

**CONTRACT FOR SERVICES**

**Kaiaka Wool Industry Training New Zealand  
("Kaiaka")**

**and**

**[Contractor]  
("Contractor")**

Draft

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## Agreement for Services

This Agreement dated: 2020

**Parties** **Kaiaka Wool Industry Training New Zealand** a registered charitable trust, registration number [insert number] (“**Kaiaka**”)

and

**[Contractor full name]**, company number [insert number] (“**Contractor**”)

### Background

- A. Kaiaka, a registered Charitable Trust, has been formed by New Zealand Shearing Contractors Association Incorporated (“**NZSCA**”) to develop and deliver a sustainable and integrated training programme model specific to the New Zealand shearing and wool handling industry (“**the Training Model**”).
- B. Kaiaka has sourced initial funding for a pilot scheme of the Training Model (“**the Pilot Scheme**”) from the Ministry of Business, Innovation and Employment (“**the Ministry**”) through the Ministry’s Provincial Development Unit – Te Ara Mahi (“**the PDU Funding Agreement**”).
- C. NZSCA considers that the Training Model will avert an industry-predicted labour-shortage crisis within the wool harvesting sector, while also creating significant employment opportunities and economic growth for regional New Zealand (collectively, “**the Purposes**”).
- D. To achieve the Purposes, Kaiaka wishes to develop industry attraction from secondary schools, online information for prospective shearers, Centres of Excellence as world class training environments, and development of consistent industry standards for certification, seals or similar. Kaiaka also intends to develop two wool harvesting (shearing and wool handling) pilot training centres – one in the Hawkes Bay region and one in the Otago/Southland region - and to deliver a training programme to wool handling industry trainees in line with the objectives outlined in the PDU Funding Agreement (collectively, “**the Objectives**”).
- E. Kaiaka wishes to acquire, and the Contractor wishes to provide, the development and delivery of the Pilot Scheme in the accordance with the Purposes and the Objectives (as further described in clause 5 of this Agreement as “**the Services**”).
- F. This Agreement records the terms and conditions the Parties have agreed regarding the Services.

### 1. Definitions and Interpretation

- 1.1 Definitions: In this Agreement the following expressions have the meanings stated, unless the context otherwise requires:

**“Agreement”** means this agreement for services, including all its appendices and schedules;

**“Business Day”** means any day which is not a Saturday, Sunday or public holiday in Auckland, New Zealand;

**“Force Majeure”** means any circumstance beyond the reasonable control of a party which results in a party being unable to perform any obligation due under this Agreement. Such circumstances include any act of God, earthquakes, floods, storms, explosions, fires and/or any natural disasters but exclude any workforce or industrial action;

**“Intellectual Property”** means all trademarks, service marks, inventions, patents, designs, copyrights, know-how, proprietary information, trade secrets, software and all rights and interests to use any of them, and any other right or interest generally recognised as intellectual property;

**“Parties”** mean the parties to this Agreement;

**“Representative”** means either of the representatives to be nominated respectively from time to time by Kaiaka and the Contractor;

**“Tahi Ngatahi”** means the NZSCA-led and industry stakeholder-related online training platform that provides wool handling industry-specific health and safety training; and

**“Timetable”** means the timetable specifying the Phases and the estimated dates for the completion of each Phase set out in the First Schedule and as may be altered pursuant to clause **Error! Reference source not found.** or 3.8.

1.2 Interpretation: In this Agreement, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) words denoting persons shall include any individual, principal, corporation, partnership, joint venture, association, organisation, trust, state, agency of a state, municipal authority, government or any statutory body in each case whether or not having separate legal identity;
- (d) use of the terms “including”, “includes” and “include” shall be without limitation;
- (e) any covenant or agreement on the part of two or more persons shall bind those persons jointly and severally;
- (f) any reference to “month” or “monthly” shall mean respectively calendar month or calendar monthly;

- (g) references to these Terms and Conditions or any document or statement (however described) shall include references to that document as modified, novated, supplemented, varied or replaced from time to time; and
- (h) reference to any statute, regulation, ordinance or bylaw shall be deemed to extend to all statutes, regulations, ordinances or bylaws amending, consolidating or replacing the same

## **2. Term**

- 2.1 This Agreement will commence on [Date Month Year] and will terminate on [Date Month Year] (the expiry date) unless terminated earlier in accordance with this Agreement.
- 2.2 The Parties may agree in writing to extend the Term or to enter into a new Agreement, but there is no expectation of any contractual relationship beyond the Term.

## **3. Relationship of Parties**

- 3.1 The Contractor is engaged by Kaiaka as an independent contractor and not as an employee, agent, partner or subsidiary of Kaiaka. The Contractor will not represent itself to be other than a contractor to Kaiaka.
- 3.2 The Contractor has no authority to bind Kaiaka to any enforceable commitment or contract, except to the extent expressly authorised by Kaiaka in writing.

## **4. Personnel and Sub-Contractors**

- 4.1 The Contractor may use its personnel (including any of its employees, volunteers and contractors)(“**Personnel**”) to provide the Services.
- 4.2 The Contractor shall ensure that all Personnel meet any requirements set by Kaiaka, and that they:
  - (a) are suitably educated, trained, skilled, experienced and fully qualified for the Services they provide;
  - (b) have completed the relevant training programme offered by Tahi Ngatahi;
  - (c) comply with any requirements and policies, including any health and safety policies or training programmes developed by Kaiaka, NZSCA or Tahi Ngatahi; and
  - (d) agree to cooperate and consult with Kaiaka and other contractors in matters related to health and safety.
- 4.3 If Kaiaka reasonably considers that any Personnel:

- (a) does not meet, or has not acted consistently with, the requirements set out in Clause 4.2 above or any other requirements in this Agreement; or
- (b) is otherwise unsatisfactory.

Kaiaka may then, by notice to the Contractor, require the Contractor to replace the person and the Contractor shall do so as soon as is practicable (but in any event no later than ten (10) working days after receipt by the Contractor of the notice).

- 4.4 The Contractor may not sub-contract the Services to any third party without Kaiaka's agreement in writing.
- 4.5 The Contractor will ensure that all Personnel, and any personnel employed or contracted by a subcontractor to provide the Services ("**Subcontractor**"), has the qualifications, accreditation, experience, competency and availability necessary to enable it to perform the Services in accordance with this Agreement.
- 4.6 The Contractor will ensure that the Contractor's Representative, all Personnel and all Subcontractors comply with the Contractor's obligations under this Agreement as if the Contractor's Representative, the Personnel and the Subcontractor were the Contractor.
- 4.7 To avoid doubt, the Contractor's Representative, any Personnel, and any Subcontractor are not employed by, or in a contractual relationship with, Kaiaka.

## 5. The Services

- 5.1 The Contractor will provide the services set out in the Schedule to this Agreement, and any services incidental to those ("**the Services**").
- 5.2 The Contractor will comply with the following requirements in the performance of the Services:
  - (a) **Professional Standards:** The Contractor agrees to provide the Services in a prompt, efficient and diligent manner, consistent with good professional practices and standards, and to use all reasonable care, attention and skill. The Contractor will not do anything which could damage, disrupt or adversely affect Kaiaka's activities, operations, reputation, goodwill or assets.
  - (b) **Performance Requirements:** The Contractor shall meet all performance requirements as required as outlined in the Schedule.
  - (c) **Disclosures:** The Contractor will immediately notify Kaiaka of any actual or likely breach of this Agreement. The Contractor will immediately advise Kaiaka of any circumstances that may negatively impact on its ability to fulfil its obligations under this Agreement, or by association may damage Kaiaka's reputation. Without limiting this clause, this includes immediately notifying Kaiaka if the Contractor is charged with a criminal offence or is subject to an investigation by New Zealand Qualifications Authority, Tertiary Education Commission, Worksafe NZ or Ministry of Business, Innovation and Employment.

- (d) **Reporting:** The Contractor will provide Kaiaka with regular reports (as specified in Schedule) regarding the Services, and as requested by Kaiaka (acting reasonably).
- (e) **Advice and Policies:** The Contractor will pay proper regard to all advice and recommendations given by Kaiaka's representatives. The Contractor will also comply with any policies and procedures provided to the Contractor in writing or drawn to the Contractor's attention by Kaiaka. Kaiaka may vary, revoke or suspend its policies or procedures, or introduce new policies or procedures from time to time. Where those policies or procedures are likely to significantly affect the Contractor's obligations under this Agreement, Kaiaka will consult with the Contractor about their applicability.
- (f) **Communication:** The Contractor's primary point of contact with Kaiaka will be with the representative nominated in the Schedule to this Agreement as a Contact Point (Kaiaka may nominate other representatives). The Contractor will pay proper regard to all advice and recommendations given by a nominated Representative. The Contractor will answer within two business days all enquiries from Kaiaka that relate to any aspect of performance under this Agreement.
- (g) **Relevant Qualifications and Registrations:** The Contractor will hold and retain (at the Contractor's cost) all qualifications, licences, accreditations and registrations required to undertake the Services.
- (h) **Compliance:** The Contractor will comply with the requirements of Kaiaka, and any requirements of the New Zealand Qualifications Authority and the Tertiary Education Commission in all respects. The Contractor will comply with all applicable laws and industry codes of practice, and obtain, maintain and comply with any applicable regulatory licences and consents.
- (i) **Remedial Work:** The Contractor will promptly remedy any work that is defective or not performed in accordance with the provisions of this Agreement. Kaiaka will not be required to pay for any such remedial work.
- (j) **Specifications:** The Contractor will perform the Services within the specifications, including any deadlines, set by Kaiaka from time to time, including those provided in the Schedule to this Agreement. The Contractor will also advise Kaiaka immediately should there be an issue in meeting any deadline or other specification, and of any issue that may otherwise affect the Contractor's ability to deliver the Services as agreed.
- (k) **Premises and Equipment:** Kaiaka will provide the equipment and services set out in the Schedule to this Agreement. Except as otherwise provided by this Agreement, or otherwise agreed in writing, the Contractor will work from the Contractor's own premises and use the Contractor's own equipment and provide, at its own cost, vehicles, mobile phones, tools, computer/laptop, projector, materials and equipment to carry out this Agreement. If the Contractor is given access to Kaiaka's premises or equipment, they will be used solely for the purpose of performing the Services agreed in this Agreement. Access may be restricted or withdrawn by Kaiaka at any time. For avoidance of doubt Kaiaka premises and equipment are defined as being owned, leased, and/or hired directly by Kaiaka.

- (l) **Duplication of Funding:** The Contractor will not obtain or use funds from any other Government source for a purpose that duplicates the funding paid to the Contractor pursuant to this Agreement.
- (m) **Negligence and Recklessness:** The Contractor agrees to treat Kaiaka's premises and equipment with all reasonable care, and will reimburse Kaiaka for the costs of repairing or replacing any property damaged as a result of the Contractor's negligence or recklessness.
- (n) **Under-Performance:** On completion of the delivery of the Services, Kaiaka will assess the delivery of the Services against any KPIs set out in the Schedule and any under-performance will be discussed with the Contractor.

## 6. Support to the Contractor

Kaiaka will:

- (a) Provide the Contractor with equipment and services as detailed in the Schedule to this agreement;
- (b) Brief the Contractor on the legal requirements for compliance with health and safety, and Contractors Acknowledgement referred to Appendix 1; and
- (c) Advise the Contractor of Kaiaka's policies and procedures to the extent those apply, and will make these available.

## 7. Contractor's Rate and Expenses

- 7.1 **Rate:** Subject to this Agreement, and in consideration for the Services provided, Kaiaka will pay the Contractor the fees set out in the Schedule.
- 7.2 **Expenses:** The Contractor will be responsible for all expenses incurred by the Contractor in the performance of the Services, unless the expense is referred to in the Schedule to this Agreement or Kaiaka otherwise agrees, in advance and in writing, to reimburse the Contractor and the Contractor complies with Kaiaka's requirements for claiming such an expense (as set out in this Agreement or advised to the Contractor).
- 7.3 **Contractor to Invoice and Report:** The Contractor will present an invoice to Kaiaka at the end of each month (refer Appendix 2). The invoice will specify the amount of GST payable (if any) and will attach invoices for any expenses claimed. The invoice shall clearly state the services provided and show how the charges have been calculated.
- 7.4 **Payment of Invoice:** Invoices will be payable on the 20th of the month following receipt of invoice by Kaiaka.
- 7.5 **Deductions and Payment Disputes:** Kaiaka may withhold payment of any disputed amount pending further information or resolution of the dispute. The Contractor shall promptly provide



such information as Kaiaka reasonably requests relating to any amount invoiced by the Contractor. If Kaiaka disputes any amount in an invoice, Kaiaka shall:

- (a) Notify the Contractor as soon as is reasonably practicable, identifying the amount in dispute and the reasons for the dispute; and
- (b) Pay any balance of the invoice which is not in dispute by the due date.

#### **7.6 Overpayments and Repayments:**

- (a) If for any reason Kaiaka pays the Contractor more than the Contractor is entitled to receive under this Agreement for provision of the Services, Kaiaka, at its discretion, may seek reimbursement of such monies or offset such monies against any future payments to the Contractor.
- (b) If Kaiaka is required to repay any funds to its funders (namely, NZSCA and/or as required under the PDU Funding Agreement) due to the Contractor not adequately performing the Services, or for providing training to learners who do not meet the validity criteria, the Contractor will be required to refund the same amount to Kaiaka (limited to the contract value). Any refund will be invoiced by Kaiaka to the Contractor and payable within 15 working days.

**7.7 No Other Entitlements:** The Contractor will not be entitled to any other payments from Kaiaka, including (but not limited to) any payment for injury, sickness, superannuation, holidays, redundancy or overtime.

**7.8 Taxes and Levies:** The Contractor is responsible for, and will pay on time and in full, all taxes and other levies arising in connection with the Services (including without limitation income tax, GST and accident compensation levies).

**7.9 Termination:** If this Agreement is terminated for any reason, the Contractor shall not be entitled to any compensation or damages other than payment for work done prior to the termination date.

#### **8. Authority to Enter**

The Contractor will permit Kaiaka or its authorised agent to enter the premises being used by the Contractor to supply the training/provide the Services at a mutually agreeable time to be arranged prior to the commencement of any class, and talk to any Trainees and/or their Tutors.

#### **9. Right to Cancel, Terminate or Defer Learning Programmes**

**9.1** Kaiaka may cancel or defer to a later date any learning programme without financial penalty provided that such cancellation is no later than 12 working days prior to the commencement of the learning programme. Where Kaiaka seeks deferment of a learning programme it will meet the reasonable costs incurred by the Contractor as a consequence.

- 9.2 The financial penalty to Kaiaka for cancelling any learning programme with less than 12 working days' notice is 20% of the sum otherwise payable by Kaiaka if the learning programme had been delivered. This payment is in full settlement of all claims arising from cancellation.
- 9.3 Where applicable should a commenced learning programme be cancelled the Contractor will be paid for the actual hours taught plus a sum representing 20% of the sum otherwise payable if the learning programme had been delivered less such sum paid for delivery of the learning programme to date of cancellation. This payment is in full settlement of all claims arising from cancellation.
- 9.4 Any claim for monies owing to the Contractor in respect of the delivery of a learning programme must be notified to Kaiaka within 90 days of cancellation of the learning programme. No payment will be made in respect of any claim notified by the Contractor outside this time period.
- 9.5 Should the Contractor be unable to deliver the learning programme on the agreed terms and such failure materially and adversely affects delivery of the learning programme then Kaiaka may terminate the learning programme forthwith, in accordance with clause 21.5.
- 9.6 Kaiaka has the power to terminate the learning programme or take such other action as it deems appropriate at its sole discretion.

## **10. The Contractor's Work Programme**

The learning programme(s) to be delivered by the Contractor, particulars of payment, and dates of delivery, are recorded in the Schedule. Kaiaka reserves the right to make reasonable amendments to the Schedule.

## **11. Privacy**

The Contractor shall have a privacy policy to protect the rights of trainees and their employers and such policy shall be disclosed to Kaiaka upon request.

## **12. Performance Feedback**

- 12.1 The Contractor performance shall be measured against performance outcomes as outlined in Appendix 3.
- 12.2 Feedback will be provided during the course of the agreement year. Formal feedback on performance will be provided annually at a meeting with the Contractor at the end of the agreement year, along with a documented summary based on performance outcomes as outlined in Appendix 3. Formal discussions outside of this may be arranged as necessary, with minutes of any discussions taken. Informal feedback will be on-going throughout the period as part of the relationship between Kaiaka and the Contractor.
- 12.3 The Contractor shall send an interim return to Kaiaka outlining progress towards performance objectives by 30th April, with a final return sent by 31st October. A meeting to discuss

performance will be held following this. The interim and final returns are also an opportunity for the Contractor to give feedback on all aspects of their partnership with Kaiaka.

### **13. Health, Safety and Risk Management**

- 13.1 **Health and Safety:** The Contractor is deemed a person conducting a business or undertaking ("PCBU") under the Health and Safety at Work Act 2015 ("HSWA") and will comply with its obligations under the HSWA and other relevant regulations while providing the Services under this Agreement.
- 13.2 As a PCBU, the Contractor will implement and manage its own health and safety management system in respect of the provision of the Services and will provide a copy of it (including any changes from time to time) to Kaiaka.
- 13.3 Where it is appropriate to do so, the Contractor will comply with Kaiaka's health and safety policies and, so far as is reasonably practicable, consult, cooperate and coordinate activities with Kaiaka where Kaiaka also has a duty in relation to the same matter under the HSWA. The Contractor also agrees to comply with any health and safety requirements advised by Kaiaka while providing Services either on Kaiaka's premises or remotely.
- 13.4 The Contractor agrees to take all reasonable and practicable steps to ensure the safety of themselves, and any other person affected by the Contractors the provision of the Services. All hazards identified by the Contractor relating to Kaiaka's premises (or any premises where the Services are being provided) must be reported to Kaiaka or any affected PCBU so that appropriate action may be taken, as required. Any accidents or incidents relating to the provision of the Services must be reported to Kaiaka without delay.
- 13.5 The Contractor shall ensure that appropriate general and site-specific health and safety documentation is in place at all times and such documentation shall be provided promptly on request by Kaiaka, in line with clause 14.1 and 14.2.
- 13.6 **Risk Management:** Without limiting the clause above, the Contractor will carry out appropriate briefings at the commencement of any training sessions to ensure awareness of any hazards and the approaches to dealing with these.
- 13.7 A breach by the Contractor of clause 13 is grounds for the summary termination of this Agreement.

### **14. Records and Audits**

- 14.1 The Contractor shall keep full, accurate and up-to-date records relating to the performance of the Services.
- 14.2 The Contractor shall, promptly on request by Kaiaka, provide to Kaiaka copies of any such records reasonably requested by Kaiaka.

14.3 The Contractor shall allow Kaiaka and any auditors of, or other advisers to, Kaiaka to access from time to time any of the Contractor's premises, Personnel and relevant records as may reasonably be required to verify that the Contractor has complied with its obligations under this agreement.

14.4 The Parties shall bear their own costs and expenses incurred in complying with their obligations under Clause 14.3.

## **15. Confidentiality**

15.1 For the purposes of this Agreement, Confidential Information includes, but is not limited to:

- (a) Any information not known or available generally outside Kaiaka that relates to its activities, including (but not limited to) its trade secrets and any information about its finances, intellectual property, strategic plans, disputes, and legal and other risks;
- (b) Personal or other information about Kaiaka's officers, representatives, volunteers, contractors, clients or other people associated with it;
- (c) The terms of this Agreement.

15.2 The Contractor will not directly or indirectly use or disclose to any person or entity any Confidential Information which belongs to Kaiaka, its officers, representatives, volunteers, contractors or suppliers, except where used or disclosed in the proper performance of the Services, for the purposes of seeking professional advice, or as required by law.

15.3 The Contractor will take all reasonable steps to prevent the improper use or disclosure of any Confidential Information.

15.4 Without limiting these Confidential Information provisions, the Contractor will not make any comment or statement to the media (in writing or otherwise) about Kaiaka or any of its activities without Kaiaka's prior approval.

15.5 Kaiaka will not disclose or use the Contractor's confidential or personal information, except where it is used or disclosed in the proper performance of its functions or responsibilities, for the purposes of seeking professional advice, or as required by law.

15.6 These confidentiality provisions will apply after termination of this Agreement and regardless of any dispute.

## **16. Property**

16.1 If the Contractor at any time in the performance of the Services conceives, invents, discovers or becomes possessed of any work, idea, invention, process, art, service, system, method, other materials, or any improvement upon or addition to them (the Intellectual Property), the Intellectual Property will be the sole property of Kaiaka.

- 16.2 The Contractor waives all moral rights in any copyright work covered by this clause.
- 16.3 The Contractor warrants the Services will be the Contractor's own original work and that the use of the Services by Kaiaka will not infringe the intellectual property rights of any other person.
- 16.4 Upon request, and at Kaiaka's cost, the Contractor will do all things that Kaiaka considers necessary or appropriate to vest all rights, titles and interests in the Intellectual Property in Kaiaka. If the Contractor fails to comply with a request within the timeframe specified by Kaiaka, the Contractor hereby appoints Kaiaka as its attorney to execute any documents on the Contractor's behalf.
- 16.5 Upon request, and in any event at the end of the Term, the Contractor will promptly deliver to Kaiaka all property or material belonging to or concerning Kaiaka or its clients or customers which is in the Contractor's possession or control. This includes any keys or access cards, and any hard-copy, audio, visual or electronic documents, precedents, property, software, records, or other electronic information that relates to Kaiaka or which contains Kaiaka's Confidential Information or Intellectual Property.
- 16.6 These property provisions will apply after termination of this Agreement and regardless of any dispute.

## **17. Conflicts of Interest**

During the Term, the Contractor will not, without the prior written consent of Kaiaka, provide services to any person or entity or be involved or interested in any other employment, activity, business or undertaking where that conflicts or may conflict with the interests of Kaiaka or interferes with the Contractor's ability to perform the Contractor's obligations under this Agreement.

## **18. Indemnity**

- 18.1 The Contractor will keep Kaiaka indemnified against any loss, expense, damages or compensation which Kaiaka incurs or is required to pay (including without limitation any legal fees or amount paid by way of settlement) in relation to any claim or complaint which is threatened, notified or commenced against Kaiaka and which arises directly or indirectly out of any wilful or negligent act or omission of the Contractor, any Contractor's Representation or other Personnel in the course of the Services. This indemnity will continue to apply after termination of this Agreement, and regardless of any dispute.
- 18.2 The Contractor also indemnifies Kaiaka against the consequences of any liability incurred by Kaiaka for the deduction or payment of tax in connection with payments made by Kaiaka to the Contractor under this Agreement, including the costs of collection of such tax and other incidental costs, expenses, penalties or claims. If Kaiaka is assessed for such tax, Kaiaka is

entitled to off-set any such claim against any payment due from Kaiaka to the Contractor or to otherwise claim it from the Contractor.

## **19. Claims Against Kaiaka**

19.1 The Contractor must give Kaiaka written notice of any claim against Kaiaka within three months of the event or function to which it relates, otherwise Kaiaka will have no liability.

19.2 No claim against Kaiaka shall exceed the value of the work to which it is connected.

19.3 In no event will Kaiaka be liable for any consequential loss, damage, or expenses including any loss of profits.

19.4 Each of Kaiaka's Representatives is also to enjoy the benefit of this clause.

## **20. Insurance**

20.1 The Contractor shall ensure it holds adequate Professional Indemnity and Public Liability insurance at all times.

20.2 The Contractor will be held responsible for any professional errors and negligence by the Contractor, the Contractor's Representative and any other Personnel, for the Term of the Agreement and beyond its expiry or termination where it relates to Services provided under the Agreement.

20.3 The Contractor shall diligently pursue any insurance claims for the full amount of Kaiaka's loss or damage.

## **21. Termination**

21.1 Either party may terminate this Agreement for any reason prior to the expiry date by giving the other party four (4) weeks' notice in writing.

21.2 Either party may terminate this Agreement or any learning programme scheduled hereto for a material breach. Termination shall not be effective until written notice is served on the other party.

21.3 Kaiaka may terminate this Agreement with immediate effect by written notice if the Contractor:

- (a) Breaches this Agreement, fails or is unable to perform the Services, or is negligent in the performance of the Services, and, if asked to rectify the situation, does not do so within any time-frame reasonably specified by Kaiaka in writing; or
- (b) Commits any act that in Kaiaka's reasonable opinion has or may seriously damage its reputation or interests;

- (c) The Contractor becomes insolvent or bankrupt, subject to receivership, liquidation, administration or bankruptcy proceedings, or makes any compromise with creditors; or
- (d) Kaiaka believes on reasonable grounds that the welfare of trainees has been put at risk by the actions of the Contractor.

21.4 Without prejudice to other rights of action Kaiaka may terminate this Agreement forthwith by notice in writing if:

- (a) Its funding for administering off-job training is reduced or removed; or
- (b) Rules, protocols, or directives are promulgated by the Tertiary Education Commission, or its successor, which, in the opinion of Kaiaka, disable it from fulfilling its obligations under this Agreement or make fulfilment of the Schedules unduly onerous upon it.

21.5 In the event of termination of the Agreement by Kaiaka under this clause the liability of Kaiaka to the Contractor is limited to monies payable to the Contractor as at the date of termination and for the avoidance of doubt the provisions of Clause 9.5 are inapplicable.

21.6 Termination of this Agreement necessarily terminates any and all learning programmes contracted to be delivered pursuant to the Agreement.

## **22. Force Majeure**

22.1 A party shall not be liable for any breach of the Agreement to the extent that such breach is due to a Force Majeure Event, provided that it keeps the other party fully informed of the situation, uses reasonable endeavours to mitigate the effect of the Force Majeure Event and resumes full performance as soon as reasonably practicable.

22.2 A Force Majeure Event means an extraordinary event or circumstance beyond the reasonable control of a party such as extreme weather events or act of God (but excluding lack of funds).

## **23. Dispute Resolution**

23.1 The Parties will try to resolve any dispute between them in the first instance by meeting and discussing the matter in good faith.

23.2 If resolution cannot be reached, either party may give the other written notice requiring the Parties to try and resolve the dispute by mediation. The Parties will agree on a mediator or, if agreement cannot be reached within seven days after notice has been given, either party may refer the matter to the Chairperson of LEADR, who will appoint a mediator. Unless the Parties agree otherwise, the mediation will take place in Wellington, within 21 days after a mediator has been appointed and the costs of the mediation, excluding the Parties' own legal and preparation costs, will be shared equally. The mediator will determine the process for mediation.

23.3 Without limiting the Parties' ability to take professional advice, the Parties agree that the existence of any dispute between them and the information relating to any dispute will remain strictly confidential.

23.4 These dispute provisions do not limit the Parties' ability to seek urgent interlocutory relief.

## **24. Miscellaneous**

24.1 All notices will be in writing and will be delivered to the persons and addresses specified in the Schedule.

24.2 Notice will be deemed to have been given and received:

- (a) By delivery in person, when the specified person receives the notice;
- (b) Signed received at the specified address when delivered by courier;
- (c) By email to the specified email address when receipt is confirmed (other than by an 'out of office reply'); *or*
- (d) By facsimile, when a valid transmission report confirms that the facsimile has been transmitted.

24.3 This Agreement contains the entire agreement of the Parties and supersedes all prior agreements and representations given or made between the Parties relating to the matters dealt with in this Agreement. No variation, waiver, representation, assurance or other agreement will be effective or binding on either party, whether in contract, equity or otherwise, unless it is recorded in writing and signed by both Parties.

24.4 This Agreement is personal to the Contractor and may not be assigned to any other party without Kaiaka's agreement in writing.

24.5 This Agreement is governed by New Zealand law and the Parties irrevocably submit to the non-exclusive jurisdiction of the New Zealand Courts.



Signed for and on behalf of **Kaiaka** by [            ].

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Witness Signature: \_\_\_\_\_

Witness Name: \_\_\_\_\_

Signed for and on behalf of the **Contractor** by [            ].

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Witness Signature: \_\_\_\_\_

Witness Name: \_\_\_\_\_

## SCHEDULE

### 1. The Services and Payment Rates

- (a) The Contractor will deliver training for the learning programmes named in the table below in accordance with Kaiaka programmes.
- (b) The Contractor agrees to work such hours as required to ensure the expeditious and professional provision of the Services in this agreement.
- (c) The Contractor will provide the Services during the hours and at the location(s) specified in the attached Course Schedule.

Kaiaka Programme Number	Programme Title/Qualification	Hourly Rate <sup>^</sup> (Excl. GST)	Couse Delivery Hours (Excl. GST)

**Please Note:** For avoidance of doubt the 'Hourly Rate<sup>^</sup>' is based on the hours delivering the course to trainees as identified in the course schedule. This rate is inclusive of all Services provided and any expenses incurred in the process of delivering these Services. This includes (without limitation) preparation time, marking and assessment, travel, any necessary equipment required to deliver the class, and required reporting (monthly, quarterly, at conclusion of contract, and ad hoc as required).

An attendance list needs to accompany each invoice before payment can be made.

### 2. Contractor Obligations

#### Information and Resources for Trainees

- (a) Work with Kaiaka to construct a learning programme timetable at least one month before commencement of the learning programme.

- (b) Develop fit-for-purpose resources to accompany all learning programmes.
- (c) The Contractor will make clear to trainees the expectations held in terms of assessment, self-directed learning, and requirements of the learning programme.
- (d) Provide alternative delivery packages and assessments for trainees who have previously achieved parts of the programme.
- (e) Provide, when requested by Kaiaka, learning programme day notes and assessment to trainees who have been unable to attend learning programme days and make this option easily accessible.
- (f) Provide the venue. Supply of light refreshments (e.g. tea, coffee) may be provided but this is at the discretion of the Contractor.
- (g) Any written communications to trainees and their employers must be drafted in consultation with Kaiaka.
- (h) The Contractor will collaborate with appropriate support agencies to provide support for trainees who especially are identified as having barriers to learning such as literacy and/or numeracy issues.

#### **Trainee Assessment and Administration of Results**

Specific administration requirements:

- The Contractor agrees to submit results to Kaiaka on a monthly basis, throughout the duration of the qualification.
  - 
  - The Contractor will be responsible for marking all assessments and ensuring that they meet the standard for moderation (where applicable)
  - The Contractor agrees that the tutor sign-off will occur in the individual trainee's workbooks.
  - The Contractor agrees that tutors will make themselves available to Kaiaka to provide verification.
- (a) All Assessments and Workbooks will be marked within two weeks. Any returned scripts shall note any areas of excellence and/or areas for improvement. The Contractor shall make itself available to answer trainees' queries at the learning programme day following that in which the assessment was completed/collected, or if there is no subsequent learning programme day, within 12 working days of completion/collection of the trainees' assessments. Scripts are the property of the trainee and as such cannot be withheld when requested.
  - (b) The Contractor is to retain a sample of assessments (refers to a copy of actual trainee assessments) and/or spreadsheet of assessment (sign-offs) from a learner portfolio for a minimum period of two (2) years to meet the requirements of moderation. There must be examples of "Competent, "Borderline" and "Not Yet Competent" scripts.
  - (c) Conduct assessment for each area of learning for each trainee as required. The Contractor reserves the right to charge the trainee a nominal fee for assessments that

have not been completed within two months of the last teaching day. Providers will specify explicitly to trainees the due dates for assessments and time for marking.

- (d) No reporting the results of Kaiaka trainees to any third party without prior written authorisation of Kaiaka.

#### **Tools of the Trade**

The Contractor agrees to supply their own Tools of Trade including:

- Office rental and associated expenses.
- The Contractor to supply own office, office equipment e.g. desks, phones, copier and copier materials, office consumables.
- Laptop/PC Hardware and maintenance, projectors.
- Mobile phone and or landline hardware.
- Vehicle and vehicle running costs, fuel, registration, warrant/certificate of fitness, insurance.
- Venue hire.
- Tea/Coffee maybe provided but this is at the discretion of the Contractor.

#### **Additional Expenses**

Any and all additional expenses will need to be agreed in writing with Kaiaka prior to being incurred.

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## APPENDIX 1

### Contractor's Acknowledgement

Prior to commencement of any project on a Kaiaka site this form must be completed, signed and the below criteria met. The Contractor will also abide by and follow any health and safety management initiatives implemented by Kaiaka while working on site.

Note: Reference to "the Contractor" includes any of the Contractor's employees, agents, staff and sub-contractors and their employees, agents and staff.

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1. The Contractor has provided a health and safety policy and/or any further relevant documentation including any documents outlining hazard controls, task analysis, licences, certificates required to complete this acknowledgement to Kaiaka.	
2. The Contractor will participate in any induction process and be made aware of the hazards of the site and the personal protective equipment staff are required to wear.	
3. Any sub-contractor (or their employees, agents and staff) has provided the appropriate documentation (as per point 1), are to be inducted and will comply with the conditions noted in this document.	
4. Any plant or equipment brought onto a Kaiaka site meets all safety and compliance requirements, is correctly maintained, is suitable for the purpose it is to be used for, and may be inspected by Kaiaka upon request.	
5. The Contractor understands its obligations under the Health and Safety at Work Act 2015 and will comply at all times while providing Services under this Agreement.	
6. Prior commencement of work, the Contractor will advise Kaiaka of any hazards that may be created during the Agreement. If any unforeseen hazards arise during this Agreement, the Contractor will inform Kaiaka immediately to ensure that appropriate action can be taken and documentation produced to suit.	
7. The Contractor will not undertake any tasks or duties that will affect the safety of itself or others and any work may be suspended if Kaiaka is not satisfied that all practicable steps are being taken.	
8. Kaiaka may audit the Contractor's health and safety performance periodically during the term of the Agreement.	
9. The Contractor will report to Kaiaka immediately on the occurrence of any incident or accident.	
10. The Contractor shall provide any emergency procedures that have been identified as requiring to be provided by Kaiaka.	
11. The Contractor shall provide "Task Analysis" for all jobs it intends to perform as requested by Kaiaka or the site manager and the Contractor shall adhere to them.	

<b>Contractor:</b>	<b>Kaiaka:</b>
<b>Name:</b>	<b>Name:</b>
<b>Signed:</b>	<b>Signed:</b>
<b>Date:</b>	<b>Date:</b>

## APPENDIX 2

### Invoices

Invoices should be made out to Kaiaka Wool Industry Training New Zealand and addressed to the contact person. Kaiaka will not process invoices unless they are made out correctly and contain a description of what is being invoiced for, and are accompanied by the required monthly reporting.

Invoices are paid on the 20<sup>th</sup> of the month unless otherwise agreed prior to invoicing. Therefore, if your invoice is sent in on the 21<sup>st</sup> April it won't be paid until the 20<sup>th</sup> May.

Include the following details on/with your invoice:

- The words "TAX INVOICE" in a prominent place;
- The name (or trade name) and GST number of the supplier;
- The name and address of the recipient of the supply;
- The date the invoice was issued;
- A description of the goods and/or services supplied;
- The quantity or volume of the goods and/or services supplied;
- Trainee learning programme attendance list;
- Email address for remittance purposes;
- Bank account details if these have not already been supplied, or if they have changed.

**Please Note:** Information not received in the required format will not be processed, and may be returned to the Contractor for correction, which may delay payment.

### APPENDIX 3

*Note: This appendix will be populated as part of the negotiation process with successful provider(s).*

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