
Springs Road Property Limited

FSS Management Limited



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This agreement is dated

PARTIES

Springs Road Property Limited
(Principal)

FSS Management Limited
(Contractor)

BACKGROUND

The Principal wishes to appoint the Contractor and the Contractor wishes to accept such appointment to act as its agent and provide the Services on the terms and conditions set out in this agreement.

AGREEMENT

1 Definitions and interpretation

1.1 Definitions - In this agreement unless the context otherwise requires:

Applicable Laws means all laws and regulations in any way governing or affecting the performance of obligations under this agreement.

Business means all of the business and operations of the Principal.

Business Day means a day which is not a Saturday, Sunday or public holiday in Nelson.

Commencement Date means 1 January 2021.

Confidential Information means any and all information relating to any provision, or the subject matter, of this agreement and any and all information relating to the activities, business, finances, software, know-how, data (technical or non-technical), trade secrets, projects, forecasts, systems or processes, marketing, customers of the Principal or any other information relating to or owned by the Principal, in each case whether such information is oral, written or embodied in any other physical or electronic form.

Default Rate means 8% per annum.

Fees means the fees specified in schedule 2.

GST means goods and services tax in terms of the Goods and Services Tax Act 1985.

Insolvency Event means the happening of any of the following events:

- (a) a party suspends, or threatens to suspend payment of its debts, or is or becomes unable to pay its debts when they fall due, or is presumed unable to pay its debts in accordance with section 287 of the Companies Act 1993, or is or becomes insolvent or action is taken which could result in it becoming insolvent; or
- (b) a receiver, receiver and manager, administrator or statutory manager is appointed over the assets of a party; or

- (c) a body corporate resolves to liquidate itself, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved; or
- (d) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate and the application is not withdrawn, stayed or dismissed within 21 days of being made, or one of them is appointed, whether or not under an order; or
- (e) an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the other party; or
- (f) except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them; or
- (g) a creditor or encumbrancer of a party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (h) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Review Date has the meaning set out in clause 6.3 of this agreement.

Related Party means in respect of a party:

- (a) if that party is a company or other body corporate, a related company of that party (as defined in section 2(3) of the Companies Act), and any person which controls that party, is controlled by that party, or is controlled by the same person that controls that party;
- (b) if that party is a natural person, a member of that party's family, or any trust, company or other entity controlled by or associated with that party or a member of that party's family.

Services means the services specified in schedule 1.

1.2 Interpretation - In this agreement unless the context otherwise requires:

- 1.2.1 Expressions defined in the main body of this agreement have the defined meaning in the whole of the agreement, including the background.
- 1.2.2 Section, clause and other headings are for convenience only and will not affect the interpretation of this agreement.
- 1.2.3 Reference to one gender includes each other gender.
- 1.2.4 Singular will include plural and vice versa.
- 1.2.5 Where any term defined in this agreement takes a different form for reasons of grammar, the different form has a corresponding meaning.
- 1.2.6 References to persons will include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental and other regulatory bodies or authorities and other entities, in each case whether having separate legal personality.

- 1.2.7 Reference to a party will include that party's executors, administrators, successors and permitted assigns.
- 1.2.8 Reference to a statute or regulation will include all amendments and re-enactments thereof and any subordinate legislation made thereunder.
- 1.2.9 Reference to **dollars** and **\$** refers to New Zealand dollars (NZ\$) exclusive of GST unless specifically stated otherwise.
- 1.2.10 References to times of day or dates are to New Zealand times and dates respectively unless specifically stated otherwise.
- 1.2.11 The term "including" means "including without limitation".
- 1.2.12 Any obligation not to do anything will be deemed to include an obligation not to suffer, permit or cause that thing to be done.
- 1.2.13 The terms **written** and **in writing** include any means of reproducing words, figures or symbols in a tangible and visible form.

2 Term

- 2.1 **Term** - This agreement will begin on the Commencement Date and remain in force until terminated in accordance with the terms of this agreement.

3 Appointment

- 3.1 **Appointment of Contractor** – The Principal appoints the Contractor to act as its agent and provide the Services upon the terms and conditions set out in this agreement.
- 3.2 **Acceptance of appointment** - The Contractor accepts the appointment and agrees to act as agent and provide the Services upon the terms and conditions set out in this agreement.

4 Agency

- 4.1 **Agency** - In providing the Services, the Contractor will act as agent for the Principal.
- 4.2 **Power of attorney** – The Principal hereby appoints:
 - 4.2.1 each director for the time being of the Contractor; and
 - 4.2.2 the Contractor,

(each, an **Attorney**) acting jointly or severally as its lawful attorney with full power and authority on its behalf and in its name to enter into, execute and deliver in any place or places in the world all deeds, agreements, instruments, notices, requests, demands, consents, certificates, receipts, acknowledgements, authorisations, instructions, directions, appointments, waivers and other documents which the Attorney may consider to be necessary, appropriate or desirable relating to the Business with power to appoint one or more substitute attorneys to act instead of or in addition to the Contractor, subject to such conditions as the Contractor thinks fit and to revoke any such appointment.

- 4.3 **No enquiry** – No person dealing with the Attorney or any substitute attorney will be concerned to see or enquire as to the propriety of any act, matter or thing which the attorney may do or purport or agree to do or perform in the name of the Principal by virtue of the power in this clause 4 or as to the authority of that attorney to carry out or perform that act, matter or thing.

- 4.4 **Ratification** – The Principal will ratify and confirm all that the Attorney and substitute attorney will do or cause to be done by virtue of the power in this clause 4.
- 4.5 **Indemnity** – The Principal indemnifies the Attorney and the substitute attorney against any loss, liability claim, cost or expense incurred or sustained by the Attorney as a result of any lawful act, matter or thing carried out or performed in the exercise of the powers and authorities conferred on that attorney by this clause 4.
- 4.6 **Privity** – For the purposes of the Contract and Commercial Law Act 2017, the obligations of the Principal under this clause are for the benefit of each Attorney and substitute attorney and are intended to be enforced by such attorney.
- 4.7 **Proceedings** – The Contractor may, but is not obliged to, take, issue, commence, threaten any court or other action or proceedings in the name of or on behalf of the Principal.
- 4.8 **Meetings** – A representative of the Contractor is entitled to attend and speak at all meetings of directors and shareholders of the Principal but will not have any right to vote at such meeting unless the right arises in the Contractor's capacity as shareholder or director of the Principal.
- 4.9 **Entry onto properties** -The Contractor and all representatives of the Contractor have the power to enter upon the properties owned by the Principal in connection with the provision of the Services but subject to the obligations any lease of premises forming part of those properties.

5 Services

- 5.1 **Services** – The Contractor will provide the Services to the Principal.
- 5.2 **Additional services** - The Contractor will provide such further services to the Principal as are reasonably incidental to the Services.
- 5.3 **Standard of performance** - The Contractor will devote such skills and time as are reasonably necessary to carry out the Services required and in doing so will:
- 5.3.1 comply with best industry practice;
 - 5.3.2 perform all Services with due skill, care and diligence;
 - 5.3.3 complete the Services in such manner and within such time as may be reasonably required;
 - 5.3.4 employ appropriately skilled, qualified and experienced personnel to provide the Services;
 - 5.3.5 at all times comply in all material respects with all Applicable Laws and all policies and procedures of the Principal which may from time to time be in place; and
 - 5.3.6 obtain and maintain, at its cost, all licences, approvals, permits and authorisations required by law in order for it to provide the Services and otherwise perform its obligations under this agreement.

6 Fees

- 6.1 **Fees** - The Principal will pay the Contractor the Fees.
- 6.2 **GST** - The Fees do not include GST. In addition to the Fees, the Principal will pay the Contractor the amount of all GST chargeable on any taxable supply under this agreement.

6.3 **Review of fees** - The parties will, by the anniversary of the Commencement Date in each year of the agreement (commencing one year after the Commencement Date) (each, a **Review Date**):

6.3.1 review the Fees; and

6.3.2 agree revised Fees payable by the Principal with effect from the Review Date in the year.

6.4 **Costs** – The Principal will reimburse costs incurred by the Contractor on behalf of the Principal, including accounting and registry costs. The Contractor will charge such costs as disbursements on the relevant invoices.

7 Invoicing and payment

7.1 **Invoicing** - The Contractor will submit valid GST invoices to the Principal at a frequency agreed between the parties. Each GST invoice will state the details of the Services supplied to the Principal.

7.2 **Payment of invoices** - The Principal will pay the Contractor on the 20th day of each month following the month in which the relevant invoice is received.

7.3 **Default** - If for any reason, other than the default of the Contractor, the Principal fails to make any payment payable under this agreement on the date it is due and in the manner specified in this agreement, then the Principal will pay interest at the Default Rate to the Contractor on the unpaid amount calculated on a daily basis from the due date until payment. This provision is without prejudice to any other rights or remedies available to the Contractor in relation to this agreement.

7.4 **Disputes over invoices** - If the Principal disputes any portion of any amount appearing as payable on any invoice issued to it by the Contractor under this agreement, the Principal will promptly notify the Contractor of that dispute. The Principal will pay any undisputed portion of each invoice on the due date for payment under this clause 7, but may withhold payment of the disputed portion until the dispute is resolved between the Principal and the Contractor or (in the absence of agreement) pursuant to clause 13.

8 Records

8.1 **Keeping records** - The Contractor will keep full and complete records of the Services provided to the Principal and will at all times keep these records up to date.

8.2 **Inspection of records** - The records kept pursuant to clause 8.1 will at all reasonable times be available for and open to inspection by the Principal or its delegate, who will be at liberty to take copies and extracts from the records.

9 Liability

9.1 **Indemnity** - None of the Contractor or its directors, employees, contractors or agents (**Indemnified Parties**) will be liable to the Principal or to any other person for any act or omission, negligent, tortious or otherwise, in the performance of this agreement. The Principal indemnifies and holds harmless the Indemnified Parties from and against all losses, liabilities, claims, costs and expenses suffered or incurred by the Indemnified Parties arising from or in connection with the Contractor's performance of this agreement.

9.2 **Limitation of liability** - Notwithstanding anything in this agreement, the Contractor will not be liable for any loss, liability, claim, cost or expense suffered or incurred by the Principal arising from or in connection with:

- 9.2.1 any act or omission in the performance of this agreement, including any act or omission of any property manager appointed by the Contractor;
- 9.2.2 any decline in the value of properties or any part of them;
- 9.2.3 any failure to perform this agreement arising from any present or future statute, regulation, rule, ordinance or bylaw, action of any national or local government or any declaration, order or judgment of any court; or
- 9.2.4 any other reason whatsoever;
- 9.3 **Consequential loss** – Notwithstanding anything in this agreement, the Contractor will not be liable for any loss of profit, or any consequential, indirect or special loss or damages suffered or incurred by the Principal.
- 9.4 **Survival** - This clause 9 will continue to have effect notwithstanding the termination or expiration of this agreement.
- 10 Termination**
 - 10.1 **Termination for convenience** - Subject to clause 10.2, this agreement may be terminated by the Principal on the one hand or the Contractor on the other giving at least 90 days' written notice to the other or by mutual agreement which will be recorded in writing.
 - 10.2 **Termination for cause** – The Principal on the one hand or the Contractor on the other (**non-defaulting party**) may terminate this agreement with immediate effect by giving written notice to the other (**defaulting party**) if:
 - 10.2.1 the defaulting party has failed to comply with an earlier written notice given by the non-defaulting party specifying a material breach of this agreement by the defaulting party and, in the case of a breach which is capable of remedy, requiring that the non-defaulting party remedy that breach within ten Business Days after receipt of that earlier notice;
 - 10.2.2 the defaulting party commits any material breach of this agreement and that breach is, in the reasonable opinion of the non-defaulting party, not reasonably capable of being remedied by the defaulting party within ten Business Days;
 - 10.2.3 an Insolvency Event occurs in respect of the defaulting party;
 - 10.2.4 the defaulting party suspends for ten Business Days or longer, or ceases, its principal business activities;
 - 10.2.5 the defaulting party engages in conduct which could, or does, in the reasonable opinion of the non-defaulting party cause harm or injury to the non-defaulting party, its employees, clients, contractors or agents; or
 - 10.2.6 the defaulting party engages in conduct likely to bring the non-defaulting party, its employees, clients, contractors or agents into disrepute.
 - 10.3 **Effect of termination** - Upon termination of this agreement for whatever reason:
 - 10.3.1 the Contractor will be paid all monies owing to it under this agreement provided that the Principal may deduct from such payments any money owed to it by the Contractor;

- 10.3.2 such termination will be without prejudice to the rights and remedies of the non-defaulting party in respect of any antecedent breach of this agreement by the defaulting party;
- 10.3.3 each party will promptly return to the other all documents, materials and other items (including software) belonging to the other parties and in its possession or under its control at the time of termination; and
- 10.3.4 such termination will not affect those provisions of this agreement which are intended to continue after termination.

11 Confidentiality

11.1 Confidentiality - No party will at any time, directly or indirectly:

- 11.1.1 disclose or permit any Confidential Information to be disclosed to any person; or
- 11.1.2 use such Confidential Information other than for the purpose for which it was provided, except:
 - 11.1.3 to the extent required by law; or
 - 11.1.4 as is already public knowledge without a breach of this clause by the parties seeking to disclose or use such confidential information; or
 - 11.1.5 as is authorised in writing by each other party; or
 - 11.1.6 as is reasonably necessary to give effect to this agreement.

12 Force Majeure

12.1 Effect of force majeure - Neither party (**Affected Party**) will be liable for any delay or for any failure to fulfil its obligations under this agreement if:

- 12.1.1 the failure or delay arises directly from or as a consequence of any cause or circumstance beyond the reasonable control of the Affected Party; and
- 12.1.2 the Affected Party:
 - (a) as soon as reasonably practicable after the start of the cause or circumstance, notifies the other party in writing of the nature, effects and expected duration of the cause or circumstance; and
 - (b) uses its reasonable endeavours to continue to perform its obligations as required under the terms of this agreement and to mitigate the effects of the cause or circumstance on the performance of its obligations under this agreement.

12.2 Obligation to pay remains - Nothing in this clause 12 will excuse a party from any obligation to make payment when due under this agreement.

13 Disputes

13.1 Dispute notice - If any dispute or difference arises between the parties to this agreement (**Dispute**) any party may serve a notice of Dispute on the other (**Dispute Notice**) specifying the nature of the dispute and the provisions of this clause 13.1 shall apply. Any Dispute will be referred to the arbitration of a single arbitrator agreed on between the parties, or failing

agreement within 10 Business Days after service of a Dispute Notice to be nominated by the President for the time being of the New Zealand Law Society (or his or her nominee).

- 13.2 **Conduct of arbitration** - The arbitration will be conducted as soon as possible at Nelson in accordance with the provisions of the Arbitration Act 1996. During the arbitration, both parties may be represented by a duly qualified legal practitioner. Subject to any right of appeal or review, the award of the arbitrator will be final and binding on the parties.
- 13.3 **Appeals** - A party to arbitration under this agreement may appeal to the High Court on any question of law arising out of an award, and any matter relating to the construction of this agreement will be considered a question of law.
- 13.4 **Interlocutory relief** - Nothing in this clause will prevent any party from taking immediate steps to seek urgent interlocutory relief before an appropriate court.
- 13.5 **Costs** - The arbitrator may decide how the reasonable costs, fees and other expenses of the parties in relation to the determination of the award are to be born. However, if the arbitrator makes no decision as to costs, the parties will bear their own costs and an equal share of the costs of the award.
- 13.6 **Continuation of service** - To the extent reasonably practicable, in the event of any dispute or legal proceedings relating to this agreement, the Contractor will continue to provide the Services in accordance with this agreement.

14 Notices

- 14.1 **Method of notice** - Any notice given pursuant to this agreement will be deemed to be validly given if either:

- 14.1.1 personally delivered;
- 14.1.2 posted by fastpost; or
- 14.1.3 sent by electronic means (commonly known as email),

to the address, facsimile number or email address of the party to be notified set forth below or to such other address, or email address as the party to be notified may designate by written notice given to all the other parties.

The Principal

Address Level 1, 3/237 Queen Street, Richmond
Telephone
Email
Attention

The Contractor

Address c/- Duncan Cotterill, 197 Bridge Street, Nelson
Telephone
Email
Attention

- 14.2 **Time of delivery** - Any notice given pursuant to this agreement will be deemed to be validly given:

- 14.2.1 in the case of delivery, when received;
- 14.2.2 in the case of posting, on the second day following the date of posting; and
- 14.2.3 in the case of electronic transmission by email, at the time specified in the email transmission which was not returned as undeliverable or as containing any error.
- 14.3 **Business day** - If the delivery or transmission of any notice given under this agreement is on a day which is not a Business Day, or occurs after 5.00 p.m. (local time) on any Business Day, the notice will be deemed to be received on the next following day which is a Business Day.
- 15 General**
- 15.1 **No announcements** - The parties will not (except as may be required by law or regulation) make any announcement or disclosure regarding this agreement or its subject matter except in a form and manner and at such time as the parties will agree.
- 15.2 **No waiver** - Any failure by a party to enforce any clause of this agreement, or any forbearance, delay or indulgence granted by that party to any other party will not be construed as a waiver of the first party's rights under this agreement.
- 15.3 **Assignment** - No party will assign or purport to assign (whether in part or in whole) their interest in this agreement without the prior written consent of the other parties. The Contractor may subcontract the performance of its obligations under this agreement without the prior written consent of the Principal.
- 15.4 **Entire agreement** - This agreement constitutes the entire agreement, understanding and arrangement (express and implied) amongst the parties in respect of the matters contained in this agreement, to the exclusion of all other agreements, arrangements, understandings or representations, whether express or implied, and therefore supersedes any prior agreements, arrangements, understandings and representations between the parties in respect of such matters of any nature whatsoever.
- 15.5 **Amendments** - No waiver, amendment or other modification of this agreement will be effective unless in writing and signed by or on behalf of each party to be bound thereby.
- 15.6 **Further assurances** - The parties agree to execute all such documents and do all such acts or things as may reasonably be required in order to give effect to the terms of this agreement.
- 15.7 **Costs** - Except as otherwise provided in this agreement, each party will pay its own costs and expenses in connection with the negotiation, preparation, execution and performance of this agreement.
- 15.8 **Law and jurisdiction** - This agreement will be governed by, and construed in accordance with, the laws of New Zealand. The parties irrevocably submit to the exclusive jurisdiction of the Courts of New Zealand with respect to any legal action, suit or proceeding or any other matter arising out of or in connection with this agreement.
- 15.9 **Counterparts** - This agreement may be executed and exchanged in any number of counterparts (including copies, facsimile copies and scanned email copies) each of which is to be deemed an original, but all of which together are to constitute a binding and enforceable agreement between the parties.

EXECUTED as a deed.

SIGNED BY
Springs Road Property Limited
in the presence of:

)
)
) 

Authorised Signatory



Authorised Signatory

Witness signature

Witness name

Jessie Stone
Solicitor
Duncan Cotterill
Nelson

Witness occupation

Witness town of residence

SIGNED BY
FSS Management Limited
in the presence of:

)
)
) 

Director



Director/Authorised Signatory

Witness signature

Witness name

Jessie Stone
Solicitor
Duncan Cotterill
Nelson

Witness occupation

Witness town of residence

SCHEDULE 1

Services

Non-financial services (to be provided from the Commencement Date)

- (a) Carry out the day to day management and administration of the Business.
- (b) Arrange for the issue of share certificates, management of the share register and payment of distributions in respect of the Principal's shares.
- (c) Arrange for operation of a secondary market for the Principal's shares.
- (d) Procure the filing of all returns for the Group with IRD and the Companies Office.
- (e) Arrange for the preparation and audit of such financial statements as the Group is required by any statute to prepare and have audited.
- (f) Instruct such accountants, auditors, solicitors, valuers, and other consultants or advisers as the Contractor deems necessary or desirable in connection with any of its obligations under this agreement.

Financial services (to be provided from the date the Contractor is registered on the financial service providers register)

- (g) Arrange finance for the Group's activities from such sources and on such terms and conditions as to security or otherwise as the Contractor in consultation with the Group deems fit.
- (h) Procure and supervise the acquisition, management (including tenants, accounts and buildings) and eventual sale of the properties owned or to be owned by the Group with the assistance of a property manager.
- (i) Operate all bank accounts.
- (j) Do or perform such other act or thing which the Group may reasonably request in connection with the investment and administrative management of the Group and its properties.

SCHEDULE 2

Fees

- (a) Subject to paragraph (b), the Principal will pay a fee of 9% of net rental from the properties per annum plus GST.
- (b) At the discretion of the Contractor, the Contractor may provide a rebate to the Principal based on fees received against costs incurred at the end of the year ending 31 March.
- (c) If the Principal requests the Contractor to undertake any matters relating to its properties which are not contemplated by schedule 1, the Principal will pay a time and attendance fee at a rate of \$120 per hour plus GST.