



Cook Island Government Consultancy Agreement

## **Penrhyn Cyclone Centre's - Design Services**

Contract No. CK181917

Between

Infrastructure Cook Islands

and

**Insert Supplier**



## Contents

Schedule - Penrhyn Cyclone Centre's - Design Services .....	3
Conditions of Engagement: Consultant.....	5



Cook Island Government Consultancy Agreement

## Schedule - Penrhyn Cyclone Centre's - Design Services

**Government:** Her Majesty the Queen in right of the government of the Cook Islands acting by and through the Secretary of Infrastructure Cook Islands

Signed: \_\_\_\_\_

Name: Diane Charlie-Puna

Position: Secretary, Infrastructure Cook Islands

Date:

**Supplier:**

Signed: \_\_\_\_\_

Name:

Position:

Date:

---

**Project: Penrhyn Cyclone Centre's - Design Services**

**Location: Omoka and Tetatua, Penrhyn, Cook Islands**

**Scope and Nature of the Services:**

A detailed scope of services required is outlined in the Terms of Reference document provided with the Request for Tender. In summary, the successful Supplier of the Design Services will primarily be focusing on:

1. Provision of technical services relating to the design of two Cyclone centres for the villages of Omoka and TeTautua on Penrhyn, Cook Islands

**Programme for the Services:**

It is anticipated that the required scope of services will be undertaken and completed within a 12 Week programme with the starting date to be confirmed with the selected Supplier prior to the signing of the contract.

**Fees and Timing of Payments:**

The Supplier is required to include all professional fees; travel cost, per diems, profit, overheads and other administrative costs etc. to undertake the scope of the services detailed within the RFT.

The Supplier shall be responsible for meeting all costs relating to their staff and equipment during the undertaking of the Services.

Payments will be made monthly following invoicing from the Supplier based on progress against the required outputs and their price.



**Insurance:**

The Supplier shall take out and maintain for the duration of the services insurances as specified below;

Professional Indemnity insurance for the liability amount of five times the fee (exclusive of GST/VAT and disbursements).

The Supplier shall take out and maintain health, medical and travel insurance for the duration of the travel and services within the Cook Islands for any non resident staff.

**Contact Person:**

**Government Contact:**

Name: Gareth Clayton  
Position: Projects Unit Manager  
Company: Infrastructure Cook Islands  
Email: [gareth.clayton@cookislands.gov.ck](mailto:gareth.clayton@cookislands.gov.ck)  
Phone: +682 20321

**Supplier Contact:**

Name:  
Position:  
Company:  
Email:  
Phone:

**Special Conditions:**

Upon request from the Principal, the Supplier is to provide evidence that they have sufficient funds / cashflow to undertake the services required by the contract prior to the signing of the contract and any payment being made.



## Cook Island Government Consultancy Agreement

## Conditions of Engagement: Consultant

---

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

1. **Services:** The Supplier shall perform the Services as described in the attached Schedule.
2. **Skill:** In providing the Services the Supplier shall exercise the degree of skill, care and diligence normally expected of a competent professional.
3. **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, such consent not to be unreasonably withheld.
4. **Confidentiality:** The Supplier 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, such consent not to be unreasonably withheld.
5. **Public Statements:** The Supplier must not make any public statements about the Services or this Agreement without the Government's written approval, such consent not to be unreasonably withheld.
6. **Delay:** If at any time the Supplier's performance falls behind the programme set out in the Schedule then the Supplier shall notify the Government and, where the delays are due to matters within the control of the Supplier, shall take all practicable steps to remedy such delay.
7. **Information:** The Government shall provide to the Supplier, 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 Supplier shall not, without the Government's prior consent, use information provided by the Government for purposes unrelated to the Services.
8. **Variations:** The Government may order variations to the Services in writing or may request the Supplier to submit proposals for variation to the Services. Where the Supplier considers a direction from the Government or any other circumstance is a Variation the Supplier shall notify the Government as soon as practicable.
9. **Payment:** The Government shall pay the Supplier 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.
10. **Purchase of Goods:** Where Services are carried out on a time charge basis, the Supplier may purchase such incidental goods and/or services as are reasonably required for the Supplier to perform the Services. The cost of obtaining such incidental goods and/or services shall be payable by the Government provided that the Supplier first obtains the written consent of the Government. The Supplier shall maintain records which clearly identify time and expenses incurred.
11. **Liability:** Where the Supplier breaches this Agreement, the Supplier is liable to the Government for reasonably foreseeable claims, damages, liabilities, losses or expenses caused directly by the breach. The Government and the Supplier shall not 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.

The maximum aggregate amount payable, whether in contract, tort or otherwise, in relation to claims, damages, liabilities, losses or expenses, shall be five times the fee (exclusive of GST/VAT and disbursements).

Neither Party shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on a Party within 6 years from completion of the Services.

- 12. Insurance:** The Supplier shall take out and maintain for the duration of the Services a policy of Professional Indemnity insurance for the amount of liability as set out in the Schedule and any other such insurances or amounts as are specified in the Schedule. The Supplier undertakes to use all reasonable endeavours to maintain a similar policy of insurance for six years after the completion of the Services.
- 13. 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.
- 14. Intellectual Property:** Intellectual property prepared or created by the Supplier 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 Supplier and paid for by the Government shall, after payment by the Government, lie with the Government. The Supplier does not warrant the suitability of New Intellectual Property for any purpose other than the Services or any other use stated in the Agreement.
- 15. Termination:** The Government may suspend all or part of the Services by notice to the Supplier who shall immediately make arrangements to stop the Services and minimise further expenditure. The Supplier 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.
- 16. Jurisdiction:** This Agreement is governed by the Cook Islands law and the Cook Islands courts have jurisdiction in respect of this Agreement.
- 17. Assignment:** Subject to the Schedule, the Supplier 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.
- 18. General Warranties:** The Supplier 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.
19. **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.

For the avoidance of doubt, any steps specified in this Agreement to be taken by the Government (including without limitation, the giving of consent) may be taken by the signatory of this Agreement.