

From: [Venter, Nick](#)
To: [Mounsey, Zoe](#)
Subject: Re: Ufba review
Date: Wednesday, 31 March 2021 11:14:26 am

Thanks Zoe

All good. Just had a phone call from Chair. He wanted Darryl to know no issues with content which is what Board wants, but he'd like to reframe. He's briefed me about what he wants so I'll have a go.

Regards

Nick

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From: Mounsey, Zoe <~~x@x~~>
Sent: Wednesday, March 31, 2021 11:01:17 AM
To: Venter, Nick <~~x@x~~>
Subject: Ufba review
Hi Nick

Sorry if you feel have abandoned you :) spoke to Rhys this morning and no changes to letter needed until after the UFBA meeting. I'll make sure I have time tomorrow to work on.

Some words for minister about UFBA review.

We have commissioned PWC to undertake the analysis of the funding provided to UFBA to investigate whether it had been used for the purpose it was intended for (check wording of Board paper). PWC have started the analysis and will provide an update for the Board at the April meeting (this may be verbal). The timeframe for the full report will depend on the initial analysis but we expect the work to be concluded by end of June at the latest.

It's a bit rough so tinker bits in () are notes to you

Just email if you need anything

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National Headquarters
Level 12
80 The Terrace
PO Box 2133
Wellington
New Zealand

Phone+64 4 496 3600, Fax +64 4 496 3700

22 March 2021

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED]

Thank you for confirming your support for the upcoming review. The purpose of this review is to examine whether the funding provided by Fire and Emergency to UFBA has been used for the purposes the funding was provided and that the services the funding supported have been delivered.

I am writing to confirm that we have appointed PriceWaterhouseCoopers to undertake this work on our behalf. The team will be led by [REDACTED] (Partner, Forensic Services) and [REDACTED] (Partner, Risk Assurance). The terms of reference for the review has been agreed by the Board (attached), however we acknowledge that the completion date of the report is subject to change.

I want to acknowledge the importance of the strong relationship between Fire and Emergency and the UFBA and I look forward to our respective organisations continuing to have constructive engagement with each other on this issue and other matters.

Ngā mihi nui

Rhys Jones

Chief Executive
Fire and Emergency New Zealand



From: [REDACTED]
To: [Mounsey, Zoe](#)
Subject: FW: Purchase Order PwC
Date: Wednesday, 17 March 2021 9:49:19 am
Attachments: [PurchaseOrder_60264.pdf](#)

Fyi

From: @x<x@x

Sent: Wednesday, 17 March 2021 9:46 am

To: [REDACTED]@fireandemergency.nz>

Cc: [REDACTED]@fireandemergency.nz>

Subject: Purchase Order

Attn:

Please find attached a purchase order from FIRE AND EMERGENCY NZ.

This is a system generated email.

If you wish to reply please email: [REDACTED]@fireandemergency.nz

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PURCHASE ORDER

To: PRICEWATERHOUSECOOPE
Address: RS CONSULTING (NZ)
 PRIVATE BAG 92162
 AUCKLAND

City:
Attention:

Order No. 60264
Order Date 17/03/2021
Delivery Date 16/03/2021
Vendor No. 1226765

 The Seller Accepts and Agrees to the Standard Fire and Emergency New Zealand Terms and Conditions of Supply found on <https://fireandemergency.nz/about-us/general-contractual-provisions>, or by request. All Invoices, Packing Slips and Correspondence must quote the above Purchase Order Number. Failure to do so may result in non-payment. Any queries relating to this Purchase Order should be directed to [REDACTED]. All Payment queries should be directed to NHQ Finance (04) 496 3666

CODE	DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL
	UFBA Audit		72,114.00	72,114.00

Total Amount	72,114.00
Tax	10,817.10
PURCHASE ORDER TOTAL	82,931.10 NZD

Deliver To: [REDACTED]

Bill To: Fire and Emergency NZ
 Accounts Payable
 PO Box 30268
 LOWER HUTT 5040

 E-mail Invoices in PDF format (1 invoice per PDF) to:
 xxxxxxxx@xxxxxxxxxxxxxxxxxx

Special Instructions:

From: [Purdy, Darryl](#)
To: [Mounsey, Zoe](#)
Cc: [REDACTED]
Subject: FW: Fire and Emergency CSO
Date: Friday, 12 March 2021 4:38:11 pm
Attachments: [CSO for Examination of UFBA use of FENZ Grant Funding 10032021.docx \(1\).pdf](#)
[image001.jpg](#)

Hi, I am happy with the CSO. I did wonder about the 30 transactions to sample and whether that was enough, but I think if they sample a range of transaction types.

Please sign it out thanks

Ngā mihi

Darryl Purdy

DCE Finance and Business Operations

M: [REDACTED]

From: [REDACTED]@pwc.com]
Sent: Thursday, 11 March 2021 9:39 AM
To: Mounsey, Zoe <[REDACTED]>; Purdy, Darryl <[REDACTED]>
Cc: [REDACTED]@pwc.com>; [REDACTED]@pwc.com>; [REDACTED]@pwc.com>
Subject: Re: Fire and Emergency CSO

Hi Zoe,

Good timing on your email, we were just getting signatures put on the CSO this morning (as attached).

Please have a read and let us know what you think and any questions you may have. We've tried to cover off all the areas we discussed while also providing enough flex for us to adjust as required depending on what we find.

If you are happy for us to proceed on these terms then we just need Darryl to sign and the [REDACTED] and [REDACTED] can work through timing and details with you.

Ngā mihi

[REDACTED]
PwC | Partner Risk Assurance

Office: [REDACTED] Mobile: [REDACTED] | Fax: [REDACTED]

Email: [REDACTED]@pwc.com

PricewaterhouseCoopers New Zealand

PwC Centre, 10 Waterloo Quay, PO Box 243, Wellington 6140, New Zealand

pwc.co.nz

[https://nz.linkedin.com/in/\[REDACTED\]](https://nz.linkedin.com/in/[REDACTED])

Alternative contact: [REDACTED] ([REDACTED]@pwc.com + [REDACTED])

At PwC we work flexibly - so whilst it suits me to send this email now, I do not expect a response or action outside of your own working hours

On Thu, 11 Mar 2021 at 09:34, Mounsey, Zoe <[REDACTED]> wrote:

Hi [REDACTED]

How are you getting on?

I am currently writing a Board paper (for meeting on 26th March) and would like to update the Board on progress re: audit. When do you think we will be in a position to discuss/agree the contents of the CSO?

Ngā mihi, Zoe

Zoe Mounsey

Chief Advisor, Finance and Business Operations



Procurement Plan

NP# XXXX

2021 UFBA Audit

Business Unit: ~~XXXX~~ 5117

Object Code: ~~XXXX~~ 4670

Work Record: ~~XXXX~~

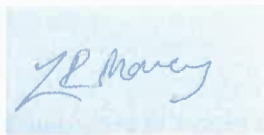
Approvals (to be signed in numerical order)

Part 1 Plan prepared by

Contract start: 15/03/2021 Contract end: 2/06/2021

Name: Zoe Mounsey

Position/title: Chief Advisor, Finance and Business Operations

Signature:  Date: 8/03/2021

Part 2 Budget approval (signee must hold DFA for whole-of-life spend)

Project name: UFBA Audit

Financial year: 2020/21 Estimated total cost over whole-of-life: Less than \$100,000 excluding GST

Name: Darryl Purdy

Position/title: DCE, Finance and Business Operations

Signature:  Date: Click or tap to enter a date. 1/3/21

Part 3 Procurement approval

Audit required: No

Procurement comment: All of Government Panel Direct Source

Name: Chris Chainey

Position/title: Finance and Procurement Manager

Signature:  Date: Click or tap to enter a date. 11/3/21

Part 4 Project sponsor approval

Approval to: Proceed with procurement

Name: Darryl Purdy

Position/title: DCE, Finance and Business Operations

Signature:

Date:

11/3/21
Click or tap to enter a date.

Under the Government Rules of Sourcing, all procurement over \$100k not covered by an All of Government Panel, should go to tender. Please contact the NHQ Procurement team for assistance.

Background

Fire and Emergency is seeking an audit to examine whether the funding provided by Fire and Emergency New Zealand to UFBA has been used for the purposes the funding was provided and that the services the funding supported have been delivered. Secondly, the audit will provide the Board of Fire and Emergency assurance that no Fire and Emergency funding has been used to fund the set up or operation of Tāngata Matatau. This additional requirement results from our concern over a number of issues related to Tāngata Matatau including the incorporation of a limited liability company.

User Requirements

A suitably qualified person(s) to undertake an audit and produce a report in accordance with the Terms of Reference.

Key questions that the audit should answer:

- how much of UFBA cash reserves represent unutilised funding from Fire and Emergency New Zealand (FENZ) if any?
- whether the funding provided by FENZ has been used for the purposes the funding was provided?
- whether services the funding supported have been delivered?
- whether any Fire and Emergency funding has been used to fund the set up or operation of Tāngata Matatau

Approach to market

The All of Government (AOG) consultancy panel has provision for experts in assurance, risk and audit functions. As a mandated agency, FENZ will use the AoG panel.

Market Engagement

How are you proposing to engage with the market:

AOG Panel/ Common Capability/ ICT Common Capability/ Syndicated Agreement/ AFAC	<input checked="" type="checkbox"/>
open tender	<input type="checkbox"/>
closed tender	<input type="checkbox"/>
direct source	<input checked="" type="checkbox"/>

AOG panels are mandated for use by Fire and Emergency NZ, where they are available. Given the timing and profile of this audit, Fire and Emergency has considered each of the Tier 1 AoG Audit providers and chosen to approach PriceWaterhouse Coopers (PwC). This choice has been driven by PwC’s knowledge of Fire and Emergency and forensic accounting expertise. Other members of the panel were not appropriate due to providing services to the UFBA or due to previous engagements with Fire and Emergency.

Performance

Please complete the following sentences:

- a) During the contract, the three worst things that could happen are:
 1. **UFBA does not engage with the audit**
 2. **Failure to meet deadlines due to incapacity or otherwise**
 3. **Audit results not accepted by UFBA or the Board**

- b) Indicators that the contract is progressing or tracking well include:
 - **Regular progress reports which show key milestones and performance indicators are being met**
 - **Receiving a draft supplier report on time which is robust and on track**

- c) At the end of the contract, we will be able to measure if this has been successful by:
 - **Receiving a credible robust report which fulfils the agreed Terms of Reference and requirements, is easily understood and accurate and accepted by UFBA and the Board**

- d) What will happen at the end of the contract?

Everything will be good, and there’s nothing more to do	<input checked="" type="checkbox"/>
We will need to review outcomes and re-tender for something similar	<input type="checkbox"/>
There will be a next phase / something else (please elaborate):	<input type="checkbox"/>

Costs

Complete the table of expected costs as accurately as you can. The cumulative whole of life cost and contract term of the contract determines the delegation level.

	Start-up cost	Year 1	Year 2	Year 3+	TOTAL
Expected cost of goods or services	\$	Less than \$100,000	\$	\$	Less than \$100,000
Design/ Development/ Implementation	\$	\$	\$	\$	\$
Delivery/ Transport	\$	\$	\$	\$	\$
Licensing or support	\$	\$	\$	\$	\$
Additional or ongoing personnel resources	\$	\$	\$	\$	\$
Evaluation	\$	\$	\$	\$	\$
Testing/ Trials	\$	\$	\$	\$	\$
Rollout	\$	\$	\$	\$	\$

Total expected procurement value

Less than \$100k

Tender Process

Please provide indicative dates for tender:

Action	Indicative date
Request for service released to PwC	19/02/2021
Deadline for proposal	12/03/2021
Evaluation/Due Diligence	15/03/2021
Recommendation accepted/denied	15/03/2021
Contract signed	15/03/2021
Contract start date	15/03/2021

Evaluation Process

The proposal will be reviewed by Darryl Purdy, DCE Finance and Business Operations.

Due Diligence

As the supplier is on the AoG panel these checks will not be required.

Stakeholders

Please complete the table below of key stakeholders and when they will be involved in the process for the procurement of the supplier.

	Scope / Spec/ Recommendation	Decision Making	Decision Advising	Rollout	Post contract
Board	Yes	No	No	N/A	N/A
CE	Yes	No	Yes	N/A	N/A
ELT	Yes	Yes through DP	Yes	N/A	N/A
UFBA	N/A	N/A	N/A	N/A	N/A
NZPFU	N/A	N/A	N/A	N/A	N/A
Community	N/A	N/A	N/A	N/A	N/A
SH&W team	N/A	N/A	N/A	N/A	N/A
Legal	N/A	N/A	N/A	N/A	N/A

Safety, Health and Wellbeing Considerations

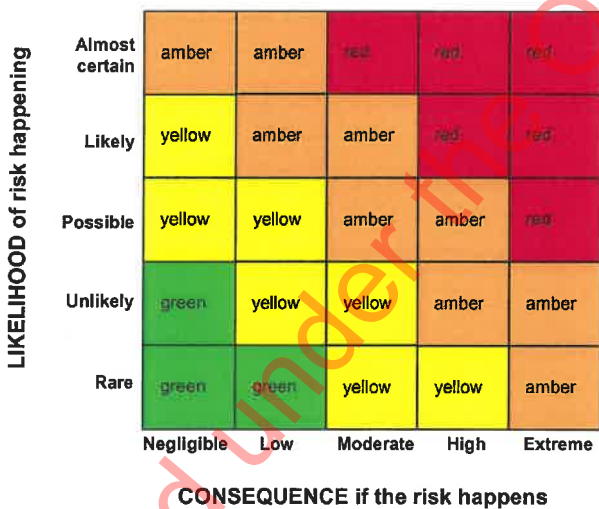
What are the Safety, Health and Wellbeing considerations for this Procurement?

Only for contractor site visits, if any. Work may be done remotely.

Risks

Using the risk analysis framework below, what are the key risks in this procurement and for the contract?

Risk	L	C	Rating	Mitigation action	Responsible
The report is not of sufficient quality	P	M	Moderate	<ul style="list-style-type: none"> Regular reporting of progress Evidence of quality controls by the provider 	Darryl Purdy
Provider assumes ready access to sufficient and good quality evidence and records within UFBA	P	M	Moderate	<ul style="list-style-type: none"> Review accuracy of assumptions with short-list providers 	Darryl Purdy
Provider is not able to deliver report within timeframe (including COVID-19 related delays)	P	L	Moderate	<ul style="list-style-type: none"> Regular reporting of progress Precondition 	Darryl Purdy



Further Information

The following information is available on the Intranet:

Procurement and contract management policy

Procurement Manual

Conflict of Interest declaration

Delegated Financial Authority

Helpful websites:

New Zealand Government procurement website <https://www.procurement.govt.nz/>

Government rules of sourcing <https://www.procurement.govt.nz/procurement/principles-and-rules/government-rules-of-sourcing/>

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From: [REDACTED]
To: [Mounsey, Zoe](#)
Cc: [Purdy, Darryl](#); [REDACTED]
Subject: Re: Fire and Emergency CSO
Date: Thursday, 11 March 2021 9:58:26 am

Hi Zoe,

I think we could definitely provide an update by 30 April.

For the terms of reference, we just focussed on reframing it within the CSO. So it may be worthwhile providing a portion of that to the Board so they understand any changes to what they had been expecting. Especially for example the four questions in the original TOR. Based on the discussion we had together last Wednesday, I think it will be difficult to definitively answer those questions.

Alternatively we could update the TOR for you to reflect the CSO - what would you prefer?

Ngā mihi

[REDACTED]
[REDACTED]
PwC | Partner Risk Assurance

Email: [REDACTED] [@pwc.com](#)
PricewaterhouseCoopers New Zealand
PwC Centre, 10 Waterloo Quay, PO Box 243, Wellington 6140, New Zealand
pwc.co.nz

[REDACTED]
Alternative contact: [REDACTED]

At PwC we work flexibly - so whilst it suits me to send this email now, I do not expect a response or action outside of your own working hours

On Thu, 11 Mar 2021 at 09:46, Mounsey, Zoe <[xx@x](#)> wrote:

Thank you

I can see you have kept timing loose and I understand that. Do you think we would be in position to do an update report to our Board meeting on 30th April even if it is just part 1?

Do you wish to alter the Terms of reference in any way other than timing?

Ngā mihi, Zoe

Zoe Mounsey

Chief Advisor, Finance and Business Operations

M: [REDACTED]

From: [REDACTED]@pwc.com>
Sent: Thursday, 11 March 2021 9:39 am
To: Mounsey, Zoe <[REDACTED]>; Purdy, Darryl <[REDACTED]>
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Ngā mihi

[REDACTED]

[REDACTED]

PwC | Partner Risk Assurance

[REDACTED]

Email: [REDACTED]

PricewaterhouseCoopers New Zealand

PwC Centre, 10 Waterloo Quay, PO Box 243, Wellington 6140, New Zealand

pwc.co.nz

[REDACTED]

Alternative contact: [REDACTED]

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update the Board on progress re: audit. When do you think we will be in a position to discuss/agree the contents of the CSO?

Ngā mihi, Zoe

Zoe Mounsey

Chief Advisor, Finance and Business Operations

M: [REDACTED]



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PricewaterhouseCoopers

Fire and Emergency New Zealand

Internal Audit and Forensic Accountancy Assistance

Date: 10 March 2021

Version: 1.0

Part A – for Participating Agency (client) to complete

The Participating Agency (referred to as the client in this Consultancy Services Order) will complete this and email the entire form (including all Parts) to the Provider.

Date	10 March 2021	Client	Fire and Emergency New Zealand
Provider	PricewaterhouseCoopers Consulting (New Zealand) LP and PwC New Zealand	Contact name	Darryl Purdy
Nominated personnel	██████████ and ██████████	Contact title	Deputy Chief Executive Finance and Business Operations
Project name	UFBA use of FENZ grant funding	Contact phone #	04 496 3600
Client reference		Sub category of services	Internal Audit / Forensic Accountancy

Purpose and any background information

Fire and Emergency New Zealand (“FENZ”) is a Crown entity responsible not only for putting out fires, but also responding to motor vehicle crashes, medical emergencies, hazardous materials spillages, storms, floods, earthquakes and a wide range of rescue situations. Fire and Emergency NZ is made up of approximately 1840 career and 12,060 volunteer firefighters, as well as people in advisory, operational and support roles

The United Fire Brigades’ Association (“UFBA”) is a non-government organisation that is funded mainly through a grant from FENZ. An interim arrangement with UFBA via a Transitional and Advocacy Support Agreement (“TASA”) was signed off in July 2018. It provides the mechanism and framework to make grants to the UFBA for the delivery to FENZ personnel of “core” and “non-core” services.

FENZ agreed to make an annual grant to meet the UFBA fair and reasonable governance and management cost in recognition of UFBA providing core functions as defined in TASA. In respect of UFBA non-core functions, as also defined in TASA, FENZ agreed to make a discretionary grant to cover the fair and reasonable costs of facilitating such a service or enter into a contract for services.

In 2019 the Board of FENZ asked UFBA to provide an audit report from an internal audit provider to examine whether the funding provided by FENZ to UFBA had been used for the purposes the funding was provided and that the services the funding supported have been delivered. While a report from UFBA was provided, this did not meet the criteria set by the Board of FENZ.

FENZ now wishes to commission its own review to examine whether the funding provided by FENZ to UFBA has been used for the purposes the funding was provided and that the services the funding supported have been delivered. This examination will include establishing whether UFBA records evidence that FENZ annual funding grants have been underutilised and retained in the UFBA’s accumulated funds.

Specific questions / instructions for Provider

Incorporated in Purpose and background information above

Additional Information e.g. risks to Participating Agency, additional contact information

None noted

Timeframes

This CSO will be in place from the date of this agreement (or later by mutual agreement). It is noted in the initial FENZ Draft Terms of Reference record that the final report from this engagement was to be issued by the end of March 2021. Given the nature of this work, including current uncertainties around the level of cooperation to be received from the UFBA and documentation quality, it cannot be guaranteed that the engagement will be completed by this date. Oral and/or email progress updates will be provided on a weekly basis, or as agreed with the FENZ.

Indicative budget

FENZ budget

Provider liability cap

No change to the liability in Part F Terms and Conditions

Part B – for Provider to complete

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

Specific Services to be provided

The purpose and scope of PwC's services will include three phases, as set out below. To the extent possible we will perform steps within the phases of work in parallel to avoid duplicating effort.

Phase 1 – Assess the UFBA processes for managing the use of FENZ funding

This phase will involve making enquiries with representatives of the UFBA and examining UFBA accounting records to understand the processes and records that they have in place to manage the use of all funding it receives from FENZ. The purpose will be to enable FENZ to assess the level of confidence it has that the UFBA processes and accounting systems consistently ensure that FENZ funding is used for the purposes intended. Our enquiries will also seek to determine whether UFBA's processes can reliably track under-expending of FENZ funding, and if so, whether UFBA records can identify where the under-use of FENZ funding has contributed to increases in the UFBA's accumulated funds.

We will start by reading all of the background documentation supplied to us by FENZ. We will seek to gain an understanding of:

- the contractual arrangements between FENZ and UFBA
- the nature and detailed breakdown of the annual FENZ funding grants to UFBA
- the process by which UFBA applies for annual funding grants from FENZ and the FENZ process for approving the annual funding
- the framework FENZ employs to monitor the UFBA's use of its FENZ funding grants
- the reporting that UFBA does to FENZ on its use of FENZ funding grants
- the information FENZ has been provided to date by UFBA on the important questions FENZ has been wanting to have answered.

We will also analyse UFBA Annual Reports obtained from the UFBA website in order to understand all sources of its funding, what proportion is FENZ funding, analyse how UFBA reports expenditures and identify what years have seen major increases in UFBA's accumulated funds. We will seek to determine whether it is possible to identify where these increases may have originated (i.e. what additional or unspent sources of funding may have generated these increases in reserves).

Once this is completed we will use what we have learned in order to guide and provide focus for our enquiries with the UFBA.

Phase 2 - A Forensic Review of Relevant Transactions

Building on the work completed in Phase 1, we will establish a population of payments to be reviewed in order to determine the purpose of those payments, including whether they were incurred in accordance with any relevant funding requirements.

Our scope will include:

- Leveraging the findings of Phase 1 to understand the accounting processes, controls and systems at UFBA as well as review of relevant FENZ funding documents;
- To the extent necessary, further discussions with relevant UFBA personnel to understand their interpretation of and practicalities of the FENZ funding requirements;

- Obtaining and analysing relevant expenditures from the UFBA accounting system including, but not limited to, general ledgers, journal entries and trial balances for the period from 1 January 2019;.
- Review and analysis of obtained data for trends and any potential abnormalities and outliers with a view for selecting a sample of transactions for an in-depth review (up to 30 items);
- Obtaining and review of supporting documentation (e.g. relevant invoices, purchase orders, approvals) for the selected sample of expenditures with a view of ascertaining whether they were incurred in line with the FENZ funding requirements;
- Where necessary, further discussions with UFBA personnel to clarify any documents, nature of expenditure(s), any follow up questions.

On completion of Phase 2, we will share our results with the FENZ Sponsor, and discuss recommendations for FENZ going forward. We will then prepare a draft report to formalise the engagement's findings and recommendations for presentation to FENZ management.

Phase 3 - any scope extensions as agreed between PwC and FENZ in writing.

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

Estimate/Quote

We estimate that the fees for Phase 1 will be in the range of \$21,000 to \$28,000 and Phase 2 from \$35,000 to \$40,000 (please see above for the services to be provided under each phase). If it appears that PwC will exceed the fees for each phase, PwC will discuss with FENZ its findings to date, and will only proceed with the FENZ's agreement. Costs for Phase 3 will be discussed and agreed with FENZ prior to commencing any further work, if required.

In addition to our fees, any out-of-pocket expenses such as travel and forensic technology consumables which may be necessarily incurred will be on-charged at cost. Additional disbursements will include a service charge of 5% of fees to cover costs in respect of IT, phone costs any other sundry incidental expenses incurred during this engagement.

Total Fees	\$56,000 to \$68,000
Administration Fee (Tier 1 and 2 only)	\$560 to \$680
Expenses	5% service fee plus out-of-pocket expenses (at cost)
Total Charges	\$59,388 to \$72,114 plus any direct disbursements at cost (e.g. if our Auckland forensics team are required to fly to Wellington)
Identify whether the Total Charges is an Estimate / Quote and the method that the Charges have been calculated	The total charges are based on estimates of effort at the hourly rates stated above.

Conflict of Interest declaration and Additional Information

We, [REDACTED], have made diligent inquiry whether PwC has any actual, potential or perceived Conflict of Interest were it to provide the Services described in this Consultancy Services Order and we have disclosed any actual, potential or perceived Conflict of Interest and how it will be managed below:

We have carefully considered the services we propose to provide to the FENZ and we are not aware of any current conflicts of interest that would impact on us accepting the role of providing investigative assistance.

A conflict of interest may arise under the following scenario:

1. **Related party risk.** If we act for another party (e.g. customer, vendor) and/or are asked to provide services to the subject of our investigation as this could be seen as compromising the independence of our services to the Ministry.

This risk is managed by

- Formal relationship checking processes prior to undertaking any engagement
- Protocols preventing PwC acting for related parties in certain conditions.

Current work

As a Firm we have carried out certain tax and consulting work for FENZ in the past 12 months. We are not currently providing any services to the UFBA and this is further being monitored via our internal risk management procedures. As such, we do not see any conflicts in our involvement through the provision of this investigative assistance.

Additional information/Assumptions

Assumptions and qualifications upon which the services are provided

PwC's services for this engagement will be delivered under the All-of-Government (AoG) Consultancy Services Panel Agreement and the terms and conditions (attached in Part F) for this AoG contract will apply. FENZ accepts PwC's standard clauses to be included in the AoG contract terms and conditions and these are as follows:

1. Our services and our deliverable will be prepared for the purposes noted above, and for none other. If you use it for any other purpose, you do so at your own risk.
2. During the course of this assignment, we may come to hold information that was provided to us in confidence, and in respect of which we therefore owe a duty of confidentiality. In commissioning us to perform the Services, you are acknowledging this, and will respect this duty of confidentiality.
3. We are providing the Services to FENZ and therefore they should not be relied upon by any of your employees or advisors in any personal capacity.
4. Unless specifically provided for in the Consultancy Services Order:
 - a) The Services do not involve an audit or examination conducted in accordance with New Zealand auditing standards, and we will not express an opinion on any financial

statements or information taken as a whole, nor provide any opinion on the achievability of prospective financial information

- b) The Services are not designed to specifically reveal fraud or misrepresentation, and we will not be seeking to do so.
- 5. Draft versions of reports and other outputs will be provided for your information, comment and engagement during the assignment, but will always be subject to amendment and updating. If you rely on drafts or incomplete deliverables, you do so at your own risk.

Released under the Official Information Act 1982

Part C – Variations to Part A

LEAVE BLANK WHEN ISSUING CONSULTANCY SERVICES ORDER

The client will complete Part C if they wish to change any details in Part A

Revised scope and/or timeframe

None

Part D – Variations to Part B

LEAVE BLANK WHEN ISSUING CONSULTANCY SERVICES ORDER

The Provider will complete this only if and when it receives a Variation per Part C above from the Participating Agency

Revised estimate

Revised Charges	\$
Revised Expenses	\$
Total	\$
Identify whether the Total is an Estimate / Quote and the method that the Charges have been calculated	

Additional information / assumptions:

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Part E – Acceptance

LEAVE BLANK WHEN ISSUING CONSULTANCY SERVICES ORDER
The Provider and Participating Agency to complete on acceptance of this Consultancy Services Order

Name of provider’s authorised signatory	[Redacted]
Signature of authorised signatory	[Redacted]
Name of provider’s authorised signatory	[Redacted]
Signature of authorised signatory	[Redacted]

Participating Agency accepts and authorises this Consultancy Services Order	Fire and Emergency of New Zealand
Name of Participating Agency’s authorised signatory	
Signature of authorised signatory	
Date of acceptance	
Client’s job reference or purchase order number	

Released under the Official Information Act 1982

Part F – Terms

THE PROVIDER AND PARTICIPATING AGENCIES ARE NOT PERMITTED TO AMEND THIS PART F.

This Part F contains an extract of selected terms and conditions from the Services Agreement (the **Agreement**). Clause, schedule and paragraph references have been updated to refer to clauses, schedules and paragraphs in this Part F where applicable. For the full terms and conditions that govern the Services, please refer to the Agreement.

<p>1. Services</p> <p>1.1 Services</p> <p>(a) The Provider will provide Services to each Participating Agency in accordance with the terms of this Agreement (including any Consultancy Services Order).</p> <p>(b) The Provider will use all reasonable endeavours to ensure that, on the date the Documentation is provided under any Consultancy Services Order, such Documentation is in a readable and readily useable format.</p> <p>1.2 Requesting information</p> <p>(a) A Participating Agency may contact the Provider, either orally or in writing, about the Provider performing Services before it decides whether to issue a Consultancy Services Order.</p> <p>(b) Following such contact, the Provider must provide such information reasonably requested by the Participating Agency at no cost to the Participating Agency.</p> <p>1.3 Consultancy Services Order</p> <p>(a) Each time a Participating Agency wishes to engage the Provider to perform Services, those Services will be subject to a Consultancy Services Order recording the terms agreed by those parties for the performance of those Services.</p> <p>(b) Each Consultancy Services Order must be substantially in the form prescribed in Schedule 2 (Consultancy Services Order) – refer to the Agreement.</p> <p>(c) Each Consultancy Services Order must record the nature and detail of the Charges, including amounts and/or formula for calculating such Charges.</p> <p>1.4 Agents may procure Services</p> <p>A Participating Agency may, by notice to the Provider and the CoE, appoint one or more third parties to procure Services under a Consultancy Services Order on the Participating Agency's behalf and/or receive invoices, as if that agent was a Participating Agency, provided that any such procurement is for the sole benefit of the Participating Agency.</p> <p>1.5 Process for issuing and responding to a Consultancy Services Order</p> <p>(a) If a Participating Agency wishes to engage the Provider to perform Services, it will complete Part A of the Consultancy Services Order and email it to the Provider.</p> <p>(b) After receiving a Consultancy Services Order, the Provider must, subject to clause 2.1(a) and 3.1, complete the information specified in Part B of the Consultancy Services Order, and email it to the Participating Agency.</p> <p>(c) Upon receipt of the completed Part B of the Consultancy Services Order, the Participating Agency must promptly advise the Provider in writing if the completed Part B is acceptable and the Provider may not commence performing the Services until this approval has been given.</p> <p>1.6 Timely performance</p> <p>The Provider will ensure that the Services to be performed under a Consultancy Services Order are provided on or before the date specified for performance (if any) in the Consultancy Services Order and, if no time is specified, within a reasonable time after the issue of the Consultancy Services Order.</p> <p>1.7 Delay</p> <p>(a) If the Provider considers that it is (or is likely to be) prevented or delayed from achieving a date or time for performance (Milestone) specified in a Consultancy Services Order (Delay), it will:</p>	<p>(i) immediately provide notice verbally or in writing to the Participating Agency, setting out:</p> <p>(A) the cause of the Delay and its expected duration;</p> <p>(B) the effect of the Delay on its ability to perform its obligations under the Consultancy Services Order (including any future Milestones);</p> <p>(C) what extension, if any, to the relevant Milestone is being sought; and</p> <p>(D) what steps, if any, the Participating Agency may take to mitigate the effect of the Delay; and</p> <p>(ii) take all reasonable steps necessary (including by the allocation of additional resources) to eliminate or avoid the Delay and, in all cases, mitigate its effects.</p> <p>(b) If the Provider and Participating Agency agree that the Delay is acceptable or wish to amend the Milestone:</p> <p>(i) the Provider will complete and submit Part C of the Consultancy Services Order to the Participating Agency; and</p> <p>(ii) upon receipt of the completed Part C of the Consultancy Services Order, the Participating Agency must promptly advise the Provider in writing if the completed Part C is acceptable.</p> <p>(c) If the Provider does not achieve the Milestone (as amended from time to time) and the Participating Agency's acts or omissions, or those of its Personnel or third parties acting on its behalf, have not caused the Provider to fail to achieve the Milestone, the Participating Agency may, without prejudice to any other right or remedy, suspend payment of any Charges relating to that Consultancy Services Order until the Provider remedies the relevant failure.</p> <p>1.8 Service standards</p> <p>(a) The Provider must provide the Services to a standard that reaches or exceeds the Service Levels specified in Schedule 3 (Performance Management).</p> <p>(b) In addition, the Provider must:</p> <p>(i) provide the Services diligently, efficiently, effectively and in accordance with Industry Best Practice;</p> <p>(ii) ensure that the Services to be performed under a Consultancy Services Order are provided on or before the date specified for performance (if any) in the Consultancy Services Order and, if no time is specified, within a reasonable time after the issue of the Consultancy Services Order;</p> <p>(iii) ensure that all Documentation, information and advice (including Documentation, information and advice provided prior to the issue of a Consultancy Services Order) provided to a Participating Agency or published on the Provider Database is Fit for Purpose so that, without limitation, it contains sufficient content and detail to enable the Participating Agency to make use of it for the purpose for which it was requested;</p> <p>(iv) act in the best interests of the Participating Agency who issued the Consultancy Services Order in the provision of Services to that Participating Agency;</p> <p>(v) provide information as outlined in Schedule 6 (Reporting) to the CoE – refer to the Agreement;</p>
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- (vi) provide and maintain its information on the Provider Database;
- (vii) keep the CoE informed of all matters of which it ought reasonably to be made aware, and provide such information in relation to the provision of Services as may reasonably be required by the CoE or by any Participating Agency with respect to the provision of Services to that Participating Agency, including under any Consultancy Services Order between the Provider and the Participating Agency; and
- (viii) provide Services to the reasonable satisfaction of the Participating Agency who issued the Consultancy Services Order (as reported to the CoE).

2. Estimates and Quotes

2.1 Estimates and Quotes

- (a) The Provider must provide an Estimate or Quote for all Services to be provided under a Consultancy Services Order, unless the total Fees in respect of the Services under any Consultancy Services Order are likely to be less than \$10,000 (exclusive of GST) or such other amount as determined by the CoE and notified to the Provider.
- (b) Despite clause 2.1(a), if, during the course of providing the Services, the Provider becomes aware that the total Fees (excluding GST) are likely to exceed the amount referred to in clause 2.1(a), the Provider must provide an Estimate in accordance with clauses 2.1(f) and (g).
- (c) All Estimates and Quotes will be provided at no cost to the Participating Agency.
- (d) The Participating Agency may at its sole discretion:
 - (i) request a Quote or Estimate on a lump sum or maximum fee or other basis; and/or
 - (ii) give one or more providers on the Panel an opportunity to provide an Estimate or Quote based on the maximum rates recorded in their respective agreements with the CoE or, in the case of the Provider, the Rates in this Agreement.
- (e) The purpose of clause 2.1(d)(ii) is to allow a Participating Agency, at its discretion, to run a small secondary procurement process if the Services required are sufficiently extensive to merit obtaining an Estimate or Quote from more than one provider on the Panel. For the avoidance of doubt, a secondary procurement process is not mandatory for Participating Agencies.
- (f) All Estimates and Quotes must specify the estimated timeframe to perform the Services requested in the Consultancy Services Order and the Rates of Personnel providing the Services and include any Charges likely to be incurred in providing the Services.
- (g) All Quotes and Estimates must be provided to the Participating Agency in writing and must be included in the Consultancy Services Order.

2.2 If Charges exceed the Estimate

- (a) If during the course of providing the Services under a Consultancy Services Order, the Provider becomes aware that the total Charges (excluding GST) are likely to exceed the Estimate, the Provider must give written notice to the Participating Agency using Part D of the Consultancy Services Order as soon as the Provider becomes so aware, but no later than the time the costs accrued or incurred reach 80% of the Estimate.
- (b) The notice under clause 2.2(a) must specify a revised Estimate for the Services and include the reason the total Charges will exceed the original Estimate.
- (c) A Participating Agency has sole discretion whether to approve a revised Estimate and must act reasonably when deciding whether to approve a revised Estimate.
- (d) When a revised Estimate is approved, the Participating Agency must provide written notice of the same to the Provider.
- (e) If a Provider has provided an Estimate to a Participating Agency for Services, the Participating Agency is not liable to pay the Provider any amount exceeding the Estimate unless the Participating Agency has approved a revised Estimate.

2.3 If Charges exceed the Quote

- (a) The Provider acknowledges that neither the CoE nor the Participating Agency are obliged to pay any

Charges to the Provider in relation to Services performed under a Consultancy Services Order if those Charges exceed any Quote provided in relation to that Consultancy Services Order, unless the Participating Agency has given its prior written consent in accordance with clause 2.3(b).

- (b) If the Participating Agency agrees to allow the Provider to increase the Charges:
 - (i) the Provider will complete and submit Part D of the Consultancy Services Order to the Participating Agency; and
 - (ii) upon receipt of the completed Part D of the Consultancy Services Order, the Participating Agency must promptly advise the Provider (in writing) if the completed Part D is acceptable.

3. Conflicts of interest

3.1 Conflicts of interest

- (a) The Provider must, upon receipt of a Consultancy Services Order, make diligent inquiry whether it has any actual, potential or perceived Conflicts of Interest if it were to provide the Services specified in the Consultancy Services Order and, if no such Conflict of Interest exists, the Provider must provide confirmation to that effect to the Participating Agency that issued the Consultancy Services Order.
- (b) If the Provider has an actual, potential or perceived Conflict of Interest, the Provider must immediately notify the Participating Agency who issued the Consultancy Services Order and must not begin performing the Services without the prior written approval of the Participating Agency.
- (c) The Provider must take all reasonable steps to ensure that:
 - (i) a situation does not arise that might result in an actual, potential or perceived Conflict of Interest; and
 - (ii) any Personnel or Subcontractors of the Provider do not engage in any activity or obtain interests that might result in the Provider or such Personnel or Subcontractors having an actual, potential or perceived Conflict of Interest,
 that cannot be managed to the satisfaction of the Participating Agency who issued the Consultancy Services Order.
- (d) If, after commencing Services under any Consultancy Services Order, the Provider becomes aware of any matter, circumstance, interest or activity that may give rise to any actual, potential or perceived Conflict of Interest, the Provider must immediately notify the Participating Agency of all relevant details and must immediately cease work on the Services until such time as the Participating Agency provides written notice confirming the Provider may continue to perform the Services or terminates the engagement of the Provider in respect to the Services to be performed under the relevant Consultancy Services Order in accordance with clause 3.1(e).
- (e) If the Participating Agency who issued a Consultancy Services Order considers that the Provider has an actual Conflict of Interest of sufficient gravity that the Provider can no longer perform Services for it, the Participating Agency may, by written notice to the Provider, terminate the Consultancy Services Order with immediate effect on the date of termination specified in that notice.
- (f) Any approval or notice given by the Participating Agency pursuant to clause 3.1(b) or 3.1(d) may require the Provider to take steps reasonably required by the Participating Agency to manage the Conflict of Interest, and the Provider must provide written notice confirming its acceptance of those steps before it may commence or continue to provide the Services under that Consultancy Services Order.

4. Responsibilities

4.1 Provider responsibilities

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

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

- privacy and other policies and guidelines issued by the Participating Agency and notified or made available to the Provider;
- (c) obtain, maintain and comply with any governmental, regulatory or other approvals, permissions, consents, licences, and requirements necessary to provide the Services and perform its obligations under this Agreement;
 - (d) comply with all Laws at all times during the Term in so far as they relate to the provision of the Services, including the Privacy Act 1993 and all applicable consumer laws;
 - (e) ensure that it and its Personnel providing the Services do not access any Participating Agency's information or systems except to the extent necessary to provide the Services and for no other purpose;
 - (f) as soon as is practicable, notify the CoE and all other relevant Participating Agencies of any problems or issues that arise in relation to the performance of its obligations under this Agreement, including any problems or issues that will, or are likely to, affect the provision or quality of the Services or the ability of the Provider to perform its obligations under this Agreement;
 - (g) provide and maintain information in the Provider Database as detailed in Schedule 7 (Provider Database) – refer to Agreement;
 - (h) without limiting any other provision of this Agreement, use all reasonable endeavours to avoid damaging or adversely affecting any Participating Agency's reputation; and
 - (i) conducting the Agency Satisfaction Survey by asking Participating Agencies the questions recorded in Annexure B of Schedule 5 (Governance) within 5 Business Days of the Services in each CSO being provided – refer to the Agreement.

4.2 Participating Agencies' responsibilities

Each Participating Agency has the following responsibilities in relation to the Services:

- (a) to manage its operational relationship with the Provider, including in relation to the fulfilment of each Consultancy Services Order;
- (b) to notify the Provider of all relevant policies, guidelines and procedures of the Participating Agency that the Provider must comply with when performing the Services under each Consultancy Services Order;
- (c) to provide adequate instructions and information to the Provider to allow it to perform the Services under each Consultancy Services Order;
- (d) to make timely decisions where approvals or consents are reasonably sought by the Provider in performing the Services under each Consultancy Services Order;
- (e) to pay the Charges; and
- (f) to use its best efforts to resolve any dispute directly with the Provider before involving the CoE in accordance with clause 12.

4.3 Transition

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

5. Resourcing

5.1 General requirements

The Provider will provide and maintain sufficient resources (including human resources, equipment, telecommunications connectivity, premises and other facilities) to enable it to perform its obligations on time and otherwise in accordance with this Agreement.

5.2 Provider's Nominated Personnel

- (a) The Participating Agency may, in any Consultancy Services Order, nominate specific Personnel (**Nominated Personnel**) to be the primary providers or to supervise the delivery of the Services.

- (b) If any Nominated Personnel nominated in a Consultancy Services Order are not available to provide or supervise the Services requested, the Provider must immediately notify the Participating Agency and provide details of other Personnel (if any) with the necessary skills and experience to provide or supervise the Services requested pursuant to that Consultancy Services Order.
- (c) Notice given under clause 5.2(b) must specify the period for which the Nominated Personnel will continue to be unavailable.
- (d) Upon receipt of notice under clause 5.2(b), the Participating Agency must notify the Provider whether the replacement Personnel are acceptable.
- (e) The Participating Agency is under no obligation to accept any replacement Personnel and, if it does not approve the replacement Personnel, the Provider may not commence or continue providing the Services.

5.3

Personnel

- (a) The Provider will ensure that all of its Personnel who are engaged in the performance of the Provider's obligations under this Agreement:
 - (i) have the requisite skills, expertise, qualifications and experience;
 - (ii) have, before performing any such obligations, obtained all security clearances and passed all probity checks required by, or necessary to provide the Services to, a Participating Agency;
 - (iii) comply with all health, safety, security and other policies, codes of conduct, procedures and reasonable directions as may be reasonably required by a Participating Agency from time to time; and
 - (iv) will carry out their respective duties with due care, skill and diligence.
- (b) The Participating Agency will notify the Provider of any security clearances and probity checks required by, or necessary to provide the Services to, that Participating Agency.

5.4

Subcontracting

- (a) The Provider will not subcontract the performance of all or part of the Services or any of its other obligations under this Agreement, except with the prior written consent of the Participating Agency for whom it is providing Services.
- (b) The Provider is solely responsible for the selection of each Subcontractor and must ensure that each Subcontractor is creditworthy, qualified and has the relevant experience to perform the work it is required to carry out for the Provider.
- (c) To the extent permitted by Law, the Provider is and remains fully responsible for any act or omission of any Subcontractor.
- (d) The Provider must ensure that each Subcontract contains obligations on the Subcontractor that are consistent with the relevant terms of this Agreement, including in relation to clauses 9 (Confidentiality), 10 (Intellectual Property), 15 (Audit) – refer to the Agreement, and 13 (Termination) and Schedule 3 (Performance Measurement).
- (e) If, in the CoE's reasonable opinion, a Subcontractor is:
 - (i) materially not performing in accordance with the terms of this Agreement, the CoE may, by notice to the Provider, require the Provider to procure that the Subcontractor performs the relevant obligations within 10 Business Days, failing which the CoE may, by notice to the Provider, require the Provider to remove that Subcontractor; or
 - (ii) a material threat to the health, safety or security of the Personnel or property of any Participating Agency, or has breached security or confidentiality requirements of this Agreement, the CoE may, by notice to the Provider, require the Provider to remove that Subcontractor,

and the Provider will ensure the immediate removal of that Subcontractor.

6. Changes

6.1 Change procedure

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

7. Price and payment

7.1 Calculation of Charges

The Charges will be calculated in accordance with the terms of Schedule 2 (Pricing).

7.2 Participating Agency to pay for Services

- (a) Each Participating Agency will pay the Provider the Charges applicable to any Services procured by that Participating Agency on the terms of this clause 7.
- (b) The Charges comprise the total amount payable by Participating Agencies for the Services.

7.3 Invoicing and payment

Except as otherwise provided in Schedule 2 (Pricing) or as agreed with a Participating Agency in any Consultancy Services Order, the Provider will invoice:

- (a) each Participating Agency; or
- (b) if the Participating Agency has appointed an agent to purchase Services on its behalf in accordance with clause 1.4 and the Participating Agency has instructed the Provider in writing to invoice that agent,

for the Charges applicable to that Participating Agency and the Participating Agency will pay those Charges, in accordance with the following terms:

- (c) the Provider will render one itemised invoice to the Participating Agency at the end of each month during the Term for all Services performed during that month specifying (as applicable):
 - (i) the nature and amount of the Fees or other applicable fees and fee structures;
 - (ii) the Personnel and their hourly rate;
 - (iii) the hours billed (by Personnel and in the aggregate);
 - (iv) the nature and amount of any Expenses (including any third party Charges to be passed on to the Participating Agency);
 - (v) the amount representing the Administration Fee;
 - (vi) how much of the Estimate or Quote has been used;
 - (vii) a brief description of the Services provided during that month; and
 - (viii) any other matters the Participating Agency may reasonably request;
- (d) each correctly rendered invoice will be payable on or before the 20th day of the month following the month in which the invoice was received;
- (e) the Participating Agency will have no obligation to pay any Charges which are invoiced more than 90 days after the date that such amount was required to be invoiced pursuant to this clause 7.3; and
- (f) the Provider may only invoice a Participating Agency for any Expenses at the cost actually incurred by the Provider.

7.4 Invoice disputes

If a Participating Agency or the Provider disputes an invoice:

- (a) it may withhold the disputed sum and associated Administration Fee until the dispute is resolved;
- (b) the dispute will be resolved in accordance with clause 12; and
- (c) it will pay the undisputed portion in accordance with clause 7.3.

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

7.5 Taxes

- (a) Except for any GST payable by a Participating Agency, any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including applicable interest and penalties) payable in connection with this Agreement under any Law is to be paid by the Provider and not passed on to a Participating Agency unless

otherwise expressly agreed in writing by the Participating Agency.

- (b) The Participating Agency may deduct from any payment to be made to the Provider any withholding taxes or other deductions that it is required by Law to make.

7.6 Suspension of payment

- (a) Without prejudice to any other right or remedy that may be available to a Participating Agency, a Participating Agency may suspend payment of all or any part of the Charges if the CoE has notified the Provider that the Provider is in Material Breach, until that Material Breach is remedied.
- (b) If the Material Breach is not capable of remedy the Participating Agency and the Provider agree to treat the Charges as being in dispute and clause 13 will apply.

8. Warranties

8.1 General warranties

Each party represents, warrants and undertakes that:

- (a) it has full power, capacity and authority to execute, deliver and perform its obligations under this Agreement;
- (b) it has, and will continue to have, all the necessary consents, permissions, licences and rights to enter into and perform its obligations under this Agreement; and
- (c) this Agreement constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

8.2 Provider's warranties

The Provider represents, warrants and undertakes that:

- (a) it will perform its obligations under this Agreement with due care, skill, promptness and diligence at all times;
- (b) it has, and will have throughout the Term, sufficient Personnel to supply the Services and to perform its other obligations under this Agreement;
- (c) it, and each of its Personnel engaged in the performance of the Services, has, and will have throughout the Term, the necessary expertise and all necessary governmental, regulatory or other approvals, permissions, consents, licences, qualifications, accreditations and requirements to provide the Services and perform its other obligations under this Agreement;
- (d) it will comply with the requirements of all Laws as they relate to the provision of Services by the Provider;
- (e) the possession or use of any item of Intellectual Property supplied or licensed by it, or the use of any item of Intellectual Property by it to perform its obligations under this Agreement, will not infringe the rights of any third party;
- (f) all Documentation (and any other information or advice supplied by it to a Participating Agency) will be accurate, complete and Fit for Purpose;
- (g) there are no existing agreements, undertakings or arrangements which prevent it from entering into this Agreement, or which would impede the performance of its obligations under this Agreement, or that it would breach by entering into this Agreement;
- (h) it is not (and nor is any of its Personnel) a party to any litigation, proceedings or disputes which could adversely affect its ability to perform its obligations under this Agreement;
- (i) it has not offered any inducement in connection with the entering into or negotiation of this Agreement, and will not offer any inducement in connection with the supply of Services to Participating Agencies;
- (j) in responding to the RFP and establishing the Charges, such decisions and prices were arrived at independently and without collusion; and
- (k) all representations, statements and warranties made in the RFP Response were true and correct when provided to the CoE.

8.3 Continuous application

The warranties, representations and undertakings set out in clause 8.2 will be deemed to be given by the Provider continuously throughout the Term.

8.4 Notification

Each party will promptly notify the other if at any time during the Term it breaches any of the warranties, representations and undertakings in this clause 8.

8.5 Other warranties excluded

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

9. Confidentiality

9.1 Protection of Confidential Information

- (a) Subject to clauses 9.1(c) and 9.2, the Provider and each Participating Agency will treat as confidential and not disclose to any third party nor use for its own benefit any Confidential Information that is the Confidential Information of the other (or, in the case of the Provider, that is the Confidential Information of any Participating Agency).
- (b) The Provider will:
- (i) ensure that all Confidential Information of the CoE or any other Participating Agency (and any backup archives containing such Confidential Information) in the possession or control of the Provider from time to time is kept secure and managed and protected and only disclosed or otherwise dealt with in accordance with this Agreement;
 - (ii) not use any Agency Information for its own purposes or for any purposes different from those contemplated by this Agreement; and
 - (iii) advise the CoE in writing if any Confidential Information of the CoE or any other Participating Agency will be transferred or stored outside New Zealand before such information is transferred and will confirm that the requirements of this clause 9.1 will be met while such Confidential Information is stored outside New Zealand.
- (c) Clause 9.1(a) does not prevent the disclosure of Confidential Information:
- (i) if that information was known, or becomes known, to the public through no act or default of the recipient;
 - (ii) that the recipient is required by Law or parliamentary practice (including parliamentary questions) to disclose, or to a Select Committee or to a Minister of the Crown, so long as the recipient provides notice of the required disclosure promptly upon receipt of notice of the required disclosure (if it is permitted to do so by Law);
 - (iii) that was lawfully known to the recipient prior to the date it was received;
 - (iv) that becomes available to the recipient from a source other than a party to this Agreement or a Participating Agency, provided that the recipient has no reason to believe such source is itself bound by an obligation of confidence to the person that disclosed that information or is otherwise prohibited under Law from disclosing such information;
 - (v) to any Professional Adviser for the purposes of rendering professional services to a party in relation to this Agreement;
 - (vi) to the extent that such disclosure is authorised by this Agreement; or
 - (vii) if such disclosure is approved for release with the consent of the party from whom the Confidential Information is first received.

9.2 Limited disclosure

- (a) The Provider may, subject to clause 9.2(d), disclose the Confidential Information of a Participating Agency to its Subcontractors, Personnel, Related Entities and Professional Advisers who need to know the same for the sole purpose of enabling the Provider to perform its obligations and exercise its rights under this Agreement.
- (b) A Participating Agency may, subject to clause 9.2(d), disclose the Confidential Information of the Provider to its third party suppliers, Personnel and Professional Advisers and any other Participating Agency (including the CoE) who need to know the same in connection with the Services.

- (c) The Provider will not disclose a Participating Agency's Confidential Information to any of its Subcontractors, Related Entities or Professional Advisers, and a Participating Agency will not disclose the Provider's Confidential Information to any of its third party suppliers or Professional Advisers, unless the recipient has given a written confidentiality undertaking to the disclosing party in terms substantially similar to those set out in this clause 9.

- (d) Any undertaking given pursuant to clause 9.2(c) will be provided to the other party to this Agreement or the relevant Participating Agency on request.

10. Intellectual Property

10.1 Intellectual Property owned by Provider

- (a) The CoE acknowledges that all:
- (i) Intellectual Property held by the Provider before the Commencement Date;
 - (ii) Intellectual Property developed independently from this Agreement by the Provider, and that is not developed, commissioned or created under or in connection with this Agreement; and
 - (iii) adaptations and modifications to the Intellectual Property described in clauses 10.1(a)(i) and (ii),
- remains the Provider's sole and exclusive property (**Provider IP**).
- (b) To the extent that a Participating Agency needs to use any of the Provider IP to receive the full benefit of the Services, the Provider grants to the Participating Agency a royalty-free, non-exclusive licence (including, if agreed in a Consultancy Services Order, the right to sublicense) to use, copy, modify and distribute during the Term any Provider IP provided to a Participating Agency by or on behalf of the Provider.

10.2 Intellectual Property owned by Participating Agencies

- (a) The Provider acknowledges that each Participating Agency or its licensor has, and continues to have, sole and exclusive ownership of all Intellectual Property rights in all of the Agency Information together with all adaptations and modifications of such Agency Information (**Pre-contract Participating Agency IP**).
- (b) All Intellectual Property created or developed by the Provider or its employees or Subcontractors in performing the Services and developing the Documentation will be owned by the Participating Agency that issued the Consultancy Services Order for those Services from the date the Intellectual Property is created or developed (**Post-contract Participating Agency IP** and, together with the Pre-contract Participating Agency IP, the **Participating Agency IP**).
- (c) If the Provider (or any of its Subcontractors) has under any Law any right in or claim to any of the Participating Agency IP or holds any of the Participating Agency IP, the Provider (by itself and for its Subcontractors):
- (i) assigns to the Participating Agency all of its rights, title and interest in and to that Participating Agency IP from the date it was created or developed; and
 - (ii) waives all right of lien or similar rights as may now or later be claimed in that Participating Agency IP; and
 - (iii) waives all of its moral rights under Part 4 of the Copyright Act 1994 in that Participating Agency IP,

and the Provider will sign all documents and do all acts and things that are necessary to give effect to this clause 10.2(c).

- (d) To the extent that the Provider needs to use any of the Participating Agency's IP for the purpose of performing its obligations under this Agreement, the CoE will use its reasonable endeavours to procure the grant by the Participating Agency to the Provider, subject to any written direction given by the CoE or the Participating Agency, of a royalty-free, non-exclusive, non-transferable licence to use and store that Participating Agency's IP for the sole purpose of performing its obligations under this Agreement during the Term.

10.3 Intellectual Property owned by third parties

- (a) To the extent that the Provider needs to use any Intellectual Property held or owned by a third party (**Third Party IP**) in performing the Services under a Consultancy Services Order issued by a Participating Agency, the Provider will use its best endeavours to obtain the fullest rights of use and licence of that Third Party IP (on terms and at a cost to be agreed with the Participating Agency) as are necessary for the performance of those Services for the benefit of the Participating Agency.
- (b) The CoE acknowledges that the Provider may have limited ability to obtain rights and/or a licence to use any Third Party IP and, where the Provider, using its best endeavours, cannot obtain appropriate rights and/or a licence for a Participating Agency to use that Third Party IP, the warranty in clause 8.2(e) applies.

IP Claim without the prior written consent of the affected Participating Agency (which will not be unreasonably withheld); and

- (iv) the Provider will notify the CoE of the IP Claim, and the outcome within 5 Business Days of the claim being concluded.
- (b) If any IP Claim disrupts a Participating Agency's use or enjoyment of a Service, the Provider will (unless otherwise requested by the CoE), at its own expense and at its option, immediately:
- (i) obtain for the Participating Agency the legal right to continued use of the infringing materials; or
- (ii) replace, modify or resupply the infringing materials so that there is no further infringement, without adversely affecting the performance or functionality of those materials.

11. Liability

11.1 Indemnity

- (a) The Provider will, to the extent permitted by Law, indemnify the Participating Agency who issued a Consultancy Services Order against all Losses suffered or incurred by that Participating Agency as a result of any:
- (i) unlawful, malicious or negligent act or omission by the Provider;
- (ii) personal injury, sickness, death or loss of, or damage to, tangible property due to an act or omission of the Provider; or
- (iii) any other breach by the Provider of its obligations under this Agreement.
- (b) The Provider will, subject to clause 11.1(c), indemnify the CoE and the Participating Agencies against all Losses suffered or incurred by the CoE or a Participating Agency as a result of any claim that the possession or use of any Intellectual Property supplied or licensed by the Provider, or the use of any Intellectual Property used to provide the Services, infringes any third party's rights.
- (c) The Provider will have no liability under clause 11.1(b) to the extent that any IP Claim arises from any:
- (i) modification by the Participating Agency of any item of Intellectual Property supplied or licensed by the Provider without the approval of the Provider;
- (ii) use by a Participating Agency of Intellectual Property supplied or licensed by the Provider for any purpose disallowed by this Agreement or the applicable Intellectual Property licence (but only if the licence has been provided to the Participating Agency prior to such use); or
- (iii) use of Intellectual Property used to provide the Services if and to the extent that Intellectual Property was supplied by a Participating Agency or the CoE.

11.2 IP Claims

- (a) In the event of a claim under clause 11.1(b) (an **IP Claim**):
- (i) the affected Participating Agency will give the Provider notice of the IP Claim as soon as practicable and, to the extent permissible by Law, permit the Provider (at the Provider's cost) to handle all negotiations for settlement and to control and direct any litigation that may follow (**Control of the IP Claim**);
- (ii) if the Provider has Control of the IP Claim:
- (A) the affected Participating Agency will provide all reasonable assistance to the Provider (at the Provider's cost) in the handling of any negotiations and litigation; and
- (B) the Provider will keep the affected Participating Agency informed of the defence or negotiations of the IP Claim and diligently conduct any litigation or negotiations, using competent counsel and in a manner that does not adversely affect the name or reputation of the CoE or any Participating Agency;
- (iii) the Provider will not enter into any settlement or compromise in relation to the

11.3 Maximum liability of Participating Agency

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

11.4 Maximum liability of the Provider

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

- (a) in relation to the sub-categories for which the Provider has been appointed as a Tier 1 Provider in the Appointment Letter, the greater of:
- (i) 10 times the total Charges paid and payable under the Consultancy Services Order;
- (ii) \$5,000,000; and
- (iii) any greater amount or multiple set out in the Consultancy Services Order; and
- (b) in relation to the sub-categories for which the Provider has been appointed as a Tier 2 Provider in the Appointment Letter, the greater of:
- (i) 10 times the total Charges paid and payable under the Consultancy Services Order;
- (ii) \$2,000,000; and
- (iii) any greater amount or multiple set out in the Consultancy Services Order.

11.5 Exclusions on liability

The limitations on liability set out in clauses 11.3 and 11.4 will not limit the liability of:

- (a) the Provider under clauses 11.1(a) and 11.1(b) (other than in respect of negligent acts or omissions under clause 11.1(a)(i) and breach by the Provider of its obligations under this Agreement under clause 11.1(a)(iii), which are subject to the limitations of liability in clauses 11.3 and 11.4);
- (b) the Provider for any fraudulent act or omission; or
- (c) either party for any breach of confidentiality.

11.6 Categories of loss

- (a) Irrespective of how liability arises, neither the CoE, the Provider nor any Participating Agency who issued any Consultancy Services Order to the Provider will, under any circumstances, be liable for any indirect loss or damage (including consequential loss) arising under or in connection with this Agreement.
- (b) Neither the CoE nor any Participating Agency will, under any circumstances, be liable for any loss of profits or loss of revenue suffered by the Provider in connection with this Agreement.
- (c) Losses relating to administration, operations, fines and penalties arising from the Provider's act or omission will be considered direct loss or damage that the CoE is not prevented from recovering by any term of this Agreement.
- (d) For the avoidance of doubt, clause 11.3(a) will not preclude the CoE taking action to recover any unpaid Administration Fee.

11.7 Force majeure

- (a) The CoE, the Provider and any Participating Agency who issues a Consultancy Services Order to the

Provider (in this clause 11.7, referred to as a party) will not be liable to the other for any failure to perform its obligations under this Agreement during the time and to the extent that such performance is prevented, wholly or substantially, by reason of any Force Majeure Event.

(b) The party subject to the Force Majeure Event (the **non-performing party**) must:

(i) notify the other party (and, if the non-performing party is the Provider, all affected Participating Agencies) as soon as practicable after the Force Majeure Event occurs and provide full information concerning the Force Majeure Event, including the extent of its inability to perform, an estimate of the time likely to be required to overcome the Force Majeure Event and the steps the non-performing party will take to comply with clauses 11.7(b)(ii) and 11.7(b)(iii);

(ii) use all reasonable endeavours to mitigate and remedy the effect of the Force Majeure Event and minimise the impact of the event on the other party (including, if the non-performing party is the Provider, on the Participating Agencies); and

(iii) use all reasonable endeavours to perform its obligations under this Agreement as far as is practicable,

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

(c) If the non-performing party affected by the Force Majeure Event is the Provider, each affected Participating Agency may, to the extent that any Service requested by the Participating Agency under a Consultancy Services Order has not been delivered and delivery has, or will be, delayed by the Force Majeure Event, terminate the Consultancy Services Order for the supply of that Service, by notice to the Provider within five Business Days following receipt by the Participating Agency of notice of the Force Majeure Event, at no cost to the Participating Agency, subject to the Participating Agency paying for Services delivered up to the date of the Force Majeure Event.

11.8 Insurance

(a) During the Term and for a period of two years following the termination of this Agreement, the Provider will, at its own expense, ensure that it maintains adequate insurance in respect of its potential liability for loss or damage under this Agreement in accordance with Industry Best Practice, but as a minimum the Provider must hold professional indemnity insurance and public liability insurance in respect of the Services provided under this Agreement and other insurance to cover standard commercial risks (including in respect of Documentation which is the property of a Participating Agency and in the Provider's possession or control).

(b) The Provider will, at the CoE's request, promptly provide satisfactory evidence that it has complied with its obligations in this clause 11.8.

12. Dispute resolution

12.1 Dispute

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

(a) the relevant Participating Agency and the Provider will each use its best efforts to resolve the dispute through good faith negotiations and informal dispute resolution techniques, and will continue to perform its obligations under this Agreement as far as possible as if the dispute had not arisen, pending final settlement of the dispute; and

(b) neither the Participating Agency nor the Provider will commence any formal proceedings relating to the dispute unless it has complied with clause 12.2.

12.2 Escalation

(a) The Participating Agency and the Provider will each advise its respective Representative (or equivalent person) of a dispute on the day that the dispute arises.

(b) The Representatives will use their best efforts to resolve the dispute in accordance with clause 12.1(a).

(c) If the dispute is not resolved:

(i) within 10 Business Days, the dispute will be escalated to senior representatives of the Provider and the Participating Agency with delegated authority to resolve the dispute;

(ii) within a further 10 Business Days, the dispute will be escalated to the CoE's Manager, All-of-Government Contracts and the Provider's Chief Executive.

12.3 Mediation

(a) If a dispute is not resolved under clause 12.2, either party may, by written notice to the other, refer the dispute to mediation, or they may agree in writing to refer the dispute to mediation.

(b) The mediation will be conducted by a single mediator in accordance with the terms of the LEADR New Zealand Inc. Standard Mediation Agreement and at a fee to be agreed by the parties.

(c) If the parties fail to agree on the identity of the mediator and/or the mediator's fee within five Business Days of referral of the dispute to mediation, the mediator will be chosen, and the mediator's fee determined, by the chairperson for the time being of LEADR New Zealand Inc. (or his or her nominee).

12.4 Urgent relief

Nothing in this clause 12 will preclude either party from taking immediate steps to seek urgent relief before a New Zealand court.

13. Termination

13.1 Termination of Consultancy Services Order

The Participating Agency may terminate a Consultancy Services Order:

(a) for convenience by giving the Provider at least one month's prior written notice;

(b) by notice to the Provider with immediate effect on the date of termination specified in that notice, if the Provider commits a Material Breach which is:

(i) not capable of being remedied (and, for the avoidance of doubt, paragraphs (a) and (b) of the definition of "Material Breach" are deemed incapable of being remedied); or

(ii) capable of being remedied but which is not remedied to the satisfaction of the Participating Agency within 10 Business Days following the date of receipt by the Provider of the Participating Agency's notice of the Material Breach;

(c) in accordance with clause 3.1(e) (Conflict of Interest); or

(d) in accordance with clause 11.7(c) (Force Majeure Event).

13.2 Consequences of termination or expiry

(a) In the event of termination or expiry of this Agreement, no Participating Agency will be obliged to make any payment to the Provider except for any Charges payable for Services supplied pursuant to a Consultancy Services Order entered into on or before the effective date of expiry or termination.

(b) Termination or expiry will not, unless otherwise provided in this Agreement, affect:

(i) any rights and remedies available to either party which have accrued up to and including the date of termination or expiry; and

(ii) the provisions of this Agreement which expressly, or by their nature, survive termination or expiry, including clauses 14 (Entire agreement), 1.4 (Precedence - refer to the Agreement), 9 (Confidentiality), 10 (Intellectual Property), 15 (Audit - refer to the Agreement), 11 (Liability), 12 (Dispute Resolution), 13.2 (Consequences of termination or expiry) and 19 (General - refer to the Agreement) and Schedule 1 (Definitions).

(c) After expiry or termination of this Agreement for any reason, each party will, within five Business Days of receiving notice from the other party, return all Documentation, Confidential Information or other property belonging to the party and (in the case of the Provider) to each Participating Agency that issued a Consultancy Services Order to the Provider (or destroy such Confidential Information, if requested), except if

such Documentation, Confidential Information or other property is required to be retained by any Law.

14. Entire agreement

14.1 Entire agreement

- (a) No other terms or conditions, including any conditions of sale, invoices or any other communication not included in a Consultancy Services Order (**Communication**), will be incorporated into this Agreement, even if at some later date the other party (including, in the case of the CoE, any other Participating Agency) signs or otherwise purports to accept those terms and conditions or the terms of that Communication.
- (b) For the avoidance of doubt, and without limiting clauses 1.3(a) to 1.3(c) – *refer to the Agreement*:

(i) any Communication which is expressed or intended to operate as an indemnity, warranty, representation, undertaking, condition or other term of such a nature is hereby disappplied and excluded from this Agreement; and

(ii) any part of a Consultancy Services Order which describes the nature, scope, price or manner of delivery of Services will, subject to clause 14.1(b)(i), form part of this Agreement, but only to the extent that it does not conflict with any other part of this Agreement.

(iii) relating to that party's or Participating Agency's internal management, structure, Personnel or strategies;

(c) the terms of this Agreement; and

(d) Agency Information;

SCHEDULE 1: DEFINITIONS

In this Agreement, unless the context otherwise requires:

Administration Fee means the amount referred to in clause 11.8 of the Base Agreement – *refer to the Agreement*;

Agency Information means all:

- (a) information and records belonging to a Participating Agency that are supplied to or collected by the Provider for the purpose of enabling the Provider to perform its obligations under this Agreement;
- (b) compilations of data created by a Participating Agency or the Provider for the purposes of this Agreement, but excluding the Provider's working papers; and
- (c) legal names, logos, trademarks, brands or images of a Participating Agency, including all related Intellectual Property of the Participating Agency and the New Zealand Coat of Arms or any other coat of arms or emblem used by the Participating Agency;

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

Annexure means any document physically attached to a Schedule and identified as such and any other document incorporated by reference in any part of this Agreement (other than an Annexure);

Appointment Letter means the letter issued to the Provider by the CoE, as amended or reissued from time to time, confirming (among other things) the Provider's appointment as an All-of-Government provider of consultancy services and detailing the terms and conditions of the appointment (including the Services and the applicable Tier(s));

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

Business Day means any day of the year other than a Saturday, a Sunday or a public holiday (as defined in section 44 of the Holidays Act 2003), provided that:

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

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

Change means any change to this Agreement made in accordance with clause 10.1 of the Base Agreement – *refer to Agreement*;

Charges means the amount payable by Participating Agencies for Services and includes Expenses, as described in Schedule 2 (Pricing) and agreed in a Consultancy Services Order;

Commencement Date is the date on which this Agreement is signed by both parties or, if two dates, the later date;

Confidential Information means:

- (a) all information and trade secrets already communicated or subsequently communicated under or in connection with this Agreement, including information obtained during the negotiation of this Agreement or in the performance of this Agreement and information on the Provider Database;
- (b) any information about the business or property of either party or a Participating Agency including any information:
- (i) relating to the financial position of that party or Participating Agency;
- (ii) concerning that party's or Participating Agency's suppliers and customers; or

Conflict of Interest means any matter, circumstance, interest or activity of the Provider, its Personnel or Subcontractors, arising by whatever means that directly or indirectly conflicts with:

(a) the duties of the Provider and any of its Personnel or Subcontractors to the Participating Agency who issued the Consultancy Services Order; or

(b) the interests of any Participating Agency in relation to this Agreement (including any Consultancy Services Order) or otherwise in respect to the provision of consultancy services to the Participating Agency either before or after the Commencement Date;

or otherwise impairs or might appear to impair the ability of the Provider (or any of its Personnel or Subcontractors) to provide the Services to any Participating Agency under a Consultancy Services Order diligently, independently, impartially and in the best interests of the Participating Agency;

Consultancy Services Order means a service order relating to the supply of Services issued by a Participating Agency in accordance with clause 1.4 and substantially in the form attached as Schedule 2 (Consultancy Services Order – *refer to the Agreement*) and, if agreed between the Participating Agency and the Provider or required under the Appointment Letter, may contain additional information or further particularity in respect of the Services to be provided under the service order to that contained in the Appointment Letter;

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

(a) the first Contract Quarter will begin on the Commencement Date and end on the date specified in the Appointment Letter; and

(b) the final Contract Quarter will end on the effective date of expiry or termination of this Agreement;

Control means, in relation to the Provider or any ultimate or intermediate holding company or Holding Entity of the Provider, the power to:

(a) manage, directly or indirectly, the operation of the business; or

(b) control, directly or indirectly, the composition of the board of directors or board of management or equivalent governing body,

of the Provider or such ultimate or intermediate holding company or Holding Entity, whether through the ownership of voting securities, by contract or otherwise, and for these purposes "holding company" will have the same meaning as in section 5 of the Companies Act 1993;

Documentation means all advice, communications, documentation (including information on the Provider Database) and reports (whether in paper, electronic, audio or audio-visual format) relating to, or provided as part of, the Services together with additions, modifications to, and replacements of, that documentation, but excludes the Provider's working papers;

Eligible Agency means:

(a) each Public Service department, as defined in section 27 of the State Sector Act 1988;

(b) the New Zealand Defence Force, the New Zealand Police, the New Zealand Security Intelligence Service, the Parliamentary Counsel Office, the Office of the Clerk of the House of Representatives and the Parliamentary Service;

(c) each Crown Entity, as defined in section 7 of the Crown Entities Act 2004;

(d) each organisation listed in the fourth schedule to the Public Finance Act 1989;

(e) the Reserve Bank of New Zealand;

(f) the Office of the Controller and Auditor-General, the Office of the Ombudsmen, and the Office of the Parliamentary Commissioner for the Environment;

(g) each corporation listed in the first schedule to the State Owned Enterprises Act 1986;

- (h) each local authority, as defined in section 5 of the Local Government Act 2002; and
- (i) any other, person, organisation or entity that does not fall within the above categories but which the CoE determines should be treated as an Eligible Agency for the purposes of this Agreement;

Estimate means an estimate of the total Charges for the Services required by the Participating Agency;

Expense means any actual and reasonable out-of-pocket costs incurred by the Provider in the delivery of the Services and agreed to in any Consultancy Services Order, and includes any freight and related costs, travelling and incidental expenses and other costs, disbursements, fees, charges and expenses directly or indirectly incurred by the Provider;

Fees means the amount payable by the Participating Agency to the Provider for its time spent delivering the Services calculated on the basis of the Rates, excluding Expenses;

Fit for Purpose means, in relation to any Service or Documentation to be provided by the Provider to a Participating Agency, that such Services or Documentation are, in descending order of priority, fit for the purpose(s):

- (a) expressly made known in writing by that Participating Agency to the Provider (including in a Consultancy Services Order); or
- (b) for which the Provider, given its knowledge of that Participating Agency and understanding why the Services or Documentation are required, has reason to expect such Services or Documentation to be used;

Force Majeure Event means an event or circumstance beyond the reasonable control of either party which makes it impossible or illegal to perform, or prevents compliance with, or the performance of, a party's obligations under this Agreement, including:

- (a) fire, floods, tsunamis, storms, tempest, earthquake or other act of God;
- (b) any act of a public enemy, war, riot, or act of civil or military authority;
- (c) nuclear, chemical or biological contamination; and
- (d) subject to paragraph (g) of this definition, any act of a third party engaged in subversive or terrorist activity or sabotage,

but does not include an event to the extent that:

- (e) the effect of that event could have been substantially prevented, avoided or overcome or mitigated by:
 - (i) implementation of any contracted business continuity or disaster recovery service, or any contingency plans agreed between the parties or which a party has represented it has in place; or
 - (ii) exercising a reasonable standard of care; or
 - (iii) using information provided by the other party or which is available in the public domain; or
- (f) it is an event for which the party affected is or was directly responsible; or
- (g) that event is constituted or caused by any act or omission of Personnel or a Subcontractor unless and to the extent that the Personnel or Subcontractor was itself affected by an event, which if it occurred in relation to either party would have been a Force Majeure Event; or
- (h) that event is constituted or caused by an Insolvency Event or the insolvency of a Subcontractor or lack of funds for any reason;

GST means goods and services tax under the Goods and Services Tax Act 1985;

Holding Entity means a trust, unit trust, partnership, limited partnership, unincorporated joint venture or other body corporate or unincorporated body of persons that Controls the Provider, and includes any natural person that Controls the Provider;

Industry Best Practice means the high professional standard that would reasonably be expected from a prudent and experienced provider of Services in New Zealand having regard to market practice at the relevant time;

Insolvency Event means, in relation to the Provider:

- (a) the presentation of an application for its liquidation that is not discharged within 30 days of its filing or which is not demonstrated to the CoE prior to the expiry of that 30 day period as being an application that is frivolous or vexatious;
- (b) any step taken in or toward the making of any compromise, proposal or deed of arrangement with all or some of its creditors;
- (c) the appointment of a liquidator, receiver, statutory manager, administrator or similar official, to it;
- (d) the suspension or threatened suspension by it of the payment of its debts;
- (e) cessation by it of a whole or any relevant part of its business in New Zealand;
- (f) the enforcement of any security against the whole or a substantial part of its assets; or
- (g) any other insolvency event or proceedings analogous to any of the foregoing occurring in any relevant jurisdiction;

Intellectual Property means copyright, all rights in relation to inventions (including patents), registered and unregistered trademarks, registered and

unregistered designs, trade or other proprietary rights or rights derivative of those rights (including licence rights) anywhere in the world as well as any other rights in intellectual property which are recognised or protected under Law;

Law means:

- (a) any statute, regulation, bylaw, ordinance or subordinate legislation in force from time to time to which a party is subject;
- (b) the common law and the law of equity as applicable to the parties from time to time;
- (c) any binding court order, judgment or decree;
- (d) any applicable industry code of practice or conduct, convention, policy, rule or standard to which a party is bound; or
- (e) any applicable direction, policy, permission, consent, licence, rule or order that is binding on a party and that is made or given by any governmental or regulatory body having jurisdiction over a party or any of that party's assets, resources or business,

in any jurisdiction that is applicable to this Agreement;

Losses means liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis);

Material Breach means any material breach by the Provider of the terms of this Agreement or the occurrence of any event having a material effect on the ability of the Provider to perform its obligations under this Agreement (other than a Force Majeure Event), including:

- (a) the occurrence of an Insolvency Event in relation to the Provider or the likely occurrence of an Insolvency Event;
- (b) the occurrence of a change in Control of the Provider or any ultimate or intermediate holding company or Holding Entity of the Provider that the CoE has not previously approved (acting reasonably);
- (c) any representation or warranty made by the Provider in terms of this Agreement being found to be untrue or incorrect; and
- (d) any failure on the part of the Provider to comply with, observe or perform any of the terms of this Agreement in circumstances where that contract breach or that contract breach together with other contract breaches is considered by the CoE on reasonable grounds to cause the Provider to be unable or unwilling, or be likely to be unable or unwilling, to perform its obligations under this Agreement;

Panel means the All-of-Government panel of providers who provide consultancy services to Participating Agencies, including any sub-panel, as detailed on www.procurement.govt.nz;

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

Participation MoU means the memorandum of understanding between the CoE and all other Participating Agencies relating to the management of their relationship with each other and with the Provider in relation to the Services, as amended from time to time;

Personnel includes partners, principals, directors, employees, agents, officers and individual independent contractors;

Professional Adviser means any accounting, legal, procurement or technical professional;

Provider Database means the IT platform described in Schedule 7 (Provider Database – refer to the Agreement);

Quote means a fixed price, capped price or other pre-agreed basis for establishing the Charges for Services required by the Participating Agency where the Provider is prevented from increasing the Charges without the prior written consent of the Participating Agency;

Rates means the maximum rates (whether hourly, daily or weekly or other time-related basis) payable to the Provider for providing the Services, determined in accordance with Schedule 2 (Pricing), excluding Expenses;

Related Entity means a related company under the Companies Act 1993 (New Zealand) or a related body corporate under the Corporations Act 200, provided that any reference in the Companies Act 1993 to a "company" is deemed to include any partnership, body corporate, association or other entity, whether corporate or unincorporated, irrespective of the place of incorporation or registration of that partnership, body corporate, association or other entity;

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

Representative has the meaning given in paragraph 3.1 of Schedule 5 (Governance – refer to the Agreement);

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

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

Service Level means a required standard for the Provider's performance of its obligations under this Agreement, as described in Schedule 3 (Performance Management);

Service Level Default means a failure by the Provider to meet one or more Service Levels;

Services means the consultancy services provided from time to time under the terms of this Agreement, including any Consultancy Services Order, as more particularly described in the Appointment Letter;

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

Term means the term specified in clause 3 – refer to the Agreement; and

Tiers means any of **Tiers 1** and **Tiers 2** for which members of the Panel are appointed and, in respect of the Provider, means the Tier(s) the Provider is appointed to as detailed in the Appointment Letter – refer to the Agreement.

SCHEDULE 2: PRICING

1. Introduction

This Schedule sets out general principles underlying the Charges.

2. Principles

2.1 Participating Agencies will only pay for Services ordered

- (a) The Provider will invoice each Participating Agency for the Charges applicable to that Participating Agency in accordance with clause 7.3 of the Base Agreement – refer to the Agreement.
- (b) A Participating Agency will only pay for Services that it orders in accordance with this Agreement.

2.2 No minimum volume

Neither the CoE nor any Participating Agency is required to meet a minimum aggregate expenditure or volume level for any Services.

2.3 No interest

No interest will be payable on any amount due to the Provider under this Agreement.

SCHEDULE 3: PERFORMANCE MEASUREMENT

1. Introduction

1.1 This Schedule describes:

- (a) the Service Levels; and
- (b) how performance against Service Levels will be measured and reported.

2. Service Levels

2.1 Format

Each Service Level is described in Annexure A using the following format:

Parameter	Description
Description	Description of what the Service Level will measure
Purpose	Why it is important to Participating Agencies that the Service Level is met
Calculation	Method for calculating the Service Level
Service Level	The performance standard that the Provider is required to meet or exceed

2.2 Service Levels must be met

- (a) At all times during the Term, the Provider will perform its obligations to meet or exceed the Service Levels.
- (b) The Provider acknowledges that any failure to meet the Service Levels may have a significant impact on Participating Agencies.

2.3 Changes to Service Levels

- (a) From time to time during the Term, the CoE and the Provider may negotiate in good faith to add, delete or modify then-existing Service Levels to reflect changes

2.4 Rates

- (a) The Fees are calculated on the Rates that are recorded Provider Database.
- (b) The Rates are the maximum amounts payable by a Participating Agency for the Services.

2. Charges

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

in the Participating Agencies' requirements or objectives.

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

2. Performance measurement

3.1 Implement tools

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

3.2 Measure performance

The CoE will measure the performance of the Provider under this Agreement against the Service Levels recorded in Annexure A to this Schedule.

3.3 Measurement period

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

3.4 Failure to meet Service Levels

If the Provider fails to achieve one or more of the Service Levels in any Contract Quarter, it will:

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

3.5 Respond to feedback on performance

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

3.6 Reporting on Provider performance

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

Annexure A: Service Levels

Parameter	1. Services Fit for Purpose
Description	Were the Services subject to each Consultancy Services Order Fit for Purpose?
Purpose	To ensure Services provided are Fit for Purpose.
Calculation	The Participating Agency will advise whether the Services are Fit for Purpose as part of the Agency Satisfaction Survey.
Service Level	100% of Services delivered to a Participating Agency must be Fit for Purpose.

Parameter	2. Timely Performance of Services
Description	Did the Provider perform the Services subject to each Consultancy Services Order within the timeframe recorded in that Consultancy Service Order (or as amended by agreement from time to time)?
Purpose	To ensure on-time provision of Services requested under a Consultancy Services Order.
Calculation	The Provider is required to report on this metric as part of the reporting requirements in Schedule 6 (Reporting).
Service Level	The Provider must deliver all Services subject to a Consultancy Services Order within the agreed timeframe for delivery recorded in the Consultancy Services Order including any variation to the timeframe recorded in Part D of the Consultancy Services Order.

Parameter	3. Services Performed to budget
Description	Were the Charges for the Services subject to each Consultancy Services Order within the Estimate or Quote recorded in that Consultancy Services Order?
Purpose	To ensure Services requested under a Consultancy Services Order are performed on or under the Provider's Estimate or Quote.
Calculation	The Provider is required to report on this metric as part of the reporting requirements in Schedule 6 (Reporting).
Service Level	The Provider must deliver all Services subject to a Consultancy Services Order within the agreed Estimate or Quote recorded in the Consultancy Services Order including any variation to the Estimate recorded in Part D of the Consultancy Services Order.

Parameter	4. Reporting Provided
Description	Did the Provider submit the information required of it as detailed in Schedule 8 (Reporting) accurately, in the required format and on time?
Purpose	To ensure the reporting information is provided accurately, regularly and on time.
Calculation	The CoE will receive the reporting information each Contract Quarter.
Service Level	All reporting information must be completed accurately and submitted on time.

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



Procurement Plan

NP# XXXX

2021 UFBA Audit

Business Unit: [XXXX]

Object Code: [XXXX]

Work Record: [XXXX]

Approvals (to be signed in numerical order)

Part 1		Plan prepared by	
Contract start:	15/03/2021	Contract end:	2/06/2021
Name:	Zoe Mounsey		
Position/title:	Chief Advisor, Finance and Business Operations		
Signature:		Date:	Click or tap to enter a date.

Part 2		Budget approval (signee must hold DFA for whole-of-life spend)	
Project name:	UFBA Audit		
Financial year:	2020/21	Estimated total cost over whole-of-life:	Less than \$100,000 excluding GST
Name:	Darryl Purdy		
Position/title:	DCE, Finance and Business Operations		
Signature:		Date:	Click or tap to enter a date.

Part 3		Procurement approval	
Audit required	No		
Procurement comment:	All of Government Panel Direct Source		
Name:	Chris Chainey		
Position/title:	Finance and Procurement Manager		
Signature:		Date:	Click or tap to enter a date.

Part 4		Project sponsor approval	
Approval to:	Proceed with procurement		
Name:	Darryl Purdy		
Position/title:	DCE, Finance and Business Operations		
Signature:		Date:	Click or tap to enter a date.

Under the Government Rules of Sourcing, all procurement over \$100k not covered by an All of Government Panel, should go to tender. Please contact the NHQ Procurement team for assistance.

Background

Fire and Emergency is seeking an audit to examine whether the funding provided by Fire and Emergency New Zealand to UFBA has been used for the purposes the funding was provided and that the services the funding supported have been delivered. Secondly, the audit will provide the Board of Fire and Emergency assurance that no Fire and Emergency funding has been used to fund the set up or operation of Tāngata Matatau. This additional requirement results from our concern over a number of issues related to Tāngata Matatau including the incorporation of a limited liability company.

User Requirements

A suitably qualified person(s) to undertake an audit and produce a report in accordance with the Terms of Reference.

Key questions that the audit should answer:

- how much of UFBA cash reserves represent unutilised funding from Fire and Emergency New Zealand (FENZ) if any?
- whether the funding provided by FENZ has been used for the purposes the funding was provided?
- whether services the funding supported have been delivered?
- whether any Fire and Emergency funding has been used to fund the set up or operation of Tāngata Matatau

Approach to market

The [All of Government \(AOG\)](#) consultancy panel has provision for experts in assurance, risk and audit functions. As a mandated agency, FENZ will use the AOG panel.

Market Engagement

How are you proposing to engage with the market:

AOG Panel/ Common Capability/ ICT Common Capability/ Syndicated Agreement/ AFAC	<input checked="" type="checkbox"/>
open tender	<input type="checkbox"/>
closed tender	<input type="checkbox"/>
direct source	<input checked="" type="checkbox"/>



AOG panels are mandated for use by Fire and Emergency NZ, where they are available. Given the timing and profile of this audit, Fire and Emergency has considered each of the Tier 1 AoG Audit providers and chosen to approach PriceWaterhouse Coopers (PwC). This choice has been driven by PwC’s knowledge of Fire and Emergency and forensic accounting expertise. Other members of the panel were not appropriate due to providing services to the UFBA or due to previous engagements with Fire and Emergency.

Performance

Please complete the following sentences:

- a) During the contract, the three worst things that could happen are:
 1. **UFBA does not engage with the audit**
 2. **Failure to meet deadlines due to incapacity or otherwise**
 3. **Audit results not accepted by UFBA or the Board**

- b) Indicators that the contract is progressing or tracking well include:
 - **Regular progress reports which show key milestones and performance indicators are being met**
 - **Receiving a draft supplier report on time which is robust and on track**

- c) At the end of the contract, we will be able to measure if this has been successful by:
 - **Receiving a credible robust report which fulfils the agreed Terms of Reference and requirements, is easily understood and accurate and accepted by UFBA and the Board**

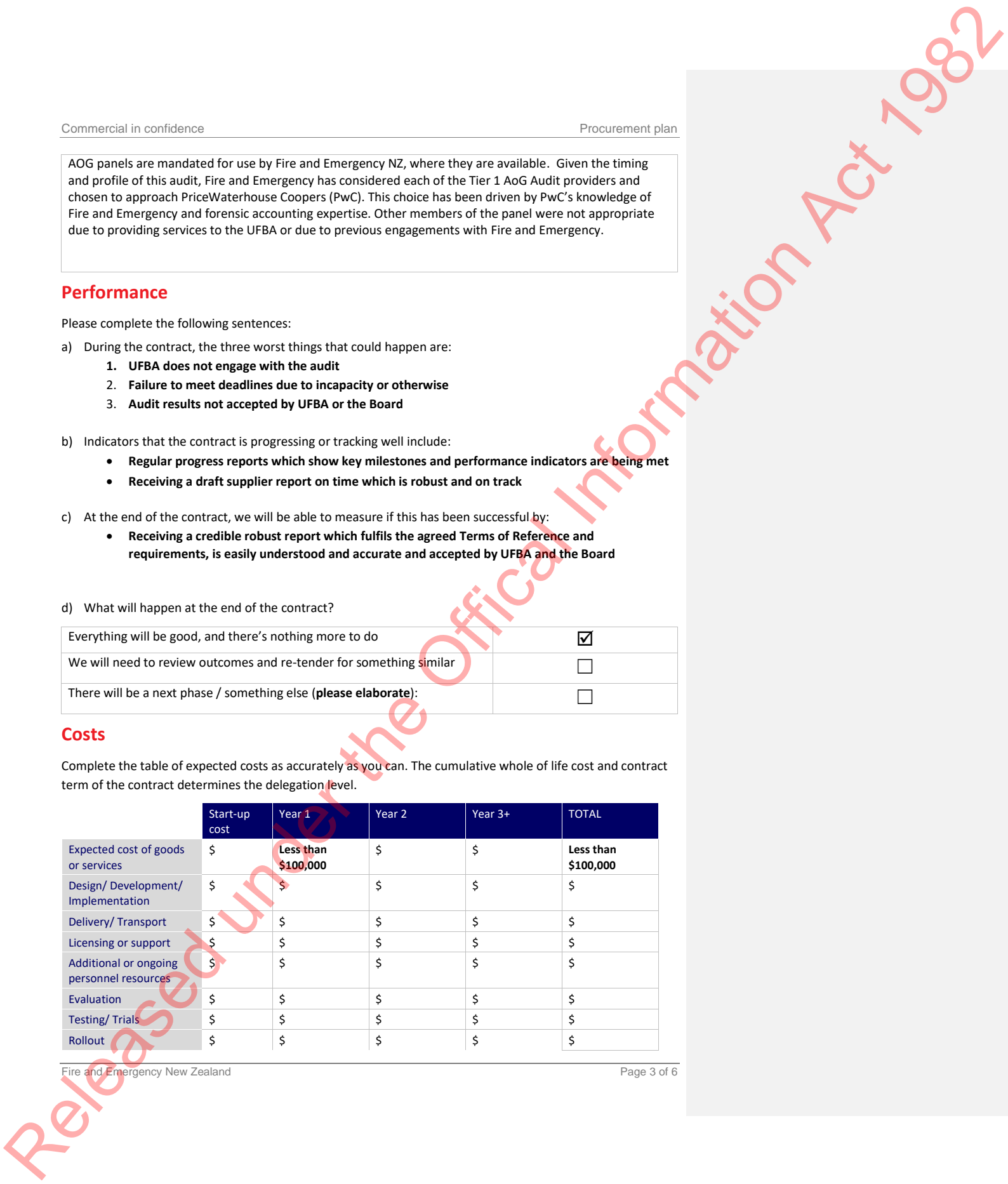
- d) What will happen at the end of the contract?

Everything will be good, and there’s nothing more to do	<input checked="" type="checkbox"/>
We will need to review outcomes and re-tender for something similar	<input type="checkbox"/>
There will be a next phase / something else (please elaborate) :	<input type="checkbox"/>

Costs

Complete the table of expected costs as accurately as you can. The cumulative whole of life cost and contract term of the contract determines the delegation level.

	Start-up cost	Year 1	Year 2	Year 3+	TOTAL
Expected cost of goods or services	\$	Less than \$100,000	\$	\$	Less than \$100,000
Design/ Development/ Implementation	\$	\$	\$	\$	\$
Delivery/ Transport	\$	\$	\$	\$	\$
Licensing or support	\$	\$	\$	\$	\$
Additional or ongoing personnel resources	\$	\$	\$	\$	\$
Evaluation	\$	\$	\$	\$	\$
Testing/ Trials	\$	\$	\$	\$	\$
Rollout	\$	\$	\$	\$	\$



Total expected procurement value

Less than \$100k

Tender Process

Please provide indicative dates for tender:

Action	Indicative date
Request for service released to PwC	19/02/2021
Deadline for proposal	12/03/2021
Evaluation/Due Diligence	15/03/2021
Recommendation accepted/denied	15/03/2021
Contract signed	15/03/2021
Contract start date	15/03/2021

Commented [PC1]: Need to be updated if this plan isn't retrospective

Evaluation Process

The proposal will be reviewed by Darryl Purdy, DCE Finance and Business Operations.

Due Diligence

As the supplier is on the AoG panel these checks will not be required.

Stakeholders

Please complete the table below of key stakeholders and when they will be involved in the process for the procurement of the supplier.

	Scope / Spec/ Recommendation	Decision Making	Decision Advising	Rollout	Post contract
Board	Yes	No	No	N/A	N/A
CE	Yes	No	Yes	N/A	N/A
ELT	Yes	Yes through DP	Yes	N/A	N/A
UFBA	N/A	N/A	N/A	N/A	N/A
NZPFU	N/A	N/A	N/A	N/A	N/A
Community	N/A	N/A	N/A	N/A	N/A
SH&W team	N/A	N/A	N/A	N/A	N/A
Legal	N/A	N/A	N/A	N/A	N/A

Safety, Health and Wellbeing Considerations

What are the Safety, Health and Wellbeing considerations for this Procurement?

Only for contractor site visits, if any. Work may be done remotely.

Risks

Using the risk analysis framework below, what are the key risks in this procurement and for the contract?

Risk	L	C	Rating	Mitigation action	Responsible
The report is not of sufficient quality	P	M	Moderate	<ul style="list-style-type: none"> Regular reporting of progress Evidence of quality controls by the provider 	Darryl Purdy
Provider assumes ready access to sufficient and good quality evidence and records within UFBA	P	M	Moderate	<ul style="list-style-type: none"> Review accuracy of assumptions with short-list providers 	Darryl Purdy
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LIKELIHOOD of risk happening	Almost certain	amber	amber	red	red	red
	Likely	yellow	amber	amber	red	red
	Possible	yellow	yellow	amber	amber	red
	Unlikely	green	yellow	yellow	amber	amber
	Rare	green	green	yellow	yellow	amber
		Negligible	Low	Moderate	High	Extreme
CONSEQUENCE if the risk happens						

Further Information

The following information is available on the Intranet:

- Procurement and contract management policy
- Procurement Manual
- Conflict of Interest declaration
- Delegated Financial Authority

Released under the Official Information Act 1982

Helpful websites:

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Government rules of sourcing <https://www.procurement.govt.nz/procurement/principles-and-rules/government-rules-of-sourcing/>

Released under the Official Information Act 1982

From: [Chainey, Chris](#)
To: [Pappafloratos, Chrissy](#); [Mounsey, Zoe](#)
Subject: RE: procurement plan for UFBA funding audit
Date: Monday, 8 March 2021 12:41:03 pm
Attachments: [image001.png](#)

Thanks, I'm comfortable with the plan. I discussed this with Zoe the other day and agree that engaging PWC is an appropriate and logical choice.

From: Pappafloratos, Chrissy <xx.xx>

Sent: Monday, 8 March 2021 10:21 am

To: Mounsey, Zoe <xxx.xxxxxxx@xxxxxxxxxxxxxxxxxxxxxxxx.xx>; Chainey, Chris <xxxxx.xxxxxxx@xxxxxxxxxxxxxxxxxxxxxxxx.xx>

Subject: RE: procurement plan for UFBA funding audit

Hi Zoe

Few wee tracked changes but otherwise looks good , If you would like, Lora Cowan can help you with the CSO and provide the NP#

Chris please note – This is an exemption as spend over \$50k WoL should go to three providers to quote

Happy to discuss

Chrissy Pappafloratos

Team Leader Procurement

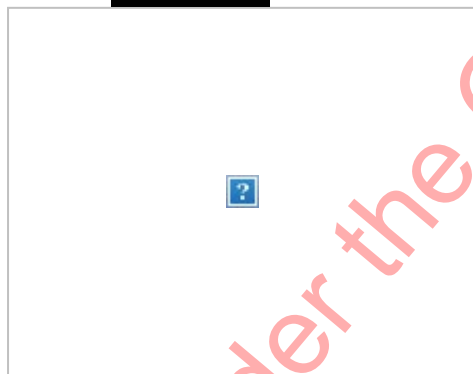
Finance & Business Operations

National Headquarters

Level 11, 80 The Terrace, Wellington

PO Box 2133, Wellington 6140

Mobile - [REDACTED]



From: Mounsey, Zoe <xxx.xxxxxxx@xxxxxxxxxxxxxxxxxxxxxxxx.xx>

Sent: Monday, 8 March 2021 10:02 am

To: Chainey, Chris <xxxxx.xxxxxxx@xxxxxxxxxxxxxxxxxxxxxxxx.xx>; Pappafloratos, Chrissy <xx.xx>

Subject: procurement plan for UFBA funding audit

Dear Chris and Chrissy

The Board has asked for an external audit of the UFBA's use of our funding to be undertaken.

I had previously drafted up the procurement plan thinking this would be under \$50,000.

However after conversations with Darryl, we are expecting the costs to be between \$50,000 and \$100,000.

I have amended the procurement plan attached. Can you let me know if you are happy to sign off based on the information.

Ngā mihi, Zoe

Zoe Mounsey

Chief Advisor, Finance and Business Operations

M: [REDACTED]

Released under the Official Information Act 1982



Procurement Plan

NP# XXXX

2021 UFBA Audit

Business Unit: [XXXX]

Object Code: [XXXX]

Work Record: [XXXX]

Approvals (to be signed in numerical order)

Part 1		Plan prepared by	
Contract start:	15/03/2021	Contract end:	2/06/2021
Name:	Zoe Mounsey		
Position/title:	Chief Advisor, Finance and Business Operations		
Signature:		Date:	Click or tap to enter a date.

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Project name:	UFBA Audit		
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Audit required	No		
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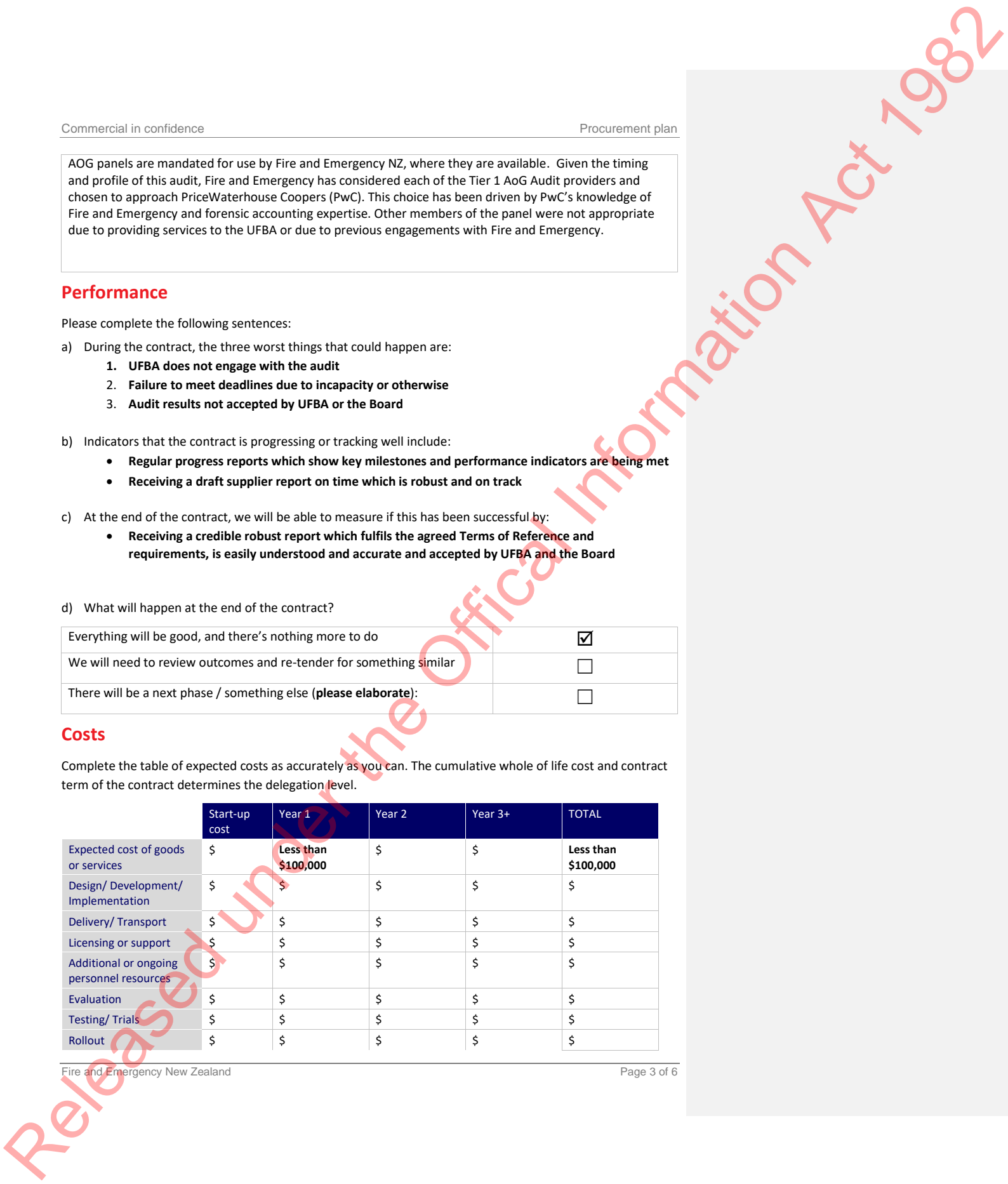
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CONSEQUENCE if the risk happens						

Further Information

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Government rules of sourcing <https://www.procurement.govt.nz/procurement/principles-and-rules/government-rules-of-sourcing/>

Released under the Official Information Act 1982

From: [REDACTED]
To: [Mounsey, Zoe](#)
Subject: Re: Next steps
Date: Tuesday, 2 March 2021 4:11:20 pm

Great thanks - just waiting on confirmation from [REDACTED], but looks like this time will work
Ngā mihi

[REDACTED]
PwC | Partner Risk Assurance

Office: [REDACTED]
Email: [REDACTED]
PricewaterhouseCoopers New Zealand
PwC Centre, 10 Waterloo Quay, PO Box 243, Wellington 6140, New Zealand
pwc.co.nz

[REDACTED]
Alternative contact: [REDACTED]

At PwC we work flexibly - so whilst it suits me to send this email now, I do not expect a response or action outside of your own working hours

On Tue, 2 Mar 2021 at 16:06, Mounsey, Zoe <xxx.xxxxxxx@xxxxxxxxxxxxxxxxxxxxx.x> wrote:

Hi [REDACTED]

Darryl and I can do a virtual meeting tomorrow at 4pm – look forward to talking to you

Ngā mihi, Zoe

Zoe Mounsey

Chief Advisor, Finance and Business Operations

M: [REDACTED]

From: [REDACTED] <[\[REDACTED\]@pwc.com](mailto:[REDACTED]@pwc.com)>

Sent: Tuesday, 2 March 2021 4:01 pm

To: Purdy, Darryl <xxxxxx.xxxxxx@xxxxxxxxxxxxxxxxxxxxx.x>; Mounsey, Zoe

<xxx.xxxxxxx@xxxxxxxxxxxxxxxxxxxxx.x>

Cc: [REDACTED] <[\[REDACTED\]@pwc.com](mailto:[REDACTED]@pwc.com)>; [REDACTED] (NZ)

[REDACTED] <[\[REDACTED\]@pwc.com](mailto:[REDACTED]@pwc.com)>; [REDACTED] <[\[REDACTED\]@pwc.com](mailto:[REDACTED]@pwc.com)>

Subject: Next steps

Hi Darryl,

We have made our way through most of the documents Zoe sent us, and discussed internally what we think may be a useful approach for us to take on

this engagement. I have sent you an invite for 4pm tomorrow to discuss next steps (if that suits you), otherwise I can work with Zoe to find an appropriate time.

You'll see a few people on the invite, including [REDACTED] who leads our forensics practice. Stephen's team have completed a number of similar reviews to this and he has some good ideas on how we may be able to assist you. [REDACTED] is based in Auckland, so I wonder if a virtual meeting would be ok for us all.

Please let me know what suits.

Ngā mihi

[REDACTED]

[REDACTED]

PwC | Partner Risk Assurance

Office: [REDACTED]

Email: [REDACTED]@pwc.com

PricewaterhouseCoopers New Zealand

PwC Centre, 10 Waterloo Quay, PO Box 243, Wellington 6140, New Zealand

pwc.co.nz

[REDACTED]

Alternative contact: [REDACTED]

At PwC we work flexibly - so whilst it suits me to send this email now, I do not expect a response or action outside of your own working hours

This email message and attachments are confidential to our organisation and may be subject to legal privilege. If you have received this email in error, please advise the sender immediately and destroy the message and any attachments. If you are not the intended recipient you are notified that any use, distribution, amendment, copying or any action taken or omitted to be taken in reliance of this message or attachments is prohibited. An electronic communication is not received by PwC until the contents of that communication have come to the attention of the person who is the addressee of the electronic communication. Only PwC partners or principals have authority to enter into legal obligations on behalf of PwC member firms. If you are an existing client, this email is provided in accordance with the latest terms of engagement which we have agreed with you. Prior to opening this email or any attachment, please check them for viruses.

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Notice: This email and any attachments may contain information that may be subject to an obligation of confidence or the subject of legal privilege.

From: [REDACTED]@ufba.org.nz
Sent: Wednesday, 5 August 2020 2:40 pm
To: Purdy, Darryl
Cc: [REDACTED]
Subject: UFBA funding review.
Attachments: UFBA Cash Reserves Review Report_v2.asd.docx

Categories: Planner, Darryl to Action

Hello Daryl.

Are you able to advise the status of the UFBA funding review?

UFBA completed and forwarded to FENZ the funding review with the assistance of Grant Thornton (GT) in December 2019.

Our auditors (GT) who are currently auditing our 2020 financial statements are interested in the outcome of the review.

Thanks.

[REDACTED] | Accountant
86 Main Road | PO Box 56079 | Tawa, Wellington 5249
P. [REDACTED] | E. [REDACTED]



The banner features the UFBA logo and the text 'UFBA Kōrero 2020' in large white letters on a red background. Below this, it says 'Free celebrity and sector leader webinar series. Register at ufba.org.nz'. To the right, there is a 'SUPPORTED BY' logo for FIRE (Fire and Emergency Services). Below the main text, there are four small images of speakers with their names and topics: Shane Fitzsimmons (Australia's wildfires) on Thurs 30 July, Nigel Latta (Resilience & wellbeing) on Thurs 13 August, Fire and Emergency Exec. Leadership Team on Thurs 17 September, and Hilary Barry (Communication) on Thurs 15 October.

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25 February 2021

[REDACTED]
86 Main Road
Tawa, Wellington 5028

Dear [REDACTED]

Thank you for your letter dated 18 February 2021. We appreciate your support for the external audit and confirmation that you will work with the appointed auditors.

We will proceed with appointing the auditor and be back in touch regarding the Terms of Reference, the appointed auditor, their audit team, and the anticipated timeline.

I want to acknowledge the importance of the strong relationship between FENZ and the UFBA and I look forward to our respective organisations continuing to have constructive engagement with each other on this issue and other matters.

Ngā mihi nui

Hon Paul Swain
Chairman
Fire and Emergency New Zealand Board



18 February 2021

Paul Swain
Chairman
Fire and Emergency New Zealand Board
80 The Terrace
Wellington

Tēnā koe Paul,

Cash Reserves Review

In response to your letter dated 11 February 2021 the UFBA looks forward to the external audit of its cash reserves. Please note that we do not have access to financial records prior to 1 July 2014 because NZ Fire Service managed the UFBA accounts in house for assurance purposes.

UFBA believe it is important that you are aware of the understanding we had with FENZ management about the approach we took to the review and its subsequent completion in good faith. We assumed the Board had oversight of the various interactions and agreements we had with FENZ management.

The UFBA responded immediately to the initial FENZ request in 2019. On the 16th October 2019, the UFBA CEO requested pragmatic changes to the terms of reference in a letter to Darryl Purdy as follows: -

- The cash review be carried out internally by its inhouse accountant and be independently reviewed by [REDACTED] (fee subsequently paid for this assistance \$5,125).
 - [REDACTED] managed the process undertaken by our inhouse accountant including guidance into the level of cash reserves an organisation of UFBA 's size and operation should retain. No separate report was produced by [REDACTED] because their guidance, methodology, advice and support are subsumed within the report findings. We do accept this is not the same as the independent review referred to by the CEO.
- Completion of an internal cash reserves review as opposed to an external audit supplier completing this task was requested because of cost considerations.
 - The estimated cost of an external audit was approximately \$20,000. UFBA supported by FENZ had recently employed a full-time accountant (30 September 2019) who completed the review with an unbiased perspective. This was considered a good alternative to an external audit given the FENZ Finance team had previously completed the accounting role for the UFBA and FENZ continued to have full access to UFBA accounting records.



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- The review period be reduced from 5 years (2014 - 2019) to three including a baseline year 2017 – coverage 2018 to 2019.
 - Cash reserves were static up to 2017 when they increased significantly in both 2018 and 2019. The former NZ Fire Service who managed UFBA finances inhouse had previously not highlighted any concerns around UFBA cash reserves in years 2014 to 2017 and comments from the Commission on our performance and expenditure were always favourable.

On the 18th November 2019 UFBA received advice from FENZ about the recommended changes to the cash reserves review terms of reference, subject to the term being a 3 year snapshot rather than the two years proposed by us. This was received from Neil Singh (FENZ Financial Controller) to whom Darryl Purdy had delegated this task. The UFBA CEO proceeded on this basis.

The internal cash reserves review was completed and sent to FENZ management prior to Xmas 2019 by E-mail from the UFBA CEO to Darryl Purdy on the 18th of December 2019. UFBA did not subsequently receive any acknowledgement or response from FENZ after sending the internal cash reserves internal review report and assumed FENZ Board satisfaction in the absence of any response.

A follow up UFBA E-mail was sent eight months later to Daryl Purdy (5th August 2020) by the UFBA Accountant requesting feedback and whether UFBA was required to complete any further work. A response was received to this E-mail on the 19th November 2020 requesting an external financial audit be completed with attached terms of reference as noted in your letter of 11th February 2021 which was a complete surprise to UFBA management.

Copies of correspondence is available if required.

During this process UFBA have always attempted to fully cooperate with FENZ on this matter and will assist the appointed external auditors to deliver the report requested. The UFBA CEO will address the points you raise about Tāngata Matatau separately in his response to correspondence received today from Rhys Jones.

Nāku noa, nā

UFBA Board



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Fire and Emergency New Zealand

2021 UFBA Audit Terms of Reference

15 February 2021

Released under the Official Information Act 1982

BACKGROUND

Firefighters are at the heart of New Zealand communities, and have been for over 150 years.

The Fire and Emergency NZ Act 2017 combined urban and rural fire services into a single, integrated fire and emergency services organisation. Fire and Emergency NZ is responsible for new legislative functions and requirements and represents a significant increase in size and complexity compared to its predecessor organisations. The new organisation has been created to build stronger communities and protect what matters most to the people within them. As well as putting out fires, Fire and Emergency NZ responds to motor vehicle crashes, medical emergencies, hazardous materials spillages, storms, floods, earthquakes and a wide range of rescue situations.

Fire and Emergency NZ is made up of approximately 1840 career and 12,060 volunteer firefighters, as well as people in advisory, operational and support roles. The organisation is developing its capability and recognises that it needs a greater variety of skills and subject matter experts.

Fire and Emergency NZ operates with an annual operating budget in the order of \$600 million. It manages a balance sheet with assets valued at over \$1 billion.

The UFBA is classed as a non-government organisation (NGO) that is funded mainly through a grant from Fire and Emergency. An interim arrangement with UFBA via a Transitional and Advocacy Support Agreement (TASA) was signed off in July 2018. It provides the mechanism and framework to make grants to the UFBA for the delivery to Fire and Emergency New Zealand personnel of “core” and “non-core” services.

Fire and Emergency New Zealand agreed to make an annual grant to meet the UFBA fair and reasonable governance and management cost in recognition of UFBA providing core functions as defined in TASA. In respect of UFBA non-core functions, as also defined in TASA, Fire and Emergency New Zealand agreed to make a discretionary grant to cover the fair and reasonable costs of facilitating such a service or enter into a contract for services.

Core services relate to:

- the governance and management of the UFBA
- the provision of independent advocacy and support services for volunteers
- the service recognition and retention programme; and
- the continued operation of the Volunteer Accident and Assurance Scheme and Benevolent Fund.

Non-core services are other functions that encourage, maintain and strengthen the capability of members' brigades. These include:

- the annual conference
- national and regional firefighter challenges; and
- volunteer capability building.

The funding provided to UFBA contributes to Fire and Emergency meeting its legislative requirements including:

- Recognise, respect and promote the contribution of Fire and Emergency volunteers:
 - to the performance and exercise of Fire and Emergency functions, duties and powers under the Fire and Emergency New Zealand Act 2017 (“Act”)
 - to the maintenance of the wellbeing and safety of communities.
[Section 36(1)(a) of the Act]
- Assist Fire and Emergency to develop policy and organisational arrangements to encourage, maintain and strengthen the capability of volunteers [Section 36(1)(c) of the Act]
- Carry out its consultation obligations under the Act [Section 36(1)(b) of the Act]
- Provide specialist advocacy and support services to its volunteers [Section 37(1) of the Act]
- Assist Fire and Emergency to undertake its good employer duties in respect of Fire and Emergency volunteers [Section 36 of the Act].

In 2019 the Board asked UFBA to provide an audit report from an internal audit provider to examine whether the funding provided by Fire and Emergency New Zealand to UFBA had been used for the purposes the funding was provided and that the services the funding supported have been delivered. While a report from UFBA was provided, this did not meet the criteria set by the Board.

PURPOSE

Fire and Emergency now wishes to commission its own audit report to examine whether the funding provided by Fire and Emergency New Zealand to UFBA has been used for the purposes the funding was provided and that the services the funding supported have been delivered. The report will also examine whether any Fire and Emergency funding has been used to fund the set up or operation of Tāngata Matatau. This additional requirement results from our concern over a number of issues related to Tāngata Matatau including the incorporation of a limited liability company.

Key questions that the audit should answer:

- how much of UFBA cash reserves represent unutilised funding from Fire and Emergency New Zealand (FENZ) if any?
- whether the funding provided by FENZ has been used for the purposes the funding was provided?
- whether services the funding supported have been delivered?
- whether any Fire and Emergency funding has been used to fund the set up or operation of Tāngata Matatau

DELIVERABLES

The key deliverable from the review is an audit report addressing the key questions.

SCOPE

In scope:

Fire and Emergency’s funding provision to UFBA since 2014.

Out of scope:

This will be determined between the audit provider and Fire and Emergency as issues arise.

TIMEFRAME

The DCE FaBO (Darryl Purdy) will oversee the Audit on behalf of ELT. The review

timetable is set out in the Table below:

Phase	Activity	Consulted With	Approved by	Expected Completion Date
1. Confirm TOR	Develop draft Terms of Reference (TOR)		ELT	By 19 th Feb
	Circulate draft TOR for feedback	UFBA		
	Finalise TOR		ELT (Board notified via CE report)	
2. Procurement of Reviewer	Finalise Procurement Plan	Procurement	DCE FaBO	By 26 th Feb
	Approach preferred supplier		DCE FaBO	
	Appoint Reviewer and confirm Consultancy Services Order (CSO)		DCE FaBO	
3. Delivery	Analysis	UFBA		By 31 st March
	Draft report	ELT and Board (verbal update to Board at 26 th March meeting)		
	Review report completed			

Please note the dates are indicative only and may change particularly given the COVID-19 environment.

Approved: 17th Feb 2021 by ELT