**GOODS AND SERVICES CONTRACT**

**UNIVERSITY OF OTAGO**

|  |  |
| --- | --- |
| **AGREEMENT** | |
| **Contract number:** | [*insert contract identifier*] |
| **General description:** | [*insert e.g. plumbing services*] |
| The parties have agreed that the Supplier will supply the Goods and Services to the University in accordance with this Agreement. This Agreement comprises this cover page and:   1. the Key Details; 2. the General Terms; and 3. all other Schedules.   These documents are intended to work together, but if any conflict or inconsistency exists, the document appearing higher in the order above will prevail over any document appearing lower in the order. | |

|  |  |
| --- | --- |
| **PARTIES, ADDRESS FOR NOTICES & SIGNING** | |
| **University:** University of Otago  **Physical address**: [362 Leith Street,  Dunedin 9016]  **Postal address:** [PO Box 56, Dunedin 9054]  **E-mail:** [*insert*] | **Supplier:** [*insert*]  **Physical address:** [*insert*]  **Postal address:** [*insert*]  **E-mail:** [*insert*] |
| **SIGNED** for and on behalf of the University by:   |  | | --- | | Signature | | Name | | Title | | Date | | **SIGNED** for and on behalf of the Supplier by:   |  | | --- | | Signature | | Name | | Title | | Date | |

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Key Details

|  |  |
| --- | --- |
| **Term** | |
| **Commencement Date** |  |
| **Expiry Date** |  |
| **Renewal** | |
| **Right of renewal** | [Yes]/[No] |
| **Number and duration of renewal(s)** |  |
| **Exclusivity** | |
| **Exclusive or non-exclusive supply** | [Exclusive]/[Non-exclusive] |
| **Representatives** | |
| **The University's Representative** | **Name:  Phone number:  E-mail:** |
| **The Supplier's Representative** | **Name:**  **Phone number:  E-mail:** |
| **Key Personnel** | |
| **The Supplier's Key Personnel** | [*Specify any key people employed or contracted by the Supplier that the University wishes to ensure will personally perform and co-ordinate the Services*]/[Nil] |
| **Liability** | |
| **Defects Liability Period** | 12 months |
| **Supplier’s Maximum Liability** | $[*insert – e.g. the level of public liability insurance required, and in any case no lower than $[insert*]] |
| **Minimum insurance requirements** | |
| **Professional indemnity** | $[*insert*]/[Not applicable] |
| **Public liability** | $10,000,000.00 |
| **Motor Vehicle** | $10,000,000.00 |
| **Goods** | [Full replacement value]/[Not applicable] |
| **Other insurance** | [*insert type of cover, minimum $ and required duration*] |

Schedule 1: Goods and Services

*[insert full and clear description of the Goods and Services, including any specific purpose for which the University is obtaining them]*

**Description of the Goods/Services**

The Goods under this Agreement are [as set out in the attached Schedule of Goods *[and attach any relevant lists etc. to this Schedule]*] **OR** [*insert clear description of the Goods*].

*[include any product codes or serial numbers, and any specific certifications or standards that the Goods must comply with]*

The Services under this Agreement are [as set out in the Supplier’s proposal dated[*insert date*]] **OR** [*insert clear description of the Services*].

**Quality Standards**

The Goods and Services must comply with the specifications set out in Schedule 3: Specifications.

*[Specify how these standards will be measured, and specify any codes of conduct]*

**Delivery Timeframes**

The Supplier must deliver the Goods as follows:

* *e.g. in the case of [insert type of goods], within [24] hours from receipt of the relevant Order from the University*
* *e.g. in the case of [insert type of goods], no later than [4:00 p.m.] each Monday during the Term*

The Supplier must supply the Services [on or before [*insert date*]] **OR** [in accordance with the timetable set out in the Supplier’s proposal dated [*insert date*]].

**Specific Deliverables**

* *[insert e.g. a report on a certain topic]*

**Training and Support**

The Supplier must provide training and support [as follows: [*insert description of training and support to be provided by the Supplier*] **OR** [as set out in the Supplier’s proposal dated[*insert date*]].

*[Consider any other topics that need to be covered such as installation, responsibilities, testing, commissioning, records and data protection etc.]*

**[Minimum Purchase Obligations / Minimum Quantity of Order]**

*[insert any minimum purchase obligations and/or any minimum quantities required per Order]*

Schedule 2: Fees

**GOODS**

The Supplier’s Fee for the Goods will be calculated as follows:

**[Choose one option, insert relevant details and delete remainder]**

**List**

|  |  |
| --- | --- |
| **Item / model / product number** | **Unit cost**  **(ex GST)** |
| [*insert description of item or model number*] | $[*insert price*] |
| [*insert description of item or model number*] | $[*insert price*] |
| **Total cost (ex GST)** | [***insert total***] |

**OR**

**Fixed Fee**

A fixed Fee of $[*insert*] excluding GST.

**OR**

**Variable Fee**

As set out in the attached Schedule of Prices.

**SERVICES**

The Supplier’s Fee for the Services will be calculated as follows:

**[Choose one option, insert relevant details and delete remainder]**

**Fixed Fee**

A fixed Fee of $[*insert*] excluding GST

**OR**

**Hourly Rate**

For each hour worked an hourly rate of $[*insert*] excluding GST, up to a total maximum of $[*insert*] excluding GST.

If the Supplier reaches the total maximum without completing the Services, the Supplier is required to complete the Services without further payment, unless otherwise agreed in writing.

**OR**

**Daily Rate**

For each day worked a daily rate of $[*insert*] excluding GST, up to a total maximum of $[*insert*] excluding GST. One day's work is defined as eight hours. If the Supplier works less than a full day, the Fee will be calculated based on the time worked at the agreed Daily Fee Rate i.e. (Daily Fee Rate ÷ 8) x hours worked.

If the Supplier reaches the total maximum without completing the Services, the Supplier is required to complete the Services without further payment, unless otherwise agreed in writing.

**Personnel Rates**

[Hourly/Daily] rates for each of the Personnel set out below, up to a total maximum of $[*insert*] excluding GST, in accordance with the following table of rates.

|  |  |  |  |
| --- | --- | --- | --- |
| **Personnel** | **[Hourly/Daily] Rate**  **(ex GST)** | **Total hours/days** | **Total Fees** |
| [*insert Personnel’s specialisation or name of Key Personnel*] | [*insert either hourly or daily rate as applicable*] | [*insert total maximum chargeable hours/days*] | [*insert total maximum charge for Fees*] |
| [*insert Personnel’s specialisation or name of Key Personnel*] | [*insert either hourly or daily rate as applicable*] | [*insert total maximum chargeable hours/days*] | [*insert total maximum charge for Fees*] |
| **Total chargeable hours/days** | | [***insert total***] |  |
| **Total chargeable Fees (excluding GST)** | | [***insert total***] | |

**INVOICING SCHEDULE**

[*insert details – e.g. on or before a certain day each month, or on completion of the supply, or on completion of specific milestones*]

The Supplier must send the University a valid invoice for the Fee at the following times:

**[Choose one option, insert relevant details and delete remainder.]**

**[If the currency is not NZD, clearly state the agreed currency, and consider FX risk.]**

On [completion of the Services] **OR** [final delivery of the Goods].

**OR**

At the end of the month, for Goods and Services delivered during that month.

**OR**

On the following dates, subject to completion of the relevant [Deliverables/Milestones].

|  |  |  |
| --- | --- | --- |
| **Deliverable/Milestone** | **Due date** | **Amount due (exc GST)** |
| [*insert specific Deliverables/Milestones to be achieved*] | [*insert date for completion of Deliverable/Milestone*] | [*insert amount payable on completion of the Deliverable/Milestone*] |
| ***Example*** |  |  |
| *1. Development of initial report and programme of work.* | *20 July 2019* | *$2,500* |
| *2. Delivery of equipment on site.* | *30 May 2020* | *$4,000* |
| *3. Final report.* | *30 June 2020* | *$1,000* |
| ***Total (exc GST)*** | | ***$7,500*** |

**PRICE INCREASES & REVIEWS**

**[Choose one option and delete remainder.]**

The Fees are fixed for the Term, and any changes require written approval of both parties.

**OR**

[*e.g. The Fees are subject to an annual price review on each anniversary of the Commencement Date (****Review******Date****) as follows:*

*The Fees will be adjusted on the basis of increases in the following indexes published by Stats NZ Tatauranga Aotearoa:*

*(A) in respect of all labour rates, the Labour Cost Index; and*

*(B) in respect of all non-labour rates, the Consumers Price Index (CPI),*

*(each, a* ***Relevant Index****), in each case according to the following formula:*

*New Fee = Previous Fee x (Percentage Change / 100 + 1)*

*Where:*

*Percentage Change = the annual “percentage change” in the Relevant Index in respect of the aggregate increase between:*

*(A) the Relevant Index for the quarter ending immediately prior to the date that is 12 months prior to the Review Date (or, in the case of the first Review Date, the Relevant Index for the quarter ending immediately prior to the Commencement Date); and*

*(B) the Relevant Index for the quarter ending immediately prior to the Review Date.*

*If this calculation would result in a price adjustment decrease, the Fee will not be decreased but will remain the same*.]

Note: Any adjustment will ordinarily be capped pro-rata at no greater than the Labour Cost Index or Consumers Price Index (if positive) or no less (if negative) as published by Stats NZ Tatauranga Aotearoa.

The University may, at its sole discretion, consider a request for an alternative pricing variation proposal at the request of the Supplier in the case of extraordinary circumstances. Any alternative variation request must be supported with sufficient supporting evidence satisfactory to the University.

The decision to vary the methodology for a pricing variation away from the above indices will be at the absolute discretion of the University.

Schedule 3: Specifications

[*insert any specifications required for the Goods and Services, including for example the location for delivery of any Goods– this should include any technical documents required to accurately describe the Goods and Services*]

All Goods and Services must comply with [insert standards, specifications or certifications] as found in [insert website or source of standards].

Schedule 4: Performance and Reporting

[*insert any KPIs, performance damages or reporting requirements e.g.:*]

**KEY PERFORMANCE INDICATORS (KPIs)**

The Supplier must supply the Goods and Services to meet or exceed the KPIs set out below:

|  |  |  |  |
| --- | --- | --- | --- |
| **No.** | **Area** | **KPI** | **Acceptable standard of performance** |
| 1 | *[e.g. Supply]* | *[e.g. Delivery]* | *[e.g. the [specific item] is delivered on or before the relevant due date OR the Supplier has complied with the agreed programme]* |
| 2 | *[e.g. Supply]* | *[e.g. Quality]* | *[e.g. 95% of the [specific items] meet the quality testing performed by [insert]]* |
| 3 | *[e.g. Health and Safety]* | *[e.g. Incidents]* | *[e.g. zero health and safety incidents – ensure a clear and appropriate description is used, so everyone is clear what counts as an incident]* |
| 4 |  |  |  |

[*If you include KPIs, ensure they are fit for purpose and achievable – KPIs that are too strict or too relaxed are of little benefit to either party. Ensure that KPIs can be measured in an accurate and workable manner – e.g. are these monthly, annually or on certain milestones? Who measures the KPIs and how do they do so? Consider whether breach of any of these KPIs should allow the University to terminate the entire Agreement, or part(s) of it. Consider also whether performance damages are appropriate.*]

**LIQUIDATED PERFORMANCE DAMAGES**

[*Insert only if appropriate for the arrangement, otherwise delete. Does the University have a legitimate interest to protect – e.g. an absolutely critical timing deadline? Is there a reasonable method for pre-determining damages that the Supplier should pay if it fails to meet clearly defined expectations? At this time, is there a compelling reason to anticipate or contemplate a performance failure, or can the University rely on other remedies? Liquidated damages can be complex, and will often increase negotiation time, but can be a useful tool. Also consider whether the University should have the option of choosing between accepting a performance failure (and receiving damages) or rejecting a failure under the other terms of the Agreement*.]

If the Supplier fails to meet any [obligation under this Agreement] **OR** [KPI], the Supplier must pay Liquidated Performance Damages to the University as set out below:

* *e.g. $[insert] per Business Day that the failure continues; or*
* *e.g. $[insert] per [insert measurement e.g. per non-compliant item].*

**REPORTING**

The Supplier will provide to the University all reports required under this agreement (or otherwise required by the University from time to time) in the format specified in this agreement (or otherwise approved by the University), including (without limitation) the following:

* *e.g. daily report*
* *e.g. monthly report on stock turns*
* *e.g. quarterly report on health and safety incidents*
* *e.g. final report within [10] Business Days of completion*

# General Terms

# Definitions and interpretation

#### Definitions

##### In this Agreement, the following definitions apply:

#### Agreement means this agreement, including all Schedules and attachments.

#### Applicable Requirements means all Laws and codes of practice applicable to the Goods or Services and to the performance by the Supplier of its obligations under this Agreement, or otherwise applicable to the Supplier or the University.

#### Business Day means a day (other than a Saturday, Sunday or public holiday) on which the University is open for business in Otago.

#### Commencement Date means the date for commencement of supply of the Goods or Services as set out in the Key Details.

#### Confidential Information means all information relating to the University, the Goods and the Services which is or has been disclosed or communicated to the Supplier by or on behalf of the University and which is identified as, or reasonably expected to be, confidential or commercially sensitive.

#### Defect means any aspect of the Goods or Services that does not comply with this Agreement, and Defective has a similar meaning.

#### Defects Liability Period means the defects liability period set out in the Key Details, beginning from the date of the University’s receipt of the relevant Goods, unless specifically agreed otherwise in writing.

#### Expiry Date means the initial expiry date set out in the Key Details or, if the Agreement is renewed in accordance with clause 3.2, the last day of the renewal period.

#### Fee means the fee calculated in accordance with Schedule 2: Fees.

#### Force Majeure Event means any event beyond the reasonable control of the relevant party (including floods, earthquakes, fire and any national industrial action or act of government), but excluding:

* + - 1. a lack of funds for any reason, and
      2. any event to the extent that it could have been avoided by that party taking reasonable care.

#### Good Industry Practices means the standards, practices, methods and procedures conforming to law and to the degree of skill, diligence, prudence and foresight which would reasonably be expected from a skilled Supplier engaged in the same type of undertaking and under the same or similar circumstances as those contemplated under this Agreement and being a Supplier who is familiar with and experienced in best practices that are generally recognised in New Zealand as being applicable to the supply of the Goods or Services.

#### Goods means the goods to be supplied to the University under this Agreement, as specified in Schedule 1: Goods and Services.

#### GST means goods and services tax imposed under the Goods and Services Tax Act 1985.

#### Insolvency Event in relation to a person means anything that reasonably indicates that there is a significant risk that that person is or will become unable to pay its debts as they fall due.

#### Intellectual Property Rights means all intellectual property rights and interests recognised and protected by law, whether registered or unregistered, and including all applications and rights to apply for any of the same.

#### Key Personnel means the key individuals named in the Key Details.

#### KPI means each key performance indicator set out in Schedule 4: Performance and Reporting.

#### Laws means principles of New Zealand law established by the courts, statutes, regulations, ordinances, by-laws and other subordinate forms of rule making of government or any local authority, in each case as may be amended from time to time.

#### Liquidated Performance Damages means the damages payable by the Supplier to the University if the Supplier fails to comply with the requirements set out in Schedule 4: Performance and Reporting (if any).

#### New Intellectual Property Rights means all Intellectual Property Rights created after the date of this Agreement for the purposes of this Agreement.

#### Order means an order provided by the University to the Supplier detailing the Goods and Services required by the University, the cost, the date and location for supply, and any special conditions applicable to such supply.

#### Personnel means the Supplier’s officers, employees, contractors, subcontractors and agents, and includes Key Personnel.

#### Pre-existing Intellectual Property Rights means all Intellectual Property Rights created prior to the date of this Agreement (but excludes any later modifications, adaptations or additions to such Intellectual Property Rights developed for the purposes of this Agreement, which will be New Intellectual Property Rights under this Agreement).

#### Representative means the University's Representative and the Supplier's Representative (as the case may be), as set out in the Key Details.

#### Services means the services to be supplied to the University under this Agreement as specified in Schedule 1: Goods and Services, and includes any services ancillary to the supply of Goods under this Agreement.

#### Specifications means the specifications for the Goods and Services set out in Schedule 3: Specifications.

#### Term means the term of this Agreement as set out in clause 3.1.

#### Variation has the meaning set out in clause 15.1.

#### Interpretation

##### In this Agreement:

all monetary amounts are stated exclusive of GST and in New Zealand dollars unless provided otherwise;

where the context permits, the singular includes the plural and vice versa;

references to any party mean a party to this Agreement and include their respective successors and permitted assignees (as the case may be);

references to clauses and schedules are to clauses in and the schedules to this Agreement (unless stated otherwise);

references to “Goods or Services” mean, as the context requires, either Goods or Services, or both Goods and Services;

references to the word 'include' or including are to be construed without limitation;

where the context permits, references to the Supplier include the Supplier's employees, agents and officers;

all references to legislation include all subordinate legislation, any re-enactment of or amendment to that legislation and all legislation passed in substitution for that legislation; and

references to a person include a natural person, firm, corporation, association or other entity, whether incorporated or not and whether or not having a separate legal personality.

# Appointment

#### General

##### The University appoints the Supplier to supply the Goods and Services in accordance with this Agreement, and the Supplier accepts such appointment.

#### Appointment non-exclusive

##### Unless the Key Details expressly provide for an exclusive supply arrangement, the appointment of the Supplier under this Agreement is non-exclusive. It does not restrict the University's right to contract with others for the supply of goods or services identical or similar to the Goods and Services.

##### Where the Key Details expressly provide for an exclusive supply arrangement, the University will, subject to clause 2.4, purchase all of its requirements for the Goods and Services from the Supplier and the Supplier will supply all such requirements.

##### Notwithstanding clause 2.3, the University will not be required to purchase all or any of its requirements for the Goods and Services from the Supplier, if the Supplier is unable or unwilling for any reason to supply any of the Goods and Services, as and when required by the University.

# Term and renewal

#### Term

##### Subject to clause 3.2, this Agreement commences on the Commencement Date and will end on the Expiry Date, unless terminated earlier in accordance with this Agreement.

#### Renewal

##### The University may, at its sole and absolute discretion, renew this Agreement as set out in the Key Details. If the University wishes to exercise any right of renewal, it will give the Supplier notice before the end of the applicable Expiry Date. The Agreement will be renewed on the same terms (save for any rights of renewal already exercised by the University), unless otherwise agreed by the parties.

#### Prior Services

##### Any goods or services supplied by the Supplier to the University before the Commencement Date that fall within the scope of the Goods or Services will be deemed to be Goods or Services supplied under this Agreement, and this Agreement will apply accordingly.

# Supplier’s general obligations

#### Compliance

##### In performing its obligations under this Agreement the Supplier will comply with:

all Applicable Requirements (and will not place the University in breach of any Applicable Requirements);

Good Industry Practices;

all reasonable directions and requirements of the University, to the extent that such directions are not contrary to any provision of this Agreement; and

all applicable University policies, procedures and standards, as notified by the University to the Supplier from time to time.

##### The Supplier will ensure that:

all Goods and Services supplied under this Agreement comply with this Agreement, the Specifications, all Applicable Requirements and Good Industry Practices;

all Goods supplied under this Agreement are new and of merchantable quality; and

the Goods and Services match the description given in Schedule 1: Goods and Services, are free from all Defects and fit for any purpose described in Schedule 1: Goods and Services.

#### Reporting, records and public statements

##### The Supplier must report to the University as reasonably required by the University from time to time, including as set out in Schedule 4: Performance and Reporting.

##### The Supplier must keep and maintain full records and documentation in relation to the Goods and Services in accordance with Good Industry Practices and as required by law, for 7 years following termination or expiry of this Agreement (**Retention Period**). On request by or on behalf of the University during the Retention Period, the Supplier must make all documents and records relating to the Goods and Services available to the University, or any party acting on the University’s behalf, for inspection within a reasonable time of such request being made.

##### The Supplier must not make, or be *involved in any way in making, any public communication in respect of this Agreement, the Goods or the Services at any time, without the prior written approval of the University, which may be withheld at the University’s sole discretion.*

##### The Supplier acknowledges that the University is subject to the Official Information Act 1982, and that the University may need to release certain information about the Goods and Services, or this Agreement.

# Health, safety and environment

#### General

##### The Supplier will be responsible for the health and safety performance of its Personnel with respect to the supply of the Goods and Services.

##### The Supplier will comply with, and will ensure its Personnel comply with, the University’s health and safety policies and protocols, all obligations under the Health and Safety at Work Act 2015 (including Codes of Practices made under that Act) and any other legal and statutory safety obligations and published codes of practice, standards and guidelines applicable to the supply of the Goods and Services.

##### In carrying out its obligations under this Agreement, the Supplier will ensure so far as is reasonably practicable:

the health and safety of its Personnel; and

that the health and safety of any person is not put at risk.

##### The Supplier will ensure that all persons under the Supplier’s control are appropriately supervised.

##### To the extent that the Supplier, the University and any separate contractor have overlapping health and safety duties in relation to the supply of the Goods and Services under this Agreement, the Supplier agrees to, and will ensure that all of its Personnel will, consult, cooperate, and co-ordinate activities with the University and the separate contractor (as applicable) and provide all information the University may require.

##### In supplying the Goods and Services, the Supplier must take all reasonable steps to care for, and to avoid nuisance or damage to, the environment.

#### Notifications

##### The Supplier will notify the University as soon as practicable on becoming aware of any hazards and following all near misses, incidents, injuries, damage to property or the environment and within 1 Business Day of any such event, provide a report to the University setting out full details of the event and, if required by the University, recommendations or strategies for prevention in the future.

##### The Supplier will, if required by any Applicable Requirements, notify any regulatory authority of any event specified in clause 5.7, provide a copy of that notice to the University at the same time and provide all information and assistance reasonably required by the University in relation to any such event.

##### The Supplier will immediately notify the University of any notices, orders or directions received from any statutory authority (e.g. WorkSafe) concerning the Goods or Services, including any improvement notices, prohibition notices or non-disturbance notices.

#### Audits

##### The University may audit the Supplier from time to time on any aspect of its activities or procedures as they relate to health, safety and the environment. If the University is of the opinion that the Supplier has failed to comply with any of its obligations under this clause 5, the University may advise the Supplier accordingly and instruct the Supplier to cease, or not commence, the supply any part of the Goods or Services, until the Supplier has achieved full compliance. For the avoidance of doubt, any such instruction will not constitute a Variation. The Supplier will meet the costs of any audit that shows any non-compliance.

#### University owned or controlled sites

##### Whenever the Supplier or any of its Personnel are required to be on, or in the vicinity of, any site owned or controlled by the University, the Supplier must:

attend all induction courses as reasonably requested by the University;

submit and update any health, safety and environment management plans as reasonably requested by the University, and comply at all times with such plans;

implement, maintain and comply with a health, safety and environment management system that, as a minimum requirement, demonstrates compliance with all Applicable Requirements relating to health, safety and the environment; and

ensure that any equipment used by the Supplier is in a safe working condition and complies with all Applicable Requirements.

#### Removal and suspension

##### Without limiting the University’s rights or remedies, if in the reasonable opinion of the University, the Supplier is likely to:

endanger the health and safety of any person; or

cause damage to property or the environment,

##### the University may immediately:

remove the Supplier or any Personnel from the site; or

suspend the supply of the Goods and Services in accordance with clauses 11.4 and 21,

##### until such time as the Supplier satisfies the University that the Supplier is able to perform its obligations in accordance with this Agreement.

# Ordering Goods and Services

#### Orders

##### The University may place orders for Goods or Services from time to time and, unless otherwise stated in this Agreement, there will be no minimum purchase obligations and no minimum quantity of order.

##### Each Order must be in writing and must specify the type and volume of Goods or Services required.

#### Cancellation prior to supply

##### The University may cancel an Order at any time without giving any reason in relation to any unsupplied Goods or Services. Upon notice of cancellation, the Supplier must immediately cease all performance under that Order.

##### Except where such cancellation is due to any breach by the Supplier of any of the terms of this Agreement, in the event of cancellation the University will pay to the Supplier an amount equal to the value of:

all Goods and Services that were supplied prior to the notice of cancellation, and that have not been paid for at the time of cancellation; and

all unsupplied Goods that have been produced solely for the purpose of the Order and that can only be used for such purpose.

#### No responsibility for Goods

##### If the Supplier delivers any Goods not specified in an Order, or in excess of the amount specified in an Order, unless otherwise required by the University such Goods will be deemed to be rejected and the provisions of clause 8.10 will apply.

# Testing and inspection

#### Testing and inspection

##### The University will be entitled at any time, by itself or through an agent, to inspect, test and monitor any or all of the Goods and Services, and the Supplier must co-operate as required.

#### Obligations continue

##### No approval, inspection or review of the Goods or Services by the University will relieve the Supplier of any of its obligations under this Agreement.

# Supply

#### Time of supply

##### The Supplier must supply the Goods and Services:

in a timely and efficient manner; and

by the date, within the period or in accordance with any timetable set out in any Order or this Agreement, or as agreed by the parties in writing.

##### It is essential that the Goods and Services are supplied on time.

#### Order number, documents and warranties

##### The University’s purchase Order number must be shown on all packages, invoices and correspondence.

##### The Supplier will ensure that all Goods are accompanied by any necessary instructions and technical documents, including any manufacturer's operating and service manuals.

##### The Supplier must ensure that the University has the full benefit of any manufacturers’ warranties that may be applicable to the Goods, and the Supplier must pursue any manufacturers’ warranties on the University’s behalf, if requested by the University.

#### Failure to supply

##### The Supplier must immediately notify the University if the Supplier believes at any time that it is unlikely to be able to supply any of the Goods and Services by the date, within the period, or in accordance with any timetable specified for supply of the Goods and Services. The Supplier must:

give detailed reasons for the anticipated delay and the Supplier’s best estimate of the duration of the delay; and

to the extent reasonably practicable, immediately take all necessary action to reduce the impact of any delay on the University.

##### If the Supplier provides the University with a notice under clause 8.6, the University may, in addition to any other rights it may have and at its discretion, do any or all of the following:

grant the Supplier an extension of time to supply the Goods and Services; or

at the Supplier’s cost, engage, or request the Supplier to engage, a third party to supply any of the Goods and Services that the Supplier cannot supply in accordance with this Agreement.

#### Defective Goods or Services

##### Without prejudice to any other right or remedy the University may have, if any Goods or Services are Defective or otherwise not supplied in accordance with this Agreement, the University may do any or all of the following:

accept the Goods or Services and require the Supplier to pay to the University the Liquidated Performance Damages set out in Schedule 4: Performance and Reporting (but only if Liquidated Performance Damages have been specified); or

require the Supplier (at the Supplier's expense) to:

###### remedy any Defective Goods and Services;

###### replace the Goods or resupply the Services; and

###### carry out any other necessary work to ensure that the terms of the Agreement are fulfilled.

##### If, at any time, the University is not satisfied with the Supplier’s progress in remedying or resupplying the Goods or Services under clause 8.8.2 or if clause 8.12 applies, the University may:

reject the Goods or Services; or

arrange for another person to remedy, replace or resupply the Goods or Services (and carry out any other necessary work), in which case the Supplier will reimburse all costs and expenses incurred by the University in doing so.

##### If the University rejects any Goods or Services under clause 8.9.1, or if clause 6.5 or 8.12 applies, the Supplier must promptly remove any rejected Goods from the University’s premises and, at the University’s election:

provide a full refund of the Fees paid for the rejected Goods or Services within 10 Business Days of the University’s request;

provide a credit for Fees paid for the rejected Goods or Services; or

promptly resupply the Goods or Services to ensure that the terms of the Agreement are fulfilled.

##### If the Supplier fails to remove any rejected Goods from the University’s premises, the University may return the Goods to the Supplier and recover from the Supplier all costs and expenses incurred by the University in doing so.

#### Defects Liability Period

##### The Supplier guarantees to the University that the Goods will be free from Defects for the duration of the Defects Liability Period. If at any time during the Defects Liability Period, any Goods are found to be Defective (other than Goods accepted by the University under clause 8.8.1), the University may exercise any or all of its rights under clauses 8.8.2, 8.9, 8.10 and 8.11.

##### The University will:

notify the Supplier of any Defective Goods within 5 Business Days of the University becoming aware of the Defect; and

provide the Supplier with a reasonable opportunity to investigate the Defective Goods.

##### Any remediation of Defective Goods or Services required under this clause 8 must be carried out by the Supplier promptly, in a good and workmanlike manner, and to the satisfaction of the University.

# Returns

##### The University is entitled to return, for a full credit, any standard stock item ordered and supplied by the Supplier, subject only to the Goods being in reasonable condition for resale.

##### The University must notify the Supplier of the requirement to make a return and the Supplier must arrange uplifting of the Goods. The University will have no responsibility for the condition of Goods not uplifted within 2 Business Days of the Supplier being advised of the return.

# Representatives

##### The Representatives are responsible for managing this Agreement, and will be the first point of contact for any issues that arise. All routine and day-to-day communications between the parties will be given and received by their respective Representatives.

##### The Supplier’s Representative will, at any time reasonably requested, meet with the University's Representative to review the supply of the Goods and Services and any matters relating to the Goods and Services or this Agreement.

##### The University may replace the University’s Representative from time to time by notice to the Supplier. The Supplier may replace the Supplier’s Representative from time to time with the University’s prior written approval (such approval not to be unreasonably withheld).

# Subcontracting and personnel

#### Subcontracting

##### The Supplier must not appoint any subcontractor to discharge any of its obligations under this Agreement except with the University’s prior written approval. The Supplier will remain responsible for the performance of all its obligations under this Agreement and will be liable for the acts or omissions of any subcontractor as if they were acts or omissions of the Supplier.

##### The Supplier must ensure that:

any subcontract it enters into is on terms that are consistent with this Agreement; and

each subcontractor is fully aware of the Supplier’s obligations under this Agreement.

#### Key Personnel

##### The Supplier must use the Key Personnel (if any) to supply the Goods and Services. If the Supplier wishes to change any Key Personnel, it must obtain the University’s prior written approval.

#### Concerns with Personnel

##### The University may (acting reasonably) require the Supplier to remove any of the Supplier's Personnel from performance of the Services. The Supplier must promptly remove any such Personnel and replace them with Personnel reasonably acceptable to the University.

#### General requirements

##### The Supplier will ensure that:

all Personnel are appropriately qualified, licensed, competent and skilled to perform the relevant part of the Services in respect of which they are engaged; and

the Supplier and all Personnel do not do anything that may bring the University into disrepute.

# Title and risk

#### Title

##### Subject to clauses 12.3 and 12.4, title to Goods passes to the University at the earlier of:

payment by the University; or

when the Goods have been delivered to the location set out in the Order or in Schedule 3: Specifications.

#### Risk

##### Subject to clause 12.3, risk in the Goods will pass to the University upon delivery being acknowledged in writing by a duly authorised representative from the University. Such acknowledgement will be of the fact of delivery only, and will not be conclusive as to quantities delivered, or the condition in which Goods are received.

#### Title and risk of rejected or Defective Goods

##### Title and risk in any Goods rejected by the University will pass back to the Supplier as follows:

if the University has paid for those rejected Goods, once the Supplier has provided a refund or credit in accordance with clauses 8.10.1 and 8.10.2; and

in all other cases, when the Goods are collected from the place to which they were delivered.

##### Title and risk in any Goods replaced under 8.8.2 or 8.9.2 will pass back to the Supplier once the Supplier or third party has delivered the replacement Goods.

#### Warranties

##### The Supplier warrants and undertakes on a continuing basis that:

the Supplier has the right to sell the Goods at the time when title to those Goods is to pass to the University in accordance with this Agreement; and

all Goods supplied to the University are supplied unencumbered and with clean title.

# Payment

#### General

##### Subject to clause 8 and this clause 13, the University will pay the Supplier the Fee for the Goods and Services calculated in accordance with Schedule 2: Fees. Unless otherwise stated in Schedule 2: Fees, the rates and charges specified in Schedule 2: Fees will remain fixed for the Term.

#### Fee inclusive

##### Except where expressly provided in Schedule 2: Fees, the Fee covers the total cost of complying with all obligations of the Supplier under this Agreement and includes all incidental expenses and disbursements incurred by the Supplier in supplying the Goods and Services.

#### Invoicing

##### The Supplier must provide valid tax invoices to the University in accordance with the invoicing schedule stated in Schedule 2: Fees.

##### To be valid, each tax invoice must be dated and must:

be addressed to the University;

state the Supplier’s name, address and GST number (if the Supplier is registered for GST);

be in New Zealand dollars, unless otherwise agreed with the University;

include the University’s purchase Order number in respect of the Goods or Services covered by the invoice;

identify this Agreement, the Goods and Services supplied and the date(s) of supply;

to the extent that the Fee is calculated on a time spent basis, specify the name of each of the Supplier's Personnel involved in supplying the Services covered by the invoice, together with the time spent and the amount charged by the Supplier in respect of each such person;

provide details of any Variations that have been set out by the Supplier during the invoice period;

state the Fee due, calculated in accordance with Schedule 2: Fees; and

provide such other supporting information and documentation as the University may reasonably request from time to time (including GST receipts for any expenses claimed).

##### The University has no obligation to pay any invoice that does not meet the requirements of clause 13.4.

#### Payment

##### Subject to clauses 13.7 and 13.8 and provided the Supplier has complied with the requirements of clause 13.4, the University will pay each invoice within the time for payment stated in Schedule 2: Fees.

##### If the University disputes any invoice, the University will notify the Supplier within 10 Business Days of receipt and:

the matter will be resolved in accordance with clause 23;

the University will pay any amounts not in dispute by the time for payment in accordance with this clause 13; and

the parties must continue to perform their other obligations under this Agreement pending resolution of the dispute.

#### Right to set-off and deductions required by law

##### The University may deduct from amounts otherwise payable to the Supplier:

any amounts due from the Supplier to the University or the amount of any claim which the University may have against the Supplier in connection with this Agreement;

any amounts required to be deducted by law or that may be deducted under this Agreement.

#### Payment not acceptance

##### Payment of any invoice is on account only and will not constitute acceptance of the scope or quality of any aspect of the supply of the Goods and Services.

# Information, assistance and access

#### Information and assistance

##### The University will provide all relevant information, directions and assistance as is reasonably required for the Supplier to perform its obligations in accordance with this Agreement.

#### Access

##### The University will provide the Supplier with reasonable access during business hours (or at such other times as the parties may agree) to any facilities or support services required under this Agreement. This access is subject to compliance by the Supplier with its obligations under this Agreement relating to access and conduct on University owned or controlled sites.

# Variations

#### Request for Variations

##### Either party may, at any time by notice in writing to the other, request any change to the Goods or Services (**Variation**).

#### Fee consequences

##### Within 5 Business Days of a request for a Variation, the Supplier (acting reasonably) must advise the University in writing of the impact the Variation will have on the Fee (if any), determined by reference to the rates and charges set out in Schedule 2: Fees.

##### On receipt of the information in clause 15.2, the University may:

give a direction to the Supplier to carry out the Variation; or

advise the Supplier not to proceed with the proposed Variation.

##### The Supplier must not vary the Goods or Services without a direction in writing from the University.

# Intellectual property

#### Pre-existing Intellectual Property Rights

##### Nothing in this Agreement affects any Pre-existing Intellectual Property Rights.

#### New Intellectual Property Rights

##### New Intellectual Property Rights created by the Supplier in performing its obligations under this Agreement become the property of the University upon creation. The Supplier must execute all documents and do all things required to give effect to this clause 16.2.

##### The Supplier grants to the University a perpetual, non-exclusive, irrevocable and royalty-free licence to use all Intellectual Property Rights not owned by the University for the purposes of obtaining the full benefit of the Goods and Services.

##### The University grants to the Supplier a royalty free, non-exclusive licence during the Term to use any Intellectual Property Rights vested in the University under clause 16.2 for the purpose of the Supplier performing its obligations under this Agreement.

#### Moral rights

##### The Supplier agrees to procure the consent of its Personnel not to enforce any moral rights that those individuals may have, presently or in the future, arising from the supply of the Goods and Services or the Intellectual Property Rights vested in the University under clause 16.2.

#### No infringement

##### The Supplier warrants and undertakes that any Pre-existing Intellectual Property Rights and New Intellectual Property Rights provided by the Supplier under this Agreement will not infringe any Intellectual Property Rights of any person.

##### The Supplier indemnifies the University against any losses or liabilities suffered or incurred by the University in respect of any action, suit, claim, demand, cost or expense arising in connection with any third party claim that the supply of the Goods or Services, or the University’s use of them, infringes any third party’s rights.

# Indemnity and limitations of liability

#### Indemnity

##### Subject to this clause 17, the Supplier indemnifies the University against any losses or liabilities suffered or incurred by the University in respect of any action, suit, claim, demand, cost or expense (including, without limitation, damage to property) arising as a result of any act or omission by the Supplier or the Supplier’s Personnel in breach of any warranty, any other obligation under this Agreement, or any Applicable Requirements, or out of or referable to any damage, injury or loss caused by or resulting from any negligence, recklessness, or wilful act or omission of the Supplier or its Personnel.

#### University’s limitation of liability

##### Despite any other provision of this Agreement, the maximum amount for which the University is liable (in contract, tort or otherwise, including negligence) to the Supplier under this Agreement is limited to the Fee (or where the Fee is expressed on a variable basis, a reasonable estimate of the maximum Fee to complete the supply of the Goods and Services).

#### Supplier's limitation of liability

##### The maximum amount for which the Supplier is liable (in contract, tort or otherwise, including negligence) to the University for anything arising out of the Supplier’s obligations under this Agreement is limited to an amount equal to the Supplier’s Maximum Liability set out in the Key Details (and if no limit is set out, then the Supplier’s liability under this Agreement will be unlimited).

#### Supplier’s liability unlimited in certain circumstances

##### Notwithstanding clause 17.3, the Supplier’s liability is unlimited in respect of liability:

caused by any wilful misconduct, fraudulent or criminal actions of the Supplier or the Supplier’s Personnel; and

arising under the indemnity set out in clause 16.7.

# Insurance

#### Supplier's insurance

##### To the extent required by the Key Details, the Supplier must effect and maintain:

professional indemnity insurance for not less than the amount specified in the Key Details in respect of any single occurrence and in the aggregate, for liability arising from a breach of professional duty by the Supplier;

public liability insurance for not less than the amount specified in the Key Details to indemnify the University against liability to third parties for damage, loss or injury caused by any act or omission of the Supplier arising out of the supply of the Goods and Services;

motor vehicle third party insurance for not less than the amount specified in the Key Details, for liability to third parties arising from the use of any motor vehicle belonging to or under the care, custody or control of the Supplier in connection with the supply of the Goods and Services;

insurance over all Goods ordered by the University while at the Supplier's risk for full replacement value, held for the benefit of both parties; and

any other insurance specified in the Key Details,

(together, the **Required Insurances**).

#### General requirements

##### All Required Insurances must be:

on terms, and with insurers, reasonably acceptable to the University; and

maintained for the duration of this Agreement, except for professional indemnity insurance, which must remain in force for a period of 6 years following termination or expiry of this Agreement.

##### The Supplier must, upon request, provide to the University reasonable evidence that the Required Insurances are in place. The University will have no obligation to pay any amount to the Supplier under this Agreement unless and until the Supplier has fully complied with its obligations under this clause 18.

##### The Supplier must ensure that all subcontractors have insurance in place acceptable to the University (acting reasonably).

##### No insurance arranged or held by the University will affect the Supplier's insurance obligations under this Agreement, and the Supplier will not be entitled to claim the benefit of any such insurance.

# Confidentiality

#### Obligations of confidence

##### The Supplier must keep all Confidential Information confidential, and must establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access or use.

#### Permitted use and disclosure

##### The Supplier must not use or disclose Confidential Information to any other person except:

to the extent necessary to comply with its obligations under this Agreement;

as required by law; or

if the University gives prior written approval to the use or disclosure.

# Force Majeure Events

#### No liability

##### Subject to this clause 20, neither party is liable to the other for any failure to perform its obligations under this Agreement to the extent the failure is due to a Force Majeure Event.

#### Written notice

##### A party seeking to rely on clause 20.1 must promptly give the other party written notice stating:

the nature of the circumstances given rise to the Force Majeure Event;

the extent of that party’s inability to perform its obligations under this Agreement;

the likely duration of that non-performance; and

the steps being taken by that party to limit the effects of the Force Majeure Event.

#### Mitigation

##### The party whose obligations are affected by the Force Majeure Event must take all reasonably practicable steps to limit the effects of that event on the performance of its obligations under this Agreement and must continue to carry out its obligations under this Agreement to the extent possible despite the Force Majeure Event.

#### Prolonged Force Majeure Event

##### If a party is unable to perform any obligations under this Agreement for 20 Business Days or more due to a Force Majeure Event, the other party may terminate this Agreement immediately by written notice.

# Suspension

##### The University may direct the Supplier to suspend supply of all or any part of the Goods and Services at any time. If the Supplier receives such a direction, it must immediately comply.

##### The University may at any time, following a direction to suspend performance, direct the Supplier to resume supply of any parts of the Goods or Services, and the Supplier must promptly comply with the direction.

##### Unless the suspension is due to a default on the part of the Supplier, the suspension will be treated as a Variation.

# Termination

#### Termination with notice

##### The University may terminate this Agreement at any time by giving 20 Business Days’ notice to the Supplier.

#### Immediate termination by the University

##### The University may immediately terminate this Agreement by notice to the Supplier if the Supplier:

commits a material breach of this Agreement;

fails to remedy any other breach of this Agreement within 10 Business Days following receipt of a notice from the University specifying the breach and requiring it to be remedied;

repeatedly fails to comply with any of its obligations under this Agreement (including minor obligations);

suffers an Insolvency Event;

breaches clause 26.1; or

does something or fails to do something that, in the University's opinion, brings the University's reputation into disrepute.

#### Immediate termination by the Supplier

##### The Supplier may immediately terminate this Agreement by notice to the University if the University:

commits a material breach of this Agreement; or

fails to remedy any other breach of this Agreement within 10 Business Days following receipt of a notice from the Supplier specifying the breach and requiring it to be remedied.

#### Supplier’s obligations on termination or expiry

##### On giving or receiving a notice of termination, the Supplier must:

cease supply of the Goods and Services; and

take all reasonable steps to minimise any loss, cost or expense arising from termination of this Agreement.

##### On termination or expiry of this Agreement, the Supplier must immediately return to the University all Confidential Information and other property belonging to the University.

##### The Supplier will, if requested by the University, provide all reasonable assistance to assist the University achieve a smooth and seamless transition to a replacement supplier.

#### Consequences of termination or expiry

##### On termination or expiry of this Agreement, the University:

subject to its rights under clause 13.8, must pay the Supplier for all Goods and Services supplied in accordance with this Agreement prior to the effective date of termination; and

may recover from the Supplier, or set off against funds due to the Supplier, any part of the Fee paid in advance.

##### Any provisions of this Agreement that expressly, or by their nature, survive termination or expiry, will, subject to any time limits provided at law, remain in full force following the termination or expiry of this Agreement. The termination or expiry of this Agreement will not affect any liabilities of either party accrued prior to that termination or expiry.

##### If:

this Agreement contemplates separable parts, scopes, categories or locations (**Parts**); and

the University is entitled to terminate this Agreement for any reason,

##### then the University may, in its discretion, terminate any one or more Parts of this Agreement, without affecting the remaining Parts.

# Dispute resolution

#### Precondition to court proceedings

##### If a dispute arises under this Agreement, neither party may commence any court proceedings relating to the dispute until it has first complied with this clause 23, unless court action is necessary to preserve a party’s rights.

#### Representatives attempt to resolve dispute

##### The parties must use their best endeavours to resolve any dispute or difference that arises under this Agreement. The following process will apply to disputes:

a party must notify the other if it considers a matter is in dispute;

the Representatives must attempt to resolve the dispute through direct negotiation as soon as reasonably practicable following notification under clause 23.2.1;

if the Representatives have not resolved the dispute within 10 Business Days of notification, they will refer it to the parties’ senior managers for resolution; and

if the senior managers have not resolved the dispute within 10 Business Days of it being referred to them, the parties must refer the dispute to mediation or some other form of alternative dispute resolution.

#### Mediation

##### If a dispute is referred to mediation, the mediation will be conducted:

by a single mediator agreed by the parties, or if they cannot agree, appointed by the Chair of Resolution Institute;

on the terms of the Resolution Institute’s standard mediation agreement; and

at a fee to be agreed by the parties, or if they cannot agree, at a fee determined by the Chair of the Resolution Institute.

##### Each party will pay its own costs of mediation or alternative dispute resolution under this clause 23.

#### Obligations continue

##### If there is a dispute, each party must continue to perform its obligations under this Agreement to the extent practicable given the nature of the dispute, provided that the University will not be obliged to pay any part of the Fee referable to the dispute.

# Warranties

##### The Supplier warrants and undertakes on a continuing basis that:

this Agreement is valid, binding and enforceable;

it has taken all necessary action to authorise the execution and performance of this Agreement;

no Insolvency Event has occurred in respect of the Supplier;

no form of inducement or reward has been, or will be, directly or indirectly provided by the Supplier to any of the University's employees, agents, officers or Representative in connection with this Agreement or the Goods and Services;

it has no conflict of interest in supplying the Goods and Services; and

all information, representations, warranties and undertakings made or given by the Supplier to the University (whether before or after the date of this Agreement) are true, complete and accurate in all respects.

# Notices

#### Giving notices

##### Any notice, approval or communication given to a party under this Agreement is only given if it is in writing and delivered, posted or emailed to that party’s address or email address set out in this Agreement.

#### Change of address

##### Once a party has given the other party 3 Business Days’ notice of a change of address or email address, any notice is only given by that other party if it is delivered, posted or emailed to the latest address or email address.

#### Time notice is given

##### Any notice is to be treated as given at the following time:

if it is delivered, when it is left at the relevant address; or

if it is sent by post, 3 Business Days after it is posted; or

if it is sent by email, when sent, unless the sender is notified that the email was not delivered.

##### However, if any notice is given on a day that is not a Business Day, or after 5pm on a Business Day, in the place of the party to whom it is sent, it is to be treated as having been given at the start of the next Business Day.

# General

#### Assignments and transfers

##### The Supplier must not assign or transfer any of its rights or obligations under this Agreement without the prior written approval of the University. Any change in the effective management or control of the Supplier or any parent company of the Supplier, through whatever means, will be deemed to be an assignment of this Agreement requiring the prior written approval of the University.

#### Entire agreement

##### This Agreement contains the entire agreement of the parties and supersedes all previous discussions and agreements of the parties on this subject matter before this Agreement was signed.

#### Other terms not to apply

##### Any standard terms set out on any purchase order issued by the University for the Goods or Services will not apply. To the extent that the Supplier’s terms and conditions are supplied to the University, those terms and conditions will be of no legal effect and will not constitute part of the Agreement, except to the extent expressly incorporated into this Agreement in writing.

#### Contract and Commercial Law Act 2017, Part 2, Subpart 1

##### Unless this Agreement expressly provides otherwise, this Agreement is not intended to confer a benefit on any person or class of persons who is not a party to it. However:

In consideration of the University entering into this Agreement, the Supplier grants other New Zealand State Entity Universities, New Zealand Polytechnics and Crown Research Institutions (**Other Related Institutions**), the right to contract for and purchase the Goods and Services from the Supplier, at the price(s) detailed in this Agreement and on the same terms and conditions contained in this Agreement, at any time during the Term. The University may (without notifying the Supplier) make this Agreement (and associated information) available to Other Related Institutions for the purposes of this clause 26.4.

If any Other Related Institution elects to take up the above option to purchase the Goods and Services from the Supplier, then that Other Related Institution and the Supplier will enter into a goods and services supply agreement for the purchase of the Goods and Services on the same terms and conditions as contained in this Agreement, subject to any minor adjustments necessary to reflect revised service delivery times and locations, and any other changes the Other Related Institution may request and the Supplier agrees to.

The Supplier acknowledges that the Other Related Institution will have the benefit of the promises made in this Agreement and that the Other Related Institution may take up the option to purchase the Goods and Services in accordance with the terms of this Agreement and may enforce the promises made in this Agreement directly against the Supplier under the Contract and Commercial Law Act 2017.

#### Further assurances

##### Each party will execute all documents and do all other things necessary to implement and carry out its obligations under this Agreement.

#### No partnership, agency or employment

##### The Supplier is at all times an independent contractor and not an employee, agent or partner of the University. The Supplier has no authority to bind, make representations or incur liability on behalf of the University.

#### Waiver

##### If a party breaches this Agreement and the other party does not immediately enforce its rights resulting from the breach, it does not:

excuse the party in beach from its obligations at the time or in the future; or

prevent the other party from exercising its rights resulting from the breach at a later time.

#### Severability

##### If any part of this Agreement becomes illegal or unenforceable in a relevant jurisdiction, the legality or enforceability of the remainder of this Agreement will not be affected.

#### Joint and individual liability and benefits

##### Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

#### Amendment

##### No amendment to this Agreement will take effect unless it is in writing and signed by each party to this Agreement.

#### Counterparts

##### This Agreement may be executed in counterparts (including scanned and emailed copies) and the counterparts together will constitute a binding agreement.

#### Governing law and jurisdiction

##### This Agreement is governed by the law of New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand.