Client without the Providers written consent.
- 5.2 Unless Administration and/or Observation are included in the Agreed Services, the Provider has no obligation to answer any questions or make site visits during/following construction. If the Provider subsequently agrees to carry out such work, the work will be subject to all the conditions of this Agreement, and will be invoiced at the hourly rates of \$299 per hour exclusive of GST, travel at \$0.78 per kilometre and disbursements which shall also be payable by the Client.

Section 6 | Confidentiality

- 6.1 Confidentiality of all information will be maintained by both the Provider and Client for the duration of the Project, to the best of both parties abilities, except as is required for the reasonable needs of the Project at the absolute discretion of the Provider.
- 6.2 Computer files including BIMx models and other CAD files contain intellectual property that the Provider chooses to keep confidential. For this reason no computer file shall be made available to the Client in any form other than PDF.
- 6.3 The Client agrees that the Provider may make, store and rely upon photographs, audio recordings and/or video recordings applicable to the construction project and business functionality as a whole. These may include, but are not be limited to, telephone voice call recording, site photos and c.c.t.v. footage. The Provider shall only use these items in relation to the project or related business activities and shall distribute them only to parties relevant to the project, business activity or dispute. The Client shall not take photographs, or make audio and/or video recordings without the express written permission of the Provider.

Section 7 | Separate Consultants

- 7.1 Separate Consultants (and their scope of services) must be disclosed to the Provider before their appointment, and their conditions of engagement must include that:
 - a) The Provider is responsible only for coordinating their services, and
 - b) The Client must give all instructions to the Separate Consultants through the Provider or Provide a copy of the instruction to the Provider on request.
- 7.2 The Provider is entitled to rely on any information from, or services or work done by the Client, or for the Client, and has no responsibility or liability to the Client or any other person in relation to that information, service or work.
- 7.3 The Client wholly and irrevocably indemnifies the Provider for any lost earnings or other fiscal or time matters, against any persons claiming to be the rightful Copyright Owner of any Separate Consultants work provided by the Client, or otherwise, to the Provider.

Section 8 | Fees & Payments

- 8.1 If requested by the Provider, the Client shall make payment of any and all Invoices, Payment Claims, Services or Stage Values in full to the Provider prior to any relevant stage being undertaken by the Provider.
- 8.2 Accounts for fees, particularly hourly and disbursement costs, can be rendered weekly by the Provider or otherwise periodically. The Client must pay the account within 5 Calendar Days of date shown on the invoice without deduction.
- 8.3 Clients agents (or person purporting to be an agent) who enter into this Agreement on behalf of the Client shall be jointly and severally liable with the Client for the payment of all fees due to the Provider under this Agreement.
- 8.4 In the event that the Client has not paid an account within 5 Calendar Days of the due date, the Provider shall be entitled to suspend performance of the Agreed Services until payment (including any costs incurred in relation to the suspension) is received in full. The Provider shall not be liable to the Client or any other person for losses arising from suspension of the Agreed Services.
- 8.5 Interest shall be paid by the Client at the rate of 4.5% per month compounded monthly on all overdue accounts and the Client shall also pay any debt recovery costs.
- 8.6 Disputes over fees shall, notwithstanding Section 12 (Disputes), be referred immediately to an Expert for determination. If the parties cannot agree upon an Expert within two Working Days

of a dispute being raised, then the President of the Arbitrators and Mediators Institute of New Zealand will appoint the Expert. The Expert will deliver within 15 Working Days of appointment, a determination that will be binding on all parties. Without limitation, the Expert is entitled to award costs against either party, including but not limited to the costs of the Expert.

- 8.7 In the event of a fees dispute, the Client cannot use any of the Services Materials until the dispute is resolved to the Providers absolute satisfaction.

Section 9 | Intellectual Property Rights

- 9.1 All rights including copyright in the Services Materials belong to the Provider.
- 9.2 The Provider grants the Client a non-exclusive licence (which cannot be assigned) to use the Services Materials solely for purposes relating to the Project and for no other purpose ("the Licence").
- 9.3 The License is conditional upon the Client complying with all of the Client's obligations under this Agreement, including the payment of all fees and disbursements due.
- 9.4 If this Agreement ends before completion of the Agreed Services, the Licence will still apply but to the completed Services Materials only. Partially completed Services Materials cannot be used by the Client without the Providers prior written consent.
- 9.5 Future work on the Project using any part of the Services Materials for any alterations or extensions, without the Provider being appointed to provide related services, will require the Client to obtain the Providers prior written consent. Such consent will not be unreasonably withheld.
- 9.6 Re-using the Providers Service Materials is permitted only with the prior written consent of the Provider who is entitled to receive a royalty for each re-use.
- 9.7 Completion of the Agreed Services or the early termination of this Agreement the Client is entitled to retain one copy of the completed Services Materials in printed or passive electronic form such as PDF. The Provider will not be required to provide any of the Services Materials in any active electronic form.

Section 10 | Promotional Credits

- 10.1 The Provider must be credited by the Client or their representatives in any Project related brochure, or promotional material.
- 10.2 The Provider can:
- Display an appropriate promotional sign on the Site or in a clearly visible place nearby; and
 - Use the designs, drawings and photographs of the Project for the Providers own promotional and professional purposes (including appropriate awards).
 - Use the Clients logo or name in advertising and promotion, including website, and may alter the logo colours at it's discretion.

Section 11 | Providers Liability

- 11.1 To the maximum extent permitted by law, the liability of the Provider to the Client in respect of his or her Services for the project shall be strictly limited to a zero dollar value (\$0.00). The Client wholly and irrevocably indemnifies the Provider for any loss of current earnings, court costs or future earnings, wholly and completely in relation to the Services and Service Materials provided.
- 11.2 The Client, shall review and certify all Service Material for its intended use and shall not hold the Provider liable in any way for mistakes or omissions. The Client will be deemed to have accepted the plans and accepts Liability when the Client either instructs the Provider to continue with work, lodges with an Authority, or the Client uses the Plans for Pricing, Concepts or

any other purpose. The Client shall pay the Provider the sum of \$299 plus GST per hour plus disbursements to remedy any issues or matters found in the Service Materials.

- 11.3 The Provider will not be considered liable for any loss or damage resulting from any occurrence, mistake or omission where the Client, or any person acting on the behalf of the Client, has provided incomplete or inaccurate information to the Provider which has increased the time taken to provide the Agreed Services or Service Materials. Where the Client has provided incomplete or inaccurate information, the Provider is entitled to financial reparation for time incurred or incidental goods and /or services required at a rate of \$299 plus GST per hour plus disbursements and travel, if any.
- 11.4 The Provider shall not be liable to the Client, either in contract, under any act or stature, or in common law, for direct or indirect loss or damage suffered by the Client as the result of a breach by the Provider of his or her obligations under this Agreement.
- 11.5 Where the Client reports the Provider, or a person acting on behalf of the Provider with the Providers express written authority, or requires the Provider to attend or be in anyway involved in, a mediation or legal hearing of any sort, board, disciplinary committee, or any other hearing or meeting for the purposes of adjudication, discipline or resolution of any matter of any type, the Client fully indemnifies the Provider against all losses and financial inconveniences and agrees to pay all fines, infringements or financial inconveniences incurred by the Provider. This shall include, but not be limited to, total compensation for lost earnings at a rate of \$299 plus GST per hour plus disbursements, plus any legal fees incurred by the provider and any loss of earning potential incurred during and following resolution of the matter. Any loss of fees shall be wholly calculated at the absolute discretion of the Provider.
- 11.6 Any claim (whether in contract, tort or on any other legal basis) must be filed in Court, or any Tribunal which has jurisdiction to determine such a claim, within two years of the date of this Agreement or within two years of the date of the act or omission giving rise to the claim, whichever is the earlier, otherwise the parties will have no liability to each other. This clause will not adversely affect any time limitation defence available to a party under a statute.
- 11.7 The Providers employees, directors, officers, shareholders and agents are acknowledged by the Client to have no personal liability to the Client in connection with this Agreement or the performance of the Agreed Services under any and all circumstances. The Client acknowledges it has relied, and/or will rely, only on the corporate conduct of the Provider and shall only seek reparation or make claims against the Providers Limited Liability Company. Should the Client make a claim or complaint to any board or licensing committee, or court, or tribunal, or adjudicator, or any other person or party or committee, against the Providers employees, directors, officers agents or shareholders, whether individually, in part or as a whole, a sum of three times (3x) the Annual Salary of the employee named by the Client, or twenty times (20x) the service material total cost shall be payable by the Client to the Provider annually for a minimum of 50 years.
- 11.8 The Provider shall not be liable in any way for ensuring the Service Materials complies with the requirements of the Territorial Authority, Easements, Consent Notices, Subcontractor Reports or Recommendations, Land or Property Covenants or any other Statue, Act or other matter or contract. These should be considered by the Client prior to the certification of the Service Materials by the Client as outlined in clause 11.2.
- 11.9 The Client wholly and irrevocably indemnifies the Provider against any action brought by any Person or Entity claiming to be the Client, Purchaser, Associate or Otherwise of the Client. The Client acknowledges that the Service Materials are for the Clients use only. No liability lies between the Provider and any Client, Purchaser, Associate or Otherwise of the Client.

Section 12 | Disputes

- 12.1 Resolution of disputes must be attempted in good faith between the Client and the Provider within 10 Working Days of the dispute arising. Failing resolution within that period, either party may require the dispute to be referred to mediation. This clause 12.1 is not applicable to a fees dispute to which Section 8 applies.
- 12.2 If mediation has not occurred or settlement is not achieved within 30 Working Days of the notice requiring mediation, then the Client and the Provider may agree to refer the dispute to Arbitration or failing agreement, either party may refer the dispute to the Courts for resolution.
- 12.3 In the event of a dispute, other than a fees dispute to which Section 8 applies, the Provider may on expiry of the 10 Working Day resolution period stated in clause 12.1 and on 2 Working Days' notice in writing to the Client suspend its obligations under this Agreement. In that event the Provider will not be liable to the Client or any other person for any losses arising from such suspension.
- 12.4 Should a dispute arise for any reason, the Client cannot use any Services Materials to which the dispute may in any way relate until the dispute is resolved. The Provider will not be liable to the Client or any other person for any losses arising from the Client's inability to use the Services Materials.
- 12.5 The Client and Provider shall not make written, spoken or digital; remarks, reviews, comments, posts, comments, or otherwise against either party, at any time, that have a negative or defamatory tone or content.

Disbursements and any other fees or charges payable by the Client.

- 15.4 Any Changes to the Service Materials requested by the Client shall be done so using the Providers form entitled "Change Order Request".

Section 16 | Assignment/Termination

- 16.1 This Agreement cannot be assigned or transferred without the prior written consent of both parties, such consent not to be unreasonably withheld.
- 16.2 The Client or the Provider may terminate this Agreement by notice in writing to the other at their last known address or email address. This Agreement will end 5 Working Days after the notice is sent.
- 16.3 In the event the Client terminates this Agreement, the Client will pay the Provider immediately on demand, in addition to any outstanding amount due under this agreement, any loss of profits resulting from the Agreement's non-completion and any expenses and costs that the Provider reasonably incurred relating to ending the Agreement where such payment is fair and reasonable.
- 16.4 Should the Client terminate or cancel this Agreement, the Provider shall be entitled to keep any and all payments already made to the Provider.

Section 13 | Notice of Defects

- 13.1 Problems in design or any fault or defect that the Client becomes aware of will be notified to the Provider in writing not later than 30 Working Days after the Client becomes aware of it. The Client shall pay the Provider the sum of \$299 + GST per hour plus disbursements to remedy any defects or matters found in the Service Materials.

Section 17 | Jurisdiction & Privacy

- 17.1 The laws of New Zealand will govern this Agreement and the New Zealand Courts will have exclusive jurisdiction in respect of this Agreement.
- 17.2 The Client acknowledges that the information included in this Agreement and otherwise provided by them will be disclosed to any parties relevant to compliance, guarantee, finance and construction at the Providers absolute discretion.

Section 14 | Health & Safety

- 14.1 For the term of this Agreement, the Client shall be the party responsible for implementing, managing and overseeing a Health and Safety Management plan. The Client shall be the PCBU as described in the relevant Act. For avoidance of doubt, the Provider shall not at anytime manage the Health and Safety of the project where its Service Materials are used.
- 14.2 The Client shall make all reasonable efforts to ensure the Provider is compliant with all Acts and Statues for the duration of this agreement.

Section 18 | Insurance

- 18.1 The Provider holds Professional Indemnity Insurance for a sum not less than \$250,000, subject to the various terms, exclusions and limitations of the policy. The Provider will use its reasonable endeavours to obtain insurance on similar terms for two years from the date of expiry of its insurance cover. The Client agrees to be bound by the various terms, exclusions and limitations of the policy and shall not make claims outside of these.
- 18.2 If a greater amount of insurance indemnity is required by the Client, the cost of the additional amount will be at the Client's expense. Such increase in indemnity will not necessarily increase the Provider maximum aggregate liability to the Client as this is limited to the value of the Providers Fee.

Section 15 | Variations & Change Orders

- 15.1 Any variations to this Agreement, including to the scope and nature of the Agreed Services, must be in writing and will be subject to all the terms and conditions of this Agreement. They must be agreed upon by both the Client and the Provider.
- 15.2 Variations to the Agreed Services listed in DOC8743 may be requested by the Client. In the event the Provider agrees to undertake the variations then the Provider will be entitled to charge on a time and cost basis at an hourly rate of \$299 Plus GST and Disbursements and any other fees or charges payable by the Client.
- 15.3 If the Agreed Services need to be delayed or accelerated because of changes in the Client's instructions or requirements, or due to any reasons beyond the Providers reasonable control, including but not limited to Sub Contracting Parties and Separate Consultants, then irrespective of the manner in which fees are being charged, the Provider shall be entitled to additional fees on a time and cost basis of \$299 Plus GST hourly and

Section 19 | Indemnity

- 19.1 The Client indemnifies the Provider and its directors, employees, contractors and agents against any liability for any direct, indirect or consequential injury, loss, damage or cost arising directly or indirectly out of any act or omission or breach by the Client of the terms of this Agreement.
- 19.2 To the extent permitted by law, all warranties, conditions or obligations imposed on the Provider at law, in equity, or otherwise are expressly excluded.
- 19.3 When the Client engages the Provider to perform the Agreed Services for the purposes of a business:
- (a) the parties acknowledge and agree that:
 - (i) the Client is acquiring the goods and/or services covered by this Agreement for the purposes of a business in terms of sections 2 and 43(2) of the Consumer Guarantees Act 1993;

- (ii) the goods and/or services are both supplied and acquired in trade for the purposes of the Fair Trading Act 1986 and the parties agree to contract out of sections 9, 12A, and 13; and
 - (b) the Client agrees that all warranties, conditions, and other terms implied by the Consumer Guarantees Act 1993 or sections 9, 12A, and 13 of the Fair Trading Act 1986 are excluded from this Agreement to the fullest extent permitted by law and the parties further acknowledge and agree that it is fair and reasonable that the parties are bound by this clause.
- 19.4 To the extent permitted by law, the Provider or its directors, employees, contractors and agents shall not be liable for any loss, damage or liability of any kind whatsoever (including indirect or consequential losses or loss of profit, business, revenue, or goodwill) whether suffered or incurred by the Client or another person and whether in contract, tort (including negligence), or otherwise, and whether such loss or damage arises directly or indirectly from the performance of the Agreed Services.
- 19.5 If, for any reason a court finds that the Provider is liable to the Client then, to the maximum extent permitted by law, such liability will be limited to the Provider's Fee only.

Section 20 | Privacy Act 2020

- 20.1 Where the Client is a natural person, for the purposes of the Privacy Act 2020, the Client authorises the Provider:
- (a) to collect, retain and use information about the Client, and/or the Client's Customers, from any person for the purpose of assessing the Client's creditworthiness;
 - (b) to disclose information about the Client and/or the Client's Customers:
 - (i) to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to the Client's obligations under this Agreement;
 - (ii) to such persons as may be necessary or desirable to enable the Provider to exercise any power or enforce or attempt to enforce any of the Provider's rights, remedies, and powers under this Agreement.

Section 21 | General

- 21.1 If any provision of this Agreement is held to be unenforceable, illegal, or invalid by any court or tribunal:
- (a) the rest of this Agreement will remain in full force and effect;
 - (b) the parties will co-operate to ensure that the spirit and intention of this Agreement is carried out as far as is reasonably possible; and
 - (c) the parties will, if necessary, amend this Agreement accordingly.
- 21.2 No failure or delay by a party to exercise (in whole or in part) any right, power or remedy under this Agreement will operate as a waiver of that right, power or remedy.

- 21.3 The Provider may set-off any money paid against any debt or liability of the Client to the Provider.
- 21.4 The rights, powers, and remedies in this Agreement are in addition to, and do not exclude or limit, any rights, powers, or remedies provided at law or in equity unless stated otherwise in this Agreement.
- 21.5 The Provider will not be in breach of this Agreement and will not be liable for any delay attributable in whole or in part to action by any government or governmental agency or other external agency or event, including natural disaster or emergency, pandemic, epidemic, industrial action, civil disorder, equipment failure, banking or computer system disruption or interruption of power supplies or any other event beyond the Provider's control.
- 21.6 The rule of construction known as the contra proferentem rule does not apply to this Agreement.

Section 22 | Guarantee

- 22.1 In consideration of the Client entering into this Agreement at the Guarantors' request, the Guarantors (and if more than one, then the Guarantors jointly and severally) unconditionally and irrevocably:
- (a) Guarantee to the Provider payment of the total amount owing by the Client under this Agreement and the performance by the Client of all of the Client's obligations in this Agreement; and
 - (b) Indemnify the Provider against any losses the Provider might suffer as a result of the Client's breach of this Agreement or should this Agreement be lawfully disclaimed;
- 4.2 The Guarantors covenant with the Provider that:
- (a) No release delay or other indulgence given to the Client whereby the Guarantors would have been released had the Guarantors been merely a surety shall release prejudice or affect the liability of the Guarantors as a guarantor or as an indemnifier;
 - (b) the Guarantors may be treated as principal debtors and the Provider shall be under no obligation to take proceedings against the Client before taking proceedings against the Guarantors;
 - (c) This guarantee is for the benefit of and may be enforced by any person entitled for the time being to receive the Provider's Fee;
 - (d) Any permitted assignment of this Agreement shall not release the Guarantors from liability under this guarantee;
 - (e) Should there be more than one Guarantor their liability under this guarantee shall be joint and several;
 - (f) This guarantee is a continuing guarantee and is irrevocable and remains in full force and effect until all the Client's obligations to the Provider under this Agreement have been satisfied.

{end: General Provisions of Agreement}



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10 January 2020