



# SERVICES AGREEMENT FOR CONTRIBUTION TO A REPORT ON THE IMPACT OF THE 'FUTURE OF WORK' ON MĀORI

**DATE:** 2019

**BETWEEN** HER MAJESTY THE QUEEN in right of New Zealand acting by and through Jarred Mair, Deputy Chief Executive, Strategic Policy and Programmes, Ministry of Business, Innovation and Employment (Ministry)

**AND** NZO Ltd acting as trustee to McKinsey & Company Unit Trust of Level 13, 188 Quay Street, Auckland 1010, NZ and its affiliates (Service Provider)

## AGREEMENT

The Ministry engages the Service Provider, and the Service Provider accepts engagement by the Ministry, to provide the Services and Deliverables on the terms and conditions set out in Schedule 1 (Details) and Schedule 2 (Terms and Conditions).

## SIGNED

Signed for and on behalf of **HER MAJESTY THE QUEEN** )  
in right of New Zealand by Jarred Mair, Deputy Chief- )  
Executive, Strategic Policy and Programmes, Ministry of )  
Business, Innovation and Employment: )

Privacy of natural persons

Date: 24/6/19

Signed for and on behalf of **NZO Ltd acting as trustee to** )  
**McKinsey & Company Unit Trust** on behalf of itself and )  
its affiliates by:

Privacy of natural persons

Signature

Privacy of natural persons

Print Full Name

**Senior Partner**

Print Title

Date: **21 June 2019**

PROACTIVELY RELEASED

# SCHEDULE 1

## DETAILS

### 1. **Context and Purpose** (clause 2.2, Schedule 2)

NZO Ltd acting as trustee to McKinsey & Company Unit Trust (McKinsey & Company) has undertaken significant analysis on the impact of the changing nature of work.

Its analysis for New Zealand – *A Future that Works: Harnessing automation for a more productive and skilled New Zealand* was provided to Government on 2 May. One of the findings of the report was that Māori and youth are especially vulnerable to potential impacts of automation and recommended Government commission a similar report focusing on Māori to inform targeted recommendations.

The funding being provided under this Service Agreement is a contribution to the development of such a report. It takes advantage of the data sets already gathered, and analysis undertaken by McKinsey & Company.

### 2. **Services** (clause 2, Schedule 2)

The following services:

Analysis and preparation of a final report on the impact of 'the future of work' on Māori.

### 3. **Deliverables** (clause 2, Schedule 2)

The following deliverables:

Final report on the impact of 'the future of work' on the Māori community. This report will provide:

- A detailed fact-base on how automation and the changing nature of work is expected to impact Māori workers.
- A set of recommended interventions responding to the opportunities and challenges that automation, and the changing nature of work, might pose for Māori.
- Such information that the Ministry reasonably requires in order to be able to verify the subject matter of the report, including but not limited to a description of any relevant assumptions, methodologies and data sources that were used in connection with the report.

Further information on the project is at Annex A.

### 4. **Ministry inputs** (clause 3, Schedule 2)

The following inputs:

Financial contribution of \$200,000 to McKinsey & Company.

### 5. **Standards** (clause 2.1.a, Schedule 2)

None specified.

**6. Timeframes and Milestones** (clause 1.1, 2.1.a, Schedule 2)

Timeframes for the report are outlined at Annex B.

100% of the contribution to be paid on commencement of the project. The project will commence once the Steering Group have met (19 June 2019).

The Steering Group will comprise:

- Two members of the Prime Ministers Business Advisory Council as follows:
  - Rachel Taulelei – CEO of Kono
  - Bailey Mackey – CEO of Pango Productions
- Jo Hughes, Deputy Chief Executive, Strategic Policy and Programmes, Ministry of Business, Innovation and Employment
- Dr. Eruera Prendegast-Tarena – Executive Director of Tokona Te Raki Māori Futures Collective

The Steering Group will be provided drafts at regular intervals (at least once a month) for their feedback and direction over the life of the project.

**7. Charges** (clause 4.1, Schedule 2)

Fixed Charge of \$200,000 plus GST (if any).

**8. Invoice Terms** (clause 4.2, Schedule 2)

Invoice on finalisation of the terms of reference and scope of the report, as approved by the Steering Group (100% of payment).

**9. Expenses** (clause 4.6, Schedule 2)

No reimbursement of expenses.

**10. Commencement Date** (clause 1.1, 5.1, Schedule 2)

The service will commence on the date of signoff of the project plan, scope of report, and Terms of Reference by the Steering Group providing oversight of this report.

**11. Completion Date** (clause 1.1, 5.1, Schedule 2)

Within four months of commencement of the service.

**12. Reporting Requirements** (clause 9.1, Schedule 2)

McKinsey & Company will report to the Steering Group at each of their meetings over the life of the project.

**13. Service Provider's and/or Third Parties' Pre-existing Intellectual Property Rights** (clause 11.4, Schedule 2)

McKinsey & Company retain the intellectual property rights of the analysis of the report *A Future that Works: Harnessing automation for a more productive and skilled New Zealand* (the **Initial Report**) including all concepts, know-how, tools, questionnaires and assessments, modules, courses, frameworks, software, algorithms, databases, content models, and industry perspectives developed or enhanced outside of or in connection with the preparation of the report. The report covered by this service agreement draws on this analysis. McKinsey & Company acknowledges that the Initial Report has been made available to the Ministry and various other parties and is publicly available on the Prime Minister's Business Advisory Council's website.

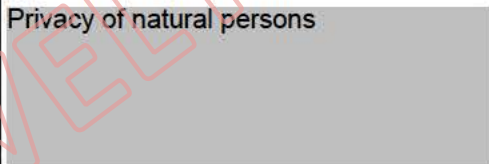
The Parties acknowledge that Iwi shall retain the intellectual property rights in any information that they provide to the Service Provider in relation to this Agreement (unless otherwise agreed by those parties).

**16. Exit Services** (clause 6.6, Schedule 2)

a. The following services:

Delivery of report drafts, and associated and supporting analytical material prepared at the point of exit of services.

**17. Address for Notices** (clause 18.5, Schedule 2)

<b>Ministry:</b>	<b>Service Provider:</b>
Ministry of Business, Innovation and Employment 15 Stout Street PO Box 1473 WELLINGTON	NZO Ltd acting as trustee to McKinsey & Company Unit Trust Level 13 188 Quay Street AUCKLAND 1010 NZ
Email Address:  kate.mcrae@mbie.govt.nz  Attention: Kate McRae	Privacy of natural persons 



## SCHEDULE 2

# SERVICES AGREEMENT STANDARD TERMS AND CONDITIONS

### 1. Definitions

1.1 In this Agreement, the following terms have the stated meanings:

**Agreement** means this agreement, including Schedule 1 and this Schedule 2;

**Business Day** means any day not being a Saturday or Sunday or public holiday within the meaning of section 44 of the Holidays Act 2003;

**Charges** means the charges set out in the Details;

**Commencement Date** means the commencement date set out in the Details or, if no commencement date is set out, the date of this Agreement;

**Completion Date** means the completion date set out in the Details;

**Confidential Information** means the terms and conditions of this Agreement, the Deliverables and all information and data (in any form) produced or acquired by the Service Provider or its Personnel in connection with this Agreement or the performance of the Services, and the Ministry Data;

**Deliverables** means the deliverables (if any) described in the Details and any other documents, reports or other materials produced by the Service Provider in the course of providing the Services;

**Details** means Schedule 1;

**Exit Services** has the meaning given in clause 6.6;

**GST** means goods and services tax within the meaning of the Goods and Services Tax Act 1985;

**Intellectual Property Rights** includes copyright and all rights conferred under statute, common law or equity in relation to inventions (including patents), registered or unregistered trade marks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity, and **Intellectual Property** has a corresponding meaning;

**Key Personnel** has the meaning given in clause 7.1;

**Milestone** means an event or task under this Agreement to be performed at or by a particular date and time, as set out in the Details (if any);

**Ministry Data** means all information and data (in any form) belonging to the Ministry that is acquired by the Service Provider or its Personnel in connection with this Agreement or the performance of the Services and includes the Ministry's information systems and processing facilities, all data relating to the Ministry's operations and clients and all data or business knowledge about the Ministry, its Personnel, customers and suppliers;

**Parties** means the Ministry and the Service Provider,

including their permitted assigns;

**Personnel** means all employees, contractors, agents and officers and includes, to avoid doubt, Key Personnel (if any); and

**Services** means the services described in the Details together with all other work to be performed by the Service Provider to supply the Deliverables and perform its other obligations under this Agreement.

1.2 References to clauses and Schedules are to clauses and Schedules of this Agreement and references to persons include bodies corporate, unincorporated associations or partnerships.

1.3 The headings in this Agreement are for convenience only and have no legal effect.

1.4 The singular includes the plural and vice versa.

1.5 "Including" and similar words do not imply any limitation.

1.6 References to a statute include references to that statute as amended or replaced from time to time.

1.7 References to "NZD" or "\$" are to New Zealand currency, except where expressly stated otherwise.

1.8 The rule of construction known as *contra proferentem* does not apply to the interpretation of this Agreement.

1.9 If there is any conflict of meaning between the Details and Schedule 2, Schedule 2 will prevail, except where the Details expressly state otherwise.

### 2. Services and Deliverables

2.1 The Service Provider must provide the Services and the Deliverables promptly, efficiently, with reasonable skill and care and using suitably skilled, experienced and qualified Personnel, in accordance with:

- this Agreement, including the standards and Milestones and other timeframes (if any) set out in the Details (and if no timeframe is set out in the Details, within a timeframe that is reasonable in the circumstances);
- the best currently accepted principles and practices applicable to the Services and the Deliverables;
- all applicable laws, regulations, rules and professional codes of conduct or practice, including the Employment Relations Act 2000, the Immigration Act 2009 and the Health and Safety at Work Act 2015;
- the Ministry's security and health and safety policies and requirements where the Service Provider is providing any of the Services and Deliverables on the Ministry's premises; and
- the reasonable directions of the Ministry.

2.2 The Service Provider must ensure that the Services and Deliverables are fit for the purpose set out in the Details

(if any).

- 2.3 The Service Provider must obtain all third party consents, licences, authorisations and approvals required for it to provide the Services and Deliverables under this Agreement.
- 2.4 If the Services or Deliverables are not, in the Ministry's reasonable opinion, provided in accordance with this Agreement (including in accordance with any Milestone due dates set out in the Details) or are not otherwise in accordance with the Ministry's requirements, the Ministry may (without limiting its other remedies):
- require the Service Provider to remedy the deficiency immediately, at the Service Provider's cost;
  - withhold any payment due to the Service Provider until the deficiency is remedied to the Ministry's satisfaction; and/or
  - deduct a reasonable amount from any payment due to the Service Provider to reflect the deficiency.
- 2.5 The Service Provider must provide the Deliverables in such format, and on such medium, as is mutually agreed between the Parties..
- 2.6 The Service Provider acknowledges that the Ministry may engage other suppliers to provide services that relate to or are used by the Ministry in conjunction with the Services and Deliverables. The Service Provider agrees to co-operate fully and collaborate in good faith with the Ministry and any external suppliers in a timely manner, including:
- providing information reasonably required to ensure that the Ministry and any external supplier is able to perform their relevant responsibilities and functions; and
  - to the extent that it is within the Service Provider's control, achieving efficiency and reliability of services and deliverables provided to the Ministry and to ensure efficient change control processes across all suppliers.
- 3. Ministry inputs**
- The Ministry must use reasonable efforts to provide the inputs set out in the Details (if any) to the Service Provider in accordance with any timeframes set out in the Details (and if no timeframe is set out in the Details, within a timeframe that is reasonable in the circumstances).
- 4. Charges and invoicing**
- 4.1 Subject to clauses 2.4, 4.3, 4.4 and 4.5, the Ministry must pay the Charges at the rates set out in the Details for the provision of the Services and the Deliverables. The Charges:
- are the total amount payable by the Ministry for the provision of Services and Deliverables under this Agreement; and
  - must not exceed any cap on the Charges set out in the Details.
- 4.2 The Service Provider must provide a fully itemised valid GST invoice to the Ministry for all Charges due in

the manner set out in the Details. The invoice must:

- be sent directly to the Ministry in PDF format via email to [mbie.invoices@mbie.govt.nz](mailto:mbie.invoices@mbie.govt.nz);
- Be copied to the relevant MBIE manager;
- include details of the Services and Deliverables to which the invoice relates;
- include sufficient information reasonably required to enable the Ministry to validate the claim for payment including:
  - reference to this Agreement (under which the invoice is issued);
  - the Charges for and description of each Service and Deliverable being invoiced;
  - in respect of any Charges on a time and rate basis, the relevant times and rates on which the Charge is based;
  - full details of any approved expenses incurred, together with copies of invoices for such items which have a value greater than \$1,000; and
- be clearly and legibly marked to the attention of the full name of the person ordering the Services and Deliverables.

4.3 The Ministry is not obliged to make any payment under this Agreement until an invoice which complies with clause 4.2 has been received by it from the Service Provider.

Payments will be made to the credit of a bank account to be designated in writing by the Service Provider.

4.4 The Charges are inclusive of all taxation except GST. The Ministry shall be entitled to deduct any withholding tax required to be withheld by law from payments made to the Service Provider and shall not be required to gross-up or increase any such payments in respect of such amounts withheld.

4.3 Without limiting the Ministry's rights under clause 2.4, the Ministry may (acting reasonably) withhold any disputed amount until the dispute is resolved. The Ministry must pay any undisputed portion of the sum set out in each invoice by the 20th of the month following the month of receipt of the invoice. The Ministry must reimburse the Service Provider for expenses incurred by the Service Provider in providing the Services and Deliverables only if, and to the extent, specified in the Details.

## **5. Term**

5.1 Subject to clauses 6.1, 6.2 and 17.2, this Agreement will commence on the Commencement Date and will continue until the later of the Completion Date set out in the Details or completion of the Services and provision of the Deliverables in accordance with this Agreement.

5.2 Services and Deliverables provided prior to the date of this Agreement are deemed to have been provided on the terms of this Agreement.

## **6. Termination**

6.1 The Ministry may terminate this Agreement at any time by giving 10 Business Days' notice to the Service Provider.

6.2 The Ministry may terminate this Agreement immediately by giving notice to the Service Provider, if the Service Provider:

- a. is in breach of any of its obligations under this Agreement and that breach is not capable of being remedied;
- b. fails to remedy any breach of its obligations under this Agreement within 5 Business Days of receipt of notice of the breach from the Ministry;
- c. does or omits to do something, or any matter concerning the Service Provider comes to the Ministry's attention, which in the Ministry's opinion may cause damage to the business or reputation of the Ministry or of the Government of New Zealand;
- d. has given or gives any information to the Ministry which is misleading or inaccurate in any material respect; or
- e. becomes, or in the Ministry's reasonable opinion, is likely to become insolvent, bankrupt or subject to any form of insolvency action or administration.

6.3 Termination or expiry of this Agreement does not affect the rights and obligations of the Parties accrued up to and including the date of termination.

6.4 Within 10 Business Days of termination of this Agreement:

- a. where that termination was under clause 6.1, the Ministry must pay the Service Provider for Services and Deliverables provided in accordance with this Agreement up to the date of termination (provided the Service Provider has provided an invoice which complies with clause 4.2); and
- b. the Service Provider must refund to the Ministry all amounts paid by the Ministry for Services or Deliverables not provided. If the Ministry has paid a fixed Charge for Services or Deliverables, the Service Provider must refund to the Ministry a portion of the fixed Charge which, in the Ministry's reasonable opinion, relates to the Services or Deliverables not provided.

6.5 Except to the extent the Service Provider (a) is legally required to retain any Confidential Information, or (b) the information is in electronic form such that it cannot be returned or destroyed, and the Service Provider must, within 5 Business Days of termination or expiry of this Agreement:

- a. return to the Ministry:
  - i. all Confidential Information in the Service Provider's possession or control; and
  - ii. all other property of the Ministry relating in any way to this Agreement (including documents, data, work-in-progress and materials in which the Intellectual Property Rights of the Ministry are vested and back-up copies) which is in the possession or control of the Service Provider or its Personnel; and/or
- b. if requested by the Ministry, destroy or erase all copies in any form of the Confidential Information or Ministry Intellectual Property and

any other documents prepared by or for the Service Provider which contain or reflect any Confidential Information or Ministry Intellectual Property.

Notwithstanding the above, the Service Provider may retain, subject to the terms of this Agreement and for professional archival purposes only, a copy of any proposal, presentation, progress review, report or other document furnished to the Ministry by the Service Provider together with any working papers necessary to support its conclusions or recommendations

6.6 The Service Provider must, if requested by the Ministry, provide the exit services set out in the Details, if any (Exit Services), before or from the expiry or termination of this Agreement.

6.7 The Ministry must, except where the Ministry has terminated under clause 6.2, pay for the Exit Services at the relevant rates set out in the Details, up to the total maximum cap set out in the Details for the Exit Services. To avoid doubt, the terms of this Agreement continue to apply to the Exit Services, with all necessary modification.

6.8 The provisions of this Agreement which, by their nature, are intended to survive termination or expiry of this Agreement, including those provisions relating to remedying deficiencies in the Services and Deliverables (clause 2.4), termination (clause 6) reporting requirements (clause 9.2), intellectual property (clause 11), confidentiality (clause 12), and liability and insurance (clause 14) will continue after the expiry or termination of this Agreement.

## 7. Key Personnel

7.1 The Service Provider must ensure that the key Personnel set out in the Details (if any) (Key Personnel) provide the Services and Deliverables.

7.2 If, at any time during the term of this Agreement, any member of the Key Personnel is not available to provide the Services and Deliverables, the Service Provider must:

- a. promptly notify the Ministry of the non-availability of any Key Personnel; and
- b. consult with the Ministry when appointing a replacement.

7.3 Where the Service Provider appoints a new person to a Key Personnel role, it must ensure that a full and proper handover occurs between each appointee to a Key Personnel role.

7.4 If the Service Provider's Personnel require access to the Ministry's facilities and IT systems to provide the Services the Service Provider must provide the following evidence of the suitability of the relevant Personnel:

- a. Ministry of Justice criminal record check (MoJ Check);
- b. clearance to work in New Zealand; and
- c. credential and reference check from at least two references (the Evidence).

The Evidence must not be more than 6 months old.

Apart from the MoJ Check, the Service Provider must provide the Evidence when the Personnel are proposed to provide the Services.

The Service Provider must provide the MoJ Check to the



Ministry as soon as possible and no later than 20 business days after the Contract has commenced.

On request by the Ministry, the Service Provider must provide additional evidence of the suitability of the Personnel performing the Services such as a credit check.

7.5 For other Personnel providing the Services, the Service Provider, on request by the Ministry, must provide evidence of the suitability of the Personnel performing the Services. This evidence is to be in the form of the following background checks which are not to be more than 6 months old:

- a. Ministry of Justice criminal record check;
- b. clearance to work in New Zealand;
- c. credential and reference check; and
- d. credit check.

7.6 The Service Provider will immediately notify the Ministry of any change it is aware of to the suitability of the Personnel during the term of this Contract.

#### 8. Good Employer

The Service Provider must ensure that it operates policies and systems that promote fair and proper treatment of employees in all aspects of their employment.

#### 9. Reporting Requirements

9.1 The Service Provider must report on the progress of the Services and Deliverables (including, if requested, providing copies of current versions of the Deliverables) to the Ministry:

- a. as set out in the Details; and
- b. in any format and on any medium reasonably required by the Ministry.

9.2 The Service Provider must:

- a. respond promptly, accurately and adequately to any reasonable request for information made by the Ministry in relation to this Agreement, including for the purpose of enabling the Ministry to comply:
  - i. with its obligations under the Official Information Act 1982 and the Privacy Act 1993 or any other applicable law;
  - ii. with its obligations to relevant Ministers of the Crown and Select Committees; and
  - iii. otherwise for the purpose of enabling the Ministry to comply with its internal and external reporting and accountability obligations; and
- b. ensure that all information provided to the Ministry contains sufficient content and detail to enable the Ministry to make use of the information for the purpose for which it was requested.

#### 10. Warranty

Each Party warrants to the other Party that it has full power and authority to enter into and perform its obligations under this Agreement which, when

executed, will constitute binding obligations on it in accordance with this Agreement's terms.

#### 11. Intellectual Property

11.1 Upon payment in full of the Service Provider's fees, the Ministry will own all reports and other deliverables (including the Deliverables) prepared for and furnished to the Ministry by the Service Provider in connection with this Agreement, save that the Service Provider retains ownership of all concepts, know-how, tools, questionnaires and assessments, modules, courses, frameworks, software, algorithms, databases, content models, and industry perspectives developed or enhanced outside of or in connection with the Services (the Service Provider's Tools), it being understood that none of the Service Provider's Tools will contain the Ministry's Confidential Information. To the extent the Deliverables include any embedded Service Provider Tools, the Service Provider grants the Ministry a non-exclusive, non-transferable, non-sublicenseable, worldwide, royalty free license to use and copy the Service Provider Tools solely as part of the Deliverables and subject to the limitations here on disclosure of Service Provider materials and publicity. The Ministry agrees that, without the Service Provider's written permission, it will not, or permit any third party to (a) access, copy or reverse engineer any Service Provider Tool or Deliverable, or (b) remove or circumvent security or technological safeguards, including notices, digital protection mechanisms, metadata, watermarks or disclaimers provided with any Service Provider Tool or Deliverable.

11.2 The following Intellectual Property (including any modification, enhancement or derivative work of that Intellectual Property) remains the property of the current owner, regardless of its use in the Deliverables:

- a. Intellectual Property that existed prior to the date of this Agreement; and
- b. Intellectual Property that was developed independently of this Agreement.

To avoid doubt, all Intellectual Property Rights in the Ministry Data (including in any modification, enhancement or derivative work of that Ministry Data) remain the property of the Ministry, regardless of its use in any Deliverables.

11.3 The Service Provider must not develop, create or use in the course of performing this Agreement any Deliverable or other material which infringes or is likely to infringe the Intellectual Property Rights of any person.

11.4 Subject to Clause 11.1, the Service Provider must not incorporate any Intellectual Property owned by it or a third party into the Confidential Information or any Intellectual Property created or developed in providing the Services and Deliverables unless:

- a. the Service Provider's (and any third party's) Intellectual Property Rights are listed in the Details; and
- b. the Service Provider grants or obtains for the Ministry an irrevocable, transferable, perpetual, royalty-free licence to use, modify, licence, market and disseminate the relevant Intellectual Property for the purpose set out in the Details or, if there is no

purpose set out, for the Ministry's general purposes, including any purpose reasonably contemplated when the Services and Deliverables were provided.

- 11.5 The Service Provider must indemnify and keep indemnified the Ministry, up to a multiple of three times the fees paid by the Ministry to the Service Provider for the Services, from and against all claims, proceedings, damages, liability, loss, costs or expense (including legal costs on a solicitor own client basis) in connection with the infringement or alleged infringement of any third party's Intellectual Property Rights (IP Claim) arising out of or in connection with the Services or the Deliverables or the supply to or the possession or use by the Ministry (or its Personnel) of the Deliverables as contemplated by this Agreement.
- 11.6 The Service Provider is not required to indemnify the Ministry under clause 11.5 to the extent that an IP Claim arises as a result of:
- the Ministry's breach of this Agreement; or
  - modification or alteration of the Deliverables by a person other than the Service Provider (but only to the extent of the modification or alteration).
- 11.7 Without limiting the indemnity in clause 11.5 or any other rights of the Ministry under this Agreement, if at any time an IP Claim is made, or in the Service Provider's reasonable opinion is likely to be made, then in defence or settlement of the IP Claim, at the Ministry's request the Service Provider must (at the Service Provider's cost and option):
- obtain for the Ministry the right to continue using the items which are the subject of the IP Claim; or
  - modify, replace or re-perform the items which are the subject of the IP Claim so they become non-infringing, provided that this does not detract from the performance of the Services or Deliverables.
- 11.8 Without limiting the Ministry's other rights and remedies, if the remedies in clause 11.7 are exhausted without remedying or settling, to the Ministry's satisfaction, the IP Claim, the Ministry may terminate this Agreement for breach under clause 6.2a.

## 12. Confidentiality

- 12.1 The Service Provider must, unless it has the prior written consent of the Ministry:
- keep the Confidential Information confidential at all times;
  - not disclose any Confidential Information to any person other than its Personnel to whom disclosure is necessary for the purposes of providing the Services and Deliverables;
  - ensure that it has in place adequate security measures to safeguard the Confidential Information from access or use by unauthorised persons, and will protect Confidential Information in accordance with the McKinsey Data Protection Protocols available at <https://solutions.mckinsey.com.msdata-protocols.pdf> (the Protocols). To bring the best of the Service Provider's global resources to serve

the Ministry, the Ministry agrees that the Service Provider may transfer Confidential Information to geographies other than those in which it was collected or received, including to the Service Provider's affiliates and sub-processors that comprise or support the Service Provider's infrastructure and maintenance functions as set forth in the Protocols, to facilitate any activities authorised by the Client, provided that at all times Confidential Information will be treated as confidential and protected in accordance with the terms of this Agreement (Affiliates means entities that directly or indirectly control, or are controlled by, or are under the same control as, such party or any other entities affiliated with such party or entities).

- ensure that any Personnel to whom it discloses Confidential Information are aware of, and comply with, the provisions of this clause 12.
- 12.2 The obligations of confidentiality in clause 12.1 do not apply to any disclosure of Confidential Information:
- required by law;
  - to the extent that such disclosure is necessary for the purposes of providing the Services and Deliverables or exercising rights under this Agreement; or
  - where such information has become public other than through a breach of the obligation of confidentiality in this clause 12 by the Service Provider, or its Personnel, or was disclosed to the Service Provider on a non-confidential basis by a third party who is not in breach of any obligation of confidentiality to the Ministry.
  - where such information is already in the possession of the Service Provider or known to the Service Provider prior to receipt from the Ministry;
  - where such information is independently acquired or developed by the Service Provider without violating any of its obligations under this Agreement; or
  - where such information was rightfully disclosed to the Service Provider by a third party without restriction.
- 12.3 The Service Provider must not, without the Ministry's prior written approval:
- make any public statement in relation to this Agreement or the provision of the Services or Deliverables to the Ministry, including making press releases or naming the Ministry on any customer list; or
  - offer any customer reference in relation to this Agreement.
- ## 13. Conflict of Interest
- 13.1 The Service Provider must maintain a high standard of honesty and integrity at all times in the performance of this Agreement and must avoid conflicts of interest. Conflicts of interest include:
- situations which could give rise to a conflict of interest or compromise the Service Provider's or the Ministry's integrity; or

- b. any financial or other interest or undertaking that could interfere with or compromise the performance of the Service Provider's obligations under this Agreement, or the integrity or standing of the Ministry.
- 13.2 Unless otherwise stated in the Details, the Service Provider warrants that it has no conflicts of interest at the date of this Agreement.
- 13.3 The Service Provider must advise the Ministry in writing of any actual or potential conflict of interest that might arise in the performance of the Services and the development of the Deliverables as soon as the Service Provider becomes aware of it, and must assist the Ministry to address or avoid or mitigate that conflict of interest, it being understood that it is the Service Provider's long standing policy to serve competing clients and clients with potentially conflicting interests as well as counter-parties in merger, acquisition and alliance opportunities, and to do so without compromising the Service Provider's professional responsibility to maintain the confidentiality of client information. Consistent with such practice and the Service Provider's confidentiality obligations to its other clients, the Service Provider is not able to advise or consult with the Ministry about the Service Provider's serving of the Ministry's competitors or other parties. Nothing in this section shall operate to limit or reduce the Service Provider's obligations with respect to the Ministry's Confidential Information, including the confidentiality and non disclosure obligations
- 14. Liability and Insurance**
- 14.1 The Services shall not be deemed investment, legal, tax, accounting or other regulated advice. The Service Provider does not supplant the Ministry's management or other decision making bodies and does not guarantee results. The Ministry remains solely responsible for its decisions, actions, use of the Deliverables and compliance with applicable laws, rules and regulations.
- 14.2 Except for the Ministry's liability to pay the Charges, neither Party is liable for any loss of profit, revenue, data, savings, business and/or goodwill or any other indirect, consequential or incidental loss or damage arising under or in connection with this Agreement, regardless of whether the other Party had been advised of the possibility of such loss or damage.
- 14.3 Clause 14.4 does not apply to limit the Service Provider's liability:
- under the Intellectual Property indemnity in clause 11.5;
  - in connection with a breach of clause 12; or
  - under clause 14.6.
- 14.4 Subject to clause 14.3 above, in no event shall the Service Provider's liability to the Ministry in connection with the Services relating to this Agreement exceed the fees received by the Service Provider from the Ministry in connection with this Agreement.
- 14.5 To the maximum extent permitted by law, the maximum liability of the Ministry under or in connection with this Agreement whether arising in contract, tort (including negligence) or otherwise is the total amount which would be payable under this Agreement if all Services and Deliverables had been provided in accordance with this Agreement.
- 14.6 The Service Provider indemnifies the Ministry against any claim, liability, loss or expense, including legal fees on a solicitor own client basis (together, loss), brought or threatened against, or incurred by the Ministry, arising from fraud or wilful misconduct by the Service Provider, or its Personnel or personal injury or death as a result of, or in connection with, an act or omission of the Service Provider or its Personnel in breach of this Agreement, except to the extent that loss arises out of an act or omission by the Ministry.
- 14.7 The Service Provider must:
- at its own expense, ensure that it has in place for the term of this Agreement:
    - adequate insurance to cover standard commercial risks and the indemnities under this Agreement; and
    - other insurance reasonably required by the Ministry; and
  - upon request by the Ministry, provide the Ministry with evidence of its compliance with this clause.
- 15. Independent Contractor**
- 15.1 The Service Provider is engaged to provide the Services and Deliverables as an independent contractor. The Service Provider (including its Personnel, if any) is not an employee of the Ministry or of the Chief Executive of the Ministry. At no time will the Ministry have any liability to pay to the Service Provider:
- holiday pay, sick pay or any other payment under the Holidays Act 2003; or
  - redundancy or any other form of severance pay; or
  - taxes or levies, including any levies under the Accident Compensation Act 2001.
- 15.2 The Service Provider indemnifies the Ministry against any taxes, levies, penalties, damages or compensation which the Ministry may be liable to deduct, withhold or pay by reason of the Service Provider, or any person used by the Service Provider to provide the Services or Deliverables, being held to be an employee of the Ministry or of the Chief Executive of the Ministry.
- 16. Dispute Resolution**
- 16.1 The Parties will attempt to resolve any dispute or difference that may arise under or in connection with this Agreement amicably and in good faith, referring the dispute to the Parties' senior managers for resolution if necessary.
- 16.2 If the Parties' senior managers are unable to resolve the dispute within 10 Business Days of it being referred to them, the Parties will refer the dispute to mediation or another form of alternative dispute resolution agreed between the Parties.
- 16.3 If a dispute is referred to mediation, the mediation will be conducted by a single mediator appointed by the

Parties (or if they cannot agree, appointed by the Chair of the Resolution Institute) and on the terms of the Resolution Institute standard mediation agreement (unless the Parties agree otherwise). The Parties will pay their own costs relating to any mediation or other form of alternative dispute resolution (unless they agree otherwise).

16.4 The Parties must continue to perform their obligations under this Agreement as far as possible as if no dispute had arisen pending final resolution of the dispute.

16.5 Nothing in this clause 16 precludes either Party from taking immediate steps to seek urgent relief before a New Zealand court.

## 17. Force Majeure

17.1 Neither Party will be liable to the other for any failure to perform its obligations under this Agreement by reason of any cause or circumstance beyond the Party's reasonable control including acts of God, communication line failures, power failures, riots, strikes, lock-outs, fires, war, flood, earthquake or other disaster, or governmental action after the date of this Agreement (**Force Majeure Event**). To avoid doubt, a Party cannot rely on this clause 17.1 to the extent that it could have avoided the effects of the Force Majeure Event by taking reasonable steps. The Party affected must:

- a. notify the other Party as soon as practicable after the Force Majeure Event occurs and provide full information concerning the Force Majeure Event including an estimate of the time likely to be required to overcome it;
- b. use its best endeavours to overcome the Force Majeure Event and minimise the loss to the other Party; and
- c. continue to perform its obligations as far as practicable.

17.2 If by reason of a Force Majeure Event a Party has been unable to perform any material obligation under this Agreement for a period of one month, the other Party may, after consulting with the Party affected by the Force Majeure Event, immediately terminate this Agreement by giving notice to that Party.

## 18. General

18.1 A waiver by either Party of any rights arising from any breach of any term of this Agreement will not be a continuing waiver of any other rights arising from any other breaches of the same or other terms or conditions of this Agreement. No failure or delay on the part of either Party in the exercise of any right or remedy in this Agreement will operate as a waiver. No single or partial exercise of any such right or remedy will preclude any other or further exercise of that or any other right or remedy.

18.2 Assignment:

- a. The rights and obligations of the Service Provider under this Agreement are personal to the Service Provider and may only be assigned, delegated or subcontracted with the prior approval in writing of the Ministry (which may

not be unreasonably withheld or delayed). The Service Provider remains liable for performance of its obligations under this Agreement despite any approved assignment, subcontracting or delegation.

- b. If the Service Provider is a company, any transfer of shares, or any other arrangement affecting, the Service Provider or its holding company which results in a change in the effective control of the Service Provider is deemed to be an assignment subject to clause 18.2.a.

18.3 This Agreement may only be varied by agreement in writing signed by the Parties.

18.4 If any part or provision of this Agreement is invalid, unenforceable or in conflict with the law, the invalid or unenforceable part or provision will be replaced with a provision which, as far as possible, accomplishes the original purpose of the part or provision. The remainder of the Agreement will be binding on the Parties.

18.5 Any notice to be given under this Agreement must be in writing and hand delivered or sent by email or post to the Parties' respective addresses as set out in the Details. Any notice is deemed to be received:

- a. if personally delivered, when delivered;
- b. if posted, three Business Days after posting; or
- c. if sent by email, at the time the email enters the recipient's information system as evidenced by a delivery receipt requested by the sender and it is not returned undelivered or as an error;

provided that any notice received after 5pm or on a day which is not a Business Day is deemed not to have been received until the next Business Day.

18.6 This Agreement sets out the entire agreement and understanding of the Parties and supersedes all prior oral or written agreements, understandings or arrangements relating to its subject matter.

18.7 This Agreement may be signed in any number of counterparts (including scanned copies) and provided that each Party has signed a counterpart, the counterparts, when taken together, will constitute a binding and enforceable agreement between the Parties.

18.8 This Agreement will be governed by and construed in accordance with New Zealand law. Subject to clause 16, each Party submits to the non-exclusive jurisdiction of the New Zealand courts in relation to any dispute connected with this Agreement.

## ANNEX A – DRAFT SCOPING SHEET

### Problem statement – the impact of ‘the future of work’ on the Maori community

DRAFT SUBJECT TO REVISION

#### Basic question

Building on the NZ future of work research completed for the Prime Minister’s Business Advisory Council in March 2019, how are automation and artificial intelligence (AI) expected to impact Maori workers, businesses and communities, and how can the Maori community grasp the opportunities automation and AI have to offer while avoiding the potentially negative consequences for vulnerable Maori communities?

#### 1 Context

- Automation is expected to significantly disrupt workplaces across NZ, and is expected to differ by occupation, sector, region, and relevancy, by Maori/non-Maori and iwi
- Maori workers, and therefore Maori communities, are expected to be disproportionately affected by automation given the industries and occupations Maori are active in. Maori workers tend to be over-represented in sectors with high automation adoption, such as transportation and warehousing, agriculture, manufacturing, and mining. These sectors have 2-3% higher share of Maori workers than the national average, and are expected to have the highest rate of automation adoption, at 29-30% vs 21% avg)
- At the same time, learning the right skills required to be successful in the future, and harnessing automation, may accelerate growth of Maori businesses and workers
- The overall NZ solution space and recommendations for this automation wave needs to be tailored to specific Maori challenges and context

#### 2 Criteria for success and deliverables

- A written report with exhibits, in a similar style to MGI’s ‘Automation and the future of the African-American workforce’, for NZ general public containing:
  - A detailed fact-base on how automation is expected to impact Maori workers, to be used as the basis for recommended interventions (including potentially by regionally/iwi – e.g. Auckland deep-dive with Iwi)
  - A set of recommended interventions to provide direction to Maori workers, communities, government, business and education institutions, and that will be a starting point for Maori business and iwi leaders to take forward
  - Recommendations for non-Maori stakeholders that will enable them to provide useful and tangible assistance to support Maori community to harness automation and protect their vulnerable communities

#### 3 Scope of solution space of recommendations

- Skills shifts required to ‘future-proof’ the Maori community
- Syndicated recommendations for nation-wide policy changes, private sector action, and individual/iwi/community interventions

#### 4 Constraints within solution space

- Recommendations to be endorsed by most stakeholders before publication in order to ensure implementation
- Syndication partners to be determined (esp if data allows for a good iwi focus)

#### 5 Stakeholders

- Maori community workers and business syndication group (to be fleshed out) – Kerensa Johnston (Nga Pae o te Maramatanga), Dr Tahu Kukuta
- Tokona te Rau: Maori Futures Collective
- MBIE (Jarrod Mair)
- PM’s Business Advisory Council (Taualelei Mackey)
- Others

#### 6 Key sources of insight

- MBIE, Stats NZ, Figures NZ and Census data (Maori employment, education outcomes, etc.)
- Survey into data not readily available (to be designed after writing narrative)
- McKinsey Global Institute models and tools
- BAC report 2019: A future that works in NZ
- Research / other reports on how automation may impact indigenous, or minority workforces (e.g., Automation and the future of the African American workforce)
- Interviews with experts identified through stakeholders

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## ANNEX B – HIGH LEVEL WORKPLAN

### Initial high-level workplan

DRAFT

Activity	Month 1	Month 2	Month 3
<b>Initial activities</b> <ul style="list-style-type: none"> <li>Conduct initial research</li> <li>Conduct initial data requests and analysis</li> <li>Write and align on initial storyline and report skeleton</li> <li>Syndicate initial outcomes with stakeholders</li> </ul>			
<b>Analysis</b> <ul style="list-style-type: none"> <li>Conduct MGI automation analysis</li> <li>Conduct MGI jobs gained/jobs lost analysis</li> <li>Conduct MGI skills shift analysis</li> <li>Conduct other ancillary analysis</li> <li>Syndicate outcomes with stakeholders</li> </ul>			
<b>Interviews</b> <ul style="list-style-type: none"> <li>Write interview questions</li> <li>Align on and refine interview questions</li> <li>Launch/conduct interviews</li> <li>Analyse and synthesise responses</li> <li>Syndicate outcomes with stakeholders</li> </ul>			
<b>Report writing</b> <ul style="list-style-type: none"> <li>Write draft report and prepare exhibits</li> <li>Initial alignment with stakeholders on WIP report and exhibits</li> <li>Co-creation of interventions/resolutions</li> <li>Complete draft exhibits for report</li> <li>Complete draft report</li> </ul>			
<b>Report finalisation</b> <ul style="list-style-type: none"> <li>Syndicate draft report broadly</li> <li>Incorporate feedback into report</li> <li>Syndicate final draft with stakeholders for sign-off</li> <li>Final editing and proofreading</li> <li>Finalise report</li> <li>Launch report</li> </ul>			

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