

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 "HSS" means Health & Safety Systems Limited, its successors and assigns or any person acting on behalf of and with the authority of Health & Safety Systems Limited.
- 1.3 "Client" means the person/s, entities, company or any person acting on behalf of and with the authority of the Client requesting HSS 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 "Incidental Items" means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by HSS in the course of it conducting, or supplying to the Client, any Services.
- 1.5 "Services" mean all Services supplied by HSS to the Client at the Client's request from time to time.
- 1.6 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (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) and pricing details.
- 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 ordering from the 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 ordering Services 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 HSS and the Client in accordance with clause 8 of this Contract.

2. Interpretation

- 2.1 In this Contract, unless it is stated to the contrary or the context requires otherwise:
- (a) words in the singular shall include the plural (and vice versa), words importing one gender shall include every gender, a reference to a person shall include any other legal entity of whatsoever kind (and vice versa) and where a word or a phrase is given a defined meaning in this Contract, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning; and
 - (b) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction); and
 - (c) the words 'include' and 'including', and any variants of those words, will be treated as if followed by the words 'without limitation'; and
 - (d) a reference to dollars (\$), is a reference to New Zealand currency; and
 - (e) this Contract is not to be interpreted against the Consultant merely because they prepared this Contract; and
 - (f) the following order of precedence (in descending order) will be applied to resolve any conflict, ambiguity or discrepancy in this Contract:
 - (i) Terms and Conditions of Trade; and
 - (ii) any schedules.
 - (g) any reference (other than in the calculation of consideration, or of any indemnity, reimbursement or similar amount) to cost, expense or other similar amount is a reference to that cost exclusive of GST.

3. Acceptance

- 3.1 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 HSS.
- 3.2 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.
- 3.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 3.4 The Client acknowledges that the supply of Services on credit shall not take effect until the Client has completed a credit application with HSS and it has been approved with a credit limit established for the account.
- 3.5 In the event that the supply of Services request exceeds the Clients credit limit and/or the account exceeds the payment terms, HSS reserves the right to refuse delivery.
- 3.6 Where HSS gives any advice, recommendation, information, assistance or service provided by HSS in relation to Services supplied is given in good faith to the Client or the Client's agent and is based on HSS's own knowledge and experience and shall be accepted without liability on the part of HSS. Where such advice or recommendations is not acted upon then HSS shall require the Client or their agent to authorise commencement of the Services in writing. HSS shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 3.7 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.

4. Authorised Representatives

- 4.1 Unless otherwise limited as per clause 4.2, the Client agrees that should the Client introduce any third party to HSS as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Services, and/or to request

- any variation thereto, on the Client's behalf, or the Client otherwise notifies HSS in writing that said person is no longer the Client's duly authorised representative).
- 4.2 In the event that the Client's duly authorised representative as per clause 4.1 is to have only limited authority to act on the Client's behalf, then the Client must specifically and clearly advise HSS in writing of the parameters of the limited authority granted to their representative.
- 4.3 The Client specifically acknowledges and accepts that they will be solely liable to HSS for all additional costs incurred by HSS (including HSS's profit margin) in providing any Services, or variation/s thereto, requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).
- 5. Nominated Consultants**
- 5.1 HSS shall engage consultants (as specified in the quotation) acting solely as agent on behalf of the Client and the following shall apply:
- (a) HSS shall be entitled to enter into contracts with such consultants in the name of the Client; and
 - (b) the Client shall be responsible for all payments to such consultants and shall reimburse HSS for the payment thereof by the due date for payment, as specified by HSS on any invoice or other form as being the date for payment; and
 - (c) HSS does not warrant the accuracy or quality of the consultant's work or warrant that the recommendations of the consultant are appropriate or adequate or are fit for their purpose or that they are not given negligently. The Client agrees that they shall not make any demand on HSS, or commence any legal proceedings against HSS, and HSS shall have no liability, whether in negligence or otherwise, to the Client in relation to any work performed by the consultant.
- 6. Errors and Omissions**
- 6.1 The Client acknowledges and accepts that HSS 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 HSS 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 HSS in respect of the Services.
- 6.2 In the event such an error and/or omission occurs in accordance with clause 6.1, and is not attributable to the negligence and/or wilful misconduct of HSS; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 7. Change in Control**
- 7.1 The Client shall give HSS 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 HSS as a result of the Client's failure to comply with this clause.
- 8. Price and Payment**
- 8.1 At HSS's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by HSS to the Client; or
 - (b) the Price as at the date of delivery of the Services according to HSS's current price list; or
 - (c) HSS's quoted price (subject to clause 8.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 8.2 HSS reserves the right to change the Price:
- (a) if a variation to the Services originally scheduled (including any applicable plans, specifications or change in design) is requested; or
 - (b) where additional Services are required due to the discovery of change in regulations, bylaws and/or safety standards which are only discovered on commencement of the Services; or
 - (c) in the event of increases to HSS in the cost of labour or materials which are beyond HSS's control.
- 8.3 Variations will be charged for on the basis of HSS's quotation, and will be detailed in writing, and shown as variations on HSS's invoice. The Client shall be required to respond to any variation submitted by HSS within ten (10) working days. Failure to do so will entitle HSS 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.
- 8.4 At HSS's sole discretion a non-refundable deposit may be required.
- 8.5 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by HSS, which may be:
- (a) on completion of the Services;
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) by way of instalments/progress payments in accordance with HSS's payment schedule;
 - (d) 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;
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by HSS.
- 8.6 Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and HSS.
- 8.7 HSS may in its discretion allocate any payment received from the Client towards any invoice that HSS determines and may do so at the time of receipt or at any time afterwards. On any default by the Client HSS may re-allocate any payments previously received and allocated. In the absence of any payment allocation by HSS, payment will be deemed to be allocated in such manner as preserves the maximum value of HSS's Purchase Money Security Interest (as defined in the PPSA) in the Services.
- 8.8 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 HSS nor to withhold payment of any invoice because part of that invoice is in dispute.
- 8.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to HSS an amount equal to any GST HSS must pay for any supply by HSS under this or any other agreement for providing HSS'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.

9. Provision of the Services

- 9.1 Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this Contract.
- 9.2 Where HSS has affected delivery all risk passes to the Client as per clause 8.1 and the Client claims the Incidental Items have been stolen it shall be the Client's responsibility to notify the police and forward evidence to HSS, this shall not excuse the Client from fulfilling their financial obligations under this Contract.
- 9.3 Any time specified by HSS for delivery of the Services is an estimate only and HSS 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 HSS is unable to supply the Services as agreed solely due to any action or inaction of the Client then HSS shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.

10. Risk

- 10.1 Irrespective of whether HSS retains ownership of any Incidental Items 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 HSS may repossess the Incidental Items. The Client must insure all Incidental Items on or before delivery.
- 10.2 HSS reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Incidental Items as a result of the Client's failure to insure in accordance with clause 10.1.

11. Extension of Contract Period

- 11.1 HSS shall be entitled to claim an extension to the term of the Contract in the event of delays resulting from any matter whatsoever which is not entirely under the control of HSS. These matters shall include, but are not limited to delays caused by:
- (a) response(s) to information request(s) made by HSS to the Client not being available when required;
 - (b) information from consultants, councils or referral agencies not being available when required;
 - (c) any other variation to the contract;
 - (d) approval authorities response times for requests for preliminary decisions/information;
 - (e) time taken by the approval authority for the granting of required approvals;
 - (f) changes to the design brief being requested by the Client;
 - (g) required changes to the scope of works that must be made by HSS.

12. Access

- 12.1 The Client shall ensure that HSS has clear and free access to the nominated site at all times to enable them to undertake the Services. HSS shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of HSS.

13. Compliance with Laws

- 13.1 The Client and HSS shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Services.
- 13.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.

14. Title

- 14.1 HSS and the Client agree that where it is intended that the ownership of Incidental Items is to pass to the Client that such ownership shall not pass until:
- (a) the Client has paid HSS all amounts owing for the Services; and
 - (b) the Client has met all other obligations due by the Client to HSS in respect of all contracts between HSS and the Client.
- 14.2 Receipt by HSS 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 HSS's ownership or rights in respect of the Incidental Items shall continue.
- 14.3 It is further agreed that:
- (a) the Client is only a bailee of the Incidental Items and must return the Incidental Items to HSS immediately upon request by HSS;
 - (b) the Client holds the benefit of the Client's insurance of the Incidental Items on trust for HSS and must pay to HSS the proceeds of any insurance in the event of the Incidental Items being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Incidental Items. If the Client sells, disposes or parts with possession of the Incidental Items then the Client must hold the proceeds of sale of the Incidental Items on trust for HSS and must pay or deliver the proceeds to HSS on demand;
 - (d) the Client should not convert or process the Incidental Items 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 HSS and must dispose of or return the resulting product to HSS as HSS so directs;
 - (e) the Client shall not charge or grant an encumbrance over the Incidental Items nor grant nor otherwise give away any interest in the Incidental Items while they remain the property of HSS;
 - (f) the Client irrevocably authorises HSS to enter any premises where HSS believes the Incidental Items are kept and recover possession of the Incidental Items.

15. Personal Property Securities Act 1999 ("PPSA")

- 15.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:

Health & Safety Systems Limited – Terms & Conditions of Trade

- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
(b) a security interest is taken in all Incidental Items and/or collateral (account) – being a monetary obligation of the Client to HSS for Services – that have previously been supplied and that will be supplied in the future by HSS to the Client.
- 15.2 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 HSS may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, HSS for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Incidental Items charged thereby;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Incidental Items and/or collateral (account) in favour of a third party without the prior written consent of HSS.
- 15.3 HSS and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 15.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 15.5 Unless otherwise agreed to in writing by HSS, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 15.6 The Client shall unconditionally ratify any actions taken by HSS under clauses 15.1 to 15.5.
- 15.7 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 16. Security and Charge**
- 16.1 In consideration of HSS 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).
- 16.2 The Client indemnifies HSS from and against all HSS's costs and disbursements including legal costs of a solicitor and own client basis incurred in exercising HSS's rights under this clause.
- 16.3 The Client irrevocably appoints HSS and each director of HSS as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client's behalf.
- 17. Consumer Guarantees Act 1993**
- 17.1 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 HSS to the Client.
- 18. Intellectual Property**
- 18.1 If during the course of providing the Services, HSS designs, develops, discovers, or supplies the Client with any Incidental Items, information, ideas, documentation (including designs, plans, reports, proposals, designs, programs, strategies, plans, specifications and other materials and aids, etc.), new concepts, products or processes which are capable of being patented, then copyright in that Intellectual Property shall remain the property of HSS.
- 18.2 The Client **must not** reproduce, copy or use it in any manner without the prior written permission of HSS **and no copies of such Intellectual Property are to be retained, used or passed on to any third party by the Client.**
- 18.3 The Client agrees that HSS may (at no cost) use for the purposes of marketing or entry into any competition, any Incidental Items which HSS has created for the Client.
- 18.4 The Client warrants that all designs, specifications, information and instructions to HSS will not cause HSS to infringe any patent, registered design or trademark in the execution of the Client's order. Furthermore, the Client agrees to indemnify, defend, and hold HSS harmless from all loss incurred or suffered by HSS arising from any claims (including third party claims) or demands against them where such loss was caused by any infringement or alleged infringement of any person's Intellectual Property rights by the Client during its use of the Services.
- 18.5 Upon completion of any agreement with HSS, the Client must return to HSS all copies of any Intellectual Property (whether in written, electronic or other form), except as otherwise agreed with HSS.
- 19. Default and Consequences of Default**
- 19.1 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 HSS's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes HSS any money the Client shall indemnify HSS from and against all costs and disbursements incurred by HSS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, HSS's collection agency costs, and bank dishonour fees).
- 19.3 Further to any other rights or remedies HSS may have under this Contract, if a Client has made payment to HSS, 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 HSS under this clause 19, 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.
- 19.4 Without prejudice to HSS's other remedies at law HSS shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to HSS shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to HSS becomes overdue, or in HSS'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 HSS;
- (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.

20. Cancellation

- 20.1 Without prejudice to any other remedies HSS may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions HSS may suspend or terminate the supply of Services to the Client. HSS will not be liable to the Client for any loss or damage the Client suffers because HSS has exercised its rights under this clause.
- 20.2 HSS 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 HSS shall repay to the Client any money paid by the Client for the Services. HSS shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 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 HSS as a direct result of the cancellation (including, but not limited to, any loss of profits).

21. Privacy Policy

- 21.1 All emails, documents, images or other recorded information held or used by HSS is Personal Information as defined and referred to in clause 21.3 and therefore considered confidential. HSS 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” then the EU Data Privacy Laws (including the General Data Protection Regulation “GDPR”) (collectively, “EU Data Privacy Laws”). HSS acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by HSS that may result in serious harm to the Client, HSS 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.
- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to HSS in respect of Cookies where transactions for purchases/orders transpire directly from HSS’s website. HSS 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 HSS when HSS sends an email to the Client, so HSS may collect and review that information (“collectively Personal Information”)
- In order to enable / disable the collection of Personal Information by way of Cookies, 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 proceeding with a purchase/order via HSS’s website.
- 21.3 The Client authorises HSS or HSS’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 HSS from the Client directly or obtained by HSS 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.
- 21.4 Where the Client is an individual the authorities under clause 21.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 21.5 The Client shall have the right to request HSS for a copy of the Personal Information about the Client retained by HSS and the right to request HSS to correct any incorrect Personal Information about the Client held by HSS.

22. Suspension of Services

- 22.1 Where the Contract is subject to the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
- (a) HSS has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
 - (i) the payment is not paid in full by the due date for payment in accordance with clause 8.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator’s notice that the Client must pay an amount to HSS by a particular date; and
 - (iv) HSS has given written notice to the Client of its intention to suspend the carrying out of work under the Contract.
 - (b) if HSS suspends work, it:
 - (i) is not in breach of Contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
 - (iii) is entitled to an extension of time to complete the Contract; and
 - (iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator’s determination has not been complied with.
 - (c) if HSS exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to HSS under the Contract and Commercial Law Act 2017; or
 - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of HSS suspending work under this provision;
 - (d) due to any act or omission by the Client, the Client effectively precludes HSS from continuing the Services or performing or complying with HSS’s obligations under this Contract, then without prejudice to HSS’s other rights and remedies, HSS may suspend the Services

immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by HSS as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.

22.2 If pursuant to any right conferred by this Contract, HSS suspends the Services and the default that led to that suspension continues unremedied subject to clause 20.1 for at least ten (10) working days, HSS shall be entitled to terminate the Contract, in accordance with clause 20.

23. Service of Notices

23.1 Any written notice given under this Contract shall be deemed to have been given and received:

- (a) 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;
- (b) by leaving it at and/or posting it to the address of the other party as stated in this Contract;
- (c) by sending it by courier and/or tracked post to the address of the other party as stated in this Contract;
- (d) if sent by email to the other party's last known email address.
- (e) by handing the notice to the other party, in person;

23.2 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.

24. Trusts

24.1 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 HSS may have notice of the Trust, the Client covenants with HSS 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 HSS (HSS 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.

25. General

25.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).

25.2 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.

25.3 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 courts of New Zealand.

25.4 HSS 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 HSS of these terms and conditions (alternatively HSS's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).

25.5 HSS may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.

25.6 The Client cannot licence or assign without the written approval of HSS.

25.7 HSS 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 HSS's sub-contractors without the authority of HSS.

25.8 The Client agrees that HSS 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 HSS to provide Services to the Client.

25.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, earthquake, tsunami, volcanic eruption, fire, flood, storm (including, but not limited to, cyber- attack or internet outage) or other event beyond the reasonable control of either party.

25.10 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.