
COOK ISLANDS GOVERNMENT

Purchase and Sale of Goods and Services Policy Templates Booklet



This Template Booklet was last updated on 4 October 2016

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TEMPLATE BOOKLET OVERVIEW

The Purchase and Sale of Goods and Services (PSGS) Policy applies to all Cook Islands Government Agencies. Where Agency means all Ministries, Island Administrations, Crown Funded Agencies and State Owned Enterprises and “Agencies” has a corresponding meaning.

The policy must be read together with the PSGS Templates Booklet which may be amended from time to time. Templates and sample documentation referred to in the policy are published separately by MFEM and available from time to time on the MFEM website.

Templates are to assist officials in complying with the PSGS Policy and guidance is provided in the form of text that are coloured **red** and should be deleted upon the completion of the relevant section.

If you would like to change the templates or remove any aspect please contact the MFEM.

Templates can be downloaded from the MFEM website, the procurement website or from the Ministry of Finance and Economic Management. If you have any questions about how to use these documents, please contact either MFEM or Crown Law.

LIST OF TEMPLATES AVAILABLE

DECLARATION FORMS

1. Conflict of Interest Declaration – Quote
2. Confidentiality and Conflict of Interest Declaration – Tender Opening
3. Confidentiality and Conflict of Interest Declaration – Tender Team
4. Confidentiality and Conflict of Interest Declaration – Tender Evaluation

QUOTE REPORT.

5. Quote Report Template

REQUEST FOR TENDER

6. Request for Tender Template

CONTRACTS

7. **Contract for the Supply of Products**
 - Purchase Order Product
 - Terms and Conditions for Supply of Product
8. **Contract for the Supply of Product and Services**
 - Purchase Order Product and Services
 - Terms and Conditions for Supply of Product and Services
9. **Contract for the Engagement of a Consultant**
 - Schedule for a Consultancy Agreement
 - Conditions for a Consultancy Agreement
10. **Contract for Construction (2 Types of Contract)**
 1. Contract for Low Value Construction
 - Schedule for a Low Value Construction Contract
 - Terms and Conditions for Low Value Construction Contract
 2. Contract for Construction Contract up to 500k
 - Schedule for a Construction Contract Up to 500k
 - Terms and Conditions for a Construction Contract up to 500k

SELF EVALUATION CHECKLIST

11. Self Evaluation Checklist

TENDER LOG

12. Tender Log – Interested Parties
13. Tender Log – Received Parties

TENDER REPORT

14. Tender Report Template

DOCUMENT CHECKLIST

- 15.** Document Checklist – Quote
- 16.** Document Checklist – Tender

PROCUREMENT COMPLAINTS

- 17.** Complaints Form
- 18.** Complaints Register

DECLARATION FORMS

[Insert Agency Letter Head]

CONFLICT OF INTEREST DECLARATION

I hereby declare that with regard to this quote process, to the best of my knowledge I do not have:

- Any financial interest in the services provided
- Any relatives or friends with a financial interest in the services provided
- Any personal bias, inclination, personal obligation, allegiance or loyalty which would in any way affect my decisions in relation to the evaluation of the tenders/responses.

I am aware that all discussions, meetings and written and electronic materials relating to this quote process are confidential and I will not divulge details to any person who are not on the evaluation team.

I will not copy or reproduce any written and electronic materials relating to the quote process.

I will take all necessary precautions to prevent un-authorized access to or copying of the written and electronic material in my control.

During the period that the tender is open and during the subsequent evaluation (up until formal announcement of the successful service provider(s), I will not;

- Pass any information to'
- Receive any gift, gratuity, hospitality or any other form of inducement form,
- Make any comments to, or
- Meet with any potential service providers for the project.

I will pass any requests for information and meetings that I receive from the potential service providers to the [insert Agency Name] staff member(s) responsible for handling via formal channels.

Notes:

Selected Quote Supplier/Staff Member Responsible

(Signature)

Name:.....

Date:...../...../.....

[Insert Agency Letter Head]

[Insert Reference Number and Project Title]

CONFIDENTIALITY AGREEMENT AND CONFLICT OF INTEREST DECLARATION

I hereby declare that with regard to the project, to the best of my knowledge I do not have:

- Any financial interest in the services provided
- Any relatives or friends with a financial interest in the services provided
- Any personal bias, inclination, personal obligation, allegiance or loyalty which would in any way affect my decisions in relation to the evaluation of the tenders/responses.

I am aware that all discussions, meetings and written and electronic materials relating to the tender are confidential and I will not divulge details to any person who are not on the evaluation team.

I will not copy or reproduce any written and electronic materials relating to the tender.

I will take all necessary precautions to prevent un-authorized access to or copying of the written and electronic material in my control.

During the period that the tender is open and during the subsequent evaluation (up until formal announcement of the successful service provider(s), I will not;

- Pass any information to
- Receive any gift, gratuity, hospitality or any other form of inducement form,
- Make any comments to, or
- Meet with any potential service providers for the project.

I will pass any requests for information and meetings that I receive from the potential service providers to the [insert Agency Name] Tender Team Leader for handling via formal channels.

Notes:
Selected Tender Opening Team Member
<hr/>
(Signature)
Name:.....
Date:...../...../.....

[Insert Agency Letter Head]

[Insert Reference Number and Project Title]

CONFIDENTIALITY AGREEMENT AND CONFLICT OF INTEREST DECLARATION

I hereby declare that with regard to the project, to the best of my knowledge I do not have:

- Any financial interest in the services provided
- Any relatives or friends with a financial interest in the services provided
- Any personal bias, inclination, personal obligation, allegiance or loyalty which would in any way affect my decisions in relation to the evaluation of the tenders/responses.

I am aware that all discussions, meetings and written and electronic materials relating to the tender are confidential and I will not divulge details to any person who are not on the evaluation team.

I will not copy or reproduce any written and electronic materials relating to the tender.

I will take all necessary precautions to prevent un-authorized access to or copying of the written and electronic material in my control.

During the period that the tender is open and during the subsequent evaluation (up until formal announcement of the successful service provider(s), I will not;

- Pass any information to'
- Receive any gift, gratuity, hospitality or any other form of inducement form,
- Make any comments to, or
- Meet with any potential service providers for the project.

I will pass any requests for information and meetings that I receive from the potential service providers to the [insert Agency Name] Tender Team Leader for handling via formal channels.

Notes:
Selected Tender Team Member
<hr/>
(Signature)
Name:.....
Date:...../...../.....

[Insert Agency Letter Head]

[Insert Reference Number and Project Title]

CONFIDENTIALITY AGREEMENT AND CONFLICT OF INTEREST DECLARATION

I hereby declare that with regard to the project, to the best of my knowledge I do not have:

- Any financial interest in the services provided
- Any relatives or friends with a financial interest in the services provided
- Any personal bias, inclination, personal obligation, allegiance or loyalty which would in any way affect my decisions in relation to the evaluation of the tenders/responses.

I am aware that all discussions, meetings and written and electronic materials relating to the tender are confidential and I will not divulge details to any person who are not on the evaluation team.

I will not copy or reproduce any written and electronic materials relating to the tender.

I will take all necessary precautions to prevent un-authorized access to or copying of the written and electronic material in my control.

During the period that the tender is open and during the subsequent evaluation (up until formal announcement of the successful service provider(s), I will not;

- Pass any information to'
- Receive any gift, gratuity, hospitality or any other form of inducement form,
- Make any comments to, or
- Meet with any potential service providers for the project.

I will pass any requests for information and meetings that I receive from the potential service providers to the [insert Agency Name] Tender Team Leader for handling via formal channels.

Notes:

Selected Tender Evaluation Team Member

(Signature)

Name:.....

Date:...../...../.....

QUOTE REPORT

Quote Report



[Name of Project]

Reference No:	[Reference Number]
Date of Release:	[Date, Month, Year]

[Name of Agency]

Contact Officer

[Contact person email address]

QUOTE CLOSING TIME: [Time] (CI Time) [Day, Date, Month, Year]

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BACKGROUND

Background/Brief Description of Tender

[Provide a brief description of what is being purchased, funding source, purpose and how long the project is intended to run and benefits to the Cook Islands Government]

Mark Applicable Quote:

- a) Quote for Goods ☐
- b) Quote for Goods & Services ☐
- c) Quote for Consultancy ☐
- d) Quote for Construction ☐

Appropriation/Funding Details for Tender

[Provide brief details on appropriation/funding for this tender]

Other Relevant Details:

[List any other relevant details, if necessary to this section.]

QUOTATION PROCESS

[State procurement method and provide a brief background on how/why the procurement method was used. State if an EOI was conducted or not, how as information disseminated to services providers or to the market, etc]

List of Quotes Received and Amounts

List of Quotes Received and Amounts, and conformity status:

Name of Tenderer	Amount (Excl VAT)

[Please provide reasons if unable to provide 3 quotes]

Advertising started on the [Date, Month, and Year] via:

1. [List public media used]
- 2.
- 3.

Please note that the quote request was advertised within the requirement minimum of 10 working days.

Quote Closing Date: [Day, Month, Year, and Time]

Extended Quote Closing Date (If applicable): [Day, Month, Year, and Time]

Staff Members Responsible

Include details of all those agency staff members involved in the quotation process.

Staff Responsible consists of:

1. *[List names and position/title]*
2. *[List names and position/title]*
3. *[List names and position/title]*

List Supporting/Technical Advisors (if applicable)

[Please confirm if all members have signed a conflict of interest and confidentiality form. If members have identified a conflict of interest please explain how these will be mitigated]

Evaluation Comments

1. *[Highlight any relevant comments made while assessing quotes received]*
2. *[Highlight any potential risk]*

RECOMMENDATION

Name of Successful Quote and Amount

Name:

Amount:

Describe preference in selection e.g. cost, quality, timeliness etc:

Provide a brief description on the preference for selecting the successful tenderer.

Provide a summary of the recommendations highlighting the successful bidder and contract price.

Include any other comment that is relevant to the final recommendation.

Head of Agency Endorsement

The Head of the Agency accepts the report and acknowledges that the evaluation process is in compliance with the Cook Islands Government Procurement Policy 2014.

Certified True and Correct:

Name	Signed	Date
[Name] , [Position]		

REQUEST FOR TENDER

Request for Tender



[Name of Project]

Reference No:	[Reference Number]
Date of Release:	[Date, Month, Year]

[Name of Agency]

All queries regarding this Request for Tender should be directed to:

Contact Officer

[Contact person email address]

TENDER CLOSING TIME: [Time] (CI Time) [Day, Date, Month, Year]

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GLOSSARY AND DEFINITIONS

TERM	EXPLANATION
BTIB	Business Trade Investment Board
Manual	The Cook Islands Government Financial Policies and Procedures manual
Policy	The Cook Islands Government Purchase and Sale of Goods and Services Policy
Principal	[name of principal or name of tendering agency]
RFT	Request for Tender
Tender Team	The group of people responsible for the management of the tender process and includes those people who are specifically responsible to evaluate Tenders.

INTRODUCTION

Summary of Requirements

Through this Request for Tender (RFT) the Principal wishes to implement [insert name of parent programme, if relevant]. This RFT is for [briefly describe the goods and/or services to be supplied under the terms of the tender].

[Insert a brief description of the requirements for this RFT. The description should capture the critical elements of the Specifications. Provide an overview of what you are purchasing with further details included in Attachment 1.

- State whether tenders will be accepted for part/whole of the tender requirements as per Appendix A.
- Include any details necessary in regards to freight and delivery.
- State whether a site visit is necessary, if yes the following statement should be included: "It is the tenderers responsibility to carry out any site visits in order to assess the true costs to complete the project where necessary."
- Include where and how copies of the tender documentation may be uplifted.]

CONDITIONS OF TENDERING

All tenders should conform to the Conditions of Tendering, but must conform to the Mandatory Conditions as set out in this RFT.

Contact Officer

The Contact Officer for this tender is:

Name of Person:

Title:

Address:

Phone:

E-mail:

Tender Registration

Prospective tenderers should register their interest to participate in this RFT process by emailing the Contact Officer who will acknowledge receipt of the registration. Only registered tenderers will receive notices directly as and when they are issued. It is the responsibility of the tenderer to ensure they are properly registered for this RFT. The Principal reserves the right to extend the list of registered Tenderers beyond those who register interest in this RFT.

Tender Closing Time

Tenders must be received by the **Electronic Tender Account or in the tender box specified** by the following deadline, or they will not be considered:

Tender Closing Time and Date: 3.00pm (CI Time) Friday 26th August 2016

It is the tenderer's responsibility to ensure that their tender reaches the [designated venue – please indicate where the tender box is located and/or refer to the Electronic Tender Account, is applicable] by the specified closing date and time.

Late tenders will not be accepted.

Submission of Tender

The cost of preparing and submitting the Tender shall be borne by the Tenderer.

The Principal may vary the Tender Specifications described in Attachment 1 at any time, including the closing date, by notice in writing to the Tenderers still involved in the RFT at the time the Tender Specifications are varied.

Tenders shall be submitted in either hard copy or electronic copy, as specified below only.

Telefax tenders will not be accepted.

Hard Copy Submission:

Original hard copy tenders shall be packaged and labelled "CONFIDENTIAL" and have the following information clearly exhibited on the outside:

- Name of the [Crown agency responsible for the RFT].
- Tender [title and Reference No].
- Tender [closing time and date].

Hard copy tenders must be placed in the Tender Box located at the [Location of Tender Box] and submitted in the format contained in Attachment 2 – Forms to be submitted, by the due date. Failure to do so will result in the tender being disqualified.

Electronic Copy Submission:

Electronic copy tenders shall be submitted by emailing the tender bid as a pdf file to tenders@cookislands.gov.ck with the subject line [Name of Subject Line]. Tenders must be received in the inbox of tenders@cookislands.gov.ck in the format contained in Attachment 2 – Forms to be submitted, by the due date. Failure to do so will result in the tender being disqualified. The receipt time on the inbox will be used as the receipt time for the purposes of ensuring a tender is within the time limits.

The Electronic Tender Account will send a confirmation of receipt email in response to your electronic submission. If you do not receive a confirmation of receipt email within five working days please contact the Contact Officer for this tender.

Conflict of Interest Declaration

Tenderers must complete the Conflict of Interest Declaration form in Attachment 2 to disclose any potential or actual conflicts of interest that they may have or may be perceived to have, in respect of their responsibilities to the Principal and other parties should they be selected as the successful Tenderer. Where potential or actual conflicts of interests are identified, the Tenderer must specify how this will be managed in order to provide assurance that it will not adversely impact the performance of any services.

Further information or clarifications

Negotiations will not be permitted between the Tender Team and any prospective tenderers during the tender advertising period. However, prospective tenderers may seek clarification of the tender documents prior to submitting their tenders.

Any further information or clarification required by a Tenderer in relation to this RFT must be directed to the **Contact Officer**. Tenderers should note that to ensure no disadvantage to any tenderers, responses to questions pertaining to this RFT will be circulated to all those who have registered their interest.

Where the Principal considers that the competitive advantage of the individual Tenderer may be compromised by the distribution of responses to such requests for information and/or clarification to all Tenderers, the Principal reserves the right to issue such response(s) only to that particular Tenderer.

Any additional information relating to this RFT will be uploaded to [www.procurement.gov.ck or list other places information will be made available]

[Insert details of the process for sharing responses to tender questions. This could take the form of a Question and Answer section on the procurement website or a specified section within the newspaper or both].

Probity

No gifts or entertainment of any nature will be permitted between any parties involved throughout the tender process, including: tenderers or potential tenderers, tender team members, evaluation team members, the Head of Agency, or any other member or organisation that may have an involvement with any aspect of the tender process.

Selection Process

All tenders received in the [[Tender Box or Electronic Tender Box](#)] by the closing date and time will be assessed on whether they have conformed to the Mandatory Conditions. Failure to comply with these conditions will result in immediate exclusion from the Evaluation process. All Tenders deemed compliant will then proceed to the evaluation stage.

Evaluation of the responses to this RFT will be in accordance with the Evaluation Criteria described in Attachment 3.

[Further information in regards to how tenders will be evaluated should be included here. For example if tenders are going to be shortlisted this should be included in this section].

Notification of Acceptance

Tenders shall remain valid for acceptance and shall not be withdrawn for a period of sixty (60) working days from the Closing Date of the tender.

Unsuccessful tenderers shall be notified in writing by the Principal or their representative within ten (10) working days of acceptance of the successful tender.

If no tender is accepted by the Principal within twenty (20) working days after the Closing Date, each tenderer will be notified in writing by the Principal or their representative whether their tender is still under consideration or is no longer being considered.

When the preferred Tenderer has been identified, the Principal will invite the Tenderer to enter into negotiations based on the draft contract in Attachment 4 to this RFT. Only when both parties have agreed to the terms of the contract and executed the contract, will the Principal formally issue a Letter of Acceptance to the successful Tenderer

The successful tenderer will be notified by the Principal or their representative in writing on a date yet to be confirmed, but within sixty (60) working days from the Closing Date of the tender.

The Tender Team reserves the right to contact referees and/or customers regarding the performance of the tenderer as it may pertain to this RFT.

The Principal shall not be bound to accept the lowest priced tender or the highest scored tender or any tender.

Tenderers are entitled to the release of their evaluation report on request. Any requests for evaluation reports of other tenders must be processed under the Official Information Act 2009.

If no tender has been accepted within the period stated, the Principal will notify all Tenderers that no tender was accepted and may:

- Invite all Tenderers to provide additional information; and/or
- Re-advertise the RFT and extend the closing date of the Tender. Tenderers may either resubmit their tender or provide additional information to support their existing Tender already received by the Principal; and/or

Confidentiality

[Place a standard Confidentiality Statement into this Section if required, otherwise delete entire section.]

Drawings, Specifications, Schedules and written technical information supplied to Tenderers shall not be used for purposes other than the preparation of a Tender without the approval of the Principal. Information submitted by a Tenderer shall be regarded as confidential and shall not be disclosed to a third party except with the prior written agreement of the Tenderer.

Non-Resident Tenderer

In order for foreign companies to carry out business in the Cook Islands, an application for, and approval, must be sought from the Business Trade Investment Board (BTIB). Any fees associated with the registration are to be covered by the Tenderer. Tenderers should inform themselves of the registration process and confirm in their Tender that they are willing to register once a Letter of Acceptance is issued. Information can be found at www.btib.gov.ck.

MANDATORY CONDITIONS

All tenders must conform to the Mandatory Conditions below. Any tender that fails to comply with one or more of the mandatory requirements will be deemed non-compliant and will be excluded from the evaluation process. Mandatory Conditions below are also reflected in Attachment 3 – Evaluation Criteria.

1. Tenders must be completed in the format contained in Attachment 2 of this RFT. If offers do not comply with the format contained in Attachment 2, they will be deemed non-compliant and may not be accepted.
2. Tenders must be deposited in the required form in the Tender Box or the Electronic Tender Account by the closing time as specified in this RFT.
3. All tenders and related documentation in respect of this RFT may be presented in the English or Maori language. Tenders presented in Maori or any other language must be provided with an English translation.
4. Tenderers must tender to provide services or supply materials for the whole of the works/goods/services as specified in the Tender Specifications. *[In some circumstances Tenderers may be able to tender for part of the requirement.][This Clause may be omitted if there is discretion in the works to be provided under this RFT.]*
5. Tenders must be presented in hard copy format and/or electronic copy format as specified in this RFT. Telefax tenders will not be accepted.
6. All prices quoted must be landed inclusive of freight and relevant charges to the final point of delivery. *[This Clause may be omitted if it is not relevant.]*
7. All prices must be in New Zealand dollars.
8. *Any other item that is critical to the delivery of the requirement and cannot be compromised. For example, there might be pre-qualification conditions attached to the RFT and tenderers not meeting such requirements should be excluded.*

SPECIAL CONDITIONS

[In this section describe the elements that are unique to this RFT which are not compulsory – i.e. the tender will still be assessed if it does not meet these requirements. For example, tenderers might be required to provide staff with specific professional qualifications or equipment that conforms to certain operational or safety requirements.] [This section may be omitted if it is not relevant.]

ATTACHMENT 1 – TENDER SPECIFICATION REQUIREMENTS

Tender Specifications

[Refer to Step 4 – Specifications at clause 5.6 of the Policy for guidance on what should be included in this section. Note that the Policy requires that specifications should be prepared by an appropriately qualified person and should be peer reviewed by another suitably qualified person.]

ATTACHMENT 2 – TENDER FORMS TO BE SUBMITTED

Instructions

1. Tenderers must complete and submit all of the following forms, in the formats provided in this Attachment:

- A1 – Tender Form
- A2 – Conflict of Interest Declaration
- A3 – Completed Schedule of Prices
- A4 – Proposed Subcontractors (*if applicable*)
- A5 – Preliminary Delivery Programme
- A6 – List of Referees you may contact in relation to this offer.

2. Tenderers who fail to supply all of the items listed in above, will be deemed non-compliant and will be excluded from the tender evaluation process.

A1 – Form of Tender

[Insert the address to which responses to this RFT must be directed]

Tender For:	[Name of Project]
Supplier:	[Name of supplier]

Having examined the Tender Documents in relation to Tender Reference No. _____ and dated __/__/__, released by [insert the title of the Principal or tendering agency], we submit the following offer.

We offer to complete, handover to the Principal and remedy defects in the whole of the said Tender Specifications in conformity with these Tender Documents for the sum of [insert the price offered in text with the value in numbers thus (NZD\$_____)] stated exclusive of Value Added Tax, together with such other sums as may be ascertained in accordance with the Contract.

We acknowledge receipt of Notices _____ to _____.

We **agree/do not agree** to the Terms and Conditions of the Purchase Agreement in Attachment 4 of the said tender and do not propose any amendments.

We undertake to complete and handover of the **whole/parts** of the Contract Works/Goods/Services within the period stated in the Conditions of Tendering.

We agree to abide by this Tender for a period of sixty (60) days from the date fixed for receiving the same and it shall remain binding upon us and may be accepted by you at any time before the expiry of that period.

Unless and until a Contract Agreement is prepared and executed, this Tender together with your written acceptance thereof, shall constitute a binding contract between us.

We understand that you are not bound to accept the lowest or any Tender you may receive.

We understand that no contract shall come into existence, and no legal or other obligations shall arise between us and you (or between us and any other agent of the Principal) in relation to the conduct, outcome or otherwise of the Tender process, prior to and apart from your acceptance of our Tender.

We understand that you may contact the referees nominated by us in this offer and make whatever enquiries you deem necessary regarding our financial health and ability to deliver the Contract Works/Goods/Services. Further, during the assessment stage we understand and agree that you may request specific information from all tenderers in order to assist your assessment. We acknowledge that a failure to provide such information may result in disqualification from the process.

We provide the following information required to be submitted with this Tender:

- A2 – Conflict of Interest Declaration
- A3 – Completed Schedule of Prices
- A4 – Proposed Subcontractors *(if applicable)*
- A5 – Preliminary Delivery Programme

- A6 – List of Referees you may contact in relation to this offer.

If the tenderer is unable to agree to any clauses included in the Conditions to the Contract, it must set out in a table form the clause reference, reason why the tenderer cannot accept it and proposed alternative wording.

Tenderers details:

<i>Tenderers full name:</i>	<hr/>
<i>Tenderers trading name (if Company):</i>	<hr/>
<i>Contact person (if Company):</i>	<hr/>
<i>Postal address:</i>	<hr/>
<i>Physical address:</i>	<hr/>
<i>Phone number:</i>	<hr/>
<i>Mobile:</i>	<hr/>
<i>Email address:</i>	<hr/>

<i>Signature</i>	<i>Date</i>
<hr/>	<hr/>
<i>Full Name</i>	<i>Position (if Company)</i>
<hr/>	<hr/>

A2 – Conflict of Interest Declaration

In submitting this tender I make the following declarations:

- I understand that an actual, potential or perceived conflict of interest may arise in participating in this tender and that I am obliged to declare any such conflict of interest.
- I confirm that in submitting this information that I have either declared any potential conflicts of interest in my Tender or that I am not be aware of any situation or issue that would conflict with the interest of the Principal.
- If a conflict of interest arises at any time before or until the selected tenderer has been awarded this tender, I will advise the Contact Officer or the Principal immediately.
- I have personally completed this declaration on behalf of the Tenderer(s) and declare that the above particulars provided here and in the attached documents are true and correct.

Potential or actual conflicts of interest identified, if applicable:

Please note how this conflict of interest(s) will be managed, if applicable:

Signed for and on behalf of the Tenderer(s) by an authorised contracting officer / contract signatory:

Signature

Date

Full Name

Position (if Company)

A3 – Completed Schedule of Prices

[Clause 5.7.4 of the Policy notes that a standard form should be drawn up to separate price into relevant columns or sections which matches the specifications. The tender team must be easily able to compare different tenders and understand if there is anything missing or additional in tenders that requires a price adjustment. This will vary according to the level of complexity of the RFT and the nature of the item(s) being procured.]

[A Schedule of Prices must be included and must clearly show the VAT exclusive amount, the VAT amount and the total inclusive VAT amount as required under section 5.7.5 of the Policy.]

A4 – Proposed Subcontractors (if applicable)

Subcontractor details:

Subcontractors full name:

Subcontractor s trading name (if Company):

Contact person (if Company):

Postal address:

Physical address:

Phone number:

Mobile:

Email address:

Works/Skills to be performed:

Educational/Technical Qualifications:

Work Experience:

Potential or Actual Conflicts of Interest:

A5 – Preliminary Delivery Programme

[This should include the delivery schedule, if any and may include a provision for the Tenderer to comment on the proposed schedule, or suggest an alternative. This could be driven by the availability of required supplies/services, prevailing weather conditions or other external factors that might need to be taken into consideration during the evaluation process.]

[Agencies may include a template for delivery programme in this section or they may allow the tenderer to submit in their own format.]

A6 – List of Referees who may be Contacted

Name: _____

Company: _____

Address: _____

E-mail Address: _____

Phone No.: _____

Facsimile No.: _____

Nature of Relationship with Tenderer: _____

Name: _____

Company: _____

Address: _____

E-mail Address: _____

Phone No.: _____

Facsimile No.: _____

Nature of Relationship with Tenderer: _____

ATTACHMENT 3 – EVALUATION CRITERIA

[The Evaluation Criteria must be established at the outset and included in the Tender documents so potential tenderers know how their tender will be assessed. The Evaluation Criteria should be divided into two sections, Mandatory Conditions and the Evaluation Criteria. Both of these criteria must align with the Conditions of Tendering included in the RFT. Mandatory Conditions are mandatory and failure to comply with any of these requirements will result in automatic exclusion from the evaluation process.]

[The Evaluation Criteria must use a 'Weighted Scoring' method to ensure that Value for Money (VfM) can be assessed taking into account all factors weighted according to their importance. Please refer to the following sections of the policy for further guidance:

- Clause 5.7.7 Tender Documentation and Contract
- Clause 5.11.2 Tender Compliance
- Clause 5.11.3 Evaluation Criteria
- Clause 5.11.4 Short Listing
- Clause 5.11.5 Tender Proposal Evaluation]

The Mandatory Conditions have been drawn from the Conditions of Tendering in this RFT. Tenders that do not meet the Mandatory Conditions are deemed non-compliant, and will not proceed into Evaluation.

Mandatory Conditions

Tenders must pass all of the following requirements. Tenders that do not meet one or more of these conditions are deemed non-compliant and will not be considered.

Criterion	Complies Yes or No
1. Tender must be completed in the format contained in Attachment 2 of the RFT.	
2. Tenders must be deposited in the required form in the Tender Box by the closing time specified in the RFT	
3. Proposal and related documentation must be in the English language or translated into English.	
4. Tenderers must tender to provide the whole of the works/goods/services specified in the RFT. <i>[In some circumstances Tenderers may be able to tender for part of the requirement. This criterion should reflect the conditions of the RFT.]</i>	
5. Tenders must be presented in hard copy and/or electronic copy format as specified in this RFT only.	
6. All prices quoted must be landed inclusive of freight and relevant charges to final point of delivery.	
7. All prices must be in NZ dollars	

Evaluation Criteria

[The assignment of weightings is based on the following principles:

- The items that reflect the critical elements of the project will be assigned a weight
- Weightings will reflect the relative importance of each criterion
- Scores will be based on the information provided in the submitted Tender
- Non-price criteria will not have a value exceeding 50% unless justification for assigning a higher amount is provided and approved by the tender secretariat with Crown Law advice during the Tender Committee Secretariat Sign off prior to advertising step of the tender process.
- All tenders must include the following evaluation criteria: Locally established company/locally supplied resources (labour and/or materials), compliance with contract terms and price unless approved by the tender secretariat with Crown Law advice during the Tender Committee Secretariat sign off prior to advertising step of the tender process.]

A Weighted Criteria methodology will apply to the evaluation of this RFT as follows:

Criteria	Weight %
<u>Non-Price Criteria</u>	
1. Locally established company Locally supplied resources (labour and/or materials)	5
2. Acceptance of the contract terms	5
3. Relevant skills	10
4. Past Performance	5
5. Technical Skills	10
6. Resources	5
<u>Total Non-Price Elements</u>	40
Price	60
TOTAL WEIGHTING	100

Risk

The Evaluation Committee will conduct a Risk Assessment for each Tender submitted. This will identify the most significant risks presented by the Tender and consider the likelihood of the risk occurring; the consequence of that risk; and a risk mitigation strategy. In conclusion, the mitigated risk will be determined to form an overall measure of the risk represented by each Tender.

The risk mitigation strategy may include the inclusion of specific clauses in the executed contract. Therefore, a Tender considered to be high risk might still be selected subject to the Tenderer's willingness to accept the proposed contract amendments.

ATTACHMENT 4 – CONTRACT CONDITIONS

Clause 5.7.3 Template Contracts must be attached to tenders. If the template contracts do not meet your requirements you should seek advice from Crown Law who will assist by directing you to the appropriate contracts or drafting a contract for you. The tender evaluation criteria must include a provision for the tenderer to accept the contract terms or to propose amendments.

There are standard contracts which have been approved for use by Crown Law which include:

- Contract for the Supply of Product;
- Contract for the Supply of Product and Services;
- Contract for the Engagement of a Consultant;
- Contract for Low Value Construction Works;
- Contract for Construction Works up to \$500,000;

CONTRACTS

Contract for the Supply of Products



PURCHASE ORDER PRODUCT

Government: Her Majesty the Queen in right of the government of the Cook Islands acting by and through the Minister/Secretary of [insert details of Ministry or Department]

Signed: _____

Name:

Position:

Date:

Supplier: [Insert Supplier details]

Signed: _____

Name:

Position:

Date:

Product: [insert details of product to be supplied including the purpose for which the product is being purchased]

Delivery: [insert details of where product should be delivered to and when]

Price: [insert details of the amount to be paid, including if it is as a lump sum or by instalments]

Insurance: [insert details of any insurance requirements, i.e. type of cover and cover levels]

Contact Person:

Government Contact: [insert details]

Supplier Contact: [insert details]

Additional Terms: [insert any special requirements that are not already covered in this Purchase Order or the agreement terms. These may include details of inspection requirements, standards which need to be complied with, whether product can be used or must be new or any other terms that you may

require. Please do not hesitate to contact Crown Law with assistance as to whether further terms are required and how they should be worded.]

TERMS AND CONDITIONS FOR SUPPLY OF PRODUCT

The Supplier agrees to supply the Product categorised above and more specifically described and detailed in the Purchase Order issued by the Government of the Cook Islands (the “Government”) on the following terms and conditions:

1. APPLICATION

These terms and conditions apply to all purchases of Product except where the Government agrees in writing that they be varied or do not apply. These terms and conditions supersede any contrary provisions in the Supplier’s terms and conditions of supply including those terms that the Supplier normally uses. No right under these terms and conditions shall be deemed to be waived except by notice in writing by each party. In the event that any one or more of the provisions contained in these terms and conditions are declared invalid by an order, decree or judgment of any Court of competent jurisdiction, these terms and conditions will be read as if such provision had not been inserted.

2. PRICES

- 2.1. The prices stated on the Government’s Purchase Order are fixed, unless there is a written agreement stipulating the price may be varied, when it may be varied and how the price is to be determined.
- 2.2. The price includes freight, insurance, packaging, crating, local cartage, customs duty and/or any other services in the delivery of the Product.
- 2.3. The price is exclusive of VAT.
- 2.4. The Supplier is not entitled to claim expenses, surcharges or margins or disbursements except if otherwise agreed in advance and in writing by the Government.

3. DELIVERY

- 3.1. The time of delivery of the Product is a fundamental element of these terms and conditions.
- 3.2. The Product shall be delivered and rendered in a prompt and timely manner on or within the delivery dates specified in the Purchase Order. All Product must be delivered within the Government business hours (normal business hours are 8:00 am to 4:00 pm, Monday to Friday), unless otherwise specified in the Purchase Order.
- 3.3. The Supplier shall notify the Government in writing immediately when the Supplier becomes aware there may be a delay in the delivery of Product to the Government.
- 3.4. The Government is entitled to cancel the Purchase Order or change its specification (without incurring additional charges) if the Product is not supplied on the supply dates or times specified in the Purchase Order.
- 3.5. All Product must be supplied to the address specified in the Purchase Order. The Supplier shall make itself aware of any special requirements when supplying the Product to Government property.
- 3.6. When Product is delivered to the Government it shall be accompanied by a delivery docket that records the Purchase Order number, the description, quantity with the applicable units of measure, unit rates and dollar values of the Product delivered. The delivery docket must be signed for and retained by a Government officer.

- 3.7. All Product shall be packaged in a manner to prevent damage or deterioration when being delivered to the Government.
- 3.8. The Government may use other suppliers for the supply of Product, or product of the same nature as the Product, at any time.

4. IDENTIFICATION

- 4.1. The Purchase Order number must be shown on all packages, invoices and correspondence relating to the Product. Product supplied against an invalid Purchase Order or without a Purchase Order, will be returned to the Supplier at the Supplier's expense including the cost of packaging, transportation, insurance and handling of the Product.
- 4.2. Where applicable, the Supplier grants the Government access to the Supplier's premises, facilities and staff concerning the delivery and identification of the Product. The Government shall have the right to audit and inspect the Supplier's records concerning delivery of the Product. These rights are for both the Government and any other party that has the use or benefit of the Product.

5. QUALITY, INSPECTION AND ACCEPTANCE

It is a condition of these terms and conditions and the Supplier warrants that:

- 5.1. All Product shall be in accordance with any requirements set out in these terms and conditions and/or in the Purchase Order and shall be free from defects in workmanship, materials and design. These obligations survive acceptance of the Product and payment.
- 5.2. The Supplier shall use the highest reasonable standard of skill, care and quality and employ techniques, methods, procedures and materials of a high quality and standard in accordance with best professional practice in providing the Product.
- 5.3. The Supplier will comply with all relevant (a) Cook Island standards and international standards (if not in conflict) (both general and industry-specific); (b) statutes; (c) regulations; (d) by-laws; (e) ordinances; and (f) Government policies, applicable in respect of the supply of the Product.
- 5.4. Where the Supplier has the benefit of any warranties or covenants from a third party in respect of the Product, the Supplier shall disclose and assign the benefit of the warranties and/or covenants to the Government.
- 5.5. The Product, its material and workmanship, shall be subject to inspection and testing at all reasonable times and places by the Government (or those parties to whom the Government supplies the Product) before, during or after delivery.
- 5.6. If inspection and testing is to be conducted on the premises of the Supplier or the Supplier's sub-contractors, the Supplier shall provide (without additional charge) all reasonable facilities and assistance for the safe and convenient inspection and testing required by the Government's inspectors in the performance of their duty.
- 5.7. The Supplier acknowledges that the signing of a delivery note or similar on behalf of the Government does not constitute acceptance of any Product. The Government may reject any Product, even after they have been accepted, that: (a) are not of merchantable quality; (b) are not fit for purpose as stipulated in the Purchase Order; (c) are in an unsatisfactory condition or not functioning in the way they are designed to

function; or (d) do not otherwise meet the requirements (including requirements relating to delivery) of these terms and conditions, ("Rejected Product").

- 5.8. For any Rejected Product the Supplier will, within ten (10) business days of receiving notice of Government's rejection of the Rejected Product, at the Government's sole and absolute discretion and at the Supplier's sole risk and expense: (a) repair the Rejected Product; (b) replace the Rejected Product; (c) remove the Rejected Product for full credit or reimbursement; and in the case of clause 5.8(c), reimburse/credit the Government in full for any amounts paid by the Government in respect of the Rejected Product.
- 5.9. Title to the Rejected Product will pass back to the Supplier on the earlier of the replacement of the Rejected Product, repair of the Rejected Product or, refund or credit of any amounts paid by the Government as specified in clause 5.8(c).
- 5.10. Clauses 5.7 and 5.8 do not limit or negate any other rights or remedies that the Government may have under these terms and conditions or at law.
- 5.11. The Government's failure to inspect does not relieve the Supplier of any responsibility to perform its obligations according to these terms and conditions.

6. OWNERSHIP AND RISK

- 6.1. Subject to clauses 5.7 and 5.8:
 - a. title in the Product passes to the Government when the Product is delivered to the Government or when the Government completes payment for the Product, whichever is the earlier date;
 - b. the Product remains at the Supplier's risk until the Product is delivered to the Government.
- 6.2. Where the Product is delivered to the Government to be installed and/or commissioned, the Product remains at the Supplier's risk until the completion of installation and commissioning.

7. PAYMENT

- 7.1. The Supplier shall provide to the Government's Contact Person, within five (5) business days of the end of the month following delivery of the Product, a VAT tax invoice for each delivery of the Product, stating Purchase Order number, date of delivery and full description of the Product and quantity delivered. Invoices received without all of these details will be returned to the Supplier, unpaid.
- 7.2. If monthly charges are applicable, the Supplier shall supply to the Contact Person specified in the Purchase Order a monthly statement of that month's deliveries not later than the tenth business day of the month following delivery.
- 7.3. Invoices and statements are to be addressed to the address specified in the Purchase Order.
- 7.4. Subject to clause 5, payment for Product delivered, once approved, will be effected on the first Wednesday on or after the 20th of the month following the date of the Supplier's VAT tax invoice or receipt of the delivery of the Product, whichever is the later.

- 7.5. Any invoices provided by the Supplier which have not met the requirements of this Payment clause will not be affected.
- 7.6. Payment will be effected by Electronic Funds Transfer (EFT) (direct credit).

8. CONFLICT

- 8.1. The Supplier confirms it has no knowledge of any conflict of interest in providing the Product.
- 8.2. If any conflict arises or has the potential to arise during the supply of the Product, the Supplier shall immediately inform the Government in writing and the Government will decide on the appropriate steps to be followed in such event, which may include the right of the Government to terminate the Purchase Order with immediate effect.

9. ASSIGNMENT

The Supplier shall not assign or sub-contract any rights or obligations applicable under these terms and conditions without the prior written consent of the Government given at its discretion.

10. NOTICES

- 10.1. All correspondence shall include the Purchase Order number and addressed to the Government's Contact Person named on the Purchase Order form.
- 10.2. All correspondence shall be in writing sent by email, mail with postage prepaid or by hand delivery to the address for notices as set out above or such other address as a party has notified in writing.
- 10.3. Subject to clause 10.4, notice given in person is deemed to be served upon delivery or by post three (3) business days after the date of posting. Any notice served on a non-business day is deemed to have been served on the first business day after that day. Any notice by email shall be deemed to be received on the first business day after such email has reached the receiver's designated information system for receiving emails or, in all other situations, when the email comes to the receiver's attention.
- 10.4. The Government shall only be deemed to have received delivery of a notice upon the Government acknowledging in writing receipt of the notice.

11. INDEMNITY

The Supplier indemnifies the Government in respect of all costs (including legal costs), claims, liabilities, losses, damage and expenses suffered or incurred by the Government and any other person claiming through the Government as a direct or indirect consequence of any unlawful, negligent, tortious, criminal, reckless or dishonest errors, acts or omission of the Supplier in the performance of its obligations under these terms and conditions. This indemnity survives the termination of these terms and conditions.

12. REMEDIES

The Supplier shall not be entitled to anticipatory profits or to special (including multiple or punitive), incidental or consequential damages or losses.

13. INSURANCES

- 13.1. The Supplier shall take out and maintain at its own cost, at all times during the continuance of these terms and conditions, such insurances as specified in the Purchase Order. All such insurance shall be on such terms and with such insurers as the Government may reasonably require.

- 13.2. The Supplier shall, if requested by the Government, provide the Government with written evidence that all insurances are in force and shall produce, whenever reasonably required by the Government, the relevant policies and evidence of payment of the current premiums. If the Supplier fails to provide such evidence the Government may, after notifying the Supplier in writing, arrange or keep in force that insurance and may, for the purpose of doing so, pay the relevant premiums and deduct a corresponding amount from any moneys payable by Government to the Supplier under these terms and conditions.

14. LAW

These terms and conditions are governed by the laws of the Cook Islands. The parties agree to submit to the non-exclusive jurisdiction of the High Court of the Cook Islands.

15. TERMINATION FOR CONVENIENCE

Notwithstanding anything to the contrary contained in these terms and conditions, the Government shall be entitled to cancel any applicable Purchase Order, at its convenience, on 10 business days' written notice to the Supplier; provided the Government will pay for all Product delivered to the satisfaction of the Government in respect of any Purchase Order, prior to the date of notice of cancellation.

16. GENERAL WARRANTIES

The Supplier represents, warrants and undertakes that:

- 16.1. it has full power, capacity and authority to execute, deliver and perform its obligations under these terms and conditions or any Purchase Order;
- 16.2. it has and will continue to have, all necessary consents, permissions, licences and rights to enter into and perform its obligations under these terms and conditions or any Purchase Order;
- 16.3. there are no existing agreements, undertakings or arrangements which prevent it from entering into these terms and conditions or which would impede the performance of its obligations under these terms and conditions or any Purchase Order;
- 16.4. it has not offered any inducement in connection with the entering into or negotiation of these terms and conditions or any Purchase Order and;
- 16.5. 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 these terms and conditions or any Purchase Order.

17. DISPUTE RESOLUTION

In the event of a dispute arising between the parties in respect of any matter in relation to this Agreement, the authorised representatives of each party will negotiate a resolution. If the dispute cannot be resolved by negotiation within five days of service by one party to the other of the written notice of a dispute arising, the dispute will be referred to arbitration under the Arbitration Act 2014.

Contract for the Supply of Product and Services



PURCHASE ORDER PRODUCT AND SERVICES

Government: Her Majesty the Queen in right of the government of the Cook Islands acting by and through the Minister/Secretary of [insert details of Ministry or Department]

Signed: _____

Name:

Position:

Date:

Supplier: [Insert Supplier details]

Signed: _____

Name:

Position:

Date:

Product and Services: [insert details of product and services to be supplied including the purpose for which the product and services are being purchased]

Delivery: [insert details of where product and services should be delivered to and when]

Price: [insert details of the amount to be paid, including if it is as a lump sum or by instalments]

Insurance: [insert details of any insurance requirements, i.e. type of cover and cover levels]

Contact Person:

Government Contact: [insert details]

Supplier Contact: [insert details]

Additional Terms: [insert any special requirements that are not already covered in this Purchase Order or the agreement terms. These may include details of inspection requirements, standards which need to be complied with, whether product can be used or must be new or any other terms that you may

require. Please do not hesitate to contact Crown Law with assistance as to whether further terms are required and how they should be worded.]

TERMS AND CONDITIONS FOR SUPPLY OF PRODUCT AND SERVICES

The Supplier agrees to supply the Product and Services categorised above and more specifically described and detailed in the Purchase Order issued by the Government of the Cook Islands (the "Government") on the following terms and conditions:

1. APPLICATION

These terms and conditions apply to all purchases of Product and Services except where the Government agrees in writing that they be varied or do not apply. These terms and conditions supersede any contrary provisions in the Supplier's terms and conditions of supply including those terms that the Supplier normally uses. No right under these terms and conditions shall be deemed to be waived except by notice in writing by each party. In the event that any one or more of the provisions contained in these terms and conditions are declared invalid by an order, decree or judgment of any Court of competent jurisdiction, these terms and conditions will be read as if such provision had not been inserted.

2. PRICES

- 2.1. The prices stated on the Government's Purchase Order are fixed, unless there is a written agreement stipulating the price may be varied, when it may be varied and how the price is to be determined.
- 2.2. The price includes the Services, freight, insurance, packaging, crating, local cartage, customs duty and/or any other services in the delivery of the Product.
- 2.3. The price is exclusive of VAT.
- 2.4. The Supplier is not entitled to claim expenses, surcharges or margins or disbursements except if otherwise agreed in advance and in writing by the Government.

3. DELIVERY

- 3.1. The time of delivery and performance of the Product and Services is a fundamental element of these terms and conditions.
- 3.2. The Product and Services shall be delivered and rendered in a prompt and timely manner on or within the delivery dates specified in the Purchase Order. All Product and Services must be delivered and performed within the Government business hours (normal business hours are 8:00 am to 4:00 pm, Monday to Friday), unless otherwise specified in the Purchase Order.
- 3.3. The Supplier shall notify the Government in writing immediately when the Supplier becomes aware there may be a delay in the delivery of Product or rendering of Services to the Government.
- 3.4. The Government is entitled to cancel the Purchase Order or change its specification (without incurring additional charges) if the Product and/or Services are not supplied on the supply dates or times specified in the Purchase Order.
- 3.5. All Product and Services must be supplied to the address specified in the Purchase Order. The Supplier shall make itself aware of any special requirements when supplying the Product and Services to Government property.

- 3.6. When Product is delivered to the Government it shall be accompanied by a delivery docket that records the Purchase Order number, the description, quantity with the applicable units of measure, unit rates and dollar values of the Product and Services delivered. The delivery docket must be signed for and retained by a Government officer.
- 3.7. All Product shall be packaged in a manner to prevent damage or deterioration when being delivered to the Government.
- 3.8. The Government may use other suppliers for the supply of Product and Services, or product and services of the same nature as the Product and Services, at any time.

4. IDENTIFICATION

- 4.1. The Purchase Order number must be shown on all packages, invoices and correspondence relating to the Product and Services. Product supplied against an invalid Purchase Order or without a Purchase Order, will be returned to the Supplier at the Supplier's expense including the cost of packaging, transportation, insurance and handling of the Product and Services.
- 4.2. Where applicable, the Supplier grants the Government access to the Supplier's premises, facilities and staff concerning the delivery and identification of the Product. The Government shall have the right to audit and inspect the Supplier's records concerning delivery of the Product and rendering of the Services. These rights are for both the Government and any other party that has the use or benefit of the Product and Services.

5. QUALITY, INSPECTION AND ACCEPTANCE

It is a condition of these terms and conditions and the Supplier warrants that:

- 5.1. All Product and Services shall be in accordance with any requirements set out in these terms and conditions and/or in the Purchase Order and shall be free from defects in workmanship, materials and design. These obligations survive acceptance of the Product and Services and payment.
- 5.2. The Supplier shall use the highest reasonable standard of skill, care and quality and employ techniques, methods, procedures and materials of a high quality and standard in accordance with best professional practice in providing the Product and rendering the Services.
- 5.3. The Supplier will comply with all relevant (a) Cook Island standards and international standards (if not in conflict) (both general and industry-specific); (b) statutes; (c) regulations; (d) by-laws; (e) ordinances; and (f) Government policies, applicable in respect of the supply of the Product and rendering the Services.
- 5.4. Where the Supplier has the benefit of any warranties or covenants from a third party in respect of the Product and Services, the Supplier shall disclose and assign the benefit of the warranties and/or covenants to the Government.
- 5.5. The Product and any result or product of the rendering of the Services, its material and workmanship, shall be subject to inspection and testing at all reasonable times and

places by the Government (or those parties to whom the Government supplies the Product) before, during or after delivery.

- 5.6. If inspection and testing is to be conducted on the premises of the Supplier or the Supplier's sub-contractors, the Supplier shall provide (without additional charge) all reasonable facilities and assistance for the safe and convenient inspection and testing required by the Government's inspectors in the performance of their duty.
- 5.7. The Supplier acknowledges that the signing of a delivery note or similar on behalf of the Government does not constitute acceptance of any Product and Services. The Government may reject any Product and Services (as applicable), even after they have been accepted, that: (a) are not of merchantable quality; (b) are not fit for purpose as stipulated in the Purchase Order; (c) are in an unsatisfactory condition or not functioning in the way they are designed to function; or (d) do not otherwise meet the requirements (including requirements relating to delivery) of these terms and conditions, or in circumstances where the Services do not meet the requirements of clause 5.1("Rejected Product"/"Rejected Services").
- 5.8. For any Rejected Product or Rejected Services the Supplier will, within ten (10) business days of receiving notice of Government's rejection of the Rejected Product or Rejected Services, at the Government's sole and absolute discretion and at the Supplier's sole risk and expense: (a) repair the Rejected Product; (b) replace the Rejected Product; (c) request the re-performance of the Services (d) remove the Rejected Product for full credit or reimbursement; or (e) suspend or cancel the Services, and in the case of clause 5.8(c), reimburse/credit the Government in full for any amounts paid by the Government in respect of the Rejected Product or Rejected Services, as the case may be.
- 5.9. Title to the Rejected Product will pass back to the Supplier on the earlier of the replacement of the Rejected Product, repair of the Rejected Product or, refund or credit of any amounts paid by the Government as specified in clause 5.8(c).
- 5.10. Clauses 5.7 and 5.8 do not limit or negate any other rights or remedies that the Government may have under these terms and conditions or at law.
- 5.11. A lack of Government inspection does not relieve the Supplier of any responsibility to perform its obligations according to these terms and conditions.

6. OWNERSHIP AND RISK

- 6.1. Subject to clauses 5.7 and 5.8:
 - a. title in the Product passes to the Government when the Product is delivered to the Government or when the Government completes payment for the Product, whichever is the earlier date;
 - b. the Product remains at the Supplier's risk until the Product is delivered to the Government and is declared by the Government as not being Rejected Product or Rejected Services.
- 6.2. Where the Product is delivered to the Government subject to the Services, the Product remains at the Supplier's risk until the Government is satisfied with the complete rendering of the Services.

7. PAYMENT

- 7.1. The Supplier shall provide to the Government's Contact Person, within five (5) business days of the end of the month following delivery of the Product or rendering of the Services, a VAT tax invoice for each delivery of the Product and rendering of the Services, stating Purchase Order number, date of delivery and full description of the Product and Services and quantity delivered. Invoices received without all of these details will be returned to the Supplier, unpaid.
- 7.2. If monthly charges are applicable, the Supplier shall supply to the Contact Person specified in the Purchase Order a monthly statement of that month's deliveries not later than the tenth business day of the month following delivery.
- 7.3. Invoices and statements are to be addressed to the address specified in the Purchase Order.
- 7.4. Subject to clause 5, payment for Product delivered, once approved, will be effected on the first Wednesday on or after the 20th of the month following the date of the Supplier's VAT tax invoice or receipt of the delivery of the Product, whichever is the later.
- 7.5. Any invoices provided by the Supplier which have not met the requirements of this Payment clause will not be affected.
- 7.6. Payment will be effected by Electronic Funds Transfer (EFT) (direct credit).

8. CONFLICT

- 8.1. The Supplier confirms it has no knowledge of any conflict of interest in providing the Product and rendering the Services.
- 8.2. If any conflict arises or has the potential to arise during the supply of the Product and Services, the Supplier shall immediately inform the Government in writing and the Government will decide on the appropriate steps to be followed in such event, which may include the right of the Government to terminate the Purchase Order with immediate effect.

9. INTELLECTUAL PROPERTY

- 9.1. "Intellectual Property" includes copyright, designs, drawings, specifications, reports, data and documentation. All Intellectual Property arising from the provision of the Services ("New IP") is owned by the Government and the Supplier shall co-operate with the Government (including by signing documents) to help the Government protect its rights in the New IP.
- 9.2. To the extent that New IP incorporates or requires Intellectual Property arising outside of the provision of the Services (Pre-existing IP), the Supplier licences, or shall procure the licence to the Pre-existing IP for the Government on a perpetual, royalty-free basis.
- 9.3. The Supplier warrants and represents to the Government that the New IP and the Pre-existing IP will not infringe the Intellectual Property rights of any third party.

10. ASSIGNMENT

The Supplier shall not assign or sub-contract any rights or obligations applicable under these terms and conditions without the prior written consent of the Government given at its discretion.

11. NOTICES

- 11.1. All correspondence shall include the Purchase Order number and addressed to the Government's Contact Person named on the Purchase Order form.
- 11.2. All correspondence shall be in writing sent by email, mail with postage prepaid or by hand delivery to the address for notices as set out above or such other address as a party has notified in writing.
- 11.3. Subject to clause 11.4, notice given in person is deemed to be served upon delivery or by post three (3) business days after the date of posting. Any notice served on a non-business day is deemed to have been served on the first business day after that day. Any notice by email shall be deemed to be received on the first business day after such email has reached the receiver's designated information system for receiving emails or, in all other situations, when the email comes to the receiver's attention.
- 11.4. The Government shall only be deemed to have received delivery of a notice upon the Government acknowledging in writing receipt of the notice.

12. INDEMNITY

The Supplier indemnifies the Government in respect of all costs (including legal costs), claims, liabilities, losses, damage and expenses suffered or incurred by the Government and any other person claiming through the Government as a direct or indirect consequence of any unlawful, negligent, tortious, criminal, reckless or dishonest errors, acts or omission of the Supplier in the performance of its obligations under these terms and conditions. This indemnity survives the termination of these terms and conditions.

13. REMEDIES

The Supplier shall not be entitled to anticipatory profits or to special (including multiple or punitive), incidental or consequential damages or losses.

14. INSURANCES

- 14.1. The Supplier shall take out and maintain at its own cost, at all times during the continuance of these terms and conditions, such insurances as specified in the Purchase Order. All such insurance shall be on such terms and with such insurers as the Government may reasonably require.
- 14.2. The Supplier shall, if requested by the Government, provide the Government with written evidence that all insurances are in force and shall produce, whenever reasonably required by the Government, the relevant policies and evidence of payment of the current premiums. If the Supplier fails to provide such evidence the Government may, after notifying the Supplier in writing, arrange or keep in force that insurance and may, for the purpose of doing so, pay the relevant premiums and deduct a corresponding amount from any moneys payable by Government to the Supplier under these terms and conditions.

15. LAW

These terms and conditions are governed by the laws of the Cook Islands. The parties agree to submit to the non-exclusive jurisdiction of the High Court of the Cook Islands.

16. TERMINATION FOR CONVENIENCE

Notwithstanding anything to the contrary contained in these terms and conditions, the Government shall be entitled to cancel any applicable Purchase Order, at its convenience, on 10 business days' written notice to the Supplier; provided the Government will pay for all Product and Services rendered delivered to the satisfaction of the Government in respect of any Purchase Order, prior to the date of notice of cancellation.

17. GENERAL WARRANTIES

The Supplier represents, warrants and undertakes that:

- 17.1. it has full power, capacity and authority to execute, deliver and perform its obligations under these terms and conditions or any Purchase Order;
- 17.2. it has and will continue to have, all necessary consents, permissions, licences and rights to enter into and perform its obligations under these terms and conditions or any Purchase Order;
- 17.3. there are no existing agreements, undertakings or arrangements which prevent it from entering into these terms and conditions or which would impede the performance of its obligations under these terms and conditions or any Purchase Order;
- 17.4. it has not offered any inducement in connection with the entering into or negotiation of these terms and conditions or any Purchase Order and;
- 17.5. 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 these terms and conditions or any Purchase Order.

18. DISPUTE RESOLUTION

In the event of a dispute arising between the parties in respect of any matter in relation to this Agreement, the authorised representatives of each party will negotiate a resolution. If the dispute cannot be resolved by negotiation within five days of service by one party to the other of the written notice of a dispute arising, the dispute will be referred to arbitration under the Arbitration Act 2014.

Contract for the Engagement of a Consultant



Schedule

Government: Her Majesty the Queen in right of the government of the Cook Islands acting by and through the Minister/Secretary [insert details of Ministry or Department]

Signed: _____

Name:

Position:

Date:

Consultant: [Insert Consultant details]

Signed: _____

Name:

Position:

Date:

Project:

Location:

Scope and Nature of the Services:

Programme for the Services:

Fees and Timing of Payments:

Insurance:

Contact Person:

Government Contact: [insert details]

Supplier Contact: [insert details]

Key Personnel:

Special Conditions:

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.

Contract for Construction (2 Types of Contract)

Contract for Low Value Construction



Low Value Construction Works Contract

Parties:

Her Majesty the Queen in right of the government of the Cook Islands acting by and through the Minister/Secretary of *[Insert name of agency]* (**Principal**)
[Insert name of contractor] (**Contractor**)

Contract:

The Principal engages the Contractor to provide the Services described below and the Contractor agrees to perform the Services for the Fees and Expenses and on the Terms and Conditions appended to this Contract at Schedule 1.

Services:

The Contractor shall provide the following construction services:

Further details of the scope of Services may be appended to this Contract.

Authorised Representative: *[insert name and contact details]*, who is authorised to act on behalf of the Principal in respect of the Services.

Contract Term: From *[insert date]* to *[insert date]*

Fees:

The Contractor shall charge the following agreed fee for the Services:

The Contractor shall, within 3 working days of the start of each month, issue a payment claim to the Principal for the Fees owed from the previous month, plus any actual and reasonable expenses that are pre-approved in writing by the Principal (**Expenses**).

Insurance: The Contractor shall main the following insurance:

Retention: 10% of all Fees payable pursuant to this Contract shall be withheld until the requirements in subclauses 5.5 and 5.6 of the Terms and Conditions are complied with.

Defects Liability Period: 3 months from practical completion.

Principal's authorised signatory(ies):

Contractor's authorised signatory(ies):

Print Name:
Date:
Address for notices:

Print Name:
Date:
Address for notices:

TERMS AND CONDITIONS FOR CONSTRUCTION

The Cook Islands Government ("Government") engages the Contractor, and the Contractor accepts the engagement, to perform the Services in accordance with these terms and conditions.

1. Application:

These terms and conditions supersede any contrary provisions in any previous agreements between parties, written or otherwise. No right under these terms shall be deemed to be waived except by notice in writing by each party. In the event that any one or more of the provisions contained in these conditions are declared invalid by order, decree or judgment of any Court of competent jurisdiction, these conditions are to be read as if such provision had not been inserted.

2. Standard of Services and Compliance

In performing the Services the Contractor shall:

- 2.1. Exercise the degree of skill, care and diligence normally expected of a competent professional; and
- 2.2. Comply with all applicable statutes, regulations and codes applicable to the Services.

3. Information

The Government shall use reasonable endeavours to provide to the Contractor, free of cost, as soon as practicable following any request for information, all relevant information in its power to obtain which may relate to the Services. The Contractor shall not, without the Government's prior written consent, use information provided by the Government for purposes unrelated to the Services.

4. Variations

The Government may order variations to the Services in writing or may request the Contractor to submit proposals for variations to the Services. No work pursuant to a variation may commence until the Services comprised in the variation and the Fees and Expenses for the variation are approved in writing by the Government.

5. Payment

- 5.1. Within 3 working days of the end of each month, and subject to the Contractor having first signed this Contract, the Contractor shall issue the Government through its Authorised Representative with a payment claim setting out the Fees and Expenses claimed for the previous month (less Retentions) and details of the Services provided. The Contractor acknowledges that it is not entitled to payment until it has signed this Contract.

- 5.2. Upon receipt of the payment claim, the Government shall review it and respond by way of a payment schedule within 10 working days setting out whether it agrees with the contents of the payment claim, and if not, the reasons why and the revised calculation of the amount payable.
- 5.3. Upon receipt of the Government's payment schedule, the Contractor shall issue a VAT tax invoice to the Government for the amount set out in the Government's payment schedule.
- 5.4. All amounts payable by the Government shall be paid on the 20th of the month following the month of receipt of the invoice. Any changes to approved Fees or Expenses, must first be approved in writing by the Government.
- 5.5. Upon achieving practical completion of the Services, as certified by the Authorised Representative, the Contractor must remedy all defects identified by the Authorised Representative both at practical completion and during the Defects Liability Period.
- 5.6. Upon expiry of the Defects Liability Period and the Contractor having satisfactorily remedied any defects in the Services, as certified by the Authorised Representative, and delivered all warranties, guarantees and other documentation required by the Government as part of the Services, the Contractor may issue a payment claim for the Retention held by the Government, which shall be subject to the process set out in 5.2 to 5.4 above.

6. Insurance

The Contractor is required to maintain the Insurance throughout the Contract Term and to use reasonable endeavours to maintain the same for the specified period after the completion of the Services. The Contractor shall provide an updated insurance certificate to the Government prior to the expiry of any relevant insurance certificate.

7. Intellectual Property

The ownership of data, factual information and intellectual property (including copyright) in all drawings, specifications and other documents and things created pursuant to this Contract and paid for by the Government shall, after payment by the Government, lie with the Government.

8. Suspension

The Government may suspend all or part of the Services by notice in writing to the Contractor who shall immediately make arrangements to stop the Services and minimise further expenditure. Suspension shall not prejudice or affect the accrued rights or claims and liabilities of the parties.

9. Termination

- 9.1. The Government may terminate (in its sole discretion) the Services by 10 working days' prior written notice to the Contractor.
- 9.2. Either party may terminate the Services by immediate notice if the other party materially breaches the Contract, including but not limited to the Contractor failing to perform the Services by the Completion Date or to the standard required by this Contract.
- 9.3. Termination shall not prejudice or affect the accrued rights or claims and liabilities of the parties.

10. Acknowledgement

- 10.1. The Contractor confirms and acknowledges that it:
 - a. Is qualified to carry out the Services;
 - b. Will deliver all guarantees and warranties (including manufacturer's warranties on products and materials) required as part of the Services to the Government prior to practical completion;
 - c. Will promptly remedy any defects in the Services provided upon written request from the Government;
 - d. Has no, and is not aware of any conflict of interest, that it has not disclosed in writing to the Government prior to signing this Contract and the Contractor undertakes to advise the Authorised Representative immediately if any conflict of interest should arise;
 - e. Is not the subject of any claim brought by any Government for defective workmanship, and will notify the Government immediately if any such claim is brought.

11. General

- 11.1. This Contract is governed by the Cook Islands law, and the Cook Islands courts have exclusive jurisdiction in respect of this Contract.
- 11.2. This Contract evidences the entire agreement between the Contractor and Government in connection with the Services and supersedes and extinguishes all prior agreements (including any quotes provided by the Contractor) between the Contractor and Government relating to such matters.
- 11.3. The Contractor may not assign the Contract without the Government's prior written approval.

- 11.4. The Contractor shall not sub-contract any part of this Contract or the Services without the Government's prior written consent.
- 11.5. The Government can set-off any amounts owing to the Contractor under this Contract against any amounts owing to the Government by the Contractor under this contract or any other Contract between the Government and the Contractor.
- 11.6. 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 set out in this Contract. In case of notice by email, confirmation of receipt from the recipient is required to confirm the delivery of the notice.

Contract for Construction (2 Types of Contract)

Contract for Construction Contract up to 500k

SIGNED for and on behalf of
[Contractor]

By:

Witness:

Name:.....

Name:.....

Title:.....

Title:.....

Date: -----

Date: -----

SIGNED for and on behalf of Her Majesty the Queen
acting by and through [Agency]

By:

Witness:

Name:.....

Name:.....

Title:.....

Title:.....

Date: -----

Date: -----

Schedule 1: Particulars

Project: [TBA]
Site: [TBA]
Principal: [TBA]

Principal's representative

Person: [TBA]
Street Address: [TBA]
Postal Address: [TBA]
Telephone: [(+682)TBA]
Facsimile: [(+682)TBA]
Mobile: [(+682)TBA]
E-mail: [TBA]

Contractor

Contractor: [TBA]
Street Address: [TBA]
Postal Address: [TBA]
Telephone: [TBA]
Facsimile: [TBA]
Mobile: [TBA]
E-mail: [TBA]

Completion Date: [TBA]

Contract Price: [TBA]

Liquidated damages: [TBA] (plus VAT) per day

Schedule 2: Payment Terms

Delete whichever payment terms (1. Progress payments or 2. Lump sum payment) are not appropriate:

1 Progress payments

- 1.1 The Contractor is entitled to progress payments for construction work carried out under this contract, including the value of approved Variations.
- 1.2 The Contractor may serve payment claims on the Principal under the contract. Payment claims shall be submitted in respect of construction work carried out during periods of not less than one month. The Contractor's payment claims shall:
- (a) Be in writing;
 - (b) Identify the contract to which the progress payment relates;
 - (c) Identify the construction work and the relevant period to which the progress payment relates;
 - (d) Indicate a claimed amount on the basis of:
 - (i) the estimated extent and value of the works that have been carried out during the period to which the progress payment relates;
 - (ii) the estimated extent and value of all construction work done which is claimed in respect of approved variations to the work; and
 - (iii) the estimated extent and value of Materials delivered to the site that are intended to be incorporated into the works but have not yet been so incorporated;
 - (e) Indicate the manner in which the claimed amount was calculated; and
 - (f) Indicate the due date for payment, which shall be 30 Working Days after the date of service of the payment claim.
- 1.3 Within 10 Working Days of receiving a payment claim from the Contractor, the Principal shall issue a payment schedule to the Contractor. The Principal's payment schedule shall:
- (a) Be in writing;
 - (b) Identify the payment claim to which it relates;
 - (c) Indicate a scheduled amount;
 - (d) Indicate the manner in which the scheduled amount was calculated; and
 - (e) Indicate the reason or reasons for any difference between the scheduled amount and the claimed amount and, where the principal is withholding payment on any basis, the reason for withholding payment.

- 1.4 Every scheduled amount shown in a payment schedule, together with the amount of VAT payable, shall be paid by the Principal to the Contractor within 20 Working Days of the date of the payment schedule.
- 1.5 The Defects Liability Retention shall be paid out to the Contractor by the Principal within 20 Working Days of the issue of the Defects Liability Certificate in accordance with clause 15 of this contract.
- 1.6 No later than 30 days after the completion of the Contract Works, or within such further time as the Principal may reasonably allow, the Contractor shall submit a final account of all of the Contractor's payment claims to the Principal. That account shall be headed "final payment claim" and be signed by the Contractor, and shall:
 - (a) Be in writing;
 - (b) Identify the contract to which the final payment claim relates;
 - (c) Identify the relevant period or periods to which the final payment claim relates;
 - (d) Identify the construction work to which the final payment claim relates, which shall include all works completed by the Contractor that have yet to be paid for by the Principal;
 - (e) Indicate the amount claimed for those works, the amount claimed in respect of all outstanding claims, and the manner in which those sums have been calculated; and
 - (f) Indicate the due date for payment, which shall be 30 Working Days after the date of service of the payment claim.
- 1.7 Within 10 Working Days of receiving a final payment claim from the Contractor the Principal shall issue a final payment schedule to the Contractor. The Principal's final payment schedule shall:
 - (a) Be in writing;
 - (b) Identify the final payment claim to which it relates;
 - (c) Indicate a scheduled amount;
 - (d) Indicate the manner in which the scheduled amount was calculated; and
 - (e) Indicate the reason or reasons for any difference between the scheduled amount and the claimed amount and, where the Principal is withholding payment on any basis, the reason for withholding payment.
- 1.8 Every scheduled amount shown in a final payment schedule, together with the amount of VAT payable, shall be paid by the Principal to the Contractor within 20 Working Days of the date of the final payment schedule.
- 1.9 Upon the issue of the final payment schedule, the Principal shall cease to be liable to the Contractor in respect of any of the Principal's obligations under the contract except for the Principal's obligations:
 - (a) To pay the scheduled amount due;

- (b) To pay any retention monies withheld; and
- (c) To pay any scheduled amounts shown in any payment schedule issued prior to the issue of the final payment schedule but unpaid at that time.

OR

2 Lump sum payment

- 2.1 No later than 30 days after the delivery of the PCC to the Contractor, or within such further time as the Principal may reasonably allow, the Contractor shall submit a final account of all amounts owing to the Contractor. That account shall be headed “final payment claim” and be signed by the Contractor, and shall:
 - (a) Be in writing;
 - (b) Identify the construction contract to which the payment claim relates;
 - (c) Identify the relevant period or periods to which the payment claim relates;
 - (d) Identify the construction work to which the payment claim relates, which shall include all works completed by the Contractor;
 - (e) Indicate the amount claimed for those and the manner in which those sums have been calculated; and
 - (f) Indicate the due date for payment, which shall be 30 Working Days after the date of service of the payment claim.
- 2.2 The Defects Liability Retention shall be paid out to the Contractor by the Principal within 20 Working Days of the issue of the Defects Liability Certificate in accordance with clause 15 of this contract.
- 2.3 Within 10 Working Days of receiving the final payment claim from the Contractor the Principal shall issue the final payment schedule to the Contractor. The Principal’s final payment schedule shall:
 - (a) Be in writing;
 - (b) Identify the final payment claim to which it relates;
 - (c) Indicate a scheduled amount;
 - (d) Indicate the manner in which the scheduled amount was calculated; and
 - (e) Indicate the reason or reasons for any difference between the scheduled amount and the claimed amount and, where the Principal is withholding payment on any basis, the reason for withholding payment.
- 2.4 Every scheduled amount shown in a final payment schedule, together with the amount of VAT payable, shall be paid by the Principal to the Contractor within 20 Working Days of the date of the final payment schedule.
- 2.5 Upon the issue of the final payment schedule, the Principal shall cease to be liable to the Contractor in respect of any of the Principal’s obligations under the contract except for the Principal’s obligations:

- (a) To pay the scheduled amount due; and
- (b) To pay any retention monies withheld.

Schedule 3: Insurances

1 Insurances

1.1 The Contractor is to arrange the following insurances:

- (a) [Professional indemnity: \$[●] – *delete this requirement if no design is to be carried out*];
- (b) Contractor's plant & equipment: \$[50,000 or greater];
- (c) [Public liability: \$[●]]; and
- (d) Motor vehicle liability: \$[25,000 or greater].

1.2 The Principal is to arrange Contract Works under the Principal's Policy. –

OR

The Contractor is to arrange Contract Works: \$[●]

1.3 The insurances the Contractor or the Principal arrange under this contract must meet the following requirements:

- (a) Except for insurance of Contractor's Plant and equipment, insurances arranged by the Contractor must be in the joint names of the Contractor and the Principal;
- (b) Insurances arranged by the Principal must be in the joint names of the Principal, the Contractor and any subcontractors;
- (c) The insurance must include a provision that a default by one insured does not prejudice the rights of the other;
- (d) The insurance must include a waiver of the insurer's right to subrogation against the insured parties;
- (e) The insurance must operate as if separate policies had been issued to each of the insured parties other than in relation to the amount of insurance available; and
- (f) The insurer or insurers and the insurance contracts must be acceptable to the other parties, provided that those parties must not be unreasonable in agreeing to the arrangements, and the insurance contracts must not be able to be cancelled or changed without the consent of the parties.

Schedule 4 – Plans and Specifications

Schedule 5 – Practical Completion

1 Practical Completion

1.1 Practical Completion is where the Contractor has:

- (a) Delivered to the Principal all of the following (to the extent that the Contractor is responsible under this contract):
 - (i) All necessary authorities and certification relating to lawful occupation of the Contract Works by the Principal;
 - (ii) All relevant test certificates and approval certificates from relevant authorities required for occupation and use;
 - (iii) All inspection certificates required for occupation and use under any applicable legislative requirement; and
 - (iv) All deeds of warranty and producer statements that have not already been provided;
- (b) Completed all of the work except for minor omissions and minor defects:
 - (i) which do not prevent the works from being reasonably capable of being used for their intended purpose, and the rectification of which will not prejudice the convenient use of the Contract Works; and
 - (ii) the value to remedy of which shall not cost in aggregate more than the value of the Defects Liability Retention remaining once PCC is issued;
- (c) Connected, tested, balanced and certified all services as fit for operation for their intended purpose in accordance with the Plans and Specifications;
- (d) Removed all rubbish from the Site and the building and site works have been cleaned to an acceptable standard;
- (e) As required, provided the Principal or the Principal's Representative with relevant operations maintenance manuals and with such information as they may reasonably require, and facilitated an inspection of the Site in order to verify Practical Completion;
- (f) Obtained, following inspection by any design consultants engaged by the Principal or the Contractor to prepare designs comprised in the Contract Works, a certificate stating that the Contract Works have been completed in accordance with the design consultants' designs and associated design documentation; and
- (g) If required by the Principal, obtained from independent design consultants selected by the Principal, confirmation that the works are practically complete.

The Principal may, but is not obliged to, waive any of these requirements at its sole discretion.

1.2 To achieve Practical Completion, the Contractor (at its cost) must satisfy the Principal that it has done and it will do everything necessary as may be required to facilitate the

uplifting of the code compliance certificate for the Contract Works, and the Contractor has actually lodged an application for the code compliance certificate on behalf of the Principal and has obtained a Certificate for Public Use for the School (if applicable).

Appendix A – Table of guarantees

Works or Materials	Materials	Workmanship	
Structural Steel Corrosion Protective Coatings	10	5	
Metalwork	2	5	
Carpentry	2	5	
Aluminium Windows and Doors (including glazing)	5	5	
Metal Roof Flashings	15	5	
Membrane Roofing Incl. Join to Existing	20	5	
Wall Cladding	10	5	
External Sealants	10	5	
Painting	3	5	
Electrical and Electrical Fixtures	2	5	
General Guarantee on New Building Work	2	5	
Pre Cast Concrete Panels	25	5	
Concrete Work	5	1	
Brickwork	15	1	
Structural Steel	25	1	
Sheet Tanking	20	5	
Proprietary Curtain Walling (including Curtain wall glazing)	5	5	
Glazing (other than glass to aluminium windows and doors or to curtain walls)	2	1	
Colorsteel Profiled Metal Soffits	15	5	coating 15
Durolite GRP Roofing	15	5	weathertightness/light transmission 15
Membrane Roofing	20	5	
Timber Doors	2	1	
Fire Rated Coatings	10	5	
Direct Fixed Acoustic	5	2	
Suspended Tile Ceiling (grid and tiles)	15	5	
USG Grid Ceiling Suspension systems	15	5	
Purpose made joinery fixtures	2	1	
Plumbing and Plumbing Fixtures	2	1	
Door Hardware	10	5	
Solid Plaster	5	1	
Vinyl Flooring	5	1	
Carpet	5	1	
Roller Shutter Doors	2	1	
Siteworks, Paving and Drainage	10	5	
Structured Cabling	20	5	
Security System	2	1	
Mechanical Equipment	1	1	
Fire Services (delivery pipework, both in-ground and above-ground)	15	5	
Fire Services (rest of system)	5	5	
All in-ground services	15	5	

Contract for Construction Works
Cook Islands Government



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AGREEMENT dated **20**

PARTIES

Her Majesty the Queen in right of the government of the Cook Islands acting by and through the [insert [Minister/Secretary] of Agency name] ("Principal")

The party named as Contractor in Schedule I ("Contractor")

RECITALS

- A. The Principal has selected the Contractor to undertake the Project.
- B. It is a fundamental principle that the Contractor takes responsibility for the overall Project including establishing and maintaining an appropriate Programme of Works, quality control and supervision of costs.
- C. The Principal has agreed to pay the Contractor the Contract Price.
- D. The parties wish to record the terms of their agreement in this contract.

AGREEMENT

I. INTERPRETATION

- I.1 Unless otherwise expressly stated to the contrary, capitalized terms used in this contract shall have the following meaning:
 - (a) Completion Date means the due date for the Practical Completion of the Project as set out in Schedule I;
 - (b) Contract Price means the amount set out in Schedule I;
 - (c) Contract Works means the works to be executed by the Contractor to complete the Project in accordance with this contract;
 - (d) Defects extends to include all defects, faults, omissions, shrinkages, undue deterioration and other faults which are due to Materials or workmanship not being in accordance with this contract;
 - (e) Defects Liability Certificate shall have the meaning set out in clause 15;
 - (f) Defects Liability Period shall have the meaning assigned to it in clause 15.2;
 - (g) Defects Liability Retention means the funds retained in clause 4.1 as retentions for potential defects;
 - (h) Force Majeure means any of the following causes provided they are outside the reasonable control of the affected party, were not reasonably foreseen and could not have been prevented or avoided by that party taking all reasonable steps:
 - (i) Act of God, earthquake, cyclone, fire, explosion, flood, landslide, lightning, storm, tempest or drought;
 - (ii) Act of public enemy, sabotage, malicious damage, terrorism or civil unrest,

but does not include any strike, lock-out, trade dispute or labour disturbance affecting the affected party or any of its representatives;

- (i) Materials means any raw or manufactured material, goods or things (other than Plant) required for use in the Contract Works;
- (j) Payment means each payment of the Contract Price made to the Contractor;
- (k) Payment Terms means the payment terms described in the Schedule 2;
- (l) PCC means the practical completion certificate issued to the Contractor when the Contractor has achieved Practical Completion;
- (m) Plans and Specifications means the plans and specifications annexed as Schedule 4;
- (n) Plant means all appliances, temporary buildings and equipment of whatsoever nature required for carrying out the Contract Works but not intended to be incorporated in the Contract Works;
- (o) Practical Completion shall have the meaning assigned to it in Clause 13;
- (p) Principal's Representative means the person named in Schedule 1;
- (q) Programme of Works means the programme for the construction of the Contract Work as further described in Clause 11.1;
- (r) Project means the project described in Schedule 1;
- (s) Repair means renewal and/or replacement necessary to remedy defects;
- (t) Site means the site described in Schedule 1;
- (u) Subcontractor means any person who contracts with the Contractor to design, carry out or supply part of the Contract Works on behalf of the contractor;
- (v) VAT means Value Added Tax under the Value Added Tax Act 1997;
- (w) Working Day means any day on which trading banks are open for business in the Cook Islands other than;
 - (i) A Saturday, Sunday or a public holiday; or
 - (ii) Any day during the period commencing on and including 24 December in one year and ending on and including 5 January in the following year.

2. CONTRACTOR TO UNDERTAKE THE CONTRACT WORKS

- 2.1 The Contractor shall construct, complete, deliver and remedy defects in the Contract Works and do all things described in this contract.

3. PRINCIPAL TO PAY CONTRACT PRICE

- 3.1 The Principal shall pay the Contract Price on the Payment Terms together with the VAT.
- 3.2 No payment shall be made pursuant to this contract until the contract is executed and signed by the Contractor and delivered to the Principal.

4. RETENTION

- 4.1 The Principal shall retain the following percentage from each Payment by way of retention and the limit of the total sums retained shall be in respect of Defects Liability Retention: 10% of the Contract Price.
- 4.2 Upon the issue, by the Principal of the PCC, the Principal shall be liable to pay all retention monies (excluding the Defects Liability Retention) owing to the Contractor at the date of the Practical Completion in accordance with the Payment Terms.
- 4.3 Upon the expiry of the Defects Liability Period, the Principal shall pay the Defects Liability Retention on the date which is 10 working days after the date of the Defects Liability Certificate issued in respect of the buildings building services and landscaping.

5. CONTRACTOR'S OBLIGATIONS

- 5.1 The Contractor will undertake and complete the Contract Works at its own cost, in accordance with the Programme of Works and the Plans and Specifications, in a good and workmanlike manner with all reasonable speed, in accordance with all consents. Specifically the Contractor covenants that it shall;
- (a) Comply with all obligations, restrictions, requirements and standards imposed by or arising in consequence of, all statutes, regulations, the building code, and all other codes in force for the time being affecting the carrying out and completion of the Contract Works including any building upgrade works required;
 - (b) Obtain at its cost all relevant permits, consent and approvals required to enable the Contract Works to be lawfully commenced and carried out (including any consents necessary for any Variations);
 - (c) Arrange forthwith for all inspections by all relevant authorities to be carried out at all times in accordance with all applicable laws or the building code (as may be applicable in the circumstances);
 - (d) Notify all relevant authorities on completion of the Contract Works and obtain a code compliance certificate for the Contract Works;
 - (e) Comply with all proper instructions issued by the Principal in relation to this Contract;
 - (f) Ensure that all Materials used in and forming all or part of the Contract Works are new materials and of good quality and in accordance with the provisions of this contract;
 - (g) Provide all necessary supervision during this contract and have on the Site at all working times a competent representative; and
 - (h) Have full responsibility for:
 - (i) The care of the Contract Works from the time it obtains possession of the Site until Practical Completion except where any loss or damage arises from the excepted risks listed in Clause 10.1; and
 - (ii) The adequacy, stability and safety of all Site operations and methods of construction.

6. CONTRACTOR'S WARRANTIES

- 6.1 The Contractor warrants and undertakes to the Principal that the Contractor:

- (a) Is satisfied that the Contract Price is sufficient to cover the costs of performing all of its obligations under and in connection with this contract and all things and matters required for the due, proper and punctual performance of the Contract Works with the expectation of Variations;
- (b) Has taken into consideration all information which is relevant to the risks, contingencies and other circumstances which would in any way affect the Contract Works and /or the Contract Price with the exception of Variations;
- (c) Has read and reviewed all information provided to it by the Principal regarding the Site and the conditions on, under and about the Site and had made its own inquiries, including review of archival and other records which are publicly available in relation to utilities, building and other structures which have previously been located on the Site;
- (d) Is not entitled to and will not claim an entitlement to an increase in the Contract Price nor to any other compensation or benefit except those entitlements expressly provided for in this contract;
- (e) Has fully inspected the site and any existing earthworks prior to commencing the Contract Works and has made due allowance for the conditions in this contract. Having inspected the Site and the earthworks and satisfied itself with the ground conditions for the purposes of the Contract Works, the Contractor shall not be entitled to claim, or request a Variation or an extension of time;
- (f) Has fully inspected the Site and agreed with the Principal how the Contractor is permitted to access the Site and has satisfied itself that the access is appropriate for the Contract Works. The Contractor shall not be entitled to claim a Variation or an extension of time if access issues arise after the Contract Works have started;
- (g) Will remain up to date with its payments to Subcontractors and will provide, if requested, confirmation and evidence of such payments to the Principal;
- (h) Will provide guarantees for all of its work and for all of its work carried out by Subcontractors in favour of the Principal for the minimum periods as set out in the table of guarantees at Appendix A (as applicable) or as otherwise agreed in writing with the Principal;
- (i) Will provide guarantees for all materials used and for all materials used by Subcontractors in favour of the Principal for the minimum periods as set out in the table of guarantees at Appendix A (as applicable) or as otherwise agreed in writing with the Principal;
- (j) Shall assign and where necessary, procure the assignment of all manufacturers warranties on any products used in the Contract Works to the Principal; and
- (k) Shall upon 10 working days written notice from the Principal, provide the Principal with access to the Contractor's records and files relating to the cost of the Contract Works, in hard copy, electronic or other format. The Principal shall keep confidential any commercially sensitive information obtained by it in the context of this clause.

6.2 Where any guarantees and/or warranties are included in the Plans and Specifications, they will be in addition to the guarantees and warranties set out in this contract, and in the event of any inconsistency between them, the guarantees and warranties set out in this contract shall prevail.

7. DESIGN OBLIGATIONS

If the Contract Works include provisions of design services, the provisions of this clause 7 shall apply.

- 7.1 The Contractor warrants and undertakes to the Principal that the Contractor;
- (a) Is experienced in the management, co-ordination and/or production of design documentation for the projects containing elements similar to the elements comprising the Contract Works;
 - (b) Has examined the documents, things and requirements comprising the contract, including but not limited to the Plans and Specifications; and
 - (c) Has arranged the requisite professional indemnity insurance as required in Schedule 3.
- 7.2 The Contractor is responsible for any design and/or documentation work it carries out, and the performance and “build ability” of that design work and the Contractor must ensure that such works are designed, the design developed and the design documentation prepared with the degree of skill, care and diligence reasonably expected of a professional providing services similar to the design work, in accordance with innovative and cost effective design and construction solutions and in accordance with this contract. The Contractor must ensure that:
- (a) To the extent that the Contractor undertakes the design work, the Contractor has the necessary experience, skills, and expertise to carry out such work;
 - (b) Where it subcontracts the design work, such works are designed for the Contractor by appropriate consultants (approved by the Principal) in accordance with the proper professional architectural or engineering practices and principles;
 - (c) Such works and all services and features included in such works are professionally designed to be appropriate, adequate and fit for the purpose or purposes described in or reasonably able to be inferred from this contract;
 - (d) It has and will apply sufficient resources perform the design services to meet its obligations, including to comply with the Principal's programming requirements; and
 - (e) Where the Contractor forms the opinion on reasonable grounds, at any time that an element of the design or design documentation does not comply with the contract or contains errors or omissions the Contractor must direct its consultants to rectify the non-compliance (at no additional cost to the Principal) and inform the Principal of the direction in writing.

8. MUTUAL OBLIGATIONS

- 8.1 The Principal and the Contractor agree to adopt and conduct themselves in accordance with the following partnering principles:
- (a) The establishment of a relationship based on mutual trust;
 - (b) Shared intentions to achieve a maximizing of each of their respective benefits;
 - (c) Openness, promptness, consistency and fairness in all dealings and communications and reasonableness and timeliness, having regard to the internal approval process of the Principal and in particular recognizing the levels of delegated authority of the Principals; and
 - (d) Non – adversarial dealings and constructive mutual steps both to avoid differences and to identify solutions.
- 8.2 The Principal and the Contractor must, in their day to day interactions and in performing their obligations act in a manner entirely consistent with these partnering principles and the

Principal must procure the same standard of conduct from the Principal's Representative the Contractor must also procure that its subcontractors act in a manner entirely consistent with these partnering principles in performing their obligations in respect of the Contract Works.

- 8.3 The Contractor agrees to further ensure that it actively maintains positive relationships with other key stakeholders in the Project.

9. **INSURANCE**

- 9.1 Insurances required under this contract are to be effected by the parties as described in Schedule 3. The insurances specified are the minimum requirements for insurance and the parties are free to arrange whatever additional insurance protection they may consider appropriate.
- 9.2 These insurance arrangements do not limit or alter any indemnities or affect in any way the liabilities the parties may have as contained in this contract.
- 9.3 The insurances in Schedule 3 must:
- (a) Begin by the earlier of either the possession date of the Site by the Contractor or the date when the Contractor commences work;
 - (b) Continue until the date of issue of the PCC; and
 - (c) Cover loss or damage and all liability risks arising from the carrying out of deferred work and work required to remedy defects until such work is completed.

10. **VARIATIONS**

- 10.1 The Contractor can only claim a Variation for the following excepted risks:
- (a) Force Majeure;
 - (b) A General Strike or industrial action on the island where the Project is based, where the Project is over two or more islands, only in respect of that portion of the work on the affected island;
 - (c) Work required which is outside the scope of the Plans and Specifications, as first approved in writing by the Principal or the Principal's representative; or
 - (d) Any act or omission of the Principal or of any person for whose acts or omissions the Principal is, as between itself and the Contractor, responsible.
- 10.2 The Contractor must provide to the Principal as estimate of the price of work involved in a proposed Variation.
- 10.3 The Principal may, at its option, accept or reject a Variation estimate from the Contractor and will advise the Contractor accordingly within 10 Working Days of receiving the estimate. No work may proceed in respect of the Variation unless the Principal has approved the estimate for the work in writing. The Principal shall not be liable to pay for any work carried out over and above an approved estimate without its prior written approval of a further estimate and the reason for the additional cost which shall be provided by the Contractor.
- 10.4 The Contract Price and the elements that make up the Contract Price shall be adjusted by the value of Variations being added to or deducted from it.
- 10.5 The Contractor shall not vary the Plans and Specifications or the Contract works generally without an order in writing from the Principal.

11. PROGRAMME OF WORKS

- 11.1 The Contractor shall within 10 working days of execution of this contract and in consultation with the Principal prepare a Programme of Works in respect of the Contractor's construction and completion of the Contract Works. The Contractor will keep the Principal informed of progress of the Contract Works and if at any time Contract Works fall behind the Programme of Works, such that any key milestone dated listed in the Programme of Works will not be met, or in the reasonable opinion of the Principal, may not be met, the Principal may serve a notice on the Contractor requiring the Contractor to take such action and to apply such additional resources as are necessary to accelerate the Contract Works so that any key milestone date in the Programme of Works will be met. Any costs incurred as a result of such notice shall be at the sole costs of the Contractor.

12. EXTENSION OF TIME

- 12.1 The Contractor must start work within 5 Working Days of being given possession of the Site and achieve Practical Completion of the Contract Works on the Completion Date.
- 12.2 The Contractor may apply to the Principal to extend the time for the Practical Completion due to the delay arising from any of the following causes:
- (a) A consent or approval not being obtained (through no fault of Contractor);
 - (b) Unforeseeable physical conditions;
 - (c) The Contract Works being suspended with the written consent of the Principal;
 - (d) Loss or damage to any part of the Contract Works (through no fault of the Contractor);
 - (e) Variations;
 - (f) Unusually inclement weather that materially interferes with the progress of the Contract Works;
 - (g) Strike, lockout or industrial action affecting the island or islands on which the Project is based;
 - (h) The Principal not giving a direction within a reasonable time after being asked by the Contractor in writing to do so;
 - (i) The Principal not supplying Materials, information, work or services on time;
 - (j) A separate contractor's act or omission;
 - (k) The Contractor dying; or
 - (l) Something else of significance beyond the Contractor's control.
- 12.3 The Contractor must apply in writing within 5 Working Days or as soon as practicable after the delay begins. The application must state in sufficient detail the grounds for the extension, including the cause of the delay relied on, and must specify the number of Working Days claimed.
- 12.4 The Principal must respond to the Contractor's claim within 10 Working Days after the later of receiving the Contractor's claim or receiving sufficient detail for the Principal to properly assess the Contractor's claim. If the Principal fails to respond within 10 Working Days the Contractor must notify the Principal of the failure. If after a further 5 Working Days of such

notification the Principal has not responded, the time for Practical Completion must be extended by the extension of time claimed by the Contractor.

13. PRACTICAL COMPLETION

- 13.1 Practical Completion is that stage in the execution of the Programme of Works when the Contract Works are complete in accordance with Schedule 5, and the Contract Works may be lawfully occupied by the Principal or any person authorized by the Principal without being unreasonably inconvenienced by the rectification of minor defects.

14. SUBCONTRACTORS

- 14.1 The Contractor may only subcontract the Contract Works with the consent of the Principal.
- 14.2 The Contractor is responsible for the work of all subcontractors engaged by the Contractor to carry out any part of the Contract Works. The Contractor is in particular responsible for the procuring of any guarantee required by or called for under this contract or the Plans and Specifications and for ensuring that all subcontractors act in strict accordance with all legislation and any consent issued in respect of the works.

15. DEFECTS LIABILITY

- 15.1 When the Contractor believes that the Contract Works qualify for the issue of a Defects Liability Certificate on the basis that:

- (a) The Defects Liability Period has expired;
- (b) The Contractor has confirmed that the Contract Works have been inspected and quality for the Defects Liability Certificate;
- (c) The Contractor has remedied any minor omission or minor defects in the Contract Works; and
- (d) The Contractor has obtained the code compliance certificate,

then the Contractor shall give to the Principal a provisional Defects Liability Certificate confirming that the Defects Liability Period has expired and that there are no outstanding omissions or defects.

- 15.2 The Defects Liability Period for the Contract Works shall commence on the date of Practical Completion of the Contract Works. The Defects Liability Period shall be 12 months for buildings, building services and landscaping.
- 15.3 Upon receipt of the provisional Defects Liability Certificate and once the Principal is satisfied that the prerequisites in clause 15.2 have been satisfied and Contractor has provided the Principal with all guarantees and warranties required under this contract and the Plans and Specifications, then the Principal shall issue a Defects Liability Certificate to the Contractor.

16. LIQUIDATED DAMAGES

- 16.1 If the Contractor does not achieve Practical Completion by the Completion Date, the Principal is entitled to deduct liquidated damages at the rate set out in Schedule 1. The liquidated damages shall run from the Completion Date to the actual date of Practical Completion.
- 16.2 Without prejudice to any other means of recovery, the Principal may deduct the amount of liquidated damages from any monies payable to the Contractor in accordance with the contract.

17. WEATHER TIGHTNESS

- 17.1 The Contractor warrants to and covenants with the Principal that the total building envelope and Contract Works shall remain weathertight for a period of ten years from Practical Completion.
- 17.2 The Contractor guarantees to the Principal that it shall, at its own expense, Repair all Defects that may compromise the weathertightness of the building envelope or the Contract Works and make good any damage to the building caused by any Defect.
- 17.3 The Contractor indemnifies the Principal in respect of all direct losses incurred by the Principal that may be occasioned by or arise out of any Defect in the weathertightness of the building envelope or the Contract Works.
- 17.4 If the Contractor does not Repair any Defects within 10 Working Days, or where imported Plant or Materials are required for such Repair, within a reasonable period of receiving notice from the Principal that the building envelope or the Contract Works is not weathertight, the Principal may remedy the Defect and recover all costs thereby incurred from the Contractor but without releasing the Contractor from any obligations or liability. Such costs may include the cost of all labour, material, travelling, and other charges incurred by the Principal in repairing such Defect.
- 17.5 The Contractor shall not be liable for any direct, indirect or consequential loss or damage solely attributable to:
- (a) Any act omission or negligence of the Principal or any other person for which the Principal is responsible, as between itself and the Contractor; or
 - (b) Any forces of nature which could not be reasonably foreseen or mitigated by the Contractor.
- 17.6 The Contractor further indemnifies and holds the Principal harmless from and against any costs, claims, liabilities, or expenses which the Principal may incur or for which the Principal may become liable arising from any failure by the Contractor to Repair and/or rectify any Defect in accordance with the requirements of this clause.

18. COMPLIANCE WITH LAWS

- 18.1 In carrying out the Contract Works the Principal and the Contractor shall comply with the provisions of all statutes, regulations and policies that may be applicable to the Contract Works.
- 18.2 The Contractor must comply, at its costs with all licenses, consents, approvals, obtained and all conditions attaching to such licenses, consents or approvals.

19. DISPUTES

- 19.1 Any dispute arising under this contract shall, in the first instance be referred to the Principals Representative and appropriate person for the Contractor for resolution. If the dispute is not resolved within 14 Working Days, the dispute will be referred to the Head of Agency and the equivalent person in respect of the Contractor. Where this process fails to achieve a resolution, the matter will be referred to arbitration in accordance with the Arbitration Act 2009.

20. NOTICES

- 20.1 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 I.

- 20.2 Notices must be signed or in the case of email sent by the appropriate manager or person having authority to do so.
- 20.3 A notice will be considered to be received:
- (a) If delivered by hand, on the date it is delivered
 - (b) If sent by post on the 7th Working Day after the date it is sent;
 - (c) If sent by courier on the date it is delivered;
 - (d) If sent by fax, on the sender receiving fax machine report that it is successfully sent;
or
 - (e) If sent by email, upon receipt of a confirmation email from the recipient.
- 20.4 A notice received after 4pm on a Working Day or on a day that is not Working Day will be considered to be received on the next Working Day.

21. **DISCRETIONARY TERMINATION**

- 21.1 In addition to any other rights of termination that the Principal may have under the contract or at law generally, the Principal reserves the right to terminate the contract at any time. When exercising this right, the Principal shall give at least 20 Working Days notice to the Contractor who shall then do everything necessary to comply with the notice and demobilize from the Site. At the time of giving notice to the Contractor the Principal shall inform the Contractor of the date of termination.
- 21.2 The Principal shall meet the costs of early termination and demobilization and the Contractor shall be entitled to be paid in accordance with the contract for all work up to the date of termination. The Contractor shall be entitled to such reasonable costs which the Contractor can demonstrate are a direct result of such early termination but it will not be entitled to any payment for anticipated profit for preliminary and general costs in respect of the unfinished work or any consequential loss of any kind whatsoever.

22. **TERMINATION**

- 22.1 The Principal may terminate this contract immediately by written notice to the Contractor if:
- (a) The Contractor suspends work on site for 10 Working Days; or
 - (b) A receiver, liquidator, statutory manager is appointed to the Contractor, the Contractor is adjudged bankrupt, or otherwise enters into a compromise with its creditors; or
 - (c) The Contractor breaches this contract and fails to remedy the breach within 5 Working Days of receipt of written notice from the Principal to remedy the breach.

23. **CONFIDENTIALITY**

- 23.1 The Contractor must use its best endeavours to keep confidential all matters relating to the contract. The Contractor must not disclose any information except to the extent that:
- (a) The disclosure of that information is necessary for the Contractor to carry out its obligations under this contract or to enforce any of its rights under it; and
 - (b) That disclosure is required by law.
- 23.2 The Contractor must keep confidential any claim or dispute under the contract.

- 23.3 The Contractor must not advertise its relationship with the Principal or its involvement in the Contract Works without the written permission of the Principal.
- 23.4 The Contractor must ensure that its subcontractors and suppliers are bound by a clause similar to this clause.

24. **GENERAL**

- 24.1 Subject to clause 14, the Contractor must not assign or novate any rights under the contract without first obtaining the Principal's consent. The Principal's consent may be given or withheld at the Principal's absolute discretion.
- 24.2 The Principal may assign its rights under this contract without the consent of the Contractor.
- 24.3 The Principal is entitled to set off, against any sums that would otherwise be due to the Contractor, amounts in respect of any claims it has, including damages for breach of contract by the Contractor (whether pursuant to this contract or any other contract between the Principal and the Contractor).
- 24.4 The Principal may, acting reasonably, request that the Contractor immediately remove any on-site personnel from the Site. The Contractor shall pay any costs incurred in such removal and any costs of subsequent replacement and the person required to be removed (or prevented access) shall not again be employed in relation to the Contract Works without the permission of the Principal.
- 24.5 This contract evidences the entire agreement between the Contractor and Principal in connection with the Contract Works and supersedes and extinguishes all prior agreements between the Contractor and Principal relating to such matters.
- 24.6 Except as provided at law or elsewhere in the contract, nothing in the contract can be varied, waived, discharged or released, unless both parties agree in writing.
- 24.7 This contract may be signed in any number of counterparts (which may be emailed pdf or facsimile copies) all of which when taken together shall constitute one and the same contract.
- 24.8 This contract is governed by Cook Islands law and the parties submit to the jurisdiction of the High Court of the Cook Islands.
- 24.9 Unless otherwise noted, all amounts referred to, including the Contract Price, exclude VAT.

SCHEDULE 1: PARTICULARS

SCHEDULE 2: PAYMENT TERMS

SCHEDULE 3: INSURANCES

SCHEDULE 4: PLANS AND SPECIFICATIONS

SCHEDULE 5: PRACTICAL COMPLETION

APPENDIX A – TABLE OF GUARANTEES

SELF-EVALUATION CHECKLIST



SELF EVALUATION CHECKLIST

NAME OF AGENCY: [Name of Tendering Agency]

PROJECT TITLE: [Project Title]

The Tendering Agency or Principal must complete this checklist to ensure a tender is in line with tendering requirements. If at any point you answer NO, take appropriate steps to remedy the situation and when the answer becomes YES, then continue. Otherwise please include justification for exclusion. This checklist must be submitted to the tender secretariat with your tender document for review prior to advertising. The tender secretariat must endorse this checklist before you may proceed with advertising.

REFERENCE TO POLICY	REFERENCE TO RFT TEMPLATE	MANDATORY TENDER REQUIREMENTS FOR PURCHASES	COMPLETE	INCLUDE PAGE NUMBER AND SECTION OR JUSTIFICATION FOR EXCLUSION	FOR TENDER SECRETARIAT USE ONLY
Schedule One, 12.1.1. a)	Pg. 1 Cover Page	Cover sheet containing basic information – tender title, tender reference number, name of tendering agency, date release.	YES NO		
Schedule One, 12.1.1. b)	Pg. 1 Cover Page	The name of the agency responsible for the tender must be clearly stated.	YES NO		
Schedule One, 12.1.1. c)	Pg. 5 Tender Closing Time Pg. 6 Submission of Tender	The venue for lodgement, date and time for closure of acceptance of Tenders.	YES NO		
Schedule One, 12.1.1. d)	Pg. 5 Tender Closing Time	It is the tenderer's responsibility to ensure that their proposal reaches the designated venue by the specified date and time.	YES NO		

[Name of Tendering Agency] Request for Tender – [Project Title]

REFERENCE TO POLICY	REFERENCE TO RFT TEMPLATE	MANDATORY TENDER REQUIREMENTS FOR PURCHASES	COMPLETE	INCLUDE PAGE NUMBER AND SECTION OR JUSTIFICATION FOR EXCLUSION	FOR TENDER SECRETARIAT USE ONLY
Schedule One, 12.1.1. e)	Pg. 6 Submission of Tender Pg. 9 Mandatory Conditions (1)	Tenders must be completed in the format contained in “Attachment #”. If offers do not comply with the format contained in Attachment #, they will be deemed non-compliant and may not be accepted.	YES NO		
Schedule One, 12.1.1. f)	Pg. 9 Mandatory Conditions (3)	It must be clearly stated that all tenders and related documentation may be presented in the English or Maori language. Tenders in Maori must be translated into English.	YES NO		
Schedule One, 12.1.1. g)	Pg. 5 Introduction	It is the tenderer’s responsibility to carry out any site visits in order to assess the true costs to complete the project where necessary.	YES NO		
Schedule One, 12.1.1. h)	Pg. 5 Introduction Pg. 9 Mandatory Conditions (4)	It must be clearly stated whether tenders will be accepted for all or part of the specifications listed for the tender. The specifications may include statements such as: ‘The Tenderer must tender to provide services or supply materials for the whole contract works...’ or ‘Tenderers may tender to supply services or materials for sections of the entire specifications but must tender for the whole requirements of that section.’	YES NO		
Schedule One, 12.1.1. i)	Pg. 8 Non-Resident Tenderer	Notes the need for compliance with Business Trade and Investment Board (BTIB) requirements. “In order for foreign companies to carry on business in the Cook Islands, an application must be made to the Business Trade and Investment Board for registration as a foreign enterprise. Any fees associated with the registration are to be covered by the tenderer.”	YES NO		

[Name of Tendering Agency] Request for Tender – [Project Title]

REFERENCE TO POLICY	REFERENCE TO RFT TEMPLATE	MANDATORY TENDER REQUIREMENTS FOR PURCHASES	COMPLETE	INCLUDE PAGE NUMBER AND SECTION OR JUSTIFICATION FOR EXCLUSION	FOR TENDER SECRETARIAT USE ONLY
Schedule One, 12.1.1. j)	Attachment 2 – Tender Forms to be Submitted	A template for costing and other details should be prepared for tenderers to complete and submit. This will ensure that the tenderer submits the required information and that all tenders are consistent for the purposes of evaluating the tenders.	YES NO		
Schedule One, 12.1.1. k)	Pg. 6 Submission of Tender Pg. 9 Mandatory Conditions (5)	Whether electronic and hard copy, or electronic only or hard copy only tenders are permitted.	YES NO		
Schedule One, 12.1.1. l)	Pg. 4 Further Information of Clarification	Negotiations will not be permitted between the tender/evaluation team and any prospective suppliers during the advertising period.	YES NO		
Schedule One, 12.1.1. m)	Pg. 7 Selection Process Attachment 3	Information on how the tender will be assessed and how the successful tenderer will be chosen must be included.	YES NO		
Schedule One, 12.1.1. n)	Not in Template	The tender documents must include, if applicable, a request for details of financial or contractual requirements that the tenderer will apply if awarded the tender.	YES NO		

[Name of Tendering Agency] Request for Tender – [Project Title]

REFERENCE TO POLICY	REFERENCE TO RFT TEMPLATE	MANDATORY TENDER REQUIREMENTS FOR PURCHASES	COMPLETE	INCLUDE PAGE NUMBER AND SECTION OR JUSTIFICATION FOR EXCLUSION	FOR TENDER SECRETARIAT USE ONLY
Schedule One, 12.1.1. o)	Pg. 7 Selection Process Attachment 3	If there is likely to be a short listing of tenderers, then terms and conditions for this process must be clearly stated.	YES NO		
Schedule One, 12.1.1. p)	Pg. 8 Notification of Acceptance	The process for informing the successful tenderer must be clearly stated.	YES NO		
Schedule One, 12.1.1. q)	Pg. 7 Notification of Acceptance	The process for informing unsuccessful tenderers, if applicable, and a statement that they have the right to make a complaint under the complaints process must be stated.	YES NO		
Schedule One, 12.1.1. r)	Pg. 8 Notification of Acceptance	There must be a statement of the agency's intentions to contact referees, competitors or customers to enquire about the performance of the tenderer.	YES NO		
Schedule One, 12.1.1. s)	Pg. 8 Notification of Acceptance	Tenderers are entitled to the release of their evaluation report on request. Any requests for evaluation reports of other tenders must be processed under the Official Information Act 2009.	YES NO		
Schedule One, 12.1.1. t)	Pg. 7 Probity	That no gifts or entertainment of any nature will be permitted between any parties involved throughout the tender process, including: tenderers or potential tenderers, tender team members, evaluation team members, the Head of Agency, or any other member or organisation that may have an involvement with any aspect of the tender process.	YES NO		

[Name of Tendering Agency] Request for Tender – [Project Title]

REFERENCE TO POLICY	REFERENCE TO RFT TEMPLATE	MANDATORY TENDER REQUIREMENTS FOR PURCHASES	COMPLETE	INCLUDE PAGE NUMBER AND SECTION OR JUSTIFICATION FOR EXCLUSION	FOR TENDER SECRETARIAT USE ONLY
Schedule One, 12.1.1. u)	Pg. 9 Mandatory Conditions (6)	Tenders must be inclusive of freight landed in Rarotonga (or the relevant island) for ease of comparing local and overseas tenders.	YES NO		
Schedule One, 12.1.1. v)	Not in Template	At the conclusion of the tender process the outcome must be published on the procurement website showing the names of the successful tenderer.	YES NO		
Clause 1.8.2	Pg. 6 Conflict of Interest Declaration Attachment 2	All tender bids should be accompanied by a conflict of interest declaration by those representing the bid.	YES NO		
Clause 4.6.5	Pg. 6 Submission of Tender Pg. 9 Mandatory Conditions (5)	Tender documents must include an approved statement explicitly stating that e-tenders are acceptable to the agency and describing how e-tenders will be submitted.			
Clause 5.6	Attachment 1	Specifications completed.	YES NO		
Clause 5.7.3	Attachment 4	Contract completed and consistent with RFT specifications	YES NO		
Clause 5.7.4	Attachment 2	Price schedules completed.	YES NO		

[Name of Tendering Agency] Request for Tender – [Project Title]

REFERENCE TO POLICY	REFERENCE TO RFT TEMPLATE	MANDATORY TENDER REQUIREMENTS FOR PURCHASES	COMPLETE	INCLUDE PAGE NUMBER AND SECTION OR JUSTIFICATION FOR EXCLUSION	FOR TENDER SECRETARIAT USE ONLY
Clause 5.7.5	Pg. 9 Mandatory Conditions (7) Attachment 2	All tenders must clearly show the VAT exclusive price, the VAT amount and a total inclusive of VAT amount. All values must be shown in New Zealand Dollar (NZD) currency.	YES NO		
Clause 5.7.7	Attachment 3	Evaluation criteria completed.	YES NO		
Clause 5.11.3 a)	Attachment 3	Tenders must be evaluated using the weighted scoring method.	YES NO		
Clause 5.11.3 b)	Attachment 3	If a request for tender is able to be carried out by a locally established company or if the request for tender has the ability to use local labour/resources, part of the evaluation criteria should include a weighted scoring for locally established companies.	YES NO		
Clause 5.11.3 c)	Attachment 3	The format of the evaluation criteria should be set out in a way that will allow each evaluation team member to allocate points to a tenderer for each category assessed.	YES NO		
Clause 5.11.3 d)	Attachment 3	If an agency has provided a contract with the tender documents, the tenderers acceptance of the terms of that contract must be assessed and weighted positively. A tenderers non-acceptance of the terms of the contract by making any amendments to the terms must be assessed and weighted negatively.	YES NO		

REFERENCE TO POLICY	INTERNAL CHECKS	COMPLETE	COMPLETED BY	FOR TENDER SECRETARIAT USE ONLY
Clause 5.3	Financial Review	YES NO		
Clause 5.4	Head of Agency – Written Delegated Authority	YES NO		
Clause 5.5	A tender team has been established.	YES NO		
Clause 5.6	Technical Review	YES NO		
Clause 5.7.3	Legal Review	YES NO		

TENDER SECRETARIAT USE ONLY			
<input type="checkbox"/> Tender Template Used <input type="checkbox"/> Previous Ministry Template Used <input type="checkbox"/> Other Template Used	<input type="checkbox"/> Retender <input type="checkbox"/> Waiver <input type="checkbox"/> Closed <input type="checkbox"/> Open <input type="checkbox"/> Electronic Submission	Date Endorsed: <input style="width: 100%;" type="text"/>	
Reference No: <input style="width: 100%;" type="text"/>		Submitted By: <input style="width: 100%;" type="text"/>	
		Approved By: <input style="width: 100%;" type="text"/>	

Please remember all tenders must be advertised for a minimum of 10 working days in at least 3 different public media sources. A tender log form must be kept up to date and all notices and clarifications should be circulated.

TENDER LOG

[Insert Agency Letter Head]

TENDER LOG FORM FOR INTERESTED PARTIES

[Insert Reference Number and Project Title]

Closing Date and Time: [Insert Closing Date and Time]

	DATE	NAME OF INTERESTED PARTY	CONTACT DETAILS
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

[Insert Agency Letter Head]

TENDER LOG FORM FOR RECEIVED TENDERS

[Insert Reference Number and Project Title]

Closing Date and Time: [Insert Closing Date and Time]

Tender Box Opening Date: [Insert Closing Date]

	NAME	RECEIVED VIA (POST/ IN PERSON/ ELECTRONIC) Include Contact Details	DATE AND TIME RECEIVED	AMOUNT (EXCL VAT)
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				

[Insert Agency Letter Head]

Witnesses Present During the Tender Opening:

Name	
Position	
Signature	
Date	

Name	
Position	
Signature	
Date	

Name	
Position	
Signature	
Date	

Name	
Position	
Signature	
Date	

TENDER REPORT

Tender Report



[Name of Project]

Reference No:	[Reference Number]
Date of Release:	[Date, Month, Year]

[Name of Agency]

All queries regarding this Request for Tender should be directed to:

Contact Officer

[Contact person email address]

TENDER CLOSING TIME: [Time] (CI Time) [Day, Date, Month, Year]

[This page is intentionally left blank]

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BACKGROUND

Background/Brief Description of Tender

[Provide a brief description of the tender and project, funding source, purpose and how long the project is intended to run and benefits to the Cook Islands Government]

Mark Applicable Tender:

- a) Tender for Goods ☐
- b) Tender for Goods & Services ☐
- c) Tender for Consultancy ☐
- d) Tender for Construction ☐

Appropriation/Funding Details for Tender

[Provide brief details on appropriation/funding for this tender]

Other Relevant Details:

[List any other relevant details, if necessary to this section.]

PROCUREMENT METHOD

[State procurement method and provide a brief background on how/why the procurement method was used. State if an EOI was conducted or not, how as information disseminated to services providers or to the market, etc]

Advertising started on the [Date, Month, and Year] via:

1. [List public media used]
- 2.
- 3.

Please note that the tender was advertised within the requirement minimum of 10 working days.

Tender Closing Date: [Day, Month, Year, and Time]

Extended Tender Closing Date (If applicable): [Day, Month, Year, and Time]

[Please note if there were any notices issued during the advertising period and confirm if these were issued to all registered tenderers]

Tender Management Summary

Include details of the Tender Management Team and those members identified as forming the Evaluation Committee and any Technical Advisors used.

Tender Team consists of:

1. *[List names of Tender Team Members]*
2. *[List names of Tender Team Members]*
3. *[List names of Tender Team Members]*

Tender Team Evaluation members consisted of:

1. *[List names of Tender Evaluation Members]*
2. *[List names of Tender Evaluation Members]*
3. *[List names of Tender Evaluation Members]*

List Supporting/Technical Advisors (if applicable)

[Please confirm if all members have signed a conflict of interest and confidentiality form. If members have identified a conflict of interest please explain how these will be mitigated]

TENDER OPENING

Tender Box Opening Date: *[Day, Month, Year, and Time]*

Members Present:

1. *[Tender Team Member]*
2. *[Relevant witness]*
3. *[List anyone else present]*

[Please confirm if all members have signed a conflict of interest and confidentiality form. If members have identified a conflict of interest please explain how these will be mitigated]

List of Tenders Received and Amounts

List of Tenders Received and Amounts, and conformity status:

Name of Tenderer	Amount (Excl VAT)	Conformity Status (Y/N)

Compliance Checklist

List tenderers that did not comply with the mandatory conditions and list which conditions were not met.

[Confirm if notification for non-compliant tenderers were sent out, when and if there were any responses.]

EVALUATION SUMMARY

First Tender Evaluation Date: [Day, Month, Year, and Time]

Last Tender Evaluation Date: [Day, Month, Year, and Time]

Evaluation Comments

1. Provide a Summary table of Evaluation Panel Weighted Average Scores (Be sure to include original score sheets as an appendix.
2. Provide an analytical summary on bids received weighted against the total average score.
3. Highlight any relevant comments made by the Evaluation team

Risk Assessment of Tenderers

1. [Highlight any potential risk in assessing the Bids]

RECOMMENDATION

Name of Successful Tender and Amount

Name:

Amount:

Describe preference in selection e.g. cost, quality, timeliness etc:

Provide a brief description on the preference for selecting the successful tenderer.

Provide a summary of the Evaluations team's recommendations highlighting the successful bidder and contract price.

Include any other comment that is relevant to the final recommendation.

Tender Evaluation Team Endorsement

The Tender Evaluation Team accepts the report and acknowledges that the evaluation process is in compliance with the Cook Islands Government Procurement Policy 2014.

Name	Signed	Date
[Name] , [Position]		
[Name] , [Position]		
[Name] , [Position]		

Head of Agency Endorsement

Certified True and Correct:

Name	Signed	Date
[Name] , [Position]		

DOCUMENT CHECKLIST



MINISTRY OF FINANCE AND ECONOMIC MANAGEMENT
GOVERNMENT OF THE COOK ISLANDS

Reference No#:	[Reference Number]
Project Title:	[Name of Project Title]

As per section 3.1.8 (d) of the policy upon submission of the Quote Report to the tender committee, the following supporting documentation must be submitted to the tender committee:

<u>List of Documents</u>	<u>Yes/No</u>
a) Cover letter outlining quote with reference to Cabinet minute endorsing purchase of good/service, if required;	
b) Quote Report	
c) Copy of Advertisements to confirm compliance with section 3.1.8 (a)	
d) Conflict of Interest Forms to confirm compliance with section 3.1.8 (b)	
e) Original copy of Quotes received	
f) Any additional information as deemed relevant by the Agency	

All agencies must comply with section 3 Quotations of the Purchase and Sale of Goods and Services Policy. Please refer to page 15 and 16 of the policy for further details in regards to the Quotation Process Requirements.



MINISTRY OF FINANCE AND ECONOMIC MANAGEMENT
GOVERNMENT OF THE COOK ISLANDS

Reference No#:	[Reference Number]
Project Title:	[Name of Project Title]

As per section 5.12.1 of the policy a tender is only to be awarded after the tender report and supporting documentation has been reviewed and agreed to by the tender committee. The following documentation must be submitted to the tender committee:

List of Documents	Yes/No
a) Cover letter outlining tender with reference to Cabinet minute endorsing purchase of good/service, if required;	
b) Completed Document Checklist (this document)	
c) Tender Report	
d) Completed declaration of confidentiality and conflict of interest forms	
e) Completed self-evaluation checklist	
f) Tender Specification Document	
g) Any notices or correspondence entered into with tenderers	
h) Copy of Advertisements of Tender in all media used	
i) Copy of Advertisements to confirm content and placement requirements (step 7)	
j) Tender Log (Registered Interest Log and Received Tenders Log)	
k) Original copy of Tender proposals received	
l) Site visit report (Only applicable if a tender is for works to be carried out in the Outer Islands).	
m) Any additional information as deemed relevant by the Agency	

Section 5.12.2 - To ensure a timely and effective review of tenders, the following documentation should be submitted to the tender committee:

- (a) The completed tender report with justifications and supporting documentation attached.
- (b) The comprehensive justification if the lowest evaluated and responsive tender is not the preferred tender.

Section 5.12.3 - The tender committee may request any information or other supporting documentation pertaining to the tender that would assist the tender committee in delivering a favourable review.

Section 5.12.6 - The tender committee will report on its findings as soon as practicable but no later than five (5) working days after receipt of all the required documentation from the Tender Secretariat.

PROCUREMENT COMPLAINTS



COMPLAINTS FORM

Reference No:	
Tendering Agency:	
Project Title:	
Date Tender Closed:	
Officer Responsible:	

Tick who you are lodging complaint with (Tick one box only):

- ☐ Tendering Agency
☐ Tender Committee
☐ Office of the Ombudsman

Complainants Details:

Complainants full name:

Complainants trading name (if Company):

Contact person (if Company):

Postal address:

Physical address:

Phone number:

Mobile:

Email address:

Please add complaint information below:

You should include:

- ☐ Background information identifying the tender, the process and the relevant dates
☐ A brief summary of the problem or concerns you have
☐ An outline of your dealings with the agency
☐ Details of any phone calls you had, emails or letters sent and the names of the people you were dealing with
☐ A summary of the information you were given at the debrief and why this does not resolve the problem
☐ An explanation of what you want the agency to do – for example, you might request that the agency provides more information or investigation specific facts, and
☐ Your contact details – name, address, email address and phone numbers.
☐ List supporting documents attached

Signature

Date

Full Name

Position (if Company)

[Insert Ministry/Department/Agency Letter Head]

Complaints Register [Insert Financial Year]

[illegible]

