



File No. 1617-0791

09 FEB 2017

Ms Nicola Wolley  
[fyi-request-5170-f05dc09e@requests.fyi.org.nz](mailto:fyi-request-5170-f05dc09e@requests.fyi.org.nz)

Dear Ms Wolley

Thank you for your email of 31 December 2016 requesting the following information under the Official Information Act 1982 (the Act):

1. *Please provide the cost for the development for the verification method C/VM2 that was introduced in 2012.*
2. *Please provide the cost for the development for the acceptable solutions C1 – C6 that was introduced in 2012.*
3. *Please provide a copy of the contracts for any persons contracted as part of the development for the 2012 Acceptable Solution C1 - C6 and/or Verification Method C/VM2.*

In response to parts one and two of your request, you will be aware from the Ministry of Business, Innovation and Employment's (MBIE's) 3 February 2017 letter to you (1617-0762), no singular cost centre for the Fire Programme existed prior to the formal launch in October 2015. As such, costs that were incurred before October 2015 (when the Fire Programme cost centre was created) were attributed to a team cost centre. Therefore, costs incurred prior to October 2015 are not definitively identifiable. This includes contractor and other any other associated development costs.

As such, parts one and two of your request are refused under section 18(f) of the Act, as the information requested cannot be made available without substantial research and collation.

I have considered whether fixing a charge under section 15 or extending the time limit under section 15A would enable your request to be granted, but in my view it would not. I have also considered whether consulting with you about your request would remove the reason for my refusal under section 18(f), but in my view it would not.

Seven documents have been found within the scope of part three of your request, and are released to you. Hourly fee rates contained within the documents have been withheld under section 9(2)(b)(ii) of the Act, to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information. This information is summarised in the attached document schedule.



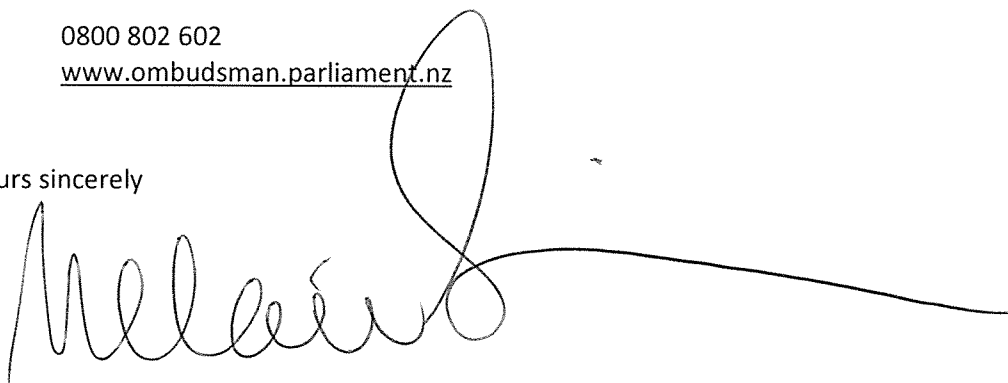
In my opinion there are no counterbalancing public interest considerations under section 9(1) in making the information I have withheld available to you.

You have the right under section 28(3) of the Act to ask the Ombudsman to investigate and review my decision to refuse certain information. The relevant contact details are:

The Ombudsman  
Office of the Ombudsman  
PO Box 10 162  
WELLINGTON 6143

0800 802 602  
[www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz)

Yours sincerely

A handwritten signature in black ink, appearing to read 'Melanie Smith', with a long horizontal flourish extending to the right.

Melanie Smith  
Acting Manager, Engineering Design and Science  
Building System Performance



<b>1617-0791 - Documents Released</b>			
<b>Ref.</b>	<b>Date</b>	<b>Document Title</b>	<b>Withholding status</b>
1	11 June 2010	Master Service Agreement (Panel) – Scenario Communications Ltd	s9(2)(b)(ii)
2	5 June 2013	Variation 1 to Contract (BRANZ Ltd)	N/A
3	11 June 2013	Variation 1 to Contract (OnFire Consulting Ltd)	N/A
4	1 July 2013	Contract for Services (Department of Civil Engineering, University of Canterbury)	s9(2)(b)(ii)
5	1 July 2013	Contract for Services (Holmes Fire LP)	s9(2)(b)(ii)
6	1 November 2013	Contract for Services (Opus International Consultants)	s9(2)(b)(ii)
7	1 November 2013	Contract for Services (Macdonald Barnett Partners Limited)	s9(2)(b)(ii)





Department of  
Building and Housing

*Te Tari Kaupapa Whare*

## MASTER SERVICE AGREEMENT (PANEL)

**CONTRACTOR'S NAME** Scenario Communications Ltd

**PROJECT NAME** Panel to provide Technical Support Services for the Department of Building and Housing

**DURATION** Start date: 11-06-2010 Completion date: 30-06-2013

# MASTER SERVICE AGREEMENT

## GENERAL CONTRACTUAL PROVISIONS

These provisions and the attached Schedules (together forming this "contract") apply between HER MAJESTY THE QUEEN in right of New Zealand (the "Crown"), acting by and through the Chief Executive of the Department of Building and Housing (the "Department") and the Contractor. If any other provision is to apply or prevail it must be agreed to in writing by the Department and be attached to this document.

## BACKGROUND

- A The Department issued a Request for Proposal for panel members to Provide Technical Support Services dated 14 April 2010, a copy of which is included as Schedule 1.
- B The Contractor provided a written response to the RFP, a copy of which is included as Schedule 2. Following evaluation, the Contractor has been selected to be a panel member who the Department may call upon from time to time to perform some or all of the following services described in the RFP as: Editorial Reviewer
- C When the Department wishes to engage the panel member to perform services recorded in the RFP the Department will prepare a Service Schedule to record the particulars of the services to be provided, the timeframe within which such services must be completed and any maximum fee payable in respect to the performance of the services.
- D This contract records the general terms and conditions that regulate the relationship between the parties.

### Contractor's Obligations and Rights

- 1 **Perform services/price.** During the term of this contract recorded in Schedule 2 if the Department requests the Contractor to perform services and the Contractor agrees, the Contractor will perform the Deliverables set out in any Service Schedule agreed between the parties by the date and for the price specified in the Service Schedule.
- 2 **Access.** The Contractor may access the relevant property and information of the Department for reasonable purposes at reasonable times to perform this contract, subject to the Department's security and operational requirements. Disruption to the Department must be minimised and any damage or problem, to the extent it is caused by the Contractor, must promptly be made good by the Contractor.
- 3 **Care of property.** The Contractor must keep secure, take good care of and not allow any unauthorised access to or use of the Department's property or information while that property or information is within the Contractor's possession or control. The Contractor must stop using and return the Department's property and information as and when requested by the Department.
- 4 **Return of property.** The Contractor:
  - a must within 5 working days (or longer timeframe if agreed) of the contract completion date or date advised by the Department, deliver to the Department all property and information in the Contractor's possession that has been produced pursuant to this contract; but
  - b may, to the extent required, retain a copy for audit purposes only
- 5 **Operational requirements.** The Contractor must:
  - a comply with the Department's reasonable security, operational and documentation requirements (particularly in relation to access to and use of property and information, hazardous substances, health and safety, environmental protection and appearance and conduct of personnel and property);
  - b have and comply with the Contractor's own appropriate health and safety plan, and promptly notify the Department:



- i if any hazard exists at any relevant property due to the Contractor; and
- ii of any accident or serious harm that occurs to, or is caused by, the Contractor at any relevant property; and
- c obtain every necessary resource consent and/or other authorisation required for the Contractor to establish, use and maintain facilities and equipment.
- 6 **Keep the Department informed.** The Contractor must inform the Department in writing as soon as the Contractor becomes aware of any delays or problems that could affect the contract.
- 7 **Sourcing.** The Contractor is responsible, at its own risk and cost, for efficiently and economically sourcing and providing everything the Contractor needs to perform its obligations under this contract.
- 8 **Standards/quality assurance.** In providing the Deliverables the Contractor shall use the highest reasonable standards of skill, care and diligence in accordance with competent and prudent professional practice in the profession or industry.
- 9 **Personnel.** The Contractor must:
- a perform its obligations under this contract using only appropriately trained, qualified, experienced and supervised personnel;
- b end the involvement with this contract of any of the Contractor's personnel to the extent reasonably requested by the Department (e.g. due to security, conflict of interest or misconduct reasons); and
- c ensure that the Key Personnel specified in any Service Schedule perform the Deliverables.
- 10 **Non-solicitation.** The Contractor will not at any time during the period of this contract, or for a period of six months after the termination of this contract, solicit or endeavour to entice away any employee of the Department.
- 11 **Prices/invoices.** The Contractor will promptly provide the Department with correct tax invoices for the Deliverables delivered in accordance with the relevant Service Schedule.
- 12 **Public liability insurance.** If the Contractor is visiting properties in performance of the services and Deliverables independently of Departmental representatives, the Contractor must, at the Contractor's cost, have and maintain appropriate insurance cover including public liability cover to the Department's satisfaction for each event relating to this contract during the period of, and for a period of 12 months following the completion of, this contract.
- 12A **Professional indemnity insurance.** Unless the Contractor is performing services as an "assessor" under the Weatheright Homes Resolution Service Act 2006 or providing services to assist the Chief Executive of the Department in relation to an application for a determination under section 187 of the Building Act 2004, the Contractor must, at the Contractor's cost, have and maintain appropriate professional indemnity insurance cover to the Department's satisfaction, each of at least \$500,000, for each event relating to this contract during the period of, and for a period of 12 months following the completion of, this contract.
- 13 **General assurances.** The Contractor assures the Department that:
- a goods and services will be provided or used only when necessary or as authorised by the Department;
- b ownership, possession or use by the Department of any goods and the result of any service provided by the Contractor will not infringe any intellectual property right or other proprietary right or interest of any person;
- c to the best of the Contractor's knowledge all information and documentation provided, or to be provided, to the Department by the Contractor is accurate, complete and true; and
- d all information and documentation provided to the Department which is intended to be published must be in a form and to a standard which, in the Department's view, is suitable for publication.

- 14 **Compliance with laws/authorisations.** The Contractor will ensure each good and service the Contractor provides complies with all New Zealand, and each relevant jurisdiction's, laws, codes and standards and is responsible for ensuring that every necessary and prudent authorisation is obtained to ensure that the Contractor can perform its obligations under this contract and the Department can (where applicable) own, possess, use free of charge and/or resell unrestricted, any good and the result of any service provided.
- 15 **Confidentiality.** The Contractor must keep confidential and secure all information of the Department. No disclosure or use of that information by the Contractor is allowed without the Department's prior written consent. The Contractor will not advertise that it supplies goods or services to the Department without the Department's consent. This obligation applies during, and after the completion of, the period of this contract.
- 16 **Conflicts of Interest.** The Contractor must advise the Department immediately upon receipt of instructions contained in every Service Schedule whether the Contractor knows of anything that might give rise to a conflict between the Contractor's responsibilities under this contract and any other responsibility or business, professional or personal interest the Contractor may have..
- 17 **Maintain records.** The Contractor must produce and maintain records to the extent, and in a form, which enables prompt and accurate verification of any matter in relation to this contract.
- 18 **No assignment or sub-contracting.** The Contractor must not assign or sub-contract any benefit or burden of this contract without the Department's written authority.
- 19 **Official information.** The Department may be required by the Official Information Act 1982 to disclose information supplied by or about the Contractor. The Contractor will therefore identify in writing any information supplied to the Department, the release of which would be likely to prejudice:
- a. the commercial position of the person or entity who supplied or is the subject of the information; or
  - b. the supply of similar information or information from the same source, where the information is subject to an obligation of confidence,
- provided that the Contractor acknowledges that it is for the Department, in its sole discretion, to decide whether to disclose information pursuant to the Official Information Act 1982. The Department may disclose any information relating to this contract to any Parliamentary Select Committee that requests the information.
- 20 **Intellectual property.** The Contractor must, on the Department's request and free of charge, transfer to the Crown every proprietary right to any intellectual property developed pursuant to this contract and to every Deliverable. Intellectual property held by the Contractor prior to the commencement of this contract and intellectual property discovered by the Contractor through its activities in a similar research area on behalf of other clients is specifically excluded from this contract.
- 21 **Department not liable.** The Contractor agrees that the Department will not be liable (in contract or tort, including negligence, or otherwise) to the Contractor for any indirect damage, loss or cost in relation to this contract.
- 22 **Contractor's liability.** The total aggregate liability of the Contractor arising from any and all Defaults in any 12 month period will be \$500,000.
- 23 **Relationship/authority limited.** The Contractor agrees that the Contractor is an independent contractor and not an employee, agent or representative of the Department, and does not have the Department's authority to say or do anything on the Department's behalf except to the extent authorised by the Department in each case.
- 24 **Contractor acknowledgement.** The Contractor acknowledges that:
- a. the Department may call upon the Contractor to provide services from time to time during the term; and
  - b. entry into this contract does not guarantee the Contractor will be instructed to perform Deliverables during the term of the contract.

## Department's Obligations and Rights

- 25 **Contractor not liable.** The Department agrees that the Contractor will not be liable (in contract or tort, including negligence, or otherwise) to the Department for any indirect damage, loss or cost in relation to this contract.
- 26 **Engagement.** The Department engages the Contractor to provide Deliverables when requested by the Department. The Department will provide reasonable co-operation, including providing any information held by the Department which is relevant to services being carried out by the Contractor, to enable the Contractor to provide the Deliverables in accordance with a Service Schedule to be entered.
- 27 **Payment.** The Department will, if the relevant Deliverable(s) has been completed to the satisfaction of the Department, pay the Contractor in accordance with the Schedule 4 and any Service Schedule by the 20<sup>th</sup> day of the month following the month in which the Department receives a correct tax invoice for the relevant Deliverable(s).
- 28 **Intellectual property.** The Department owns any intellectual property developed pursuant to this contract and owns every output of the Deliverables.
- 29 **Termination by notice.** The Department may terminate this contract at any time by giving the Contractor at least one week's written notice and the Department shall not be liable for payment for any work done or any expenses or liabilities whatsoever incurred by the Contractor after the date of termination.
- 30 **Non-compliance remedies.** The Department may notwithstanding any other remedies available at law:
- a withhold any payment otherwise due to the Contractor until the matter is resolved to the Department's satisfaction; and/or
  - b suspend or terminate (in whole or in part) this contract by written notice to the Contractor; if
  - c the Contractor breaches, or fails to properly or promptly perform, any of the Contractor's obligations under this contract and fails to remedy the situation to the Department's satisfaction within 5 working days after notice from the Department of the breach or failure;
  - d the Contractor has a conflict of interest with the Department's interests which the Department considers sufficiently inappropriate;
  - e any direct or indirect change of ownership or control of the Contractor occurs which, in the reasonable opinion of the Department, reduces the Contractor's ability to perform its obligations under this contract;
  - f the Contractor is or becomes insolvent or bankrupt, or is in or goes into receivership or liquidation;
  - g the Department believes that the Contractor is generally in financial difficulty which, in the reasonable opinion of the Department, reduces the Contractor's ability to perform its obligations under this contract; or
  - h the parties fail to resolve dispute in accordance with clause 34.
- 31 **Observe and review.** The Department may observe and review any aspect of the Contractor's performance of the Contractor's obligations under this contract.
- 32 **Non-solicitation.** The Department will not at any time during the period of this contract, or for a period of six months after the termination of this contract, solicit or endeavour to entice away any employee of the Contractor.

## General

- 33 **Force Majeure.** Neither party will be liable to the other for any failure or delay in performance of this contract due to any circumstance reasonably beyond the control of the affected party.

- 34 **Disputes.** If a party believes that there is a dispute concerning this contract, that party must promptly notify the other party giving details of the dispute. If the dispute is not resolved within 5 working days by the contract authorities of the parties as specified in this contract, it will be immediately referred to senior representatives of the parties. If the senior representatives of the parties fail to resolve the dispute within 10 working days of the date the dispute is referred to them, the Department may exercise the remedies at clause 30(a) and (b).
- 35 **Waiver.** A waiver of any right under this contract must be in writing and signed by both parties. A failure or delay by either party to exercise any right under this contract will not operate as a waiver of that right.
- 36 **Variation.** Any variation to this contract must be done by way of a Variation Form.
- 37 **Crown powers.** No executive or prerogative power or right, or any immunity, of the Crown is affected by this contract.
- 38 **Liability.** If the Contractor comprises more than one person, each person's liability to the Department is joint and several.
- 39 **Time:** Time is of the essence in respect of all dates and times for performance by the Contractor of its obligations under this contract.
- 40 **Notices:** All notices and other communications permitted under this contract shall be sent by mail with postage pre-paid, by hand delivery or by facsimile transmission to the person and address specified in the contact details contained in Schedule 3.

All such notices or communications shall be deemed to be duly given if made:

- (a) if by post, 3 days after being mailed,
- (b) if by hand, when delivered,
- (c) if by facsimile, on the next working day, provided the sender receives a transmission report showing the transmission satisfactorily completed (unless a verifiable query as to material eligibility is promptly raised by the recipient).

- 41 **Interpretation and definitions.** Unless specifically otherwise stated:

- a amounts are in NZ\$ and exclude GST (if any);
- b headings are to be ignored;
- c references to a party or a person includes any form of entity and their respective successors, assigns and representatives;
- d including and similar words do not imply any limitation;
- e "Default" means any breach of the obligations of a party to this contract or any Service Schedule or any act, omission or statement of a party, its employees or agents (including any negligent act, omission or statement);
- f "Deliverable" means any good and any service or combination of them to be supplied by the Contractor to the Department under this contract or any Service Schedule;
- g "RFP" means the Request for Proposal for Panel Members to provide Technical Support Services dated 14 April 2010 included as Schedule 1;
- h "Service Schedule" means the written agreement entered into by the parties to record the following:
  - i background information the Department considers relevant to allow the Contractor to provide the desired services;
  - ii a description of the services required by the Department, i.e. the Deliverable;
  - iii the timeframe when such services must be completed
  - iv any maximum fee payable in respect to the performance of the services; and
  - v any other matters the parties consider necessary;

- i "this contract" means the contract and every Service Schedule entered into between the parties during the period covered by the RFP; and
- j "Variation Form" means a document recording a variation to this contract which must be signed by both the Department and the Contractor and which should be attached to this document.

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EXECUTION

SIGNED for and on behalf of )

DEPARTMENT OF BUILDING )  
AND HOUSING by )

DKS  
Signature

David Kelly  
Name

Deputy Chief Executive Building  
Quality  
Title

16/10  
Date

SIGNED for and on behalf of )  
THE CONTRACTOR by )

K. Bellamy  
Signature

KOZEL VAN BELLAMY  
Name

DIRECTOR  
Title

16 June 2010  
Date

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# SCENARIO. BRAND NEW THINKING

Response to the request for proposal for:

Technical Support Services  
for the Department of Building and Housing

Submitted by Scenario Communications Limited  
10 May 2010

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# SCENARIO. BRAND NEW THINKING

## Executive Summary

Thank you for the opportunity to put forward our proposal for technical editing services for the Department of Building and Housing.

Scenario Communications, a regular supplier to the Department of Building and Housing since the Department's inception in November 2004, proposes Joy Hellyer for editorial review services for the Department.

Joy has had nearly 10 years' experience proofreading and editing a wide range of documents for both public and private sector clients on behalf of Scenario Communications. Her experience includes many years' of providing proof reading and editing services to the Department and, prior to November 2004, the Building Industry Authority.

As an Account Manager responsible for Scenario's relationship with a range of public and private sector clients, Joy also has strong project management skills, including the ability to manage timelines and budgets, and excellent relationship management skills.

## Company Information:

Company Name: Scenario Communications Limited

Ownership: One director, Roger Bellamy

Staff: nine

### Contact details:

PO BOX 11 224  
Level 1, 154 Victoria Street  
Wellington

Phone: 385 9766

Email: [joy@scenario.co.nz](mailto:joy@scenario.co.nz)

Please note, the primary contact for this proposal, Joy Hellyer, is on leave until Monday 17 May. Until that date, the contact for this RFP is Roger Bellamy, [roger@scenario.co.nz](mailto:roger@scenario.co.nz)

# SCENARIO. BRAND NEW THINKING

## 3.5 Respondent Questionnaire

1. What technical support area/s do you want to be considered for (see s2.3)?

Editorial reviewer

2. Describe briefly your field/s of expertise within the technical support areas you wish to be considered for?

Joy Hellyer has a PhD in French Language and Literature from the University of Otago. She has been a proofreader/editor with Scenario Communications since April 1999. She has provided proofreading/editing services to a wide range of both private and public sector organisations, including:

- Land Information New Zealand
- Ministry of Fisheries
- Housing New Zealand
- CentrePort Limited
- Tertiary Education Commission
- Ministry of Education
- GNS Science.

The range of documents Joy has worked on includes:

- technical documents for specialised audiences
- documents containing regulatory compliance information
- documents explaining technical information to non-technical audiences
- reports and accompanying instructions
- newsletters
- statutory reporting documents
- educational materials
- promotional materials.

Our approach to providing editorial services would normally be to review the document and any accompanying brief, so that any issues are resolved at the outset. At this point, an estimate for the work and proposed timeline would be presented for approval. It would be anticipated that two or three drafts would be presented before sign-off of the work, depending on the nature of the project. The first draft would generally incorporate any broad structural changes to the flow of the document for approval before proceeding with more detailed editing - this draft would likely also include questions for consideration by the document's authors. The second draft would incorporate any feedback from the authors and a more detailed edit. The final

# SCENARIO. BRAND NEW THINKING

draft would be to resolve any outstanding issues/additional feedback arising from the second draft, if any.

### 3. Are you a current provider of technical services to the Department?

Yes

### 4. If yes, please advise what technical support area(s) you currently work in, your field of expertise within that area(s) and whether you wish to continue providing those services to the Department?

Scenario Communications has been providing editorial/proofreading services as part of the broader design and layout and print management services we have carried out for the Department since the Department's inception in November 2004. Joy Hellyer has provided all proofreading services to the Department on Scenario's behalf over that time. We wish to continue to provide proofreading and editorial services to the Department.

Technical areas within the Department of Building and Housing Joy has been involved with include:

- a range of documents relating to the Building Consent Authority Accreditation and Registration Scheme
- technical review summary documents
- the Licensed Building Practitioner Scheme – guidance and forms
- a wide range of technical guidance information
- a wide range of consultation/discussion documents, including the recent Building Act review discussion document
- the Compliance Documents (since 2001), including E2/AS1, the Simple House Compliance Document and the Compliance Schedule Handbook documents on the Building Code Review
- consumer information on the Weathertight Homes Resolution Service and tenancy services
- *Codewords*, since the first edition.

Having worked with the Department since its inception in 2004, including working closely on projects relating to the various work programmes implemented under the Building Act 2004, Joy has a detailed understanding of the Act and many of its accompanying regulations.

In addition, Joy was involved in proofreading the Department's *Guide to Professional Communication* when it was introduced. This, along with her more than five years' experience working on the Department's publications, gives Joy an in-depth

# SCENARIO. BRAND NEW THINKING

understanding of the Department's house styles and the terminology used in departmental publications.

Joy is an experienced user of Microsoft Word and Excel.

We foresee no issues with any requirement to travel under this contract, although Joy does not hold a driver's licence. Scenario's services to the Department are generally provided at Scenario Communications, but if a particular project required Joy to work on-site at the Department that would not be an issue.

5. If you wish to continue to provide these services, please list examples of information provided to the Department within the last 2 years that you consider demonstrate the competencies required for each technical support area and field of expertise within that area(s)

Simple House Acceptable Solution: Scenario was responsible for the layout and printing of the Simple House Acceptable Solution. Editorial/proofreading services provided on this project including proofreading for consistency, identifying and proposing additional items to be included in the definitions section (based on familiarity with the Compliance Documents), checking cross-referencing, liaising with the Department over updates. *Department contact: Jon Harcourt*

Codewords: Codewords is the Department's Building Controls newsletter. As part of our responsibilities for the design, layout and printing of Codewords, Scenario also provides proofreading/editing services. Scenario's contribution goes beyond checking for spelling and grammar, as our familiarity with a wide range of technical areas within the Department enables us to offer advice on consistent use of terminology with other publications. *Most recent Department contact: Vivienne Sanders*

6. Briefly describe (no more than 200 words) how that information already held by the Department demonstrates the competencies required for each technical support area and field of expertise within that area(s) that you wish to be considered for.

While much of the work carried out by Scenario has been commissioned by the Communications team, Joy has also worked closely alongside members of the Department's technical teams. Examples of this include the work done on the Compliance Documents. Over the nine years Scenario has worked on the Compliance Documents, Joy has worked closely with a wide range of technical specialists. Similarly, in the wide range of projects carried out on the Building Consent Authority Accreditation and Registration Scheme, while projects were often commissioned through the Communications team, Joy regularly liaised with members

# SCENARIO. BRAND NEW THINKING

of the Consent Authority Capability and Performance Group.

Relationship management is an important part of providing editorial services through the need to work closely alongside those at the Department responsible for the various publications. Joy has been responsible for managing Scenario's relationship with the Department since November 2004.

7. If you are a current provider who wants to be considered for an additional technical support area or expanded field of expertise:

i) List the new technical service area/field of expertise?

Not applicable

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On behalf of the respondent and / or named individuals:

I ROGER VAN BELLAMY

(full name: first or given names and family or surname)

of 1/78 STANDEN STREET

KARORI, WELLINGTON

(full residential address)

Occupation Company Director

declare that:

1. I, or other named individuals have not been convicted of any offences under any legislation (for these purposes do not count any infringement offences, e.g., parking or speeding offences that did not result in a conviction being entered against you)

~~OR~~

~~I, or other named individuals have been convicted of the following offences under the following legislation (do not count infringement offences, see above)~~

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~

2. I, or any named individual and any property or building related company that I or they have been involved in, have not:

- a. been named as a party to any litigation alleging poor workmanship;
- b. been named as a party to any litigation relating to a "leaky building\*";
- c. been named as a party in any Weathertight Homes Resolution Services claim relating to a leaky building;
- d. settled any claim relating to an allegation about poor workmanship and/or a leaky building privately in New Zealand or overseas,

~~OR~~

~~\*Details of any allegations and/or claims about my/our work, or that of any property or building related company that I/we have been involved in relating to poor workmanship and/or a leaky building, (including the dates and outcomes of those allegations and/or claims) in New Zealand and overseas are as follows:~~

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~

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\* For the purpose of this declaration the phrase "leaky building" means a dwelling house into which water has penetrated as a result of any aspect of the design, construction, or alteration of the dwelling house (being a building, or an apartment, flat, or unit within a building, that is intended to have as its principal use occupation as a private residence), or materials used in its construction or alteration.

3. I / we have not been the subject of any disciplinary action by any professional body in New Zealand or overseas, nor are there any unresolved complaints to any professional body against me / us

~~OR~~

~~Details of disciplinary action by any professional body in New Zealand or overseas or of unresolved complaints to any professional body against me/a named individual are as follows:~~

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4. I / we are not aware of any matter related to my/our past or present employment or my/our professional or personal life that could result in an actual or perceived conflict of interest in being a panel member,

~~OR~~

~~Details of matters related to my/our past or present employment or my/our professional or personal life that could result in a conflict of interest with the role of being a panel member are as follows:-~~

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5. I, or any named individual have not been dismissed from any role due to questions regarding my/their competence,

~~OR~~

~~Details of matters related to my/their past employment or my/their professional life where I/they have been dismissed:~~

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6. I, or other named individuals have not been made bankrupt, entered into a composition with my/their creditors, or been disqualified as a director of a company.

7. I/we know of no other matter that might affect my/our credibility in the role of being a panel member to provide technical support services to the Department.

Declared at WELLINGTON this 10<sup>th</sup> day  
of MAY 2010.

Name ROGER IVAN BELLAMY

Signature R.I. Bellamy

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# SCENARIO. BRAND NEW THINKING

## Proposed pricing

Scenario Communications proposes to continue to use the discounted rate for editing/proofreading currently provided to the Department of:

§ 9(2)(b)(ii) per hour.

In addition to this, any disbursements required to complete the project would be charged for. Unless travel is involved, we would expect these to be minor (black and white laser proofs, couriers).

Our proposed approach to pricing for specific projects would be to review the work required and provide an estimate of the time (and disbursements) required to complete it. From that point, unless the parameters of the project change, the work would be completed within the agreed budget. In the case of any changes that might affect the budget, any additional costs would be notified to the Department for approval before proceeding.

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Department of  
Building and Housing  
*Te Tari Kaupapa Whare*

Level 6, 86 Customhouse Quay  
PO Box 10 729, Wellington  
Tel +64 4 494 0260  
Fax +64 4 494 0290  
www.dbh.govt.nz

10 June 2010

Roger Bellamy  
Scenario Communications Ltd  
PO Box 11 224  
Wellington

Dear Roger

**Panel to provide technical support services to the Department of Building & Housing**

I am pleased to offer you a Master Service Agreement to provide the supply of technical support services to the Department, following your response to the recent Department's RFP.

We note that you have not requested any variations to the Department's Master Service Agreement in your response, so we consider that you are agreeable to the form of contract provided with the RFP.

Attached are 2 signed copies of the Master Service Agreement. Can you check the accuracy of details noted in Schedule 3 and add details (handwritten) of your back-up contact.

Could you sign both copies and please send one back to:

Paul Alsford  
Department of Building & Housing  
PO Box 10-729  
Wellington 6145

If you have not been offered a Master Services Agreement for any areas which you may have indicated, you may request a debriefing as outlined in the RFP document in section 6.6 (f). Please email [Paul.Alsford@dbh.govt.nz](mailto:Paul.Alsford@dbh.govt.nz) to request a debrief.

Thank you for your interest in this providing this service.

Yours sincerely

  
John Gardiner  
Manager Determinations

  
Peter Thorby  
Manager Building Standards



**SCHEDULE 3: CONTRACT DURATION, DETAILS AND NOTICES**

CONTRACT START DATE 11 June 2010

CONTRACT COMPLETION DATE 30 June 2013

**Contractor's details**

Full legal name: Scenario Communications Ltd

Trading name (if different):

Company number (if applicable): 583677

Full address: PO Box 11 224, Wellington

Main contact person

Name: Roger Bellamy

Phone:

Fax:

Email: joy@scenario.co.nz

Back-up contact person (if applicable)

Name:

Position:

Phone:

Fax:

Email:

**Department of Building and Housing details**

**Contacts**

DBH Group	Determinations	Building Standards
Name	John Gardiner	Peter Thorby
Position	Manager Determinations	Manager Building Standards Group
Phone	04 817 4856	04 817 4846
Fax	04 494 0290	04 494 0290
Email	John.Gardiner@dbh.govt.nz	Peter.Thorby@dbh.govt.nz

Main address for written/general correspondence to the Department:

Department of Building and Housing  
PO Box 10 729  
Wellington

#### SCHEDULE 4. PRICE INFORMATION

1. The Department will pay the Contractor a fee (up to the maximum fee recorded, if any) for the Deliverable in accordance with the agreed Service Schedule for that Deliverable.
2. The Department will reimburse the Contractor for any expenses specifically recorded in any Service Schedule, including:
  - All air travel, rental cars and accommodation for main centres must be booked through the Department's contracted travel agency/broker using suppliers for which the Department has negotiated a preferred supplier arrangement whenever possible.
  - Air travel is to be economy class at the lowest possible cost.
  - Where travel away from the Contractor's office overnight is required to provide the services away from a Department office,
    - a. Accommodation may be selected close to the work location provided the costs do not exceed \$135.00 per night.
    - b. Meals and incidentals may be claimed as actual and reasonable costs on the basis of invoices presented or at a set rate of:
      - i. \$60.00 for each 24 hour period, plus
      - ii. \$21.00 for any part day.
  - Where travel away from the Contractor's office area is required to provide the services, a mileage allowance may be claimed at the following rates:
    - a. \$0.62/km for travel up to and including 3,000 km per annum
    - b. \$0.19/km for travel over 3,000 km per annum.
3. The Contractor will invoice the Department for the services and any expenses it provides pursuant to any Service Schedule, at the end of each month and at completion of the Deliverable.
4. The Contractor will provide satisfactory GST invoices when claiming expenses.
5. If not otherwise specified, payment is not due until the relevant Deliverable has been provided to the Department's satisfaction.
6. Unless otherwise specified,
  - a. Hourly rates and fixed charges/prices include an allowance for the use of any equipment/property not supplied by the Department, and the Contractor's use of a reasonable amount of materials and consumables.
  - b. Overtime hourly rates are the same as standard rates.
  - c. Amounts are in NZ\$ and exclude GST. All other taxes and duties are included.
  - d. Any disbursements not included in this contract must be agreed to by the Department in advance of being incurred.
7. Where reimbursement for disbursements is sought, invoices must detail the type and cost of each disbursement, attaching receipts or copies of third party invoices.
8. Where hourly rates are used:

- a Hourly rates are to be charged pro rata per part hour.
  - b Invoices must detail the time expended and the charging rates used.
  - c The Department will only pay for a reasonable number of hours.
9. Subject to the Contractor's invoice (s) being approved for payment, the Department will pay the lesser of the number of hours invoiced or the maximum fee recorded in any Service Schedule.
  10. If work content changes by more than 5% due to variation by the Department, then fixed charges/prices may be adjusted by agreement between the Department and the Contractor.
  11. Hourly rates and fixed charges/prices may be reviewed by the Department every 12 months.

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Official Information Act 1982



Ministry of Business,  
Innovation & Employment

Variation – SERVICES (Government  
Model Contract)  
for Public Service and State Services agencies

Variation 1 to Contract

**Contract** means the contract between the Parties for:

2010 Master Service Agreement - Panel

Dated: 5 June 2013

Parties

Ministry of Business, Innovation and Employment

(Buyer)

and

BRANZ Ltd Moonshine Road Judgeford Porirua (Supplier)

Variation

The Buyer and the Supplier are parties to the Contract.

The Parties agree to vary the Contract. The scope of the Variation is set out in the attached Schedule of Changes. The Variation is effective from the Effective Date stated in the Schedule of Changes.

Subject to the changes made by this Variation, the terms and conditions of the Contract remain in effect.

Words used but not defined in this Variation, have the same meaning as they do in the Contract.

Acceptance

Signed for and on behalf of  
the Buyer:

  
Signature

Name:

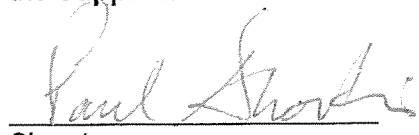
Position:

Date:

Adrian Regnault  
General Manager  
Building System Performance Branch

11/2013

Signed for and on behalf of  
the Supplier:

  
Signature

Name:

Position:

Date:

PAUL SNOGRASS  
GM - SES  
18/11/13

Official Information Act 1982

## Schedule of Changes

Effective Date: 1 July 2013

### Changes

#### Change to description of Services

1. The description of the Services in Schedule 1 is amended by adding the following:

#### Background

The Building Standards group is preparing proposed amendments to building code clause C (Protection from Fire) and the related acceptable solutions and verification methods.

#### Description of services

The Ministry requires you to carry out the following services (the Deliverables):

- a. Advise on revisions required;
- b. Make recommendations on proposed revisions; and
- c. Attending meetings arranged by the Ministry to discuss the revisions.

The Ministry requires you to provide the services from the date of this letter to 31 March 2014. The Ministry will provide you with at least 14 working days' notice of meetings referred to in sub paragraph (c) above.

The Ministry will pay you at the contract rate up to a maximum fee of \$40,000 (plus GST, if any) for the Deliverables set out in this letter. The Department will pay your travel expenses in accordance with Schedule 4 of the Master Services Agreement.

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Ministry of Business,  
Innovation & Employment

Variation – SERVICES (Government  
Model Contract)  
for Public Service and State Services agencies

## Variation 1 to Contract

**Contract** means the contract between the Parties for:

2010 Master Service Agreement - Panel

Dated: 11 June 2013

## Parties

Ministry of Business, Innovation and Employment  
(Buyer)

and

OnFire Consulting Ltd 477 Alexandra St Te Awamutu (Supplier)

## Variation

The Buyer and the Supplier are parties to the Contract.

The Parties agree to vary the Contract. The scope of the Variation is set out in the attached Schedule of Changes. The Variation is effective from the Effective Date stated in the Schedule of Changes.

Subject to the changes made by this Variation the terms and conditions of the Contract remain in effect.

Words used but not defined in this Variation have the same meaning as they do in the Contract.

## Acceptance

Signed for and on behalf of  
the Buyer:

Signature

Name: Andrew Crisp

Position: Deputy Chief Executive

Date: 8/11/13

Signed for and on behalf of  
the Supplier:

Signature

Name: Debbie Scott

Position: Principal Fire Engineer

Date: 8/11/13

## Schedule of Changes

Effective Date: 1 July 2013

### Changes

#### Change to description of Services

1. The description of the Services in Schedule 1 is amended by adding the following:

#### Background

The Building Standards group is preparing proposed amendments to building code clause C (Protection from Fire) and the related acceptable solutions and verification methods.

#### Description of services

The Ministry requires you to carry out the following services (the Deliverables):

- a. Advise on revisions required;
- b. Make recommendations on proposed revisions; and
- c. Attending meetings arranged by the Ministry to discuss the revisions.

The Ministry requires you to provide the services from the date of this letter to 31 March 2014. The Ministry will provide you with at least '14 working days' notice of meetings referred to in sub paragraph (c) above.

The Ministry will pay you at the contract rate up to a maximum fee of \$40,000 (plus GST, if any) for the Deliverables set out in this letter. The Department will pay your travel expenses in accordance with Schedule 4 of the Master Services Agreement.

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Official Information Act 1982

# Contract for Services



## Ministry of Business, Innovation & Employment

### Amendments to Protection from Fire Supporting Documents

#### The Parties

Ministry of Business, Innovation and Employment	(Buyer)
33 Bowen St	
Wellington 6011	
and	
Department of Civil Engineering University of Canterbury	(Supplier)
Engineering Rd	
Christchurch 8140	

#### The Contract

##### Agreement

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

##### The documents forming this Contract are:

1. This page Page 1
2. Contract Details and Description of Services Schedule 1
3. Standard Terms and Conditions Schedule 2  
GMC Form 1 SERVICES 1 Schedule 2 (2nd Edition) available at: [www.procurement.govt.nz](http://www.procurement.govt.nz)
4. Any other attachments described at Schedule 1.

##### How to read this Contract

5. Together the above documents form the whole Contract.
6. Any Supplier terms and conditions do not apply.
7. Clause numbers refer to clauses in Schedule 2.
8. Words starting with capital letters have a special meaning. The special meaning is stated in the Definitions section at clause 17 (Schedule 2).

#### Acceptance

In signing this Contract, each Party acknowledges that it has read and agrees to be bound by it.

For and on behalf of the Buyer:


  
(signature)

name: Adrian Regnault

position: General Manager

date: 6/11/2013

For and on behalf of the Supplier:

  
(signature)

name: Nigel Johnson

position: Director  
Research & Innovation

date: 27/11/2013

# Schedule 1

## Contract Details and Description of Services

<b>Start Date</b>	1 July 2013	Reference Schedule 2 clause 1	
<b>End Date</b>	31 MARCH 2014	Reference Schedule 2 clause 1	
<b>Contract Managers</b> Reference Schedule 2 clause 4	<b>Buyer's Contract Manager</b>	<b>Supplier's Contract Manager</b>	
	<b>Name:</b>	Peter Thorby	Dr Charles Fleischmann
	<b>Title / position:</b>	Manager Building Stds	Asst Professor
	<b>Address:</b>	33 Bowen St Well 6011	Department of Civil and Natural Resources Engineering Private Bag 4800 Christchurch
	<b>Phone:</b>	04 901 8701	64 3 364 2399
	<b>Fax:</b>		64 3 364 2753
	<b>Email:</b>	Peter.thorby@mbie.govt.nz	Charles.fleischmann@canterbury.ac.nz
<b>Addresses for Notices</b> Reference Schedule 2 clause 4	<b>Buyer's address</b>	<b>Supplier's address</b>	
	<b>For the attention of:</b>	Peter Thorby	Dr Charles Fleischmann
	<b>c.c. Contract Manager</b>		
	<b>Delivery address:</b>	33 Bowen St PO Box 1473, Wellington 6145	University of Canterbury Department of Civil and Natural Resources Engineering Private Bag 4800 Christchurch New Zealand 8140
	<b>Postal address:</b>	33 Bowen St, PO Box 1473, Wellington 6145	University of Canterbury Department of Civil and Natural Resources Engineering Private Bag 4800 Christchurch New Zealand 8140
	<b>Fax:</b>		
	<b>Email:</b>		
<b>Supplier's Approved Personnel</b> Reference Schedule 2 clause 2.5	<b>[OPTIONAL]</b>	<b>Approved Personnel</b>	
	<b>Name:</b>		
	<b>Position:</b>		
	<b>Specialisation:</b>		
<b>Supplier's Approved Sub-contractor</b> Reference Schedule 2 clause 7	<b>[OPTIONAL]</b>	<b>Approved Sub-contractor</b>	
	<b>Name:</b>		
	<b>Address:</b>		
	<b>Specialisation:</b>		

Description of Services	
<p><b>Context</b></p> <p><b>Background</b> The Building Standards group is preparing proposed amendments to building code clause C (Protection from Fire) and the related acceptable solutions and verification methods.</p> <p>The Ministry will pay you at the contract rate up to a maximum fee of \$40,000 (plus GST, if any) for the Deliverables set out in this letter. The Department will pay your travel expenses in accordance with Schedule 4 of the Master Services Agreement.</p> <p><b>Description of Services</b> The Ministry requires you to carry out the following services (the Deliverables):</p> <ol style="list-style-type: none"> <li>Advise on revisions required;</li> <li>Make recommendations on proposed revisions; and</li> <li>Attending meetings arranged by the Ministry to discuss the revisions.</li> </ol> <p>The Ministry requires you to provide the services from the date of this letter to 31 March 2014. The Ministry will provide you with at least 14 working days' notice of meetings referred to in sub-paragraph (c) above.</p> <p><b>Deliverables</b></p> <p>Attendance at meetings</p> <p>Providing Advice both written and verbal, as required</p>	

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

<b>Fees</b> Reference Schedule 2 clause 3	The Supplier's Fees will be calculated as follows.
	<p><b>Hourly Fee Rate</b></p> <p>For each hour worked an Hourly Fee Rate of <del>s9(2)</del> excluding GST, up to a total maximum of \$40,000 excluding GST.</p>

<b>Expenses</b> Reference Schedule 2 clause 3	<p><b>Actual and reasonable — general Expenses</b></p> <p>The Buyer will pay the Supplier's actual and reasonable Expenses incurred in delivering the Services up to a total maximum amount of \$5,000 excluding GST provided that:</p> <ol style="list-style-type: none"> <li>the Buyer has given prior written consent to the Supplier incurring the Expense</li> <li>the Expense is charged at actual and reasonable cost, and</li> <li>the claim for Expenses is supported by GST receipts.</li> </ol>
	(Empty row)

<b>Daily Allowance</b> Reference Schedule 2	No Daily Allowances are payable.
--	----------------------------------

clause 3													
<b>Invoices</b> Reference Schedule 2 Subject to clauses 3 and 11.7	The Supplier must send the Buyer an invoice for the Charges at the following times: On completion of the Services.												
<b>Address for Invoices</b> Reference Schedule 2 clause 3	<table border="1" style="width: 100%;"> <thead> <tr> <th style="width: 30%;"></th> <th style="text-align: center;">Buyer's address</th> </tr> </thead> <tbody> <tr> <td>For the attention of:</td> <td>Kate Mcrae</td> </tr> <tr> <td>Physical address:</td> <td>33 Bowen St Wellington 6145</td> </tr> <tr> <td>Postal address:</td> <td>PO Box 1473 Wellington 6145</td> </tr> <tr> <td>Email:</td> <td>Kate.mcrae@mbie.govt.nz</td> </tr> <tr> <td></td> <td></td> </tr> </tbody> </table>		Buyer's address	For the attention of:	Kate Mcrae	Physical address:	33 Bowen St Wellington 6145	Postal address:	PO Box 1473 Wellington 6145	Email:	Kate.mcrae@mbie.govt.nz		
	Buyer's address												
For the attention of:	Kate Mcrae												
Physical address:	33 Bowen St Wellington 6145												
Postal address:	PO Box 1473 Wellington 6145												
Email:	Kate.mcrae@mbie.govt.nz												
<b>Insurance</b> Reference Schedule 2 Clause 8.1	<p><b>INSURANCE: (clause 8.1 Schedule 2)</b></p> <p>It is the Supplier's responsibility to ensure the risks of doing business are adequately covered, whether by insurance or otherwise. The Buyer does not require any specific insurance under this Contract.</p>												

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<p><b>Changes to Schedule 2 and additional clause/s</b></p>	<p>Schedule 2 of this Contract is amended as follows:</p> <p><u>Changes</u></p> <p>1. Clause 1.1 is amended by inserting the following at the end of the second sentence:</p> <p><i>“,however if Services are delivered before the Start Date with the Buyer’s approval this Contract shall be deemed to apply.”</i></p> <p><u>Additional Clauses</u></p> <p>1. Rights to Compensation and Indemnity</p> <p><i>“The Supplier must compensate the Buyer for any loss, expense or damage that the Buyer suffers, and indemnify the Buyer against any liability the Buyer incurs, which results from any breach, delay, or failure to comply with this Contract by the Supplier or any of the Supplier’s agents.”</i></p> <p>2. Immigration Status</p> <p><i>“The Supplier must ensure that its staff, agents, sub-contractors, their replacements or substitutes, and any other personnel involved in delivering the Services are lawfully entitled to work in New Zealand under the Immigration Act 2009.”</i></p> <p>3. Good Employer</p> <p><i>“The Supplier must ensure that it operates policies and systems that promote fair and proper treatment of employees in all aspects of their employment. This includes providing good and safe working conditions, equal employment opportunities, impartial selection procedures, and opportunities for employee personal development.”</i></p> <p>4. Contracts (Privity) Act 1982</p> <p><i>“Nothing in this Contract shall confer any benefit on any person who is not a Party to this Contract unless otherwise stated”.</i></p> <p>5. If Part of Contract Ruled Invalid</p> <p><i>“If any part of this Contract is ruled to be invalid or unenforceable, it will be deemed to be deleted and will not affect the validity or enforceability of the rest of this Contract”.</i></p> <p>6. Health and Safety</p> <p>6.1 The Supplier must have policies and procedures in place to ensure compliance with the Health and Safety in Employment Act 1992 and the Health and Safety in Employment Regulations 1995.</p> <p>6.2 The Supplier must ensure that all Personnel utilised are fully trained and qualified for the Services to be delivered under this Contract.</p> <p>6.3 The Supplier must supply and maintain all safety equipment required to minimise the risk of injury and keep it readily accessible for use by any Personnel delivering the Services.</p> <p>6.4 The Supplier will be responsible for any loss or injury that may occur if its safety equipment fails or is unavailable.</p>
<p><b>Attachments</b> Reference 'Contract documents' described at Page 1</p>	<p>NONE</p>

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## Schedule 2

### Standard Terms and Conditions - Services

#### 1. Length of Contract

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

#### 2. The Services

##### Both Parties' obligations

- 2.1 Both Parties agree to:
- act in good faith and demonstrate honesty, integrity, openness and accountability in their dealings with each other
  - discuss matters affecting this Contract or the delivery of the Services, whenever necessary
  - notify each other immediately of any actual or anticipated issues that could:
    - significantly impact on the Services or the Charges
    - receive media attention, and
  - comply with all applicable laws and regulations

##### Buyer's obligations

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

##### Supplier's obligations

- 2.3 The Supplier must deliver the Services:
- on time and to the required performance standards or quality set out in Schedule 1 or reasonably notified by the Buyer to the Supplier from time to time
  - within the amounts agreed as Charges, and
  - with due care, skill and diligence, and to the appropriate professional standard or in accordance with good industry practice as would be expected from a leading supplier in the relevant industry.
- 2.4 The Supplier must:
- ensure that its Personnel have the necessary skills, experience, training and resources to successfully deliver the Services
  - provide all equipment and resources necessary to deliver the Services, and
  - comply with the *Standards of Integrity and Conduct* issued by the State Services Commission (see [www.ssc.govt.nz](http://www.ssc.govt.nz)) and any other relevant codes of conduct listed in Schedule 1 or notified by the Buyer to the Supplier from time to time.
- 2.5 Where an Approved Personnel has been authorised by the Buyer in Schedule 1, the Supplier must use the Approved Personnel in delivering the Services. The Supplier must obtain the Buyer's prior written approval if it wishes to change any Approved Personnel.
- 2.6 If the Supplier is at the Buyer's premises, the Supplier must observe the Buyer's policies and procedures, including those relating to health and safety, and security requirements. The Buyer must tell the Supplier what the relevant policies and procedures are, and either give the Supplier a copy of them or provide an internet link.

- 2.7 If the nature of the Services requires it, the Supplier will deliver Services:
- in a manner that is culturally appropriate for Māori, Pacific and other ethnic or indigenous groups, and
  - that respects the personal privacy and dignity of all participants and stakeholders.

### 3. Charges and payment

#### Charges & invoices

- 3.1 The Charges are the total maximum amount payable by the Buyer to the Supplier for delivery of the Services. Charges include Fees and, where agreed, Expenses and Daily Allowances.
- 3.2 The Supplier must provide valid tax invoices for all Charges on the dates or at the times specified in Schedule 1. The Buyer has no obligation to pay the Charges set out on an invoice, which is not a valid tax invoice. A valid tax invoice must:
- clearly show all GST due
  - be in New Zealand currency or the currency stated in Schedule 1
  - be clearly marked 'Tax invoice'
  - contain the Supplier's name, address and GST number, if the Supplier is registered for GST
  - contain the Buyer's name and address and be marked for the attention of the Buyer's Contract Manager or such other person stated in Schedule 1
  - state the date the invoice was issued
  - name this Contract and provide a description of the Services supplied, including the amount of time spent in the delivery of the Services if payment is based on an Hourly Fee Rate or Daily Fee Rate
  - contain the Buyer's contract reference or purchase order number if there is one
  - state the Charges due, calculated correctly, and
  - be supported by GST receipts if Expenses are claimed and any other verifying documentation reasonably requested by the Buyer.

#### Payment

- 3.3 If the Buyer receives a valid tax invoice on or before the 3<sup>rd</sup> Business Day of the month, the Buyer must pay that tax invoice by the 20<sup>th</sup> calendar day of that month. Any valid tax invoice received after the 3<sup>rd</sup> Business Day of the month will be paid by the Buyer on the 20<sup>th</sup> calendar day of the month following the month it is received. The Buyer's obligation to pay is subject to clauses 3.2, 3.4 and 11.10.
- 3.4 If the Buyer disputes a tax invoice or any part of a tax invoice that complies with clause 3.2, the Buyer must notify the Supplier within 10 Business Days of the date of receipt of the tax invoice. The Buyer must pay the portion of the tax invoice that is not in dispute. The Buyer may withhold payment of the disputed portion until the dispute is resolved.

### 4. Contract management

#### Contract Manager

- 4.1 The persons named in Schedule 1 as the Contract Managers are responsible for managing the Contract, including:
- managing the relationship between the Parties
  - overseeing the effective implementation of this Contract, and
  - acting as a first point of contact for any issues that arise.

#### Changing the Contract Manager

- 4.2 If a Party changes its Contract Manager it must tell the other Party, in writing, the name and contact details of the replacement within 5 Business Days of the change.

### 5. Information management

## Information and Records

- 5.1 The Supplier must:
- keep and maintain Records in accordance with prudent business practice and all applicable laws
  - make sure the Records clearly identify all relevant time and Expenses incurred in providing the Services
  - make sure the Records are easy to access, and
  - keep the Records safe.
- 5.2 The Supplier must give information to the Buyer relating to the Services that the Buyer reasonably requests. All information provided by the Supplier must be in a format that is usable by the Buyer and delivered within a reasonable time of the request.
- 5.3 The Supplier must co-operate with the Buyer to provide information immediately if the information is required by the Buyer to comply with an enquiry or its statutory, parliamentary, or other reporting obligations.
- 5.4 The Supplier must make its Records available to the Buyer during the term of the Contract and for 7 years after the End Date (unless already provided to the Buyer earlier).
- 5.5 The Supplier must make sure that Records provided by the Buyer or created for the Buyer, are securely managed and securely destroyed on their disposal.

## Reports

- 5.6 The Supplier must prepare and give to the Buyer the reports stated in Schedule 1, by the due dates stated in Schedule 1.

## 6. The contractual relationship

### Independent contractor

- 6.1 Nothing in this Contract constitutes a legal relationship between the Parties of partnership, joint venture, agency, or employment. The Supplier is responsible for the liability of its own, and its Personnel's, salary, wages, holiday or redundancy payments and any GST, corporate, personal and withholding taxes, ACC premiums or other levies attributable to the Supplier's business or the engagement of its Personnel.

### Neither Party can represent the other

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

### Permission to transfer rights or obligations

- 6.3 The Supplier may transfer any of its rights or obligations under this Contract only if it has the Buyer's prior written approval. The Buyer will not unreasonably withhold its approval.

## 7. Subcontractors

### Rules about subcontracting

- 7.1 The Supplier must not enter into a contract with someone else to deliver any part of the Services without the Buyer's prior written approval. In selecting an appropriate Subcontractor the Supplier must be able to demonstrate value for money.

### The Supplier's responsibilities

- 7.2 The Supplier is responsible for ensuring the suitability of any Subcontractor and the Subcontractor's capability and capacity to deliver that aspect of the Services being subcontracted.
- 7.3 The Supplier must ensure that:
- each Subcontractor is fully aware of the Supplier's obligations under this Contract, and
  - any subcontract it enters into is on terms that are consistent with this Contract.

- 7.4 The Supplier continues to be responsible for delivering the Services under this Contract even if aspects of the Services are subcontracted.

## 8. Insurance

### Where insurance is a requirement

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

## 9. Conflicts of Interest

### Avoiding Conflicts of Interest

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

### Obligation to tell the Buyer

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

## 10. Resolving disputes

### Steps to resolving disputes

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

### Obligations during a dispute

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

### Taking court action

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

## 11. Ending this Contract

### Termination by the Supplier

- 11.1 The Supplier may terminate this Contract by giving 20 Business Days Notice to the Buyer, if the Buyer fails to pay Charges that are properly due, and are not in dispute under clause 3.4. The Charges must be overdue by 20 Business Days and the Supplier must have first brought this to the Buyer's attention in writing within this period.
- 11.2 At any time during the term of this Contract the Supplier may notify the Buyer that it wishes to terminate this Contract by giving 20 Business Days Notice. The Buyer will, within 20 Business Days following receipt of the Supplier's, notify the Supplier whether, in its absolute discretion, it consents to the Supplier's Notice of termination. If the Buyer:
- consents, the Contract will be terminated on a date that is mutually agreed between the Parties, or
  - does not consent, the Contract will continue in full force as if the Supplier's Notice of termination had not been given.
- 11.3 The Supplier may also terminate this Contract under clause 11.9.

### Termination by the Buyer

- 11.4 The Buyer may terminate this Contract at any time by giving 20 Business Days Notice to the Supplier.
- 11.5 The Buyer may terminate this Contract immediately, by giving Notice, if the Supplier:
- becomes bankrupt or insolvent
  - has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed
  - becomes subject to any form of external administration
  - ceases for any reason to continue in business or to deliver the Services
  - is unable to deliver the Services for a period of 20 Business Days or more due to an Extraordinary Event
  - requires the supply of Services within the period of an Extraordinary Event
  - is in breach of any of its obligations under this Contract and the breach cannot be remedied
  - repeatedly fails to perform or comply with its obligations under this Contract whether those obligations are minor or significant
  - does something or fails to do something that, in the Buyer's opinion, results in damage to the Buyer's reputation or business or the reputation or business of the Crown
  - has a Conflict of Interest that in the Buyer's opinion is so material as to impact adversely on the delivery of the Services, the Buyer or the Crown, or
  - provides information to the Buyer that is misleading or inaccurate in any material respect.

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

- 11.6 If a Party fails to meet the requirements of this Contract (defaulting Party) and the other Party (non-defaulting Party) reasonably believes that the failure can be remedied, the non-defaulting Party must give a Notice (default Notice) to the defaulting Party.
- 11.7 A default Notice must state:
- the nature of the failure
  - what is required to remedy it, and
  - the time and date by which it must be remedied.
- 11.8 The period allowed to remedy the failure must be reasonable given the nature of the failure.
- 11.9 If the defaulting Party does not remedy the failure as required by the default Notice, the non-

defaulting Party may terminate this Contract immediately by giving a further Notice.

- 11.10 If the Buyer gives a default Notice to the Supplier, the Buyer may also do one or both of the following things:
- a. withhold any payment of Fees due until the failure is remedied as required by the default Notice, and or
  - b. if the failure is not remedied as required by the default Notice, deduct a reasonable amount from any Fees due to reflect the reduced value of the Services to the Buyer.

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

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

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

- 11.13 The termination or expiry of this Contract does not affect those rights of each Party which:
- a. accrued prior to the time of termination or End Date, or
  - b. relate to any breach or failure to perform an obligation under this Contract that arose prior to the time of termination or End Date.
- 11.14 If this Contract is terminated the Buyer:
- a. will only be liable to pay Charges that were due for Services delivered before the effective date of termination, and
  - b. may recover from the Supplier or set off against sums due to the Supplier, any Charges paid in advance that have not been incurred.

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

- 11.15 The Supplier will, within 10 Business Days of the End Date, provide all reasonable assistance and cooperation necessary to facilitate a smooth handover of the Services to the Buyer or any person appointed by the Buyer.
- 11.16 If the Parties agree, the Supplier will provide additional assistance to support any replacement supplier to deliver the Services. This support may be for a period of up to 3 months from the date of termination and at a reasonable fee to be agreed between the Parties, based on the Fees and Expenses stated in this Contract.

## 12. Intellectual Property Rights

### Ownership of Intellectual Property Rights

- 12.1 Pre-existing Intellectual Property Rights remain the property of their current owner.
- 12.2 New Intellectual Property Rights in the Deliverables become the property of the Buyer when they are created.
- 12.3 The Supplier grants to the Buyer (as The Crown) a perpetual, non-exclusive, worldwide and royalty-free licence to use, for any purpose, all Intellectual Property Rights in the Deliverables that are not owned by the Buyer. This licence includes the right to use, copy, modify and distribute the Deliverables.

### Supplier indemnity

- 12.4 The Supplier warrants that it is legally entitled to do the things stated in clause 12.3 with the Intellectual Property Rights in the Deliverables.

- 12.5 The Supplier warrants that Pre-existing and New Intellectual Property Rights provided by the Supplier and incorporated in the Services and Deliverables do not infringe the Intellectual Property Rights of any third party.
- 12.6 The Supplier indemnifies the Buyer (as The Crown) in respect of any expenses, damage or liability incurred by the Buyer or The Crown in connection with any third party claim that the delivery of the Services or Deliverables to the Buyer or the Buyer's or The Crown's use of them, infringes a third party's rights. This indemnity is not subject to any limitation or cap on liability that may be stated elsewhere in this Contract.

### 13. Confidential Information

#### Protection of Confidential Information

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

#### Obligation to inform staff

- 13.2 Each Party will ensure that its Personnel:
- are aware of the confidentiality obligations in this Contract, and
  - do not use or disclose any of the other Party's Confidential Information except as allowed by this Contract.

### 14. Notices

#### Delivery of Notices

- 14.1 All Notices to a Party must be delivered by hand or sent by post, courier, fax or email to that Party's address for Notices stated in Schedule 1.
- 14.2 Notices must be signed or in the case of email sent by the appropriate manager or person having authority to do so.

#### Receipt of Notices

- 14.3 A Notice will be considered to be received:
- if delivered by hand, on the date it is delivered
  - if sent by post within New Zealand, on the 3rd Business Day after the date it was sent
  - if sent by post internationally, on the 7th Business Day after the date it was sent
  - if sent by courier, on the date it is delivered
  - if sent by fax, on the sender receiving a fax machine report that it has been successfully sent, or
  - if sent by email, at the time the email enters the recipient's information system as evidenced by a delivery receipt requested by the sender and it is not returned undelivered or as an error.
- 14.4 A Notice received after 5pm on a Business Day or on a day that is not a Business Day will be considered to be received on the next Business Day.

### 15. Extraordinary Events

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

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

#### Obligations of the affected Party

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

#### Alternative arrangements requiring immediate termination

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

#### Termination of Contract

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

## 16. General

#### Changes to this Contract

- 16.1 Any change to this Contract is called a Variation. A Variation must be agreed by both Parties and recorded:
- in writing and signed by both Parties, or
  - through an exchange of emails where the authors have delegated authority to approve the Variation.

#### This is the entire Contract

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

#### Waiver

- 16.3 If a Party breaches this Contract and the other Party does not immediately enforce its rights resulting from the breach that:
- does not mean that the Party in breach is released or excused from its obligation to perform the obligation at the time or in the future, and
  - does not prevent the other Party from exercising its rights resulting from the breach at a later time.

#### New Zealand law, currency and time

- 16.4 This Contract will be governed and interpreted in accordance with the laws of New Zealand. All moneys in New Zealand dollars, unless Schedule 1 specifies a different currency. Dates and times are New Zealand time.

#### Publication of information about this Contract

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



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

### Signing the Contract

- 16.7 The date of execution is date this Contract is signed. This Contract is properly signed if each Party signs the same copy, or separate identical copies, of Page 1. If this Contract is signed on two separate dates or separate copies are signed, the date of execution is the later of the two dates. Where separate copies are signed the signed copy can be the original document, or a faxed or emailed copy.

### No poaching

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

### Clauses that remain in force

- 16.9 The clauses that by their nature should remain in force on expiry or termination of this Contract do so, including clauses 5 (Information management), 8 (Insurance), 10 (Resolving disputes), 11 (Ending this Contract), 12 (Intellectual Property Rights), 13 (Confidential Information), 16 (General) and 17 (Definitions).

### Precedence

- 16.10 If there is any conflict or difference between the documents forming this Contract (as stated on Page 1) then the order of precedence is:
- a Variation agreed between the Parties under clause 16.
  - b. Schedule 1
  - c. any Attachment to Schedule 1
  - d. Schedule 2.

## 17. Definitions

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

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

**Approved Personnel** A person who is engaged by the Supplier to deliver the Services and is named in Schedule 1. The Supplier must use this person in the delivery of the Services and cannot change them without first obtaining the Buyer's written approval.

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

**Buyer** The Buyer is the purchaser of the Services. The Buyer is the Crown, also described as the Sovereign Her Majesty the Queen in right of New Zealand who acts by and through the government agency named as the Buyer on page 1 of this Contract for the purposes of this Contract.

**Charges** The total amount payable by the Buyer to the Supplier as stated in Schedule 1. The Supplier's Charges include Fees and any Expenses and Daily Allowances stated in Schedule 1. Charges are payable on successful delivery of the Services provided a valid tax invoice has been submitted.

**Confidential Information** Information that:

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

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

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

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

**Contract Manager** The person named in Schedule 1 as the Contract Manager. Their responsibilities are listed in clause 4.1

**Crown (The Crown)** The Buyer also described as the Sovereign Her Majesty the Queen in right of New Zealand and includes a Minister, a government department and an Office of Parliament, but does not include a Crown entity, or a State enterprise named in Schedule 1 of the State-owned Enterprises Act 1986.

**Daily Allowance** An allowance to cover accommodation, meals and incidentals for the Supplier's Personnel if they are required in order to deliver the Services or to travel overnight away from their normal place of business. The amount of any Daily Allowance must be agreed to in Schedule 1. A Daily Allowance is similar to a per diem.

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

**Deliverables** A tangible output resulting from the delivery of the Services as stated in Schedule 1. A deliverable may be a document, a piece of equipment, goods, information or data stored by any means including all copies and extracts of the same.

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

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

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

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

**Fees** The amount payable to the Supplier for the time spent in delivery of the Services calculated on the basis stated in Schedule 1, excluding any Expenses and Daily Allowances.

**GST** The goods and services tax payable in accordance with the New Zealand Goods and Services Tax Act 1995

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

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

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

**New Intellectual Property Rights** Intellectual Property Rights developed after the date of this

Contract and incorporated into the Deliverables.

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

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

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

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

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

**Services** All work, tasks and Deliverables, including those stated in Schedule 1, that the Supplier must perform and deliver under this Contract.

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

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

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

**Supplier** The person, business, company or organisation named as the Supplier on page 1. It includes its Personnel, successors, and permitted assignees.

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

