



**FIRE AND EMERGENCY NEW ZEALAND  
AUSTRALIAN FIRE AND EMERGENCY SERVICE AUTHORITIES COUNCIL**

---

**AGREEMENT FOR PROVISION OF OPERATIONAL REVIEW SERVICES  
FIRE AT THE NEW ZEALAND INTERNATIONAL CONVENTION CENTRE AT SKYCITY**

---

**[xx] DECEMBER 2019**

Released under the Official Information Act 1982

## **Parties**

Fire and Emergency New Zealand (**Sponsor**)

Australian Fire and Emergency Service Authorities Council (**AFAC**)

## **1 Review Services**

1.1 AFAC agrees to provide the Review Services to the Sponsor for the Term in accordance with the terms of this Agreement.

## **2 Manner of delivery**

2.1 The Review Services will be delivered:

2.1.1 by the Specified Person;

2.1.2 in accordance with the Terms of Reference and the reasonable directions of the Sponsor;

2.1.3 with due care, skill and diligence, and in accordance with good industry practice as would be expected from AFAC; and

2.1.4 in a cost effective manner.

## **3 Specified Person**

3.1 AFAC warrants that the Specified Person has the necessary skills, experience, training and resources to successfully deliver the Review Services.

3.2 The parties agree that the Review Services are delivered by the Specified Person as a representative of AFAC and not as a representative of the Sponsor. AFAC may not direct the Specified Person in the delivery of the Review Services during the period of the Review.

3.3 If the Specified Person is unable to deliver the Review Services, AFAC will substitute the Specified Person with an employee of reasonably commensurate experience agreed by the Sponsor in writing.

## **4 No Employment, Partnership or Agency relationship**

4.1 No relationship of employment, partnership or agency is created between the Specified Person and the Sponsor by virtue of this Agreement, or by virtue of the delivery of the Review Services.

- 4.2 The Specified Person remains an employee of AFAC throughout the period of the delivery of the Review Services and subject to the terms of their employment with AFAC and AFAC policies and processes.
- 4.3 AFAC is required to maintain workers' compensation insurance coverage in respect of the Specified Person, in accordance with legislation covering such arrangements relevant to the subject matter of this Agreement.

## **5 Non-disclosure of Information**

- 5.1 The Specified Person must at all times, including after the completion of the delivery of the Review, not disclose information or make any statement to any person or organisation in respect of any matter that has been acquired by the Specified Person as a result of the Review except in accordance with the Terms of Reference or with the express written approval of the Sponsor. In giving such written approval, the Sponsor may impose such terms and conditions as they consider fit.
- 5.2 The Sponsor may at any time require the Specified Person to give written undertakings, in a form acceptable to the Sponsor, relating to the non-disclosure of confidential information.

## **6 Daily rate, hours and assistance**

- 6.1 The Sponsor agrees to pay AFAC the Daily Rate for the Services and to reimburse the actual and reasonable expenses incurred by the Specified Person in the proper course of providing the Review Services.
- 6.2 The Specified Person may be reasonably required to work such hours, greater than their regular working hours, as necessary to meet the requirements of the delivery of the Review Services in the manner set out in the Terms of Reference.

## **7 Salary and benefits**

- 7.1 The Specified Person will remain the employee of AFAC. AFAC will continue to pay to the Specified Person all salary and other benefits, including leave entitlements.

## **8 Leave**

- 8.1 The Specified Person's rights in respect of annual leave, long service leave and sick leave with AFAC will remain unaffected.
- 8.2 The Sponsor will inform AFAC of any annual or sick leave so that AFAC may update its personal records.
- 8.3 The Daily Rate will not be payable for periods where the Specified Person takes annual leave, long service leave, study leave or sick leave.

## **9 Sponsor Material**

- 9.1 The title to and Intellectual Property right in or in relation to the Sponsor's Material vests upon its creation in the Sponsor.
- 9.2 Sponsor's Material remains the property of the Sponsor and, on the expiration or earlier termination of this Agreement, the Specified Person must deliver to the Sponsor all the Sponsor's Material.

## **10 Mutual indemnity**

- 10.1 The parties indemnify each other from and against any Claim which may be brought against or made upon any of them which is caused by:

- 10.1.1 any negligent or unlawful act or omission of the other party;
- 10.1.2 breach of this Agreement by the other party;
- 10.1.3 contravention of any legislative requirements by the other party; or
- 10.1.4 infringement by the other party of the intellectual property rights of any third Party

except to the extent the claim is due to the negligent or unlawful act or omission of the first party.

## **11 Security, health, and safety**

- 11.1 The Specified Person must comply with all reasonable Fire and Emergency New Zealand directions and procedures relating to health, safety and security, including those required for the purpose of the Health and Safety at Work Act 2015.

## **12 Conflict of Interest**

- 12.1 AFAC warrants that, at the date of signing this Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations or those of the Specified Person under this Agreement.

- 12.2 If, during the term of this Agreement, a conflict or risk of conflict of interest arises, the Specified Person undertakes to notify the Sponsor immediately in writing of that conflict or risk, and after such notification, the Sponsor may at its discretion require the Specified Person not to engage in such other activities as give rise to the conflict or risk of conflict of interest, or may terminate this Agreement.

## **13 Dispute resolution**

### **Dealing with disputes**

- 13.1 The parties must, without delay and in good faith, attempt to resolve any dispute which arises out of, or in connection with, this Agreement prior to commencing any proceedings.

### **Mediation**

- 13.2 Any disputes not resolved by the parties must be submitted to mediation.
- 13.3 A party may not commence proceedings in respect of a dispute (other than proceedings for urgent interlocutory relief) unless the dispute is not settled by mediation within 15 working days of submission to mediation, or such other time as the parties agree.

## **14 Termination**

- 14.1 Either party may, by giving the other party 20 working days written notice, terminate this Agreement. If this Agreement is so terminated, the Sponsor shall be liable only for:
- 14.1.1 payments under the payment provisions of this Agreement for services rendered before the effective date of termination; and
  - 14.1.2 any reasonable costs incurred by AFAC and directly attributable to the termination or partial termination of this Agreement.
- 14.2 Notwithstanding clause 14.1, upon delivering a notice of termination to the Sponsor, AFAC must continue to provide the Sponsor with the Review Services for a period at least sufficient (as considered by the Sponsor) for the Review to achieve the next immediate milestone set out in the Terms of Reference.
- 14.3 Upon receiving a notice of termination from the Sponsor, AFAC and Specified Person must:
- 14.3.1 stop work as specified in the notice; and
  - 14.3.2 take all available steps to minimise loss resulting from that termination and to protect the Sponsor's Material.

## **15 Notices**

- 15.1 All notices, documents, requests, demands or other communication to be given for the purposes of this Agreement must be given in writing and may be served personally, emailed, or sent by registered mail/courier to the address of each party's representative set out at Schedule 1, or as notified in writing by one party to the other.
- 15.2 All notices or communications will be deemed to be duly given or made:
- 15.2.1 On delivery, if delivered in person
  - 15.2.2 On delivery of an electronic read receipt or confirmation of receipt by return email

15.2.3 Three working days after the date notice was sent if sent by registered mail.

15.3 Any such notice, which has been served on a non-working day, is deemed to be served on the first working day after that day.

## **16 Special Terms**

16.1 The additional terms specified in Schedule 1, if any, are to form part of this Agreement.

## **17 Miscellaneous**

### **Assignments and transfers**

17.1 A party must not assign or transfer any of its rights or obligations under this agreement without the prior written consent of each of the other parties.

### **Contracts (Privity) Act 1982**

17.1 Unless this Agreement expressly provides otherwise, this Agreement is not intended to confer a benefit on any person or class of persons who is not a party to it.

### **Entire agreement**

17.2 This Agreement (and the documents referred to by it) constitute the entire agreement between the parties and supersedes all communications, representations, negotiations, arrangements and agreements, either oral or written, between the parties with respect to the subject matter of this Agreement.

### **Execution of separate documents**

17.3 This Agreement is properly executed if each party executes either this document or an identical document. In the latter case, this Agreement takes effect when the separately executed documents are exchanged between the parties.

### **Governing law and jurisdiction**

17.4 This Agreement is governed by the law of New Zealand. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

### **Severability**

17.5 Each provision of this Agreement is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this Agreement in the relevant jurisdiction, but the rest of this Agreement will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

### **Variation**

17.6 No agreement or understanding varying or extending this Agreement shall be legally binding upon either party unless in writing and signed by the Sponsor and AFAC.

## Waivers

- 17.7 A waiver of any right, power or remedy under this Agreement must be in writing signed by the party granting it. A waiver only affects the particular obligation or breach for which it is given. It is not an implied waiver of any other obligation or breach or an implied waiver of that obligation or breach on any other occasion.
- 17.8 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement does not amount to a waiver.

## 18 Definitions and interpretation

### Definitions

- 18.1 In this Agreement the following definitions apply:

**Agreement** means this agreement (and all documents referred to in it)

**Claim** means any claim, action, proceeding, demand, liability, obligation, costs (including legal costs), losses, damages and expenses

**Daily Rate** means the rate specified in Schedule 1 to this Agreement

**Intellectual Property** means all copyright, patents, registered and unregistered trade marks, registered designs, trade secrets and know-how and anything developed from any of those rights or from that information

**Review Services** means the responsibilities and duties set out at Schedule 1 of this Agreement

**Sponsor's Material** means any material provided by or on behalf of the Sponsor to the Specified Person for the purposes of this Agreement or brought into existence by the Specified Person in the performance of his or her duties under this Agreement, including, but not limited to, documents, equipment, information and data stored by any means

**Specified Person** means the AFAC employee(s) specified at Schedule 1 to this Agreement

**Term** has the meaning specified in Schedule 1 to this Agreement

**Terms of Reference** means the Terms of Reference for the Review Services set out at Schedule 2 of this Agreement.

### Interpretation

- 18.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
- 18.2.1 References to an organisation include that organisation and any successor organisations by Act of parliament.
- 18.2.2 Obligations set out in this Agreement that, by their nature, are intended to apply following the termination or expiry of this Agreement, have continuing effect notwithstanding such termination or expiry.

- 18.2.3 A reference in this Agreement to a working day means a day other than a Saturday or Sunday on which banks are open for business generally in Wellington, New Zealand.
- 18.2.4 If the day on which any act, matter or thing is to be done under this Agreement is not a working day, the act, matter or thing must be done on the next working day.
- 18.2.5 A reference in this Agreement to 'dollars' or '\$' means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- 18.2.6 A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 18.2.7 A word which indicates the singular also indicates the plural, a word which indicates the plural also indicates the singular, and a reference to any gender also indicates the other genders.
- 18.2.8 In the event of any conflict between the terms and conditions contained in the clauses of the Agreement and any part of the Schedule and annexures thereto (if any) then the clauses shall take precedence in the following order:
- (a) Terms of Reference
  - (b) Schedule 1 - Review Services
  - (c) This Agreement



**Execution and date**

Executed as an agreement.

Date:

**Fire and Emergency New Zealand by:**

.....  
Signature of authorised person

.....  
Name of authorised person (print)

.....  
Office held

**Australian Fire and Emergency Service  
Authorities Council by:**

.....  
Signature of authorised person

.....  
Name of authorised person (print)

.....  
Office held

## Schedule 1 – Review Services

<b>Specified Person(s)</b>	Jeremy Fewtrell (Deputy Commissioner (Fire and Rescue New South Wells) and Paul Considine (Director Capability and Assurance, AFAC)
<b>Term</b>	This Agreement continues in full force and effect until the written acceptance by the Sponsor of the Final Report defined in the Terms of Reference (or as otherwise extended in writing as the parties).
<b>Daily Rate</b>	AUD [REDACTED] (per person) excluding GST for each day worked by the Specified Person (and pro-rated for period during which the Review Services are delivered less than 8 hours per day)  Amounts payable will be invoiced at the end of each month and the invoice is payable by the Sponsor on the 20th day of the month following the month of receipt.
<b>Other costs</b>	The Sponsor will pay the Specified Person(s)' actual and reasonable disbursements including airfares, accommodation and travelling costs for any travel required for the purpose of the Review in accordance with the Sponsor's policies.
<b>Special terms</b>	- None -
<b>Notices details</b>	<p><b>Sponsor:</b></p> <p><b>Rhys Jones</b> Chief Executive Fire and Emergency New Zealand Level 12 80 The Terrace PO Box 2133 Wellington NEW ZEALAND Phone: [REDACTED] E-mail: [REDACTED]</p> <p><b>AFAC:</b></p> <p><b>Stuart Ellis</b> Chief Executive Officer Australasian Fire and Emergency Service Authorities Council Level 1 340 Albert Street East Melbourne Victoria 3002 AUSTRALIA Phone: [REDACTED] E-mail: [REDACTED]</p>

Released under the Official Information Act 1982

**Schedule 2. Terms of Reference**

Released under the Official Information Act 1982