

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. Practical Completion

- 5.1. Practical Completion is defined as that stage in the execution of the work under the Contract when the Contract Works or any Separable Portion are complete except for minor omissions and minor defects:
 - a. Which in the opinion of the Authorised Representative the Contractor has reasonable grounds for not promptly correcting;

- b. Which do not prevent the Contract Works or Separable Portion from being used for their intended purpose; and
 - c. Rectification of which will not prejudice the convenient use of the Contract Works or any Separable Portion.
- 5.2. When the Contract Works or any Separable Portion are believed to qualify for Practical Completion the Contractor shall notify the Authorised Representative in writing accordingly.

6. Payment

- 6.1. 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.
- 6.2. 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.
- 6.3. 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.
- 6.4. 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.
- 6.5. 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.
- 6.6. 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 6.2 to 6.4 above.

7. 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.

8. 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.

9. 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.

10. Termination

- 10.1. The Government may terminate (in its sole discretion) the Services by 10 working days' prior written notice to the Contractor.
- 10.2. 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.
- 10.3. Termination shall not prejudice or affect the accrued rights or claims and liabilities of the parties.

11. Acknowledgement

- 11.1. 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.

12. General

- 12.1. This Contract is governed by the Cook Islands law, and the Cook Islands courts have exclusive jurisdiction in respect of this Contract.
- 12.2. 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.
- 12.3. The Contractor may not assign the Contract without the Government's prior written approval.
- 12.4. The Contractor shall not sub-contract any part of this Contract or the Services without the Government's prior written consent.
- 12.5. 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.
- 12.6. 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.