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## **Services Agreement**

relating to

**the supply of consultancy services**

**Ministry of Business, Innovation and Employment**

and

**Provider**

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OFFICIAL INFORMATION ACT

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RELEASED UNDER THE  
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between (1) **Her Majesty the Queen in right of New Zealand** acting by and through David Smol, the Chief Executive of the Ministry of Business, Innovation and Employment, the Centre of Expertise for Consultancy Services (the **CoE**)

and (2) **Provider**

## Introduction

- A. The CoE issued the Request for Proposal (**RFP**), seeking proposals for the provision of Services to Participating Agencies. The CoE is a Participating Agency.
- B. The CoE's objectives in this procurement are to:
- (i) match the needs of Eligible Agencies to the most capable and value for money providers for the consultancy services they require;
  - (ii) reward providers who consistently provide quality consultancy service;
  - (iii) enable transparency by allowing Eligible Agencies to identify providers that consistently provide quality services and value for money;
  - (iv) ensure participation of a broad business base in the solution, including small to medium size enterprises;
  - (v) create a solution that is flexible, allowing new provider entrants to participate and Eligible Agencies to utilise the innovation opportunities present in a dynamic market; and
  - (vi) provide a solution that can easily be implemented by all Eligible Agencies as and when required.
- C. In reliance on the Provider's representations in the RFP Response, the CoE engages the Provider to provide Services to Participating Agencies on the terms of this Agreement.

## It is agreed:

### 1. **Scope**

#### 1.1 **Appointment**

- (a) The CoE appoints the Provider to provide Services to Participating Agencies as detailed in the Appointment Letter and the Provider accepts that appointment, in accordance with and subject to the terms of this Agreement.
- (b) Certain obligations of the Provider in this Agreement do not apply in relation to the sub-categories of Services for which the Provider has been appointed as a Tier 3 Provider as follows:
  - (i) the Participating Agency may, in any Consultancy Services Order for relevant Services, nominate specific Personnel to be the primary providers or to supervise the delivery of the Services but clauses 8.2(b) to (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 4 (Performance Measurement) and clause 4.8(a), Schedule 4 (Performance Measurement) and paragraph 3.3(c) of Schedule 5 (Governance) do not apply;
  - (iii) the Provider is not required to pay an Administration Fee for the relevant Charges and clauses 11.3(a)(v), 11.8, 15.1(a) and 16.7(d) do not apply;
  - (iv) the Provider is not required to conduct the Agency Satisfaction Survey for the relevant Services and clauses 7.1(j) and 10.1(b)(iii), paragraph 7.1(d) of Schedule 5 (Governance) and Annexure A to Schedule 5 (Governance) do not apply;
  - (v) the Provider is not required to keep the CoE up to date with changes in relevant technology, practices, standards and architectures and clause 7.2(b) does not apply;
  - (vi) the Provider is not required to maintain a minimum of \$500,000 professional indemnity cover in accordance with clause 16.9(a)(i), but clause 16.9(a) otherwise applies and the Provider must ensure that it maintains adequate insurance in respect of its potential liability for loss or damage under this Agreement in accordance with that clause and Industry Best Practice;
  - (vii) 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 17.2(c)(ii); and
  - (viii) as otherwise stated in this Agreement.
- (c) The Provider acknowledges that:
- (i) the CoE may appoint one or more additional providers to the Panel during the Term to provide Services to Participating Agencies, and the appointment of the Provider and any additional providers is non-exclusive;
  - (ii) nothing in this Agreement will commit any Participating Agency to procure any minimum volume of Services from the Provider, or to pay any amount to the Provider other than the Charges; and
  - (iii) a Participating Agency is not required to have all its needs for the Services met from within the Panel, and in some instances a Participating Agency may obtain services from outside the Panel.

## 1.2 Acknowledgements

- (a) By accepting its appointment under clause 1.1, the Provider acknowledges that it has not relied on any representation made, or information provided to it, by a Participating Agency that has not been independently verified by the Provider.
- (b) The CoE expressly disclaims any representation, warranty or undertaking, express or implied, as to the value, volume or nature of Services to be procured by Participating Agencies under this Agreement.

### 1.3 Entire agreement

- (a) This Agreement comprises the Base Agreement, the Schedules, the Annexures and the Appointment Letter, each of which will, subject to the rest of this clause 1.3, be read and construed as part of this Agreement.
- (b) This Agreement and each Consultancy Services Order is the entire agreement between the Provider, the CoE and the Participating Agencies in relation to the provision of Services and supersedes all agreements, arrangements, understandings or representations relating to the subject matter of this Agreement and any Consultancy Services Order, except that the Provider will, in relation to the sub-categories of Services for which the Provider has been appointed as a Tier 1 and 2 Provider, continue to be bound by the statements, representations and warranties made or given in the RFP Response, and acknowledges that the CoE has relied on such statements, representations and warranties in entering into this Agreement and will be entitled to continue to rely on the same.
- (c) No other terms or conditions, including any conditions of sale, invoices or any other communication not included in the Appointment Letter or a Consultancy Services Order (**Communication**), will be incorporated into this Agreement or any Consultancy Services Order, even if at some later date the other party (including, in the case of the CoE, any other Participating Agency) signs or otherwise purports to accept those terms and conditions or the terms of that Communication.
- (d) For the avoidance of doubt, and without limiting clauses 1.3(a) to 1.3(c):
  - (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 Agreement and each Consultancy Services Order; and
  - (ii) any part of a Consultancy Services Order which describes the nature, scope, price or manner of delivery of Services will, subject to clause 1.3(d)(i), form part of that Consultancy Services Order, but only to the extent that it does not conflict with any other part of this Agreement or the terms of that Consultancy Services Order.

### 1.4 Precedence

- (a) Subject to clause 1.4(c), if there is any conflict or inconsistency between any of the documents which form part of this Agreement, the order of precedence is:
  - (i) the Appointment Letter;
  - (ii) any change or variation to this Agreement agreed between the parties pursuant to clause 10;
  - (iii) the Base Agreement;
  - (iv) the Schedules (other than Schedule 1 (Definitions)); and
  - (v) the Annexures.
- (b) If there is any conflict or inconsistency between this Agreement and any Consultancy Services Order, this Agreement prevails.

- (c) If there is any conflict or inconsistency between information contained within the documents having the same level of precedence, the information contained in later documents will prevail over information contained in earlier documents.
- (d) If, in the performance of the Services, the Provider provides any draft or interim Documentation, Reports, information or advice, the information contained in the final (or later, if there is no final) Document, Report, information or advice will prevail over the information contained in the earlier draft or interim Document, Report, information or advice.

## 2. Participating Agencies

### 2.1 Benefit of this Agreement

- (a) The Provider acknowledges that the terms of this Agreement are intended to confer benefits on each Participating Agency pursuant to the Contracts (Privity) Act 1982 and are enforceable by each Participating Agency.
- (b) Despite clause 2.1(a), the Provider acknowledges that:
  - (i) the CoE is entitled to exercise all rights, powers, authorities, discretions or remedies conferred on the CoE (or any other Participating Agency) by this Agreement or any applicable Law as if the CoE were the sole beneficiary of the promises made and the obligations owed by the Provider under this Agreement (including any Consultancy Services Order);
  - (ii) where a Participating Agency may, or is required to, provide any information, give a notification, make a request or take any action, the CoE may provide that information, give the notification, make the request or take that action; and
  - (iii) the CoE may bring an action against the Provider to enforce any obligation owed to a Participating Agency by the Provider.

### 2.2 CoE is not responsible for acts of Participating Agencies

If a Participating Agency fails to comply with any term of this Agreement and the Provider seeks to take action in respect of that failure:

- (a) the Provider will take action against the Participating Agency in accordance with, and subject to, clause 17 and Schedule 5 (Governance); and
- (b) the Participating Agency will be liable to the Provider in relation to the failure.

### 2.3 Participating Agencies' responsibilities

Each 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 each 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 each Consultancy Services Order;

- (c) to provide adequate instructions and information to the Provider to allow it to perform the Services under each Consultancy Services Order;
- (d) to make timely decisions where approvals or consents are reasonably sought by the Provider in performing the Services under each 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 17.

## 2.4 Participating Agency in context

In this Agreement, unless the context otherwise requires, a reference to:

- (a) a party is a party to this Agreement, being, as the context requires, the CoE or the Provider;
- (b) a Participating Agency or the Participating Agencies is to any and all Participating Agencies (including the CoE) and, in the context of the Services or a Consultancy Services Order, is to the Participating Agency that is procuring Services or that has issued the Consultancy Services Order; and
- (c) an obligation of a Participating Agency is a reference to an obligation to be performed by that Participating Agency, as procured by the CoE.

## 2.5 Transition

- (a) The Provider will manage the transition of each Participating Agency to the supply arrangements contemplated by this Agreement in a manner which minimises disruption to, or adverse impact on, that Participating Agency and other Participating Agencies.
- (b) If a Participating Agency has one or more pre-existing engagements with the Provider that require the Provider to provide services of a similar nature to the Services to the Participating Agency after the Commencement Date, the Provider and Participating Agency may agree to transition those engagements onto the terms of this Agreement.

## 3. Term

### 3.1 Term

This Agreement will start on the Commencement Date and will continue until it is terminated in accordance with clause 18.

## 4. Services

### 4.1 Services

- (a) The Provider will provide Services to each Participating Agency in accordance with the terms of this Agreement (including any Consultancy Services Order).
- (b) The Provider will not supply any Services to an Eligible Agency under this Agreement, unless and until:



- (i) the CoE has given that Eligible Agency its express written authorisation to become a Participating Agency (which the CoE will only grant if the Eligible Agency has become a party to the Participation MoU); and
  - (ii) the CoE has notified the Provider that it has given the authorisation required under clause 4.1(b)(i), and the Provider will keep that notice as a record pursuant to paragraph 7 of Schedule 5 (Governance).
- (c) The Provider will use all reasonable endeavours to ensure that, on the date the Documentation is provided under any Consultancy Services Order, such Documentation is in a readable and readily useable format.

#### 4.2 Requesting information

- (a) A Participating Agency may contact the Provider, either orally or in writing, about the Provider performing Services before it decides whether to issue a Consultancy Services Order.
- (b) Following such contact, the Provider must provide such information reasonably requested by the Participating Agency at no cost to the Participating Agency.

#### 4.3 Consultancy Services Order

- (a) Each time a Participating Agency wishes to engage the Provider to perform Services, those Services will be subject to a Consultancy Services Order recording the terms agreed by those parties for the performance of those Services.
- (b) Each Consultancy Services Order must be substantially in the form prescribed in Schedule 2 (Consultancy Services Order).
- (c) Each Consultancy Services Order must record the nature and detail of the Charges, including amounts and/or formula for calculating such Charges.

#### 4.4 Agents may procure Services

A Participating Agency may, by notice to the Provider and the CoE, appoint one or more third parties to procure Services under a 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.

#### 4.5 Process for issuing and responding to a Consultancy Services Order

- (a) If a Participating Agency wishes to engage the Provider to perform Services, it will complete Part A of the Consultancy Services Order and email it to the Provider.
- (b) After receiving a Consultancy Services Order, the Provider must, subject to clause 5.1(a) and 6.1, complete the information specified in Part B of the Consultancy Services Order, and email it to the Participating Agency.
- (c) Upon receipt of the completed Part B of the Consultancy Services Order, the Participating Agency must promptly advise the Provider in writing if the completed Part B is acceptable and the Provider may not commence performing the Services until this approval has been given.

#### 4.6 Timely performance

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

#### 4.7 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 a 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 the 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 the Consultancy Services Order to the Participating Agency; and
  - (ii) upon receipt of the completed Part C of the 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 that Consultancy Services Order until the Provider remedies the relevant failure.

#### 4.8 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 4 (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 a Consultancy Services Order are provided on or before the date specified for performance (if any) in the Consultancy Services Order and, if no time is specified, within a reasonable time after the issue of the Consultancy Services Order;
- (iii) ensure that all Documentation, information and advice (including Documentation, information and advice provided prior to the issue of a Consultancy Services Order) provided to a 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 who issued the Consultancy Services Order in the provision of Services to that Participating Agency; and
- (v) provide Services to the reasonable satisfaction of the Participating Agency who issued the Consultancy Services Order (as reported to the CoE).

## 5. Estimates and Quotes

### 5.1 Estimates and Quotes

- (a) The Provider must provide an Estimate or Quote for all Services to be provided under a Consultancy Services Order, unless the total Fees in respect of the Services under any 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 5.1(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 5.1(a), the Provider must provide an Estimate in accordance with clauses 5.1(f) and (g).
- (c) All Estimates and Quotes will be provided at no cost to the Participating Agency.
- (d) The Participating Agency may at its sole discretion:
  - (i) request a Quote or Estimate on a lump sum or maximum fee or other basis; and/or
  - (ii) give one or more providers on the Panel an opportunity to provide an Estimate or Quote based on the rates recorded in their respective agreements with the CoE or, in the case of the Provider, the Rates in this Agreement.
- (e) The purpose of clause 5.1(d)(ii) is to allow a Participating Agency, at its discretion, to run a small secondary procurement process if the Services required are sufficiently extensive to merit obtaining an Estimate or Quote from more than one provider on the Panel. For the avoidance of doubt, a secondary procurement process is not mandatory for Participating Agencies.
- (f) All Estimates and Quotes must specify the estimated timeframe to perform the Services requested in the Consultancy Services Order and the Rates of Personnel providing the Services and include any Expenses likely to be incurred in providing the Services.

- (g) All Quotes and Estimates must be provided to the Participating Agency in writing and must be included in the Consultancy Services Order.
- (h) To avoid doubt and without limiting clause 4.5(c), 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.

## 5.2 If Charges exceed the Estimate

- (a) If during the course of providing the Services under a 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 the 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 5.2(a) must specify a revised Estimate for the Services and include the reason the total Charges will exceed the original Estimate.
- (c) A 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 a 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.

## 5.3 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 a Consultancy Services Order if those Charges exceed any Quote provided in relation to that Consultancy Services Order, unless the Participating Agency has given its prior written consent in accordance with clause 5.3(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 the Consultancy Services Order to the Participating Agency; and
  - (ii) upon receipt of the completed Part D of the Consultancy Services Order, the Participating Agency must promptly advise the Provider (in writing) if the completed Part D is acceptable.

## 6. Conflicts of interest

### 6.1 Conflicts of interest

- (a) The Provider must, upon receipt of a 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 the Consultancy Services Order and, if no such Conflict of Interest exists, the Provider must provide confirmation to that effect to the Participating Agency that issued the Consultancy Services Order.

- (b) If the Provider has an actual, potential or perceived Conflict of Interest, the Provider must immediately notify the Participating Agency who issued the Consultancy Services Order 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 who issued the Consultancy Services Order.
- (d) If, after commencing Services under any 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 the relevant Consultancy Services Order in accordance with clause 6.1(e).
- (e) If the Participating Agency who issued a Consultancy Services Order 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 the 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 6.1(b) or 6.1(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 that Consultancy Services Order.

## 7. Responsibilities

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### 7.1 Provider responsibilities

In addition to its other obligations under this Agreement, the Provider will:

- (a) respond promptly, accurately and adequately to any requests for information made by any Participating Agency in relation to the Services, including requests for advice;
- (b) in performing Services for a Participating Agency under a 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 Agreement;

- (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 any 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 CoE and all other relevant Participating Agencies of any problems or issues that arise in relation to the performance of its obligations under this Agreement, 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 Agreement;
- (g) provide and maintain information in the Provider Database as detailed in Schedule 7 (Provider Database);
- (h) without limiting any other provision of this Agreement, use all reasonable endeavours to avoid damaging or adversely affecting any Participating Agency's reputation;
- (i) provide information as outlined in Schedule 6 (Reporting) to the CoE; and
- (j) 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 Participating Agencies the questions recorded in Annexure A of Schedule 5 (Governance) within 10 Business Days of the Services in each Consultancy Services Order being completed.

## 7.2 Continuous improvement and innovation

The Provider will:

- (a) continually plan and cater for the evolution of the Services and seek to improve its performance under this Agreement without increasing the Charges; and
- (b) keep the CoE up to date with changes in relevant technology, practices, standards and architectures that will, or are likely to, have a material effect on the Services in relation to the sub-categories for which the Provider has been appointed as a Tier 1 and Tier 2 Provider.

## 7.3 CoE responsibilities

The CoE's responsibilities in relation to this Agreement are described in paragraph 5.1 of Schedule 5 (Governance).

# 8. Resourcing

## 8.1 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 Agreement.

## 8.2 Provider's Nominated Personnel

- (a) The Participating Agency may, in any 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 a 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 that Consultancy Services Order.
- (c) Notice given under clause 8.2(b) must specify the period for which the Nominated Personnel will continue to be unavailable.
- (d) Upon receipt of notice under clause 8.2(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.

## 8.3 Personnel

- (a) The Provider will ensure that all of its Personnel who are engaged in the performance of the Provider's obligations under this Agreement:
  - (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, a 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 a 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, that Participating Agency.

## 8.4 Subcontracting

- (a) The Provider will not subcontract the performance of all or part of the Services or any of its other obligations under this Agreement, except with the prior written consent of the Participating Agency for whom it is providing Services.
- (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 Agreement, including in relation to clauses 7.1 (Provider Responsibilities), 8.3(a) (Personnel), 13 (Confidentiality), 14 (Intellectual Property), 15 (Audit) and 18 (Termination) and Schedule 4 (Performance Measurement).
- (e) If, in the Participating Agency's reasonable opinion, a Subcontractor is:
  - (i) materially not performing in accordance with the terms of this Agreement, 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 Agreement, 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.

## 9. Governance

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- (a) The governance arrangements for this Agreement are set out in Schedule 5 (Governance).
- (b) The CoE, the Provider and Participating Agencies must comply with all applicable obligations under Schedule 5 (Governance).

## 10. Changes

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### 10.1 Change procedure

- (a) Subject to clause 10.1(b) the Agreement:
  - (i) may only be amended with the mutual consent of the CoE and the Provider and all amendments must be agreed in writing before becoming effective; and
  - (ii) may be amended without the need for the agreement of any Participating Agency other than the CoE.
- (b) Subject to clause 10.1(c), the CoE may, acting reasonably and with regard to likely cost implications for the Provider and Participating Agencies alike, amend:
  - (i) the template Consultancy Services Order (Schedule 2 (Consultancy Services Order));
  - (ii) the reports a Provider must supply under Schedule 6 (Reporting);
  - (iii) the Agency Satisfaction Survey (Annexure A of Schedule 5 (Governance)); and
  - (iv) any other part of this Agreement if the amendment does not involve a material alteration or deviation from this Agreement, or is otherwise to correct a manifest error,



by notifying the Provider and Participating Agencies (as applicable), and any such amendments will take effect 30 days after receipt of such notice by the Provider.

- (c) Each Participating Agency who issues a Consultancy Services Order may agree any variations to that Consultancy Services Order with the Provider using Part C of the Consultancy Services Order.

## 10.2 Possible increase in scope of Services

- (a) It is acknowledged by the parties that the CoE may wish to increase the scope of the Services during the Term.
- (b) Any such amendment would occur in accordance with this clause 10 and in compliance with applicable government procurement guidelines and rules.

## 10.3 No adverse effect

The Provider will ensure that no Change has an adverse effect on, or changes, the performance of its obligations under this Agreement, except to the extent specifically approved by the CoE.

## 11. Price and payment

### 11.1 Calculation of Charges

The Charges will be calculated in accordance with the terms of Schedule 3 (Pricing).

### 11.2 Participating Agency to pay for Services

- (a) Each Participating Agency will pay the Provider the Charges applicable to any Services procured by that Participating Agency on the terms of this clause 11.
- (b) The Charges and Administration Fee comprise the total amount payable by Participating Agencies for the Services.

### 11.3 Invoicing and payment

Except as otherwise provided in Schedule 3 (Pricing) or as agreed with a Participating Agency in any Consultancy Services Order, the Provider will invoice each Participating Agency (or, if the Participating Agency has instructed the Provider in writing, the third party agent) for the Charges applicable to that Participating Agency 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(s);
  - (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 11.3; and
  - (d) the Provider may only invoice a Participating Agency for any Expenses at the cost actually incurred by the Provider.

#### 11.4 Invoice disputes

If a 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 17; and
- (c) it will pay the undisputed portion in accordance with clause 11.3.

The Provider will not be excused from performing its obligations under this Agreement while an invoice is disputed by a Participating Agency.

#### 11.5 Increasing the Rates

- (a) The Provider will not increase its Rates (including its Maximum Rates) that are recorded in the Provider Database at any time during the Term without the prior written consent of the CoE (which will not be given unless the Provider has fully performed its obligations under this clause 11.5).
- (b) If the Provider wishes to increase its Rates recorded in the Provider Database, it will provide to the CoE written notice of its proposed alteration and all information required to substantiate the proposed increase, including all relevant costs and expenses incurred by the Provider in connection with the supply of the relevant Services to Participating Agencies.
- (c) The Provider may only increase its Rates recorded in the Provider Database once in every two calendar year period.

#### 11.6 Decreasing the Rates

- (a) The Provider may decrease its Rates (including its Maximum Rates) recorded in the Provider Database at any time during the Term by giving written notice to the CoE and updating the Provider Database.

- (b) The Provider may at any time offer Rates to a Participating Agency under a Consultancy Services Order that are lower than the Rates recorded in the Provider Database.

## 11.7 Taxes

- (a) Except for any GST payable by a 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 Agreement under any Law is to be paid by the Provider and not passed on to a 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.

## 11.8 Administration Fee

- (a) 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 a Participating Agency for Charges includes, in addition to the Charges, a separate amount equal to 1% of the Fees (excluding GST) charged for in that invoice (the **Administration Fee**).
- (b) Within 10 Business Days following the end of each Contract Quarter or such other period as may be agreed between the Provider and the CoE, the Provider will provide to the CoE a report setting out the aggregate relevant Fees (excluding GST) paid or payable for Services delivered by the Provider in that Contract Quarter in relation to the sub-categories for which the Provider has been appointed as a Tier 1 or Tier 2 Provider (the **Reference Amount**).
- (c) Within one month following receipt of the Provider's report, the CoE will:
  - (i) examine the report to identify any manifest error; and
  - (ii) absent manifest error (which the Provider will remedy by re-issuing the report within three Business Days following the CoE's notice), render an invoice to the Provider for an amount equal to 1% of the Reference Amount, plus GST (if any).
- (d) The Provider will pay the CoE's invoice on or before the 20th day of the month following the date that invoice was received.
- (e) If the Provider, of its own volition or following resolution of a dispute, reduces the quantum of an invoice previously rendered to a Participating Agency (including writing it off) following payment of the Administration Fee for that invoice, the CoE will, on receipt of written evidence demonstrating the reduction of that invoice, issue a credit for the difference between the invoice included in the Reference Amount and the reduced value of the invoice to the Provider when the CoE issues the next invoice to the Provider in accordance with clause 11.8(c).

## 11.9 Suspension of payment

- (a) Without prejudice to any other right or remedy that may be available to a Participating Agency, a 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 17 will apply.

## 12. Warranties

### 12.1 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 Agreement;
- (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 Agreement; and
- (c) this Agreement constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

### 12.2 Provider's warranties

The Provider represents, warrants and undertakes that:

- (a) it will perform its obligations under this Agreement 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 Agreement;
- (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 Agreement;
- (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 Agreement, will not infringe the rights of any third party;
- (f) all Documentation (and any other information or advice supplied by it to a 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 Agreement, or which would impede the performance of its obligations under this Agreement, or that it would breach by entering into this Agreement;
- (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 Agreement;

- (i) it has not offered any inducement in connection with the entering into or negotiation of this Agreement, and will not offer any inducement in connection with the supply of Services to Participating Agencies;
- (j) in responding to the RFP and establishing the Charges, such decisions and prices were arrived at independently and without collusion; and
- (i) all representations, statements and warranties made in the RFP Response were true and correct when provided to the CoE.

### 12.3 Continuous application

The warranties, representations and undertakings set out in clause 12.2 will be deemed to be given by the Provider continuously throughout the Term.

### 12.4 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 12.

### 12.5 Other warranties excluded

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

## 13. Confidentiality

### 13.1 Protection of Confidential Information

- (a) Subject to clauses 13.1(c) and 13.2, the Provider and each 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 (or, in the case of the Provider, that is the Confidential Information of any Participating Agency).
- (b) The Provider will:
  - (i) ensure that all Confidential Information of the CoE or any other 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 Agreement;
  - (ii) not use any Agency Information for its own purposes or for any purposes different from those contemplated by this Agreement; and
  - (iii) advise the CoE in writing if any Confidential Information of the CoE or any other Participating Agency will be transferred or stored outside New Zealand before such information is transferred and will confirm that the requirements of this clause 13.1 will be met while such Confidential Information is stored outside New Zealand.
- (c) Clause 13.1(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 Agreement or a Participating Agency, 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 Agreement;
- (vi) to the extent that such disclosure is authorised by this Agreement; or
- (vii) if such disclosure is approved for release with the consent of the party from whom the Confidential Information is first received.

### 13.2 Limited disclosure

- (a) The Provider may, subject to clause 13.2(d), disclose the Confidential Information of a 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 Agreement.
- (b) A Participating Agency may, subject to clause 13.2(d), disclose the Confidential Information of the Provider to its third party suppliers, Personnel and Professional Advisers and any other Participating Agency (including the CoE) who need to know the same in connection with the Services.
- (c) The CoE may disclose:
  - (i) the Confidential Information to Eligible Agencies and other persons who need to know the same in connection with this Agreement, the performance of the CoE's obligations and the exercise of the CoE's rights under this Agreement; and
  - (ii) the Confidential Information, including Confidential Information provided pursuant to Schedule 6 (Reporting), to Eligible Agencies for the purpose of promoting informed procurement practices among Eligible Agencies in relation to consultancy services and promoting better understanding of consultancy services (including the Services).
- (d) The Provider will not disclose a Participating Agency's Confidential Information to any of its Subcontractors, Related Entities or Professional Advisers, and a 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 13.
- (e) Any undertaking given pursuant to clause 13.2(d) will be provided to the other party to this Agreement or the relevant Participating Agency on request.

## 14. Intellectual Property

### 14.1 Intellectual Property owned by Provider

- (a) The CoE acknowledges that all:
- (i) Intellectual Property held by the Provider before the Commencement Date;
  - (ii) Intellectual Property developed independently from this Agreement by the Provider, and that is not developed, commissioned or created under or in connection with this Agreement; and
  - (iii) adaptations and modifications to the Intellectual Property described in clauses 14.1(a)(i) and (ii),
- remains the Provider's sole and exclusive property (**Provider IP**).
- (b) To the extent that a 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 a Consultancy Services Order, the right to sublicense) to use, copy, modify and distribute during the Term any Provider IP provided to a Participating Agency by or on behalf of the Provider.

### 14.2 Intellectual Property owned by Participating Agencies

- (a) The Provider acknowledges that each 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 that issued the Consultancy Services Order for those Services 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 that 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 that Participating Agency IP; and
  - (iii) waives all of its moral rights under Part 4 of the Copyright Act 1994 in that 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 14.2(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 CoE will use its reasonable endeavours to procure the grant by the Participating Agency to the

Provider, subject to any written direction given by the CoE or the Participating Agency, of a royalty-free, non-exclusive, non-transferable licence to use and store that Participating Agency's IP for the sole purpose of performing its obligations under this Agreement during the Term.

### 14.3 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 a Consultancy Services Order issued by a Participating Agency, 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 CoE 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 a Participating Agency to use that Third Party IP, the warranty in clause 12.2(e) applies.

## 15. Audit

### 15.1 Right to audit

The CoE may, subject to its compliance with clause 15.2, carry out an audit in relation to the Services for the purpose of confirming:

- (a) if applicable, the proper calculation of the Administration Fee;
- (b) the proper calculation of the Charges;
- (c) the proper calculation of any Expenses (including any third party Charges passed on to a Participating Agency);
- (d) the accuracy of any invoice rendered by the Provider; or
- (e) the Provider's compliance with, and/or ability to perform any of, its other obligations under, or in connection with, this Agreement,

but will not do so more than once in any calendar year unless the CoE considers, acting reasonably, that the Provider has breached any of its obligations under this Agreement or it is required by Law to carry out an audit, in which case audits may occur more frequently.

### 15.2 Audit process

If the CoE conducts an audit under this clause 15:

- (a) it will be conducted during Business Hours and following not less than five Business Days' notice to the Provider;
- (b) it may be undertaken, at the CoE's option, by its Personnel or an independent expert (the **Auditor**), with such Auditor to be under a duty of confidentiality;
- (c) the CoE will procure that the Auditor complies with the Provider's reasonable security, confidentiality and access requirements;



- (d) the CoE will procure that the Auditor uses its reasonable endeavours to minimise any disruption to the Provider's business during the course of the audit;
- (e) the Provider must co-operate in a timely manner in respect of any audit and must promptly provide:
  - (i) reasonable access and assistance to the Auditor in respect of any audit (including reasonable access to the Provider, its Personnel, facilities, systems, records and resources used in the performance of this Agreement); and
  - (ii) any explanation, information and documentation relating to this Agreement or the provision of the Services that the Auditor may reasonably require in relation to the audit; and
- (f) the CoE or the Auditor will provide a copy of the audit report to the Provider, and the CoE may disclose a summary of findings of the audit report to any Participating Agency.

### 15.3 Cost of audit

The parties will each be responsible for their own costs in relation to any audit undertaken in accordance with this clause 15 unless the audit reveals a Material Breach, in which case the Provider will reimburse the CoE for its reasonable actual costs in carrying out the audit.

## 16. Liability

### 16.1 Indemnity

- (a) The Provider will, to the extent permitted by Law, indemnify the Participating Agency who issued a Consultancy Services Order against all Losses suffered or incurred by that 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 Agreement.
- (b) The Provider will, subject to clause 16.1(c), indemnify the CoE and the Participating Agencies against all Losses suffered or incurred by the CoE or a 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 16.1(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 the Provider without the approval of the Provider;
  - (ii) use by a Participating Agency of Intellectual Property supplied or licensed by the Provider for any purpose disallowed by this Agreement 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 a Participating Agency or the CoE.

## 16.2 IP Claims

- (a) In the event of a claim under clause 16.1(b) (an **IP Claim**):
  - (i) the affected 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**);
  - (ii) if the Provider has Control of the IP Claim:
    - (A) the affected Participating Agency will provide all reasonable assistance to the Provider (at the Provider's cost) in the handling of any negotiations and litigation; and
    - (B) the Provider will keep the affected 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 CoE or any Participating Agency;
  - (iii) the Provider will not enter into any settlement or compromise in relation to the IP Claim without the prior written consent of the affected Participating Agency (which will not be unreasonably withheld); and
  - (iv) the Provider will notify the CoE of the IP Claim, and the outcome within 5 Business Days of the claim being concluded.
- (b) If any IP Claim disrupts a 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:
  - (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.

## 16.3 Maximum liability of CoE

The maximum aggregate liability of the CoE to the Provider under or in connection with this Agreement will be, in respect of all Losses, \$100,000.

## 16.4 Maximum liability of Participating Agency

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

## 16.5 Maximum liability of Provider

The maximum liability of the Provider to the CoE and a Participating Agency for all Losses under or in connection with a 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 the Consultancy Services Order;
  - (ii) \$5,000,000; and
  - (iii) any greater amount or multiple set out in the 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 the Consultancy Services Order;
  - (ii) \$2,000,000; and
  - (iii) any greater amount or multiple set out in the 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 the Consultancy Services Order;
  - (ii) \$1,000,000; and
  - (iii) any greater amount or multiple set out in the Consultancy Services Order.

## 16.6 Exclusions on liability

The limitations on liability in clauses 16.3, 16.4 and 16.5 will not limit the liability of:

- (a) the Provider under clauses 16.1(a) and (b) (other than in respect of negligent acts or omissions under clause 16.1(a)(i) and breach by the Provider of its obligations under this Agreement under clause 16.1(a)(iii), which are subject to the limitations of liability in clauses 16.3, 16.4 and 16.5);
- (b) the Provider for any fraudulent act or omission; or
- (c) either party for any breach of confidentiality.

## 16.7 Categories of loss

- (a) Irrespective of how liability arises, neither the CoE, the Provider nor any Participating Agency who issued any Consultancy Services Order to the Provider will, under any circumstances, be liable for any indirect loss or damage (including consequential loss) arising under or in connection with this Agreement.

- (b) Neither the CoE nor any Participating Agency will, under any circumstances, be liable for any loss of profits or loss of revenue suffered by the Provider in connection with this Agreement.
- (c) Losses relating to administration, operations, fines and penalties arising from the Provider's act or omission will be considered direct loss or damage that the CoE is not prevented from recovering by any term of this Agreement.
- (d) For the avoidance of doubt, clause 16.7(a) will not preclude the CoE taking action to recover any unpaid Administration Fee.

## 16.8 Force majeure

- (a) The CoE, the Provider and any Participating Agency who issues a Consultancy Services Order to the Provider (in this clause 16.8, referred to as a party) will not be liable to the other for any failure to perform its obligations under this Agreement 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 (and, if the non-performing party is the Provider, all affected Participating Agencies) 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 16.8(b)(ii) and 16.8(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 (including, if the non-performing party is the Provider, on the Participating Agencies); and
  - (iii) use all reasonable endeavours to perform its obligations under this Agreement as far as is practicable,

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

- (c) If the non-performing party affected by the Force Majeure Event is the Provider, each affected Participating Agency may, to the extent that any Service requested by the Participating Agency under a Consultancy Services Order has not been delivered and delivery has, or will be, delayed by the Force Majeure Event, terminate the Consultancy Services Order for the supply of that Service, 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.

## 16.9 Insurance

- (a) During the Term and for a period of two years following the termination of this Agreement, 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 Agreement in accordance with Industry Best Practice, but as a minimum, the Provider must hold:

- (i) professional indemnity insurance, which in relation to the sub-categories for which the Provider has been appointed as a Tier 1 and Tier 2 Provider must be at least \$500,000;
  - (ii) public liability insurance in respect of the Services provided under this Agreement; and
  - (iii) other insurance to cover standard commercial risks (including in respect of Documentation which is the property of a Participating Agency and in the Provider's possession or control).
- (b) The Provider will, at the CoE's request, promptly provide satisfactory evidence that it has complied with its obligations in this clause 16.9.

## 17. Dispute resolution

### 17.1 Dispute

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

- (a) the relevant 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 Agreement 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 17.2.

### 17.2 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 17.1(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 All-of-Government Procurement Manager for Consultancy and the Provider's Chief Executive.

### 17.3 Mediation

- (a) If a dispute is not resolved under clause 17.2, 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).

#### 17.4 Urgent relief

Nothing in this clause 17 will preclude either party from taking immediate steps to seek urgent relief before a New Zealand court.

### 18. Termination

#### 18.1 Termination by CoE

##### (a) Material Breach

- (i) The CoE may terminate this Agreement 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:
  - (A) 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
  - (B) capable of being remedied but which is not remedied to the satisfaction of the CoE within 20 Business Days following the date of receipt by the Provider of the CoE's notice of the Material Breach.
- (ii) For the purposes of clause 18.1(a)(i), repeated breaches or a series of minor breaches may constitute a Material Breach.

##### (b) Convenience

- (i) At any time during the Term, the CoE may terminate this Agreement, for convenience, by giving the Provider at least three months' prior written notice.
- (ii) If the CoE intends to terminate all of the Panel's consultancy services agreements, it will give the Provider and the Panel at least nine months' prior written notice.

##### (c) Force Majeure Event

The CoE may terminate this Agreement by written notice to the Provider, with immediate effect on the date of termination specified in that notice, if the Provider has been unable to perform all, or a material part, of its obligations under this Agreement in accordance with this Agreement as a result of a Force Majeure Event for a continuous period of 20 Business Days.

#### 18.2 Termination of Consultancy Services Order

The Participating Agency may terminate a 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 6.1(e) (Conflict of Interest); or
- (d) in accordance with clause 18.1(c) (Force Majeure Event).

### 18.3 Termination by Provider

- (a) At any time during the Term, the Provider may notify the CoE that it wishes to terminate this Agreement and the CoE will, within 20 Business Days following receipt of the Provider's notice, notify the Provider whether (in its absolute discretion) it consents to the Provider's notice of termination.
- (b) If the CoE:
  - (i) consents, this Agreement will be terminated with effect from the date three months after the date of the Provider's notice of termination (or such other date as the parties may agree); or
  - (ii) does not consent, this Agreement will continue in full force and effect as if the Provider's notice of termination had not been given.
- (c) The Provider may, in the event of material breach of this Agreement by the CoE, seek to recover damages, but will continue to fully perform its obligations under this Agreement.

### 18.4 Partial termination

- (a) If the CoE is entitled to terminate this Agreement under clause 18.1(a), it may elect to only terminate the Service in respect of which the Material Breach arose, in which case:
  - (i) the CoE will provide notice of termination to the Provider (**Notice of Partial Termination**) setting out the Service that is to be terminated, any amendments required to this Agreement and the date of termination; and
  - (ii) if required, this Agreement will be varied and the relevant parts of this Agreement (if any) terminated, on the date and in the manner specified in the Notice of Partial Termination, in accordance with the change procedure set out in clause 10.
- (b) If a Participating Agency is entitled to terminate a Consultancy Services Order under clause 18.2, it may elect to only terminate a part of the Consultancy Services Order, in which case clause 18.4(a)(i) and (ii) applies (with all necessary modifications).

## 18.5 Consequences of termination

- (a) In the event of termination of this Agreement:
- (i) the Provider will not enter into any new Consultancy Services Orders;
  - (ii) each Consultancy Services Order entered into on or before the effective date of termination will remain in full force and effect until it expires or is terminated in accordance with its terms; and
  - (iii) no Participating Agency will be obliged to make any payment to the Provider except for any Charges payable for Services supplied pursuant to a Consultancy Services Order entered into on or before the effective date of termination.
- (b) Termination will not, unless otherwise provided in this Agreement, affect:
- (i) the provisions of this Agreement relevant to the performance of any Consultancy Services Orders entered into on or before the effective date of termination;
  - (ii) any rights and remedies available to either party which have accrued up to and including the date of termination; and
  - (iii) the provisions of this Agreement which expressly, or by their nature, survive termination, including clauses 1.3 (Entire agreement), 1.4 (Precedence), 13 (Confidentiality), 14 (Intellectual Property), 15 (Audit), 16 (Liability), 17 (Dispute Resolution), 18.5 (Consequences of termination or expiry) and 19 (General) and Schedule 1 (Definitions).
- (c) After termination of this Agreement for any reason, each party will, within five Business Days of receiving notice from the other party, return or, if requested, destroy all Documentation, Confidential Information or other property belonging to the party and (in the case of the Provider) to each Participating Agency that issued a Consultancy Services Order to the Provider, except to the extent any such Documentation, Confidential Information or other property is required to be retained by any Law.

## 19. General

### 19.1 Interpretation

- (a) In this Agreement, unless the context otherwise requires:
- (i) the terms used in this Agreement and defined in Schedule 1 (Definitions) will have the meanings recorded in that Schedule;
  - (ii) a reference to a clause or Schedule is a reference to a clause of, or a schedule to, the Base Agreement, and a reference to a paragraph or an Annexure is a reference to a paragraph of, or an annexure to, a Schedule;
  - (iii) a gender includes each other gender;
  - (iv) the singular includes the plural and *vice versa*;



- (v) a reference to documentation includes:
    - (A) a reference to that document as varied, supplemented, novated or substituted from time to time; and
    - (B) a reference to that documentation in any form, whether paper based or in electronic form encoded on or as part of any form of media;
  - (vi) a reference to the Provider includes a reference to its respective successors in title and permitted assigns (and, where the context so permits, its respective Personnel, Subcontractors, Related Entities, agents and representatives);
  - (vii) any agreement not to do a thing also constitutes an agreement not to suffer or permit or cause that thing to be done;
  - (viii) whenever the words “includes” or “including” are used in this Agreement, they are deemed to be followed by the words “without limitation”;
  - (ix) a reference to any legislation, policy or standard includes a modification of that legislation, policy or standard or, in the case of legislation, legislation enacted in substitution for that legislation and a regulation, order-in-council and other instrument from time to time issued or made under that legislation;
  - (x) headings to clauses and the table of contents are included for ease of reference only and are not to have any effect on construction and interpretation;
  - (xi) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or other entity, whether corporate or unincorporated;
  - (xii) the “Introduction” forms part of this Agreement;
  - (xiii) a reference to days, other than Business Days, is a reference to any calendar day of the year, and a reference to months is a reference to calendar months;
  - (xiv) a reference to any time is a reference to New Zealand time; and
  - (xv) a reference to currency is a reference to New Zealand currency, unless expressly provided otherwise.
- (b) None of the terms of this Agreement are to be construed against a party by reason of the fact that that term was first proposed or was drafted by that party.

## 19.2 Relationship of the parties

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

## 19.3 Costs

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

## 19.4 Assignment

- (a) Neither party may assign, novate, transfer or otherwise dispose of the whole or any part of its rights and obligations under this Agreement without first obtaining the other party's consent (which will not be unreasonably withheld or delayed).
- (b) The Crown may replace the Public Service department holding CoE responsibility under this Agreement by notice to the Provider and, from the date specified in the notice, the specified replacement Public Service department will be the CoE for the purposes of, and may exercise all rights under, this Agreement.

## 19.5 Public disclosures

Subject to clause 13, all public disclosures by the Provider relating to this Agreement, including the fact of its existence (until such time as the composition of the Panel is made public) and promotional or marketing material (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 CoE prior to release.

## 19.6 Notices

- (a) Each notice or other communication under this Agreement 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 CoE's initial postal address, physical address and email address is set out below:

### **Ministry of Business, Innovation and Employment**

Person: All of Government Procurement Manager, Centre of Expertise for Consultancy  
Postal address: PO Box 1473, Wellington 6140  
Physical address: Level 2, 15 Stout Street, Wellington 6011  
Email address: [consultancy.coe@mbie.govt.nz](mailto:consultancy.coe@mbie.govt.nz)

and may be amended by notice to the Provider at any time.

- (c) 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.
- (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.

## 19.7 Severability

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

## 19.8 Waiver

- (a) Neither party will be deemed to have waived any right under this Agreement 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 Agreement 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 Agreement will not constitute a waiver of any subsequent breach or continuing right.

## 19.9 Remedies cumulative

Except as is expressly stated otherwise in this Agreement:

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

## 19.10 Counterparts

This Agreement 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.

## 19.11 Governing law and jurisdiction

- (a) This Agreement is governed by, and will be construed in accordance with, the laws of New Zealand.
- (b) Subject to clause 17, 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.

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## Schedule 1: Definitions

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In this Agreement, unless the context otherwise requires:

**Administration Fee** means the amount referred to in clause 11.8;

**Agency Information** means all:

- (a) information and records belonging to a Participating Agency that are supplied to or collected by the Provider for the purpose of enabling the Provider to perform its obligations under this Agreement;
- (b) compilations of data created by a Participating Agency or the Provider for the purposes of this Agreement; and
- (c) legal names, logos, trademarks, brands or images of a 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 (which remain the property of the Provider);

**Agreement** is described in clause 1.3(a) of the Base Agreement;

**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 Agreement (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));

**Base Agreement** means clauses 1 to 19 (inclusive) of, and Schedule 1 (Definitions) to, this Agreement;

**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), provided that:

- (a) in relation to any Consultancy Services Order, public holiday means a public holiday observed at the location of the Participating Agency who issued the Consultancy Services Order; and
- (b) in all other cases, public holiday means a public holiday observed in Wellington, New Zealand;

**Business Hours** means the hours between 8.30 a.m. and 5.00 p.m. on any Business Day;

**Change** means any change to this Agreement made in accordance with clause 10.1;

**Charges** means the amount payable by Participating Agencies for Services and includes Fees and Expenses, as described in Schedule 3 (Pricing) and agreed in a Consultancy Services Order;

**Commencement Date** is the date on which this Agreement 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 Agreement, including information obtained during the negotiation of this Agreement or in the performance of this Agreement and information on the Provider Database;

- (b) any information about the business or property of either party or a Participating Agency including any information:
  - (i) relating to the financial position of that party or Participating Agency;
  - (ii) concerning that party's or Participating Agency's suppliers and customers; or
  - (iii) relating to that party's or Participating Agency's internal management, structure, Personnel or strategies;
- (c) the terms of this Agreement; 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 who issued the Consultancy Services Order; or
- (b) the interests of any Participating Agency in relation to this Agreement (including any 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 any Participating Agency under a Consultancy Services Order diligently, independently, impartially and in the best interests of the Participating Agency;

**Consultancy Services Order** means a service order relating to the supply of Services issued by a Participating Agency in accordance with clause 4.5 and substantially in the form attached as Schedule 2 (Consultancy Services Order) and, if agreed between the Participating Agency and the Provider or required under the Appointment Letter, may contain additional information or further particularity in respect of the Services to be provided under the service order to that contained in the Appointment Letter;

**Contract Quarter** means a period of three consecutive months commencing on 1 January, 1 April, 1 July or 1 October, provided that:

- (a) the first Contract Quarter will begin on the Commencement Date and end on the date specified in the Appointment Letter; and
- (b) the final Contract Quarter will end on the effective date termination of this Agreement;

**Contract Year** means a period of 12 consecutive months commencing on 1 July and ending on 30 June (inclusive, in each case), except that:

- (a) the first Contract Year will begin on the Commencement Date and end on the date specified in the Appointment Letter; and
- (b) the final Contract Year will end on the effective date of termination of this Agreement;

**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;

**Eligible Agency** means:

- (a) each Public Service department, as defined in section 27 of the State Sector Act 1988;
- (b) the New Zealand Defence Force, the New Zealand Police, the New Zealand Security Intelligence Service, the Parliamentary Counsel Office, the Office of the Clerk of the House of Representatives and the Parliamentary Service;
- (c) each Crown Entity, as defined in section 7 of the Crown Entities Act 2004;
- (d) each organisation listed in the fourth schedule to the Public Finance Act 1989;
- (e) the Reserve Bank of New Zealand;
- (f) the Office of the Controller and Auditor-General, the Office of the Ombudsmen, and the Office of the Parliamentary Commissioner for the Environment;
- (g) each corporation listed in the first schedule to the State Owned Enterprises Act 1986;
- (h) each local authority, as defined in section 5 of the Local Government Act 2002; and
- (i) any other person, organisation or entity that does not fall within the above categories but which the CoE determines should be treated as an Eligible Agency for the purposes of this Agreement;

**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 any 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 a 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 that Participating Agency to the Provider (including in a Consultancy Services Order); or
- (b) for which the Provider, given its knowledge of that 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 Agreement, 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 CoE 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 Agreement;

**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 Agreement or the occurrence of any event having a material effect on the ability of the Provider to perform its obligations under this Agreement (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 Agreement 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 Agreement in circumstances where that contract breach or that contract breach together with other contract breaches is considered by the CoE 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 Agreement;

**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](http://www.procurement.govt.nz);

**Participating Agency** means each of the CoE and every other Eligible Agency that is a party to the Participation MoU in relation to the Services;

**Participation MoU** means 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);

**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 3 (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 2001, 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;

**Reports** mean the reports generated by the Provider specified in Schedule 6 (Reporting), as amended from time to time by the CoE;

**Representative** has the meaning given in paragraph 3.1 of Schedule 5 (Governance);

**RFP** means the request for proposals in relation to the supply of the Services to Participating Agencies, issued by the CoE as described in the Appointment Letter;

**RFP Response** means the Provider's original response to the RFP, as clarified and amended by subsequent oral and written correspondence (including questions and answers) between the CoE and the Provider prior to the Commencement Date;

**Service Level** means a required standard for the Provider's performance of its obligations under this Agreement, as described in Schedule 4 (Performance Measurement);

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**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 Agreement, including any Consultancy Services Order, as more particularly described in the Appointment Letter;

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

**Term** means the term specified in clause 3; and

**Tiers** means any of **Tiers 1**, **Tiers 2** and **Tiers 3** 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.

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## Schedule 2: Consultancy Services Order

### 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		Client	
Client Contact		Client Email Address	
Provider		Contact Name	
Nominated Personnel	<i>[where the client wants certain personnel on the project]</i>	Contact Title	
Project name	<i>[optional name]</i>	Contact Phone #	
Sub Category			

### Purpose and any background information

*[Insert background context and specific detailed requirements of this engagement. This section should tell the reader instantly what this engagement is all about and what outcomes/success factors you are looking for as clearly as possible. You should avoid jargon and acronyms. Any specific services/deliverables/ /outcomes should be specified.]*

### Specific questions / instructions for Provider

*[Be specific about what information you want from the provider in relation to how they will meet your requirements. Insert any questions you wish to ask the Provider/s and any other information you require from them to help you make a decision about who to select for your engagement.*

*The complexity, time frame, risk involved and successful completion factors or performance measures for the consulting task will contribute to the amount of information included in the CSO. It is recommended that the business talk to potential vendors about their task and listen to their suggestions about aspects of the work to agree on the final version of the CSO.]*

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

[Instructional questions?]

### Client specific requirements

[Use this section for any specific requirements – e.g. security, health or other policies and procedures, confidentiality requirements etc.

*Leave blank or insert 'Not applicable' if no additional or specific requirements apply.]*

### Timeframes

[What turnaround is required for the Estimate or Quote?]  
 [When are the Services required?]

### Indicative budget

*[This is to be exclusive of GST, and should cover all relevant components of work.  
 State what proportion is to be spent across various sub-categories of Services, if known.]*

### Outputs of the Services

[Any deliverables or outputs required to be delivered to the client as part of the Services?]

### Provider liability cap

*Use this box if the client wants to increase the liability cap of the Provider (e.g. for a high risk engagement) above what is set out in the Services Agreement (refer to Part F of this Consultancy Services Order). Leave blank if the default liability cap(s) set out in Part F apply.*

**[Option A – specified amount cap:**

The maximum liability of the Provider to the CoE and the client for all Losses under or in connection with this Consultancy Services Order in respect of all claims will not exceed \$[insert amount].]

**[Option B – multiple of fees cap:**

The maximum liability of the Provider to the CoE and the client for all Losses under or in connection with this Consultancy Services Order in respect of all claims will not exceed an amount that is equal to [insert number (being more than 10)] times the total Charges paid and payable under this Consultancy Services Order].]

**[Option C – combination of options A and B:**

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

- \$[insert amount]; and
- an amount that is equal to [insert number (being more than 10)] times the total Charges paid and payable under this Consultancy Services Order].]

### Part B – for Provider to complete

*The Provider will complete Part B and email the form back to the client*

### Specific Services to be provided

*[This box is to be populated on a case-by-case basis for each Consultancy Services Order.*

*The Provider will review Part A and set out here a detailed description of the Services it is to provide to meet the objectives and in response to the other information in Part A.]*

**Sub Category and Tier to be Provided**

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

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

**Can you confirm that the timeframe is acceptable?**

**Estimated Start and End Date**

Start	End

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**Estimate / Quote (excluding GST, if any)**

<b>Fees</b>	\$(Add in total Fees)
<b>Administration Fee (Tier 1 and 2 only)</b>	\$(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	\$
<b>Expenses</b>	\$
<b>Total Charges</b>	\$
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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Job Level	Indicative Characteristics
Level 5	<ul style="list-style-type: none"> <li>• 15+ years of extensive professional experience in their specialised field in a consultancy role.</li> <li>• An industry leader and key influencer who is respected for their professional proficiency and knowledge.</li> <li>• Recognised as a trusted adviser to ministers and/or senior executive teams.</li> <li>• Acts as the senior responsible person on major client engagements. Able to be accountable for leading complex projects/programs.</li> <li>• Responsible for leading a high performing team of professionals, including the coaching and mentoring of colleagues at Levels 1–4.</li> </ul>

Level 4	<ul style="list-style-type: none"> <li>• 10+ years of substantial professional experience in their specialised field in a consultancy role.</li> <li>• Strong theoretical base in subject area, with ability to apply best practice principles to the subject matter context.</li> <li>• Senior team leader with the ability to deputise for the senior responsible person and coach and mentor more junior staff.</li> <li>• Ability to coordinate contributions of other specialists to complete a joint project.</li> <li>• Can engage with clients at strategic/management level if required.</li> </ul>
Level 3	<ul style="list-style-type: none"> <li>• 3-10 years of notable professional experience in their specialised field in a consultancy role.</li> <li>• A trusted performer on a wide range of client-facing consultancy projects in both the private and public sectors.</li> <li>• Thorough knowledge of functional area, combining a broad grasp of relevant best practice principles.</li> <li>• Ability to participate in multi-disciplinary teams and to work independently (with limited supervision).</li> <li>• Performs professional level analysis requiring technical skills and independent initiative within a well-defined program of work.</li> <li>• Contacts with clients predominantly at a working level.</li> </ul>
Level 2	<ul style="list-style-type: none"> <li>• 1-3 years of demonstrable professional experience in their specialised field in a consultancy role.</li> <li>• Previous experience on a range of client-facing consultancy projects, preferably in both the private and public sectors.</li> <li>• Has a theoretical base in subject area, possibly supplemented through recent study, with the ability to translate theory into practice</li> <li>• Performs a variety of analytical tasks requiring independent initiative and knowledge.</li> <li>• Interacts with clients predominantly at the working level.</li> </ul>
Level 1	<ul style="list-style-type: none"> <li>• 0+ years of relevant professional experience in a professional environment.</li> <li>• Evidence of prior contributions to consultancy engagements.</li> <li>• Performs a range of administrative tasks to support the wider team.</li> <li>• Work is performed under the guidance of colleagues at Levels 3-5.</li> </ul>

**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:

**Additional information**

**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*

**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*

**Revised Estimate (excluding GST, if any)**

<b>Revised Fees</b>	\$(Add in total Fees)
<b>Administration Fee (Tier 1 and 2 only)</b>	\$(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	\$
<b>Revised Expenses</b>	\$
<b>Total Charges</b>	\$
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*

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]

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## 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.
- (iv) 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

#### 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

- 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.
- (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).

### 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.
- (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

<p>obligations under this Consultancy Services Order;</p> <p>(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;</p> <p>(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;</p> <p>(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;</p> <p>(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;</p> <p>(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.</p>	<p><b>5.2 Participating Agencies' responsibilities</b></p> <p>The Participating Agency has the following responsibilities in relation to the Services:</p> <p>(a) to manage its operational relationship with the Provider, including in relation to the fulfilment of this Consultancy Services Order;</p> <p>(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;</p> <p>(c) to provide adequate instructions and information to the Provider to allow it to perform the Services under this Consultancy Services Order;</p> <p>(d) to make timely decisions where approvals or consents are reasonably sought by the Provider in performing the Services under this Consultancy Services Order;</p> <p>(e) to pay the Charges; and</p> <p>(f) to use its best efforts to resolve any dispute directly with the Provider before involving the CoE in accordance with clause 13.</p>	<p><b>6. Resourcing</b></p> <p><b>6.1 General requirements</b></p> <p>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.</p> <p><b>6.2 Provider's Nominated Personnel</b></p> <p>(a) The Participating Agency may, in this Consultancy Services Order, nominate specific Personnel (<b>Nominated Personnel</b>) to be the primary providers or to supervise the delivery of the Services.</p> <p>(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.</p> <p>(c) Notice given under clause 6.2(b) must specify the period for which the Nominated Personnel will continue to be unavailable.</p> <p>(d) Upon receipt of notice under clause 6.2(b), the Participating Agency must notify the Provider whether the replacement Personnel are acceptable.</p> <p>(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.</p> <p><b>6.3 Personnel</b></p> <p>(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:</p> <p>(i) have the requisite skills, expertise, qualifications and experience;</p> <p>(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;</p> <p>(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</p> <p>(iv) will carry out their respective duties with due care, skill and diligence.</p>
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- (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

	<p>the Provider, and that is not developed, commissioned or created under or in connection with this Consultancy Services Order; and</p> <p>(iii) adaptations and modifications to the Intellectual Property described in clauses 11.1(a)(i) and (ii),</p> <p>remains the Provider's sole and exclusive property (<b>Provider IP</b>).</p>				
	<p>(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.</p>	11.3			<p>(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.</p>
11.2	<p><b>Intellectual Property owned by Participating Agency</b></p> <p>(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 (<b>Pre-contract Participating Agency IP</b>).</p> <p>(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 (<b>Post-contract Participating Agency IP</b>) and, together with the Pre-contract Participating Agency IP, the <b>Participating Agency IP</b>.</p> <p>(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):</p> <p>(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</p> <p>(ii) waives all right of lien or similar rights as may now or later be claimed in the Participating Agency IP; and</p> <p>(iii) waives all of its moral rights under Part 4 of the Copyright Act 1994 in the Participating Agency IP,</p> <p>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).</p>				<p><b>Intellectual Property owned by third parties</b></p> <p>(a) To the extent that the Provider needs to use any Intellectual Property held or owned by a third party (<b>Third Party IP</b>) 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.</p> <p>(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.</p>
		<b>12.</b>			<b>Liability</b>
		12.1			<b>Indemnity</b>
				(a)	<p>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:</p> <p>(i) unlawful, malicious or negligent act or omission by the Provider;</p> <p>(ii) personal injury, sickness, death or loss of, or damage to, tangible property due to an act or omission of the Provider; or</p> <p>(iii) any other breach by the Provider of its obligations under this Consultancy Services Order.</p>
				(b)	<p>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.</p>
				(c)	<p>The Provider will have no liability under clause 12.1(b) to the extent that any IP Claim arises from any:</p> <p>(i) modification by the Participating Agency of any item of Intellectual Property supplied or licensed by the Provider without the approval of the Provider;</p>

	(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		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	<b>IP Claims</b>		12.3	<b>Maximum liability of Participating Agency</b>  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.
	(a)	In the event of a claim under clause 12.1(b) (an <b>IP Claim</b> ):	12.4	<b>Maximum liability of the Provider</b>  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:
	(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 ( <b>Control of the IP Claim</b> );		(a) in relation to the sub-categories for which the Provider has been appointed as a Tier 1 Provider, the greater of:
	(ii)	if the Provider has Control of the IP Claim:		(i) 10 times the total Charges paid and payable under this Consultancy Services Order;
	(A)	the Participating Agency will provide all reasonable assistance to the Provider (at the Provider's cost) in the handling of any negotiations and litigation; and		(ii) \$5,000,000; and
	(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;		(iii) any greater amount or multiple set out in this Consultancy Services Order;
	(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		(b) in relation to the sub-categories for which the Provider has been appointed as a Tier 2 Provider, the greater of:
	(iv)	the Provider will notify the CoE of the IP Claim, and the outcome within 5 Business Days of the claim being concluded.	12.5	(i) 10 times the total Charges paid and payable under this Consultancy Services Order;
	(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:	12.6	(ii) \$2,000,000; and
	(i)	obtain for the Participating Agency the legal right to		(iii) any greater amount or multiple set out in this Consultancy Services Order;
				(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	<b>No double dipping</b>  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	<b>Exclusions on liability</b>  The limitations on liability set out in clauses 12.3 and 12.4 will not limit the liability of:

<p>(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);</p> <p>(b) the Provider for any fraudulent act or omission; or</p> <p>(c) either party for any breach of confidentiality.</p>	<p>12.7</p>	<p><b>Categories of loss</b></p> <p>(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.</p> <p>(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.</p>	<p>12.8</p>	<p><b>Force majeure</b></p> <p>(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.</p> <p>(b) The party subject to the Force Majeure Event (the <b>non-performing party</b>) must:</p> <p>(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);</p> <p>(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</p> <p>(iii) use all reasonable endeavours to perform its obligations under this Consultancy Services Order as far as is practicable,</p> <p>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.</p> <p>(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</p>	<p>12.9</p>	<p><b>Insurance</b></p> <p>(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:</p> <p>(i) professional indemnity insurance;</p> <p>(ii) public liability insurance in respect of the Services provided under this Consultancy Services Order; and</p> <p>(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).</p> <p>(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.</p>	<p>13.</p>	<p><b>Dispute resolution</b></p>	<p>13.1</p>	<p><b>Dispute</b></p> <p>In the event of any dispute, difference or question arising out of, or in connection with, this Consultancy Services Order or its formation (a <b>dispute</b>):</p> <p>(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</p> <p>(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.</p>	<p>13.2</p>	<p><b>Escalation</b></p> <p>(a) The Participating Agency and the Provider will each advise its respective Representative (or equivalent person) of</p>	<p>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.</p>
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- 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 disappplied and excluded from this Consultancy Services Order; and
- (ii) any part of this Consultancy Services Order which descr bes 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.

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;

### 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,

**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, tsunami, 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](http://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.

(b) 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**

(c) 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.

(d) Any changes to Service Levels will be effected in accordance with clause 10 of the Services Agreement.

**3. Performance measurement**

**3.1 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
- (b) 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
- (c) 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.

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.
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.

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## Schedule 3: Pricing

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### 1. Introduction

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This Schedule sets out general principles underlying the Charges.

### 2. Principles

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#### 2.1. Participating Agencies will only pay for Services ordered

- (a) The Provider will invoice each Participating Agency for the Charges applicable to that Participating Agency in accordance with clause 11.3 of the Base Agreement.
- (b) A Participating Agency will only pay for Services that it orders in accordance with this Agreement.

#### 2.2. No minimum volume

Neither the CoE nor any Participating Agency is 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 Agreement.

#### 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 a Consultancy Services Order.
- (b) The Maximum Rates are the maximum amounts payable by a Participating Agency for the Services.

### 3. Charges

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

## Schedule 4: 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 Participating Agencies.

#### 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.
- (b) Any changes to Service Levels will be effected in accordance with clause 10 of the Base Agreement.

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### 3. Performance measurement

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#### 3.1. Implement tools

The CoE will implement appropriate measurement, monitoring and management tools and procedures to enable it to measure the Provider's performance against the Service Levels.

#### 3.2. Measure performance

The CoE will measure the performance of the Provider under this Agreement in relation to the sub-categories for which the Provider has been appointed as a Tier 1 and Tier 2 Provider against the Service Levels recorded in Annexure A to this Schedule.

#### 3.3. Measurement period

- (a) Except for the Service Levels set out in paragraph 3.3(b), each Service Level will be measured by reference to performance over a Contract Quarter.
- (b) Service Levels one and five will be measured by reference to performance biannually.

#### 3.4. Failure to meet Service Levels

If the Provider fails to achieve one or more of the Service Levels in any Contract Quarter (or any two Contract Quarters for Service Levels one and five), it will:

- (a) take such steps and do all things necessary, as soon as possible, to correct the failure;
- (b) notify the CoE and the Participating Agency(s) who issued the Consultancy Services Order(s), the subject of the Service Level Defaults, of the reasons for the failure and the steps that the Provider is taking to ensure that the failure is not repeated; and
- (c) 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.

#### 3.5. Respond to feedback on performance

The Provider will respond constructively to the CoE's feedback on Service Level performance, and to all other reasonable requests from the CoE for additional metrics, analyses and reports relating to performance against Service Levels from time to time during the Term, at no additional cost to the CoE.

#### 3.6. Reporting on Provider performance

The CoE may report, at any time, on poor performance by the Provider against the Service Levels to all Participating Agencies and any Eligible Agencies.

## Annexure A: Service Levels

Parameter	1. Services Fit for Purpose
Description	Were the Services subject to each 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 a Participating Agency must be Fit for Purpose.

Parameter	2. Timely performance of Services
Description	Did the Provider perform the Services subject to each Consultancy Services Order within the timeframe recorded in that 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).
Service Level	The Provider must deliver all Services subject to a Consultancy Services Order within the agreed timeframe for delivery recorded in the Consultancy Services Order including any variation to the timeframe recorded in Part D of the Consultancy Services Order.

Parameter	3. Services performed to budget
Description	Were the Charges for the Services subject to each Consultancy Services Order within the Estimate or Quote recorded in that 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).
Service Level	The Provider must deliver all Services subject to a Consultancy Services Order within the agreed Estimate or Quote recorded in the Consultancy Services Order including any variation to the Estimate recorded in Part D of the Consultancy Services Order.

Parameter	4. Reporting provided
Description	Did the Provider submit the information required of it as detailed in Schedule 6 (Reporting) accurately, in the required format and on time?
Purpose	To ensure the reporting information is provided accurately, regularly and on time.
Calculation	The CoE will receive the reporting information each Contract Quarter.
Service Level	All reporting information must be completed accurately and submitted on time.

Parameter	5. Results of Agency Satisfaction Survey
Description	Each Participating Agency is satisfied with the overall level of service it received from the Provider.
Purpose	To ensure that the Participating Agencies are satisfied with the service of the Provider.
Calculation	The Provider's biannual average score from the Agency Satisfaction Survey will be calculated as the mean (average) of the Provider's individual scores for the survey period.
Service Level	The Provider's average score for each survey must exceed 5/10.

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## Schedule 5: Governance

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### 1. Introduction

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#### 1.1. Scope

This Schedule sets out:

- (a) the relationship principles for the Provider and Participating Agencies in relation to each other;
- (b) the governance model to be used for this Agreement;
- (c) the Provider's Representative(s) and their role and responsibilities; and
- (d) the Provider's obligations in relation to the management of records.

#### 1.2. Purpose

The purpose of this Schedule is to maximise the value of the relationship between the Provider, the CoE and Participating Agencies by supporting and encouraging communication and collaboration at all levels.

#### 1.3. Application

- (a) If the Provider is appointed as a Tier 2 Provider in respect of any sub-categories in the Appointment Letter, paragraph 4.1 applies in relation to the relevant sub-categories as amended below:
  - (i) the reference to "once every two Contract Quarters" in paragraph 4.1(a) is replaced with "once every Contract Year"; and
  - (ii) the references to "Contract Quarters" in paragraphs 4.1(a)(ii) and 4.1(a)(iv) is replaced with "Contract Year".
- (b) If the Provider is appointed as a Tier 3 Provider in respect of any sub-categories in the Appointment Letter:
  - (i) paragraphs 2.1(d) and (e); and
  - (ii) paragraph 4.1,do not apply in relation to the relevant sub-categories.

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## 2. Relationship principles

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### 2.1. Principles

The Provider and the Participating Agencies will:

- (a) engage effectively across strategic, tactical and operational levels;
- (b) work together to continuously improve the delivery of Services under this Agreement;
- (c) adopt a working approach that is collaborative, open, transparent, ethical and honest;
- (d) acknowledge and promptly address any issues as they arise;
- (e) provide reliable, timely and proactive feedback at all levels; and
- (f) display high levels of commitment, proactivity, flexibility and timeliness.

### 2.2. Understand Participating Agencies

The Provider will seek to understand each Participating Agency's business drivers and objectives to the extent that such understanding is relevant to the Provider's performance of its obligations under this Agreement.

### 2.3. Support Provider Database

The parties will work together in good faith to support the operation of the Provider Database in accordance with Schedule 7 (Provider Database).

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## 3. Representatives

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### 3.1. Appoint Representative

- (a) The Provider and each Participating Agency will appoint and maintain during the Term a suitably qualified and experienced person as relationship manager (**Representative**).
- (b) The Provider may have more than one Representative.

### 3.2. Primary point of contact

The Provider's Representative(s) will serve as the primary point of contact with each Participating Agency Representative, and will have overall responsibility for managing and co-ordinating the performance of the Provider's obligations under this Agreement.

### 3.3. Role of Provider's Representatives

The functions and duties of each Provider's Representative include:

- (a) ensuring that the Services are provided to the standards required and the Provider's other obligations are performed in accordance with the terms of this Agreement;
- (b) managing reports and other information flows required under this Agreement;
- (c) if applicable, ensuring that monitoring procedures for the Service Levels are in place, are robust and are adhered to;
- (d) liaising with each Participating Agency's Representative and other Participating Agency Personnel, both formally and informally, to facilitate the performance of the Provider's obligations in accordance with the terms of this Agreement; and
- (e) managing any dispute or potential dispute in accordance with the escalation procedure set out in clause 17.2 of the Base Agreement.

### 3.4. Lead Representative

Where a Provider has more than one Representative, it will designate one as the Lead Representative and will advise the Participating Agency of whom it has so designated.

## 4. Relationship management

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### 4.1. Review meetings

- (a) Subject to paragraph 1.3, the CoE may meet the Lead Representative of the Provider once every two Contract Quarters (each a **review meeting**) to:
  - (i) discuss matters of importance to the strategic, commercial and operational relationship between the parties;
  - (ii) review the performance of the Provider over the preceding Contract Quarters, measured against the Service Levels and its performance of its other obligations under this Agreement;
  - (iii) discuss potential cost savings initiatives; and
  - (iv) set goals and objectives for the following Contract Quarters.
- (b) For each review meeting, the CoE will:
  - (i) convene the meeting by at least 10 Business Days' written notice to the Provider;
  - (ii) prepare the agenda; and

- (iii) record the minutes (and will send a copy of those minutes to the Provider promptly following the meeting, for the Provider's review).
- (c) The CoE may invite one or more representatives from Participating Agencies to each review meeting.

#### 4.2. Ad hoc meeting

- (a) Either party may, by at least two Business Days' written notice to the other party, convene a meeting (in person or by teleconference) to, if applicable, discuss one or more Service Level Defaults or any urgent or material issue relating to the performance of the Provider's obligations under this Agreement.
- (b) For each such meeting:
  - (i) the agenda will be prepared by the party giving notice of the meeting, and sent with that notice;
  - (ii) the Lead Representative is to participate; and
  - (iii) the CoE will record the minutes (and will send a copy of those minutes to the Provider promptly following the meeting, for the Provider's review).

#### 4.3. Conduct of meetings

When attending the meetings described in paragraphs 4.1 and 4.2, the parties are to:

- (a) take a reasonable and pragmatic approach to fact-finding and the issues raised; and
- (b) endeavour to reach consensus on an issue wherever reasonably practicable.

#### 4.4. Annual forum

- (a) The CoE may invite the Panel to an annual forum to discuss matters of importance to the All-of-Government consultancy services solution.
- (b) For each forum, the CoE will:
  - (i) convene the forum by at least one month's written notice to the Panel;
  - (ii) prepare the agenda; and
  - (iii) record the minutes (and send a copy of those minutes to each member of the Panel).
- (c) The CoE may invite one or more representatives from Participating Agencies to each forum.

#### **4.5. Meet the buyer**

During the Term the CoE may invite the Panel to one or more 'meet the buyer' events where providers will have an opportunity to meet with Participating Agencies, establish key contacts and discuss any upcoming needs for Services.

### **5. CoE responsibilities**

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#### **5.1. CoE responsibilities**

The CoE is responsible for:

- (a) monitoring the Provider's performance of this Agreement, including (if applicable) against Service Levels (Schedule 4 (Performance Measurement));
- (b) strategic Provider relationship management;
- (c) assisting Participating Agencies to manage ad hoc issues with the Provider;
- (d) developing and maintaining the Provider Database;
- (e) any Changes (clause 10 of the Base Agreement);
- (f) the admission of new Participating Agencies (clause 4.1(b) of the Base Agreement); and
- (g) if applicable, disputes escalated to the CoE under clause 17.2 of the Base Agreement.

### **6. Structure**

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#### **6.1. Governance model**

- (a) The CoE manages governance for this Agreement.
- (b) The CoE may seek advice and guidance from its Client Advisory Group on governance matters.

### **7. Records**

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#### **7.1. Maintain records**

The Provider will, at all times, maintain, store and archive true, up-to-date, accurate and complete records of all:

- (a) invoices;

- (b) Consultancy Services Orders received;
  - (c) Documentation provided to any Participating Agency by the Provider;
  - (d) if applicable, Agency Satisfaction Survey responses; and
  - (e) other records relating to its performance under this Agreement,
- and will ensure that each of its Subcontractors (if any) does the same.

## 7.2. **Content of records**

The Provider will ensure that the records described in paragraph 7.1 provide sufficient detail to enable the CoE to reconcile those records with:

- (a) the contents of the reports the Provider issues to the CoE under Schedule 6 (Reporting); and
- (b) the invoices that the Provider renders to Participating Agencies under clause 11.3 of the Base Agreement.

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## Annexure A: Agency Satisfaction Survey

The following table is the scoring scale for the questions that will be asked of Participating Agencies within 10 Business Days of the relevant Services being provided in each relevant Consultancy Services Order in relation to the Services provided. Participating Agencies will be asked to rate how well the Provider performed on a scale of 1-5 in each of the measures as outlined below.

NB: 'Advice' refers to advice provided under each Consultancy Services Order.

Measure	Description	What does poor practice looks like? <b>SCORE = 1</b>	What does good practice looks like? <b>SCORE = 5</b>
<b>1. Proactivity</b>	Proactivity assesses how forward looking the approach is of the Provider. For example, whether it is open to new ideas, anticipates your issues, updates clients on relevant developments in the field of expertise or sponsors innovative processes.	<p>The Provider valued out-dated approaches and was slow to introduce new ideas or processes.</p> <p>The Provider responded to my requirements but does not proactively anticipate my needs.</p> <p>There was no attempt to relate developments in the field of expertise, introduce new thinking, or promote new processes to us unless we specifically requested it.</p>	<p>The Provider had a forward looking perspective which was useful to me.</p> <p>The Provider provided highly valuable innovative ideas (for example ideas that utilised technology for mutual benefit), and was constantly looking for new ways to be the front-runner when it comes to innovation.</p> <p>The Provider was proactive in demonstrating awareness of new developments and contemporary views.</p>
<b>2. Optimal Services</b>	Optimal Services will address all the requirements in the Consultancy Services Order; be consistent with your business objectives and there is evidence of the Provider's expertise and experience being applied.	<p>Some areas in the Consultancy Services Order were not addressed.</p> <p>The Services were not in line with your business objectives.</p> <p>The expertise and experience of the Provider was</p>	<p>All areas in the Consultancy Services Order were thoroughly addressed / answered.</p> <p>Your business objectives were understood by the Provider and the Services you received met these.</p>

Measure	Description	What does poor practice looks like? <b>SCORE = 1</b>	What does good practice looks like? <b>SCORE = 5</b>
		not evident.	The Provider's expertise experience and insights were evident, in the Services they provided.
<b>3. Organisational culture</b>	<p>In measuring the cultural fit of your Provider you are considering the manner in which they collaborated and worked with you in this piece of work.</p> <p>Culture in this context means your Provider's ability to adapt their unique culture to fit with your organisation's unique culture.</p> <p>Culture can mean the way an individual behaves or the way in which a whole team behaves – please consider which aspect you feel to be most relevant to this piece of work.</p>	<p>The Provider put their needs before yours.</p> <p>Their method of working was inflexible and did not meet your needs.</p> <p>In your view there was little consideration shown towards you.</p> <p>You did not consider the Provider to be part of your team and there was no evidence of a collaborative relationship of mutual trust and respect.</p>	<p>The Provider sought opportunities to work with you in a manner that best suited you.</p> <p>The Provider was adaptable and showed consideration towards you.</p> <p>You were proud to consider the Provider an extension of your team and you shared a collaborative relationship of mutual trust and respect.</p>
<b>4. Value for money</b>	<p>Value for money is an assessment of a range of factors to determine whether the price paid for Services is fair and reasonable. Best value for money is achieved by delivering the best overall result for the money spent.</p> <p>Considerations in determining value for money include:</p> <ul style="list-style-type: none"> <li>• Quality of Services received</li> <li>• Complexity of requirements</li> <li>• Risk to your organisation</li> <li>• Cost of Services</li> <li>• Urgency of Services required</li> </ul>	<p>You feel you paid more for the Services than the value you received from the Provider.</p> <p>This may have been because of the time taken to complete the work or the amount of resource applied to the piece of work may have exceeded your expectations compared to the complexity of the piece of work and/or its importance to you.</p>	<p>You felt you received value from these services that was in excess of the price you paid for them.</p> <p>This may have been because the quality of work exceeded your expectations, the cost was less than anticipated or that you considered the cost of services to be small compared to the complexity of the piece of work and/or the risk it represented.</p>



Measure	Description	What does poor practice looks like? <b>SCORE = 1</b>	What does good practice looks like? <b>SCORE = 5</b>
5. Service	Service is an assessment of the: <ul style="list-style-type: none"> <li>• Understanding of the Consultancy Services Order and Participating Agency objectives</li> <li>• Delivery of Services on time and to budget</li> <li>• Attitude of the Provider to the Participating Agency's work</li> </ul>	<p>The Provider didn't understand or attempt to understand the Consultancy Services Order or my objectives.</p> <p>The Provider did not provide the Services on time and to budget.</p> <p>I felt that the Provider didn't prioritise my work and I was not an important client.</p>	<p>The Provider understood the Consultancy Services Order and my objectives fully, including clarifying their understanding if required.</p> <p>The Provider delivered the Services on time and to budget.</p> <p>Our work was the Provider's highest priority, and was given full attention. I felt like a valued client.</p>

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## Schedule 6: Reporting

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### 1. Provide reports

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#### 1.1 Scope

The Provider will provide:

- (a) the reports described in Annexure A to this Schedule as amended from time to time;
- (b) any other report requested by the CoE from time to time in accordance with the terms of this Schedule and the CoE's reasonable instructions (including as to content, format and timeliness); and
- (c) any other report requested by a Participating Agency concerning the provision of Services, as agreed between the Participating Agency and the Provider.

### 2. Timing of reports

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The Provider will submit to the CoE the reports required under paragraph 1.1(a) at the end of each Contract Quarter, unless otherwise specified in Annexure A to this Schedule or agreed by the CoE.

### 3. Format of reports

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- (a) All reports provided to the CoE under paragraph 1.1(a) must be in the format prescribed by the CoE, such format to be provided by the CoE to the Provider:
  - (i) if the Provider is appointed as a Tier 1 or 2 Provider in respect of any sub-categories in the Appointment Letter, at least one month before the end of the first Contract Quarter;
  - (ii) if the Provider is appointed as a Tier 3 Provider in respect of any sub-categories in the Appointment Letter, at least one month before the end of the first Contract Year; and
  - (iii) as amended by the CoE from time to time.
- (b) Any part of a report that contains numerical information, or which is required to be provided in table format (rows and columns), is to be provided in Microsoft Excel file format (.xls) unless otherwise agreed in writing by the CoE.
- (c) The reports will be emailed to the CoE at the frequency specified above.

### 4. Support a reporting interface

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- (a) During the Term, the CoE may develop an interface with the objective of allowing the Provider to submit reporting information to the CoE directly via web services. It is intended that the interface will remove the need for the Provider to manually transfer information from the Provider's business systems into a spreadsheet template and eliminating the risk of data entry errors.

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- (b) If developed, the parties will work together in good faith to support the operation of such a reporting interface.

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## Annexure A: Reports

If the Provider is appointed as a Tier 1 and Tier 2 Provider in respect of any sub-categories in the Appointment Letter, the Provider will provide the following reports for those sub-categories:

Report	Description
<b>Spend report</b>	<ol style="list-style-type: none"> <li>1. Report detailing the Provider's name, the month ending the reporting period (dd/mm/yy) and the names and number of Participating Agencies that the Provider provided Services to during the current reporting period.</li> <li>2. Report for each Participating Agency and in aggregate:               <ol style="list-style-type: none"> <li>(a) total Charges invoiced to Participating Agencies (excluding GST and any amount(s) representing the Administration Fee);</li> <li>(b) the total amount invoiced to Participating Agencies representing the Administration Fee; and</li> <li>(c) total Fees invoiced to Participating Agencies broken into time units per subcategory of Services.</li> </ol> </li> <li>3. If requested by the CoE, a report for each Participating Agency and in aggregate representing the savings Participating Agencies made (calculated against the Pre-AoG Agency Price (the best price available for a specific Service or Service Group (as notified by the CoE) that would be offered to any Participating Agency, if it were not a party to the AoG (i.e. if that Participating Agency were to source such Services independently)).</li> <li>4. If requested by the CoE, a report for each Participating Agency and in aggregate detailing the services provided to Participating Agencies that fall outside the scope of the Services and the total amount invoiced for these services.</li> <li>5. Report setting out the aggregate Fees as described in clause 11.8(a) of the Base Agreement.</li> </ol>
<b>Service Level reports</b>	<p>A report detailing the Provider's name, the month ending the reporting period (dd/mm/yy) and the following:</p> <ol style="list-style-type: none"> <li>1. <b>Timely Performance of Services (Service Level 2)</b> Report for each Participating Agency and in aggregate:               <ol style="list-style-type: none"> <li>(a) the total number of Consultancy Services Orders entered into; and</li> <li>(b) the total number of Consultancy Services Orders where the Services were delivered to the Participating Agency within the agreed timeframe for delivery as recorded in the applicable Consultancy Services Order (including any variation to the timeframe recorded in Part D of the Consultancy Services Order).</li> </ol> </li> <li>2. <b>Services performed to budget (Service Level 3)</b> Report for each Participating Agency and in aggregate:</li> </ol>

	<p>(a) the total number of Consultancy Services Orders entered into; and</p> <p>(b) the total number of Consultancy Services Orders where the Services were delivered within the agreed Estimate or Quote recorded in the Consultancy Services Order (including any variation to the timeframe recorded in Part D of the Consultancy Services Order).</p> <p><b>3. Reporting provided (Service Level 4)</b></p> <p>Report showing the total number of reports which were rejected by the CoE relating to the current reporting period as inaccurate, not in the correct format or not on time, expressed as a percentage of all reports due.</p> <p><b>4. Results of Agency Satisfaction Survey (Service Level 5)</b></p> <p>Report for each Participating Agency and in aggregate every second Contract Quarter:</p> <p>(a) the results of the Agency Satisfaction Survey for the current reporting period; and</p> <p>(b) the Provider's average score for each Agency Satisfaction Survey response.</p>
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If the Provider is appointed as a Tier 3 Provider in respect of any sub-categories in the Appointment Letter, the Provider will provide the following reports for those sub-categories:

- (a) an annual report at the end of each Contract Year detailing:
- (i) the Provider's name, the month ending the reporting period (dd/mm/yy) and the names and number of Participating Agencies that the Provider provided Services to during the current reporting period;
  - (ii) in aggregate the total Charges invoiced to Participating Agencies (excluding GST) during the current reporting period; and
  - (iii) if requested by the CoE, in aggregate detailing the services provided to Participating Agencies that fall outside the scope of the Services and the total amount invoiced for these services during the current reporting period.

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## Schedule 7: Provider Database

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### 1. Introduction

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This Schedule sets out the Provider's responsibilities in relation to the Provider Database.

### 2. Provider Database

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- (a) The purpose of the Provider Database is to electronically store, manage and display information on the Panel and the services they offer (including services, charges and Participating Agency feedback).
- (b) The Panel will be able to access the Provider Database via a secure log on for the purpose of updating and maintaining their information. Individual Panel providers will not be able to access information of other Panel providers.
- (c) Participating Agencies will be able to access the Provider Database via a secure log on to view information on all Panel providers.
- (d) The Provider will provide any information reasonably requested by the CoE from time to time on the Provider Database and maintain such information to ensure that it remains up to date during the Term.

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