

DATED

20

BETWEEN

MASSEY UNIVERSITY ("Massey")

AND

\*A\* ("the Provider")

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**AGREEMENT FOR CONSULTANCY SERVICES**

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**Massey University**

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## **INDEX AND CHECKLIST FOR COMPLETION OF AGREEMENT FOR CONSULTANCY SERVICES SCHEDULE**

- A =** insert in Schedule full legal name of Provider and complete details in Schedule
- B =** insert in Schedule how payment for Services is calculated, eg if fixed amount insert amount, if progress payments insert basis of payment and amount, if hourly rate insert hourly rate, if not determined insert “a fair and reasonable fee”
- C =** insert in Schedule one of Palmerston North, Auckland or Wellington
- D =** select in Schedule term option D1 or D2 and complete
- E =** select in Schedule payment option E1 or E2, if option E2 is selected complete
- F =** insert in Schedule description of Services and any objectives (F1) or outcomes (F2) – use separate sheet if necessary
- G =** insert in execution provision name and position of Massey authorised signatory
- H =** Insert in execution provision name and position of Provider authorised signatory
- I =** insert date on last page after Schedule and before signing

THIS AGREEMENT made on the date appearing below.

## PARTIES

1. MASSEY UNIVERSITY ("Massey")
2. The party specified as the provider in Section A of the Schedule ("the Provider")

## BACKGROUND:

The Provider has agreed to provide the services as described in this Agreement to Massey on the terms and subject to the conditions of this Agreement.

## IT IS AGREED:

### **DEFINITIONS AND INTERPRETATION**

1. Definitions: In this Agreement:
  - 1.1 "Agreed Rate" means the rate specified in Section B of the Schedule;
  - 1.2 "confidential information" means commercial, financial, marketing, technical or other information of whatever nature including without limitation information relating to the Services, know how, intellectual property, trade secrets and other information in any form whether disclosed orally, in writing, electronically, by tape, or disk or any other medium before or after the date of this Agreement by Massey to the Provider. For the avoidance of doubt the term "confidential information" extends to and includes:
    - (a) (New information created by the Provider which is based on or incorporates (whether in a modified form or not) information supplied by Massey; and
    - (b) The notes, records or copies (including electronic copies) made of the confidential information supplied by Massey;but shall not include information:
    - (c) which is available for use by the Provider and which was lawfully obtained from a source other than Massey or its representatives or advisors;
    - (d) was independently developed by the Provider on the basis of information which was not confidential information;
    - (e) which is in the public domain at the time of signing this Agreement;
    - (f) entered the public domain other than as a breach of a duty of confidence and then only from the date such information enters the public domain.
  - 1.3 "Forum Campus" means the main Massey Campus as specified in Section C of the Schedule.
  - 1.4 "Services" means the Services described in Section F of the Schedule or any part thereof.
2. Interpretation:
  - 2.1 A reference to the singular includes the plural and vice versa.
  - 2.2 A reference to a particular gender includes all other genders.
  - 2.3 If the Provider is more than one party then those parties have a joint and several liability.
  - 2.4 Headings are for convenience only and do not affect interpretation of any provision.
  - 2.5 A reference to the Schedule is a reference to the Schedule to this Agreement and any Schedule attached.

### **COMPONENTS**

3. The Provider shall provide the Services:
  - 3.1 Using personnel who have adequate qualifications, relevant training, sufficient experience and appropriate oversight to provide the Services;
  - 3.2 In a proper manner and to a professional standard;
  - 3.3 Where in written format and when requested by Massey provide such Services in an electronic format (this includes without limitation opinions, advice, drawing and plans), compatible with Massey's electronic systems; and
  - 3.4 To achieve the objectives and/or outcomes if any are mentioned in Section F1 and/or F2 of the Schedule.

### **TERM**

4. The Services are to be provided during the term as specified in Section D of the Schedule.

### **PAYMENT**

5. Massey will pay for Services as set out in Section E of the Schedule at the Agreed Rate.

### **CONFIDENTIALITY**

6. The Provider acknowledges that in providing Services it may receive confidential information. The Provider agrees with respect to confidential information it receives as follows:-
  - 6.1 The confidential information including all rights relating thereto, is and shall remain at all times the absolute property of Massey.
  - 6.2 The Provider in receiving confidential information does so in the strictest confidence and shall not, either by itself or by the action of any employee, agent or advisor to it, directly or indirectly disclose, distribute or permit to be disclosed or distributed the confidential information to any person that is not bound by the provisions of this Agreement, or a like Agreement.
  - 6.3 Without limiting any provision of this Agreement confidential information received by the Provider may be used solely in connection with and for the purposes of providing the Services and may not be used for any other purpose or be used in a manner which is prejudicial to Massey in any way.
  - 6.4 The Provider in receiving confidential information is aware that any breach of this provision may result in Massey suffering damage.
  - 6.5 The Provider acknowledges that unauthorised disclosure and/or use of confidential information is in breach of this provision and may not be adequately compensated for by damages and may be the subject of equitable/interim relief.
  - 6.6 The Provider in receiving confidential information agrees to pay all expenses, losses, damages and costs (including lawyer/client costs) that Massey may sustain or incur as a result, whether directly or indirectly, of any breach of this provision by the Provider.
  - 6.7 Immediately upon written demand from Massey the Provider must immediately return to Massey all confidential information (including all copies or reproductions of the same) in the possession or control of the Provider together with all information and documentation containing, comprising or relating in any way to the confidential information.
  - 6.8 Failing a written demand for the return of the confidential information, confidential information may be retained by the Provider but will at all times remain subject to this provision.
  - 6.9 The Provider will keep confidential information confidential and secure and separate from the Provider's own documentation.
  - 6.10 The Provider shall notify the Provider's employees, advisors or other third parties who might have access to the confidential information (in accordance with the terms of this provision) of the confidential nature of the information and the Provider's obligations under this Agreement.
  - 6.11 This provision shall survive:
    - (a) the performance of the Services; and
    - (b) for a period of five (5) years after the date on which the confidential information is returned to Massey.

### **SOLICITING OF EMPLOYEES**

7. The Provider shall not solicit any employee of Massey or a contractor of Massey away from Massey other than as a result of normal recruiting procedures.

### **ACCURACY**

8. In performing the Services the Provider shall be entitled to rely upon the accuracy of information supplied to it by or on behalf of Massey. The Provider shall not be responsible for outcomes arising from any inaccuracy of information provided to it or the failure by Massey to provide information that may be relevant to the Services provided. If however the Provider has reason to believe the information provided is either inaccurate or inadequate it shall advise Massey at the first possible opportunity.

### **SURVEYS**

9. Massey acknowledges that information provided or derived from surveys or mathematical models are estimates and are subject to statistical error.

## **PERSONAL INFORMATION**

10. Should the Provider whilst providing Services obtain information which could be regarded as personal information of any individual then, that information shall be respected as personal information it should not be published in any way that could in any circumstances identify the person that such personal information relates. The Provider will comply with the requirements of the Privacy Act 1993 in relation to any such information.

## **SCOPE**

11. Massey acknowledges that any reports, opinions, findings or proposals that eventuate as a consequence of the Services are for the benefit of Massey only and should not be relied upon by any third party without the prior approval of the Provider and if any such reports, opinions, findings or proposals are circulated by Massey to third parties Massey shall acknowledge the authorship of such reports, opinions, findings or proposals is that of the Provider. Massey for the purposes of this provision includes companies in which Massey holds or controls 50% or more of the issued shares directly or indirectly.

## **PROVIDER'S OBLIGATIONS**

12. The Provider shall:
- 12.1 Establish adequate and reasonable procedures acceptable to Massey for the administration and management of the Services. In the absence of Massey requiring approval of such procedures, such procedures are to be best industry practice;
- 12.2 Commence the Services by the agreed date, if any, and work responsibly and diligently and use its best endeavours to complete Services to achieve any advised objectives and outcomes that form part of the Services.
- 12.3 Notify Massey as soon as practical if it is known or suspected that the Services cannot be completed or any objectives or outcomes cannot be met.
- 12.4 In the case of Services which are provided over a period of time provide reasonable access and information to Massey to enable Massey to be reasonably satisfied that the terms and conditions of this Agreement are being fulfilled.
- 12.5 Meet all expenses contracted for and directly or indirectly related to the Services.
- 12.6 Not breach the intellectual property of any third person.

## **COMPLIANCE**

13. The Provider in providing the Services shall observe and comply with all relevant New Zealand laws and Massey by-laws.

## **HEALTH AND SAFETY**

14. If the Provider is providing services on a Massey Campus or other workplace controlled by Massey, the Provider shall:
- 14.1 familiarise itself with, and observe and comply with Massey's health and safety requirements;
- 14.2 ensure that any employee of the Provider who visits or works at any Massey campus or other workplace controlled by Massey as part of this Agreement familiarises himself with, and observes and complies with Massey's health and safety requirements.
15. The Provider acknowledges that it is responsible for ensuring the health and safety of its employees who are involved in providing the Services pursuant to this Agreement at all times, including when its employees are visiting or working at a Massey campus or at another workplace controlled by Massey.
16. If the Services provided may or should have a health and safety aspect the Provider shall ensure that the provisions of the Health and Safety in Employment Act 1992 is fully complied with in making any recommendation with respect to any Massey Campus or workplace.

## **INTELLECTUAL PROPERTY**

17. The copyright and all intellectual property relating to the outcome of any Services will be the absolute property of Massey. Without limitation to the previous sentence this clause includes intellectual property provided by Massey to the Provider and any development of such intellectual property by the Provider.

## **DISPUTE RESOLUTION**

18. If any dispute or difference shall arise between the parties or any of them with respect to this Agreement the parties to this dispute shall use their best endeavors to resolve such dispute or difference in the spirit of co-operation and goodwill. If the parties are unable to resolve the matter themselves they will participate in mediation with a mutually acceptable third party appointed if necessary by the chairperson of the New Zealand Chapter of LEADR. Failing mediation being successful within 21 days after appointment of the mediator the parties to the dispute shall submit to the arbitration of a single arbitrator to be agreed or failing agreement to be appointed by the President for the time being of the New Zealand Law Society and conducted in accordance with the Arbitration Act 1996.

## **FORUM**

19. The forum for the hearing of any dispute shall be:
- 19.1 The Court registry nearest the Forum Campus in the case of any Court proceedings arising from this Agreement;
- 19.2 The Forum Campus in the case of mediation or arbitration arising from this Agreement. Massey shall make appropriate rooms available at the Forum Campus for any mediation or arbitration.

## **JURISDICTION**

20. This Agreement shall be subject to the jurisdiction of the New Zealand Courts and the laws of New Zealand.

## **INDEMNITY**

21. The Provider will indemnify and keep indemnified Massey from and against all claims, losses, actions, damages, costs, charges, expenses (including real costs and expenses) or other liabilities whatsoever, (whether direct, indirect, consequential or otherwise), that may be suffered, or incurred by Massey arising directly or indirectly from any act, default or omission of the Provider in respect of its obligations under this Agreement. This clause shall remain in full force after termination of this Agreement.

## **TERMINATION**

22. Massey may terminate this Agreement on written notice to the Provider but if such written notice is given prior to completion of the Services the Provider may charge Massey for work carried out and disbursements incurred up to the time of termination. The Provider shall have no other remedy for termination of this Agreement.

## **ASSIGNMENT**

23. The Provider shall not assign any rights or benefits under this Agreement without the prior written approval of Massey and the Provider shall not subcontract any part of the Services without Massey's prior written approval.

## **AMENDMENTS TO THE AGREEMENT**

24. The terms and conditions of this Agreement may not be modified without the written agreement of both parties.

## **NO WAIVER**

25. No waiver of any breach, or failure to enforce any provision, of this Agreement at any time by any party shall in any way affect, limit or waive the rights of such party thereafter to enforce and compel strict compliance with the provisions of this Agreement.

## **AGENCY**

26. The Provider acknowledges that this Agreement does not establish an agency or partnership relationship between Massey and the Provider and the Provider is not authorised to incur any legal obligations on Massey's behalf during the course of providing the Services. The Provider is not authorised to use Massey's name or logo in connection with the provision of the Services.

**SCHEDULE**

**A** The Provider referred to in the Agreement is:

Whose contact and address for service is:

Physical Address:

Postal Address if different to above:

Telephone:

Fax:

E-Mail:

Contact Person:

**B** The Agreed Rate is

**C** The Forum Campus is:

**D** Delete one option

Option D1: The term of the Agreement is \_\_\_\_\_ OR

Option D2: The Services will be completed by \_\_\_\_\_

**E** Delete one option

Option E1: Monthly in arrears on the late of the 20<sup>th</sup> of the month or seven days after receipt of a tax invoice OR

Option E2: [complete]

**F** **Services** (see also any attached Schedule):

The Provider shall provide the following Services:

**F1** **Objectives if required** (see also any attached Schedule):

The objectives of the Services are:

**F2** **Outcomes if required** (see also any attached Schedule):

The required/intended [*delete one*] outcomes of the Services are:

**\*I\*This Agreement is dated \_\_\_\_\_ 20\_\_\_\_\_**

SIGNED for \_\_\_\_\_ )  
MASSEY UNIVERSITY by:- ) Signature

\_\_\_\_\_  
**\*G\* Name of Signatory**                      **Position**

**Provider**  
SIGNED for the Provider by \_\_\_\_\_ )  
Signature

\_\_\_\_\_  
**\*H\*Name of Signatory**                      Position