

## TERMS OF ENGAGEMENT

### 1. Application

- a. These terms and conditions set out our agreement ("**Agreement**") with you (our Client), and will apply whenever you, or your acting agent (such as a property manager or family member or lawyer), engage Forensic Building Specialists Ltd to act for you in performing the services, unless we agree (in writing) to vary them. Acceptance of any quote or statement of work we provide you shall constitute acceptance of the terms and conditions contained in this Agreement.

### 2. Interpretation

- a. "**Client**", "**you**", "**your**" shall mean the person or entity (or any person acting on behalf of and with the authority of such entity or person) entering into this Agreement with FBS for the provision of services.
- b. "**FBS**", "**we**", "**us**", "**our**" shall mean Forensic Building Specialists Limited and any independent contractors or employees thereof.
- c. "**FBS report**" shall mean and includes the various reports entitled (depending on the type of survey or assessment selected):
  - 'Asbestos Management Survey',
  - 'Asbestos Demolition/Refurbishment Survey'
  - 'Asbestos Air Assessment Survey'
  - 'Screening Methamphetamine Assessment'
  - 'Screening Individual Methamphetamine Assessment'
  - 'Detailed Methamphetamine Assessment'
  - 'Post-Decontamination Methamphetamine Assessment'
  - 'COVID-19 Environmental Surface Sampling'

which will be provided to you in accordance within the timeframe agreed between FBS and the Client in writing prior to commencement of the services.

- d. "**Price**" shall mean the price payable for the services as quoted by FBS and any other amounts owing to FBS by the Client.
- e. "**Services**" shall mean the carrying out of the sampling and surveying which includes: site inspections, visual assessments, the taking of samples and air assessments to enable FBS to report on hazardous materials at the property. If necessary, services may also include (where agreed): soil sampling, heavy metal analysis, iodine, air sampling and pH testing.

- f. **"Working Day"** means Monday to Friday (8.30am to 5pm) (excluding public holidays)

### **3. General**

- a. FBS may contract any part of the services to be performed under this Agreement in accordance with this clause. The Client agrees and acknowledges that FBS may engage and train, in its sole discretion, suitable independent contractors and employees to undertake sampling and surveying and such parties may not be licensed environmental testing professionals but will undergo training with FBS for performing the services. No contractor has any authority to agree to any variation of this Agreement on behalf of FBS. All surveyors who carry out asbestos surveys and management plans will have successfully completed BOHS IP402. All assessors who perform air monitoring / clearance work will have successfully completed BOHS IP404.
- b. FBS reserves the right to vary, modify or replace these terms and conditions at any time without notice and such changes shall take effect in respect of any subsequent provision of Services.
- c. This Agreement shall be subject to and construed according to the laws of New Zealand and subject to the jurisdiction of the New Zealand Court geographically closest to the registered office of FBS.
- d. We hold appropriate Public Liability, Statutory Liability and Environmental Protection Liability insurance, a copy can be provided upon request.

### **4. Services**

- a. FBS agrees to provide the services to the Client on the following terms and conditions. These terms and conditions together with any quotation, statement of work or any other document issued by FBS together form the Agreement and will be deemed to contain the full agreement between the parties and supersedes and extinguishes all prior agreements, discussions, representations and arrangements between the parties.
- b. FBS, in its sole discretion, reserves the right to decline any order and/or request for Services.

### **5. Payment and Price**

- a. The price of the services shall be as shown on the FBS invoice, which shall be in accordance with the FBS quote or as specified by us prior to commencement of the services.
- b. The price is exclusive of Goods and Services Tax which is payable by the Client in addition to the price.
- c. Unless otherwise agreed in writing by FBS, payment of the FBS invoice must be made in full prior to the provision of services.
- d. FBS may agree, in its sole discretion, to carry out services (limited to sampling and

surveying only) prior to receipt of payment. In this instance, the FBS invoice shall be payable by the Client immediately on completion of sampling in order for the Client to receive the FBS report within the quoted timeframe. For the avoidance of doubt, the FBS report will not be released to the Client until FBS receives payment in full.

- e. FBS may agree in its sole discretion to provide services and reports to the Client prior to receipt of payment. In this instance, and unless agreed otherwise, the FBS invoice shall be due on the 3rd working day following the date on which an invoice is issued to the Client. For the avoidance of doubt, the invoice will be issued to the Client by FBS on provision of the FBS report.
- f. Payment must be made by direct deposit to FBS nominated bank account as shown on the FBS invoice. FBS does not accept cash or cheque.
- g. Payment must not be made directly to any FBS employee or contractor.
- h. All payments by the Client must be made in full and without any deduction or right of set-off or counterclaim.
- i. FBS shall not be bound by any error or omission made by FBS on any invoice, quotation, estimate, or any other document issued by FBS.
- j. If the Client fails to make payment by the due date the Client shall be liable to pay interest on the amount outstanding at the rate of 15% from the due date for payment until payment is made. Any expenses, costs, disbursements and legal costs incurred by FBS in the enforcement of any rights contained in this Agreement or in the recovery of money shall be paid by the Client, including any reasonable solicitor's fees or debt collection agency fees.
- k. FBS will not issue statements for outstanding invoices. FBS reserves the right to place all invoices that are not paid within four weeks of issuing into debt collection. The Client will be liable for all additional fees incurred through this process.

## **6. Failure to Access Fee & Cancellation**

- a. You agree to provide us with access to the property for the purposes of enabling us to undertake the sampling and / or surveying and shall ensure that the property is accessible prior to commencement and remains in a state and condition that is safe for FBS (its employees and contractors) and causes no disruption or obstruction to the carrying-out of any sampling and/or the services. If FBS cannot gain access to a property (at the time mutually agreed by the Client and FBS) or if FBS (acting reasonably) considers that the Client has not carried out its obligation to ensure that the property is safe for the provision of services, the Client agrees and acknowledges that FBS is entitled to terminate the Services and charge (or retain if payment has already been made) 50% of the price, even if no services have been provided to the Client.
- b. FBS recommends that the Client obtains confirmation in writing from the property owner, owner's agent, property manager or tenant prior to submitting an order for services.

## **7. Rescheduling & Resampling**

- a. From time to time, FBS may be required to reschedule provision of services. In this event, FBS will contact the Client directly and will use its best endeavours to provide at least 24 hours' prior notice of any rescheduling.
- b. The parties agree and acknowledge that following methamphetamine and / or asbestos sampling of a property, FBS will courier samples to an IANZ accredited laboratory for testing and analysis. In the event that samples have been couriered by FBS but do not arrive at the designated laboratory due to any third-party fault, the parties agree that provision of the relevant FBS report shall be postponed until FBS have re-sampled the property. In this event, FBS will not charge any additional costs for re-sampling. However, for the avoidance of doubt, the Client shall remain liable to pay the price in full in accordance with clause 5.

## **8. Alarm systems**

- a. The Client agrees that (as part of its access obligations) any security systems are to be disarmed prior to provision of services.
- b. If the Client instructs and authorises FBS to disarm and re-arm any home security systems at commencement and completion of services, the parties agree that FBS shall not be liable for any loss or damage of any kind, arising directly or indirectly, from FBS or any employee or independent contractor of FBS, operating or failing to operate any home security system.

## **9. Health & Safety**

- a. Without limiting and in addition/clarification of your obligations at 6a the Client will take all reasonable steps to provide a safe working environment for FBS and our independent contractors or employees (by way of example (but without limitation) this includes but is not limited to: animals being under control at all times, occupants of a property being informed of the FBS methamphetamine site assessment. The Client is also responsible to provide safe access to a roof space if additional testing is required.
- b. FBS and our independent contractors, or employees will provide all tools and equipment required to perform the site assessment, sampling and surveying including sampling kits, ladders, health and safety equipment such as suitable coveralls, shoe covers, gloves and face masks, personal protective equipment (PPE) and personal protective respirator (PPR).
- c. All FBS employees and independent contractors must adhere to FBS Health and Safety Policies, Procedures and Quality Management Systems in the provision of all services.
- d. FBS reserves the right to abandon the provision of services and terminate this Agreement, at any time, if FBS and our independent contractors or employees have any reason to believe that their personal safety is at risk. This includes but is not limited to: threatening behaviour, domestic incidents, disputes, dangerous or threatening

pets/animals, unsafe or unsanitary conditions.

- e. The parties agree that animals that can cause harm will be secured or removed during the provision of services.

## **10. Removal of Items & Damage**

- a. The Client agrees and acknowledges that in some instances, FBS may be required to re-position or remove items of suspicious material from the property for further sampling.
- b. If any items are removed from the property for further testing, the parties expressly agree that FBS is not liable for any remediation or redecoration costs or any other loss, cost, expense or damage caused and the Client indemnifies FBS in respect thereof.
- c. Without limiting clause 10b FBS will use all reasonable endeavours to store and return any items (where possible) to the Client within a reasonable time following completion of the sampling.
- d. The Client agrees and acknowledges that FBS (including any FBS employee or independent contractor) is not liable for any loss or damage caused to property in the provision of services.

## **11. Privacy and Confidential Information**

- a. The parties agree that knowledge of where property keys are located, PIN codes for any home security systems and any other confidential information provided by the Client to FBS including any photographs taken by FBS (including by its employees or independent contractors) in the provision of Services will remain private and confidential information and will not be transmitted or disclosed to any other party without the Client's permission.
- b. The parties agree that any FBS report provided to the Client must not be shared, copied or reproduced by the Client without written approval from FBS.
- c. The parties agree that FBS will not disclose any confidential information obtained from the Client unless required by law or to protect the health and safety of its Client and / or third parties.
- d. The parties expressly agree and acknowledge that FBS may use recording devices (including smartphone cameras) required to complete the Services.

## **12. Conflict of Interest**

- a. We have policies in place to identify and respond to conflicts of interest. If a conflict of interest or potential conflict of interest arises, we will consult with you about the best way to resolve the matter.

### **13. Termination of Services**

- a. FBS may immediately terminate this Agreement when any of the following events happen:
  - If the Client defaults in performing its obligations under this Agreement and the default, if capable of being remedied, is not remedied within 24 hours of notice to remedied; or
  - If the Client defaults in performing its obligations under this Agreement and the default is in FBS's reasonable opinion incapable of being remedied; or
  - Upon the occurrence of any of the events specified in clause 9.e.

Termination of this Agreement will not prejudice or affect the rights, remedies or claims of FBS.

- b. If this Agreement is terminated, FBS is entitled to recover and the Client will be liable to pay FBS for the full value of the Price and any reasonable costs that FBS incurs as a result of early termination.

### **14. Copyright & Intellectual Property**

- a. All of the trademarks, patents, copyright, designs or other intellectual property rights (whether or not registered) in respect of the services remain FBS's property notwithstanding the sale/supply of the services to the Client. FBS reports must only be used by the Client for the specific purpose they have been provided and not be copied, reproduced, distributed, modified, published, uploaded, posted, or transmitted in any way without our prior written consent. FBS reserves all copyright in its website and in all documents and information on its website.
- b. The Client agrees and acknowledges that FBS expressly prohibits the Client from using any FBS trademarks, trade names, graphics, designs or intellectual property and reserves its right to take action against the Client in the event of any Client breach.

### **15. Consumer Guarantees Act 1993 and Fair-Trading Act 1986**

- a. Where services are provided for the purposes of a business, the Client agrees that the provisions contained in the Consumer Guarantees Act 1993 shall not apply.
- b. Nothing in this Agreement is intended to have the effect of contracting out of the Consumer Guarantees Act 1993 and the Fair-Trading Act 1986 except to the extent permitted by statute.

### **16. No Additional Warranty**

- a. FBS makes no warranty, representation or assurance that the Services carried-out will categorically detect contamination that may be associated with the specific hazardous substances they have been engaged to survey, sample and report on therefore:

- Only the specific area(s) and site(s) the subject of the sampling should be construed as being representative of the status of the property and/or indicative of the presence of the hazardous materials specifically being tested for with results being applicable only to the specific day, time and the actual site where the sampling was carried out at the time sampling was performed. There may be other contaminated areas of the property or hazardous materials that may be present but have not been tested for (we take no responsibility nor hold any liability for those matters). Only areas identified in the relevant FBS report are examined and Sampled;
- The Client agrees and acknowledges that there may be other contaminants/hazardous materials and/or or varying degrees of methamphetamine contamination in other areas that were not tested by FBS (we take no responsibility nor hold any liability for those matters);
- There can be variation of methamphetamine contamination levels at a site as contamination is not evenly spread and fluctuates depending on a range of factors (including without limitation different surface materials that have a high or low affinity to methamphetamine);
- The Client agrees and acknowledges that the presence of methamphetamine, asbestos and other hazardous substances can be masked through extensive cleaning painting and decorating. The Client is advised to check and advise FBS if any extensive cleaning, painting and renovating of the property has been recently completed.

## **17. Client Indemnification**

- a. The Client indemnifies FBS for any loss or damage, including any third-party claims that may arise in the provision of services as well as any losses, damages, expenses and legal costs (on a solicitor and own client) that FBS may reasonably sustain or incur as a result, whether directly or indirectly, of any breach by the Client of the provisions of this Agreement.

## **18. Disclaimer**

- a. In New Zealand, the Consumer Guarantees Act 1993, the Commerce Act 1986, the Fair-Trading Act 1986 and other statutes may imply warranties or impose obligations on FBS which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of such implied warranties, conditions or terms imposed on FBS, its liability shall, where it is allowed, be excluded or if not able to be excluded, only apply to the minimum extent required by the relevant statute.
- b. Subject to clause 18a above, FBS shall not be liable towards the Client (or another person) for any loss or damage of any kind (arising directly or indirectly from services or from remedial recommendations made by FBS) however caused.
- c. Notwithstanding any other provision of this Agreement and without prejudice to clause 18.b, if for any reason FBS becomes liable for loss or damage that would have otherwise been excluded then its total liability to the Client arising out of any claim for

damages for any cause will be limited to a refund to the Client of the monetary amount of the value of that part of the Services giving rise to the claim.

- d. Neither party shall be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any Act of God, war, terrorism, fire, natural disaster, accident, act of government, strikes, unavailability of material, or any other cause beyond the reasonable control of such party.
- e. The Client hereby disclaims any right to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by FBS.

## 19. Dispute

- a. Unless the disputed matter falls within the jurisdiction of the Disputes Tribunal, no party to this Agreement shall begin any court proceedings relating to any dispute arising out of this Agreement (including any dispute as to the validity, breach or termination of this Agreement or as to any claim in tort, in equity pursuant to any statute) unless that party has complied with the following paragraphs of this clause.
- b. Any party who claims that a dispute has arisen under or about this Agreement must give written notice to the other party specifying the nature of the dispute. On receipt of the notice by the other party, the parties to this Agreement:
  - Must co-operate and use their best endeavours to resolve the dispute quickly; and
  - Must, if they do not within seven days of receiving the notice (or any further period as they may agree in writing) resolve the dispute, refer the dispute to mediation (“the mediation”)
- c. The mediation shall be conducted in terms of the LEADR New Zealand Inc. Standard Mediation Agreement.
- d. The mediation shall be conducted by a mediator and at a fee agreed by the parties, failing agreement between the parties, the mediator shall be selected, and the mediator’s fee shall be decided by the Chair for the time being of LEADR New Zealand Incorporated.

## 20. Miscellaneous

- a. The illegality, invalidity or unenforceability of a provision of this Agreement under any law shall not affect the legality, validity or enforceability of that provision under another law or the legality, validity or enforceability of any other provision of this Agreement.
- b. Failure or omission by a party at any time to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair that provision in any way or the rights of that party to benefit from the remedies it may have as to any breach of any provision. Insurance Certificates.