



AGREEMENT FOR CAPITAL ITEMS WITH SERVICES

For

[]

UoA Contract Reference No. C2[]-[]



with
[]
[] 2023

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AGREEMENT FOR PRODUCTS AND SERVICES

UoA appoints the **Supplier** to provide the **Products** and **Services** (as described in Schedules B and C), and the **Supplier** accepts such appointment, on the terms and conditions set out in this **Agreement**.

The terms of this **Agreement** are contained in the following Schedules and Appendices:

SCHEDULE A - General Information
SCHEDULE B - Products and Prices
SCHEDULE C - Services and Prices
SCHEDULE D - Quality and Other Requirements
SCHEDULE E - Terms of Trade
SCHEDULE F – Supplier Code of Conduct
SCHEDULE G – Product Specifications
SCHEDULE H – Product Delivery Schedule
SCHEDULE I – Site Preparation Specifications
SCHEDULE J – Preventive Maintenance Task Sheets
SCHEDULE K – Scheduled Maintenance Forecast
SCHEDULE L – Escrow arrangements
Appendix 1 – Change Order Notice Form Template

All the Schedules and Appendices taken together form the contract between **UoA** and the **Supplier**. To the extent there is any express conflict between the Schedules, they have the following descending order of precedence:

- Schedule B – Products and prices
- Schedule C – Services and prices
- Schedule G – Product specifications
- Schedule H – Product delivery schedule
- Schedule I – Site preparation specifications
- Schedule D – Quality and other requirements
- Schedule L – Escrow agreement
- Schedule A – General Information
- Schedule E – Terms of trade
- Schedule F – Code of Conduct
- Schedule J – Preventative maintenance task sheet
- Schedule K – Scheduled maintenance forecast

To the extent that specific provisions of a **Purchase Order** conflict with the terms and conditions of the Schedules, the terms and conditions of the Schedules will supersede and take precedence over the inconsistent provisions of that **Purchase Order**.

Capitalised terms used in this Agreement have the meanings given to those terms in clause [1] of Schedule E, unless otherwise defined in this Agreement.

SCHEDULE A - General Information

Parties

Customer	Waipapa Taumata Rau The University of Auckland (“ UoA ”), a body corporate established in accordance with The University of Auckland Act 1961 and a university under the Education and Training Act 2020, of Building 105, the Clock Tower, 22 Princes Street, Auckland, New Zealand, New Zealand Business Number (NZBN) 9429041925300.
Products/Services Supplier	[] (“ Supplier ”), registered at [], New Zealand Business Number (NZBN) [].

Term

Commencement Date	[]
Expiry Date	[Ten (10) years] after Commencement Date UoA is entitled to renew this Agreement for a period of [ten (10) years] from the Expiry Date. If UoA elects to renew this Agreement, it will notify the Supplier at least [three (3) months] prior to the Expiry Date.
Right of Renewal	I

Contact Details

UoA – Operational contact	Telephone No: [] Email Address: [] Contact Person: []
UoA – Appointed representative	Address: <i>Procurement Office, 49 Symonds Street, Auckland 1010, New Zealand</i> Telephone No: [] Email Address: <i>procurement@auckland.ac.nz</i> Contact Person: <i>Procurement Manager – []</i>
Supplier – Appointed representative	Company Name: [] Address: [] Telephone No: [] Email Address: [] Contact Person: []
Supplier– Customer Support	Telephone No: [] Email Address: []

All communications related to this **Agreement** must include the **UoA** contract reference number C2[].

Execution (by authorised signatory)

For and on behalf of the University of Auckland	Signature: _____ Name: Position: Date:
For and on behalf of [insert full legal name of Supplier]	Signature: _____ Name: Position: Date:

SCHEDULE B - Products and Prices

1. PRODUCTS

- 1.1 The **Supplier** will *supply, deliver, unpack, assemble, install and commission* the following **Products** to **UoA**, at the prices detailed below plus **GST** (if any), as and when ordered by **UoA** through a **Purchase Order**, in accordance with the terms and conditions of this **Agreement**.

Product Part No.	Product Description	Quantity	Price per UOM in NZ\$ (excluding GST)
	Total Package Price (including supply, delivery, unpack, assembly, installation, commission, warranty and training)		

[Table 001]

- 1.2 The **Supplier** warrants that the **Products** will comply at all times with the specifications set out in Schedule [G] of this **Agreement**.

- 1.3 To avoid doubt, the **Supplier** acknowledges that this **Agreement** is entered into by **UoA** in respect of:

- (a) a one-off capital purchase of the **Products**; and
- (b) the ongoing supply of **Services**, spare parts, accessories and consumables throughout the **Term** of the **Agreement**.

If **UoA** wishes to purchase additional **Product** units during the **Term**, over and above the **Product** quantities specified in table 001 above, **UoA** will notify the **Supplier** in writing. Subject to agreement between the **Parties**, **UoA** may issue further **UoA Purchase Orders** for additional **Product** units.

2. PRICE

- 2.1 **UoA** will pay the **Supplier** the prices set out in clause [1.1] above for the provision of the **Products**, in accordance with the payment provisions set out in Schedule E.

- 2.2 Where **GST** is payable, the **Supplier** will issue a **GST** invoice and **UoA** will pay **GST** in accordance with clause [3] of Schedule E. Where payment for the **Products** is to be made in any currency other than New Zealand dollars, and **GST** is payable by the **Supplier** in New Zealand:

- (a) The **Supplier** agrees to invoice **UoA** for any **GST** payable in connection with the supply of **Products** and **Services** under this **Agreement**, such amount to be invoiced separately in New Zealand Dollars calculated by using the applicable foreign exchange rate, as published by the Reserve Bank NZ: located at <http://reservebank.govt.nz/statistics/tables/b1/>, called B1 Daily (2014 – Current).xls, and using the mid-market rate on the date the invoice is raised.
- (b) The first invoice must specify the full **GST** amount in NZ\$, and record the applicable exchange rate used to convert the full **GST** amount to NZ\$. Any subsequent part payment invoices related to this purchase must not apply any **GST** amount, but should reference the first invoice number and its date.]

3. DOCUMENTATION

3.1 On or prior to delivery of the Products, the **Supplier** will provide to **UoA** an electronic copy of the:

- (a) service documentation for the **Products**, including a comprehensive service manual, circuit diagrams/schematics, and fault diagnosis software (if applicable); and
- (b) operator's manual(s) for the **Products**,

and either or both of the above documents must include installation instructions and details of the recommended planned maintenance and/or quality assurance programmes for the **Products**. All documentation must be in English.

3.2 For the purposes of this clause [3], the terms "Escrow Agreement", "Escrow Agent", "Release Event" are defined in Schedule L. Within five (5) **Business Days** of any **Product** being installed and commissioned, the **Supplier** will provide **UoA** with:

- (a) an executed copy of an Escrow Agreement, on the terms set out at Schedule L, signed for and on behalf of the **Supplier** and the Escrow Agent, for execution by **UoA**; and
- (b) written confirmation that all relevant Escrow Materials, as defined in Schedule L, have been deposited with the Escrow Agent, -

and, subject to clause [3.3] below, the **Supplier** agrees that **UoA** may access such Escrow Materials following the occurrence of a Release Event in accordance with the terms of the Escrow Agreement.

3.3 [Review of escrow: At [6] month intervals from the **Commencement Date**, **UoA** (acting reasonably) shall review whether or not the escrow arrangements established under clause [3.2] above need to remain in place, taking into account relevant factors including the risk over the following [6] months of the **Supplier** being unable to meet its maintenance obligations due to a [Force Majeure Event]. If **UoA** decides, in its sole discretion, that the escrow arrangements are no longer required, then it shall notify the **Supplier** in writing and:

- (a) clause [3.2] and Schedule L shall cease to have effect;
- (b) the **Parties** shall notify the Escrow Agent that the Escrow Agreement is to be terminated; and
- (c) the **Escrow Materials** shall be removed from escrow and returned to the **Supplier**.]

4. MODIFICATIONS

4.1 The **Supplier** warrants that the **Products** will not contain or have activated by the **Supplier** at any time, without **UoA's** consent, any software feature or device that prevents **UoA** conducting the manufacturer's standard preventive and corrective maintenance tests and accessing all error logs and fault diagnosis tools available within the **Products**.

5. WARRANTY OBLIGATIONS

5.1 The Warranty Period for each Product is [two (2) years] from the time that **UoA** has accepted in writing that the **Products** are ready for use pursuant to clause [5.5] of [Schedule E]. During the **Warranty Period** the **Supplier** will:

- (a) Perform the manufacturer's recommended maintenance inspections and preventive maintenance tasks as detailed in the manufacturer's service documentation, remedy any non-compliance with performance specifications and report on **Services** and findings as indicated in accordance with the requirements set out at Schedule [C, clause 5]; and
- (b) Remedy, repair, enhance or replace any defective or faulty **Products** so that they meet and satisfy the warranties set out in clause [7] of Schedule E. Such warranty service obligations shall be provided in a timely manner with the **Supplier's** service personnel

responding by phone within [sixty] minutes from UoA's telephone request for service, by being on-site within [forty-eight] hours from any telephone request, and by having the **Products** (or replacement **Products**) available for use in the minimum time possible; and

- (c) Following the provision of any service to the **Products** as described in paragraphs (a) and (b) above, complete and return within [five (5)] **Business Days**, a detailed **Supplier's** Field Service Report (FSR) attaching, where relevant, the preventive maintenance inspection report referred to Schedule [C, clause 1.2],-

together, the "**Warranty Services**".

5.2 The price for the **Warranty Services** is included in the price for the **Products** and includes all costs associated with packaging, collection, transportation and insurance if any Product has to be returned to the **Supplier** or manufacturer, and all other costs, including any costs associated with the provision of any replacement **Products**.

5.3 Equipment requiring corrective maintenance that has been subject to **Customer Induced Damage** may not be eligible for the **Warranty Services**. If there is any dispute regarding a claim of **Customer Induced Damage**, UoA will be solely responsible for deciding the validity of the **Customer Induced Damage** claim. No invoice for **Customer Induced Damage** may be raised without written authorisation from UoA.

5.4 During the initial **Warranty Period** any spares or components fitted will be under warranty for the remainder of the initial **Warranty Period** or twelve (12) months (whichever is greater). After the initial **Warranty Period** has elapsed any spares or components fitted will be subject to twelve (12) months' warranty.

6. SPARE PARTS AND SOFTWARE MODIFICATIONS

6.1 The **Supplier** will ensure that:

- (a) all spare parts, accessories and consumables required for each **Product** are and will continue to be available for a period of 7 years from when the relevant **Product** ceases to be manufactured by the manufacturer; and
- (b) sufficient stock to meet UoA's reasonably foreseeable requirements for all spare parts, accessories and consumables is held at the **Supplier's** premises in Auckland at all times during the **Term**.

6.2 The **Supplier** will provide to UoA, during the useful life of the Product, all subsequent modifications (including software) required by the manufacturer, at the **Supplier's** expense.

6.3 The **Parties** have agreed that the spare parts, accessories and consumables identified in the table below are to be held by the **Supplier** as inventory items (ie spare parts, accessories and consumable that are to be held at all times by the **Supplier** in readiness for use or for fitment to the Product) at the **Supplier's** Auckland premises, and will be supplied within 24 hours of UoA providing the **Supplier** with a **Purchase Order**.

Item Code	Item Description	Price per each in NZ\$ (excluding GST)	Unit of Measure (UOM)	Price per UOM in \$NZ at the time of Agreement execution (excluding GST)

Item Code	Item Description	Price per each in NZ\$ (excluding GST)	Unit of Measure (UOM)	Price per UOM in \$NZ at the time of Agreement execution (excluding GST)

[Table 002]

6.4 Spare parts, accessories and consumables that are not provided to **UoA** under the Product warranty described at clause [5] of this Schedule B will be invoiced **at no more** than the Supplier's New Zealand list price less [25%]. If:

- (a) any inventory item mentioned in [Table 002] above is not able to be despatched to **UoA** within [24] hours of **UoA** issuing a **Purchase Order** for that item; or
- (b) any spare part, accessory or consumable not mentioned in [Table 002] above is unable to be despatched within [10] **Business Days** of **UoA** issuing a **Purchase Order** for that item,

then the Supplier will provide the relevant item to **UoA** free of charge, unless the Supplier is unable to supply due to a **Force Majeure Event** and has complied with the **Force Majeure Event** process described at clause [14 of Schedule E].

7. SUPPLIER SUPPORT

7.1 Prior to supply of the **Products**, and for the **Term**, the **Supplier** will make available to **UoA** a telephone number at which the **Supplier** can be contacted between [] hours, [] days a week to provide support to **UoA** and answer any questions **UoA** may have in relation to the **Products** or the **Services**. The **Supplier** will ensure it has appropriately qualified personnel to provide the aforementioned support to **UoA**.

7.2 The **Supplier** will provide the support **Services** referred to in [clause 7.1] at no cost to **UoA**.

8. TRAINING

8.1 The **Supplier** will provide comprehensive initial operator training to persons nominated by **UoA**, and additional operator training where reasonably requested by **UoA** from time to time. All costs relating to this training including the instructor's time and associated expenses will be met by the **Supplier**.

8.2 On-going and updated training will be conducted on site at **UoA's** premises at a time or times to be agreed between the **Parties**. Any additional training (outside of that reasonably requested by **UoA** under clause [8.1] above) will be agreed between the **Parties** and may be subject to a fee.

9. PACKAGING

9.1 On delivery of the **Products** to **UoA**, the **Supplier** will remove all packaging not required by **UoA** and the **Supplier** will be responsible for the correct and environmentally appropriate disposal of that packaging immediately following installation.

10. OTHER AGENCY / UNIVERSITY OPTION

10.1 In consideration for **UoA** entering into this **Agreement**, the **Supplier** grants other New Zealand universities and Crown Research Institutions (collectively, "Other Universities"), the right to contract for and purchase the **Products** 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**. **UoA** may (without notifying the **Supplier**) make this **Agreement** (and associated information) available to Other Universities for the purposes of this [clause 10].

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

10.3 The **Supplier** acknowledges that the Other University shall have the benefit of the promises made in this **Agreement** and that the other Universities may take up the option to purchase the **Products** and **Services** in accordance with the **Terms** of this [clause 10] and may enforce the promises made in this **Agreement** directly against the **Supplier** under part 2, subpart 1 of the Contract and Commercial Law Act 2017.

11. UPTIME GUARANTEE

11.1 The **Supplier** guarantees the following minimum uptime on the **Products**:

(a) [Product] [98%] uptime per annum

(b) Uptime is the opposite of downtime. Downtime exists when the **Product**:

- (i) cannot function in accordance with the **Product** specifications (as set out in this **Agreement**);or
- (ii) is receiving contracted preventive maintenance,-

and to avoid doubt, unavailability of a **Product** (or spares) caused by damage/breakage by **UoA** personnel does not contribute to downtime. Unavailability of parts (awaiting delivery) contributes to downtime.

(c) Downtime measurement begins, in the case of preventative maintenance **Services**, at the time that Staff begin contracted preventative maintenance **Services**, and in all other cases when **UoA** contacts the **Supplier's** service help desk to advise that the **Product** is not functioning in accordance with its specifications. If the **Supplier's** service representative is denied immediate access to the **Product**, the time spent waiting for the **Product** will not qualify for downtime measurement. Such access may be either on site, or via remote telephone connection at the **Supplier's** discretion.

(d) The signature of the relevant **UoA** personnel on a service report will signify that the downtime condition no longer exists and will cease downtime measurement. If a signature cannot be obtained because of the hour at which the service call was completed, then the hour at which the service call was completed will be used as the end of the downtime episode provided that the downtime condition no longer exists when the **Product** is next utilised by **UoA** personnel.

11.2 Calculation of Uptime

(a) Uptime Measurement Formula:

$$(\text{Base Hours} - \text{Downtime}) = \text{Uptime Hours}$$

$$(\text{Uptime Hours} / \text{Base Hours}) \times 100 = \text{Uptime Percentage}$$

11.3 If the event that the uptime described below is not achieved for any **Product** covered by warranty during the **Warranty Period**, the **Warranty Period** for the relevant **Product** will be extended in accordance with the following table:

Uptime	Rebate Award
Product	
98% to 100%	None
95% to 97.9%	2 weeks extension of warranty
92% to 94.9%	3 weeks extension of warranty
<92%	4 weeks extension of warranty

[Table 003]

11.4 In the event that the uptime specified in clause [11.1] above is not achieved for any **Product** in any rolling twelve (12) months period after the **Warranty Period** has expired, the price payable for preventative maintenance **Services** for that **Product** will be discounted in accordance with Table [004] below. The discount will be applied to the annual preventive maintenance payment(s) for the following twelve (12) months:

Uptime	Adjustment
Product	
98% to 100%	None
95% to 97.9%	5%
92% to 94.9%	10%
<92%	15%

[TABLE 004]

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SCHEDULE C - Services and Prices

1. MAINTENANCE SERVICES

1.1 The **Supplier** will provide comprehensive preventive and corrective maintenance and support **Services** in relation to each Product for the **Term** in accordance with the terms of this **Agreement**. In providing such **Services**, the Supplier will:

- (a) Perform the **Services** where the Product is located at **UoA's** premises unless otherwise agreed by **UoA**;
- (b) Provide all necessary tools, documentation, diagnostic aids and test equipment (inclusive of software supplied for the purpose of equipment control and fault diagnosis) to ensure proper performance and maintenance of the **Product**. Such items at all times remain the property of the **Supplier**; and
- (c) Be responsible for handing over the **Product** following any **Services** in a safe condition and ready for use. The **Supplier** will inform **UoA's** designated representative if any **Services** (e.g. repairs) are incomplete and supply all necessary details in respect to the further action required to satisfactorily complete the **Services**,-

and the **Supplier** acknowledges that it is responsible for the cost of all travel, transportation and labour in relation to such **Services**.

1.2 Preventive Maintenance Services

The **Supplier** will:

- (a) On receipt of a **Purchase Order** requesting the **Service**, perform the manufacturer's recommended preventative maintenance in accordance with the manufacturer's service documentation (including at least one planned preventative maintenance service visit per annum, quality assurance and quality control performance tests, electrical safety tests and system operational tests), remedy any non-compliance with performance specifications and report on **Services** and findings in accordance with Schedule [C, clause 5].
- (b) Ensure that the **Product** is maintained in a proper functional order and meets all electrical and mechanical safety requirements, complies with all applicable laws and meets **UoA's** performance requirements for the **Product**.
- (c) Perform the **Services** at a time(s) reasonably convenient to **UoA**, and use its best endeavours to ensure that the **Product** is not unavailable for **UoA's** use for more than one (1) **Business Day** in connection with the delivery of preventative maintenance **Services**.

1.3 Corrective Maintenance Services

- (a) The **Supplier** will provide corrective maintenance **Services** for the **Product** when requested by **UoA** during the hours described in [Schedule B, clause 7.1]. The **Supplier** will remedy, repair, enhance or replace any defective, broken, non-operating or under-performing parts or **Product**.
- (b) The **Supplier** will provide, at no additional cost, reasonable telephone assistance to assist **UoA Staff** in identifying and rectifying any fault in the **Product** when requested by **UoA**.
- (c) Corrective maintenance **Services** will be provided in a timely manner with **Supplier's** service personnel responding by telephone following the **UoA's** request for service, by being on-site if required and by having the Product (or replacement Product) available for use in the minimum time possible. Minimum response times are shown in the following table:
- (d)

Description	Requirement	Response
Telephone Support / Email / Internet	Normal Working Hours	[to be confirmed] hour
Telephone Support / Email / Internet	Non Normal Working Hours	[to be confirmed] hour
On-site Support after requirement for onsite visit identified	Normal Working Hours	[to be confirmed] Hours
On-site Support after requirement for onsite visit identified	Non Normal Working Hours	[to be confirmed] Hours

[Table 005]

- (e) The **Supplier** will maintain a **Services** log book for all **Products** on site at **UoA**, such log book being signed and dated by the nominated **UoA** member of **Staff** after the successful completion of each **Service** event.
- (f) The **Supplier** will attend to all problems of **Product** malfunction and ensure that all repairs are of a standard compatible with the design and specification of the **Product** manufacturer.

2. PRICE

2.1 The prices for the preventive maintenance, corrective maintenance and support **Services** will be as follows:

- (a) For the initial **Warranty Period** for each **Product**, the price of the corrective maintenance, preventive maintenance and related support **Services** is included in the price for the **Products**; and
- (b) From the expiry of the **Warranty Period** and for the remainder of the **Term**, **UoA** will pay the **Supplier** the price specified in row 2 of [Table 006] below, plus **GST** if any, for the preventive maintenance **Services**:

	Description	Requirement	Price
Row 1	Preventive Maintenance Service	[Annual], on-site for Warranty Period	Free of charge
Row 2	Preventive Maintenance Service	[Annual], on-site for post-Warranty Period	\$() per hour capped at [] hours, plus material costs as specified in Schedule [B], clause [6]

[Table 006]

- (c) From the expiry of the **Warranty Period** and for the remainder of the **Term**, **UoA** will pay the **Supplier** the price specified in [Table 007] below, plus **GST** if any, for the corrective maintenance and support **Services**:

Description	Requirement	Price
Telephone / Email / Internet Support	Normal Working Hours	Free of Charge
On-site Support after onsite visit identified	Normal Working Hours	\$() per hour
On-site Support after onsite visit identified	Non Normal Working Hours	\$() per hour
Travel Time	Normal Working Hours	Not Charged
Travel Time	Non Normal Working Hours	Not Charged

[Table 007]

- 2.2 Preventive maintenance and corrective maintenance charges will be calculated and invoiced by the **Supplier** to the nearest 30 minutes time period.
- 2.3 Notwithstanding clause 3.5 of Schedule E, the **Supplier** may amend the hourly rates specified in Tables [006 and 007] once per year during the Term, with any revised rate to take effect the anniversary of the Commencement Date. If the Supplier intends to amend its rates pursuant to this clause, it will submit the revised rate to **UoA** not less than twenty (20) Business Days before each anniversary of the Commencement Date. The revised rate may be an increase or a decrease of the existing hourly rate, but any increase must not be more than the sum calculated using the NZ labour Cost Index (Salary and Wage Rate (LCIQ SG51M1) - Table 4.1, All Sectors Combined, MN1 Professional, Scientific and Technical Services), published by Statistics New Zealand. The price review formula shown below indicates that the revised price is equal to the current labour rate divided by the base year labour cost index, multiplied by the average annual labour cost index:

$$P_n = \left(\frac{P_o}{B_I} \right) \times I_n$$

Where:

P_n = Revised Rate

P_o = Current Labour Rate

B_I = [1187] (Base year labour cost index).

(The base year labour cost index is the average of the labor cost indices for four quarters of [2021]).
(MN1 Professional, Scientific and Technical **Services** (LCIQ SG51M1))

In = Labour Cost Index (Salary and Wage Rates), stated as an average of the previous calendar year's four quarters.
(MN1 Professional, Scientific and Technical **Services** (LCIQ SG51M1))

Example:

$$P_o = [\$235.00]$$

$$B_l = [1187] \text{ (average of the labour cost indices for the four quarters of [2021])}$$

$$I_n = [1200] \text{ (calculated as an average of the labor cost indices for the previous four quarters)}$$

$$P_n = [(235/1187) \times 1200]$$

$$P_n = [\$241.00]$$

3. SERVICE LEVELS

3.1 The **Supplier** undertakes that all **Services** will:

- (a) Be supplied with the prime aim of being an effective response to **UoA's** needs where these are readily identifiable and attainable within the limitations which may be reasonably set by **UoA**;
- (b) Meet the required standards of acceptability where defined by professional standards, legal requirements or other codes of practice. In cases where these are not defined the **Services** must meet **UoA's** reasonable expectations;
- (c) Be readily accessible to those persons entitled to such assistance. The **Supplier** agrees that requests for service, or requests for information on the options available, will be handled in a courteous and professional manner;
- (d) Be carried out efficiently and, where necessary and practicable, all efforts will be taken to minimise the disruption to **UoA's** workload through appropriate scheduling of the tasks to be performed;
- (e) Be performed in accordance with current safety standards or, if these do not exist, to the standards set by **UoA** in codes of practice, protocols or similar internal documentation;
- (f) Be reviewed by the **Supplier**, by the **Supplier** undertaking regular surveys to determine **UoA's** perception of the **Supplier's** level of service and take any necessary and practicable steps to ensure that any identified shortcomings are addressed; and
- (g) Be supported by the **Supplier** promoting the importance and need for its entire **Staff** to develop and maintain positive customer relations, portray a professional image and be sensitive to **UoA's** needs.

4. QUALIFIED STAFF AND TRAINING

4.1 The **Supplier** will ensure that all of its **Staff** who are involved in the provision of the **Products** and **Services** are suitably trained and qualified, and have the necessary expertise to provide the **Services**.

4.2 Without limiting the generality of clause 4.1 above, the **Supplier** will ensure that its **Staff** are adequately trained and supervised in the safe use of all vehicles, machinery, tools, processes, substances, protective clothing and equipment, which they may be required to use in relation to supply of the **Products** and **Services**.

4.3 Without limiting the generality of clause 4.1 above, at the request of **UoA**, and at mutually agreed times, the **Supplier** will ensure that those of its **Staff** who provide **Services** first attend any training course run by the manufacturer of the **Product** or any other applicable organisation in order for the **Supplier's Staff** to be suitably qualified to perform the **Services**. All costs associated with such training shall be met by the **Supplier**.

5. SERVICE REPORT

5.1 Within [five (5)] **Business Days** of completion of any **Services**, the **Supplier** will complete and provide to a nominated **UoA** representative a detailed **Supplier's** Field Service Report (FSR) which will record where appropriate:

- (a) A description of the Product serviced and a serial/registration number;
- (b) The location of the Product;
- (c) The nature of the **Services** carried out (for example, preventive maintenance Services, corrective maintenance Services or other types of **Services**);
- (d) The manner in which the **Services** were initiated;
- (e) A summary of the **Services** performed;
- (f) The time taken;
- (g) Details of parts/materials and any associated costs (such as freight/travel), in relation to completion of the **Services**; and
- (h) The name of the **Staff** who performed the **Services**.

SCHEDULE D - Quality and Other Requirements

1. LICENCES AND AUTHORISATIONS

- 1.1 The **Supplier** will obtain at its own risk and expense any import licence and other official authorisation and carry out all customs formalities for the importation of the **Products** and, where necessary, for their transit through another country.
- 1.2 The **Supplier** will ensure that the **Product** is certified as fit for service by the manufacture before despatch from the manufacturer's premises.
- 1.3 [After installation **UoA** may at its discretion instruct a suitable third-party to inspect the **Product** and assess whether it is fit for purpose, with a view to providing a certificate for service. If such a third-party inspection finds reason not to issue a certificate for service, the **Supplier** will remedy the issues identified in the inspection, including if necessary, providing a replacement **Product**. Any fit for purpose assessment by **UoA**'s nominated third-party shall assess the **Product** against the manufacturer's specification.]

2. QUALITY

- 2.1 The **Supplier** will ensure that the **Products** are of a high quality and standard and operate in accordance with best industry practice.
- 2.2 The **Supplier** will provide the **Products** and **Services** in compliance with, and in a manner that is consistent with, all applicable standards (including, without limitation, health and safety standards and any other standards advised by **UoA** (acting reasonably) from time to time), codes of practice, regulations and all applicable law.

3. HEALTH AND SAFETY

- 3.1 The **Supplier** acknowledges that it is a PCBU (as that term is defined in the **HSWA**) and under this Agreement is the person who influences or controls activities and work carried out in provision of the **Products** or **Services** for the purposes of health and safety laws. The **Supplier** will take primary responsibility for its obligations under health and safety laws and accept responsibility for the safety of its **Staff** for the purposes of providing the **Products** or **Services**, and persons affected by or associated with the **Products** or **Services**. In complying with its obligations, the **Supplier** warrants that:
- (a) It will take all practicable steps to ensure the safety of all **UoA** personnel, **Staff** and third parties in connection with the supply of the **Products** and **Services**, including by ensuring all such people under control of the **Supplier** are appropriately trained, inducted and/or supervised;
- (b) So far as is applicable to the **Products** and **Services**, the **Supplier** will take all practicable steps to ensure that no act or omission:
- (i) causes a hazard, significant hazard, harm or serious harm to any **Staff** or any person on **UoA**'s sites; or
 - (ii) is a breach of any duty or obligation of the **Supplier** under the **HSWA**; or
 - (iii) does or is likely to give rise to the issue of any enforcement proceedings or a prosecution under the **HSWA** against the **Supplier** or **UoA**;
- (c) It will comply with **UoA**'s health and safety requests, requirements and health and safety policies. Without limiting the foregoing, the **Supplier** will comply with or better all **UoA**'s policies and procedures with respect to security, quality of service and infection control as shown in the **UoA** On Site Health and Safety Plan (as provided by **UoA** from time to time); and

- (d) It will, so far as is reasonably practicable, consult, co-operate with, and co-ordinate activities with all other PCBUs who have a duty in relation to the same matter, including **UoA**, to ensure activities are carried out, so far as reasonably practicable, without risks to health and safety.
- 3.2 Prior to the Commencement Date the **Supplier** will establish, and during the **Term** of this **Agreement** the **Supplier** will implement and maintain, a written Health and Safety Management Plan (for the purposes of this clause, the "Plan") that is tailored specifically to the **Products** and **Services** which promotes health and safety of people associated with or affected by the **Products** and **Services**, and a system of auditing compliance with the Plan. The Plan will include (as a minimum) the following items:
- (a) Ongoing hazard and risk identification and mitigation procedures;
 - (b) A list of all the hazards associated with the **Products** or **Services**;
 - (c) Details of how each hazard will be managed by the **Supplier**;
 - (d) Incident and accident reporting procedures;
 - (e) Details of how health and safety monitoring, auditing and reporting in relation to the **Products** and **Services** will be undertaken;
 - (f) The names, positions and contact details of the **Supplier's** key **Staff** responsible for implementing the Plan; and
 - (g) Details of how the Plan will be communicated to **Staff**,-
- and the **Supplier** will provide a copy of the Plan to **UoA** upon request from **UoA**.
- 3.3 The **Supplier** will record and report any notifiable event (as defined in the HSWA), analyse injury and near miss data, and notify WorkSafe New Zealand within the applicable notification timeframe if an accident is deemed a notifiable event under the HSWA. The **Supplier** will:
- (a) advise **UoA** as soon as reasonably practicable, but no later than [three (3) **Business Days**], after a notifiable event occurs;
 - (b) provide **UoA** with copies of any documents provided to WorkSafe New Zealand; and
 - (c) keep **UoA** informed of any communications with WorkSafe New Zealand.
- 3.4 The **Supplier** will notify **UoA** as soon as reasonably practicable of any WorkSafe New Zealand:
- (a) improvement, prohibition or other notice or any proceedings issued in connection with the **Supplier's** provision of **Products** or **Services**; and
 - (b) inspection, investigation or information request in relation to the **Supplier's** provision of **Products** or **Services**, and will obtain consent from **UoA** before disclosing any information to third parties which includes information about **UoA** (not to be unreasonably withheld or delayed, and notwithstanding any powers or laws which may compel such a disclosure).
- 3.5 Should the **Supplier** fail to meet the requirements detailed in this clause [3 of Schedule D] and/or in the health and safety sections of the Code of Conduct (attached at Schedule F, and as updated from time to time by **UoA**), the **Supplier's** failure shall constitute a breach of this **Agreement** and **UoA** shall be entitled to suspend immediately the performance of any part or all of the **Services** at the **Supplier's** expense for such period as is necessary until the **Supplier** has remedied the failure, and **UoA** shall be entitled to exercise any of the remedies set out in clause [13 and 15 of Schedule E].
- 3.6 If the **Supplier** becomes aware that the **Supplier** or its **Staff** are or may be in breach or are likely to be in breach of this clause [3 of Schedule D] then the **Supplier** will immediately notify **UoA** of such breach or anticipated breach and will consult with **UoA** as to steps

that the Supplier will take to avoid, remedy or mitigate such breaches or anticipated breach. Nothing in this clause operates as a release in favour of the Supplier in respect of any responsibility or liability pursuant to this Agreement.

4. OTHER QUALITY REQUIREMENTS

- 4.1 If the **Supplier** installs technical equipment on any **UoA** site, the **Supplier** must abide by the requirements of the **UoA** Health, Safety and Wellbeing Department, and the Property Services Department. Relevant guides and documents are located on the **UoA** internet site (at [Health and Safety](#)).
- 4.2 The **Supplier** will not make any alterations of any kind to **UoA** property nor affix any items to any **UoA** property or sites without the prior written consent of **UoA**. In the event that any affixation or alteration is approved, **UoA** may require the **Supplier** to remove any affixation and reinstate its property (to the standard it was in prior to the alteration or affixation) at the expiry of the **Term** or on earlier termination of this **Agreement**.
- 4.3 Any damage caused by the **Supplier** to **UoA's** sites or to any **UoA** property or to any person lawfully on **UoA's** sites will be made good by the **Supplier** at the **Supplier's** own expense.
- 4.4 The **Supplier** will ensure that areas in which **Staff** are or have been carrying out the **Services** are kept in a clean and tidy condition for use and occupation by **UoA**, to **UoA's** satisfaction.
- 4.5 The **Supplier** must apply the necessary resources to remove all waste material from **UoA** sites as expeditiously as possible in order to avoid unsightly and potentially hazardous accumulation of such materials.
- 4.6 The **Supplier** will ensure that if required by **UoA**, all **Staff** will wear an identification card approved by **UoA**, visibly affixed to their clothing at all times while at any **UoA** site.
- 4.7 Except in relation to supply of the **Products** and **Services**, neither the **Supplier** nor any **Staff** will carry out any business or trading activity at any **UoA** site and no advertisement, sign or notice of any description will be displayed by the **Supplier** or **Staff** without prior written approval from **UoA**.
- 4.8 The **Supplier** will ensure that all equipment required to carry out the **Services** or associated with the **Products** is well and safely maintained, that full and accurate records are created and maintained in respect of such maintenance, and that all materials and other consumables are safely and securely stored when not in use. Without limiting any other requirements in this Agreement, the **Supplier** will comply with the Electricity Act 1992 and any **UoA** rules or regulations relating to electrical interference and earthing.
- 4.9 The **Supplier** will ensure that all **Staff** maintain high standards of personal hygiene while working at any **UoA** site.
- 4.10 The **Supplier** will supply suitable uniforms to **Staff** and will ensure that the uniforms are laundered at appropriate intervals at the **Supplier's** expense. The **Supplier** will ensure **Staff** uniforms meet the prior approval of **UoA** at all times.
- 4.11 The **Supplier** will undertake background checks on all **Staff** (including criminal history checks), and will provide **UoA** with detail regarding its background check process. The **Supplier** acknowledges that its background check process must be to **UoA's** reasonable satisfaction, to ensure **UoA's** requirements for security and confidentiality are met.
- 4.12 The **Supplier** will ensure that any person to whom **UoA** has objected will not provide or be directly or indirectly associated with the supply of the **Products** or **Services**.

5. BUSINESS REVIEWS

5.1 The purpose of a business review ("**Business Review**") is to provide a forum for **UoA** [(including the Procurement department of **UoA**)] and the **Supplier** to review and align expectations, report progress on initiatives, review accomplishments, set future direction and strengthen the relationship between the **Parties**.

5.2 The objective of the Business Reviews will be to:

- (a) Align **UoA** and **Supplier** expectations and strategic direction;
- (b) Review past performance, progress towards agreed goals, discuss future planning;
- (c) Measure performance against expectations;
- (d) Review and evaluate key performance indicators;
- (e) Review roles for responsibility and accountability;
- (f) Canvas new technology and research;
- (g) Identify business improvements and initiatives; and
- (h) Review contingency plans.

5.3 Business Reviews will be held every twelve months as follows:

- (a) Business Review meeting dates need to be confirmed at least fifteen (15) **Business Days** before the meeting is scheduled by the **Supplier**;
- (b) The **Supplier** will prepare a draft agenda and send the draft to **UoA** no later than ten (10) **Business Days** before the meeting. **UoA** will review and, where it considers appropriate, amend the draft agenda (including by adding any additional agenda items which **UoA** wishes to discuss), and provide the updated agenda to the **Supplier** at least three (3) **Business Days** before the meeting;
- (c) The **Supplier** is responsible for compiling the information on the agenda and leading discussion on the items on the agenda; and
- (d) The **Supplier** is responsible for recording the minutes of the Business Review meeting and providing the minutes to **UoA** within ten (10) **Business Days** from the applicable meeting.

5.4 The Business Review agenda will include the following matters:

- (a) Sales review by **Products**, value, volume, quarterly and year to date;
- (b) **Services** review by **Products**, value, volume, quarterly and year to date;
- (c) **Supplier** personnel changes;
- (d) Performance against **UoA** expectations and KPIs;
- (e) **Supplier** / **UoA** business issues (for example, ordering, service, delivery);
- (f) New technology and research;
- (g) Business initiatives;

- (h) Contingency plans;
- (i) General items and outstanding issues; and
- (j) Next Business Review (date, time and venue).

5.5 Information relating to the matters referred to in clause [5.4] above will be compiled by the **Supplier** and provided to **UoA**, in a form directed by **UoA** from time to time, by the **Supplier** a reasonable time before each Business Review meeting.

6. KEY PERFORMANCE INDICATORS

6.1 For the purpose of reviewing the **Supplier's** performance under this **Agreement**, the following expectations will be documented in key performance indicators ("**KPIs**") and agreed between the **Parties** prior to the **Commencement Date** and such KPIs shall be deemed to form part of this **Agreement**:

(a) Assured Supply:

- I. Demonstration that deliveries under this **Agreement** have met agreed lead times;
- II. Validated contingency or business continuance plan in the event of the **Supplier's** business being disrupted;
- III. Quality, Excellent Service;
- IV. Clarification of how the **Products and Services** are priced;
- V. Validation that **UoA** is provided lowest total cost of ownership for **Products**. For the purposes of this clause, "total cost of ownership" refers to all purchase costs and operating costs incurred over the course of a **Product's** life cycle;
- VI. Validated process controls and management systems to measure and optimise cost and quality.

(b) Technical Excellence

- I. Review of Approved Quality Management Programme that includes certification and audit by a third party;
- II. Demonstrate controls and capabilities to assure safe and consistent **Products and Services**;
- III. Meet the future needs of **UoA** and provide **Products and Services** compatible with **UoA's** delivery of service plan;
- IV. Demonstrate use of up to date technology.

(c) Process Management

- I. An established process to determine **UoA's** requirements for new or modified **Products and Services**;
- II. An established process for improving the **Services and Products**;
- III. An established process that communicates all changes to the **Products and Services**, the **Product's** packaging and manufacturing processes and the performance of the **Services**.

(d) Relationship

- I. Open communication;
- II. Commitment to providing **UoA** customer satisfaction and meeting future expectations;
- III. Joint planning and sharing of objectives/initiatives;
- IV. Commitment to adding value by demonstrating continuous improvement over time.

7. THE SUPPLIER'S CONTRACTS MANAGER

7.1 The **Supplier's** account manager ("**Contracts Manager**") will be nominated by the **Supplier** and approved by **UoA**. At the date of this Agreement the **Contracts Manager** is the person named in Schedule A as the **Supplier's** nominated representative.

7.2 The **Contracts Manager** will:

- (a) Be a dedicated representative of the **Supplier** who will manage the account with **UoA**;
- (b) Take responsibility for the implementation of this **Agreement** and co-ordinate business plans as agreed between the **Supplier** and **UoA**;
- (c) Take responsibility for the overall management and performance of this **Agreement** including attaining agreed **Delivery Dates**, key performance indicators, service levels and supply chain initiatives as well as co-ordinating communication between the **Parties**; and
- (d) Work with designated **UoA** representatives (including procurement personnel) on **Product** and **Service** initiatives and market information to ensure that **UoA** needs are aligned with the commercial supply environment.

8. QUALITY ASSURANCE

8.1 The **Supplier** is required to become an approved or certified **Supplier** to **UoA**. In order to become approved or certified, the **Supplier** may be required to provide evidence to **UoA** that as at the Commencement Date the **Supplier** holds (operates) an approved and third party audited quality management programme based on an appropriate industry standard (i.e. ISO 9001:2008) ("**Quality Management Programme**"), and the **Supplier** must ensure that they continue to hold and comply with the **Quality Management Programme** throughout the **Term**.

8.2 The **Supplier** shall meet any costs it incurs in developing, implementing and maintaining a **Quality Management Programme**.

9. COMPETITIVENESS AND MODIFICATIONS

9.1 During the **Term** the **Supplier** will maintain its competitiveness. This means in particular that any product or service optimisation or changes in technology which can be used to improve the efficacy of the **Products** and delivery of the **Services**, or reduce the price of the **Products** or the **Services**, will be utilised and such improvements or reduction in costs will be passed to **UoA** as soon as they become available. In such an event, the prices detailed in Schedules B and C will be adjusted accordingly (notwithstanding that the **Products** and **Services** may be recorded elsewhere in this **Agreement** as being on a fixed price basis). In the case of **Products** using computer software, the **Supplier** will provide to **UoA** subsequent modifications software for fault diagnosis at the **Supplier's** expense.

10. STAFFING ARRANGEMENTS

10.1 The **Supplier** must:

- (a) Comply with its obligations under all relevant employment law, including the Employment Relations Act 2000, Minimum Wage Act 1983, Wages Protection Act 1983 and the Holidays Act 2003;
 - (b) Notify **UoA** of any instances where the **Supplier** or its **Staff** are being investigated by the Labour Inspectorate within the Ministry of Business, Innovation and Employment, or where the **Supplier** identifies it has breached any of the legislation referenced in subclause [(a)] above; and
 - (c) Take reasonable steps to maintain a workplace that is free from unlawful discrimination.
- 10.2 The **Supplier** agrees to take reasonable steps to monitor compliance with human rights standards in its supply chain and address any related issues of which the **Supplier** becomes aware.
- 10.3 Subject to the terms of its subcontracts, the **Supplier** agrees to pay its subcontractors promptly.
- 10.4 Without limiting clause [19.6] of Schedule E, the **Supplier** agrees to consider including local, Māori, and Pasifika businesses, where the **Supplier** requires a subcontractor to assist in the performance of this **Agreement**.

11. SUSTAINABILITY

- 11.1 The **Supplier** agrees to take reasonable steps to improve its environmental sustainability and reduce its environmental impact.

12. PRODUCT RECORDS

- 12.1 The **Supplier** agrees that it will provide **UoA**, within one (1) month of each anniversary of the **Commencement Date**, a report that lists:
- (a) each **Product** [(excluding consumables)] that has been provided by the **Supplier** under this **Agreement**;
 - (b) the **Product's** specific location within **UoA** premises;
 - (c) the **Product's** valuation, at the date of the report; and
 - (d) the **Product** code and operation manual name.

SCHEDULE E - Terms of Trade

1. DEFINITIONS AND INTERPRETATION

- 1.1 **"Agreement"** means this contract signed by the **Parties** and comprising the Schedules and Appendices, as amended from time to time.
- 1.2 **"Business Day"** means any day excluding Saturday or Sunday and public holidays in Auckland.
- 1.3 **"Claim"** means any claim, action, proceeding, demand, judgment, damage, loss, costs, expenses or liability (including legal and expert costs and expenses incurred on a solicitor/client basis) whatsoever incurred or suffered by or brought or made or recovered and however arising (whether or not presently ascertained, immediate, future or contingent).
- 1.4 **"Commencement Date"** means the commencement date specified in Schedule A.
- 1.5 **"Customer Induced Damage"** means damage to a Product that is due to misuse or negligence caused by the **UoA** and is not caused as a result of normal usage or typical wear and tear.
- 1.6 **"Delivery Date"** means the date upon which the **Products** will be delivered to **UoA** pursuant to clause [5.1] of this Schedule E or such other date as agreed in writing between the **Parties**.
- 1.7 **"Escrow Materials"** means the code, materials, documents and other technical materials described in Part A of Schedule L, which are to be held on escrow in accordance with clause [3.2 of Schedule B and Schedule L].
- 1.8 **"Force Majeure Event"** means any event beyond the reasonable control of the **Party** affected by it, in consequence of which that **Party** cannot perform its obligations under this **Agreement**. The expression, without prejudice to the foregoing, includes fire, outbreaks of war, acts of hostility or terrorism, epidemics, pandemics and acts of nature. The expression does not include financial management difficulties or other like difficulties or delay caused by or in connection with contractual relations between the **Supplier** and its employees, agents, sub-contractors or third party suppliers or any risk or event, including those listed above, the effects of which the **Party** affected could have prevented, overcome or ameliorated by taking reasonable care, including having in place a risk management process to deal with foreseeable risk.
- 1.9 **"GST"** means goods and services tax as imposed under the Goods and Services Tax Act 1985 (New Zealand).
- 1.10 **"HSWA"** means the Health and Safety at Work Act 2015 and its associated regulations.
- 1.11 **"Intellectual Property"** means all intellectual and industrial property rights and interests of any person (including common law rights and interests).
- 1.12 **"Normal Working Hours"** means [8.30am to 5.30pm on a Business Day].
- 1.13 **"Parties"** means both **UoA** and the **Supplier** and **"Party"** means either one of them.
- 1.14 **"Products"** means the **Products** listed in Schedule B.
- 1.15 **"Purchase Order"** means a purchase order issued by **UoA** to request supply of any **Product** or **Services**.
- 1.16 **"Purchase Order Number"** means the number shown on a Purchase Order.
- 1.17 **"Services"** means the **Services** listed in Schedule C.
- 1.18 **"Staff"** means the **Supplier's** employees, agents, contractors and representatives.
- 1.19 **"Term"** means the term of this **Agreement** as set out in Schedule A and clause 2.2 of this Schedule E, and includes any renewed period.
- 1.20 **"UOM"** means Unit of Measure and is used as the minimum ordering quantity for any Product or spare part, accessory or consumable.
- 1.21 **"Warranty Period"** means the period of time specified in clause [5.1] of Schedule B in which Products are under warranty and the Supplier will provide **Warranty Services**.
- 1.22 **"Warranty Services"** has the meaning given to that term at clause [5.1 of Schedule B].

- 1.23 Terms which are defined in Schedule A shall have the same meaning throughout the rest of this **Agreement**.
- 1.24 In this **Agreement**, unless the context requires otherwise: references to clauses and schedules and appendices are to clauses and schedules and appendices of this **Agreement**; the headings to clauses will be ignored in construing this **Agreement**; the plural includes the singular and vice versa; references to gender include each other gender; a statute includes that statute as amended from time to time and any regulations, orders in council and other instruments issued or made under that statute from time to time and legislation passed in substitution for that statute; an obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done; derivatives of any defined word or term have a corresponding meaning; all references to dollars are references to New Zealand dollars unless provided otherwise; “including” and similar words do not imply any limitation; and no provision of this **Agreement** will be construed against a **Party** on the basis that this **Agreement** or the provision in question was put forward or drafted by that **Party**.
- 1.25 “**Labour Cost Index**” (LCI) is a short-term indicator showing the proportional change in hourly labour costs incurred by employers. In other words, the LCI measures the cost pressure arising from the production factor “labour”. The LCI used in this **Agreement** must be taken from Labour Cost Index, Salary and Wage Rate (LCIQ SG51M1) - Table 4, All Sectors combined, MN1 Professional, Scientific and Technical **Services**), published by Statistics NZ (www.stats.govt.nz), calculated as an average of the previous calendar year’s four quarters. The base year labour cost index is the average of the labour cost indices for four quarters of [2021].
- 2. SUPPLY**
- 2.1 The **Supplier** agrees to supply the **Products** and the **Services** to **UoA** on the terms and conditions set out in this **Agreement**. The **Supplier** acknowledges that it is responsible for all management, administration and supervisory personnel, labour, materials, equipment and anything else required to provide the **Products** and **Services** in accordance with this **Agreement**.
- 2.2 This **Agreement** will begin on the **Commencement Date** and, subject to **UoA** exercising any right of renewal provided for in Schedule A, will end on the expiry date specified in Schedule A. Any renewal is at the sole discretion of **UoA**.
- 2.3 The **Services** will be performed at times which cause the least possible disruption to **UoA**.
- 2.4 **UoA** may postpone any **Service** on 24 hours’ notice to the **Supplier** and the **Supplier** will reschedule the postponed **Service** to occur as soon as reasonably practicable.
- 2.5 Nothing in this **Agreement** will prevent **UoA** purchasing products and services similar to, or the same as, the **Products** and **Services** from any other person.
- 2.6 Other than as specifically set out in **UoA’s** Purchase Order(s), **UoA** does not guarantee the **Supplier** any specific volume of business under this **Agreement**. All estimates provided by **UoA** are estimates only, and the **Supplier** confirms that it will not rely on these estimates in any case.
- 2.7 The **Supplier** acknowledges the importance of business continuity for **UoA**, and agrees to develop and maintain a written business continuity plan. The **Supplier** will provide the business continuity plan to **UoA** on request. If **UoA** requires any amendment to the business continuity plan, **UoA** will notify the **Supplier**. The **Supplier** will amend the business continuity plan to address **UoA’s** requirements, and provide an updated copy of the plan to **UoA**, within 10 **Business Days** of **UoA’s** notice.
- 2.8 In the event of an emergency or disaster affecting **UoA**, the **Supplier** will use its best endeavours to provide the **Products** and/or **Services** as requested by **UoA**.
- 3. INVOICING AND PAYMENT**
- 3.1 **Products:** The **Supplier** will submit two invoices to **UoA** for each **Product** that is supplied under this **Agreement**, to support the staged payments outlined in clause [3.3] of this Schedule E. *The first invoice will be issued on or before the last Business Day of the calendar month in which the Products were delivered. The second invoice will be issued on or before the last Business Day of the calendar month in which UoA has accepted in writing that the Products are ready for use (such acceptance not*

to be unreasonably withheld). All invoices will be in a form directed by **UoA** from time to time. Each invoice will state the Contract Reference Number, the **Supplier's** delivery-note reference number, the **Purchase Order Number**, the net amount payable (excluding **GST**, if any), any discount given, and full details of the **Products** supplied to **UoA** under this **Agreement** (including the **UoA** item codes, quantity and price as per the agreed **UOM** and total cost for all **Products** supplied to **UoA**). All invoices for part payment of **Products** must also state the amount invoiced to date, the amount payable for that invoice and the amount remaining to be paid for the **Products**. Invoices will be supported by such information as **UoA** determines is necessary for costing or other purposes. **Invoices related to installation or commissioning must be accompanied by the signed acceptance paperwork**. All invoices must be emailed to: invoices@auckland.ac.nz

3.2 **Services:** The **Supplier** will submit on or before the last **Business Day** of each calendar month an invoice for **Services** provided during that month. The invoice will be in a form directed by **UoA** from time to time. Each invoice will state the Contract Reference Number, a **Purchase Order Number** (requested by the **Supplier** from the **UoA** in advance of any servicing), the net amount payable (excluding **GST**, if any), any discount given, and full details of the **Services** supplied to **UoA** under this **Agreement** (including the total cost for all **Services** supplied to **UoA**). All invoices for **Services** must also state the amount invoiced to date, the amount payable for that invoice and any amount remaining to be paid for the **Services**. Invoices will be supported by such information as **UoA** determines is necessary for costing or other purposes.

3.3 **Payment:** **UoA** will pay **Supplier** invoices on or before 20th (twentieth) of the month following receipt of the invoice, provided that invoices are received in accordance with [clauses 3.1 and 3.2]. In respect of **Products**, **UoA** will pay the **Supplier** as follows:

- (a) 80 percent of the total price of the delivered **Products** following delivery; and
- (b) 20 percent of the total price following acceptance in writing by **UoA** that those **Products** are ready for use (such acceptance not to be unreasonably withheld).

3.4 If **GST** is payable in respect of any supplies made under this **Agreement**, the **Supplier** will ensure that its invoices meet the requirements for a tax invoice under the Goods and Services Tax Act 1985.

3.5 **UoA** may pay the **Supplier** by electronic funds transfer or such other method acceptable to **UoA**.

3.6 **UoA** is under no obligation to pay for **Products** and/or **Services** that do not meet the requirements of this **Agreement** or to pay any part of an invoice which is in dispute.

3.7 Failure by **UoA** to dispute any invoice prior to payment will not prejudice **UoA's** right to subsequently dispute the correctness of such invoice.

3.8 In making payment for the **Products** or the **Services**, **UoA** may withhold or deduct or set off the amount of any overpayment or any amount recoverable by **UoA** from the **Supplier** under this **Agreement**.

3.9 Subject to clause [1.3 of Schedule B], [clause 2.3 of Schedule C] and clause [9 of Schedule D], the price(s) for the **Products** and **Services** (as specified in Schedules B and C) will not be increased during the **Term**. The **Supplier** shall not apply any premium or seek to claim any additional costs or expenses in connection with or related to those prices for any special hours or days of work or for any other reason.

3.10 The **Supplier** acknowledges that **UoA** will not be required to pay any sums in respect of the **Services** and/or the **Products** other than the prices listed in this **Agreement**. In particular, the **Supplier** acknowledges that the **Supplier's** costs and expenses incurred in complying with the **Supplier's** obligations under each and every Schedule in this **Agreement** are included in the prices listed in this **Agreement**.

3.11 The price(s) for the **Products** and **Services** include all charges for import, duty, freight, packing, transportation, insurance and all other charges applied to the landing, delivery, unpacking, assembly, installation and commissioning of the **Products** and all associated works and all costs and expenses incurred by the **Supplier** to fully and effectively perform the **Services**, all of which will be arranged by and be the responsibility of the

Supplier. For the avoidance of doubt, all prices for the **Products** are Delivery Duty Paid (DDP).

4. PURCHASE ORDER(S)

4.1 **UoA** will confirm all orders for **Products** and **Services** by issuing **Purchase Orders** and the **Supplier** will promptly confirm receipt of all **Purchase Orders**. The **Purchase Order Number** must be quoted on all related delivery notes, packing lists, tax invoices and statements.

5. DELIVERY, INSTALLATION AND COMMISSIONING

5.1 The **Products** will be delivered to **UoA** on such days, at such times, to such places and in such quantities as required by **UoA**. **UoA's** requirements will be specified in its **Purchase Order** for the **Products**, or will otherwise be agreed in writing between the **Parties**. A delivery note, in duplicate (stating the **Purchase Order Number**, each **Product** item purchased, and the quantity delivered) will be furnished with each supply. If the quantities appear to be correct on preliminary inspection by **UoA**, the **Supplier** will ensure that **UoA** legibly signs both copies of the delivery note and the person who signs the delivery note legibly writes his or her name and position on such delivery note. One copy of the delivery note will be retained by **UoA** and the other will be returned to the **Supplier**.

5.2 The **Supplier** will liaise with the **UoA** to ensure that the site is in readiness in accordance with the Site Preparation Specification sheet shown in [Schedule I], before arriving to perform the installation.

5.3 The **Supplier** will package the **Products** in an appropriate manner having regard to the type of the **Products** and the transportation used.

5.4 Risk in the **Products** will pass to **UoA** upon signing of the delivery note furnished with the **Products**. Unencumbered title in the **Products** will also pass to **UoA** upon signing of the delivery note furnished with the **Products**. The receipt or signature of a delivery note will not be taken as acceptance of either the quality or quantity of the **Products** and acceptance by **UoA** of the **Products** will be subject to **UoA's** subsequent inspection and use of the **Products**.

5.5 The **Supplier** will install and commission the **Products** at **UoA's** premises in accordance with Schedule [H] (Product Delivery Schedule), unless otherwise required by **UoA**. Such installation and commissioning will be at the **Supplier's** expense and includes the cost of providing any labour, expertise, materials, structural alterations or modifications and any other costs associated with installing and commissioning the **Products** in accordance with **UoA's** requirements, all of which will be arranged by and be the responsibility of the **Supplier**. The **Supplier** will provide a detailed written Field Service Report (FSR) within five (5) **Business Days** of commissioning and for all subsequent service activities needing to be carried out at the commissioning stage. Within five (5) **Business Days** of receiving the FSR, **UoA** will confirm in writing to the **Supplier** whether it accepts the **Products** as installed (such acceptance not to be unreasonably withheld). If **UoA** does not accept the **Products** as installed, it must notify the **Supplier**, such notice to include the reasons for **UoA's** decision not to accept the **Products**. The **Supplier** will promptly remedy any such issues and then provide a further FSR to **UoA** for review and acceptance.

5.6 If any **Product** is not delivered in accordance with the delivery schedule set out in [Schedule H] or otherwise agreed in writing by both the **UoA** and the **Supplier**, and if the delay in delivery is not due to a **Force Majeure Event**, **UoA** may at its sole discretion, and without prejudice to any other remedies which it may have, apply a non-performance fee. The non-performance fee will be 1% of the amount payable for the **Product** which has not been delivered for each completed 7 calendar days of delay beyond the scheduled **Delivery Date**. This amount is limited to a maximum of 10% of the total amount payable for the relevant **Product** (excluding GST). The **UoA** will issue to the **Supplier** a written credit note request for the non-performance fee after the **Product** has been delivered. The non-performance fee will be credited to the **UoA** within 40 **Business Days** from when the credit note request is received by the **Supplier**. To avoid doubt, the **Supplier** acknowledges that **UoA** is a statutory entity which was constituted for the advancement of knowledge and the dissemination and maintenance thereof by teaching and research, and it does not carry on business using the **Products** for the primary purpose of making a

profit. Accordingly it cannot be compensated for loss of profit. However the **Supplier** recognises that there is a cost to **UoA** in not being able to use the **Products** because of delivery delays, and agrees that the non-performance fee is a genuine pre-estimate of such loss and is not out of proportion to **UoA**'s legitimate interests in performance.

6. DEFECTIVE AND UNDELIVERED PRODUCT AND DEFECTIVE SERVICES

6.1 If any **Product** fails to comply with the requirements of this **Agreement** or Part 3 of the Contract and Commercial Law Act 2017:

- (a) **UoA** agrees to notify the **Supplier** and give the **Supplier** the opportunity to cure any defects by promptly repairing or replacing the relevant **Product**;
- (b) If the **Product** is not repaired or replaced in a timely manner (as determined by **UoA**), **UoA** may reject the **Product** and return it to the **Supplier** at the **Supplier**'s risk and expense. In such circumstances, **UoA** is not required to pay the **Supplier** for the rejected **Product**, and the **Supplier** must refund any amount paid by **UoA** for the rejected **Product** in accordance with clause [6.3] of this Schedule E. Title in the rejected **Product** passes to the **Supplier** once the **Supplier** has refunded any amount paid by **UoA** for the rejected **Product**, or, where **UoA** has not paid for the rejected **Product**, when the **Product** is returned to the **Supplier**.

6.2 In the event that the **Supplier** is required by government or any other authorities to recall or modify any or all of the **Products**, the **Supplier** will notify **UoA** immediately. The **Supplier** will also similarly notify **UoA** if it becomes aware of any manufacturer supplied or independently sourced reputable reports of non-compliance that affect or have the potential to affect the safety of the **Products**. The **Supplier** will use its best endeavours to provide replacement **Products** to **UoA** (in the case of a **Product** recall) or to appropriately modify the relevant **Product** in accordance with manufacturer guidance (in the case of a modification requirement or other safety issue) as soon as possible. If **UoA** is not reasonably satisfied with the steps

taken by the **Supplier** under this clause [6.2], **UoA** reserves its right to reject and return the relevant **Product** and clause [6.1(b)] will apply.

6.3 In the event that any **Product** is rejected under clause [6.1] or if any **Product** is recalled as contemplated by clause [6.2], the **Supplier** shall immediately refund to **UoA** all money paid by **UoA** to the **Supplier** for such **Products** and such money will be recoverable from the **Supplier** as a debt due to **UoA**, unless the **Supplier** has provided replacement **Products** to the satisfaction of **UoA**.

6.4 Without limiting any other provisions of this **Agreement** (including clauses [10.1 and 10.2] of this [Schedule E]), if any **Services** fail to comply with the requirements of this **Agreement**, the **Supplier** will promptly rectify or re-perform such **Services**, and/or remedy any defects arising from any defective materials and/or workmanship associated with the **Services**, at no extra cost to **UoA**. If the **Supplier** fails to rectify or re-perform the relevant **Services** or remedy defects to **UoA**'s satisfaction, **UoA** is not required to pay the **Supplier** for the relevant **Services** and the **Supplier** shall immediately refund to **UoA** all money paid by **UoA** to the **Supplier** for such **Services** (and such money will be recoverable from the **Supplier** as a debt due to **UoA**).

7. PRODUCT WARRANTIES

7.1 The **Supplier** warrants that:

- (a) It has obtained all necessary rights and permits to sell the **Products** to **UoA** and the **Products** will be delivered free of any encumbrance, security interest, adverse interest or claim by any third party;
- (b) It is the sole owner or licensee of all the proprietary rights and **Intellectual Property** in the **Products** and it is not in breach of any **Intellectual Property** rights of any third party. Neither the supply of the **Products** or **UoA**'s use of the **Products** will infringe any third party's **Intellectual Property** rights;
- (c) The **Products** are of merchantable quality, free from faults and defects and are fit for **UoA**'s intended purpose;

- (d) All labels on the **Products** are clearly and indelibly inscribed in English;
- (e) The **Products** are new and unused;
- (f) The **Products** comply in all respects with all laws, regulations, standards and codes of practice in force in New Zealand including any regulations, standards and codes of practice issued under the Electricity Act 1992 and the Radiation Safety Act 2016 and any industry standards applicable to pressure vessels;
- (g) If the **Products** are mains operated equipment, they operate satisfactorily when supplied with either 230V (+/-10%), 50Hz, single-phase or 400V (+/-10%), 50Hz, 3-phase; and
- (h) The **Products** comply with the quality requirements, specifications and other requirements set out in this **Agreement**, including but not limited to the specifications set out in Schedule [G], and all descriptive or technical specifications, drawings, catalogues, illustrations, and particulars of weight and dimension contained in any relevant promotional or other material or documents of the Supplier.

7.2 If a warranty or maintenance obligation (including a warranty from a manufacturer) applies in relation to the **Products** or any items incorporated into or supplied with the **Products**, the **Supplier** must ensure that the benefit of the warranty or maintenance obligation is passed to **UoA**.

8. SERVICES WARRANTIES

8.1 The **Supplier** warrants that:

- (a) It will carry out its obligations under this **Agreement**, including providing the **Services**, with reasonable care, skill and diligence and will employ techniques of a high quality and standard and in accordance with best industry practices;
- (b) It will carry out its obligations under this **Agreement** with the objective of maintaining day to day operational efficiency of the **Products** and to

ensure compliance with statutory health and safety requirements;

- (c) It has obtained all necessary rights and permits to provide the **Services** to **UoA**;
- (d) It is the sole owner or licensee of all the proprietary rights and **Intellectual Property** in the **Services** and it is not in breach of any **Intellectual Property** rights of any third party. Neither the delivery of the **Services** nor **UoA**'s use of the **Services** will infringe any third party's **Intellectual Property** rights;
- (e) The **Staff** involved in providing the **Services** are competent, appropriately qualified and are, where relevant, registered with or licensed by the appropriate statutory or professional body;
- (f) The **Services** comply with and will be carried out in compliance in all respects, with the laws, regulations, standards and codes of practice in force in New Zealand; and
- (g) The **Services** comply with and will be carried out in compliance with the quality and other requirements set out in this **Agreement**.

9. SUPPLIER WARRANTIES

9.1 The **Supplier** warrants that it:

- (a) Is duly incorporated and the person signing this **Agreement** on behalf of the **Supplier** is duly authorised to do so and bind the **Supplier** to the terms of this **Agreement**;
- (b) Is not in any litigation, employment dispute or any other dispute or issue which could affect its performance under this **Agreement**; and
- (c) Will make reasonable endeavours to maintain a good record of industrial relations and to preserve a constructive and co-operative working relationship with **Staff** and their bargaining agents throughout the **Term**.

10. LIABILITY

10.1 The **Supplier** indemnifies **UoA** against any **Claims** suffered by **UoA** that arise from or are in respect of the **Products** and/or the **Services** and are attributable in whole or in part to any act or omission of the **Supplier** or its **Staff** including:

- (a) Any failure to comply with the terms contained in or implied by this **Agreement**;
- (b) Any breach of any of the warranties contained in or implied by this **Agreement**; and/or
- (c) Any failure to comply with any applicable laws or regulations.

10.2 Without limiting clauses [10.1] of this [Schedule E], the **Supplier** indemnifies **UoA** from all **Claims** incurred or suffered by **UoA** in respect of any breach of the **HSWA**, and conviction or proceedings instigated against **UoA** pursuant to the **HSWA**, directly or indirectly related to a breach by the **Supplier** of any of the **Supplier's** obligations under this **Agreement**. This indemnity extends to any court costs, reparation order, prosecution witness costs and expenses and prosecution solicitors' costs imposed by the court on **UoA** upon conviction for any offence under **HSWA** but does not include any fine or infringement fee.

11. INSURANCE

11.1 The **Supplier** will effect and maintain public liability, product liability and professional indemnity insurance for the duration of the **Term** and for a period of six (6) years thereafter on the following minimum terms:

- (a) The sum insured shall not be less than [NZ\$3,000,000] per **Claim**.
- (b) The **Supplier's** public liability cover must extend to personal injury to or death of any person resulting from any act or omission on the part of the **Supplier** or any of its **Staff**.

11.2 If required by **UoA**, the **Supplier** shall send a copy of the relevant certificates of currency and a copy of the policy renewals each year to **UoA's** Contracts Manager.

12. RECORDS AND AUDIT

12.1 The **Supplier** will keep full, accurate and up to date records and information relating to its supply of the **Products** and **Services** under this **Agreement** (including supporting documentation for all amounts payable by **UoA**). The **Supplier** will at its own cost retain such records for at least [two (2) years] from the expiry or termination of this **Agreement**, and for a longer period if required by law or applicable industry standards. The **Supplier** will promptly provide such records to **UoA**, at **UoA's** request.

12.2 **UoA** may from time to time audit the **Supplier's** compliance with this **Agreement**. The terms and manner of any audit shall be first agreed between the **Parties**. The **Parties** agree to act reasonably for this purpose. For this purpose the **Parties** shall discuss the provision of any relevant documentation, inspection of the **Supplier's** premises and other property, and co-operation with any person or persons authorised by **UoA** to carry out any audit. The **Supplier** agrees to promptly answer any queries by **UoA** with respect to any aspect of the **Supplier's** compliance with this **Agreement**.

12.3 If any audit reveals an area of non-compliance with this **Agreement**, **UoA** will notify the **Supplier**, who will have 10 **Business Days** to remedy the non-compliance (unless [clause 13.1(b)] is applicable and is relied on by **UoA**).

13. TERMINATION

13.1 In addition to its rights of cancellation arising under the Contract and Commercial Law Act 2017, **UoA** will have the right to terminate this **Agreement** immediately by notice in writing to the **Supplier** in the event of:

- (a) The **Supplier** being or stating that it is insolvent or unable to pay its debts as they fall due, entering into any composition or arrangement with its creditors, being wound up or doing any act which would render it liable to be wound up, or having a liquidator, provisional liquidator, receiver or official manager appointed over all or any of its property; or

- (b) The **Supplier** committing any breach of the terms of this **Agreement** where the breach is material and not capable of being remedied; or
- (c) The **Supplier** committing any breach of the terms of this **Agreement** where the breach is capable of being remedied and the **Supplier** fails to remedy the breach within 10 **Business Days** after notice has been given to the **Supplier** requiring such remedy; or
- (d) The **Supplier** indicating to **UoA**, by words or conduct, that it does not intend to perform some or all of its future obligations under the **Agreement**; or
- (e) The **Supplier** failing to remedy any area of non-compliance in accordance with clause [12.2] above; or
- (f) Termination being necessitated by a decision of a regulatory authority which is binding on **UoA**.
- 13.2 The **Supplier** will have the right to terminate this **Agreement** immediately by notice in writing to **UoA** in the event of:
- (a) **UoA** being or stating that it is insolvent or unable to pay its debts as they fall due, entering into any composition or arrangement with its creditors, being wound up or doing any act which would render it liable to be wound up, or having a liquidator, provisional liquidator, receiver or official manager appointed over all or any of its property; or
- (b) **UoA** committing any breach of the terms of this **Agreement** where the breach is material and not capable of being remedied; or
- (c) **UoA** committing any breach of the terms of this **Agreement** where the breach is capable of being remedied and **UoA** fails to remedy the breach within 10 **Business Days** after notice has been given to **UoA** requiring such remedy.
- 13.3 On termination or expiry of this **Agreement**:
- (a) Any order that has been placed by **UoA** but is unfulfilled at the date of termination or expiry will be fulfilled by the **Supplier**, unless **UoA** notifies the **Supplier in writing** that such unfulfilled orders are cancelled at the time of termination or expiry;
- (b) If requested by **UoA**, the **Supplier** will provide all reasonable assistance to support any replacement supplier to supply products and/or services which are the same as or similar to the **Products** and/or **Services**;
- (c) Clauses [4, 5 and 6] of Schedule B, and clauses [3.7, 6, 7, 8, 9, 10, 11, 12, 15 and 19] of Schedule E will remain in full force and effect; and
- (d) Subject to paragraph (a) of this clause [13.3], termination or expiry will be without prejudice to any rights and obligations of either **Party** that have accrued in the period prior to termination or expiry.
- 13.4 The **Supplier** agrees that it shall have no claim against **UoA** for any indirect or consequential losses that arise in relation to termination of this **Agreement**. To avoid doubt, indirect or consequential losses include but are not limited to loss of anticipated profits and/or loss of opportunity.
- 14. FORCE MAJEURE**
- 14.1 A **Party** (for the purposes of this clause [14], the "**Affected Party**") will not be liable to the other for any delays or non-performance of contractual obligations under this **Agreement** caused by a **Force Majeure Event**, provided the Affected Party complies with the requirements of this clause [14]. The **Parties** acknowledge that both of them may be affected by the same **Force Majeure Event**, in which case both **Parties** will constitute an "Affected Party" for the purposes of this clause [14].
- 14.2 As soon as reasonably practicable, the Affected Party must give written notice to the other **Party** specifying the nature of the **Force Majeure Event** and the obligations that the Affected Party is precluded from performing (including, where relevant, detail regarding the extent to which such obligations are affected). At the request of the other **Party**, the Affected Party must provide:

- (a) detailed information in writing evidencing how the **Force Majeure Event** has precluded the Affected Party's performance; and
 - (b) where the Affected Party had, or should reasonably have had, knowledge of the **Force Majeure Event** prior to the **Force Majeure Event** precluding the Affected Party's performance, the steps that the Affected Party took to mitigate the effect of such **Force Majeure Event** on its performance of its obligations under this **Agreement**.
- 14.3 The Affected Party's obligations will be suspended to the extent that such performance is precluded by, and for the duration of, the relevant **Force Majeure Event**, provided that the Affected Party:
- (a) takes reasonable steps to mitigate the effect of the **Force Majeure Event**;
 - (b) keeps the other **Party** updated as to the extent to which its performance of this **Agreement** is affected by the **Force Majeure Event**; and
 - (c) take all reasonably practicable steps to overcome the **Force Majeure Event** as quickly as possible.
- 14.4 Where either **Party** or both **Parties** are affected by a **Force Majeure Event**, the **Parties** will discuss whether it is possible to vary the obligations which are affected by the **Force Majeure Event**, on a temporary basis, such that both parties can continue to perform this **Agreement**. Any such variation must:
- (a) be agreed between the **Parties** and recorded in writing;
 - (b) specify the period for which the variation applies (for the purposes of this clause [14], the "**Variation Period**"); and
 - (c) expressly specify whether clause [14.5] is suspended during the Variation Period, and/or the extent to which clause [14.5] shall apply during or after the Variation Period.
- 14.5 Subject to any agreement to the contrary pursuant to clause [14.4], if a **Force Majeure Event** occurs which

causes delays in delivery of any **Products** and/or **Services** and such delays continue or are likely to continue for a period greater than 15 Business Days past the specified **Delivery Date** or date on which the **Products** and/or **Services** are due to be provided, **UoA** may by notice to the **Supplier** cancel its order for any undelivered **Product(s)** and/or **Services** affected by the **Force Majeure** event. In such event **UoA** shall have the option to secure alternative **Products** and/or **Services** elsewhere and, where relevant to the delivery of **Services**, may access the Escrow Materials. Where services the same as or similar to the **Services** are provided by **UoA** or a third party pursuant to this clause, such services shall not prejudice any warranties provided by the **Supplier**.

14.6 Subject to any agreement reached between the **Parties** pursuant to clause [14.4], if any **Force Majeure Event** continues to prevent one **Party** from performing its obligations under this **Agreement** (whether partially or wholly) for a period of or exceeding 60 consecutive **Business Days**, the non-affected **Party** shall have the right to terminate this **Agreement** on 10 **Business Days'** written notice. If both **Parties'** performance of this **Agreement** is affected by the same **Force Majeure Event** for a period of or exceeding 60 consecutive **Business Days**, either **Party** may terminate this **Agreement** immediately by written notice.

14.7 Nothing in this clause [14] limits the **Supplier's** obligations to maintain, and implement as appropriate, a business continuity plan in accordance with clause [2.6].

15. UOA MAY PERFORM

15.1 In the event of the **Supplier** failing to perform any part of the **Services** or any express or implied term of this **Agreement**, without prejudice to any other rights and remedies **UoA** may have, **UoA** may immediately cancel all or part of its order for the **Services** on giving notice to the **Supplier** and **UoA** may (but is not obliged to) perform or arrange the performance by a third party of that obligation of the **Supplier**. Where such obligations are performed by **UoA** or a third party pursuant to this clause, such performance shall not prejudice any warranties provided by the **Supplier**, and the **Supplier** indemnifies **UoA** for any costs incurred by **UoA** (to the extent such

costs are greater than the amount that would have been payable by **UoA** to the **Supplier** for such **Services**).

16. CONDUCT OF SUPPLIER

16.1 The **Supplier** will ensure that when any of its **Staff** enter onto **UoA** sites or premises, they:

- (a) Behave and speak in a manner appropriate to the university environment;
- (b) Comply with **UoA's** Supplier Code of Conduct as set out in Schedule F (as updated from time to time by notice to the **Supplier**), and any reasonable orders or instructions issued by **UoA**;
- (c) Are aware of and will comply with all fire and emergency management plans and other security and safety measures from time to time in force at **UoA's** premises; and
- (d) Comply with all COVID-19 health protection policies applicable to the **UoA** premises and entry onto the **UoA** campus (as may be updated by **UoA** from time to time), including any requirements relating to the vaccination status of persons visiting **UoA** premises. Such policies will be provided to the **Supplier** from time to time during the **Term**. The **Supplier** must provide a copy of such policies and requirements to all **Staff** who may attend **UoA** premises in connection with this **Agreement**, prior to such attendance. In addition to compliance with the **UoA** COVID-19 health protection policies, all **Staff** must comply with any other applicable COVID-19 health protection requirements imposed by the New Zealand Government as a matter of law.

17. AMENDMENTS

17.1 The terms of this **Agreement** may be amended by agreement in writing between the **Parties** using the Change Order Notice Form shown in [Appendix 1] (a "**Change Order**").

17.2 If **UoA** is required to vary the terms of this **Agreement** to give effect to its obligations under any funding agreement with any government department or Crown or statutory entity (including but not limited to the Tertiary Education

Commission), or any directive issued to it, then **UoA** will give the **Supplier** notice of such variation by issuing a Change Order and of the date on which such variation is to take effect (for the purposes of this clause, the "**Effective Date**").

17.3 If any Change Order issued under clause [17.2] is, in the **Supplier's** opinion, adverse to its interests and **UoA** cannot immediately agree on an acceptable means of resolving that adversity, the **Supplier** may, within 25 **Business Days** of the date of the Variation Notice, give **UoA** notice of termination of this **Agreement** (Termination Notice). Such termination will take effect on the later of:

- (a) The date 10 **Business Days** from the date of the Termination Notice; and
- (b) The Effective Date.

If a Termination Notice is given, then the terms of the Change Order will have no effect.

17.4 If the **Supplier** fails to provide **UoA** with a Termination Notice within 25 **Business Days** of the date of the Change Order, then the **Supplier** will be deemed to be bound by the contents of the Change Order from the Effective Date, and, unless otherwise specified in the Change Order, the terms of this **Agreement** will be deemed to have been amended in accordance with the Change Order.

18. RELATIONSHIP MANAGEMENT AND DISPUTE RESOLUTION

18.1 Each **Party** will appoint a representative to act as a key contact for the purposes of this Agreement. At the date of this Agreement, the representatives are specified at Schedule A.

18.2 The **Parties** shall discuss in good faith any dispute or difference between them arising in connection with this **Agreement** and shall give consideration to adopting alternative dispute resolution processes, such as mediation, if the dispute or difference is not resolved by discussion.

18.3 Nothing in this clause [18] shall restrict the right of either **Party** to initiate litigation before a court of competent

jurisdiction to resolve a dispute, enforce a right or obligation or seek damages.

- 18.4 Both **Parties** will continue to comply with their obligations under this **Agreement** until the dispute is resolved, but payments may be withheld to the extent that they are disputed.

19. MISCELLANEOUS PROVISIONS

- 19.1 **Notices:** Any notice under this **Agreement** must be in writing (and may be personally delivered, or sent by post or email) to the addresses set out in Schedule A, or such other address as is advised by one **Party** to the other in writing from time to time during the **Term**. For the purposes of this **Agreement**, a notice will only be effective: (a) in the case of personal delivery, when delivered; (b) if sent by post, five **Business Days** after it was sent; or (c) if sent by email, when it has been received, as evidenced by receipt by the sender of a read receipt and provided that no automatic out of office response is received by the sender advising that the recipient is away. Any notice received or deemed received after 5.00pm on a **Business Day** or on a day which is not a **Business Day** will be deemed not to have been received until 9.00am on the next **Business Day**.

- 19.2 **Entire Agreement:** This **Agreement** constitutes the entire **Agreement** between the **Parties** and supersedes and nullifies any negotiations, agreements or promises in respect thereof which have been made prior to the execution of this **Agreement**, and in particular anything in the **Supplier's** own invoices or the **Parties'** correspondence.

- 19.3 **Exclusion of United Nations Convention:** The **Parties** acknowledge and agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods will not apply to the supply of **Products** under this **Agreement**.

- 19.4 **Governing Law:** This **Agreement** will be governed by the laws of New Zealand and the **Parties** submit to the non-exclusive jurisdiction of the courts of New Zealand.

- 19.5 **Agreement Paramount:** Notwithstanding any terms of supply of the **Supplier** or recorded on the **Supplier's**

quotations, invoices or in credit arrangements entered into, this **Agreement** will be paramount and will apply to the exclusion of any of the **Supplier's** documentation, even if at some later date **UoA** signs or otherwise purports to accept, the terms of that documentation other than in the manner outlined in this **Agreement**. To the extent there is any conflict or inconsistency within this **Agreement**, the precedence clause at the outset of this **Agreement** will apply.

- 19.6 **Assignment:** Neither **Party** will, without the prior written consent of the other **Party** (such consent not to be unreasonably withheld), assign or sub-contract all or any part of its rights and obligations under this **Agreement**. Should the **Supplier** subcontract any of its obligations under this **Agreement** (whether or not with **UoA's** consent), the **Supplier:** (a) must ensure that its contract with the relevant subcontractor appropriately reflects the requirements of this **Agreement**; and (b) will not be relieved of its responsibility for the performance of its obligations in accordance with the terms and conditions of this **Agreement**. The **Supplier** will be liable for the acts and omissions of any subcontractor as if they were the acts and omissions of the **Supplier**. For the purposes of this clause, a change of control of the Supplier (including through a change in the direct or indirect beneficial ownership of more than 50% of the voting shares of the Supplier) shall be deemed an assignment by the Supplier.

- 19.7 **Confidentiality and Advertising:** Neither **Party** will disclose to any person any information concerning this **Agreement** and any subject matter to which it relates (except as may be required by law, including (in the case of **UoA**) where **UoA** considers disclosure is required under the Official Information Act 1982) without the prior written approval of the other **Party**. Neither **Party** will use the other **Party's** name in advertising its business or activities without the prior written consent of the other **Party** and will comply with all reasonable terms and conditions upon which such permission may be given. On termination or expiry of this **Agreement** the **Supplier** must remove any reference to **UoA** in any of its marketing materials, unless otherwise agreed with **UoA**.

- 19.8 **Withholding Tax:** In respect of all payments **UoA** is liable to make to the **Supplier** under this **Agreement**, **UoA** will

be entitled to deduct any withholding tax required to be deducted from those payments and forward that withholding tax to the New Zealand Inland Revenue Department in the manner required by New Zealand Law. The net amounts paid by **UoA** to the **Supplier** shall be a complete and final discharge by **UoA** of its obligation to make the relevant payments.

- 19.9 **No Waiver:** No failure or delay on the part of either **Party** in exercising any power or right under this **Agreement** will operate as a waiver, nor will any single or partial exercise of such right or power preclude any other or future exercise of the same, or any other right or power contained in this **Agreement**.
- 19.10 **Severability:** Should any part or provision of this **Agreement** be held unenforceable or in conflict with the applicable laws or regulations, the invalid or unenforceable part or provision will be replaced with a provision which accomplishes, to such extent as possible, the original business and purpose of such part or provision in a valid and enforceable manner and the remainder of this **Agreement** will remain binding on the **Parties**.
- 19.11 **Status of the Parties:** The **Supplier** acknowledges that the **Supplier** is an independent contractor to **UoA** and nothing in this **Agreement** may be construed to make either **Party** a partner, servant, agent, employer or employee of the other. Neither **Party** has the authority to represent or bind the other in any way for any purpose.
- 19.12 **Negotiated agreement:** The **Parties** each acknowledge that they have had an effective opportunity to negotiate and agree the terms of this **Agreement**, and that the terms are specific to the **Products** and **Services** and their risk profile and value.
- 19.13 **Costs:** Each of the **Parties** will bear its own costs of negotiating, preparing and executing this **Agreement**.
- 19.14 **Counterparts:** This **Agreement** may be executed in counterparts, including facsimile or scanned PDF counterparts, which, when executed, will constitute and be read as one document. No counterpart will be effective until each **Party** has executed at least one counterpart. Each **Party** consents to the use of electronic signatures as a means of legally effective execution, and consents to receiving a counterpart of this **Agreement** in electronic or digital form.
- 19.15 **Further Assurances:** Each **Party** agrees to execute any further documents and do any further acts within its power as may be reasonably necessary from time to time to give effect to the terms and intentions of this **Agreement**.
- 19.16 **Parking:** Notwithstanding anything else in this **Agreement**, **UoA** does not guarantee the availability of parking at any of its sites. Should the **Supplier** or its **Staff** park a vehicle at a **UoA** site, then the **Supplier** and its **Staff** shall pay for parking at the then current rates charged by **UoA** at the time of parking, and the **Supplier** and its **Staff** shall comply with all of **UoA's** parking policies. In the event that **UoA** becomes aware of any vehicle parked in breach of this clause it may forthwith and without notice have the vehicle towed away and the cost of removal shall be paid by the **Supplier**.
- 19.17 **Time of Essence:** Time will be of the essence in relation to the **Supplier's** performance of its obligations under this **Agreement**.
- 19.18 **University of Auckland Policies on Gifts and Hospitality and Sponsorship:** The **Supplier** acknowledges the importance of transparency and integrity to **UoA**. Any Gifts or Hospitality or Sponsorships provided to the **UoA** by the **Supplier** must be in strict accordance with the **UoA** gifts, hospitality and sponsorship policies shown on the **UoA** internet site www.auckland.ac.nz.
- 19.19 **Ethical Procurement:** The **Supplier** is to comply with the [Ethical Procurement Statement](#) set out in the **UoA** internet site www.auckland.ac.nz.
- 19.20 **End of Useful Life:** On written request by **UoA**, the **Supplier** will decommission, remove and (if not retained by the **Supplier**) dispose of the **Product(s)** using an appropriate, lawful, and socially and environmentally responsible method, and in accordance with **UoA** Health and Safety guidelines. **Products** that contain data must be wiped (so that no data is held within the **Products** or is otherwise recoverable from the **Products**), and any reference to **UoA** on the **Product(s)** must be removed, before they are removed from the **UoA** site. On request

by **UoA**, the **Supplier** will provide UoA with the identity of any third-party recipient(s) of the **Product(s)**, if such **Product(s)** are not retained or destroyed by the **Supplier**. Ownership, risk and value in the **Product(s)** will transfer to the **Supplier** once **UoA** has provided written confirmation

that it is satisfied the **Product** has left the **UoA** site and **UoA** is satisfied with the disposal plan. The **Supplier** may charge **UoA** for any time required to decommission the **Product(s)**, but will not charge **UoA** for removing, decontaminating and disposing of the **Product(s)**.

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SCHEDULE F – Supplier Code of Conduct

1. INTRODUCTION

- 1.1 This Supplier Code of Conduct documents the standard of behaviour for all **Suppliers** and their **Staff** who attend **UoA's** premises.
- 1.2 **Staff** means the **Supplier**, its employees, agents, contractors and representatives.
- 1.3 The obligations set out in this Supplier Code of Conduct do not in any way limit other conduct requirements that apply to **Suppliers** and their **Staff** under **UoA's** policies and procedures (as notified to the Supplier from time to time), including the conduct requirements that apply to all members of the **UoA** community and which are available at: [Code of Conduct - The University of Auckland](#).

2. RESPONSIBILITIES

- 2.1 The **Supplier** is responsible for:
- (a) Ensuring this Supplier Code of Conduct is effectively communicated to all its **Staff** who are to attend **UoA** premises;
 - (b) Monitoring the behaviour of its **Staff** attending **UoA** premises and ensuring that behaviour is at all times in accordance with this Supplier Code of Conduct; and
 - (c) Providing any special clothing and protective devices required by the **Staff** engaged by the **Supplier** to comply with **UoA's** rules and regulations.
- 2.2 **UoA** is responsible for:
- (a) Communicating to all **Staff** any **UoA** rules and regulations applying to the facilities and premises where work is being performed;
 - (b) Promptly reporting to the **Supplier** any observed breaches of the Supplier Code of Conduct; and
 - (c) Ensuring reasonable protection is provided for all **Staff** engaged by the **Supplier** working in such conditions that puts their health or safety at risk.

3. CONFIDENTIALITY

- 3.1 There is an obligation on all **Staff** working on **UoA** premises not to divulge any confidential **UoA** business that may be seen or heard.
- 3.2 A breach of [clause 3.1] above will result in the **Staff** member(s) being refused further access to **UoA** premises and may be grounds for Termination of this **Agreement**.

4. PERSONAL APPEARANCE AND CONDUCT

- 4.1 All **Staff** will wear clothing appropriate to premises in which they are required to work.
- 4.2 **UoA** will provide sterile protective clothing and the **Supplier** will provide, at the **Supplier's** expense, all other protective clothing as deemed necessary by **UoA's** representative or, required by statute or regulation and in such conditions that put **Staff** members' health or safety at risk. The **Supplier** will ensure that its **Staff** wear such clothing where appropriate.
- 4.3 When working in areas where food is handled or stored all **Staff** must ensure that they adopt standards of cleanliness appropriate to the environment.
- 4.4 No **Staff** member who is aware that he/she is suffering from infectious or contagious medical conditions including, but not limited to, influenza will work in **UoA** properties.
- 4.5 All **Staff** will at all times conduct themselves in a manner that is appropriate to the environment in which they are working and which is mindful of the sensitivities of **UoA** employees and members of the public (e.g. **Staff** will not exhibit or practice racist, sexist or any other behaviour that might reasonably be considered offensive).
- 4.6 The removal by a **Staff** member of any property that is belonging to **UoA** or belonging to any **UoA** employee, sub-contractor, agent or student or any member of the public will result in that **Staff** member being refused further access to **UoA** premises. The **Supplier** may also take further action as it deems necessary and the **Staff** member may also face prosecution.

4.7 No **Staff** working on site at **UoA** will receive for any reason, directly or indirectly, a fee, reward, or gratuity from any student. Any **Staff** infringing this will be refused further access to **UoA** premises.

4.8 Whenever there is due cause to doubt the propriety of any proposed action or behaviour, the **Staff** member should seek prior approval from an appropriate **UoA Staff** member before proceeding.

5. PERFORMANCE OF DUTIES

5.1 All **Staff** will perform their duties in a manner that will cause minimum disruption to **UoA Staff** and operations.

5.2 While in the vicinity of **UoA** properties, **Staff** will not create a noise nuisance by the use of loud or unnecessary speech, radios, or any other source of noise not strictly required for the performance of the **Supplier's** responsibilities under this **Agreement**. **UoA** retains the right to take any initiative or action in ensuring that students are not unduly distressed by "work noise" (including, but not limited to, requesting the **Staff** member(s) to cease work during any lesson times).

5.3 All **Staff** will at all times be mindful of the safety of **UoA Staff**, students and the public.

5.4 All **Staff** will abide by all advertised **UoA** rules and regulations applying to the site and premises on which duties are being performed including, but not limited to, speed restrictions, parking restrictions, restrictions on access to defined areas and the use of security passes.

5.5 On completion of every piece of work performed, all **Staff** will ensure that the premises are left in a tidy and clean state.

5.6 While on **UoA** premises, **Staff** may be required to wear (at the **Supplier's** expense), in a clearly visible fashion, an identification badge which includes a photograph of the **Staff** member. Such a requirement will be communicated to the **Supplier** in writing by **UoA's** representative.

6. COMMUNICATIONS WITH UOA STAFF

6.1 All **Staff** will be courteous in all dealings with **UoA Staff**.

6.2 All **Staff** will obey all reasonable instructions given by **UoA Staff** who possess the apparent authority to give such instructions.

6.3 All **Staff** will keep appropriate **UoA Staff** informed of the progress of work if deemed necessary by **UoA's** representative.

7. BREACHES OF SUPPLIER CODE OF CONDUCT

7.1 Failure of any **Staff** member to observe/comply with any of the provisions contained herein may result in the appropriate disciplinary action being taken against the **Supplier**.

7.2 In addition to any action which may be taken against the **Supplier** in relation to a breach of this Supplier Code of Conduct, **UoA** retains the right to refuse access to all **UoA** premises for any **Staff** member who breaches any of the provisions contained herein.

8. EMERGENCY MANAGEMENT

8.1 In the event of an emergency on **UoA** premises, the **Staff** member will immediately report the emergency by telephone or in person to a **UoA Staff** member and will then follow the instructions of the **UoA Staff**.

SCHEDULE G – Product Specifications

The **Products** will comply with the following specifications:

[insert relevant brochures and tender spec sheet]

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SCHEDULE H – Product Delivery Schedule

On receipt of a **UoA** Purchase Order by the **Supplier** the lead time for the **Products** will comply with the following schedule:

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SCHEDULE I – Site Preparation Specifications

(Insert copy of vendors Site Preparations Specification Sheet)

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SCHEDULE J – Preventive Maintenance Task Sheets

(Insert copy of vendors Preventive Maintenance Task Sheet)

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SCHEDULE K – Scheduled Maintenance Forecast

For the **Term** of the **Agreement**, in accordance with the original equipment manufacturer’s recommendation, preventative maintenance **Services** will be performed annually by the **Supplier**. On the request of the **Supplier** the **UoA** will confirm time and dates for the maintenance visit and raise a **Purchase Order** in advance of such visit if it is chargeable. The following table records the scheduled maintenance dates.

Maintenance dates will be added to this Schedule after the **Product** has been successfully installed at the **UoA** site. The maintenance dates may be amended by mutual **Agreement** between the **UoA** and the **Supplier**.

Preventative Maintenance Schedule	
Year	Maintenance date
2022	
2023	
2024	
2025	
2026	

SCHEDULE L – Escrow arrangements

1. ESCROW

1.1 The Supplier agrees to:

- (a) enter into an Escrow Agreement with UoA and the Escrow Agent, in relation to the Escrow Materials; and
- (b) ensure that the Escrow Agreement is in a form that UoA has approved, and provides, among other things, that:
 - (i) the Supplier will deposit the Escrow Materials with the Escrow Agent within five (5) Business Days of a Product being installed and commissioned;
 - (ii) [UoA] will be responsible for the Escrow Agent's fees;
 - (iii) the Supplier will deposit a copy of any update, version release, modification or enhancement to the Escrow Materials (including any update or new version of any software) to the Escrow Agent within [14] days of any such update, version release, modification or enhancement;
 - (iv) where any Escrow Materials are owned or licensed by a third party, the Supplier must procure that the third party deposits the Escrow Materials with the Escrow Agent and agrees to the release of the Escrow Materials in the event of a Release Event in accordance with this clause and the terms of the Escrow Agreement;
 - (v) at any time, UoA may procure a competent person approved by the Supplier (such approval not to be unreasonably withheld or delayed) to access the Escrow Materials and assess whether the Supplier is in compliance with its obligations under the Escrow Agreement and the Escrow Materials are complete and up to date; and
 - (vi) the Escrow Agent will be required to release the Escrow Materials within [3] days of receipt of UoA's written notice advising the Escrow Agent that a Release Event has occurred, from which time UoA will have the rights to use (and/or engage a third party to use), [for the duration of the relevant Force Majeure Event only,] the Escrow Materials for the purposes of carrying out necessary maintenance and/or repairs to the Product

1.2 In this Schedule L, terms defined elsewhere in the Agreement have the meanings given to them and the following terms have the following meanings:

Escrow Agent means [insert details];

Escrow Agreement means a tripartite agreement between UoA, the Supplier and the Escrow Agent, on terms approved by UoA and consistent with the terms described in paragraph 1.1(b) of this Schedule L;


Escrow Materials means:

- (a) [all software, source code, algorithms, configurations, user manuals, documentation and all other information in or accessible in electronic, human-readable form required to enable UoA to use, install, possess, operate, support and maintain, reproduce and modify, enhance and adapt the [Software] (and to allow third parties to do the same)];
- (b) [all technical documentation, user manuals, repair manuals and instructions relating to the Product, required to enable UoA to carry out necessary maintenance and repairs to the Product (and to allow third parties to do the same)];
- (c) [spare and replacement parts and componentry for the Product, further defined as follows: [●]]; and

Release Event means a failure or inability of the Supplier to undertake scheduled or requested maintenance, support or repair services in accordance with the terms of this Agreement or the UoA's reasonably requested timeframes in respect of the [Product] due to a Force Majeure Event, in circumstances where the failure or inability is inhibiting, or would be likely to inhibit (if allowed to continue), UoA's ability to use and have the benefit of the Product as intended.

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Appendix 1 – Change Order Notice Form Template

<i>Change Order Notice</i>	
	
1/ Change No:	2/ Contract Ref:
3/ Contract Title:	
4/ Supplier:	
5/ Date of Contract:	
6/ Title of Change:	
7/ Type of Change(s): <i>(e.g. service; price; Terms...)</i>	
8/ Reason for Change:	
9/ Description of Change:	
10/ Change effect section / clause:	
11/ Details of change impact: <i>(e.g. financial, delivery, functionality, training...)</i>	
12/ Section / Clause Changes: <i>(amendments in bold)</i>	
13/ Approval of proposed Change	
<p>In accordance with clause [17 in Schedule E] of the Agreement, the University and the Supplier confirm that they have each read the information contained in this Change Order and approve the proposed change as set out and agree that the Agreement shall be treated as having been amended accordingly:</p> <p>Effective date of change:</p>	
<p><u>For and on behalf of University of Auckland</u></p> <p>Signed: (Authorised Signatory)</p> <p>Name:</p> <p>Title:</p> <p>Date:</p>	<p><u>For and on behalf of Supplier</u></p> <p>Signed: (Authorised Signatory)</p> <p>Name:</p> <p>Title:</p> <p>Date:</p>