

SERVICE PROVIDER AGREEMENT

SCOTT TECHNOLOGY LTD

AND

CONTRACTOR

BETWEEN:

1. **SCOTT TECHNOLOGY LTD AND ITS SUBSIDIARY COMPANIES** (“the Company”)
2. (“the Contractor”)

BACKGROUND

- A On the basis of the representations made by the Contractor as to its skills and abilities, the Company wishes to enter into a formal service provider arrangement with the Contractor to provide services in relation to one or more specified Projects, with effect from the date of this Agreement.
- B The Company and the Contractor are entering into this Agreement to provide clarity around future dealings.
- C The Company and the Contractor are both entering into this Agreement recognising that the Contractor is being appointed as an independent contractor and not in any other capacity.
- D The Company and the Contractor are entering into this Agreement recognising that, with effect from the date of this Agreement, all other standard terms and conditions covering or purporting to cover dealings between the parties regardless of where located or how communicated shall not apply to any agreements between the parties and that this Agreement contains all the relevant terms for dealings between the parties.

AGREEMENT

1. DEFINITIONS

- 1.1. “Commencement Date” means the date when this Agreement was signed (see back page).
- 1.2. “Services” means services described in one or more Project Schedules agreed between the parties from time to time and which become a part of this Agreement.
- 1.3. “Term” means the term of this Agreement being the period starting on the Commencement Date and continuing until this Agreement is terminated in accordance with clause 10;

- 1.4. "Project" means any project or work requirement in respect of which the Company wishes to use the services of the Contractor, details of which are set out in a Project Schedule;
- 1.5. "Project Schedule" means a Project Schedule in the form set out in Appendix 1, and which, when completed with all necessary details (including a PO No.) and signed in accordance with clause 12, becomes a part of this Agreement;
- 1.6. "Project Term" means the term specified in a Project Schedule during which services referred to in such Project Schedule are to be delivered;
- 1.7. "Specified Personnel" means the persons described in clause 12.2 and (if any) identified in a Project Schedule, who must be deployed on the Project the subject of that Project Schedule;
- 1.8. Confidential Information means:
 - (a) information disclosed or made available to the Contractor by or on behalf of the Company or any of its associates in relation to the Services in general and any Projects (including the Intellectual Property and any other know-how, data, processes, inventions, developments, formulations, applications, other trade secrets, methodologies, reports, documents, computer programs, business activities, marketing and sales activities, plans or financial information), whether created before or after the date of this Agreement; and
 - (b) all items which come into existence through modifications or developments to such information, including such items arising directly or indirectly from the Contractor's use of the information;but does not include:
 - (c) information which is or becomes general public knowledge through no fault of the Contractor; or
 - (d) information that the Company agrees in writing to release from the terms of this Agreement.

For the purposes of paragraph (c), information will not be deemed to be available to the public merely because it is expressed in more general terms or included in more general information which is publicly available;

- 1.9. "Intellectual Property" means all intellectual and industrial property rights (including common law rights and interests) owned or held by the Company, or created as a result of the Services provided under this Agreement or lawfully used by the Company from time to time including, without limitation, all know-how, copyrights, flow charts, work product, documents, drawings and specifications, designs, registered designs, patents, trade names, symbols, logos, patent applications, service marks and trademarks.

2. THE SERVICES

- 2.1. The Contractor agrees to perform Services as specified in this Agreement and in particular the Services specified in a Project Schedule during the relevant Project Term in accordance with the terms and conditions in this Agreement.
- 2.2. The Company recognises that the Contractor will have to schedule work for the company alongside projects for other customers. However, the contractor acknowledges that time is of the essence in performance of all services under this Agreement.
- 2.3. The Contractor and the Company both acknowledge that being a supplier does not guarantee that any Projects will be given to the Contractor or that no other competing businesses will be appointed as a supplier to the company.
- 2.4. The term of each Project covered by a Project Schedule shall be specified in the Project Schedule and the Contractor will perform and complete the required services within the term. Time for delivery of each Project shall be of the essence. If any Project will not be completed within the specified term the Contractor must address this issue with the Project Manager and amend the Project Schedule to reflect any variation agreed to.
- 2.5. The Contractor will put in place insurance cover covering a range of risks appropriate for a business operating in its field of expertise. The Contractor acknowledges that having insurance with appropriate levels of cover may be a pre-condition of a Project Schedule.

3. CONTRACTUAL STATUS

- 3.1. The Contractor acknowledges that the Contractor is an independent contractor and will ensure that in performing the Services it does so as an independent business with separate tax liability and appropriate insurance and in accordance with all legal requirements applicable to the provision of services as an independent contractor. The Contractor agrees to indemnify the Company for any loss, costs or expenses incurred by the Company as a result of a failure by the Contractor to ensure compliance with this clause and its legal obligations.
- 3.2. The Contractor undertakes to ensure that all employees, shareholders, directors, contractors and sub-contractors of the Contractor conduct their own tax and legal affairs in such a way as to avoid any suggestion that they are employees of the Company.

4. PRICE AND PAYMENT

- 4.1. In consideration of the Contractor performing the Services the Company agrees to pay the Contractor for the Services specified in a Project Schedule, at the price specified and on the other terms set out in such Project Schedule.
- 4.2. The Contractor acknowledges that the Company must issue a purchase order number ("PO No.") in respect of each Project Schedule before any payment

obligations will arise and that the Contractor will ensure that it has such a PO No. before commencing any Project work.

- 4.3. To enable the Company to process invoices and timesheets promptly, the Contractor will promptly produce a complete and correct invoice in respect of the price due for Services provided in the previous agreed time period (together with detailed timesheets of the hours worked by the Contractor) (as set out in a Project Schedule). If the Company disputes any invoice received from the Contractor, the Company will promptly notify the Contractor in writing of that dispute. The Company will pay any undisputed portion of the invoice in a timely manner but may withhold payment of the disputed portion until the dispute is resolved by the parties.
- 4.4. The Company shall pay the Contractor with a frequency as specified in each Project Schedule. All payments due to the Contractor on a monthly basis shall be made by the Company on the last day in each month, or all weekly payments as specified in a Project Schedule. All payments shall be made directly into the Contractor's nominated bank account.

5. PROGRESS REPORTING AND VARIATIONS

- 5.1. The Contractor agrees to provide reports to the Company at the reporting intervals and containing the information specified in a Project Schedule.
- 5.2. The Company and the Contractor shall meet on a regular basis in order to discuss the Contractor's progress in performing the Services, as specified in the relevant Project Schedule.
- 5.3. Any proposed changes to the Services specified in a Project Schedule must be agreed in advance between the parties prior to any amendment of a Project Schedule.
- 5.4. Once a change to the Services is agreed reflecting any price and/or delivery changes, the Project Schedule shall be amended.

6. FACILITIES AND EQUIPMENT

- 6.1. The Company will provide to the Contractor all equipment and other resources specified in a Project Schedule to enable the Contractor to perform the Services.
- 6.2. The Contractor shall be responsible for providing all other equipment and other resources needed to perform the Services.
- 6.3. The Company agrees to provide the Contractor with access to the Company's equipment and materials as necessary for performance of the Services.
- 6.4. The Contractor shall comply with all of the Company's requirements and its customers' requirements (including but not limited to, health and safety, code of conduct, operating policies and procedures...etc) when working with the Company's or its customers' equipment and materials or when present on the Company's or its customers' premises and will undertake all health and safety or risk management training imposed on visitors to the Company's or its customers' sites.

7. STANDARD OF PERFORMANCE

- 7.1. The Contractor shall ensure that all Services performed under this Agreement and all Project Schedules are carried out with diligence and to the best of the Contractor's abilities in a professional and timely manner, in accordance with the best relevant level of Australasian industry knowledge and competence.
- 7.2. If the Services the Contractor performs are not of a high standard or quality, or are not in accordance with the Project Schedule requirements, then the Company may:
- (a) require the Contractor to immediately remedy the deficiency; and/or
 - (b) recover from the Contractor all the Company's losses or damages attributable to the deficiency; and/or
 - (c) terminate this Agreement in accordance with clause 10.
- 7.3. If a Project Schedule specifies a liquidated damages sum and the Services are not completed by the end date set out in the Project Schedule then the Contractor will pay on demand to the Company by way of liquidated damages the sum specified in the Project Schedule per calendar day for each day of delay in meeting the end date, except to the extent that such delay is caused by defaults by the Company or any of its other suppliers.
- 7.4. The Contractor agrees that any liquidated damages specified in a Project Schedule will be a realistic estimate of loss likely to be suffered by the Company in the event of delay. The Contractor agrees that it will not dispute any claim for liquidated damages on the basis that the specified amount of liquidated damages does not reflect the actual cost of delay to the Company.

8. OWNERSHIP OF INTELLECTUAL PROPERTY

- 8.1. The Contractor acknowledges and agrees that Intellectual Property is and will remain the property of the Company and the Contractor will not have any right, title or interest in the Intellectual Property.
- 8.2. In consideration of the payments to be made by the Company to the Contractor the Contractor assigns to the Company as its exclusive property:
- (a) the worldwide ownership of copyright for all purposes in all works and materials including (without limitation) software, designs, flow charts, work product, documents, drawings and specifications; and
 - (b) the worldwide ownership of all designs, data, techniques, knowhow, inventions, improvements and innovations, whether or not patentable;
- which, in each case, are produced or discovered by the Contractor pursuant to the Contractor's performance of the Services under this Agreement.
- 8.3. The Contractor agrees to disclose to the Company full particulars of any Intellectual Property created when requested by the Company.

- 8.4 The Contractor agrees to:
- (a) sign any document considered reasonably necessary by the Company to convey or perfect the Company's ownership of the Intellectual Property; and
 - (b) co-operate fully and as the Company may require in obtaining, defending or enforcing the Intellectual Property.
- 8.5 The Contractor hereby irrevocably appoints the Company as the Contractor's attorney to do all things and to sign all documents on behalf of the Contractor that may be required for the Contractor to comply with the Contractor's obligations under this clause 8.
- 8.6 The Contractor acknowledges and agrees that the terms of clause 8 shall apply to all Intellectual Property arising from Services undertaken by the Contractor for the business of the Company prior to the date of this Agreement.

9. CONFIDENTIALITY

- 9.1. The Contractor agrees to sign a standard Non-disclosure Agreement with the Company prior to starting work on any Project.
- 9.2. The Contractor agrees at all times to keep secret and strictly confidential the Confidential Information.
- 9.3. The Contractor agrees that it shall not and shall ensure that its people do not disclose Confidential Information to any third party without the prior written consent of the Company and shall not use the Confidential Information for any purpose other than the performance of the Services pursuant to this Agreement.
- 9.4. Upon expiry or earlier termination of this Agreement or if requested by the Company at any other time the Contractor agrees to deliver all or any Confidential Information and all or any copies of Confidential Information to the Company.
- 9.5. The Contractor acknowledges and agrees that the Company will withhold payment of the last invoice payable under a Project Schedule, if Confidential Information is due to be returned to the Company.
- 9.6. All Confidential Information is and will remain the property of the Company and the Contractor shall not have any right, title or interest in the Confidential Information.
- 9.7. The Contractor agrees that it will preserve the confidentiality of the Confidential Information and take all proper and adequate precautions at all times to preserve the secrecy and confidentiality of the Confidential Information. The Contractor acknowledges that the Confidential Information is highly confidential and that the Company may suffer damage as a result of the disclosure or communication of the Confidential Information to an unauthorised person.
- 9.8. The Contractor agrees that monetary damages alone would be insufficient to correct a breach of this Agreement and that upon a breach or alleged breach of this Agreement the Company shall be entitled to injunctive relief in addition to any other legal or equitable remedies to which it is entitled.

10. TERM AND TERMINATION

- 10.1. Either party may terminate this Agreement on written notice to the other party if the other party is in breach of this Agreement or requirements under a Project Schedule and fails to remedy such breach within 10 working days of written notice from the first mentioned party specifying the breach.
- 10.2. The Company may terminate this Agreement immediately and without notice to the Contractor if the Contractor breaches or threatens to breach any obligation set out in clause 9 of this Agreement.
- 10.3. Either party may terminate this Agreement immediately on written notice to the other if any of the following events occur in relation to the other party:
 - (a) the relevant party ceases or threatens to cease to carry on its business or convenes a meeting of its creditors to propose a scheme of arrangement with its creditors; or
 - (b) liquidation proceedings are commenced for the relevant party; or
 - (c) the relevant party has a receiver or manager or statutory manager appointed or becomes bankrupt.
- 10.4. Either party may terminate this Agreement on 10 working days notice provided that no Projects covered by Project Schedules are outstanding or incomplete in any way.
- 10.5. The Company may cancel a Project covered by a Project Schedule (but not this Agreement) on written notice to the Contractor, if the Contractor is unable to fulfil the requirements of a Project Schedule due to an event of force majeure which is preventing or will prevent the Contractor from delivering in accordance with a Project Schedule. If cancellation occurs the Company will pay the Contractor for work delivered up to the date of cancellation in accordance with the Project Schedule or, if necessary on a quantum meruit basis.
- 10.6. The Company shall not be in breach of this Agreement if its failure to perform its obligations under this Agreement or a Project Schedule results from force majeure. The Company will rectify any failures as soon as practicable following the end of the force majeure event.

11. UNFAIR COMPETITION

- 11.1. Neither the Contractor nor the Company will solicit, procure, direct, or otherwise be instrumental in the diversion of any business or any person away from the other party.
- 11.2. The Contractor will not, for a period of 6 months from the termination of the Contractor's service relationship with the Company, whether personally, in a partnership, as an employee, or through any employee or other agent, or in any other way, solicit, procure, direct, or otherwise be instrumental in the diversion of any business or any person away from the Company.

- 11.3. For the purposes of the Contracts (Privity) Act 1982, the Contractor's obligations under clause 11.1 are not only for the benefit of the Company but also for any company which may be formed by the Company for operating the business of the Company and is intended to be enforced by the Company and any such other company jointly and severally.

12. PROJECTS

- 12.1. If and when the Company requires the services of the Contractor and discussions are concluded around all the Project requirements, the parties will produce a Project Schedule in the form of Appendix 1 setting out all the commercial terms of the Project.
- 12.2. If Project performance or delivery is dependent on particular employees, sub-contractors or directors of the Contractor being deployed, their names will be specified in the Project Schedule and the Contractor will use the Specified Personnel to perform the Services in addition to any unspecified required persons.
- 12.3. When a Project Schedule has been signed by the authorised signatories of the parties, the Project Schedule shall become a part of this agreement as an agreed amendment according to its terms.

13. HEALTH AND SAFETY

- 13.1 The parties shall comply with their obligations under the Health and Safety Law along with any other relevant legislation or regulations.
- 13.2 The Contractor and its temporary workers are required to comply with Scott's rules, procedures and policies
- 13.3 In the event the Contractor or its temporary workers fail to comply with the rules and procedures, this agreement may be terminated.
- 13.4 In the unlikely event, a temporary worker or contractor is injured while on assignment, the injury management and rehabilitation process will be managed in accordance with the country relevant injury reporting regulations e.g. ; Accident Compensation Act 2001 (NZ) by the relevant employer.
- 13.5 The Contractor shall comply with all provisions of the Health & Safety legislation for any period of the contract for services as it relates to the carrying out of that contract.
- 13.6 The Contractor will ensure that any contractor or temporary worker engaged by Scott has the necessary skills, experience and, where required, holds the appropriate licences and certifications for the assignment they are engaged for, and to ensure that any workers do not undertake jobs/tasks that are no trained/qualified for.
- 13.7 Contractors shall provide where requested a Job safety analysis (JSA or JHA) for Scott approval prior to work commencing, for the purpose of identifying likely hazards that relate to the place of work where the Contractor will be working.

- 13.8 The Contractor will supply Scott with a copy of their Insurances – depending on the work engaged for – Public liability or Professional Indemnity.
- 13.9 The contractor shall supply Scott with their Health and Safety Policy or Programme as requested.
- 13.10 Contractors will inform Scott of any likely hazards that could occur as a result of the work to be undertaken. This includes hazardous substances, plant and processes.
 - 13.10.1 The Contractor will not endanger any staff, other contractors or on-site clients of Scott.
 - 13.10.2 The Contractor will endeavour to carry out any potentially hazardous activities at a time that will least affect the on-site personnel.
 - 13.10.3 A risk assessment via a Job safety analysis may be requested. All hazards should be eliminated in the first instance, if not possible then the hazard should be isolated, and only as a last resort should the hazards be minimised by the use of personal protective equipment.
- 13.11 All accidents that are caused to or by the Contractor will be recorded by the Contractor and the Contractor will maintain an accident register whilst at the place of work.
- 13.12 Scott shall advise (in conjunction with contractor) the country Regulating body e.g. : WorkSafe NZ of any accidents as required by the Act.
- 13.13 The Contractor will advise Scott of all accidents or incidents (near hit accidents) for the purpose of Scott maintaining their register of accidents and incidents within the place of work.
- 13.14 The Contractor must be aware of the current emergency procedures that are in place for the place of work. Should the place of work be in the control of the Contractor, then the Contractor needs to supply a schedule of emergency procedures for the site.
- 13.15 The Contractor will provide the necessary personal protective equipment for members of their staff.
- 13.16 Where applicable the Contractor will supply to Scott, relevant training of employees on the site.
- 13.17 The Contractor will abide by Scott procedures and complete job safety analysis and obtain work permits where required.
- 13.18 The Contractor shall ensure equipment is fit for purpose and meets applicable health and safety code of practice.
- 13.19 The use of personal protective equipment (PPE) will be required at Scott premises and the Contractor will ensure that its temporary engineering workers engaged to work on assignment are supplied with as a minimum, appropriate protective boots, protective eyewear, and hearing protection.
- 13.20 All Contractors, their staff and their sub-contractors must be inducted by a Scott representative prior to work commencing.

14. GENERAL

- 14.1. This Agreement shall be governed by, and construed in accordance with, the laws of New Zealand.
- 14.2. If any dispute arises between the parties in respect of or in connection with this Agreement (including the validity, breach or termination of it), or any Projects the parties shall endeavour to resolve the dispute but failing that, and without prejudice to any other right or entitlement that either party may have, the parties shall explore whether the dispute can be resolved by agreement between them using informal dispute resolution techniques such as negotiation, mediation, independent expert approval or any other alternative dispute resolution technique. The rules governing any such technique adopted shall be as agreed between the parties or as selected by LEADR (Lawyers Engaged in Alternative Dispute Resolution - New Zealand Chapter).
- 14.3. If the dispute remains unresolved after dispute resolution or mediation under 14.2, then the dispute will be finally resolved by the Courts of New Zealand and the parties unconditionally and irrevocably submit to the jurisdiction of the Courts of New Zealand.
- 14.4. The Contractor acknowledges that its appointment as a supplier is specific to it and that it shall not assign, sub-contract or otherwise transfer this Agreement to any third party.
- 14.5. No Project Schedule nor any amendment or waiver of any provision of this Agreement, or consent to any departure from it, shall be effective where it has material financial implications unless confirmed in writing by a representative of the Contractor and also by a General Manager, the CEO or the Group Procurement Manager of the Company. Any such amendment, waiver or consent shall be effective only in the specific instance, for the purpose and to the extent for which it is made or given. Project Managers of the company named in a Project Schedule shall have authority to amend Project Schedules to address logistical and technical issues which have no material financial implications.
- 14.6. This Agreement records the entire agreement and understanding between the parties in relation to the matters contemplated by this Agreement and supersedes any prior agreement, correspondence, or undertaking between the parties except for any confidentiality or intellectual property undertakings or provisions contained in prior services agreements between the parties.
- 14.7. Clauses 8, 9, 11, and 14 shall survive termination of this Agreement.
- 14.8. The invalidity, unlawfulness or unenforceability of any term of this agreement shall not affect or impair the validity, legality, enforceability and effectiveness of remaining provisions. Both parties shall endeavour in good faith negotiations to replace any invalid, unlawful or unenforceable provision with a valid provision, the economic

effect of which should come as close as possible to that of the invalid, unlawful and unenforceable provisions. In the event that any time limit stipulated by any provision of this agreement is in excess of that which is permitted by applicable law, such provision shall remain in force and the time limit specified shall be reduced to the longest period permissible under the applicable law.

14.9. All notices or other communications to be given under this agreement shall be given at the recipient's last known place of address (or such other address within New Zealand as that party may have specified in writing), and shall be deemed to have been duly given or made:

- (a) if given by hand or courier, on personal delivery to the recipient or to such address;
- (b) in case of email when acknowledged by return email or otherwise in writing.

14.10. The notified addresses, facsimile numbers and email addresses of the parties are as follows:

Scott Technology Limited
Address: Private Bag 1960
Dunedin
Email: j.schurmann@scott.co.nz

The Contractor
(see Project Schedule)

Either party may change its notified address, facsimile number or email address by notice in writing to the other party.

EXECUTION

EXECUTED FOR SCOTT TECHNOLOGY NZ LIMITED (the Company) by:
GROUP PROCUREMENT MANAGER

Jason Schurmann

EXECUTED FOR (the Contractor) by:
DIRECTOR

THIS AGREEMENT is made the day of; 20.....