

2.1 The contractor will invoice the company on provision of the Services. The company will pay all amounts payable under this agreement to the contractor on the twentieth day of the month following receipt of the invoice from the contractor. The company will reimburse the contractor for expenses incurred by the contractor in performing the Services in accordance with the provisions of the **Schedule** provided that the company has agreed to the scope or details of the expense in writing prior to the contractor incurring such expense, and the contractor produces all relevant receipts and documentation to the company for expenses for which the contractor seeks reimbursement.

2.2 If any item or part of an item in an invoice submitted by the contractor is contested by the company, the company shall give prompt notice with reasons for disputing it and shall not delay payment on the remainder of the invoice which is not disputed.

3 Term of the agreement

This agreement will commence on the Commencement Date in the **Schedule** and continue until terminated in accordance with clauses 4.1 to 4.3.

4 Termination

4.1 The company or the contractor may give notice to terminate this agreement by providing three (3) calendar months advance notice in writing to the other party.

4.2 The company may terminate this agreement forthwith, by notice, if:

(a) the Services are not performed expeditiously and with all reasonable care, skill and diligence;

(b) 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 the company, acting reasonably, within fourteen (14) days of receipt of notice in writing from the company requiring the breach to be remedied.

4.3 The contractor may terminate this agreement forthwith, by notice, if the company has breached any of the terms of the agreement and fails to remedy the breach to the satisfaction of the contractor, acting reasonably, within fourteen (14) days of receipt of notice in writing from the contractor requiring the breach to be remedied.

4.4 Termination of this agreement shall be without prejudice to the rights and obligations of the parties prior to termination. Termination shall also be without prejudice to any of the provisions of this agreement which are expressed to survive termination.

5 Independent contractor

5.1 The contractor is an independent contractor and is not an employee or agent of the company. The parties acknowledge that the real nature of their relationship is that of independent contractor and principal and that the contractor is in business on his own account. The contractor shall be responsible for the contractor's own liability for tax, ACC levies, and all other liabilities and expenses, of whatever nature, relating to the contractor. The contractor hereby indemnifies and saves harmless the company from all such taxes, levies and other expenses.

5.2 The contractor will be responsible for the contractor's own safety and health. The contractor must comply with the Health and Safety in Employment Act 1992, any regulations made under that Act, and any health and safety policies, directives or procedures of the company.

6 Confidentiality

6.1 "Confidential Information" shall for the purpose of this agreement means the product list of the company and suppliers of those products, any client list which is disclosed to the

contractor and information, data and know-how, whether technical or not, which relates to the research, development or business activities of the company, which is either marked or stated to be confidential, or is by its nature reasonably intended to be confidential; but shall not include information, data or know-how which can be established within 30 days of the date of this agreement by written records to be already known to the contractor or the public at the time of its disclosure, nor information, data or know-how which enters the public domain through no fault of the contractor.

- 6.2 Except as provided under clause 6.4 the contractor agrees not to disclose or otherwise publish the Confidential Information without the prior written consent of the company.
- 6.3 The contractor agrees not to use the Confidential Information for any purpose other than that for which the information was provided. In the case of any uncertainty, the contractor agrees to obtain prior clearance from the company.
- 6.4 When disclosure to any other person employed or contracted by the contractor or to the contractor's agents is necessary the contractor shall ensure that they are bound by equivalent duties of confidentiality and non-use as those set out in this agreement.
- 6.5 The contractor shall take all reasonable care to ensure that all materials in the possession of the contractor which contain or incorporate Confidential Information be securely kept; and shall return, destroy or otherwise deal with as directed all material containing or incorporating Confidential Information on the direction of the company.
- 6.6 The contractor's obligations in respect of the Confidential Information shall be in addition to any other obligation under any other agreement which involves the Confidential Information, unless expressly excluded by reference.
- 6.7 The obligations under this clause will survive termination of this agreement.

7 Non-competition

- 7.1 The contractor will not for a period of two (2) years from the date of termination of this agreement for whatever reason:
 - (a) Sell or provide to any end user access to any product designed to provide the same distance learning program; or
 - (b) Solicit
 - (c) Contact or attempt to contact any manufacturer or developer of any product appearing on the company's product list; or
 - (d) Enter into any correspondence or dialogue with any such manufacturer or developer without first disclosing full details of the nature of the contact, correspondence or dialogue or the product to be sold or supplied and may proceed only with the written consent of the company which may be withheld at its absolute discretion.

8 Software

- 8.1 Where the company wishes the contractor to write software programs (the "Project") for the company the contractor agrees that he will:
 - (a) provide written reports to the company at not greater than monthly intervals specifying the status of the Project its degree of completion, the activities performed during the preceding monthly period, any problems encountered which may adversely affect the completion of the Project, and reporting on any other matters which may reasonably be required by the company.

- (b) Not, without the company's prior written consent permit any person except those named in the **Schedule** (if any) who are accepted by the company on the representation by the contractor that they have and will use the experience, skills and qualifications necessary to perform the tasks required of them, to be engaged in the Project.

8.2 The contractor assigns to the company as its exclusive property:

- (a) the worldwide ownership and of copyright for all purposes in all works produced during the Project including but not limited to flow charts, algorithms, work product, source and object code, documents, drawings, specifications, trade names and marks and knowhow; and
- (b) any enhancements, developments or amendments to that Software; and
- (c) the worldwide ownership of all designs, techniques, inventions, improvements and innovations, whether or not patentable;

which, in each case, have been produced by the contractor or any other person employed or contracted by the contractor pursuant to this agreement, ("the Intellectual Property").

8.3 The contractor agrees to disclose the company (and ensure that any other person employed or contracted by the contractor discloses) full particulars of the Intellectual Property.

8.4 The contractor agrees to:

- (a) sign (and to ensure that any other person employed or contracted by the contractor signs) 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 at the company's expense.

8.5 The contractor, at all times agrees to keep secret and strictly confidential all information relating to the Project and the Intellectual Property.

8.6 As a condition to the making of any payment by the company to the contractor under this agreement the contractor must first obtain:

- (a) the written consent of the company to the use by the contractor of any other person employed or contracted by the contractor (such consent not to be unreasonably withheld); and (if required to do so)
- (b) the signature by such other person employed or contracted by the contractor of an Intellectual Property assignment.

8.7 From time to time at the company's request the contractor agrees to provide documentation relating to the Intellectual Property Rights and the Project including source code (including all updates and upgrades) with full explanations and supporting documentation.

8.8 The obligations under this clause will survive termination of this agreement.

9 Indemnity

9.1 (a) The contractor warrants that the contractor is not aware of any patent, trade mark, copyright, registered design or other intellectual property rights held by third parties which may be infringed by the performance by the contractor or any other person employed or contracted by the contractor of their duties under this agreement.

(b) If there are any such rights or alleged rights the contractor agrees to indemnify the company against all liabilities for costs, damages, obligations and claims arising from such breach by the contractor or any other person employed or contracted by the contractor of those rights or alleged rights and, at the company's option, reperform the contractor's services under this agreement to correct the breach free of charge to the company.

9.2 The contractor agrees to indemnify the company against any claims, giving rise to liability, damages and costs (including loss of profits and destruction or damage to a computer program or data and consequential loss) under this agreement including but not limited to any claims arising from the contractor's performance of the Project.

9.3 The obligations under this clause will survive termination of this agreement.

10 Severance

10.1 If any term of this agreement is illegal, invalid or unenforceable for any reason whatsoever including, but without limitation, legislation or other provisions having the force of law or any decision of any court or other body or authority having jurisdiction, such term will be deemed to be deleted from this agreement.

11 Notices

11.1 Any notice, document, request, demand or other communication ("notices") to be given for the purposes of this agreement must be in writing and may be served personally or sent by registered mail or document exchange to the address of the receiving party from time to time or by facsimile or electronic mail to the facsimile or electronic mail number of that party or such other facsimile or electronic mail number as that party may notify the other party, in writing, from time to time.

11.2 Notices given:

- (a) personally are deemed served upon delivery;
- (b) by post or document exchange are deemed served 2 business days after posting;
- (c) by airmail to an address outside New Zealand are deemed served 5 business days after posting;
- (d) by facsimile or electronic mail are deemed served upon receipt of the correct answer-back or receipt code in the case of facsimile and transmission in the case of electronic mail.

11.3 Any such notice which has been served on a non-business day, is deemed served on the first business day after such day.

11.4 A notice may be given by an authorised officer, employee or agent of the party giving the notice.

11.5 Time is of the essence.

12 Assignment

12.1 The contractor may not sell, transfer, assign, license, franchise, perform on behalf of a third party or otherwise part with possession of, mortgage, charge or encumber any right or obligations under this agreement without the prior written consent of the company. The company may require that in the case of assignment or other agreed dealing with the agreement:

- (a) the contractor must pay all fees and expenses (including legal fees on a solicitor/client basis) incurred by the company in connection with the investigation of the proposed assignee or other third party and otherwise relating to the proposed assignment or dealing; and
- (b) the proposed assignee or other third party agrees in writing with company to observe and perform the terms, conditions and restrictions applying to the contractor in this agreement whether express or implied as if the proposed assignee or other third party was an original contracting party to this agreement.

13 General provisions

13.1 Entire agreement

The parties have been legally advised in relation to the section 4 of the Contractual Remedies Act 1979 (Statements during negotiation for a contract) and acknowledge that this agreement sets forth the entire agreement and understanding of the parties and supersedes all prior to oral or written agreements, understandings or arrangements relating to its subject matter.

13.2 Amendment

This agreement cannot be amended, modified, varied or supplemented except in writing signed by duly authorised representatives of the parties.

13.3 No waiver

No failure or delay on the part of either party to exercise any right or remedy under this agreement is a waiver of such right or remedy nor does any single or partial exercise of any right or remedy under this agreement preclude the exercise of any other right or remedy or preclude the further exercise of such right or remedy as the case may be. The rights and remedies provided in this agreement are cumulative and are not exclusive of any rights or remedies provided by law.

13.4 Public statements

- (a) The parties agree that, subject to the requirements of applicable law, none of them will disclose any of the terms of this agreement to any third parties other than their professional advisers, and further neither of them will, and will not permit their advisers to, make any public announcement or issue any press release or other publicity relating to this agreement without the prior written approval of the other party as to its form and content.
- (b) The parties agree that they will issue a joint press release and/or coordinated press releases announcing the execution of this agreement and all issues of disclosure and publicity (whether required by law or otherwise) will be coordinated by representatives appointed by each party to consult with the other parties.

13.5 Costs

Each of the parties is responsible for its respective legal and other costs incurred in relation to the preparation of this agreement.

13.6 Further assurance

Each party agrees with due diligence to sign all deeds, assignments and documents and to do everything that the other party may reasonably require to carry out the terms of this agreement.

14 Governing law

14.1 This agreement is governed by and construed in accordance with the laws of New Zealand for the time being in force, and the parties agree to submit to the non-exclusive jurisdiction of the courts of that jurisdiction.

15 Dispute resolution

15.1 With the exception of the disputes referred to in clause 15.5, if any dispute between the parties arises concerning this agreement the parties agree that the dispute:

(a) Will first be referred by any responsible representative of either party to the chief executive officers of each party who must meet together with the objective of reaching an acceptable commercial solution to the problem.

(b) If such an agreed solution cannot be reached to the satisfaction of both parties within 5 days of the reference of the dispute to the chief executive officers of the parties either of those officers may then refer the dispute to conciliation in accordance with the rules of LEADR NZ.

15.2 If the dispute is not settled by agreement between the parties within 30 days of the commencement of conciliation proceedings then either party may refer the matter to arbitration in accordance with the Arbitration Act 1996. The decision of the arbitrator is final and binding on the parties.

15.3 While any such dispute remains unresolved the parties agree to continue the performance of the agreement to the extent that such performance is possible given the nature of the dispute.

15.4 Any information or material or settlement proposals disclosed or made during the preceding dispute resolution proceedings are made on a without prejudice basis and the parties agree to use their best endeavours to ensure that all such information, material and proposals and the existence of any dispute between them is kept strictly confidential.

15.5 The preceding dispute resolution procedures do not apply to any dispute relating to the ownership of the Intellectual Property Rights or Software.

SIGNED by the parties before the Schedule.

EXECUTION

Signed on behalf of SMART TRAINER LTD

Signed on behalf of
the contractor by)
name, position)

Schedule

Services

- 1 Services**
The contractor must perform the following services:
- *please insert services to be performed.*

2 Expenses

Subject to clause 2.1 (expenses), the company will reimburse the contractor for:

- *please insert expenses eg: travel expenses, materials, and expenses incurred obtaining any parts from other parties.*

3 Fees

The company will make the following payments to the contractor for performance of the services:

- *please insert hourly/monthly rates etc.*