



MEMO

DATE	31 March 2017
TO	Renee Le'afa, Procurement Support Team Leader
PREPARED BY	Michelle Wessing, Programme Manager, Health, Safety and Security Branch
APPROVED BY	Adrian Regnault, Head of Safety and Security (cost centre manager)
SUBJECT	EXEMPTION FROM USING AN ALL-OF-GOVERNMENT CONTRACT – CONSULTANCY PANEL

REQUEST

It is requested that you approve an exemption from using the All of Government contract-Consultancy Panel to procure the services for a physical security specialist for a 6 week period from mid-April 2017 to mid-May 2017.

BACKGROUND

The Health, Safety and Security Branch needs to procure services from a security professional who has the skills and experience to complete this work (see Appendix 1 for the terms of reference for the assignment). This service is not available to be procured under the All-of-Government agreement. We have considered the scope of this agreement and wish to procure the service from a supplier not on this All of Government panel.

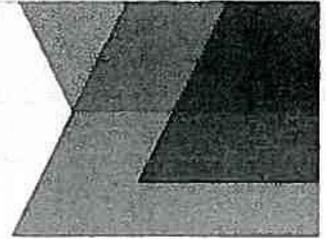
THE ASSIGNMENT – FURTHER CONTEXT TO THE EXEMPTION REQUEST

MBIE is looking to urgently appoint a suitably experienced person/firm to complete the following activities, which draw on international trends and patterns, over a period of time:

1. Review and strengthen MBIE's Physical and Environmental Security Standard₁ with a focus on:
 - improving the design of our worksites from a customer service experience, while
 - ensuring the safety and security of both our workers and our visitors.
2. Review the ground floor configuration of 15-21 Stout Street premises against the site security assessment report₂ and provide an independent review on the 14 recommendations made in the report. The review may identify other deficiencies and comment on any additional work that may be required to address these deficiencies. The outcome would be improved physical security at Stout Street, which is the main office for a variety of core government services.

REASONING

We recommend that the service is procured outside of the relevant All-of-Government panel and an exemption is granted as the work is highly specialised and there are a limited number



of security professionals that have the necessary skills and experience to complete this work (to the standard that MBIE would expect). Because of the high demand for security professionals, it is our professional opinion that also going to market would not enhance the outputs from this assignment.

COST

This is a total contract value of \$25,000(ex GST). The hourly rate is expected to be up to \$250 per hr and up to 100 hours).

PRECEDENT

We, Health, Safety and Security Branch have not previously purchased this service from the proposed supplier (F.Stock). We expect this request to be a one off request.

AGREED BY:

Date:

Procurement Support Team
Leader *(for exemptions
from using another All-of-
Government or*



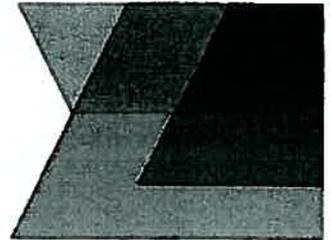
3/4/17

Authority to approve this
spend:

Adrian Regnault, Head of Safety and Security
Branch _____

Date:

31/3/2017 _____



Government Model Contract for Services

Limited technical review physical security

The Parties

Ministry of Business, Innovation and Employment **(Buyer)**

PO Box 1473

Wellington 6140

And

Stoks Limited **(Supplier)**

PO Box 233 Picton 7250

The Contract

Agreement

The Buyer appoints the Supplier to deliver the Services described in this Contract and the Supplier accepts that appointment. This Contract sets out the Parties' rights and obligations.

The documents forming this Contract are:

1. This page Page 1
2. Contract Details and Description of Services Schedule 1
3. Standard Terms and Conditions Schedule 2
4. GMC Form 1 SERVICES | Schedule 2 (2nd Edition) available at: www.procurement.govt.nz
5. Any other attachments described at Schedule 1.

How to read this Contract

6. Together the above documents form the whole Contract.
7. Any Supplier terms and conditions do not apply.
8. Clause numbers refer to clauses in Schedule 2.
9. Words starting with capital letters have a special meaning. The special meaning is stated in the Definitions section at clause 17 (Schedule 2).

Acceptance

In signing this Contract each Party acknowledges that it has read and agrees to be bound by it.

For and on behalf of the **Buyer:**

(signature) /

For and on behalf of the **Supplier:**

(signature)

name: Adrian Regnault

name: Dr Frank Stoks

position: Head of Health, Safety and Security

position: Director

date: 3 April 2017

date: 12 April 2017

Schedule 1: Contract Details and Description of Services

Start Date	13 April 2017	Reference Schedule 2 clause 1
End Date	31 May 2017	Reference Schedule 2 clause 1

Contract Managers Reference Schedule 2 clause 4	Buyer's Contract Manager	Supplier's Contract Manager
	Name:	Adrian Regnault
Title / position:	Head of Health, Safety and Security	Director
Address:	P.O.Box 1473, Wellington	Double Cove Marlborough PO Box 233 Picton 7250
Phone:	(04) 901 8373 (DDI)	
Fax:	N/A	N/A
Email:	Adrian.Regnault@mbie.govt.nz	@stoks.nz

Addresses for Notices Reference Schedule 2 clause 14	Buyer's address	Supplier's address
	For the attention of:	Nicky Wilson
c.c. Contract Manager		
Delivery address:	15 Stout Street, Wellington	Q 5542 Double Cove Marlborough
Postal address:	P.O.Box 1473, Wellington	Double Cove Marlborough PO Box 233 Picton 7250
Fax:	N/A	N/A
Email:	Nicky.Wilson@mbie.govt.nz	@clear.net.nz

Supplier's Approved Personnel Reference Schedule 2 clause 2.5	Approved Personnel	
Name:	Dr Frank Stoks	
Position:	Director	
Specialisation:	Corporate Security and Risk Management	

Supplier's Approved Sub-contractor Reference Schedule 2 clause 7	[OPTIONAL]	Approved Sub-contractor N/A
Name:		
Address:		
Specialisation:		

Description of Services

Context

Under the Health and Safety at Work Act 2015, MBIE has a primary duty of care to ensure, so far as reasonably practicable, the health and safety of:

- its workers
- any workers whose activities it directs or influences, and no other person is put at risk from its work.

The health, safety and security of our workers and the people visiting our nationwide offices is an absolute priority for the organisation and for our senior leaders, ensuring MBIE complies with its primary duty of care. MBIE offices should be places where our workers, customers and visitors can work constructively and with positive intent.

MBIE’s Head Office has been situated at 15-21 Stout Street since 2014 and accommodates more than 1,800 staff (or over 60% of MBIE’s workers). The site comprises 10 floors – a publicly accessible ground floor, a base level and eight secure working floors. MBIE has sole occupancy of this building with the exception of a commercial café, which operates within the ground floor atrium. The café includes a seating area that is open to both MBIE workers and the public.

Following the recent judgment against the Ministry of Social Development (MSD) owing to their failure to ensure the health and safety of their workers and others, MBIE has initiated a programme of work on physical security in our workplaces. The purpose of the programme is to ensure the physical security learnings from the MSD case are understood and applied consistently across MBIE offices that need to have face-to-face contact with the public, with particular focus on the ground floor configuration at Head Office.

Description of Services

MBIE is looking to urgently appoint a suitably experienced person/firm to complete the following activities, which draw on international trends and patterns, over a period of time:

1. Review and strengthen MBIE’s Physical and Environmental Security Standard¹ with a focus on:
 - improving the design of our worksites from a customer service experience, while
 - ensuring the safety and security of both our workers and our visitors.
2. Review the ground floor configuration of 15-21 Stout Street premises against the site security assessment report² and provide an independent review on the 14 recommendations made in the report. The review may identify other deficiencies with the configuration (for example- tailgating) and comment on any additional work that may be required to address these deficiencies. The outcome would be improved physical security at Stout Street, which is the main office for a variety of core government services.

Deliverables

1. The updating of MBIE’s Physical and Environmental Security Standard including generating a draft for comment and review by MBIE’s Protective Security team.
2. Independent report within the description of services - scope of work activity item 2.

Refer to the terms of reference for this assignment. See Appendix 3.

Deliverable/Milestone	Performance Standards	Due date	Amount due (exc GST)
1. The updating of MBIE’s Physical and Environmental Security Standard, and 2. Review the ground floor configuration at 15 Stout Street premises against the recently completed site security assessment and comment on the recommendations made in the report and any further upgrade work required to address any further deficiencies.	Delivery to agreed timeframes Drawing on industry best practice	1. Standard updated by 28 April 2017. 2. Written report(in draft format) by 19 May. Final report by 29 May.	\$25,000
Total (exc GST)			\$25,000

Specific code of conduct / health & safety / legislative requirement

The Supplier and its Personnel must comply with the Buyers’ Health and Safety and Wellbeing Policy and any other relevant codes of conduct notified by the Buyer to the Supplier from time to time.

¹ Published 28th September 2016- version 1.0

² Published 16 November 2016, version 1.0

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Supplier's Reporting Requirements	Report to:	Type of report	Due date
Reference Schedule 2 clause 5	Contract Manager	Email progress report	1 May 2017
		Project completion report	29 May 2017

CHARGES: The following section sets out the Charges. Charges are the total maximum amount payable by the Buyer to the Supplier for delivery of the Services. Charges include *Fees*, and where agreed, *Expenses* and *Daily Allowances*. The Charges for this Contract are set out below.

Fees Reference Schedule 2 clause 3	The Supplier's Fees will be calculated as follows: Hourly Fee Rate For each hour worked an Hourly Fee Rate of \$250.00 excluding GST, up to a total maximum of \$25,000 excluding GST.
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Expenses Reference Schedule 2 clause 3	No Expenses are payable.
Daily Allowance Reference Schedule 2 clause 3	No Daily Allowances are payable.

Invoices Reference Schedule 2 Subject to clauses 3 and 11.7	The Supplier must send the Buyer an invoice for the Charges at the following times: On completion of the Services.
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Address for invoices	Buyer's address	
Reference Schedule 2 clause 3	For the attention of:	Nicky Wilson
	Email:	mbie.invoices@mbie.govt.nz

<p>Insurance</p> <p>Reference Schedule 2 Clause 8.1</p>	<p>INSURANCE: (clause 8.1 Schedule 2) is deleted and replaced with the following clause:</p> <p><i>"During the term of the Contract the Supplier will, at its own expense, ensure that it maintains adequate insurance in respect of its potential liability for loss or damage under this Contract, but as a minimum the Supplier must hold professional indemnity insurance of at least \$1,000,000 per occurrence. The Supplier will, at the Buyer's request, promptly provide satisfactory evidence that it has complied with its obligations in this clause."</i></p>
<p>Changes to Schedule 2 and additional clause/s</p>	<p>Schedule 2 of this Contract is amended as follows:</p> <p>Changes</p> <p>1. Clause 1.1 is amended by inserting the following at the end of the second sentence: <i>"however if Services are delivered before the Start Date with the Buyer's approval this Contract shall be deemed to apply."</i></p> <p>Additional Clauses</p> <p>2. Rights to Compensation and Indemnity <i>"The Supplier must compensate the Buyer for any loss, expense or damage that the Buyer suffers, and indemnify the Buyer against any liability the Buyer incurs, which results from any breach, delay, or failure to comply with this Contract by the Supplier or any of the Supplier's agents."</i></p> <p>3. Immigration Status <i>"The Supplier must ensure that its staff, agents, sub-contractors, their replacements or substitutes, and any other personnel involved in delivering the Services are lawfully entitled to work in New Zealand under the Immigration Act 2009".</i></p> <p>4. Good Employer <i>"The Supplier must ensure that it operates policies and systems that promote fair and proper treatment of employees in all aspects of their employment. This includes providing good and safe working conditions, equal employment opportunities, impartial selection procedures, and opportunities for employee personal development."</i></p> <p>5. Contracts (Privity) Act 1982 <i>"Nothing in this Contract shall confer any benefit on any person who is not a Party to this Contract unless otherwise stated".</i></p> <p>6. If Part of Contract Ruled Invalid <i>"If any part of this Contract is ruled to be invalid or unenforceable, it will be deemed to be deleted and will not affect the validity or enforceability of the rest of this Contract".</i></p> <p>7. Health and Safety <i>"The Supplier will:</i></p> <ol style="list-style-type: none"> <i>a. consult, cooperate and coordinate with the Buyer to the extent required by the Buyer to ensure that the Buyer and the Seller will each comply with their respective obligations under the Health and Safety at Work Act 2015 as they relate to the Contract</i> <i>b. perform its, and ensure that its Personnel perform their, obligations under the Contract in compliance with its and their obligations under the Health and Safety at Work Act 2015</i> <i>c. comply with all reasonable directions of the Buyer relating to health, safety, and security</i> <i>d. report any health and safety incident, injury or near miss, or any notice issued under the Health and Safety at Work Act 2015, to the Buyer to the extent that it relates to, or affects, the Contract."</i>

	<p>8. Confidentiality</p> <p><i>"The Supplier will ensure that its Personnel are bound in writing by the duty of confidence that is owed by it to the Buyer in a form reasonably acceptable to the Buyer, an original of which will be delivered by the Supplier to the Buyer for retention in the Buyer's files"</i></p> <p>9. Reports</p> <p><i>"The Supplier will, if required by the Buyer, provide the Buyer with the following reports relating to the Personnel:</i></p> <p><i>a. Ministry of Justice criminal record check <input type="checkbox"/> (Tick here if this is required); and</i></p> <p><i>b. Credit check <input type="checkbox"/> (Tick here if this is required)."</i></p> <p>10. Intellectual Property Rights</p> <p><i>"The Buyer shall duly attribute and acknowledge intellectual property provided by the Supplier in any reproductions of that information".</i></p>
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<p>Attachments Reference 'Contract documents' described at Page 1</p>	<p>1. Confidentiality Deed (attached to this agreement)</p> <p>2. Health, Safety and Wellbeing Policy available here: http://thelink/how/Documents/Forms/MBIE%20Policy.aspx</p> <p>3. Terms of reference for this engagement</p>
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Confidentiality Deed

DATE:

APPROVED PERSONNEL

Dr Frank Stoks, of Double Cove, Marlborough Sounds

I acknowledge that the Ministry of Business, Innovation and Employment (the **Ministry**) is willing to disclose to me information that may be relevant to the *limited technical review of physical security project and other Health, Safety and Security Branch projects* and other areas of the Ministry that I support (**Projects**). I will also have access to information of the Ministry in the course of my engagement with it. Such information may include, but is not limited to:

- a. information and data, whether written or oral, related in any way to the Ministry's requirements for the Projects or the Ministry's existing processes, procedures or systems; and
- b. processes, personnel, policies, business strategies, plans, ideas, know how, concepts, technologies, methodologies, reports, documents, and other information whether of a business, financial, technical, non-technical or other nature and whether existing in tangible form, electronic form or otherwise which is made available by the Ministry to me; and
- c. other information of the Ministry which becomes known to me in the course of my engagement with it,

but excludes:

- d. publically available information; or
- e. information that becomes known to me from a third party who is not in breach of any obligation of confidentiality to the Ministry,

(Confidential Information).

I acknowledge that the Confidential Information is highly sensitive and confidential in nature, and is disclosed on the understanding that it will be kept confidential and used solely for the purpose of enabling me to perform, design, develop, supply and deliver services and deliverables in relation to Projects (the **Permitted Purpose**).

Accordingly, I undertake as follows:

1. Confidentiality

1.1 I will keep all Confidential Information strictly secret and confidential and shall use the Confidential Information for the Permitted Purpose only. I acknowledge that the Confidential Information remains the property of the Ministry. I will not contest or dispute the Ministry's ownership of the Confidential Information at any time.

2. Use and Disclosure

3.1 I will not use any Confidential Information disclosed by the Ministry in any manner which is, or may be, detrimental to the Ministry's interests.

3.2 I will not disclose, or permit to be disclosed, the Confidential Information other than:

- a. to the extent required by law (including the rules of any stock exchange to which I am

- b. subject); or
- c. to the extent required by a court order; or
- d. to the extent required by a regulatory authority acting under a statutory power to require disclosure of information; or
- e. with the Ministry's prior written consent in each instance.

3.3 Before disclosing Confidential Information under clause 2.2, where practical I must:

- a. promptly notify the Ministry of the requirement; and
- b. use all reasonable endeavours to obtain, from the person requiring the information, assurances that the Confidential Information will be treated as confidential.

3. Completion of Purpose

3.1 The obligations under this Deed continue to apply after the completion of the Permitted Purpose.

3.2 At the Ministry's reasonable request I must:

- a. return or destroy the Confidential information in my possession and control; and
- b. confirm in writing my compliance with this clause 3.2a.

4. Term of Deed

4.1 I acknowledge and agree that this Deed, and my obligations under it, will continue in full force and effect without limit of time unless otherwise agreed in writing by the Ministry.

5. Indemnity

5.1 I indemnify the Ministry against all costs, losses and damages (including legal costs on a solicitor-client basis) that may be incurred by the Ministry should I breach any of my obligations under this Deed. I agree that I am responsible for any act or default of any third party to whom I disclose any Confidential Information.

6. Governing Law

6.1 This Deed is governed by New Zealand law and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

SIGNED AND DELIVERED AS A DEED by
 [INSERT FULL NAME OF PERSON] in the
 presence of:

) Francis G. Stokes.

)
)
)
 Signature

Witness signature: [Redacted]

Witness name: M.A. Hession

Witness address: 2/1133 Forest Rd
Clutha, West.

Appendix 3

Limited technical review – physical security

INTRODUCTION

The Ministry of Business, Innovation and Employment (MBIE) as a person conducting a business or undertaking (PCBU) as defined by the Health and Safety at Work Act 2015 (HSWA) has specific responsibilities in relation to all of its workers. MBIE must also consult, cooperate and coordinate with all other PCBUs who have a duty in relation to the same matter.

BACKGROUND

Under the Health and Safety at Work Act 2015, MBIE has a primary duty of care to ensure, so far as reasonably practicable, the health and safety of:

- its workers
- any workers whose activities it directs or influences, and no other person is put at risk from its work.

The health, safety and security of our workers and the people visiting our nationwide offices is an absolute priority for the organisation and for our senior leaders, ensuring MBIE complies with its primary duty of care. MBIE offices should be places where our workers, customers and visitors can work constructively and with positive intent.

MBIE's Head Office has been situated at 15-21 Stout Street since 2014 and accommodates more than 1,800 staff (or over 60% of MBIE's workers). The site comprises 10 floors – a publicly accessible ground floor, a base level and eight secure working floors. MBIE has sole occupancy of this building with the exception of a commercial café, which operates within the ground floor atrium. The café includes a seating area that is open to both MBIE workers and the public.

Following the recent judgment against the Ministry of Social Development (MSD) owing to their failure to ensure the health and safety of their workers and others, MBIE has initiated a programme of work on physical security in our workplaces. The purpose of the programme is to ensure the physical security learnings from the MSD case are understood and applied consistently across MBIE offices that need to have face-to-face contact with the public, with particular focus on the ground floor configuration at Head Office.

The assignment

MBIE is looking to urgently appoint a suitably experienced person/firm to complete the following activities, which draw on international trends and patterns, over a period of time:

1. Review and strengthen MBIE's Physical and Environmental Security Standard³ with a focus on:
 - improving the design of our worksites from a customer service experience, **while**
 - ensuring the safety and security of both our workers and our visitors.
2. Review the ground floor configuration of 15-21 Stout Street premises against the site security assessment report⁴ and provide an independent review on the 14 recommendations made in

³ Published 28th September 2016- version 1.0

⁴ Published 16 November 2016, version 1.0

the report. The review may identify other deficiencies with the configuration (for example-tailgating) and comment on any additional work that may be required to address these deficiencies. The outcome would be improved physical security at Stout Street, which is the main office for a variety of core government services.

Deliverables

1. The updating of MBIE's Physical and Environmental Security Standard including generating a draft for comment and review by MBIE's Protective Security team.
2. Independent report within the scope of work activity item 2.

Timeline

It is estimated that this work should take between 3 to 5 weeks commencing mid-April 2017.

Budget

Capped to \$25,000(plus GST)

Reporting to

Head of Health, Safety and Security, Adrian Regnault

30 March 2017

Schedule 2

Standard Terms and Conditions - Services

1. Length of Contract

- 1.1 This Contract starts on the Start Date. Services must not be delivered before the Start Date.
- 1.2 This Contract ends on the End Date unless terminated earlier.

2. The Services

Both Parties' obligations

- 2.1 Both Parties agree to:
 - a. act in good faith and demonstrate honesty, integrity, openness and accountability in their dealings with each other
 - b. discuss matters affecting this Contract or the delivery of the Services, whenever necessary
 - c. notify each other immediately of any actual or anticipated issues that could:
 - i. significantly impact on the Services or the Charges
 - ii. receive media attention, and
 - d. comply with all applicable laws and regulations.

Buyer's obligations

- 2.2 The Buyer must:
 - a. provide the Supplier with any information it has reasonably requested to enable the delivery of the Services
 - b. make decisions and give approvals reasonably required by the Supplier to enable delivery of the Services. All decisions and approvals must be given within reasonable timeframes, and
 - c. pay the Supplier the Charges for the Services as long as the Supplier has delivered the Services and invoiced the Buyer, all in accordance with this Contract.

Supplier's obligations

- 2.3 The Supplier must deliver the Services:
 - a. on time and to the required performance standards or quality set out in Schedule 1 or reasonably notified by the Buyer to the Supplier from time to time
 - b. within the amounts agreed as Charges, and
 - c. with due care, skill and diligence, and to the appropriate professional standard or in accordance with good industry practice as would be expected from a leading supplier in the relevant industry.
- 2.4 The Supplier must:
 - a. ensure that its Personnel have the necessary skills, experience, training and resources to successfully deliver the Services
 - b. provide all equipment and resources necessary to deliver the Services, and

- c. comply with the *Standards of Integrity and Conduct* issued by the State Services Commission (see www.ssc.govt.nz) and any other relevant codes of conduct listed in Schedule 1 or notified by the Buyer to the Supplier from time to time.
- 2.5 Where an Approved Personnel has been authorised by the Buyer in Schedule 1, the Supplier must use the Approved Personnel in delivering the Services. The Supplier must obtain the Buyer's prior written approval if it wishes to change any Approved Personnel.
- 2.6 If the Supplier is at the Buyer's premises, the Supplier must observe the Buyer's policies and procedures, including those relating to health and safety, and security requirements. The Buyer must tell the Supplier what the relevant policies and procedures are, and either give the Supplier a copy of them or provide an internet link.
- 2.7 If the nature of the Services requires it, the Supplier will deliver Services:
- a. in a manner that is culturally appropriate for Māori, Pacific and other ethnic or indigenous groups, and
 - b. that respects the personal privacy and dignity of all participants and stakeholders.

3. Charges and payment

Charges & invoices

- 3.1 The Charges are the total maximum amount payable by the Buyer to the Supplier for delivery of the Services. Charges include Fees and, where agreed, Expenses and Daily Allowances.
- 3.2 The Supplier must provide valid tax invoices for all Charges on the dates or at the times specified in Schedule 1. The Buyer has no obligation to pay the Charges set out on an invoice, which is not a valid tax invoice. A valid a tax invoice must:
- a. clearly show all GST due
 - b. be in New Zealand currency or the currency stated in Schedule 1
 - c. be clearly marked 'Tax invoice'
 - d. contain the Supplier's name, address and GST number, if the Supplier is registered for GST
 - e. contain the Buyer's name and address and be marked for the attention of the Buyer's Contract Manager or such other person stated in Schedule 1
 - f. state the date the invoice was issued
 - g. name this Contract and provide a description of the Services supplied, including the amount of time spent in the delivery of the Services if payment is based on an Hourly Fee Rate or Daily Fee Rate
 - h. contain the Buyer's contract reference or purchase order number if there is one
 - i. state the Charges due, calculated correctly, and
 - j. be supported by GST receipts if Expenses are claimed and any other verifying documentation reasonably requested by the Buyer.

Payment

- 3.3 If the Buyer receives a valid tax invoice on or before the 3rd Business Day of the month, the Buyer must pay that tax invoice by the 20th calendar day of that month. Any valid tax invoice received after the 3rd Business Day of the month will be paid by the Buyer on the 20th calendar day of the month following the month it is received. The Buyer's obligation to pay is subject to clauses 3.2, 3.4 and 11.10.
- 3.4 If the Buyer disputes a tax invoice or any part of a tax invoice that complies with clause 3.2, the Buyer must notify the Supplier within 10 Business Days of the date of receipt of the tax invoice. The Buyer must pay the portion of the tax invoice that is not in dispute. The Buyer may withhold payment of the disputed portion until the dispute is resolved.

4. Contract management

Contract Manager

- 4.1 The persons named in Schedule 1 as the Contract Managers are responsible for managing the Contract, including:
- a. managing the relationship between the Parties
 - b. overseeing the effective implementation of this Contract, and
 - c. acting as a first point of contact for any issues that arise.

Changing the Contract Manager

- 4.2 If a Party changes its Contract Manager it must tell the other Party, in writing, the name and contact details of the replacement within 5 Business Days of the change.

5. Information management

Information and Records

- 5.1 The Supplier must:
- a. keep and maintain Records in accordance with prudent business practice and all applicable laws
 - b. make sure the Records clearly identify all relevant time and Expenses incurred in providing the Services
 - c. make sure the Records are easy to access, and
 - d. keep the Records safe.
- 5.2 The Supplier must give information to the Buyer relating to the Services that the Buyer reasonably requests. All information provided by the Supplier must be in a format that is usable by the Buyer, and delivered within a reasonable time of the request.
- 5.3 The Supplier must co-operate with the Buyer to provide information immediately if the information is required by the Buyer to comply with an enquiry or its statutory, parliamentary, or other reporting obligations.
- 5.4 The Supplier must make its Records available to the Buyer during the term of the Contract and for 7 years after the End Date (unless already provided to the Buyer earlier).
- 5.5 The Supplier must make sure that Records provided by the Buyer or created for the Buyer, are securely managed and securely destroyed on their disposal.

Reports

- 5.6 The Supplier must prepare and give to the Buyer the reports stated in Schedule 1, by the due dates stated in Schedule 1.

6. The contractual relationship

Independent contractor

- 6.1 Nothing in this Contract constitutes a legal relationship between the Parties of partnership, joint venture, agency, or employment. The Supplier is responsible for the liability of its own, and its Personnel's, salary, wages, holiday or redundancy payments and any GST, corporate, personal and withholding taxes, ACC premiums or other levies attributable to the Supplier's business or the engagement of its Personnel.

Neither Party can represent the other

- 6.2 Neither Party has authority to bind or represent the other Party in any way or for any purpose.

Permission to transfer rights or obligations

- 6.3 The Supplier may transfer any of its rights or obligations under this Contract only if it has the Buyer's prior written approval. The Buyer will not unreasonably withhold its approval.

7. Subcontractors

Rules about subcontracting

- 7.1 The Supplier must not enter into a contract with someone else to deliver any part of the Services without the Buyer's prior written approval. In selecting an appropriate Subcontractor the Supplier must be able to demonstrate value for money.

The Supplier's responsibilities

- 7.2 The Supplier is responsible for ensuring the suitability of any Subcontractor and the Subcontractor's capability and capacity to deliver that aspect of the Services being subcontracted.
- 7.3 The Supplier must ensure that:
- a. each Subcontractor is fully aware of the Supplier's obligations under this Contract, and
 - b. any subcontract it enters into is on terms that are consistent with this Contract.
- 7.4 The Supplier continues to be responsible for delivering the Services under this Contract even if aspects of the Services are subcontracted.

8. Insurance

Where insurance is a requirement

- 8.1 It is the Supplier's responsibility to ensure its risks of doing business are adequately covered, whether by insurance or otherwise. If required in Schedule 1, the Supplier must have the insurance specified in Schedule 1 and the Supplier must:
- a. take out insurance, with a reputable insurer, and maintain that insurance cover for the term of this Contract and for a period of 3 years after the End Date, and
 - b. within 10 Business Days of a request from the Buyer provide a certificate confirming the nature of the insurance cover and proving that each policy is current.

9. Conflicts of Interest

Avoiding Conflicts of Interest

- 9.1 The Supplier warrants that as at the Start Date, it has no Conflict of Interest in providing the Services or entering into this Contract.
- 9.2 The Supplier must do its best to avoid situations that may lead to a Conflict of Interest arising.

Obligation to tell the Buyer

- 9.3 The Supplier must tell the Buyer immediately, and in writing, if any Conflict of Interest arises in relation to the Services or this Contract. If a Conflict of Interest does arise the Parties must discuss, agree and record in writing whether it can be managed and, if so, how it will be managed. Each Party must pay its own costs in relation to managing a Conflict of Interest.

10. Resolving disputes

Steps to resolving disputes

- 10.1 The Parties agree to use their best endeavours to resolve any dispute or difference that may arise under this Contract. The following process will apply to disputes:
- a. a Party must notify the other if it considers a matter is in dispute
 - b. the Contract Managers will attempt to resolve the dispute through direct negotiation
 - c. if the Contract Managers have not resolved the dispute within 10 Business Days of notification, they will refer it to the Parties' senior managers for resolution, and
 - d. if the senior managers have not resolved the dispute within 10 Business Days of it being referred to them, the Parties shall refer the dispute to mediation or some other form of alternative dispute resolution.
- 10.2 If a dispute is referred to mediation, the mediation will be conducted:
- a. by a single mediator agreed by the Parties or if they cannot agree, appointed by the Chair of LEADR NZ Inc.
 - b. on the terms of the LEADR NZ Inc. standard mediation agreement, and
 - c. at a fee to be agreed by the Parties or if they cannot agree, at a fee determined by the Chair of LEADR NZ Inc.
- 10.3 Each Party will pay its own costs of mediation or alternative dispute resolution under this clause 10.

Obligations during a dispute

- 10.4 If there is a dispute, each Party will continue to perform its obligations under this Contract as far as practical given the nature of the dispute.

Taking court action

- 10.5 Each Party agrees not to start any court action in relation to a dispute until it has complied with the process described in clause 10.1, unless court action is necessary to preserve a Party's rights.

11. Ending this Contract

Termination by the Supplier

- 11.1 The Supplier may terminate this Contract by giving 20 Business Days Notice to the Buyer, if the Buyer fails to pay Charges that are properly due, and are not in dispute under clause 3.4. The Charges must be overdue by 20 Business Days and the Supplier must have first brought this to the Buyer's attention in writing within this period.
- 11.2 At any time during the term of this Contract the Supplier may notify the Buyer that it wishes to terminate this Contract by giving 20 Business Days Notice. The Buyer will, within 20 Business Days following receipt of the Supplier's Notice, notify the Supplier whether, in its absolute discretion, it consents to the Supplier's Notice of termination. If the Buyer:
- a. consents, the Contract will be terminated on a date that is mutually agreed between the Parties, or
 - b. does not consent, the Contract will continue in full force as if the Supplier's Notice of termination had not been given.
- 11.3 The Supplier may also terminate this Contract under clause 11.9.

Termination by the Buyer

- 11.4 The Buyer may terminate this Contract at any time by giving 20 Business Days Notice to the Supplier.
- 11.5 The Buyer may terminate this Contract immediately, by giving Notice, if the Supplier:
- a. becomes bankrupt or insolvent
 - b. has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed
 - c. becomes subject to any form of external administration
 - d. ceases for any reason to continue in business or to deliver the Services
 - e. is unable to deliver the Services for a period of 20 Business Days or more due to an Extraordinary Event
 - f. requires the supply of Services within the period of an Extraordinary Event
 - g. is in breach of any of its obligations under this Contract and the breach cannot be remedied
 - h. repeatedly fails to perform or comply with its obligations under this Contract whether those obligations are minor or significant
 - i. does something or fails to do something that, in the Buyer's opinion, results in damage to the Buyer's reputation or business or the reputation or business of the Crown
 - j. has a Conflict of Interest that in the Buyer's opinion is so material as to impact adversely on the delivery of the Services, the Buyer or the Crown, or
 - k. provides information to the Buyer that is misleading or inaccurate in any material respect.

Termination by a Party if a breach has not been remedied

- 11.6 If a Party fails to meet the requirements of this Contract (defaulting Party) and the other Party (non-defaulting Party) reasonably believes that the failure can be remedied, the non-defaulting Party must give a Notice (default Notice) to the defaulting Party.
- 11.7 A default Notice must state:
- a. the nature of the failure
 - b. what is required to remedy it, and
 - c. the time and date by which it must be remedied.
- 11.8 The period allowed to remedy the failure must be reasonable given the nature of the failure.
- 11.9 If the defaulting Party does not remedy the failure as required by the default Notice, the non-defaulting Party may terminate this Contract immediately by giving a further Notice.
- 11.10 If the Buyer gives a default Notice to the Supplier, the Buyer may also do one or both of the following things:
- a. withhold any payment of Fees due until the failure is remedied as required by the default Notice, and or
 - b. if the failure is not remedied as required by the default Notice, deduct a reasonable amount from any Fees due to reflect the reduced value of the Services to the Buyer.

Supplier's obligations on termination or expiry of this Contract

- 11.11 On giving or receiving a Notice of termination, the Supplier must:
- a. stop providing the Services
 - b. comply with any conditions contained in the Notice, and

- c. immediately do everything reasonably possible to reduce its losses, costs and expenses arising from the termination of this Contract.

11.12 On termination or expiry of this Contract, the Supplier must, if requested by the Buyer, immediately return or securely destroy all Confidential Information and other material or property belonging to the Buyer.

Consequences of termination or expiry of this Contract

11.13 The termination or expiry of this Contract does not affect those rights of each Party which:

- a. accrued prior to the time of termination or End Date, or
- b. relate to any breach or failure to perform an obligation under this Contract that arose prior to the time of termination or End Date.

11.14 If this Contract is terminated the Buyer:

- a. will only be liable to pay Charges that were due for Services delivered before the effective date of termination, and
- b. may recover from the Supplier or set off against sums due to the Supplier, any Charges paid in advance that have not been incurred.

Handing over the Services on termination or expiry of this Contract

11.15 The Supplier will, within 10 Business Days of the End Date, provide all reasonable assistance and cooperation necessary to facilitate a smooth handover of the Services to the Buyer or any person appointed by the Buyer.

11.16 If the Parties agree, the Supplier will provide additional assistance to support any replacement supplier to deliver the Services. This support may be for a period of up to 3 months from the date of termination and at a reasonable fee to be agreed between the Parties, based on the Fees and Expenses stated in this Contract.

12. Intellectual Property Rights

Ownership of Intellectual Property Rights

- 12.1 Pre-existing Intellectual Property Rights remain the property of their current owner.
- 12.2 New Intellectual Property Rights in the Deliverables become the property of the Buyer when they are created.
- 12.3 The Supplier grants to the Buyer (as The Crown) a perpetual, non-exclusive, worldwide and royalty-free licence to use, for any purpose, all Intellectual Property Rights in the Deliverables that are not owned by the Buyer. This licence includes the right to use, copy, modify and distribute the Deliverables.

Supplier indemnity

- 12.4 The Supplier warrants that it is legally entitled to do the things stated in clause 12.3 with the Intellectual Property Rights in the Deliverables.
- 12.5 The Supplier warrants that Pre-existing and New Intellectual Property Rights provided by the Supplier and incorporated in the Services and Deliverables do not infringe the Intellectual Property Rights of any third party.
- 12.6 The Supplier indemnifies the Buyer (as The Crown) in respect of any expenses, damage or liability incurred by the Buyer or The Crown in connection with any third party claim that the delivery of the Services or Deliverables to the Buyer or the Buyer's or The Crown's use of them, infringes a third party's rights. This indemnity is not subject to any limitation or cap on liability that may be stated elsewhere in this Contract.

13. Confidential Information

Protection of Confidential Information

- 13.1 Each Party confirms that it has adequate security measures to safeguard the other Party's Confidential Information from unauthorised access or use by third parties, and that it will not use or disclose the other Party's Confidential Information to any person or organisation other than:
- a. to the extent that use or disclosure is necessary for the purposes of providing the Deliverables or Services or in the case of the Buyer using the Deliverables or Services
 - b. if the other Party gives prior written approval to the use or disclosure
 - c. if the use or disclosure is required by law (including under the Official Information Act 1982), Ministers or parliamentary convention, or
 - d. in relation to disclosure, if the information has already become public, other than through a breach of the obligation of confidentiality by one of the Parties.

Obligation to inform staff

- 13.2 Each Party will ensure that its Personnel:
- a. are aware of the confidentiality obligations in this Contract, and
 - b. do not use or disclose any of the other Party's Confidential Information except as allowed by this Contract.

14. Notices

Delivery of Notices

- 14.1 All Notices to a Party must be delivered by hand or sent by post, courier, fax or email to that Party's address for Notices stated in Schedule 1.
- 14.2 Notices must be signed or in the case of email sent by the appropriate manager or person having authority to do so.

Receipt of Notices

- 14.3 A Notice will be considered to be received:
- a. if delivered by hand, on the date it is delivered
 - b. if sent by post within New Zealand, on the 3rd Business Day after the date it was sent
 - c. if sent by post internationally, on the 7th Business Day after the date it was sent
 - d. if sent by courier, on the date it is delivered
 - e. if sent by fax, on the sender receiving a fax machine report that it has been successfully sent, or
 - f. if sent by email, at the time the email enters the recipient's information system as evidenced by a delivery receipt requested by the sender and it is not returned undelivered or as an error.
- 14.4 A Notice received after 5pm on a Business Day or on a day that is not a Business Day will be considered to be received on the next Business Day.

15. Extraordinary Events

No fault if failure due to an Extraordinary Event

- 15.1 Neither Party will be liable to the other for any failure to perform its obligations under this Contract where the failure is due to an Extraordinary Event.

Obligations of the affected Party

- 15.2 A Party who wishes to claim suspension of its obligations due to an Extraordinary Event must notify the other Party as soon as reasonably possible. The Notice must state:
- a. the nature of the circumstances giving rise to the Extraordinary Event
 - b. the extent of that Party's inability to perform under this Contract
 - c. the likely duration of that non-performance, and
 - d. what steps are being taken to minimise the impact of the Extraordinary Event on the delivery of Services.

Alternative arrangements requiring immediate termination

- 15.3 If the Buyer, acting reasonably, requires the Services to be supplied during the period affected by an Extraordinary Event, then despite clause 15.4, the Buyer may terminate this Contract immediately by giving Notice.

Termination of Contract

- 15.4 If a Party is unable to perform any obligations under this Contract for 20 Business Days or more due to an Extraordinary Event, the other Party may terminate this Contract immediately by giving Notice.

16. General

Changes to this Contract

- 16.1 Any change to this Contract is called a Variation. A Variation must be agreed by both Parties and recorded:
- a. in writing and signed by both Parties, or
 - b. through an exchange of emails where the authors have delegated authority to approve the Variation.

This is the entire Contract

- 16.2 This Contract, including any Variation, records everything agreed between the Parties relating to the Services. It replaces any previous communications, negotiations, arrangements or agreements that the Parties had with each other relating to the Services before this Contract was signed, whether they were verbal or in writing.

Waiver

- 16.3 If a Party breaches this Contract and the other Party does not immediately enforce its rights resulting from the breach that:
- a. does not mean that the Party in breach is released or excused from its obligation to perform the obligation at the time or in the future, and
 - b. does not prevent the other Party from exercising its rights resulting from the breach at a later time.

New Zealand law, currency and time

- 16.4 This Contract will be governed and interpreted in accordance with the laws of New Zealand. All money is in New Zealand dollars, unless Schedule 1 specifies a different currency. Dates and times are New Zealand time.

Publication of information about this Contract

- 16.5 The Supplier may disclose the existence of this Contract but must obtain the Buyer's prior written approval before making reference to the Buyer or this Contract in its publications, public statements, promotional material or promotional activities about this Contract.
- 16.6 Each Party undertakes not to post on websites or social networking sites and not to publicly display objectionable or derogatory comments about the Services, this Contract, each other or any of its Personnel and to ensure that its Personnel do not do so.

Signing the Contract

- 16.7 The date of execution is date this Contract is signed. This Contract is properly signed if each Party signs the same copy, or separate identical copies, of Page 1. If this Contract is signed on two separate dates or separate copies are signed, the date of execution is the later of the two dates. Where separate copies are signed the signed copy can be the original document, or a faxed or emailed copy.

No poaching

- 16.8 During the term of this Contract and for a period of 6 months after the End Date neither Party shall, without the other's written consent, deliberately solicit for employment or hire any person who is or has been employed by the other and involved in the delivery of the Services. This does not apply where a person has responded to a legitimate advertisement.

Clauses that remain in force

- 16.9 The clauses that by their nature should remain in force on expiry or termination of this Contract do so, including clauses 5 (Information management), 8 (Insurance), 10 (Resolving disputes), 11 (Ending this Contract), 12 (Intellectual Property Rights), 13 (Confidential Information), 16 (General) and 17 (Definitions).

Precedence

- 16.10 If there is any conflict or difference between the documents forming this Contract (as stated on Page 1) then the order of precedence is:
- a. a Variation agreed between the Parties under clause 16.1
 - b. Schedule 1
 - c. any Attachment to Schedule 1
 - d. Schedule 2.

17. Definitions

- 17.1 When used in this Contract the following terms have the meaning beside them:

Attachment Any supplementary document named in Schedule 1 as an Attachment to this Contract.

Approved Personnel A person who is engaged by the Supplier to deliver the Services and is named in Schedule 1. The Supplier must use this person in the delivery of the Services and cannot change them without first obtaining the Buyer's written approval.

Business Day A day when most businesses are open for business in New Zealand. It excludes Saturday, Sunday, and public holidays. A Business Day starts at 8.30am and ends at 5pm.

Buyer The Buyer is the purchaser of the Services. The Buyer is the Crown, also described as the Sovereign Her Majesty the Queen in right of New Zealand who acts by and through the government agency named as the Buyer on page 1 of this Contract for the purposes of this Contract.

Charges The total amount payable by the Buyer to the Supplier as stated in Schedule 1. The Supplier's Charges include Fees and any Expenses and Daily Allowances stated in Schedule 1. Charges are payable on successful delivery of the Services provided a valid tax invoice has been submitted.

Confidential Information Information that:

- a. is by its nature confidential
- b. is marked by either Party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence'

- c. is provided by either Party or a third party 'in confidence'
- d. either Party knows or ought to know is confidential, or
- e. is of a sensitive nature or commercially sensitive to either Party.

Conflict of Interest A Conflict of Interest arises if a Party or its Personnel's personal or business interests or obligations do or could conflict or be perceived to conflict with its obligations under this Contract. It means that its independence, objectivity or impartiality can be called into question. A Conflict of Interest may be:

- a. actual: where the conflict currently exists
- b. potential: where the conflict is about to happen or could happen, or
- c. perceived: where other people may reasonably think that a person is compromised.

Contract The legal agreement between the Buyer and the Supplier that comprises Page 1 (the front sheet), Schedule 1, this Schedule 2 and any other Schedule, and any Variation and Attachment.

Contract Manager The person named in Schedule 1 as the Contract Manager. Their responsibilities are listed in clause 4.1

Crown (The Crown) The Buyer also described as the Sovereign Her Majesty the Queen in right of New Zealand and includes a Minister, a government department and an Office of Parliament, but does not include a Crown entity, or a State enterprise named in Schedule 1 of the State-Owned Enterprises Act 1986.

Daily Allowance An allowance to cover accommodation, meals and incidentals for the Supplier's Personnel if they are required in order to deliver the Services or to travel overnight away from their normal place of business. The amount of any Daily Allowance must be agreed to in Schedule 1. A Daily Allowance is similar to a per diem.

Daily Fee Rate If the Supplier's fee rate is expressed as a Daily Fee Rate this is the fee payable for each day spent in the delivery of Services. A day is a minimum of 8 working hours.

Deliverables A tangible output resulting from the delivery of the Services as stated in Schedule 1. A deliverable may be a document, a piece of equipment, goods, information or data stored by any means including all copies and extracts of the same.

End Date The earlier of the date this Contract is due to end as stated in Schedule 1, the date of termination as set out in a Notice of termination or any other date agreed between the Parties as the date the Contract is to end.

Expenses Any actual and reasonable out-of-pocket costs incurred by the Supplier in the delivery of the Services and agreed to in Schedule 1.

Extraordinary Event An event that is beyond the reasonable control of the Party immediately affected by the event. An Extraordinary Event does not include any risk or event that the Party claiming could have prevented or overcome by taking reasonable care. Examples include:

- a. acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, pandemics and any natural disaster
- b. acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilisation, requisition or embargo
- c. acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war, or
- d. contamination by radioactivity from nuclear substances or germ warfare or any other such hazardous properties.

Fees The amount payable to the Supplier for the time spent in delivery of the Services calculated on the basis stated in Schedule 1, excluding any Expenses and Daily Allowances.

GST The goods and services tax payable in accordance with the New Zealand Goods and Services Tax Act 1985.

Hourly Fee Rate If the Supplier's fee rate is expressed as an Hourly Fee Rate this is the Fee payable for each hour spent delivering the Services.

Intellectual Property Rights All Intellectual Property Rights and interests, including copyright, trademarks, designs, patents and other proprietary rights, recognised or protected by law.

Milestone A phase or stage in the delivery of Services resulting in a measurable output. Payment of Fees is usually due on the satisfactory delivery of a Milestone.

New Intellectual Property Rights Intellectual Property Rights developed after the date of this Contract and incorporated into the Deliverables.

Notice A formal or legal communication from one Party to the other that meets the requirements of clause 14.

Party The Buyer and the Supplier are each a Party to this Contract, and together are the Parties.

Personnel All individuals engaged by either Party in relation to this Contract or the delivery of Services. Examples include: the owner of the business, its directors, employees, Subcontractors, agents, external consultants, specialists, technical support and co-opted or seconded staff. It includes Approved Personnel.

Pre-existing Intellectual Property Rights Intellectual Property Rights developed before the date of this Contract. It does not cover later modifications, adaptations or additions.

Records All information and data necessary for the management of this Contract and the delivery of Services. Records include, but are not limited to, reports, invoices, letters, emails, notes of meetings, photographs and other media recordings. Records can be hard copies or soft copies stored electronically.

Services All work, tasks and Deliverables, including those stated in Schedule 1, that the Supplier must perform and deliver under this Contract.

Schedule An attachment to this Contract with the title 'Schedule'.

Start Date The date when this Contract starts as stated in Schedule 1.

Subcontractor A person, business, company or organisation contracted by the Supplier to deliver or perform part of the Supplier's obligations under this Contract.

Supplier The person, business, company or organisation named as the Supplier on page 1. It includes its Personnel, successors, and permitted assignees.

Variation A change to any aspect of this Contract that complies with clause 16.1.

Simon Millswell

From: Jane Baxter
Sent: Monday, 26 March 2018 3:08 p.m.
To: Simon Millswell
Subject: Protective Security Services - CERT [UNCLASSIFIED]
Attachments: SRM Invoice 001234 CERT NZ.PDF

Hi Simon, here are the protective security services that were used in relation to CERT, together with the invoice.

- The name of the provider we used; Security Risk Management
- Why we used them; Provider of Specialist Security Services
- When we used them; and 30 December 2016
- How much was paid. \$7,339.07 inclusive GST

Regards

Jane B



TAX INVOICE

CERTNZ

Invoice Date
12 Jan 2017

Invoice Number
INV-1234

Reference
TSCM

GST Number
057243007

Security Risk Management
(NZ) Ltd
P.O. Box 13-647,
Johnsonville,
Wellington 6440
Telephone: (04) 4736710
Fax: (04) 4736835
Mobile: [REDACTED]
Email: [REDACTED]@srm.co.nz

Description	Quantity	Unit Price	Amount NZD
30/12/16 - TSCM search by Horsburgh	1.00	1,200.00	1,200.00
30/12/16 - TSCM search by Eccles	1.00	1,200.00	1,200.00
30/12/16 - TSCM search by Parker	1.00	1,200.00	1,200.00
30/12/16 - TSCM search by Aubrey	1.00	750.00	750.00
Travel Parker	1.00	371.00	371.00
Travel Eccles	1.00	310.80	310.80
Report Preparation	1.00	750.00	750.00
Equipment Deployment Surcharge	1.00	600.00	600.00
		Subtotal	6,381.80
		TOTAL GST 15%	957.27
		TOTAL NZD	7,339.07

Due Date: 20 Feb 2017

If you wish to pay by direct credit, our bank account details are as follows:
ASB 12-3493-0009700-00

Statement of Work No. 2

**under Security Services Subscription Agreement
for the supply of security services**

Ministry of Business, Innovation & Employment

and

KPMG

Statement of Work

This Statement of Work records the terms on which certain Services and deliverables will be provided by KPMG (Service Provider) to the Ministry of Business, Innovation & Employment (the Subscribing Party).

1. Security Services Subscription Agreement

1.1 Subject to Security Services Subscription Agreement

This Statement of Work is entered into under, and is part of, the Security Services Subscription Agreement dated 24 October 2014 between the Service Provider and the Subscribing Party (Security Services Subscription Agreement).

1.2 Interpretation

Unless the context otherwise requires, terms defined or referred to in the Security Services Subscription Agreement have the same meaning in this Statement of Work and the rules of construction recorded in clause 19 of the Security Services Subscription Agreement apply to this Statement of Work (except that references to paragraphs and appendices in this Statement of Work are references to the paragraphs and appendices of this Statement of Work).

2. Term

2.1 Term

This Statement of Work will commence on 4 May 2015 and, unless otherwise terminated or removed in accordance with the provisions of the Security Services Subscription Agreement, will continue until 30 June 2015 (Statement of Work Term). The Statement of Work Term may be extended upon written agreement between the parties.

2.2 Consistent with Term of Security Services Subscription Agreement

Notwithstanding any other provision of this Statement of Work, this Statement of Work will terminate immediately upon the termination of the Security Services Subscription Agreement, because this Statement of Work is part of the Security Services Subscription Agreement.

3. Services

3.1 Services

The Service Provider will provide the following Services to the Subscribing Party:

- Evaluate the design effectiveness of the controls in place to mitigate the physical security risks identified in the Physical Security Risk Assessment performed in February 2015
- Determine the level of residual risk presented, taking into account the controls identified.

The services will be performed through:

- Agreeing with the Ministry the specific business units (and premises locations), or other areas that will be assessed, based on the Physical Security Risk Assessment

- For each business unit:
 - Reviewing the documentation supporting the physical security controls
 - Visiting a sample of premises and observing the physical security control in place
 - Undertaking discussions with key representatives to understand:
 - o The operation of the physical security controls at the premises
 - o The consistency of the physical security controls across the different premises
 - Evaluating the design effectiveness of the controls in place
- For each technical area:
 - Reviewing the documented controls design
 - Undertaking discussions with staff responsible for the technical area to understand the controls in place
 - Inspecting the implementation of the controls
 - Evaluating the design effectiveness of the controls in place
- Determining the residual risk, taking into account the inherent risk identified in the Physical Security Risk Assessment performed in February 2015.

A business unit is defined as the Ministry's operational functional areas, as used in the Physical Security Risk Assessment e.g. Labour Inspectorate or Employment Relations Authority. A technical area is defined as a non-operational control area e.g. Mobile Computing.

Where staff are located outside Auckland or Wellington, discussions will be performed via phone or video conference (except when visiting a premise outside of Auckland or Wellington).

The assessment will exclude:

- Evaluating the physical security controls at all premises, or within all business units or technical areas (unless all business units and/or technical areas are selected by the Ministry)
- Testing the ongoing operating effectiveness of the controls.

3.2 Service Levels:

The Service Provider will meet or exceed the following Service Levels:

- Delivery of report in line with timeframes detailed below
- Notification of any roadblocks or barriers to achieving the delivery of the risk assessment within the timeframes outlined, as soon as identified.

4. Deliverables

4.1 Deliverables

The Service Provider will provide to the Subscribing Party the deliverables listed below in accordance with the milestones and to meet the milestone dates specified below:

Deliverables

The deliverables will be a KPMG branded report, similar to that delivered for the Physical Security Risk Assessment.

Summary of deliverable	Milestone	Milestone date
Draft report	Delivery of draft report	12 June 2015

Final report	Delivery of final report, subsequent to the provision of feedback from the Ministry	26 June 2015
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The milestone dates listed are estimated dates. The specific dates will be dependent upon:

- The number of business units, locations and technical areas assessed
- The availability of the business representatives nominated.

5. Data

The Service Provider will not permit any Subscribing Party Data to be transferred or stored outside New Zealand unless the Service Provider has first notified the Subscribing Party and obtained the written consent of the Subscribing Party.

6. Personnel

6.1 Project managers

Party	Project manager
Service Provider	Philip Whitmore PO Box 996, Wellington, 6140 10 Customhouse Quay, Wellington 6011 04 816 4500 [redacted]@kpmg.co.nz
Subscribing Party	Annouschka Martinsen PO Box 1473, Wellington 6140 15 Stout Street, Wellington 6011 (04) 901 3876 [redacted]@mbie.govt.nz

6.2 Specified Personnel

The Personnel responsible for providing the Services under this Statement of Work and their respective functions are:

Personnel	Component of deliverables/Services for which Personnel is responsible
Philip Whitmore	Lead the engagement, responsible for the overall quality and involved in the fieldwork.
Sean Aitken	Lead the delivery team, and delivery of fieldwork.
Diego McCormick	Delivery of fieldwork.
Ryan Swanepoel	Delivery of fieldwork.

7. Reporting Requirements

7.1 Reporting Requirements

The Service Provider will provide to the Subscribing Party the following reports at the following times:

Report Details	Frequency/Date
Status reports	Weekly

8. Fees

8.1 Invoicing

The Service Provider is to invoice the Fees at the end of each month for the Services and deliverables provided during that month in accordance with the Security Services Subscription Agreement.

The Service Provider must select either email or mail delivery of invoices and not send in the same invoice by both email and mail.

8.2 Fees

Fees will in accordance with the following table of rates, excluding GST and disbursements. The effort outlined includes planning, travel, fieldwork and reporting.

Task	Effort	Fee
Review of individual business unit (<i>per premise visited</i>)	2 - 3 days	\$4,425 - \$6,635
Review of individual functional area	2 days	\$4,425

Disbursements are limited to direct costs involved in travelling outside of Auckland or Wellington, and may include airfares, mileage, accommodation and meals.

Execution

Signed as an Agreement

SIGNED by the Ministry of Business,
Innovation & Employment



Signature

Name

Peter Thomas
Deputy Chief Executive
Corporate Services

Position

Date

24/4/15

SIGNED by KPMG



Signature

Philip Whitmore

Name

Partner

Position

24 April 2015

Date

Contract for Services



Ministry of Business, Innovation & Employment

MBIE Physical and Environmental Security Standards – phase one

The Parties

Ministry of Business, Innovation and Employment (Buyer)

56 The Terrace

PO Box 3705

Wellington

Axenic Ltd (Supplier)

5 Morton Street

Berhampore

Wellington

The Contract

Agreement

The Buyer appoints the Supplier to deliver the Services described in this Contract and the Supplier accepts that appointment. This Contract sets out the Parties' rights and obligations.

The documents forming this Contract are:

- | | |
|---|------------|
| 1. This page | Page 1 |
| 2. Contract Details and Description of Services | Schedule 1 |
| 3. Standard Terms and Conditions | Schedule 2 |
| 4. Any other attachments described at Schedule 1. | |

How to read this Contract

- Together the above documents form the whole Contract.
- Any Supplier terms and conditions do not apply.
- Clause numbers refer to clauses in Schedule 2.
- Words starting with capital letters have a special meaning. The special meaning is stated in the Definitions section at clause 17 (Schedule 2).

Acceptance

In signing this Contract each Party acknowledges that it has read and agrees to be bound by it.

For and on behalf of the **Buyer**:


(signature)

name: Nicola Bowler
position: General Manager Property, Corporate Services

date: 10 JAN 14

For and on behalf of the **Supplier**:


(signature)

name: Steve McCabe
position: Consulting Partner

date: 08/01/14

Schedule 1

Contract Details and Description of Services

Start Date	3 February 2014	Reference Schedule 2 clause 1
End Date	To be advised	Reference Schedule 2 clause 1

Contract Managers Reference Schedule 2 clause 4	Buyer's Contract Manager		Supplier's Contract Manager
	Name:	Nicola Bowler	Steve McCabe
	Title / position:	General Manager Property	Consulting Partner
	Address:	Level 6, Unisys House 56 The Terrace Wellington	Level 8, AMP Chambers 187 Featherston Street Wellington
	Phone:	021476604	
	Fax:		
Email:	Nicola.bowler@mbie.govt.nz	@axenic.co.nz	

Addresses for Notices Reference Schedule 2 clause 14	Buyer's address		Supplier's address
	For the attention of:	Nicola Bowler	Steve McCabe
	c.c. Contract Manager		
	Delivery address:	As above	As above
	Postal address:	PO Box 3705 Wellington 6140	PO Box 25 494 Wellington 6146
	Fax:		
Email:	As above	As above	

Description of Services		
Context		
As part of the MBIE Security Governance Framework the Property Branch has a deliverable to produce a set of Physical and Environmental Security Standards. Ahead of commencing the work to develop these standards MBIE wishes to conduct a scoping exercise to determine the high level requirements, deliverables, timeframes and costs to develop the standards.		
Description of Services/Deliverables		
Item	Task	Deliverable(s)
1.	Scope exercise	Conduct a scoping exercise to determine the high level requirements, deliverables, timeframes, delivery schedule and costs to develop a set of Physical and Environmental Security Standards.
2.	Statement of work	In consultation with the GM Property prepare a statement of work for the development of Physical and Environmental Security Standards based on the requirements identified in the scoping exercise above at point 1.
Any additional services or deliverables must be agreed in writing by the Buyer's Contract Manager prior to commencing delivery.		
Performance standards		
All deliverables will be reviewed and approved by the General Manager Property		

Supplier's Reporting Requirements Reference Schedule 2 clause 5	Report to:	Type of report	Due date
	Contract Manager	Weekly status report via e-mail	Weekly from commencement

CHARGES: The following section sets out the Charges. Charges are the total maximum amount payable by the Buyer to the Supplier for delivery of the Services. Charges include *Fees*, and where agreed, *Expenses* and *Daily Allowances*. The Charges for this Contract are set out below.

Fees Reference Schedule 2 clause 3	The Supplier's Fees will be calculated as follows:
	Hourly Fee Rate For each hour worked an hourly fee rate of \$180.00 excluding GST, up to a total maximum of \$14,400 excluding GST (80 hours). Any additional Fees over \$14,400.00 excluding GST must be agreed in writing by the Buyer's Contract Manager prior to the additional work commencing.

Invoices Reference Schedule 2 Subject to clauses 3 and 11.7	The Supplier must send the Buyer an invoice for the Charges at the following times: At the end of the month, for Services delivered during that month.
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Address for invoices Reference Schedule 2 clause 3	Buyer's address	
	For the attention of:	Nicola Bowler
	Physical address:	Ministry of Business, Innovation and Employment Level 13, Unisys House 56 The Terrace Wellington
	Postal address:	Ministry of Business, Innovation and Employment PO Box 3705 Wellington 6140
	Email:	MBIE_Invoices@globalservicesmail.fxnz.co.nz
	Fax:	

Insurance Reference Schedule 2 Clause 8.1	INSURANCE: (clause 8.1 Schedule 2) It is the Supplier's responsibility to ensure its risks of doing business are adequately covered, whether by insurance or otherwise. The Buyer does not require any specific insurance under this Contract.
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Changes to Schedule 2 and additional clause/s	Schedule 2 of this Contract is amended as follows: Changes 1. Clause 1.1 is amended by inserting the following at the end of the second sentence: <i>" , however if Services are delivered before the Start Date with the Buyer's approval this Contract shall be deemed to apply."</i> 2. Clause 12.3 is amended by inserting the expression 'non-transferable,' after the word 'perpetual'. Additional Clauses 1. Rights to Compensation and Indemnity <i>"The Supplier must compensate the Buyer for any loss, expense or damage that the Buyer suffers, and indemnify the Buyer against any liability the Buyer incurs, which results from any breach, delay, or failure to comply with this Contract by the Supplier or any of the Supplier's agents." The maximum aggregate liability of the Supplier to the Buyer for all losses under or in connection with this Contract will be \$135,000.</i>
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	<p>2. Immigration Status</p> <p><i>"The Supplier must ensure that its staff, agents, sub-contractors, their replacements or substitutes, and any other personnel involved in delivering the Services are lawfully entitled to work in New Zealand under the Immigration Act 2009".</i></p> <p>3. Good Employer</p> <p><i>"The Supplier must ensure that it operates policies and systems that promote fair and proper treatment of employees in all aspects of their employment. This includes providing good and safe working conditions, equal employment opportunities, impartial selection procedures, and opportunities for employee personal development."</i></p> <p>4. Contracts (Privity) Act 1982</p> <p><i>"Nothing in this Contract shall confer any benefit on any person who is not a Party to this Contract unless otherwise stated".</i></p> <p>5. If Part of Contract Ruled Invalid</p> <p><i>"If any part of this Contract is ruled to be invalid or unenforceable, it will be deemed to be deleted and will not affect the validity or enforceability of the rest of this Contract".</i></p>
<p>Attachments Reference 'Contract documents' described at Page 1</p>	<p>None.</p>

Schedule 2

Standard Terms and Conditions - Services

1. Length of Contract

- 1.1 This Contract starts on the Start Date. Services must not be delivered before the Start Date.
- 1.2 This Contract ends on the End Date unless terminated earlier.

2. The Services

Both Parties' obligations

- 2.1 Both Parties agree to:
 - a. act in good faith and demonstrate honesty, integrity, openness and accountability in their dealings with each other
 - b. discuss matters affecting this Contract or the delivery of the Services, whenever necessary
 - c. notify each other immediately of any actual or anticipated issues that could:
 - i. significantly impact on the Services or the Charges
 - ii. receive media attention, and
 - d. comply with all applicable laws and regulations.

Buyer's obligations

- 2.2 The Buyer must:
 - a. provide the Supplier with any information it has reasonably requested to enable the delivery of the Services
 - b. make decisions and give approvals reasonably required by the Supplier to enable delivery of the Services. All decisions and approvals must be given within reasonable timeframes, and
 - c. pay the Supplier the Charges for the Services as long as the Supplier has delivered the Services and invoiced the Buyer, all in accordance with this Contract.

Supplier's obligations

- 2.3 The Supplier must deliver the Services:
 - a. on time and to the required performance standards or quality set out in Schedule 1 or reasonably notified by the Buyer to the Supplier from time to time
 - b. within the amounts agreed as Charges, and
 - c. with due care, skill and diligence, and to the appropriate professional standard or in accordance with good industry practice as would be expected from a leading supplier in the relevant industry.
- 2.4 The Supplier must:
 - a. ensure that its Personnel have the necessary skills, experience, training and resources to successfully deliver the Services
 - b. provide all equipment and resources necessary to deliver the Services, and
 - c. comply with the *Standards of Integrity and Conduct* issued by the State Services Commission (see www.ssc.govt.nz) and any other relevant codes of conduct listed in Schedule 1 or notified by the Buyer to the Supplier from time to time.
- 2.5 Where an Approved Personnel has been authorised by the Buyer in Schedule 1, the Supplier must use the Approved Personnel in delivering the Services. The Supplier must obtain the Buyer's prior written approval if it wishes to change any Approved Personnel.
- 2.6 If the Supplier is at the Buyer's premises, the Supplier must observe the Buyer's policies and procedures, including those relating to health and safety, and security requirements. The Buyer must tell the Supplier what the relevant policies and procedures are, and either give the Supplier a copy of them or provide an internet link.

- 2.7 If the nature of the Services requires it, the Supplier will deliver Services:
- a. in a manner that is culturally appropriate for Māori, Pacific and other ethnic or indigenous groups, and
 - b. that respects the personal privacy and dignity of all participants and stakeholders.

3. Charges and payment

Charges & invoices

- 3.1 The Charges are the total maximum amount payable by the Buyer to the Supplier for delivery of the Services. Charges include Fees and, where agreed, Expenses and Daily Allowances.
- 3.2 The Supplier must provide valid tax invoices for all Charges on the dates or at the times specified in Schedule 1. The Buyer has no obligation to pay the Charges set out on an invoice, which is not a valid tax invoice. A valid a tax invoice must:
- a. clearly show all GST due
 - b. be in New Zealand currency or the currency stated in Schedule 1
 - c. be clearly marked 'Tax invoice'
 - d. contain the Supplier's name, address and GST number, if the Supplier is registered for GST
 - e. contain the Buyer's name and address and be marked for the attention of the Buyer's Contract Manager or such other person stated in Schedule 1
 - f. state the date the invoice was issued
 - g. name this Contract and provide a description of the Services supplied, including the amount of time spent in the delivery of the Services if payment is based on an Hourly Fee Rate or Daily Fee Rate
 - h. contain the Buyer's contract reference or purchase order number if there is one
 - i. state the Charges due, calculated correctly, and
 - j. be supported by GST receipts if Expenses are claimed and any other verifying documentation reasonably requested by the Buyer.

Payment

- 3.3 If the Buyer receives a valid tax invoice on or before the 3rd Business Day of the month, the Buyer must pay that tax invoice by the 20th calendar day of that month. Any valid tax invoice received after the 3rd Business Day of the month will be paid by the Buyer on the 20th calendar day of the month following the month it is received. The Buyer's obligation to pay is subject to clauses 3.2, 3.4 and 11.10.
- 3.4 If the Buyer disputes a tax invoice or any part of a tax invoice that complies with clause 3.2, the Buyer must notify the Supplier within 10 Business Days of the date of receipt of the tax invoice. The Buyer must pay the portion of the tax invoice that is not in dispute. The Buyer may withhold payment of the disputed portion until the dispute is resolved.

4. Contract management

Contract Manager

- 4.1 The persons named in Schedule 1 as the Contract Managers are responsible for managing the Contract, including:
- a. managing the relationship between the Parties
 - b. overseeing the effective implementation of this Contract, and
 - c. acting as a first point of contact for any issues that arise.

Changing the Contract Manager

- 4.2 If a Party changes its Contract Manager it must tell the other Party, in writing, the name and contact details of the replacement within 5 Business Days of the change.

5. Information management

Information and Records

- 5.1 The Supplier must:
- keep and maintain Records in accordance with prudent business practice and all applicable laws
 - make sure the Records clearly identify all relevant time and Expenses incurred in providing the Services
 - make sure the Records are easy to access, and
 - keep the Records safe.
- 5.2 The Supplier must give information to the Buyer relating to the Services that the Buyer reasonably requests. All information provided by the Supplier must be in a format that is usable by the Buyer, and delivered within a reasonable time of the request.
- 5.3 The Supplier must co-operate with the Buyer to provide information immediately if the information is required by the Buyer to comply with an enquiry or its statutory, parliamentary, or other reporting obligations.
- 5.4 The Supplier must make its Records available to the Buyer during the term of the Contract and for 7 years after the End Date (unless already provided to the Buyer earlier).
- 5.5 The Supplier must make sure that Records provided by the Buyer or created for the Buyer, are securely managed and securely destroyed on their disposal.

Reports

- 5.6 The Supplier must prepare and give to the Buyer the reports stated in Schedule 1, by the due dates stated in Schedule 1.

6. The contractual relationship

Independent contractor

- 6.1 Nothing in this Contract constitutes a legal relationship between the Parties of partnership, joint venture, agency, or employment. The Supplier is responsible for the liability of its own, and its Personnel's, salary, wages, holiday or redundancy payments and any GST, corporate, personal and withholding taxes, ACC premiums or other levies attributable to the Supplier's business or the engagement of its Personnel.

Neither Party can represent the other

- 6.2 Neither Party has authority to bind or represent the other Party in any way or for any purpose.

Permission to transfer rights or obligations

- 6.3 The Supplier may transfer any of its rights or obligations under this Contract only if it has the Buyer's prior written approval. The Buyer will not unreasonably withhold its approval.

7. Subcontractors

Rules about subcontracting

- 7.1 The Supplier must not enter into a contract with someone else to deliver any part of the Services without the Buyer's prior written approval. In selecting an appropriate Subcontractor the Supplier must be able to demonstrate value for money.

The Supplier's responsibilities

- 7.2 The Supplier is responsible for ensuring the suitability of any Subcontractor and the Subcontractor's capability and capacity to deliver that aspect of the Services being subcontracted.
- 7.3 The Supplier must ensure that:
- each Subcontractor is fully aware of the Supplier's obligations under this Contract, and
 - any subcontract it enters into is on terms that are consistent with this Contract.

- 7.4 The Supplier continues to be responsible for delivering the Services under this Contract even if aspects of the Services are subcontracted.

8. Insurance

Where insurance is a requirement

- 8.1 It is the Supplier's responsibility to ensure its risks of doing business are adequately covered, whether by insurance or otherwise. If required in Schedule 1, the Supplier must have the insurance specified in Schedule 1 and the Supplier must:
- take out insurance, with a reputable insurer, and maintain that insurance cover for the term of this Contract and for a period of 3 years after the End Date, and
 - within 10 Business Days of a request from the Buyer provide a certificate confirming the nature of the insurance cover and proving that each policy is current.

9. Conflicts of Interest

Avoiding Conflicts of Interest

- 9.1 The Supplier warrants that as at the Start Date, it has no Conflict of Interest in providing the Services or entering into this Contract.
- 9.2 The Supplier must do its best to avoid situations that may lead to a Conflict of Interest arising.

Obligation to tell the Buyer

- 9.3 The Supplier must tell the Buyer immediately, and in writing, if any Conflict of Interest arises in relation to the Services or this Contract. If a Conflict of Interest does arise the Parties must discuss, agree and record in writing whether it can be managed and, if so, how it will be managed. Each Party must pay its own costs in relation to managing a Conflict of Interest.

10. Resolving disputes

Steps to resolving disputes

- 10.1 The Parties agree to use their best endeavours to resolve any dispute or difference that may arise under this Contract. The following process will apply to disputes:
- a Party must notify the other if it considers a matter is in dispute
 - the Contract Managers will attempt to resolve the dispute through direct negotiation
 - if the Contract Managers have not resolved the dispute within 10 Business Days of notification, they will refer it to the Parties' senior managers for resolution, and
 - if the senior managers have not resolved the dispute within 10 Business Days of it being referred to them, the Parties shall refer the dispute to mediation or some other form of alternative dispute resolution.
- 10.2 If a dispute is referred to mediation, the mediation will be conducted:
- by a single mediator agreed by the Parties or if they cannot agree, appointed by the Chair of LEADR NZ Inc.
 - on the terms of the LEADR NZ Inc. standard mediation agreement, and
 - at a fee to be agreed by the Parties or if they cannot agree, at a fee determined by the Chair of LEADR NZ Inc.
- 10.3 Each Party will pay its own costs of mediation or alternative dispute resolution under this clause 10.

Obligations during a dispute

- 10.4 If there is a dispute, each Party will continue to perform its obligations under this Contract as far as practical given the nature of the dispute.

Taking court action

- 10.5 Each Party agrees not to start any court action in relation to a dispute until it has complied with the process described in clause 10.1, unless court action is necessary to preserve a Party's rights.

11. Ending this Contract

Termination by the Supplier

- 11.1 The Supplier may terminate this Contract by giving 20 Business Days Notice to the Buyer, if the Buyer fails to pay Charges that are properly due, and are not in dispute under clause 3.4. The Charges must be overdue by 20 Business Days and the Supplier must have first brought this to the Buyer's attention in writing within this period.
- 11.2 At any time during the term of this Contract the Supplier may notify the Buyer that it wishes to terminate this Contract by giving 20 Business Days Notice. The Buyer will, within 20 Business Days following receipt of the Supplier's, notify the Supplier whether, in its absolute discretion, it consents to the Supplier's Notice of termination. If the Buyer:
- consents, the Contract will be terminated on a date that is mutually agreed between the Parties, or
 - does not consent, the Contract will continue in full force as if the Supplier's Notice of termination had not been given.
- 11.3 The Supplier may also terminate this Contract under clause 11.9.

Termination by the Buyer

- 11.4 The Buyer may terminate this Contract at any time by giving 20 Business Days Notice to the Supplier.
- 11.5 The Buyer may terminate this Contract immediately, by giving Notice, if the Supplier:
- becomes bankrupt or insolvent
 - has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed
 - becomes subject to any form of external administration
 - ceases for any reason to continue in business or to deliver the Services
 - is unable to deliver the Services for a period of 20 Business Days or more due to an Extraordinary Event
 - requires the supply of Services within the period of an Extraordinary Event
 - is in breach of any of its obligations under this Contract and the breach cannot be remedied
 - repeatedly fails to perform or comply with its obligations under this Contract whether those obligations are minor or significant
 - does something or fails to do something that, in the Buyer's opinion, results in damage to the Buyer's reputation or business or the reputation or business of the Crown
 - has a Conflict of Interest that in the Buyer's opinion is so material as to impact adversely on the delivery of the Services, the Buyer or the Crown, or
 - provides information to the Buyer that is misleading or inaccurate in any material respect.

Termination by a Party if a breach has not been remedied

- 11.6 If a Party fails to meet the requirements of this Contract (defaulting Party) and the other Party (non-defaulting Party) reasonably believes that the failure can be remedied, the non-defaulting Party must give a Notice (default Notice) to the defaulting Party.
- 11.7 A default Notice must state:
- the nature of the failure
 - what is required to remedy it, and
 - the time and date by which it must be remedied.
- 11.8 The period allowed to remedy the failure must be reasonable given the nature of the failure.
- 11.9 If the defaulting Party does not remedy the failure as required by the default Notice, the non-defaulting Party may terminate this Contract immediately by giving a further Notice.

- 11.10 If the Buyer gives a default Notice to the Supplier, the Buyer may also do one or both of the following things:
- a. withhold any payment of Fees due until the failure is remedied as required by the default Notice, and or
 - b. if the failure is not remedied as required by the default Notice, deduct a reasonable amount from any Fees due to reflect the reduced value of the Services to the Buyer.

Supplier's obligations on termination or expiry of this Contract

- 11.11 On giving or receiving a Notice of termination, the Supplier must:
- a. stop providing the Services
 - b. comply with any conditions contained in the Notice, and
 - c. immediately do everything reasonably possible to reduce its losses, costs and expenses arising from the termination of this Contract.
- 11.12 On termination or expiry of this Contract, the Supplier must, if requested by the Buyer, immediately return or securely destroy all Confidential Information and other material or property belonging to the Buyer.

Consequences of termination or expiry of this Contract

- 11.13 The termination or expiry of this Contract does not affect those rights of each Party which:
- a. accrued prior to the time of termination or End Date, or
 - b. relate to any breach or failure to perform an obligation under this Contract that arose prior to the time of termination or End Date.
- 11.14 If this Contract is terminated the Buyer:
- a. will only be liable to pay Charges that were due for Services delivered before the effective date of termination, and
 - b. may recover from the Supplier or set off against sums due to the Supplier, any Charges paid in advance that have not been incurred.

Handing over the Services on termination or expiry of this Contract

- 11.15 The Supplier will, within 10 Business Days of the End Date, provide all reasonable assistance and cooperation necessary to facilitate a smooth handover of the Services to the Buyer or any person appointed by the Buyer.
- 11.16 If the Parties agree, the Supplier will provide additional assistance to support any replacement supplier to deliver the Services. This support may be for a period of up to 3 months from the date of termination and at a reasonable fee to be agreed between the Parties, based on the Fees and Expenses stated in this Contract.

12. Intellectual Property Rights

Ownership of Intellectual Property Rights

- 12.1 Pre-existing Intellectual Property Rights remain the property of their current owner.
- 12.2 New Intellectual Property Rights in the Deliverables become the property of the Buyer when they are created.
- 12.3 The Supplier grants to the Buyer (as The Crown) a perpetual, non-exclusive, worldwide and royalty-free licence to use, for any purpose, all Intellectual Property Rights in the Deliverables that are not owned by the Buyer. This licence includes the right to use, copy, modify and distribute the Deliverables.

Supplier indemnity

- 12.4 The Supplier warrants that it is legally entitled to do the things stated in clause 12.3 with the Intellectual Property Rights in the Deliverables.
- 12.5 The Supplier warrants that Pre-existing and New Intellectual Property Rights provided by the Supplier and incorporated in the Services and Deliverables do not infringe the Intellectual Property

Rights of any third party.

- 12.6 The Supplier indemnifies the Buyer (as The Crown) in respect of any expenses, damage or liability incurred by the Buyer or The Crown in connection with any third party claim that the delivery of the Services or Deliverables to the Buyer or the Buyer's or The Crown's use of them, infringes a third party's rights. This indemnity is not subject to any limitation or cap on liability that may be stated elsewhere in this Contract.

13. Confidential Information

Protection of Confidential Information

- 13.1 Each Party confirms that it has adequate security measures to safeguard the other Party's Confidential Information from unauthorised access or use by third parties, and that it will not use or disclose the other Party's Confidential Information to any person or organisation other than:
- to the extent that use or disclosure is necessary for the purposes of providing the Deliverables or Services or in the case of the Buyer using the Deliverables or Services
 - if the other Party gives prior written approval to the use or disclosure
 - if the use or disclosure is required by law (including under the Official Information Act 1982), Ministers or parliamentary convention, or
 - in relation to disclosure, if the information has already become public, other than through a breach of the obligation of confidentiality by one of the Parties.

Obligation to inform staff

- 13.2 Each Party will ensure that its Personnel:
- are aware of the confidentiality obligations in this Contract, and
 - do not use or disclose any of the other Party's Confidential Information except as allowed by this Contract.

14. Notices

Delivery of Notices

- 14.1 All Notices to a Party must be delivered by hand or sent by post, courier, fax or email to that Party's address for Notices stated in Schedule 1.
- 14.2 Notices must be signed or in the case of email sent by the appropriate manager or person having authority to do so.

Receipt of Notices

- 14.3 A Notice will be considered to be received:
- if delivered by hand, on the date it is delivered
 - if sent by post within New Zealand, on the 3rd Business Day after the date it was sent
 - if sent by post internationally, on the 7th Business Day after the date it was sent
 - if sent by courier, on the date it is delivered
 - if sent by fax, on the sender receiving a fax machine report that it has been successfully sent, or
 - if sent by email, at the time the email enters the recipient's information system as evidenced by a delivery receipt requested by the sender and it is not returned undelivered or as an error.
- 14.4 A Notice received after 5pm on a Business Day or on a day that is not a Business Day will be considered to be received on the next Business Day.

15. Extraordinary Events

No fault if failure due to an Extraordinary Event

- 15.1 Neither Party will be liable to the other for any failure to perform its obligations under this Contract where the failure is due to an Extraordinary Event.

Obligations of the affected Party

- 15.2 A Party who wishes to claim suspension of its obligations due to an Extraordinary Event must notify the other Party as soon as reasonably possible. The Notice must state:
- a. the nature of the circumstances giving rise to the Extraordinary Event
 - b. the extent of that Party's inability to perform under this Contract
 - c. the likely duration of that non-performance, and
 - d. what steps are being taken to minimise the impact of the Extraordinary Event on the delivery of Services.

Alternative arrangements requiring immediate termination

- 15.3 If the Buyer, acting reasonably, requires the Services to be supplied during the period affected by an Extraordinary Event, then despite clause 15.4, the Buyer may terminate this Contract immediately by giving Notice.

Termination of Contract

- 15.4 If a Party is unable to perform any obligations under this Contract for 20 Business Days or more due to an Extraordinary Event, the other Party may terminate this Contract immediately by giving Notice.

16. General

Changes to this Contract

- 16.1 Any change to this Contract is called a Variation. A Variation must be agreed by both Parties and recorded:
- a. in writing and signed by both Parties, or
 - b. through an exchange of emails where the authors have delegated authority to approve the Variation.

This is the entire Contract

- 16.2 This Contract, including any Variation, records everything agreed between the Parties relating to the Services. It replaces any previous communications, negotiations, arrangements or agreements that the Parties had with each other relating to the Services before this Contract was signed, whether they were verbal or in writing.

Waiver

- 16.3 If a Party breaches this Contract and the other Party does not immediately enforce its rights resulting from the breach that:
- a. does not mean that the Party in breach is released or excused from its obligation to perform the obligation at the time or in the future, and
 - b. does not prevent the other Party from exercising its rights resulting from the breach at a later time.

New Zealand law, currency and time

- 16.4 This Contract will be governed and interpreted in accordance with the laws of New Zealand. All money is in New Zealand dollars, unless Schedule 1 specifies a different currency. Dates and times are New Zealand time.

Publication of information about this Contract

- 16.5 The Supplier may disclose the existence of this Contract but must obtain the Buyer's prior written approval before making reference to the Buyer or this Contract in its publications, public statements, promotional material or promotional activities about this Contract.
- 16.6 Each Party undertakes not to post on websites or social networking sites and not to publicly display objectionable or derogatory comments about the Services, this Contract, each other or any of its Personnel and to ensure that its Personnel do not do so.

Signing the Contract

- 16.7 The date of execution is date this Contract is signed. This Contract is properly signed if each Party signs the same copy, or separate identical copies, of Page 1. If this Contract is signed on two separate dates or separate copies are signed, the date of execution is the later of the two dates. Where separate copies are signed the signed copy can be the original document, or a faxed or emailed copy.

No poaching

- 16.8 During the term of this Contract and for a period of 6 months after the End Date neither Party shall, without the other's written consent, deliberately solicit for employment or hire any person who is or has been employed by the other and involved in the delivery of the Services. This does not apply where a person has responded to a legitimate advertisement.

Clauses that remain in force

- 16.9 The clauses that by their nature should remain in force on expiry or termination of this Contract do so, including clauses 5 (Information management), 8 (Insurance), 10 (Resolving disputes), 11 (Ending this Contract), 12 (Intellectual Property Rights), 13 (Confidential Information), 16 (General) and 17 (Definitions).

Precedence

- 16.10 If there is any conflict or difference between the documents forming this Contract (as stated on Page 1) then the order of precedence is:
- a. a Variation agreed between the Parties under clause 16.1
 - b. Schedule 1
 - c. any Attachment to Schedule 1
 - d. Schedule 2.

17. Definitions

- 17.1 When used in this Contract the following terms have the meaning beside them:

Attachment Any supplementary document named in Schedule 1 as an Attachment to this Contract.

Approved Personnel A person who is engaged by the Supplier to deliver the Services and is named in Schedule 1. The Supplier must use this person in the delivery of the Services and cannot change them without first obtaining the Buyer's written approval.

Business Day A day when most businesses are open for business in New Zealand. It excludes Saturday, Sunday, and public holidays. A Business Day starts at 8.30am and ends at 5pm.

Buyer The Buyer is the purchaser of the Services. The Buyer is the Crown, also described as the Sovereign Her Majesty the Queen in right of New Zealand who acts by and through the government agency named as the Buyer on page 1 of this Contract for the purposes of this Contract.

Charges The total amount payable by the Buyer to the Supplier as stated in Schedule 1. The Supplier's Charges include Fees and any Expenses and Daily Allowances stated in Schedule 1. Charges are payable on successful delivery of the Services provided a valid tax invoice has been submitted.

Confidential Information Information that:

- a. is by its nature confidential
- b. is marked by either Party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence'
- c. is provided by either Party or a third party 'in confidence'
- d. either Party knows or ought to know is confidential, or
- e. is of a sensitive nature or commercially sensitive to either Party.

Conflict of Interest A Conflict of Interest arises if a Party or its Personnel's personal or business interests or obligations do or could conflict or be perceived to conflict with its obligations under this Contract. It means that its independence, objectivity or impartiality can be called into question. A Conflict of Interest may be:

- a. actual: where the conflict currently exists
- b. potential: where the conflict is about to happen or could happen, or
- c. perceived: where other people may reasonably think that a person is compromised.

Contract The legal agreement between the Buyer and the Supplier that comprises Page 1 (the front sheet), Schedule 1, this Schedule 2 and any other Schedule, and any Variation and Attachment.

Contract Manager The person named in Schedule 1 as the Contract Manager. Their responsibilities are listed in clause 4.1

Crown (The Crown) The Buyer also described as the Sovereign Her Majesty the Queen in right of New Zealand and includes a Minister, a government department and an Office of Parliament, but does not include a Crown entity, or a State enterprise named in Schedule 1 of the State-Owned Enterprises Act 1986.

Daily Allowance An allowance to cover accommodation, meals and incidentals for the Supplier's Personnel if they are required in order to deliver the Services or to travel overnight away from their normal place of business. The amount of any Daily Allowance must be agreed to in Schedule 1. A Daily Allowance is similar to a per diem.

Daily Fee Rate If the Supplier's fee rate is expressed as a Daily Fee Rate this is the fee payable for each day spent in the delivery of Services. A day is a minimum of 8 working hours.

Deliverables A tangible output resulting from the delivery of the Services as stated in Schedule 1. A deliverable may be a document, a piece of equipment, goods, information or data stored by any means including all copies and extracts of the same.

End Date The earlier of the date this Contract is due to end as stated in Schedule 1, the date of termination as set out in a Notice of termination or any other date agreed between the Parties as the date the Contract is to end.

Expenses Any actual and reasonable out-of-pocket costs incurred by the Supplier in the delivery of the Services and agreed to in Schedule 1.

Extraordinary Event An event that is beyond the reasonable control of the Party immediately affected by the event. An Extraordinary Event does not include any risk or event that the Party claiming could have prevented or overcome by taking reasonable care. Examples include:

- a. acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, pandemics and any natural disaster
- b. acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilisation, requisition or embargo
- c. acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war, or
- d. contamination by radioactivity from nuclear substances or germ warfare or any other such hazardous properties.

Fees The amount payable to the Supplier for the time spent in delivery of the Services calculated on the basis stated in Schedule 1, excluding any Expenses and Daily Allowances.

GST The goods and services tax payable in accordance with the New Zealand Goods and Services Tax Act 1985.

Hourly Fee Rate If the Supplier's fee rate is expressed as an Hourly Fee Rate this is the Fee payable for each hour spent delivering the Services.

Intellectual Property Rights All Intellectual Property Rights and interests, including copyright, trademarks, designs, patents and other proprietary rights, recognised or protected by law.

Milestone A phase or stage in the delivery of Services resulting in a measurable output. Payment of Fees is usually due on the satisfactory delivery of a Milestone.

New Intellectual Property Rights Intellectual Property Rights developed after the date of this Contract and incorporated into the Deliverables.

Notice A formal or legal communication from one Party to the other that meets the requirements of clause 14.

Party The Buyer and the Supplier are each a Party to this Contract, and together are the Parties.

Personnel All individuals engaged by either Party in relation to this Contract or the delivery of Services. Examples include: the owner of the business, its directors, employees, Subcontractors, agents, external consultants, specialists, technical support and co-opted or seconded staff. It includes Approved Personnel.

Pre-existing Intellectual Property Rights Intellectual Property Rights developed before the date of this Contract. It does not cover later modifications, adaptations or additions.

Records All information and data necessary for the management of this Contract and the delivery of Services. Records include, but are not limited to, reports, invoices, letters, emails, notes of meetings, photographs and other media recordings. Records can be hard copies or soft copies stored electronically.

Services All work, tasks and Deliverables, including those stated in Schedule 1, that the Supplier must perform and deliver under this Contract.

Schedule An attachment to this Contract with the title 'Schedule'.

Start Date The date when this Contract starts as stated in Schedule 1.

Subcontractor A person, business, company or organisation contracted by the Supplier to deliver or perform part of the Supplier's obligations under this Contract.

Supplier The person, business, company or organisation named as the Supplier on page 1. It includes its Personnel, successors, and permitted assignees.

Variation A change to any aspect of this Contract that complies with clause 16.1.

