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Subcontractor

Prime Project Title

Prime Sponsor

Sponsor's Reference

Prime Project Leader

Assignment Leader

Start Date

Finish Date

Massey engages the Subcontractor by way of the Assignment Leader to provide the services described below ("Assignment") and the Subcontractor agrees to perform the services described in terms of this Agreement. Both parties agree to be bound by the *Conditions of Engagement*. This Agreement, once signed, together with any attachments referred to below, will replace all written or oral agreements previously reached between the parties in relation to the subject matter hereof.

Assignment Scope

Timetable & Milestones

Payment Schedule

Fee \$

*All amounts payable in
New Zealand Dollars **plus GST***

Subcontractor - Contract Administration

Notices

Massey - Contract Administration

Contracts Team

Research Management Services

Massey University

Private Bag 11 222, Palmerston North 4442

Courtyard Complex, Tennent Drive, RD4, Palmerston North 4474

Massey - Invoices

Attachments

Massey Authorised Signatory

Signature

Name

Title

Date

Subcontractor Authorised Signatory

Signature

Name

Title

Date

Conditions of Engagement - Subcontract

1 Term

Notwithstanding the date of signing of this Agreement, the Assignment shall commence and, unless earlier terminated in terms of clause 7 hereof, shall terminate on the Finish Date. The term may be extended for such further periods as are agreed in writing between Massey and the Subcontractor.

2 Fees and Expenses

2.1 The Subcontractor shall charge a fee ("Fee") for services provided under this Agreement.

2.2 The Subcontractor shall provide invoices to Massey as specified.

2.3 Payment shall be made by Massey to the Subcontractor within thirty (30) days from the date of receipt by Massey of invoice(s) issued by or on behalf of the Subcontractor.

2.4 Massey shall not be liable for payment in excess of the agreed Fee for any work done outside the Assignment, except by prior arrangement in writing between the parties.

3 GST Registration

The Subcontractor shall, if not already registered, become registered under the Goods and Services Tax Act 1985 and will remain so registered during the term of this Agreement, or provide a written declaration signed by the Subcontractor if not required to be registered in terms of Section 51 of the Act.

4 Key Personnel

4.1 The parties agree that the provision of the services of the Assignment Leader is an integral factor in the Assignment and that if the Assignment Leader becomes unavailable, the parties will endeavour to agree on a suitably competent substitute.

4.2 If the parties are unable to agree on a suitable substitute, the dispute shall be resolved in accordance with clause 16 hereof.

5 Intellectual Property

Subject to the Agreement between Massey and the Prime Sponsor, the ownership of intellectual property developed by the Subcontractor during the course of the Assignment shall vest in Massey.

6 Performance and Liability

6.1 The Subcontractor agrees to exercise all reasonable skill, care and diligence in the performance of work under this Agreement and such work shall be performed to standards which are in accordance with those generally accepted professionally worldwide.

6.2 If the Assignment, or any major or material part(s) thereof -
(a) is/are not carried out in accordance with clause 6.1 hereof;
(b) do not meet the objectives and/or timeframes included in the attached Schedules; and/or
(c) do not meet the expectations or requirements of the Prime Sponsor (individually or jointly "Non-performance") -
- Massey may, at its sole discretion, either require the Subcontractor to refund immediately any payment made in respect of the Non-performance and/or withhold any payment until the Non-performance has been rectified to Massey's and the Prime Sponsor's satisfaction.

6.3 Any liability of the Subcontractor under this Agreement shall be limited to direct loss or damage arising from the negligence of the Subcontractor in providing the agreed services to a maximum of twice the Fee payable by Massey to the Subcontractor.

6.4 Neither party shall be liable for any loss of profit, loss of business or consequential loss of the other party, howsoever caused.

7 Termination

7.1 This Agreement may be terminated prior to its expiry date by either party on thirty (30) days' notice in writing to the other party if such other party is in breach of any material term or condition of this Agreement and does not remedy the breach within thirty (30) days from the date of service of a notice in writing specifying the breach and requiring its remedy. Massey will not be liable to pay on termination by the Subcontractor, except for services that have been rendered to the satisfaction of Massey.

7.2 This Agreement shall terminate immediately should the Agreement between Massey and the Prime Sponsor be terminated. Upon such termination Massey shall have no further obligation to the Subcontractor except to pay the Subcontractor for the successful and satisfactory completion of work already undertaken by the Subcontractor and to pay for reasonable costs incurred by the Subcontractor in discharging commitments entered into in relation to the Assignment prior to the date of termination.

8 Confidentiality

8.1 The parties agree that they will each keep entirely secret and confidential the terms of this Agreement and all information of a secret, confidential and/or proprietary nature concerning the business or affairs of the other of them which may come into their knowledge as a result of performance under this Agreement.

8.2 Each party further undertakes that it will restrict access to the terms of this Agreement or other such information to their employees or agents on a strictly "need to know" basis and will not make use, or seek to make use, of the existence of the terms of this Agreement, or other such information, except for the purposes of this Agreement.

8.3 The obligation of confidentiality shall not, however, apply to information that -

- (a) is already known to the party to which it was disclosed;
- (b) is in, or becomes, part of the public domain without a breach of this Agreement;
- (c) is obtained from third parties which have no obligation to keep confidential to the contracting parties;
- (d) is agreed in writing between the parties not to be confidential; or
- (e) is required to be disclosed by law.

9 Publication

Subject to the Agreement between Massey and the Prime Sponsor, and to the prior written permission of Massey, the Subcontractor and the Assignment Leader shall have the ability to publish the results of the Assignment and/or give addresses or present papers based upon the Assignment at professional meetings.

10 Publicity

Neither party will use the name of the other party or the names of any staff or employees of the other party in relation to this Agreement, or in any endorsement, without the prior written permission of the other party.

11 Insurance

The Subcontractor warrants that it has taken or will take out, and shall maintain, all the relevant types and amounts of insurance cover to meet any and all of the Subcontractor's obligations under this Agreement.

12 Partnership or Agency

Nothing in this Agreement creates, or is intended to create, a partnership, agency, employer/employee, trust or joint venture relationship between the parties.

13 Amendments

All amendments to this Agreement must be in writing and signed by both parties. No waiver will be effective unless it is in writing and signed by the waiving party.

14 Assignment

The Subcontractor shall not assign, transfer or sub-contract any of its rights or obligations under this Agreement without the prior written consent of Massey and, if required, the Prime Sponsor.

15 Force Majeure

Neither party shall be responsible for any failure or delay in complying with the terms of this Agreement where such failure or delay results from events beyond its reasonable control. The frustrated party is to resume its obligations under this Agreement as soon as it reasonably can after the force majeure event ceases.

16 Dispute Resolution

If a dispute arising out of this Agreement occurs between the parties, then the parties will in good faith try to resolve that dispute. This process may also include mediation. If the dispute is not resolved within twenty (20) working days from the date the dispute was advised in writing then the dispute shall be referred to arbitration in accordance with the Arbitration Act 1996.

17 Notices

Notices under this Agreement shall be in writing and may be delivered by hand, sent by prepaid post or transmitted by facsimile, by one party to the other at the address showing on this Agreement or such other address as notified in writing.

18 Survival

Neither the termination or expiry of this Agreement, nor the end of the Project, will affect any provisions of this Agreement which are reasonably required or intended to continue irrespective of those events.