

# PŪMANAWA MAHI - HEAD AGREEMENT

YOU ARE REQUIRED TO READ AND CONFIRM YOUR CONSENT TO THE FOLLOWING TERMS IN THIS AGREEMENT. THE TERMS CONTAINED IN THIS AGREEMENT WILL FORM PART OF ANY ASSIGNMENT BETWEEN A CLIENT AND CONTRACTOR FOR THE COMPLETION OF ANY STATEMENTS OF WORK AGREED TO BETWEEN CLIENTS AND CONTRACTORS. THE TERMS IN THIS AGREEMENT SET OUT YOUR LEGAL RIGHTS, OBLIGATIONS AND THE TERMS FOR USING PŪMANAWA MAHI AND ARE LEGALLY ENFORCABLE AGAINST BOTH THE CLIENT AND THE CONTRACTOR. KETE PŪMANAWA LIMITED (T/A KP SOLUTIONS) RESERVES THE RIGHT TO AMEND THE FOLLOWING AGREEMENT AND ANY OTHER CONTRACTUALLY OBLIGING DOCUMENTS WITH NOTICE TO THE CLIENT AND THE CONTRACTOR OF 30 DAYS OR GREATER.

## 1.0 Definitions (Key Terms)

“**Account**” means the account associated with your email address.

“**Agreement**” means this contract or any other contractual obligation required of The Parties on the Site.

“**Assignment**” means an Agreement for Contractor Services that a Contractor provides to a Client under a Statement of Work on the Site.

“**Bid**” means an offer made by a Contractor to be engaged by the Client to complete an Assignment.

“**Client**” means any person who enters into an Assignment to obtain Contractor Services from a Contractor.

“**Confidential Information**” means any information:

- (i) relating to the business of any Contractor or Client;
- (ii) of the Contractor or Client which is designated by the respective owner as confidential;
- (iii) of Contractor or Client which is of a confidential or sensitive nature, which is marked or denoted as confidential or which a reasonable person to whom that information is disclosed or to whose knowledge the information comes would consider confidential; or

- (iv) which is disclosed by the Contractor or the Client to the other, directly or indirectly, or otherwise comes to the knowledge of that party in relation to or in connection with this, whether that information is in oral, visual or written form or is recorded or embodied in any other medium.

**“Company”** means Kete Pūmanawa Limited trading as (T/a) KP Solutions.

**“Contractor”** means any person who enters an Assignment to perform Contractor Services for a Client.

**“Default”** means the Client fails to pay the Contractor fees or any other amounts when due under the Statement of Work.

**“Measurements of Performance”** means key performance indicators negotiated between the parties.

**“Pūmanawa Mahi”** means the Site operated by Kete Pūmanawa Limited, trading as (T/a) KP Solutions.

**“Regulated Work”** means work that is governed by New Zealand Statute or Regulation requiring that any person completing the work is registered with any relevant governing body charged with monitoring and overseeing the regulated area of work.

**“RWT”** means Resident Withholding Tax.

**“Statement of Work”** means the contractual provisions between a Client and a Contractor governing the Contractor Services to be performed by a Contractor for a Client in completing an Assignment.

**“The Parties”** means Contractors and Clients.

**“Users”** means anyone with an Account on the Site.

## **2.0 Purpose of Pūmanawa Mahi**

**2.1** Pūmanawa Mahi (the Site) serves as an intermediary location for Contractors (suppliers) and Clients (buyers) to connect and complete agreed Assignments. The details regarding any Assignment are set out in an agreed Statement of Work which covers all the essential terms of the contract (e.g. price or hourly rate, timeframes, detail of work to be completed). The Parties are also able to agree to any further contractual terms they themselves determine are

necessary. However, if any of these additional terms conflict with the terms set out in this Agreement, then these terms shall prevail.

**2.2** Pūmanawa Mahi is not a party to the terms set out in the Statement of Work. The Site simply allows Contractors and Clients to identify each other and contract directly with each other. Both Contractors and Clients acknowledge that the purpose of Pūmanawa Mahi is to merely make the Site and Site Services available to enable Contractors and Clients to find and contract directly with each other. Pūmanawa Mahi does not introduce Contractors to Clients, find Assignments for Contractors, or find Contractors for Clients. Pūmanawa Mahi acts as an intermediary only and facilitator for The Parties to enter and form their own contracts. However, Pūmanawa Mahi reserves the right to enforce any obligations under this Agreement pursuant to Clause 14 of this Agreement.

**2.3** In summary:

**2.3.1** Pūmanawa Mahi provides the opportunity for Clients and Contractors to interact and deal directly with one another to complete work.

**2.3.2** Pūmanawa Mahi is not responsible for determining and evaluating the suitability of a project, Contractor, or Client.

**2.3.3** When Clients and Contractors agree to enter into a Statement of Work, the Company is in no way tied to that contract or any work completed because of that Statement of Work.

**2.3.4** Contractors are solely responsible for assessing the feasibility and their own ability to complete the Statement of Work to a satisfactory standard prior to bidding or accepting any work.

**2.3.5** The Client is solely responsible for assessing the ability of the Contractor to complete the Statement of Work agreed to between The Parties.

**2.3.6** Pūmanawa Mahi accepts no responsibility for any decisions made by any Client or Contractor to enter into an Assignment and that both

the Client and the Contractor acknowledge that they are exercising their own judgement in every respect.

- 2.3.7** If a Contractor and Client decide to enter into an Agreement or complete a Statement of Work, the Statement of Work is a contractual relationship directly between the Contractor and the Client.
- 2.3.8** The Contractor and the Client have complete discretion both with regard to whether to enter into a Statement of Work with each other and with regard to the terms of any Service Contract.
- 2.3.9** You acknowledge, agree, and understand that Pūmanawa Mahi is not a party to any Statement of Work, that the formation of a Statement of Work between Clients and Contractors will not, under any circumstance, create an employment or other service relationship between Pūmanawa Mahi and any Client or Contractor or a partnership or joint venture between Pūmanawa Mahi and any Client or Contractor.
- 2.3.10** Pūmanawa Mahi does however reserve the right to enforce any obligations under this Agreement pursuant to Clause 14 of this Agreement.
- 2.3.11** Pūmanawa Mahi also reserves the right to delete, remove and/or deregister any Contractor or Client Account that Pūmanawa Mahi considers is in breach of this Agreement and/or any other term or condition associated with the use of the Site. This clause is included for the sole benefit of Pūmanawa Mahi and may be exercised without notice and any decision is final.

### **3.0 Acceptance of Terms and Conditions (Registration of Accounts)**

#### **Contractors and Clients**

- 3.1** By registering for an account on Pūmanawa Mahi, Contractors and Clients are legally agreeing to the terms and conditions set out in this Agreement.

- 3.2** Pūmanawa Mahi does not make any representations about or guarantee the truth or accuracy of any Contractor's or Client's listings or other User Content on the Site.
- 3.3** Pūmanawa Mahi does not verify any information provided by Contractors or Clients.
- 3.4** Pūmanawa Mahi does not vet or otherwise perform background checks on Contractors or Clients.
- 3.5** Pūmanawa Mahi does not guarantee any minimum level of business to Contractors or guarantee that Clients will find Contractors on the Site to enter a Statement of Work or complete Assignments.
- 3.6** Pūmanawa Mahi makes no representations about and does not guarantee, and you agree not to hold Pūmanawa Mahi responsible for:
- (i)** the quality, safety, or legality of Contractor Services;
  - (ii)** the qualifications, background, or identities of Users;
  - (iii)** the ability of Contractors to deliver Contractor Services; this includes
  - (iv)** the Client's assessment of the Contractor's skills, background, reputation, previous work experience and all other matters related to a Contractor's ability to complete the work detailed in a Statement of Work;
  - (v)** the ability of Clients to pay for Contractor Services;
  - (vi)** user content and statements or posts made by Users;
  - (vii)** the ability or willingness of a Client or Contractor to actually complete a transaction;
  - (viii)** ensuring the accuracy and truthfulness of any Contractor or Client loaded content on the Site; and
  - (ix)** determining the suitability of any Contractor to be able to undertake and complete any Statement of Works for the Client;

- (x) negotiating, agreeing to, and executing any terms or conditions of the Statement of Work;
- (xi) complying with all the terms and conditions of not only this Agreement, but also any separate terms and conditions agreed to between the Parties;
- (xii) paying all money due under any Statement of Work within the timeframe provided and agreed to.

**3.7** In registering for a Contractor or a Client account on the Site, Contractors and Clients are required to choose a username and password. Contractors and Clients agree that Pūmanawa Mahi reserves the right to assume that any person using any Contractor or Client username, or password is either authorised to do so or is acting under this direct authority.

**3.8** Contractors and Clients are responsible for ensuring the confidentiality of Contractor and Client usernames and passwords. Contractors and Clients agree not to share Contractor or Client usernames and passwords with anyone not authorised to use Contractor or Client accounts. Pūmanawa Mahi confirms that under no circumstances will they share your username and password with anyone.

### **Contractor Accounts**

**3.9** By registering for a Contractor account on Pūmanawa Mahi, Contractors confirm as follows:

**3.9.1** Contractors confirm that the information provided in relation to personal and business information is true, accurate, and complete. Contractors agree not to provide any misleading or deceptive information to complete your profile on the Site.

**3.9.2** Contractors confirm that they have disclosed all information that could reasonably impact on both Pūmanawa Mahi's ability and any Clients's ability to assess the suitability of the Contractor to complete the work detailed in the Statement of Work. This includes not only relevant work

history, but also personal information such as any previous criminal convictions, any pending or current matters before the Court, if the person/entity is currently subject to bankruptcy proceedings, has previously been declared bankrupt and any other information likely to impact on the reputation of the Client. This obligation is a continuing one and remains active through the entire period that the Contractor is registered with the Site.

- 3.9.3** Contractors are required to provide relevant information and prove that they have business systems in place to provide services as a Contractor that are in line with expected industry standards.
- 3.9.4** The Contractor further confirms that if the Statement of Work involves the completion of work that is by operation of the law (Regulated Work), that the Contractor holds all or any required professional registrations to be able to complete work of that nature that are both current and without restrictions.
- 3.9.5** The Contractor may not assign, transfer, subcontract, or pledge its rights or obligations under this Agreement, or under any assignment or Statements of Work to any other individual or organisation unless that assignment, transfer, subcontract, or pledge is consented to and agreed to in writing by the Client.
- 3.9.6** When bidding for any work on the Site, the Contractor confirms that they intend to enter into a legally binding contract with the Client.

### **Client Accounts**

**3.10** By registering for a Client account on Pūmanawa Mahi, the Client confirms as follows:

- 3.10.1** Clients are required to provide relevant company or personal information when registering for a Client account. Clients confirm that the information provided for the purposes of a Client account are true, accurate, and complete. Clients agree not to provide any misleading or deceptive information to complete their Client account profile on the Site.

- 3.10.2** Clients confirm that they have disclosed all information that could reasonably impact on both Pūmanawa Mahi's ability and any Contractor's ability to assess the suitability of the Client. This includes not only relevant employer history but also personal information such as any previous criminal convictions, any pending or current matters before the Court, if the person/entity is currently subject to bankruptcy proceedings, has previously been declared bankrupt and any other information likely to impact on the reputation of the Client. This obligation is a continuing one and remains active through the entire period that the Client is registered with the Site.
- 3.10.3** Employees of Clients creating an account on behalf of a Client organisation confirm that they are authorised to enter the Client into binding contracts such as this Agreement and other Agreements such as a Statement of Work provided in dealings with Contractors.
- 3.10.4** Clients agree to make all payments in full due to Contractors at the time that any payments are required under any Statement of Work or this Agreement.
- 3.10.5** When accepting and bidding for work made by any Client, the Contractor confirms that they intend to enter into a legally binding contract with the Client.

## **4.0 Feedback**

- 4.1** At the closure of work completed through Pūmanawa Mahi, Clients and Contractors will have the opportunity to provide feedback to the Company about the work completed by the other party, the use of the Site, and any other information pertaining to Pūmanawa Mahi. This feedback is not obligatory and does not impact on the relationship between the Client or Contractor and the Company but it may have an impact on Client and Contractor star ratings, which is the rating system used by the Site which Clients and Contractors can both use to assess Clients and Contractors before bidding for Assignments or in the case of Clients – accepting Bids for Assignments.

## **5.0 Statement of Work**

- 5.1** Statements of Work detail the key terms when a Contractor and a Client decide to enter into an Assignment to complete a 'Statement of Work'. Pūmanawa Mahi remains independent of any relationship between the Contractor and the Client. The Site is in no way brought into the working relationship between the Contractor and the Client. The Statement of Work remains a contractual obligation and relationship exclusively between the Contractor and the Client. However, Pūmanawa Mahi does reserve the right to enforce any obligations under the Statement of Work and this Agreement.
- 5.2** The key deliverables and related Measurements of Performance will be negotiated between the Client and Contractor and stipulated in each Statement of Work. The Contractor agrees to provide the services described in the Statement of Work to a standard acceptable to the Client and that is in line with industry standards. The Statements of Work and this Head Agreement will form the terms and conditions of the Assignment.
- 5.3** All Statements of Work must include the following essential terms:
- (i)** price or hourly rate;
  - (ii)** all details covering the scope of the work to be completed;
  - (iii)** timeframe for the completion of work (the maximum amount of time measured in hours, milestone dates, and completion date).
- 5.4** Both parties have the right to enter into other appropriate written Agreements pertaining to the work agreed upon within the Statement of Work (e.g. confidentiality statements, intellectual property Agreements). Further Agreements pertaining to the specifics of work between the Contractor and the Client must be agreed by both parties in writing and accurately tracked on the Site. Contractor and Clients must ensure that additional Agreements, do not conflict with, narrow, or expand Pūmanawa Mahi's rights and obligations under this Agreement or the terms of governing the use of the Site.

- 5.5 The Contractor cannot commit the Client to any expenditure that is outside the Statement of Work without prior written Agreement from the Client.

## **6.0 Client and Contractor Fees**

### **Client Fees**

- 6.1 Clients contracting Contractors for longer projects (greater than one month) are required to pay invoices on a monthly basis as billed by Pūmanawa Mahi. For shorter projects (less than one month), Clients are required to complete payment upon the completion of the work. Charge out rates are done so in hourly rate terms for work requiring just one Contractor. For project-based work requiring more than one Contractor, Pūmanawa Mahi will negotiate a contract price with the Client. All transfer of funds in relation to work completed through Pūmanawa Mahi is to be done so in New Zealand Dollars (NZD).

### **Contractor Fees**

- 6.2 Contractors enrolled on Pūmanawa Mahi operate as independent contractors and are independent from Pūmanawa Mahi. RWT will be deducted from Contractors if required. A Contractor is not entitled to holiday pay or other employee entitlements. In the event of a Contractor moving to an executive lease scenario, the independent contractor would be employed by Pūmanawa Mahi to complete the services required under the executive lease – this would be negotiated if appropriate. For longer projects (greater than one month), Contractors are remunerated on a monthly basis. For shorter projects (less than one month), payment is made to Contractors upon the completion of the work and billing cycle.

## **7.0 Expenses (Actual and Reasonable)**

- 7.1 The Client will pay the Contractor's actual and reasonable expenses incurred in delivering the services, provided that:

- (i) the Client has given prior consent to the Contractor incurring the expense;
- (ii) the expense is charged at actual and reasonable cost;
- (iii) the claim for expenses is supported by GST receipts; and
- (iv) expenses will be paid directly to the Contractor.

## **8.0 Payment Process**

- 8.1** The Contractor, when working at an hourly charge out rate, will enter their hours on Pūmanawa Mahi and these will only be paid once the Client has approved the hours for payment as agreed with the payment schedule. Where the contract is milestone based, Contractors will track achievement of milestones in Pūmanawa mahi and will only be paid once the Client has approved the milestone payment as agreed with the payment schedule.
- 8.2** Payments will be made on a monthly basis within 7 working days following completion of satisfactory delivery of the services set out in the Statement of Work, and submission of approved invoices. Pūmanawa Mahi reserves the right to make part payments, or withhold payments, when the delivery of services is unsatisfactory, and The Parties are in dispute.
- 8.3** In the event that this Agreement is terminated by one of The Parties (see Termination clause), the Client must pay the Contractor for work performed as agreed up to that date. The value of payment will be stipulated in each Statement of Work. The Company is not obliged to pay for any fees or costs which are outside of those agreed in any Statement of Work.

## **9.0 Fees**

- 9.1** The Contractor agrees that Pūmanawa Mahi will charge a service fee of 20% of gross pay for the provision of Assignments. The service fee will be deducted from Contractor remuneration at the point of payment. Clients are required to pay the hourly rate or fixed amount advertised at the point of accepting the

bid. The remuneration process for both the Client and Contractor remain stipulated in Clause 8.1 of this Agreement.

## **10.0 Taxes**

- 10.1** The Contractor remains responsible to declare and pay all tax liabilities associated with payments, including ACC and any other tax levies payable, made by Pūmanawa Mahi and any Clients dealt with through this Site. Pūmanawa Mahi will only take RWT from Contractors if required, however, Contractors remain responsible for ensuring their RWT is paid appropriately and completely.

## **11.0 Non-Payments**

- 11.1** A Client will be deemed to be in default if the Client fails to pay the Contractor fees within 7 working days following the completion of satisfactory delivery of the services set out in the Statement of Work, and submission of approved invoices.
- 11.2** If a Client is in default, Pūmanawa Mahi may, without notice, temporarily or permanently close the Client's Account and revoke the Client's access to the Site and Site Services, including the Client's authority to obtain any additional Contractor Services from other Contractors through the Site. However, the Client will remain responsible for any amounts that accrue on any continuing Assignments at the time any limitation is put on the Client's Account as a result of the default.
- 11.3** Without limiting other available remedies, Clients must pay Pūmanawa Mahi upon demand for any amounts owed, plus interest on the outstanding amount at the rate of 5% per month plus legal fees and other costs of collection to the extent permitted by applicable law.

**11.4** Pūmanawa Mahi does not guarantee that any Client is able to pay or will pay Contractor Fees and Pūmanawa Mahi is not liable for Contractor Fees if the Client is in default.

**11.5** Contractors may use the dispute process as described in this Agreement in order to recover funds from Client in the event of a default or may pursue such other legal remedies available against Client as the Contractor chooses.

Likewise, Pūmanawa Mahi may also use the dispute process as described in this Agreement in order to recover funds from the Client in the event of a default or may pursue such other legal remedies available against Client as Pūmanawa Mahi chooses.

## **12.0 Non-Circumvention**

**12.1** The following information relates to the non-circumvention terms for Contractors and Clients for completing any future work that arises out of any relationship formed through any Contractors or Clients using the Site. By registering for an account with Pūmanawa Mahi, both Contractors and Clients acknowledge that the only means of Pūmanawa Mahi being compensated for the services that it provides through the Site is through the percentage of the agreed fee that is collected by Pūmanawa Mahi. The services offered to both Contractors and Clients are of significant value to both parties. Without the services offered through the Site, the development of the relationships formed between Contractors and Clients would be significantly more difficult. It is on this basis that the non-circumvention clause is founded.

### **Contractor Non-Circumvention**

**12.2** You agree that any work arising from the relationship between yourself and the Client established through Pūmanawa Mahi must be completed through the Site at all times. From the time of identification, you agree that any future work from this Client, or arising out of work completed for the Client must be requested, agreed, and completed through the Pūmanawa Mahi payment

system. Any Contractor wishing to opt-out of this Agreement must contact Pūmanawa Mahi directly. Please note, opt-out fees will apply.

#### **Client Non-Circumvention**

**12.3** You agree that any work arising for the Contractor identified through Pūmanawa Mahi by yourself must be completed through the Site. In essence, the Contractor and the Client are bound to use Pūmanawa Mahi to complete all future transactions of work. From the time of identification, you agree that any future work for the Contractor, or arising out of work completed for the Client must be requested, agreed, and completed through Pūmanawa Mahi payment services. Any Client wishing to opt-out of this Agreement must contact Pūmanawa Mahi. Please note, opt-out fees will apply.

### **13.0 Liability**

- 13.1** Pūmanawa Mahi endeavours to ensure the accuracy of any information provided by the Contractor but gives no warranty for such suitability or for the accuracy of information obtained from either the Contractor or from any other person in connection with the Contractor.
- 13.2** Pūmanawa Mahi shall not be liable under any circumstances for any loss, damage, expense or delay arising from or in any connection with the recruitment, use, or engagement of any Contractor, from the failure to provide or delay in providing a Contractor for all or part of the period of the Assignment, or from any act or omission (including, but not limited to, negligence, dishonesty, misconduct or lack of skill) of the Contractor.
- 13.3** The Client is responsible for the supervision, direction and control of the Contractor from the commencement of the Assignment and for its duration, and agrees to be responsible for all acts, errors and omissions of the Contractor howsoever caused. The Client will comply with all statutes, bylaws, codes of practice and legal requirements to which it is ordinarily subject in respect of personnel on their worksites.

- 13.4** The Client indemnifies Pūmanawa Mahi against any loss, damage or expense which Pūmanawa Mahi incur arising from or in any way connected with the Client's engagement of the Contractor including but not limited to any loss, damage or expense arising from any act or omission by the Client, or its employees, officers or agents in respect of a Contractor on Assignments to the Client.
- 13.5** Any Contractor's reference (or information relating to a reference) which KP Solutions or the Contractor may provide during the recruitment process or at any time, thereafter, is provided without liability and in strict confidence for the Client's information only. The Client agrees not to disclose such information to any other person.
- 13.6** The provisions of this clause continue to bind The Parties after any Assignment has ended.

## **14.0 Confidential Information**

- 14.1** Both parties agree to keep the Confidential Information of the other party confidential and to use such information only for the purposes of performance of their respective obligations under this Agreement. A party must:
- 14.1.1** not disclose any Confidential Information of the other party to anyone else except as permitted under this Agreement;
- 14.1.2** limit the disclosure of the Confidential Information within its own organisation only to those of its officers and employees to whom such disclosure is strictly necessary for the purposes of this Agreement and who have been made aware of its confidential nature and have agreed to keep the information confidential in accordance with the terms of this clause; and
- 14.1.3** not use the name of the other party in publicity releases, advertising or promotion of the party unless the other party has given its prior written consent (which must not be unreasonably withheld).

**14.2** The obligations of confidentiality in paragraph 12.1.1 – 12.1.3 will not apply to information which:

**14.2.1** is generally available in the public domain except where such availability is as a result of a breach of this Agreement;

**14.2.2** was known prior to the disclosure of the information by the other party; or

**14.2.3** is required to be disclosed by an applicable law or court order.

**14.3** The obligations imposed under this clause will survive the termination of this Agreement.

## **15.0 Waiver**

**15.1** Any waiver of a term of this Agreement will only be effective if in writing and signed by all parties (the Client, the Contractor, and Pūmanawa Mahi). Without limiting the foregoing, any failure by a party to compel performance by other parties of any of the terms and conditions of this Agreement will not constitute a waiver of those terms or conditions, nor will it affect or impair the right of the first mentioned party to enforce them at a later time or to pursue remedies it may have for any subsequent breach of those terms and conditions.

## **16.0 Termination for Breach**

**16.1** If in respect of either party:

**(i)** that party breaches, or fails to properly or promptly perform any obligation of that party under this Agreement and fails to remedy the breach or perform the obligation to the other party's reasonable

satisfaction within 15 business days after receiving notice from the other party specifying the breach or failure and requiring remedy; or

**(ii)** that party ceases to carry on all or substantially all its business or operations; or

**(iii)** that party:

**(a)**

is, becomes, or is deemed to be, unable to pay its debts, insolvent or bankrupt;

- (b) makes an assignment for the benefit of, or enters into or makes any arrangement or compromise with, its creditors generally;
- (c) goes into receivership or voluntary administration or has a receiver, trustee and manager (or either of them) (including a statutory manager) appointed in respect of all or any of its property;
- (iv) anything analogous to an event in subclause (iii) occurs in respect of that party;
- (v) any resolution is passed, or any proceeding is commenced, for the dissolution of that party;
- (vi) or a person which controlled that party at the date of this Agreement ceases to control that party, or a person which did not control that party at the date of this Agreement comes to control that party;

the other party may, by notice to that party, terminate this Agreement.

**16.2** Expiry or termination of this Agreement:

- (i) is without prejudice to any other right, power or remedy under this Agreement, at law, or otherwise, that either party has in respect of a default by the other party;
- (ii) shall not terminate clauses which are stated as surviving the termination of this Agreement and shall continue in force notwithstanding expiry or termination.

## **17.0 Rights of Third Parties**

**17.1** The Parties agree that this Agreement does confer rights and remedies upon Pūmanawa Mahi, and no person other than The Parties and Pūmanawa Mahi has any rights or remedies under the Agreement. The Parties expressly reserve the power to amend or modify or terminate this Agreement without the consent of Pūmanawa Mahi.

## **18.0 Insurance**

- 18.1** The Contractor is not covered under Haemata Tāpui Limited's insurance policy. The Client undertakes to ensure that the Contractor is adequately insured against any liability to third parties arising out of the Contractor's acts or omissions during an Assignment.

## **19.0 Compliance with Legislation**

- 19.1** Where a contractor is required to work at a Client's worksite, the Client agrees to provide a safe workplace for the Contractor and will comply with all legislative and regulatory requirements relating to contractors, including (but not limited to) health and safety and human rights.
- 19.2** If the Contractor is injured, or subjected to any breach of any statute while on Assignment with the Client, the Client will indemnify KP Solutions in respect of any liability resulting from the injury, or breach including (but not limited to) any:
- 19.2.1** Claims brought by the Contractor against KP Solutions arising out of their contractor relationship, including (but not limited to) claims under the Health and Safety at Work Act 2015, and the Human Rights Act 1993 (and their amendment Acts); and penalties imposed on KP Solutions under any Act.

## **20.0 Governing Law**

- 20.1** This Agreement is governed by and construed in accordance with New Zealand law, and all involved parties submit to the exclusive jurisdiction of the New Zealand courts.
- 20.2** The Parties agree that the terms of this Agreement are deemed to have been made and agreed to by The Parties in New Zealand.
- 20.3** These Terms and Conditions are binding on, and for the benefit of, the successors of the Client and the successors and assigns of KP Solutions.

## **21.0 Intellectual Property**

**21.1** All intellectual property rights (including copyright) in all works and material produced under this Agreement and its associated Statements of Work shall remain the property of the Client if contractually bound. The Contractor will not infringe any third-party intellectual property rights in developing any work under this Contract.

## **22.0 Privacy**

**22.1** Client and Contractor privacy is important. You can read our Privacy Policy through visiting the legal section within the Site. The Privacy Policy is a part of these Terms and Conditions and incorporated herein by reference.

## **23.0 Indemnity**

**23.1** By using the Site, you agree to defend and fully indemnify and hold Pūmanawa Mahi (and our officers, directors, employees and agents) harmless from and against all claims, actions, suits, demands, damages, liabilities, costs or expenses (including legal costs and expenses on a full indemnity basis), including in tort, contract or negligence, arising out of or connected to:

- (i)** your use of or access to the Site;
- (ii)** any breach by you of these Terms; or
- (iii)** any wilful, unlawful or negligent act or omission by you.

## **24.0 Force Majeure**

**24.1** Neither party is in breach of this Agreement if its breach is caused by an act of God, fire, act of government or state, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining any raw materials, energy or other supplies, labour disputes of whatever nature and any other reason beyond the control of either party.

- 24.2** If either party is unable to perform its duties and obligations under this Agreement as a direct result of any such reasons, that party must give immediate written notice to the other of such inability, stating the reason.
- 24.3** The operation of this Agreement will be suspended during the period (and only during the period) in which the reason continues. Immediately upon the reason ceasing to exist, the party relying upon it must give written advice to the other of this fact.
- 24.4** If the reason continues for a period of more than 60 business days and substantially affects the commercial basis of this Agreement, The Parties agree to consult together for the purposes of agreeing what action should be taken in the circumstances and, if appropriate, must negotiate in good faith to amend and modify appropriately the provisions and terms of this Agreement as necessary to deal with the reason for the inability to perform.
- 24.5** If such negotiations are unsuccessful, the party not claiming relief under this clause has the right to terminate this Agreement upon giving 20 business days written notice of such termination to the other party.

## **25.0 Entire Agreement**

- 25.1** The Parties acknowledge that no representations or warranties have been made other than those expressly recorded in this Agreement and that, in respect of this Agreement or any part of it including the transactions contemplated pursuant to this Agreement, no party has relied or will rely upon any representations or information, whether oral or written, previously provided to or discovered by it. Even though Pūmanawa Mahi drafted the terms of this Agreement, you represent that you had ample time to review and decide whether to agree to the terms of this Agreement. If an ambiguity or question of intent or interpretation of the terms of this Agreement arises, no presumption or burden of proof will arise favouring or disfavouring Contractors, Clients, or Pūmanawa Mahi because of the authorship of any provision of the terms of this Agreement.

## **26.0 Severance**

- 26.1** If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision must, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement and must not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

## **27.0 Dispute Resolution**

- 27.1** If a dispute arises between The Parties in relation to this Agreement, any Statement or Work, or any disputes between The Parties of any nature rising in relation to the Site or with Pūmanawa Mahi, the dispute must be dealt with in accordance with this clause.
- 27.2** Any party claiming that a dispute exists must notify the other party to the dispute in writing of the nature of the dispute. The Parties agree to use their best endeavours to use mediation and negotiation to resolve any dispute, prior to resorting to an external dispute resolution process.
- 27.3** If the dispute is not resolved by Agreement within 10 working days of the Second Party receiving the notice referred to in Clause 27.2, either party may refer the matter to mediation conducted by a mediator agreed between The Parties within a further 5 working days or failing Agreement within that period, as appointed by Pūmanawa Mahi. The costs of the mediator must be borne equally between the disputing Parties. The chosen mediator must determine the procedures for the mediation. The chosen mediator will not have the power or authority to make any other determination in relation to the dispute.
- 27.4** If The Parties have not mediated a resolution of the dispute within 10 working days of the selection of a mediator, neither party must be obliged to continue

any attempt at mediation under this clause, and either party may then commence such legal proceedings as it thinks fit in relation to the dispute.

**BY CLICKING 'I ACCEPT', YOU AGREE TO THE TERMS AND CONDITIONS OUTLINED IN THIS AGREEMENT TO OPERATE AS A PARTY TO PŪMANAWA MAHI.**