

TAI POUTINI PROFESSIONAL SERVICES LIMITED

In consideration for TAI POUTINI PROFESSIONAL SERVICES LIMITED providing to the Client, the goods and services described in the attached Proposal ("the Supply"), the Client will pay TAI POUTINI PROFESSIONAL SERVICES LIMITED the fees, charges and reimbursable expenses described in the Proposal ("the Fees"). By accepting the Proposal, the Client agrees to be bound by the terms and conditions outlined herein and the accepted Proposal, together with these terms and conditions, comprise the entire agreement (together, "the Agreement"). TAI POUTINI PROFESSIONAL SERVICES LIMITED and the Client are hereinafter jointly referred to as the "Parties" and separately as a "Party".

INTERPRETATION

1. The clause headings are for references purposes only and shall not influence interpretation of this document.
2. References to the masculine gender shall, where applicable, include the feminine gender and vice versa.
3. Words importing the singular, where applicable, also include the plural and vice versa.
4. References to natural persons include created legal entities (whether incorporated or unincorporated) and vice versa.

1. COMMENCEMENT AND TERM

Unless otherwise agreed by the Parties in writing or specified in the Proposal, the Proposal is valid for acceptance by the Client for 90 days from its date. The Agreement shall commence on the date the Client communicates its acceptance of the Proposal and these Standard Terms and Conditions shall expire on the written confirmation of TAI POUTINI PROFESSIONAL SERVICES LIMITED of the completion of the Supply, unless it is terminated earlier by either party in accordance with clause 11 ("the Term").

2. INCONSISTENCY

- a. In the event of any inconsistency between the terms and conditions outlined herein and the Proposal, to the extent of the inconsistency, the terms and conditions in this Appendix 2 will prevail.
- b. If there is any conflict or inconsistency between a Purchase Order and the

Agreement, the Agreement will prevail to the extent of that conflict or inconsistency.

- c. For the purposes of this Agreement, Purchase Order means an individual purchase order or service order as may be issued by the Client to TAI POUTINI PROFESSIONAL SERVICES LIMITED in respect of the Supply.

3. PAYMENT

- a. Unless otherwise agreed by the Parties in writing or provided in the Proposal:
 - i. all amounts referred to are in New Zealand Dollars;
 - ii. the Client must pay all Fees within 30 days of the date of the invoice provided by TAI POUTINI PROFESSIONAL SERVICES LIMITED to the Client;
 - iii. all payments must be made by bank draft in favour of "TAI POUTINI PROFESSIONAL SERVICES LIMITED" or by direct electronic transfer to the account provided in the Proposal;
 - iv. the terms of this Agreement apply to any/all services carried out by TAI POUTINI PROFESSIONAL SERVICES LIMITED for the Client prior to execution of the Agreement by the Parties, and that work is included in the Contract Price; and
 - v. if applicable, the Client shall be responsible for all costs and expenses related to payment of the Fees to TAI POUTINI PROFESSIONAL SERVICES LIMITED including any variation of and to any foreign exchange rate and any international bank charges.
- b. TAI POUTINI PROFESSIONAL SERVICES LIMITED will submit to the Client invoices for payment of Fees, accompanied by such information and documentation as is reasonably required to verify the invoice in accordance with the Proposal.
- c. If any Fees due and payable by the Client to TAI POUTINI PROFESSIONAL SERVICES LIMITED remain unpaid after the due date, then at TAI POUTINI PROFESSIONAL SERVICES LIMITED's discretion, interest may be payable thereon at the rate of 5% per annum, calculated daily on overdue balances.
- d. The Client agrees that the Fees may be adjusted by TAI POUTINI PROFESSIONAL SERVICES LIMITED if it is required to carry out additional work or if the Supply requires changes, deletions or modifications arising from:
 - i. requests by the Client;
 - ii. the Client's site conditions that could not reasonably have been foreseen by TAI POUTINI PROFESSIONAL SERVICES LIMITED;
 - iii. a change in legislative requirements or in response to a request or requirement of a relevant authority; or

iv. any other change outside the reasonable control of TAI POUTINI PROFESSIONAL SERVICES LIMITED, and in each such case, where reasonably practicable, advance notice of any increase in the Fees will be given to the Client.

4. TAXES AND EXPENSES

- a. All payments to be made by the Client to TAI POUTINI PROFESSIONAL SERVICES LIMITED under this Agreement shall be made without any deduction or set-off for or on account of any taxes, levies, imports, duties, charges, fees and withholdings of any nature imposed by any governmental, fiscal or other authority save as required by law. If a Party to this Agreement is compelled to make any such deduction, it will pay to the receiving Party such additional amounts as are necessary to ensure receipt by the receiving Party of the full amount which that party would have received but for the deduction.
- b. All taxes, duties, levies, and freight which may be charged in connection with the Supply will be the responsibility and for the sole account of the Client.

Goods and Services Tax as defined in the New Zealand Goods and Services Tax Act 1985 ("GST")

- c. Unless otherwise agreed by the Parties in writing or specified in the Proposal, any amount required to be paid in connection with the Supply by TAI POUTINI PROFESSIONAL SERVICES LIMITED to the Client pursuant to the Agreement is calculated to be exclusive of GST.
- d. If GST is payable in relation to the Supply, the Client will pay to TAI POUTINI PROFESSIONAL SERVICES LIMITED, an additional amount equal to the GST.
- e. The additional amounts payable pursuant to this clause 4 are due at the same time and payable in the same manner as the Fees.

5. RESPONSIBILITIES AND OBLIGATIONS OF TAI POUTINI PROFESSIONAL SERVICES LIMITED

During the Term, TAI POUTINI PROFESSIONAL SERVICES LIMITED will:

- a. provide the Client with the Supply pursuant to the terms of this Agreement;
- b. at its discretion, engage and retain suitably qualified sub-consultants and sub-contractors, if required, to carry out the Supply;
- c. with due expedition and in accordance with the Agreement, provide all professional skill and advice required for carrying out the Supply;
- d. comply with all reasonable directions of the Client pursuant to a provision of the Proposal;
- e. unless otherwise agreed by the Parties, remain responsible for the Supply within the timeframes outlined in the Agreement, provided that should the Client fail to provide TAI POUTINI PROFESSIONAL SERVICES LIMITED with relevant documents,

specifications, patterns and other requested information in a timely manner then TAI POUTINI PROFESSIONAL SERVICES LIMITED shall not be responsible or liable to the Client for any claim, loss or damage of whatsoever nature or howsoever arising for the delay in any timeframe as a result of such failure and

- f. make all reasonable efforts to comply with all legislative requirements in carrying out the Supply.

6. PASSING OF RISK AND OWNERSHIP OF TITLE

- a. Subject to any rights of TAI POUTINI PROFESSIONAL SERVICES LIMITED or third parties pursuant to the Agreement, ownership of, and title to goods the subject of the Supply shall only pass to the Client upon full payment of the Fees.
- b. Risk in goods the subject of the Supply passes to the Client:
- upon delivery to the Client or collection by the Client or the Client's agent; or
 - passing of ownership of the goods pursuant to subclause above, whichever occurs first.

7. RESPONSIBILITIES AND OBLIGATIONS OF THE CLIENT

- a. The Client will:
- pay TAI POUTINI PROFESSIONAL SERVICES LIMITED the Fees in accordance with the Agreement when and as required pursuant to the Agreement, including Fees for work carried out by TAI POUTINI PROFESSIONAL SERVICES LIMITED prior to signing this Agreement on receipt of the relevant invoices;
 - provide TAI POUTINI PROFESSIONAL SERVICES LIMITED with relevant documents, specifications, patterns and other information requested by TAI POUTINI PROFESSIONAL SERVICES LIMITED in the possession or control of the Client, in a timely manner sufficient to enable TAI POUTINI PROFESSIONAL SERVICES LIMITED to carry out the Supply;
 - bear the cost of all fees and charges required to comply with legislative requirements which are incurred, including fees and charges TAI POUTINI PROFESSIONAL SERVICES LIMITED could not reasonably have anticipated would be incurred, in connection with the Supply;
 - obtain all necessary consents, permits, authorisations and/or approvals prior to the commencement of work pursuant to the Agreement and ensure that they remain valid and in effect at all relevant times;
 - provide, together with the submission of

all samples, a completed and signed Chain of Custody form with instructions describing the type of analysis requested and complete and thorough written disclosure of the known or suspected presence of any hazardous substances. Hazardous substances are those defined as such by applicable New Zealand legislation. The Client warrants that all relevant disclosures will be made to TAI POUTINI PROFESSIONAL SERVICES LIMITED about the presence of hazardous substances and agrees that it will be liable and will pay all costs and damages resulting from a Client's failure to disclose to TAI POUTINI PROFESSIONAL SERVICES LIMITED that a sample contained or was suspected to contain a hazardous substance together with any costs and damages resulting from its failure to comply with any New Zealand legislation in respect of the sample. For the avoidance of doubt, the Client will also be liable for and will pay all costs and damages whatsoever resulting from any action or negligence on the part of the Client which interrupts TAI POUTINI PROFESSIONAL SERVICES LIMITED's ability to process work, contaminates TAI POUTINI PROFESSIONAL SERVICES LIMITED's laboratory, its instruments or work areas or necessitates any clean-up or recovery on the part of TAI POUTINI PROFESSIONAL SERVICES LIMITED which arises from a sample which contains an undisclosed (in whole or part) hazardous substance.

8. INTELLECTUAL PROPERTY

a. Definitions

- i. Background Intellectual Property means all Intellectual Property owned by TAI POUTINI PROFESSIONAL SERVICES LIMITED prior to the date on which the Client accepts the Proposal, or which is developed independently and outside of the Supply. Without limiting the generality of this clause, TAI POUTINI PROFESSIONAL SERVICES LIMITED's Background Intellectual Property includes but is not limited to: minerals and materials testing methods; techniques and procedures; inspection methods; metallurgical and mechanical testing methods; integrity engineering programs, software and any of TAI POUTINI PROFESSIONAL SERVICES LIMITED's other methods, techniques and procedures utilised by TAI POUTINI PROFESSIONAL SERVICES LIMITED not in connection with the Supply; and any amendments or improvements to the above.

- ii. New Intellectual Property means any Intellectual Property created or developed in the course of, as a result of and/or as part of the Supply.

- iii. Intellectual Property means any and all rights and interests in any intellectual property or like rights. It includes but is not limited to all statutory and equitable rights or remedies in respect of copyright and neighbouring rights, trade marks (registered or unregistered), designs, inventions, patents (including patent applications), improvements, confidential information, copyright, results, research data, research information, research insights, know-how, trade secret and the right to apply for registration of any such rights; and all other rights with respect to intellectual property as defined in Article 2 of the July 1967 Convention Establishing the World Intellectual Property Organisation.

- b. The Parties each retain ownership of their Background Intellectual Property. Nothing in this Agreement shall affect, transfer, licence or grant any other rights in or to TAI POUTINI PROFESSIONAL SERVICES LIMITED's Background Intellectual Property.
- c. TAI POUTINI PROFESSIONAL SERVICES LIMITED shall own all rights and interests in and/or to New Intellectual Property on creation unless noted in Special Terms under Key Terms, page 1.
- d. Notwithstanding clause 8.c, to the extent that any New Intellectual Property vests in or is owned by the Client, the Client shall, without limit in time, take all steps and execute all documentation required to ensure that ownership of such New Intellectual Property is transferred and/or assigned to TAI POUTINI PROFESSIONAL SERVICES LIMITED.

9. CONFIDENTIALITY

- a. For the purposes of the Agreement, Confidential Information means:
 - i. information about the business, customers, services, and products of a party to this Agreement;
 - ii. the negotiation of and terms of this Agreement; and
 - iii. Intellectual Property of any kind belonging to a Party including the right to apply for registration of Intellectual Property but excludes information which is in the public domain other than through a breach of this Agreement.
- b. Each Party must, in relation to the other Party's Confidential Information –
 - i. treat the Confidential Information as secret and confidential;
 - ii. not use the Confidential Information for any purpose other than the performance of its obligations under this Agreement;
 - iii. not copy, reproduce, make records of or

- take extracts from Confidential Information except as is reasonably necessary to enable a Party to perform its obligations under this Agreement; and
- iv. not directly or indirectly disclose the Confidential Information to any person.
- c. Clause 9(b) does not apply to –
 - i. disclosure required by law or the listing rules of the New Zealand Financial Markets Authority;
 - ii. disclosure to employees of a Party who need to receive the information for the purpose of the Supply and who have agreed in writing to abide by the terms of this clause; or
 - iii. disclosure to a Party's legal, accounting, or financial advisors under a duty of confidentiality.
- d. The confidentiality obligations in this clause do not apply to any information which:
 - i. subsequently becomes available to the general public other than through a breach by the receiving Party;
 - ii. is already known to the receiving Party before disclosure by the disclosing Party;
 - iii. is developed through the independent documented efforts of the receiving Party;
 - iv. the receiving Party rightfully receives from a third party without restrictions as to use; or
 - v. is required to be disclosed pursuant to an order or requirement by a court or other government body.
- e. This clause shall survive for a period of no less than ten (10) years after the expiration of this Agreement or termination of the Agreement by either Party for any reason.

10. TERMINATION

- a. The Agreement may be terminated immediately:
 - i. by mutual agreement in writing by the Parties;
 - ii. at the sole discretion of TAI POUTINI PROFESSIONAL SERVICES LIMITED in writing should the Client have committed an Event of Default; or
 - iii. by written notice from a Party to the other Party where that other Party suffers an Insolvency Event.
- b. If the Agreement is terminated pursuant to this clause 10 the Client must pay TAI POUTINI PROFESSIONAL SERVICES LIMITED for all Fees and expenses reasonably incurred by TAI POUTINI PROFESSIONAL SERVICES LIMITED in carrying out the Supply to the date of termination together with any costs and expenses reasonably incurred by TAI POUTINI PROFESSIONAL SERVICES LIMITED by reason of the termination.

Definition of Event of Default and Insolvency Event

- a. For the purposes of this Agreement, an "Event of Default" means, in respect of a Party, any of the following:
 - i. the Party is the subject of an Insolvency

- Event;
- ii. the Party commits a material breach of its obligations under this Agreement which is capable of being remedied and does not remedy the breach within 30 days from the Party receiving notice in writing from the other Party specifying the breach and requiring the breach to be remedied; OR
- iii. the Party commits a material breach of its obligations under this Agreement which is not capable of being remedied.
- b. In this Agreement, an "Insolvency Event" means where a party:
 - i. is or is deemed to be, insolvent or bankrupt;
 - ii. makes an assignment for the benefit of or enters into or makes any arrangement or composition with its creditors;
 - iii. goes into receivership or administration or has a receiver, administrator, trustee and manager (or either of them) (including a statutory manager) or similar appointed in respect of all or any substantial part of its property; or
 - iv. has a liquidator appointed or any resolution passed or any proceeding commenced for its winding up or liquidation (other than for the purposes of a solvent reconstruction).

11. FORCE MAJEURE

- a. "Force Majeure Event" means a circumstance beyond the reasonable control of the Party which occurs without default or negligence of the Party affected and, without limiting to the generality of this, includes:
 - i. civil disturbance or commotion, state of emergency, general strikes, acts of God, war blockage, revolution, riot, terrorism, fire, earthquake, floods, storm, tempest or other natural calamity;
 - ii. failure of public services, absence of transport facilities, absence of raw material supplies, plant breakdown or failure of plant to perform to expected specifications beyond the reasonable control of the Party affected; and
 - iii. restrictions on a Party's actions or ability to perform which arise from or are a result of any Covid-19 pandemic measures imposed by a government or local authority:-

BUT

- iv. a Party's failure to meet its obligations to make payments under this Agreement will not be a Force Majeure Event unless the circumstance is caused by an impediment in or affecting the New Zealand banking system; and
- v. industrial unrest or actions specifically involving the Party's workforce does not constitute a Force Majeure Event.
- b. The obligations of a Party will be suspended without penalty during the time and to the extent that that Party is prevented from or delayed in complying with the obligation by a

- Force Majeure Event.
- c. The suspension referred to in paragraph b above will not extend the Term.
 - d. If suspension as a result of a Force Majeure Event continues for a period of not less than sixty (60) days then either Party may terminate this Agreement by giving fourteen (14) days written notice to the other Party
 - e. A Party affected by a Force Majeure Event must:-
 - i. immediately after being affected give written notice to the other Party setting out full particulars of the Force Majeure Event and the manner in which any estimated time for which its performance is prevented or delayed;
 - ii. use reasonable endeavours to remove or mitigate the effect of the Force Majeure Event at the earliest possible time provided that a Party will not be obliged to settle a strike, lockout or other labour difficulties; and
 - iii. upon becoming aware of the cessation of the Force Majeure Event notify the other Party immediately of that fact in writing.
 - f. A Force Majeure Event will not relieve a Party from meeting its obligations under any disaster, recovery or business continuity plans under this Agreement.

12. LIABILITY OF EACH PARTY

Exclusion of Indirect and Consequential Loss

- a. Notwithstanding any other provision of the Agreement, TAI POUTINI PROFESSIONAL SERVICES LIMITED will not under any circumstances be liable to the Client or any Party engaged by the Client, for any consequential, special or indirect loss, including but not limited to:-
 - i. loss of revenue;
 - ii. loss of profits;
 - iii. loss of data;
 - iv. business interruption; or
 - v. loss of opportunity,whether under the law of contract, tort, statutory duty or otherwise, suffered or incurred by the Client in connection with the Agreement.

Limit of Liability

- b. Notwithstanding any other provision of the Agreement with the exception of clause 12 a, and except to the extent that liability cannot be limited or excluded by law:
 - i. TAI POUTINI PROFESSIONAL SERVICES LIMITED's aggregate liability to the Client for any loss or damage whatsoever which arises under or in connection with this Agreement or the performance of the Supply (excluding loss or damage to real or personal property), and whether by way of an indemnity or statute, in tort (for negligence or otherwise), or on any other basis in law or equity, is limited to the value

of the Fees payable under this Agreement; and

- ii. TAI POUTINI PROFESSIONAL SERVICES LIMITED's aggregate liability to the Client for any loss or damage to real or personal property which arises under or in connection with this Agreement or the performance of the Supply, and whether by way of an indemnity or statute, in tort (for negligence or otherwise), or on any other basis in law or equity, is limited to \$5 million in aggregate.

Defects

- c. The Client must notify TAI POUTINI PROFESSIONAL SERVICES LIMITED within seven days of becoming aware of a defect in the Supply. To the extent that the defect is caused by TAI POUTINI PROFESSIONAL SERVICES LIMITED's negligence or breach of the Agreement, TAI POUTINI PROFESSIONAL SERVICES LIMITED must use its best endeavours to rectify the defect.

Duration of Liability

- d. The Client (and persons claiming through or under the Client) will not be entitled to commence any action, claim or proceeding of any kind whatsoever after the date which is 12 months after the date of the final invoice for Fees issued to the Client against TAI POUTINI PROFESSIONAL SERVICES LIMITED (or any employee of TAI POUTINI PROFESSIONAL SERVICES LIMITED) for any liability in connection with the Supply whether under the law of contract, tort, statutory duty or otherwise.

Contribution

- e. TAI POUTINI PROFESSIONAL SERVICES LIMITED's liability to the Client for any loss or damage, including a claim for damages for a breach of contract by TAI POUTINI PROFESSIONAL SERVICES LIMITED, will be reduced to the extent that an act or omission of the Client or its employees or agents, contributed to the loss or damage.

Representation by TAI POUTINI PROFESSIONAL SERVICES LIMITED

- f. TAI POUTINI PROFESSIONAL SERVICES LIMITED will use its best endeavours to ensure the contents of any documentation, recommendations, advice and reports produced under the Agreement are accurate at the time of providing it to the Client.

Extent of Representation and warranties by TAI POUTINI PROFESSIONAL SERVICES LIMITED

- g. TAI POUTINI PROFESSIONAL SERVICES LIMITED does not make any representations as to any matter, fact or thing that is not expressly provided for in the Proposal.
- h. TAI POUTINI PROFESSIONAL SERVICES LIMITED does not give any warranty, nor

accept any liability in relation to the contents of the documents, recommendations, advice and reports produced in connection with the Proposal, except to the extent, if any, required by law or specifically provided for in the Proposal.

- i. Unless otherwise agreed, TAI POUTINI PROFESSIONAL SERVICES LIMITED will not be liable to the Client for any claims relating to advice and reports, training material, operation manuals etc in any language other than in English.
- j. If, notwithstanding these exclusions any warranty would be implied whether by law, custom or otherwise, that warranty is to the fullest extent permitted by law excluded.

Warranty by the Client

- k. The Client warrants to TAI POUTINI PROFESSIONAL SERVICES LIMITED that it has met all obligations that may need to be satisfied by the applicable law of the jurisdiction in which the Supply is to be carried out.
- l. The Client warrants to TAI POUTINI PROFESSIONAL SERVICES LIMITED that at the date of accepting the Proposal, no applicable laws of the jurisdiction in which the Supply is to be carried out would prevent the Parties from performing their obligations under the Agreement and the Agreement is enforceable under such laws.
- m. The Client will promptly advise TAI POUTINI PROFESSIONAL SERVICES LIMITED in writing of any actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs, charges and expenses which may be brought or claimed against the Client or TAI POUTINI PROFESSIONAL SERVICES LIMITED, in respect of which the Client, its servants or agents or TAI POUTINI PROFESSIONAL SERVICES LIMITED may become liable in connection with the Agreement.

Indemnity by the Client

- n. The Client indemnifies TAI POUTINI PROFESSIONAL SERVICES LIMITED against any and all direct and consequential losses, costs, expenses, damages and liabilities (whether monetary or capable of being converted into money), suffered or incurred by TAI POUTINI PROFESSIONAL SERVICES LIMITED in connection with the Agreement - including without limitation, all loss suffered by TAI POUTINI PROFESSIONAL SERVICES LIMITED from any actions, suits (civil, criminal or penal), claims, demands, proceedings, losses (including losses which are not indemnified under any other policy of insurance in which TAI POUTINI PROFESSIONAL SERVICES LIMITED has an interest), damages, compensation, sums of money, legal costs (including solicitor and Client costs), charges and expenses (including increased

expenditure or effort in providing the Supply), in connection with the Supply, whether under the law of contract, tort, statutory duty or otherwise.

Release by the Client

- o. The Client agrees to release, discharge and holds harmless TAI POUTINI PROFESSIONAL SERVICES LIMITED from, and agrees that under no circumstance will TAI POUTINI PROFESSIONAL SERVICES LIMITED be liable for any and all losses, claims, actions, demands, proceedings, liabilities, damages, amounts, costs and expenses (including any consequential loss and loss of profit) and legal costs and disbursements, arising, paid, suffered or incurred by the Client in connection with:
 - i. any liability for infringement of a third party's trade secrets, proprietary or confidential information, patents, registered designs, trademarks or names, copyright or other protected rights; any act or omission of any employee, agent or permitted sub-contractor of TAI POUTINI PROFESSIONAL SERVICES LIMITED in connection with the Supply; and
 - ii. any liability of the Client as a result of the Agreement to pay any payroll tax, GST, superannuation guarantee charge or other tax, duty, charge, or levy.
- p. This clause 12 shall survive expiration of the Agreement or termination of the Agreement by either Party for any reason.

13. INSURANCE

- a. For the Term of this Agreement or until otherwise terminated, TAI POUTINI PROFESSIONAL SERVICES LIMITED will maintain:
 - i. public liability insurance for an amount of not less than \$10 million;
 - ii. statutory liability insurance for an amount of not less than \$1 million; and
 - iii. if services are being provided, professional indemnity insurance for an amount of not less than \$1 million.
- b. TAI POUTINI PROFESSIONAL SERVICES LIMITED is covered for injury insurance under the Accident Compensation Act 2001.
- c. The insurance policies referred to in paragraph a above are current and TAI POUTINI PROFESSIONAL SERVICES LIMITED will provide Certificates of Currency to the Client upon request.

14. VARIATIONS

Compliance with Agreement

- a. TAI POUTINI PROFESSIONAL SERVICES LIMITED must not alter the terms of the Supply or deviate from the requirements of the Agreement except by agreement in writing with the Client or directed by the Client as set out in in this clause 14.

Direction by the Client

- b. The Client may, at any time prior to expiry or termination of the Agreement, give TAI POUTINI PROFESSIONAL SERVICES LIMITED a written request to alter, amend, omit, add to or otherwise vary the Supply ("Variation").
- c. TAI POUTINI PROFESSIONAL SERVICES LIMITED must within ten (10) Business Days after receiving the notice of Variation under clause 16(b) provide the Client with:-
 - i. a statement of its proposal for performing the Variation;
 - ii. the impact (if any) on time, PROFESSIONAL SERVICES and all other issues related to the Variation; and
 - iii. the cost of its proposal for performing the Variation.
- d. If the Client approves the proposal by TAI POUTINI PROFESSIONAL SERVICES LIMITED for performing the Variation, the Parties must sign a Variation to this Agreement setting out the changes to the Supply and the Fees. When the Parties have signed the Variation to this Agreement, each Party must comply with the terms of that Variation.
- e. If the Client does not approve the costs or the method of performing the Variation proposed by TAI POUTINI PROFESSIONAL SERVICES LIMITED, the request for Variation referred to under clause 16(b) is taken to be withdrawn and the Parties must comply with this Agreement.

Deletion of parts of the Supply

- f. If a Variation requires the deletion of any part of the Supply, the Client may not engage another contractor to perform the such parts of the Supply which were deleted without the consent of TAI POUTINI PROFESSIONAL SERVICES LIMITED.

15. GENERAL

Governing Law

- a. The Agreement is governed by the laws of New Zealand and the Parties submit to the jurisdiction of the courts of New Zealand.

Relationship of Parties

- b. The Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

Assignment

- c. Subject to the terms and conditions of the Agreement, and unless otherwise agreed by TAI POUTINI PROFESSIONAL SERVICES LIMITED in writing or provided in the Proposal, the Client may not assign or otherwise transfer its rights or obligations under the Agreement without the prior written consent of TAI POUTINI PROFESSIONAL SERVICES LIMITED.

Counterparts

- d. If the Agreement consists of a number of

counterparts, the counterparts taken together are said to constitute one document.

Entire Agreement

- e. The Agreement constitutes the whole agreement between the Parties as to the subject matter hereof and in relation to the Supply. No previous offers, prior representations, communications, correspondence, agreements, statements and understandings whether oral or in writing other than those set out in this Agreement, are binding on the Parties. The Client agrees that it has not relied on any pre-contractual conduct, representations or inducement of TAI POUTINI PROFESSIONAL SERVICES LIMITED prior to entering into this Agreement.
- f. If at any time the Client issues a Purchase Order (regarding the goods and services to be supplied or performed pursuant to this Agreement) which attaches a separate set of terms and conditions, those terms and conditions attached to the Purchase Order will be null and void and not binding on any Party regardless of whether the Parties have signed the Purchase Order or not. It is agreed that these standard terms and conditions shall in exchange of the original terms and conditions attached to the Purchase Order, govern the terms and conditions of the Purchase Order as if they were the original terms and conditions of the Purchase Order and the Parties agree to be bound by these terms and conditions regarding the substance of the Purchase Order.

Disputes

- g. If a Party claims that a dispute has arisen in connection with the Agreement that Party must advise the other Party in writing as soon as is practicable.
- h. The Parties agree in the first instance to meet and take constructive steps to resolve the dispute and identify solutions in accordance with the principles in *The Kia Tutahi Relationship Accord* within ten (10) business days of receiving the notice referred to in subclause g above.
- i. If, within ten (10) business days of the meeting described in subclause h the parties have not been successful in resolving the dispute, a Senior Executive (with authority to resolve the dispute) of each Party must confer at least once to attempt to resolve the dispute.
 - j. If the dispute cannot be resolved within thirty (30) business days of a Party receiving notice of a dispute, (or such further period as the Senior Executives may agree is appropriate) the parties may refer the dispute to:
 - i. a mediator agreed by the Parties; or
 - ii. failing agreement between the Parties within three (3) business days after receipt of the notice of referral to mediation, to a mediator nominated by the New Zealand Resolution Institute.
- k. Any information or documentation disclosed by a Party in the course of or for the purpose of the mediation must be kept confidential and the mediator may not be used except in an

attempt to resolve the dispute.

- l. The mediator's fees must be paid equally by the Parties and each Party must otherwise bear its own costs of mediation.

Amendments

- m. This Agreement may only be amended by a written instrument executed by both Parties.

Severability

- n. In the event that any terms of this Agreement are found to be invalid, unlawful or unenforceable, such term(s) will be severed from the remaining terms, which will continue to be valid and enforceable.

Waiver of Rights

- o. No waiver on the part of any Party or any rights arising from a breach of any provision of this Agreement will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.

Authority

- p. Each person signing this Agreement for and on behalf of a Party hereto hereby warrants in his personal capacity that he is duly authorised by such a Party to do so.

Notices

- q. Any notices required to be given by one Party to the other under the terms of the Agreement must be in writing and must be delivered by hand or sent by registered post or email to each Party's addresses as recorded in the Key Terms.
- r. A notice is deemed to be received: if delivered by hand, on receipt; if sent by registered post, on the third day after posting; [and if sent by email, at the time the email leaves the communication systems of the sender, provided that the sender does not receive any error message relating to the sending of the email at the time of sending and the recipient subsequently acknowledges receipt by return email.] provided that if a notice is given by a party on a date that is not a business day, or the delivery or transmission is made after 5:00pm on a business day, then the notice will be deemed to have been received on the next business day.

