

Terms & Conditions for the Supply of Security Services

1. DEFINITIONS

1.1. Definitions: In these Terms and Conditions, unless the context otherwise requires:

“AGREEMENT” has the meaning described in clause 2.2.

“BUSINESS DAY” means any day which is not a Saturday, Sunday or public holiday in Auckland, New Zealand.

“CASUAL SERVICES” means any Services to be provided on an ad hoc or “as required” basis where those Services are referred to as Casual Services by FIRST Security.

“CHARGES” means the charges payable by you for the Services as set out in the Temporary Security Services Form (or, where the Agreement arises by way of your acceptance of a quotation or our confirmation of your request for Services, in such quotation or confirmation of request for Services) provided that the charges may be varied in accordance with clause 4.6.

“COMMENCEMENT DATE” means the first day on which the Services have been requested to be provided.

“CUSTOMER”, “YOU” and “YOUR” means you, the Customer.

“FIRST SECURITY”, “WE”, “US” and “OUR” means FIRST Security Guard Services Limited and includes its officers, employees, contractors, agents, successors and assignees where appropriate.

“FIXED TERM AGREEMENT” means an Agreement that commences on the Commencement Date specified in the Temporary Security Services Form (or, where the Agreement arises by way of a quotation or confirmation of request for Services, in such quotation or confirmation of request for Services) and continue for a period specified in the Temporary Security Services Form or in such quotation or confirmation of request for Services (as the case may be).

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

“GUARANTOR” means any person or persons named as a Guarantor on any form provided by the Customer to FIRST Security.

“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.

“PERMANENT AGREEMENT” means an Agreement where the Temporary Security Services Form or quotation or confirmation of request for Services does not specify a finite time period, as opposed to a Fixed Term Agreement.

“PERMANENT SERVICES” means any Services that are required to be provided on an ongoing, continual basis where those Services are referred to as Permanent Services by FIRST Security.

“PREMISES” means any premises you have specified to us.

“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.

“SERVICES” means, where the Agreement arises by way of a quotation or confirmation of request for Services, the security services described in such quotation or confirmation of request for Services or the security services described in the Temporary Security Services Form or any other form where these terms and conditions are intended to apply to the supply of the Services.

“TEMPORARY SECURITY SERVICES FORM” means the document labelled Temporary Security Services Form signed by you.

“TERM” means the Initial Term and any Renewal Period as described in clause 5.

1.2. Interpretation: In these Terms and Conditions, unless the context otherwise requires:

- (a) section, clause and other headings are for convenience only and will not affect the interpretation of these Terms and Conditions;
- (b) singular will include plural 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”; and

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- (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.

2. AGREEMENT

2.1. **Terms and Conditions:** Unless agreed otherwise by us in writing, these terms and conditions ([TERMS AND CONDITIONS](#)) shall apply to the provision of all goods and/or Services provided by us to you. These Terms and Conditions are the Terms and Conditions referred to in any correspondence with you or referred to in the Temporary Security Services Form or any other form, quotation, invoice or confirmation of request for services. We reserve the right to amend the Terms and Conditions from time to time by written notice to you. Your continued use of the Services will be deemed acceptance of such amended Terms and Conditions and such amended Terms and Conditions will replace any previous arrangements or understandings between you and FIRST Security.

2.2. **Acceptance:** If:

- (a) we accept a request for goods and/or Services from you; and/or
- (b) you complete a Temporary Security Services Form and we accept that form; and/or
- (c) you accept a quote for goods and/or Services to be provided by us,

that shall constitute acceptance of these Terms and Conditions and such request, quote or Temporary Security Services Form (as applicable) together with these Terms and Conditions shall constitute the agreement between you and us (the [AGREEMENT](#)). Any variations or additions to the Agreement not expressly agreed in writing by us are expressly rejected by us.

3. SECURITY SERVICES

3.1. **Services:** We will provide to you the goods and/or Services specified in the Temporary Security Services Form (or, where the Agreement arises by way of a quotation or confirmation of request for Services, such quotation or confirmation of request for Services) and such further ancillary Services requested by you from time to time (including any request for us to deploy security guards to your Premises at any unscheduled time), provided that:

- (a) no security guard may be requested to provide Services to you for anything less than an eight hour unbroken period;
- (b) no security guard will be deployed to your Premises unless a start and end time for the deployment has been agreed;
- (c) once we have agreed to deploy a security guard to your Premises, that deployment may not be cancelled by you unless you provide us with notice in writing of the cancellation:
 - (i) in the case of Casual Static Guard Services, at least 24 hours prior to the commencement of the deployment (and if you provide less than 24 hours' notice, you shall be charged for all the scheduled hours of the deployment notwithstanding that such deployment may no longer be required and/or not occur); and
 - (ii) in the case of Permanent Static Guard Services, at least 3 months' notice of cancellation.
- (d) we shall determine, in our sole discretion, the manner and means by which the Services are performed.

3.2. **Mobile Patrol Services:** Where the Services include a requirement for us to provide mobile patrol services, we do not guarantee any particular number or frequency of patrols of your Premises. Any agreement to provide a certain number of patrols to your Premises within a specific period is subject to the following:

- (a) the timing of those patrols shall be selected randomly by us and could be at any time during such period; and
- (b) to the extent we provide less than the agreed number of patrols within that period we can make up the shortfall by providing an increased number of patrols in any subsequent period.
- (c) once we have agreed to deploy patrol services to your Premises, that deployment may not be cancelled by you unless you provide us with notice in writing of the cancellation:
 - (i) in the case of Casual Patrol Services, at least 24 hours' notice prior to the commencement of the deployment (and if you provide less than 24 hours' notice, you shall be charged for all the scheduled hours of the deployment notwithstanding that such deployment may no longer be required and/or not occur); and
 - (ii) in the case of Permanent Patrol Services, at least 12 months' notice of cancellation.

3.3. **Alarm Monitoring Supplier:** You agree we can accept instructions to supply goods and/or Services to you from your authorised alarm monitoring supplier on your behalf.

3.4. **Alarm Monitoring Services and Alarm Response Services:** Where the Services include alarm monitoring and alarm response services, we shall use reasonable endeavours to provide alarm response attendances within the current NZ Standard 4421 (Guard and Patrol Security Services) timeframes but do not warrant that this is possible in all

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circumstances and has no liability to you or any third party if the standard is not achieved on any occasion due to any circumstances outside of our reasonable control. Measurement of response time starts once the alarm monitoring supplier has provided accurate and complete information to us, identifying the exact location of the alarm, and the nature of any actual or potential threat or hazard. Where we provide alarm monitoring services to you under a Permanent Agreement, these services may not be terminated during the Initial Term. After the Initial Term you will need to give us at least 3 months' written notice if you wish to terminate any alarm monitoring services. Alarm monitoring services provided to you under a Fixed Term Agreement cannot be terminated prior to the expiry of the Term.

- 3.5. **Remotely Monitored Camera Services:** Where the Services include a requirement for us to provide Remotely Monitored Camera Services to you:
- (a) We will deliver and install a solar powered camera at the Premises and remotely monitor the camera during the agreed hours.
 - (b) We 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. We will assess the situation and, in our discretion, follow a pre-agreed response process with you, which may include:
 - (i) Two-way communication with you or your representative;
 - (ii) Calling NZ Police;
 - (iii) Dispatching a Mobile Patrol Service to the Premises;
 - (iv) Calling your assigned contact person specified in the Temporary Security Services Form (or, where the Agreement arises by way of a quotation or confirmation of request for Services, such quotation or confirmation of request for Services).
 - (c) We will 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 you or any third party if the standard is not achieved on any occasion due to any circumstances outside of our reasonable control.
 - (d) We do 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 we shall keep you reasonably informed of any actual or potential fault, delay or quality of the camera that becomes known to us, 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, we can deploy a Static Guard or provide a Mobile Patrol Service to the Premises until the camera is repaired or replaced.
 - (e) 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 we give you at least 5 Business Days' notice.
 - (f) Subject to subclause (h), the supplier of the camera shall retain full and absolute ownership of all intellectual and proprietary rights in the camera.
 - (g) First Security shall obtain full rights, title and interest of any footage recorded by the camera. First Security and you 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.
 - (h) 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.
 - (i) Any change to the Premises will incur additional Charges.
 - (j) Any incident assessment, management or response carried out by us will be charged at the rate stated in the Temporary Security Services Form or quotation or confirmation of request for Services.
 - (k) 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.
 - (l) Our obligation and liability to you 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 your cost.

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- (m) 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.
- (n) You shall give us at least 3 months' written notice if you wish to terminate any Remotely Monitored Camera Services under the Agreement.

4. CHARGES

4.1. Fees:

- (a) You shall pay us the Charges for providing the Services from the Commencement Date.
- (b) The Charges for providing the Services are calculated on a time and materials basis and any Charges expressed in the Temporary Security Services Form (or, where the Agreement arises by way a quotation or confirmation of request for Services, such quotation or confirmation of request for Services) 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 us to provide the Services calculated in accordance with the applicable Charge.
- (c) 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.
- (d) All Charges exclude GST (and other applicable taxes) and any payments payable by you shall be increased by the amount of any GST chargeable on any taxable supply under the Agreement (and other applicable taxes).

4.2. Payment:

- (a) We will submit a valid tax invoice to you in respect of all Services provided by us. Payment for all Services is to be made by automatic bank transfer to the bank account notified to you by us from time to time, on or before the 20th day (or, if the 20th day is not a Business Day, on the next Business Day) of the month following the provision of the relevant Services. You must make payment of all amounts under the Agreement without set off, deduction or withholding of any kind.
- (b) If you dispute any portion of any amount appearing as payable on any invoice issued by us under the Agreement, you shall pay the applicable invoice in full and will promptly notify us of that dispute and we will attempt to promptly resolve the dispute between us or (in the absence of agreement) pursuant to the dispute resolution process set out in this agreement.

4.3. **Default interest:** If you default for any reason in payment of any amount on the due date (time being strictly of the essence), you shall pay to us on demand, interest at a rate equal to 5% per annum above the current overdraft rate which we have with our principal bank, calculated by us on a daily basis on the amount so unpaid from the due date until payment. Charging of this interest will not limit any of our other rights or remedies under these Terms and Conditions or otherwise in respect of your default.

4.4. **Debt collection:** You must pay all costs and expenses (including costs on a solicitor/client basis and debt collectors' costs) we incur in enforcing or attempting to enforce our rights under this clause and otherwise under these Terms and Conditions.

4.5. **Withholding Services:** You agree that we may withhold the further supply of Services in the event that you default on your obligations under this clause 4.

4.6. Variation of charges:

- (a) The Charges shall be reviewed and varied by us on each anniversary of the date of this Agreement as follows:
 - (i) we shall be permitted to increase the Charges by a percentage amount equal to the percentage increase in the Labour Cost Index (Salary and Wage Rates) published by Statistics New Zealand (or any replacement index) over the preceding 12-month period;
 - (ii) we shall be permitted to increase the Charges by a percentage amount equal to the percentage increase in the Consumer Prices Index (CPI) published by Statistics New Zealand (or any replacement index) over the preceding 12-month period;
 - (iii) we shall notify you of all variations in writing; and
 - (iv) such variations shall be effective from the anniversary of the date of this Agreement or such later date determined by us.
- (b) Notwithstanding anything in clause 4.1 or the Temporary Security Services Form (or, where the Agreement arises by way of a quotation or confirmation of request for Services, in such quotation or confirmation of request for Services), we may adjust the charges at any time by an amount that we in our sole discretion determine is necessary to take account of any alterations you may make to the Premises or other factors which affect the cost to us of providing the Services, including, but not limited to:

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- (i) increased wages (including, but not limited to, as a result of increases in the Minimum Wage Rates and the flow-on effect such increases have on wages for our employees regardless of whether such employees are on the Minimum Wage Rates or not);
- (ii) Union Awards;
- (iii) increased contractor costs;
- (iv) increased fuel costs;
- (v) increased equipment and equipment maintenance costs; and
- (vi) legislative changes (including in relation to the holidays and other benefits to our employees and/or contractors).
- (vii) in the case of Services that are mobile patrol services, where there is a change that affects our ability to leverage economies of scale to provide the mobile patrol services at the Charges agreed (including, but not limited to, as a result of any decrease in mobile patrol services provided to customers other than you within the area/s in which your Premises are located).

Any such variation to the Charges in accordance with this clause 4.6(b) shall be effective from the date we specify by notice in writing to you.

- (c) If we give you notice of a variation to the Charges in accordance with Clauses **Error! Reference source not found.** or 4.6(b), 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.

4.7. **Additional charges:** If one of our security guards providing Services to you is required to attend the Premises for any length of time at your request or in response to an incident, or if you otherwise request us to carry out additional Services, such additional time incurred and/or additional Services provided shall be subject to the terms of these Terms and Conditions and the Charges payable by you for such additional time and/or Services shall be based on our standard rates at the time, plus in all cases the amount of any GST or other applicable tax.

5. TERM AND TERMINATION

5.1. Term:

- (a) In the case of a Fixed Term Agreement, the term shall commence on the Commencement Date specified in the Temporary Security Services Form (or, where the Agreement arises by way of a quotation or confirmation of request for Services, in such quotation or confirmation of request for Services) and continue for a period specified in the Temporary Security Services Form or in such quotation or confirmation of request for Services (as the case may be) ("Initial Term"). At the expiry of the Initial Term of a Fixed Term Agreement, the parties may agree to renew or extend the Term in writing ("Renewal Period).
- (b) In the case of a Permanent Agreement where the Temporary Security Services Form or quotation or confirmation of request for Services does not specify a finite time period, then a period of 36 months shall apply (the "Initial Term"). At the expiry of the Initial Term, the Permanent Agreement shall automatically renew for further periods of 36 months (each a "Renewal Period") unless you give us at least 45 days' written notice prior to the expiry of the then current Term that you wish to terminate the Agreement at the end of the Term.

5.2. **Early termination:** This Agreement may be terminated with immediate effect by mutual agreement; or by either party ("terminating party") by written notice to the other party ("defaulting party") if the defaulting party:

- (a) breach, or fail to perform properly or promptly any material obligation under the Agreement, and, where that breach or failure to perform is capable of remedy, fail to remedy the breach or perform the obligation within 20 Business Days (or 5 Business Days in event of an overdue payment) after receiving written notice (inclusive of the date of receipt) from the terminating party of such breach or failure and requiring remedy (and for the avoidance of doubt, any failure by you to make any payment to us under this Agreement on its due date shall be deemed to be a material breach of this Agreement);
- (b) are, become, or are deemed to be bankrupt or insolvent or any resolution is passed, or any proceeding is commenced, for bankruptcy or liquidation (whether voluntarily or otherwise);
- (c) make an assignment for the benefit of, or enter into or make any arrangement or composition with, creditors or are unable (or deemed to be unable) to pay debts as they fall due;
- (d) go into receivership or have a receiver, trustee, administrator or manager (or any of them) (including a statutory manager) appointed in respect of property; or
- (e) a material change occurs in the ownership or control which, in the terminating party's reasonable opinion adversely affects its rights or the defaulting party's ability to perform its obligations under the Agreement or is otherwise

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contrary to the terminating party's interests (for the purposes of this clause, "control" means having the power to alter the management and direction of a person or any person controlling that person).

- 5.3. **Termination on notice:** We may terminate the Agreement, at any time and for any reason, by giving you at least 30 days' notice in writing.
- 5.4. **Consequences of termination:** The termination or expiry of the Agreement shall be without prejudice to any rights, remedies or obligations accrued under these Terms and Conditions prior to termination or expiration and nothing in the Agreement shall prejudice our right to recover any amount outstanding at such termination or expiry. On expiry or termination of the Agreement for whatever reason all monies owed by you to us will be due and payable immediately. Furthermore you will promptly return all confidential information and documentation, materials and other items belonging to us that are in your possession or control at the time of termination. This subclause will continue to have effect after termination or expiration of the Agreement.

6. AUTHORITY

- 6.1. **Access to Premises:** Entry into the Agreement by you grants us full authority to access the Premises for the purposes of carrying out the Services and generally protecting your business, property and persons. Where the Services are to be provided outside your normal business hours, you shall supply us with such keys and access cards as are necessary to enable us to access the Premises to carry out the Services.
- 6.2. **Authority to take reasonable steps:** If we become aware of a security issue that may impact on you or the Premises, and we are unable to contact you to obtain instructions, we are authorised to take reasonable steps to protect the integrity, safety and security of the Premises, property and personnel, at your expense.
- 6.3. **Notification:** You shall notify us immediately if any changes are made to the access ways, and/or locks, at the Premises.
- 6.4. **Contact person:** Without limiting the other persons that bind you, the contact person requesting services on your behalf has the full authority to bind you in all matters connected with the Agreement.

7. REPRESENTATIONS AND WARRANTIES

- 7.1. Your representation: You represent and warrant to us that:
- (a) you have obtained all authorisations and have done all things necessary in order to enter into the Agreement and to perform your obligations under the Agreement;
 - (b) you are not aware of anything which will, or might be reasonably expected to, prevent or impair you from performing your obligations under the Agreement, in the manner and at the times contemplated by these Terms and Conditions; and
 - (c) you have not relied on any representation made by us which has not been expressly stated in these Terms and Conditions and, without limitation, you acknowledge that we have not represented to you that by entering into the Agreement, or by receiving the Services from us, you, your Premises and/or your other property shall be safe from unlawful entry, loss, damage or injury.
- 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 these Terms and Conditions.
- 7.3. Consumer Guarantees Act / Fair Trading Act:
- (a) Subject to clause 7.3(b), where the *Consumer Guarantees Act 1993* and/or the *Fair Trading Act 1986* apply nothing in these Terms and Conditions shall contract out of or limit the application of those Acts.
 - (b) If the Services are acquired by you for business purposes and you are "in trade" within the meaning of the *Fair Trading Act 1986* or the *Consumer Guarantees Act 1993* (as the case may be), you agree that the *Consumer Guarantees Act 1993* and sections 9, 12A, and 13 of the *Fair Trading Act 1986* do not apply to the Agreement in respect of the Services.
 - (c) Where you are in trade and accordingly clause 7.3(b) applies, you acknowledge that the effectiveness of contracting out of the Acts is subject to compliance with the statutory tests including that it is fair and reasonable that you be bound by those terms.
 - (d) Where we are supplying goods and services to you other than as a customer that is in trade the provisions of clauses 7.3(b) and 7.3(c) above will have no effect and the provisions of the *Consumer Guarantees Act 1993* and the full provisions of the *Fair Trading Act 1986* will apply and these Terms and Conditions shall be read subject to the provisions of the *Consumer Guarantees Act 1993* and the full provisions of the *Fair Trading Act 1986*.

7.4. Occupational health and safety:

- (a) You warrant that the Premises are safe and free from harmful materials, substances, infections or building diseases, or any environmental matters or issues, and any other materials, that could be harmful to one or more of our employees and/or contractors.
- (b) Without limiting our obligations to consult and cooperate with you as a person conducting a business undertaking (as that term is defined in the *Health and Safety at Work Act 2015*) in accordance with the *Health and Safety at Work Act 2015*, it is your responsibility to 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.

7.5. **No guaranteed response times:** Where we provide you with alarm response services under the 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 secure the relevant Premises upon arrival.

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

8. LIMITATION ON OUR LIABILITY AND YOUR INDEMNITY

8.1. **Liability:** To the fullest extent permitted by law, we shall not be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind suffered or incurred by you arising directly or indirectly from the performance or non-performance of our obligations under the Agreement (including, but not limited to, a failure to meet any service level agreed to for the purposes of the Agreement), any breach of our obligations under or in connection with the Agreement or from any negligence, misrepresentation or other act or omission on our part or the part of our employees, agents or contractors.

8.2. **Maximum liability:** Notwithstanding anything else in the Agreement, our liability, whether in contract or pursuant to any termination or cancellation of the Agreement or in tort or otherwise, 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 the Agreement, from any termination or cancellation of the Agreement or from any negligence, misrepresentation or other act or omission on our part, or the part of our employees, agents or contractors, shall not exceed:

- (a) the weekly charge paid by you to us where your claim relates to mobile patrol services;
- (b) the monthly charge paid by you to us where your claim relates to remotely monitored camera services;
- (c) the monthly charge paid by you to us where your claim relates to alarm monitoring services;
- (d) the call out fee for an alarm response where your claim relates to alarm response services; and
- (e) \$500 where your claim relates to static guard services,

in respect of one event (or a series of failures arising from the same event). To the maximum extent permitted by law, our aggregate maximum liability to you, whether in contract, tort or under any other legal theory howsoever arising under the Agreement is limited to the lesser of \$10,000 or the total fees paid by you in the month immediately preceding the event giving rise to a claim under this Agreement.

8.3. **Acts of employees and contractors:** Notwithstanding anything else in this Agreement, we shall in no circumstances have any liability for any wilful, reckless or deliberate acts or omissions of our employees or contractors (including any burglary, theft, arson, or wilful damage) in each case in the course of performance, or otherwise in any way arising out, of the Services unless such act or omission could have been prevented by reasonable supervision of such employees or contractors on our part.

8.4. **Claims:** We shall not be liable to you with 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 in respect of which your claim arises (time being of the essence). Any notice shall state full details of the claim.

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 breaches of the 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 relation to, the provision of, or failure to provide, the Services.

8.6. **Third Parties:** All provisions of these Terms and Conditions which limit or exclude our liability shall be for the benefit of and enforceable by each of our employees, agents and contractors, and the provisions of Subpart 1 (Contractual Privity) of Part 2 of the *Contract and Commercial Law Act 2017* will apply accordingly.

8.7. **Insurance:** Our liability under the Agreement is limited. Accordingly, you are responsible for arranging appropriate insurance for any loss, damage or injury that may arise to you, your Premises and your other property as a result of our performance or non-performance under the Agreement.

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8.8. **Continue Following Termination:** This clause will continue to have effect after termination or expiration of the Agreement.

9. INDEPENDENT CONTRACTOR

9.1. **Independent Contractor Status:** You acknowledge and agree that we are engaged under this Agreement as an independent contractor and nothing express or implied in this Agreement will be construed as constituting either party as the partner, agent, employee, officer or representative of, or as a joint venture with you and neither party will make any contrary representation to any other person.

10. GUARANTEE

10.1. **Guarantee:** Each Guarantor unconditionally and irrevocably guarantees to us the due and punctual performance by you of all your obligations under the Agreement (including, but not limited to, the due and punctual payment of all moneys which are now or may in the future be owing or remain unpaid by you). The liability of each Guarantor under this guarantee constitutes a principal obligation of each Guarantor and such liability shall not be relieved, or in any way affected in a manner prejudicial to us, by the granting of time, waiver or forbearance to sue by us or by any other act, omission, matter, circumstance or law whereby each Guarantor as a surety only would, but for the provisions of this clause, have been released from liability.

11. INFORMATION AND PRIVACY ACT 2020

11.1. **Authorisations:** For the purpose of facilitating the administration and efficient running of our business, the Customer and the Guarantors authorise us:

- (a) subject to clause 11.2, to collect all information (including Personal Information as defined in the *Privacy Act 2020* (Personal Information)), we may require from any third parties and authorise those third parties to release that information to us;
- (b) to hold all information given by you or any third parties to us; and
- (c) to use that information, including giving information to any other person (including any other credit provider or any credit reporting agency), for the purpose of assessing the Customer's and/or the Guarantors' creditworthiness, to facilitate the collection of debts from you and/or the Guarantors, and for marketing products and services to the Customer and/or the Guarantor.

11.2. **Conditions:** The information (including any Personal Information) will be collected, held, disclosed and used in a manner that complies with the *Privacy Act 2020* and on the condition that:

- (a) it will be held securely at our registered office and in our electronic debt collection system (IODM);
- (b) it will be accessible to any of our employees and agents who need access to it for the efficient running of our business; and
- (c) you may request access to and correction of it at any time.

11.3. **Privacy Act 2020:** Where the Customer and/or any Guarantor is an individual, the authorities under clause 11.1 are authorities or consents for the purposes of the *Privacy Act 2020*.

12. GENERAL

12.1. **Circumstances beyond our control:** Notwithstanding any other provision of these Terms and Conditions, non-performance by us of our obligations under the Agreement shall be excused, without liability for non-performance, during the time and to the extent that such performance is prevented, wholly or partly, by any act of God, fire, earthquake, storm, flood, landslide, strike, lockout, work stoppage or other labour hindrance, explosion or public mains electrical supply failure, sabotage, riot, civil disturbance, national emergency, terrorism, act of war or any other cause beyond our reasonable control.

12.2. **Assignment:** We may assign our rights and obligations under the Agreement without your consent. The Agreement is personal to you and you may not directly or indirectly (including on a change of control) assign or otherwise transfer your rights or obligations under the Agreement or any interest under the Agreement to any other person without our consent (which may be withheld at our complete discretion).

12.3. **Subcontracting:** We may allow a contractor to carry out all or any of our obligations under the Agreement without your consent.

12.4. **Non-Solicitation:** 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

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you in connection with this Agreement. You acknowledge the restrictions in this sub-clause are reasonable and necessary and have been given to protect and maintain our proprietary interests and to protect our investment in training, recruiting and developing staff and without prejudice to any other right or remedy we may have, you agree to pay us on demand the greater of 12% of the annual wage or \$5,000 for each person directly or indirectly engaged or employed by you in breach of subclause. This clause 12.4 will continue to have effect notwithstanding the termination or expiration of this Agreement.

- 12.5. **Entire Agreement:** The Agreement supersedes any previous agreement with you relating to the same or similar services provided to you and contains all the terms of our agreement with you and all other terms, conditions and warranties are expressly excluded. There has been no representation made by either party to the other except as expressly set out in these Terms and Conditions.
- 12.6. **Severability:** If any part of these Terms and Conditions 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 these Terms and Conditions which shall remain in full force.
- 12.7. **No waiver:** No waiver of any breach, or failure to enforce any provision, of these Terms and Conditions 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 these Terms and Conditions.
- 12.8. **Confidentiality:** You shall at all times keep confidential, treat as privileged, and not directly or indirectly make, or allow any disclosure or use to be made of, the subject matter, or any provision of, the Agreement or any information relating to any provision, or the subject matter, of the Agreement, or any information directly or indirectly obtained from us under or in connection with the Agreement.
- 12.9. **Disputes:**
- (a) If any dispute or difference arises between the parties (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.
 - (b) 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.
 - (c) 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.
 - (d) **Interlocutory Relief:** Nothing in this clause will prevent any party from taking immediate steps to seek urgent interlocutory relief before an appropriate Court.
- 12.10. **Notices:** Any notice to be given pursuant to this Agreement will be in writing addressed to the party to whom it is given. Where we are required to give you notice we will do that by one or more of the following means:
- (a) personal delivery;
 - (b) post; or
 - (c) electronic mail
- to the addresses obtained by us unless you notify us otherwise in writing. We are entitled to assume our notices have been received by you on the day it was personally delivered, it was transmitted to your email address or on the third Business Day after being posted.
- 12.11. **Governing law:** The Agreement will be governed by, and construed in accordance with, the laws of New Zealand. The parties irrevocably submit to the 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 the Agreement.