

Form of Agreement for Consultancy Services

Contract Name: Fleet & Equipment AMP Support

Contract Number: 3836

Between Fire and Emergency New Zealand and the Consultant

The Consultant Morrison Low Ltd

Address Morrison Low Ltd, Level 2, 11 Chews Lane, Wellington 6011

Fire and Emergency New Zealand
Form of Agreement for Engagement of Consultant
Consultancy Services Contract Number: 3836 Fleet & Equipment
AMP Support

For the Delivery of Consultancy Services to Fire and Emergency New Zealand by the Consultant

This contract is made on the **08** day of **January 2024**

Parties

1. Fire and Emergency New Zealand (the **Client**); and
2. Morrison Low Ltd of Level 2, 11 Chews Lane, Wellington 6011 (the **Consultant**)

Background

The Client requires periodic specialist support to check the internally produced Fleet and Equipment AMPs. This will ensure that:

- The Fleet and Equipment AMPs are consistent with industry good practice, based on the existing information / datasets available, gaps and key themes are clearly identified, and tells the story. (**Client's Project**).

The Client and the Consultant have agreed that the Consultant will, on the terms and conditions set out in this Agreement, undertake and provide the Services in respect of the Client's Project.

THE PARTIES AGREE as follow:

1. The Client engages the Consultant to provide the Services and agrees to pay the Consultant as described in Appendix B and to undertake its other obligations set out in this Agreement.
2. The Consultant agrees to perform the Services on the terms of this Agreement.
3. The following documents shall form this Agreement in order of precedence. Where any conflict or inconsistency exists between any of the documents listed below, the document that appears first in the order of precedence shall prevail over the provision of any other document or documents appearing lower in the list.
 - a. Form of Agreement for Engagement of Consultant
 - b. Special Conditions – Part A (Specific Conditions)
 - c. Special Conditions – Part B (Other Conditions)
 - d. Engineering New Zealand/ACENZ General Conditions of Contract for Consultancy Services (Fourth Edition, December 2017) (copy not included)
 - e. Annexure 1: Post-Tender Correspondence and Clarifications (if any)
 - f. Annexure 2: Notices to Tenderers
 - g. Appendix A: Scope, Purpose, Programme and Completion Date for the Services
 - h. Annexure 3: Scope and Purpose
 - i. Appendix B: Fees, Expenses and Payment
 - j. Appendix C: Client's Representative

- k. Appendix D: Consultant's Representative and Consultant's Key Personnel
- l. Appendix E: Subconsultants and Subconsultants' Key Personnel
- m. Appendix F: Other Consultants, Other Consultants' Insurances, Personnel, Equipment, Facilities and Information supplied by the Client
- n. Appendix G: Client's Risk Identification and Notification
- o. Appendix H: Client's Request for Proposals
- p. Appendix I: Consultant's Proposal

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

EXECUTED AS AN AGREEMENT

SIGNED for an on behalf of **Fire and Emergency New Zealand** by its duly authorised representative

9(2)(a)

Sarah Sinclair

Name of authorised signatory

18 January 2024

Date of signing

SIGNED for an on behalf of **Morrison Low Ltd** by its duly authorised representative

9(2)(a)

Signature of authorised signatory

9(2)(a)

Name of authorised signatory

08/01/2024

Date of signing

SPECIAL CONDITIONS – PART A (SPECIFIC CONDITIONS)

References from clauses in the Engineering New Zealand/ACENZ General Conditions of Contract for Consultancy Services (Fourth Edition, December 2017) (“General Conditions of Contract for Consultancy Services (Fourth Edition, December 2017)”).

6.2 Limitation of Liability*

The maximum amount payable shall be five times the fee with a minimum limit of \$500,000 and a maximum limit of \$2,000,000;

6.4 Duration of Liability*

The duration of liability shall be six (6) years.

6.5 Insurance*

The amount of public liability insurance required shall be \$2,000,000.

Additional insurances required are:

Type: n/a

Amount: []

12.8 Notices

Client's Address:

Physical Address: Spark Central, Level 7, 42-52 Willis Street, Wellington Central 6011

Postal Address: PO Box 2133, Wellington 6140

Email address: Jim.Stuart-Black@fireandemergency.nz

cc: NHQ.Procurement@fireandemergency.nz

Consultant's Address:

Physical Address: Level 2, 11 Chews Lane, Wellington 6011

Postal Address: Level 2, 11 Chews Lane, Wellington 6011

Email address: 9(2)(a)@morrisonlow.com

SPECIAL CONDITIONS – PART B (OTHER SPECIAL CONDITIONS)

Clause numbers below refer to clauses in the said General Conditions of Contract for Consultancy Services (Fourth Edition, December 2017), as may be amended by this Part B (Other Special Conditions).

The General Conditions of Contract for Consultancy Services (Fourth Edition, December 2017) are amended as follows:

Section 1: Definitions and Interpretation

The following definitions are inserted into clause 1.1

- Prior Services

Prior Services means any of the Services that have been provided by the Consultant to the Client under any arrangement between the Parties which was made in contemplation of this Agreement.

Section 2: Obligations of the Consultant

Clause 2.1 (The Services)

Add the following bullet points to the end of clause 2.1:

- “Provide sufficient employees (including Key Personnel) with the necessary qualifications, licenses, skills and experience to perform the Services to the standard required by this Agreement; and
- Co-operate with the Client and use all reasonable endeavours to co-operate with any Other Consultants (as applicable); and
- At the Consultant’s cost, correct any errors, omissions or both in any documentation prepared as part of the Services by the Consultant where the error or omission is the result of the Consultant failing to exercise the duty of care required by clause 2.2; and
- Comply with all applicable legislation, regulations and any of the Client’s rules, policies and standards that the Client may notify to the Consultant in writing from time to time, except to the extent that compliance with any of the Client’s rules, policies or standards would constitute a breach of the Consultant’s duty of care under this Agreement. The Consultant may notify the Client where it considers any rule, policy or standard notified after the commencement of the Services results in a material increase in the Consultant’s costs and such shall be treated as notice of a Variation for the purposes of clauses 2.13 and 7.”

Clause 2.2 (Duty of Care)

Clause 2.2 is amended by adding the following:

“for a project of a similar type and size to the Client’s Project.”

Section 3: Obligations of the Client

Clause 3.3 (Client Decisions)

The following wording is added to the end of clause 3.3:

"The Consultant shall, in every case where it requires the Client to make a decision, accompany the request for a decision with a reasonable level of information to enable the Client to consider the matter at issue. The Client is entitled to request further information as may be reasonably required by the Client to assist it in making the relevant decision. The provision of information pursuant to this clause 3.3 shall be at no additional cost to the Client except where such is beyond what would reasonably be expected to be provided by the Consultant as part of the Services."

Clause 3.6 (Instructions to Others)

Clause 3.6 is amended by adding the following at the end:

"Notwithstanding the forgoing, in an urgent or emergency situation the Client may give instructions directly to Other Consultants and/or Third Parties directly contracted to the Client but in such an event the Client as soon as reasonably practicable must notify the Consultant that instructions have been given."

Clause 3.7 (Client to Give Early Warning)

The words ", as soon as reasonably practicable," are inserted on the second line after the word "must".

The following is inserted as a second paragraph:

"The Client shall not be required to inform the Consultant of anything which will affect the scope or timing of the Services that is related to another Government agency or entity outside of the direct matters for which the Client is responsible as a Government agency or entity."

Clause 3.9 (Approvals)

The following is inserted after the last paragraph:

"Without limitation to the Client's obligations in the 4th bullet point of clause 3.2, any approval by the Client of information submitted to it by the Consultant (such information must in all cases be provided by email or in hard copy by the Consultant) shall not be taken to signify that the Client has checked the accuracy or completeness of such information received from the Consultant and shall not relieve the Consultant of any of its obligations under this Agreement unless approval is expressly given on that basis or the parties expressly agree such in writing."

Section 4: Personnel

Clause 4.3 (Key Personnel)

Clause 4.3 is deleted and replaced with the following:

"The Consultant must obtain the Client's prior written consent before replacing or substituting any of the Key Personnel, including where the Client has required the replacement in accordance with this clause 4.3, such consent not to be unreasonably withheld or delayed.

The Client may, for good reason, require the Consultant to replace any Key Personnel, any other person engaged by either the Consultant or any Subconsultant if they are unsuitable or are not sufficiently available to perform the Services by giving written notice to the Consultant specifying the Client's reason(s). The cost of

replacing any person pursuant to this clause shall be borne solely by the Consultant and any replacement or substitute person proposed must be no less skilled and experienced than the Key Personnel to be replaced.”

Section 5: Payments

5.5 Set-off

Add a new clause 5.5 as follows:

5.5 (Set-off)

“Provided that it first gives written notice to the Consultant, the Client is entitled to set-off against any sums that would otherwise be due to the Consultant under the Agreement any actual amount owing as a debt due and payable in respect of any claims the Client has against the Consultant in relation to the Client’s Project. This right of set-off, deduction and withholding is without prejudice to any other right of set-off, deduction or withholding provided for pursuant to this Agreement or otherwise.”

Section 6: Liability and Insurance

Clause 6.2 (Limitation of Liability)

The following paragraphs are added to clause 6.2:

“However, such limitation shall not apply to the Client’s liability to pay the Consultant’s fee or any liability of either party which arises:

- in relation to any unauthorised use of the other party’s Intellectual Property or Confidential Information in breach of this Agreement; or
- in relation to an indemnity provided by the Consultant under clause 9.4.”

Clause 6.5 (Insurance)

Clause 6.5 is amended as follows:

The first bullet point is deleted and replace with the following: “professional indemnity insurance for the amount as set out in the Special Conditions;”

The following is added at the end of clause 6.5:

“The Consultant’s public liability insurance shall include the Client (which shall include the Client’s officers and employees) as an additional insured in respect of their vicarious liability arising from the Consultant’s negligence in relation to the performance of this Agreement.

The Consultant insurances required to be taken out by the Consultant shall be with insurers with a minimum unsecured credit rating of least “A-” from Standard & Poor’s (or equivalent) immediately on the execution of this Agreement. The Consultant shall keep them in force for the length of time set out in the Special Conditions except that in the case of professional indemnity insurance the maintenance obligation is as stated in the second paragraph of this clause 6.5.”

Section 7: Variations

Clause 7.4

Add a new clause 7.4 as follows:

7.4 (Reduction in Scope)

"The Client may reduce either or both of the scope of the Project, and the scope of the Services, and may engage another party to undertake any such works so removed from the scope, and in any such event the Consultant shall not be entitled to claim any breach, damages or loss of profits against the Client.

Within 15 days of any notice under this clause, the Consultant shall forward to the Client:

- (a) the proposed reduction in the consultancy fee for the reduction in the Services, such amount to be agreed in accordance with Clauses 7.2 and 7.3; and
- (b) the proposed amount of any reasonable out of pocket costs that the Consultant incurs solely because of the reduction in Services.

Upon determination of the reduction of the consultancy fee in accordance with this clause the consultancy fee shall be reduced accordingly."

Section 9: Copyright of Documents

Clause 9.1 (New Intellectual Property)

Clause 9.1 is amended by inserting the following at the end:

"Notwithstanding the foregoing, where any New Intellectual Property includes Confidential Information, the Client's or the Consultant's use of that New Intellectual Property is subject to ensuring compliance with clause 8.1 or 8.2 (as applicable). For example, any Confidential Information is to be redacted or removed from the New Intellectual Property prior to any further use."

Clause 9.2 (Pre-existing Intellectual Property)

Delete the words "to the extent reasonably required to enable the Client to make use of the Services or use, adapt, update or amend the Works" and replace with the following:

"in relation to or in connection with this Agreement, the Services, the Works or the Client's Project, including for the planning, design, engineering, procurement, construction, testing, commissioning, completion, operation, maintenance, repair, replacement, modification, renewal, expansion and/or alteration of the Services, Works or the Client's Project."

Clause 9.3

Clause 9.3 is amended by inserting the words: "part of the" after the words "concerning the" on the fourth line.

Clause 9.4

Clause 9.4 is amended by adding the following at the end:

"The Consultant will indemnify the Client against any loss, claim, damage, expense, liability or proceeding suffered or incurred at any time by the Client as a direct result of any breach of any of the Consultant's obligations, undertakings or warranties contained or implied in this clause 9.4."

Section 10: Disputes

Clause 10.1

Clause 10.1 is amended by deleting the words “best endeavours” and replacing them with “reasonable endeavours”.

Clause 10.2

Clause 10.2 is deleted and replaced with the following:

“If the parties cannot resolve the dispute themselves within a reasonable time (but in any event within 20 Working Days or such longer period agreed in writing), then either Party may require that the dispute be referred to mediation by serving written notice on the other.”

Clause 10.3

Clause 10.3 is amended by deleting the words “a reasonable time” and replacing them with “20 Working Days of the date of either Party’s notice requiring mediation issued pursuant to clause 10.2 (or such longer or shorter period as may be expressly agreed by the Parties)”

Clause 10.6

Add a new clause 10.6 as follows:

“Nothing in this clause 10 shall prevent or prejudice the ability of either party to apply to any court in order to seek interim injunctive relief against the other.”

Section 11: Termination

Clause 11.2 (Payment on Early Termination)

Add the following paragraph at the end of clause 11.2

“The Client will not in any circumstances be responsible for abandonment costs or lost fees for stages of the Services not performed as at the date of termination (including without limitation any loss of profit, or lost opportunity costs or claims suffered by the Consultant) or for any fees for any Services for which the Client had not, as at the date of termination, instructed the Consultant to proceed with.”

Clause 11.6 (Suspension)

Add a new clause 11.6 as follows:

“The Client may suspend the performance of the Services by the Consultant at any time by written notice specifying the reasons why the Services are suspended. As soon as such notice is received by the Consultant, the Consultant will stop the performance of the Services. The Client may withdraw the suspension of the Services at any time by giving further written notice to the Consultant.

Suspension of the performance of the Services will not prejudice or affect the accrued rights or claims and liabilities of the Parties.

Where the Services are suspended other than for the default of the Consultant the Client shall:

- grant the Consultant additional time to complete the Services commensurate with the period of suspension plus the period of time reasonably required by the Consultant to remobilise should the Client later withdraw the suspension, and the Consultant shall not be entitled to a Variation due to suspension under this clause 11.6;
- pay the Consultant for the Services provided to the date of suspension and any reasonable costs incurred by the Consultant solely as a result of such suspension (the Consultant will take all reasonable steps to minimise all such costs);
- have no claim against the Consultant solely by reason of any delay caused by or arising from the suspension; and
- not be responsible for any costs or losses resulting from any such suspension other than the reasonable costs which may be payable under the 2nd bullet above.

The Consultant may terminate this Agreement by written notice to the Client where the Services remain suspended for a continuous period of more than three months and the Client has not withdrawn the suspension or the parties have not agreed a further extension of the suspension.

Where the Client gives notice to the Consultant withdrawing a suspension the Consultant must remobilise, and as far as reasonably possible reassign Key Personnel to the Project and provide sufficient employees (including Key Personnel) with the necessary qualifications, licenses, skills and experience to perform the Services to the standard required by this Agreement within a reasonable time from the date it receives the Client's notice."

Section 12: General Provisions

Clause 12.8 (Notices)

In the first bullet point, delete the words "or by facsimile".

Clause 12.10 (Survival of Provisions)

Add the following after the reference to "9" in clause 12.10:

"and 10, 11 and 12"

Clause 12.15 (Client's Regulatory Functions)

The following is added to the end of clause 12.15:

"For the avoidance of doubt, any exercise of a regulatory function by the Client shall not constitute a breach of this Agreement."

Clause 12.19 (Prior Services)

A new clause 12.19 is added as follows:

"For the avoidance of doubt, where the Consultant has performed any Prior Services, this Agreement will retrospectively apply to those Prior Services from the date that it is executed by both Parties."

Appendix A: Scope, Purpose, Programme and Completion Date for Services

1 Scope and Purpose

We understand that specialist support is required to ensure that the two AMPs for the fleet and equipment portfolios are complete, fit for purpose and consistent with good industry practice.

The current status is:

- Fleet portfolio - The draft Fleet AMP has been prepared internally and mostly meets industry standards as set out in the IIMM. External guidance is now required to ensure it is complete and fit for purpose.
- Equipment portfolio - Capability plans have been developed for the specific logistics and equipment asset classes (about 24 in total). There is currently no overreaching AMP for the logistics and equipment asset portfolio.

2 Programme and Completion Date for Services

Commencement Date: Upon signing of contract by both parties

Completion Date: 30/6/2024

Appendix B: Fees, Expenses and Payment

1 Fees

1.1 [Agreed Hourly Rates (exclusive of GST)]

The fee for the Services shall be calculated according to the following hourly rates [and shall in no event be greater than \$50,000 plus GST]:

Role	Hourly Rate (\$)
9(2)(a)	\$9(2)(b)(ii)
9(2)(a)	\$9(2)(b)(ii)
9(2)(a)	\$9(2)(b)(ii)

The Consultant shall record all costs against each task in terms of the rates set out above and shall provide the Client with an itemised assessment of the expected final cost. The Consultant shall provide a detailed breakdown of the fee incurred to date if requested by the Client.

1.2 Valuing Variations

For the purposes of clause 7 of General Conditions of Contract for Consultancy Services (Fourth Edition, December 2017), the Parties agree that the rates noted in section 1.2 should be used to value Variations (if any).

2 Expenses and Disbursements

No expenses or disbursements are payable by the Client to the Consultant under this Agreement unless approved by the Client.

3 Payment

The Consultant shall be entitled to payment monthly.

The Consultant is not entitled to invoice until the end of the month in which the relevant payment entitlement arises.

Payment shall be made on the 20th of the month following the month of issue of each GST invoice (in accordance with clause 5.1 of the General Conditions of Contract for Consultancy Services (Fourth Edition, December 2017)).

The Consultant shall send all invoices to:

Email address: invoices@fireandemergency.nz

Attention: Jim Stuart-Black

Purchase Order reference **77535** to be included on all invoices.

Appendix C: Client's Representative

1. Client's Representative

Name of Client's Representative	Jim Stuart-Black
Street Address	Spark Central, Level 7, 42-52 Willis Street, Wellington, 6011
Postal Address	PO Box 2133, Wellington, 6140
Mobile Number	9(2)(a)
Email Address	Jim.Stuart-Black@fireandemergency.nz

Appendix D: Consultant's Representative and Consultant's Key Personnel

1. Consultant's Representative

Name of Consultant's Representative	9(2)(a)
Street Address	Level 2 11 Chews Lane Wellington 6011
Postal Address	PO Box 9126 Newmarket Auckland 1149
Mobile Number	+9(2)(a)
Email Address	9(2)(a)@morrisonlow.com

Appendix E: Subconsultants and Subconsultants' Key Personnel

1. Subconsultants

Not Applicable

2. Subconsultants' Key Personnel

Not Applicable

Appendix F: Other Consultants, Other Consultant's Insurance, Personnel, Equipment, Facilities and Information Supplied by the Client

1. Other Consultants

Not Applicable

2. Other Consultants' Insurance

Not Applicable

3. Client Personnel

Not Applicable

4. Equipment

Not Applicable

5. Facilities

Not Applicable

Appendix G: Client's Risk Identification and Notification

There are no known risk(s) for this Agreement

Risk	Description
1.	
2.	
3.	

Appendix H: Client's Request for Proposals

[Not used]

Appendix I: Consultant's Proposal

Introduction

Thank you for the opportunity to provide this proposal for supporting the Fire and Emergency New Zealand (FENZ) in the development of Asset Management Plans (AMP) for the fleet and equipment portfolios. This proposal is based on meeting with Sarah Sinclair and Cushla Anich on 6 December 2023.

Our understanding of your requirements

We understand that specialist support is required to ensure that the two AMPs for the fleet and equipment portfolios are complete, fit for purpose and consistent with good industry practice.

The current status is:

- Fleet portfolio - The draft Fleet AMP has been prepared internally and mostly meets industry standards as set out in the IIMM. External guidance is now required to ensure it is complete and fit for purpose.
- Equipment portfolio - Capability plans have been developed for the specific logistics and equipment asset classes (about 24 in total). There is currently no overarching AMP for the logistics and equipment asset portfolio.

Methodology

This work will primarily be undertaken by Helen Ramsey with Cushla Anich providing peer review and oversight. Helen has had previous experience with FENZ looking at fleet maintenance strategy and approach. We will also draw on our recent experience with NZ Police and Mid-Central Health in developing their fleet AMPs. We can start this work immediately to fit in with the overall timeframe having AMPs and budgets completed by June 2024.

We will have a kick-off meeting with you to agree on the scope and timeframes, and specific guidance tasks for the Fleet and Equipment AMP support. We will only undertake a task once briefed by you and fee estimate is confirmed. Our methodology for providing support is detailed below in the detailed task methodology.

Detailed task methodology

Scope items	Proposed Morrison Low Role
Kick-off meeting	We will hold a kick-off meeting via Teams to confirm the scope and timeframe for the project and agree what information is required.
Task 1 – Fleet AMP review and development	Tasks: • Fleet AMP review – Undertake a review of the draft AMP by Morrison Low's strategic AM specialist 9(2)(a) to ensure the plan is heading in the right direction. We will identify weaknesses in the AMP, areas for improvement that are readily resolved with the available information and within the project timeframe or identified for improvement in the three-year programme. We will review draft Fleet AMP to ensure the key themes are captured adequately based on the proposed investment programmes as well as our industry knowledge. The focus will be on providing helpful comments to improve it. Practical examples will be used to guide the internal plan writer. Document the key review findings and

Scope items	Proposed Morrison Low Role
	recommendations in a short memorandum to enable FENZ to make necessary changes. Morrison Low will write some sections if required to meet the AMP deadline.
	Key personnel: 9(2)(a) will undertake a review of the Fleet AMP and provide recommendations and suggestions / examples for improvement. 9(2)(a) will review the recommendations.
	Key deliverables: Combination of comments within the AMP and review findings / recommendations in memorandum format.
	Client inputs: Draft Fleet AMP in Word version, regular updates of AMP as sections are completed.
	Timing: Late January 2024.
Task 2 – Equipment AMP review and development	Tasks: - Equipment AMP development – An AMP needs to be developed for the logistics and equipment asset portfolio that is consistent with industry standard. The initial stage will be to review the capability plans and then develop the AMP by Morrison Low's strategic AM specialist 9(2)(a). 9(2)(a) will work with FENZ staff to ensure the right level of data and analysis is provided within the AMP, understand the key issues and any gaps are identified between equipment needs and available budget. - The focus will be on developing the AMP using the information provided and understanding of the key issues.
	Key personnel: 9(2)(a) will develop the equipment AMP. 9(2)(a) will review the draft AMP.
	Key deliverables: Draft Equipment AMP in Word version.
	Client inputs: Draft capability plans, data inventory, financial forecasts.
	Timing: Late February 2024.

Our team

We propose the following experienced team to undertake this project with you:

- 9(2)(a) is our project director for this project. She will provide strategic oversight, mainly with the setup of the budget sheet and will review the AMP key themes.
- 9(2)(a) will review the budget outputs and provide property expertise as required.

9(2)(a) has completed the following projects for FENZ so has a good understanding of the people capability, systems, processes, and data:

- Light Investor Confidence Rating on its Property, Equipment & logistic, Fleet and ICT portfolios, and developed a Roadmap of improvements.
- Property AM assistance to understand the robustness of the existing data sets.

Brief bios for the project team were provided in our Property AM Assistance Proposal (May 2023).

Fee structure

Based on the methodology above and our understanding of the specialist support required, the estimated cost to provide support for the Fleet and Equipment AMPs would be **\$50,000** (excluding GST and disbursements).

The fee estimate is shown below:

Task No.	Tasks	Estimated fees (excluding GST and disbursements)
1	Review and assistance in writing some sections of the Fleet AMP	\$9(2)(b)(ii)
2	Development of the Equipment AMP in conjunction with FENZ	\$9(2)(b)(ii)
	TOTAL	\$50,000

Our estimates are based on the following assumptions:

- All estimated fees exclude GST and disbursements.
- Costs will be based on actuals variable depending on how much writing Morrison Low undertakes.
- The project meetings are via video conferencing (MS Teams).
- Supporting evidence is made available.
- Financial forecasts for both asset portfolios are provided.

We note that the All of Government Standard Conditions of Engagement will form the basis of our engagement for this proposal. We invoice monthly for work completed to the end of that month, although outputs may not be fully documented at that time. We understand that scope may fluctuate to meet your needs and we will advise you if there is any fee change accordingly.

Conclusion

We trust that you find this proposal aligned with what you are seeking. Please feel free to contact 9(2)(a) if you have any queries or would like to refine the project scope further. We look forward to working with you and making step changes in AM practices in your teams.

Annexure 1: Post-Tender Correspondence and Clarifications

Not used

Annexure 2: Notices to Tenderers

Not used

All of Government Construction Consultancy Services Tracking Slip

Contract Award Date		Project name	
Agency	Fire and Emergency New Zealand	Provider	Morrison Low Ltd
Agency contact name & title	Jim Stuart-Black	Provider contact name & title	9(2)(a)
	CA to DCE OSCD		Associate Director
Agency email address	Jim.stuart-black@fireandemergency.nz	Provider email address	9(2)(a)@morrisonlow.com
Value (\$)	\$50,000 excl. GST and disbursements	Additional notes	
Contract Terms Used	Conditions of Contract for Consultancy Services as modified by the standard Crown amendments		
Note any subcontractors used and their share of spend (%)	N/A		

Agency must note on GETS that the opportunity is sourced via the All of Government Construction Consultancy Services Panel.

Provider must check that the opportunity is sourced via the All of Government Construction Consultancy Services Panel.

Please tag this Tracking Slip in your Financial Management System to indicate AoG CCS.

Variation to CCCS contract #3836 of 8 January 2024 approved.

9(2)(a)

Jim Stuart-Black (Acting DCE OSCD)



FENZ - variation Request

Equipment and Logistic Asset Management Support (10 May 2024)

Original Scope and Purpose

We understand that specialist support is required to ensure that the two Asset Management Plans (AMPs) for the Fleet and Equipment portfolios are complete, fit for purpose and consistent with good industry practice. Morrison Low were engaged for the following two tasks.

The current status is:

- Fleet portfolio - The draft Fleet AMP has been prepared internally and mostly meets industry standards as set out in the IIMM. External guidance is now required to ensure it is complete and fit for purpose.
- Equipment portfolio - Capability Management Plans have been developed for the specific logistics and equipment asset classes (about 24 in total). There is currently no overarching AMP for the logistics and equipment asset portfolio.

Revised scope and fee

The budget setting task for Equipment portfolio was completed as the first task. It focused on the equipment budget with detailed analysis around what budget level is required for the different equipment types. This was not part of the original proposal but agreed at the kick off meeting. A detailed financial model has been developed that FENZ can use for forecasting renewals by equipment category. This work has been completed with the model provided to FENZ. The outputs of the model and analysis have been used within the Operational Equipment AMP to ensure the asset information and lifecycle section is robust data analysis.

An additional \$15k is requested to the original Equipment AMP budget to cover this additional task. This will allow Morrison Low to prepare the Operational Equipment AMP based on the original \$35k budget. The total project budget would be **\$66,000**, including the Fleet AMP support.

The revised fee estimate is shown below:

Task No.	Tasks	Revised Estimated fees (excl. GST and disbursements)	Notes
1	Budget setting and analysis for equipment	\$9(2)(b)(ii)	Additional task requested in January 2024
2	Development of the Equipment AMP in conjunction with FENZ	\$9(2)(b)(ii)	Original budget
3	Review and assistance in writing some sections of the Fleet AMP	\$9(2)(b)(ii)	Original budget
TOTAL		\$66,000	

Variation Request

The total variation request is **\$15,000** to cover the additional work completed.

AoG Consultancy Services Order (CSO)

Part A – for Participating Agency (client) to complete

The Participating Agency (referred to as the client in Parts A – E of this Consultancy Services Order) will complete this and email the entire form (including all Parts) to the Provider.

Today's Date	21/3/2024	CSO or Project name	ICT AMP
Agency	Fire & Emergency New Zealand	Provider	Morrison Low & Associates Limited
Agency contact name & title	Murray Mitchell	Provider contact name & title	9(2)(a)
	Chief Information & Technology Officer		Director
Nominated Personnel	Chris Juriss	Nominated Personnel	9(2)(a)
Agency email address	Chris.Juriss@fireandemergency.nz invoices@fireandemergency.nz	Provider email address	9(2)(a)@morrisonlow.com
Agency phone #		Provider phone #	9(2)(a)
Sub Category	Outcome-based consultancy engagement (asset management)		
GCDO Assurance Sub Panel	no		
Protective Security Services Sub Panel	no		

A1. Purpose and any background information

Morrison Low (the Provider) are providing asset management assistance to FENZ (the Client) to develop an Asset Management Plan (AMP) for the ICT portfolio.

FENZ require a complete document that meets good asset management (AM) practice. The AMP will include the latest information available and be a forward-looking plan to cover FENZ's strategic direction for the ICT portfolio.

There are five main ICT asset classes in total with the addition of asset data and information as a new asset class:

1. Operational Services.
2. Business Services (Applications).
3. End User Services.
4. ICT Delivery Services.
5. Asset Data and Information.

The asset classes are supported by various capabilities and it is intended that the Capability Management Plans will be developed at asset class level. The ICT AMP will be the overarching technical document with the lifecycle management detail provided in the Capability Management Plans at asset class level.

The ICT Asset Life Cycle Plan 2019-2031 outlines the approach for managing the ICT assets and will be used to populate the main lifecycle section in the ICT AMP. It is expected that it only requires to be updated to reflect the latest asset hierarchy and financial forecasts.

The Digital Strategy 2021-2027 provides the ten year view for the ICT portfolio with a focus on getting the foundations right.

A2. Specific questions / instructions for Provider

The Provider will provide the Services set out in A1. Specific questions / instructions may be asked by the Client in relation to this engagement from time to time.

A3. Additional Information e.g. risks to client, additional contact information

Participating Agency's Position on Expenses

The Participating Agency will reimburse the Provider for its reasonable Expenses incurred in the provision of the Services and Deliverables provided that:

- (a) the Participating Agency has given its prior written consent to the Provider incurring the Expenses; and
- (b) the Expenses are charged at cost.

The Participating Agency is under no obligation to pay for any Expenses that are claimed by the Provider other than in accordance with this provision and reserves the right to request evidence of Expenses incurred.

A4. Client specific requirements

The key deliverables for the ICT AMP are:

- ICT AMP structure with content noted at sub section level (using Property AMP structure as a starting point).
- Finalised 2024 ICT AMP in the agreed structure (similar to Property AMP structure) using FENZ's style guide.
- A3 AMP on a Page in well-presented format targeted at the non-technical audience.
- Ten-year financial summaries based on agreed capital projects and optimised operational expenditure forecast based on best information available (provided by ICT team).
- Three-year prioritised improvement programme (using template in Property AMP structure).
- Risk register in FENZ's template.
- LOS table to good industry practice (using template in Property AMP structure).

A5. Timeframes

Start date: 22/3/2024

Completion date: 31/8/2024, unless this CSO is renewed by agreement or terminated earlier.

A6. Indicative budget

1. Kick off meeting and agree AMP content \$3,700
2. AMP development \$26,000
3. Finalise AMP \$8,300

Total = \$38,000 (excluding GST and disbursements)

4. *Develop structure for capability management plans – future phase (to be estimates (if agree to proceed)*

A7. Outputs of the Services

See A1, A4 A5 above

A8. Tables

[Tables can be inserted here]

A9. Provider liability cap

The maximum liability of the Provider to the CoE and the Participating Agency for all Losses under or in connection with this Consultancy Services Order is as per clause 12.4 of Part F (having regard to the relevant Tier).

Part B – for Provider to complete

B1. Specific Services to be provided

Refer to the full methodology in Morrison Low's proposal (12 March 2024). Summary of method is:

Phase 1 - Kick-off meeting and agree AMP content:

- Kick-off meeting - We will have a kick-off meeting with you to agree on the scope, timeframes, key issues and information to be provided. Cushla Anich and Richard Slater will attend this meeting via Teams. The ICT Team's approach to asset data and information as a new asset class will be discussed and will be agreed on how it will be presented in the AMP (as early in maturity).
- Agree AMP content – Using the structure developed for the Property AMP, the overall structure will be amended following the kick off meeting and to allow the alignment with the Capability Management Plans being developed for the five asset classes. The content will be noted in each sub section for client review prior to starting the full AMP development. The format of the proposed A3 AMP on a Page will also be discussed and agreed upon. We would use the Roadmap prepared in 2022 as a starting point for the Improvement Programme.
- Validate existing information - Information will be reviewed for completeness at a high level to ensure that the AMPs are based on sound underlying information and to help develop the improvement programme where there are weaknesses or gaps identified through this process. Workshop / interview key staff where information is not readily available.

Phase 2 - AMP development

- AMP analysis - Key information will be analysed and prepared ready for inputting into the AMP to meet industry good practice for AM. Analysis will include asset inventory, risk register review, level of service (LOS) table, financial forecast summaries based on likely capital projects for the AMP period and prioritised three-year improvement programme.
- Activity Risk Register - Operational risk registers are being developed throughout FENZ across the directorates. It is good practice to develop an Activity Risk Register for the AMP. We would expect the higher risks are presented in the AMP and reference the operational risk register for the detail. Morrison Low will facilitate activity risk workshop with ICT'S asset managers using the corporate risk matrix if necessary.
- Develop draft ICT AMP – Develop the AMP as first draft using the analysis from above and the other key information. A well-presented graphic showing the asset hierarchy will be prepared for feedback and inclusion in the AMP.

Phase 3 - Finalise AMP

- Gather feedback on draft AMP – We propose to gather feedback on the draft AMP and AMP on a Page with a Teams meeting.
- Finalise draft AMP - Following feedback from the initial draft, the AMP will be updated including any new information.

B2. Sub Category and Tier to be Provided		
Selection	Sub-category of Services	Tier (1/2/3)
	Accounting	
✓	Assurance	2
	Audit	
	Finance and economics	
	Procurement and logistics	
	Taxation	
	Business change	
	Human resource	
	Marketing and public relations	
	Operations management and risk	
✓	Policy, research and development	2

B3. Can you confirm that the Nominated Personnel (if any) is available to provide the Services?
The nominated people are available to provide these services. These include 9(2)(a) 9(2)(a) and 9(2)(a).

B4. Can you confirm that the timeframe is acceptable?
We can confirm that we can develop and ICT AMP by 31 August 2024.

B5. Estimated Start and End Date			
Start	22/3/24	End	31/8/24

B6. Estimate / Quote (excluding GST, if any)

Fees	\$38,000
Administration Fee (Tier 1 and 2 only)	\$380
<i>(Optional)</i> The above Fees are apportioned as follows:	
Job Level 1	\$
Job Level 2	\$
Job Level 3	\$
Job Level 4	\$
Job Level 5	\$
Fixed Fee (Job Level 1)	\$
Fixed Fee (Job Level 2)	\$
Fixed Fee (Job Level 3)	\$
Fixed Fee (Job Level 4)	\$
Fixed Fee (Job Level 5)	\$
Monthly Retainer	\$
Subcontracting	\$
Expenses	\$
Total Charges	\$38,380
Identify whether the Total Charges is an Estimate / Quote and the method that the Charges have been calculated	Total charges are an estimate. Estimate based on hourly rate for similar AM projects. This is based on AOG charge out rates (excluding GST) as follows: \$[REDACTED] for 9(2)(a) and 9(2)(a) and \$[REDACTED] for 9(2)(a)

Additional information / assumptions:

Various catch-up meetings will by video conference or face to face as follows:

- Auckland for Cushla Anich
- Wellington for Richard Slater

Job Level	Indicative Characteristics
Level 5	• 15+ years of extensive professional experience in their specialised field in a consultancy role. • An industry leader and key influencer who is respected for their professional proficiency and knowledge. • Recognised as a trusted adviser to ministers and/or senior executive teams. • Acts as the senior responsible person on major client engagements. Able to be accountable for leading complex projects/programs. • Responsible for leading a high performing team of professionals, including the coaching and mentoring of colleagues at Levels 1–4.
Level 4	• 10+ years of substantial professional experience in their specialised field in a consultancy role. • Strong theoretical base in subject area, with ability to apply best practice principles to the subject matter context. • Senior team leader with the ability to deputise for the senior responsible person and coach and mentor more junior staff. • Ability to coordinate contributions of other specialists to complete a joint project. • Can engage with clients at strategic/management level if required.
Level 3	• 3-10 years of notable professional experience in their specialised field in a consultancy role. • A trusted performer on a wide range of client-facing consultancy projects in both the private and public sectors. • Thorough knowledge of functional area, combining a broad grasp of relevant best practice principles. • Ability to participate in multi-disciplinary teams and to work independently (with limited supervision). • Performs professional level analysis requiring technical skills and independent initiative within a well-defined program of work. • Contacts with clients predominantly at a working level.
Level 2	• 1-3 years of demonstrable professional experience in their specialised field in a consultancy role. • Previous experience on a range of client-facing consultancy projects, preferably in both the private and public sectors. • Has a theoretical base in subject area, possibly supplemented through recent study, with the ability to translate theory into practice • Performs a variety of analytical tasks requiring independent initiative and knowledge. • Interacts with clients predominantly at the working level.
Level 1	• 0+ years of relevant professional experience in a professional environment. • Evidence of prior contributions to consultancy engagements. • Performs a range of administrative tasks to support the wider team. • Work is performed under the guidance of colleagues at Levels 3-5.

B7. Conflict of Interest declaration and Additional Information

I, [name of authorised signatory of Provider] have made diligent inquiry whether [name of Provider] has any actual, potential or perceived Conflict of Interest were it to provide the Services described in this Consultancy Services Order and I have disclosed any actual, potential or perceived Conflict of Interest and how it will be managed below:

No perceived conflicts

B8. Additional information**B9. Signatures**

Name of Provider's authorised signatory

9(2)(a)

Signature of authorised signatory

9(2)(a)

The client accepts and authorises this Consultancy Services Order

[Yes]

Name of client's authorised signatory

Murray Mitchell

Signature of authorised signatory

9(2)(a)

Murray Mitchell (Apr 11, 2024 10:30 GMT+12)

Date of acceptance

Apr 11, 2024

Client's job reference or purchase order number

[if required]

Please send this link below to your agency contacts to complete after each engagement. For long engagements, we recommend sending this at key milestones to seek feedback throughout the engagement.

Consultancy (<https://www.research.net/r/ClientSatisfactionSurvey-AoGcontracts-CSO>)

GCDO Assurance (<https://www.research.net/r/GCDOAssuranceServices-CSO>)

Part C – Variations to Part A

LEAVE BLANK WHEN ISSUING CONSULTANCY SERVICES ORDER

The client will complete Part C if they wish to change any details in Part A

C1. Revised scope and/or timeframe

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Part D – Variations to Part B**LEAVE BLANK WHEN ISSUING CONSULTANCY SERVICES ORDER**

The Provider will complete this only if and when it receives a Variation per Part C above from the client

D1. Revised Estimate (excluding GST, if any)

Revised Fees	\$[Add in total Fees]
Administration Fee (Tier 1 and 2 only)	\$[1% of Fees for Services for which the Provider is Tier 1 or Tier 2]
<i>(Optional)</i> The above Fees are apportioned as follows:	
Job Level 1	\$
Job Level 2	\$
Job Level 3	\$
Job Level 4	\$
Job Level 5	\$
Fixed Fee (Job Level 1)	\$
Fixed Fee (Job Level 2)	\$
Fixed Fee (Job Level 3)	\$
Fixed Fee (Job Level 4)	\$
Fixed Fee (Job Level 5)	\$
Monthly Retainer	\$
Subcontracting	\$
Revised Expenses	\$
Total Charges	\$
Identify whether the Total Charges is an Estimate / Quote and the method that the Charges have been calculated	

Additional information / assumptions:

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Part E – Acceptance**LEAVE BLANK WHEN ISSUING CONSULTANCY SERVICES ORDER***The Provider and client to complete on acceptance of this Consultancy Services Order***E1. Signatures****Name of Provider's authorised signatory****Signature of authorised signatory****The client accepts and authorises this
Consultancy Services Order****[Yes/No]****Name of client's authorised signatory****Signature of authorised signatory****Date of acceptance****Client's job reference or purchase order number****[if required]**

Please send this link below to your agency contacts to complete after each engagement. For long engagements, we recommend sending this at key milestones to seek feedback throughout the engagement.

Consultancy (<https://www.research.net/r/ClientSatisfactionSurvey-AoGcontracts-CSO>)

GCDO Assurance (<https://www.research.net/r/GCDOAssuranceServices-CSO>)

Part F – Terms

THE PROVIDER AND PARTICIPATING AGENCIES ARE NOT PERMITTED TO AMEND THIS PART F.

*This Part F contains an extract of selected terms and conditions from the Services Agreement (the **Agreement**). Clause, schedule and paragraph references have been updated to refer to clauses, schedules and paragraphs in this Part F where applicable. For the full terms and conditions that govern the Services, please refer to the Agreement.*

1. Appointment

1.1 Appointment

- (a) The Participating Agency appoints the Provider to provide Services to the Participating Agency as detailed in this Consultancy Services Order and the Provider accepts that appointment, in accordance with the terms of this Consultancy Services Order.
- (b) Certain obligations of the Provider in this Consultancy Services Order do not apply to sub-categories of Services for which the Provider has been appointed as a Tier 3 Provider as follows:
 - (i) the Participating Agency may nominate specific Personnel to be the primary providers or to supervise the delivery of the Services but clauses 6.2(b) to 6.2(e) do not apply to any nominated Personnel;
 - (ii) the relevant Services are not required to meet or exceed the Service Levels specified in Schedule 3 (Performance Measurement) and clause 2.5(a), Schedule 3 (Performance Measurement) do not apply;
 - (iii) the Provider is not required to pay an Administration Fee and clause 8.3(a)(v) does not apply;
 - (iv) the Provider is not required to conduct the Agency Satisfaction Survey for the relevant Services and clause 5.1(h) does not apply;
 - (v) the Provider and Participating Agency are not obligated to escalate a dispute to the CoE's All-of-Government Procurement Manager, Centre of Expertise for Consultancy, in accordance with clause 13.2(c)(ii); and
 - (vi) as otherwise stated in this Consultancy Services Order.

2. Services

2.1 Services

- (a) The Provider will provide Services to the Participating Agency in accordance with

the terms of this Consultancy Services Order.

- (b) The Provider will use all reasonable endeavours to ensure that, on the date the Documentation is provided under this Consultancy Services Order, such Documentation is in a readable and readily useable format.

2.2 Agents may procure Services

The Participating Agency may, by notice to the Provider and the CoE, appoint one or more third parties to procure Services under this Consultancy Services Order on the Participating Agency's behalf and/or receive invoices, as if that agent was a Participating Agency, provided that any such procurement is for the sole benefit of the Participating Agency.

2.3 Timely performance

The Provider will ensure that the Services to be performed under this Consultancy Services Order are provided on or before the date specified for performance (if any) in this Consultancy Services Order and, if no time is specified, within a reasonable time after the issue of the Consultancy Services Order.

2.4 Delay

- (a) If the Provider considers that it is (or is likely to be) prevented or delayed from achieving a date or time for performance (**Milestone**) specified in this Consultancy Services Order (**Delay**), it will:
 - (i) immediately provide notice verbally or in writing to the Participating Agency, setting out:
 - (A) the cause of the Delay and its expected duration;
 - (B) the effect of the Delay on its ability to perform its obligations under this Consultancy Services Order (including any future Milestones);
 - (C) what extension, if any, to the relevant Milestone is being sought; and
 - (D) what steps, if any, the Participating Agency

- may take to mitigate the effect of the Delay; and
 - (ii) take all reasonable steps necessary (including by the allocation of additional resources) to eliminate or avoid the Delay and, in all cases, mitigate its effects.
- (b) If the Provider and Participating Agency agree that the Delay is acceptable or wish to amend the Milestone:
 - (i) the Provider will complete and submit Part C of this Consultancy Services Order to the Participating Agency; and
 - (ii) upon receipt of the completed Part C of this Consultancy Services Order, the Participating Agency must promptly advise the Provider in writing if the completed Part C is acceptable.
- (c) If the Provider does not achieve the Milestone (as amended from time to time) and the Participating Agency's acts or omissions, or those of its Personnel or third parties acting on its behalf, have not caused the Provider to fail to achieve the Milestone, the Participating Agency may, without prejudice to any other right or remedy, suspend payment of any Charges relating to this Consultancy Services Order until the Provider remedies the relevant failure.

2.5

Service standards

- (a) The Provider must provide the Services in relation to the sub-categories for which the Provider has been appointed as a Tier 1 and Tier 2 Provider to a standard that reaches or exceeds the Service Levels specified in Schedule 3 (Performance Measurement).
- (b) In addition, the Provider must:
 - (i) provide the Services diligently, efficiently, effectively and in accordance with Industry Best Practice;
 - (ii) ensure that the Services to be performed under this Consultancy Services Order are provided on or before the date specified for performance (if any) in this Consultancy Services Order and, if no time is specified, within a reasonable time after the issue of this Consultancy Services Order;
 - (iii) ensure that all Documentation, information and advice (including Documentation, information and advice provided prior to the issue of this Consultancy Services Order) provided to the Participating Agency or published on the Provider Database is Fit for Purpose so that, without limitation, it contains sufficient content and detail to enable the Participating Agency

to make use of it for the purpose for which it was requested;

- (iv) act in the best interests of the Participating Agency in the provision of Services to the Participating Agency; and
- (v) provide Services to the reasonable satisfaction of the Participating Agency (as reported to the CoE).

3. Estimates and Quotes

3.1 Estimates and Quotes

- (a) The Provider must provide an Estimate or Quote for all Services to be provided under this Consultancy Services Order, unless the total Fees in respect of the Services under this Consultancy Services Order are likely to be less than \$10,000 (exclusive of GST) or such other amount as determined by the CoE and notified to the Provider.
- (b) Despite clause 3.1(a), if, during the course of providing the Services, the Provider becomes aware that the total Fees (excluding GST) are likely to exceed the amount referred to in clause 3.1(a), the Provider must provide an Estimate in accordance with clauses 3.1(c) to (e).
- (c) All Estimates and Quotes will be provided at no cost to the Participating Agency.
- (d) All Estimates and Quotes must specify the estimated timeframe to perform the Services requested in this Consultancy Services Order and the Rates of Personnel providing the Services and include any Expenses likely to be incurred in providing the Services.
- (e) All Quotes and Estimates must be provided to the Participating Agency in writing and must be included in this Consultancy Services Order.
- (f) To avoid doubt and without limiting clause 4.5(c) of the Services Agreement, if any Quote or Estimate is not acceptable to the Participating Agency, the Participating Agency and Provider may seek to negotiate a more favourable Quote or Estimate, including a decrease in the Rates on which the Quote or Estimate was based.

3.2 If Charges exceed the Estimate

- (a) If during the course of providing the Services under this Consultancy Services Order, the Provider becomes aware that the total Charges (excluding GST) are likely to exceed the Estimate, the Provider must give written notice to the Participating Agency using Part D of this Consultancy Services Order as soon as the Provider becomes so aware, but no later than the time the costs accrued or incurred reach 80% of the Estimate.
- (b) The notice under clause 3.2(a) must specify a revised Estimate for the Services and include the reason the total

- Charges will exceed the original Estimate.
- (c) The Participating Agency has sole discretion whether to approve a revised Estimate and must act reasonably when deciding whether to approve a revised Estimate.
 - (d) When a revised Estimate is approved, the Participating Agency must provide written notice of the same to the Provider.
 - (e) If a Provider has provided an Estimate to the Participating Agency for Services, the Participating Agency is not liable to pay the Provider any amount exceeding the Estimate unless the Participating Agency has approved a revised Estimate.
- 3.3 **If Charges exceed the Quote**
- (a) The Provider acknowledges that neither the CoE nor the Participating Agency are obliged to pay any Charges to the Provider in relation to Services performed under this Consultancy Services Order if those Charges exceed any Quote provided in relation to this Consultancy Services Order, unless the Participating Agency has given its prior written consent in accordance with clause 3.3(b).
 - (b) If the Participating Agency agrees to allow the Provider to increase the Charges:
 - (i) the Provider will complete and submit Part D of this Consultancy Services Order to the Participating Agency; and
 - (ii) upon receipt of the completed Part D of this Consultancy Services Order, the Participating Agency must promptly advise the Provider (in writing) if the completed Part D is acceptable.
- (ii) any Personnel or Subcontractors of the Provider do not engage in any activity or obtain interests that might result in the Provider or such Personnel or Subcontractors having an actual, potential or perceived Conflict of Interest,
- that cannot be managed to the satisfaction of the Participating Agency.
- (d) If, after commencing Services under this Consultancy Services Order, the Provider becomes aware of any matter, circumstance, interest or activity that may give rise to any actual, potential or perceived Conflict of Interest, the Provider must immediately notify the Participating Agency of all relevant details and must immediately cease work on the Services until such time as the Participating Agency provides written notice confirming the Provider may continue to perform the Services or terminates the engagement of the Provider in respect to the Services to be performed under this Consultancy Services Order in accordance with clause 4.1(e).
 - (e) If the Participating Agency considers that the Provider has an actual Conflict of Interest of sufficient gravity that the Provider can no longer perform Services for it, the Participating Agency may, by written notice to the Provider, terminate this Consultancy Services Order with immediate effect on the date of termination specified in that notice.
 - (f) Any approval or notice given by the Participating Agency pursuant to clause 4.1(b) or 4.1(d) may require the Provider to take steps reasonably required by the Participating Agency to manage the Conflict of Interest, and the Provider must provide written notice confirming its acceptance of those steps before it may commence or continue to provide the Services under this Consultancy Services Order.

4. Conflicts of interest

4.1 Conflicts of interest

- (a) The Provider must, upon receipt of this Consultancy Services Order, make diligent inquiry whether it has any actual, potential or perceived Conflicts of Interest if it were to provide the Services specified in this Consultancy Services Order and, if no such Conflict of Interest exists, the Provider must provide confirmation to that effect to the Participating Agency.
- (b) If the Provider has an actual, potential or perceived Conflict of Interest, the Provider must immediately notify the Participating Agency and must not begin performing the Services without the prior written approval of the Participating Agency.
- (c) The Provider must take all reasonable steps to ensure that:
 - (i) a situation does not arise that might result in an actual, potential or perceived Conflict of Interest; and

5. Responsibilities

5.1 Provider responsibilities

In addition to its other obligations under this Consultancy Services Order, the Provider will:

- (a) respond promptly, accurately and adequately to any requests for information made by the Participating Agency in relation to the Services, including requests for advice;
- (b) in performing Services for the Participating Agency under this Consultancy Services Order comply with all privacy and other policies and guidelines issued by the Participating Agency and notified or made available to the Provider;
- (c) obtain, maintain and comply with any governmental, regulatory or other approvals, permissions, consents, licences, and requirements necessary to provide the Services and perform its

obligations under this Consultancy Services Order;

- (d) comply with all Laws at all times during the Term in so far as they relate to the provision of the Services, including the Privacy Act 1993 and all applicable consumer laws;
- (e) ensure that it and its Personnel providing the Services do not access the Participating Agency's information or systems except to the extent necessary to provide the Services and for no other purpose;
- (f) as soon as is practicable, notify the Participating Agency of any problems or issues that arise in relation to the performance of its obligations under this Consultancy Services Order, including any problems or issues that will, or are likely to, affect the provision or quality of the Services or the ability of the Provider to perform its obligations under this Consultancy Services Order;
- (g) without limiting any other provision of this Consultancy Services Order, use all reasonable endeavours to avoid damaging or adversely affecting any Participating Agency's reputation;
- (h) in relation to the sub-categories for which the Provider has been appointed as a Tier 1 and Tier 2 Provider, conduct the Agency Satisfaction Survey by asking the Participating Agency the questions recorded in Annexure A of Schedule 5 (Governance) to the Services Agreement within 5 Business Days of the Services in this Consultancy Services Order being completed.

5.2 Participating Agencies' responsibilities

The Participating Agency has the following responsibilities in relation to the Services:

- (a) to manage its operational relationship with the Provider, including in relation to the fulfilment of this Consultancy Services Order;
- (b) to notify the Provider of all relevant policies, guidelines and procedures of the Participating Agency that the Provider must comply with when performing the Services under this Consultancy Services Order;
- (c) to provide adequate instructions and information to the Provider to allow it to perform the Services under this Consultancy Services Order;
- (d) to make timely decisions where approvals or consents are reasonably sought by the Provider in performing the Services under this Consultancy Services Order;
- (e) to pay the Charges; and
- (f) to use its best efforts to resolve any dispute directly with the Provider before involving the CoE in accordance with clause 13.

6. Resourcing

6.1 General requirements

The Provider will provide and maintain sufficient resources (including human resources, equipment, telecommunications connectivity, premises and other facilities) to enable it to perform its obligations on time and otherwise in accordance with this Consultancy Services Order.

6.2 Provider's Nominated Personnel

- (a) The Participating Agency may, in this Consultancy Services Order, nominate specific Personnel (**Nominated Personnel**) to be the primary providers or to supervise the delivery of the Services.
- (b) If any Nominated Personnel nominated in this Consultancy Services Order are not available to provide or supervise the Services requested, the Provider must immediately notify the Participating Agency and provide details of other Personnel (if any) with the necessary skills and experience to provide or supervise the Services requested pursuant to this Consultancy Services Order.
- (c) Notice given under clause 6.2(b) must specify the period for which the Nominated Personnel will continue to be unavailable.
- (d) Upon receipt of notice under clause 6.2(b), the Participating Agency must notify the Provider whether the replacement Personnel are acceptable.
- (e) The Participating Agency is under no obligation to accept any replacement Personnel and, if it does not approve the replacement Personnel, the Provider may not commence or continue providing the Services.

6.3 Personnel

- (a) The Provider will ensure that all of its Personnel who are engaged in the performance of the Provider's obligations under this Consultancy Services Order:
 - (i) have the requisite skills, expertise, qualifications and experience;
 - (ii) have, before performing any such obligations, obtained all security clearances and passed all probity checks required by, or necessary to provide the Services to, the Participating Agency;
 - (iii) comply with all health, safety, security and other policies, codes of conduct, procedures and reasonable directions as may be reasonably required by the Participating Agency from time to time; and
 - (iv) will carry out their respective duties with due care, skill and diligence.

- (b) The Participating Agency will notify the Provider of any security clearances and probity checks required by, or necessary to provide the Services to, the Participating Agency.
- 6.4 **Subcontracting**
- (a) The Provider will not subcontract the performance of all or part of the Services or any of its other obligations under this Consultancy Services Order, except with the prior written consent of the Participating Agency.
- (b) The Provider is solely responsible for the selection of each Subcontractor and must ensure that each Subcontractor is creditworthy, qualified and has the relevant experience to perform the work it is required to carry out for the Provider.
- (c) To the extent permitted by Law, the Provider is and remains fully responsible for any act or omission of any Subcontractor.
- (d) The Provider must ensure that each Subcontract contains obligations on the Subcontractor that are consistent with the relevant terms of this Consultancy Services Order, including in relation to clauses 5.1 (Provider responsibilities), 6.3(a) (Personnel), 10 (Confidentiality), 11 (Intellectual Property) and 14 (Termination) and Schedule 3 (Performance Measurement), together with clause 15 (Audit) of the Services Agreement.
- (e) If, in the Participating Agency's reasonable opinion, a Subcontractor is:
- (i) materially not performing in accordance with the terms of this Consultancy Services Order, the Participating Agency may, by notice to the Provider, require the Provider to procure that the Subcontractor performs the relevant obligations within 10 Business Days, failing which the Participating Agency may, by notice to the Provider, require the Provider to remove that Subcontractor; or
- (ii) a material threat to the health, safety or security of the Personnel or property of the Participating Agency, or has breached security or confidentiality requirements of this Consultancy Services Order, the Participating Agency may, by notice to the Provider, require the Provider to remove that Subcontractor,
- and the Provider will ensure the immediate removal of that Subcontractor.

7. Changes

7.1 Change procedure

The Participating Agency may agree any variations to this Consultancy Services Order with the Provider using Part C of the Consultancy Services Order.

8. Price and payment

8.1 Calculation of Charges

The Charges will be calculated in accordance with the terms of Schedule 2 (Pricing).

8.2 Participating Agency to pay for Services

- (a) The Participating Agency will pay the Provider the Charges applicable to any Services procured by the Participating Agency on the terms of this clause 8.
- (b) The Charges and Administration Fee comprise the total amount payable by the Participating Agency for the Services.

8.3 Invoicing and payment

Except as otherwise provided in Schedule 2 (Pricing) or as agreed with the Participating Agency in this Consultancy Services Order, the Provider will invoice the Participating Agency (or, if the Participating Agency has instructed the Provider in writing, the third party agent) for the Charges and the Participating Agency will pay those Charges, in accordance with the following terms:

- (a) the Provider will render one itemised invoice to the Participating Agency at the end of each month during the Term for all Services performed during that month specifying (as applicable):
- (i) the nature and amount of the Fees or other applicable fees and fee structures;
- (ii) the Personnel and their applicable Rate;
- (iii) the hours billed (by Personnel and in the aggregate);
- (iv) the nature and amount of any Expenses (including any third party charges to be passed on to the Participating Agency);
- (v) if applicable, the amount representing the Administration Fee;
- (vi) how much of the Estimate or Quote has been used;
- (vii) a brief description of the Services provided during that month; and
- (viii) any other matters the Participating Agency may reasonably request;
- (b) each correctly rendered invoice will be payable on or before the 20th day of the month following the month in which the invoice was received;
- (c) the Participating Agency will have no obligation to pay any Charges which are invoiced more than 90 days after the date that such amount was required to be invoiced pursuant to this clause 8.3; and
- (d) the Provider may only invoice the Participating Agency for any Expenses at the cost actually incurred by the Provider.

8.4 Invoice disputes

If the Participating Agency or the Provider disputes an invoice:

- (a) it may withhold the disputed sum and, if applicable, associated Administration Fee until the dispute is resolved;
- (b) the dispute will be resolved in accordance with clause 13; and
- (c) it will pay the undisputed portion in accordance with clause 8.3.

The Provider will not be excused from performing its obligations under this Consultancy Services Order while an invoice is disputed by the Participating Agency.

8.5 Taxes

- (a) Except for any GST payable by the Participating Agency, any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including applicable interest and penalties) payable in connection with this Consultancy Services Order under any Law is to be paid by the Provider and not passed on to the Participating Agency unless otherwise expressly agreed in writing by the Participating Agency.
- (b) The Participating Agency may deduct from any payment to be made to the Provider any withholding taxes or other deductions that it is required by Law to make.

8.6 Administration Fee

In relation to the sub-categories for which the Provider has been appointed as a Tier 1 or Tier 2 Provider, the Provider will ensure that each invoice issued to the Participating Agency for the Charges includes, in addition to the Charges, a separate amount equal to 1% of the Fees (excluding GST) (the **Administration Fee**).

8.7 Suspension of payment

- (a) Without prejudice to any other right or remedy that may be available to the Participating Agency, the Participating Agency may suspend payment of all or any part of the Charges if the CoE has notified the Provider that the Provider is in Material Breach, until that Material Breach is remedied.
- (b) If the Material Breach is not capable of remedy the Participating Agency and the Provider agree to treat the Charges as being in dispute and clause 14 will apply.

9. Warranties

9.1 General warranties

Each party represents, warrants and undertakes that:

- (a) it has full power, capacity and authority to execute, deliver and perform its obligations under this Consultancy Services Order;
- (b) it has, and will continue to have, all the necessary consents, permissions, licences and rights to enter into and perform its obligations under this Consultancy Services Order; and

- (c) this Consultancy Services Order constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

9.2

Provider's warranties

The Provider represents, warrants and undertakes that:

- (a) it will perform its obligations under this Consultancy Services Order with due care, skill, promptness and diligence at all times;
- (b) it has, and will have throughout the Term, sufficient Personnel to supply the Services and to perform its other obligations under this Consultancy Services Order;
- (c) it, and each of its Personnel engaged in the performance of the Services, has, and will have throughout the Term, the necessary expertise and all necessary governmental, regulatory or other approvals, permissions, consents, licences, qualifications, accreditations and requirements to provide the Services and perform its other obligations under this Consultancy Services Order;
- (d) it will comply with the requirements of all Laws as they relate to the provision of Services by the Provider;
- (e) the possession or use of any item of Intellectual Property supplied or licensed by it, or the use of any item of Intellectual Property by it to perform its obligations under this Consultancy Services Order, will not infringe the rights of any third party;
- (f) all Documentation (and any other information or advice supplied by it to the Participating Agency) and any information and data reported to the CoE will be accurate, complete and (as applicable) Fit for Purpose;
- (g) there are no existing agreements, undertakings or arrangements which prevent it from entering into this Consultancy Services Order, or which would impede the performance of its obligations under this Consultancy Services Order, or that it would breach by entering into this Consultancy Services Order;
- (h) it is not (and nor is any of its Personnel) a party to any litigation, proceedings or disputes which could adversely affect its ability to perform its obligations under this Consultancy Services Order; and
- (i) it has not offered any inducement in connection with the entering into or negotiation of this Consultancy Services Order, and will not offer any inducement in connection with the supply of Services to the Participating Agency.

9.3

Continuous application

The warranties, representations and undertakings set out in clause 9.2 will be deemed to be given by the Provider continuously throughout the Term.

9.4 **Notification**

Each party will promptly notify the other if at any time during the Term it breaches any of the warranties, representations and undertakings in this clause 9.

9.5 **Other warranties excluded**

All warranties (statutory, express or implied) which are not expressly referred to in this Consultancy Services Order are excluded to the fullest extent permitted by Law.

10. Confidentiality

10.1 Protection of Confidential Information

- (a) Subject to clauses 10.1(c) and 10.2, the Provider and the Participating Agency will treat as confidential and not disclose to any third party nor use for its own benefit any Confidential Information that is the Confidential Information of the other.
- (b) The Provider will:
 - (i) ensure that all Confidential Information of the Participating Agency (and any backup archives containing such Confidential Information) in the possession or control of the Provider from time to time is kept secure and managed and protected and only disclosed or otherwise dealt with in accordance with this Consultancy Services Order;
 - (ii) not use any Agency Information for its own purposes or for any purposes different from those contemplated by this Consultancy Services Order; and
 - (iii) advise the CoE in writing if any Confidential Information of the Participating Agency will be transferred or stored outside New Zealand before such information is transferred and will confirm that the requirements of this clause 10.1 will be met while such Confidential Information is stored outside New Zealand.
- (c) Clause 10.1(a) does not prevent the disclosure of Confidential Information:
 - (i) if that information was known, or becomes known, to the public through no act or default of the recipient;
 - (ii) that the recipient is required by Law or parliamentary practice (including parliamentary questions) to disclose, or to a Select Committee or to a Minister of the Crown, so long as the recipient provides notice of the required disclosure promptly upon receipt of notice of the required disclosure (if it is permitted to do so by Law);
 - (iii) that was lawfully known to the recipient prior to the date it was received;

- (iv) that becomes available to the recipient from a source other than a party to this Consultancy Services Order, provided that the recipient has no reason to believe such source is itself bound by an obligation of confidence to the person that disclosed that information or is otherwise prohibited under Law from disclosing such information;
- (v) to any Professional Adviser for the purposes of rendering professional services to a party in relation to this Consultancy Services Order;
- (vi) to the extent that such disclosure is authorised by this Consultancy Services Order; or
- (vii) if such disclosure is approved for release with the consent of the party from whom the Confidential Information is first received.

10.2 Limited disclosure

- (a) The Provider may, subject to clause 10.2(d), disclose the Confidential Information of the Participating Agency to its Subcontractors, Personnel, Related Entities and Professional Advisers who need to know the same for the sole purpose of enabling the Provider to perform its obligations and exercise its rights under this Consultancy Services Order.
- (b) The Participating Agency may, subject to clause 10.2(d), disclose the Confidential Information of the Provider to its third party suppliers, Personnel and Professional Advisers and any other Participating Agencies (including the CoE) who need to know the same in connection with the Services.
- (c) The Provider will not disclose the Participating Agency's Confidential Information to any of its Subcontractors, Related Entities or Professional Advisers, and the Participating Agency will not disclose the Provider's Confidential Information to any of its third party suppliers or Professional Advisers, unless the recipient has given a written confidentiality undertaking to the disclosing party in terms substantially similar to those set out in this clause 10.
- (d) Any undertaking given pursuant to clause 10.2(c) will be provided to the other party to this Consultancy Services Order on request.

11. Intellectual Property

11.1 Intellectual Property owned by Provider

- (a) The Participating Agency acknowledges that all:
 - (i) Intellectual Property held by the Provider before the Commencement Date;
 - (ii) Intellectual Property developed independently from this

Consultancy Services Order by the Provider, and that is not developed, commissioned or created under or in connection with this Consultancy Services Order; and

- (iii) adaptations and modifications to the Intellectual Property described in clauses 11.1(a)(i) and (ii),

remains the Provider's sole and exclusive property (**Provider IP**).

- (b) To the extent that the Participating Agency needs to use any of the Provider IP to receive the full benefit of the Services, the Provider grants to the Participating Agency a royalty-free, non-exclusive licence (including, if agreed in this Consultancy Services Order, the right to sublicense) to use, copy, modify and distribute during the Term any Provider IP provided to the Participating Agency by or on behalf of the Provider.

11.2 Intellectual Property owned by Participating Agency

- (a) The Provider acknowledges that the Participating Agency or its licensor has, and continues to have, sole and exclusive ownership of all Intellectual Property rights in all of the Agency Information together with all adaptations and modifications of such Agency Information (**Pre-contract Participating Agency IP**).
- (b) All Intellectual Property created or developed by the Provider or its employees or Subcontractors in performing the Services and developing the Documentation will be owned by the Participating Agency from the date the Intellectual Property is created or developed (**Post-contract Participating Agency IP**) and, together with the Pre-contract Participating Agency IP, the **Participating Agency IP**.
- (c) If the Provider (or any of its Subcontractors) has under any Law any right in or claim to any of the Participating Agency IP or holds any of the Participating Agency IP, the Provider (by itself and for its Subcontractors):
 - (i) assigns to the Participating Agency all of its rights, title and interest in and to the Participating Agency IP from the date it was created or developed; and
 - (ii) waives all right of lien or similar rights as may now or later be claimed in the Participating Agency IP; and
 - (iii) waives all of its moral rights under Part 4 of the Copyright Act 1994 in the Participating Agency IP,

and the Provider will sign all documents and do all acts and things that are necessary to give effect to this clause 11.2(c).

- (d) To the extent that the Provider needs to use any of the Participating Agency's IP for the purpose of performing its obligations under this Agreement, the Participating Agency grants to the Provider, subject to any written direction given by the Participating Agency, of a royalty-free, non-exclusive, non-transferable licence to use and store the Participating Agency's IP for the sole purpose of performing its obligations under this Consultancy Services Order during the Term.

11.3 Intellectual Property owned by third parties

- (a) To the extent that the Provider needs to use any Intellectual Property held or owned by a third party (**Third Party IP**) in performing the Services under this Consultancy Services Order, the Provider will use its best endeavours to obtain the fullest rights of use and licence of that Third Party IP (on terms and at a cost to be agreed with the Participating Agency) as are necessary for the performance of those Services for the benefit of the Participating Agency.
- (b) The Participating Agency acknowledges that the Provider may have limited ability to obtain rights and/or a licence to use any Third Party IP and, where the Provider, using its best endeavours, cannot obtain appropriate rights and/or a licence for the Participating Agency to use that Third Party IP, the warranty in clause 9.2(e) applies.

12. Liability

12.1 Indemnity

- (a) The Provider will, to the extent permitted by Law, indemnify the Participating Agency against all Losses suffered or incurred by the Participating Agency as a result of any:
 - (i) unlawful, malicious or negligent act or omission by the Provider;
 - (ii) personal injury, sickness, death or loss of, or damage to, tangible property due to an act or omission of the Provider; or
 - (iii) any other breach by the Provider of its obligations under this Consultancy Services Order.
- (b) The Provider will, subject to clause 12.1(c), indemnify the Participating Agency against all Losses suffered or incurred by the Participating Agency as a result of any claim that the possession or use of any Intellectual Property supplied or licensed by the Provider, or the use of any Intellectual Property used to provide the Services, infringes any third party's rights.
- (c) The Provider will have no liability under clause 12.1(b) to the extent that any IP Claim arises from any:
 - (i) modification by the Participating Agency of any item of Intellectual Property supplied or licensed by

- (ii) use by the Participating Agency of Intellectual Property supplied or licensed by the Provider for any purpose disallowed by this Consultancy Services Order or the applicable Intellectual Property licence (but only if the licence has been provided to the Participating Agency prior to such use); or
- (iii) use of Intellectual Property used to provide the Services if and to the extent that Intellectual Property was supplied by the Participating Agency.

IP Claims

- 12.3

- (i) obtain for the Participating Agency the legal right to continued use of the infringing materials; or
- (ii) replace, modify or resupply the infringing materials so that there is no further infringement, without adversely affecting the performance or functionality of those materials.

Maximum liability of Participating Agency

In addition to its obligation to pay the Charges, the maximum aggregate liability of the Participating Agency to the Provider under or in connection with this Consultancy Services Order will be, in respect of all Losses, limited to the total Charges paid and payable under this Consultancy Services Order.

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Maximum liability of the Provider

The maximum liability of the Provider to the Participating Agency for all Losses under or in connection with this Consultancy Services Order in respect of all claims will not exceed:

- (a) in relation to the sub-categories for which the Provider has been appointed as a Tier 1 Provider, the greater of:
 - (i) 10 times the total Charges paid and payable under this Consultancy Services Order;
 - (ii) \$5,000,000; and
 - (iii) any greater amount or multiple set out in this Consultancy Services Order;
- (b) in relation to the sub-categories for which the Provider has been appointed as a Tier 2 Provider, the greater of:
 - (i) 10 times the total Charges paid and payable under this Consultancy Services Order;
 - (ii) \$2,000,000; and
 - (iii) any greater amount or multiple set out in this Consultancy Services Order; and
- (c) in relation to the sub-categories for which the Provider has been appointed as a Tier 3 Provider, the greater of:
 - (i) 10 times the total Charges paid and payable under this Consultancy Services Order;
 - (ii) \$1,000,000; and
 - (iii) any greater amount or multiple set out in this Consultancy Services Order.

12.5

No double dipping

A party to this Consultancy Services Order (or the CoE acting on behalf of the Participating Agency in accordance with the Services Agreement) cannot recover for the same Loss under both this Consultancy Services Order and the Services Agreement.

12.6

Exclusions on liability

The limitations on liability set out in clauses 12.3 and 12.4 will not limit the liability of:

- (a) the Provider under clauses 12.1(a) and 12.1(b) (other than in respect of negligent acts or omissions under clause 12.1(a)(i) and breach by the Provider of its obligations under this Consultancy Services Order under clause 12.1(a)(iii), which are subject to the limitations of liability in clauses 12.3 and 12.4);
- (b) the Provider for any fraudulent act or omission; or
- (c) either party for any breach of confidentiality.

12.7

Categories of loss

- (a) Irrespective of how liability arises, neither the Provider nor the Participating Agency will, under any circumstances, be liable for any indirect loss or damage (including consequential loss) arising under or in connection with this Consultancy Services Order.
- (b) The Participating Agency will not, under any circumstances, be liable for any loss of profits or loss of revenue suffered by the Provider in connection with this Consultancy Services Order.

12.8

Force majeure

- (a) The Provider and the Participating Agency will not be liable to the other for any failure to perform its obligations under this Consultancy Services Order during the time and to the extent that such performance is prevented, wholly or substantially, by reason of any Force Majeure Event.
- (b) The party subject to the Force Majeure Event (the **non-performing party**) must:
 - (i) notify the other party as soon as practicable after the Force Majeure Event occurs and provide full information concerning the Force Majeure Event, including the extent of its inability to perform, an estimate of the time likely to be required to overcome the Force Majeure Event and the steps the non-performing party will take to comply with clauses 12.8(b)(ii) and 12.8(b)(iii);
 - (ii) use all reasonable endeavours to mitigate and remedy the effect of the Force Majeure Event and minimise the impact of the event on the other party; and
 - (iii) use all reasonable endeavours to perform its obligations under this Consultancy Services Order as far as is practicable,

and the Participating Agency will not be required to pay Charges to the extent that the Provider fails to perform its obligations to the Participating Agency due to a Force Majeure Event.
- (c) If the non-performing party affected by the Force Majeure Event is the Provider,

the Participating Agency may, to the extent that any Service requested by the Participating Agency under this Consultancy Services Order has not been delivered and delivery has, or will be, delayed by the Force Majeure Event, terminate this Consultancy Services Order, by notice to the Provider within five Business Days following receipt by the Participating Agency of notice of the Force Majeure Event, at no cost to the Participating Agency, subject to the Participating Agency paying for Services delivered up to the date of the Force Majeure Event.

12.9

Insurance

- (a) During the Term and for a period of two years following the termination of this Consultancy Services Order, the Provider will, at its own expense, ensure that it maintains adequate insurance in respect of its potential liability for loss or damage under this Consultancy Services Order in accordance with Industry Best Practice, but as a minimum the Provider must hold:
 - (i) professional indemnity insurance;
 - (ii) public liability insurance in respect of the Services provided under this Consultancy Services Order; and
 - (iii) other insurance to cover standard commercial risks (including in respect of Documentation which is the property of the Participating Agency and in the Provider's possession or control).
- (b) The Provider will, at the Participating Agency's request, promptly provide satisfactory evidence that it has complied with its obligations in this clause 12.9.

13.

Dispute resolution

13.1

Dispute

In the event of any dispute, difference or question arising out of, or in connection with, this Consultancy Services Order or its formation (a **dispute**):

- (a) the Participating Agency and the Provider will each use its best efforts to resolve the dispute through good faith negotiations and informal dispute resolution techniques, and will continue to perform its obligations under this Consultancy Services Order as far as possible as if the dispute had not arisen, pending final settlement of the dispute; and
- (b) neither the Participating Agency nor the Provider will commence any formal proceedings relating to the dispute unless it has complied with clause 13.2.

13.2

Escalation

	(a) The Participating Agency and the Provider will each advise its respective Representative (or equivalent person) of a dispute on the day that the dispute arises. (b) The Representatives will use their best efforts to resolve the dispute in accordance with clause 13.1(a). (c) If the dispute is not resolved: (i) within 10 Business Days, the dispute will be escalated to senior representatives of the Provider and the Participating Agency with delegated authority to resolve the dispute; and (ii) in relation to the sub-categories for which the Provider has been appointed as a Tier 1 and Tier 2 Provider, within a further 10 Business Days, the dispute will be escalated to the CoE's Manager, All-of-Government Contracts and the Provider's Chief Executive.	satisfaction of the Participating Agency within 10 Business Days following the date of receipt by the Provider of the Participating Agency's notice of the Material Breach; (c) in accordance with clause 4.1(e) (Conflict of Interest); or (d) in accordance with clause 12.8(c) (Force Majeure Event).
13.3	Mediation (a) If a dispute is not resolved under clause 13.2, either party may, by written notice to the other, refer the dispute to mediation, or they may agree in writing to refer the dispute to mediation. (b) The mediation will be conducted by a single mediator in accordance with the terms of the Resolution Institute Standard Mediation Agreement and at a fee to be agreed by the parties. (c) If the parties fail to agree on the identity of the mediator and/or the mediator's fee within five Business Days of referral of the dispute to mediation, the mediator will be chosen, and the mediator's fee determined, by the chairperson for the time being of Resolution Institute (or his or her nominee).	15.2 Consequences of termination or expiry (a) In the event of termination or expiry of this Consultancy Services Order, the Participating Agency will not be obliged to make any payment to the Provider except for any Charges payable for Services supplied pursuant to this Consultancy Services Order before the effective date of expiry or termination. (b) Termination or expiry will not, unless otherwise provided in this Consultancy Services Order, affect: (i) any rights and remedies available to either party which have accrued up to and including the date of termination or expiry; and (ii) the provisions of this Consultancy Services Order which expressly, or by their nature, survive termination or expiry, including clauses 16 (Entire agreement), 10 (Confidentiality), 11 (Intellectual Property), 12 (Liability), 13 (Dispute Resolution), 15.2 (Consequences of termination or expiry) and 17 (General) and Schedule 1 (Definitions); (iii) the continued application of clauses of the Services Agreement which expressly, or by their nature, are intended to continue to apply to this Consultancy Services Order after termination or expiry of this Consultancy Services Order, including clauses 1.4 (Precedence) and 15 (Audit).
13.4	Urgent relief Nothing in this clause 13 will preclude either party from taking immediate steps to seek urgent relief before a New Zealand court.	
14.	Termination	
14.1	Termination of Consultancy Services Order 15. The Participating Agency may terminate this Consultancy Services Order: (a) for convenience by giving the Provider at least one month's prior written notice; (b) by notice to the Provider with immediate effect on the date of termination specified in that notice, if the Provider commits a Material Breach which is: (i) not capable of being remedied (and, for the avoidance of doubt, paragraphs (a) and (b) of the definition of "Material Breach" are deemed incapable of being remedied); or (ii) capable of being remedied but which is not remedied to the	(c) After expiry or termination of this Consultancy Services Order for any reason, each party will, within five Business Days of receiving notice from the other party, return all Documentation, Confidential Information or other property belonging to the other party (or destroy such Confidential Information, if requested), except if such Documentation, Confidential Information or other property is required to be retained by any Law.
16.	Entire agreement	
16.1	Entire agreement (a) This Consultancy Services Order is intended to be read in conjunction with the Services Agreement. The provisions of the Services Agreement (not already included in this Consultancy Services	

Order) which confer rights, obligations or benefits on the parties or the CoE in respect of this Consultancy Services Order are intended to apply to this Consultancy Services Order.

- (b) Subject to clause 16.1(a), no other terms or conditions, including any conditions of sale, invoices or any other communication not included in this Consultancy Services Order (**Communication**), will be incorporated into this Consultancy Services Order, even if at some later date the other party (including, in the case of the Participating Agency) signs or otherwise purports to accept those terms and conditions or the terms of that Communication.
- (c) For the avoidance of doubt, and without limiting clauses 16.1(a) and 16.1(b):
 - (i) any Communication which is expressed or intended to operate as an indemnity, warranty, representation, undertaking, condition or other term of such a nature is hereby disappplied and excluded from this Consultancy Services Order; and
 - (ii) any part of this Consultancy Services Order which describes the nature, scope, price or manner of delivery of Services will, subject to clause 16.1(c)(i), form part of this Consultancy Services Order, but only to the extent that it does not conflict with any other part of this Consultancy Services Order.

17. General

17.1 Interpretation

The rules of interpretation set out in clause 19.1 of the Services Agreement apply to this Consultancy Services Order.

17.2 Relationship of the parties

Nothing expressed or implied in this Consultancy Services Order will be deemed to constitute either party as the partner, agent, or joint venturer of the other party.

17.3 Costs

A party who has an obligation to do anything under this Consultancy Services Order will perform that obligation at its own cost, unless a term of this Consultancy Services Order expressly provides otherwise.

17.4 Assignment

Neither party may assign, novate, transfer or otherwise dispose of the whole or any part of its rights and obligations under this Consultancy Services Order without first obtaining the other party's consent (which will not be unreasonably withheld or delayed).

17.5 Public disclosures

Subject to clause 10, all public disclosures by the Provider relating to this Consultancy Services Order, including the fact of its existence (but not including any announcement intended solely for internal distribution or any disclosure required by

legal, accounting or regulatory requirements), will be co-ordinated with, and must first be approved in writing by, the Participating Agency prior to release.

17.6

Notices

- (a) Unless otherwise specified in this Consultancy Services Order, each notice or other communication under this Consultancy Services Order will be made in writing and delivered by post, personal delivery or email to the addressee at the addressee's postal address, physical address or email address (as applicable) and marked for the attention of the person or office holder (if any) from time to time designated for that purpose by the addressee.
 - (b) The Provider's postal address, physical address and email address is set out in the Provider Database and may be amended by the Provider at any time.
 - (c) The Participating Agency's postal address, physical address and email address is as notified by the Participating Agency to the Provider and may be amended by the Participating Agency at any time.
 - (d) A notice or other communication will be deemed to be received:
 - (i) in the case of a letter sent to the addressee's postal address, on the third Business Day after posting;
 - (ii) in the case of personal delivery, on receipt; and
 - (iii) in the case of an email, at the time the email leaves the communications system of the sender, provided that the sender:
 - (A) does not receive any error message relating to the sending of the email at the time of sending; and
 - (B) has obtained confirmation that the email has been delivered to the recipient (which confirmation may be in the form of an automated delivery receipt from the communications system of the recipient),
- on the Business Day on which it is dispatched or, if dispatched after 5 p.m. (in the place of receipt), on the next Business Day after the date of dispatch.

17.7

Severability

If any term or provision of this Consultancy Services Order is held to be illegal, invalid or unenforceable it will be severed from this Consultancy Services Order without affecting the legality, validity or enforceability of the remaining provisions.

17.8

Waiver

- (a) Neither party will be deemed to have waived any right under this Consultancy Services Order unless the waiver is in writing and signed by the parties.
- (b) Any failure or delay by a party to exercise any right or power under this Consultancy Services Order will not operate as a waiver of that right or power.
- (c) Any waiver by a party of any breach, or failure to exercise any right, under this Consultancy Services Order will not constitute a waiver of any subsequent breach or continuing right.

17.9 Remedies cumulative

Except as is expressly stated otherwise in this Consultancy Services Order:

- (a) the rights, powers and remedies provided in this Consultancy Services Order are cumulative and are not exclusive of any rights, powers or remedies provided by Law or under this Consultancy Services Order; and
- (b) the exercise of any rights, powers and remedies provided in this Consultancy Services Order will not prejudice the exercise of any other right, power or remedy under this Consultancy Services Order or existing at Law.

17.10 Counterparts

This Consultancy Services Order may be signed in two counterparts, each of which will be deemed an original, but both of which together are to constitute a single instrument.

17.11 Governing law and jurisdiction

- (a) This Consultancy Services Order is governed by, and will be construed in accordance with, the laws of New Zealand.
- (b) Subject to clause 13, each party irrevocably submits to the exclusive jurisdiction of the New Zealand courts for the purpose of hearing and determining any dispute under, or in connection with, this Agreement.

SCHEDULE 1: DEFINITIONS

In this Consultancy Services Order, unless the context otherwise requires:

Administration Fee means the amount referred to in clause 8.6;

Agency Information means all:

- (a) information and records belonging to the Participating Agency that are supplied to or collected by the Provider for the purpose of enabling the Provider to perform its obligations under this Consultancy Services Order;
- (b) compilations of data created by a Participating Agency or the Provider for the purposes of this Consultancy Services Order; and

- (c) legal names, logos, trademarks, brands or images of the Participating Agency, including all related Intellectual Property of the Participating Agency and the New Zealand Coat of Arms or any other coat of arms or emblem used by the Participating Agency, but excluding the Provider's working papers;

Annexure means any document physically attached to a Schedule and identified as such and any other document incorporated by reference in any part of this Consultancy Services Order (other than an Annexure);

Appointment Letter means the letter issued to the Provider by the CoE, as amended or reissued from time to time, confirming (among other things) the Provider's appointment as an All-of-Government provider of consultancy services and detailing the terms and conditions of the appointment (including the Services and the applicable Tier(s));

Business Day means any day of the year other than a Saturday, a Sunday or a public holiday (as defined in section 44 of the Holidays Act 2003) observed at the location of the Participating Agency;

Charges means the amount payable by Participating Agencies for Services and includes Fees and Expenses, as described in Schedule 2 (Pricing) and agreed in this Consultancy Services Order;

CoE means the Ministry of Business, Innovation and Employment, the Centre of Expertise for Consultancy Services;

Commencement Date is the date on which this Consultancy Services Order is signed by both parties or, if two dates, the later date;

Confidential Information means:

- (a) all information and trade secrets already communicated or subsequently communicated under or in connection with this Consultancy Services Order, including information obtained during the negotiation of this Consultancy Services Order or in the performance of this Consultancy Services Order and information on the Provider Database;
- (b) any information about the business or property of either party including any information:
 - (i) relating to the financial position of that party;
 - (ii) concerning that party's suppliers and customers; or
 - (iii) relating to that party's internal management, structure, Personnel or strategies;
- (c) the terms of this Consultancy Services Order; and
- (d) Agency Information;

Conflict of Interest means any matter, circumstance, interest or activity of the Provider, its Personnel or Subcontractors, arising by whatever means that directly or indirectly conflicts with:

- (a) the duties of the Provider and any of its Personnel or Subcontractors to the Participating Agency; or
- (b) the interests of the Participating Agency in relation to this Consultancy Services Order or otherwise in respect to the provision of consultancy services to the Participating Agency either before or after the Commencement Date;

or otherwise impairs or might appear to impair the ability of the Provider (or any of its Personnel or Subcontractors) to provide the Services to the Participating Agency under this Consultancy Services Order diligently, independently,

impartially and in the best interests of the Participating Agency;

Consultancy Services Order means this service order relating to the supply of Services issued by the Participating Agency;

Contract Quarter means a period of three consecutive months commencing on 1 January, 1 April, 1 July or 1 October;

Control means, in relation to the Provider or any ultimate or intermediate holding company or Holding Entity of the Provider, the power to:

- (a) manage, directly or indirectly, the operation of the business; or
- (b) control, directly or indirectly, the composition of the board of directors or board of management or equivalent governing body,

of the Provider or such ultimate or intermediate holding company or Holding Entity, whether through the ownership of voting securities, by contract or otherwise, and for these purposes "holding company" will have the same meaning as in section 5 of the Companies Act 1993;

Documentation means all advice, communications, documentation (including information on the Provider Database) and reports (whether in paper, electronic, audio or audio-visual format) relating to, or provided as part of, the Services together with additions, modifications to, and replacements of, that documentation, but excludes the Provider's working papers;

Estimate means an estimate of the total Charges for the Services required by the Participating Agency;

Expense means any actual and reasonable out-of-pocket costs incurred by the Provider in the delivery of the Services and agreed to in this Consultancy Services Order, and includes any freight and related costs, travelling and incidental expenses and other costs, disbursements, fees, charges and expenses directly or indirectly incurred by the Provider;

Fees means the amount payable by the Participating Agency to the Provider for its time spent delivering the Services calculated on the basis of the Rates, excluding Expenses;

Fit for Purpose means, in relation to any Service or Documentation to be provided by the Provider to the Participating Agency, that such Services or Documentation are, in descending order of priority, fit for the purpose(s):

- (a) expressly made known in writing by the Participating Agency to the Provider (including in this Consultancy Services Order); or
- (b) for which the Provider, given its knowledge of the Participating Agency and understanding why the Services or Documentation are required, has reason to expect such Services or Documentation to be used;

Force Majeure Event means an event or circumstance beyond the reasonable control of either party which makes it impossible or illegal to perform, or prevents compliance with, or the performance of, a party's obligations under this Consultancy Services Order, including:

- (a) fire, floods, tsunamis, storms, tempest, earthquake or other act of God;
- (b) any act of a public enemy, war, riot, or act of civil or military authority;
- (c) nuclear, chemical or biological contamination; and
- (d) subject to paragraph (g) of this definition, any act of a third party engaged in subversive or terrorist activity or sabotage,

but does not include an event to the extent that:

- (e) the effect of that event could have been substantially prevented, avoided or overcome or mitigated by:
 - (i) implementation of any contracted business continuity or disaster recovery service, or any contingency plans agreed between the parties or which a party has represented it has in place; or
 - (ii) exercising a reasonable standard of care; or
 - (iii) using information provided by the other party or which is available in the public domain; or
- (f) it is an event for which the party affected is or was directly responsible; or
- (g) that event is constituted or caused by any act or omission of Personnel or a Subcontractor unless and to the extent that the Personnel or Subcontractor was itself affected by an event, which if it occurred in relation to either party would have been a Force Majeure Event; or
- (h) that event is constituted or caused by an Insolvency Event or the insolvency of a Subcontractor or lack of funds for any reason;

GST means goods and services tax under the Goods and Services Tax Act 1985;

Holding Entity means a trust, unit trust, partnership, limited partnership, unincorporated joint venture or other body corporate or unincorporated body of persons that Controls the Provider, and includes any natural person that Controls the Provider;

Industry Best Practice means the high professional standard that would reasonably be expected from a prudent and experienced provider of consultancy services in New Zealand having regard to market practice at the relevant time;

Insolvency Event means, in relation to the Provider:

- (a) the presentation of an application for its liquidation that is not discharged within 30 days of its filing or which is not demonstrated to the Participating Agency prior to the expiry of that 30 day period as being an application that is frivolous or vexatious;
- (b) any step taken in or toward the making of any compromise, proposal or deed of arrangement with all or some of its creditors;
- (c) the appointment of a liquidator, receiver, statutory manager, administrator or similar official, to it;
- (d) the suspension or threatened suspension by it of the payment of its debts;
- (e) cessation by it of a whole or any relevant part of its business in New Zealand;
- (f) the enforcement of any security against the whole or a substantial part of its assets; or
- (g) any other insolvency event or proceedings analogous to any of the foregoing occurring in any relevant jurisdiction;

Intellectual Property means copyright, all rights in relation to inventions (including patents), registered and unregistered trademarks, registered and unregistered designs, trade or other proprietary rights or rights derivative of those rights (including licence rights) anywhere in the world as well as any other rights in intellectual property which are recognised or protected under Law;

Law means:

- (a) any statute, regulation, bylaw, ordinance or subordinate legislation in force from time to time to which a party is subject;
- (b) the common law and the law of equity as applicable to the parties from time to time;
- (c) any binding court order, judgment or decree;
- (d) any applicable industry code of practice or conduct, convention, policy, rule or standard to which a party is bound; or
- (e) any applicable direction, policy, permission, consent, licence, rule or order that is binding on a party and that is made or given by any governmental or regulatory body having jurisdiction over a party or any of that party's assets, resources or business,

in any jurisdiction that is applicable to this Consultancy Services Order;

Losses means liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis);

Material Breach means any material breach by the Provider of the terms of this Consultancy Services Order or the occurrence of any event having a material effect on the ability of the Provider to perform its obligations under this Consultancy Services Order (other than a Force Majeure Event), including:

- (a) the occurrence of an Insolvency Event in relation to the Provider or the likely occurrence of an Insolvency Event;
- (b) the occurrence of a change in Control of the Provider or any ultimate or intermediate holding company or Holding Entity of the Provider that the CoE has not previously approved (acting reasonably);
- (c) any representation or warranty made by the Provider in terms of this Consultancy Services Order being found to be untrue or incorrect; and
- (d) any failure on the part of the Provider to comply with, observe or perform any of the terms of this Consultancy Services Order in circumstances where that contract breach or that contract breach together with other contract breaches is considered by the Participating Agency on reasonable grounds to cause the Provider to be unable or unwilling, or be likely to be unable or unwilling, to perform its obligations under this Consultancy Services Order;

Maximum Rates means the maximum Rates payable to the Provider for providing the Services, as recorded in the Provider Database, excluding Expenses;

Panel means the All-of-Government panel of providers who provide consultancy services to Participating Agencies, including any sub-panel, as detailed on www.procurement.govt.nz;

Participating Agency means the Participating Agency that is a party to this Consultancy Services Order;

Participating Agencies means each of the CoE and every other Eligible Agency that is a party to the memorandum of understanding between the CoE and all other Participating Agencies relating to the management of their relationship with each other and with the Provider in relation to the Services, as amended from time to time;

Personnel includes partners, principals, directors, employees, agents, officers and individual independent contractors;

Professional Adviser means any accounting, legal, procurement or technical professional;

Provider Database means the IT platform described in Schedule 7 (Provider Database) to the Services Agreement;

Quote means a fixed price, capped price or other pre-agreed basis for establishing the Charges for Services required by the Participating Agency where the Provider is prevented from increasing the Charges without the prior written consent of the Participating Agency;

Rates means the rates (whether hourly, daily or weekly or other time-related basis) payable to the Provider for providing the Services, determined in accordance with Schedule 2 (Pricing), excluding Expenses;

Related Entity means a related company under the Companies Act 1993 (New Zealand) or a related body corporate under the Corporations Act 200, provided that any reference in the Companies Act 1993 to a "company" is deemed to include any partnership, body corporate, association or other entity, whether corporate or unincorporated, irrespective of the place of incorporation or registration of that partnership, body corporate, association or other entity;

Representative has the meaning given in paragraph 3.1 of Schedule 5 (Governance) to the Services Agreement);

Service Level means a required standard for the Provider's performance of its obligations under this Consultancy Services Order, as described in Schedule 3 (Performance Measurement);

Service Level Default means a failure by the Provider to meet one or more Service Levels;

Services means the consultancy services provided from time to time under the terms of this Consultancy Services Order;

Services Agreement means the All-of-Government services agreement relating to the supply of Tier 1 and 2 consultancy services between the CoE and the Provider;

Subcontractor means any person to whom the Provider has subcontracted any part of its obligations under this Consultancy Services Order or who is a supplier to the Provider in respect of this Consultancy Services Order and includes the employees and subcontractors of that person and **Subcontract** will be construed accordingly;

Term means the period commencing on the date that this Consultancy Services Order is signed by both parties and ending on the earlier of:

- (a) the date on which the Services are completed in accordance with this Consultancy Services Order; and
- (b) the date on which this Consultancy Services Order is terminated in accordance with its terms; and

Tiers means any of **Tiers 1** and **Tiers 2** for which members of the Panel are appointed and, in respect of the Provider, means the Tier(s) the Provider is appointed to as detailed in the Appointment Letter.

SCHEDULE 2: PRICING

1. Introduction

This Schedule sets out general principles underlying the Charges.

2. Principles

2.1 Participating Agency will only pay for Services ordered

- (a) The Provider will invoice the Participating Agency for the Charges in accordance

with clause 8.3 of this Consultancy Services Order.

- (b) The Participating Agency will only pay for Services that it orders in accordance with this Consultancy Services Order.

2.2 No minimum volume

The Participating Agency is not required to meet a minimum aggregate expenditure or volume level for any Services.

2.3 No interest

No interest will be payable on any amount due to the Provider under this Consultancy Services Order.

2.4 Rates

- (a) The Fees are calculated on the Rates, being either the Rates that are recorded on the Provider Database or, subject to paragraph 3, a different Rate as negotiated between the Provider and Participating Agency and recorded in this Consultancy Services Order.
- (a) The Maximum Rates are the maximum amounts payable by the Participating Agency for the Services.

3. Charges

The Charges payable by the Participating Agency for Services must not include any Fees invoiced at Rates higher than the Maximum Rates recorded in the Provider Database.

SCHEDULE 3: PERFORMANCE MEASUREMENT

1. Introduction

This Schedule describes, in relation to the sub-categories for which the Provider has been appointed as a Tier 1 and Tier 2 Provider:

- (a) the Service Levels; and
- (b) how performance against Service Levels will be measured and reported.

2. Service Levels

2.1 Format

Each Service Level is described in Annexure A using the following format:

Parameter	Description
Description	Description of what the Service Level will measure
Purpose	Why it is important to Participating Agencies that the Service Level is met
Calculation	Method for calculating the Service Level
Service Level	The performance standard that the Provider is required to meet or exceed

2.2 Service Levels must be met

- (a) At all times during the Term, the Provider will, in relation to the sub-categories for which the Provider has been appointed as a Tier 1 and Tier 2 Provider, perform its obligations to meet or exceed the Service Levels.

- (b) The Provider acknowledges that any failure to meet the Service Levels may have a significant impact on the Participating Agency.

2.3 Changes to Service Levels

- (a) From time to time during the Term, the CoE and the Provider may negotiate in good faith to add, delete or modify then-existing Service Levels to reflect changes in the Participating Agencies' requirements or objectives.
- (c) Any changes to Service Levels will be effected in accordance with clause 10 of the Services Agreement.

3. Performance measurement

3.2 Failure to meet Service Levels

If the Provider fails to achieve one or more of the Service Levels in any Contract Quarter in respect of this Consultancy Services Order, it will:

- (a) take such steps and do all things necessary, as soon as possible, to correct the failure; and
- (a) notify the Participating Agency of the reasons for the failure and the steps that the Provider is taking to ensure that the failure is not repeated; and
- (b) consider whether the Charges for the Services that are subject to the Service Level Default should be reduced to reflect the lower value of the Services provided.

Annexure A: Service Levels

Parameter	1. Services Fit for Purpose
Description	Were the Services subject to this Consultancy Services Order Fit for Purpose?
Purpose	To ensure Services provided are Fit for Purpose.
Calculation	The Participating Agency will advise whether the Services are Fit for Purpose as part of the Agency Satisfaction Survey.
Service Level	100% of Services delivered to the Participating Agency must be Fit for Purpose.

Parameter	2. Timely Performance of Services
Description	Did the Provider perform the Services subject to this Consultancy Services Order within the timeframe recorded in this Consultancy Service Order (or as amended by agreement from time to time)?
Purpose	To ensure on-time provision of Services requested under a Consultancy Services Order.
Calculation	The Provider is required to report on this metric as part of the reporting requirements in Schedule 6 (Reporting) to the Services Agreement.
Service Level	The Provider must deliver all Services subject to this Consultancy Services Order within the agreed timeframe for delivery recorded in this Consultancy Services Order including any variation to the timeframe recorded in Part D of this Consultancy Services Order.

Parameter	3. Services Performed to budget
Description	Were the Charges for the Services subject to this Consultancy Services Order within the Estimate or Quote recorded in this Consultancy Services Order?
Purpose	To ensure Services requested under a Consultancy Services Order are performed on or under the Provider's Estimate or Quote.
Calculation	The Provider is required to report on this metric as part of the reporting requirements in Schedule 6 (Reporting) to the Services Agreement.
Service Level	The Provider must deliver all Services subject to this Consultancy Services Order within the agreed Estimate or Quote recorded in this Consultancy Services Order including any variation to the Estimate recorded in Part D of this Consultancy Services Order.

AoG Consultancy Services Order (CSO)

Part A – for Participating Agency (client) to complete

The Participating Agency (referred to as the client in Parts A – E of this Consultancy Services Order) will complete this and email the entire form (including all Parts) to the Provider.

Today's Date	26 May 2025	CSO or Project name	FENZ AMP Reviews
Agency	Fire and Emergency New Zealand (FENZ)	Provider	Beca Ltd
Agency contact name & title	Jim Stuart-Black	Provider contact name & title	9(2)(a)
	Chief Advisor to DCE Organisational Strategy and Capability Development Branch		Technical Director/Principal - Asset Advisory
Nominated Personnel	Jim Stuart-Black	Nominated Personnel	9(2)(a)
Agency email address	Jim.Stuart-Black@fireandemergency.nz	Provider email address	9(2)(a)@beca.com
Agency phone #	9(2)(a)	Provider phone #	9(2)(a)
Subcategory	MBIE Consultancy Services Providers – Assurance		
GCDO Assurance Sub Panel			
Protective Security Services Sub Panel			

A1. Purpose and any background information

The purpose of this project is to review four FENZ Asset Management Plans (AMPs) to confirm to FENZ and the Board they are 'useable' documents that follow a coherent framework and that they 'work':

1. Fleet
2. Property
3. ICT
4. Equipment and Logistics

Focussing on the following four 'themes' for each AMP review:

- a. Story – do the AMPs cohesively convey the 'plan' for the portfolios, considering the ability to be implemented.
- b. Gaps – are there any significant gaps in the structure, information or presentation.
- c. Assumptions and Risks - what assumptions have been made and are there any obvious contradictions, gaps or risks to plan implementation.
- d. Improvement Plan – has an adequate and appropriate improvement plan been identified for the AMP.

A2. Specific questions / instructions for Provider

The following tasks are agreed:

1. Project commencement via internal meetings to develop the report format/content and drafting process.
2. Review the four AMPs for 'story, gaps, assumptions, improvement plan'.
3. Test the main assumptions.
4. Engage with the activity/AMP leads, if required.
5. Draft the report (one report with four sub-sections) outlining:
 - a. The process we followed to complete the reviews
 - b. Our findings and recommendations
 - c. Review with FENZ and finalise.

A3. Additional Information e.g. risks to client, additional contact information

A4. Client specific requirements

A5. Timeframes

The project will commence immediately, with the draft outcome report due on 6 June 2025 and final version due 13 June 2025.

A6. Indicative budget**A7. Outputs of the Services**

1. Draft the report (one report with four sub-sections) outlining:
 - a. The process we followed to complete the reviews
 - b. Our findings and recommendations
 - c. Review with FENZ and finalise.

A8. Tables

N/A

A9. Provider liability cap

5 x Estimated Fee

Part B – for Provider to complete*The Provider will complete Part B and email the form back to the client***B1. Specific Services to be provided**

Provide asset management plan review services for four FENZ AMPs and associated report detailing the findings.

B2. Sub Category and Tier to be Provided

Selection	Sub-category of Services	Tier (1/2/3)
	Accounting	
confirmed	Assurance	1
	Audit	
	Finance and economics	
	Procurement and logistics	
	Taxation	
	Business change	
	Human resource	
	Marketing and public relations	
	Operations management and risk	
	Policy, research and development	

B3. Can you confirm that the Nominated Personnel (if any) is available to provide the Services?

9(2)(a) is the nominated Beca appointment to this task and is available to provide the services. The project team is:

Resource	Location	Role
9(2)(a)	Palmerston North	Technical Lead
9(2)(a)	Nelson	Technical Review / Job Director
9(2)(a)	Auckland	Asset Management Support
9(2)(a)	Auckland	Lifecycle Management Specialist
9(2)(a)	Palmerton North	Job Manager / Risk Reviewer

B4. Can you confirm that the timeframe is acceptable?

The timeframe is acceptable.

B5. Estimated Start and End Date

Start	26 May 2025	End	13 June 2025
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B6. Estimate / Quote (excluding GST, if any)

Fees	\$49,687.00
Administration Fee (Tier 1 and 2 only)	\$(1% of Fees for Services for which the Provider is Tier 1 or Tier 2)
<i>(Optional)</i> The above Fees are apportioned as follows:	
Job Level 1	\$
Job Level 2	\$
Job Level 3	\$
Job Level 4	\$
Job Level 5	\$
Fixed Fee (Job Level 1)	\$
Fixed Fee (Job Level 2)	\$
Fixed Fee (Job Level 3)	\$
Fixed Fee (Job Level 4)	\$
Fixed Fee (Job Level 5)	\$
Monthly Retainer	\$0
Subcontracting	\$0
Expenses	\$0
Total Charges	\$49,687.00
Identify whether the Total Charges is an Estimate / Quote and the method that the Charges have been calculated	Fee estimate

Additional information / assumptions:

1. The level of financial review is to be agreed, although challenge of the stated amounts is not required.
2. The expenditure focus of FENZ currently is 'H&S and Security'.
3. There is current no AM Policy or SAMP.
4. We will not be testing all the stated assumptions but will provide a general examination of those identified as key.
5. Consistency between the AMPs is not a focus.
6. No travel or other disbursement is required as this is a desktop only exercise.

Job Level	Indicative Characteristics
Level 5	• 15+ years of extensive professional experience in their specialised field in a consultancy role. • An industry leader and key influencer who is respected for their professional proficiency and knowledge. • Recognised as a trusted adviser to ministers and/or senior executive teams. • Acts as the senior responsible person on major client engagements. Able to be accountable for leading complex projects/programs. • Responsible for leading a high performing team of professionals, including the coaching and mentoring of colleagues at Levels 1–4.
Level 4	• 10+ years of substantial professional experience in their specialised field in a consultancy role. • Strong theoretical base in subject area, with ability to apply best practice principles to the subject matter context. • Senior team leader with the ability to deputise for the senior responsible person and coach and mentor more junior staff. • Ability to coordinate contributions of other specialists to complete a joint project. • Can engage with clients at strategic/management level if required.
Level 3	• 3-10 years of notable professional experience in their specialised field in a consultancy role. • A trusted performer on a wide range of client-facing consultancy projects in both the private and public sectors. • Thorough knowledge of functional area, combining a broad grasp of relevant best practice principles. • Ability to participate in multi-disciplinary teams and to work independently (with limited supervision). • Performs professional level analysis requiring technical skills and independent initiative within a well-defined program of work. • Contacts with clients predominantly at a working level.
Level 2	• 1-3 years of demonstrable professional experience in their specialised field in a consultancy role. • Previous experience on a range of client-facing consultancy projects, preferably in both the private and public sectors. • Has a theoretical base in subject area, possibly supplemented through recent study, with the ability to translate theory into practice • Performs a variety of analytical tasks requiring independent initiative and knowledge. • Interacts with clients predominantly at the working level.
Level 1	• 0+ years of relevant professional experience in a professional environment. • Evidence of prior contributions to consultancy engagements. • Performs a range of administrative tasks to support the wider team. • Work is performed under the guidance of colleagues at Levels 3-5.

B7. Conflict of Interest declaration and Additional Information

I, [Priyani de Silva-Currie] have made diligent inquiry whether [Beca] has any actual, potential or perceived Conflict of Interest were it to provide the Services described in this Consultancy Services Order and I have disclosed any actual, potential or perceived Conflict of Interest and how it will be managed below:

No current or perceived conflict of interest. Any potential conflicts will be advised immediately to FENZ.

B8. Additional information

Copies of the current versions of the AMPs and associated financials.

B9. Signatures

Name of Provider's authorised signatory	9(2)(a)
Signature of authorised signatory	

The client accepts and authorises this Consultancy Services Order	[Yes/No]
Name of client's authorised signatory	Jim Stuart-Black (DCE OSCD – Acting)
Signature of authorised signatory	
Date of acceptance	27 May 2027
Client's job reference or purchase order number	PO# 84532

Please send this link below to your agency contacts to complete after each engagement. For long engagements, we recommend sending this at key milestones to seek feedback throughout the engagement.

Consultancy (<https://www.research.net/r/ClientSatisfactionSurvey-AoGcontracts-CSO>)

GCDO Assurance (<https://www.research.net/r/GCDOAssuranceServices-CSO>)

Part C – Variations to Part A

LEAVE BLANK WHEN ISSUING CONSULTANCY SERVICES ORDER

The client will complete Part C if they wish to change any details in Part A

C1. Revised scope and/or timeframe

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Part D – Variations to Part B**LEAVE BLANK WHEN ISSUING CONSULTANCY SERVICES ORDER**

The Provider will complete this only if and when it receives a Variation per Part C above from the client

D1. Revised Estimate (excluding GST, if any)**Revised Fees**

\$[Add in total Fees]

Administration Fee (Tier 1 and 2 only)

\$[1% of Fees for Services for which the Provider is Tier 1 or Tier 2]

(Optional) The above Fees are apportioned as follows:

Job Level 1

\$

Job Level 2

\$

Job Level 3

\$

Job Level 4

\$

Job Level 5

\$

Fixed Fee (Job Level 1)

\$

Fixed Fee (Job Level 2)

\$

Fixed Fee (Job Level 3)

\$

Fixed Fee (Job Level 4)

\$

Fixed Fee (Job Level 5)

\$

Monthly Retainer

\$

Subcontracting

\$

Revised Expenses

\$

Total Charges

\$

Identify whether the Total Charges is an Estimate / Quote and the method that the Charges have been calculated

Additional information / assumptions:

Part E – Acceptance**LEAVE BLANK WHEN ISSUING CONSULTANCY SERVICES ORDER***The Provider and client to complete on acceptance of this Consultancy Services Order***E1. Signatures****Name of Provider's authorised signatory****Signature of authorised signatory****The client accepts and authorises this
Consultancy Services Order****[Yes/No]****Name of client's authorised signatory****Signature of authorised signatory****Date of acceptance****Client's job reference or purchase order number****[if required]**

Please send this link below to your agency contacts to complete after each engagement. For long engagements, we recommend sending this at key milestones to seek feedback throughout the engagement.

Consultancy (<https://www.research.net/r/ClientSatisfactionSurvey-AoGcontracts-CSO>)

GCDO Assurance (<https://www.research.net/r/GCDOAssuranceServices-CSO>)

THE PROVIDER AND PARTICIPATING AGENCIES ARE NOT PERMITTED TO AMEND THIS PART F.

*This Part F contains an extract of selected terms and conditions from the Services Agreement (the **Agreement**). Clause, schedule and paragraph references have been updated to refer to clauses, schedules and paragraphs in this Part F where applicable. For the full terms and conditions that govern the Services, please refer to the Agreement.*

Part F – Terms

THE PROVIDER AND PARTICIPATING AGENCIES ARE NOT PERMITTED TO AMEND THIS PART F.

*This Part F contains an extract of selected terms and conditions from the Services Agreement (the **Agreement**). Clause, schedule and paragraph references have been updated to refer to clauses, schedules and paragraphs in this Part F where applicable. For the full terms and conditions that govern the Services, please refer to the Agreement.*

1. Appointment

1.1 Appointment

- (a) The Participating Agency appoints the Provider to provide Services to the Participating Agency as detailed in this Consultancy Services Order and the Provider accepts that appointment, in accordance with the terms of this Consultancy Services Order.
- (b) Certain obligations of the Provider in this Consultancy Services Order do not apply to sub-categories of Services for which the Provider has been appointed as a Tier 3 Provider as follows:
 - (i) the Participating Agency may nominate specific Personnel to be the primary providers or to supervise the delivery of the Services but clauses 6.2(b) to 6.2(e) do not apply to any nominated Personnel;
 - (ii) the relevant Services are not required to meet or exceed the Service Levels specified in Schedule 3 (Performance Measurement) and clause 2.5(a), Schedule 3 (Performance Measurement) do not apply;
 - (iii) the Provider is not required to pay an Administration Fee and clause 8.3(a)(v) does not apply;
 - (iv) the Provider is not required to conduct the Agency Satisfaction Survey for the relevant Services and clause 5.1(h) does not apply;

- (v) the Provider and Participating Agency are not obligated to escalate a dispute to the CoE's All-of-Government Procurement Manager, Centre of Expertise for Consultancy, in accordance with clause 13.2(c)(ii); and
- (vi) as otherwise stated in this Consultancy Services Order.

2. Services

2.1 Services

- (a) The Provider will provide Services to the Participating Agency in accordance with the terms of this Consultancy Services Order.
- (b) The Provider will use all reasonable endeavours to ensure that, on the date the Documentation is provided under this Consultancy Services Order, such Documentation is in a readable and readily useable format.

2.2 Agents may procure Services

The Participating Agency may, by notice to the Provider and the CoE, appoint one or more third parties to procure Services under this Consultancy Services Order on the Participating Agency's behalf and/or receive invoices, as if that agent was a Participating Agency, provided that any such procurement is for the sole benefit of the Participating Agency.

2.3 Timely performance

The Provider will ensure that the Services to be performed under this Consultancy Services Order are provided on or before the date specified for performance (if any) in this

Consultancy Services Order and, if no time is specified, within a reasonable time after the issue of the Consultancy Services Order.

2.4

Delay

- (a) If the Provider considers that it is (or is likely to be) prevented or delayed from achieving a date or time for performance (**Milestone**) specified in this Consultancy Services Order (**Delay**), it will:
- (i) immediately provide notice verbally or in writing to the Participating Agency, setting out:
 - (A) the cause of the Delay and its expected duration;
 - (B) the effect of the Delay on its ability to perform its obligations under this Consultancy Services Order (including any future Milestones);
 - (C) what extension, if any, to the relevant Milestone is being sought; and
 - (D) what steps, if any, the Participating Agency may take to mitigate the effect of the Delay; and
 - (ii) take all reasonable steps necessary (including by the allocation of additional resources) to eliminate or avoid the Delay and, in all cases, mitigate its effects.
- (b) If the Provider and Participating Agency agree that the Delay is acceptable or wish to amend the Milestone:
- (i) the Provider will complete and submit Part C of this Consultancy Services Order to the Participating Agency; and
 - (ii) upon receipt of the completed Part C of this Consultancy Services Order, the Participating Agency must promptly advise the Provider in writing if the completed Part C is acceptable.
- (c) If the Provider does not achieve the Milestone (as amended from time to time) and the Participating Agency's acts or omissions, or those of its Personnel or third parties acting on its behalf, have not caused the Provider to fail to achieve the Milestone, the Participating Agency may, without prejudice to any other right or remedy, suspend payment of any Charges relating to this Consultancy Services Order until the Provider remedies the relevant failure.

2.5

Service standards

- (a) The Provider must provide the Services in relation to the sub-categories for which the Provider has been appointed as a Tier 1 and Tier 2 Provider to a standard that reaches or exceeds the Service Levels specified in Schedule 3 (Performance Measurement).

(b) In addition, the Provider must:

- (i) provide the Services diligently, efficiently, effectively and in accordance with Industry Best Practice;
- (ii) ensure that the Services to be performed under this Consultancy Services Order are provided on or before the date specified for performance (if any) in this Consultancy Services Order and, if no time is specified, within a reasonable time after the issue of this Consultancy Services Order;
- (iii) ensure that all Documentation, information and advice (including Documentation, information and advice provided prior to the issue of this Consultancy Services Order) provided to the Participating Agency or published on the Provider Database is Fit for Purpose so that, without limitation, it contains sufficient content and detail to enable the Participating Agency to make use of it for the purpose for which it was requested;
- (iv) act in the best interests of the Participating Agency in the provision of Services to the Participating Agency; and
- (v) provide Services to the reasonable satisfaction of the Participating Agency (as reported to the CoE).

3. Estimates and Quotes

3.1 Estimates and Quotes

- (a) The Provider must provide an Estimate or Quote for all Services to be provided under this Consultancy Services Order, unless the total Fees in respect of the Services under this Consultancy Services Order are likely to be less than \$10,000 (exclusive of GST) or such other amount as determined by the CoE and notified to the Provider.
- (b) Despite clause 3.1(a), if, during the course of providing the Services, the Provider becomes aware that the total Fees (excluding GST) are likely to exceed the amount referred to in clause 3.1(a), the Provider must provide an Estimate in accordance with clauses 3.1(c) to (e).
- (c) All Estimates and Quotes will be provided at no cost to the Participating Agency.
- (d) All Estimates and Quotes must specify the estimated timeframe to perform the Services requested in this Consultancy Services Order and the Rates of Personnel providing the Services and include any Expenses likely to be incurred in providing the Services.
- (e) All Quotes and Estimates must be provided to the Participating Agency in

writing and must be included in this Consultancy Services Order.

- (f) To avoid doubt and without limiting clause 4.5(c) of the Services Agreement, if any Quote or Estimate is not acceptable to the Participating Agency, the Participating Agency and Provider may seek to negotiate a more favourable Quote or Estimate, including a decrease in the Rates on which the Quote or Estimate was based.

3.2

If Charges exceed the Estimate

- (a) If during the course of providing the Services under this Consultancy Services Order, the Provider becomes aware that the total Charges (excluding GST) are likely to exceed the Estimate, the Provider must give written notice to the Participating Agency using Part D of this Consultancy Services Order as soon as the Provider becomes so aware, but no later than the time the costs accrued or incurred reach 80% of the Estimate.
- (b) The notice under clause 3.2(a) must specify a revised Estimate for the Services and include the reason the total Charges will exceed the original Estimate.
- (c) The Participating Agency has sole discretion whether to approve a revised Estimate and must act reasonably when deciding whether to approve a revised Estimate.
- (d) When a revised Estimate is approved, the Participating Agency must provide written notice of the same to the Provider.
- (e) If a Provider has provided an Estimate to the Participating Agency for Services, the Participating Agency is not liable to pay the Provider any amount exceeding the Estimate unless the Participating Agency has approved a revised Estimate.

3.3

If Charges exceed the Quote

- (a) The Provider acknowledges that neither the CoE nor the Participating Agency are obliged to pay any Charges to the Provider in relation to Services performed under this Consultancy Services Order if those Charges exceed any Quote provided in relation to this Consultancy Services Order, unless the Participating Agency has given its prior written consent in accordance with clause 3.3(b).
- (b) If the Participating Agency agrees to allow the Provider to increase the Charges:
- (i) the Provider will complete and submit Part D of this Consultancy Services Order to the Participating Agency; and
- (ii) upon receipt of the completed Part D of this Consultancy Services Order, the Participating Agency must promptly advise the Provider (in writing) if the completed Part D is acceptable.

4. Conflicts of interest

4.1 Conflicts of interest

- (a) The Provider must, upon receipt of this Consultancy Services Order, make diligent inquiry whether it has any actual, potential or perceived Conflicts of Interest if it were to provide the Services specified in this Consultancy Services Order and, if no such Conflict of Interest exists, the Provider must provide confirmation to that effect to the Participating Agency.
- (b) If the Provider has an actual, potential or perceived Conflict of Interest, the Provider must immediately notify the Participating Agency and must not begin performing the Services without the prior written approval of the Participating Agency.
- (c) The Provider must take all reasonable steps to ensure that:
- (i) a situation does not arise that might result in an actual, potential or perceived Conflict of Interest; and
- (ii) any Personnel or Subcontractors of the Provider do not engage in any activity or obtain interests that might result in the Provider or such Personnel or Subcontractors having an actual, potential or perceived Conflict of Interest,
- that cannot be managed to the satisfaction of the Participating Agency.
- (d) If, after commencing Services under this Consultancy Services Order, the Provider becomes aware of any matter, circumstance, interest or activity that may give rise to any actual, potential or perceived Conflict of Interest, the Provider must immediately notify the Participating Agency of all relevant details and must immediately cease work on the Services until such time as the Participating Agency provides written notice confirming the Provider may continue to perform the Services or terminates the engagement of the Provider in respect to the Services to be performed under this Consultancy Services Order in accordance with clause 4.1(e).
- (e) If the Participating Agency considers that the Provider has an actual Conflict of Interest of sufficient gravity that the Provider can no longer perform Services for it, the Participating Agency may, by written notice to the Provider, terminate this Consultancy Services Order with immediate effect on the date of termination specified in that notice.
- (f) Any approval or notice given by the Participating Agency pursuant to clause 4.1(b) or 4.1(d) may require the Provider to take steps reasonably required by the Participating Agency to manage the Conflict of Interest, and the Provider must provide written notice confirming its

acceptance of those steps before it may commence or continue to provide the Services under this Consultancy Services Order.

5. Responsibilities

5.1 Provider responsibilities

In addition to its other obligations under this Consultancy Services Order, the Provider will:

- (a) respond promptly, accurately and adequately to any requests for information made by the Participating Agency in relation to the Services, including requests for advice;
- (b) in performing Services for the Participating Agency under this Consultancy Services Order comply with all privacy and other policies and guidelines issued by the Participating Agency and notified or made available to the Provider;
- (c) obtain, maintain and comply with any governmental, regulatory or other approvals, permissions, consents, licences, and requirements necessary to provide the Services and perform its obligations under this Consultancy Services Order;
- (d) comply with all Laws at all times during the Term in so far as they relate to the provision of the Services, including the Privacy Act 1993 and all applicable consumer laws;
- (e) ensure that it and its Personnel providing the Services do not access the Participating Agency's information or systems except to the extent necessary to provide the Services and for no other purpose;
- (f) as soon as is practicable, notify the Participating Agency of any problems or issues that arise in relation to the performance of its obligations under this Consultancy Services Order, including any problems or issues that will, or are likely to, affect the provision or quality of the Services or the ability of the Provider to perform its obligations under this Consultancy Services Order;
- (g) without limiting any other provision of this Consultancy Services Order, use all reasonable endeavours to avoid damaging or adversely affecting any Participating Agency's reputation;
- (h) in relation to the sub-categories for which the Provider has been appointed as a Tier 1 and Tier 2 Provider, conduct the Agency Satisfaction Survey by asking the Participating Agency the questions recorded in Annexure A of Schedule 5 (Governance) to the Services Agreement within 5 Business Days of the Services in this Consultancy Services Order being completed.

5.2 Participating Agencies' responsibilities

The Participating Agency has the following responsibilities in relation to the Services:

- (a) to manage its operational relationship with the Provider, including in relation to the fulfilment of this Consultancy Services Order;
- (b) to notify the Provider of all relevant policies, guidelines and procedures of the Participating Agency that the Provider must comply with when performing the Services under this Consultancy Services Order;
- (c) to provide adequate instructions and information to the Provider to allow it to perform the Services under this Consultancy Services Order;
- (d) to make timely decisions where approvals or consents are reasonably sought by the Provider in performing the Services under this Consultancy Services Order;
- (e) to pay the Charges; and
- (f) to use its best efforts to resolve any dispute directly with the Provider before involving the CoE in accordance with clause 13.

6. Resourcing

6.1 General requirements

The Provider will provide and maintain sufficient resources (including human resources, equipment, telecommunications connectivity, premises and other facilities) to enable it to perform its obligations on time and otherwise in accordance with this Consultancy Services Order.

6.2 Provider's Nominated Personnel

- (a) The Participating Agency may, in this Consultancy Services Order, nominate specific Personnel (**Nominated Personnel**) to be the primary providers or to supervise the delivery of the Services.
- (b) If any Nominated Personnel nominated in this Consultancy Services Order are not available to provide or supervise the Services requested, the Provider must immediately notify the Participating Agency and provide details of other Personnel (if any) with the necessary skills and experience to provide or supervise the Services requested pursuant to this Consultancy Services Order.
- (c) Notice given under clause 6.2(b) must specify the period for which the Nominated Personnel will continue to be unavailable.
- (d) Upon receipt of notice under clause 6.2(b), the Participating Agency must notify the Provider whether the replacement Personnel are acceptable.
- (e) The Participating Agency is under no obligation to accept any replacement Personnel and, if it does not approve the replacement Personnel, the Provider may not commence or continue providing the Services.

6.3 Personnel

- (a) The Provider will ensure that all of its Personnel who are engaged in the performance of the Provider's obligations under this Consultancy Services Order:
- (i) have the requisite skills, expertise, qualifications and experience;
 - (ii) have, before performing any such obligations, obtained all security clearances and passed all probity checks required by, or necessary to provide the Services to, the Participating Agency;
 - (iii) comply with all health, safety, security and other policies, codes of conduct, procedures and reasonable directions as may be reasonably required by the Participating Agency from time to time; and
 - (iv) will carry out their respective duties with due care, skill and diligence.
- (b) The Participating Agency will notify the Provider of any security clearances and probity checks required by, or necessary to provide the Services to, the Participating Agency.

Business Days, failing which the Participating Agency may, by notice to the Provider, require the Provider to remove that Subcontractor; or

- (ii) a material threat to the health, safety or security of the Personnel or property of the Participating Agency, or has breached security or confidentiality requirements of this Consultancy Services Order, the Participating Agency may, by notice to the Provider, require the Provider to remove that Subcontractor,

and the Provider will ensure the immediate removal of that Subcontractor.

7. Changes

7.1 Change procedure

The Participating Agency may agree any variations to this Consultancy Services Order with the Provider using Part C of the Consultancy Services Order.

8. Price and payment

8.1 Calculation of Charges

The Charges will be calculated in accordance with the terms of Schedule 2 (Pricing).

8.2 Participating Agency to pay for Services

- (a) The Participating Agency will pay the Provider the Charges applicable to any Services procured by the Participating Agency on the terms of this clause 8.
- (b) The Charges and Administration Fee comprise the total amount payable by the Participating Agency for the Services.

8.3 Invoicing and payment

Except as otherwise provided in Schedule 2 (Pricing) or as agreed with the Participating Agency in this Consultancy Services Order, the Provider will invoice the Participating Agency (or, if the Participating Agency has instructed the Provider in writing, the third party agent) for the Charges and the Participating Agency will pay those Charges, in accordance with the following terms:

- (a) the Provider will render one itemised invoice to the Participating Agency at the end of each month during the Term for all Services performed during that month specifying (as applicable):
 - (i) the nature and amount of the Fees or other applicable fees and fee structures;
 - (ii) the Personnel and their applicable Rate;
 - (iii) the hours billed (by Personnel and in the aggregate);
 - (iv) the nature and amount of any Expenses (including any third party charges to be passed on to the Participating Agency);

6.4

Subcontracting

- (a) The Provider will not subcontract the performance of all or part of the Services or any of its other obligations under this Consultancy Services Order, except with the prior written consent of the Participating Agency.
- (b) The Provider is solely responsible for the selection of each Subcontractor and must ensure that each Subcontractor is creditworthy, qualified and has the relevant experience to perform the work it is required to carry out for the Provider.
- (c) To the extent permitted by Law, the Provider is and remains fully responsible for any act or omission of any Subcontractor.
- (d) The Provider must ensure that each Subcontract contains obligations on the Subcontractor that are consistent with the relevant terms of this Consultancy Services Order, including in relation to clauses 5.1 (Provider responsibilities), 6.3(a) (Personnel), 10 (Confidentiality), 11 (Intellectual Property) and 14 (Termination) and Schedule 3 (Performance Measurement), together with clause 15 (Audit) of the Services Agreement.
- (e) If, in the Participating Agency's reasonable opinion, a Subcontractor is:
 - (i) materially not performing in accordance with the terms of this Consultancy Services Order, the Participating Agency may, by notice to the Provider, require the Provider to procure that the Subcontractor performs the relevant obligations within 10

- (v) if applicable, the amount representing the Administration Fee;
 - (vi) how much of the Estimate or Quote has been used;
 - (vii) a brief description of the Services provided during that month; and
 - (viii) any other matters the Participating Agency may reasonably request;
- (b) each correctly rendered invoice will be payable on or before the 20th day of the month following the month in which the invoice was received;
- (c) the Participating Agency will have no obligation to pay any Charges which are invoiced more than 90 days after the date that such amount was required to be invoiced pursuant to this clause 8.3; and
- (d) the Provider may only invoice the Participating Agency for any Expenses at the cost actually incurred by the Provider.

8.4

Invoice disputes

If the Participating Agency or the Provider disputes an invoice:

- (a) it may withhold the disputed sum and, if applicable, associated Administration Fee until the dispute is resolved;
- (b) the dispute will be resolved in accordance with clause 13; and
- (c) it will pay the undisputed portion in accordance with clause 8.3.

The Provider will not be excused from performing its obligations under this Consultancy Services Order while an invoice is disputed by the Participating Agency.

8.5

Taxes

- (a) Except for any GST payable by the Participating Agency, any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including applicable interest and penalties) payable in connection with this Consultancy Services Order under any Law is to be paid by the Provider and not passed on to the Participating Agency unless otherwise expressly agreed in writing by the Participating Agency.
- (b) The Participating Agency may deduct from any payment to be made to the Provider any withholding taxes or other deductions that it is required by Law to make.

8.6

Administration Fee

In relation to the sub-categories for which the Provider has been appointed as a Tier 1 or Tier 2 Provider, the Provider will ensure that each invoice issued to the Participating Agency for the Charges includes, in addition to the Charges, a separate amount equal to 1% of the Fees (excluding GST) (the **Administration Fee**).

8.7

Suspension of payment

- (a) Without prejudice to any other right or remedy that may be available to the Participating Agency, the Participating Agency may suspend payment of all or any part of the Charges if the CoE has notified the Provider that the Provider is in Material Breach, until that Material Breach is remedied.
- (b) If the Material Breach is not capable of remedy the Participating Agency and the Provider agree to treat the Charges as being in dispute and clause 14 will apply.

9.

Warranties

9.1

General warranties

Each party represents, warrants and undertakes that:

- (a) it has full power, capacity and authority to execute, deliver and perform its obligations under this Consultancy Services Order;
- (b) it has, and will continue to have, all the necessary consents, permissions, licences and rights to enter into and perform its obligations under this Consultancy Services Order; and
- (c) this Consultancy Services Order constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

9.2

Provider's warranties

The Provider represents, warrants and undertakes that:

- (a) it will perform its obligations under this Consultancy Services Order with due care, skill, promptness and diligence at all times;
- (b) it has, and will have throughout the Term, sufficient Personnel to supply the Services and to perform its other obligations under this Consultancy Services Order;
- (c) it, and each of its Personnel engaged in the performance of the Services, has, and will have throughout the Term, the necessary expertise and all necessary governmental, regulatory or other approvals, permissions, consents, licences, qualifications, accreditations and requirements to provide the Services and perform its other obligations under this Consultancy Services Order;
- (d) it will comply with the requirements of all Laws as they relate to the provision of Services by the Provider;
- (e) the possession or use of any item of Intellectual Property supplied or licensed by it, or the use of any item of Intellectual Property by it to perform its obligations under this Consultancy Services Order, will not infringe the rights of any third party;
- (f) all Documentation (and any other information or advice supplied by it to the Participating Agency) and any

	information and data reported to the CoE will be accurate, complete and (as applicable) Fit for Purpose;	(iii)	advise the CoE in writing if any Confidential Information of the Participating Agency will be transferred or stored outside New Zealand before such information is transferred and will confirm that the requirements of this clause 10.1 will be met while such Confidential Information is stored outside New Zealand.
(g)	there are no existing agreements, undertakings or arrangements which prevent it from entering into this Consultancy Services Order, or which would impede the performance of its obligations under this Consultancy Services Order, or that it would breach by entering into this Consultancy Services Order;	(c)	Clause 10.1(a) does not prevent the disclosure of Confidential Information:
(h)	it is not (and nor is any of its Personnel) a party to any litigation, proceedings or disputes which could adversely affect its ability to perform its obligations under this Consultancy Services Order; and	(i)	if that information was known, or becomes known, to the public through no act or default of the recipient;
(i)	it has not offered any inducement in connection with the entering into or negotiation of this Consultancy Services Order, and will not offer any inducement in connection with the supply of Services to the Participating Agency.	(ii)	that the recipient is required by Law or parliamentary practice (including parliamentary questions) to disclose, or to a Select Committee or to a Minister of the Crown, so long as the recipient provides notice of the required disclosure promptly upon receipt of notice of the required disclosure (if it is permitted to do so by Law);
9.3	Continuous application The warranties, representations and undertakings set out in clause 9.2 will be deemed to be given by the Provider continuously throughout the Term.	(iii)	that was lawfully known to the recipient prior to the date it was received;
9.4	Notification Each party will promptly notify the other if at any time during the Term it breaches any of the warranties, representations and undertakings in this clause 9.	(iv)	that becomes available to the recipient from a source other than a party to this Consultancy Services Order, provided that the recipient has no reason to believe such source is itself bound by an obligation of confidence to the person that disclosed that information or is otherwise prohibited under Law from disclosing such information;
9.5	Other warranties excluded All warranties (statutory, express or implied) which are not expressly referred to in this Consultancy Services Order are excluded to the fullest extent permitted by Law.	(v)	to any Professional Adviser for the purposes of rendering professional services to a party in relation to this Consultancy Services Order;
10.	Confidentiality	(vi)	to the extent that such disclosure is authorised by this Consultancy Services Order; or
10.1	Protection of Confidential Information	(vii)	if such disclosure is approved for release with the consent of the party from whom the Confidential Information is first received.
(a)	Subject to clauses 10.1(c) and 10.2, the Provider and the Participating Agency will treat as confidential and not disclose to any third party nor use for its own benefit any Confidential Information that is the Confidential Information of the other.	10.2	Limited disclosure
(b)	The Provider will:	(a)	The Provider may, subject to clause 10.2(d), disclose the Confidential Information of the Participating Agency to its Subcontractors, Personnel, Related Entities and Professional Advisers who need to know the same for the sole purpose of enabling the Provider to perform its obligations and exercise its rights under this Consultancy Services Order.
(i)	ensure that all Confidential Information of the Participating Agency (and any backup archives containing such Confidential Information) in the possession or control of the Provider from time to time is kept secure and managed and protected and only disclosed or otherwise dealt with in accordance with this Consultancy Services Order;	(b)	The Participating Agency may, subject to clause 10.2(d), disclose the Confidential Information of the Provider to its third party suppliers, Personnel and Professional Advisers and any other
(ii)	not use any Agency Information for its own purposes or for any purposes different from those contemplated by this Consultancy Services Order; and		

- Participating Agencies (including the CoE) who need to know the same in connection with the Services.
- (c) The Provider will not disclose the Participating Agency's Confidential Information to any of its Subcontractors, Related Entities or Professional Advisers, and the Participating Agency will not disclose the Provider's Confidential Information to any of its third party suppliers or Professional Advisers, unless the recipient has given a written confidentiality undertaking to the disclosing party in terms substantially similar to those set out in this clause 10.
- (d) Any undertaking given pursuant to clause 10.2(c) will be provided to the other party to this Consultancy Services Order on request.

11. Intellectual Property

11.1 Intellectual Property owned by Provider

- (a) The Participating Agency acknowledges that all:
- (i) Intellectual Property held by the Provider before the Commencement Date;
 - (ii) Intellectual Property developed independently from this Consultancy Services Order by the Provider, and that is not developed, commissioned or created under or in connection with this Consultancy Services Order; and
 - (iii) adaptations and modifications to the Intellectual Property described in clauses 11.1(a)(i) and (ii),
- remains the Provider's sole and exclusive property (**Provider IP**).

- (b) To the extent that the Participating Agency needs to use any of the Provider IP to receive the full benefit of the Services, the Provider grants to the Participating Agency a royalty-free, non-exclusive licence (including, if agreed in this Consultancy Services Order, the right to sublicense) to use, copy, modify and distribute during the Term any Provider IP provided to the Participating Agency by or on behalf of the Provider.

11.2 Intellectual Property owned by Participating Agency

- (a) The Provider acknowledges that the Participating Agency or its licensor has, and continues to have, sole and exclusive ownership of all Intellectual Property rights in all of the Agency Information together with all adaptations and modifications of such Agency Information (**Pre-contract Participating Agency IP**).
- (b) All Intellectual Property created or developed by the Provider or its employees or Subcontractors in performing the Services and developing the Documentation will be owned by the

Participating Agency from the date the Intellectual Property is created or developed (**Post-contract Participating Agency IP** and, together with the Pre-contract Participating Agency IP, the **Participating Agency IP**).

- (c) If the Provider (or any of its Subcontractors) has under any Law any right in or claim to any of the Participating Agency IP or holds any of the Participating Agency IP, the Provider (by itself and for its Subcontractors):
- (i) assigns to the Participating Agency all of its rights, title and interest in and to the Participating Agency IP from the date it was created or developed; and
 - (ii) waives all right of lien or similar rights as may now or later be claimed in the Participating Agency IP; and
 - (iii) waives all of its moral rights under Part 4 of the Copyright Act 1994 in the Participating Agency IP,
- and the Provider will sign all documents and do all acts and things that are necessary to give effect to this clause 11.2(c).

- (d) To the extent that the Provider needs to use any of the Participating Agency's IP for the purpose of performing its obligations under this Agreement, the Participating Agency grants to the Provider, subject to any written direction given by the Participating Agency, of a royalty-free, non-exclusive, non-transferable licence to use and store the Participating Agency's IP for the sole purpose of performing its obligations under this Consultancy Services Order during the Term.

11.3 Intellectual Property owned by third parties

- (a) To the extent that the Provider needs to use any Intellectual Property held or owned by a third party (**Third Party IP**) in performing the Services under this Consultancy Services Order, the Provider will use its best endeavours to obtain the fullest rights of use and licence of that Third Party IP (on terms and at a cost to be agreed with the Participating Agency) as are necessary for the performance of those Services for the benefit of the Participating Agency.
- (b) The Participating Agency acknowledges that the Provider may have limited ability to obtain rights and/or a licence to use any Third Party IP and, where the Provider, using its best endeavours, cannot obtain appropriate rights and/or a licence for the Participating Agency to use that Third Party IP, the warranty in clause 9.2(e) applies.

12. Liability

12.1 Indemnity

(a)	The Provider will, to the extent permitted by Law, indemnify the Participating Agency against all Losses suffered or incurred by the Participating Agency as a result of any:	handling of any negotiations and litigation; and
	(i) unlawful, malicious or negligent act or omission by the Provider;	(B) the Provider will keep the Participating Agency informed of the defence or negotiations of the IP Claim and diligently conduct any litigation or negotiations, using competent counsel and in a manner that does not adversely affect the name or reputation of the Participating Agency;
	(ii) personal injury, sickness, death or loss of, or damage to, tangible property due to an act or omission of the Provider; or	
	(iii) any other breach by the Provider of its obligations under this Consultancy Services Order.	
(b)	The Provider will, subject to clause 12.1(c), indemnify the Participating Agency against all Losses suffered or incurred by the Participating Agency as a result of any claim that the possession or use of any Intellectual Property supplied or licensed by the Provider, or the use of any Intellectual Property used to provide the Services, infringes any third party's rights.	(iii) the Provider will not enter into any settlement or compromise in relation to the IP Claim without the prior written consent of the Participating Agency (which will not be unreasonably withheld); and
(c)	The Provider will have no liability under clause 12.1(b) to the extent that any IP Claim arises from any:	(iv) the Provider will notify the CoE of the IP Claim, and the outcome within 5 Business Days of the claim being concluded.
	(i) modification by the Participating Agency of any item of Intellectual Property supplied or licensed by the Provider without the approval of the Provider;	(b) If any IP Claim disrupts the Participating Agency's use or enjoyment of a Service, the Provider will (unless otherwise requested by the CoE), at its own expense and at its option, immediately:
	(ii) use by the Participating Agency of Intellectual Property supplied or licensed by the Provider for any purpose disallowed by this Consultancy Services Order or the applicable Intellectual Property licence (but only if the licence has been provided to the Participating Agency prior to such use); or	(i) obtain for the Participating Agency the legal right to continued use of the infringing materials; or
	(iii) use of Intellectual Property used to provide the Services if and to the extent that Intellectual Property was supplied by the Participating Agency.	(ii) replace, modify or resupply the infringing materials so that there is no further infringement, without adversely affecting the performance or functionality of those materials.
12.2	IP Claims	12.3 Maximum liability of Participating Agency
	(a) In the event of a claim under clause 12.1(b) (an IP Claim):	In addition to its obligation to pay the Charges, the maximum aggregate liability of the Participating Agency to the Provider under or in connection with this Consultancy Services Order will be, in respect of all Losses, limited to the total Charges paid and payable under this Consultancy Services Order.
	(i) the Participating Agency will give the Provider notice of the IP Claim as soon as practicable and, to the extent permissible by Law, permit the Provider (at the Provider's cost) to handle all negotiations for settlement and to control and direct any litigation that may follow (Control of the IP Claim);	12.4 Maximum liability of the Provider
	(ii) if the Provider has Control of the IP Claim:	The maximum liability of the Provider to the Participating Agency for all Losses under or in connection with this Consultancy Services Order in respect of all claims will not exceed:
	(A) the Participating Agency will provide all reasonable assistance to the Provider (at the Provider's cost) in the	(a) in relation to the sub-categories for which the Provider has been appointed as a Tier 1 Provider, the greater of:
		(i) 10 times the total Charges paid and payable under this Consultancy Services Order;
		(ii) \$5,000,000; and
		(iii) any greater amount or multiple set out in this Consultancy Services Order;

- (b) in relation to the sub-categories for which the Provider has been appointed as a Tier 2 Provider, the greater of:
- (i) 10 times the total Charges paid and payable under this Consultancy Services Order;
 - (ii) \$2,000,000; and
 - (iii) any greater amount or multiple set out in this Consultancy Services Order; and
- (c) in relation to the sub-categories for which the Provider has been appointed as a Tier 3 Provider, the greater of:
- (i) 10 times the total Charges paid and payable under this Consultancy Services Order;
 - (ii) \$1,000,000; and
 - (iii) any greater amount or multiple set out in this Consultancy Services Order.

12.5 No double dipping

A party to this Consultancy Services Order (or the CoE acting on behalf of the Participating Agency in accordance with the Services Agreement) cannot recover for the same Loss under both this Consultancy Services Order and the Services Agreement.

12.6 Exclusions on liability

The limitations on liability set out in clauses 12.3 and 12.4 will not limit the liability of:

- (a) the Provider under clauses 12.1(a) and 12.1(b) (other than in respect of negligent acts or omissions under clause 12.1(a)(i) and breach by the Provider of its obligations under this Consultancy Services Order under clause 12.1(a)(iii), which are subject to the limitations of liability in clauses 12.3 and 12.4);
- (b) the Provider for any fraudulent act or omission; or
- (c) either party for any breach of confidentiality.

12.7 Categories of loss

- (a) Irrespective of how liability arises, neither the Provider nor the Participating Agency will, under any circumstances, be liable for any indirect loss or damage (including consequential loss) arising under or in connection with this Consultancy Services Order.
- (b) The Participating Agency will not, under any circumstances, be liable for any loss of profits or loss of revenue suffered by the Provider in connection with this Consultancy Services Order.

12.8 Force majeure

- (a) The Provider and the Participating Agency will not be liable to the other for any failure to perform its obligations under this Consultancy Services Order during the time and to the extent that such performance is prevented, wholly or

substantially, by reason of any Force Majeure Event.

- (b) The party subject to the Force Majeure Event (the **non-performing party**) must:

- (i) notify the other party as soon as practicable after the Force Majeure Event occurs and provide full information concerning the Force Majeure Event, including the extent of its inability to perform, an estimate of the time likely to be required to overcome the Force Majeure Event and the steps the non-performing party will take to comply with clauses 12.8(b)(ii) and 12.8(b)(iii);
- (ii) use all reasonable endeavours to mitigate and remedy the effect of the Force Majeure Event and minimise the impact of the event on the other party; and
- (iii) use all reasonable endeavours to perform its obligations under this Consultancy Services Order as far as is practicable,

and the Participating Agency will not be required to pay Charges to the extent that the Provider fails to perform its obligations to the Participating Agency due to a Force Majeure Event.

- (c) If the non-performing party affected by the Force Majeure Event is the Provider, the Participating Agency may, to the extent that any Service requested by the Participating Agency under this Consultancy Services Order has not been delivered and delivery has, or will be, delayed by the Force Majeure Event, terminate this Consultancy Services Order, by notice to the Provider within five Business Days following receipt by the Participating Agency of notice of the Force Majeure Event, at no cost to the Participating Agency, subject to the Participating Agency paying for Services delivered up to the date of the Force Majeure Event.

12.9

Insurance

- (a) During the Term and for a period of two years following the termination of this Consultancy Services Order, the Provider will, at its own expense, ensure that it maintains adequate insurance in respect of its potential liability for loss or damage under this Consultancy Services Order in accordance with Industry Best Practice, but as a minimum the Provider must hold:
 - (i) professional indemnity insurance;
 - (ii) public liability insurance in respect of the Services provided under this Consultancy Services Order; and
 - (iii) other insurance to cover standard commercial risks

(including in respect of Documentation which is the property of the Participating Agency and in the Provider's possession or control).

- (b) The Provider will, at the Participating Agency's request, promptly provide satisfactory evidence that it has complied with its obligations in this clause 12.9.

13. Dispute resolution

13.1 Dispute

In the event of any dispute, difference or question arising out of, or in connection with, this Consultancy Services Order or its formation (a **dispute**):

- (a) the Participating Agency and the Provider will each use its best efforts to resolve the dispute through good faith negotiations and informal dispute resolution techniques, and will continue to perform its obligations under this Consultancy Services Order as far as possible as if the dispute had not arisen, pending final settlement of the dispute; and
- (b) neither the Participating Agency nor the Provider will commence any formal proceedings relating to the dispute unless it has complied with clause 13.2.

13.2 Escalation

- (a) The Participating Agency and the Provider will each advise its respective Representative (or equivalent person) of a dispute on the day that the dispute arises.
- (b) The Representatives will use their best efforts to resolve the dispute in accordance with clause 13.1(a).
- (c) If the dispute is not resolved:
- (i) within 10 Business Days, the dispute will be escalated to senior representatives of the Provider and the Participating Agency with delegated authority to resolve the dispute; and
- (ii) in relation to the sub-categories for which the Provider has been appointed as a Tier 1 and Tier 2 Provider, within a further 10 Business Days, the dispute will be escalated to the CoE's Manager, All-of-Government Contracts and the Provider's Chief Executive.

13.3 Mediation

- (a) If a dispute is not resolved under clause 13.2, either party may, by written notice to the other, refer the dispute to mediation, or they may agree in writing to refer the dispute to mediation.
- (b) The mediation will be conducted by a single mediator in accordance with the terms of the Resolution Institute Standard Mediation Agreement and at a fee to be agreed by the parties.

- (c) If the parties fail to agree on the identity of the mediator and/or the mediator's fee within five Business Days of referral of the dispute to mediation, the mediator will be chosen, and the mediator's fee determined, by the chairperson for the time being of Resolution Institute (or his or her nominee).

13.4 Urgent relief

Nothing in this clause 13 will preclude either party from taking immediate steps to seek urgent relief before a New Zealand court.

14. Termination

14.1 Termination of Consultancy Services Order

The Participating Agency may terminate this Consultancy Services Order:

- (a) for convenience by giving the Provider at least one month's prior written notice;
- (b) by notice to the Provider with immediate effect on the date of termination specified in that notice, if the Provider commits a Material Breach which is:
- (i) not capable of being remedied (and, for the avoidance of doubt, paragraphs (a) and (b) of the definition of "Material Breach" are deemed incapable of being remedied); or
- (ii) capable of being remedied but which is not remedied to the satisfaction of the Participating Agency within 10 Business Days following the date of receipt by the Provider of the Participating Agency's notice of the Material Breach;
- (c) in accordance with clause 4.1(e) (Conflict of Interest); or
- (d) in accordance with clause 12.8(c) (Force Majeure Event).

14.2 Consequences of termination or expiry

- (a) In the event of termination or expiry of this Consultancy Services Order, the Participating Agency will not be obliged to make any payment to the Provider except for any Charges payable for Services supplied pursuant to this Consultancy Services Order before the effective date of expiry or termination.
- (b) Termination or expiry will not, unless otherwise provided in this Consultancy Services Order, affect:
- (i) any rights and remedies available to either party which have accrued up to and including the date of termination or expiry; and
- (ii) the provisions of this Consultancy Services Order which expressly, or by their nature, survive termination or expiry, including clauses 15 (Entire agreement), 10 (Confidentiality), 11 (Intellectual Property), 12 (Liability), 13

- (Dispute Resolution), 14.2 (Consequences of termination or expiry) and 16 (General) and Schedule 1 (Definitions);
- (iii) the continued application of clauses of the Services Agreement which expressly, or by their nature, are intended to continue to apply to this Consultancy Services Order after termination or expiry of this Consultancy Services Order, including clauses 1.4 (Precedence) and 15 (Audit).
- (c) After expiry or termination of this Consultancy Services Order for any reason, each party will, within five Business Days of receiving notice from the other party, return all Documentation, Confidential Information or other property belonging to the other party (or destroy such Confidential Information, if requested), except if such Documentation, Confidential Information or other property is required to be retained by any Law.

15. Entire agreement

15.1 Entire agreement

- (a) This Consultancy Services Order is intended to be read in conjunction with the Services Agreement. The provisions of the Services Agreement (not already included in this Consultancy Services Order) which confer rights, obligations or benefits on the parties or the CoE in respect of this Consultancy Services Order are intended to apply to this Consultancy Services Order.
- (b) Subject to clause 15.1(a), no other terms or conditions, including any conditions of sale, invoices or any other communication not included in this Consultancy Services Order (**Communication**), will be incorporated into this Consultancy Services Order, even if at some later date the other party (including, in the case of the Participating Agency) signs or otherwise purports to accept those terms and conditions or the terms of that Communication.
- (c) For the avoidance of doubt, and without limiting clauses 15.1(a) and 15.1(b):
- (i) any Communication which is expressed or intended to operate as an indemnity, warranty, representation, undertaking, condition or other term of such a nature is hereby disapplied and excluded from this Consultancy Services Order; and
- (ii) any part of this Consultancy Services Order which describes the nature, scope, price or manner of delivery of Services will, subject to clause 15.1(c)(i), form part of this Consultancy Services Order, but only to the extent that it does not conflict with any other part of this Consultancy Services Order.

16. General

16.1 Interpretation

The rules of interpretation set out in clause 19.1 of the Services Agreement apply to this Consultancy Services Order.

16.2 Relationship of the parties

Nothing expressed or implied in this Consultancy Services Order will be deemed to constitute either party as the partner, agent, or joint venturer of the other party.

16.3 Costs

A party who has an obligation to do anything under this Consultancy Services Order will perform that obligation at its own cost, unless a term of this Consultancy Services Order expressly provides otherwise.

16.4 Assignment

Neither party may assign, novate, transfer or otherwise dispose of the whole or any part of its rights and obligations under this Consultancy Services Order without first obtaining the other party's consent (which will not be unreasonably withheld or delayed).

16.5 Public disclosures

Subject to clause 10, all public disclosures by the Provider relating to this Consultancy Services Order, including the fact of its existence (but not including any announcement intended solely for internal distribution or any disclosure required by legal, accounting or regulatory requirements), will be co-ordinated with, and must first be approved in writing by, the Participating Agency prior to release.

16.6 Notices

- (a) Unless otherwise specified in this Consultancy Services Order, each notice or other communication under this Consultancy Services Order will be made in writing and delivered by post, personal delivery or email to the addressee at the addressee's postal address, physical address or email address (as applicable) and marked for the attention of the person or office holder (if any) from time to time designated for that purpose by the addressee.
- (b) The Provider's postal address, physical address and email address is set out in the Provider Database and may be amended by the Provider at any time.
- (c) The Participating Agency's postal address, physical address and email address is as notified by the Participating Agency to the Provider and may be amended by the Participating Agency at any time.
- (d) A notice or other communication will be deemed to be received:
- (i) in the case of a letter sent to the addressee's postal address, on the third Business Day after posting;
- (ii) in the case of personal delivery, on receipt; and

- (iii) in the case of an email, at the time the email leaves the communications system of the sender, provided that the sender:

- (A) does not receive any error message relating to the sending of the email at the time of sending; and
- (B) has obtained confirmation that the email has been delivered to the recipient (which confirmation may be in the form of an automated delivery receipt from the communications system of the recipient),

on the Business Day on which it is dispatched or, if dispatched after 5 p.m. (in the place of receipt), on the next Business Day after the date of dispatch.

16.7 Severability

If any term or provision of this Consultancy Services Order is held to be illegal, invalid or unenforceable it will be severed from this Consultancy Services Order without affecting the legality, validity or enforceability of the remaining provisions.

16.8 Waiver

- (a) Neither party will be deemed to have waived any right under this Consultancy Services Order unless the waiver is in writing and signed by the parties.
- (b) Any failure or delay by a party to exercise any right or power under this Consultancy Services Order will not operate as a waiver of that right or power.
- (c) Any waiver by a party of any breach, or failure to exercise any right, under this Consultancy Services Order will not constitute a waiver of any subsequent breach or continuing right.

16.9 Remedies cumulative

Except as is expressly stated otherwise in this Consultancy Services Order:

- (a) the rights, powers and remedies provided in this Consultancy Services Order are cumulative and are not exclusive of any rights, powers or remedies provided by Law or under this Consultancy Services Order; and
- (b) the exercise of any rights, powers and remedies provided in this Consultancy Services Order will not prejudice the exercise of any other right, power or remedy under this Consultancy Services Order or existing at Law.

16.10 Counterparts

This Consultancy Services Order may be signed in two counterparts, each of which will be deemed an original, but both of which together are to constitute a single instrument.

16.11 Governing law and jurisdiction

- (a) This Consultancy Services Order is governed by, and will be construed in accordance with, the laws of New Zealand.
- (b) Subject to clause 13, each party irrevocably submits to the exclusive jurisdiction of the New Zealand courts for the purpose of hearing and determining any dispute under, or in connection with, this Agreement.

SCHEDULE 1: DEFINITIONS

In this Consultancy Services Order, unless the context otherwise requires:

Administration Fee means the amount referred to in clause 8.6;

Agency Information means all:

- (a) information and records belonging to the Participating Agency that are supplied to or collected by the Provider for the purpose of enabling the Provider to perform its obligations under this Consultancy Services Order;
- (b) compilations of data created by a Participating Agency or the Provider for the purposes of this Consultancy Services Order; and
- (c) legal names, logos, trademarks, brands or images of the Participating Agency, including all related Intellectual Property of the Participating Agency and the New Zealand Coat of Arms or any other coat of arms or emblem used by the Participating Agency,
- but excluding the Provider's working papers;

Annexure means any document physically attached to a Schedule and identified as such and any other document incorporated by reference in any part of this Consultancy Services Order (other than an Annexure);

Appointment Letter means the letter issued to the Provider by the CoE, as amended or reissued from time to time, confirming (among other things) the Provider's appointment as an All-of-Government provider of consultancy services and detailing the terms and conditions of the appointment (including the Services and the applicable Tier(s));

Business Day means any day of the year other than a Saturday, a Sunday or a public holiday (as defined in section 44 of the Holidays Act 2003) observed at the location of the Participating Agency;

Charges means the amount payable by Participating Agencies for Services and includes Fees and Expenses, as described in Schedule 2 (Pricing) and agreed in this Consultancy Services Order;

CoE means the Ministry of Business, Innovation and Employment, the Centre of Expertise for Consultancy Services;

Commencement Date is the date on which this Consultancy Services Order is signed by both parties or, if two dates, the later date;

Confidential Information means:

- (a) all information and trade secrets already communicated or subsequently communicated under or in connection with this Consultancy Services Order, including information obtained during the negotiation of

this Consultancy Services Order or in the performance of this Consultancy Services Order and information on the Provider Database;

- (b) any information about the business or property of either party including any information:
 - (i) relating to the financial position of that party;
 - (ii) concerning that party's suppliers and customers; or
 - (iii) relating to that party's internal management, structure, Personnel or strategies;
- (c) the terms of this Consultancy Services Order; and
- (d) Agency Information;

Conflict of Interest means any matter, circumstance, interest or activity of the Provider, its Personnel or Subcontractors, arising by whatever means that directly or indirectly conflicts with:

- (a) the duties of the Provider and any of its Personnel or Subcontractors to the Participating Agency; or
- (b) the interests of the Participating Agency in relation to this Consultancy Services Order or otherwise in respect to the provision of consultancy services to the Participating Agency either before or after the Commencement Date;

or otherwise impairs or might appear to impair the ability of the Provider (or any of its Personnel or Subcontractors) to provide the Services to the Participating Agency under this Consultancy Services Order diligently, independently, impartially and in the best interests of the Participating Agency;

Consultancy Services Order means this service order relating to the supply of Services issued by the Participating Agency;

Contract Quarter means a period of three consecutive months commencing on 1 January, 1 April, 1 July or 1 October;

Control means, in relation to the Provider or any ultimate or intermediate holding company or Holding Entity of the Provider, the power to:

- (a) manage, directly or indirectly, the operation of the business; or
- (b) control, directly or indirectly, the composition of the board of directors or board of management or equivalent governing body,

of the Provider or such ultimate or intermediate holding company or Holding Entity, whether through the ownership of voting securities, by contract or otherwise, and for these purposes "holding company" will have the same meaning as in section 5 of the Companies Act 1993;

Documentation means all advice, communications, documentation (including information on the Provider Database) and reports (whether in paper, electronic, audio or audio-visual format) relating to, or provided as part of, the Services together with additions, modifications to, and replacements of, that documentation, but excludes the Provider's working papers;

Estimate means an estimate of the total Charges for the Services required by the Participating Agency;

Expense means any actual and reasonable out-of-pocket costs incurred by the Provider in the delivery of the Services and agreed to in this Consultancy Services Order, and includes any freight and related costs, travelling and incidental expenses and other costs, disbursements, fees,

charges and expenses directly or indirectly incurred by the Provider;

Fees means the amount payable by the Participating Agency to the Provider for its time spent delivering the Services calculated on the basis of the Rates, excluding Expenses;

Fit for Purpose means, in relation to any Service or Documentation to be provided by the Provider to the Participating Agency, that such Services or Documentation are, in descending order of priority, fit for the purpose(s):

- (a) expressly made known in writing by the Participating Agency to the Provider (including in this Consultancy Services Order); or
- (b) for which the Provider, given its knowledge of the Participating Agency and understanding why the Services or Documentation are required, has reason to expect such Services or Documentation to be used;

Force Majeure Event means an event or circumstance beyond the reasonable control of either party which makes it impossible or illegal to perform, or prevents compliance with, or the performance of, a party's obligations under this Consultancy Services Order, including:

- (a) fire, floods, tsunamis, storms, tempest, earthquake or other act of God;
- (b) any act of a public enemy, war, riot, or act of civil or military authority;
- (c) nuclear, chemical or biological contamination; and
- (d) subject to paragraph (g) of this definition, any act of a third party engaged in subversive or terrorist activity or sabotage,

but does not include an event to the extent that:

- (e) the effect of that event could have been substantially prevented, avoided or overcome or mitigated by:
 - (i) implementation of any contracted business continuity or disaster recovery service, or any contingency plans agreed between the parties or which a party has represented it has in place; or
 - (ii) exercising a reasonable standard of care; or
 - (iii) using information provided by the other party or which is available in the public domain; or
- (f) it is an event for which the party affected is or was directly responsible; or
- (g) that event is constituted or caused by any act or omission of Personnel or a Subcontractor unless and to the extent that the Personnel or Subcontractor was itself affected by an event, which if it occurred in relation to either party would have been a Force Majeure Event; or
- (h) that event is constituted or caused by an Insolvency Event or the insolvency of a Subcontractor or lack of funds for any reason;

GST means goods and services tax under the Goods and Services Tax Act 1985;

Holding Entity means a trust, unit trust, partnership, limited partnership, unincorporated joint venture or other body corporate or unincorporated body of persons that Controls the Provider, and includes any natural person that Controls the Provider;

Industry Best Practice means the high professional standard that would reasonably be expected from a prudent and experienced provider of consultancy services in New Zealand having regard to market practice at the relevant time;

Insolvency Event means, in relation to the Provider:

- (a) the presentation of an application for its liquidation that is not discharged within 30 days of its filing or which is not demonstrated to the Participating Agency prior to the expiry of that 30 day period as being an application that is frivolous or vexatious;
- (b) any step taken in or toward the making of any compromise, proposal or deed of arrangement with all or some of its creditors;
- (c) the appointment of a liquidator, receiver, statutory manager, administrator or similar official, to it;
- (d) the suspension or threatened suspension by it of the payment of its debts;
- (e) cessation by it of a whole or any relevant part of its business in New Zealand;
- (f) the enforcement of any security against the whole or a substantial part of its assets; or
- (g) any other insolvency event or proceedings analogous to any of the foregoing occurring in any relevant jurisdiction;

Intellectual Property means copyright, all rights in relation to inventions (including patents), registered and unregistered trademarks, registered and unregistered designs, trade or other proprietary rights or rights derivative of those rights (including licence rights) anywhere in the world as well as any other rights in intellectual property which are recognised or protected under Law;

Law means:

- (a) any statute, regulation, bylaw, ordinance or subordinate legislation in force from time to time to which a party is subject;
- (b) the common law and the law of equity as applicable to the parties from time to time;
- (c) any binding court order, judgment or decree;
- (d) any applicable industry code of practice or conduct, convention, policy, rule or standard to which a party is bound; or
- (e) any applicable direction, policy, permission, consent, licence, rule or order that is binding on a party and that is made or given by any governmental or regulatory body having jurisdiction over a party or any of that party's assets, resources or business,

in any jurisdiction that is applicable to this Consultancy Services Order;

Losses means liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis);

Material Breach means any material breach by the Provider of the terms of this Consultancy Services Order or the occurrence of any event having a material effect on the ability of the Provider to perform its obligations under this Consultancy Services Order (other than a Force Majeure Event), including:

- (a) the occurrence of an Insolvency Event in relation to the Provider or the likely occurrence of an Insolvency Event;
- (b) the occurrence of a change in Control of the Provider or any ultimate or intermediate holding company or Holding Entity of the Provider that the CoE has not previously approved (acting reasonably);
- (c) any representation or warranty made by the Provider in terms of this Consultancy Services Order being found to be untrue or incorrect; and

- (d) any failure on the part of the Provider to comply with, observe or perform any of the terms of this Consultancy Services Order in circumstances where that contract breach or that contract breach together with other contract breaches is considered by the Participating Agency on reasonable grounds to cause the Provider to be unable or unwilling, or be likely to be unable or unwilling, to perform its obligations under this Consultancy Services Order;

Maximum Rates means the maximum Rates payable to the Provider for providing the Services, as recorded in the Provider Database, excluding Expenses;

Panel means the All-of-Government panel of providers who provide consultancy services to Participating Agencies, including any sub-panel, as detailed on www.procurement.govt.nz;

Participating Agency means the Participating Agency that is a party to this Consultancy Services Order;

Participating Agencies means each of the CoE and every other Eligible Agency that is a party to the memorandum of understanding between the CoE and all other Participating Agencies relating to the management of their relationship with each other and with the Provider in relation to the Services, as amended from time to time;

Personnel includes partners, principals, directors, employees, agents, officers and individual independent contractors;

Professional Adviser means any accounting, legal, procurement or technical professional;

Provider Database means the IT platform described in Schedule 7 (Provider Database) to the Services Agreement;

Quote means a fixed price, capped price or other pre-agreed basis for establishing the Charges for Services required by the Participating Agency where the Provider is prevented from increasing the Charges without the prior written consent of the Participating Agency;

Rates means the rates (whether hourly, daily or weekly or other time-related basis) payable to the Provider for providing the Services, determined in accordance with Schedule 2 (Pricing), excluding Expenses;

Related Entity means a related company under the Companies Act 1993 (New Zealand) or a related body corporate under the Corporations Act 200, provided that any reference in the Companies Act 1993 to a "company" is deemed to include any partnership, body corporate, association or other entity, whether corporate or unincorporated, irrespective of the place of incorporation or registration of that partnership, body corporate, association or other entity;

Representative has the meaning given in paragraph 3.1 of Schedule 5 (Governance) to the Services Agreement;

Service Level means a required standard for the Provider's performance of its obligations under this Consultancy Services Order, as described in Schedule 3 (Performance Measurement);

Service Level Default means a failure by the Provider to meet one or more Service Levels;

Services means the consultancy services provided from time to time under the terms of this Consultancy Services Order;

Services Agreement means the All-of-Government services agreement relating to the supply of Tier 1 and 2 consultancy services between the CoE and the Provider;

Subcontractor means any person to whom the Provider has subcontracted any part of its obligations under this Consultancy Services Order or who is a supplier to the

Provider in respect of this Consultancy Services Order and includes the employees and subcontractors of that person and **Subcontract** will be construed accordingly;

Term means the period commencing on the date that this Consultancy Services Order is signed by both parties and ending on the earlier of:

- (a) the date on which the Services are completed in accordance with this Consultancy Services Order; and
- (b) the date on which this Consultancy Services Order is terminated in accordance with its terms; and

Tiers means any of **Tiers 1** and **Tiers 2** for which members of the Panel are appointed and, in respect of the Provider, means the Tier(s) the Provider is appointed to as detailed in the Appointment Letter.

SCHEDULE 2: PRICING

1. Introduction

This Schedule sets out general principles underlying the Charges.

2. Principles

2.1 Participating Agency will only pay for Services ordered

- (a) The Provider will invoice the Participating Agency for the Charges in accordance with clause 8.3 of this Consultancy Services Order.
- (b) The Participating Agency will only pay for Services that it orders in accordance with this Consultancy Services Order.

2.2 No minimum volume

The Participating Agency is not required to meet a minimum aggregate expenditure or volume level for any Services.

2.3 No interest

No interest will be payable on any amount due to the Provider under this Consultancy Services Order.

2.4 Rates

- (a) The Fees are calculated on the Rates, being either the Rates that are recorded on the Provider Database or, subject to paragraph 3, a different Rate as negotiated between the Provider and Participating Agency and recorded in this Consultancy Services Order.
- (a) The Maximum Rates are the maximum amounts payable by the Participating Agency for the Services.

3. Charges

The Charges payable by the Participating Agency for Services must not include any Fees invoiced at Rates higher than the Maximum Rates recorded in the Provider Database.

SCHEDULE 3: PERFORMANCE MEASUREMENT

1. Introduction

This Schedule describes, in relation to the sub-categories for which the Provider has been appointed as a Tier 1 and Tier 2 Provider:

- (a) the Service Levels; and
- (b) how performance against Service Levels will be measured and reported.

2. Service Levels

2.1 Format

Each Service Level is described in Annexure A using the following format:

Parameter	Description
Description	Description of what the Service Level will measure
Purpose	Why it is important to Participating Agencies that the Service Level is met
Calculation	Method for calculating the Service Level
Service Level	The performance standard that the Provider is required to meet or exceed

2.2 Service Levels must be met

- (a) At all times during the Term, the Provider will, in relation to the sub-categories for which the Provider has been appointed as a Tier 1 and Tier 2 Provider, perform its obligations to meet or exceed the Service Levels.
- (b) The Provider acknowledges that any failure to meet the Service Levels may have a significant impact on the Participating Agency.

2.3 Changes to Service Levels

- (a) From time to time during the Term, the CoE and the Provider may negotiate in good faith to add, delete or modify then-existing Service Levels to reflect changes in the Participating Agencies' requirements or objectives.
- (c) Any changes to Service Levels will be effected in accordance with clause 10 of the Services Agreement.

3. Performance measurement

3.2 Failure to meet Service Levels

If the Provider fails to achieve one or more of the Service Levels in any Contract Quarter in respect of this Consultancy Services Order, it will:

- (a) take such steps and do all things necessary, as soon as possible, to correct the failure; and
- (a) notify the Participating Agency of the reasons for the failure and the steps that the Provider is taking to ensure that the failure is not repeated; and
- (b) consider whether the Charges for the Services that are subject to the Service Level Default should be reduced to reflect the lower value of the Services provided.

Annexure A: Service Levels

Parameter	1. Services Fit for Purpose
Description	Were the Services subject to this Consultancy Services Order Fit for Purpose?
Purpose	To ensure Services provided are Fit for Purpose.
Calculation	The Participating Agency will advise whether the Services are Fit for Purpose as part of the Agency Satisfaction Survey.
Service Level	100% of Services delivered to the Participating Agency must be Fit for Purpose.

Parameter	2. Timely Performance of Services
Description	Did the Provider perform the Services subject to this Consultancy Services Order within the timeframe recorded in this Consultancy Service Order (or as amended by agreement from time to time)?
Purpose	To ensure on-time provision of Services requested under a Consultancy Services Order.
Calculation	The Provider is required to report on this metric as part of the reporting requirements in Schedule 6 (Reporting) to the Services Agreement.
Service Level	The Provider must deliver all Services subject to this Consultancy Services Order within the agreed timeframe for delivery recorded in this Consultancy Services Order including any variation to the timeframe recorded in Part D of this Consultancy Services Order.

Parameter	3. Services Performed to budget
Description	Were the Charges for the Services subject to this Consultancy Services Order within the Estimate or Quote recorded in this Consultancy Services Order?
Purpose	To ensure Services requested under a Consultancy Services Order are performed on or under the Provider's Estimate or Quote.
Calculation	The Provider is required to report on this metric as part of the reporting requirements in Schedule 6 (Reporting) to the Services Agreement.
Service Level	The Provider must deliver all Services subject to this Consultancy Services Order within the agreed Estimate or Quote recorded in this Consultancy Services Order including any variation to the Estimate recorded in Part D of this Consultancy Services Order.

AoG Consultancy Services Order (CSO)

Part A – for Participating Agency (client) to complete

The Participating Agency (referred to as the client in Parts A – E of this Consultancy Services Order) will complete this and email the entire form (including all Parts) to the Provider.

Today's Date	26/5/25	CSO or Project name	AM Implementation Plan
Agency	Fire & Emergency New Zealand	Provider	Morrison Low & Associates Limited
Agency contact name & title	Jim Stuart-Black	Provider contact name & title	9(2)(a)
	Chief Strategic Advisor		Director
Nominated Personnel	Jim Stuart-Black	Nominated Personnel	9(2)(a)
Agency email address	Jim.Stuart-Black@fireandemergency.nz invoices@fireandemergency.nz	Provider email address	9(2)(a)@morrisonlow.com
Agency phone #	9(2)(a)	Provider phone #	9(2)(a)
Sub Category	Outcome-based consultancy engagement (asset management)		
GCDO Assurance Sub Panel	no		
Protective Security Services Sub Panel	no		