**THIS AGREEMENT** is made this day of 20

**BETWEEN** **MASSEY UNIVERSITY** (“Massey”)

**AND** **Legal description of Contractor** (“Contractor”)

**BACKGROUND**

A. In furtherance of the Tertiary Education Strategy, the parties have decided to collaborate to enhance educational outcomes for learners enrolled at Massey (“Students”).

B. Massey wishes to engage the Contractor to provide certain services described in Schedule A (“the Services”).

C. The Contractor agreed to perform the Services on the terms and conditions set out below.

D. The parties record their agreement.

**IT IS AGREED**

1 **Contractor's Appointment and Obligations**

1.1 The Contractor shall perform the services set out in Schedule A during the term of this Agreement.

1.2 The Contractor shall:

(a) perform the Services to the highest industry standards, and in accordance with Massey’s quality assurance processes, so as to promote and further the interests of Massey and its Students;

(b) be (and remain) a New Zealand Qualifications Authority registered Private Training Establishment (“PTE”) or an Institute of Technology or Polytechnic (“ITP”);

(c) hold all accreditations and approvals necessary for the provision of the Services or exemptions under Section 232B of the Education Act 1989 (“Act”);

(d) not obtain or seek to obtain any payment from any Student enrolled with Massey, nor claim any government subsidy (including student achievement component) or other grant or payment in respect of the Students except as directed in writing by Massey from time to time;

(e) not report on verification of study to Study Link for any Student enrolled with Massey unless directed by Massey in writing to do so;

(f) not delegate or have any other person perform its obligations under this Agreement (without Massey’s prior written permission for each employee), or appoint any subcontractor;

(g) except to the extent stated in Schedule B, provide, at itsown cost, all facilities and/or resources necessary to enable it to perform itsobligations under this Agreement;

(h) comply with all relevant laws applicable to the conduct of the Services, including (without limitation) compliance with Massey’s obligations under the Act and the Contractor’s obligations under the Act and with all policies and procedures established by Massey relevant to the Services;

(i) comply with Massey’s directions and instructions in relation to the performance of the Services (including timetable, location, record-keeping, quality assurance);

(j) not use Massey’s name, logo or intellectual property without its prior written consent and then in strict accordance with that consent;

(k) supply promptly to Massey any information requested by Massey, from time to time, that in any way pertains to delivery of the Services, including such financial information concerning the Contractor as Massey may request;

(l) comply with all audits by Massey and/or the Tertiary Education Commission (“TEC”);

(m) comply with TEC Funding Information and the Funding Determination in respect of subcontractors as amended from time to time;

(n) produce in writing to Massey monthly progress reports on Students;

(o) advise Massey as soon as a Student stops participating;

(p) use its best endeavours in accordance with all the Act and TEC requirements to encourage course participation and course completion by the Students;

(q) not deal with any Student complaint in respect of the Services but refer the Student concerned to Massey;

(r) not deliver the Services to International Students without Massey’s prior written permission. Permission shall only be granted where the Contractor is a signatory to the Code of Practice, has all accreditations and course approvals in respect of the Services or NZQA exemptions.

1.3The Contractor acknowledges that clause 1.2 is an essential term of this Agreement.

1.4The Contractor’s staff delivering the Services shall be honorary staff of Massey solely and exclusively for the purposes of the Act (including subordinate legislation and any legislation passed in amendment or substitution) and for no other purpose.

2 **Agreement Conditional**

2.1Notwithstanding any provision to the contrary, this Agreement is conditional upon Massey obtaining, upon terms and conditions acceptable to it (in its absolute discretion), all necessary internal (Council, Academic Board) and external approvals pertinent to the Contractor’s supply of the Services within a timeframe acceptable to Massey. If such consents are not given Massey may, by notice in writing, terminate this Agreement.

3 **Payment**

3.1 The Contractor will invoice Massey as specified in Schedule C. Subject to clauses 1.2 and 3.2 Massey will pay all amounts payable under this Agreement to the Contractor within twenty (20) working days of receipt of the invoice from the Contractor. Massey will reimburse the Contractor for expenses incurred by the Contractor in performing the Services in accordance with the provisions of Schedule C, provided that Massey has agreed to the scope or details of the expense in writing prior to the Contractor incurring such expense, and the Contractor produces receipts and documentation satisfactory to Massey in respect of the expense(s) for which the Contractor seeks reimbursement.

3.2Massey may set off from any invoice received under clause 3.1, any money it believes it is owed by the Contractor, howsoever arising.

4 **Term of the Agreement**

4.1 This Agreement will commence on the date it is signed and continue until terminated in accordance with this Agreement.

5 **Termination**

5.1 Massey may terminate this Agreement without cause on three months’notice in writing to the other party.

5.2 Massey may terminate this Agreement summarily, by written notice, if:

(a) it considers that the Services are not being performed in a timely manner and/or with all reasonable care, skill and diligence in accordance with Massey’s quality assurance requirements;

(b) the Contractor breaches clause 1.2;

(c) the Contractor commits, or allows to be committed, any breach of the other terms of this Agreement and fails to remedy the breach to the satisfaction of Massey, acting reasonably, within fourteen (14) days of receipt of notice in writing from Massey requiring the breach to be remedied;

(d) in Massey’s opinion continued provision of the Services is not viable due to reduced student numbers.

5.3 Termination of this Agreement shall be without prejudice to the rights and obligations of the parties prior to termination.

6 **Independent Contractor**

6.1 The Contractor is an independent contractor and is not an employee or agent of Massey. The Contractor shall be responsible for the Contractor's own liability for tax, ACC levies, and health and safety and including compliance with the Health and Safety in Employment Act 1992, any regulations made under that Act, and any health and safety policies, and procedures of Massey.

7 **Dispute Resolution**

7.1Any dispute between the parties shall first be addressed by good faith negotiations. Any dispute not resolved within fourteen (14) days from the date that one party gave the other notice of dispute (“resolution date”) shall be referred either to arbitration pursuant to the Arbitration Act or a Court of competent jurisdiction at Massey’s absolute discretion. Such election by notice in writing by Massey within thirty (30) days from the resolution date.

7.2Nothing in clause 7.1 prevents either party applying for urgent relief at any New Zealand Court.

8 **Variation**

8.1If the Education Act (including all subordinate legislation) and/or the Funding Determination or the TEC Funding Information or any other legislation (and each of them) alter the obligations of any party to Students, TEC, Ministry of Education, Auditor or otherwise, then this Agreement is deemed to be amended to the extent required so that each party complies with its obligations under such legislation or Funding Determination or Funding Information.

8.2Except as required by clause 8.1, no variation shall be legally enforceable by either party unless it is in writing and signed by the parties.

9 **Responsibility**

9.1Without releasing the Contractor from its obligations in this Agreement, Massey is responsible, as between Massey and the Students enrolled in it, for continued delivery.

10 **CAP**

10.1The Contractor acknowledges that Massey may limit the number of Students receiving the Services.

**GENERAL TERMS**

11 **Services**

11.1 The Contractor willnot undertake work for Massey other than the Services without obtaining Massey’s priorwritten consent and without first agreeing in writing with Massey the price for those additional services.

11.2 The Contractor must not incur expenses in Massey’s name nor enter into any agreement that places any obligations on Massey unless the Contractor first has Massey’s written consent and then in accordance with that consent. The Contractor must not use Massey’s name except for performing the Services.

11.3 The Contractor acknowledges that Massey is relying on the Contractor’s expertise in providing the Services.

12 **Compliance with Legislation**

12.1 The Contractor will abide by all relevant statutory and common law obligations of Massey.

12.2 The Contractor will also comply with all relevant legislation and local or other authority requirements arising directly or indirectly in respect of the supply of the Services.

13 **Compliance with Massey’s Statutes, Policies and Procedures**

13.1 The Contractor will, at the Contractor’s cost, when supplying the Services, comply with Massey’s Statutes, Regulations, Policies and Procedures (including all amendments and new Statutes, Policies and Procedures) as published on the Massey website.

14 **Conflicts of Interest and Good Faith**

14.1 The Contractor is required to act in the best interests of Massey when undertaking the Services. The Contractor will not do anything that may harm Massey except for exercising the Contractor’s rights under this Contract.

15 **Intellectual Property and Confidential Information**

15.1 All copyright, know-how, designs or trademarks, and each of them, and all other intellectual property rights used and/or created and/or improved and/or modified and/or contributed to as part of this Contract are owned solely and exclusively by Massey.

* + 1. All information of a confidential nature (“Confidential Information”) is the sole property of Massey. Confidential Information consists of any knowledge or information which the Contractor may acquire during this Agreement concerning Massey including its employees and/or students.

15.2.2 Except as required by law, and except for performing the Services, Confidential Information shall not be used or disclosed by the Contractor to any person and/or entity during the term of this Agreement or after termination or expiry.

16 **Entire Agreement**

16.1 Except as expressly provided in this Agreement, each party to this Agreement agrees that it has entered into this Agreement in reliance on its own skill and judgement and not in reliance on the skill and judgement of any other party to this Agreement.

16.2 Subject to clause 8.1 and clause 11.3:

1. This Agreement constitutes the entire agreement between the parties in respect of the Services and contains all of the representations, undertakings, warranties, covenants and agreements of the parties.
2. This Agreement supersedes all prior negotiations, contracts, arrangements and understandings in respect of the Services.

## 17 Partial Invalidity and Non-waiver

## 17.1 If any clause(s) in this Agreement are found by any court of competent jurisdiction or arbitrator to be void, invalid, illegal or otherwise not binding on the parties then such clause(s) shall be severed from this Agreement.

## 17.2 If Massey reasonably considers, in its sole opinion, that the effect of severing any clause(s) from this Agreement will be to substantially reduce the benefit(s) it obtains, or substantially increase its obligations, then Massey may terminate this Agreement summarily by written notice.

18 **Force Majeure**

18.1 If any party to this Agreement cannot perform its obligations under this Agreement by reason of riot, earthquake, volcanic activity, fire, storm, operation of law or other like cause beyond the control of that party (“force majeure event”), that party shall give written notice specifying the force majeure event (“force majeure notice”) to all other parties to this Agreement, and then that party shall be released from its obligations under this Agreement if and to the extent that such party is prevented or delayed from performing its obligations by reason of that force majeure event (“release”), but without prejudice to any pre-existing claim or pre-existing liability in respect of this Agreement.

18.2 If Massey considers, in its sole opinion, that any Force Majeure Event subsists for more than seven working days Massey may terminate this Agreement summarily by written notice.

19 **Authority**

19.1 Until this Agreement or any waiver or any variation or subject to clause 8.1 is signed by Massey, Massey is not bound, as the case may be, by this Agreement, to sign this Agreement, by any waiver or any variation of this Agreement.

19.2 Whoever is signing this Agreement on behalf of the Contractor (and if there is more than one person doing so, then jointly and severally) undertakes to Massey that they have the authority to bind the Contractor. If the person signing this Agreement signs it as agent for an undisclosed principal then that person is liable for the obligations of the Contractor notwithstanding that a principal has not been disclosed. If the person signing this Agreement signs it as agent for a company to be incorporated then that person is liable for the obligations of the Contractor.

## 20 Tax and Accident Insurance

## 20.1 The Contractor is an independent contractor. The Contractor is responsible for the Contractor’s own liability for tax, levies and other money payable under the Injury Prevention Rehabilitation and Compensation Act 2001 including amendments and substitutions of that Act.

## 20.2 Where required by relevant legislation, tax will be deducted from all payments made to the Contractor at the appropriate rates unless the Contractor is a company or the Contractor provides an exemption certificate before payment.

## 21 Relationship

21.1 Nothing in this Agreement creates a relationship of employer and employee, principal and agent between Massey and the Contractor.

21.2 The Contractor indemnifies Massey for all losses and liabilities incurred by Massey if the Contractor at any time claims against Massey or its Vice-Chancellor to be or to have been an employee of Massey or its Vice-Chancellor during the provision of the Services under this Agreement.

## 22 Jurisdiction

22.1 This Contract is governed by New Zealand law in every particular including formation and interpretation and shall be deemed to have been made in New Zealand. The parties hereby submit exclusively to New Zealand jurisdiction.

23 **Independent Advice**

23.1 The Contractor acknowledges that prior to entering into this Agreement the Contractor was provided with sufficient opportunity to seek and obtain independent legal advice.

**SIGNED** by **MASSEY UNIVERSITY** )

by its Vice-Chancellor Steve Maharey )

in the presence of: ) --------------------------------------

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Signature: --------------------------------------

Occupation: ------------------------------------

Address: ----------------------------------------

**SIGNED** by the Contractor )

in the presence of: )--------------------------------------

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Signature: --------------------------------------

Occupation: ------------------------------------

Address: ----------------------------------------

**Schedule A**

**Services**

1. **Services**

The contractor must perform the following services: **[What/When/Where]**

• **[insert]**.

**Schedule B**

1. **[Resources to be supplied by Massey]**

**Schedule C**

1. **Expenses**

Subject to clause 3.1 (expenses), Massey will reimburse the Contractor for:

• **[insert agreed expenses]**.

2. **Fees**

Massey will make the following payments to the Contractor for performance of the services:

• [insert hourly fee/total plus GST]