

Schedule 2

Standard Terms and Conditions—Services

Length of Contract

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

The Services

- 2.1 Both Parties' obligations: Both Parties agree to:
- act in good faith and honestly in their dealings with each other
 - discuss matters affecting this Contract or the delivery of the Services, whenever necessary
 - notify each other immediately of any actual or anticipated issues that could:
 - significantly impact on the Services or the Charges, and/or
 - receive media attention, and
 - comply with all applicable laws and regulations.
- 2.2 Buyer's obligations: The Buyer must:
- provide the Supplier with any information the Supplier has reasonably requested to enable the delivery of the Services
 - make decisions and give approvals reasonably required by the Supplier to enable delivery of the Services, within reasonable timeframes, and
 - pay the Supplier the Charges for the Services in accordance with this Contract.
- 2.3 Supplier obligations: The Supplier must:
- deliver the Services:
 - on time (including meeting all Milestones on time) and to the required performance standards or quality set out in Schedule 1 or reasonably notified by the Buyer to the Supplier from time to time, and
 - with due care, skill and diligence, and to the appropriate professional standard or in accordance with good industry practice as would be expected from a leading supplier in the relevant industry
 - ensure that its Personnel have the necessary skills, experience, training and resources to deliver the Services
 - provide all equipment and resources necessary to deliver the Services, and
 - comply with the *Supplier Code of Conduct* issued by the Procurement Functional Leader (see www.procurement.govt.nz) and any other relevant codes of conduct listed in Schedule 1 or notified by the Buyer to the Supplier from time to time.

- 2.4 **Approved Personnel:** Where Approved Personnel have been agreed in Schedule 1, the Supplier must:
- a. use those Approved Personnel in delivering the Services; and
 - b. obtain the Buyer's prior written approval if it wishes to change any Approved Personnel.
- 2.5 **Premises:** If the Supplier is at the Buyer's premises, the Supplier must observe the Buyer's policies and procedures, including those relating to health and safety, and security requirements, as notified to the Supplier.
- 2.6 **Health & Safety & Security:** The Supplier must:
- a. Consult, cooperate and coordinate with the Buyer to ensure that each Party complies with the HSW Act as it relates to the Contract
 - b. comply, and ensure that its Personnel comply, with their obligations under the HSW Act
 - c. comply with all reasonable directions of the Buyer relating to health, safety, and security, and
 - d. report any health and safety incident, injury or near miss, or any notice issued under the HSW Act, to the Buyer if it relates to, or affects, the Contract.
- 2.7 **Employment standards:** The Supplier must:
- a. comply, and ensure that its Personnel comply, with their obligations under the Employment Relations Act 2000, Minimum Wage Act 1983, Wages Protection Act 1983 and the Holidays Act 2003
 - b. report any instances where the Supplier or its Personnel are being investigated by the Labour Inspectorate, or where the Supplier identifies it has breached any of the legislation referenced in 2.7a.
- 2.8 **Respect:** The Supplier must deliver the Services in a manner that:
- a. is culturally appropriate for Māori, Pacific and other ethnic or indigenous groups, and
 - b. respects the personal privacy and dignity of all individuals.

Charges and payment

- 3.1 **Maximum amount:** The Charges are the total maximum amount payable by the Buyer to the Supplier for delivery of the Services. Charges include Fees and, where agreed, Expenses and Daily Allowances.
- 3.2 **Valid tax invoice:** The Supplier must provide valid tax invoices for all Charges on the dates or at the times specified in Schedule 1. The Buyer has no obligation to pay the Charges set out on an invoice that is not a valid tax invoice. A valid tax invoice must:
- a. clearly show all GST due, if any
 - b. be in New Zealand currency or the currency stated in Schedule 1
 - c. be clearly marked 'Tax invoice'
 - d. contain the Supplier's name, address, NZBN and GST number, if the Supplier is registered for GST
 - e. contain the Buyer's name and address and be marked for the attention of the Buyer's Contract Manager or such other person stated in Schedule 1

- 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 the Charges are based on an Hourly Fee Rate or Daily Fee Rate
- h. contain the Buyer'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 reasonably requested by the Buyer.

3.3 **Payment:** Subject to clauses 3.4 and 11.4(f), if the Buyer receives a valid tax invoice:

- a. on or before the 3rd Business Day of the month, the Buyer will pay that invoice by the 20th calendar day of that month, or
- b. after the 3rd Business Day of the month, the Buyer will pay that invoice by the 20th calendar day of the following month.

3.4 **Dispute:** The Buyer must notify the Supplier within 10 Business Days of the date of receipt of a tax invoice if the Buyer disputes any part of that tax invoice, and the Buyer:

- a. must pay the portion of the tax invoice that is not in dispute (and the Supplier will provide a further valid tax invoice for the undisputed amount if required), and
- b. may withhold payment of the disputed portion until the dispute is resolved.

Contract management

4.1 **Contract Manager:** The persons named in Schedule 1 as the Contract Managers will manage 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.

4.2 **Changing the Contract Manager:** A Party may change its Contract Manager by telling the other Party, in writing, the name and contact details of the replacement.

Information management

5.1 **Information and records:** 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 kept safe and are easy to access
- d. give information to the Buyer relating to the Services that the Buyer reasonably requests, in a format that is usable by the Buyer, and within a reasonable time of the request
- e. co-operate with the Buyer to provide information immediately if the information is required by the Buyer to comply with an enquiry or its statutory, parliamentary, or other reporting obligations

- f. make its Records available to the Buyer during the term of the Contract and for 7 years after the End Date (unless already provided to the Buyer earlier), and
- g. make sure that Records provided by, or created for, the Buyer are securely managed and destroyed on their disposal.

5.2 Reports: The Supplier must give the Buyer the reports, by the due dates, stated in Schedule 1.

The contractual relationship

- 6.1 Independent contractor: 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.
- 6.2 **No representing:** Neither Party has authority to bind or represent the other Party in any way.
- 6.3 Transfer of rights or obligations: The Supplier may transfer any of its rights or obligations under this Contract only with the Buyer's prior written approval. The Buyer will not unreasonably withhold its approval.

Subcontractors

- 7.1 **Subcontracting:** The Supplier must not enter into a contract with someone else to deliver any part of the Services without the Buyer's prior written approval.
- 7.2 Supplier responsibilities: The Supplier:
- a. must ensure that each Subcontractor is suitable and has the capability and capacity to deliver that aspect of the Services being subcontracted
 - b. 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, and
 - c. is responsible for delivering the Services under this Contract even if aspects of the Services are subcontracted.

Insurance

- 8.1 The Supplier is responsible for ensuring its risks of doing business are adequately covered, whether by insurance or otherwise. If required in Schedule 1, the Supplier must:
- a. take out the insurance, with a reputable insurer, as specified in Schedule 1, and maintain that insurance cover for the term of this Contract and for a period of 3 years after the End Date, and
 - b. provide a certificate confirming the nature of the insurance cover and proving that each policy is current within 10 Business Days of any request from the Buyer.

Conflicts of Interest

- 9.1 Avoiding conflicts of interest: The Supplier:
- a. warrants that as at the Start Date, it has no Conflict of Interest in providing the Services or entering into this Contract, and
 - b. must do its best to avoid situations that may lead to a Conflict of Interest arising.
- 9.2 Obligation to tell Buyer: The Supplier must tell the Buyer 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.

Resolving disputes

- 10.1 **Negotiation:** The Parties agree to use their best endeavours to resolve any dispute that may arise under this Contract. The following process will apply to disputes:
- a. a Party will notify the other if it considers a matter is in dispute
 - b. the Contract Managers will attempt to resolve the dispute through negotiation
 - c. if the Contract Managers have not resolved the dispute within 10 Business Days of notification, they will refer it to the Parties' senior managers for resolution, and
 - d. 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, if agreed by the parties, some other form of alternative dispute resolution.
- 10.2 **Mediation:** 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 Resolution Institute
 - b. on the terms of the Resolution Institute Mediation Rules, and
 - c. at a fee to be agreed by the Parties or if they cannot agree, at a fee determined by the Resolution Institute.
- 10.3 **Costs:** Each Party will pay its own costs of mediation or alternative dispute resolution under this clause 10.
- 10.4 **Effect of dispute:** 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.
- 10.5 **Taking court action:** 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 that Party requires urgent relief from a court.

Ending this Contract

- 11.1 **Termination for non-payment:** The Supplier may terminate this Contract by giving not less than 20 Business Days' Notice to the Buyer if:
- a. the Buyer fails to pay Charges more than 20 Business Days after they are properly due; and

- b. the Supplier has written to the Buyer requesting payment during that 20 Business Day period.
- 11.2 At any time during the term of this Contract the Supplier may notify the Buyer that it wishes to terminate this Contract. The Buyer 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 Buyer:
- 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 **Buyer's termination for convenience:** The Buyer may terminate this Contract at any time by giving not less than 20 Business Days' Notice to the Supplier.
- 11.4 **Buyer's termination for cause:** The Buyer may terminate this Contract immediately, by giving Notice, if the Supplier:
- a. becomes bankrupt or insolvent
- b. has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed
- c. becomes subject to any form of external administration
- d. ceases for any reason to continue in business or to deliver the Services
- e. is in breach of any of its obligations under this Contract and the breach cannot be remedied
- f. repeatedly fails to perform or comply with its obligations under this Contract whether those obligations are minor or significant
- g. does something or fails to do something that, in the Buyer's opinion, results in damage to the Buyer's reputation or business or the reputation or business of the Crown
- h. has a Conflict of Interest that in the Buyer's opinion is so material as to impact adversely on the delivery of the Services, the Buyer or the Crown, or
- i. provides information to the Buyer that is misleading or inaccurate in any material respect.
- 11.5 **Termination for unremedied breach:**
- a. If a Party breaches this Contract (**defaulting Party**) and that breach can be remedied, the non-defaulting Party may give a default Notice to the defaulting Party.
- b. A default Notice must state:
- c. the nature of the breach, and
- d. the time and date by which it must be remedied.
- e. The period allowed to remedy the breach must be reasonable given the nature of the failure.
- f. The non-defaulting Party may terminate this Contract immediately by giving a further Notice to the defaulting Party if the defaulting Party does not remedy the breach as required by the default Notice.
- g. If the Buyer gives a default Notice to the Supplier, the Buyer may also:
- withhold any payment of Charges due until the breach is remedied as required by the default Notice, and/or

- if the breach is not remedied as required by the default Notice, deduct a reasonable amount from any Charges due to reflect the reduced value of the Services to the Buyer.

11.6 Supplier's obligations:

- a. On giving or receiving a Notice of termination, the Supplier must:
 - comply with any conditions contained in the Notice, and
 - immediately do everything reasonably possible to reduce its losses, costs and expenses arising from the termination of this Contract.
- b. On termination or expiry of this Contract, the Supplier must, if requested by the Buyer, immediately return or securely destroy all Confidential Information and other material or property belonging to the Buyer.

11.7 Accrued rights: The termination or expiry of this Contract does not affect any rights of a Party which:

- a. accrued prior to the End Date, or
- b. relate to any breach of this Contract that arose prior to the End Date.

11.8 Buyer's rights: If this Contract is terminated the Buyer:

- 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 for Services or Deliverables that have not been provided.

11.9 Handing over the Services:

- a. The Supplier will provide all reasonable assistance and cooperation necessary to facilitate a smooth handover of the Services to the Buyer or any person appointed by the Buyer during the term of this Contract and for a period of 10 Business Days after the End Date.
- b. If required by the Buyer, the Supplier will provide additional assistance to support any replacement supplier to deliver the Services, for a period of up to 3 months from the End Date at a reasonable fee to be agreed between the Parties, based on the Charges.

Intellectual Property Rights

12.1 Ownership of Intellectual Property Rights:

- a. Pre-existing Intellectual Property Rights remain the property of their owner.
- b. New Intellectual Property Rights in the Deliverables become the property of the Buyer when they are created, and the Supplier agrees to do all things necessary to give effect to this clause 12.1(b).
- c. The Supplier grants to the Buyer (as the Crown) a perpetual, non-exclusive, worldwide, transferable, sub-licensable and royalty-free licence to use, for any purpose, all Intellectual Property Rights in the Deliverables that are not owned by the Buyer. This licence includes the right to use, copy, modify and distribute the Deliverables.

12.2 Supplier warranties: The Supplier warrants that:

- a. it is legally entitled to grant the licence in clause 12.1(c), and

- b. the Crown's use of anything provided by the Supplier and incorporated in the Services and Deliverables will not infringe the rights, including Intellectual Property Rights, of any third party.

12.3 **Supplier indemnity:** The Supplier indemnifies the Buyer (as the Crown) in respect of any expenses, damage or liability incurred by the Buyer in connection with any third party claim that the delivery of the Services or Deliverables to the Buyer, or the Buyer's use of them, infringes a third party's rights. This indemnity is not subject to any limitation or cap on liability that may be stated elsewhere in this Contract.

Confidential Information

13.1 **Protection of Confidential Information:** 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 Buyer, using the Deliverables or Services
- b. 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), Ministers or parliamentary convention, or
- c. if the information has already become public, other than through a breach of the obligation of confidentiality by one of the Parties.

13.2 **Obligation to inform staff:** 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.

Notices

14.1 **Requirements:** All Notices must be:

- a. in writing and delivered by hand or sent by post, courier or email to the recipient Party's address for Notices stated in Schedule 1, and
- b. signed, or in the case of email sent, by the appropriate manager or person having authority to do so.

14.2 **Receipt of Notices:** A Notice will be considered to be received:

- a. if delivered by hand or sent by courier, on the date it is delivered
- b. if sent by post within New Zealand, on the 5th Business Day after the date it was sent
- c. if sent by post internationally, on the 9th Business Day after the date it was sent, or
- d. if sent by email, at the time the email enters the recipient's information system and it is not returned undelivered or as an error,

but 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.

Extraordinary Events

- 15.1 **No liability:** Neither Party will be liable to the other for any failure to perform its obligations under this Contract to the extent the failure is due to an Extraordinary Event.
- 15.2 **Obligations of affected Party:** A Party who wishes to claim suspension of its obligations due to an Extraordinary Event must notify the other Party as soon as reasonably possible. The Notice must state:
- a. the nature of the circumstances giving rise to the Extraordinary Event
 - b. the extent of that Party's inability to perform under this Contract
 - c. the likely duration of that non-performance, and
 - d. what steps are being taken to minimise the impact of the Extraordinary Event on the performance of this Contract.
- 15.3 **Termination:** 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.

General

- 16.1 **Variations:** A Variation must be agreed by both Parties and recorded:
- a. in writing and signed by both Parties, or
 - b. through an exchange of emails,
- where the signatories or authors have delegated authority to approve the Variation.
- 16.2 **Entire contract:** 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 oral or in writing.
- 16.3 **Waiver:** If a Party does not immediately enforce its rights under this Contract that:
- a. does not mean that the other Party is released or excused from any obligation to perform at the time or in the future, and
 - b. does not prevent that Party from exercising its rights at a later time.
- 16.4 **New Zealand law, currency and time:** This Contract will be governed and interpreted in accordance with the laws of New Zealand. All money is in New Zealand dollars, unless Schedule 1 specifies a different currency. Dates and times are New Zealand time.
- 16.5 **Publication:** The Supplier must obtain the Buyer's prior written approval before making reference to the Buyer or this Contract in its publications, public statements, promotional material or promotional activities.
- 16.6 **No derogatory remarks:** Each Party undertakes not to publicly make objectionable or derogatory comments about the Services, this Contract, the other Party or any of the other Party's Personnel, and to ensure that its Personnel do not do so.
- 16.7 **Signing the Contract:** The date of execution is the date this Contract has been signed by both parties. This Contract is properly signed if each Party signs the same copy, or separate identical copies, including electronic copies, of Page 1.

- 16.8 No poaching: 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.
- 16.9 Clauses that remain in force: The clauses that by their nature should remain in force on expiry or termination of this Contract do so, including clauses 5 (Information management), 8 (Insurance), 10 (Resolving disputes), 11 (Ending this Contract), 12 (Intellectual Property Rights), 13 (Confidential Information), 14 (Notices), 16 (General) and 17 (Definitions).
- 16.10 Precedence: If there is any conflict or difference between the documents forming this Contract (as stated on Page 1) then the order of precedence is:
1. a Variation
 2. Schedule 1
 3. any Attachment to Schedule 1, and
 1. Schedule 2.

Definitions

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

Attachment Any supplementary document named in Schedule 1 as an Attachment to this Contract.

Approved Personnel A person who is engaged by the Supplier to deliver the Services and is named in Schedule 1.

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

Buyer The Buyer is the Crown, also described as the Sovereign in right of New Zealand who acts by and through the government agency named as the Buyer on page 1 of this Contract.

Charges The total amount payable by the Buyer to the Supplier as stated in Schedule 1, including Fees and any Expenses and Daily Allowances.

Confidential Information Information that:

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

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, such that the Party's or its Personnel's independence, objectivity or impartiality can be called into question. A Conflict of Interest may be:

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

Contract The legal agreement between the Buyer and the Supplier that comprises Page 1 (the front sheet), Schedule 1, this Schedule 2 and any other Schedule, and any Variation and Attachment.

Contract Manager The person named in Schedule 1 as the Contract Manager.

Crown The Sovereign in right of New Zealand and includes a Minister and a government department but does not include a Crown entity, or a State enterprise named in Schedule 1 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, as agreed in Schedule 1.

Daily Fee Rate A 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 Schedule 1.

End Date The earlier of the date this Contract is due to end as stated in Schedule 1 and the date of termination as set out in a Notice of termination, or any other date agreed between the Parties as the date the Contract is to end.

Expenses Any actual and reasonable out-of-pocket costs incurred by the Supplier in the delivery of the Services and agreed to in Schedule 1.

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:

- acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, pandemics and any natural disaster
- acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilisation, requisition or embargo
- acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war, and
- 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 Schedule 1, excluding any Expenses and Daily Allowances.

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

HSW Act means the Health and Safety at Work Act 2015.

Hourly Fee Rate A Fee payable for each hour spent delivering the Services.

Intellectual Property Rights All industrial and intellectual property rights whether conferred by statute, at common law or in equity, including, but not limited to copyright, trademarks, designs and patents.

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 under this Contract or in the performance of the Services.

Notice A communication from one Party to the other that meets the requirements of clause 14.

Party The Buyer or the Supplier, and together they are the **Parties**.

Personnel All individuals engaged by either Party in relation to this Contract or the delivery of Services.

Pre-existing Intellectual Property Rights Intellectual Property Rights developed before the date of, or independently from, this Contract.

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 Schedule 1, that the Supplier must perform and deliver under this Contract.

Schedule An attachment to this Contract with the title 'Schedule'.

Start Date The date when this Contract starts as stated in Schedule 1.

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 on page 1.

Variation A change to any aspect of this Contract that complies with clause 16.1.