

Master Services Agreement

Parties & Purpose

Between	Gestalt Group Limited (t/a Unlimited Engineering) , (NZBN 9429046637123) (“ the Contractor ”) a duly incorporated company having its registered office at: 2 Neil Avenue, Te Atatu Peninsula, Auckland, 0610, New Zealand nick@unlimitedengineering.co.nz +6420 4162 4388
And	Click or tap here to enter text. (NZBN Click or tap here to enter text.)(“ the Client ”) a duly incorporated company having its registered office at: Click or tap here to enter text.
For	Ongoing design and professional engineering services to support the Client’s Project(s) as requested by the Client and agreed between the Parties and documented in the Statement(s) of Work (“ the Services ”)

1. Introduction & Structure

- 1.1 The Client is of the opinion that the Contractor has the necessary qualification experience and abilities to provide services to the Client.
- 1.2 The Contractor is agreeable to providing such services to the Client on the terms and conditions set out in this Master Services Agreement and any Statement(s) of Work signed or otherwise accepted by the Parties.
- 1.3 The Parties enter into this Agreement to record the basis on which the Contractor will provide the Client with the Services described under Parties and Purpose.
- 1.4 Unless expressly stated otherwise, if there is any conflict between the Agreement documents, the following precedence will apply:
 - (a) The Statement of Work
 - (b) This MSA.
- 1.5 Each Statement of Work agreed by the Parties shall:
 - (a) capture the requirements and approval to proceed between the Parties for each project and service request.
 - (b) in conjunction with this MSA, constitute a separate Agreement to provide the Services specified in the Statement of Work.

2. Interpretation & Definitions

- 2.1 Expressions defined in the main body of this Agreement have the defined meaning in the whole of this Agreement, including the background and the Statements of Work.
- 2.2 Section, clause and other headings are for ease of reference only and do not form any part of the context or affect this Agreement’s interpretation.
- 2.3 References to sections, clauses and schedules are references to sections and clauses of and schedules to this Agreement.
- 2.4 Any obligation not to do anything shall also constitute an obligation not to suffer, permit, cause or assist any other person to do that thing:
- 2.5 Singular words include the plural and vice versa.
- 2.6 Words in the masculine shall include the feminine and vice versa.
- 2.7 References to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality.

- 2.8 References to a statute include references to regulations, orders, rules or notices made under that statute and references to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or otherwise.
- 2.9 No provision of this Agreement will be construed adversely to a Party because that Party was responsible for the preparation of this Agreement or that provision.
- 2.10 Specifying anything in this Agreement after the words 'include', 'including' or 'for example' or similar expressions does not limit what else is included.
- 2.11 Working days shall mean any day of the week except for Saturdays, Sundays, public holidays in the respective regions of the Client or Contractor in New Zealand, or any days between the period 23 December - 6 January.
- 2.12 In this Agreement, unless the context requires otherwise, these definitions apply:

Agreement	means this Master Services Agreement in conjunction with a Statement of Work;
Client	means Click or tap here to enter text. as described under Parties & Purpose;
Commencement Date	means the agreed start date detailed on a Statement of Work;
Confidential Information	means any professional advice, data and know-how (whether technical or not), or other information of a sensitive nature, relating to the Parties, their business activities and their respective clients, but excluding information which is in the public domain through no breach of this Agreement;
Contractor	means Gestalt Group Limited (t/a Unlimited Engineering), as described under Parties & Purpose;
Contract Year	a period of 12 months commencing on the Commencement Date or from any anniversary of the Commencement Date;
Deliverables	means all prototypes, models, samples or other items supplied or procured by the Contractor in the course of providing the Services (including any deliverables listed in the Statement of Work), and any reports or advice in relation to the deliverables;
Expenses	means any disbursements or expenses reasonably incurred by the Contractor incidental to providing the Services;
Fees	means the Contractor's remuneration for the Services (as specified in a Statement of Work, or if no fee is specified then at the Contractor's prevailing hourly rates);
Force Majeure Event	means an event or occurrence which is beyond the Contractor's or the Client's (as the case may be) reasonable control (including acts of God or public enemy, flood, earthquake, storm, cyclone, tornado, hurricane, lightning, fire, explosion, pandemic, epidemic, war, embargoes, riot or civil disturbances, sabotage, expropriation, confiscation or requisitioning of facilities, the imposition of disabling exchange rate controls, orders or temporary or permanent injunctions of any duly constituted court of competent jurisdiction) which that Party did not cause and which that Party could not have either reasonably foreseen or taken reasonable measures to prevent.
Intellectual Property	means all intellectual property rights (whether registered or unregistered) to and all copyright in all designs, works, concepts, models, drawings, specifications, plans, studies, reports, software, systems, patents, patentable inventions, trademarks, trade secrets,

	technology and documents prepared or created in connection with the Services or products resulting from the Services;
Losses	means all claims, liabilities, losses, damages, expenses and legal costs (including on a solicitor and own client basis) suffered or reasonably incurred by a Party;
MSA	means this Master Services Agreement;
Product	means a product created or produced from, using or incorporating the Services (or any part of the Services), regardless of the manufacturer;
Party or Parties	means the Contractor or the Client, or both, as the case may be;
Project	means the project to be completed by the Contractor for the Client, as recorded in the Statement of Work;
Services	means the Services as described under Parties & Purpose;
Statement of Work	means an order for Services (which may be a quote, estimate, proposal, statement of work, engagement letter or otherwise) that is signed or otherwise accepted by the Contractor and the Client;

3. General Provisions

- 3.1 The term of this Agreement (the "Term") will begin on the date of this Agreement and remain in full force and effect indefinitely until terminated as provided in this Agreement.
- 3.2 Each Agreement (comprising the Statement of Work and this MSA) forms the entire agreement between the Parties relating to the supply of those specific Services. It replaces and supersedes any previous proposals, correspondence, understandings or other communications (whether written or oral) in relation to those specific Services.
- 3.3 In the event that either Party breaches a material provision under this Agreement, the non-defaulting Party may terminate this Agreement immediately and require the defaulting Party to indemnify the non-defaulting Party against all reasonable damages.
- 3.4 Pursuant to clause 11 of this Agreement, any amendment or modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement will only be binding if evidenced in writing signed by each Party or an authorised representative of each Party.
- 3.5 Except as otherwise provided in this Agreement, the obligations of the Contractor will end upon the termination of this Agreement.
- 3.6 The Parties agree to do everything necessary to ensure that the terms of this Agreement take effect.
- 3.7 This Agreement is governed by and construed according to the laws of New Zealand and the Client accepts the exclusive jurisdiction of the Courts of New Zealand.
- 3.8 In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.
- 3.9 The waiver by either Party of a breach, default, delay or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions.
- 3.10 Any failure, delay or omission by a Party to enforce or require compliance with any provision of the Agreement will not affect or impair that Party's right to enforce or require compliance with the provision or to seek any appropriate remedy in respect of a breach of the provision.
- 3.11 For the duration of the Agreement(s), and for 12 months after the termination or completion of the final Agreement between the Parties, the Client will not employ or engage, or procure a third party to employ or engage, any employee, contractor or subcontractor of the Contractor who has taken part in the performance of the Services.

- 3.12 The Parties acknowledge that this Agreement is non-exclusive and that either Party will be free after the Term, to engage or contract with third parties for the provision of services similar to the Services.
- 3.13 The Contractor will not voluntarily, or by operation of law, assign or otherwise transfer its obligations under this Agreement without the prior written consent of the Client.
- 3.14 It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressly provided in this Agreement.
- 3.15 All notices, requests, demands or other communications required or permitted by the terms of this Agreement will be given in writing and delivered by hand, prepaid mail, or email; to the Parties at the addresses provided or to such other address as either Party may from time to time notify the other.
- 3.16 A notice will be deemed to have been received at the time when delivered, if delivered by hand, or upon confirmation of successful transmission, if sent by email, or 5 working days after posting, if sent by mail.
- 3.17 The working files and papers for any Services engagement, including electronic documents and files, are the Contractor's property and are not licensed or transferred to the Client, and shall be regarded as the Contractor's Confidential Information. Except as may be recorded in the Statement of Work, the Contractor is not obliged to provide copies of any design works or other records in any particular electronic/physical or editable formats, and final copies may (at the Contractor's discretion) be provided in any print/electronic or non-editable electronic form.
- 3.18 This MSA and any Statement of Work may be executed in any number of counterpart copies (including copies exchanged by email or facsimile).

4. Termination & Survival of Agreement

- 4.1 The Agreement remains in force until cancelled or terminated in accordance with this clause.
- 4.2 In the event that either Party wishes to terminate this Agreement, that Party will be required to provide 30 days' written notice to the other Party and the Agreement will be terminated by mutual agreement of the Parties.
- 4.3 Either Party may immediately terminate the Agreement if, and only if:
 - (a) the other Party defaults in performing its obligations under the Agreement and the default, if capable of being remedied, is not remedied within twenty (20) working days after receipt or deemed receipt by the defaulting Party of a notice specifying the default and requiring remedy; or
 - (b) the other Party defaults in the performance of its obligations under the Agreement and the default is incapable of being remedied.
- 4.4 Notwithstanding termination of the Agreement, the Client will be liable to pay the Contractor for:
 - (a) Those Services or that portion of the Services performed prior to termination, and any Expenses, not previously invoiced and/or paid for; and
 - (b) Where the Contractor has terminated the Agreement following any breach by the Client, any Losses that the Contractor has incurred as a result of the breach and/or early termination.
- 4.5 The rights and obligations in this Agreement capable of having effect after the expiration or termination of this Agreement (including, but not limited to, clauses 4, 5, 6, 13, 14, 15, 16, 17, 19) shall remain in full force and have continuing effect following the expiration or termination of this Agreement.
- 4.6 This Agreement will endure to the benefit of and be binding on the Parties and their respective heirs, executors, administrators and permitted successors and assigns.

5. Contractor's Obligations

- 5.1 The Contractor shall:
 - (a) Provide the Services:
 - (i) in accordance with the scope and requirements set out in any Statement of Work; and
 - (ii) with reasonable skill and care;

subject to any financial, physical, time or other constraints imposed by the Client or reasonably resulting from the nature of the engagement.

- (b) Use reasonable endeavours to provide the services in accordance with the timing requirements set out in any Statement of Work, provided however that dates in any timeframe set out in the Statement of Work are intended for planning and estimating purposes only and are not contractually binding. Estimates of time for completion of the Services are given on the assumption that the Contractor receives the co-operation described in this MSA and commitment from employees in the Client's organisation.
- (c) If working on site at the Client's premises, comply with any reasonable health and safety policies and procedures (if any) notified in writing to the Contractor in advance.
- (d) Promptly notify the Client of any matter arising which may materially affect the Contractor's ability to achieve the project specifications or to provide the Services in accordance with the project scope, estimated completion dates or Fee estimates (if any) set out in the Statement of Work.

5.2 The contractor warrants that:

- (a) To the best of the Contractor's knowledge (relying on the Client's warranties in this MSA), the Services performed will not infringe upon or violate any Intellectual Property right of any third party in the same legal jurisdiction as the Client and any other jurisdictions identified by the Client in writing as intended markets for the products to result from the Services.
- (b) To the maximum extent permitted by law, the Contractor disclaims all other warranties, conditions, undertakings and representations, either express or implied, including, but not limited to, any implied warranties of merchantability or fitness for a particular purpose. The Client acknowledges that it is acquiring the Services for the purposes of a business and the provisions of the Consumer Guarantees Act 1993, and sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986, do not apply. Notwithstanding anything else in the Agreement and to the maximum extent permitted by law, the Contractor provides no warranties and disclaims any liability if engaged to manufacture a product or prototype using the Client's design.

6. Clients Obligations

6.1 The Client shall:

- (a) Pay the Contractor for performing the Services in accordance with any Statement of Work and clause 15.
- (b) Promptly make decisions (including approvals) and provide the Contractor with all instructions and information necessary for the proper performance of the Services. All such instructions or information shall be provided in the format reasonably specified by the Contractor (if any).
- (c) Co-operate with the Contractor as described in this MSA. If co-operation is not provided or is delayed, the Client agrees to pay the Contractor any additional Fees or Expenses which may result.
- (d) Declare any ownership or proprietary interest that any third party may have in the information referred to in clause 6.1(b) or in any design or product similar to that which the Contractor is to produce or work on for the Client.
- (e) Be fully and solely responsible for the accuracy of all information, instructions and briefs provided by the Client. The Client acknowledges that the Contractor will rely on such instructions and other information, and that the Contractor accepts no Losses that the Client or any other person sustains, directly or indirectly, arising from or relating to the Contractor's reliance on the instructions and information supplied by the Client.
- (f) Provide the Contractor with reasonable and safe access to the Client's premises and staff where access is necessary for the Contractor to be able to perform the Services.
- (g) Notify the Contractor in writing as soon as it becomes aware of any matter which may:
 - (i) materially change the product specifications, scope or timing of the Services from what is set out in the Statement of Work; or

- (ii) affect or delay performance of any of the Client's responsibilities under the Agreement.
- 6.2 The Client warrants that:
 - (a) Intellectual Property and other information (including designs, concepts, prototypes or models) supplied to the Contractor do not breach any third-party Intellectual Property rights and the Client is duly authorized to supply the items and materials described for the purpose of the Services.
 - (b) The Contractor will not independently verify or research the items and materials described in clause 6.2(a), but instead relies on the Client's warranty.
 - (c) The Client indemnifies and shall keep indemnified the Contractor, its directors, employees and agents, from and against all Losses relating to or arising from the provision of the Services, the designs and/or the products resulting from the Services, or any breach of the Agreement by the Client.

7. Relationship between the Parties

- 7.1 The Contractor is at all times an independent contractor to the Client. Neither Party is an agent, partner or employee of the other. The Parties acknowledge that this Agreement does not create a partnership or joint venture between them and is exclusively a contract for service.
- 7.2 Subject to clause 7.3, neither Party may refer to the other nor attribute anything to the other in the press or any other form of media without first obtaining the other's approval.
- 7.3 With the Client's approval, the Contractor may enter the product into design competitions and may use the product and the Client's name in marketing material (including web).

8. Attribution

- 8.1 The Contractor asserts all moral rights in respect of the Services. The Client agrees to acknowledge the Contractor for the Services (by providing the attribution described in clause 8.2(a)) on all publicity relating to the Services, on the Client's website and otherwise where the Services are promoted whether in print or online.
- 8.2 The Contractor's attribution shall be as follows (or as otherwise approved):
 - (a) Design by Nick Barnett, Unlimited Engineering (www.unlimitedengineering.co.nz)

9. Contractor Capacity and Autonomy

- 9.1 Except as otherwise provided in this Agreement, the Contractor may, at the Contractor's discretion, engage a third-party sub-contractor to perform some or all the obligations of the Contractor under this Agreement and the Client will not hire or engage any third parties to assist with the provision of the Services.
- 9.2 In the event that the Contractor hires a sub-contractor:
 - (a) the Contractor will pay the sub-contractor for its services and the compensation will remain payable by the Client to the Contractor.
 - (b) all subcontractors retained by the Contractor are bound to the confidentiality provisions in clause 13 of this MSA.
 - (c) nothing in the subcontracting agreement will constitute or create a contractual relationship between a subcontractor and the Client.
 - (d) for the purposes of the indemnification clause of this Agreement, the sub-contractor is an agent of the Contractor.
- 9.3 Except as otherwise provided in the Agreement, the Contractor will have full control over working time, methods, and decision making in relation to provision of the Services in accordance with the Agreement. The Contractor will work autonomously and not at the direction of the Client. However, the Contractor will be responsive to the reasonable needs and concerns of the Client.

- 9.4 Provided the Contractor has first obtained consent of the Client, the Contractor may assign some or all of its rights and obligations in the Agreement to an affiliated company or a reputable third party.
- 9.5 The Client may not assign its rights or obligations under the Agreement without the Contractor's prior written consent.

10. Deliverables

- 10.1 The Contractor takes pride in its work and will always provide the Services to the standards described in this MSA. However, given the inherently experimental and exploratory nature of designing and engineering new Products, the Contractor cannot provide any assurances that Deliverables will be defect-free or will perform to any specified standard or functionality.
- 10.2 Accordingly, notwithstanding anything else in the Agreement, the Contractor disclaims any liability (whether contractual, negligence or otherwise) for defects in, performance or testing of Deliverables.

11. Variations

- 11.1 The Services provided under a Statement of Work will not be varied, except by agreement in writing between the duly authorised representatives of both Parties.
- 11.2 Notwithstanding clause 11.1, the Contractor may:
 - (a) vary the manner in which it carries out the Services at any time without notice to the Client, provided that this does not affect the Services or associated products in a materially adverse manner, and
 - (b) reduce the scope of the Services agreed in a Statement of Work at any time if it determines that some or all of the remaining Services require expertise that the Contractor is unable to provide or source. the Contractor must advise the Client immediately if it becomes apparent to the Contractor that completing the Services requires expertise the Contractor does not have. Any reduction in the Services to be provided by the Contractor must be matched by a commensurate reduction in the fees payable to the Contractor.
- 11.3 The Services are confined to the work specified in the Statement of Work. Alterations to the proposed scope of work due to scope changes or delays beyond the Contractor's control will be the subject of an additional Fee which either will be agreed or will be charged in accordance with the Contractor's then applicable current charge rates. Any such alteration may also impact other aspects of the Services including but not limited to the Client's designated responsibilities and Service delivery schedules.

12. Dispute Resolution

- 12.1 Subject to clause 12.2, neither Party may commence court proceedings against the other unless that Party has first complied with the following procedure:
 - (a) The complainant must provide written notice detailing the nature of the dispute and both Parties must make every reasonable effort to resolve the dispute by negotiation.
 - (b) On receipt of a dispute notice the Parties' authorised representatives shall meet (or otherwise communicate, if a meeting is not practicable) and attempt to resolve the dispute through good faith negotiations on a 'without prejudice' basis within five (5) working days of the date of the notice.
 - (c) If the dispute is not resolved under (b) within five (5) working days from the commencement of negotiations under (b), then the dispute shall be escalated to the Parties' respective chief executives (or equivalent).
 - (d) Where escalation occurs, the Parties' chief executive officers (or equivalent) shall meet (or otherwise communicate if a meeting is not practicable) and attempt to resolve the dispute through good faith negotiations on a 'without prejudice basis.
 - (e) If the Parties remain unable to reach a satisfactory outcome, then the Parties may take any further steps as they see fit, provided that neither Party shall commence any litigation in relation

to an Agreement unless ten (10) working days have passed since the Parties' respective chief executive officers (or equivalent) have met (or otherwise communicated) and endeavoured to resolve the dispute in good faith and on mutually acceptable terms under (d).

- 12.2 Nothing in clause 12.1 prevents a Party from seeking injunctive relief from an appropriate Court, where failure to obtain such relief would cause irreparable damage to the Party concerned. Further, clause 12.1 will not apply to events giving rise to a right to immediately terminate the Agreement where the occurrence of those events and the resulting right to terminate the Agreement cannot reasonably be denied.

13. Confidentiality

- 13.1 Except as permitted under the Agreement, each Party must keep strictly secret all Confidential Information supplied by the other Party and shall only use it for the purposes of the Agreement, unless otherwise agreed by the other Party in writing or as required by law.
- 13.2 Either Party may disclose the other's Confidential Information to its directors, officers, employees, advisors or agents who have a genuine need to know the information in order to fulfil the Party's obligations, or enforce its rights, under the Agreement.
- 13.3 On termination of the Agreement, each Party must, if directed by the other Party, promptly return or destroy all Confidential Information supplied by the other Party.
- 13.4 The obligations of confidentiality will apply during the Term and will survive indefinitely upon termination of this Agreement.

14. Intellectual Property

- 14.1 Unless otherwise specified in the Statement of Work, Intellectual Property shall be owned as follows:
- (a) The Client shall own all pre-existing Intellectual Property it contributes to the project described in the Statement of Work. The Client grants the Contractor the right, authority and licence to use the Client's Intellectual Property for the sole and exclusive purpose of completing the Services, on the terms and conditions set out in the Agreement;
 - (b) Subject to clause 14.1(c) and 14.2, the Client shall own all new Intellectual Property in all Deliverables created and supplied to the Client by the Contractor in the course of performing the Services, upon full payment of the Fees and any other amounts owed by the Client to the Contractor. Unless and until the Fees and any other amounts owed by the Client are paid in full, the Contractor shall own all new Intellectual Property created in performing the Services; and
 - (c) The Contractor shall own all pre-existing Intellectual Property it contributes to the project described in the Statement of Work. Provided that the Client has complied fully with the Agreement, the Contractor grants the Client a perpetual, non-exclusive and non-transferable licence to use this Intellectual Property solely in connection with the project for which the Services are provided.
 - (d) The Client grants to the Contractor a security interest in the new Intellectual Property in the Deliverables, and in the proceeds of that Intellectual Property, to secure payment of all fees and other amounts due from the Client to the Contractor from time to time. Nothing in sections 114(1) (a), 133 and 134 of the Personal Property Securities Act 1999 shall apply. The Client waives its rights pursuant to sections 121, 125, 129, 131 and 132 of that Act and its right to receive any verification statement relating to the security interest (section 148).
- 14.2 During the course of performing the Services the Contractor may develop new 'know how' (including methods, design and production techniques, and design and production technology), the Intellectual Property in which shall be owned by the Contractor. the Contractor may use such developments for its own purposes including designing products for other clients and nothing in the Agreement shall preclude the Contractor from developing or disclosing such technology and information provided that does not contain any Intellectual Property owned by the Client.

15. Fees, Expenses & Payments

- 15.1 The Client agrees to pay all Fees and Expenses when due, in full and without any deductions, set off, counterclaim or offset of any kind.
- 15.2 The Contractor will be reimbursed from time to time for reasonable and necessary Expenses incurred by the Contractor in connection with providing the Services.
- 15.3 Expenses exceeding NZD500 will be pre-approved by the Client in advance of incurring the cost.
- 15.4 The Contractor shall invoice the Client on the dates specified in the Statement of Work, or if no invoice dates are specified the Contractor will invoice monthly, for Services undertaken and Expenses incurred in the previous month.
- 15.5 Unless otherwise specified in the Statement of Work, all payments by the Client are due 14 days after the date of the invoice.
- 15.6 Unless otherwise specified, all Fees, Expenses or any other reference to amounts payable by the Client under the Agreement are in NZD (New Zealand Dollars) and stated exclusive of GST, or other applicable duties as may be required by law. Any GST and duties required by law will be charged to the Client in addition to the Payment.
- 15.7 If the Client reasonably disputes an invoice or part of an invoice, the Client must, within 10 working days of receiving the invoice, give reasons for withholding payment of the disputed amount and pay the undisputed amount. If notice is not given by the Client within the time frame stipulated, then the Client shall be deemed to have accepted the Contractor's invoice.
- 15.8 Subject to clause 15.7, where any invoice or payment due to the Contractor is not paid in full and on time:
 - (a) The Client must pay monthly late fees calculated at 2% per month on any amounts outstanding; and
 - (b) The Contractor may suspend some or all of the Services until payment has been received.
 - (c) The Client shall pay all costs and expenses (including legal costs on a solicitor and own client basis) incurred by the Contractor in recovering any money owing by the Client.

16. Royalties

- 16.1 Where royalties are included in the Statement of Work, the Client shall pay royalties to the Contractor at the rate specified in the Statement of Work.
- 16.2 Unless otherwise specified, the royalty rate in the Statement of Work excludes GST, which must be paid in addition.
- 16.3 The royalty fees are payable for all units sold of the Product(s) (including any future versions, revisions or variations of the Products, or works derived from part or all of the Products), regardless of who manufactures or sells the Product(s).
- 16.4 If the Client sells its business, the Client will continue to be liable to pay royalties unless:
 - (a) the Contractor agrees otherwise in writing; or
 - (b) If the ongoing royalties are subject to a maximum royalty cap, the Client pays the difference between the royalty cap and the total amount of Royalties paid previously.
- 16.5 Within 30 days after the end of each calendar month, the Client shall provide to the Contractor a statement setting out:
 - (a) the number of Product units manufactured; and
 - (b) the number of Product units sold; and
 - (c) the royalties due;in respect of the relevant calendar month and shall arrange for the deposit of the royalties into the Contractor's nominated bank account, unless a differing payment arrangement is otherwise agreed in writing between the Parties.
- 16.6 Upon receipt of the royalties, the Contractor shall provide a receipt for the royalties suitable for the purposes of GST or otherwise so as to enable the Client to recover or off set such taxes as it may be entitled at law.

- 16.7 The Client shall keep and maintain full and accurate records (including tax returns filed in respect of GST or any other sales tax, financial accounts, receipts or other records of any kind) from which the accuracy of the royalty fee payments may be verified and shall permit the Contractor (by its authorised agent or officer), upon reasonable notice, to inspect and take copies of all such records in the Client's possession or control as may be necessary to verify the accuracy of the royalty fee payments.

17. Limitation of Liability

- 17.1 If the Contractor is liable for any Losses arising from or in relation to the Services or the Agreement (whether in contract, tort (including negligence), equity, statute or otherwise), its maximum aggregate liability in a given Contract Year, is limited to the lesser of:
- (a) 5 times of the Fees paid or payable by the Client under this Agreement in that Contract Year; or
 - (b) NZD 100,000.
- 17.2 Except as expressly provided above and to the maximum extent permitted by applicable law, the Contractor shall not be liable for any damages whatsoever (including, without limitation, damages for lost revenues, loss of business profits, business interruption, loss of business information, or other pecuniary loss, or any direct, indirect, special, incidental, punitive, exemplary or consequential damages of any nature) arising out of or in relation to the Services or the Agreement, even if the Contractor has been advised of the possibility of such damages.
- 17.3 The Contractor shall not be liable for any Losses or any defects, failures or inadequacies in the product design or Services resulting from the Client's failure to comply with its obligations under the Agreement.

18. Indemnification and Costs

- 18.1 To the extent permitted by applicable law, each Party agrees to indemnify and hold harmless the other Party, and its respective directors, shareholders, affiliates, officers, agents, employees, and permitted successors and assigns against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or amount whatsoever, which result from or arise out of any act or omission of the indemnifying Party, its respective directors, shareholders, affiliates, officers, agents, employees, and permitted successors and assigns that occurs in connection with this Agreement. This indemnification will survive the termination of this Agreement.
- 18.2 For the avoidance of doubt, unless otherwise determined between the Parties in writing, each Party will meet their own costs relating to the negotiation, preparations and execution of this Agreement and the associated Scope of Work.

19. First Right of Refusal

- 19.1 The Client grants the Contractor a right of first refusal during the Term to provide any further design services arising out of or related to a Statement of Work.
- 19.2 The Client also grants the Contractor a right of first refusal during the Term on any similar works or projects of which the Contractor could reasonably be considered able to assist with, and the Contractor would anticipate the Client would offer to them.
- 19.3 The Contractor's proposal for the completion of the work shall be mutually acceptable to both Parties with respect to price, to a standard and to a timeframe. The Client shall not unreasonably withhold acceptance of the Contractor's offer and both Parties agree to negotiate in good faith.
- 19.4 The first right of refusal will not be deemed to be waived except by written refusal from the Contractor to the Client.

20. Force Majeure

- 20.1 Despite anything in the Statement of Work, neither the Contractor nor the Client will be liable for any failure or delay in complying with any of its obligations under the Agreement (excluding any payment obligation) if:


- (a) The failure or delay is caused by a Force Majeure Event; and
- (b) That Party uses its best endeavours to:
 - (i) Mitigate the effects of the Force Majeure Event on that Party's obligations; and
 - (ii) Perform that Party's obligations in respect of the Services which are not affected by the Force Majeure Event.

21. Binding Agreement

21.1 Each Party acknowledges this Agreement has been entered into without the presence of duress or undue influence. Each Party has made a voluntary decision to enter into this Agreement, and to the best of their knowledge, is aware of the ramification of such a decision.

22. Execution

- 22.1 All the Parties have executed this document as an Agreement. The Agreement comes into force once the last Party executes it.
- 22.2 Execution may be completed by counterpart execution, including scanned copies exchanged by email.

Party	Signature of Party	Date Executed
Gestalt Group Limited (t/a Unlimited Engineering) as the Contractor	 <hr/> Nicholas Barnett	Click or tap to enter a date.
Click or tap here to enter text. as the Client	<hr/> Click or tap here to enter text.	Click or tap to enter a date.