**AGREEMENT WITH AN I****NDEPENDENT CONTRACTOR**

# **Nature of this Contract**

### The terms set out in this document, in the attached schedule or any letter of engagement ("jointly the Schedule"), or expressly incorporated constitute the entire agreement between the parties and replaces any previous agreements or understandings.

### If there is any conflict between the terms in this agreement and the Schedule then the terms in this agreement will apply.

### The contracting parties are the University of Otago ("the Principal") and the person or entity named in the Schedule as "the Contractor."

### Nothing in this contract is intended to confer a benefit on any third party or create an obligation enforceable by any third party.

### The Principal may offer other engagements to the Contractor from time to time, but nothing in this arrangement is intended to imply that further engagements will be offered unless expressly recorded in writing.

### If the Contractor is not an individual, the Principal may name a particular person in the Schedule whom it requires to perform the Services ("the Nominated Person"). The Contractor will take all steps necessary to ensure the Nominated Person performs the Contractor's obligations under this agreement and any failure or breach by the Nominated Person will be deemed to be a failure or breach by the Contractor.

# **Assignment**

### The Contractor cannot assign this contract or any part of it to any other person without the prior written consent of the Principal. The Principal may withhold its consent without giving any reason for doing so, or it may give a conditional consent.

# **Contractor's Obligations**

### The Contractor will provide the services described in the Schedule ("the Services") from the Start Date until the Termination Date specified in the Schedule.

### If the Contractor's contractual obligations to the Principal conflict with its obligations to third parties at any time the Contractor will give priority to performing its obligations to the Principal, except that nothing in this Contract obliges the Contractor to accept any a particular engagement.

### The Services must be provided predominately on weekdays between 8:30am and 5pm so that the Contractor is available to the Principal's employees and contractors unless agreed otherwise between the parties.

### The Contractor must report to the Principal's nominee identified in the Schedule, and comply with any special conditions set out in the Schedule.

### The Contractor will:

#### Carry out the Services in an efficient and professional manner to the best of the Contractor's ability, and exercise a standard of care and perform to a level of skill commensurate with that which would be expected of a competent and prudent provider of the Services.

#### Immediately remedy any defects or errors in the Contractor's performance of the Services notified to the Contractor by the Principal.

#### Comply with any of the Principal's reasonable day to day requirements.

#### Do nothing to put the Contractor or Principal in breach of any legal obligations or duties, including copyright restrictions.

#### Be courteous in dealing with the Principal's employees, contractors, and students.

#### Do nothing to adversely affect the Principal's business or reputation.

#### Not make any press or other public announcement concerning any aspect of this Contract, or make any use of the Principal's name without prior written consent from the Principal.

#### Contact the Principal immediately for assistance if the Contractor encounters any difficulty in providing the Services.

#### Advise the Principal as soon as practicable if unable to complete any aspect of the Services (whether due to illness or other reasons).

### It is an essential term of this contract that the Contractor or the Nominated Person holds and maintains any required licence, qualification, permit, authorisation, safety certification, or warrant necessary for the provision of the Services, and notifies the Principal immediately the Contractor or Nominated Person is unable to comply with this condition.

# **Payment**

### The Contractor will provide the Principal with an appropriate invoice periodically as specified in the Schedule for the agreed hours and for any agreed expenses accompanied by proper receipts.

### The Principal will pay the Contractor the amount properly invoiced no later than the end of the month following receipt of the invoice.

### The Principal will deduct tax on schedular payments, or add GST, when it is required to do so by law. The Contractor is solely responsible for meeting its own additional liability for tax or ACC levies.

# **Equipment and Contractual Status**

### The Principal will provide the Contractor with any specific equipment necessary to provide the Services. The Contractor will return the equipment on termination together with any books, records (written and electronic) papers or other property belonging to the Principal.

### Despite the provisions of clause 5.1, the Contractor is in business on its own account and neither the Contractor nor the Nominated Person are an employee, agent, or representative of the Principal and will not hold themselves out as such at any time, or incur any liability on the Principal's behalf, without express authorisation from the Principal.

# **Health and Safety**

### The Contractor will comply with Health and Safety legislation and the Principal's Health and Safety policies, and will take all practicable steps to ensure its own safety, and the safety of any other persons while providing the Services.

# **Confidentiality and Security**

### All confidential information given by the Principal to the Contractor will remain the Principal's property. The Contractor will not disclose any such information to any third party.

### The Contractor will observe all security arrangements reasonably required by the Principal.

# **Intellectual Property**

### The rights of the parties in relation to ownership of copyright and other intellectual property created by the contractor alone or with others in the course of providing the Services will be subject to the University's Intellectual Property Rights Policy and determined as if the Contractor were an employee of the University.

# **Contractor's Indemnity and Insurance**

### Unless specified otherwise in the Schedule, during the term of this contract and for three years' following its termination the Contractor must maintain adequate public liability and professional indemnity insurance at the minimum level of five times the highest project fee agreed with the contractor in any twelve month period from start date, covering all the Contractor's officers, employees, and agents acting in the course of their professional relationship with the Contractor.

### The Contractor shall be liable both during and after the term of this agreement, and shall indemnify the Principal against, all claims, losses, actions, damages, costs (including legal costs) or expenses arising out of or in connection with the performance of the Contractor's obligations under this Contract.

### Each year the contractor will advise the Principal of the level of its indemnity insurance.

# **Waiver and Representations**

### Any waiver or consent given by either party must be in writing and will be effective only in the specific instance and for the specific purpose for which it is given.

### If either party delays or does not exercise any right or remedy under this contract, it is not a waiver of that right or remedy.

### The Contractor acknowledges that the Principal has made no representations to the Contractor regarding the subject matter of this contract.

# **Dispute resolution**

### Any ongoing dispute between the parties will first be referred to mediation, and if no resolution is achieved it will be referred to arbitration conducted in accordance with the Arbitration Act 1996.

### The parties must continue to comply with their obligations under this contract during the dispute resolution process, but disputed payments may be withheld pending resolution.

# **Termination**

### This Contract continues until terminated in writing by either party on 28 days' notice.

### Despite clause 12.1 either party can terminate this Contract without notice for material breach of the other, including breach of clause 3.5b.

**DATED THIS …….. DAY OF …………….…20……**

**Signed for the University of Otago**

**By Head of Service**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

……………………………………….

 (Signature)

 **Divisional HR Manager**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

……………………………………….

 (Signature)

**Signed for the Contractor**

**By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

……………………………………….

 (Signature)

**SCHEDULE**

**The Contractor:** [ADD NAME OF CONTRACTING INDIVIDUAL OR ORGANISATION]

**Nominated Person:** [ADD NAME- IF NONE PUT "None")

**The Services:** [ADD DESCRIPTION OF WORK TO BE DONE BY THE CONTRACTOR]

**Contractor's Payment** (exclusive of GST):

**Invoice Period:** [ADD PERIOD FOR CHARGING SUCH AS WEEKLY/MONTHLY/QUARTERLY]

**Start Date:** [ADD DATE WHEN WORK IS TO START]

**Termination Date:** This agreement continues indefinitely until terminated in accordance with the terms of this agreement. [OR REPLACE THAT WITH A DEFINITE TERMINATION DATE OR WITH A DESCRIPTION OF WHEN THE WORK REQUIRED WILL END IF THE ENGAGEMENT IS FOR A SPECIFIC PROJECT]

**Reports To:** [NAME OF PERSON THE CONTRACTOR MUST REPORT TO]

**Contractor's Indemnity and Insurance (Minimum Level):** For the purpose of clause 9.1 of the agreement the minimum level of indemnity insurance is [$XX for a duration of XXX years] OR [nil].

**Special Requirements (including any reports required):** [ANYTHING IMPORTANT IN THIS SPECIFIC INSTANCE NOT COVERED ABOVE]