

CONTRACT FOR SERVICES

Between

MASSEY UNIVERSITY

And



CONTENTS

| | |
|--------------------------------------|----|
| 1. APPOINTMENT | 3 |
| 2. THE TERM | 3 |
| 3. SERVICES | 3 |
| 4. PERFORMANCE OF THE SERVICES | 3 |
| 5. THE FEE | 4 |
| 6. EXPENSES | 5 |
| 7. EQUIPMENT | 5 |
| 8. CONFLICT OF INTEREST | 5 |
| 9. CONFIDENTIALITY | 5 |
| 10. INDEMNITY | 5 |
| 11. INTELLECTUAL PROPERTY | 6 |
| 12. INVENTIONS | 6 |
| 13. HEALTH AND SAFETY | 6 |
| 14. TERMINATION | 6 |
| 15. FORCE MAJEURE | 7 |
| 16. DISPUTES | 8 |
| 17. NOTICES | 8 |
| 18. GENERAL CONDITIONS | 9 |
| SCHEDULE A | 11 |
| SCHEDULE B | 12 |

THIS CONTRACT dated

("the Contract")

BETWEEN

Massey University, a body corporate under the Massey University Act 1963, and the Education Act 1989 of Palmerston North, New Zealand ("**the University**")

AND

_____ of _____ ("**the Contractor**").
[Contractor Name] [Address]

1. APPOINTMENT

- 1.1 The University appoints the Contractor to provide the services set out in Schedule A ("the Services") and the Contractor accepts such appointment.
- 1.2 The relationship between the University and the Contractor is and will be for all purposes that of independent contractor and not that of employer and employee, and this contract will be construed and applied accordingly. The Contractor acknowledges having had sufficient opportunity to obtain legal advice on the impact of the relationship being one of contractor as opposed to employee.

2. THE TERM

- 2.1 This Contract shall commence on the Commencement Date specified in Schedule B and, subject to Clauses 14.1 and 14.2, shall terminate on the Completion Date specified in Schedule B. If the University requires the Contractor to provide the Services beyond the Completion Date, the term of the Contract may be extended upon conditions agreed in writing by both parties.
- 2.2 There is no expectation of a further contract being entered into when this contract terminates.

3. SERVICES

- 3.1 The Contractor agrees to provide the Services within the term of this Contract.
- 3.2 In consultation with the Contractor the University may amend the scope, nature or content of the Services at any time which may affect the remuneration payable under the Contract.

4. PERFORMANCE OF THE SERVICES

- 4.1 In supplying the Services the Contractor shall exercise the degree of care, diligence, skill and judgement expected of a professional advisor providing such Services. The Contractor shall be liable to the University in respect of any failure to exercise such care, diligence, skill and judgement. The Contractor will at its own cost make good any errors, omissions, defects or faults in the Services of which the University notifies the Contractor in writing during or after the term of this Contract.
- 4.2 The Contractor will, in the performance of the Services, act so as to promote and protect the business, reputation and goodwill of the University and will carry out and comply with all

reasonable and lawful directions and policies of the University which may vary from time to time.

- 4.3 Unless otherwise agreed in writing, the Contractor will ensure that the Key Personnel named in Schedule B will perform the Services.
- 4.4 If the Contractor fails to commence, execute, or complete the Services and, as a result the University incurs, directly or indirectly, any loss or damage, the Contractor will be liable for such proportion of the loss or damage as is attributable to the Contractor's failure.
- 4.5 If completion of any part of the Services is delayed by matters beyond the control of the Contractor or the University or if additional work requires the Services to be varied, the University will grant a fair and reasonable extension of time to the Contractor.
- 4.6 The Contractor agrees to keep the University fully informed of all matters relevant to the performance of the Services and agrees to promptly advise the University of any problems or anticipated problems which may adversely affect the delivery of the Services by the Contractor.

5. THE FEE

- 5.1 The University agrees to pay the Contractor for the Services in accordance with Schedule B, plus GST if any.
- 5.2 Accounts for fees will be invoiced and paid as detailed in Schedule B.
- 5.3 Where applicable, the University will deduct withholding tax as required by existing legislation unless the Contractor provides an exemption certificate or special tax code certificate from the Inland Revenue Department.
- 5.4 Subject to clause 5.3 the Contractor agrees it is solely liable and responsible for all taxes, levies and duties imposed on the Contractor in respect of the fees received for the provision of Services hereunder and will file all necessary returns in respect of such taxes (including Goods and Services tax, and ACC levies) with the appropriate authorities. The Contractor further agrees to indemnify the University against any liability or loss whatsoever suffered or incurred by the University through the Contract by the Contractor failing in any way to comply with this clause.
- 5.5 The Contractor will not be entitled to any payments, fees, allowances or reimbursements other than those specified in this Contract and, without limiting this clause, will not be entitled to any payments or benefits relating to sickness, superannuation, holidays, redundancy, or overtime.
- 5.6 If the University considers that an invoice submitted by the Contractor is not acceptable, the University shall, promptly after becoming aware of the reasons for non-acceptance, notify the Contractor in writing of the reasons for non-acceptance and of any actions to be taken by the Contractor for the invoice to be rendered acceptable for payment.
- 5.7 Until any dispute between the parties relating to an invoice is resolved the obligation of the University to pay the portion of the invoiced amount in dispute shall be deferred without prejudice to either party's rights and remedies under this Contract or otherwise.
- 5.8 Upon resolution of a dispute referred to in clause 5.7, the amount outstanding (if any) pursuant to the disputed invoice shall be paid within 10 working days of the dispute being resolved.

6. EXPENSES

6.1 The Contractor will pay for all expenses incurred by the Contractor in the performance of the Services.

7. EQUIPMENT

7.1 The University will provide the Contractor with the equipment specified in Schedule B. The Contractor will provide all other equipment required to perform the Services and will ensure that all such equipment is well maintained and capable of performing the Services.

8. CONFLICT OF INTEREST

8.1 The Contractor is entitled to undertake other work during the term of this Contract but will not enter into any contract or business arrangement or engage in any activity which may conflict with the University's interests without the University's written consent.

9. CONFIDENTIALITY

9.1 The Contractor will not, either during the term of this Contract or thereafter, except as necessary to provide the Services, disclose to any person or other organisation, or use in any unauthorised manner:

- a. any trade secrets of the University or any of its associated entities;
- b. information which is confidential to the University or any of its associated entities; or
- c. information regarding any of the dealings, transactions or affairs of the University or any of its associated entities,

which is or becomes known to the Contractor. The Contractor will not disclose the nature or content of any of the terms of this Contract, either during or after the Term, except for the purposes of obtaining legal or financial advice.

9.2 The Contractor shall not advertise or publicise the existence of this Contract (or any aspect of it) without the prior written consent of the University and will not make any statements or representations to the media on behalf of the University without the prior approval of the Vice-Chancellor of the University.

10. INDEMNITY

10.1 The Contractor will be responsible for carrying the Contractor's own indemnity insurance and for paying the premiums.

10.2 The Contractor will indemnify the University against any claim, liability or expense (including without limitation, legal fees, costs and disbursements) brought or threatened against, or incurred by the University, arising either directly or indirectly out of the provision of the Services that is caused or contributed to by the Contractor, and against any tax which the University may be held liable to withhold from the payments to the Contractor to be made under this Contract.

11. INTELLECTUAL PROPERTY

- 11.1 The Contractor will abide by the procedures laid down in the University's Policy on Intellectual Property with respect to the rights of both internal and external parties.
- 11.2 The Contractor agrees that if, at any time in performing the Services, the Contractor (whether alone or with any other person) originates any work in which intellectual property rights (including but without limitation, copyright) may exist:
- a. the Contractor will promptly disclose it to the University;
 - b. all intellectual property rights in New Zealand or any other country in such work will belong absolutely to the University as such rights are created; and
 - c. the Contractor will do all things necessary or desirable to substantiate the rights of the University in relation to such work.
- 11.3 Without limiting this clause, all rights of ownership in course material produced for teaching and distribution to students will belong to the University

12. INVENTIONS

- 12.1 The Contractor agrees that if at any time in performing the Services, the Contractor makes or discovers or participates in the making or discovery of any invention or improvement upon or addition to an invention ("the Invention") which is applicable to the business for the time being of the University, the Contractor will promptly disclose it to the University and it will be the absolute property of the University.
- 12.2 The Contractor will at the request and cost of the University:
- a. give and supply to the University all such information, data, drawings and assistance as may be necessary to enable the University to exploit the Invention to the best advantage; and
 - b. execute all documents and do all things necessary or desirable for obtaining patent or similar protection for the Invention in New Zealand and/or overseas as may be specified by the University and/or vesting the Invention in the University or as the University may direct.

13. HEALTH AND SAFETY

- 13.1 The Contractor shall comply at all times with the requirements of the Health and Safety at Work Act 2015 and with the University's internal policies regarding health and safety while providing the Services.
- 13.2 The Contractor shall undergo a health and safety induction process at the request of the University before any Services are provided under this Contract.

14. TERMINATION

- 14.1 This Contract shall be terminated on the earlier of:
- a. the Completion Date as stated in Schedule B; or

- b. a date agreed in writing between the parties; or
- c. receipt of written notice in the event that the other party becomes bankrupt, or (being a company) goes into receivership, statutory management or liquidation, or, in the case of the Contractor, dies; or
- d. the expiration of 14 days after written notice by the University of termination has been received by the Contractor for any of the following reasons:
 - i. where the University in its sole discretion determines that a particular paper, programme or module for the course for which the Services are to be provided by the Contractor should not proceed;
 - ii. if the Contractor commits any breach of the terms and conditions of this Contract and fails to remedy the breach within 14 days' notice in writing from the University requiring the breach to be remedied;
 - iii. if the Contractor's conduct is considered by the University to be detrimental to the reputation of the University;
 - iv. if the Contractor is in breach of clause 9 relating to disclosure of confidential information, whether purposely or accidentally; or
 - v. if, due to the ill health of the Contractor, the Services have fallen behind schedule to such a degree that the project cannot be completed within a reasonable timeframe, or where the Services have not been satisfactorily completed; or
- e. the expiration of 14 days after written notice of termination by the Contractor has been received by the University for either of the following reasons:
 - i. the University is in arrears for more than 28 days after any payment by the University to the Contractor has become due, unless the University has given the Contractor notice within 14 days of receipt of the invoice that it disputes the payment; or
 - ii. the University commits any serious breach of the terms and conditions of this Contract and fails to remedy the breach within 14 days' notice in writing from the Contractor requiring the breach to be remedied.

14.2 Notwithstanding any other clause of this Contract, the University reserves the right to immediately terminate this Contract, without notice, at any time for serious misconduct, or any substantial breach, substantial non-observance or substantial non-performance of any of the terms or conditions of this Contract.

14.3 Termination of this Contract shall not extinguish or otherwise affect the obligations under this Contract which by their nature are intended to survive termination.

15. FORCE MAJEURE

15.1 Neither party shall be liable for any act or omission that is due to any unforeseen cause clearly outside of the control of that party.

15.2 In the event that the Contractor is unable to complete the Term of the Contract, the Contractor will endeavour to provide continuity of support and ensure that the Contractor's egress is conducted in an orderly fashion so as to minimise any adverse impact on the University.

15.3 Any party wishing to rely on this clause shall advise the other party immediately of any circumstances, situation or act which could justify reliance on this clause and must perform its obligations to the extent it is able to do so notwithstanding the relevant unforeseen cause.

16. DISPUTES

16.1 If any dispute or difference arises between the parties as to:

- a. the meaning or application of any part of this Contract; or
- b. any other matter touching or concerning this Contract,

then the parties will attempt in good faith to amicably settle the dispute or difference.

16.2 If the parties cannot amicably settle the dispute or difference within 14 days of the dispute or difference arising, either party may refer the matter to mediation. If both parties agree to attend mediation they will agree upon a mediator, or failing agreement, a mediator will be nominated on the application of either party by the President of the New Zealand Law Society or his/her nominee. The mediator's fee and costs will be split evenly between the parties but the parties will otherwise bear their own costs relating to the mediation.

16.3 If one party refuses to attend mediation within 21 days of referral of the dispute or difference to mediation or the matter has not been resolved (either at all or within a reasonable timeframe), then either party may refer it to the arbitration of a single arbitrator to be agreed upon by the parties, or failing agreement, to be nominated on the application of either party by the President of the New Zealand Law Society or his/her nominee. The arbitrator's fee and costs will be split evenly between the parties.

16.4 The arbitration will be conducted in accordance with and subject to the provisions of the Arbitration Act 1996 and its amendments (excluding clauses 1, 3, 4 and 5 of the Second Schedule to that Act).

16.5 The decision of the arbitrator will be final and conclusive as between the parties.

16.6 The parties shall continue to perform their obligations under the Contract as far as possible as if no dispute had arisen pending the final settlement of any matter referred to arbitration.

16.7 Nothing in this clause shall preclude either party from taking immediate steps to seek urgent equitable relief before a New Zealand Court.

17. NOTICES

17.1 A notice, consent or approval to be given under this Contract ("a Notice") may be given by one party to any other party to this Contract by personally serving it on that party or by sending it by post (with a registered postal operator) to that party, or by transmitting it by facsimile to the address set out in Schedule B (or to such other address as the party to be notified may advise for the purpose from time to time) marked for the attention of the person named in Schedule B. Any notice or document so given shall be deemed to be received at the time when it was actually delivered, sent by facsimile or within 48 hours after the time it was mailed to the authorised representative of the recipient party at the respective address set forth in Schedule B

18. GENERAL CONDITIONS

- 18.1 This Contract shall be construed and take effect in accordance with the laws of New Zealand.
- 18.2 The provisions of this Contract are severable. If a court of competent jurisdiction holds any provision of this Contract to be invalid or unenforceable, such finding shall not affect the remaining provisions of this Contract.
- 18.3 No modification, variation or waiver of this Contract or any one or more of the terms herein shall be effective or binding on either of the parties unless in writing and signed by the parties.
- 18.4 This Contract constitutes the entire agreement between the parties and supersedes all prior agreements, undertakings, representations and negotiations.
- 18.5 The Contractor shall not assign, transfer or subcontract its rights or obligations under this Contract without the prior written consent of the University.

SIGNED BY

[NAME] for and on behalf of the
CONTRACTOR

Full name

Signature

and witnessed by:

Signature of witness

Occupation

City/town of residence

SIGNED BY

[NAME] for and on behalf of **MASSEY**
UNIVERSITY []
DEPARTMENT

Full name

Signature

and witnessed by:

Signature of witness

Occupation

City/town of residence

SCHEDULE A

The Services to be provided under this Contract are:

SCHEDULE B

- 1. **Commencement Date:** _____
- 2. **Completion Date:** _____
- 3. **Fees (Exclusive of GST) (include the total cost or maximum limit applying to the fee up to a maximum of \$50,000)** _____
- 4. **Key Personnel:** _____
- 5. **Invoices will be submitted:** _____
- 6. **Invoices are paid fortnightly and will be paid in the first available period after receipt** _____
- 7. **Equipment Provided by Massey:** _____

Address for Service

a.) The Address for service on the University is:

Address: _____

Attention: _____
Phone: _____
Facsimile: _____

b.) The Address for service on the Contractor is:

Address: _____

Attention: _____
Phone: _____
Facsimile: _____