

SECURITY SERVICES AGREEMENT

Date of this Agreement: [Publish Date]

PROTECTING

YOUR FUTURE



Section A Agreement

Between **First Security Guard Services Limited** (Company No. 945773)

and **The Customer** *named in Section B*

First Security Guard Services Limited agrees to provide, and the Customer agrees to purchase, the Services, on the terms and conditions set out in this Agreement.

The Customer has read and understood and accepts this Agreement comprising Sections A, B, C & D; and agrees that the information and details set out in Section B and any appendixes or attachments are correct.

Signed for and on behalf of the Customer (by its authorised signatory):	Signed for and on behalf of First Security Guard Services Limited:
Name _____	Name _____
Position _____	Position _____
Date _____	Date _____
Signature _____	Signature _____

Section B Details and Specifications

Customer Details

Full legal name _____

Trading name (if different) _____

Company Number _____

Premises for the Services As set out in Annexure A

Customer Contact Details

Postal address _____

Invoice address (if different) _____

Key contact person Name: _____
Number: _____
Email: _____

Operations contact (24/7)
(optional) Name: _____
Number: _____
Email: _____

First Security Contact Details

Account Manager Name: _____
Number: _____
Email: _____

Backup Contact sales@firstsecurity.co.nz

Address for Notices

First Security		Customer	
Address	Level 16 Aon Centre, 29 Customs Street West, Auckland, 1010, New Zealand	Address	
Email	legal@firstsecurity.co.nz	Email	

Term (refer to Section C, clause 4)

Commencement Date	End Date
Enter date here	Enter date here

Payment Terms (please select one)

- 20th of the month following supply of services
- Invoicing one month in advance and payment within 7 days
- Invoicing in advance and payment 24 hours in advance of supply of services

Insurance Cover

Maximum liability	Public liability cover
\$10,000	Minimum, \$5M

Mandated Wage Rates

The Services are based on paying the following wage rate to the standard security guard/s.

- Minimum Wage**
- Living Wage** Customer agrees to pay the living wage (LW), including any increases to the LW. All other rates will be pegged / indexed to the minimum wage.
- Other (please list)** _____

Detailed Description of Services

Remotely Monitored Camera Services

- Solar powered cameras deployed at the Premises feature motion detection analytics that detects the presence of people and large objects.
- The camera technology can differentiate between human and animal shapes and provides both “eyes and ears on” capabilities.
- Upon activation, the camera technology will also produce an audible siren and strobe light. Camera activations will be recorded.
- First Security will remotely monitor the cameras during the hours agreed and will be alerted when motion is detected.
- First Security will assess the situation when alerted and will follow a process pre-agreed with you. This may include:
 - Two-way communication with the persons present;
 - Calling NZ Police;
 - Dispatching a FIRST Security mobile patrol unit; and
 - Calling your assigned Operations Contact as detailed in Section B.

Charges

Remotely Monitored Camera Services

Option	Camera type & location	Installation / Deinstallation costs (One off)	Set up costs (One off)	Monitoring (Per month)*
1	Single camera tower (Auckland area)	\$750	\$125	\$
2	Single camera tower (Northland / Waikato / Thames)	\$1,250	\$240	\$
3	Dual camera tower (Auckland area)	\$750	\$125	\$
4	Dual camera tower (Northland / Waikato / Thames)	\$1,250	\$240	\$
5	Dual camera tower with APNR (Auckland area)	\$750	\$125	\$
6	Dual camera tower with APNR (Northland / Waikato/ Thames)	\$1,250	\$240	\$

NB: Locations outside of Auckland, Northland, Thames and Waikato may incur additional installation / deinstallation costs.

Additional Services

Service	Unit	Rate	Public holiday rate	Terms
Remotely Monitored Camera Services – Incident Management	Response	\$90.00	\$90.00	Allows up to 30 minutes for the assessment and triage of an alert
Mobile patrol	Response	\$90.00	\$90.00	Allows up to 30 minutes on site
Security officer	Hour	\$55.00	\$137.50	Minimum order of 8 hours

*Special Promotion

If the Initial Term (refer to clause 4.1, Section C) is twelve (12) months or more, then the following discounts apply for the first twelve (12) months of the Term: (excluding one-off installation, set up and deinstallation costs and additional services):

- Where monitoring cost exceeds \$2000 per month, a discount of \$200 per month
- Where monitoring cost exceeds \$3000 per month, a discount of \$300 per month
- Where monitoring costs exceeds \$4000 per month, a discount of \$500 per month

Section C

General Terms and Conditions

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions: In this Agreement, unless the context otherwise requires:

“Ad Hoc Guard Services” means as needed, on demand, casual or unscheduled Static Guard Services.

“Agreement” means this Agreement comprising Sections A to C and annexures (if any).

“Alarm Response Services” means attendance of a Guard at Customer Premises to investigate security of the Premises following activation of a security alarm and notification of the alarm to First Security by the Customer or a third-party monitoring service or technology.

“Business Day” means any day which is not a Saturday, Sunday or public holiday in Auckland.

“Casual Guard Services” has the same meaning as Ad Hoc Guard Services defined above.

“Casual Patrol” means supply of Mobile Patrol Services on an as needed, short term or otherwise non-permanent basis.

“Charges” means all fees, disbursements, reimbursements and other amounts payable by the Customer pursuant to this Agreement.

“Clause” means a clause or paragraph of this Section C.

“Commencement Date” means the commencement date of the Term specified in Section B during which the Services are provided.

“Confidential Information” means all trade secrets and information in any form about or owned by a party that is not in the public domain (other than through a breach of confidentiality by any person), including the terms of this Agreement; the nature and pricing of the Services; information about a party’s business, staff, finances, know-how, operations, customers, suppliers.

“Customer”, “you” and “your” means the Customer named in Section B and includes (where appropriate) its officers, employees, contractors, agents, successors and assignees and Related Parties.

“Customer Policies and Procedures” means the Customer’s operational, health and safety and other relevant policies, procedures, manuals, directions, and other reasonable requirements related to provision of the Services.

“End Date” means the end date specified in Section B.

“First Security”, “we”, “us” and “our” means First Security Guard Services Limited and includes (where appropriate) its officers, employees, contractors, agents, successors and assignees and Related Parties.

“Force Majeure Event” means an event, circumstance or force beyond the reasonable control of the non-performing party, such as but not limited to natural disaster, war or terrorist act, strike, lockout, work stoppage or other labour hindrance, sabotage, riot, civil disturbance, loss or interruption of access to utilities or essential supplies, national emergency, epidemic or public health emergency.

“Guard” means a First Security employee or Subcontractor who provides the Services to the Customer for the purposes of this Agreement.

“GST” means goods and services tax chargeable, or to which a person may be liable, under the Goods and Services Tax Act 1985, or any replacement thereof.

“Insolvency Event” means if a party is wound up or becomes externally administered; has a liquidator or receiver appointed by any person; is adjudicated bankrupt or cannot pay all its debts when due.

“KPIs” means the agreed key performance indicators or other measurements as specified in Section B or annexed to this Agreement (if any).

“Living Wage Rates” means the current New Zealand Living Wage rate recognised by Living Wage Aotearoa New Zealand (or its replacement organisation) from time to time.

“Minimum Wage Rates” means the minimum wage rates set by the Government under the Minimum Wage Act 1983 and associated regulations as updated from time to time and collective bargaining agreement minimum wage or allowance rates applicable to the Services as may be in force from time to time.

“Mobile Patrol Services” means services where a Guard attends and patrols or inspects Premises or carries out other services at Premises for brief periods of time (that do not constitute Static Guard attendances) on a regular or repeat basis.

“Remotely Monitored Camera Services” means services where First Security deploys a solar powered camera at the Premises, remotely monitors the camera during the agreed hours and provides a response service when alerted to alarm activations.

“Premises” means the premises, buildings, sites or locations at which the Services are provided as specified in this Agreement, and as may be varied from time to time in accordance with this Agreement. Premises also includes Premises owned or occupied by a Customer Related Party if the Services pursuant to this Agreement are also provided to Customer Related Parties.

“Related Party” means a third party associated with a party to this Agreement that is a Related Company (as defined in the Companies Act 1993); or is part of a group or network that trade under the same trademarks or brand.

“Scheduled and Regular Services” means all Services specified in this Agreement (or any variation thereto) to be provided on a regular, repeat, scheduled, rostered or ongoing basis.

“Services” means the security guard services as described in Section B and if applicable any appendixes, and as may be varied from time to time in accordance with this Agreement.

“Static Guard” means an on-Premises Guard attending to security of a single Premises or location within the Premises on a rostered or regular basis.

“Subcontractor” means any independently owned and operated supplier authorised to provide security services on its own account, that is engaged by First Security as its representative to provide the Services to the Customer.

“Term” means the term of this Agreement and provision of the Services as described in Clause 4.

1.2. **Interpretation:** In this Agreement, unless the context otherwise requires:

- (a) singular will include plural and vice versa;
- (b) reference to a company or other entity includes reference to a person and vice versa;
- (c) reference to a statute or regulation will include all amendments and re-enactments thereof and any subordinate legislation and regulations made thereunder;
- (d) the term “including” means “including without limitation”;
- (e) any obligation not to do anything will be deemed to include an obligation not to suffer, permit or cause that thing to be done;
- (f) unless specifically provided for therein, where any annexure conflicts with the provisions in Section C, the terms of Section C shall prevail.

2. THE SERVICES

2.1. First Security shall provide you with the Services, and any other services you may request and which we agree in writing to provide, on the terms set out in this Agreement. Unless otherwise set out in Section B or anywhere else in this Agreement, we shall determine, in our sole discretion, the manner and means by which the Services are performed.

2.2. First Security agrees to supply the Services at the Premises in a lawful and justified manner, exercising due care and skill reasonably appropriate in all the circumstances. While an objective of the Services is to prevent or discourage harm or loss to property or to persons, First Security does not undertake or warrant that provision of the Services will prevent all or any breach of security or damage or loss to property or persons.

2.3. **Customer Policies and Procedures:** First Security agrees to comply with reasonable Customer Policies and Procedures that have been agreed to by First Security and are annexed to this Agreement; or that are notified to First Security and are not inconsistent with the terms of this Agreement and do not require First Security to act in a manner that in First Security’s opinion would be unlawful, unreasonable, impact materially on the cost of providing the Services, or could expose First Security or its employees or other persons to unnecessary risk or harm.

- (a) Where First Security has agreed in writing to comply with a Customer Policy, and that Customer Policy contains terms that are inconsistent with this Agreement, the terms of this Agreement will take precedence.

- (b) First Security may give notice at any time of any objection to any current or intended Customer Policies and Procedures and the parties will discuss and negotiate in good faith to resolve any such objection.
 - (c) In the event of any situation where, in First Security or a Guard's reasonable opinion, complying with the Customer Policies and Procedures would conflict with First Security or its Guards' obligations to act in a lawful, reasonable, appropriate or safe manner; failure to comply with the Customer Policies and Procedures shall not be a breach of First Security's obligations under this Agreement and First Security shall have no liability to the Customer or any third party for any outcome or consequence.
- 2.4. **KPIs:** First Security will take reasonable steps to achieve the KPIs (if applicable) during the Term. KPIs and the measurement and review process may be updated from time to time by mutual agreement. First Security shall not be held as having failed to achieve a KPI or required to take remedial steps where the failure or deficiency is due to or materially contributed to by a situation described in Clauses 2.3(c) or 2.7(c).
- 2.5. **Scheduled and Regular Services:** The Customer agrees to pay the full Charges for the Scheduled or Regular Services throughout the Term, even if the Customer suspends or cancels the Services, unless a variation, cancellation or suspension is agreed to during the Term by First Security in its sole discretion, in writing.
- 2.6. **Static Guard Services:** Where the Services include Static Guard Services, First Security undertakes to supply Guards for the roles to deliver the tasks and duties specified in this Agreement, or as varied by mutual agreement, and no other roles and duties.
- 2.7. **Mobile Patrol and Alarm Response Services:**
- (a) Where the Services include Mobile Patrol Services, unless specifically provided for in Section B, or agreed to by First Security in writing; the number, frequency or timing of Mobile Patrol attendances at the Premises shall be random as decided by First Security in its reasonable discretion.
 - (b) The initial Charge for an Alarm Response or Patrol attendance applies for initial attendance by the responding Guard/s for the period stated in Section B (or part thereof), then for each subsequent period (or part thereof) of attendance.
 - (c) First Security shall use its reasonable endeavours to provide alarm response attendances within the current NZ Standard 4421 (Guard and Patrol Security Services) timeframes but does not warrant that this is possible in all circumstances and has no liability to the Customer or any third party if the standard is not achieved on any occasion due to any circumstances outside First Security's reasonable control. Measurement of response time starts once the Monitoring Service supplier has provided accurate and complete information to First Security, identifying the exact location of the alarm, and the nature of any actual or potential threat or hazard.
 - (d) A minimum notice period of 24 hours must be provided for all Casual Patrol Services orders if a specific time is requested by the Customer.
 - (e) First Security is entitled to charge the full cost of an Alarm Response call out once an order has been placed by the Customer.
 - (f) The Customer irrevocably authorises First Security to attend Alarm Response call outs to the Premises and comply with follow-up instructions made by the alarm monitoring supplier/s named on this Agreement as the Customer's authorised agent. The Customer must notify First Security in writing of any change to its alarm monitoring supplier.
- 2.8. **Ad Hoc Services:**
- (a) First Security does not warrant that it will have the capacity to accept all Ad Hoc Service orders. All requests for Ad Hoc Static Guards or Casual Patrols must be made at least 24 hours before the requested start time.
 - (b) The minimum shift period for Static Guard Ad Hoc work at any one Premises is an eight-hour unbroken period; and if less, the minimum charge will be based on eight hours per guard per Premises;
 - (c) Where orders are accepted under this section First Security does not warrant arrival or attendance of a Guard at the requested time if minimum notice has not been given; or due to delay outside FIRST Security's reasonable control.
 - (d) No order for Ad Hoc Services may be cancelled after First Security has accepted the order, unless notice of the cancellation is communicated to, and receipt confirmed by First Security:
 - (i) in the case of Ad Hoc Gard Services, at least 24 hours prior to the intended start time,
 - (ii) in the case of Casual Patrols, at least 12 hours prior to the intended patrol time.

- (e) If notice of the cancellation is not received by First Security within the required period set out in clause 2.8(d), the Customer shall be charged for the scheduled shift notwithstanding that the Services are no longer required or not delivered in part or full.

2.9. Remotely Monitored Camera Services:

- (a) First Security will deliver and install a solar powered camera at the Premises and remotely monitor the camera during the agreed hours.
- (b) First Security will be alerted when motion is detected by a camera. Upon activation, a camera will produce an audible siren and strobe light, and all activations will be recorded. First Security will assess the situation and, in its discretion, follow a pre-agreed response process with you, which may include:
 - (i) Two-way communication with the persons present;
 - (ii) Calling NZ Police;
 - (iii) Dispatching a Mobile Patrol Service to the Premises;
 - (iv) Calling your assigned Operations Contact as detailed in Section B.
- (c) The parties will meet monthly to review service requirements for Remotely Monitored Camera Services.
- (d) First Security may, in its sole discretion, use reasonable endeavours to respond to an alert or an assessed threat in line with ASNZ4421 response timeframes but does not warrant that this is possible in all circumstances and has no liability to the Customer or any third party if the standard is not achieved on any occasion due to any circumstances outside First Security's reasonable control.
- (e) First Security does not warrant that the camera will be free of interruption, loss of functionality, delay or error at all times, or that any fault or failure can be remedied or corrected; however First Security shall keep the Customer reasonably informed of any actual or potential fault, delay or quality of the camera that becomes known to First Security, and shall take all reasonable steps in the circumstances to attempt to repair, resume or supply backup or alternative Services as soon as practicable. At your request and cost, First Security will deploy a Static Guard or provide a Mobile Patrol Service to the relevant site until the camera is repaired or replaced.
- (f) You shall:
 - (i) keep and maintain the camera during the Term of this Agreement at your own cost and expense;
 - (ii) keep the camera in a good state of repair;
 - (iii) pay First Security's costs for replacement and/or repair of any camera which is damaged, lost or stolen; and
 - (iv) allow First Security to enter the Premises to inspect the condition of the camera, provided that First Security gives you at least 5 Business Days' notice.
- (g) Subject to clause 2.9(h), the supplier of the camera shall retain full and absolute ownership of all intellectual and proprietary rights in the camera.
- (h) First Security shall obtain full rights, title and interest of any footage recorded by the camera. First Security and the Customer will have joint rights to use footage recorded from the camera solely for the following purposes:
 - (i) Crime deterrence and loss prevention;
 - (ii) Health and safety; and
 - (iii) Assisting NZ Police with any criminal investigations.
- (i) A one-off cost will be incurred on the Commencement Date for installation, de-installation and set-up costs relating to Remotely Monitoring Camera Services. A monthly recurring fee will be incurred for monitoring the camera.
- (j) Any change to the Premises will incur additional Charges.
- (k) Any incident assessment, management or response carried out by First Security will be charged at the Incident Management rate stated in Section B (or part thereof), then for each subsequent period (or part thereof).
- (l) The Charges for the Remotely Monitored Camera Services include a dedicated data connection with up to 300GB per month. Usage above 300GB will be charged at cost.
- (m) First Security's obligation and liability to the Customer for a camera shall be to pass on the benefit of any warranty provided or agreed to by the supplier; or to repair or replace (in its sole discretion) for any damage or loss directly caused by First Security. If any warranty investigation fee or partial or full repair or replacement cost is payable it shall be at the Customer's cost.
- (n) You shall keep us indemnified at all times against any loss, damage, injury or third-party claims arising from or relating to the Remotely Monitored Camera Services.

2.10. **Work Orders and Callouts:**

- (a) The Customer agrees to follow First Security's processes and use any forms, communication systems or technology required by First Security for all callouts and orders. The Customer must ensure its own systems and technology, and those of their alarm monitoring supplier/s, integrate or communicate with First Security's requirements at the Customer's cost.
- (b) The Customer is responsible for ensuring all relevant and up to date information and operational means of access such as keys or codes are provided to First Security relating to all Premises and the Services to enable First Security to attend and deliver the Services as ordered.
- (c) First Security may accept requests and work orders from any person representing the Customer or from the owners or occupiers of Premises, and may deem that person authorised to order or vary the Services, unless the Customer has notified First Security in writing that only specific named persons (or holders of specific positions) are authorised to order the Services for all or any Premises.

2.11. **Customer Related Parties:** Where the Premises include Premises owned or occupied by Customer Related Parties, First Security agrees to provide the Services at those Premises pursuant to this Agreement as if they were owned or occupied by the Customer. The Customer warrants that all Customer Related Parties receiving the Services are authorised as the Customer's agent to act under this Agreement, and First Security is entitled to rely on any request, representation or communication of a Customer Related Party as having been made by the Customer. The Customer is solely liable for payment of all Charges or other obligations or liabilities incurred by a Customer Related Party in connection with this Agreement.

2.12. **Suspension, interruption or cessation of Services by First Security:** First Security is not obliged to provide, or continue to provide the Services, and shall not charge for missed or interrupted Services on any occasion or in any event where:

- (a) In First Security's sole opinion, provision or continuing provision of the Services could conflict with First Security's or its Guards' obligations and duties to act in a lawful, reasonable, appropriate or safe manner; or risk the health and safety of any person.

2.13. **Variation of Services:** The Services that we are obliged to supply are strictly limited to the Services, roles and responsibilities set out in this Agreement. Any change to the type or amount of Services requested by the Customer, a Customer Related Party or any representative of the Customer or tenant of the Premises on a one off or continuing basis shall, if considered by First Security to be outside the scope of Services defined herein, constitute a variation; and First Security may decline to provide the varied work where it is not reasonable to do so, or may reasonably vary the Charges.

3. **PRICE AND PAYMENT**

3.1. The Customer agrees to pay the Charges in cleared funds on the due dates without set off, deduction or withholding of any kind when due, throughout the Term.

3.2. The Charges for providing the Services are calculated as follows:

- (a) For Static Guard Services, based on actual hours of static guarding provided to you for the relevant service period, including public holidays if they occur during that service period;
- (b) Where the Charges include provision for a reoccurring fee (e.g. a monthly mobile patrol fee), you shall be charged the applicable fee each time such fee is incurred during the relevant period; and
- (c) Any charges expressed in Section B are not a fixed fee but an estimate only of the time and materials required to provide any Service and shall be subject to amendment to reflect the actual cost to First Security to provide the Services calculated in accordance with the applicable charge.

3.3. Unless otherwise expressly stated, the Charges exclude GST which shall be added to all amounts payable under this Agreement.

3.4. If the Customer has any query or dispute over the amount or other details of invoice it must be notified to First Security within 5 Business Days of date of invoice, and unless agreed by First Security the full invoice amount must be paid by the due date, pending resolution of the issue or dispute. If following resolution of any dispute or issue over invoice amount it is found or agreed that the Customer was overcharged, First Security shall promptly credit or refund the overcharged amount.

- 3.5. **Interest and Costs:** The Customer shall pay 5% per annum interest over the current overdraft rate on demand on any overdue amounts calculated daily from the due date until payment; and shall pay actual costs incurred by First Security in enforcing its rights or collecting any unpaid amounts, including interest.
- 3.6. **Withholding Services:** You agree that we may withhold the further supply of all or any Services without liability to any person in the event that you default on your obligations under this Clause 3.
- 3.7. **Variation of Charges:**
- (a) **Wash Up:** Where the Customer is invoiced in any period for fixed Charges or scheduled Services, and the number of hours or value of Services supplied during that period is greater for any reason from the Charges invoiced; or a refund or credit is due pursuant to this Agreement; First Security may credit or debit the Customer's account in any subsequent period; or at its option refund the Customer any overcharged amount; or request immediate payment of any undercharged amount.
 - (b) **Annual Review:** The Charges may be increased by us in our discretion annually on or around the anniversary of the Commencement Date in accordance with any percentage increase in:
 - (i) the Labour Cost Index (Salary and Wage Rates) published by Statistics New Zealand (or any replacement index) over the preceding 12 month period; or
 - (ii) the Consumer Prices Index (CPI) published by Statistics New Zealand (or any replacement index) over the preceding 12 month period and
 - (iii) If any variation is to be made under this subparagraph, we must give you written notice within three months of the anniversary date and the varied rate may be backdated to the anniversary date.
 - (c) **Variation of Services:** We may vary the Charges at any time by prior notice in writing by an amount that we in our reasonable discretion determine is necessary as a result of any temporary or ongoing variation of the Services from the Services described herein; including any change of Premises or nature or level of Services. The variation shall take effect upon the date specified in the notice.
 - (d) **Cost Increases Beyond Our Control:** We may vary the Charges at any time by prior notice in writing effective from the date we specify where circumstances or factors beyond our reasonable control affect the cost to us of providing the Services, including, but not limited to:
 - (i) Increased wages and employment costs pursuant to increases in the Minimum Wage Rates or collective bargaining agreement pay rates, Living Wage rates (where applicable), fair pay agreements, or amendments to Holidays or other employment legislation; including the effect such increases have on wages for all our Employees, Subcontractors and suppliers, regardless of whether such Employees are Guards or are on the Minimum Wage Rates or not;
 - (ii) The impact of other legislative, regulatory, compliance or industry requirement or change or a Force Majeure Event (of the nature described in this Agreement) that affect our costs of supplying the Services;
 - (e) The Charges shall be varied directly according to the percentage increase in wage rate or employment cost. For example, if the Minimum Wage increases by 5%, the Charges shall be increased by 5%.
 - (f) If we give you notice of a variation to the Charges in accordance with Clauses 3.7(c) or 3.7(d), which is more than 20% of the Charges specified herein, you may terminate the Agreement in its entirety by giving us no less than 30 days' written notice, provided that your right to terminate the Agreement under this clause may only be exercised within ten Business Days of receipt of notice of the variation to the Charges.
 - (g) **Extended Attendance Charges:**
 - (i) If a Guard is required to attend or remain at any Premises for any length of time outside a rostered or normal attendance period at your request or in accordance with your policies or procedures or in response to an incident; you shall be charged for those extended Services at the Ad Hoc rate.
 - (ii) In the event of any damage or other security breach being discovered at the Premises by a Guard during any attendance, First Security shall make reasonable attempts to contact the Customer or the Customer's agent or monitoring company for instructions. In the absence of being able to obtain instructions, we are authorised, but not obliged to take reasonable steps and incur reasonable costs to protect or reinstate the security of the Premises if practicable and safe. All such costs incurred by or on behalf of First Security in remedying any damage or keeping or placing a Guard/s on site; shall be paid in full by the Customer to First Security as part of the Charges.
 - (h) **Extended Training Charges:** If a Guard is required to attend or undertake additional training at your request in addition to the training requirements set out in Section B, the costs of such training (including the guard's time of attending and completing the training), shall be at your expense.

- (i) **Living Wage Obligation:** If Living Wage is selected in the Customer Requirements in Section B, the Customer requires that all Personnel performing Services in connection with First Security's performance of this Agreement is paid, for each hour worked, at a rate no less than the Living Wage Rate applicable at the time. First Security may vary the Charges at any time by prior notice in writing in proportion to any increase in the Living Wage Rate.

4. TERM AND TERMINATION

4.1. Term and Renewal:

- (a) This Agreement shall commence on the Commencement Date and shall continue until the End Date ("Initial Term").
- (b) Unless the Customer has, at least 45 days prior to the End Date or subsequent anniversary of the End Date, given written notice that it does not wish the Agreement to continue; this Agreement shall automatically renew for further periods of 12 months ("Renewal Period").

4.2. Early Termination:

- (a) This Agreement may be terminated with immediate effect by mutual agreement; or by either party (terminating party) by written notice to the other party (the defaulting party) if the defaulting party:
 - (i) suffers an Insolvency Event; or
 - (ii) breaches its obligations under this Agreement, including any Customer obligation to pay the Charges when due; and where that breach is capable of remedy, fails to remedy the breach or perform the obligation within 20 Business Days (or 5 Business Days in event of an overdue payment) of written notice from the terminating party detailing the breach and requiring remedy; or
 - (iii) breaches any material obligation which cannot be remedied.
- (b) First Security may terminate this Agreement on 30 days' written notice at any time.
- (c) The Client may terminate this Agreement:
 - (i) During the Initial Term, on 12 weeks written notice to First Security;
 - (ii) During any Renewal Period, on 4 weeks written notice to First Security

4.3. Consequences of Termination:

The termination or expiry of this Agreement for any reason shall be without prejudice to any rights, remedies or obligations accrued under this Agreement prior to termination or expiration and nothing in this Agreement shall prejudice our right to recover any amount outstanding at such termination or expiry. On expiry or termination of this Agreement for whatever reason:

- (a) All monies owed by you to us will be due and payable immediately whether or not the due date for payment has arrived;
- (b) Each party will promptly return to the other all Confidential Information and any other documents, materials and other items belonging to the other party and in its possession or under its control at the time of termination; and destroy or delete any copies of information or material that cannot be returned;
- (c) The parties will work together in good faith to prevent any harm or loss to the reputation of either party and First Security shall provide reasonable time and resources at the Customer's cost to assist with handover to any new supplier of the Services;
- (d) Such termination or expiry will not affect those provisions of this Agreement which are intended to continue after termination.

5. EMPLOYEES AND SUBCONTRACTORS

- 5.1. In order for First Security to provide an uninterrupted supply of suitable Guards to provide the Services, we may in our discretion use Subcontractors approved by us, to provide the Services at any time during the Term.
- 5.2. First Security undertakes to take all reasonable steps to ensure that all Guards are suitably trained, experienced, qualified, supervised, and hold a current COA at all times when they provide the Services to you, and that they are aware of and comply with their lawful obligations; and any Customer Policies and Procedures agreed to by us.
- 5.3. First Security shall have no liability to you or any other person for any act or omission of a Guard or any other Employee or Subcontractor that occurs without our authorisation, or that is outside the scope of their authority, rights and duties, or that could not have been reasonably foreseen and prevented by us.

5.4. Non-Solicitation:

- (a) You covenant that you will not, during the term of this Agreement, or at any time during the period of 12 months after its expiry or termination for any reason, whether on your own account or for any other person engage or employ in any capacity; or solicit or entice, or endeavour to solicit or entice, away from us for any reason, any of our then current Employees or Subcontractors (or employee or contractor of a Subcontractor) that had worked for or was known to the Customer in connection with this Agreement.
- (b) The Customer acknowledges and agrees the restrictions in above sub-clause are reasonable and necessary and have been given to protect and maintain First Security proprietary interests and to protect our investment in training, recruiting and developing staff and:
 - (i) First Security would not have entered into this Agreement unless the restrictive covenants were included; and
 - (ii) Without prejudice to any other right or remedy First Security may have, the Customer shall pay First Security on demand the greater of 12% of the annual wage or \$5,000 for each person directly or indirectly engaged or employed by the Customer, in breach of clause 5.4.
- (c) This Clause 5.4 will continue to have effect notwithstanding the termination or expiration of this Agreement.

6. AUTHORITY

- 6.1. The person signing this Agreement is deemed by First Security to have full authority to enter this Agreement on behalf of the Customer. If the Customer has not authorised the signatory to enter this Agreement, First Security may treat the signatory as personally liable for all Charges and other Customer obligations under this Agreement. Where the named Customer is not the legal owner or occupier of the Premise, the Customer warrants that it is authorised by the legal owner or occupier to enter into this Agreement and to authorise First Security to deliver the Services at the Premises.
- 6.2. **Access to the Premises:** You grant us full authority to access the Premises for the purposes of carrying out the Services and where the Services are to be provided outside your normal business hours, you shall supply us with such keys, access cards and access codes as are necessary to enable us to access the Premises to carry out the Services. We shall take all reasonable steps to keep the keys and access cards safe and secure and not knowingly or negligently permit any unauthorised person to have possession or use of the same. You shall notify us immediately if any changes are made to the access ways, and/or locks, at the Premises and supply us with replacement keys or cards at your cost.
- 6.3. **Contact Person:** Without limiting the other persons that bind you, the Contact person named in Section B has full authority to represent and bind you in all matters connected with this Agreement and provision of the Services. You will notify us immediately of any changes to the Operations and Account contact people. Unless you notify us otherwise, all communications from us to the contact addresses, emails and numbers set out in Section B shall be deemed delivered correctly.

7. REPRESENTATIONS AND WARRANTIES

- 7.1. **Your Representation:** You represent and warrant to us that you have not relied on any representation, undertaking or statement made by us which has not been expressly stated in this Agreement; and, without limitation you acknowledge that we have not represented to you that by entering into this Agreement, or by receiving the Services from us, that we will be able to prevent all or any unauthorised entry, or loss, damage or injury to you, your Premises or property and persons at your Premises.
- 7.2. **Our Representation:** We represent and warrant to you that we have the expertise, experience, resources, capacity and ability to, and will, perform the Services in a timely manner, efficiently, diligently and in accordance with the terms of this Agreement.
- 7.3. **Health and Safety at Work:**
 - (a) Each party undertakes to the other to meet their duties in connection with providing the Services at the Premises, as a person conducting a business or undertaking ("PCBU") in accordance with the Health and Safety at Work Act 2015. Without limitation, it is your responsibility to ensure that the health and safety of our workers is not at risk at the Premises and you must notify us in writing of any hazards on or around the Premises and to advise us of any special safety procedures we need to follow when providing the Services.
 - (b) You warrant that the Premises are safe and free from hazards, harmful materials, or any other environmental or safety matters or issues, and any other materials, that could be harmful to our Employees or Subcontractors.
- 7.4. **No guaranteed response times:** Where we provide you with alarm response services under this Agreement, we do not guarantee that we will respond to an alarm and attend the relevant Premises within any particular timeframe. Our only obligation in responding to an alarm is to observe, report to you and take further instructions.

7.5. **Continuous Warranties:** The representations and warranties in this Clause 7 will be deemed repeated continuously, by the party giving the representation and warranty, during, and as applicable after, the term of this Agreement.

8. LIMITATION ON OUR LIABILITY AND YOUR INDEMNITY

8.1. **Excluded Liability:** To the fullest extent permitted by law, First Security shall not be liable for any damages or indemnification for:

- (a) any loss of profits; or any other consequential or indirect or special loss or costs or damage or injury of any kind suffered or incurred by the Customer or a third party for any breach, act or omission of First Security, our employees, subcontractors, officers or agents under or in connection with this Agreement
- (b) any act or omission for which responsibility or liability is specifically excluded under this Agreement
- (c) any implied warranty under any law that can be excluded
- (d) any warranty or obligation under the Consumer Guarantees Act 1993 and the Fair Trading Act 1986 (sections 9, 12A, and 13) if the Services are acquired for business purposes and / or the Premises is a business or commercial Premise, and the Customer is "in trade" as defined in the applicable legislation.

8.2. **Maximum liability:** Notwithstanding anything else in this Agreement, our liability where not excluded under Clause 8.1, in respect of any and all claims for costs, loss, damage or injury arising from breach of any of our obligations arising under or in connection with this Agreement, from any termination or cancellation of this Agreement or from any negligence, misrepresentation or other act or omission on our part, or the part of our, Employees, Subcontractors, officers or representatives shall not exceed:

- (a) Where the Services were missed, delayed, interrupted or not completed the sole remedy available to the Customer shall be; at First Security's option: replacement or repeat of the Services at no Charge in a subsequent period; or crediting, refunding or not charging for the particular Services, regardless of any loss or damage alleged to have been caused or contributed to by lateness, non-delivery or non-completion of the Services;
- (b) In the case of Monitored Camera Services, an amount equivalent to the Charges paid by the Customer for Monitored Camera Services in the 3 months prior;
- (c) In any other circumstance, an amount equivalent to the Charges paid by the Customer in the 1 month prior; or the amount paid or payable pursuant to our public liability insurance policy, up to the Maximum Liability stated in Section B, if greater.

8.3. **Your Risk:** Because our liability under this Agreement is limited, you are responsible for arranging appropriate insurance or carrying the risk for any loss, damage or injury that may arise to you, your property or to any persons other than we are specifically liable for under this Agreement.

8.4. **Claims:** We shall not be liable to you in respect of any matter whatsoever unless notice in writing of any claim is received by us within 10 Business Days of the occurrence of the event or default or of the day on which you become aware or should have become aware of the event or default in respect of which your claim arises (time being of the essence). Any notice shall state full details of the claim alleged loss and remedy sought.

8.5. **Indemnity:** You shall keep us indemnified at all times against any loss, damage or injury we suffer or incur as a result of your acts or omissions or breaches of this Agreement; or arising from claims made against us by any third party with respect to any theft, loss, damage, destruction, death or injury occurring in or on the Premises arising out of, or in any way in connected to the Services where we are not or would not be liable for the same to you, pursuant to the provisions of this clause 8.

8.6. **Third Parties:** All provisions of this Agreement which limit or exclude our liability shall be for the benefit of and enforceable by each of First Security's owners, officers, employees, agents and contractors, Subcontractors, Related Parties, and the provisions of Subpart 1 (Contractual Privity) of Part 2 of the Contract and Commercial Law Act 2017 shall apply accordingly.

8.7. **Continue Following Termination:** This Clause 8 survives termination or expiration of this Agreement.

9. CONFIDENTIAL AND PERSONAL INFORMATION

9.1. **Authorisations:** For the purpose of facilitating the administration and efficient supply of the Services, and where applicable the purposes of the Privacy Act 2020, each party permits the other:

- (a) to collect all information, they may require from the other party any third parties and authorise those third parties to release that information;
- (b) to hold all information so obtained; and

- (c) to use that information, which will be accessible only by duly authorised employees and agents of the party, strictly for the purposes of this Agreement.

9.2. **Conditions:** The information will be collected, held and used on the condition that:

- (a) it will be processed and held securely and in confidence with appropriate data protection systems; and
- (b) it will only be accessible to employees and agents who need access to it for the purpose of this Agreement; and
- (c) the disclosing party may request access to and correction of their information at any time; and
- (d) following termination or expiry of this Agreement all personal information about the other party or its employees shall be destroyed or deleted unless required by law to be retained.

9.3. **Confidential Information:** No party will at any time, directly or indirectly:

- (a) disclose or permit any Confidential Information belonging to the other party to be disclosed to any person; or
- (b) use such Confidential Information other than for the purpose for which it was provided, except:
 - (i) to the extent required by law;
 - (ii) as is already public knowledge without a breach of this clause by the parties seeking to disclose or use such Confidential Information;
 - (iii) as is authorised in writing by each other party; or
 - (iv) as is reasonably necessary to give effect to this Agreement.

9.4. **Continue Following Termination:** This clause shall 9 survive after termination or expiration of this Agreement.

10. DISPUTES

10.1. **Dispute Resolution:** If any dispute or difference arises between the parties, or if any matter or issue arises which the parties wish to have resolved or remedied (Dispute) a party may serve a notice of Dispute on the other (Dispute Notice) and the parties will enter into negotiations in good faith to attempt to resolve the dispute within 15 Business Days (or such longer period as the parties may agree) of the date of the Dispute Notice.

10.2. If the parties cannot resolve the dispute, mediation may be initiated by either party writing to the other party. No additional or further claim or action may be taken by either party without first attempting mediation, which shall take place in Auckland. The parties will agree on a suitable person to act as mediator or will ask the Arbitrators' and Mediators' Institute of New Zealand Inc. (AMINZ) to appoint a mediator if they cannot agree on a suitable person. The mediation will be in accordance with the Mediation Protocol of AMINZ.

10.3. If the mediation is not successful and either party wishes to pursue any remaining dispute it shall be referred to and finally resolved by arbitration in New Zealand in accordance with New Zealand law and the current Arbitration Protocol of AMINZ and the parties hereby submit to arbitration. The arbitration shall be by one arbitrator to be agreed upon by the parties and if they should fail to agree within 15 working days, then to be appointed by the President of the AMINZ at that time.

10.4. **Interlocutory Relief:** Nothing in this clause will prevent any party from taking immediate steps to seek urgent interlocutory relief before an appropriate Court.

11. FORCE MAJEURE

11.1. Notwithstanding any other provision of this Agreement, neither party shall be held liable or responsible to the other party for any act or omission, or breach of this Agreement for failure or delay in performing any obligation under this Agreement (other than payment of Charges that are due for Services provided) if:

- (a) the failure or delay is directly or indirectly caused or contributed to by events, circumstances or forces beyond the reasonable control of the non-performing party such as but not limited to natural disaster, war or terrorist act, loss or interruption of access to utilities or essential supplies, epidemic or public health emergency ("each a Force Majeure Event"); and
 - (i) the Force Majeure Event means continuing or achieving performance is reasonably impossible or impracticable; or
 - (ii) performance could require that party to act unlawfully or contrary to any law or government or governmental authority requirement or recommendation related to the Force Majeure Event; or

- (iii) performance could expose any person to harm or risk, or increase the costs of performance beyond a level which either party would reasonably have agreed to or expected or provided for at the date of this Agreement; and
 - (b) the party relying on the Force Majeure Event takes every reasonable step to overcome or minimise or mitigate the effect of the Force Majeure Event on its performance and continue or resume performance to the best of its abilities in the circumstances.
- 11.2. A party wishing to rely on a Force Majeure Event must give the other party notice in writing as soon as practicable and in advance where possible:
 - (a) advising of the occurrence or likelihood of that party's failure or delay to perform its obligations under this Agreement or other breach or default; and
 - (b) identifying the Force Majeure Event and describing how it has/will cause or contribute to the failure, delay or breach; and
 - (c) detailing the steps the party is taking or will take to mitigate or overcome the failure or delay to perform or prevent the breach.
- 11.3. If the failure or delay or other breach by a party continues for three months or longer after date of notice due to the Force Majeure Event, either party may give notice of immediate termination.
- 11.4. During a period of force majeure, the non-breaching party may at its own cost engage a third party to perform the obligations of the party relying on the force majeure or take other reasonable steps to ensure continuity or delivery of its rights and entitlements under this Agreement.

12. GENERAL

- 12.1. **Assignment:** We may assign or novate this Agreement or our rights and obligations hereunder at any time. Any such assignment or novation shall take effect from the date we notify you in writing of the same after which we shall be discharged from any continuing obligation and released from any liability to you other than in relation to your confidential information.
- 12.2. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, representations, arrangements or understandings between the parties in any way relating to the subject matter thereof.
- 12.3. **Severability:** If any part of this Agreement is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable such determination shall not impair the enforceability of the remaining parts of this Agreement which shall remain in full force.
- 12.4. **No Waiver:** No waiver of any breach, or failure to enforce any provision, of this Agreement at any time by us shall in any way affect, limit or waive our right thereafter to enforce and compel strict compliance with the provisions of this Agreement.
- 12.5. **Update:** Notwithstanding anything to the contrary in this Agreement, First Security may reasonably update Section C General Terms and Conditions at any time by notice to the Customer or by updating the General Terms and Conditions of Service on the First Security Web Site.
- 12.6. **Notices:** All notices to be given pursuant to this Agreement shall be in writing and may be delivered or sent by courier or tracked mail or email to the addresses detailed in Section B (other than for non-contentious operational or administrative notices and communications which shall be sent to the applicable addresses in Section B). Every notice shall be deemed served, given or received on the date and time of receipt or recorded delivery time if sent by courier or traced mail; or the next business day if by email. The parties may update their addresses by similar notice. A party is entitled to rely on an address being current unless notified otherwise.
- 12.7. **Governing Law:** This Agreement will be governed by and construed in accordance with the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the Courts of New Zealand with respect to any legal action, suit or proceeding or any other matter arising out of or in connection with this Agreement.
- 12.8. **Counterparts:** This Agreement may be signed in any number of counterparts, including scanned emailed copies, all of which shall together constitute one and the same instrument and a binding and enforceable agreement between the parties. Any party may execute this Agreement by signing any such counterpart.

PROTECTING

FIRST
Security

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YOUR FUTURE