

# Part F | Architectural Designers New Zealand Agreement for Architectural Design Services - General Conditions

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## 1. The Services

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- 1.1 The Architectural Designer will perform the Services using the degree of skill, care and diligence reasonably expected of a professional consultant providing services similar to the Services.
- 1.2 In providing the Services the Architectural Designer shall at all times comply with the Code of Ethics of Architectural Designers NZ Inc.

## 2. Design Brief

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- 2.1 The Client will provide the Design Brief to the Architectural Designer and the Architectural Designer will assist the Client in developing the Design Brief as requested.
- 2.2 Where a Budget has been specified in this Agreement, the Architectural Designer will use reasonable endeavours to develop the Design up to the Concept Design stage within the Budget but does not warrant that the Project will be able to be constructed within the Budget. The parties may agree on modifications to the Budget at any time during the carrying out of the Services.

## 3. Client Assistance

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- 3.1 The Client will provide, free of charge, all reasonable assistance and cooperation to enable the Architectural Designer to carry out the Services including by:
- (a) providing all information reasonably required relating the Site;
  - (b) allowing the Architectural Designer reasonable access to the Site;
  - (c) responding to any request for instructions or decisions within a reasonable time to avoid delay in the Architectural Designer being able to provide the Services;
  - (d) providing timely feedback to the Architectural Designer on iterations of the Design for further design development.
- 3.2 The Client warrants the accuracy of all information provided by the Client to the Architectural Designer including in relation to existing structures. To the extent that any inaccurate information provided by the Client or sourced from local authority records results in additional work for the Architectural Designer, the Client will be responsible for any increase in the Fees caused by the inaccuracy. The Client acknowledges that any undisclosed or inaccurately documented information relating to the Site or Project may impact on the Budget.

## 4. Representatives

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- 4.1 The Client Representative is authorised to give instructions to the Architectural Designer on behalf of the Client and the Client will be bound by those instructions. If no Client Representative is specified in Part E of this Agreement, the Client will appoint the Client Representative and notify the Architectural Designer of the appointment prior to the Architectural Designer being required to carry out the Services.
- 4.2 The Architectural Designer Representative is authorised to receive instructions on behalf of the Architectural Designer and any notices given to the Architectural Designer Representative will be deemed to be received by the Architectural Designer.
- 4.3 Either party may replace their Representative by giving notice in writing to the other party.

### PARTIES TO INITIAL

CLIENT: \_\_\_\_\_

DESIGNER: \_\_\_\_\_



## 5. Key Personnel

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- 5.1 If any Key Personnel are specified in Part E of this Agreement, the Architectural Designer agrees that the Key Personnel will be involved in the Design and may only be replaced with the written consent of the Client (such consent not to be unreasonably withheld).

## 6. Stages

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- 6.1 If the Services are to be provided in stages, written approval must be obtained from the Client prior to the Architectural Designer commencing work on any subsequent stage.
- 6.2 The Client must give notice in writing to the Architectural Designer of any issues arising with the Design prior to approving each subsequent stage of the Services. Written approval of the Client to each stage of the Services will be evidence of the Client's satisfaction with the Design at the conclusion of the relevant stage.

## 7 Sub-Consultants

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- 7.1 The Architectural Designer may engage any third party Sub-Consultants to carry out parts of the Services provided that this will not relieve the Architectural Designer of any liability or obligation under this Agreement.

## 8. Separate Consultants

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- 8.1 The Client may engage Separate Consultants and will notify the Architectural Designer of any Separate Consultants engaged. The Architectural Designer will cooperate with the Separate Consultants and (if specified in the description of Services) the Architectural Designer will coordinate the services of the Separate Consultants. Unless otherwise specified in this Agreement, coordination of Separate Consultants will be charged at the hourly rates of the Architectural Designer specified in this Agreement.
- 8.2 The Client is solely responsible for giving instructions to the Separate Consultants.
- 8.3 The Client will ensure that the Separate Consultants cooperate and provide all information required by the Architectural Designer to carry out the Services in a timely manner. If the Architectural Designer suffers any delay in completing the Services or incurs additional costs arising from the activity of the other consultants or information provided by them, the Architectural Designer may charge those extra costs to the Client.
- 8.4 The Architectural Designer is not responsible for any services provided by the Separate Consultants engaged by the Client.

## 9. Variations

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- 9.1 Any Variations to this Agreement or the scope of Services to be provided under this Agreement will only be valid if recorded in writing and agreed between the parties.
- 9.2 The Client may request Variations to the Services. The Architectural Designer will use reasonable endeavours to agree such Variations and if the Architectural Designer agrees to the Variations, unless otherwise specified in this Agreement, the Architectural Designer will be entitled to charge for any additional services at its hourly rates specified in Part C of this Agreement.
- 9.3 Where the Architectural Designer considers that any direction or instruction from the Client constitutes a Variation to the Services, the Architectural Designer will notify the Client. If the Client does not consider the instruction to be a Variation, the Architectural Designer may suspend services until the parties reach agreement, and failing agreement the parties may refer the matter for determination under clause 19.
- 9.4 The Architectural Designer will not be required to incorporate any Variation into the Services unless agreement is reached on the Variation and the additional costs for the Variation.

### PARTIES TO INITIAL

CLIENT: \_\_\_\_\_

DESIGNER: \_\_\_\_\_



**10 Fees**

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- 10.1 The Client will pay the Fee calculated in accordance with Part C of this Agreement, as varied in accordance with this Agreement.
- 10.2 Unless otherwise specified, the Client is responsible for any resource consent or building consent fees associated with the Project.
- 10.3 Unless otherwise specified in Part C of this Agreement, the Architectural Designer may invoice the Client monthly, or at such other periodic intervals as determined by the Architectural Designer.
- 10.4 The Client must pay all undisputed invoices within the period stated in Part C of this Agreement, without setoff or deduction.
- 10.5 Where the Client disputes any part of an invoice:
- (a) if the invoice has been issued as a payment claim in accordance with the CCA, the provisions of the CCA will apply, and a payment schedule must be provided within [10] Working Days of receipt of the payment claim; and
  - (b) in any other case, the Client must pay any undisputed part of the invoice and provide full details of the basis for the dispute in writing to the Architectural Designer by the due date for payment. If no details of any dispute are provided within that time, the Client will be deemed to have accepted the invoice in full.
- 10.6 Interest will be paid by the Client on any unpaid amount of the Fee (or any disputed amount not paid that is subsequently found to have been payable) at the rate of 1.5% per month compounded monthly from the due date for payment until payment in full. The Client shall also meet any debt recovery costs incurred by the Architectural Designer, including legal costs on a solicitor/client basis.
- 10.7 Any additional services performed by the Architectural Designer at the request of the Client which are not included in the Scope of Services will be charged to the Client at the Architectural Designer's hourly rates as set out in Part C of this Agreement.
- 10.8 The Architectural Designer may review its hourly rates on or from 1 April in each year by notice in writing to the Client, provided that any change will not take effect before such notice.
- 10.9 Where Part C provides for the Fee on a Lump Sum (fixed) basis, in addition to changes to the Fee in accordance with other provisions of this Agreement, where the Services are provided over a period of more than 12 months the Architectural Designer may review the Fee to reflect changes in the Architectural Designers hourly rates or additional work carried out.
- 10.10 Including where any Fee is disputed, the Client will not be entitled to use the Design at any time when any amounts invoiced by the Architectural Designer are overdue. The Architectural Designer will not be liable for any losses arising from the inability of the Client to use the Design during such periods.

**11. Contract Administration and Site Observation**

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- 11.1 If the Services provide for contract administration, the Architectural Designer will act as required by any agreement between the Client and a third party using all reasonable professional care and judgement. The Architectural Designer's authority to act in respect of contract administration matters is limited only by any limits specified in Part B of this Agreement.
- 11.2 If the Services provide for observation, the Architectural Designer will provide reasonable assistance to the Client's contractors in interpreting the Design.
- 11.3 Unless administration and/or observation are included in the Services, the Architectural Designer has no obligation to instruct, direct or advise the Client's contractors or the Client through construction except as otherwise agreed by the Architectural Designer by Variation in writing to this Agreement.

**PARTIES TO INITIAL**

CLIENT: \_\_\_\_\_

DESIGNER: \_\_\_\_\_



- 11.4 If the Architectural Designer agrees to carry out those Services, the Services will, except as otherwise agreed, be carried out at the hourly rates of the Architectural Designer specified in Part C of this Agreement.
- 11.5 No observation or contract administration services will render the Architectural Designer liable for the works of the Client's contractors, except to the extent that there is any defect in the Design.

## **12. Health and Safety**

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- 12.1 The Architectural Designer will ensure that it is aware of and complies with all of the obligations imposed on it under the HSWA and any regulations made pursuant to the HSWA as well as any statutory health and safety obligations and codes of practice, standards and guidelines published by WorkSafe New Zealand.
- 12.2 The Architectural Designer has not and will not assume any duty imposed on the Client under the HSWA.
- 12.3 The Client will provide to the Architectural Designer details of any known health and safety risks relevant to the Site or the Services.
- 12.4 The parties agree to cooperate, consult and coordinate with each other and with any other PCBU in relation to the Project to enable compliance with obligations under the HSWA.
- 12.5 Unless otherwise agreed between the parties in writing, the Architectural Designer will have no authority to direct any person on the Site other than its own employees, or any other person on the Site at the request of the Architectural Designer.
- 12.6 The Client will, as far as reasonably practicable, eliminate or (if elimination is not practicable) minimise any risks on the Site. The Architectural Designer may suspend the Services as reasonably required until the Client has complied with this clause. The Architectural Designer will comply with all health and safety requirements and policies of the Client in relation to the Site.
- 12.7 The Client agrees that it will comply with all guidelines and requirements specified by the Architectural Designer in relation to the operation, maintenance, cleaning, repair or other use of any structure or other item designed by the Architectural Designer in relation to the Project or Site and shall provide such guidelines or manuals to any other relevant third parties.

## **13 Intellectual Property**

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- 13.1 All New Intellectual Property held in any medium, whether electronic or otherwise, and forming part of the Services supplied under this Agreement (including without limitation the Design) shall be owned by the Architectural Designer.
- 13.2 The Architectural Designer grants to the Client a non-exclusive, non-transferrable licence to use the New Intellectual Property subject to the terms of this Agreement. The licence to use the New Intellectual Property is subject to the Client complying with its obligations under this Agreement, including payment of all Fees.
- 13.3 On termination or completion of the Services and subject to payment of any Fees, the Architectural Designer will provide the Client with one copy of the Design in hardcopy or non-editable electronic format.
- 13.4 The Architectural Designer will not be required to provide the Design in editable electronic format.
- 13.5 If the Services are terminated prior to their completion, the Client shall only be entitled to use the New Intellectual Property that has been created as at the time of termination. The Client shall not be entitled to use partially completed Design, including for further development by a third party, without the Architectural Designer's prior written consent.

### **PARTIES TO INITIAL**

CLIENT: \_\_\_\_\_

DESIGNER: \_\_\_\_\_



- 13.6 The licence to use the New Intellectual Property is limited to development of the Project on the Site. The Client may not use any New Intellectual Property for the development of any land other than the Site without the prior written consent of the Architectural Designer, the Architectural Designer may (if consent is given) request a royalty for such re-use.
- 13.7 Where the Client wishes to use the New Intellectual Property for additions or alterations to be provided by someone other than the Architectural Designer, the Client must obtain the Architectural Designer's prior written consent which shall not be unreasonably withheld.
- 13.8 Each parties' Pre-Existing Intellectual Property remains the property of that party. The Client grants to the Architectural Designer a non-exclusive, non-transferrable, royalty free licence to use, and copy the Client's Pre-Existing Intellectual Property to the extent reasonably required to enable the Architectural Designer to provide the Services.
- 13.9 The Client confirms that the Client's Pre-Existing Intellectual Property will not infringe the intellectual property rights of any third party.
- 13.10 The Architectural Designer grants the Client a royalty free non-transferrable licence to use and copy the Architectural Designer's Pre-Existing Intellectual Property to the extent reasonably required to enable the Client to make use of the Services for the Project.
- 13.11 The Client may not make or authorise any change to the Design without the Architectural Designer's prior written consent.
- 13.12 The Client may not use any of the New Intellectual Property for the Design where there is an unresolved dispute in respect of the Fees, and the Architectural Designer will have no liability in respect of the Client's inability to use the Design in those circumstances.

#### **14 Notice of Defects**

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- 14.1 The Client will notify the Architectural Designer in writing within 20 Working Days of the Client becoming aware of any defects in the Design or Services. The Architectural Designer will not be liable for any losses caused by the use of the Design after the Client has become aware of the issue and before the Client has provided notice to the Architectural Designer under this clause.
- 14.2 Failure to notify the Architectural Designer within the timeframe specified in clause 14.1 means that the Client waives any claim it may have against the Architectural Designer (whether in contract, tort or otherwise) in relation to the defects or faults.

#### **15. Insurance**

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- 15.1 The Architectural Designer agrees that it will hold professional indemnity insurance cover for a sum of not less than \$250,000.00, and public liability insurance for a sum not less than \$1,000,000.00.
- 15.2 The Architectural Designer will use all reasonable endeavours to maintain professional indemnity insurance cover for a period of six years from the date of completion of the Services or termination of the Architectural Designer's engagement, whichever is earlier.
- 15.3 The Client may request the Architectural Designer's professional indemnity cover be increased and if the Architectural Designer agrees to increase the cover, the Client shall be responsible for meeting the cost of the additional insurance premium and any other costs relating to the increase.

#### **16. Limitation of Liability**

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- 16.1 To the extent permitted by law, the maximum aggregate amount of the Architectural Designer's liability to the Client (whether in contract, tort or otherwise) will be the lesser of \$250,000.00 or five times the Fee payable under this Agreement. In no circumstances will the Architectural Designer be

#### **PARTIES TO INITIAL**

CLIENT: \_\_\_\_\_

DESIGNER: \_\_\_\_\_



liable to the Client for any indirect, consequential or special loss or loss of revenue or profit, whether in contract, tort or otherwise.

- 16.2 The Architectural Designer's liability for breach of this Agreement will be limited to any reasonably foreseeable claims, damages, liabilities, losses or expenses caused directly by the breach. The Architectural Designer's liability will be reduced to the extent of any contribution to the loss or damage by any act or omission of the Client.
- 16.3 Without limiting any defences under the Limitation Act 2010 or any other legislation, the Architectural Designer shall not be liable for any loss or damage occurring more than six years from the date on which the Services are completed.
- 16.4 Where the Services have been reduced, varied or otherwise altered or the Services are terminated or suspended prior to completion, any liability of the Architectural Designer will apply only in respect of the Services actually completed, and only to the extent that the reduction or Variation of the Services has not compromised or denied the Architectural Designer the chance to properly provide the Services or amend or finalise any designs forming part of the completed Services, or otherwise mitigate any loss to the Client.
- 16.5 Where any changes are made by the Client or any other third party to the Design or any relevant consents without the Architectural Designer's prior written consent, the Architectural Designer will not be liable for any damage, loss or expense incurred by the Client as a result of such change.
- 16.6 The parties' liability under this Agreement will only be to each other and each party disclaims responsibility for any liability to any other person. If the Site is transferred, leased or assigned to any third party, the Architectural Designer will not have any liability to that third party.

## 17. Suspension

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- 17.1 Without limiting any of the Architectural Designer's rights under the CCA, the Architectural Designer may suspend performance of the Services and withhold the Design where any amounts invoiced remain unpaid and overdue under this Agreement.
- 17.2 If the Architectural Designer wishes to suspend Services it will provide at least two Working Days' notice to the Client. The Architectural Designer will not be liable for any losses incurred by the Client due to such suspension. The Architectural Designer will promptly lift any suspension following payment in full of any outstanding Fees by the Client.

## 18. Termination

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- 18.1 The Client may terminate this Agreement at any time by giving written notice to the Architectural Designer.
- 18.2 The Architectural Designer may terminate this Agreement if the Client has materially breached the terms of this Agreement and has failed to remedy such breach within a reasonable period of time following the Architectural Designer giving notice of the breach to the Client.
- 18.3 If either party terminates this Agreement, the Client must pay the Architectural Designer for all Services (calculated based on time charges where applicable or otherwise on a fair and reasonable basis) provided to the date of termination.
- 18.4 If this Agreement is terminated for reasons other than a default by the Architectural Designer, the Client must pay to the Architectural Designer:
- (a) any loss of profits resulting from the early termination of this Agreement;
  - (b) any costs committed to by the Architectural Designer prior to termination; and
  - (c) any other reasonable costs the Architectural Designer incurs due to termination of the Services.

### PARTIES TO INITIAL

CLIENT: \_\_\_\_\_

DESIGNER: \_\_\_\_\_



18.5 The Architectural Designer may terminate this Agreement by notice in writing to the Client where the Architectural Designer reasonably considers that there has been a breakdown in the working relationship between the Architectural Designer and the Client.

## 19. Disputes

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19.1 Where any dispute arises between the parties to this Agreement, this dispute must be notified in writing and the parties will attempt to resolve such dispute by good faith discussions.

19.2 If a dispute cannot be resolved between the parties within a reasonable time, then either party may refer the dispute to mediation.

19.3 If the dispute is not resolved within 60 Working Days of the dispute being notified, then either party may refer the dispute to arbitration by a sole arbitrator under the provisions of the Arbitration Act 1996. The arbitrator will be appointed by agreement between the parties within 10 Working Days of written notice of referral, or failing agreement by the President of the Arbitrators and Mediators Institute of New Zealand or its successor body, or any nominee of the President. The costs of arbitration will be met in accordance with section 6 of the Arbitration Act 1996.

19.4 Nothing in this Agreement restricts either party from seeking to resolve any dispute by way of adjudication under the CCA.

## 20. Confidentiality

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20.1 Each party will hold all Confidential Information in confidence for the benefit of the other party except as is reasonably required to perform their obligations under, or enforce the provisions of, this Agreement.

## 21. Privacy

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21.1 The Client authorises the Architectural Designer to:

- (a) access, collect, retain and use any information about the Client for the purpose of assessing the creditworthiness of the Client;
- (b) disclose information about this client, whether collected by the Architectural Designer or obtained from any other source, as may be necessary or desirable to enable the Architectural Designer to exercise any power to enforce or attempt to enforce any of the Architectural Designer's rights under this Agreement or for the purpose of credit reporting.

21.2 The Client will be entitled to access such information and request correction of any information held in accordance with the Privacy Act 2020.

## 22. Promotions

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22.1 Where the Architectural Designer agrees, the Client must credit the Architectural Designer or its representative in any form of promotional material relating to the Services or the Project.

22.2 The Architectural Designer may display a promotional sign on or near the Project Site during the building process, and use its designs, drawings and photographic images of the Project for the Architectural Designer's professional and promotional purposes, including for the purposes of industry award entries, provided that the Client's name or exact address of the Site will not be disclosed in conjunction with such use without the Client's consent.

## 23. Guarantee

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23.1 In consideration of the Architectural Designer entering into this Agreement the Guarantor guarantees the performance by the Client of its obligations under this Agreement as if the Guarantor had originally been named as the Client under it. If the Client does not meet any obligation, warranty, or undertaking, the Guarantor will indemnify the Architectural Designer for any loss, cost, liability or claim arising from that failure.

### PARTIES TO INITIAL

CLIENT: \_\_\_\_\_

DESIGNER: \_\_\_\_\_



## 24. General

- 24.1 **Force Majeure:** Neither party is liable for any act, omission, or failure to fulfil its obligations under this Agreement if such act, omission or failure arises from any cause reasonably beyond its reasonable control. The party unable to fulfil its obligations agrees to notify the other in writing of the reasons for its failure to fulfil its obligations and the effect of such failure as soon as practicable.
- 24.2 **Assignment:** Neither party has the right to assign this Agreement without the prior written consent of the other party. The Client's consent may not be unreasonably withheld.
- 24.3 **Entire Agreement:** This Agreement constitutes the entire agreement between the parties in relation to the Services. No variation, modifications or amendments to this Agreement shall be effective unless made in writing and signed by the parties to this Agreement.
- 24.4 **No Reliance:** The entire obligations of the Architectural Designer in relation to the Services comprising the subject matter of this Agreement are set out in this Agreement and the Client enters into this Agreement entirely in reliance on the Client's own skill and judgment and not in reliance on any conduct, statement or warranty made by the Architectural Designer or any other party.
- 24.5 **Fair Trading Act:** Where the Client is in trade and the Services are provided and acquired in trade, the parties agree that clauses 0 and 0 are fair and reasonable and the parties contract out of sections 9, 12A, 13, and 14(1) of the Fair Trading Act 1986.
- 24.6 **Severability:** If any clause in this Agreement is found by any court of law to be invalid or otherwise not binding on the parties, or if the parties between them agree that one or more clauses is no longer to have effect, the rest of the clauses in this Agreement shall continue in full force and effect.
- 24.7 **No Waiver:** If either party delays or does not exercise any right or remedy under this Agreement, it is not a waiver of that right or remedy.
- 24.8 **Relationships:** Nothing in this Agreement shall be construed as creating a relationship of partnership, employer and employee or principal and agent between the Client and the Architectural Designer. No party has any authority to bind the other or act on its behalf except to the extent expressly provided for in this Agreement.
- 24.9 **Governing Law:** This Agreement and the Services contemplated by it are governed by the laws of New Zealand and each party submits to the jurisdiction of the New Zealand courts.
- 24.10 **Notices:** Any notice given under this Agreement is sufficiently given if in writing (including in electronic form) to the address or contact details specified in writing by the other party for that purpose or, if no such address has been specified, then to the other party's registered office.
- 24.11 **Survival:** The obligations of the parties under the following clauses: Confidentiality, Intellectual Property, Limitation of Liability, Notice of Defects and Termination survive expiry or termination of this Agreement for whatever reason.
- 24.12 **Further Assurances:** Each party will make all applications, execute all documents and do or procure all other acts or things reasonable and necessary to implement and carry out its obligations under and the intention of this Agreement.
- 24.13 **Consumer Guarantees Act:** The parties agree that where the Services are provided for the Client's business purposes, the Consumer Guarantees Act 1993 is not applicable to the Services.
- 24.14 **Construction Contracts Act:** The parties agree that this is a construction contract for related services for the purposes of the CCA and that the CCA provisions (insofar as it is applicable to the Services) will apply to this Agreement.
- 24.15 **GST:** All monetary sums referred to in this Agreement are exclusive of GST (if any)

### PARTIES TO INITIAL

CLIENT: \_\_\_\_\_

DESIGNER: \_\_\_\_\_





24.16 **Headings:** The headings in this Agreement are inserted for convenience only and do not constitute a part of this Agreement and cannot be referred to in its interpretation.

**25. Definitions**

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25.1 In this Agreement, unless the context otherwise requires:

**Agreement** means this agreement and any schedules or appendices;

**Architectural Designer** means the party named as the Architectural Designer in Part E of this Agreement;

**Architectural Designer Representative** means the party specified in Part E of this Agreement or otherwise nominated by the Architectural Designer under clause 4 of Part F.

**Budget** means the amount nominated by the Client and recorded in Part A of this Agreement as being the estimated cost of construction of the Project, excluding GST, the Fees, fit-out or furnishings and any consenting costs;

**CCA** means the Construction Contracts Act 2002;

**Client** means the party named as the client in Part E of this Agreement;

**Client Representative** means the party specified in Part E of this Agreement or otherwise nominated by the Client.

**Concept Design** means the stage of the Design described in Part B2 of this Agreement;

**Confidential Information** means all information of either party to this Agreement, other than information that is already in the public domain, or already known by the other party;

**Developed Design means** the stage of the Design described in Part B4 of this Agreement

**Detailed Design and Documentation means** the stage of the Design described in Part B5 of this Agreement

**Design** means all designs, drawings, documents, materials or other information, including in electronic form, prepared by the Architectural Designer or any Sub-Consultants carrying out the Services;

**Design Brief** means the outline of the Client's wishes for the Project including any specific requirements or preferences, and the proposed use of the Project;

**Fee** means the amount or amounts to be paid by the Client as specified in Part C of this Agreement, either by reference to estimates, lump sum quotes, percentages or hourly rates, and subject to any Variations under this Agreement;

**Guarantor** means any party named as guarantor under Part E of this Agreement;

**GST** means goods and services tax under the Goods and Services Tax Act 1985;

**HSWA** means the Health and Safety at Work Act 2015;

**Key Personnel** means any key personnel of the Architectural Designer as specified in Part E of this Agreement;

**New Intellectual Property** means all intellectual property rights collated, collected, prepared or created by the Architectural Designer (or persons acting on behalf of the Architectural Designer) in providing the Services (including all drawings, designs and other materials, including in electronic form) but excluding any Pre-Existing Intellectual Property;

**PARTIES TO INITIAL**

CLIENT: \_\_\_\_\_

DESIGNER: \_\_\_\_\_



**Preliminary Design means** the stage of the Design described in Part B3 of this Agreement

**PCBU** (or person conducting a business or undertaking) has the meaning given to it under the HSWA;

**Pre-Existing Intellectual Property** means any intellectual property rights owned by either party prior to the performance of the Services or entry into this Agreement;

**Project** means the project identified in Part A of this Agreement;

**Representative** means the Client Representative or the Architectural Designer Representative;

**Separate Consultants** means other consultants engaged directly by the Client to provide services to the Project, set out in Part D1 and D2;

**Services** means the services to be provided by the Architectural Designer as set out in Part B of this Agreement, or as varied by agreement between the parties;

**Site** means the land owned or controlled by the Client on which the Project is intended to be developed as specified in Part A of this Agreement;

**Sub-Consultants** means any person or entity engaged by the Architectural Designer under a subcontract to assist in the provision of the Services;

**Variation** means a change in the Services or the scope of the Services or to this Agreement;

**Working Day** means a day of the week (irrespective of whether or not work is actually carried out on that day) other than;

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Labour Day, and Waitangi Day; and

(b) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and

(c) the day observed in the appropriate area as the anniversary of the province of which the Site forms a part; and

(d), a day in the period commencing on 24 December in any year and ending with the close of 5 January in the following year.

**PARTIES TO INITIAL**

CLIENT: \_\_\_\_\_

DESIGNER: \_\_\_\_\_

