



**GOVERNMENT OF THE COOK ISLANDS**

**MINISTRY OF INFRASTRUCTURE COOK ISLANDS**

**REQUEST FOR PROPOSALS**

**SLUDGE MANAGEMENT ASSESSMENT FOR  
RAROTONGA AND AITUTAKI**

REFERENCE NO: CW001/2015  
AUGUST 2014

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# **1 Introduction**

## **1.1 Introduction**

The Water, Waste and Sanitation (WATSAN) Unit of the Ministry of Infrastructure Cook Island (ICI) manages programmes regarding the upgrade of sanitation systems in the Cook Islands.

The WATSAN Unit is seeking to engage the services of an appropriately qualified, experienced and equipped consultant or consulting firm who can perform the services described in this Request for Proposals (RFP).

The required services are the provision of expert assessments of the capacity of current sludge management infrastructure and related services on Rarotonga and Aitutaki.

## **1.2 Background**

The Government of the Cook Islands has entered into funding agreements with New Zealand Aid (NZ MFAT) and the European Union (EU), to deliver a four-year 'Sanitation Upgrade Programme' (SUP), which has the overall aim of protecting and improving the quality of streams, groundwater and lagoons. A key component of the SUP will be upgrading domestic onsite sanitation systems at up to 1,000 homes in areas of Rarotonga and Aitutaki, to ensure compliance with relevant Regulations and standards.

Prior to beginning that programme of upgrading sanitation systems, it is necessary to assess whether sludge collection and transfer services and the sludge management arrangements at the waste treatment facilities on Rarotonga and Aitutaki have the capabilities and capacity to process the anticipated future loads of sludge. .

The proposed time frame for work under the Contract is:

Project commencement	01st September 2014
Consultants report	19 <sup>th</sup> September 2014

## **1.3 Project Description and Objectives:**

The principal purpose of the project is to determine the extent of the adequacy of the collection and disposal arrangements for sludge from on-site wastewater treatment systems on Rarotonga and Aitutaki. The project therefore proposes a comprehensive assessment of the wastewater systems which includes but is not limited to;

- Whether the wastewater septage ponds at the Rarotonga landfill site are intact and have sufficient capacity to adequately treat increased influent (including sludge, landfill leachate, stormwater run-off and rainfall);
- Assessing the adequacy of sludge disposal in the Rarotonga landfill, to minimise groundwater contamination during transfer or following treatment and prevent inundation from stormwater run-off;
- Assessing the adequacy of collection and disposal arrangements for sludge from on-site wastewater treatment systems on Aitutaki, to ensure that the chosen disposal option has adequate capacity and does not present an unacceptable risk of nuisance or water resource contamination;

- An environmental impact assessment of existing sludge treatment and disposal arrangements. This will include monitoring of septage ponds wastewater discharges to determine contaminant concentrations and loadings, and their impact on the receiving environment.

#### 1.4 Scope of Services

To achieve the Objectives, the Contractor will be required to carry out the following tasks:

- a. Rarotonga:
  - i. Calculate and determine whether the wastewater septage ponds at the Rarotonga landfill site are intact and have sufficient capacity to adequately treat increased influent (including sludge, landfill leachate, stormwater run-off and rainfall);
  - ii. Carry out a detailed assessment of the adequacy of collection and disposal arrangements for sludge from on-site wastewater treatment systems
  - iii. Assess the adequacy of sludge disposal in the Rarotonga landfill, to minimise groundwater contamination during transfer or following treatment and prevent inundation from stormwater run-off;
- b. Aitutaki:
  - iv. Carry out a detailed assessment of the adequacy of collection and disposal arrangements for sludge from on-site wastewater treatment systems to ensure that the chosen disposal option has adequate capacity and does not present an unacceptable risk of nuisance or water resource contamination;
- c. Undertake an environmental impact assessment of existing sludge treatment and disposal arrangements. This will include monitoring of septage ponds wastewater discharges to determine contaminant concentrations and loadings, and their impact on the receiving environment.
- d. Prepare a report on the outcome of the above assessments including any recommendations and or proposed/necessary arrangements to deal with any additional sludge volume.

#### 1.5 RFP Documents

The RFP Documents comprise:

- This RFP, including schedules;
- Any other documents that are provided by WATSAN to the Proposers during the RFP process.

#### 1.6 RFP Budget

The budget available for this project is NZ\$29,500.00 excluding taxes.

#### 1.7 RFP Timeline

The following is an outline timeline for the RFP process:

RFP issued

09<sup>th</sup> August 2014

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Closing date for Proposals	22 <sup>nd</sup> August 2014
Proposal evaluations complete	27 <sup>th</sup> August 2014
Awarding of Contract and commencement of project	01 <sup>st</sup> September 2014

Please note that the above timelines are indicative only and may be amended at any time by WATSAN at its sole discretion.

## **2 Issue of Documents and Acknowledgement**

### **2.1 Property of RFP Document**

The RFP Documents issued to each Proposer, and all other information provided to each Proposer by or on behalf of WATSAN, for use in connection with the preparation of Proposals shall remain the property of WATSAN.

## **3 Instructions to Proposers**

### **3.1 Sufficiency of Proposals**

Each Proposer shall be deemed to have:

- (a) examined the RFP Documents and any other information supplied to the Proposer by, or on behalf of WATSAN; and
- (b) satisfied itself, before submitting its Proposal, as to the correctness, completeness and sufficiency of its Proposal for the relevant project and of the prices and rates stated in its Proposal (except to the extent that the RFP Documents expressly provide otherwise).

The proposed prices and rates shall allow for all of the resources (physical, human and financial) required by the Proposer to fulfil its obligations under the contract for services to perform the Project and all of the Consultants' costs, margin and profit. The Proposer must document in its Proposal any assumptions made in the preparation of the Proposal.

### **3.2 Further Explanation**

In submitting a Proposal, each Proposer is deemed to have taken into account all matters and risks which may affect the performance of the project.

### **3.3 Accuracy and Completeness of Proposals**

All information in relation to this RFP made available by or on behalf of WATSAN (whether prior to, with, or subsequent to, this RFP) in whatever form (including presentations/ discussions) is made available on the basis that WATSAN makes no representation or warranty, and whether express or implied, as to the completeness, correctness or accuracy of such information. Each Proposer shall before submitting a Proposal undertake all such further investigations as it may consider appropriate.

### **3.4 Communications in Relation to RFP**

All communications in relation to this RFP must be directed, in writing, to WATSAN.

The contact details are as follows:

Name: Tangi Taoro  
Address: PO Box 102  
Avarua  
Rarotonga  
Cook Islands  
E-mail: [tangi.taoro@ici.gov.ck](mailto:tangi.taoro@ici.gov.ck)

### 3.5 Further Information or Clarification

Any further information or clarification required by a Proposer in relation to this RFP must be directed to WATSAN. The request and the response to any such request shall be given in writing and shall be circulated by sequentially numbered notices to Proposers. Where WATSAN considers that the competitive advantage of individual Proposers may be compromised by distribution of responses to requests for information and/or clarification to all Proposers, WATSAN, reserves the right to issue a response only to that Proposer. Any additional information relating to this RFP will be uploaded to: [www.gets.govt.nz](http://www.gets.govt.nz) and [www.procurement.gov.ck](http://www.procurement.gov.ck)

### 3.6 Modifications to RFP by WATSAN

WATSAN reserves the right to provide further information in respect of, and to modify the provisions of, this RFP at any time prior to the Proposal Submission Deadline, by notice to all Proposers.

### 3.7 Pricing

Proposers are requested to provide a detailed breakdown of the price and requirements for the project (inclusive of all anticipated disbursements, taxes etc). The price shall take into account all matters and risks set out in this RFP.

The required format for the Proposals price breakdown is attached in Schedule 1. While this document provides the minimum breakdown requirements, it does not preclude Proposers from additional price breakdown information or the inclusion of additional line items. Additional information shall be recorded in the additional disclosure sheet in the price breakdown schedule spread sheet.

All pricing shall be Proposed in NZ dollars.

## 4 Submission of Proposals

### 4.1 Proposals in Accordance with RFP

Proposals shall be prepared and submitted in accordance with this RFP.

### 4.2 Proposals Submission Deadline

Proposals must be received by WATSAN not later than 3pm on Wednesday 20<sup>th</sup> August 2014 (Cook Islands time), or such later time as WATSAN may specify by notice to all Proposers ("**Proposal Submission Deadline**"). WATSAN reserves the right to consider or reject any Proposal received after the Proposal Submission Deadline, at its sole discretion.

### 4.3 Submitting Proposals

Proposals must be submitted in "hard copy" format contained inside a sealed envelope clearly marked "**Sludge Management Assessments for Rarotonga and Aitutaki (CW001/2015)**" addressed to:

The Secretary  
Ministry of Infrastructure Cook Islands  
P O Box 102  
Rarotonga  
Cook Islands

Proposers must submit **two** copies of their Proposal in hardcopy and also include a copy of their Proposal on Flash Drive or CD, in Microsoft Office 2003 (or compatible) format. Faxed or e-mailed Proposals may not be accepted.

It is the Proposer's responsibility to ensure that its Proposal reaches the address set out in section 4.3 by the specified date and time.

During the evaluation process, WATSAN reserves the right to reject, accept and/or penalise any Proposal that does not conform with all or any of the above conditions at its sole discretion.

#### **4.4 Proposals to Remain Open for Acceptance**

No Proposal received by WATSAN may be withdrawn or amended by the Proposer after the Proposal Submission Deadline (except for any amendments permitted in accordance with section 3.6), and all Proposals shall remain open and valid for acceptance by WATSAN (by entering into a contract for services in accordance with section 6.4) until 19<sup>th</sup> September 2014 CI time on the date which is 28 days after the Proposals Submission Deadline ("**Proposals Validity Period**").

#### **4.5 Joint Proposals**

Any joint Proposals must:

- identify all of the parties to the Proposal;
- state the nature of the relationship between the parties for the purpose of the joint Proposal;
- specify which requirements each party will be responsible for delivering;
- identify the structure and systems that support joint governance, accountability and financial and contract management; and
- be signed by all parties.

If there is more than one party comprising the Proposer, each such party acknowledges and agrees that if its Proposal is accepted, its obligations to WATSAN comprised in the Proposal shall be owed by all parties comprising the Proposer jointly and by each such party severally.

In this RFP, a reference to a Proposer shall include each party comprising the Proposer, if there is more than one party.

#### **4.6 Execution of Proposals**

The Proposal shall contain the full legal name and registered address of the Proposer, shall be signed with the usual signature of the person or persons authorised to bind each such party and shall be dated. The name and position held by each person signing the Proposal must also be printed below their signature.



## 5 Discussion and Negotiation with Proposers

### 5.1 Discussion and Negotiations with Proposers

Following receipt and evaluation of Proposals, a short-list of up to three preferred Proposers will be prepared by WATSAN and a negotiation/discussion process will be undertaken as follows:

- Short-listed Proposers will be advised that they are on the short-list;
- Queries/comments on the Proposals will be sent by email to the relevant Proposer for consideration and response;
- WATSAN may conduct telephone or Skype interviews with preferred Proposers;
- On completion of the above process, WATSAN will select a preferred Proposer.

A notification that a Proposer has been short-listed does not constitute acceptance by WATSAN of the Proposer's Proposal, or imply or create any obligation to award a project to that short-listed Proposer.

### 5.2 Discussions with Third Parties

WATSAN and any person acting on its behalf shall be entitled to contact any third party or referee who has previously engaged the Proposer or any person associated with any such party, to discuss the work performed for that third party or referee. The Proposer consents (for the benefit of such third party or referee) to WATSAN and their representative approaching that third party or referee without reference to the Proposer and shall cooperate with WATSAN and their representatives in arranging such discussions between WATSAN their representative and any such third party or referee, if requested to do so by WATSAN.

### 5.3 Evaluation of Proposals

A Proposal Evaluation Team ("PET") will be established to evaluate the Proposals for each project.

Expert advisors may be used to support and advise the PET during the evaluation.

The PET will make recommendations to the Secretary of the Ministry of Infrastructure Cook Islands for approval.

Evaluations will be conducted against the criteria for the project outlined in the tables below. WATSAN reserves the right to deem any Proposal non-conforming and to vary or amend the evaluation methodology at its sole discretion.

Proposals Evaluation Criteria	Weighting
▪ Price:	25%
▪ Relevant Experience:	20%
▪ Excellent relationship management and communication skills,	10%
▪ Qualifications and experience in relevant technical disciplines	20%
▪ Methodology and work plan	15%
▪ Use of local human resources and companies	10%

## **6 Acceptance of Proposals**

### **6.1 WATSAN's Right to Accept or Reject**

Each Proposer agrees that WATSAN, in its sole discretion, may:

- (a) amend, suspend, re-issue, or discontinue the RFP, or any part of the RFP, on notice to the Proposers, at any time, for any reason, whether prior to or following the Proposal Submission Deadline;
- (b) delete, change or add to any project requirements or deadlines on notice to the Proposers, at any time, for any reason, whether prior to or following the Proposal Submission Deadline;
- (c) provide or withhold from the Proposer information in relation to any question arising in relation to this RFP. Information will only be withheld if it is deemed unnecessary, is commercially sensitive, or is inappropriate to supply at the time of the request; and/or
- (d) exclude any Proposer from the RFP process where the Proposer has breached a term or condition of this RFP;
- (e) require further clarification on any information or pricing supplied in any Proposals;
- (f) negotiate with any individual Proposer at any time, without disclosing this to, or doing the same with, any other Proposer;
- (g) accept any Proposal even though it may not be the highest scoring Proposal;
- (h) accept any Proposal even though it may not be in accordance with this RFP;
- (i) reject any or all Proposals that are over the allocated budget of NZ\$29,500.00, including the highest scoring Proposal;
- (j) accept any Proposal, at any time, prior to the expiry of the Proposal Validity Period;
- (k) re-advertise for further or additional Proposals;
- (l) waive any irregularities or informalities in the RFP procedure or a Proposal.

### **6.2 Acceptance of Proposals**

WATSAN may award the project to one Proposer or may award parts of the project to different Proposers or may choose not to award the project to any Proposer:

### **6.3 Notification of Acceptance**

If no Proposal has been accepted by the expiry of the Proposal Validity Period, each Proposer shall be notified in writing by WATSAN as to whether or not its Proposal is still under consideration.

### **6.4 Successful Proposer**

The successful Proposer(s) will be invited by WATSAN to execute a contract for services. No contract shall arise with the successful Proposer(s) and accordingly, no contract shall be binding upon WATSAN until such time as WATSAN has executed a contract for services.

## **6.5 Unsuccessful Proposers**

Unsuccessful Proposers who have submitted bona fide Proposals will be so advised by WATSAN in writing. No details of the Proposal evaluation will be disclosed by WATSAN, except to the extent that WATSAN may elect to do so.

## **6.6 Proposals not Returned**

No part of a Proposal submitted by a Proposer will be returned.

# **7 General Conditions of RFP**

## **7.1 Invitation not an Offer**

Except for the express provisions of this paragraph 7.1, no contract or other legal obligations shall arise between WATSAN and any Proposer out of, or in relation to, this RFP or RFP process, until a formal written contract (if any) is signed. By submitting a Proposal, the Proposer agrees to be bound to Section 4 of this RFP.

## **7.2 Acknowledgement of Proposer**

Each Proposer acknowledges that WATSAN has reserved to itself certain rights and discretions in this RFP and agrees that it assumes, at its sole cost, the risk that WATSAN may at any time exercise any of these rights and discretions. Each Proposer agrees that it shall not have any rights and further waives any rights it may have against WATSAN, or any other person arising from the exercise by WATSAN of its rights and discretions and agrees not to make any claim, bring any action, or otherwise seek to recover from WATSAN, or any other person associated with WATSAN, any of the costs incurred by that Proposer in respect of its Proposal or any lost expectation of profits or other benefits which that Proposer may expect to accrue to it from any acceptance of its Proposal.

## **7.3 Confidentiality of Information**

WATSAN agrees that it will not use the documentation and other information received by WATSAN from the Proposer in response to this RFP, including during any negotiation or discussions with the Proposer, for any purpose other than evaluating the Proposer's response to this RFP.

Prior to the discussion in relation to Proposals received and negotiations in relation to Proposals, WATSAN may request that the Proposers enter into a formal confidentiality agreement.

Proposers must not issue any public statement in relation to this RFP, or any subsequent contract awarded, without the prior written approval of WATSAN.

## **7.4 Ethics**

Proposers must direct all enquiries to WATSAN's contact person named in section 3. Proposers must not directly or indirectly approach, contact, lobby or solicit information concerning any aspect of this RFP from any other representative of WATSAN.

Proposers must not attempt to influence or provide any form of personal inducement, reward or benefit to any other representative of WATSAN.

Any Proposer who attempts to do anything prohibited by this section 7.4 may be disqualified from this RFP.

## **7.5 Hard Copy Prevails**

In the event of any conflict between the printed copy of this RFP and any electronic copies of all or any part of the RFP provided to a Proposer, the Proposer shall seek clarification from WATSAN. Pending such clarification, the printed copy of this RFP shall prevail.

## **7.6 Proposers to Inform Themselves**

Each Proposer shall be deemed to have inspected the Sites, examined the RFP Documents and any other information supplied in writing to have satisfied itself as far as is practicable for an experienced consultant before submitting Proposals as to the correctness and sufficiency of its proposal for the services and of the prices stated in its Proposal.

## **7.7 Language of Proposals**

Each Proposal and all correspondence and documents relating to that Proposal shall be written in English.

## **7.8 Governing Law**

This RFP is governed by Cook Island law and the Cook Island courts have exclusive jurisdiction to all matters relating to it.

# **8 Proposal Submissions**

## **8.1 General information**

All Proposals must include (but are not limited to) the following information:

- Proposer's details, including full legal name, registration details, and contact details;
- A statement of the Proposer's general expertise;
- Curriculum Vitae for all relevant personnel who would perform the services for WATSAN (limited to 2 pages per personnel member);
- Details of professional indemnity insurance held (including a certificate of currency);
- A completed conflict of interest declaration;
- Confirmation of acceptance of the terms of the contract for services attached at Schedule 6. If the Proposer is unable to agree any clause, it must set out in a table form with the clause, reference, reason why the Proposer cannot accept it and proposed alternative wording.

## **8.2 Skills and Experience in Sludge Management**

All Proposals must include (but are not limited to) the following information

- Proof of relevant accreditation/certifications/ held by the Proposer and all personnel who would perform the services
  - Evidence of the Proposer's relevant experience and expertise in designing and carrying out sludge management assessments
  - Evidence of ability to resource and meet the requirements of this project.
  - Summaries of at least three similar projects together with details of referees who may be contacted in relation to the work of the Proposer in carrying out those projects.
  - Description of how the Proposer intends to execute the specified work so as to meet delivery within the stated period for completion, including an outline programme detailing the timelines for the deliverables and details of the proposed roles and responsibilities of each of the professional and technical staff proposed by the Proposer as members of the project team.
-

- Completed Schedule of Rates in the form set out in Schedule 1.

## **9 Existing Reports**

### **9.1 Existing Reports on Wastewater Treatment and Disposal Options for the Cook Islands**

- A number of existing reports contain information that will be relevant to the work to be carried out under this contract. A list of the key reports is set out below. These reports will be made made available to the successful Proposer. The reports will not be provided as part of the RFP process.
  - a) (list and authors of the reports to be provided)

## SCHEDULE 1: PRICING SCHEDULE

Pricing information must be provided in the format set out as per Table A below. If a Proposal does not provide pricing information in the format of this Table, it will not be accepted. Proposers may insert additional rows of detail to show costs associated with personnel, travel etc.

### 1. TABLE A

<b>PROJECT COST BREAKDOWN</b>			
<b>Item</b>	<b>Description</b>	<b>Cost (NZ\$)</b>	<b>Total (NZ\$)</b>
(1)	Assessment of the wastewater septage ponds to include the calculation of approximate maximum loads of sludge that will come from the additional sanitation systems and assess whether the ponds current capacity, condition and operation is adequate to deal with the additional sludge volumes calculated		
	(1)(a) Rarotonga Waste Facility		
	(1) (b) Aitutaki Waste Facility		
(2)	Undertake an environmental impact assessment of existing sludge treatment and disposal arrangements		
	(2)(a) Rarotonga Waste Facility		
	(2)(b) Aitutaki Waste Facility		
(3)	Reporting		
(4)	Return airfares and accommodation:		
	(4)(a) Rarotonga		
	(4)(b) Aitutaki		
		SUB-TOTAL	
(5)	Cook Islands VAT (applicable only to goods and services provided in the Cook Islands by companies registered in the Cook Islands)	VAT (15%)	
(6)	Other applicable taxes (e.g. NZ GST)	Other tax	
		TOTAL	



**SCHEDULE 2:**

**REQUEST FOR PROPOSALS ACKNOWLEDGEMENT**

**[Date]**

**TO:**

Secretary  
Ministry of Infrastructure Cook Islands  
COOK ISLANDS

**Attention:**

Tangi Taoro

**REQUEST FOR PROPOSALS ACKNOWLEDGEMENT – SLUDGE MANAGEMENT ASSESSMENT FOR RAROTONGA AND AITUTAKI CW001/2015**

1. We acknowledge receipt of your Request for Proposals dated [insert date that RFP is issued] for the above project and confirm our acceptance of the RFP terms and conditions set out in that documentation.
2. We nominate the following person(s) to communicate with WATSAN (and its advisers) on our behalf in relation to the Request for Proposals and our Proposals:

Name of Person(s): \_\_\_\_\_

Position of Person(s): \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**[Name of company signing the acknowledgement]**

\_\_\_\_\_

**[Name of person signing]**

\_\_\_\_\_

Authorised Signatory

**Notes:**

1. Each party comprising the Proposer, if more than one party, should sign this acknowledgement.
2. Please return this acknowledgement duly signed by the Proposer to (.....) by [insert date].

\_\_\_\_\_



**SCHEDULE 3:**

**CONFLICT OF INTEREST DECLARATION**

**SLUDGE MANAGEMENT ASSESSMENT FOR RAROTONGA AND AITUTAKI CW001/2015**

The Proposer hereby confirms that it, and its staff, consultants and partners do not have and are not aware of any actual or potential conflicts of interest which may arise between the Cook Islands Government (including any ministry or agency) and the Proposer, or otherwise in connection with the Sludge Management Assessment for Rarotonga and Aitutaki Project (as described in the Request for Proposals) unless indicated below.

Are you aware of any actual or potential conflicts of interest?

No

There are no conflicts of interest.

Please provide details of your strategy for identifying, managing and preventing conflicts of interest during the contract period.

[enter text]
--------------

Yes

Please provide details of any engagements, obligations or commitments that the Proposer or any of its staff, consultants and partners have or are likely to acquire which may give rise to any actual or potential conflict of interest with any of the services that may be required as a result of this process or in connection with the proposed contract.

[enter text]
--------------

If "Yes" please advise your strategy for managing the conflicts of interest noted above, and identifying and preventing conflicts of interest during the contract period.

[enter text]
--------------

Proposer Name	[enter text]
Authorised Signature	
Date	

**SCHEDULE 4:**

**CONTRACT FOR SERVICES**

***Note to Proposers: This contract contains the applicable terms and conditions and will be completed as appropriate for the successful Proposer taking into account the services to be provided. Some terms may not be relevant depending on the services awarded.***



**GOVERNMENT OF THE COOK ISLANDS**

# **MINISTRY OF INFRASTRUCTURE COOK ISLANDS**

## **CONTRACT FOR SERVICES (Contract)**

***SLUDGE MANAGEMENT ASSESSMENT FOR RAROTONGA AND  
AITUTAKI - CW001/2015***

**between**

**Ministry of Infrastructure Cook Islands  
(Buyer)**

**and**

**[Supplier's Full Legal Name]  
(Supplier)**

Contract Number: [            ]

# The Contract

The Ministry of Infrastructure Cook Islands (ICI), wishes to engage the Supplier to undertake the assessment of the sludge management on the islands of Rarotonga and Aitutaki (Services). The Supplier agrees to provide the Services to ICI on the basis of the terms and conditions contained in this Contract.

## Contract Documents

This Contract consists of:

pages 1 and 2;

the Contract Details and Description of Services at Schedule 1; and

the Standard Terms and Conditions at Schedule 2,

as amended from time to time in accordance with this Contract.

If there are any differences between the documents, Schedule 1 overrides Schedule 2.

## Acceptance

**For and on behalf of the Ministry of Infrastructure Cook Islands**

**For and on behalf of the Supplier**

---

---

*Signature*

*Signature*

---

*Full name*

---

*Full name*

---

*Position*

---

*Position*

---

*Date*

---

*Date*

# Schedule 1

## Contract Details and Description of Services

### 1. Term of Contract

Reference Schedule 2 clause 1

<b>Start Date</b>	
<b>End Date</b>	

### 2. Scope of Services

*Description of the Services*

*[to complete]*

### 3. Outputs

*Outputs*

*[to complete]*

### 4. Performance Standards

Reference Schedule 2 clause 2.3

*[to complete]*

### 5. Supplier's Approved Personnel

Reference Schedule 2 clause 2.7

<b>Name:</b>	
<b>Position:</b>	
<b>Specialisation:</b>	

### 6. Fees

Reference Schedule 2 clause 3

*[to complete]*

## 7. Expenses

Reference Schedule 2 clause 3

***[to complete]***

## 8. Per Diems and Allowances

Reference Schedule 2 clause 3

***[to complete]***

## 9. Payment and Reporting

Reference Schedule 2 clauses 3 and 5

***[Payment Schedule to be completed]***

## 10. Contract Managers

Reference: Schedule 2 clause 4

	ICI's Contract Manager	Supplier's Contract Manager
<b>Name:</b>		
<b>Title/position:</b>		
<b>Physical address:</b>		
<b>Postal address:</b>		
<b>Phone:</b>		
<b>Fax:</b>		
<b>Email:</b>		

## 11. Addresses for Notices

Reference Schedule 2 clause 14

	ICI's address	Supplier's address
<b>For the attention of:</b>		
<b>c.c.</b>		
<b>Delivery address:</b>		
<b>Postal address:</b>		
<b>Fax:</b>		
<b>Email:</b>		

## 12. Attachments

Reference 'Contract documents'

The following documents are attached to Schedule 1:  
**[to insert if relevant]**

# Schedule 2: Standard Terms and Conditions

## 1. Term of Contract

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

## 2. The Services

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### **Both Parties' obligations**

- 2.1 Both Parties agree to:
  - a. act in good faith and demonstrate honesty, integrity, openness, and accountability in their dealings with each other;
  - b. discuss matters affecting this Contract or the delivery of the Services, whenever necessary;
  - c. notify each other immediately of any actual or anticipated issues that could:
    - i. significantly impact on the Services;
    - ii. impact the cost of the Services;
    - iii. be the subject of a request for official information under the Official Information Act 2008 (CI) or a complaint to the Cook Islands Ombudsman under the Ombudsman Act 1984 (CI); or
    - iv. receive media attention.
  - d. not at any time do anything that is likely to adversely affect the reputation, good standing or goodwill of either Party; and
  - e. comply with all applicable laws, regulations and codes of conduct.

### **Buyer's obligations**

- 2.2 The Buyer will:
  - a. provide the Supplier with any information it has reasonably requested to enable the delivery of the Services;
  - b. make decisions and give approvals reasonably required by the Supplier to enable delivery of the Services. All decisions and approvals are to be given within reasonable timeframes; and
  - c. pay the Supplier the Charges for the Services as long as the Supplier has achieved the relevant Milestone, including completing the Outputs required in relation to that Milestone, to ICI's reasonable satisfaction and invoiced the Buyer in accordance with this Contract.



## **Supplier's obligations**

- 2.3 The Supplier must deliver the Services in accordance with the terms and conditions of this Contract including, but not limited to:
- a. by the specified due dates and to the required standards or quality set out in Schedule 1;
  - b. within the amounts agreed as the Total Contract Price; and
  - c. diligently, effectively and to a high professional standard.
- 2.4 The Supplier warrants that:
- a. its Personnel have the necessary skills, experience, training and resources to successfully deliver the Services;
  - b. it will provide all equipment and resources necessary to deliver the Services;
  - c. it has all the regulatory licences, permits or other authorisations necessary to deliver the Services and carry out all other activities as contemplated by this Contract;
  - d. all information, statements and representations it disclosed or made to the Buyer in connection with itself and the Services, are true and correct, do not omit any material matter, and are not likely to mislead or deceive the Buyer as to any material matter;
  - e. neither the Supplier's performance of its obligations under this Contract nor the Supplier carrying out the Services infringes or will infringe any rights of third parties; and
  - f. reports produced by the Supplier shall be factually correct, accurate and truthful in every respect and shall not contain false information or be ambiguous or misleading.
- 2.5 The Supplier acknowledges that the Services are being paid for by public funds and undertakes to assist the Buyer by ensuring that transparent, efficient and effective financial and operational processes are used to manage the Contract.
- 2.6 The Supplier must use good procurement practice in letting any subcontract or the purchase of goods or services under this Contract. Good procurement practice means acting with integrity, being open, fair and accountable and achieving value for money.
- 2.7 The Supplier must use any Approved Personnel identified in Schedule 1 in delivering the Services.
- 2.8 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.

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

### 3. Invoicing and Payment

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#### **Invoicing**

- 3.1 The Supplier must provide valid and accurate Tax Invoices for all Charges on the dates or at the times specified in Schedule 1.

#### **Payment**

- 3.2 Payment will normally be made within twenty Business Days of receipt of an accurate and valid Tax Invoice. The Buyer's obligation to pay is subject to clauses 3.3 and 11.7.
- 3.3 The Buyer may withhold payment of the Charges:
- a. if the Supplier fails to deliver the Services or to achieve the relevant Milestone and Outputs in Schedule 1 to the Buyer's reasonable satisfaction in accordance with this Contract;
  - b. if the Buyer disputes a Tax Invoice, or any part of a Tax Invoice, until the dispute in relation to the Tax Invoice is resolved. The Buyer will pay any portion of a Tax Invoice that is not in dispute on receipt of an amended Tax Invoice and credit note;
  - c. to match any reduction in the level of Services where the Supplier has notified the Buyer of an Extraordinary Event;
  - d. where the Supplier has consistently failed to actively and positively participate and engage in communications and/or meetings with the Buyer, or fails to take direction from the Buyer; and
  - e. where the Supplier submits a report that does not conform with the requirements of this Contract.
- 3.4 A payment by the Buyer under this Contract is not evidence of:
- a. the Supplier's satisfactory performance of its obligations under this Contract;
  - b. acceptance of the Services by the Buyer; or
  - c. an admission of liability.
- 3.5 If, for any reason, the Buyer makes an overpayment to the Supplier for all or part of the Services, the Buyer may notify the Supplier in writing of the Buyer's intention to off-set the amount of the overpayment against any amount the Buyer owes the Supplier for the relevant Services or part of the Services under the Contract or any other contract the Buyer has with the Supplier. If there is no

amount owed by the Buyer, then the Supplier will refund to the Buyer the amount paid in excess within ten (10) Business Days of the Buyer's request for a refund.

### **Per Diems and Allowances**

- 3.6 The actual Allowance claimable by the Supplier may be adjusted to exclude any meals provided to the Supplier's Personnel during the provision of the Services or included as part of the actual accommodation cost. If Per Diems are payable these may also be adjusted if meals and/or accommodation are no longer required.
- 3.7 For the avoidance of doubt, if the Supplier negotiates an airfare and/or accommodation package representing an overall cost saving, the Buyer will reimburse the Supplier for the full cost of the package.

## **4. Contract Management**

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### **Changing the Contract Manager**

- 4.1 If a Party changes their Contract Manager they must tell the other Party, in writing, the name and contact details of the replacement within five (5) Business Days of the change.

## **5. Records, Reports and Information**

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### **Keeping Records**

- 5.1 Both Parties must keep and maintain full and accurate Records relating to this Contract and delivery of the Services. The Records must be easy to access and kept safe.
- 5.2 The Records must be accessible to the Buyer during the life of the Contract and for a minimum of seven (7) years after the End Date.

### **Reports**

- 5.3 The Supplier must prepare and give to the Buyer the reports stated in Schedule 1. All reports must:
  - a. be provided by the due dates stated in Schedule 1;
  - b. be in a format required by the Buyer in Schedule 1 and include any other information reasonably requested by the Buyer; and
  - c. be presented in a manner that allows the Buyer to easily and properly assess the Supplier's progress and the achievement of Outputs under this Contract.
- 5.4 The Buyer may from time to time request informal reports, updates or consultations on the Contract or Services.

## **Information**

- 5.5 The Supplier must give to the Buyer any Records or other information reasonably requested.
- 5.6 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.
- 5.7 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 the Buyer's statutory, parliamentary or other reporting obligations.

## **6. The Contractual Relationship**

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### **Permission to transfer rights or obligations**

- 6.1 Except as provided for under clause 7.1(b), 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.

### **No partnership, agency or employment**

- 6.2 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 VAT, corporate, personal and withholding taxes or other levies attributable to the Supplier's business or the engagement of its Personnel.

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

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

## **7. Subcontractors**

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### **Rules about subcontracting**

- 7.1 The Supplier may use Subcontractors to meet any of its obligations relating to the Services as follows:
  - a. For Subcontractors who are to be included in Schedule 1 as Approved Personnel, the Supplier must seek the Buyer's written consent through a Variation to the Contract in accordance with clause 19 prior to a change or substitution taking place.
  - b. For all other Personnel, the Supplier is solely responsible for their appointment and, if required, may make changes or substitutions without the Buyer's consent.

### **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:
- a. each Subcontractor is fully aware of the Supplier's obligations under this Contract; and
  - b. 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 any aspects of the Services are subcontracted.

## **8. Insurance and Indemnity**

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### **Supplier to maintain insurance cover**

- 8.1 The Supplier will maintain such insurance cover as is usual for entities undertaking operations in the nature of those undertaken by the Supplier in respect of the Services. Unless agreed otherwise by the Parties in writing, the Supplier must:
- a. take out and maintain that insurance cover for the duration of this Contract and for a period of three (3) years after the End Date; and
  - b. within ten (10) Business Days of a request from the Buyer provide a copy of the insurance policy, an explanation of the risks it covers, and a certificate proving that the policy is current.

### **Indemnity**

- 8.2 The Supplier indemnifies and holds harmless the Buyer from and against all costs, claims, damages, losses, liabilities and expenses (including legal expenses on a solicitor-client basis) relating to this Contract that arise directly or indirectly from the negligent or wilful act or omission of, or breach of this Contract by, the Supplier or the Supplier's Personnel.

## **9. Conflicts of Interest**

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### **Managing Conflicts of Interest**

- 9.1 The Supplier warrants that as at the Start Date:
- a. it has no Conflict of Interest in providing the Services or entering into this Contract; or
  - b. a Conflict of Interest has been declared and the Parties have discussed, agreed and recorded in writing how it will be managed (provided the Conflict of Interest is one that can be managed).
- 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 how it will be managed (provided the Conflict of Interest is one that can be managed). Each Party must pay their own costs in relation to managing a Conflict of Interest.

## **10. Resolving Disputes**

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### **Steps to resolving disputes**

- 10.1 The Parties agree to use all reasonable endeavours to resolve any dispute or difference that may arise under this Contract. The following process will apply to disputes:

- a. A Party must notify the other if it considers a matter is in dispute.
- b. The Contract Managers will attempt to resolve the dispute through direct negotiation.
- c. If the Contract Managers have not resolved the dispute within ten (10) Business Days of notification, they will refer it to the Parties' Senior Managers, or equivalent, for resolution;
- d. If the Senior Managers, or equivalent, have not resolved the dispute within ten (10) Business Days of it being referred to them, the Parties will refer the dispute to mediation or some other form of alternative dispute resolution.

- 10.2 If a dispute is referred to mediation, the mediation will be conducted:

- a. by a single mediator agreed by the Parties, or if they cannot agree, appointed by the Chief Justice of the High Court of the Cook Islands;
- b. on the terms of the LEADR standard mediation agreement subject to any modification that might be agreed by the Parties; and
- c. at a fee to be determined by the mediator, such fee to be paid by the Parties in equal shares.

- 10.3 Each Party will pay its own costs of mediation under clause 10.2 or alternative dispute resolution.

### **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 they have complied with the process described in clause 10.1 and 10.2, unless court action is necessary to preserve a Party's rights.

## 11. Ending this Contract

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### **No fault termination**

11.1 The Buyer may terminate this Contract:

- a. at any time by giving 20 Business Days' Notice to the Supplier; or
- b. immediately by giving Notice to the Supplier if the termination is due to a change in Cook Islands Government policy or a change in Cook Islands Government appropriation.

### **Immediate termination**

11.2 The Buyer may terminate this Contract immediately, by giving Notice, if the Supplier:

- a. becomes bankrupt or insolvent;
- b. has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed or otherwise becomes subject to any form of external administration;
- c. ceases for any reason to continue in business or to deliver the Services;
- d. is unable to deliver the Services for a period of 20 Business Days or more due to an Extraordinary Event;
- e. is in breach of any of its obligations under this Contract and the breach cannot be remedied in ICI's opinion;
- f. repeatedly fails to perform or comply with its obligations under this Contract whether those obligations are minor or significant;
- g. does something, or fails to do something, that, in the Buyer's opinion, results in damage to the Buyer's reputation or business, or the reputation or business of the Cook Islands Government;
- h. has a Conflict of Interest that in the Buyer's opinion is so material as to impact adversely on the delivery of the Services, the Buyer or the Cook Islands Government;
- i. provides information to the Buyer that is intentionally misleading or inaccurate in any material respect; or
- j. knowingly or unknowingly provides direct or indirect support or resources to organisations and/or individuals associated with terrorism, notwithstanding clause 17.

### **If a breach has not been remedied**

11.3 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.

11.4 A Default Notice must state:

- a. the nature of the failure;

- b. what is required to remedy it; and
  - c. the time and date by which it must be remedied.
- 11.5 The period allowed to remedy the failure must be reasonable given the nature of the failure.
- 11.6 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.
- 11.7 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**

- 11.8 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 costs and expenses.

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

- 11.9 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 expiry.
- 11.10 If this Contract is terminated the Buyer will only be liable to pay Charges that were due for Services delivered before the effective date of termination.

### **Handing over the Services**

- 11.11 The Supplier will, within ten (10) Business Days of receiving Notice of termination, 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.
- 11.12 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 three (3) months from the date of termination and at a reasonable fee to be agreed between the Parties, based on the Fees and Expenses provided for in this Contract.



## 12. Intellectual Property Rights

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

- 12.1 Pre-existing Intellectual Property Rights remain the property of their current owner.
- 12.2 New Intellectual Property Rights in the Outputs become the Buyer's property when they are created, unless otherwise agreed.
- 12.3 The Supplier grants to the Buyer a perpetual, non-exclusive, transferable, worldwide and royalty-free licence to use, for any purpose, any Pre-existing Intellectual Property Rights in the Outputs. This licence includes the right to:
- a. use;
  - b. copy;
  - c. modify; and
  - d. distribute;
- any materials to which the licence relates.
- 12.4 The Supplier acknowledges that ICI may grant a licence in relation to any Pre-existing Intellectual Property Rights in the Outputs on the same terms as set out in clause 12.3 to a Cook Islands Public Service agency, or third party (including a partner government). Where appropriate, ICI may acknowledge the owner of any Pre-existing Intellectual Property Rights when granting a licence.

### **Supplier indemnity**

- 12.5 The Supplier warrants that it is legally entitled to do the things stated in clause 12 with the Intellectual Property Rights in the Outputs.
- 12.6 The Supplier indemnifies the Buyer in respect of any expenses, damage or liability incurred by the Buyer in connection with any third party claim that the delivery of the Services or Outputs to the Buyer, or the Buyer's use of the Outputs, 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

---

### **Permission to release Confidential Information**

- 13.1 Each Party undertakes not to use or disclose the other Party's Confidential Information to any person or organisation other than:
- a. to the extent that use or disclosure is necessary for the purposes of providing the Services;
  - b. if the other Party gives prior written approval to the use or disclosure;
  - c. if the use or disclosure is required by law (including under the Official Information Act 2008 (OI) or parliamentary convention; or
  - d. 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 their Personnel:

- a. are aware of the confidentiality obligations in this Contract; and
- b. do not use or disclose any of the other Party's Confidential Information except as allowed by this Contract.

## 14. Notices

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### **Delivery of Notices**

14.1 All Notices to a Party must be delivered by hand or sent by post, courier, fax or e-mail to that Party's address for Notices stated in Schedule 1.

14.2 Notices must be signed by the appropriate manager or person having authority to do so.

### **Receipt of Notices**

14.3 A Notice will be considered to be received:

- a. if it is delivered by hand, on the date it is delivered;
- b. if it is sent by post within Cook Islands, on the third (3<sup>rd</sup>) Business Day after the date it was sent;
- c. if it is sent by post internationally, on the tenth (10<sup>th</sup>) Business Day after the date it was sent;
- d. if it is sent by courier, on the date it is delivered;
- e. if it is sent by fax, on the sender receiving a fax machine report that it has been successfully sent; or
- f. if it is sent by e-mail, at the time the e-mail enters the recipient's information system.

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

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### **No fault if failure to deliver**

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:

- a. the nature of the circumstances giving rise to the Extraordinary Event;
- b. the extent of that Party's inability to perform under this Contract;
- c. the likely duration of that non-performance; and

- d. what steps are being taken to remedy, or reduce the impact of the Extraordinary Event on the delivery of Services.

### **Alternative arrangements**

15.3 The Buyer may, after consulting with the Supplier, make alternative arrangements to ensure performance of the Services during the period affected by the Extraordinary Event, including engaging alternative suppliers. If the Buyer makes alternative arrangements, it does so at its own cost.

## **16. Anti-Corruption**

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16.1 Both Parties warrant that they shall not make, cause to be made, nor receive any offer, gift (over the value of NZ\$100), payment, consideration, inducement, reward or benefit of any kind, which would, or could be construed as an illegal, unethical, or Fraudulent practice. Any such conduct may be grounds for immediate termination of this Contract, or the taking of such corrective action as the other Party deems appropriate.

16.2 Where either Party, or a Party's Personnel, is investigated for Fraud, or where there is a finding of Fraud against either Party or a Party's Personnel, or where a Party's Personnel is convicted of a serious criminal offence that brings that Party, or the Buyer into disrepute, or the nature of the conviction is incompatible with the objective(s) of the Contract and Services, this event may be grounds for the other Party to immediately terminate this Contract by giving notice in writing to the other Party.

16.3 The Supplier undertakes to report to the Buyer within five (5) Business Days all suspected or detected Fraud and consult the Buyer before the matter is referred to police. The Buyer reserves the right to investigate cases of suspected or detected Fraud.

## **17. Anti-Terrorism**

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17.1 The Supplier must use its best endeavours to ensure that payments made under this Contract do not provide direct or indirect support or resources to organisations and/or individuals associated with terrorism. If the Supplier discovers any link whatsoever with any organisation or individual associated with terrorism it must inform the Buyer immediately.

## **18. Variations**

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### **Variations to this Contract**

18.1 Any change to this Contract must be made in accordance with clause 19, unless it is considered by the Buyer in discussion with the Supplier to have no material effect on the cost or nature of the Services.

18.2 Where the Buyer, in discussion with the Supplier, determines that the nature of the change is minor, the Variation may be completed through an exchange of emails between the Buyer and the Supplier. The email exchange must be completed prior to the Contract expiring and before the change is intended to take effect. The email must clearly state:

- a. what the Variation is and any other consequential amendments;
- b. the reason for the Variation; and
- c. any other information the Buyer reasonably requires.

The return email must clearly provide the Supplier's unconditional acceptance of the Variation.

18.3 Where the Buyer, in discussion with the Supplier, determines that the nature of the change is significant, the Variation must be set out in a letter signed by both Parties. Where practicable, the first Party to sign will scan the letter and email it to the other Party, who will print the letter, sign it, re-scan it and return it by email so that both Parties have a counter-signed copy for their records. Where it is not practicable to exchange the letter as a scanned image, the first Party will sign two originals and deliver them by courier, post, facsimile or by hand to the other Party for signature. The other Party will sign both copies and return one to the first Party so that both have one counter-signed original for their records.

## 19. General

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

19.1 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**

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

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

### **Enforceability**

19.3 If any provision in this Contract is lawfully held to be illegal, unenforceable or invalid, that provision will be deemed to be deleted and will not affect the legality, enforceability or validity of the rest of this Contract.

### **No intention to confer benefits on other people**

19.4 Nothing in this Contract is intended to confer any enforceable rights or benefits on any person accessing Services provided under this Contract, or anyone other than the Buyer and Supplier, except as provided in clause 12 (Intellectual Property Rights).

### **Jurisdiction**

19.5 This Contract will be governed and interpreted in accordance with the laws of Cook Islands and subject to the exclusive jurisdiction of Cook Islands courts. Dates and times are Cook Islands time.

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

19.6 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.

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

### **Clauses that remain in force**

19.8 The clauses that by their nature should remain in force on expiry or termination of this Contract do so, including clauses 5 (Records, Reports and Information), 8 (Insurance and Indemnity), 10 (Resolving Disputes), 11 (Ending this Contract), 12 (Intellectual Property Rights), 13 (Confidential Information), 17 (Anti-Terrorism), 19 (General) and 20 (Definitions).

## **20. Definitions**

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**Allowance** An amount payable to the Supplier to cover living expenses for the Supplier's Personnel required to travel and stay overnight within their own country of residence, or within another country, if and as provided for in Schedule 1. No receipts are required for Allowances. An Allowance is similar to a Per Diem. A meal allowance is a form of Allowance.

**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 or add them without a Variation in accordance with clause 19. Substitution of Approved Personnel by a person with a higher or similar qualification(s) and experience must be done at the previously agreed Fee rate for that position. Where the person has lower qualifications and/or experience the Buyer may negotiate a reduction in the Fee rate.

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

**Charges** Charges is the collective term for the Fees, Expenses, Per Diems and Allowances provided for in Schedule 1. Charges are payable on successful delivery of the Services and otherwise in accordance with this Contract, provided a valid and accurate Tax Invoice has been submitted to ICI.

**Confidential Information** Information that:

- i. is by its nature confidential;
- ii. is marked by either Party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence';
- iii. is provided by either Party, or a third party 'in confidence';
- iv. either Party knows or reasonably ought to know is confidential or commercially sensitive.

**Conflict of Interest** A conflict of interest happens if a person's (including the Supplier's) personal interests or obligations conflict with the responsibilities of their job or position (including as a Party to this Contract). It means that their independence, objectivity or impartiality can be called into question. While conflicts of interest should be avoided wherever possible, conflicts often happen without anyone being at fault. It is not necessarily the emergence of a conflict of interest which is an issue, it is how it is managed that matters more. A conflict of interest may be:

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

**Contract Manager** The person named in Schedule 1 as the Contract Manager who is responsible for managing this Contract on behalf of one of the Parties. The Contract Managers are the day to day contacts for routine communications regarding this Contract and the Services. They are responsible for:

- i. managing the relationship between the Parties;
- ii. overseeing the effective implementation of this Contract; and
- iii. acting as a first point of contact for any issues that arise.

**Daily Fee Rate** If the Supplier's fee rate is expressed as a daily rate this is the fee payable for each day worked in the delivery of Services. One day's work is defined as a minimum of eight hours. If the Supplier's Personnel work for more than eight hours in a 24 hour period, ICI pays for only one fee day. The Supplier will be paid for travel time in such manner as is agreed by the Parties, other than normal commuting time.

If the Supplier works less than a full day the Fee will be calculated based on the time worked at the agreed daily rate  $\div$  8 x hours worked. Note: ICI's default is the Daily Fee Rate rather than the Hourly Fee Rate.

**End Date** The date this Contract is due to end as stated in Schedule 1.

**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:

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

**Fee(s)** 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, Per Diems and Allowances.

**Fraud** means a deliberate deceit by Personnel, undertaken in order to obtain a benefit for themselves and/or someone else. This includes such acts as theft, conspiracy, bribery, corruption, misappropriation, falsification of documents, non-authorized release of information, collusion and influencing decisions that will result in a personal benefit. **Fraudulent practice** has a corresponding meaning.

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

**Intellectual Property Rights** An intangible asset that consists of human knowledge or ideas. Some examples are patents, copyrights, trademarks, design, software and similar industrial, commercial or artistic property. It can include modifications, upgrades and versions.

**Milestone** A phase or stage in the delivery of the Outputs that upon ICI's assessment of satisfactory completion may result in the payment of some or all of the Fees.

**Notice** A formal or legal communication from one Party to the other. It must be in writing and meet the requirements of clause 14 (Notices).

**Outputs** All products (including reports), tasks and key requirements that the Supplier must perform or deliver under this Contract as set out in Schedule 1 and any Costed Workplan.

**Parties** The Parties to this Contract are ICI and the Supplier.

**Per Diems** An amount payable for each night's accommodation, meals and incidentals for the Supplier's Personnel whilst working in the Cook Islands, if and as provided for in Schedule 1. No receipts are required for Per Diems.

**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.

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

**Public Service agency** Any Cook Islands Government department or agency.

**Records** All information and data necessary for the management of this Contract and the delivery of Services. It includes reports, invoices, letters, e-mails, notes of meetings, photographs and other media recordings. Records can be hard copies or soft copies stored electronically.

**Start Date** The date specified in Schedule 1 being the date this Contract starts.

**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.

**Tax Invoice** The Supplier must invoice the Buyer for the Services. The invoice must be a valid Tax Invoice which means it must:

- i. clearly show all VAT due;
- ii. be clearly marked 'Tax Invoice';
- iii. include the Supplier's name and VAT number, if the Supplier has one;
- iv. include the Buyer's name and address and marked for the attention of the Buyer's Contract Manager, or such other person stated in Schedule 1;
- v. state the date the invoice was issued; and
- vi. name this Contract and 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.

The invoice must also:

- i. include the Buyer's purchase order number if there is one;
- ii. correctly calculate the Charges due; and
- iii. be supported by receipts (or VAT receipts where applicable) if Expenses are claimed and any other verifying documentation reasonably requested by the Buyer.

**Total Contract Price** The maximum price payable by ICI, as stated in Schedule 1.

**Variation** A written agreement between the Parties in accordance with clause 19 of Schedule 2 that changes any material aspect of this Contract. A change to a material aspect of this Contract is a change that creates an obligation of sufficient importance to the delivery of the Services that failure to meet it would result in a dispute and which, if unable to be enforced,



has the potential to prejudice the delivery of the Services or the reputation of one of the Parties.

**VAT** The value added tax payable in accordance with the Value Added Tax Act 1997 (CI).

**SCHEDULE 5:**

**1. MAP OF THE RAROTONGA WASTE FACILITY SITES INCLUDE SEPTAGE PONDS**

**1. MAP OF THE AITUTAKI WASTE FACILITY SITES INCLUDE SEPTAGE PONDS**