



## STANDARD TERMS OF ENGAGEMENT

### 1. Definitions

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In these Standard Terms the following words and phrases have the meanings given to them as follows:

*Authorised Representative* means the one individual providing instructions in cases where there are multiple directors, trustees, landowners or relevant parties associated with the Client.

*Contract* means the Engagement Email together with these Standard Terms.

*Client* means the individual(s) or entity who will be receiving the Services.

*Documents* means any drawings, specifications, reports and other technical information provided to the Client by MLS including any Images.

*Engagement Email* means the email sent by MLS to which these Standard Terms are attached.

*Fee(s)* means the fee(s) calculated in accordance with clause 4.1.

*Images* means photographic images, video images, videography and other images captured by MLS.

*Landowner* means the landowner or developer who owns the Site which MLS Services relate to.

*MLS* means Measured Land Surveys Limited.

*Services* means the work to be undertaken by MLS and detailed in the Engagement Email and any variation under clause 6 of these Standard Terms.

*Site* means the site described in the Engagement Email.

*Standard Terms* means these standard terms of engagement.

### 2. Standard Terms

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2.1 These Standard Terms apply to all Services provided by MLS to the Client, unless separate terms of engagement have been agreed by both parties.

2.2 MLS reserves the right to modify these Standard Terms unilaterally. Any changes will be made available on the MLS website [www.measuredlandsurveys.co.nz](http://www.measuredlandsurveys.co.nz) and continued use of the Services by the Client constitutes acceptance of the updated terms and conditions.

2.3 If the Construction Contracts Act 2002 applies to the Services undertaken, then these Standard Terms are subject to that Act.

### 3. Provision of Services

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3.1 MLS will provide the Services to the Client.

3.2 In providing the Services MLS will use the degree of skill, care and diligence reasonably expected of a professional consultant providing services similar to the Services.

3.3 MLS may subcontract parts of the Services without the prior written consent of the Client, but if it does it will oversee the duties and responsibilities of the subcontractor.

3.4 Provision of the Services is subject to the Client providing all information required by MLS.

3.5 The Client must co-operate with MLS and not obstruct the proper performance of the Services, including allowing MLS reasonable access to the Site and other locations associated with the Services.

3.6 As soon as the Client becomes aware of anything that will affect the scope or timing of the Services, the Client must inform MLS in writing.

3.7 MLS is authorised to accept instructions from the Authorised Representative. It is the responsibility of the Client, who is communicating with MLS, to obtain the necessary consent and authorisation from the other directors, trustees, landowners, or relevant parties. MLS shall not be held responsible for any disputes or disagreements among the Client's stakeholders regarding the instructions provided by the Authorised Representative. The Client acknowledges and agrees that MLS is entitled to rely on instructions received from the Authorised Representative as if they were received from all relevant stakeholders. In the absence of explicit instructions to the contrary, MLS will assume that the instructions received from the Authorised Representative are authorised by all relevant parties.

3.8 The Client hereby authorises MLS to communicate and liaise with other professionals on behalf of the Client, as deemed necessary for the provision of Services. Such professionals may include but are not limited to solicitors, planners, or any other relevant party involved in the Site. This authorisation extends to sharing relevant Site information and seeking or providing clarification on matters related to the Services provided by MLS.

- 3.9 If the Client requests MLS to take over or review work previously conducted by another entity, the Client acknowledges and agrees that, prior to commencing such work, MLS will first confirm with the said company that their work has been completed and that the necessary permissions, rights, or approvals for the transition of work to MLS have been obtained. The Client understands that this process is essential for maintaining professional relationships and adhering to any contractual obligations with the original company. MLS shall not be held liable for any issues arising from the transition of work if the Client fails to provide accurate information regarding the status of the previous company's work.
- 3.10 MLS may suspend the Services if it is unable to perform the Services due to an event or circumstance which is beyond its reasonable control including, but not limited to, act of God, work stoppage or other labour hindrance, public mains electrical supply failure, fire, flood, storm, explosion, earthquake, landslide, epidemic and quarantine restriction. MLS will not reimburse the Client for any Fees, expenses or disbursements paid for the Services, prior to suspension of the Services.
- 3.11 MLS shall not be held responsible for unforeseen delays that impact site access and project timelines. Unforeseen delays may include, but are not limited to, acts of nature, adverse weather conditions, strikes, lockouts, acts of terrorism, accidents, governmental actions, or any other events beyond the reasonable control of MLS. In the event of such delays, MLS will make reasonable efforts to mitigate the impact on project timelines but shall not be liable for any resulting losses, damages, or expenses incurred by the Client. The Client acknowledges and agrees that unforeseen delays are inherent in certain projects and, therefore, MLS cannot guarantee uninterrupted progress.

#### **4. Fees and other amounts to be paid**

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- 4.1 The Fee for the Services will be based on the time that MLS spends attending to your instructions. At times the Fee may be adjusted to represent other factors such as the specialised knowledge skill or responsibility required, the importance of the matter, the value delivered, the urgency of the matter and the results achieved. Charge out rates are available on request.
- 4.2 All fee estimates supplied to the Client by MLS are based on the request by the Client for the Services to be carried out and the information provided by the Client. Fee estimates are indicative only and the actual fee will be determined in accordance with clause 4.1.
- 4.3 MLS reserves the right to alter its Fee (and revise any fee estimate):
- 4.3.1 where the Services are affected from a lack of precision in the Client's instructions, or the Client provides more detailed instructions after a fee estimate is given;
  - 4.3.1 if the Client requires any changes which affect the proposed program for the Services;
  - 4.3.2 if an unforeseen matter arises which affects the effort required to provide the Services;
  - 4.3.3 where the Client fails to comply with its obligations under the Contract;
  - 4.3.4 where changes are made to any legislation (including subordinate laws) which affects the provision of the Services; or
  - 4.3.5 where any other change occurs that affects the supply of the Services by MLS.
- 4.4 MLS will give the Client notice of any material change to its Fee (and any fee estimate) within a reasonable time of it becoming aware of a matter set out in clause 4.3.
- 4.5 The Client shall pay to MLS all disbursements (for example Land Information New Zealand search and lodgement fees) and expenses (for example mileage, survey consumables and offices expenses) reasonably incurred, paid or payable by MLS in relation to the Services or on behalf of the Client. Expenses may include a reasonable mark-up and general office expenses may be charged at up to 2% of the Fee. Land Information New Zealand search and lodgement fees may include a staff processing margin.
- 4.6 Goods and services tax (**GST**) chargeable pursuant to the Goods and Services Tax Act 1985 (**GST Act**) will be added to the Fee, disbursements and expenses in relation to any part of the Fee, disbursements and expenses that are for a taxable supply under the GST Act.
- 4.7 Unless explicitly specified in writing, all fee estimates or quotes provided are exclusive of GST, expenses, disbursements, and additional fees. For the avoidance of doubt, GST, fees, expenses and disbursements will be charged in addition to any estimates or quotes provided by MLS.

#### **5. Payments**

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- 5.1 Subject to paragraph 5.8 and unless agreed otherwise, the Fee, expenses and disbursements for the Services will be invoiced monthly, at the end of each month with payment to be made by the 20<sup>th</sup> day of the month following the date of the invoice.
- 5.2 Where the Client is a joint venture, each party to the joint venture shall be jointly and severally liable for all payments of fees in relation to the Contract.
- 5.3 In the event that the Client is a company, the directors of the company, jointly and severally, unconditionally and irrevocably personally guarantee the due and punctual payment of all sums owed by the company to MLS. This guarantee shall remain in effect until all obligations of the company to MLS are fully satisfied, and MLS may, at its discretion, pursue payment directly from the directors personally in the event of any default by the company. This guarantee is a continuing and irrevocable guarantee and shall not be affected by any changes in the constitution of the company or any assignment or transfer of the company's obligations to a third party. The directors further agree that this guarantee may be enforced by MLS without the need to first seek payment from the company or exhaust any other remedies available to MLS. This guarantee shall be binding upon the directors and their respective successors, assigns, and legal representatives.
- 5.4 Payment claims will be issued in accordance with the Construction Contracts Act 2002, if required.

#### Payments in advance

- 5.5 MLS may require disbursements in excess of \$250.00 to be paid in advance.

## Overdue payments

- 5.6 If payment is not received by the due date specified on the invoice, a late payment fee equal to 2% of the unpaid portion of the amount due may be charged each month until the outstanding balance is paid in full. For the avoidance of doubt, the 2% fee will be calculated from the date of the invoice and will be reassessed on the unpaid amount each month. Furthermore, MLS may pass on any associated legal and debt collection costs incurred to the party responsible for the late payment.
- 5.7 If the Client's account becomes overdue and remains unpaid for a period of 10 working days, MLS reserves the right to suspend all Services, until such time as the outstanding payment is received in full. MLS shall provide the Client with written notice of the overdue account and the intention to suspend work. During the period of suspension, the Client acknowledges that any deadlines or timelines previously established may be extended based on the duration of the account suspension. The Client understands and agrees that MLS shall not be held liable for any losses, damages, or consequences arising from the suspension of work due to overdue accounts. It is the Client's responsibility to ensure timely payment to avoid any disruption.
- 5.8 The Client will indemnify MLS against any costs, expenses and charges incurred or suffered by MLS in recovering any unpaid amounts, including costs on a solicitor client basis.

## **6. Variations**

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- 6.1 The Client may request a variation to the Services by giving notice to MLS. MLS may also propose variations to the Services by giving notice to the Client. Variations to the Services may result in a change to the fee estimate or the basis on which the Fee is to be calculated, and may impact the Services (including the estimated completion date, if this has been provided).

## **7. Termination**

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- 7.1 The Client may terminate the Contract for any reason by notice in writing to MLS. A notice of termination, received by either party, will result in MLS ceasing to provide the Services. Where the Client terminates the Contract under this clause the Client shall pay the amounts as specified in clause 7.3.
- 7.2 Either party may terminate the Contract by notice in writing to the other if:
- 7.2.1 the other party breaches the Contract and does not remedy the breach within 14 days of the party notifying that other party of the nature of the breach; or,
- 7.2.2 the other party suspends, or threatens to suspend, payment of its debts or is, or is deemed to be, insolvent or bankrupt, unable to pay its debts as they fall due for payment or admits inability to pay its debts.
- 7.3 MLS will cease providing the Services on termination of the Contract. In the event of a termination of the Contract, the Client shall pay all outstanding Fees, all Fees for work done up to the date of the termination and any actual and reasonable expenses and disbursements associated with or incurred in relation to the Contract until the date of termination.
- 7.4 Termination shall not prejudice or affect accrued rights or claims and liabilities of the parties up to the effective date of termination.

## **8. Intellectual Property**

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- 8.1 All intellectual property (including copyright) in the Documents or any other works produced or resulting from the Services, are owned by, and belong to, MLS. In particular, MLS retains all its rights to use the Images for advertisement, display or promotional purposes.
- 8.2 MLS maintains control of all Documents until full payment of the Fee (and any expenses and disbursements incurred) has been made by the Client, at which point MLS grants the Client a limited licence to use the Documents for the Client's business. The licence will not extend to any of the Client's affiliates unless written express permission is granted by MLS. Without prior written consent, MLS does not authorise the Client (nor does it grant a licence thereof to allow the Client or any affiliate) to distribute the Images nationally or internationally for promotional purposes.
- 8.3 Any publication of the Images outside of the Client's business may only be undertaken with the prior written consent of MLS and any licence granted will not allow the Client to tamper with, edit or manipulate the Images in anyway.
- 8.4 The ownership of data and factual information collected by MLS and paid for by the Client, shall, after payment by the Client, vest in the Client.

## **9. Privacy Act 2020**

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- 9.1 The Client authorises MLS to collect, store, use, and disclose personal information (which is defined in the Privacy Act 2020 as information about an identifiable individual) about the Client (including but not limited to directors, shareholders, trustees and employees of the Client), or any third parties the Client is acting on behalf of, for any purpose relating to the Contract including but not limited to enforcing these standard terms, research and performing the Services, invoicing and debt recovery and any other purpose detailed in MLS's Privacy Policy, available on the MLS website – [www.measuredlandssurveys.co.nz](http://www.measuredlandssurveys.co.nz).
- 9.2 Failure to provide information required may affect MLS's ability to provide the Services.
- 9.3 Any personal information collected and held by MLS will be kept at MLS's premises or such other places as MLS holds its client information, which may include the use of cloud storage (which may be in New Zealand or overseas). MLS may use a third party (including an overseas provider) to store and process personal information on behalf of MLS.
- 9.4 MLS will take reasonable steps to keep personal information safe from loss, unauthorised activity, or other misuse.
- 9.5 Where the Client is an individual, the Client has rights of access to, and correction of, their personal information – please contact MLS at [accounts@measuredlandssurveys.co.nz](mailto:accounts@measuredlandssurveys.co.nz) to do this. Where the Client provides information about another individual, the Client will ensure that they have express consent of the individual to provide their personal information and ensure that the individual is aware and agrees to the collection, storage, use and disclosure of personal information contemplated by this clause and of the access and correction rights available under the Privacy Act 2020.

## **10. Consumer Law**

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- 10.1 The Client agrees and represents where they are acquiring MLS Services for the purposes of trade or business, the parties agree that:
- 10.1.1 To the maximum extent permitted by law, the Consumer Guarantees Act 1993 and sections 9, 12A, 13 and 14 of the New Zealand Fair Trading Act 1986 do not apply to the supply of the Services; and
- 10.1.2 It is fair and reasonable that the parties are bound by the terms of this Contract, including this clause.

10.2 This clause will survive the termination or expiry of this Contract.

## 11. Health and Safety

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- 11.1 Each party will comply with its obligations under relevant health & safety legislation, including the Health and Safety at Work Act 2015, all regulations, by-laws, codes of practice and any other standards which are applicable to workplace health and safety.
- 11.2 In particular, the Client will take reasonably practical steps within its control to ensure that the Site is safe and free of hazards. MLS will report to the Client any hazards identified by MLS that could give rise to reasonably foreseeable risks to health and safety. The Client will take appropriate action to, where reasonably practicable, eliminate or, if not possible, mitigate, risk from such hazards.
- 11.3 In addition, the Client will consult, co-operate and co-ordinate its activities with MLS and any other contractors on the Site, so far as is reasonably practicable, in relation to health and safety.

## 12. Liabilities

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### Limits of Liability

- 12.1 Notwithstanding any other provision of the Contract, and to the maximum extent permitted by law, the total aggregate liability of MLS to the Client for damages or losses (in contract, tort, equity or otherwise, including negligence) in any way connected with the Services is limited to the lesser of five times the amount of the Fee (excluding GST, disbursements and expenses) or \$100,000.00, including interest and costs. In addition, to the maximum extent permitted by law, in no event will MLS be liable to the Client for any indirect, consequential or special loss or damage (including loss of profit), or for any loss of savings, opportunities or data. MLS will also not be liable to the Client for any loss or damage: resulting from variations being made to MLS' designs or recommendations without authorisation; or resulting from misinformation or misdirection from the Client.
- 12.2 If MLS is found liable (whether in contract, tort, equity or otherwise) and the claiming party and/or a third party has contributed to the loss or damage, MLS shall only be liable to the extent of its own contribution.
- 12.3 To the maximum extent permitted by law, MLS will not be liable to the Client for any loss or damage resulting from or connected with the Services occurring after six years from the earlier of the date the Services were completed or termination of the Contract.
- 12.4 When the Client is acting as an agent, whether in the capacity of a planner, engineer, architect, contractor, or any other role, for the Landowner, the Client undertakes they have authority to do so and accepts the responsibility to promptly and accurately pass on all information, advice, and copies of documents provided by MLS to the Landowner. This includes, but is not limited to, any recommendations, reports, or correspondence relevant to the services provided by MLS. Unless expressly agreed otherwise, where the Client is an agent for another party, the Client remains solely reliable for payment of all costs and for ensuring all of these terms and conditions are complied with despite any arrangement to the contrary between the Client and the party for who the Client is an agent.
- 12.5 MLS shall not be held liable for any consequences, losses, or damages arising from the Client's failure to transmit information to the Landowner. The Client acknowledges and agrees to indemnify MLS against any claims or actions brought by the Landowner arising from the Client's failure to fulfil this responsibility. The indemnification covers any losses, costs, damages, or liabilities incurred by MLS in connection with the Client's actions or omissions as an Agent, including but not limited to the failure to pass on information to the Landowner.
- 12.6 For the avoidance of doubt, MLS's duties under this contract are solely to the Client and where the Client is acting as agent, the Client shall indemnify MLS against any claims raised by the Landowner.
- 12.7 MLS will not be liable for any act, omission or failure under the Contract (except failure to meet an obligation to pay money) if that act, omission or failure arises directly from an event or circumstances beyond the reasonable control of the party concerned, including, without limitation, extreme weather conditions, civil disruption or industry wide actions.

## 13. Indemnity

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- 13.1 The Client indemnifies MLS against:
- 13.1.1 Any loss, costs, or damage suffered by MLS, MLS other Clients or a third party, or any action brought against MLS for the former, which results from the Client's failure to comply with these terms or as a result of reliance by MLS on any communication made to MLS via electronic mail;
- 13.1.2 Loss (including consequential loss), costs, claimed amounts, charges, expenses, damages or any other liabilities caused by the Client;
- Relating to MLS Services provided to the Client and / or the Client's relationships with MLS, except if such losses result directly from MLS own fraud or negligence.
- 13.2 The Client acknowledges that MLS may rely on information provided by other professionals, including but not limited to, solicitors, planners, or consultants engaged by the Client. MLS shall not be held responsible for the accuracy, completeness, or validity of information provided by such professionals. In the event that information provided by other professionals proves to be incorrect or incomplete, the Client agrees that MLS shall not be liable for any resulting consequences, losses, or damages.

## 14. Dispute Resolution

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- 14.1 If there is a dispute between the parties to this Contract, then the parties agree to meet in good faith within 14 days of the dispute being raised in order to use their best endeavours to resolve the dispute.

- 14.2 If the parties are unable to reach agreement within 28 days of their first meeting to discuss the dispute, then mediation will be pursued. The parties will agree on a suitable person to act as mediator.
- 14.3 If the parties fail to agree on the identity of the mediator within 14 days of the dispute being referred to mediation, the mediator will be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc (Institute), upon the application of any party.
- 14.4 If the dispute is not resolved by mediation in accordance with the above provisions 14 days after a mediation conference, then the dispute will be referred to and finally resolved by arbitration.
- 14.5 The arbitration will be conducted in accordance with the Arbitration Protocol of the Institute, the tribunal of which will consist of one arbitrator agreed to by the parties. If the parties fail to agree on the identity of the arbitrator within 14 days from the date upon which the dispute is referred to arbitration then the arbitrator will be appointed by the Institute. The place of the arbitration will be in held in the geographical location of MLS' principal place of business.
- 14.6 Each party will bear its own costs in relation to any dispute resolution and the parties agree that they will continue to perform their obligations under this Contract.
- 14.7 Pending final resolution of any dispute, neither of the parties will make any press release, public announcement or statement concerning the subject matter of the dispute to any person (except as expressly or by implication authorised in this Contract).
- 14.8 This clause 13 does not restrict or limit the right of either party from taking immediate steps to obtain relief before an appropriate court, or to terminate the Contract where the Contract provides such a right.
- 14.9 If the Construction Contracts Act 2002 applies to the Contract then either party may refer the dispute to adjudication. The parties may agree to suspend the dispute resolution process under clause 14 at any stage due to any adjudication proceedings, but in the absence of such agreement the provisions of clause 14 will continue to apply.

## 15. General Provisions

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- 15.1 Each party to the Contract will do all things reasonably required to effectively carry out and give effect to the terms and intentions of the Contract.
- 15.2 The Contract is binding on and will ensure to the benefit of the parties and their respective successors. The parties must not assign or transfer all or part of their rights or obligations under the Contract without the prior written consent of the other party.
- 15.3 Failure by a party to enforce at any time any one or more of the terms or conditions of the Contract is not a waiver of that party's right to subsequently enforce at any time any one or more of the terms or conditions of the Contract.
- 15.4 Confidential information supplied to a party to the Contract, or of which a party becomes aware as a result of that party's dealings in connection with the operation of the Contract, remains the property of the originating party. Subject to Clause 9, the parties agree to treat confidential information as strictly confidential and not to use or attempt to use any of the confidential information in any manner or for any purpose other than to fulfil its obligations described in the Contract.
- 15.5 Every notice given under this Contract will be sufficiently given if served at the email address of the Client who engaged MLS Services and to MLS on the following email address; [accounts@measuredlandssurveys.co.nz](mailto:accounts@measuredlandssurveys.co.nz), except when written notice has been provided of a change of address.
- 15.6 This Agreement is to be governed by and construed in accordance with the laws of New Zealand.

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***If at any time you would like to discuss how our service to you can be improved, or if you are dissatisfied with the service you are receiving, please let us know. We will undertake to look into any complaint carefully and promptly, and to do all we can to explain the position to you. If we have given you less than satisfactory service, we will endeavour to do everything reasonable to put it right.***