

## Long form Contract for Services

### Social Impact Assessment of the Jobs for Nature programme

Contract Reference number:

## Part A: Parties and Execution

### The Parties

**The Sovereign in Right of New Zealand, acting by and through the Secretary for the Environment** (Ministry)

8 Willis Street, Wellington Central, Wellington 6011 and

**Impact Lab Limited Company No. 7233576** (Supplier)

Level 8, 187 Featherston St,  
Wellington 6011

### The Contract

#### Agreement

The Ministry appoints the Supplier to deliver the Services described in this Contract and the Supplier accepts that appointment. This Contract sets out the Parties' rights and obligations.

#### The documents forming this Contract are:

- |   |               |
|---|---------------|
| 1. This page                                    | <b>Part A</b> |
| 2. Contract Details and Description of Services | <b>Part B</b> |
| 3. Standard Terms and Conditions                | <b>Part C</b> |
| 4. Any other Attachments to Part B or Part C.   |               |

#### How to read this Contract

- Together the above documents form the whole Contract.
- Any Supplier terms and conditions do not apply.
- Clause numbers refer to clauses in Part C, unless the context requires otherwise.
- Words starting with capital letters have a special meaning. The special meaning is stated in the Definitions section at clause 19 (Part C).

<b>Acceptance</b>			
In signing this Contract each Party acknowledges that it has read and agrees to be bound by it.			
For and on behalf of the <b>Ministry:</b>		For and on behalf of the <b>Supplier:</b>	
s 9(2)(a)		s 9(2)(a)	
(signature)		(signature)	
<b>name:</b>	Sara Clarke	<b>name:</b>	Maria English
<b>position:</b>	Acting Deputy Secretary	<b>position:</b>	CEO
<b>date:</b>	27 February 2024	<b>date:</b>	27th February 2024

**Part B: Contract Details and Description of Services**

<b>Start Date</b>	On signature by both parties	<b>Reference Part C clause 1</b>
<b>End Date</b>	30 November 2024	<b>Reference Part C clause 1</b>

<b>Contract Managers</b>  Reference Part C clause 4		<b>Ministry's Contract Manager</b>	<b>Supplier's Contract Manager</b>
	<b>Name:</b>	Isabelle Collins	Maria English
	<b>Title / position:</b>	Principal Adviser	CEO
	<b>Address:</b>	8 Willis Street, Wellington Central, Wellington 6011	2-8 Chancery Street, Auckland CBD, Auckland 1010
	<b>Phone:</b>		
	<b>Email:</b>	<a href="mailto:Isabelle.collins@mfe.govt.nz">Isabelle.collins@mfe.govt.nz</a>	s 9(2)(a) <a href="mailto:mpactlab.co.nz">mpactlab.co.nz</a>

<b>Contract Owners</b>  Reference Part C clause 4		<b>Ministry's Contract Owner</b>	<b>Supplier's Contract Owner</b>
	<b>Name:</b>	Ilana Miller	s 9(2)(a)
	<b>Title / position:</b>	Programme Director	s 9(2)(a)
	<b>Address:</b>	8 Willis Street, Wellington Central, Wellington 6011	2-8 Chancery Street, Auckland CBD, Auckland 1010
	<b>Phone:</b>		s 9(2)(a)
	<b>Email:</b>	<a href="mailto:Ilana.miller@mfe.govt.nz">Ilana.miller@mfe.govt.nz</a>	s 9(2)(a) <a href="mailto:mpactlab.co.nz">mpactlab.co.nz</a>

Addresses for Notices  Reference Part C clause 18		Ministry's address	Supplier's address
	For the attention of:	Ilana Miller	Lisa Radford
	c.c. Contract Manager	Isabelle Collins	Maria English
	Delivery address:	As above	As above
	Postal address:	PO Box 10362, Wellington 6143	PO Box 327 Wellington 6140

## Description of Services

### Context

Jobs for Nature (J4N) is a \$1.19b programme that manages funding across multiple government agencies to benefit the environment, people and the regions. It formed part of the COVID-19 recovery programme and is intended to run for four years, with funding ending by 30 June 2025.

The purpose of this work is to provide analysis and advice relating to J4N's likely social returns from the environmental outputs and to understand the social and community implications for projects once funding ceases.

We need these services because:

- there is a current gap in the J4N programme for explaining the economic and social value of \$1.19 billion invested across people and place because we don't currently collect information on the people employed through the programme. This means we don't have a picture of who they are, what happens to them when their time in the programme is complete, and what differences the programme has made to their lives. This in turn means we cannot estimate any future savings to the Crown through reductions in benefits and other support, and increased revenue due to higher earnings.
- given the scale and quantum of funding it's important to understand what the wider indirect social and economic benefits are to give a full picture of the value to New Zealand of the investment in people and nature made by Jobs for Nature. We also have obligations under the Public Finance Act Section 26G(1)(h) to ensure the Crown's resources are managed effectively and efficiently.
- an effective way of demonstrating value for money (whole of life costs from investing in outcomes externally, versus the value created from the investment) is needed to ensure the benefits promised are delivered. This work will support the current gaps in our ability to do this.
- The new Government has made it clear that it "wants people to see demonstrable, measurable results that make their lives easier, and help them to get ahead." The Auditor General has also reiterated a need for both better reporting on how the public sector is performing, and for greater transparency in reporting on the use of COVID Response and Recovery Funds (CRFF), which are the main component of Jobs for Nature funding.

### Description of Services

The project will involve:

- Working with a group of projects which have been selected with the cross-agency DCE group to extract and collect anonymised data on the project participants, including such things as age-group, gender, ethnicity, previous employment history and path following involvement in the programme (note: this data will not be published except as part of overall aggregated data so participants will not be identifiable). This involves building a trusted relationship with the projects and ensuring they understand and are comfortable with the methodology, as well as supporting them with the data collection and extraction.
- Analysis of the data which:
  - Describes project return on investment via results which show in dollar terms, the social value overall and per person, cost per person and Social Return On Investment.; and
  - Examples of effective practice applicable to the projects.
- Providing reports for the projects, and derived estimates for the programme as a whole, setting out the findings, the methodology and any caveats in a format that can be used by decision-makers, but can also provide insights to the other Jobs for Nature projects

Contractors will be expected to follow appropriate protocols as advised by the projects and/or their managing agencies in the case of any visits to the projects.

The work to be carried out is the application of the GoodMeasure methodology to four Jobs for Nature projects selected in conjunction with the relevant funding agencies. Each project will work directly with the contractors through an orientation workshop and an impact profile workshop to support the collection of the relevant data. Where feasible, and when the project wishes to work that way, the workshops can be carried out face-to-face, and expense

allowances have been identified for this purpose. Where it is not feasible (due to remoteness and access issues) the workshops will be online only. Face-to-face workshop expenses will be invoiced to the Ministry directly and are separate from the fixed costs in this contract.

The agreed travel and ancillary expenses budget of 9(2)(b) (excluding GST) represents funding for a maximum of two face-to-face workshop travel engagements in the performance of the Services overall..

All other services and workshops will be delivered online via Microsoft teams.

The four projects include:

- Department of Conservation C - Weed Free Te Tai Poutini
- Land Information New Zealand - Hokonui Hills Restoration Project
- Ministry for the Environment - Hokianga Catchment Restoration Project
- Ministry of Business, Innovation and Employment - Puhake Taku Kapu Puhake Taku Wai

For each of the four projects a report will be produced, which will be shared with the project. The final deliverable will be an analysis across the four studies to draw the lessons for the wider programme, with a final report that can form the basis for reporting and publication.

The agencies reserve the right to substitute projects in the case that it is not possible to work with these projects due to factors beyond the control of either party, however all projects must be confirmed prior to this work commencing. The parties agree that once the Contract has been signed by both parties the projects nominated at that time cannot and will not be changed during the Term.

The contractor will enter into written agreements with each project to ensure expectations on both sides are understood, and to agree the use of the aggregate data. All projects must agree to this work and sign agreements, with initial workshops booked before this work commences. To meet deadlines for this contract, this work would commence the week beginning 01 April 2024.

The final report will provide a summary view of Jobs for Nature's Impact via a report and a workshop to report on key findings. Including:

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If the projects fail to provide the relevant data reasonably requested by the Supplier to support the achievement of the milestone 'presentation of the GoodMeasure reports' by 30 September 2024, that due date will be reconsidered by the Ministry in consultation with the Supplier.

#### **Deliverables**

The project Deliverables will be:

- Four individual GoodMeasure project reports, to be delivered by 30 September 2024 via online workshops
- A Final analysis report subject to acceptance by the Jobs for Nature Governance Group. For the avoidance of doubt, in relation to both of the Deliverables above, dissatisfaction with any social return on investment number or any other analysis or output of the Supplier does not, on its own, provide a basis for the Buyer to reject any of the Impact Reports, require further work, or withhold any payment due under the Contract.

#### **Performance Standards**

The Supplier will deliver the Services (including the Deliverables) in accordance with the Performance Standards detailed below:

- The Services (including any Deliverables) provided will:
  - be developed and delivered in an environmentally and socially responsible manner;
  - be the result of a professional, comprehensive investigation consistent with best practice business standards;
  - contribute to a constructive working relationship between the Ministry and other suppliers or contractors that the Supplier may be working in conjunction with to deliver the requirements of this Contract.
- In performing the Services, the Supplier must ensure any written material, advice offered and oral communication undertaken, is performed in accordance with the following performance standards:
  - factually correct, evidence-based and accurate;
  - clear and concise;
  - grammatically correct English;

- delivered to the Ministry by the due dates;
- the result of careful consideration of all relevant information;
- meets all legislative requirements; and
- is to the reasonable satisfaction of the Ministry's Contract Manager.
- Performance reports are to be provided by the Supplier on a frequency and format to be agreed between the Parties.

### Protection of Confidential Information

The Services may involve the collection of Confidential Information from 3<sup>rd</sup> parties. The Provider confirms that it has adequate security measures to safeguard Confidential Information from unauthorised access or use by third parties and that it will not use or disclose Confidential Information to any person or organisation other than:

- to the extent that use or disclosure is necessary for the purposes of providing the Services or, in the case of the Buyer, using the Services;
- if the other party gives prior written approval to the use or disclosure;
- if the use or disclosure is required by law (including under the Official Information Act 1982 (NZ)), or by any Public Service agency, Minister of the Crown or Parliamentary Office or body; or
- in relation to the disclosure, if the information has already become public, other than through a breach of the obligation of confidentiality by one of the Parties.

The Supplier acknowledges that data supplied by the Ministry or other participating Jobs For Nature government agencies, or data collected by the Supplier under this Contract is:

- Confidential Information;
- will be stored in a de-identified format, and
- will not be disclosed to any 3<sup>rd</sup> party except as allowed under this Contract.

Where receiving, collecting, using or storing data or information from Māori, iwi or hapū the Supplier will adhere to the Principles of Māori Data Sovereignty (Te Mana Raraunga 2018) in the performance of this Contract.

<https://static1.squarespace.com/static/58e9b10f9de4bb8d1fb5ebbc/t/5bda208b4ae237cd89ee16e9/1541021836126/TMR+Ma%CC%84ori+Data+Sovereignty+Principles+Oct+2018.pdf>

### Key deliverable dates to meet the contract deadlines:

- **Each project must provide the data upon which completion of the below deliverables relies in the time stated by the Supplier for the deliverables to be completed by the nominated date.** GoodMeasure journey starts with an Orientation Call per project the week commencing **01 April 2024**
- Impact Survey data (scoping and quantitative data) is locked with Supplier (including any iterations required) by **07 May 2024**
- Impact Survey text in Impact Profiles is locked with Supplier (including any edits required) by **07 June 2024**
- Presentation of four GoodMeasure Reports completed by **30 September 2024**
- Phase Three Portfolio Overview delivery due six weeks after all four GoodMeasures have been completed

New Intellectual Property Rights that are not in the Deliverables will become the property of the party that created them.

### Specific code of conduct and on-site requirements

#### *Supplier Code of Conduct*

Further to clause 2.3 (Supplier's Obligations) of Part C, the Supplier must comply with the Supplier Code of Conduct issued by the Procurement Functional Leader (see [www.procurement.govt.nz](http://www.procurement.govt.nz)).

#### *On-Site requirements*

Further to clause 2.5 (Supplier's Obligations) of Part C, if the Supplier (including the Supplier's Personnel) is at the Ministry's premises, the Supplier must observe the Ministry's policies and procedures (including those relating to security requirements and health and safety).

Where the Supplier is working on project premises they must also observe the project's protocols, policies and procedures (including those relating to security requirements and health and safety).

Supplier's Reporting Obligations Reference Part C clause 5.6	Report to:	Type of report	Due date
	Contract Manager	Monthly Progress Update	Last day of each calendar month

Supplier's Meeting Obligations Reference Part C Clause 2.4(b)	Meeting Type:	Progress update
	Timing	Monthly
	Objectives	Ensure work is on track and no issues have arisen
	Attendees	J4N Secretariat, Impactlab team, (optional) reps from the funding agencies
	Input	Monthly progress note
	Output	Meeting note

**CHARGES:** The following section sets out the Charges. Charges are the total maximum amount payable by the Ministry to the Supplier for delivery of the Services. Charges include **Fees**, and where agreed, **Expenses** and **Daily Allowances**. The Charges for this Contract are set out below.

Fees Reference Part C Clause 3	<p>The Supplier's Fees will be calculated as follows:</p> <p><b>Fixed Fee</b></p> <p>A fixed Fee of 9(2)(b) excluding GST. Any travel and ancillary costs related to face-to-face workshops and meetings will be invoiced separately and are additional to this fixed fee.</p>
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Expenses Reference Part C Clause 3	<p><b>Actual and reasonable — general Expenses</b></p> <p>The Ministry will pay the Supplier's actual and reasonable Expenses incurred in delivering the Services up to a total maximum amount of 9(2)(b) excluding GST provided that:</p> <ol style="list-style-type: none"> <li>the Ministry has given prior written consent to the Supplier incurring the Expense</li> <li>the Expense is charged at actual and reasonable cost, and</li> <li>the claim for Expenses is supported by GST receipts.</li> </ol>
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Invoices  
Reference Part C  
Clause 3

On the following dates subject to completion of the relevant Milestones.

Deliverable/Milestone	Due date	Amount due (exc GST)
Thirty days from contract signature	31 March 2024	9(2)(b)
Impact profile workshops complete (scoping and quantitative data, including any iterations are locked)	07 May2024	9(2)(b)
Presentation of GoodMeasure Reports complete	30 September 2024	9(2)(b)
Phase Three Portfolio Overview	11 November 2024	9(2)(b)

	(All four GoodMeasure Reports must be complete before this phase commences, this will be due 6 weeks later).		
	Travel and other disbursements	As incurred	9(2)(b)
		Total Fees (exc GST)	9(2)(b)
	Total cost (exc GST)		9(2)(b)
<b>Tax invoices</b>  Reference Part C Clause 3		<b>Ministry's address</b>	
	<b>For the attention of:</b>	Accounts Payable	
	<b>Email:</b>	<a href="mailto:accounts.payable@mfe.govt.nz">accounts.payable@mfe.govt.nz</a>	
	<b>CC Contract Administrator:</b>	Freya Millward, Project Administrator	
		<b>Supplier's Invoicing Details</b>	
	<b>Supplier's GST Number:</b>	127-976-163	
	<b>Email (for e-copy of Ministry's remittance advice):</b>	<a href="mailto:accounts@impactlab.co.nz">accounts@impactlab.co.nz</a>	
<b>Insurance</b>  Reference Part C Clause 14.6	<b>INSURANCE:</b>  (a) Public liability insurance for a sum of not less than NZ\$5,000,000 for any one claim or series of claims arising out of one event; (b) Property insurance for the reinstatement value of all assets in the possession or control of the Supplier that are or will be used in connection with the provision of the Services and Deliverables; and (c) Professional indemnity insurance for a sum of not less than NZ\$5,000,000 for any claim or series of claims arising in a policy period.		
	<b>Changes to Part C and additional clause/s</b>		
<b>Part C: Standard Terms and Conditions of this Contract is amended as follows:</b>  <b>Privacy requirements</b>  Add the following new clause after clause 5.9: 5.10 Further to clause 5.9, where the Supplier is holding or processing any personal information (as defined in the Privacy Act 2020) the Supplier must: (a) report any breach or potential breach of its obligations in respect of such personal information; and (b) give the Ministry reasonable notice in advance of making a mandatory breach notification to the Privacy Commissioner (or, where prior notice is not reasonably possible, promptly after).  <b>Ministry's Obligations - insert</b>  (d) The Ministry will not reverse engineer or tamper with the Deliverables produced by the Supplier.  <b>11.14 Consequences of termination or expiry of this Contract –amend to read:</b> If this Contract is terminated the Ministry: (a) will be liable to pay Charges that were due for Services delivered before the effective date of termination as well as payment for time incurred by the Supplier in providing			

	<p>works necessary to complete the Services at the rate of \$200.00 (excl GST) per hour per personnel engaged;</p> <p>(b) If the amount payable following the calculation in 11.14a exceeds any amount paid by the Ministry to the Supplier as part of the initial payment upon signing for that milestone in Part B, the Supplier will, within 10 Business Days of the date of termination, refund the amount of that initial payment overpaid to the Supplier despite any clause to the contrary and</p> <p>(c) may recover from the Supplier or set off against sums due to the Supplier, any Charges paid in advance that have not been incurred.</p> <p><b>Handing over the Services on termination or expiry of this Contract</b></p> <p>This section is deleted as not relevant to this contract</p> <p><b>12 Intellectual property rights – insert</b></p> <p>12.3 New Intellectual Property Rights that are not in the Deliverables will become the property of the party that created them .</p>
<p><b>Attachments</b></p> <p>Reference 'Contract documents' described at Part A</p>	None





## Part C: Standard Terms and Conditions

### 1. Term

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- 1.1 This Contract starts on the Start Date. Services must not be delivered before the Start Date.
- 1.2 This Contract ends on the End Date.

### 2. Services

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#### **Both Parties' obligations**

- 2.1 Both Parties agree to:
  - a. act in good faith and demonstrate honesty, integrity, openness and accountability in their dealings with each other;
  - b. discuss matters affecting this Contract or the delivery of the Services, whenever necessary;
  - c. notify each other immediately of any actual or anticipated issues that could:
    - i. significantly impact on the Services or the Charges;
    - ii. receive media attention;
  - d. comply with all applicable Law; and
  - e. act in good faith to promptly remedy any problems with the Services.

#### **Ministry's obligations**

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

#### **Supplier's obligations**

- 2.3 The Supplier must deliver the Services and Deliverables and complete the Milestones:
  - a. to the required scope, requirements and specifications set out in Part B;
  - b. on time and to the required performance standards and quality set out in Part B or reasonably notified by the Ministry to the Supplier from time to time;
  - c. within the amounts agreed as Charges; and

- d. with due care, skill and diligence, and in accordance with Good Industry Practice.
- 2.4 The Supplier must:
- a. ensure that its Personnel have the necessary skills, experience, training and resources to successfully deliver the Services;
  - b. comply with its reporting and meeting requirements set out in Part B;
  - c. provide all equipment and resources necessary to deliver the Services;
  - d. comply with the Standards of Integrity and Conduct issued by the State Services Commission (see [www.ssc.govt.nz](http://www.ssc.govt.nz)) and any other relevant codes of conduct listed in Part B or notified by the Ministry to the Supplier from time to time;
  - e. co-operate and co-ordinate the provision of the Services with the performance of services being provided by any other contractors or consultants acting on behalf of the Ministry in respect of the Services and/or Deliverables; and
  - f. not in performing the Services do anything that would cause the Ministry to breach a Law.
- 2.5 If the Supplier is at the Ministry's premises, the Supplier must observe the Ministry's policies and procedures, including those relating to health and safety, and security requirements. The Ministry must tell the Supplier what the relevant policies and procedures are, and either give the Supplier a copy of them or provide an internet link.
- 2.6 If the nature of the Services requires it, the Supplier will deliver Services:
- a. in a manner that is culturally appropriate for Māori, Pacific and other ethnic or indigenous groups, and
  - b. that respects the personal privacy and dignity of all participants and stakeholders.
- 2.7 If any services, functions, responsibilities, activities or tasks are not specifically included within the description of the Services but now or in the future are required to perform the Services because they are a necessary, inherent or incidental part of the Services they will, to the extent that it is reasonable to do so, be deemed implied by, and included in, the scope of the Services, as if described in this Contract.
- 2.8 If the Services under this Contract are similar to services that the Supplier has provided, is providing, or may provide, for any other Crown or public service agencies, the Supplier will promptly provide notice verbally or in writing to the Ministry.

### **3. Charges and Payment**

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#### **Charges & invoices**

- 3.1 The Charges are the total maximum amount payable by the Ministry to the Supplier for delivery of the Services. Charges include Fees and, where agreed, Expenses and Daily Allowances.
- 3.2 The Supplier must provide (via email to the Ministry's centralised Accounts Payable email address detailed in Part B) valid tax invoices for all Charges on the dates or at the times specified in Part B. The Ministry has no obligation to pay the Charges set out on an invoice, which is not a valid tax invoice. A valid a tax invoice must:
- a. clearly show all GST due;

- b. be in New Zealand currency or the currency stated in Part B;
- c. be clearly marked 'Tax invoice';
- d. contain the Supplier's name, address and GST number, if the Supplier is registered for GST;
- e. contain the Ministry's name and address and be marked for the attention of the Ministry's Contract Manager or such other person stated in Part B;
- f. state the date the invoice was issued;
- g. name this Contract and provide a description of the Services supplied, including the amount of time spent in the delivery of the Services if payment is based on an Hourly Fee Rate or Daily Fee Rate;
- h. contain the Ministry's contract reference or purchase order number if there is one
- i. state the Charges due, calculated correctly; and
- j. be supported by GST receipts if Expenses are claimed and any other verifying documentation (including weekly timesheets) reasonably requested by the Ministry.

- 3.3 If the Supplier's tax invoice does not contain the Ministry's contract reference, the Ministry will not process the invoice and will return the invoice to the Supplier. The Supplier shall reissue the invoice to the Ministry with the contract reference.

### **Payment**

- 3.4 If the Ministry receives a valid tax invoice on or before the 3rd Business Day of the month, the Ministry must pay that tax invoice by the 20th calendar day of that month. Any valid tax invoice received after the 3rd Business Day of the month will be paid by the Ministry on the 20th calendar day of the month following the month it is received. The Ministry's obligation to pay is subject to clauses 3.2, 3.5 and 11.10.
- 3.5 If the Ministry disputes a tax invoice or any part of a tax invoice that complies with clause 3.2, the Ministry must notify the Supplier within 10 Business Days of the date of receipt of the tax invoice. The Supplier must provide a credit note for the original disputed tax invoice along with a replacement tax invoice for the undisputed amount if the Ministry requests one. The Ministry must pay the portion of the tax invoice that is not in dispute. The Ministry may withhold payment of the disputed portion until the dispute is resolved.
- 3.6 In accordance with section 4(1) of the Public Finance Act 1989, both Parties acknowledge that payment to the Supplier beyond each Financial Year is contingent upon the Ministry's appropriation of adequate levels of funding for services of the type covered by this Contract under an Act of Parliament for that Financial Year. If the Ministry is required to rely upon this clause, the Ministry may terminate this Contract by notice with immediate effect.

## **4. Contract Management and Delays**

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### **Contract Manager**

- 4.1 The persons named in Part B as the Contract Managers are responsible for managing the Contract, including:

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

### **Changing the Contract Manager**

- 4.2 If the Ministry changes its Contract Manager it must tell the Supplier, in writing, the name and contact details of the replacement as soon as reasonably practicable after the change. If the Supplier wishes to change its Contract Manager, it will follow the process set out in clause 7.4.

### **Delays**

- 4.3 If the Supplier considers that it is (or is likely to be) prevented or delayed from achieving a date or time for performance specified in Part B (a **Delay**) the Supplier will:
- a. immediately provide verbal or written notice to the Ministry's Contract Manager, setting out:
    - i. the cause of the Delay and its expected duration;
    - ii. the effect of the Delay on its ability to perform its obligations under Part B (including any future Deliverables and/or Milestones);
    - iii. what extension, if any, to the relevant Deliverables and/or Milestone is being sought; and
    - iv. what steps, if any, the Ministry may take to mitigate the effect of the Delay; and
  - b. 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.
- 4.4 As soon as practicable following the receipt of the notice of the Delay, the Parties will meet with a view to agreeing how the Delay should be addressed.

### **Changes to delivery dates**

- 4.5 Subject to clause 4.6, the Parties' Contractors Managers may, as a result of a Delay, agree to an extension to Deliverables and/or Milestones. Such agreement must be recorded in writing through an exchange of emails, and clearly document the revised delivery dates.
- 4.6 Any change to the Charges or the End Date as a result of a Delay may only be agreed by Variation in accordance with clause 18.1.

## **5. Information Management**

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### **Information and Records**

- 5.1 The Supplier must:
- a. keep and maintain Records in accordance with prudent business practice and all applicable laws;
  - b. make sure the Records clearly identify all relevant time and Expenses incurred in providing the Services;
  - c. make sure the Records are easy to access; and

- d. keep the Records safe.
- 5.2 The Supplier must give information to the Ministry relating to the Services that the Ministry reasonably requests. All information provided by the Supplier must be in a format that is usable by the Ministry, and delivered within a reasonable time of the request.
- 5.3 The Supplier must co-operate with the Ministry to provide information immediately if the information is required by the Ministry to comply with an enquiry or its statutory, parliamentary, or other reporting obligations.
- 5.4 The Supplier must make its Records available to the Ministry during the term of the Contract and for 7 years after the End Date (unless already provided to the Ministry earlier).
- 5.5 The Supplier must make sure that Records provided by the Ministry or created for the Ministry, are securely managed and securely destroyed on their disposal.

### Reports

- 5.6 The Supplier must prepare and give to the Ministry the reports stated in Part B, by the due dates stated in Part B.

### Official information

- 5.7 The Supplier shall immediately refer to the Ministry any request received by it for information under the Official Information Act 1982 in relation to this Contract and Services undertaken in relation to it (an **OIA request**) and advise the person requesting the information of such transfer.
- 5.8 Where the Supplier holds information that relates to this Contract and Services undertaken in relation to it that falls within the scope of any OIA request, the Supplier shall forward that information to the Ministry within the timeframe requested by the Ministry.

### Privacy

- 5.9 The Supplier agrees:
  - a. not to do anything that would breach an information privacy principle contained in the Privacy Act 2020 (the **Privacy Act**), which if done or engaged in by an agency under the Privacy Act, would be a breach of that information privacy principle;
  - b. to use or disclose personal information (as defined in the Privacy Act) obtained only for the purposes of delivering Services and complying with this Contract;
  - c. to otherwise comply with the Privacy Act and any code established under the Privacy Act;
  - d. to immediately notify the Ministry if the Supplier becomes aware of any breach or possible breach of the Privacy Act whether by it or any of its Subcontractors; and
  - e. to ensure that any of the Supplier's Personnel who are required to deal with personal information for the purposes of this Contract are made aware of and comply with the obligations set out in this clause 5.9.

## 6. Warranties

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### Supplier's warranties

- 6.1 The Supplier represents, warrants and undertakes that:
- a. the Services and Deliverables will be fit for their intended purposes as expressly set out in Part B;
  - b. it has full power, capacity and authority to execute, deliver and perform its obligations under this Contract;
  - c. it has, and will continue to have, all the necessary consents, permissions, licences and rights to enter into and perform its obligations under this Contract;
  - d. once executed this Contract constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms;
  - e. there are no existing agreements, undertakings or arrangements, the terms of which prevent it from entering into this Contract, or which would impede the performance of its obligations under this Contract, or that it would breach by entering into this Contract;
  - f. it has not violated any Laws regarding the offering of unlawful inducements in connection with the entering into or negotiation of this Contract;
  - g. in establishing the Fees, and responding to any tender process in relation to the Services and Deliverables, such decisions and prices were arrived at independently and without collusion;
  - h. is legally entitled to do the things started in clause 12.3 with the Intellectual Property Rights in the Deliverables;
  - i. that Pre-existing and New Intellectual Property Rights provided by the Supplier and incorporated in the Services and Deliverables do not infringe the Intellectual Property Rights of any third party;
  - j. in relation to any Deliverables supplied by or on behalf of the Supplier under this Contract be free of material defects and any known or detectable Viruses;
  - k. it will not, during the course of this Contract, engage in any activity likely to compromise its ability to perform its obligations fairly and independently; and
  - l. it is not (and nor is any of its respective directors or employees) a party to any litigation, proceedings or disputes which will adversely affect its ability to perform its obligations under this Contract.

### Continuous application and Notification

- 6.2 The warranties, representations and undertakings in this Contract will be deemed to be given continuously throughout its term. The Supplier will promptly notify the Ministry of any non-compliance with the warranties in this Contract.

## 7. Personnel and Subcontractors

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### Supplier Personnel

- 7.1 The Supplier must:
- a. ensure that its Personnel have the necessary skills, experience, training and resources to successfully deliver the Services;

- b. provide all equipment and resources necessary to deliver the Services; and
- c. comply with the Standards of Integrity and Conduct issued by the State Services Commission (see [www.ssc.govt.nz](http://www.ssc.govt.nz)) and any other relevant codes of conduct listed in Part B or notified by the Ministry to the Supplier from time to time.

### **Approved Personnel**

- 7.2 Where an Approved Personnel has been authorised by the Ministry in Part B, the Supplier must use the Approved Personnel in delivering the Services.
- 7.3 The Supplier's Contract Owner and Contract Manager are Approved Personnel for the purposes of this Contract.
- 7.4 Where the Supplier wishes to change an Approved Personnel it will give the Ministry at least 10 Business Days' Notice of the proposed replacement, including all relevant qualifications and details of the relevant Personnel. Subject to clause 7.5, the Supplier may only replace the Approved Personnel if:
  - a. the Ministry has approved the proposed replacement Approved Personnel;
  - b. the Supplier bears all costs relating to the replacement and upskilling the replacement Approved Personnel; and
  - c. the Supplier, if required by the Ministry, agrees on a transition plan with the Ministry for the replacement Approved Personnel and manages the replacement in accordance with such plan.
- 7.5 The Supplier agrees that the Ministry may conduct criminal checks in relation to Approved Personnel at the Ministry's sole discretion from time to time. If the Ministry is not satisfied with result of a check, the Ministry may, without limiting its other rights or remedies, require the removal of the Approved Personnel from the provision of the Services by giving Notice to the Supplier. The Supplier must comply with that Notice within five Business Days.

### **Rules about subcontracting**

- 7.6 The Supplier must not enter into a contract with someone else to deliver any part of the Services unless they are listed as a Subcontractor in Part B of this Contract or the Supplier has otherwise obtained the Ministry's prior written approval. In selecting an appropriate Subcontractor the Supplier must be able to demonstrate value for money.
- 7.7 If the Ministry reasonably thinks that the Subcontractor has failed to deliver the aspect of the Services being subcontracted as required under this Contract and the failure cannot be remedied, the Ministry may, by Notice to the Supplier, require the Supplier to terminate that sub-contract immediately and the Supplier must comply with that Notice within five Business Days.

### **The Supplier's responsibilities**

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



- 7.9 The Supplier must ensure that:
- each Subcontractor is fully aware of the Supplier's obligations under this Contract; and
  - any subcontract it enters into is on terms that are consistent with this Contract.
- 7.10 The Supplier continues to be responsible for delivering the Services under this Contract even if aspects of the Services are subcontracted.

## 8. Conflicts of Interest

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### Avoiding Conflicts of Interest

- 8.1 The Supplier warrants that as at the Start Date, it has no Conflict of Interest in providing the Services or entering into this Contract.
- 8.2 The Supplier must do its best to avoid situations that may lead to a Conflict of Interest arising.

### Obligation to tell the Ministry

- 8.3 The Supplier must notify the Ministry immediately in writing if any Conflict of Interest arises in relation to the Services or this Contract. If a Conflict of Interest does arise the Parties must discuss, agree and record in writing whether it can be managed and, if so, how it will be managed. Each Party must pay its own costs in relation to managing a Conflict of Interest.

## 9. Remedial Plan

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### Remedial Plan Process

- 9.1 If at any time:
- the Ministry considers that the Supplier has breached or may imminently breach any of its obligations under this Contract; or
  - the Supplier has given the Ministry notice of a breach or likely breach of any of its obligations under this Contract,
- (in each case a **Delivery Issue**), the Ministry may give notice to the Supplier setting out the Delivery Issue (**Delivery Notice**).
- 9.2 If at any time a Delivery Issue arises, the Supplier will immediately take all reasonable steps to minimise or mitigate the Delivery Issue.
- 9.3 As soon as possible after receipt of a Delivery Notice and within three Business Days, the Supplier will consult with the Ministry's Contract Manager or Personnel as otherwise notified by the Ministry in writing.
- 9.4 As soon as possible after receipt of a Delivery Notice and in any event within 10 Business Days, the Supplier will prepare and provide to the Ministry a proposed plan setting out (**Remedial Plan**):
- full details of the Delivery Issue (including its causes, expected duration and impact on the Services and the Supplier's obligations under this Contract);



- b. a plan (including milestones) setting out the steps it will take to eliminate, and mitigate the effect of, the Delivery Issue and prevent the Delivery Issue from recurring, as applicable; and
- c. success criteria to determine whether the Delivery Issue has been rectified (**Success Criteria**).

### **Modifications to Remedial Plan**

- 9.5 The Supplier will promptly and within five Business Days of a request by the Ministry make such amendments to the proposed Remedial Plan as the Ministry may reasonably require and deliver the amended Remedial Plan to the Ministry for review.
- 9.6 The Ministry will review the amended Remedial Plan and will promptly at its sole discretion (and, in any event, within five Business Days of receipt) either:
- a. approve the Remedial Plan by written notice to the Supplier;
  - b. notify the Supplier of any further required amendments, to be made in accordance with clause 9.5; or
  - c. issue to the Supplier a further notice which specifies that the relevant Delivery Issue has not been remedied.

### **Implementation**

- 9.7 If the Ministry has approved the Remedial Plan in accordance with clause 9.6, the Supplier will implement the Remedial Plan in accordance with its terms and this Contract.
- 9.8 The exercise, or deferral, by the Ministry of its rights in this clause 9 will be without prejudice to any other rights of remedies of the Ministry under this Contract or otherwise.

## **10. Resolving disputes**

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### **Steps to resolving disputes**

- 10.1 The Parties agree to use their best endeavours to resolve any dispute or difference that may arise under this Contract. The following process will apply to disputes:
- a. a Party must notify the other if it considers a matter is in dispute;
  - b. the Contract Managers will attempt to resolve the dispute through direct negotiation;
  - c. if the Contract Managers have not resolved the dispute within 10 Business Days of notification, they will refer it to the Parties' Contract Owners for resolution,
  - d. if the Contract Owners have not resolved the dispute within 10 Business Days of notification, they will refer it to the Parties' senior managers for resolution; and
  - e. if the senior managers have not resolved the dispute within 10 Business Days of it being referred to them, the Parties shall refer the dispute to mediation or some other form of alternative dispute resolution.
- 10.2 If a dispute is referred to mediation, the mediation will be conducted:
- a. by a single mediator agreed by the Parties or if they cannot agree, appointed by the Chair of LEADR NZ Inc;

- b. on the terms of the LEADR NZ Inc. standard mediation agreement; and
- c. at a fee to be agreed by the Parties or if they cannot agree, at a fee determined by the Chair of LEADR NZ Inc.

10.3 Each Party will pay its own costs of mediation or alternative dispute resolution under this clause 10.

#### **Obligations during a dispute**

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

#### **Taking court action**

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

## **11. Ending this Contract**

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#### **Termination by the Supplier**

- 11.1 The Supplier may terminate this Contract by giving 20 Business Days Notice to the Ministry, if the Ministry fails to pay Charges that are properly due, and are not in dispute under clause 3.5. The Charges must be overdue by 20 Business Days and the Supplier must have first brought this to the Ministry's attention in writing within this period.
- 11.2 At any time during the term of this Contract the Supplier may notify the Ministry that it wishes to terminate this Contract by giving 20 Business Days Notice. The Ministry will, within 20 Business Days following receipt of the Supplier's Notice, notify the Supplier whether, in its absolute discretion, it consents to the Supplier's Notice of termination. If the Ministry:
- a. consents, the Contract will be terminated on a date that is mutually agreed between the Parties, or
  - b. does not consent, the Contract will continue in full force as if the Supplier's Notice of termination had not been given.

11.3 The Supplier may also terminate this Contract under clause 11.9.

#### **Termination by the Ministry**

- 11.4 The Ministry may terminate this Contract at any time by giving 10 Business Days' Notice to the Supplier.
- 11.5 The Ministry may terminate this Contract immediately, by giving Notice, if the Supplier:
- a. becomes bankrupt or insolvent;
  - b. has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed;
  - c. becomes subject to any form of external administration;
  - d. ceases for any reason to continue in business or to deliver the Services;

- e. is unable to deliver the Services for a period of 20 Business Days or more due to an Extraordinary Event;
- f. requires the supply of Services within the period of an Extraordinary Event;
- g. is in breach of any of its obligations under this Contract and the breach cannot be remedied;
- h. repeatedly fails to perform or comply with its obligations under this Contract whether those obligations are minor or significant;
- i. does something or fails to do something that, in the Ministry's opinion, results in damage to the Ministry's reputation or business or the reputation or business of the Crown;
- j. has a Conflict of Interest that in the Ministry's opinion is so material as to impact adversely on the delivery of the Services, the Ministry or the Crown; or
- k. provides information to the Ministry that is misleading or inaccurate in any material respect.

#### **Termination by a Party if a breach has not been remedied**

- 11.6 If a Party fails to meet the requirements of this Contract (defaulting Party) and the other Party (non-defaulting Party) reasonably believes that the failure can be remedied, the non-defaulting Party must give a Notice (default Notice) to the defaulting Party.
- 11.7 A default Notice must state:
- a. the nature of the failure;
  - b. what is required to remedy it; and
  - c. the time and date by which it must be remedied.
- 11.8 The period allowed to remedy the failure must be reasonable given the nature of the failure.
- 11.9 If the defaulting Party does not remedy the failure as required by the default Notice, the non-defaulting Party may terminate this Contract immediately by giving a further Notice.
- 11.10 If the Ministry gives a default Notice to the Supplier, the Ministry may also do one or both of the following things:
- a. withhold any payment of Fees due until the failure is remedied as required by the default Notice; and / or
  - b. if the failure is not remedied as required by the default Notice, deduct a reasonable amount from any Fees due to reflect the reduced value of the Services to the Ministry.

#### **Supplier's obligations on termination or expiry of this Contract**

- 11.11 On giving or receiving a Notice of termination, the Supplier must:
- a. stop providing the Services;
  - b. comply with any conditions contained in the Notice; and
  - c. immediately do everything reasonably possible to reduce its losses, costs and expenses arising from the termination of this Contract.

11.12 On termination or expiry of this Contract, the Supplier must, if requested by the Ministry, immediately return or securely destroy all Confidential Information and other material or property belonging to the Ministry.

#### **Consequences of termination or expiry of this Contract**

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

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

11.14 If this Contract is terminated the Ministry:

- a. will only be liable to pay Charges that were due for Services delivered before the effective date of termination; and
- b. may recover from the Supplier or set off against sums due to the Supplier, any Charges paid in advance that have not been incurred.

#### **Handing over the Services on termination or expiry of this Contract**

11.15 The Supplier will, within 10 Business Days of the End Date, provide all reasonable assistance and cooperation necessary to facilitate a smooth handover of the Services to the Ministry or any person appointed by the Ministry.

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

11.17 The clauses that by their nature should remain in force on expiry or termination of this Contract do so, including clauses 5 (Information management), 10 (Resolving disputes), 14 (Ending this Contract), 12 (Intellectual Property Rights), 13 (Confidential Information), 14 (Liability and Insurance), 18 (General) and 19 (Interpretation and Definitions).

## **12. Intellectual Property Rights**

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### **Ownership of Intellectual Property Rights**

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

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

12.3 The Supplier grants to the Ministry (as The Crown) a perpetual, non-exclusive, worldwide and royalty-free licence to use, for any purpose, all Intellectual Property Rights in the Deliverables that are not owned by the Ministry.

## **NZGOAL**

- 12.4 The Supplier acknowledges and agrees that the licence granted in clause 12.3 includes the right for the Ministry to use, copy, modify and distribute the Deliverables and to sub-license any Intellectual Property Rights in the Deliverables and the Deliverables themselves for re-use under any Creative Commons or other licence referred to in the New Zealand Government Open Access and Licensing framework (available at <http://ict.govt.nz/guidance-and-resources/information-and-data/nzgoal>).

### **Supplier indemnity**

- 12.5 The Supplier indemnifies the Ministry (as The Crown) in respect of any expenses, damage or liability incurred by the Ministry or The Crown in connection with any third party claim that the delivery of the Services or Deliverables to the Ministry or the Ministry's or The Crown's use of them, infringes a third party's Intellectual Property Rights.

## **13. Confidential Information**

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### **Protection of Confidential Information**

- 13.1 Each Party confirms that it has adequate security measures to safeguard the other Party's Confidential Information from unauthorised access or use by third parties, and that it will not use or disclose the other Party's Confidential Information to any person or organisation other than:
- a. to the extent that use or disclosure is necessary for the purposes of providing the Deliverables or Services or in the case of the Ministry using the Deliverables or Services;
  - b. if the other Party gives prior written approval to the use or disclosure;
  - c. if the use or disclosure is required by Law (including under the Official Information Act 1982), Ministers or parliamentary convention; or
  - d. in relation to disclosure, if the information has already become public, other than through a breach of the obligation of confidentiality by one of the Parties.

### **Obligation to inform staff**

- 13.2 Each Party will ensure that its Personnel:
- a. are aware of the confidentiality obligations in this Contract, and
  - b. do not use or disclose any of the other Party's Confidential Information except as allowed by this Contract.
- 13.3 Where any Supplier Personnel are required to provide any of the Services on the Ministry's premises, the Supplier must ensure those Supplier Personnel sign and return to the Ministry a confidentiality undertaking in the form attached as an Attachment to this Part C before they commence provision of the relevant Services.

## **14. Liability and Insurance**

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### **Ministry Liability**

- 14.1 The maximum total liability of the Ministry's liability in connection with this Contract is an amount equal to the total Charges paid or payable under this Contract.

### **Supplier Liability**

- 14.2 The maximum total liability of the Supplier's liability to the Ministry in connection with this Contract is the greater of \$2,000,000 and an amount equal to five times the total Charges paid and payable under this Contract. This limitation of liability does not apply:
- a. if and to the extent there has been malicious wrongdoing, gross negligence or fraud by the Supplier,
  - b. to the Supplier's Intellectual Property Rights indemnity in clause 12.5, or
  - c. to loss or damage resulting from any breach of confidentiality by the Supplier.
- 14.3 Subject to the exclusions in clause 14.2, neither Party will under any circumstances be liable in relation to this Contract for any indirect or consequential loss or damage, or any loss of profits, arising out of or in connection with the performance or non-performance of this Contract.
- 14.4 The limitations and exclusions of liability in this clause 14 will apply irrespective of how liability arises, whether in contract, equity, tort (including negligence), breach of statutory duty or otherwise.
- 14.5 Each Party will take reasonable steps to mitigate any claim or loss sustained or incurred as a result of any breach or default of the other Party.

### **Insurance**

- 14.6 It is the Supplier's responsibility to ensure its risks of doing business are adequately covered, whether by insurance or otherwise. The Supplier must, as a minimum, have the insurance cover specified in Part B and must:
- a. take out and maintain that insurance cover with a reputable insurer for the Term and for a period of 3 years after the End Date, and
  - b. within 10 Business Days of a request from the Ministry provide a certificate confirming the nature of the insurance cover and proving that each policy is current.

## **15. Extraordinary Events**

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### **No fault if failure due to an Extraordinary Event**

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

### **Obligations of the affected Party**

- 15.2 A Party who wishes to claim suspension of its obligations due to an Extraordinary Event must notify the other Party as soon as reasonably possible. The Notice must state:
- the nature of the circumstances giving rise to the Extraordinary Event;
  - the extent of that Party's inability to perform under this Contract;
  - the likely duration of that non-performance; and
  - what steps are being taken to minimise the impact of the Extraordinary Event on the delivery of Services.

#### **Alternative arrangements requiring immediate termination**

- 15.3 If the Ministry, acting reasonably, requires the Services to be supplied during the period affected by an Extraordinary Event, then despite clause 15.4, the Ministry may terminate this Contract immediately by giving Notice.

#### **Termination of Contract**

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

## **16. Review and Audit**

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#### **Right to audit**

- 16.1 The Ministry may, from time to time, carry out an audit for the purpose of:
- reviewing the Supplier's compliance with, and/or ability to perform, any of its obligations under this Contract; or
  - confirming the accuracy of any tax invoice rendered by the Supplier to the Ministry.

#### **Audit requirements**

- 16.2 If the Ministry conducts an audit under this clause 16.1:
- it will be conducted during Business Days, during normal business hours, and following 10 Business Days' Notice to the Supplier;
  - it may, at the Ministry's option, be undertaken by its Personnel, or an independent expert approved by the Supplier (such approval not to be unreasonably withheld or delayed) (**Auditor**), with the Auditor to be under a duty of confidentiality;
  - the Ministry will comply (and will take reasonable steps to ensure any Auditor complies) with the Supplier's reasonable requirements for the purpose of protecting the security and safety of personnel, information and premises;
  - the Ministry will use its reasonable endeavours to minimise (including taking reasonable steps to ensure any Auditor minimises) any disruption to the Supplier's business during the course of the audit;
  - the Supplier must co-operate in a timely manner in respect of any audit (such co-operation to include complying with any of the Ministry's audit provisions); and
  - the Supplier must promptly provide:

- i. access and assistance to the Ministry in respect of any audit (including access to the Supplier, its Personnel, facilities, systems, records and resources used in the provision of the Services and Deliverables); and
- ii. any explanations, information and documentation that the Ministry may require in relation to the audit; and
- iii. the Supplier will procure that any agreements with its Subcontractors contain provisions granting the Ministry the same rights, in respect of the Subcontractor, that it has under this clause 16.

#### **Self-audit**

16.3 The Ministry may, by Notice and no more than once in each calendar year, request the Supplier to undertake an internal self-audit of the Supplier's provision of the Services and Deliverables in accordance with this Contract (**Self-Audit**). The Self-Audit will be carried out by the Supplier's Personnel or its external auditor within 20 Business Days of receiving such notice from the Ministry. The Supplier will, following such Self-Audit, provide a written report to the Ministry detailing the findings of such Self-Audit. The Supplier will resolve any such findings which are adverse to the proper provision of the Services and Deliverables as soon as practicable at its own cost.

#### **Cost of audit**

16.4 The Ministry and the Supplier will each be responsible for their own costs in relation to any audit undertaken in accordance with this clause 16, unless the audit reveals a material breach by the Supplier of this Contract, in which case the Supplier will reimburse the Ministry for its actual and reasonable costs in carrying out any audit (other than a Self-Audit).

### **17. Environment, Sustainability and Health and Safety**

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17.1 The Supplier will:

- a. comply at all times with all relevant requirements and provisions of the Hazardous Substances New Organisms Act 1996 (**HSNO Act**), Resource Management Act 1991 (**RMA**) and the Health and Safety at Work Act 2015 (**HSWA**) and any related regulations, codes of practice and industry best practice guidelines relevant to the Services;
- b. ensure that all of its Personnel are aware of potential liabilities and obligations under the environmental Law relevant to the Services; and
- c. keep the Ministry properly informed in writing about any threatened or actual enforcement action commenced against it or a Subcontractor under the HSNO Act, RMA or HSWA, or any other Law, in any capacity relevant to the Services or this Contract.

17.2 The Supplier will perform the Services in a manner that gives appropriate regard to the protection of the natural environment. The Supplier shall take all reasonable steps to carry out the Services, and any related research activities, end of life disposal, shipping or travel, in accordance with sustainable and environmentally sound Good Industry Practice.



**17.3 The Supplier agrees to:**

- a. consult, cooperate and coordinate with the Ministry (and any other third parties involved in the Services) with a view to ensuring both Parties comply with their respective obligations under the Health and Safety at Work Act 2015 as they relate to the Contract;
- b. perform its, and ensure that its Personnel perform their, obligations under the Contract in compliance with its and their obligations under the Health and Safety at Work Act 2015;
- c. maintain, comply with and ensure its Personnel comply with, health and safety policies and practices that are appropriate to the nature of the Services and are in accordance with Good Industry Practice;
- d. comply with all reasonable directions of the Ministry relating to health and safety; and
- e. report any health and safety incident, injury or near miss to the Ministry relating to, or affecting, the Contract as soon as practicably possible.

## **18. General**

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### **Changes to this Contract**

18.1 Any change to this Contract is called a Variation. A Variation must be agreed by both Parties and recorded in writing and signed by authorised representatives of both Parties.

### **Notices**

18.2 All Notices to a Party must be delivered by hand or sent by post, courier, fax or email to that Party's address for Notices stated in Part B.

18.3 Notices must be signed or in the case of email sent by the appropriate manager or person having authority to do so.

18.4 A Notice will be considered to be received:

- a. if delivered by hand, on the date it is delivered;
- b. if sent by post within New Zealand, on the 3rd Business Day after the date it was sent;
- c. if sent by post internationally, on the 7th Business Day after the date it was sent;
- d. if sent by courier, on the date it is delivered; or
- e. if sent by fax, on the sender receiving a fax machine report that it has been successfully sent.

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

### **Independent contractor**

18.6 Nothing in this Contract constitutes a legal relationship between the Parties of partnership, joint venture, agency, or employment. The Supplier is responsible for the liability of its own, and its Personnel's, salary, wages, holiday or redundancy payments

and any GST, corporate, personal and withholding taxes, ACC premiums or other levies attributable to the Supplier's business or the engagement of its Personnel.

#### **Non-exclusive**

18.7 The Supplier is appointed on a non-exclusive basis. Nothing in this Contract restricts the right of the Ministry to itself provide, to re-tender for the provision of, or to appoint any third party to provide, any of the Services or any other related services.

#### **Neither Party can represent the other**

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

#### **This is the entire Contract**

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

#### **Waiver**

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

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

#### **New Zealand law, currency and time**

18.11 This Contract will be governed and interpreted in accordance with the laws of New Zealand. All money is in New Zealand dollars, unless Part B specifies a different currency. Dates and times are New Zealand time.

#### **Publication of information about this Contract**

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

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

#### **Signing the Contract**

18.14 The date of execution is date this Contract is signed. This Contract is properly signed if each Party signs the same copy, or separate identical copies, of Part A. If this Contract

is signed on two separate dates or separate copies are signed, the date of execution is the later of the two dates. Where separate copies are signed the signed copy can be the original document, or a faxed or emailed copy.

### **No poaching**

18.15 During the term of this Contract and for a period of 6 months after the End Date neither Party shall, without the other's written consent, deliberately solicit for employment or hire any person who is or has been employed by the other and involved in the delivery of the Services. This does not apply where a person has responded to a legitimate advertisement.

### **Precedence**

18.16 If there is any conflict or difference between the documents forming this Contract (as stated on Part A) then the order of precedence is:

- a. a Variation agreed between the Parties under clause 18.1;
- b. Part B;
- c. Part C;
- d. any Attachment to Part B; and
- e. any Attachment to Part C.

## **19. Interpretation and Definitions**

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### **Interpretation**

19.1 In the interpretation of this Contract, unless otherwise stated:

- a. no executive or prerogative power or right, or any immunity, of the Crown is affected by this Contract;
- b. "including" and similar words do not imply any limitation;
- c. reference to the singular includes the plural and vice versa and references to any gender includes both genders;
- d. an obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- e. headings are included for ease of reference only and shall not affect the interpretation of this Contract;
- f. references to clauses and schedules are references to clauses of and schedules to this Contract;
- g. amounts are in NZ\$ and exclude GST (if any);
- h. if the Supplier comprises more than one person, each of those person's liability to the Ministry is joint and several;
- i. references to a party or a person includes any form of entity and their respective successors, assigns and representatives; and
- j. any statutory reference includes any statutory extension, amendment, consolidation or re-enactment and any statutory instrument, order or regulation made under any statute for the time being in force.

### **Definitions**

19.2 When used in this Contract the following terms have the meaning beside them:

**Attachment** Any supplementary document named in Part B or Part C as an Attachment to this Contract.

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

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

**Ministry** The Ministry is the purchaser of the Services. The Ministry is the Crown, also described as the Sovereign in right of New Zealand who acts by and through the Secretary for the Environment for the purposes of this Contract.

**Charges** The total amount payable by the Ministry to the Supplier as stated in Part B. The Supplier's Charges include Fees and any Expenses and Daily Allowances stated in Part B. Charges are payable on successful delivery of the Services provided a valid tax invoice has been submitted.

**Confidential Information** Information in relation to this Contract and the Services, whether providing before, during or after the term of the Contract, that:

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

**Conflict of Interest** A Conflict of Interest arises if a Party or its Personnel's personal or business interests or obligations do or could conflict or be perceived to conflict with its obligations under this Contract. It means that its independence, objectivity or impartiality can be called into question. A Conflict of Interest may be:

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

**Contract** The legal agreement between the Ministry and the Supplier that comprises Part A, Part B, this Part C and any other Part, and any Variation and Attachment.

**Contract Manager** The person named in Part B as the Contract Manager.

**Contract Owner** The person named in Part B as the Contract Owner.

**Crown (The Crown)** The Ministry also described as the Sovereign in right of New Zealand and includes a Minister, a government department and an Office of Parliament, but does not include a Crown entity, or a State enterprise named in Part B of the State-Owned Enterprises Act 1986.

**Daily Allowance** An allowance to cover accommodation, meals and incidentals for the Supplier's Personnel if they are required in order to deliver the Services or to travel overnight away from their normal place of business. The amount of any Daily Allowance must be agreed to in Part B. A Daily Allowance is similar to a per diem.

**Daily Fee Rate** If the Supplier's fee rate is expressed as a Daily Fee Rate this is the fee payable for each day spent in the delivery of Services. A day is a minimum of 8 working hours.

**Deliverables** A tangible output resulting from the delivery of the Services as stated in Part B. A deliverable may be a document, a piece of equipment, goods, information or data stored by any means including all copies and extracts of the same.

**End Date** The earlier of the date this Contract is due to end as stated in Part B, the date of termination as set out in a Notice of termination.

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

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

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

**Fees** The amount payable to the Supplier for the time spent in delivery of the Services calculated on the basis stated in Part B, excluding any Expenses and Daily Allowances.

**Financial Year** The 12 calendar month period, or part period thereof, beginning 1 July and ending 30 June.

**Good Industry Practice** In relation to any undertaking and any services, the exercise of the skill, diligence, prudence, foresight and judgement which would be expected from a highly skilled and experienced person engaged in the same type of undertaking

under the same or similar circumstances, applying the best standards and practices currently applied in the relevant industry.

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

**Hourly Fee Rate** If the Supplier's fee rate is expressed as an Hourly Fee Rate this is the Fee payable for each hour spent delivering the Services.

**Intellectual Property Rights** All Intellectual Property Rights and interests, including copyright, trademarks, designs, patents and other proprietary rights, recognised or protected by law.

**Law** Is:

- 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, policy or standard enforceable by law; 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, legal 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 Contract.

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

**New Intellectual Property Rights** Intellectual Property Rights developed after the date of this Contract and incorporated into the Deliverables.

**Notice** A formal or legal communication from one Party to the other that meets the requirements of clause 18.2.

**Party** The Ministry and the Supplier are each a Party to this Contract, and together are the Parties.

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

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

**Records** All information and data necessary for the management of this Contract and the delivery of Services. Records include, but are not limited to, reports, invoices, letters, emails, notes of meetings, photographs and other media recordings. Records can be hard copies or soft copies stored electronically.

**Services** All work, tasks and Deliverables, including those stated in Part B, that the Supplier must perform and deliver under this Contract.

**Start Date** The date when this Contract starts as stated in Part B.

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

**Supplier** The person, business, company or organisation named as the Supplier in Part A. It includes its Personnel, successors, and permitted assignees.

**Variation** A change to any aspect of this Contract that complies with clause 18.1.

**Virus** means any program code or programming instructions, or any thing or device, which may damage, interfere with, impair or otherwise adversely affect the operation or use of Ministry technology, systems or data, including malicious code, trojan horses, worms, spyware, malware, computer viruses, logic bombs, backdoors, disabling code and other similar things.



Ministry for the  
**Environment**  
Manatū Mō Te Taiao

## Attachment 1 – Confidentiality Undertaking

Ministry Contract Number: *[insert]*

Short Title for Contract: *[insert]*

Supplier Personnel Position Description: *[insert]*

I, *[Insert full name of recipient]*

1. Agree and undertake that as an essential condition of my engagement as *[Insert details]* by the **Ministry for the Environment** (the Ministry) through *[Insert company, if applicable]*, I will:
  - (a) be discreet in all matters relating to the Minister for the Environment and the Ministry, and the affairs of the New Zealand Government generally;
  - (b) keep confidential all information relating to the matters referred to in paragraph 1(a) above which I obtain or become aware of through my role with the Ministry (the “Information”);
  - (c) not, other than as required by law, disclose or discuss the Information with any person who is not:
    - employed by, a Minister for the Environment, or otherwise a part of the Crown; or
    - an officer, employee or authorised agent of the Ministry;without the prior written consent of the Ministry;
  - (d) not use any Information to gain personal advantage or for the benefit of any person or organisation other than in accordance with the performance of my role with the Ministry;
  - (e) in particular, but without limitation, not discuss any matters referred to in paragraph 1(a) or any Information with any member of the media or submit articles for publication or dissemination outside the Crown without the prior authorisation of the Ministry; and
  - (f) take all reasonable care to ensure that all Information in my possession is kept secure and I will immediately return, destroy or otherwise deal such Information as directed by the Ministry.
2. I acknowledge that even after my engagement with the Ministry has expired, my obligations under paragraphs 1(b)-(f) above shall survive until the Information in question becomes publicly available (other than through a breach of my obligations under this Undertaking of Confidentiality), or until the Ministry gives written approval for the disclosure or use of particular Information.

Signature: .....

Date: .....