

CONDITIONS OF ENGAGEMENT: CONSULTANT

The Government agrees to engage the Consultant and the Consultant agrees to provide the Services described in the Schedule.

1. **Services:** The Consultant shall perform the Services as described in the attached Schedule.
2. **Skill:** In providing the Services the Consultant shall exercise the degree of skill, care and diligence normally expected of a competent professional.
3. **Independent Judgment:** Where the Services require the Consultant to certify, decide or use discretion under a contract between the Government and a third party, the Consultant must act independently, and with professional skill and judgment, and according to the terms of the contract between the Government and the third party.
4. **Key Personnel:** The Key Personnel for the provision of the Services are as listed in the Schedule. Any change to the Key Personnel requires the written consent of the Government.
5. **Confidentiality:** The Consultant must keep confidential all information provided by the Government in relation to this Agreement and not disclose the same without the written consent of the Government.
6. **Public Statements:** The Consultant must not make any public statements about the Services or this Agreement without the Government's written approval.
7. **Delay:** If at any time the Consultant's performance falls behind the programme set out in the Schedule then the Consultant shall notify the Government and, where the delays are due to matters within the control of the Consultant, shall take all practicable steps to remedy such delay.
8. **Information:** The Government shall provide to the Consultant, as soon as practicable following any request for information, all information in his or her power to obtain which may relate to the Services. The Consultant shall not, without the Government's prior consent, use information provided by the Government for purposes unrelated to the Services.
9. **Variations:** The Government may order variations to the Services in writing or may request the Consultant to submit proposals for variation to the Services. Where the Consultant considers a direction from the Government or any other circumstance is a Variation the Consultant shall notify the Government as soon as practicable.
10. **Payment:** The Government shall pay the Consultant for the Services the fees and expenses at the times and in the manner set out in the Schedule and all amounts are payable in New Zealand dollars.
11. **Purchase of Goods:** Where Services are carried out on a time charge basis, the Consultant may purchase such incidental goods and/or services as are reasonably required for the Consultant to perform the Services. The cost of obtaining such incidental goods and/or services shall be payable by the Government provided that the Consultant first obtains the written consent of the Government. The Consultant shall maintain records which clearly identify time and expenses incurred.

12. **Liability:** Where the Consultant breaches this Agreement, the Consultant is liable to the Government for reasonably foreseeable claims, damages, liabilities, losses or expenses caused directly by the breach. Neither the Government nor the Consultant shall be liable to the other under this Agreement for indirect, consequential or special loss, or loss of profit, however arising, whether under contract, in tort or otherwise.
13. **Insurance:** The Consultant shall take out and maintain for the duration of the Services such insurances as are specified in the Schedule.
14. **Contribution to Loss:** If either Party is found liable to the other (whether in contract, tort or otherwise), and the claiming Party and/or a Third Party has contributed to the loss or damage, the liable Party shall only be liable to the proportional extent of its own contribution.
15. **Intellectual Property:** Intellectual property prepared or created by the Consultant in carrying out the Services ("New Intellectual Property") shall be owned by the Government. Intellectual property owned by a Party prior to the commencement of this Agreement and intellectual property created by a Party independently of this Agreement remains the property of that Party. The ownership of data and factual information collected by the Consultant and paid for by the Government shall, after payment by the Government, lie with the Government.
16. **Termination:** The Government may suspend all or part of the Services by notice to the Consultant who shall immediately make arrangements to stop the Services and minimise further expenditure. The Consultant may, in the event the Government is in material default, terminate the Agreement by notice to the Government. Any suspension or termination shall not prejudice or affect the accrued rights or claims and liabilities of the parties.
17. **Jurisdiction:** This Agreement is governed by the Cook Islands law and the Cook Islands courts have jurisdiction in respect of this Agreement.
18. **Assignment:** The Consultant must not assign, transfer or subcontract all or part of its rights or obligations under this Agreement without the Government's written consent, such consent to be provided at the Government's absolute discretion.
19. **General Warranties:** The Consultant represents, warrants and undertakes that:
 - a. it has full power, capacity and authority to execute, deliver and perform its obligations under this Agreement;
 - b. it has and will continue to have, all necessary consents, permissions, licences and rights to enter into and perform its obligations under this Agreement;
 - c. there are no existing agreements, undertakings or arrangements which prevent it from entering into this Agreement or which would impede the performance of its obligations under this Agreement;
 - d. it has not offered any inducement in connection with the entering into or negotiation of this Agreement; and

- e. it has not (nor is any of its representative directors or employees) a party to any litigation, proceedings or disputes which could adversely affect its ability to perform its obligations under this Agreement.
20. **Dispute Resolution:** In the event of a dispute arising between the parties in respect of any matter relating to this Agreement, the authorised representatives of the parties must resolve the dispute in the first instance by negotiation. If the dispute cannot be resolved by negotiation within five days of the notice of dispute having been served by one party on the other, the parties may seek resolution under the Arbitration Act 2014.