# INDEPENDENT CONTRACTOR AGREEMENT

# Dated this day of 202

# PARTIES

#  The University of Waikato, a tertiary institution established pursuant to the Education and Training Act 2020 (University); and

# [ ] with registered office at [ ] (Contractor),

Each of the above individually referred to as a “Party” and jointly the “Parties” as applicable.

# BACKGROUND

The Supplier agrees to provide the Services to the University on the terms and conditions set out in this Agreement and in the schedules to this Agreement.

**TERMS OF AGREEMENT**

# DEFINITIONS

## In this Agreement, background recitals, and any schedules to it, the following words have the following meanings:

 **Agreement:** this agreement and any attached schedules.

 **Commencement Date:** the date on which this Agreement will commence as specified in Schedule One item 1.

**Confidential Information:** any and all information, whether verbal, written or otherwise, whether scientific, trade, financial, business, or any other information of any kind which is marked or stated to be confidential, or is treated by the disclosing Party as confidential or by its nature is reasonably intended to be confidential, subject to the proviso below. Without limitation, this information may include documents, plans, sketches, drawings, inventions, processes, correspondence, models, prototypes, databases, compilations, techniques, trade secrets, formulations, software, equipment, tests, data, source code, reports, know-how, sources of supply, supplier lists, patent position, relationships with suppliers and employees, business plans and business developments, information concerning the scope or activities of research, development, manufacturing, marketing or other projects, samples and materials, and any other similar information about or belonging to the disclosing Party’s suppliers, licensors, licenses, partners, affiliates, customers, potential customers or others.

Confidential Information does not include information that:

1. is already in the public domain prior to the date of disclosure by the disclosing Party; or
2. can be demonstrated, from written records, to have been in the receiving Party’s possession from another source, not under obligation of secrecy to the disclosing Party, prior to disclosure by the disclosing Party; or
3. subsequently enters the public domain, other than by unauthorised disclosure; or
4. has been independently developed by the receiving Party without the use of the disclosing Party’s Confidential Information.

**Contract Relationship Manager:** means the contract relationship manager for the University as specified in Schedule One item 3 to this Agreement.

**Expiry Date:** the date on which this Agreement expires as specified in Schedule One item 2, unless otherwise agreed between the Parties in writing.

**Intellectual Property:** all or any of the following which a Party owns or is authorised to use: inventions (whether or not patentable), applications for patents, designs, domain names, business or company names, trade names and trademarks (whether or not these can be registered, and any applications for such), know-how, trade secrets, confidential information of any type and in any form, and copyright material including without limitation, sketches, drawings, models, prototypes, technical data, databases and compilations, software, descriptions and publications, recordings, photographs, and any other intellectual property.

**New Intellectual Property:** any Intellectual Property created or existing as a result of or in connection with the Contractor supplying the Services pursuant to this Agreement.

**Premises:** means the land and buildings owned or leased by the University, including its Hamilton and/or Tauranga campuses and other satellite premises, and University student accommodation and recreation facilities.

**Services:** the services specified in Schedule Three to be supplied by the Contractor to the University in accordance with the Agreement and the Schedules.

## **References**: In this Agreement reference to:

#### the plural includes reference to the singular, and vice versa;

#### words importing one gender includes all genders;

#### any statutory provision will include any statutory provision which amends or replaces it and any subordinate legislation made under it;

#### “person(s)” means a reference to any natural or artificial person and includes an individual, company, body corporate, association of persons (whether corporate or not), trust, state or agency of a state or other entity, in each case whether or not having separate legal personality;

#### any clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement; and

#### a Party, is to a Party to this Agreement, and references to a Party to a document includes the Party’s executors, administrators, successors and permitted assigns and substitutes.

## **Headings**: Inserted in this Agreement are for convenience of reference only and do not affect the interpretation of this Agreement.

## **Negative obligations**: Any obligation not to do anything will be deemed to include an obligation not to suffer, permit or cause that thing to be done.

## **Background recitals:** The Parties acknowledge the accuracy of the background recitals to this Agreement.

# TERM

## This Agreement will commence on the Commencement Date and will continue in full force and effect until the Expiry Date (**Term**) unless terminated in accordance with clause 12 (Termination).

#  INDEPENDENT CONTRACTOR

## Nothing contained or implied in this Agreement shall create a relationship of employee/employer, principal/agent or a joint venture or partnership of any kind between the University and the Contractor. The Contractor shall at all times be independent of the University.

# CONTRACTOR WARRANTIES

## **Warranties:** The Contractor warrants to the University that:

#### it will provide the Services required in this Agreement in a competent, professional, prompt and efficient manner;

#### it has all the necessary skills, training, expertise, tools and equipment to carry out the Services in accordance with this Agreement;

#### it will perform the Services in accordance with the requirements of this Agreement;

#### the Services will be free from material defects and errors; and

#### it will not do anything which jeopardises or harms the reputation of the University.

# CONTRACTOR RIGHTS AND OBLIGATIONS

## **Obligations:** In carrying out the Services,the Contractor will:

#### report to the University on such performance as reasonably required by the University;

####  at all times act in a courteous manner with the University and its staff and clients;

#### comply with any reasonable directions given by the Contract Relationship Manager to the Contractor;

#### comply with all applicable laws, statutes (including but not limited to the Health and Safety at Work Act 2015 and Privacy Act 2020) regulations, by-laws, codes of practice, ordinances and operational requirements of the University, University policies and procedures as they apply to this Agreement. A selection of key University policies along with a link to enable the Contractor to access the full suite of University policies are included without limitation in Schedule One item 4;

#### advise the Contract Relationship Manager of any accidents/incidents/serious harm injuries as soon as possible;

#### comply with all time limits and deadlines which are directed by the University;

#### use any of the University’s Intellectual Property only where necessary and as authorised by the University;

#### supply at the Contractor’s own cost all tools and other equipment required to perform the Services required by this Agreement and ensure that all such tools and equipment are well maintained and capable of performing the Services required;

#### perform all of the duties and obligations under this Agreement, unless he or she obtains the prior written approval of the University to engage someone else (including an employee of the contractor) to complete the work;

#### not enter into any arrangements with third parties on behalf of the University; and

#### be responsible for all costs relating to the running of the Contractor’s business, including by way of example, but not limited to, Income Tax, Accident Compensation levies or premiums and Goods and Services Tax.

## **Indemnity:** The Supplieragrees to indemnify the University and keep the University indemnified against any actions, claims, proceedings, loss, damage, costs or expenses which may be made against or taken against the University as a result of the provision of the Services under this Agreement, or arising from the Contractor’s actions on the University’s behalf (whether the University has authorised them or not) including any liability arising out of the Contractor’s negligent acts or omissions.

# CONTRACT RELATIONSHIP MANAGER RESPONSIBILITIES

## **Assign Contract Relationship Manager:** The University shall assign a Contract Relationship Manager as specified in Schedule One item 3 to work with the Contractor in a positive and supportive manner.

## **Responsibility:** The Contract Relationship Manager will be responsible for checking that the Contractor works in a safe and healthy manner while working on the Premises.

## **Induction process:** The Contract Relationship Manager will, at the commencement of this Agreement, take the Contractor through an on-site induction process.

## **Communication:** All communication with the University shall be with the Contract Relationship Manager in the first instance.

# SERVICES FEE AND PAYMENT

## **Services Fee:** The University shall pay the Contractor for the Services the Services Fee (plus GST where applicable) in instalments as set out in Schedule Two, subject to the following:

#### **E-Invoicing:** Unless otherwise agreed in writing between the Parties, and subject to any deductions that they University may make when exercising its rights under clause 7.1(f) the Contractor shall submit an electronic invoice to the University in respect of the Services.

#### **Email Submission:** Electronic invoices shall be submitted by the Contractor via email to the University as follows:

##### The Contractor shall email the electronic invoice to:

uow-accountspayable@paperlessap.co.nz

##### The subject line of the email shall contain the sentence “Invoice for the period (insert dates)”.

#### **Invalid submission:** Invoices not received in accordance with this clause 7.1 shall be deemed not to have been received (unless otherwise agreed between the Parties pursuant to clause 7.1(a)).

#### **Terms of Payment:** Subject to clauses 7.1(e), 7.1(f), and 7.1(g), the University shall pay all amounts set out in the electronic invoice that are properly payable by the University to the Contractor on the 25th day of the month following the date of the electronic invoice. Unless otherwise stated all amounts set out or payable pursuant to this Agreement are GST exclusive.

#### **Withholding payment:** Where the University informs the Contractor of a genuine and reasonable dispute about any invoice, the University may withhold payment of the disputed portion until that dispute is resolved by the Parties, or failing this, until there is a resolution of the dispute in accordance with clause ‎17.

#### **Deductions:** The University may deduct from, and/or set off against any payments due to the Contractor any credits, discounts, claims and other amounts from time to time owing to the University by the Contractor under this Agreement.

#### **No invoice:** The University shall not be liable to pay the Supplier for any Services supplied where the Contractor fails to provide an electronic invoice to the University pursuant to this clause ‎7.1.

## **Audit:** The University is entitled to audit the Contractor’s work to ensure that the work is being completed to a satisfactory standard prior to any payments being processed. Such an audit can occur at any time.

## **GST:** where applicable, GST invoices are to be given by the Contractor to the University no later than the 7th day of each month. All invoices shall be marked “prompt payment required”.

#  TAX

## **Solely responsible for payment:** The Contractor will be solely responsible for the payment of all levies, assessments, taxes or other payments levied upon the Contractor as required under the provisions of the Income Tax Act 2007, the Tax Administration Act 1994, the Goods and Services Tax Act 1985, the Injury Prevention, Rehabilitation, and Compensation Act 2001, and all other legislation that may be in force and affects the performance of the Services.

## **Certificate of exemption:** A self employed Contractor who holds a current certificate of exemption from withholding tax shall provide the University with a certified copy of a tax exemption certificate at the time of signing this Agreement and thereafter, upon the certificate being renewed each year.

## **Withholding tax:** If the Contractor does not provide a tax exemption certificate in accordance with clause 8.2, and the work performed by the Contractor falls within the scope of activities subject to withholding tax (as defined by the Inland Revenue Department), the University shall deduct withholding tax from any sums payable by the University to the Contractor under clause 7, prior to making payment to the Contractor.

## **Withholding payment:** If the Inland Revenue Department assesses the University as being liable to make any form of withholding payment from the Services Fee payable by the University to the Contractor (**Withholding Payment**) under clause 7, the Contractor will indemnify the University for the Withholding Payment, including any penalties or additional tax levied by Inland Revenue, and any premiums payable in respect of the Contractor’s obligations under the Injury Prevention, Rehabilitation, and Compensation Act 2001 or any substituted legislation.

# INSURANCE

## **Insurance cover:** The Contractorshall effect and maintain insurance cover during the Term, with a reasonable excess and on reasonable terms and conditions for public liability insurance with a sum insured of not less than $1,000,000.

## **Evidence:** The Contractor shall produce evidence of the existence of such insurance cover and the payment of premiums on the insurance cover to the Universityon request. In the event the University considers the insurance cover to be inadequate, the Universitymay from time to time require the Contractor to modify their insurance policy, and the Contractor shall comply with such request.

# CONFLICT OF INTEREST

## **Contractor’s knowledge:** If any conflict of interest or potential conflict of interest should arise to the Contractor’s knowledge then the Contractor will:

#### immediately disclose the existence of that conflict of interest or potential conflict of interest to the University; and

#### set out in writing the nature of the conflict as it is understood at that time; and

####  discuss with the University suitable procedures for dealing with the conflict.

# DEFECTS

## **Remedy:** The Contractor shall at its own cost and expense remedy any defects in the provision of the Services or any omission to provide the Services if the University has given the Contractor written notice requiring the Contractor to remedy the default.

## **Failure to comply:** If the Contractor fails to comply with the provisions of any such notice within seven days of receiving the written notice then the University shall without prejudice to any rights it may have under clause 12 (Termination) be entitled to remedy the defects or omissions and to charge the cost of so doing together with interest at a default rate of 2% above base rate per annum to the Contractor.

#  TERMINATION

## **Termination with cause by University:** This Agreement may be terminated by the University on notice to the Contractor if:

#### The Contractor commits a breach of the Agreement and does not remedy the breach within 14 days of notice in writing from the University requiring the breach to be remedied.

#### The Contractor is a company that enters into any arrangement with its creditors or enters into liquidation, or becomes subject to the appointment of a receiver; or

#### The Contractor as an individual, commits an act of bankruptcy.

## **Termination on notice by University:** The University has the right to terminate this Agreement by providing one calendar months’ notice in writing to the Contractor if:

#### The Contractor commits any serious breach of its obligations under this Agreement, is guilty of gross negligence or if the Contractor neglects or refuses to carry out the duties assigned.

#### The Contractor does anything which causes or is likely to cause substantial damage to the business or reputation of the University; or

#### Where:

##### due to the ill health of the Contractor; the work required to be done under this Agreement has fallen behind schedule to such a degree that the Services cannot be completed within a reasonable time frame; or

#####  the Services have not been completed to a satisfactory standard; or

##### the University is of the reasonable opinion that the Contractor can no longer continue to effectively or efficiently provide the Services.

## **Termination with cause by Contractor:** This Agreement may be terminated by the Contractor on notice to the University if the University commits a breach of the Agreement and does not remedy the breach within 14 days of notice in writing from the Contractor requiring the breach to be remedied.

## **Rights or remedies:** If this Agreement is terminated the termination of the Agreement does not prevent either party from pursuing any rights or remedies available to them before the termination of the contract.

## **Termination by either party:** Despite the terms of the preceding clauses either party can terminate the Agreement by giving two months’ notice in writing to the other.

## **Consequences of termination:** On termination of this Agreement the Contractor will immediately return to the University any books, electronic information, records, papers, drawings, plans, images of Artworks or other property in its possession belonging to the University in a satisfactory condition before receiving the final payment instalment for the Services.

# NOTICES

# Any notices required to be given to a party pursuant to this Agreement shall be given to that party at their registered address, an address set out in this Agreement as being applicable to that party or other address notified by that party from time to time. Notices may not be sent by email.

# CONFIDENTIALITY

## **Obligation of confidence:** The Parties shall hold and maintain all Confidential Information of the other in strict confidence and as a trade secret.

## **Prohibited conduct:** Subject to clause 14.3 no Party shall, without the other’s prior written consent:

#### use any Confidential Information of the other Party except to fulfil its obligations under this Agreement;

#### disclose any Confidential Information of the other Party (or the existence of such Confidential Information) to any third party except as necessary to fulfil its obligations under this Agreement; or

#### recompile any Confidential Information of the other Party.

## **Disclosure required by law:** A Party may disclose Confidential Information of the other Party to the extent required by law, provided that it notifies the other Party first and provides the other Party with a reasonable opportunity to take any action it considers necessary prior to disclosure.

##  **Obligations to safeguard and inform:** The Parties shall:

#### effect and maintain adequate security measures to safeguard the Confidential Information of the other from access or use by unauthorised persons, such measures meeting the standard of care reasonably required to effectively safeguard the information; and

#### immediately inform the other Party if it becomes aware of the possession, use or knowledge of the Confidential Information of the other Party by any person not authorised to possess, use or have knowledge of that Confidential Information.

## **Observance by third parties:** The Parties shall ensure that any person to whom it discloses Confidential Information of the other (including all permitted Supplier Personnel) observes not less than equivalent obligations of confidentiality as those contained in this Agreement.

## **Remedies in case of breach:** The Parties acknowledge that an actual or threatened disclosure or use of any Confidential Information in breach of this Agreement may cause the other irreparable harm that is unable to be adequately compensated for by monetary damages. In such circumstances the other Party may seek, amongst other remedies, urgent injunctive relief from the Court.

## **Obligations to continue:** This Agreement will continue to apply to any particular Confidential Information following termination of this Agreement or any other agreement with the University which involves Confidential Information, unless expressly excluded by reference, until such time as the Parties agree in writing that the respective obligations under this clause in relation to such information will cease.

# INTELLECTUAL PROPERTY

## **Infringement:** The Parties agree:

#### not to cause or permit anything that may damage or endanger the Intellectual Property of the other Party, or the other Party’s title to such Intellectual Property;

#### to notify the other Party of any suspected infringement of its Intellectual Property;

#### to take such reasonable action as the other Party may direct at the expense of the other Party in relation to such infringement; and

#### not to use the other Party’s Intellectual Property otherwise than as permitted by the other Party.

## **Ownership:** The Parties agree and acknowledge that all of the Intellectual Property created or existing at the time the Parties enter into this Agreement will remain the sole property of the Party that owns it at the date of execution of this Agreement or a third party owner (if applicable) and that neither party has any right, title, interest or claim to the other Party’s pre-existing Intellectual Property**.** In the event the Contractor creates any New Intellectual Property, the Parties agree that all New Intellectual Property shall be the sole property of the University and the Contractor shall have no right, title or interest in such New Intellectual Property, unless otherwise agreed in writing between the Parties.

# GENERAL

#### **Assignment:** Neither Party may assign or purport to assign any of its rights or obligations under this Agreement without the prior written consent of the other.

#### **Waiver:** No failure by a Party to enforce any of its rights under this Agreement shall be considered a waiver of those rights and no failure to enforce any subsequent breach of this Agreement shall be considered a waiver of those rights in respect of a subsequent breach of any term or condition of this Agreement.

#### **Severability:** If any provision of this Agreement is, or becomes, unenforceable, illegal or invalid for any reason, the relevant provision shall be deemed to be modified to the extent necessary to remedy such unenforceability, illegality or invalidity. If any provision cannot be so modified, that provision shall be void and severable and the remaining provisions will not in any way be affected or impaired

#### **Survivorship:** Termination of this Agreement for any reason (including in the event of misrepresentation) will not affect the rights and obligations of the Parties as are intended to survive the termination.

#### **Variation:** No amendment or variation of this Agreement shall be binding unless it is in writing and signed by both Parties.

#### **Governing law:** This Agreement is to be governed by the laws of New Zealand and subject to clause 17 the Parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.

#### **Non-circumvent:** The Parties shall not circumvent or attempt to circumvent the provisions and/or intent of this Agreement.

# DISPUTE RESOLUTION

## In the event of any dispute between the Parties in relation to this Agreement, the Parties shall first seek to resolve such dispute by promptly giving notice of such dispute to all other parties (**Dispute Notice**) and cooperatively endeavouring to resolve such dispute. If the dispute remains unresolved within 10 days after the date that the last party was provided with a Dispute Notice, the Parties shall then seek a resolution through the use of mediation prior to seeking resolution through the Courts.

# ENTIRE AGREEMENT

# This Agreement represents the entire agreement and understanding between the Parties as to the subject matter of this Agreement. In the event there is any conflict between the terms and conditions of this Agreement and any of the Schedules, the terms and conditions of this Agreement shall prevail.

# COUNTERPARTS

## This Agreement may be executed in counterparts (which may be facsimile, PDF or electronic copies) and all of which, when taken together constitute the one document

**EXECUTED AS AN AGREEMENT**

 Signed by **the Contractor:**

 Date: / /

Signed by **The University of Waikato:**

 Date: / /

**SCHEDULE One: Dates, Contract Relationship Manager** **and University Policies**

# Commencement Date:

# Expiry Date:

# Contract Relationship Manager:

# Selection of University policies including link to suite of University policies:

Staff Code of Conduct

Safety and Wellness Policy

Bullying and Harassment Policy

Smoke Free Policy

Computer Systems Regulations

#  Equal Employment Opportunity Policy

#  Privacy Policy

 University policies can be found at:

<https://www.waikato.ac.nz/official-info/index/policies>

**SCHEDULE TWO: Services Fee and Payment**

# Services Fee: the Services Fee payable by the University in accordance with the Agreement is set out below.

# [Payment: the University shall pay the Contractor the Services Fee for the Services in instalments as set out below. ]

**Services Fee**

**Payment**

**SCHEDULE THREE: Services**

**Services:** The Supplier shall provide the Services in accordance with the terms and conditions of the Agreement and the Schedules as set out below.