



SERVICES AGREEMENT

The Ministry of Education

[Supplier]

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PARTIES

The Sovereign In Right of the Government of New Zealand acting by and through the **Secretary for Education** at Wellington (the *Ministry*)

[Supplier] at **[Location]** company no. **[insert]** (the *Supplier*)

BACKGROUND

- A **[Insert one – three paragraphs outlining the need to procure the services]**.
- B On **[date]** the Ministry issued a request for proposal (*RFP*) entitled **[RFP title]** seeking an experienced and suitably qualified supplier to provide **[type of services]**.
- C Based on the Supplier's response to the RFP and other supporting documentation, the Ministry has selected the Supplier to provide the Services to the Ministry, which the Supplier has agreed to supply, on the terms and conditions set out in this Agreement.

AGREEMENT

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following terms have the following meanings unless the context requires otherwise:

Agreement means this agreement, including the Schedules and any appendices to this agreement.

Business Day means any day other than a Saturday, a Sunday or a public holiday (as defined in the Holidays Act 2003) in Wellington, New Zealand.

Charges means the amounts payable by the Ministry as specified in Schedule 3.

Commencement Date means the date specified as the commencement date in Schedule 1.

Confidential Information means all information in any form relating to or proprietary to a party (**Discloser**) that:

- (a) is provided by (or on behalf of) the Discloser to the other party (**Recipient**) in connection with the Agreement; or
- (b) otherwise becomes known to the Recipient in connection with the Agreement; and
- (c) is by its nature confidential, is designated (in writing or otherwise) by the Discloser as confidential or which the Recipient ought reasonably to know is confidential,

but excludes any information to the extent the Recipient can show the relevant information:

- (d) at the time of receipt by the Recipient is in the public domain or subsequently comes in to the public domain otherwise than as a result of a breach of this Agreement or any other obligation of confidentiality;
- (e) is already or lawfully comes in to the unrestricted possession of the Recipient without there having been any breach of any obligations of confidentiality owed by a third party;
- (f) has been independently developed by the Recipient (as evidenced by records in its possession);
- (g) is not intended to be confidential as evidenced by the written agreement of the Discloser;
- (h) is disclosed by the Recipient with the prior written approval of the Discloser in accordance with the terms of such written approval; or
- (i) is required to be disclosed, by law or by a governmental or other competent authority or pursuant to the listing rules of any applicable stock exchange, provided that before making the disclosure the Recipient has given the Discloser notice of the request for disclosure and where practical obtained a confidentiality order or similar protection limiting the persons to whom disclosure of the Confidential Information is made if the Discloser has no effective status on the matter.

Control means, directly or indirectly, the power to vote 50% or more of the voting interests of an entity or ownership of 50% or more of the beneficial interests in income or capital of an entity.

Crown means Her Majesty the Queen in right of New Zealand, including all:

- (a) ministers of the Crown;
- (b) government departments;
- (c) offices of Parliament;
- (d) Crown entities as defined in the Crown Entities Act 2004; and
- (e) state enterprises as defined in the State-Owned Enterprises Act 1986.

Deliverable means all documentation and/or Services and other materials to be provided by the Supplier under or in connection with this Agreement, including all deliverables set out in Schedule 2.

Dispute has the meaning given to it in clause 15.

Dispute Notice has the meaning given to it in clause 15.

Expiry Date means the date specified as the expiry date in Schedule 1.

Force Majeure Event means:

- (a) act of God, fire, earthquake, storm, flood, or landslide;
- (b) strike, lockout, work stoppage or other labour hindrance;
- (c) explosion, public mains electrical supply failure for 10 or more continuous Business Days, or nuclear accident;

- (d) sabotage, riot, civil disturbance, insurrection, epidemic, national emergency (whether in fact or law) or act of war (whether declared or not);
- (e) requirement or restriction of, or failure to act by, any government, semi-governmental or judicial entity; and/or
- (f) without limitation by reference to the foregoing, any other cause beyond the reasonable control of the party claiming the benefit of clause 16,

but does not include:

- (g) any event which the party affected could have prevented or overcome by exercising a reasonable standard of foresight and care;
- (h) in the case of the Supplier, any event which the Supplier or its Personnel or subcontractors could have prevented or overcome but for a prior failure to comply with the Supplier's obligations under this Agreement, including those relating to disaster recovery, business continuity, security and/or the resiliency of the Services; or
- (i) a lack of funds for any reason.

GST means goods and services tax payable under the Goods and Services Tax Act 1985 at the rate prevailing from time to time, including any tax levied in substitution for that tax.

Intellectual Property means all industrial and intellectual property rights whether conferred by statute, at common law or in equity, including all copyright, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs, rights in relation to trade marks, business names and domain names.

Key Personnel means the Personnel specified in Schedule 1.

Ministry Property means equipment, tools or other property owned or leased by the Ministry.

Ministry Sites means any Ministry sites at which the Supplier provides the Services or Deliverables from time to time.

Personnel means any employee, agent or representative of the Supplier, or of any subcontractor of the Supplier, who provides any Service or Deliverable.

Proposal means the Supplier's proposal (if any) described in Schedule 2.

Records means information, whether in its original form or otherwise, including a document, a signature, a seal, text, images, sound, speech, or data compiled, recorded, or stored, as the case may be:

- (a) in written form on any material;
- (b) on film, negative, tape, or other medium so as to be capable of being reproduced; or
- (c) by means of any recording device or process, computer or other electronic device or process;

Service Levels means the standards of service specified in this Agreement, including the service levels specified in Schedule 2 (if any).

Services means:

- (a) the services described in this Agreement, including Schedule 2;
- (b) all services incidental to, or required for the proper performance of, the services described in (a); and
- (c) all other services agreed in writing by the parties from time to time.
- (d) Term means the term of this Agreement described in clause 2.1.

1.2 **Interpretation**

In this Agreement, unless the context requires otherwise:

- (a) headings are for convenience only and have no legal effect unless otherwise specified;
- (b) references to the singular include the plural and vice versa;
- (c) references to a party include that party's successors, executors, administrators and permitted assignees (as the case may be);
- (d) references to clauses and Schedules are to the clauses and Schedules in this Agreement;
- (e) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) references to a person include:
 - (i) an individual, firm, company, corporation or unincorporated body of persons;
 - (ii) any public, territorial or regional authority;
 - (iii) any government; and
 - (iv) any agency of any government or authority;
- (g) an obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (h) references to any statute include any amendment to, or replacement of, that statute and any subordinate legislation made under it;
- (i) wherever the words "includes" or "including" (or similar words) are used, they are deemed to be followed by the words "without limitation";
- (j) except as otherwise expressly stated, monetary references are references to New Zealand currency; and
- (k) if there is any conflict between the terms of this Agreement, the following order of precedence will apply:
 - (i) the terms of the body of this Agreement; and

(ii) the Schedules to this Agreement.

2. OVERVIEW

2.1 Term

This Agreement will commence on the Commencement Date and, unless terminated earlier in accordance with its terms, will end on the Expiry Date.

2.2 [Further term]

[Drafting note: if no further term is required, delete this clause 2.2]

The Ministry may extend the term of this Agreement, for [insert] further term of [insert] years on the same terms and conditions, by giving the Supplier notice in writing at least [insert] [months] before the Expiry Date.]

2.3 Appointment

The Ministry appoints the Supplier, and the Supplier agrees, to provide the Services and Deliverables to the Ministry on the terms and conditions of this Agreement.

2.4 Non-exclusive appointment

The parties agree that the Supplier's appointment under this Agreement is non-exclusive, and the Ministry may appoint third parties to provide services or deliverables similar to, or identical with, the Services or Deliverables at any time, or may provide them itself.

2.5 No minimum volume

The Ministry does not guarantee any minimum level of business by entering into this Agreement and the Supplier confirms that it has not received or relied on any representation in this regard.

2.6 Supplier premises

Except as otherwise specified in this Agreement or agreed between the parties, the Supplier will work from its own premises.

2.7 Reliance

The Supplier acknowledges that the Ministry is relying on the Supplier's expertise in entering into this Agreement, including all statements made by the Supplier in the Proposal or in any other written material provided to the Ministry regarding the Supplier's or the Personnel's skills, experience and expertise and the quality and performance of the Services and Deliverables.

3. SUPPLIER'S OBLIGATIONS

3.1 Performance

In providing the Services and Deliverables and complying with its other obligations under this Agreement, the Supplier must:

- (a) provide, at its own cost, all equipment, tools, materials and other resources necessary for the provision of the Services and Deliverables;
- (b) take full responsibility for the performance of all tasks and activities necessary to provide the Services and Deliverables in accordance with

this Agreement, other than tasks or activities specifically identified as being the Ministry's responsibility;

- (c) comply with all reasonable directions given by the Ministry from time to time;
- (d) comply with all the Ministry policies and procedures notified to the Supplier from time to time;
- (e) comply with all of its legal obligations (including under statute, regulation, and contract);
- (f) co-operate with the Ministry and all other contractors and service providers to the Ministry, to ensure the Services, Deliverables and all products and services related to them are delivered efficiently and seamlessly to the Ministry;
- (g) not damage, disrupt, introduce any computer virus into or otherwise adversely affect any part of the Ministry's:
 - (i) business or operations; or
 - (ii) information technology or telecommunications systems; and
- (h) promptly notify the Ministry in writing of:
 - (i) any breach of the Supplier's obligations under this Agreement; and
 - (ii) any matter that may impact on the Supplier's ability to perform its obligations in accordance with this Agreement.

3.2 **Children's policy**

The Supplier will maintain during the Term of this Agreement a child protection policy that accords with the requirements of section 19 of the Children's Act 2014 (the *CA Policy*). If the Supplier does not have in place a CA Policy as at the Commencement Date, it undertakes to adopt one as soon as practicable, but in any event no later than three months after the Commencement Date. The Supplier further undertakes to ensure its CA Policy is reviewed on a regular basis so that at any time during the Term its CA Policy has been reviewed within the last three years.

3.3 **Service Levels**

The Supplier must provide the Services and Deliverables so as to meet or exceed the Service Levels.

3.4 **Maintain reputation**

The Supplier must not engage in any activity or conduct that might, in the Ministry's opinion, damage the reputation or image of the Ministry or the Crown.

3.5 **Conflict of interest**

The Supplier must not enter into any agreement or arrangement that will, or is likely to:

- (a) prejudice the Supplier's ability to meet its obligations under this Agreement; or
- (b) create a conflict of interest for the Supplier.

3.6 Resolve conflict

Notwithstanding clause 3.4, the Supplier must:

- (a) immediately notify the Ministry in writing if the Supplier is, or is likely to be, conflicted in the performance of its obligations under this Agreement; and
- (b) take all actions reasonably required by the Ministry to resolve any such conflict.

3.7 Add value

The Supplier must proactively use its experience and expertise to improve the Services and Deliverables, and the manner of providing them, to more effectively and efficiently meet the Ministry's requirements both in terms of quality and cost.

4. THE MINISTRY'S PROPERTY AND SITES

4.1 Ministry Property

If the Supplier has access to any Ministry Property under or in connection with this Agreement, the Supplier must:

- (a) use the Ministry Property:
 - (i) for the sole purpose of complying with its obligations under this Agreement and for no other purpose; and
 - (ii) only to the extent necessary to comply with its obligations under this Agreement;
- (b) comply with all directions regarding the use of Ministry Property given by the Ministry from time to time; and
- (c) return all of the Ministry Property to the Ministry on the earlier of:
 - (i) completion of the Services or Deliverables relating to the relevant Ministry Property;
 - (ii) receipt of the Ministry's request for it to be returned; or
 - (iii) termination or expiry of this Agreement.

4.2 Ministry Sites

The Ministry will provide the Supplier with access to the Ministry Sites solely for the purpose of enabling, and to the extent necessary to enable, the Supplier to comply with its obligations under this Agreement. The Supplier must not use or access the Ministry Sites or any other premises of the Ministry for any other purpose without the Ministry's prior written consent.

5. PERSONNEL AND SUBCONTRACTORS

5.1 Personnel

The Supplier:

- (a) must ensure the Services and Deliverables are provided using appropriately experienced, skilled and qualified Personnel who are capable of providing the Services and Deliverables to the standards required under this Agreement;
- (b) is responsible for all acts and omissions of the Personnel as if they were the acts or omissions of the Supplier; and
- (c) must ensure that all Personnel comply with the terms of this Agreement and with all of the Ministry's policies, procedures and directions.

5.2 Key Personnel

The Supplier:

- (a) must ensure the Key Personnel are involved in the provision of the Services and Deliverables and otherwise in such role(s) as specified in Schedule 2;
- (b) must maintain an active succession plan for each of the Key Personnel;
- (c) may only replace any Key Personnel if:
 - (i) that person is unavailable due to resignation, illness or death;
 - (ii) the replacement person is, in the reasonable opinion of the Ministry, appropriately experienced, skilled and qualified to perform the applicable role; and
 - (iii) the Supplier first obtains the Ministry's written consent to the replacement person.

5.3 Subcontractors

- (a) The Supplier must not subcontract any of its obligations under this Agreement to any other person without first obtaining the Ministry's written consent and complying with clause 5.3(b).
- (b) The Supplier must:
 - (i) ensure each subcontractor complies with the terms of this Agreement;
 - (ii) before engaging any subcontractor, make reasonable inquiries into the subcontractor's (and where they have a role in relation to the Services or Deliverables, its personnel's) credit history and criminal record and ensure that such persons will satisfy the requirements of the Ministry as notified by the Ministry to the Supplier from time to time;
 - (iii) manage the agreement between the Supplier and the subcontractor in the best interests of the Ministry;

- (iv) when appropriate or necessary, authorise the Ministry to deal with the subcontractor directly;
 - (v) ensure that an appropriate written agreement is in place between the Supplier and the subcontractor that is consistent with the terms of this Agreement; and
 - (vi) if requested by the Ministry, ensure that the agreement referred to in clause 5.3(b)(v) acknowledges the benefit to the Ministry for the purposes of the Contracts and Commercial Law Act 2017 and is therefore enforceable by the Ministry.
- (c) The Supplier will remain liable to the Ministry for all acts or omissions of each subcontractor as if they were the acts or omissions of the Supplier. The entry by the Supplier into an agreement with a subcontractor will not:
- (i) create a contractual relationship between the Ministry and the subcontractor except as described in clause 5.3(b)(v); or
 - (ii) relieve the Supplier from liability for the performance of any obligations under this Agreement.
- (d) The Supplier must obtain the Ministry's prior written consent to the replacement of any subcontractor and clauses 5.3(b) and (c) will apply to all replacement subcontractors.

5.4 Removal of Personnel

If the Ministry considers (acting reasonably) that any of the Personnel (including the Key Personnel) are unsatisfactory or unsuitable then, without limiting any other rights of the Ministry, the Ministry may, by written notice, require the Supplier to replace the relevant Personnel (including the Key Personnel) and the Supplier will do so as soon as possible at its own cost, but in any event no later than five Business Days, or such other longer period as agreed by the parties, after receipt by the Supplier of the notice. In the case of any replacement of Key Personnel, clauses 5.2(b) and (c) will apply.

5.5 Vetting

The Ministry may conduct credit, criminal, security and other similar checks in relation to any of the Supplier's Personnel who are engaged in, or are proposed to be engaged in, the provision of the Services. The checks will be reasonable in nature and frequency and may be conducted from time to time, including before or after an individual is engaged in providing the Services and on a regular and repeated basis.

5.6 Criminal convictions

To the extent permitted by law, the Supplier will immediately notify the Ministry in writing if the Supplier becomes aware that any of its Personnel or proposed Personnel is subject to a criminal conviction or is (or comes) under investigation for a criminal offence. Upon receipt of such notice, if the Ministry considers such conviction or investigation unsatisfactory, it may require removal of the individual concerned in accordance with clause 5.4.

6. PERFORMANCE REVIEWS AND REPORTING

6.1 Performance reviews

The parties will meet and conduct performance reviews of the Services and Deliverables in accordance with the details set out in Schedule 2. The performance reviews will provide the parties with a formal opportunity to review the provision of the Services and Deliverables including, but not limited to, the:

- (a) Service Levels;
- (b) operational and management processes;
- (c) impact of the Services and Deliverables and assessment of their effectiveness; and
- (d) compliance with all applicable laws, including the Health and Safety at Work Act 2015.

6.2 Reporting

The Supplier will report to the Ministry on a regular basis in accordance with Schedule 2 regarding the Supplier's progress in providing the Services and Deliverables, and the health and safety requirements specified in Schedule 2, and will provide such additional information and reports as and when the Ministry may reasonably request in relation to the performance of the Supplier's obligations under this Agreement.

7. HEALTH AND SAFETY

7.1 Health, safety and security

The Supplier will comply, and will ensure that all of its Personnel comply, with all of the Ministry's health, safety, operational and security requirements while on the Ministry Sites and any other Ministry premises.

7.2 Health and Safety at Work Act 2015

The Supplier shall:

- (a) consult, cooperate and coordinate with the Ministry, to the extent required by the Ministry, and to ensure that the Ministry and the Supplier will each comply with their respective obligations under the Health and Safety at Work Act 2015 as they relate to this Agreement;
- (b) perform its, and ensure that its Personnel perform their, obligations under this Agreement in compliance with its and their obligations under the Health and Safety at Work Act 2015;
- (c) comply with all reasonable directions of the Ministry relating to health, safety, and security;
- (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 Ministry to the extent that it relates to, or affects, this Agreement;
- (e) comply with any additional health and safety requirements described in Schedule 2.

8. CHARGES AND PAYMENT

8.1 Total charge

The Ministry will pay the Charges to the Supplier in accordance with this clause 8.

8.2 No other amounts payable

Except as expressly provided by in this Agreement, or otherwise agreed by the parties, the Supplier will not be entitled to any additional payment for the provision of the Services, the granting of any rights under this Agreement, and/or the performance of any other activities in connection with this Agreement.

8.3 Invoicing and payment

The Supplier will invoice the Charges incurred in respect of each calendar month or as otherwise specified in Schedule 3, and will ensure that each such invoice is a valid tax invoice under the Goods and Services Tax Act 1985. Subject to clause 8.5 the Ministry shall pay each such invoice on or before the 20th of the month following the month in which the valid invoice is received.

8.4 Taxes

The Ministry shall pay GST in respect of all taxable supplies made by the Supplier to the Ministry under this Agreement. All other government taxes, duties, imposts and levies assessed or levied on the Supplier in relation to this Agreement (including penalties thereon) are hereby deemed to be included in the Charges.

8.5 Disputed invoices

If the Ministry has a genuine dispute in relation to all or any portion of an invoice submitted by the Supplier, the Ministry may withhold payment of the amount subject to the dispute, provided that:

- (a) the Ministry shall pay the undisputed amount when it becomes due and payable in accordance with the terms of this Agreement;
- (b) the Ministry must provide reasonable details about the disputed amount and the reasons for withholding payment, and must advise the Supplier of the dispute on or before the payment date for that invoice (provided that no failure by the Ministry to do any of the foregoing will prejudice the Ministry's right to dispute an invoice after it has been paid); and
- (c) the Supplier shall continue to perform its obligations under this Agreement notwithstanding the dispute.

8.6 Ministry may withhold payment

Without prejudice to the Ministry's other rights and remedies, and notwithstanding anything else in this Agreement, if the Supplier is in breach of this Agreement, the Ministry may withhold payment of a part or all of the Charges due to the Supplier, so long as the withheld part is reasonably proportional to the seriousness of the breach and is paid to the Supplier promptly on the breach being remedied.

8.7 Ministry may deduct remedy costs

If the Supplier is in breach of this Agreement, the Ministry may give notice to the Supplier identifying that breach with reasonable particularity, and requiring the Supplier to remedy that breach. If the breach remains uncorrected more than 15 Business Days after receipt of that notice, and without prejudice to the Ministry's other rights and remedies, the Ministry may procure its own remedy for that breach, and the Supplier will reimburse the Ministry for all costs reasonably incurred by the Ministry for that purpose. The Ministry may set off those costs against any amounts payable to the Charges.

8.8 Set off

The Ministry may set-off any refund or other amount owing to the Ministry from the Supplier against any amount payable by the Ministry under this Agreement.

9. RECORDS AND AUDIT

9.1 Records

Without limiting its other obligations under this Agreement or at law, the Supplier must create and maintain, and must ensure that each subcontractor creates and maintains, full, accurate and accessible Records relating to the provision of the Services and Deliverables, the Charges charged under this Agreement, and its health and safety reporting requirements, to the standards required under the Public Records Act 2005, as notified by the Ministry from time to time.

9.2 Content of Records

Without limiting clause 9.1:

- (a) the Records created and maintained under clause 9.1 must, at a minimum, describe or specify:
 - (i) the nature and scope of the Services and Deliverables provided under this Agreement;
 - (ii) the transactions that took place in the provision of all Services and Deliverables;
 - (iii) the basis on which each invoice has been prepared and submitted to the Ministry under this Agreement;
 - (iv) health and safety events relevant to the health and safety requirements described in Schedule 2; and
 - (v) any other information reasonably required by the Ministry from time to time.
- (b) the Supplier must ensure the Records created and maintained under clause 9.1 are:
 - (i) maintained in an accessible form;
 - (ii) retained for the Term; and
 - (iii) provided to the Ministry in an accessible form on termination or expiry of this Agreement and at any other time on the Ministry's request.

9.3 Notice of audit

The Ministry may at any time notify the Supplier that the Ministry wishes to audit any or all of the Supplier's:

- (a) provision of the Services and Deliverables;
- (b) invoicing; and

(c) compliance with the terms of this Agreement,

provided that the Ministry may only conduct an audit once in any 12 month period and at any other time where the Ministry has reasonable grounds to suspect the Supplier has not complied with this Agreement.

9.4 Audit

The Ministry will notify the Supplier of the date on which the audit will commence, which must be at least two Business Days after receipt of a notice under clause 9.3. The Supplier will allow the Ministry or its nominee to inspect the Supplier's premises, systems and records on and from the date notified by the Ministry during the Supplier's normal business hours for the purpose of conducting the audit. The Ministry will comply with the Supplier's reasonable security and confidentiality requirements in conducting any audit under this clause 9.4.

9.5 Assistance

The Supplier will assist the Ministry with any audit conducted under clause 9.4 and will ensure its Personnel and subcontractors also assist the Ministry, including by making their premises, systems and records available to the Ministry or its nominee if requested.

9.6 Costs

The Ministry will meet its costs of any audit unless the audit discloses that the Supplier has overcharged the Ministry on any invoice by 5% or more. In that case, the Supplier will meet the Ministry's audit costs.

9.7 Non-compliance

Without limiting any of the Ministry's other rights or remedies, if any audit conducted under clause 9.4 discloses any failure to comply with this Agreement by the Supplier, the Supplier will promptly remedy the non-compliance. The Supplier will refund any amounts overcharged by the Supplier within five Business Days of completion of an audit and delivery of an audit report.

9.8 Official Information Act 1982

- (a) The Supplier acknowledges that the Ministry is subject to the Official Information Act 1982 (the *OIA*). The Supplier agrees to cooperate fully in providing the Ministry with any documents or other information that the Ministry is required to provide pursuant to a request made under the *OIA*, or pursuant to questions raised in Parliament or in any Select Committee concerning this Agreement.
- (b) The Ministry shall, where practicable, consult the Supplier in advance of any disclosure under clause 9.8(a) in respect of the proposed release of any commercially sensitive information of or relating to the Supplier should the Ministry receive a request for release of such information under the *OIA* or by Parliament or any Select Committee.

10. WARRANTIES

10.1 Warranties

The Supplier warrants at all times that:

- (a) all information supplied by it to the Ministry under this Agreement is true, complete and accurate;
- (b) it has full corporate power and has obtained the required authority and authorisations to enter into and perform its obligations under this Agreement;
- (c) the Services and Deliverables will be provided to a standard of skill, care and diligence which would reasonably and ordinarily be expected from a skilled, reasonable and experienced operator in the same or similar circumstances;
- (d) it will comply with all timeframes and milestones set out in this Agreement or otherwise agreed in writing by the parties;
- (e) the Services and Deliverables are fit for their purpose as communicated to the Supplier;
- (f) the Services and Deliverables comply with all specifications and requirements for those Services and Deliverables set out in this Agreement or otherwise agreed in writing by the parties;
- (g) no Deliverable contains any computer viruses, interruptions, logic bombs, Trojan horses or other forms of malicious code or performance impediments;
- (h) all documentation provided by the Supplier under or in connection with this Agreement will:
 - (i) correctly represent the attributes of the subject matter to which it relates;
 - (ii) provide proper and adequate instructions for its intended purpose; and
 - (iii) be written or delivered in language and at a level appropriate for the intended audience.

10.2 Remedies for failure

If the Supplier breaches any warranty set out in clause 10.1(c) to (h), then, without limiting the Ministry's other rights or remedies:

- (a) the Supplier must promptly remedy the breach at its cost upon receipt of notice in writing from the Ministry requiring the breach to be remedied; and
- (b) if the Supplier fails to remedy the breach to the Ministry's reasonable satisfaction within the time specified in the Ministry's notice given under clause 10.2(a), the Ministry may, without limiting its other rights and remedies, do either or both of the following:
 - (i) withhold any payment due to the Supplier until the matter is resolved to the Ministry's reasonable satisfaction; and
 - (ii) remedy the defect itself, or by contracting a third party to do so, at the Supplier's cost.

10.3 Third party warranties

The Supplier will assign to the Ministry, or if it is unable to do so, will hold for the sole benefit of the Ministry, all warranties and guarantees provided by third parties to the Supplier in respect of the provision of any Services and Deliverables under this Agreement.

10.4 Warranties additional

The express warranties provided by the Supplier under this Agreement are additional to any other warranties or guarantees given by the Supplier.

11. INDEMNITY, LIABILITY AND INSURANCE

11.1 Indemnity

Subject to clause 11.2 and 11.3, the Supplier indemnifies and holds the Ministry and its officers, employees and agents harmless from and against any and all liability, losses, damages, costs and expenses of any nature whatsoever awarded against, incurred or suffered by them, arising out of or resulting from:

- (a) the non-performance or breach by the Supplier of any of its obligations under this Agreement; or
- (b) the negligence of the Supplier or its Personnel or subcontractors.

11.2 Liability

Subject to clause 11.3, each party's liability to the other party for damages (under the law of contract, tort including negligence, equity or otherwise) arising out of or in connection with this Agreement will be limited in aggregate to:

- (a) in the case of the Supplier, the amount specified in Schedule 1;
- (b) in the case of the Ministry, an amount equal to the Charges paid and the Charges payable under this Agreement in the three month period preceding the month in which the relevant cause of action arose,

provided that liability is not limited:

- (c) in the case of wilful default, property damage or fraud;
- (d) in relation to any unauthorised use of the other party's Intellectual Property or Confidential Information; or
- (e) in the case of the Supplier, liability under clause 12.8 (Intellectual Property indemnity).

11.3 Exclusions of liability

Despite any other provision of this Agreement, neither party will be liable to the other (under the law of contract, tort, equity or otherwise) for any damages of any kind arising out of or in connection with this Agreement that are indirect or consequential (meaning not arising in the ordinary course as a direct, natural or probable consequence of the act or omission complained of), regardless of the cause of such damages or whether the other party had been advised of the possibility of such damage.

11.4 Insurance

During the Term and for three years after termination or expiry of this Agreement, the Supplier will maintain insurance coverage in amounts and against risks that are normal for businesses similar to that of the Supplier, and in particular will maintain coverage in respect of public liability and professional indemnity for the amounts specified in Schedule 1. The Supplier will, upon request at any time, provide the Ministry with a certificate from the insurer or insurers confirming the terms of such insurance.

12. INTELLECTUAL PROPERTY

12.1 No change

All Intellectual Property which is owned by, or is proprietary to, the Ministry or Supplier at the date of this Agreement (*Pre-existing Intellectual Property*) will at all times remain owned by that party exclusively.

12.2 New Intellectual Property

Subject to clause 12.1, and except where the Ministry and the Supplier agree otherwise, all Intellectual Property rights in the Deliverables will vest absolutely and exclusively in the Ministry on its creation in material form and without the need for any further act by the Ministry except as required by law.

12.3 Know-how

Subject only to each party's confidentiality obligations under this Agreement, neither party will be restricted from developing or using any techniques, ideas, concepts, information or know-how relating to methods or processes of general application which are recalled only from the memories of their Personnel.

12.4 Trade marks

Neither party shall use any trade mark owned by the other party, except as provided in this Agreement, without first obtaining the other party's consent.

12.5 Licence

To the extent necessary to enable the Ministry to receive the full benefit of the Services and the Deliverables, the Supplier grants the Ministry a non-exclusive, perpetual, irrevocable, world-wide, sub-licensable, transferable and royalty free licence to use, copy, develop and modify all Pre-existing Intellectual Property or other material provided under or in connection with this Agreement in which the Ministry does not own the Intellectual Property.

12.6 Title and risk

The parties agree that title to, and risk in, any media on which any Deliverable is recorded, will pass to the Ministry on delivery to the Ministry, unless otherwise agreed in writing by the parties.

12.7 Warranty

The Supplier warrants that neither the use nor possession of any Deliverable by the Ministry, nor the provision of any Service, infringes the Intellectual Property Rights of any person.

12.8 Intellectual Property indemnity

The Supplier indemnifies the Ministry against all liability, losses, damages, costs and expenses suffered or incurred by the Ministry as a result of any claim or threatened claim alleging that any of the Deliverables or Services, or the Ministry's use or possession of any of them, infringes the Intellectual Property Rights of any person (*IP Claim*).

12.9 Procedure

In the event of an IP Claim, the Ministry will:

- (a) promptly notify the Supplier in writing of the IP Claim and must not make any admission of liability or purport to settle any IP Claim without the Supplier's prior written consent (which will not be unreasonably withheld or delayed);
- (b) at the Supplier's request and expense, allow the Supplier to conduct and/or settle all negotiations and litigation resulting from the IP Claim (excluding any admission of wrongdoing by the indemnified party), provided that the Ministry will be entitled to be represented at, and be consulted on, all such negotiations and litigation; and
- (c) at the request of the Supplier, provide reasonable assistance with such negotiations or litigation, and the Supplier must reimburse the Ministry for its reasonable staff costs and out of pocket expenses of so doing.

12.10 Remedies

If any Deliverables or Services, or the Ministry's use or possession of any of them, infringe the Intellectual Property Rights of any person, or if the Ministry is otherwise unable to enjoy the full benefit of the Services and Deliverables as a result of an IP Claim, the Supplier will, at its expense and without limiting the Ministry's other rights and remedies:

- (a) modify the Deliverables or Services so the Ministry can use them on terms acceptable to the Ministry;
- (b) obtain a licence to enable the Ministry to use the relevant Deliverables or Services on terms acceptable to the Ministry, and pay all fees for that licence; or
- (c) replace the Deliverable with another non-infringing item,

provided that the Supplier must ensure that the remedy does not materially affect the Service or Deliverable or the Ministry's exploitation of it. Without prejudice to any right or remedy, the Ministry may terminate this Agreement if the Supplier is unable to remedy the IP Claim in accordance with this clause 12.10 within two months of the Ministry's request.

13. CONFIDENTIAL INFORMATION

13.1 Confidentiality obligations

Subject to clause 13.2, each party will keep the other party's Confidential Information in the utmost confidence, and will not use or disclose that Confidential Information except as permitted by this Agreement.

13.2 Permitted use and disclosure

Clause 13.1 will not prohibit:

- (a) either party from using or disclosing any information with the express prior written consent of the other party;

- (b) use or disclosure of information that has become generally known to the public other than through a breach of this Agreement;
- (c) either party disclosing information to its Personnel with a need to know, to be used to enable that party to perform its obligations or take the intended benefit of its rights under this Agreement, so long as the disclosing party informs such Personnel of the confidential nature of that information and makes a written record of doing so;
- (d) disclosure compelled by any statute or regulations, or any court order;
- (e) disclosure by the Supplier to the extent necessary to comply with the rules of any stock exchange on which the shares of the Supplier or any of its related companies are listed or quoted;
- (f) disclosure by the Ministry at the request of an officer of parliament, a parliamentary select committee, a royal commission, or a minister of the Crown (including for the purposes of a parliamentary question); and/or
- (g) disclosure by the Ministry of technical and/or operational information describing the Services and Deliverables, for the purpose of enabling a third party to offer or supply goods or services to the Ministry, so long as that third party gives the Ministry an undertaking that it will not use that information or those materials for any other purpose, and will destroy or return that information to the Ministry once it is no longer required for that purpose.

13.3 **Privacy**

To the extent applicable to its activities in connection with this Agreement, the Supplier will comply with all aspects of privacy and data protection legislation governing the collection, use, security and storage of personal information.

13.4 **Misuse or breach**

The Supplier will notify the Ministry in writing immediately upon becoming aware of any:

- (a) potential, threatened or actual misuse or unauthorised disclosure of Confidential Information by any person to whom the Supplier makes any disclosure; or
 - (b) breach of the Supplier's obligations under this clause 13,
- and will co-operate with the Ministry in preventing or limiting such misuse, unauthorised disclosure or breach, at the cost of the Supplier.

13.5 **Equitable relief**

Each party acknowledges that any breach of this clause 13 by the Recipient may cause the Owner irreparable harm for which damages would not be an adequate remedy. In addition to any other remedy available to it, the Owner may seek equitable relief (including injunctive relief or specific performance) against any breach or threatened breach of this clause 13 by the Recipient.

13.6 **No limitation**

Nothing in this clause limits or restricts any rights granted to the Ministry under clause 12.

13.7 **Announcements**

The Supplier must not make any announcement regarding this Agreement to any person, without the Ministry's prior written consent.

14. TERMINATION

14.1 Termination for convenience

The Ministry may terminate this Agreement at any time by giving the Supplier at least 30 days' written notice.

14.2 Termination for Supplier's breach

Without prejudice to any other right or remedy it may have, the Ministry may immediately terminate this Agreement at any time by notice in writing to the Supplier if the Supplier:

- (a) is in material breach of this Agreement and, in the case of a material breach capable of remedy, the material breach is not remedied within 20 Business Days of the Supplier receiving written notice specifying the material breach and requiring its remedy;
- (b) is in material breach of this Agreement and the material breach is not capable of remedy;
- (c) ceases or threatens to cease to carry on all or substantially all of its business or operations;
- (d) is declared or becomes bankrupt or insolvent, is unable to pay its debts as they fall due, enters into a general assignment of its indebtedness or a scheme of arrangement or composition with its creditors, or takes or suffers any similar or analogous action in consequence of debt; or
- (e) has a trustee, manager, administrator, administrative receiver, receiver, inspector under legislation or similar officer appointed in respect of the whole or any part of the Supplier's assets or business, or an order is made or a resolution is passed for the liquidation of the Supplier.

14.3 Termination for the Ministry's breach

Without prejudice to any other right or remedy it may have, the Supplier may immediately terminate this Agreement at any time by giving to the Ministry notice in writing if:

- (a) the Ministry fails to pay any Charges that are not the subject of a dispute between the parties under clause 8.5 by the due date and if:
 - (i) the failure to pay is not remedied within 20 Business Days of the Ministry receiving written notice from the Supplier specifying the failure to pay and requiring payment; and
 - (ii) the failure to pay is not remedied within 20 Business Days of the Ministry receiving a further written notice from the Supplier noting the Ministry's failure to pay within the time period set out in clause 14.3(a)(i), and specifying that failure to pay within 20 Business Days of receipt of the notice under this clause 14.3(a)(ii), may result in the Supplier terminating this Agreement; or
- (b) the Ministry is in material breach of this Agreement, other than a failure to pay any Charges, and the material breach is not remedied within 20 Business Days of the Ministry receiving notice specifying the material breach, requiring its remedy and specifying failure to remedy may result in termination.

14.4 Consequences of termination

On termination or expiry of this Agreement for any reason:

- (a) the Supplier will, subject to clause 14.4(e), cease to provide the Services and Deliverables;
- (b) the Supplier will return to the Ministry all the Ministry Property and other property that the Ministry has provided to the Supplier under or in connection with this Agreement;
- (c) the Supplier will, upon receipt of a written request from the Ministry, return or destroy (at the Ministry's option), all Confidential Information in the possession or control of the Supplier or any Personnel or subcontractor. Upon the return or destruction (as the case may be) of all such Confidential Information, the Supplier will provide to the Ministry a certificate stating that the Confidential Information returned or destroyed comprises all Confidential Information in the possession or control of the Supplier or any Personnel or subcontractor;
- (d) the Supplier will provide such information and assistance as the Ministry requires to allow the Ministry to make an orderly transition of all or any of the Services and Deliverables to the Ministry and/or any nominated alternative service provider, including by using its best endeavours to transfer to the Ministry the benefit of all subcontracts that it has entered in to which relate to the Services and Deliverables where requested to do so by the Ministry; and
- (e) the Supplier will, for up to six months (or for such further period as may be agreed) after termination or expiry, continue to offer the Services and Deliverables to the Ministry, under the terms of this Agreement as the Ministry may reasonably require while the Ministry makes the transition to an alternative service provider, and the Supplier will be entitled to charge the Ministry reasonable rates (as agreed in writing between the parties) for the Services and Deliverables.

14.5 Survival of provisions

Upon termination or expiry of this Agreement for any reason, the provisions of clauses 4.1(c), 8.2, 9.1, 9.2, 9.5 to 9.8, 10, 11, 12, 13.1 to 13.7, 14.4 to 14.6, 15, 17 and Schedule 4 and any other clauses intended to survive termination or expiry, together with those other provisions of this Agreement that are required in order to give effect to those clauses, will remain in full force and effect.

14.6 Accrued rights

Termination or expiry of this Agreement will be without prejudice to the rights and remedies of the parties accrued prior to termination or expiry, including in respect of any prior breach of this Agreement.

15. DISPUTES

15.1 Procedure

If a dispute, disagreement, question, difference or claim arises between the parties in connection to this Agreement or its subject matter (*Dispute*), either party may give the other written notice (*Dispute Notice*) requiring that the

Dispute be determined in accordance with the dispute resolution process set out in Schedule 4.

16. FORCE MAJEURE

16.1 Neither party will be liable to the other for any failure to perform any of its obligations under this Agreement to the extent the failure is caused by a Force Majeure Event, provided that the party seeking to rely on this clause 16.1 has:

- (a) notified the other party as soon as practicable after the Force Majeure Event occurs and provided full information concerning the Force Majeure Event, including an estimate of the time likely to be required to overcome it;
- (b) used its best endeavours to overcome the Force Majeure Event and minimise the loss to the other party; and
- (c) continued to perform its obligations under this Agreement as far as practicable.

16.2 If a Force Majeure Event prevents, or is likely to prevent, either party from complying with its obligations under this Agreement to a material extent for a continuous period of 20 Business Days or more, the other party may terminate this Agreement by giving the non-complying party at least 20 Business Days' notice in writing.

17. GENERAL

17.1 Variations

No amendment to this Agreement will be effective unless it is in writing and signed by the parties.

17.2 Assignment

- (a) The Supplier may not assign, transfer, novate, subcontract, charge, pledge or otherwise encumber this Agreement, or any of its rights or obligations under this Agreement, without first obtaining the Ministry's written consent.
- (b) Any change in the Control of the Supplier will be treated as an assignment by the Supplier under clause 17.2(a).
- (c) the Ministry may assign, transfer or novate any or all of its rights and obligations under this Agreement to any person, agency or regulatory body tasked by the Crown with fulfilling any of the functions of the Ministry by giving notice in writing to the Supplier.

17.3 No waiver

- (a) A delay, neglect or forbearance by a party in enforcing any provision of this Agreement against the other will not waive or limit any right of that party.
- (b) No provision of this Agreement will be considered waived by a party unless that party waives the provision in writing.

- (c) The parties will not treat a waiver by a party of any breach as a waiver of any continuing or re-occurring breach, unless the parties have expressly agreed to do so in writing.

17.4 Invalid clauses

If any part of this Agreement is held to be invalid, unenforceable or illegal for any reason, this Agreement will be deemed to be amended by the addition or deletion of wording necessary to remove the invalid, unenforceable or illegal part, but otherwise to retain the provisions of this Agreement to the maximum extent permissible under applicable law.

17.5 Costs

Each party will bear its own legal costs and expenses incurred in connection with the preparation, negotiation and execution of this Agreement.

17.6 Relationship

- (a) The parties will perform their obligations under this Agreement as independent contractors to each other.
- (b) This Agreement will not create, constitute or evidence any partnership, joint venture, agency, trust or employer/employee relationship between the parties, unless it expressly states otherwise. Neither party may make or allow anyone to represent that any such relationship exists between the parties.
- (c) Neither party will have the authority to act for, or incur any obligation on behalf of, the other party, except as expressly provided for in this Agreement.

17.7 Entire agreement

This Agreement contains the whole of the contract and understanding between the parties in respect of the matters covered by it and supersedes all prior representations, agreements, statements and understandings between the parties in respect of those matters, whether verbal or in writing.

17.8 Remedies cumulative

The rights of the parties under this Agreement are cumulative. The parties do not exclude any rights provided by law, unless otherwise expressly stated in this Agreement.

17.9 Notices

- (a) Any notice, consent, approval, agreement, undertaking, report or other communication given by a party for the purposes of this Agreement will be of no effect unless given in writing and addressed to the recipient at the address last notified by the recipient to the other party. Until a change is so notified, the address of each party is as stated in Schedule 1.
- (b) Delivery may be effected by hand, by post with postage prepaid, or by email. A notice or other communication will be deemed to have been received:

- (i) in the case of hand delivery or pre-paid post sent from outside New Zealand, at the time of actual delivery to the recipient's address;
- (ii) in the case of delivery by pre-paid post sent from within New Zealand, no later than the 2nd Business Day after posting; or
- (iii) in the case of delivery by email, no later than when the recipient's email server acknowledges receipt.

However, if a notice or other communication is received or deemed to have been received after 5 pm on a Business Day in the place to which it is sent, or on a day which is not a Business Day in that place, it will be deemed not to have been received until the next Business Day in that place.

17.10 **Governing Law**

This Agreement is governed by New Zealand law. Subject to clause 15, the parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Agreement.

17.11 **Counterparts**

This Agreement may be signed in any number of counterparts (including email copies) all of which, when taken together, will constitute one and the same agreement. A party may enter into this Agreement by signing any counterpart.

17.12 **Further assurances**

Each party will do all things and execute all documents reasonably necessary to give effect to the terms of this Agreement.

17.13 **Non merger**

The warranties, undertakings and indemnities given under this Agreement will not merge on any completion or settlement under this Agreement or any other agreement between the parties, but will remain enforceable to the fullest extent permissible, despite any rule of law to the contrary.

SIGNATURES

For The Sovereign in right of the Government of New Zealand acting by and through the Secretary for Education :
Signature:
Name:
Position:
Date:

For [Supplier] :
Signature:
Name:
Position:
Date:

Witnessed by:
Name:
Date:

Witnessed by:
Name:
Date:

DRAFT

SCHEDULE 1 – PARTICULARS OF AGREEMENT

Commencement Date	[insert date]
Expiry Date	[insert date] OR: [on the [x] anniversary of the Commencement Date]
Public Liability	\$xx
Professional indemnity	\$xx
Supplier's liability amount	\$xx
Details for notices to Supplier	To the Supplier: Address: Email:
Details for notices to the Ministry	To the Ministry: Address: PO Box 1666, 33 Bowen Street, Wellington 6011 Email: CC:

DRAFT

SCHEDULE 2 - SERVICES AND DELIVERABLES

1. DELIVERABLES

Services

The Services that the Supplier will provide to the Ministry include:

1.1 [Services]

(a) [insert]

(b) [insert]

(c) [etc]

1.2 [Services]

(a)[insert]

(b)[insert]

(c)[etc]

1.3 [etc]

Deliverables

1.4 The Deliverables that the Supplier will provide to the Ministry include:

[Reports, project plans, roadmaps, goods etc i.e. items that are not purely services.]

	Deliverable	Description	Due date
1			
2			
3			
etc			

Documentation

1.5 The Supplier will provide the following documentation to the Ministry:

	Document	Description	Date
1			
2			
etc			

2. Health and safety requirements

In addition to complying with its health and safety obligations under clause 7.2 of the Agreement, the Supplier must also:

[Insert specific health and safety requirements (which should be described in the RFP)]

3. SERVICE LEVELS

The Supplier will meet or exceed the following Service Levels:

[insert]

4. KEY PERSONNEL

The Key Personnel and their respective functions are:

Key Personnel	Role description
[Insert name]	
[Insert name]	
etc	

5. PERFORMANCE REVIEWS

The Supplier is required to participate in the following performance reviews:

- (a) [e.g. annual on [date]]
- (b) [insert others as required]

6. MEETINGS AND REPORTING REQUIREMENTS

6.1 Meeting Requirements

The Supplier's designated representatives will attend the following meetings at the following times:

Meeting	Representative	Frequency/Date
Health and Safety	[Name/party]	
[Insert name]	[Name/party]	
[Insert name]	[Name/party]	
etc		

6.2 Reporting Requirements

The Supplier will provide to the Ministry the following reports at the following times:

Report Details	Frequency/Date
Health and Safety	
[Insert]	
[Insert]	
etc	

SCHEDULE 3 - CHARGES

1 INVOICING

The Supplier is to invoice the Charges:

[OPTION 1: On completion of the Services and supply of the Deliverables to the Ministry's satisfaction.]

OR

[OPTION 2: At the end of each month for Services and Deliverables provided during that month to the Ministry's satisfaction.]

OR

[OPTION 3: In instalments on the dates set out below, subject to completion of the relevant milestones to the Ministry's satisfaction:]

No.	Milestone date	Milestone	Milestone payment (excluding GST)
1		[List the Services and/or Deliverables from Schedule 2 to be provided for milestone to be met]	
2			
3			
etc			

2 CHARGES

[OPTION 1: Fixed Fee of \$X excluding GST.]

OR

[OPTION 2: Hourly Rate of \$X excluding GST, up to a maximum amount of \$X excluding GST.]

OR

[OPTION 3: A daily rate of \$X excluding GST, for each full day's attendances of 8 or more hours, reduced pro rata for attendance of less than 8 hours, up to a total maximum Fee of \$X excluding GST.]

OR

[OPTION 4: Hourly/daily rates: for each of the Personnel in accordance with the following table of rates up to a total maximum amount of \$X excluding GST:]

Personnel	[Hourly/Daily Rate] (excluding GST)

EXPENSES

[OPTION 1: No reimbursement of expenses.

OR

[OPTION 2: Reimbursement for reasonable third party expenses incurred in the provision of the Services and Deliverables provided that:

- (a) the Ministry has given its prior written consent to the Supplier incurring the expenses; and
- (b) the expenses are charged at cost.

OR

[OPTION 3: Reimbursement of the following expenses to the limits set out in respect of each matter:

- (a) Accommodation - \$X;
- (b) Airfares - \$X; and
- (c) [Itemise other expenses] - \$X.

the Ministry is under no obligation to pay for any expense item once the specified expense limit for that item is exceeded.

OR

[OPTION 4: Reimbursement for reasonable third party expenses incurred in the provision of the Services and Deliverables up to a total of \$X provided that the Ministry is under no obligation to pay for any expense item once the total limit for expenses is exceeded.

SCHEDULE 4 - DISPUTE RESOLUTION PROCESS

1 **Negotiation**

The parties will enter into negotiations to resolve the Dispute within 10 Business Days of the Dispute Notice being issued. Negotiations will be held between representatives of the parties (who must have authority to settle the Dispute). The Dispute will be escalated to senior management as necessary.

2 **Mediation**

If:

- (a) the parties agree; and
- (b) the Dispute is not resolved by negotiation within 10 Business Days of receipt of the Dispute Notice,

then the Dispute may be referred to mediation (*Mediation*) by one party giving written notice to the other (*Mediation Notice*). The mediation will be heard as soon as possible in Wellington, New Zealand and conducted in accordance with the protocols of the Arbitrators' and Mediators' Institute of New Zealand Inc (*AMINZ*). The Mediation will be conducted by a mediator, and at a fee, agreed by the parties. If the parties fail to agree such matters within 10 Business Days following the date of the delivery of the Mediation Notice, the Chair for the time being of LEADR New Zealand Incorporated will select the mediator and determine the mediator's fee. The parties will share equally the cost of the mediator's fee.

3 **Arbitration**

If the Dispute:

- (a) has not been resolved within a period of 10 Business Days (or such longer period as the parties may agree) in accordance with paragraph 1 of this Schedule; or
- (b) in accordance paragraph 2 of this Schedule,

then either party may issue a notice (*Arbitration Notice*) referring the Dispute to arbitration.

Each Arbitration Notice will be regarded as a reference of the Dispute to arbitration in accordance with the Arbitration Act 1996 (the *Act*). Each such arbitration will be conducted on the following terms:

- (c) the place of arbitration will be Wellington, New Zealand.
- (d) the tribunal will consist of a sole arbitrator, to be appointed by agreement of the parties, but if the parties fail to reach such agreement within 10 Business Days of the date of the Arbitration Notice, then the arbitrator will

be appointed by the President for the time being, or his or her nominee, of the Arbitrators' and Mediators' Institute of New Zealand Inc.

- (e) the arbitration will be conducted as quickly as possible and, as far as is practicable, the arbitrator will issue his or her award within four months of his or her appointment. When determining the procedure and scheduling of the arbitration, the arbitrator will take this time period into consideration
- (f) each party will pay its own costs in relation to the arbitration
- (g) Clauses 3 (Powers relating to conduct of arbitral proceedings) and 6 (Costs and expenses of an arbitration) of the Second Schedule of the Act will apply to any arbitral proceedings under this Agreement. No other clauses in the Second Schedule will apply.
- (h) The award in the arbitration will be final and binding.

4 Interlocutory relief

Nothing in this Schedule 4 will prevent either party, at any time, from seeking any urgent interlocutory relief from a court of competent jurisdiction in relation to any matter that arises under this Agreement.

5 Continuity

In the event of a dispute between the parties concerning this Agreement, the Supplier will continue to provide the Services and Deliverables unless the Ministry requires otherwise in writing.

6 Without prejudice

Unless and until a Dispute is resolved by an express written agreement of the parties, any and all statements and undertakings made by the parties in connection with the associated Dispute resolution process (excluding any arbitration proceedings) will be deemed to have been made on a "without prejudice" basis.