

GENERAL TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires:

"Agreement" means this agreement comprising these General Terms and the Details Table.

"Business Day" means any day other than a Saturday, a Sunday or a public holiday in Auckland, New Zealand.

"Commencement Date" means that date set out in Item 2 of the Details Table.

"Contractor" means the person named as the contractor in Item 1 of the Details Table.

"Contractor's Fee" means the fees for the Services as set out in Item 5 of the Details Table.

"Details Table" means the table attached as the first page of this Agreement.

"Dispute Notice" has the meaning given to that term in clause 20.1.

"General Terms" means these general terms and conditions.

"Insolvency Event" means, in relation to a party, where that party ceases or threatens to cease to carry on business; is subject to any form of insolvency proceedings that are not removed within 10 Business Days; commits an act of bankruptcy or has been adjudicated bankrupt; has any of its assets seized by a creditor; enters into any compromise with a creditor; has a receiver, liquidator, administrator, statutory manager or similar official appointed; becomes insolvent or is deemed by law to be so; or suffers any analogous event.

"Intellectual Property Rights" means all intellectual property rights whether conferred by statute, at common law or in equity, including all copyright and rights in relation to inventions, trade secrets, know how, designs, trade marks, business names and domain names.

"Key Person" means the person named as the key person (if any) in Item 1 of the Details Table.

"Mediation Notice" has the meaning given to that term in clause 20.3.

"Non-Compliant Services" has the meaning given to that term in clause 18.2.

"Services" means the services to be provided by the Contractor under this Agreement as described in Item 4 of the Details Table.

"Term" means the term specified in Item 3 of the Details Table.

"University" means the University of Auckland.

1.2 In this Agreement, unless the context otherwise requires:

(a) headings to clauses are inserted for convenience only and will be ignored in interpreting this Agreement;

(b) the word including and other similar words do not imply limitation;

(c) the plural includes the singular and vice versa; and

(d) a reference to a statute includes any legislative instrument or other subordinate legislation made under it and amendments to or replacement of any of them from time to time.

2. TERM

2.1 This Agreement will commence on the Commencement Date and will continue for the Term, unless terminated earlier in accordance with this Agreement.

3. SERVICES

3.1 The University appoints the Contractor, and the Contractor agrees to provide the Services in accordance with the terms of this Agreement.

3.2 In consideration of the University agreeing to enter into this Agreement with the Contractor, the Key Person (if any) irrevocably guarantees the performance of the Contractor's obligations under this Agreement and indemnifies the University against any non-performance by the Contractor. The Key Person (if any) further agrees that references to the Contractor in this Agreement shall, where appropriate, include the Key Person, and confirms that the Key person will be actively involved in the delivery of the service.

3.3 The Contractor agrees that it is appropriately educated, trained, skilled, experienced and fully qualified for the performance of the Services.

3.4 In providing the Services, the Contractor will:

- (a) act with the levels of care, skill and diligence consistent with sound professional practice in the applicable profession;
- (b) comply with all reasonable timeframes (if applicable), directions and other requirements of the University in relation to the provision of the Services;
- (c) provide all processes and resources required to provide the Services in accordance with this Agreement;
- (d) not damage, disrupt or adversely affect the business operations, goodwill or assets of the University;
- (e) promptly respond to any reasonable requests for information made by the University in relation to this Agreement or any invoices relating to the provision of the Services; and
- (f) comply with all applicable laws and industry codes of practice, and obtain, maintain and comply with all applicable regulatory licences and consents.

4. USE OF PROPERTY AND EQUIPMENT

4.1 While the Contractor is working on the University's premises, the Contractor may, with the University's prior permission in each individual case, use such office accommodation, electricity, telephone (except toll calls), and such other of the University's property as the Contractor needs to carry out the Services.

4.2 The Contractor shall not use the property of the University for any purpose except those purposes authorised by the University.

4.3 On termination of this Agreement the Contractor will return all University property, documents, precedents, software and other materials supplied to the Contractor by the University or otherwise acquired by it during the term of this Agreement.

4.4 The Contractor agrees to treat the University's premises and equipment with all reasonable care and the Contractor will reimburse the University for any damage inflicted on such premises or equipment as a result of the negligence, recklessness or other acts of the Contractor.

5. FEES

5.1 The Contractor's Fee is as set out in Item 5 of the Details Table. The Contractor's Fee (plus any GST, if applicable) is the total amount payable by the University for the provision of the Services and the Contractor's performance of its obligations under this Agreement.

6. PAYMENT

6.1 The Contractor shall submit an invoice for the Contractor's Fees in accordance with the payment schedule set out in Item 5 of the Details Table. Each invoice must:

- (a) be in the form of a valid taxable supply document (if the Contractor is registered for GST); and
- (b) describe in reasonable detail the hours worked and Services covered by the taxable supply information (invoice).

6.2 Subject to clause 6.3, the University will pay the Contractor the amount payable in respect of each invoice issued under clause 6.1 as soon as reasonably practicable and in any event no later than the 20th day of the month following the invoice date (subject to the Contractor providing the invoice to the University on or about the invoice date).

6.3 If the University disputes any amount in an invoice issued under clause 6.1 the University shall:

- (a) notify the Contractor as soon as reasonably practicable, identifying the amount in dispute and the reasons for the dispute; and
- (b) pay any balance of the invoice which is not in dispute by the due date.

7. EXPENSES

7.1 The Contractor is liable for all expenses incurred in providing the Services. The University shall reimburse the Contractor for all expenses incurred by the Contractor in providing the Services, provided that the nature and quantum of expenses has been previously agreed to by the University and the Contractor submits to the University valid tax invoices with supporting receipts.

7.2 The Contractor is not entitled to pledge the credit of the University, order goods or incur any liability on behalf of the University, without prior authorisation.

8. INDEPENDENT CONTRACTOR STATUS

8.1 It is agreed that in all respects the Contractor's relationship to the University is that of an independent contractor, and not an employee or partner of the University. Nothing in this Agreement shall create the relationship of employer and employee between the University and the Contractor. The Contractor agrees that at no stage either during or subsequent to the termination of this Agreement will the Contractor claim that it is or was an employee of the University.

9. TAXATION

9.1 The Contractor is solely responsible for any duties, levies, ACC, GST and taxation in connection with the Service Fees, including other payments which may be payable in respect of the payments or benefits provided by the University under this Agreement.

9.2 The University will make no deduction on account of tax and any other imposition except that which the University is required by law to make. To avoid doubt, the Contractor acknowledges that where the Services are of a type covered by Schedule 4 of the Income Tax Act 2007 the University may deduct tax from the Contractor's Fee at the applicable rate(s) prescribed in that Schedule 4. The University may decide, in its sole discretion, whether or not the Services are of a type covered by that Schedule 4.

9.3 The Contractor shall indemnify and keep indemnified the University for the payment of any taxes, fees, duties, levies, penalties or other charges whatsoever imposed on the University or the Contractor by any governmental authority arising out of or in relation to this Agreement.

9.4 In the event the Inland Revenue Department makes a request in writing to the University to pay, deduct or withhold any tax in respect of the payments made under this Agreement after such payments have been paid to the Contractor, the Contractor agrees to refund to the University that amount of tax within 14 Business Days of the University notifying the Contractor of the written request.

10. UNIVERSITY POLICIES

10.1 The Contractor will read, remain familiar with and comply with all of the University's policies and procedures located on:

<https://www.auckland.ac.nz/en/about-us/about-the-university/policy-hub.html> as updated from time to time, that might reasonably be expected to be relevant to the provision of the Services by the Contractor, including, but not limited to, the University's health and safety policies, intellectual property policies and conflict of interest policies.

10.2 Without limiting clause 10.1, the Contractor will promptly notify the University of any health and safety hazards or issues which the Contractor becomes aware of during the Term.

11. INSURANCE

11.1 Unless otherwise agreed in writing, the Contractor will effect and maintain appropriate insurance in respect of the Contractor's provision of the Services and in respect of any loss of or damage to the Contractor's or the University's property during or in connection with the provision of the Services.

11.2 The Contractor shall at all times indemnify the University, and its officers, employees and agents in respect of all claims, costs, damages and other expenses incurred by the University and/or its officers, employees and agents arising directly or indirectly out of any wilful or negligent act or omission of the Contractor in the course of the Services. This indemnity will continue to apply after the expiry or earlier termination of this Agreement.

12. CONFLICT OF INTEREST

12.1 Prior to signing this Agreement, the Contractor will advise the University of any actual or potential conflicts of interest. The Contractor will advise the University of any actual or potential conflicts of interest that do or may arise during the Term of this Agreement.

12.2 During the Term of this Agreement, the Contractor is not restricted from performing work for any other person, except while performing work for the University. Notwithstanding the Contractor's ability to perform work for other persons, the Contractor will not, during the Term, make any commitments which could or will result in a conflict of interest with, or interfere with, the full performance of the Contractor's obligations under this Agreement.

13. REPUTATION

13.1 Each party warrants that it will not do anything that is defamatory or that could bring the other party into disrepute. The Contractor will not use the name or any logo or trade mark of the University without the prior permission of the University in writing. To avoid doubt, the University will not be regarded as bringing the Contractor into disrepute if information about the contractor is required to be disclosed under the Official Information Act 1982.

14. INTELLECTUAL PROPERTY

14.1 All Intellectual Property Rights of a party or any of its licensors that are not developed, commissioned or created in connection with this Agreement but are used for the purposes of this Agreement will remain owned by that party or the relevant licensor.

14.2 Except as provided in the University's intellectual property policies, or as otherwise agreed by the University, all new Intellectual Property Rights that are developed, commissioned or created under or in connection with this Agreement will be owned by the University as such rights arise. To the extent that such rights vest in the Contractor from time to time, the Contractor shall, upon request of the University, promptly assign such rights to the University or its nominee for nominal consideration.

14.3 Without limiting clause 14.2, in all cases where the University does not own or is not otherwise licensed to use any Intellectual Property Rights used by the Contractor to provide the Services, the Contractor grants or shall procure the grant to the University of a royalty-free, non-exclusive, perpetual, transferable and irrevocable licence or sub-licence to use, copy and modify such Intellectual Property Rights for the University's business and operational purposes.

14.4 The Contractor warrants, undertakes and represents to the University that neither the supply, receipt or use of the Services, nor the University's possession or use as contemplated by this Agreement of any information or materials supplied under this Agreement will infringe the Intellectual Property Rights of any third party. The Contractor will indemnify and hold the University harmless from and against any and all claims, damages, liabilities, costs and expenses including reasonable legal fees arising out of the breach of this clause 14.

15. CONFIDENTIALITY

15.1 The Contractor will not use or disclose to any other persons (including the University's employees and contractors) any information, processes, costs or secrets relating to any of the business or affairs of the University, including the contents of this Agreement except for the purposes of this Agreement.

16. TERMINATION

16.1 Either party may terminate this Agreement immediately by notice to the other party if:

- (a) the other party commits a material or persistent breach of this Agreement and fails to remedy that breach within 10 Business Days after receipt of notice by that party requiring the breach to be remedied; or
- (b) the other party is subject to an Insolvency Event.

16.2 The Contractor may terminate this Agreement by notice to the University if there is a change to the Universities policies and procedures referred to in clause 10 that detrimentally affects the Contractor's ability to provide the Services or materially increases the cost of providing the Services. Any termination notice under this clause must be issued within 20 Business Days of the Contractor being notified of the change.

16.3 The University may terminate this Agreement:

- (a) at any time by giving the Contractor at least 20 Business Days' prior notice; or
- (b) in accordance with clause 18.1 of this Agreement; or
- (c) immediately by notice to the Contractor where the University is not satisfied with the outcome of either;
 - (i) Police vet and/or safety check of the Contractor (if the Contractor is an individual) or an employee of the Contractor who is involved in the provision of the Services; and/or
 - (ii) an assessment of whether the Contractor or employee would pose a risk to the safety of children

16.4 For the avoidance of doubt, the University may not terminate this Agreement because the Contractor declines to perform additional work outside the scope of the agreed Services.

16.5 On and following termination or expiry of this Agreement for any reason:

(a) the termination or expiry shall be without prejudice to either party's accrued rights and remedies; and

(b) each party shall immediately cease using the other party's Intellectual Property Rights and shall promptly return any of the other party's property and Confidential Information and certify that it has done so

17. FORCE MAJEURE

17.1 If the Contractor's provision of the Services is prevented or delayed because of an act of God, inevitable accident, fire, lockout, strike or other labour dispute, riot or civil commotion, act of public enemy, enactment, rule, order or act of government, failure of technical facilities, failure or delay of transportation facilities or any other reason beyond the control of the University, the University may suspend the Services during the continuation of such prevention or delay and the Contractor will not be entitled to receive any fee, including any Contractor's Fee, for the period of such suspension.

17.2 If the Contractor's provision of the Services is prevented or delayed because of an act of God, inevitable accident, fire, lockout, strike or other labour dispute, riot or civil commotion, act of public enemy, enactment, rule, order or act of government, failure of technical facilities, failure or delay of transportation facilities or any other circumstance beyond the reasonable control of the Contractor (Force Majeure Event), the Contractor must immediately notify the University and take all reasonable steps to reduce or remove the effects of the Force Majeure Event so that the Services are provided or resumed.

If after taking all such steps the Contractor cannot either provide the Services, or agree reasonable alternative arrangements with the University, the University will suspend the Contractor's obligation to provide the Services during the period of such prevention or delay and the Contractor will not be entitled to receive any fee, including any Contractor's Fee, for the period of such suspension. If such suspension continues for more than five days, the University may terminate this Agreement by giving written notice to the Contractor.

18. FAILURE TO PERFORM THE SERVICES

18.1 Without limiting the University's rights under clause 16.1 of this Agreement, if the Contractor at any time fails to supply the Services for any reason, other than in a force majeure situation as described in clause 17.1 of this Agreement, then:

(a) no fee, including any Contractor's Fee, will be payable to the Contractor pursuant to this Agreement during such period of failure; and

(b) if such period exceeds two consecutive weeks, or three weeks in the aggregate, the University has the right to terminate this Agreement by giving two weeks' notice in writing to the Contractor without any further obligation.

18.2 Without limiting any other remedy the University may have under this Agreement or at law, including the University's right to terminate this Agreement:

(a) if any of the Services provided are defective or partly or wholly unperformed by the relevant date for performance under this Agreement ("Non-Compliant Services"), the University may require the Contractor to rectify, perform or re-perform such Services at the Contractor's own cost;

(b) if the Contractor is unable to do so to the University's reasonable satisfaction, the University may engage a substitute service provider (at the Contractor's cost) to do so; and

(c) the University shall have no obligation to pay for Non-Compliant Services and, if and to the extent the University has paid for any Non-Compliant Services, the University shall be entitled to set off such amounts against future payments due and owing under this Agreement.

19. NOTICES

19.1 Each notice or invoice provided under this Agreement will be in writing and delivered personally or sent by post or email to the address of the relevant party set out in Item 7 of the Details Table, or as notified to the other party from time to time. A notice is deemed to be received:

(a) if delivered personally, when delivered;

(b) if posted, three Business Days after posting; or

(c) if sent by email, when actually received,

provided that any notice deemed received on a non-Business Day or after 5pm on a Business Day will be deemed to have been received on the next Business Day.

20. DISPUTE RESOLUTION

20.1 If there is a dispute between the parties in relation to this Agreement either party may give the other party notice of the dispute ("Dispute Notice").

20.2 Senior managers of the parties shall meet to endeavour to resolve the dispute within 10 Business Days of receipt of the Dispute Notice.

20.3 If the dispute is not resolved within 20 Business Days of receipt of the Dispute Notice, either party may by notice to the other party refer the dispute to mediation ("Mediation Notice"). The mediation will be in Auckland and conducted under the LEADR New Zealand Incorporated ("LEADR") standard mediation agreement. If the parties do not agree on a mediator or the mediator's fees within five Business Days of receipt of the Mediation Notice, the mediator shall be appointed or the fees set by the chair of the LEADR (or his/her nominee) at the request of either party.

20.4 While any dispute remains unresolved each party shall continue to perform this Agreement to the extent practicable, but without prejudice to their respective rights and remedies.

20.5 Nothing in this clause 20 will preclude a party from seeking urgent interlocutory relief before a court.

21. GENERAL

21.1 No amendment to this Agreement will be effective unless it is in writing and signed by the parties.

21.2 The Contractor may subcontract the performance of all or part of the Services provided that:

(a) prior notification of the arrangement is given to the University. Notification must be in writing and include all relevant information about the subcontractor including their legal name, services they will perform, how long they will perform the services, and proof of any vetting (only as required);

(b) the subcontractor is suitably qualified and experienced to perform the relevant work;

(c) the subcontractor will not undergo vetting before being subcontracted, except where required to ensure compliance with any relevant statutory requirements, or where justified by the nature of the work to check for a relevant qualification or criminal record (or both). The Contractor is responsible for completion of any required vetting; and

(d) the Contractor remains fully responsible for the performance of the Services, and for ensuring compliance with this Agreement, by any subcontractor.

21.3 This Agreement is the entire agreement of the parties and supersedes all prior agreements and representations given or made between the parties relating to the matters dealt with in this Agreement.

21.4 The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by this Agreement or law.

21.5 If any provision of this Agreement is illegal, invalid or unenforceable, that provision shall be read down to the extent necessary to make it legal, valid and enforceable.

21.6 Following the termination or expiry of this Agreement clauses 14 (Intellectual Property Rights), 15 (Confidentiality), 21 (General) together with other provisions that are by their nature intended to survive will remain in effect.

21.7 No delay or omission by a party to exercise a right will constitute a waiver of that right. A waiver of a right under this Agreement is ineffective unless it is in writing.

21.8 This Agreement may be executed in any number of counterparts (including facsimile or scanned PDF counterpart), each of which shall be deemed to be an original, but all of which shall constitute the same instrument. No counterpart shall be effective until each party has executed at least one counterpart.

21.9 This Agreement is governed by New Zealand law and the parties irrevocably submit to the non-exclusive jurisdiction of the New Zealand courts.

22. ACKNOWLEDGEMENT OF ADVICE

22.1 The Contractor acknowledges that it has had a reasonable opportunity to seek independent advice about this agreement.