

Standard Terms and Conditions

1. Length of Contract

- 1.1 This Contract starts on the **17 November 2015**. Services must not be delivered before the **17 November 2015**.
- 1.2 This Contract ends on the End Date (if applicable) unless terminated earlier.

2. The Services - Both Parties' obligations

2.1 Both Parties agree to:

- a. act in good faith and demonstrate honesty, integrity, openness, and accountability in their dealings with each other
- b. discuss matters affecting this Contract or the delivery of the Services, whenever necessary
- c. notify each other immediately of any actual or anticipated issues that could:
 - i. significantly impact on the Services or the cost of the Services
 - ii. receive media attention, and
- d. comply with all applicable laws, regulations and codes of conduct.

Buyer's obligations

2.2 The Buyer must:

- a. provide the Supplier with any information it has reasonably requested to enable the delivery of the Services
- b. make decisions and give approvals reasonably required by the Supplier to enable the delivery of the Services. All decisions and approvals must be given within reasonable timeframes, and
- c. pay the Supplier the Charges for the Services as long as the Supplier has delivered the Services and invoiced the Buyer in accordance with this Contract.

Supplier's obligations

2.3 The Supplier must deliver the Services:

- a. on time and to the required standards or quality
- b. within the amounts agreed as Charges, and
- c. diligently, effectively and to a high professional standard.

2.4 The Supplier must:

- a. ensure that its Personnel have the necessary skills, experience, training and resources to successfully deliver the Services
- b. provide all equipment and resources necessary to deliver the Services.

2.5 The Supplier must use any Approved Personnel identified in the proposal in delivering the Services. The Supplier must obtain the Buyer's prior written approval if it wishes to change or replace any Approved Personnel.

2.6 If the Supplier is at the Buyer's premises, the Supplier must observe the Buyer's policies and procedures including those relating to health and safety, and security requirements.

2.7 The Buyer must tell the Supplier what the relevant policies and procedures are, and either give the Supplier a copy of them, or provide an internet link.

3. Charges and payment

Charges & invoices

3.1 The Charges are the total maximum amount payable by the Buyer to the Supplier for delivery of the Services as detailed in the proposal. Charges include Fees, and where agreed, Disbursements, Expenses and Daily Allowances.

3.2 The Supplier must provide valid Tax Invoices for all Charges on the dates or at the times specified in the proposal.

Payment

3.3 The Buyer must pay each valid Tax Invoice by the 20th day of the month after the month the invoice is dated. The Tax Invoice must be received by the Buyer by the 5th Business Day of the month of payment. The Buyer's obligation to pay is subject to clause 3.4 and clause 11.7.

3.4 If the Buyer disputes an invoice, or any part of an invoice, that complies with clause 3.2, the Buyer will pay the portion of the invoice that is not in dispute. The Buyer may withhold payment of the disputed portion until the dispute is resolved.

4. Contract management

Changing the Contract Manager

4.1 If a Party changes their Contract Manager they must tell the other Party, in writing, the name and contact details of the replacement within 5 Business Days of the change.

5. Records, reports and information

Keeping Records

5.1 Both Parties must keep and maintain full and accurate Records relating to this Contract and delivery of the Services. The Records must be easy to access and kept safe.

5.2 The Records must be accessible to the Buyer during the life of the Contract and for 7 years after the End Date.

Reports

5.3 The Supplier must prepare and give to the Buyer the reports stated in the proposal, by the due dates stated in the proposal.

Information

5.4 The Supplier must give to the Buyer any Records or other information reasonably requested.

5.5 All information provided by the Supplier must be in a format that is usable by the Buyer, and delivered within a reasonable time of the request.

5.6 The Supplier must co-operate with the Buyer to provide information immediately if the information is required by the Buyer to comply with an enquiry or it's statutory, parliamentary or other reporting obligations.

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6. The contractual relationship

Permission to transfer rights or obligations

6.1 The Supplier may transfer any of its rights or obligations under this Contract only if it has the Buyer's prior written approval. The Buyer will not unreasonably withhold its approval.

No partnership, agency or employment

6.2 Nothing in this Contract constitutes a legal relationship between the Parties of partnership, joint venture, agency, or employment. The Supplier is responsible for the liability of its own, and its Personnel's, salary, wages, holiday or redundancy payments and any GST, corporate, personal and withholding taxes, ACC premiums or other levies attributable to the Supplier's business or the engagement of its Personnel.

Neither Party can represent the other

6.3 Neither Party has authority to bind or represent the other Party in any way or for any purpose.

7. Subcontractors

Rules about subcontracting

7.1 The Supplier must not enter into a contract with someone else to deliver any part of the Services without the Buyer's prior written approval. The Supplier must use good procurement practice in letting any subcontract. Good procurement practice means acting with integrity, being open, fair and accountable and achieving value for money.

The Supplier's responsibilities

7.2 The Supplier is responsible for ensuring the suitability of any Subcontractor and the Subcontractor's capability and capacity to deliver that aspect of the Services being subcontracted.

7.3 The Supplier must ensure that:

- a. each Subcontractor is fully aware of the Supplier's obligations under this Contract, and
- b. any subcontract it enters into is on terms that are consistent with this Contract.

7.4 The Supplier continues to be responsible for delivering the Services under this Contract even if any aspects of the Services are subcontracted.

8. Insurance

Supplier to cover own risks

8.1 It is the Supplier's responsibility to ensure its risks of doing business are adequately covered, whether by insurance or otherwise.

8.2 If it is specified in the proposal that the Supplier must have insurance then the Supplier must:

- a. take out and maintain that insurance cover for the duration of this Contract, and
- b. within 10 Business Days of a request from the Buyer provide a copy of the insurance policy and a certificate proving that it is current.

9. Conflicts of Interest

Avoiding Conflicts of Interest

9.1 The Supplier warrants that as at the Start Date, it has no Conflict of Interest in providing the Services or entering into this Contract.

9.2 The Supplier must do its best to avoid situations that may lead to a Conflict of Interest arising.

Obligation to tell the Buyer

9.3 The Supplier must tell the Buyer immediately, and in writing, if any Conflict of Interest arises in relation to the Services or this Contract. If a Conflict of Interest does arise the Parties must discuss, agree and record in writing how it will be managed. Each Party must pay their own costs in relation to managing a Conflict of Interest.

10. Resolving disputes

Steps to resolving disputes

10.1 The Parties agree to use their best endeavours to resolve any dispute or difference that may arise under this Contract. The following process will apply to disputes:

- a. A Party must notify the other if it considers a matter is in dispute.
- b. The Contract Managers will attempt to resolve the dispute through direct negotiation.
- c. If the Contract Managers have not resolved the dispute within 10 Business Days of notification, they will refer it to the Parties' senior managers, or equivalent, for resolution.
- d. If the senior managers, or equivalent, have not resolved the dispute within 10 Business Days of it being referred to them, the Parties shall refer the dispute to mediation or some other form of alternative dispute resolution.

10.2 If a dispute is referred to mediation, the mediation will be conducted:

- a. by a single mediator agreed by the Parties, or if they cannot agree, appointed by the Chair of LEADR New Zealand Inc (Lawyers Engaged in Alternative Dispute Resolution)
- b. on the terms of the LEADR New Zealand Inc. standard mediation agreement, and
- c. at a fee to be agreed by the Parties, or if they cannot agree, at a fee determined by the Chair of LEADR New Zealand Inc.

10.3 Each Party will pay its own costs of mediation or alternative dispute resolution under clause 10.2. Obligations during a dispute

10.4 If there is a dispute, each Party will continue to perform its obligations under this Contract as far as practical given the nature of the dispute.

Taking court action

10.5 Each Party agrees not to start any court action in relation to a dispute until they have complied with the process described in clause 10.1, unless court action is necessary to preserve a Party's rights.

11. Ending this Contract

No fault termination

11.1 The Buyer may terminate this Contract:

- a. at any time by giving 20 Business Days' Notice to the Supplier, or

b. immediately by giving Notice to the Supplier if the termination is due to a change in government policy or a change in appropriation.

Immediate termination

11.2 The Buyer may terminate this Contract immediately, by giving Notice, if the Supplier:

- a. becomes bankrupt or insolvent
- b. has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed
- c. becomes subject to any form of external administration
- d. ceases for any reason to continue in business or to deliver the Services
- e. is unable to deliver the Services for a period of 20 Business Days or more due to an Extraordinary Event
- f. is in breach of any of its obligations under this Contract and the breach cannot be remedied
- g. repeatedly fails to perform or comply with its obligations under this Contract whether those obligations are minor or significant
- h. does something, or fails to do something, that, in the Buyer's opinion, results in damage to the Buyer's reputation or business
- i. has a Conflict of Interest that in the Buyer's opinion is so material as to impact adversely on the delivery of the Services or the Buyer or
- j. provides information to the Buyer that is misleading or inaccurate in any material respect.

If a breach has not been remedied

11.3 If a Party fails to meet the requirements of this Contract (Defaulting Party) and the other Party (Non-defaulting Party) reasonably believes that the failure can be remedied, the Non-defaulting Party must give a Notice (Default Notice) to the Defaulting Party.

11.4 A Default Notice must state:

- a. the nature of the failure
- b. what is required to remedy it, and
- c. the time and date by which it must be remedied.

11.5 The period allowed to remedy the failure must be reasonable given the nature of the failure.

11.6 If the Defaulting Party does not remedy the failure as required by the Default Notice, the Non-defaulting Party may terminate this Contract immediately by giving a further Notice.

11.7 If the Buyer gives a Default Notice to the Supplier the Buyer may also do one or both of the following things:

- a. withhold any payment of Fees due until the failure is remedied as required by the Default Notice
- b. if the failure is not remedied as required by the Default Notice, deduct a reasonable amount from any Fees due to reflect the reduced value of the Services to the Buyer.

Supplier's obligations

11.8 On giving or receiving a Notice of termination, the Supplier must:

- a. stop providing the Services
- b. comply with any conditions contained in the Notice, and
- c. immediately do everything reasonably possible to reduce its losses, costs and expenses arising from the termination of this Contract.

Consequences of termination or expiry of this Contract

11.9 The termination or expiry of this Contract does not affect those rights of each Party which:

- a. accrued prior to the time of termination or End Date, or
- b. relate to any breach or failure to perform an obligation under this Contract that arose prior to the time of termination or End Date.

11.10 If this Contract is terminated the Buyer will only be liable to pay Charges that were due for Services delivered before the effective date of termination.

Handing over the Services

11.11 The Supplier will, within 10 Business Days of receiving Notice of termination, provide all reasonable assistance and cooperation necessary to facilitate a smooth handover of the Services to the Buyer, or any person appointed by the Buyer.

11.12 If the Parties agree the Supplier will provide additional assistance to support any replacement supplier to deliver the Services. This support may be for a period of up to 3 months from the date of termination and at a reasonable fee to be agreed between the Parties, based on the fees and expenses stated in this Contract.

12. Intellectual Property Rights

Ownership of Intellectual Property Rights

12.1 Pre-existing Intellectual Property Rights remain the property of their current owner.

12.2 New Intellectual Property Rights in the Deliverables become the property of the Buyer when they are created.

12.3 The Supplier grants to the Buyer a perpetual, non-exclusive, worldwide and royalty-free licence to use, for any purpose, all Intellectual Property Rights in the Deliverables that are not owned by the Buyer. This licence includes the right to use, copy, modify and distribute the Deliverables.

Supplier indemnity

12.4 The Supplier warrants that it is legally entitled to do the things stated in clause 12 with the Intellectual Property Rights in the Deliverables.

12.5 The Supplier indemnifies the Buyer and all other Public Service agencies in respect of any expenses, damage or liability incurred by the Buyer in connection with any third party claim that the delivery of the Services or Deliverables to the Buyer, or the Buyer's use of them, infringes a third party's rights. This indemnity is not subject to any limitation or cap on liability that may be stated elsewhere in this Contract.

13. Confidential Information

Permission to release Confidential Information

13.1 Each Party undertakes not to use or disclose the other Party's Confidential Information to any person or organisation other than:

- a. to the extent that use or disclosure is necessary for the purposes of providing the Services
- b. if the other Party gives prior written approval to the use or disclosure
- c. if the use or disclosure is required by law (including under the Official Information Act 1982) or parliamentary convention, or
- d. if the information has already become public, other than through a breach of the obligation of confidentiality by one of the Parties.

Obligation to inform staff

13.2 Each Party will ensure that their Personnel:

- a. are aware of the confidentiality obligations in this Contract, and
- b. do not use or disclose any of the other Party's Confidential Information except as allowed by this Contract.

14. Notices

Delivery of Notices

14.1 All Notices to a Party must be delivered by hand or sent by post, courier, fax or e-mail to that Party's address for Notices stated in the Proposal.

14.2 Notices must be signed by the appropriate manager or person having authority to do so.

Receipt of Notices

14.3 A Notice will be considered to be received:

- a. if it is delivered by hand, on the date it is delivered
- b. if it is sent by post within New Zealand, on the 3rd Business Day after the date it was sent
- c. if it is sent by post internationally, on the 7th Business Day after the date it was sent
- d. if it is sent by courier, on the date it is delivered
- e. if it is sent by fax, on the sender receiving a fax machine report that it has been successfully sent, or
- f. if it is sent by e-mail, at the time the e-mail enters the recipient's information system.

14.4 A Notice received after 5pm on a Business Day, or on a day that is not a Business Day, will be considered to be received on the next Business Day.

15. Extraordinary Events

No fault if failure to deliver

15.1 Neither Party will be liable to the other for any failure to perform its obligations under this Contract where the failure is due to an Extraordinary Event.

Obligations of the affected Party

15.2 A Party who wishes to claim suspension of its obligations due to an Extraordinary Event must notify the other Party as soon as reasonably possible. The Notice must state:

- a. the nature of the circumstances giving rise to the Extraordinary Event
- b. the extent of that Party's inability to perform under this Contract
- c. the likely duration of that non-performance, and
- d. what steps are being taken to remedy, or reduce the impact of the Extraordinary Event on the delivery of Services.

Alternative arrangements

15.3 The Buyer may, after consulting with the Supplier, make alternative arrangements to ensure performance of the Services during the period affected by the Extraordinary Event, including engaging alternative suppliers. If the Buyer makes alternative arrangements, it does so at its own cost.

Termination of Contract

15.4 If a Party is unable to perform any obligations under this Contract for 20 Business Days or more due to an Extraordinary Event, the other Party may terminate this Contract immediately by giving Notice.

16. General

Changes to this Contract

16.1 Any change to this Contract, including an extension of length of time of this Contract or a change to the scope of the Services must be in writing and signed by both Parties. A change can be made at any time after this Contract has been signed by both Parties.

This is the entire Contract

16.2 This Contract, including any Variation, records everything agreed between the Parties relating to the Services. It replaces any previous communications, negotiations, arrangements or agreements that the Parties had with each other relating to the Services before this Contract was signed, whether they were verbal or in writing.

Waiver

16.3 If a Party breaches this Contract and the other Party does not immediately enforce its rights resulting from the breach that:

- a. does not mean that the Party in breach is released or excused from its obligation to perform the obligation at the time or in the future, and
- b. does not prevent the other Party from exercising its rights resulting from the breach at a later time.

New Zealand law, currency and time

16.4 This Contract will be governed and interpreted in accordance with the laws of New Zealand. All money is in New Zealand dollars. Dates and times are New Zealand time.

Publication of information about this Contract

16.5 The Supplier may disclose the existence of this Contract but must obtain the Buyer's prior written approval before making reference to the Buyer or this Contract in its publications, public statements, promotional material or promotional activities about this Contract.

16.6 Each Party undertakes not to post on websites, social networking sites or publicly display objectionable or derogatory comments about the Services, this Contract, each other, or any of their Personnel and to ensure that their Personnel do not do so.

Clauses that remain in force

16.7 The clauses that by their nature should remain in force on expiry or termination of this Contract do so, including clauses 5 (Records, reports and information), 8 (Insurance), 10 (Resolving disputes), 11 (Ending this Contract), 12 (Intellectual Property Rights), 13 (Confidential Information), 16 (General) and 17 (Definitions).

17. Definitions

17.1 When used in this Contract the following words in bold have the meaning beside them.

Approved Personnel - A person who is engaged by the Supplier to deliver the Services and is named. The Supplier must use this person in the delivery of the Services and cannot change them without first obtaining the Buyer's written approval.

Business Day - A day when most businesses are open for business in New Zealand. It excludes Saturday, Sunday and public holidays. A Business Day starts at 8.30am and ends at 5pm.

Buyer -The Buyer is the organisation named as **Plant & Food Research**.

Charges - The total amount payable by the Buyer to the Supplier as stated in the proposal. The Supplier Charges include Fees and any Incidentals, Expenses and Daily Allowances stated in the proposal. Charges are payable on successful delivery of the Services provided a valid Tax Invoice has been submitted.

Confidential Information - Information that:

- a. is by its nature confidential
- b. is marked by either Party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence'
- c. is provided by either Party, or a third party 'in confidence'
- d. either Party knows or ought to know is confidential
- e. is commercially sensitive to either Party.

Conflict of Interest - A conflict of interest happens if a person's personal interests or obligations conflict with the responsibilities of their job or position. It means that their independence, objectivity or impartiality can be called into question. While conflicts of interest should be avoided wherever possible, conflicts often happen without anyone being at fault. It is not the emergence of a conflict of interest which is an issue; it is how it is managed that counts.

A conflict of interest may be:

- a. actual: where the conflict currently exists
- b. potential: where the conflict is about to happen, or could happen, or
- c. perceived: where other people may reasonably think that a person is compromised.

Contract - The legal agreement between the Buyer and the Supplier that comprises this document and includes all Proposals, Variations and attachments.

Contract Manager - The person named in the proposal as the Contract Manager who is responsible for managing this Contract on behalf of one of the Parties. The Contract Managers are the day to day contacts for routine communications regarding this Contract and the Services. They are responsible for:

- a. managing the relationship between the Parties
- b. overseeing the effective implementation of this Contract, and
- c. acting as a first point of contact for any issues that arise.

Daily Allowance - An allowance to cover accommodation, meals and incidentals for the Supplier's Personnel if they are required, in order to deliver the Services, to travel overnight away from their normal place of business.

Daily Fee Rate- If the Supplier's fee rate is expressed as a daily rate this is the fee payable for each day spent in the delivery of Services. A day is a minimum of 8 working hours. The Supplier will be paid for travel time, other than normal commuting time.

Deliverables - A tangible output resulting from the delivery of the Services. Specific deliverables are stated in the proposal. A deliverable may be a document, a piece of equipment, goods, information, or data stored by any means including all copies and extracts of the same.

End Date - The date this Contract is due to end as stated in the proposal.

Extraordinary Event -An event that is beyond the reasonable control of the Party immediately affected by the event. An Extraordinary Event does not include any risk or event that the Party claiming could have prevented or overcome by taking reasonable care. Examples include:

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- a. acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, pandemics and any natural disaster
- b. acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilisation, requisition or embargo
- c. acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war
- d. contamination by radio-activity from nuclear substances or germ warfare or any other such hazardous properties.

Expenses - Any actual and reasonable out-of-pocket costs incurred by the Supplier in the delivery of the Services and agreed to.

Fees - The amount payable to the Supplier for the time spent in delivery of the Services calculated on the basis stated in the proposal, excluding any expenses and allowances.

GST - The goods and services tax payable in accordance with the New Zealand Goods and Services Tax Act 1985.

Hourly Fee Rate - If the Supplier's fee rate is expressed as an hourly rate this is the fee payable for each hour spent in the delivery of Services.

Intellectual Property Rights - An intangible asset that consists of human knowledge or ideas. Some examples are patents, copyrights, trademarks, design, software and similar industrial, commercial or artistic property. It can include modifications, upgrades and versions.

Milestone - A phase or stage in the delivery of Services resulting in a measurable output. Payment of fees is usually due on the satisfactory delivery of a milestone.

Notice - A formal or legal communication from one Party to the other. It must be in writing and meet the requirements of clause 14 (Notices).

Personnel - All individuals engaged by either Party in relation to this Contract, or the delivery of Services. Examples include: the owner of the business, its directors, employees, Subcontractors, agents, external consultants, specialists, technical support and co-opted or seconded staff.

Pre-existing Intellectual Property Rights - Intellectual Property Rights developed before the date of this Contract or outside the scope of this Contract. It does not cover later modifications, adaptations or additions.

Proposal - An attachment to this Contract with the title 'Proposal'. All Proposals are part of this Contract.

Records - All information and data necessary for the management of this Contract and the delivery of Services. It includes reports, invoices, letters, e-mails, notes of meetings, photographs and other media recordings. Records can be hard copies or soft copies stored electronically.

Services - All work, tasks and Deliverables stated in the proposal that the Supplier must perform and deliver under this Contract.

Start Date - The date when this Contract starts. Services must not be delivered before the Start Date.

Subcontractor - A person, business, company or organisation contracted by the Supplier to deliver or perform part of the Supplier's obligations under this Contract.

Supplier Thompson & Clark Investigations Ltd. It includes its Personnel, successors, and permitted assignees.

Tax Invoice - The Supplier must invoice the Buyer for the Services. The invoice must be a valid Tax Invoice which means it must:

- a. clearly show all GST due
- b. be in New Zealand currency
- c. be clearly marked 'Tax Invoice'

- d. include the Supplier's name and GST number, if the Supplier has one
- e. include the Buyer's name and address and marked for the attention of the Buyer's Contract Manager, or such other person stated in the proposal
- f. record the date the invoice was issued, and
- g. name this Contract and a description of the Services supplied including the amount of time spent in the delivery of the Services if payment is based on an Hourly or Daily Fee Rate.

The invoice must also include the following details:

- a. include the Buyer's purchase order number if there is one
- b. correctly calculate the Charges due, and
- c. be supported by GST receipts if Expenses are claimed and any other verifying documentation reasonably requested by the Buyer.

Variation - A written agreement signed by both Parties that changes any aspect of this Contract.

By affixing your signature below, both parties agree to the above terms and conditions.

SUPPLIER to sign;

For: **Thompson & Clark Investigations Ltd**

Name: 

Title: Director

Signature:



Date 17 November 2015

BUYER to sign;

For: **Plant & Food Research**

Name:

Title:

Signature:

Date: