The Ministry of Health (the Ministry) is seeking to engage an Evaluation Provider to undertake an ‘Evaluation of the tobacco excise increases as a contributor to Smokefree 2025’ (the Service).

To background, New Zealand is nearing the end of a series of excise increases on tobacco that began in 2010 and is scheduled to end in January 2020.

An evaluation is needed to understand the impact of the policy on reducing tobacco consumption and smoking and to help inform the future direction of policies which use price as a lever to reduce the harm from tobacco. We are also interested in understanding any unintended consequences of tobacco price increases, such as on crime (e.g. robberies and illicit trade), as well as the financial impact on smokers and their families.

We require the work to explicitly consider the impact for Māori (males/females), Pacific peoples, low-income populations, and young people (under the age of 18 years and 18-24 years).

This work will need to be completed by 30 September 2018.

We are willing to consider proposals that cover the full scope of the questions below, or part of the scope. We also encourage partnerships where this will enhance the final product.

Tobacco tax policy is an important component of New Zealand’s tobacco control programme which aims to achieve New Zealand’s Smokefree 2025 goal (less than 5 percent of New Zealanders will smoke daily).

The two main rationales for tobacco excise duty are to:
- address the external costs of smoking
- discourage smoking for public health reasons.
Based on international literature we can expect the following health outcomes from an increase in the price of tobacco:

- reduction in smoking prevalence
- reduction in amount of tobacco consumed
- reduction in smoking initiation among young people
- greater reduction in smoking prevalence among young people than adults
- greater impact on low socio-economic groups.

**Specific questions / instructions for the Provider**

The following information provides an overview of what the Ministry is seeking address:

**Item 1. The information sought through this Evaluation will address the following specific questions:**

- Do people quit, attempt to quit, reduce the amount they smoke, or change their smoking behaviour in other ways because of the price of tobacco? Which groups of people are impacted and by how much? Are past impacts likely to hold in the future, with further price increases?

- Have people changed their perceptions of the affordability of tobacco?

- Have people changed their household spending in any way to buy tobacco?

- Has the tobacco industry implemented pricing and other market strategies to minimise the impact of the tax increases (e.g. budget brands, controlling the extent to which increases are passed on, and the timing of increases)? What are these strategies and what impact have they had? What is industry’s likely future response?

- Are the tax increases resulting in an increase in illicit trade and/or robberies? If so, what is the size of this problem and what is the likely future trajectory?

- What are the expected costs and benefits of future price increases, across the various different impacts (health, family budgets, crime and so on)?

**Item 2. The following information provides an indication of the skills, experience, capability and capacity the successful Provider will have:**

- An appropriate range of knowledge, skills, expertise and experience of successfully completing complex evaluations.

- Capacity, capability and experience to undertake a range of research techniques.

- Appropriate capabilities to undertake health economic evaluations.

**Item 3. Evaluation criteria:**

Evaluation of the Proposals will support the selection of the Supplier/s who will provide the service. The following criteria and questions provide the Evaluation Panel with the detail to assess the Proposals:

<table>
<thead>
<tr>
<th>Description of Criteria</th>
<th>Questions</th>
<th>Weighting</th>
</tr>
</thead>
</table>
| **Approach** - your proposed approach will provide a detailed overview of how you will complete the Evaluation by 30 September 2018 | 1. How will you deliver the Evaluation within the timeframe? You may wish to provide this in the form of a detailed Gantt chart.  
2. Provide a risk assessment; identifying all significant risks, how they could be mitigated (prevent them from happening), managed (in the event that they do happen) and shared. | 15% |
Methodology – aims, rationale, design and methods for this Evaluation

<table>
<thead>
<tr>
<th>Question</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. What methodology do you propose and how will this provide relevant and robust information in response to the questions as detailed in Item 1 above.</td>
<td>55%</td>
</tr>
<tr>
<td>2. If relevant identify and describe any potential ethical issues and how you will address these issues.</td>
<td></td>
</tr>
</tbody>
</table>

Capability and capacity to deliver the Evaluation

<table>
<thead>
<tr>
<th>Question</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Detail the relevant experience, qualifications and knowledge of your nominated personnel and/or key sub-contractors. As part of this question complete Appendix A.</td>
<td>30%</td>
</tr>
<tr>
<td>2. How do you know your nominated personnel have the right mix of experience and expertise to undertake this Evaluation?</td>
<td></td>
</tr>
<tr>
<td>3. Provide detail and relevant track record of your organisation that will give the Ministry confidence you can complete all aspects of delivering this type of service.</td>
<td></td>
</tr>
<tr>
<td>We are especially interested in relevant case studies or exemplars that demonstrate your understanding of your running and completing health economic evaluations. Please feel free to append these.</td>
<td></td>
</tr>
<tr>
<td>4. Provide detail of the project governance structures that will support this Evaluation.</td>
<td></td>
</tr>
<tr>
<td>5. If relevant describe how you will ensure that you have adequate processes and relationships to best support cultural competency.</td>
<td></td>
</tr>
</tbody>
</table>

Additional information

<table>
<thead>
<tr>
<th>Requirement</th>
<th>☐</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal Record Check</td>
<td></td>
</tr>
<tr>
<td>Right to work in New Zealand check</td>
<td></td>
</tr>
<tr>
<td>Verification of Qualifications</td>
<td>☐</td>
</tr>
<tr>
<td>Reference checking</td>
<td>☐</td>
</tr>
</tbody>
</table>

Client specific requirements

Please be mindful when completing your Conflict of Interest Declaration in Part B:

New Zealand is a signatory to the World Health Organization Framework Convention on Tobacco Control. Article 5.3 requires parties to protect their tobacco control and public health policies from commercial and other vested interests of the tobacco industry. If your organisation has or has had a relationship with the tobacco industry this should be declared.

Timeframes

The following timeframes support this procurement:

1. Provider briefing 28 March 2018;
2. CSO will be issues to all Providers from 4 April 2018;
3. Providers advise intention to respond 10 April 2018;
4. CSO closes 2 May 2018;
5. Work commences 15 June 2018; and
6. Work must be complete by 30 September 2018.
Deliverable / Milestone / Output

The following are sample deliverables only will be discussed and agreed with the selected Provider. Outputs may be grouped around the questions set out below (see Outputs of the Service).

<table>
<thead>
<tr>
<th>Description</th>
<th>Performance Standards</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fortnightly meetings with project team</td>
<td>Meetings are held (frequency to be reviewed after 6 weeks)</td>
<td>Fortnightly from contract start date</td>
</tr>
<tr>
<td>Agreed project plan (including deliverables)</td>
<td>Project plan to be approved by the Manager, Tobacco Control - meets overall timeframes to deliver by 30 September 2018</td>
<td>15 July</td>
</tr>
<tr>
<td>Interim draft report</td>
<td>To be reviewed and agreed</td>
<td>1 September</td>
</tr>
<tr>
<td>2nd draft report</td>
<td>2nd draft report provided incorporating any changes as agreed</td>
<td>15 September</td>
</tr>
<tr>
<td>Final report</td>
<td>Final report provided incorporating any changes as agreed</td>
<td>30 September</td>
</tr>
</tbody>
</table>

Indicative budget

Your budget needs to provide sufficient detail to support each step of your evaluation process.
The Ministry will work with the preferred Provider to agree a budget for this service.

Outputs of the Service

The Evaluation will answer the questions below. We require it to explicitly measure the impact of the tobacco excise increases on the following population groups: Māori (male and female), Pacific, young people aged under 18 and 18-24 and low-income groups, where relevant.

We are also looking to test the assumptions and fill the gaps as indicated in the Treasury Regulatory Impact Statement: http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-tsy-tbe-may16.pdf.

- Do people quit, attempt to quit, reduce the amount they smoke, or change their smoking behaviour in other ways because of the price of tobacco? Which groups of people are impacted and by how much? Are past impacts likely to hold in the future, with further price increases?

- Have people changed their perceptions of the affordability of tobacco?

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- What are the expected costs and benefits of future price increases, across the various different impacts (health, family budgets, crime and so on)?

**Provider liability cap**

As set out in Part F apply.
PART B

The Provider will complete Part B and e-mail back to the client.

Specific Services to be provided

Our proposed Evaluation approach is based on our current understanding of your needs and our experience delivering similar services and consists of five integrated phases conducted over a period of 15 weeks (15 June to 30 September):

- **Evaluation design & planning**: to ensure a shared understanding of the approach, content and priority areas of the Evaluation.
- **Information gathering for secondary data analysis**: to provide critical insights into the survey development and consultation stages of the project.
- **Consultation, discussion guide and survey development**: to explore the perspectives of a wide range of stakeholders to inform the design and development of a targeted and focused evaluation.
- **Fieldwork**: including literature review, secondary data analysis, conducting surveys and focus groups.
- **Analysis and reporting**: to triangulate our research findings and provide the Ministry with robust and justifiable Evaluation findings.

Below we outline our proposed Evaluation methodology, with each step covered in more detail in our appended proposal for the Evaluation of the tobacco excise increases as a contributor to Smokefree 2025, dated 15 June 2018.

---

**Phase 1: Evaluation Design, Planning & Consultation**

15 June - 27 July

- **Scope and Planning**
  - Ensure a shared understanding as to the objectives and approach to the evaluation.

- **Key Activities**
  - Project inception meeting to:
    - Confirm the objectives and our scope of work, including proposed approach, inputs, outputs, risks, timelines, stop/go, milestones, deliverables and governance.
    - Identify key internal and external stakeholders, their respective roles and responsibilities and develop initial stakeholder engagement plan.
    - Develop review of all available information, literature and key definitions.
    - Develop stakeholder consultation discussion guides.

- **Objectives**
  - Enhance the clarity and practicality of the evaluation.
  - Engagement with key stakeholders.
  - Plan for the evaluation.

---

**Phase 2: Data Collection**

28 July - 30 September

- **Consultation & Survey Design**
  - Engage with and explore the perspectives of a wide range of stakeholders to inform the design and development of the survey.

- **Key Activities**
  - Schedule and conduct consultations with key stakeholders.
  - Decisions on the format and structure of the survey.

- **Objectives**
  - Enhance data collection.
  - Enhance the clarity and practicality of the evaluation.

---

**Phase 3: Analysis & Reporting**

27 August - 30 September

- **Analysis and Reporting**
  - Evaluate the historic and future impact and unintended consequences of the excise increase.
  - Review and provide feedback to the Ministry on the performance of the tobacco industry.
  - Deliver a final report to the Ministry.

- **Key Activities**
  - Data analysis and interpretation.
  - Preparation of final report.
  - Executive summary and final report.

---

**Sub Category and Tier of Provider**

<table>
<thead>
<tr>
<th>Selection</th>
<th>Sub-category of Services</th>
<th>Tier (1/2/3)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Accounting</td>
<td></td>
</tr>
</tbody>
</table>

---

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982
<table>
<thead>
<tr>
<th>Assurance</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Audit</td>
<td></td>
</tr>
<tr>
<td>Finance and economics</td>
<td></td>
</tr>
<tr>
<td>Procurement and logistics</td>
<td></td>
</tr>
<tr>
<td>Taxation</td>
<td></td>
</tr>
<tr>
<td>Business change</td>
<td></td>
</tr>
<tr>
<td>Human resource</td>
<td></td>
</tr>
<tr>
<td>Marketing and public relations</td>
<td></td>
</tr>
<tr>
<td>Operations management and risk</td>
<td></td>
</tr>
<tr>
<td>Policy, research and development</td>
<td>Tier 1</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Can you confirm that the Nominated Personnel (if any) is available to provide the Services</th>
<th>Yes ☒</th>
<th>No ☐</th>
</tr>
</thead>
<tbody>
<tr>
<td>Can you confirm that the timeframe is acceptable</td>
<td>Yes ☒</td>
<td>No ☐</td>
</tr>
</tbody>
</table>

| Estimated Start and End Date |  |
|---|---|---|
| Start | 15 June | End | 30 September |
## Deliverables

<table>
<thead>
<tr>
<th>Deliverable / Milestone</th>
<th>Performance Standards</th>
<th>Due date</th>
<th>Name of consultant</th>
<th>Level (1-5)</th>
<th>Hourly / Daily Fee Rate</th>
<th>Hours / days</th>
<th>Total Fees (Excl. GST)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insert specific of deliverable / milestone to be achieved</td>
<td>Insert the quality or standard or key performance indicator reqd</td>
<td>Date - completion</td>
<td>Insert Name</td>
<td>Insert Level</td>
<td>Insert rate as applicable</td>
<td>Insert hours / days</td>
<td>Insert Fees for completion of deliverable milestone</td>
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</table>

Add rows as required

Total Chargeable Fees (Excl. GST) = [TOTAL]

---

<table>
<thead>
<tr>
<th>No.</th>
<th>Milestone</th>
<th>Total Fixed Fee for Service*</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phase One: Planning</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Detailed project plan</td>
<td>$36,675</td>
<td>15 July</td>
</tr>
<tr>
<td>Phase Two: Consultation and data collection</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Completion of field work</td>
<td>$133,700</td>
<td>24 August</td>
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<tr>
<td>Phase Three: Reporting</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Interim draft report</td>
<td>$58,750</td>
<td>7 September</td>
</tr>
<tr>
<td>4</td>
<td>2\textsuperscript{nd} draft report</td>
<td>$13,475</td>
<td>15 September</td>
</tr>
<tr>
<td>5</td>
<td>Final report</td>
<td>$8,000</td>
<td>30 September</td>
</tr>
<tr>
<td>Total fixed fee</td>
<td>$250,000</td>
<td></td>
<td></td>
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</table>

\*NZD excluding GST

<table>
<thead>
<tr>
<th>Team Member</th>
<th>Level</th>
<th>Detailed Project Plan Time (Days)</th>
<th>Completion of Field Work Time (Days)*</th>
<th>Interim Draft Report Time (Days)*</th>
<th>2\textsuperscript{nd} Draft Report Time (Days)*</th>
<th>Final Report Time (Days)*</th>
<th>AoG Panel Rate*</th>
<th>Total Fee**</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partner - Level 1</td>
<td></td>
<td>1</td>
<td>2</td>
<td>1.5</td>
<td>0.5</td>
<td>0.5</td>
<td>3,500</td>
<td>$19,250</td>
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<tr>
<td>Senior Manager - Level 4</td>
<td></td>
<td>3.5</td>
<td>5</td>
<td>3.5</td>
<td>0.5</td>
<td>0.5</td>
<td>2,500</td>
<td>$32,500</td>
</tr>
<tr>
<td>Senior Manager - Level 4</td>
<td></td>
<td>3</td>
<td>12</td>
<td>5</td>
<td>1</td>
<td>0.5</td>
<td>2,500</td>
<td>$53,750</td>
</tr>
<tr>
<td>Executive Director - Level 5</td>
<td></td>
<td>1</td>
<td>3</td>
<td>1.5</td>
<td>0.5</td>
<td>0.5</td>
<td>3,000</td>
<td>$19,500</td>
</tr>
<tr>
<td>Senior Consultant - Level 3</td>
<td></td>
<td>1.5</td>
<td>12</td>
<td>6</td>
<td>1</td>
<td>0.5</td>
<td>2,250</td>
<td>$47,250</td>
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<tr>
<td>Senior Consultant - Level 3</td>
<td></td>
<td>1</td>
<td>5</td>
<td>3.5</td>
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<td></td>
<td>1,450</td>
<td>$14,500</td>
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<tr>
<td>Consultant - Level 2</td>
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<td>0.5</td>
<td>2</td>
<td>1</td>
<td></td>
<td></td>
<td>1,450</td>
<td>$5,075</td>
</tr>
<tr>
<td>Subject Matter Experts</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Senior Manager - Level 4</td>
<td></td>
<td>2</td>
<td>7</td>
<td>1.5</td>
<td>0.5</td>
<td></td>
<td>2,500</td>
<td>$27,500</td>
</tr>
<tr>
<td>Manager - Level 3</td>
<td></td>
<td>1.5</td>
<td>6</td>
<td>1.5</td>
<td>1</td>
<td>0.5</td>
<td>2,250</td>
<td>$23,625</td>
</tr>
<tr>
<td>Total fee for time and cost</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$242,950</td>
</tr>
</tbody>
</table>

\*The daily rates above are based on an 8 hour day  
**NZD excluding GST
Estimate / Quote (excluding GST, if any)
**Fees**

| Administration Fee (Tier 1 & 2 only) | $25,000 |

(Optional) The above Fees are apportioned as follows:

| Job Level 1 | $ |
| Job Level 2 | $ |
| Job Level 3 | $ |
| Job Level 4 | $ |
| Job Level 5 | $ |
| Fixed Fee (Job Level 1) | $ |
| Fixed Fee (Job Level 2) | $ |
| Fixed Fee (Job Level 3) | $ |
| Fixed Fee (Job Level 4) | $ |
| Fixed Fee (Job Level 5) | $ |
| Monthly Retainer | $ |
| Subcontracting | $ |

**Expenses**

Included above

**Total Charges**

$252,500

Identify whether the Total Charges is an Estimate / Quote and the method that the Charges have been calculated Quote, including travel and out of pocket expenses and disbursements, such as venue hire and incentives for focus groups.

Additional information / assumptions:

This fee is consistent with the requirements and timing set out in this CSO, along with our methodology, proposed project plan, proposed team and estimated time commitments detailed in our appended proposal for the Evaluation of the tobacco excise increases as a contributor to Smokefree 2025, dated 15 June 2018. Should any material changes to scope of services be required, we are happy to discuss our fees with you.

Our professional fees are predicated on the following assumptions:

- Collaborative approach with you and your key stakeholders ensuring timely access to stakeholders, data, information and other relevant artefacts
- Information held by the Ministry will be provided to the EY evaluation team in a timely manner, in a format and level of detail to allow for suitable analysis
- EY will have access to existing background information no later than indicative contract commencement
- Key stakeholders will be readily available for consultation during the Evaluation
- Timely feedback will be provided by the Ministry and other relevant parties
- Our reporting of quantitative survey data is based on closed ended questions. Should you require open ended questions, we will extend our scope accordingly and provided verbatim responses, and if possible do a high level analysis of key words.
- We recommend and have assumed a total sample size of 1,500 respondents for the general community survey
- We have assumed 14 x 60 minute face to face interviews with identified stakeholders and 6 x 90 minute focus groups with targeted populations within the general community
- EY will provide summary outputs of the survey responses and the modelling underlying our Evaluation, however, we will not handover the data and full models used to derive those outputs.
- We recommend that consideration is given to the development of a frequently asked questions and information web page (on the Ministry’s website) that participants can be directed to should they require further information. However, the development and operation of a website is excluded from our fee estimate.
- Our methodology provides support for your internal and external review and approval processes following the delivery of the Final Evaluation on 30 September. Activities beyond 30 September have not been reflected in our price.

**Option for extension of scope**

Our pricing assumes 14 x 60 minute face to face interviews with identified stakeholders. However, should your budget permit, we recommend:

- Extending the stakeholder consultation to 24 x 60 minute interviews to be undertaken prior to deploying the survey to provide richer context and improve the quality and quantity of survey responses (see page 14).

If any variation or extension to our proposed scope work is required, fees additional to the proposed fee will be chargeable. It is our intention to discuss and agree on the additional fees before commencing the work. Any additional work will be charged at applicable AoG rates detailed on the previous page of this proposal.

<table>
<thead>
<tr>
<th>Job Level</th>
<th>Indicative Characteristics</th>
</tr>
</thead>
</table>
| **Level 5** | • 15+ years of extensive professional experience in their specialised field in a consultancy role.  
• An industry leader and key influencer who is respected for their professional proficiency and knowledge.  
• Recognised as a trusted adviser to ministers and/or senior executive teams.  
• Acts as the senior responsible person on major client engagements. Able to be accountable for leading complex projects/programs.  
• Responsible for leading a high performing team of professionals, including the coaching and mentoring of colleagues at Levels 1–4. |
| **Level 4** | • 10+ years of substantial professional experience in their specialised field in a consultancy role.  
• Strong theoretical base in subject area, with ability to apply best practice principles to the subject matter context.  
• Senior team leader with the ability to deputise for the senior responsible person and coach and mentor more junior staff.  
• Ability to coordinate contributions of other specialists to complete a joint project.  
• Can engage with clients at strategic/management level if required. |
| Level 3 | • 3-10 years of notable professional experience in their specialised field in a consultancy role.  
• A trusted performer on a wide range of client-facing consultancy projects in both the private and public sectors.  
• Thorough knowledge of functional area, combining a broad grasp of relevant best practice principles.  
• Ability to participate in multi-disciplinary teams and to work independently (with limited supervision).  
• Performs professional level analysis requiring technical skills and independent initiative within a well-defined program of work.  
• Contacts with clients predominantly at a working level. |
| Level 2 | • 1-3 years of demonstrable professional experience in their specialised field in a consultancy role.  
• Previous experience on a range of client-facing consultancy projects, preferably in both the private and public sectors.  
• Has a theoretical base in subject area, possibly supplemented through recent study, with the ability to translate theory into practice.  
• Performs a variety of analytical tasks requiring independent initiative and knowledge.  
• Interacts with clients predominantly at the working level. |
| Level 1 | • 0+ years of relevant professional experience in a professional environment.  
• Evidence of prior contributions to consultancy engagements.  
• Performs a range of administrative tasks to support the wider team.  
• Work is performed under the guidance of colleagues at Levels 3-5. |
Conflict of Interest declaration

I, Chris Money, have made diligent inquiry whether Ernst & Young Transaction Advisory Services has any actual, potential or perceived Conflict of Interest were it to provide the Services described in this Consultancy Services Order and I have disclosed any actual, potential or perceived Conflict of Interest and how it will be managed below:

Our conflict of interest management process is based on two key principles – disclosure and consent. We believe it is vital to bring any issues to your attention as soon as they become apparent so that they are resolved in a timely manner. The diagram to the left details our approach to identifying and managing any actual, potential and perceived conflicts of interest.

To the best of our knowledge, there are no actual or potential conflicts preventing us from working with you. All potential engagements with clients in high-risk sectors such as tobacco are subject to a global approval process and risk assessment, leading to many engagements in these sectors not going ahead.

We acknowledge that EY, as a large global organization, may have from time to time provided technical (i.e. tax and accounting) assistance to the tobacco industry offshore, but we can confirm we have provided no advisory services that support or advocate consumption or sale of tobacco. If any interest becomes apparent we will declare it immediately and deal with the conflict transparently.

Additional information
**PART C**
**LEAVE BLANK WHEN ISSUING CONSULTANCY SERVICES ORDER**

The Client will complete Part C if they wish to change any details in Part A.

Revised scope and/or timeframe

**PART D**
**LEAVE BLANK WHEN ISSUING CONSULTANCY SERVICES ORDER**

The Client will complete Part C if they wish to change any details in Part A.

Revised Estimate (excluding GST, if any)

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fees</td>
<td>$[Add in Total for Fees for Services]</td>
</tr>
<tr>
<td>Administration Fee (Tier 1 &amp; 2 only)</td>
<td>$[Tier 1 and Tier 2 Providers - 1% of Fees for Services ONLY, not expenses]</td>
</tr>
<tr>
<td>(Optional) The above Fees are apportioned as follows:</td>
<td></td>
</tr>
<tr>
<td>Job Level 1</td>
<td>$</td>
</tr>
<tr>
<td>Job Level 2</td>
<td>$</td>
</tr>
<tr>
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<td>Job Level 4</td>
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<td>Job Level 5</td>
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<td>Fixed Fee (Job Level 3)</td>
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<td>Expenses</td>
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<tr>
<td>Total Charges</td>
<td>$</td>
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</table>

Identify whether the Total Charges is an Estimate / Quote and the method that the Charges have been calculated.

Additional information / assumptions:
**PART E - Acceptance**

*LEAVE BLANK WHEN ISSUING CONSULTANCY SERVICES ORDER*

The Provider and the client to complete on acceptance of this Consultancy Services Order

<table>
<thead>
<tr>
<th>The Provider confirms they have completed any necessary checks as outlined in Part A (Additional Information)</th>
<th>Yes ☒ No ☐</th>
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<tbody>
<tr>
<td>Name of Provider’s authorised signatory</td>
<td>Chris Money</td>
</tr>
<tr>
<td>Signature of authorised signatory</td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>The client accepts and authorises this Consultancy Services Order</th>
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<td></td>
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<tr>
<td>Signature of authorised signatory</td>
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<tr>
<td>Date of acceptance</td>
<td></td>
</tr>
<tr>
<td>Client’s job reference or purchase order number</td>
<td>[if required]</td>
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# Part F – Terms

THE PROVIDER AND PARTICIPATING AGENCIES ARE NOT PERMITTED TO AMEND THIS PART F.

This Part F contains an extract of selected terms and conditions from the Services Agreement (the Agreement). Clause, schedule and paragraph references have been updated to refer to clauses, schedules and paragraphs in this Part F where applicable. For the full terms and conditions that govern the Services, please refer to the Agreement.

## 1. Appointment

1.1 Appointment

(a) The Participating Agency appoints the Provider to provide Services to the Participating Agency as detailed in this Consultancy Services Order and the Provider accepts that appointment, in accordance with the terms of this Consultancy Services Order.

(b) Certain obligations of the Provider in this Consultancy Services Order do not apply to sub-categories of Services for which the Provider has been appointed as a Tier 3 Provider as follows:

(i) the Participating Agency may nominate specific Personnel to be the primary providers or to supervise the delivery of the Services but clauses 6.2(b) to 6.2(e) do not apply to any nominated Personnel;

(ii) the relevant Services are not required to meet or exceed the Service Levels specified in Schedule 3 (Performance Measurement) and clause 2.5(a), Schedule 3 (Performance Measurement) do not apply;

(iii) the Provider is not required to pay an Administration Fee and clause 8.3(a)(v) does not apply;

(iv) the Provider is not required to conduct the Agency Satisfaction Survey for the relevant Services and clause 5.1(h) does not apply;

(v) the Provider and Participating Agency are not obligated to escalate a dispute to the CoE’s All-of-Government Procurement Manager, Centre of Expertise for Consultancy, in accordance with clause 13.2(c)(ii); and

(vi) as otherwise stated in this Consultancy Services Order.

## 2. Services

2.1 Services

(a) The Provider will provide Services to the Participating Agency in accordance with the terms of this Consultancy Services Order.

(b) The Provider will use all reasonable endeavours to ensure that, on the date the Documentation is provided under this Consultancy Services Order, such Documentation is in a readable and readily useable format.

### Agents may procure Services

The Participating Agency may, by notice to the Provider and the CoE, appoint one or more third parties to procure Services under this Consultancy Services Order on the Participating Agency’s behalf and/or receive invoices, as if that agent was a Participating Agency, provided that any such procurement is for the sole benefit of the Participating Agency.

### Timely performance

The Provider will ensure that the Services to be performed under this Consultancy Services Order are provided on or before the date specified for performance (if any) in this Consultancy Services Order and, if no time is specified, within a reasonable time after the issue of the Consultancy Services Order.

### Delay

(a) If the Provider considers that it is (or is likely to be) prevented or delayed from achieving a date or time for performance (Milestone) specified in this Consultancy Services Order (Delay), it will:

(i) immediately provide notice verbally or in writing to the Participating Agency, setting out:
(A) the cause of the Delay and its expected duration;

(B) the effect of the Delay on its ability to perform its obligations under this Consultancy Services Order (including any future Milestones);

(C) what extension, if any, to the relevant Milestone is being sought; and

(D) what steps, if any, the Participating Agency may take to mitigate the effect of the Delay; and

(ii) take all reasonable steps necessary (including by the allocation of additional resources) to eliminate or avoid the Delay and, in all cases, mitigate its effects.

(b) If the Provider and Participating Agency agree that the Delay is acceptable or wish to amend the Milestone:

(i) the Provider will complete and submit Part C of this Consultancy Services Order to the Participating Agency; and

(ii) upon receipt of the completed Part C of this Consultancy Services Order, the Participating Agency must promptly advise the Provider in writing if the completed Part C is acceptable.

(c) If the Provider does not achieve the Milestone (as amended from time to time) and the Participating Agency’s acts or omissions, or those of its Personnel or third parties acting on its behalf, have not caused the Provider to fail to achieve the Milestone, the Participating Agency may, without prejudice to any other right or remedy, suspend payment of any Charges relating to this Consultancy Services Order until the Provider remedies the relevant failure.

2.5 Service standards

(a) The Provider must provide the Services in relation to the sub-categories for which the Provider has been appointed as a Tier 1 and Tier 2 Provider to a standard that reaches or exceeds the Service Levels specified in Schedule 3 (Performance Measurement).

(b) In addition, the Provider must:

(i) provide the Services diligently, efficiently, effectively and in accordance with Industry Best Practice;

(ii) ensure that the Services to be performed under this Consultancy Services Order are provided on or before the date specified for performance (if any) in this Consultancy Services Order and, if no time is specified, within a reasonable time after the issue of this Consultancy Services Order;

(iii) ensure that all Documentation, information and advice (including Documentation, information and advice provided prior to the issue of this Consultancy Services Order) provided to the Participating Agency or published on the Provider Database is Fit for Purpose so that, without limitation, it contains sufficient content and detail to enable the Participating Agency to make use of it for the purpose for which it was requested;

(iv) act in the best interests of the Participating Agency in the provision of Services to the Participating Agency; and

(v) provide Services to the reasonable satisfaction of the Participating Agency (as reported to the CoE).

3. Estimates and Quotes

3.1 Estimates and Quotes

(a) The Provider must provide an Estimate or Quote for all Services to be provided under this Consultancy Services Order, unless the total Fees in respect of the Services under this Consultancy Services Order are likely to be less than $10,000 (exclusive of GST) or such other amount as determined by the CoE and notified to the Provider.

(b) Despite clause 3.1(a), if, during the course of providing the Services, the Provider becomes aware that the total Fees (excluding GST) are likely to exceed the amount referred to in clause 3.1(a), the Provider must provide an Estimate in accordance with clauses 3.1(c) to (e).

(c) All Estimates and Quotes will be provided at no cost to the Participating Agency.

(d) All Estimates and Quotes must specify the estimated timeframe to perform the Services requested in this Consultancy Services Order and the Rates of Personnel providing the Services and include any Expenses likely to be incurred in providing the Services.

(e) All Quotes and Estimates must be provided to the Participating Agency in writing and must be included in this Consultancy Services Order.

(f) To avoid doubt and without limiting clause 4.5(c) of the Services Agreement, if any Quote or Estimate is not acceptable to the Participating Agency, the Participating Agency and Provider may seek to negotiate a more favourable Quote or Estimate, including a decrease in the Rates on which the Quote or Estimate was based.
3.2 If Charges exceed the Estimate

(a) If during the course of providing the Services under this Consultancy Services Order, the Provider becomes aware that the total Charges (excluding GST) are likely to exceed the Estimate, the Provider must give written notice to the Participating Agency using Part D of this Consultancy Services Order as soon as the Provider becomes so aware, but no later than the time the costs accrued or incurred reach 80% of the Estimate.

(b) The notice under clause 3.2(a) must specify a revised Estimate for the Services and include the reason the total Charges will exceed the original Estimate.

(c) The Participating Agency has sole discretion whether to approve a revised Estimate and must act reasonably when deciding whether to approve a revised Estimate.

(d) When a revised Estimate is approved, the Participating Agency must provide written notice of the same to the Provider.

(e) If a Provider has provided an Estimate to the Participating Agency for Services, the Participating Agency is not liable to pay the Provider any amount exceeding the Estimate unless the Participating Agency has approved a revised Estimate.

3.3 If Charges exceed the Quote

(a) The Provider acknowledges that neither the CoE nor the Participating Agency are obliged to pay any Charges to the Provider in relation to Services performed under this Consultancy Services Order if those Charges exceed any Quote provided in relation to this Consultancy Services Order, unless the Participating Agency has given its prior written consent in accordance with clause 3.3(b).

(b) If the Participating Agency agrees to allow the Provider to increase the Charges:

   (i) the Provider will complete and submit Part D of this Consultancy Services Order to the Participating Agency; and
   
   (ii) upon receipt of the completed Part D of this Consultancy Services Order, the Participating Agency must promptly advise the Provider (in writing) if the completed Part D is acceptable.

4. Conflicts of interest

4.1 Conflicts of interest

(a) The Provider must, upon receipt of this Consultancy Services Order, make diligent inquiry whether it has any actual, potential or perceived Conflicts of Interest if it were to provide the Services specified in this Consultancy Services Order and, if no such Conflict of Interest exists, the Provider must provide confirmation to that effect to the Participating Agency.

(b) If the Provider has an actual, potential or perceived Conflict of Interest, the Provider must immediately notify the Participating Agency and must not begin performing the Services without the prior written approval of the Participating Agency.

(c) The Provider must take all reasonable steps to ensure that:

   (i) a situation does not arise that might result in an actual, potential or perceived Conflict of Interest; and
   
   (ii) any Personnel or Subcontractors of the Provider do not engage in any activity or obtain interests that might result in the Provider or such Personnel or Subcontractors having an actual, potential or perceived Conflict of Interest, that cannot be managed to the satisfaction of the Participating Agency.

(d) If, after commencing Services under this Consultancy Services Order, the Provider becomes aware of any matter, circumstance, interest or activity that may give rise to any actual, potential or perceived Conflict of Interest, the Provider must immediately notify the Participating Agency of all relevant details and must immediately cease work on the Services until such time as the Participating Agency provides written notice confirming the Provider may continue to perform the Services or terminates the engagement of the Provider in respect to the Services to be performed under this Consultancy Services Order in accordance with clause 4.1(e).

(e) If the Participating Agency considers that the Provider has an actual Conflict of Interest of sufficient gravity that the Provider can no longer perform Services for it, the Participating Agency may, by written notice to the Provider, terminate this Consultancy Services Order with immediate effect on the date of termination specified in that notice.

(f) Any approval or notice given by the Participating Agency pursuant to clause 4.1(b) or 4.1(d) may require the Provider to take steps reasonably required by the Participating Agency to manage the Conflict of Interest, and the Provider must provide written notice confirming its acceptance of those steps before it may commence or continue to provide the Services under this Consultancy Services Order.
5. Responsibilities

5.1 Provider responsibilities

In addition to its other obligations under this Consultancy Services Order, the Provider will:

(a) respond promptly, accurately and adequately to any requests for information made by the Participating Agency in relation to the Services, including requests for advice;
(b) in performing Services for the Participating Agency under this Consultancy Services Order comply with all privacy and other policies and guidelines issued by the Participating Agency and notified or made available to the Provider;
(c) obtain, maintain and comply with any governmental, regulatory or other approvals, permissions, consents, licences, and requirements necessary to provide the Services and perform its obligations under this Consultancy Services Order;
(d) comply with all Laws at all times during the Term in so far as they relate to the provision of the Services, including the Privacy Act 1993 and all applicable consumer laws;
(e) ensure that it and its Personnel providing the Services do not access the Participating Agency’s information or systems except to the extent necessary to provide the Services and for no other purpose;
(f) as soon as is practicable, notify the Participating Agency of any problems or issues that arise in relation to the performance of its obligations under this Consultancy Services Order, including any problems or issues that will or are likely to, affect the provision or quality of the Services or the ability of the Provider to perform its obligations under this Consultancy Services Order;
(g) without limiting any other provision of this Consultancy Services Order, use all reasonable endeavours to avoid damaging or adversely affecting any Participating Agency’s reputation;
(h) in relation to the sub-categories for which the Provider has been appointed as a Tier 1 and Tier 2 Provider, conduct the Agency Satisfaction Survey by asking the Participating Agency the questions recorded in Annexure A of Schedule 5 (Governance) to the Services Agreement within 5 Business Days of the Services in this Consultancy Services Order being completed.

5.2 Participating Agencies’ responsibilities

The Participating Agency has the following responsibilities in relation to the Services:

(a) to manage its operational relationship with the Provider, including in relation to the fulfilment of this Consultancy Services Order;
(b) to notify the Provider of all relevant policies, guidelines and procedures of the Participating Agency that the Provider must comply with when performing the Services under this Consultancy Services Order;
(c) to provide adequate instructions and information to the Provider to allow it to perform the Services under this Consultancy Services Order;
(d) to make timely decisions where approvals or consents are reasonably sought by the Provider in performing the Services under this Consultancy Services Order;
(e) to pay the Charges; and
(f) to use its best efforts to resolve any dispute directly with the Provider before involving the CoE in accordance with clause 13.

6. Resourcing

6.1 General requirements

The Provider will provide and maintain sufficient resources (including human resources, equipment, telecommunications connectivity, premises and other facilities) to enable it to perform its obligations on time and otherwise in accordance with this Consultancy Services Order.

6.2 Provider’s Nominated Personnel

(a) The Participating Agency may, in this Consultancy Services Order, nominate specific Personnel (Nominated Personnel) to be the primary providers or to supervise the delivery of the Services.

(b) If any Nominated Personnel nominated in this Consultancy Services Order are not available to provide or supervise the Services requested, the Provider must immediately notify the Participating Agency and provide details of other Personnel (if any) with the necessary skills and experience to provide or supervise the Services requested pursuant to this Consultancy Services Order.

(c) Notice given under clause 6.2(b) must specify the period for which the Nominated Personnel will continue to be unavailable.

(d) Upon receipt of notice under clause 6.2(b), the Participating Agency must notify the Provider whether the replacement Personnel are acceptable.

(e) The Participating Agency is under no obligation to accept any replacement Personnel and, if it does not approve the replacement Personnel, the Provider may not commence or continue providing the Services.

6.3 Personnel

(a) The Provider will ensure that all of its Personnel who are engaged in the
performance of the Provider’s obligations under this Consultancy Services Order:

(i) have the requisite skills, expertise, qualifications and experience;

(ii) have, before performing any such obligations, obtained all security clearances and passed all probity checks required by, or necessary to provide the Services to, the Participating Agency;

(iii) comply with all health, safety, security and other policies, codes of conduct, procedures and reasonable directions as may be reasonably required by the Participating Agency from time to time; and

(iv) will carry out their respective duties with due care, skill and diligence.

(b) The Participating Agency will notify the Provider of any security clearances and probity checks required by, or necessary to provide the Services to, the Participating Agency.

6.4 Subcontracting

(a) The Provider will not subcontract the performance of all or part of the Services or any of its other obligations under this Consultancy Services Order, except with the prior written consent of the Participating Agency.

(b) The Provider is solely responsible for the selection of each Subcontractor and must ensure that each Subcontractor is creditworthy, qualified and has the relevant experience to perform the work it is required to carry out for the Provider.

(c) To the extent permitted by Law, the Provider is and remains fully responsible for any act or omission of any Subcontractor.

(d) The Provider must ensure that each Subcontract contains obligations on the Subcontractor that are consistent with the relevant terms of this Consultancy Services Order, including in relation to clauses 5.1 (Provider responsibilities), 6.3(a) (Personnel), 10 (Confidentiality), 11 (Intellectual Property) and 14 (Termination) and Schedule 3 (Performance Measurement), together with clause 15 (Audit) of the Services Agreement.

(e) If, in the Participating Agency’s reasonable opinion, a Subcontractor is:

(i) materially not performing in accordance with the terms of this Consultancy Services Order, the Participating Agency may, by notice to the Provider, require the Provider to procure that the Subcontractor performs the relevant obligations within 10 Business Days, failing which the Participating Agency may, by notice to the Provider, require the Provider to remove that Subcontractor; or

(ii) a material threat to the health, safety or security of the Personnel or property of the Participating Agency, or has breached security or confidentiality requirements of this Consultancy Services Order, the Participating Agency may, by notice to the Provider, require the Provider to remove that Subcontractor,

and the Provider will ensure the immediate removal of that Subcontractor.

7. Changes

7.1 Change procedure

The Participating Agency may agree any variations to this Consultancy Services Order with the Provider using Part C of the Consultancy Services Order.

8. Price and payment

8.1 Calculation of Charges

The Charges will be calculated in accordance with the terms of Schedule 2 (Pricing).

8.2 Participating Agency to pay for Services

(a) The Participating Agency will pay the Provider the Charges applicable to any Services procured by the Participating Agency on the terms of this clause 8.

(b) The Charges and Administration Fee comprise the total amount payable by the Participating Agency for the Services.

8.3 Invoicing and payment

Except as otherwise provided in Schedule 2 (Pricing) or as agreed with the Participating Agency in this Consultancy Services Order, the Provider will invoice the Participating Agency (or, if the Participating Agency has instructed the Provider in writing, the third party agent) for the Charges and the Participating Agency will pay those Charges, in accordance with the following terms:

(a) the Provider will render one itemised invoice to the Participating Agency at the end of each month during the Term for all Services performed during that month specifying (as applicable):

(i) the nature and amount of the Fees or other applicable fees and fee structures;

(ii) the Personnel and their applicable Rate;

(iii) the hours billed (by Personnel and in the aggregate);

(iv) the nature and amount of any Expenses (including any third party charges to be passed on to the Participating Agency).
(v) if applicable, the amount representing the Administration Fee;
(vi) how much of the Estimate or Quote has been used;
(vii) a brief description of the Services provided during that month; and
(viii) any other matters the Participating Agency may reasonably request;

(b) each correctly rendered invoice will be payable on or before the 20th day of the month following the month in which the invoice was received;
(c) the Participating Agency will have no obligation to pay any Charges which are invoiced more than 90 days after the date that such amount was required to be invoiced pursuant to this clause 8.3; and
(d) the Provider may only invoice the Participating Agency for any Expenses at the cost actually incurred by the Provider.

8.4 Invoice disputes
If the Participating Agency or the Provider disputes an invoice:

(a) it may withhold the disputed sum and, if applicable, associated Administration Fee until the dispute is resolved;
(b) the dispute will be resolved in accordance with clause 13; and
(c) it will pay the undisputed portion in accordance with clause 8.3.

The Provider will not be excused from performing its obligations under this Consultancy Services Order while an invoice is disputed by the Participating Agency.

8.5 Taxes

(a) Except for any GST payable by the Participating Agency, any present or future tax, levy, impost, duty, charge, assessment, or fee of any nature (including applicable interest and penalties) payable in connection with this Consultancy Services Order under any Law is to be paid by the Provider and not passed on to the Participating Agency unless otherwise expressly agreed in writing by the Participating Agency.

(b) The Participating Agency may deduct from any payment to be made to the Provider any withholding taxes or other deductions that it is required by Law to make.

8.6 Administration Fee
In relation to the sub-categories for which the Provider has been appointed as a Tier 1 or Tier 2 Provider, the Provider will ensure that each invoice issued to the Participating Agency for the Charges includes, in addition to the Charges, a separate amount equal to 1% of the Fees (excluding GST) (the Administration Fee).

8.7 Suspension of payment

(a) Without prejudice to any other right or remedy that may be available to the Participating Agency, the Participating Agency may suspend payment of all or any part of the Charges if the CoE has notified the Provider that the Provider is in Material Breach, until that Material Breach is remedied.

(b) If the Material Breach is not capable of remedy the Participating Agency and the Provider agree to treat the Charges as being in dispute and clause 14 will apply.

9. Warranties

9.1 General warranties
Each party represents, warrants and undertakes that:

(a) it has full power, capacity and authority to execute, deliver and perform its obligations under this Consultancy Services Order;

(b) it has, and will continue to have, all the necessary consents, permissions, licences and rights to enter into and perform its obligations under this Consultancy Services Order;

(c) this Consultancy Services Order constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

9.2 Provider’s warranties
The Provider represents, warrants and undertakes that:

(a) it will perform its obligations under this Consultancy Services Order with due care, skill, promptness and diligence at all times;

(b) it has, and will have throughout the Term, sufficient Personnel to supply the Services and to perform its other obligations under this Consultancy Services Order;

(c) it, and each of its Personnel engaged in the performance of the Services, has, and will have throughout the Term, the necessary expertise and all necessary governmental, regulatory or other approvals, permissions, consents, licences, qualifications, accreditations and requirements to provide the Services and perform its other obligations under this Consultancy Services Order;

(d) it will comply with the requirements of all Laws as they relate to the provision of Services by the Provider;

(e) the possession or use of any item of Intellectual Property supplied or licensed by it, or the use of any item of Intellectual Property by it to perform its obligations under this Consultancy Services Order, will not infringe the rights of any third party;

(f) all Documentation (and any other information or advice supplied by it to the Participating Agency) and any
information and data reported to the CoE will be accurate, complete and (as applicable) Fit for Purpose; (g) there are no existing agreements, undertakings or arrangements which prevent it from entering into this Consultancy Services Order, or which would impede the performance of its obligations under this Consultancy Services Order, or that it would breach by entering into this Consultancy Services Order; (h) it is not (and nor is any of its Personnel) a party to any litigation, proceedings or disputes which could adversely affect its ability to perform its obligations under this Consultancy Services Order; and (i) it has not offered any inducement in connection with the entering into or negotiation of this Consultancy Services Order, and will not offer any inducement in connection with the supply of Services to the Participating Agency.

9.3 Continuous application
The warranties, representations and undertakings set out in clause 9.2 will be deemed to be given by the Provider continuously throughout the Term.

9.4 Notification
Each party will promptly notify the other if at any time during the Term it breaches any of the warranties, representations and undertakings in this clause 9.

9.5 Other warranties excluded
All warranties (statutory, express or implied) which are not expressly referred to in this Consultancy Services Order are excluded to the fullest extent permitted by Law.

10. Confidentiality

10.1 Protection of Confidential Information
(a) Subject to clause 10.1(c) and 10.2, the Provider and the Participating Agency will treat as confidential and not disclose to any third party nor use for its own benefit any Confidential Information that is the Confidential Information of the other.
(b) The Provider will:
(i) ensure that all Confidential Information of the Participating Agency (and any backup archives containing such Confidential Information) in the possession or control of the Provider from time to time is kept secure and managed and protected and only disclosed or otherwise dealt with in accordance with this Consultancy Services Order;
(ii) not use any Agency Information for its own purposes or for any purposes different from those contemplated by this Consultancy Services Order; and

10.2 Limited disclosure
(a) The Provider may, subject to clause 10.2(d), disclose the Confidential Information of the Participating Agency to its Subcontractors, Personnel, Related Entities and Professional Advisers who need to know the same for the sole purpose of enabling the Provider to perform its obligations and exercise its rights under this Consultancy Services Order.
(b) The Participating Agency may, subject to clause 10.2(d), disclose the Confidential Information of the Provider to its third party suppliers, Personnel and...
Professional Advisers and any other Participating Agencies (including the CoE) who need to know the same in connection with the Services.

(c) The Provider will not disclose the Participating Agency’s Confidential Information to any of its Subcontractors, Related Entities or Professional Advisers, and the Participating Agency will not disclose the Provider’s Confidential Information to any of its third party suppliers or Professional Advisers, unless the recipient has given a written confidentiality undertaking to the disclosing party in terms substantially similar to those set out in this clause 10.

(d) Any undertaking given pursuant to clause 10.2(c) will be provided to the other party to this Consultancy Services Order on request.

11. Intellectual Property

11.1 Intellectual Property owned by Provider

(a) The Participating Agency acknowledges that all intellectual property:

(i) Intellectual Property held by the Provider before the Commencement Date;

(ii) Intellectual Property developed independently from this Consultancy Services Order by the Provider, and that is not developed, commissioned or created under or in connection with this Consultancy Services Order;

(iii) adaptations and modifications to the Intellectual Property described in clauses 11.1(a)(i) and (ii), remains the Provider’s sole and exclusive property (Provider IP).

(b) To the extent that the Participating Agency needs to use any of the Provider IP to receive the full benefit of the Services, the Provider grants to the Participating Agency a royalty-free, non-exclusive licence (including, if agreed in the Consultancy Services Order, the right to sublicense) to use, copy, modify and distribute during the Term any Provider IP provided to the Participating Agency by or on behalf of the Provider.

11.2 Intellectual Property owned by Participating Agency

(a) The Provider acknowledges that the Participating Agency or its licensor has, and continues to have, sole and exclusive ownership of all Intellectual Property rights in all of the Agency Information together with all adaptations and modifications of such Agency Information (Pre-contract Participating Agency IP).

(b) All Intellectual Property created or developed by the Provider or its employees or Subcontractors in performing the Services and developing the Documentation will be owned by the Participating Agency from the date the Intellectual Property is created or developed (Post-contract Participating Agency IP and, together with the Pre-contract Participating Agency IP, the Participating Agency IP).

(c) If the Provider (or any of its Subcontractors) has under any Law any right in or claim to any of the Participating Agency IP or holds any of the Participating Agency IP, the Provider (by itself and for its Subcontractors):

(i) assigns to the Participating Agency all of its rights, title and interest in and to the Participating Agency IP from the date it was created or developed; and

(ii) waives all right of lien or similar rights as may now or later be claimed in the Participating Agency IP; and

(iii) waives all of its moral rights under Part 4 of the Copyright Act 1994 in the Participating Agency IP, and the Provider will sign all documents and do all acts and things that are necessary to give effect to this clause 11.2(c).

(d) To the extent that the Provider needs to use any of the Participating Agency’s IP for the purpose of performing its obligations under this Agreement, the Participating Agency grants to the Provider, subject to any written direction given by the Participating Agency, of a royalty-free, non-exclusive, non-transferable licence to use and store the Participating Agency’s IP for the sole purpose of performing its obligations under this Consultancy Services Order during the Term.

11.3 Intellectual Property owned by third parties

(a) To the extent that the Provider needs to use any Intellectual Property held or owned by a third party (Third Party IP) in performing the Services under this Consultancy Services Order, the Provider will use its best endeavours to obtain the fullest rights of use and licence of that Third Party IP (on terms and at a cost to be agreed with the Participating Agency) as are necessary for the performance of those Services for the benefit of the Participating Agency.

(b) The Participating Agency acknowledges that the Provider may have limited ability to obtain rights and/or a licence to use any Third Party IP and, where the Provider, using its best endeavours, cannot obtain appropriate rights and/or a licence for the Participating Agency to use that Third Party IP, the warranty in clause 9.2(e) applies.

12. Liability

12.1 Indemnity
(a) The Provider will, to the extent permitted by Law, indemnify the Participating Agency against all Losses suffered or incurred by the Participating Agency as a result of any:

(i) unlawful, malicious or negligent act or omission by the Provider;

(ii) personal injury, sickness, death or loss of, or damage to, tangible property due to an act or omission of the Provider; or

(iii) any other breach by the Provider of its obligations under this Consultancy Services Order.

(b) The Provider will, subject to clause 12.1(c), indemnify the Participating Agency against all Losses suffered or incurred by the Participating Agency as a result of any claim that the possession or use of any Intellectual Property supplied or licensed by the Provider, or the use of any Intellectual Property used to provide the Services, infringes any third party’s rights.

(c) The Provider will have no liability under clause 12.1(b) to the extent that any IP Claim arises from any:

(i) modification by the Participating Agency of any item of Intellectual Property supplied or licensed by the Provider without the approval of the Provider;

(ii) use by the Participating Agency of Intellectual Property supplied or licensed by the Provider for any purpose disallowed by the Consultancy Services Order or the applicable Intellectual Property licence (but only if the licence has been provided to the Participating Agency prior to such use); or

(iii) use of Intellectual Property used to provide the Services if and to the extent that Intellectual Property was supplied by the Participating Agency.

12.2 IP Claims

(a) In the event of a claim under clause 12.1(b) (an IP Claim):

(i) the Participating Agency will give the Provider notice of the IP Claim as soon as practicable and, to the extent permissible by Law, permit the Provider (at the Provider’s cost) to handle all negotiations for settlement and to control and direct any litigation that may follow (Control of the IP Claim); and

(ii) if the Provider has Control of the IP Claim:

(A) the Participating Agency will provide all reasonable assistance to the Provider (at the Provider’s cost) in the handling of any negotiations and litigation; and

(B) the Provider will keep the Participating Agency informed of the defence or negotiations of the IP Claim and diligently conduct any litigation or negotiations, using competent counsel and in a manner that does not adversely affect the name or reputation of the Participating Agency.

(iii) the Provider will not enter into any settlement or compromise in relation to the IP Claim without the prior written consent of the Participating Agency (which will not be unreasonably withheld); and

(iv) the Provider will notify the CoE of the IP Claim, and the outcome within 5 Business Days of the claim being concluded.

(b) If any IP Claim disrupts the Participating Agency’s use or enjoyment of a Service, the Provider will (unless otherwise requested by the CoE): at its own expense and at its option, immediately:

(i) obtain for the Participating Agency the legal right to continued use of the infringing materials; or

(ii) replace, modify or resupply the infringing materials so that there is no further infringement, without adversely affecting the performance or functionality of those materials.

12.3 Maximum liability of Participating Agency

In addition to its obligation to pay the Charges, the maximum aggregate liability of the Participating Agency to the Provider under or in connection with this Consultancy Services Order will be, in respect of all Losses, limited to the total Charges paid and payable under this Consultancy Services Order.

12.4 Maximum liability of the Provider

The maximum liability of the Provider to the Participating Agency for all Losses under or in connection with this Consultancy Services Order in respect of all claims will not exceed:

(a) in relation to the sub-categories for which the Provider has been appointed as a Tier 1 Provider, the greater of:

(i) 10 times the total Charges paid and payable under this Consultancy Services Order;

(ii) $5,000,000; and

(iii) any greater amount or multiple set out in this Consultancy Services Order;
in relation to the sub-categories for which the Provider has been appointed as a Tier 2 Provider, the greater of:

(i) 10 times the total Charges paid and payable under this Consultancy Services Order;
(ii) $2,000,000; and
(iii) any greater amount or multiple set out in this Consultancy Services Order; and

(c) in relation to the sub-categories for which the Provider has been appointed as a Tier 3 Provider, the greater of:

(i) 10 times the total Charges paid and payable under this Consultancy Services Order;
(ii) $1,000,000; and
(iii) any greater amount or multiple set out in this Consultancy Services Order.

12.5 No double dipping

A party to this Consultancy Services Order (or the CoE acting on behalf of the Participating Agency in accordance with the Services Agreement) cannot recover for the same Loss under both this Consultancy Services Order and the Services Agreement.

12.6 Exclusions on liability

The limitations on liability set out in clauses 12.3 and 12.4 will not limit the liability of:

(a) the Provider under clauses 12.1(a) and 12.1(b) (other than in respect of negligent acts or omissions under clause 12.1(a)(i) and breach by the Provider of its obligations under this Consultancy Services Order under clause 12.1(a)(iii), which are subject to the limitations of liability in clauses 12.3 and 12.4);
(b) the Provider for any fraudulent act or omission; or
(c) either party for any breach of confidentiality.

12.7 Categories of loss

(a) Irrespective of how liability arises, neither the Provider nor the Participating Agency will, under any circumstances, be liable for any indirect loss or damage (including consequential loss) arising under or in connection with this Consultancy Services Order.

(b) The Participating Agency will not, under any circumstances, be liable for any loss of profits or loss of revenue suffered by the Provider in connection with this Consultancy Services Order.

12.8 Force majeure

(a) The Provider and the Participating Agency will not be liable to the other for any failure to perform its obligations under this Consultancy Services Order during the time and to the extent that such performance is prevented, wholly or substantially, by reason of any Force Majeure Event.

(b) The party subject to the Force Majeure Event (the non-performing party) must:

(i) notify the other party as soon as practicable after the Force Majeure Event occurs and provide full information concerning the Force Majeure Event, including the extent of its inability to perform, an estimate of the time likely to be required to overcome the Force Majeure Event and the steps the non-performing party will take to comply with clauses 12.8(b)(ii) and 12.8(b)(iii);
(ii) use all reasonable endeavours to mitigate and remedy the effect of the Force Majeure Event and minimise the impact of the event on the other party; and
(iii) use all reasonable endeavours to perform its obligations under this Consultancy Services Order as far as is practicable, and the Participating Agency will not be required to pay Charges to the extent that the Provider fails to perform its obligations to the Participating Agency due to a Force Majeure Event.

(c) If the non-performing party affected by the Force Majeure Event is the Provider, the Participating Agency may, to the extent that any Service requested by the Participating Agency under this Consultancy Services Order has not been delivered and delivery has, or will be, delayed by the Force Majeure Event, terminate this Consultancy Services Order, by notice to the Provider within five Business Days following receipt by the Participating Agency of notice of the Force Majeure Event, at no cost to the Participating Agency, subject to the Participating Agency paying for Services delivered up to the date of the Force Majeure Event.

12.9 Insurance

(a) During the Term and for a period of two years following the termination of this Consultancy Services Order, the Provider will, at its own expense, ensure that it maintains adequate insurance in respect of its potential liability for loss or damage under this Consultancy Services Order in accordance with Industry Best Practice, but as a minimum the Provider must hold:

(i) professional indemnity insurance;
(ii) public liability insurance in respect of the Services provided under this Consultancy Services Order; and
other insurance to cover standard commercial risks (including in respect of Documentation which is the property of the Participating Agency and in the Provider's possession or control).

(b) The Provider will, at the Participating Agency's request, promptly provide satisfactory evidence that it has complied with its obligations in this clause 12.9.

13. Dispute resolution

13.1 Dispute

In the event of any dispute, difference or question arising out of, or in connection with, this Consultancy Services Order or its formation (a dispute):

(a) the Participating Agency and the Provider will each use its best efforts to resolve the dispute through good faith negotiations and informal dispute resolution techniques, and will continue to perform its obligations under this Consultancy Services Order as far as possible as if the dispute had not arisen, pending final settlement of the dispute; and

(b) neither the Participating Agency nor the Provider will commence any formal proceedings relating to the dispute unless it has complied with clause 13.2.

13.2 Escalation

(a) The Participating Agency and the Provider will each advise its respective Representative (or equivalent person) of a dispute on the day that the dispute arises.

(b) The Representatives will use their best efforts to resolve the dispute in accordance with clause 13.1(a).

(c) If the dispute is not resolved:

(i) within 10 Business Days, the dispute will be escalated to senior Representatives of the Provider and the Participating Agency with delegated authority to resolve the dispute; and

(ii) in relation to the sub-categories for which the Provider has been appointed as a Tier 1 and Tier 2 Provider, within further 10 Business Days, the dispute will be escalated to the CoE's Manager, All-of-Government Contracts and the Provider's Chief Executive.

13.3 Mediation

(a) If a dispute is not resolved under clause 13.2, either party may, by written notice to the other, refer the dispute to mediation, or they may agree in writing to refer the dispute to mediation.

(b) The mediation will be conducted by a single mediator in accordance with the terms of the Resolution Institute Standard Mediation Agreement and at a fee to be agreed by the parties.

(c) If the parties fail to agree on the identity of the mediator and/or the mediator's fee within five Business Days of referral of the dispute to mediation, the mediator will be chosen, and the mediator's fee determined, by the chairperson for the time being of Resolution Institute (or his or her nominee).

13.4 Urgent relief

Nothing in this clause 13 will preclude either party from taking immediate steps to seek urgent relief before a New Zealand court.

14. Termination

14.1 Termination of Consultancy Services Order

The Participating Agency may terminate this Consultancy Services Order:

(a) for convenience by giving the Provider at least one month's prior written notice;

(b) by notice to the Provider with immediate effect on the date of termination specified in that notice, if the Provider commits a Material Breach which is:

(i) not capable of being remedied (and, for the avoidance of doubt, paragraphs (a) and (b) of the definition of "Material Breach" are deemed incapable of being remedied); or

(ii) capable of being remedied but which is not remedied to the satisfaction of the Participating Agency within 10 Business Days following the date of receipt by the Provider of the Participating Agency's notice of the Material Breach;

(c) in accordance with clause 4.1(e) (Conflict of Interest); or

(d) in accordance with clause 12.8(c) (Force Majeure Event).

14.2 Consequences of termination or expiry

(a) In the event of termination or expiry of this Consultancy Services Order, the Participating Agency will not be obliged to make any payment to the Provider except for any Charges payable for Services supplied pursuant to this Consultancy Services Order before the effective date of expiry or termination.

(b) Termination or expiry will not, unless otherwise provided in this Consultancy Services Order, affect:

(i) any rights and remedies available to either party which have accrued up to and including the date of termination or expiry; and

(ii) the provisions of this Consultancy Services Order which expressly, or by their nature, survive termination or
15. Entire agreement

15.1 Entire agreement

(a) This Consultancy Services Order is intended to be read in conjunction with the Services Agreement. The provisions of the Services Agreement (not already included in this Consultancy Services Order) which confer rights, obligations or benefits on the parties or the CoE in respect of this Consultancy Services Order are intended to apply to this Consultancy Services Order.

(b) Subject to clause 15.1(a), no other terms or conditions, including any conditions of sale, invoices or any other communication not included in this Consultancy Services Order, will be incorporated into the Consultancy Services Order, even if at some later date the other party (including, in the case of the Participating Agency) signs or otherwise purports to accept those terms and conditions or the terms of that Communication.

(c) For the avoidance of doubt, and without limiting clauses 15.1(a) and 15.1(b):

(i) any Communication which is expressed or intended to operate as an indemnity, warranty, representation, undertaking, condition or other term of such a nature is hereby disapproved and excluded from this Consultancy Services Order; and

(ii) any part of this Consultancy Services Order which describes the nature, scope, price or manner of delivery of Services will, subject to clause 15.1(c)(i), form part of this Consultancy Services Order, but only to the extent that it does not conflict with any other part of this Consultancy Services Order.

16. General

16.1 Interpretation

The rules of interpretation set out in clause 19.1 of the Services Agreement apply to this Consultancy Services Order.

16.2 Relationship of the parties

Nothing expressed or implied in this Consultancy Services Order will be deemed to constitute either party as the partner, agent, or joint venturer of the other party.

16.3 Costs

A party who has an obligation to do anything under this Consultancy Services Order will perform that obligation at its own cost, unless a term of this Consultancy Services Order expressly provides otherwise.

16.4 Assignment

Neither party may assign, novate, transfer or otherwise dispose of the whole or any part of its rights and obligations under this Consultancy Services Order without first obtaining the other party’s consent (which will not be unreasonably withheld or delayed).

16.5 Public disclosures

Subject to clause 10, all public disclosures by the Provider relating to this Consultancy Services Order, including the fact of its existence (but not including any announcement intended solely for internal distribution or any disclosure required by legal, accounting or regulatory requirements), will be co-ordinated with, and must first be approved in writing by, the Participating Agency prior to release.

16.6 Notices

(a) Unless otherwise specified in this Consultancy Services Order, each notice or other communication under this Consultancy Services Order will be made in writing and delivered by post, personal delivery or email to the addressee at the address set out in Schedule 1 (Definitions).

(b) The Provider’s postal address, physical address and email address is set out in the Provider Database and may be amended by the Provider at any time.

(c) The Participating Agency’s postal address, physical address and email address is as notified by the Participating Agency to the Provider and may be amended by the Participating Agency at any time.

(d) A notice or other communication will be deemed to be received:
(i) in the case of a letter sent to the addressee’s postal address, on the third Business Day after posting;
(ii) in the case of personal delivery, on receipt; and
(iii) in the case of an email, at the time the email leaves the communications system of the sender, provided that the sender:
(A) does not receive any error message relating to the sending of the email at the time of sending; and
(B) has obtained confirmation that the email has been delivered to the recipient (which confirmation may be in the form of an automated delivery receipt from the communications system of the recipient), on the Business Day on which it is dispatched or, if dispatched after 5 p.m. (in the place of receipt), on the next Business Day after the date of dispatch.

16.7 Severability
If any term or provision of this Consultancy Services Order is held to be illegal, invalid or unenforceable it will be severed from this Consultancy Services Order without affecting the legality, validity or enforceability of the remaining provisions.

16.8 Waiver
(a) Neither party will be deemed to have waived any right under this Consultancy Services Order unless the waiver is in writing and signed by the parties.
(b) Any failure or delay by a party to exercise any right or power under this Consultancy Services Order will not operate as a waiver of that right or power.
(c) Any waiver by a party of any breach, or failure to exercise any right, under this Consultancy Services Order will not constitute a waiver of any subsequent breach or continuing right.

16.9 Remedies cumulative
Except as is expressly stated otherwise in this Consultancy Services Order:
(a) the rights, powers and remedies provided in this Consultancy Services Order are cumulative and are not exclusive of any rights, powers or remedies provided by Law or under this Consultancy Services Order; and
(b) the exercise of any rights, powers and remedies provided in this Consultancy Services Order will not prejudice the exercise of any other right, power or remedy under this Consultancy Services Order or existing at Law.

16.10 Counterparts
This Consultancy Services Order may be signed in two counterparts, each of which will be deemed an original, but both of which together are to constitute a single instrument.

16.11 Governing law and jurisdiction
(a) This Consultancy Services Order is governed by, and will be construed in accordance with, the laws of New Zealand.
(b) Subject to clause 13, each party irrevocably submits to the exclusive jurisdiction of the New Zealand courts for the purpose of hearing and determining any dispute under or in connection with, this Agreement.

SCHEDULE 1: DEFINITIONS
In this Consultancy Services Order, unless the context otherwise requires:

Administration Fee means the amount referred to in clause 8.6;

Agency Information means all:
(a) information and records belonging to the Participating Agency that are supplied to or collected by the Provider for the purpose of enabling the Provider to perform its obligations under this Consultancy Services Order;
(b) compilations of data created by a Participating Agency or the Provider for the purposes of this Consultancy Services Order; and
(c) legal names, logos, trademarks, brands or images of the Participating Agency, including all related Intellectual Property of the Participating Agency and the New Zealand Coat of Arms or any other coat of arms or emblem used by the Participating Agency, but excluding the Provider’s working papers;

Annexure means any document physically attached to a Schedule and identified as such and any other document incorporated by reference in any part of this Consultancy Services Order (other than an Annexure);

Appointment Letter means the letter issued to the Provider by the CoE, as amended or reissued from time to time, confirming (among other things) the Provider’s appointment as an All-of-Government provider of consultancy services and detailing the terms and conditions of the appointment (including the Services and the applicable Tier(s));

Business Day means any day of the year other than a Saturday, a Sunday or a public holiday (as defined in section 44 of the Holidays Act 2003) observed at the location of the Participating Agency;

Charges means the amount payable by Participating Agencies for Services and includes Fees and Expenses, as described in Schedule 2 (Pricing) and agreed in this Consultancy Services Order;

CoE means the Ministry of Business, Innovation and Employment, the Centre of Expertise for Consultancy Services;
Commencement Date is the date on which this Consultancy Services Order is signed by both parties or, if two dates, the later date;

Confidential Information means:
(a) all information and trade secrets already communicated or subsequently communicated under or in connection with this Consultancy Services Order, including information obtained during the negotiation of this Consultancy Services Order or in the performance of this Consultancy Services Order and information on the Provider Database;
(b) any information about the business or property of either party including any information:
   (i) relating to the financial position of that party;
   (ii) concerning that party’s suppliers and customers; or
   (iii) relating to that party’s internal management, structure, Personnel or strategies;
(c) the terms of this Consultancy Services Order; and
(d) Agency Information;

Conflict of Interest means any matter, circumstance, interest or activity of the Provider, its Personnel or Subcontractors, arising by whatever means that directly or indirectly conflicts with:
(a) the duties of the Provider and any of its Personnel or Subcontractors to the Participating Agency; or
(b) the interests of the Participating Agency in relation to this Consultancy Services Order or in respect to the provision of consultancy services to the Participating Agency either before or after the Commencement Date;

or otherwise impairs or might appear to impair the ability of the Provider (or any of its Personnel or Subcontractors) to provide the Services to the Participating Agency under this Consultancy Services Order diligently, independently, impartially and in the best interests of the Participating Agency;

Consultancy Services Order means this service order relating to the supply of Services issued by the Participating Agency;

Contract Quarter means a period of three consecutive months commencing on 1 January, 1 April, 1 July or 1 October;

Control means, in relation to the Provider or any ultimate or intermediate holding company or Holding Entity of the Provider, the power to:
(a) manage, directly or indirectly, the operation of the business; or
(b) control, directly or indirectly, the composition of the board of directors or board of management or equivalent governing body, of the Provider or such ultimate or intermediate holding company or Holding Entity, whether through the ownership of voting securities, by contract or otherwise, and for these purposes “holding company” will have the same meaning as in section 5 of the Companies Act 1993;

Documentation means all advice, communications, documentation (including information on the Provider Database) and reports (whether in paper, electronic, audio or audio-visual format) relating to, or provided as part of, the Services together with additions, modifications to, and replacements of, that documentation, but excludes the Provider’s working papers;

Estimate means an estimate of the total Charges for the Services required by the Participating Agency;

Expense means any actual and reasonable out-of-pocket costs incurred by the Provider in the delivery of the Services and agreed to in this Consultancy Services Order, and includes any freight and related costs, travelling and incidental expenses and other costs, disbursements, fees, charges and expenses directly or indirectly incurred by the Provider;

Fees means the amount payable by the Participating Agency to the Provider for its time spent delivering the Services calculated on the basis of the Rates, excluding Expenses;

Fit for Purpose means, in relation to any Service or Documentation to be provided by the Provider to the Participating Agency, that such Services or Documentation are, in descending order of priority, fit for the purpose(s):
(a) expressly made known in writing by the Participating Agency to the Provider (including in this Consultancy Services Order); or
(b) for which the Provider, given its knowledge of the Participating Agency and understanding why the Services or Documentation are required, has reason to expect such Service or Documentation to be used;

Force Majeure Event means an event or circumstance beyond the reasonable control of either party which makes it impossible or illegal to perform, or prevents compliance with, or the performance of, a party’s obligations under this Consultancy Services Order, including:
(a) fire, floods, tsunami, storms, tempest, earthquake or other act of God;
(b) any act of a public enemy, war, riot, or act of civil or military authority;
(c) nuclear, chemical or biological contamination; and
(d) subject to paragraph (g) of this definition, any act of a third party engaged in subversive or terrorist activity or sabotage,

does not include an event to the extent that:
(e) the effect of that event could have been substantially prevented, avoided or overcome or mitigated by:
   (i) implementation of any contracted business continuity or disaster recovery service, or any contingency plans agreed between the parties or which a party has represented it has in place; or
   (ii) exercising a reasonable standard of care; or
   (iii) using information provided by the other party or which is available in the public domain; or
(f) it is an event for which the party affected is or was directly responsible; or
(g) that event is constituted or caused by any act or omission of Personnel or a Subcontractor unless and to the extent that the Personnel or Subcontractor was itself affected by an event, which if it occurred in relation to either party would have been a Force Majeure Event; or
(h) that event is constituted or caused by an Insolvency Event or the insolvency of a Subcontractor or lack of funds for any reason;

GST means goods and services tax under the Goods and Services Tax Act 1985;

Holding Entity means a trust, unit trust, partnership, limited partnership, unincorporated joint venture or other body corporate or unincorporated body of persons that Controls
the Provider, and includes any natural person that Controls
the Provider;

Industry Best Practice means the high professional
standard that would reasonably be expected from a prudent
and experienced provider of consultancy services in New
Zealand having regard to market practice at the relevant
time;

Insolvency Event means, in relation to the Provider:
(a) the presentation of an application for its liquidation that
is not discharged within 30 days of its filing or which is
not demonstrated to the Participating Agency prior to
the expiry of that 30 day period as being an application
that is frivolous or vexatious;
(b) any step taken in or toward the making of any
compromise, proposal or deed of arrangement with all
or some of its creditors;
(c) the appointment of a liquidator, receiver, statutory
manager, administrator or similar official, to it;
(d) the suspension or threatened suspension by it of the
payment of its debts;
(e) cessation by it of a whole or any relevant part of its
business in New Zealand;
(f) the enforcement of any security against the whole or a
substantial part of its assets; or
(g) any other insolvency event or proceedings analogous
to any of the foregoing occurring in any relevant
jurisdiction;

Intelectual Property means copyright, all rights in relation
to inventions (including patents), registered and unregistered
trademarks, registered and unregistered designs, trade or
other proprietary rights or rights derivative of those rights
(including licence rights) anywhere in the world as well as
any other rights in intellectual property which are recognised
or protected under Law;

Law means:
(a) any statute, regulation, bylaw, ordinance or
subordinate legislation in force from time to time to
which a party is subject;
(b) the common law and the law of equity as applicable to
the parties from time to time;
(c) any binding court order, judgment or decree;
(d) any applicable industry code of practice or conduct,
convention, policy, rule or standard to which a party is
bound; or
(e) any applicable direction, policy, permission, consent,
licence, rule or order that is binding on a party and that
is made or given by any governmental or regulatory
body having jurisdiction over a party or any of that
party’s assets, resources or business,
in any jurisdiction that is applicable to this Consultancy
Services Order;

Losses means liabilities, expenses, losses, damages and
costs (including legal costs on a full indemnity basis);

Material Breach means any material breach by the Provider
of the terms of this Consultancy Services Order or the
occurrence of any event having a material effect on the ability
of the Provider to perform its obligations under this
Consultancy Services Order (other than a Force Majeure
Event), including:
(a) the occurrence of an Insolvency Event in relation to the
Provider or the likely occurrence of an Insolvency
Event;
**Services** means the consultancy services provided from time to time under the terms of this Consultancy Services Order;

**Services Agreement** means the All-of-Government services agreement relating to the supply of Tier 1 and 2 consultancy services between the CoE and the Provider;

**Subcontractor** means any person to whom the Provider has subcontracted any part of its obligations under this Consultancy Services Order or who is a supplier to the Provider in respect of this Consultancy Services Order and includes the employees and subcontractors of that person and **Subcontract** will be construed accordingly;

**Term** means the period commencing on the date that this Consultancy Services Order is signed by both parties and ending on the earlier of:

(a) the date on which the Services are completed in accordance with this Consultancy Services Order; and

(b) the date on which this Consultancy Services Order is terminated in accordance with its terms; and

**Tiers** means any of **Tiers 1** and **Tiers 2** for which members of the Panel are appointed and, in respect of the Provider, means the Tier(s) the Provider is appointed to as detailed in the Appointment Letter.

**SCHEDULE 2: PRICING**

1. **Introduction**
   This Schedule sets out general principles underlying the Charges.

2. **Principles**
   2.1 Participating Agency will only pay for Services ordered
       (a) The Provider will invoice the Participating Agency for the Charges in accordance with clause 8.3 of this Consultancy Services Order.
       (b) The Participating Agency will only pay for Services that it orders in accordance with this Consultancy Services Order.

   2.2 No minimum volume
       The Participating Agency is not required to meet a minimum aggregate expenditure or volume level for any Services.

   2.3 No interest
       No interest will be payable on any amount due to the Provider under this Consultancy Services Order.

   2.4 Rates
       (a) The Fees are calculated on the Rates, being either the Rates that are recorded on the Provider Database or, subject to paragraph 3, a different Rate as negotiated between the Provider and Participating Agency and recorded in this Consultancy Services Order.
       (b) The Maximum Rates are the maximum amounts payable by the Participating Agency for the Services.

3. **Charges**
   The Charges payable by the Participating Agency for Services must not include any Fees invoiced at Rates higher than the Maximum Rates recorded in the Provider Database.

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**SCHEDULE 3: PERFORMANCE MEASUREMENT**

1. **Introduction**
   This Schedule describes, in relation to the sub-categories for which the Provider has been appointed as a Tier 1 and Tier 2 Provider:

   (a) the Service Levels; and
   (b) how performance against Service Levels will be measured and reported.

2. **Service Levels**
   2.1 Format
   Each Service Level is described in Annexure A using the following format:

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description</td>
<td>Description of what the Service Level will measure</td>
</tr>
<tr>
<td>Purpose</td>
<td>Why it is important to Participating Agencies that the Service Level is met</td>
</tr>
<tr>
<td>Calculation</td>
<td>Method for calculating the Service Level</td>
</tr>
<tr>
<td>Service Level</td>
<td>The performance standard that the Provider is required to meet or exceed</td>
</tr>
</tbody>
</table>

   2.2 Service Levels must be met
   (a) At all times during the Term, the Provider will, in relation to the sub-categories for which the Provider has been appointed as a Tier 1 and Tier 2 Provider, perform its obligations to meet or exceed the Service Levels.
   (b) The Provider acknowledges that any failure to meet the Service Levels may have a significant impact on the Participating Agency.

   2.3 Changes to Service Levels
   (c) From time to time during the Term, the CoE and the Provider may negotiate in good faith to add, delete or modify then-existing Service Levels to reflect changes in the Participating Agencies’ requirements or objectives.
   (d) Any changes to Service Levels will be effected in accordance with clause 10 of the Services Agreement.

3. **Performance measurement**
   3.1 Failure to meet Service Levels
   If the Provider fails to achieve one or more of the Service Levels in any Contract Quarter in respect of this Consultancy Services Order, it will:
(a) take such steps and do all things necessary, as soon as possible, to correct the failure; and
(b) notify the Participating Agency of the reasons for the failure and the steps that the Provider is taking to ensure that the failure is not repeated; and
(c) consider whether the Charges for the Services that are subject to the Service Level Default should be reduced to reflect the lower value of the Services provided.

Annexure A:  Service Levels

<table>
<thead>
<tr>
<th>Parameter</th>
<th>1. Services Fit for Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description</td>
<td>Were the Services subject to this Consultancy Services Order Fit for Purpose?</td>
</tr>
<tr>
<td>Purpose</td>
<td>To ensure Services provided are Fit for Purpose.</td>
</tr>
<tr>
<td>Calculation</td>
<td>The Participating Agency will advise whether the Services are Fit for Purpose as part of the Agency Satisfaction Survey.</td>
</tr>
<tr>
<td>Service Level</td>
<td>100% of Services delivered to the Participating Agency must be Fit for Purpose.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Parameter</th>
<th>2. Timely Performance of Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description</td>
<td>Did the Provider perform the Services subject to this Consultancy Services Order within the timeframe recorded in this Consultancy Service Order (or as amended by agreement from time to time)?</td>
</tr>
<tr>
<td>Purpose</td>
<td>To ensure on-time provision of Services requested under a Consultancy Services Order.</td>
</tr>
<tr>
<td>Calculation</td>
<td>The Provider is required to report on this metric as part of the reporting requirements in Schedule 6 (Reporting) to the Services Agreement.</td>
</tr>
<tr>
<td>Service Level</td>
<td>The Provider must deliver all Services subject to this Consultancy Services Order within the agreed timeframe for delivery recorded in this Consultancy Services Order including any variation to the timeframe recorded in Part D of this Consultancy Services Order.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Parameter</th>
<th>3. Services Performed to budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description</td>
<td>Were the Charges for the Services subject to this Consultancy Services Order within the Estimate or Quote recorded in this Consultancy Services Order?</td>
</tr>
<tr>
<td>Purpose</td>
<td>To ensure Services requested under a Consultancy Services Order are performed on or under the Provider’s Estimate or Quote.</td>
</tr>
<tr>
<td>Calculation</td>
<td>The Provider is required to report on this metric as part of the reporting requirements in Schedule 6 (Reporting) to the Services Agreement.</td>
</tr>
<tr>
<td>Service Level</td>
<td>The Provider must deliver all Services subject to this Consultancy Services Order within the agreed Estimate or Quote recorded in this Consultancy Services Order including any variation to the Estimate recorded in Part D of this Consultancy Services Order.</td>
</tr>
</tbody>
</table>