



Request for Proposals

Formative Evaluation

RE18/03

RFP released: 08-04-2019

Deadline for Questions: 3pm 15-04-2019

Deadline for Proposals: 3pm 29-04-2019

Te Mātāwai
Level 4, Hot Yoga House, 139 Featherston St, Wellington 6011

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This opportunity in a nutshell

What we need

Te Mātāwai is looking to procure a formative evaluation of the implementation of Te Mātāuru, the investment fund that targets home and community-based Māori language revitalisation initiatives, over its first two years of operation. The data, analysis and results of the evaluation will be provided in a comprehensive final report that includes a national focus as well as a focus on our eight Kāhui. The provider will also need to develop eight summaries of the evaluation focusing on the respective analysis and findings for each of the eight Kāhui.

What we don't want

We do not want a generic evaluative approach. We are seeking a formative evaluation through a Kaupapa Māori approach that recognises the mana motuhake and contextual dynamics of our Kāhui that are embedded in our investment model.

We do not want a high-level evaluation with generic recommendations. The recommendations from the evaluation should be realistic and pragmatic.

We do not want a designed research report and findings. We are purchasing the content firstly, and will, with the advice of the successful vendor, appropriately reflect the authorship and development of the evaluation outputs and findings. Therefore proposed budgets should not include print, design or dissemination costs.

What's important to us

Te Mātāwai is looking for credible providers who have the capability, experience and infrastructure to deliver this evaluation project. The evaluation must be able to inform our work to invest in whānau and community activities to revitalise te reo Māori. Therefore recommendations from the evaluation must be realistic and pragmatic.

Why should you bid?

This is a unique opportunity to be part of the revitalisation of te reo Māori in Māori communities across the country. The formative evaluation is critical to ensuring that we are doing our best to deliver on our strategic aims and to support our communities.

A bit about us

Te Mātāwai is an independent statutory entity that provides leadership for te reo Māori revitalisation on behalf of Iwi Māori. It was established in 2016 by Te Ture Mō Te Reo Māori 2016.

Te Mātāwai sits within Te Whare o Te Reo Mauri Ora, a partnership between Crown and Iwi Māori to influence and adopt real change to improve Māori language outcomes for whānau, hapū, iwi, Māori communities and wider society. Te Mātāwai is responsible for the Maihi Māori, the Māori language strategy for iwi, Māori and communities; while the Maihi Karauna coordinates Crown agencies and entities to ensure positive Māori language outcomes at a regional and national level. The Whare o Te Reo Mauri Ora (combining both Maihi Māori and Maihi Karauna) is guided by an overarching strategic vision of *kia ūkaipō anō te reo Māori – te reo Māori is restored as a nurturing first language*.

SECTION 1: Key information



1.1 Context

- a. This Request for Proposal (RFP) is an invitation to suitably qualified suppliers to submit a Proposal for the Formative Evaluation (RE18/03) contract opportunity.
- b. This RFP is a single-step procurement process.
- c. Words and phrases that have a special meaning are shown by the use of capitals e.g. Respondent, which means *'a person, organisation, business or other entity that submits a Proposal in response to the RFP. The term Respondent includes its officers, employees, contractors, consultants, agents and representatives. The term Respondent differs from a supplier, which is any other business in the market place that does not submit a Proposal.'* Definitions are at the end of [Section 6](#).



1.2 Our timeline

- a. Here is our timeline for this RFP.

Steps in RFP process:	Date:
Deadline for Questions from suppliers:	15-04-2019
Deadline for the Buyer to answer suppliers' questions:	22-03-2019
Deadline for Proposals:	3pm 29-04-2019
Unsuccessful Respondents notified of award of Contract:	13-05-2019
Respondents' debriefs:	week starting 11-05-2019
Anticipated Contract start date:	01-06-2019

- b. All dates and times are dates and times in New Zealand.



1.3 How to contact us

- a. All enquiries must be directed to our Point of Contact. We will manage all external communications through this Point of Contact.

- b. **Our Point of Contact**

Name: Jonathan Kilgour

Title/role: Research Manager

Email address: rangahau@tematawai.Māori.nz



1.4 Developing and submitting your Proposal

- a. This is an open, competitive tender process. The RFP sets out the step-by-step process and conditions that apply.
- b. Take time to read and understand the RFP. In particular:
 - i. develop a strong understanding of our Requirements detailed in [Section 2](#).
 - ii. in structuring your Proposal consider how it will be evaluated. [Section 3](#) describes our Evaluation Approach.
- c. For helpful hints on tendering and access to a supplier resource centre go to: www.procurement.govt.nz/for-suppliers.
- d. If anything is unclear or you have a question, ask us to explain. Please do so before the Deadline for Questions. Email our [Point of Contact](#).
- e. In submitting your Proposal you must use the Response Form provided with this RFP document.
- f. You must also complete and sign the declaration at the end of the Response Form.
- g. You must use the pricing schedule template in the Response Form for your pricing information.

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- h. Check you have provided all information requested, and in the format and order asked for.
 - i. Having done the work don't be late – please ensure you get your Proposal to us before the Deadline for Proposals!
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1.5 Address for submitting your Proposal

- a. Proposals must be submitted by email/electronically to the following address:
rangahau@tematawai.Māori.nz
 - b. Proposals sent by post or hard copy delivered to our office, will not be accepted.
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1.6 Our RFP Process, Terms and Conditions

- a. **Offer Validity Period:** In submitting a Proposal the Respondent agrees that their offer will remain open for acceptance by the Buyer for two calendar months from the Deadline for Proposals.
 - b. The RFP is subject to the RFP Process, Terms and Conditions (shortened to RFP-Terms) described in [Section 6](#). We have not made any variation to the RFP-Terms.
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1.7 Later changes to the RFP or RFP process

- a. If, after publishing the RFP, we need to change anything about the RFP, or RFP process, or want to provide suppliers with additional information we will let all suppliers know by emailing all providers registered on our Rangahau Provider distribution list (including all those that indicated an interest in this RFP).
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SECTION 2: Our Requirements

2.1 Background

This procurement relates to the delivery of evaluation content that supports the strategic research agenda of Te Mātāwai in respect of Te Whare o Te Reo Mauri Ora and the Maihi Māori. In particular, Te Mātāwai is focused on developing a knowledge and evidence base that informs Te Mātāwai functions and efforts to revitalise te reo Māori through micro-level language planning and immersion environments.

Under the Maihi Māori, Te Mātāwai has three core functions: Te Mātāuru, Te Mātātupu, and Te Matatū. Te Mātāuru represents the integrated community investments made to revitalise te reo Māori in homes and communities. The investments are guided by a priorities framework, and Kāhui-specific investment plans to meet local needs.

Te Mātāuru is divided into eight Kāhui – seven representing iwi and regional groupings and one representing a sector-based roopu (Te Reo Tukutuku). Each Kāhui has a Pae Motuhake (usually with eight members) with an investment plan to guide annual investments.

Te Mātāuru has a total budget of \$10.78m annually, which is split across the 8 Kāhui. Each Kāhui determines how many applications are funded each year, and the value of the investments. These decisions are then ratified by the Board of Te Mātāwai at the following monthly meeting.

Te Mātāuru is supported centrally by a team of staff at the office of Te Mātāwai in Wellington.

2.2 What we are buying and why

Te Mātāwai is looking to procure a formative evaluation of the implementation of Te Mātāuru over its first two years of operation. The data, analysis and results of the evaluation will be provided in a comprehensive final report that includes a national focus as well as a focus on our eight Kāhui. The provider will also need to develop eight summaries of the evaluation focusing on the respective analysis and findings for each of the eight Kāhui.

Te Mātāwai is seeking a solution that uses Kaupapa Māori methodology and caters to the respective approaches and investment plans across our eight Kāhui. We would therefore expect that the initial phases of the evaluation will codify the intervention logic or theory of change that connects the eight Kāhui investment plans through to the Maihi Māori strategy, and ultimately Te Whare o Te Reo Mauriora.

The formative evaluation must answer our key evaluation questions, using a mix of qualitative and quantitative methods. We expect ongoing updates of emerging findings throughout the evaluation. The final reports must include recommendations, based on the findings of the evaluation, for any changes needed to ensure Te Mātāuru meets its intended objectives.

The evaluation scope includes the Kāhui structure and model, policies, procedures, processes resourcing and decision-making within the model; as well as investment planning and alignment between investment plans and Maihi Māori. It does not include the Te Mātāwai structure, Board structure, appointments, staffing, individual staff performance or individual funding decisions.

The project objectives are to:

- To inform Te Mātāwai and its stakeholders of the achievements of Te Mātāuru to date
- To understand what, if any, changes are required to support achievement of the intended outcomes of Te Mātāuru and the Maihi Māori.

The key evaluation questions are:

- How well is the Maihi Māori, through Te Mātāuru, being implemented?
- How well is the Te Mātāwai governance and implementation model working?
- Was Te Mātāuru implemented and operating as intended?
- Were there any unintended consequences of Te Mātāuru?
- To what extent has the Maihi Māori model and Te Mātāuru achieved what it originally intended?
- How can the model be improved to make it more effective?

Note that there are other evaluative activities that will be operating concurrently, and you may need to communicate with other project leads to ensure consistent communication with stakeholders and to ensure that the works complement each other, make the most of each other's work and minimise any duplication. The other works are: an annual Kaitono survey and journey mapping (elements of process evaluation), an evaluation of a sample of initiatives funded by Te Mātāuru. (a focused outcomes evaluation) and a series of Kāhui wānanga (outcomes evaluation by wānanga).

We have concurrently released an RFP for the Outcomes Wānanga project. Should you think it is feasible, we do welcome joint proposals for the two projects should you consider that the objectives and outcomes for both scopes can be delivered through a single project. If so, please advise us in your proposal that it is a joint proposal and clearly demonstrate in your proposal how you will meet the objectives and outcomes of *both* projects.

2.3 What we require: the project

The project requires the development of (social and cultural) return on investment tool, along with its underpinning framework, assumptions and calculations. The specific outputs that we are expecting are:

- 1 intervention logic model for Te Mātāuru – linking the individual Kāhui investment plans to the Te Mātāuru investment plan and the Maihi Māori
- 1 national full evaluation report that addresses national results and the respective analysis and findings for each Kāhui
- 8 Kāhui evaluation summary reports
- 11 presentations – 8 kāhui and 3 national
- Participation in up to 5 videos on the evaluation results
- Up to 10 photos for each evaluation report to assist promotion

2.4 What we require: capacity

We are seeking suppliers that have the (people) capacity to conduct a formative evaluation within our timeframes. This may require a team of experienced evaluators but will need to have a level of consistency across the evaluation method, while also catering for the respective approaches and contexts of each Kāhui.

2.5 What we require: capability

We are seeking suppliers that have the demonstrated capability and technical expertise to undertake the project. The supplier must have demonstrated evaluation experience and we are especially interested in suppliers that have experience in evaluations across more complex and adaptive dynamics, given that our eight Kāhui have taken a common approach to investment which has been adapted to their own aims and contexts. The supplier must also have demonstrated capability and experience in Kaupapa Māori evaluation.

2.6 Contract term

We anticipate that the Contract will commence in June 2019. The anticipated Contract term and options to extend are:

Description	Years
Anticipated term of the Contract	Up to 12 months
Options to extend the Contract	No option to extend

2.7 Key outcomes

The following are the anticipated key outcomes that are to be delivered.

Description	Indicative date for delivery
Commence contract	June 2019
Project plan	August 2019
Theory of Change/ Intervention Logic Developed	September 2019
Relationship building and scheduling complete	October 2019
Fieldwork complete	December 2019
Draft national report and summary reports completed	March 2020
Final national report and summary reports completed, videos completed	April 2020
Presentations completed	June 2020

2.8 Other information

- a. The estimated value of this project is up to \$500,000.
- b. The project can be delivered from any location. However, proposals must include travel estimates based on planned travel to undertake the evaluation at the Kāhui level, and to meet with Te Mātāwai in person in Wellington at key points of the project.
- c. Payment will be on successful delivery of milestones.
- d. New Intellectual Property arising as a result of the Contract will be the property of Te Mātāwai.
- e. The contract is to purchase the content. Any design, translation and publishing will be the responsibility of Te Mātāwai in consultation with the Supplier.
- f. Any outputs that Te Mātāwai produces from the content will duly acknowledge the Supplier.

2.9 Other tender documents

There are no other tender documents.

SECTION 3: Our Evaluation Approach

This section sets out the Evaluation Approach that will be used to assess Proposals.

3.1 Evaluation model

The evaluation model that will be used is a weighted attribute method for non-price criteria following which a value narrative method will be used to compare Proposal prices and non-price scores and determine which combination of price and non-price score represents the best fit for purpose and value for money.

3.2 Pre-conditions

There are no identified pre-conditions for evaluating bids.

3.3 Evaluation criteria

Proposals will be evaluated on their merits according to the following evaluation criteria and weightings.

Criterion	Weighting
1. Technical merit (fit for purpose)	40%
Degree to which good/services meet our requirements (25%)	
Quality of goods/services, including methodology used (10%)	
Additional value that the proposed solution will achieve beyond meeting our requirements (5%)	
2. Capability of the supplier to deliver	40%
Assurance project deliverables will be met, including ability to commence work immediately when the contract is in place and can recruit additional staff should they need (10%)	
Demonstrates that they and any of their staff have the relevant skills and experience, relationships and networks that are relevant to the research projects (10%)	
Demonstrates a sound understanding of Māori language revitalisation knowledge, practise and experience and sound understanding Māori research paradigms, language and culture surveys (10%)	
Provides evidence of strong links with iwi/hapū and relevant community and stakeholder groups (5%)	
Demonstrates confidence in te reo Māori (5%)	
3. Capacity of the supplier to deliver	20%
Assurance project deliverables will be met, including ability to commence work immediately when the contract is in place (15%)	
Contingency plans in place to recruit staff should the need arise (5%)	
Total weightings	100%

3.4 Scoring

The following scoring scale will be used in evaluating Proposals. Scores by individual panel members may be modified through a moderation process across the whole evaluation panel.

Description	Definition	Rating
Excellent	Exceeds the requirement. Exceptional demonstration by the supplier of the relevant ability, understanding, experience, skills, resource and quality measures required to provide the goods / services. Response identifies factors that will offer potential added value, with supporting evidence.	9-10
Good	Satisfies the requirement with minor additional benefits. Above average demonstration by the supplier of the relevant ability, understanding, experience, skills, resource and quality measures required to provide the goods / services. Response identifies factors that will offer potential added value, with supporting evidence.	7-8
Acceptable	Satisfies the requirement. Demonstration by the supplier of the relevant ability, understanding, experience, skills, resource and quality measures required to provide the goods / services, with supporting evidence.	5-6
Minor reservations	Satisfies the requirement with minor reservations. Some minor reservations of the supplier's relevant ability, understanding, experience, skills, resource and quality measures required to provide the goods / services, with little or no supporting evidence.	3-4
Serious reservations	Satisfies the requirement with major reservations. Considerable reservations of the supplier's relevant ability, understanding, experience, skills, resource and quality measures required to provide the goods / services, with little or no supporting evidence.	1-2
Unacceptable	Does not meet the requirement. Does not comply and/or insufficient information provided to demonstrate that the supplier has the ability, understanding, experience, skills, resource and quality measures required to provide the goods / services, with little or no supporting evidence.	0

Innovation

3.5 Price

We wish to obtain the best value-for-money over the whole-of-life of the Contract. This means achieving the right combination of fit for purpose, quality, on time delivery, quantity and price.

If a Respondent offers a price that is substantially lower than other Proposals (an abnormally low bid), the Buyer may seek to verify with the Respondent that the Respondent is capable of fully delivering all of the Requirements and meeting all of the conditions of the Proposed Contract for the price quoted.

3.6 Evaluation process and due diligence

In addition to the above, we will undertake the following process and due diligence in relation to shortlisted Respondents. The findings will be taken into account in the evaluation process.

- a. reference check the Respondent organisation and named personnel

3.7 Optional evaluation process and due diligence

In addition to the above, we may undertake the following process and due diligence in relation to shortlisted Respondents. The findings will be taken into account in the evaluation process. Should we decide to undertake any of these we will give shortlisted Respondents reasonable notice.

- a. other checks against the Respondent e.g. Companies Office
- b. interview Respondents
- c. request Respondents make a presentation
- d. inspect audited accounts for the last three financial years
- e. undertake a credit check
- f. undertake a Police check for all named personnel.

SECTION 4: Pricing information

1.1 Pricing information to be provided by respondents

Respondents are to provide their price as part of their Proposal. In submitting the Price the Respondent must meet the following:

- a. Respondents are to use the pricing schedule template provided.
- b. the pricing schedule is to show a breakdown of all costs, fees, expenses and charges associated with the full delivery of the Requirements over the whole-of-life of the Contract. This should include all direct costs such as (but not limited to) travel, accommodation, licenses and annual costs incurred in the production and delivery of the contract. It must also clearly state the total Contract price exclusive of GST.
- c. where the price, or part of the price, is based on fee rates, all rates are to be specified, either hourly or daily or both as required.
- d. in preparing their Proposal, Respondents are to consider all risks, contingencies and other circumstances relating to the delivery of the Requirements and include adequate provision in the Proposal and pricing information to manage such risks and contingencies.
- e. respondents are to document in their Proposal all assumptions and qualifications made about the delivery of the Requirements, including in the financial pricing information. Any assumption that the Buyer or a third party will incur any cost related to the delivery of the Requirements is to be stated, and the cost estimated if possible.
- f. prices should be tendered in NZ\$. Unless otherwise agreed, the Buyer will arrange contractual payments in NZ\$.
- g. where a Respondent has an alternative method of pricing (i.e. a pricing approach that is different to the pricing schedule) this can be submitted as an alternative pricing model. However, the Respondent must also submit a pricing schedule that conforms.
- h. where two or more Respondents intend to lodge a joint or consortium Proposal the pricing schedule is to include all costs, fees, expenses and charges chargeable by all Respondents.

SECTION 5: Our Proposed Contract

5.1 Proposed Contract

The following is the Proposed Contract that we intend to use for the purchase and delivery of the Requirements.

In submitting your Proposal you must let us know if you wish to question and/or negotiate any of the terms or conditions in the Proposed Contract, or wish to negotiate new terms and/or conditions. The Response Form contains a section for you to state your position. If you do not state your position you will be deemed to have accepted the terms and conditions in the Proposed Contract in full.

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. 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 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 declared 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
- 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 or the Buyer, 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 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 in respect of any expenses, damage or liability incurred by the Buyer in connection with any third party claim that the delivery of the Services or Deliverables to the Buyer or the Buyer'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 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 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 BusinessDay.

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 ExtraordinaryEvent.

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 thisContract
- 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 givingNotice.

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 inwriting.

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 Zealandtime.

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 an 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 and is 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, 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

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.

SECTION 6: RFP Process, Terms and Conditions

Note to suppliers and Respondents

- e. In managing this procurement the Buyer will endeavour to act fairly and reasonably in all of its dealings with interested suppliers and Respondents, and to follow due process which is open and transparent.
- f. This section contains the government's standard RFP Process, Terms and Conditions (shortened to RFP-Terms) which apply to this procurement. Any variation to the RFP-Terms will be recorded in Section 1, [paragraph 1.6](#). Check to see if any changes have been made for this RFP.
- g. Words and phrases that have a special meaning are shown by the use of capitals e.g. Respondent, which means 'a person, organisation, business or other entity that submits a Proposal in response to the RFP. The term Respondent includes its officers, employees, contractors, consultants, agents and representatives. The term Respondent differs from a supplier, which is any other business in the market place that does not submit a Proposal.' [Definitions](#) are at the end of this section.
- h. If you have any questions about the RFP-Terms please email our [Point of Contact](#).

Standard RFP process



Preparing and submitting a proposal

a. Preparing a Proposal

- a. Respondents are to use the Response Form provided and include all information requested by the Buyer in relation to the RFP.
- b. By submitting a Proposal the Respondent accepts that it is bound by the RFP Process, Terms and Conditions (RFP-Terms) contained in Section 6 (as varied by Section 1, paragraph 1.6, if applicable).
- c. Each Respondent will:
 - a. examine the RFP and any documents referenced in the RFP and any other information provided by the Buyer
 - b. consider all risks, contingencies and other circumstances relating to the delivery of the Requirements and include adequate provision in its Proposal to manage such risks and contingencies
 - c. document in its Proposal all assumptions and qualifications made about the delivery of the Requirements, including any assumption that the Buyer or a third party will deliver any aspect of the Requirements or incur any cost related to the delivery of the Requirements
 - d. ensure that pricing information is quoted in NZ\$ exclusive of GST
 - e. if appropriate, obtain independent advice before submitting a Proposal
 - f. satisfy itself as to the correctness and sufficiency of its Proposal, including the proposed pricing and the sustainability of the pricing.
- d. There is no expectation or obligation for Respondents to submit Proposals in response to the RFP solely to remain on any prequalified or registered supplier list. Any Respondent on such a list will not be penalised for failure to submit a Proposal.

b. Offer Validity Period

- i. Proposals are to remain valid and open for acceptance by the Buyer for the Offer Validity Period.

c. Respondents' Deadline for Questions

- iii. Each Respondent should satisfy itself as to the interpretation of the RFP. If there is any perceived ambiguity or uncertainty in the RFP document/s Respondents should seek clarification before the Deadline for Questions.
- iv. All requests for clarification must be made by email to the Buyer's Point of Contact. The Buyer will endeavour to respond to requests in a timely manner, but not later than the deadline for the Buyer to answer Respondents' questions in Section 1, paragraph 1.2.a, if applicable.
- v. If the Buyer considers a request to be of sufficient importance to all Respondents it may provide details of the question and answer to other Respondents. In doing so the Buyer may summarise the Respondent's question and will not disclose the Respondent's identity. The question and answer may be posted on GETS and/or emailed to participating Respondents. A Respondent may withdraw a request at any time.
- vi. In submitting a request for clarification a Respondent is to indicate, in its request, any information that is commercially sensitive. The Buyer will not publish such commercially sensitive information. However, the Buyer may modify a request to eliminate such commercially sensitive information, and publish this and the answer where the Buyer considers it of general significance to all Respondents. In this case, however, the Respondent will be given an opportunity to withdraw the request or remove the commercially sensitive information.

d. Submitting a Proposal

- a. Each Respondent is responsible for ensuring that its Proposal is received by the Buyer at the correct address on or before the Deadline for Proposals. The Buyer will acknowledge receipt of each Proposal.
- b. The Buyer intends to rely on the Respondent's Proposal and all information provided by the Respondent (e.g. correspondence and negotiations). In submitting a Proposal and communicating with the Buyer each Respondent should check that all information it provides to the Buyer is:
 - 6 true, accurate and complete, and not misleading in any material respect
 - 7 does not contain Intellectual Property that will breach a third party's rights.
- c. Where the Buyer requires the Proposal to be delivered in hard and soft copies, the Respondent is responsible for ensuring that both the hard and soft copies are identical.
- d. Where the Buyer stipulates a two envelope RFP process the following applies:
 - each Respondent must ensure that all financial information and pricing components of its Proposal are provided separately from the remainder of its Proposal
 - financial information and pricing must be contained either in a separate sealed envelope or as a separate soft copy file (whichever option has been requested by the Buyer)
 - the pricing information must be clearly marked 'Financial and Pricing Information.' This is to ensure that the pricing information cannot be viewed when the package containing the other elements of the Proposal is opened.

Assessing Proposals

e. Evaluation panel

- a. The Buyer will convene an evaluation panel comprising members chosen for their relevant expertise and experience. In addition, the Buyer may invite independent advisors to evaluate any Proposal, or any aspect of any Proposal.

f. Third party information

- a. Each Respondent authorises the Buyer to collect additional information, except commercially sensitive pricing information, from any relevant third party (such as a referee or a previous or existing client) and to use that information as part of its evaluation of the Respondent's Proposal.
- b. Each Respondent is to ensure that all referees listed in support of its Proposal agree to provide a reference.
- c. To facilitate discussions between the Buyer and third parties each Respondent waives any confidentiality obligations that would otherwise apply to information held by a third party, with the exception of commercially sensitive pricing information.



g. Buyer's clarification

- a. The Buyer may, at any time, request from any Respondent clarification of its Proposal as well as additional information about any aspect of its Proposal. The Buyer is not required to request the same clarification or information from each Respondent.
- b. The Respondent must provide the clarification or additional information in the format requested. Respondents will endeavour to respond to requests in a timely manner. The Buyer may take such clarification or additional information into account in evaluating the Proposal.
- c. Where a Respondent fails to respond adequately or within a reasonable time to a request for clarification or additional information, the Buyer may cease evaluating the Respondent's Proposal and may eliminate the Proposal from the RFP process.



h. Evaluation and shortlisting

- The Buyer will base its initial evaluation on the Proposals submitted in response to the RFP. The Buyer may adjust its evaluation of a Proposal following consideration of any clarification or additional information as described in paragraphs 6.6 and 6.7.
- In deciding which Respondent/s to shortlist the Buyer will take into account the results of the evaluations of each Proposal and the following additional information:
 - a. each Respondent's understanding of the Requirements, capability to fully deliver the Requirements and willingness to meet the terms and conditions of the Proposed Contract
 - b. except where the price is the only criterion, the best value-for-money over the whole-of-life of the goods or services.
- In deciding which Respondent/s, to shortlist the Buyer may take into account any of the following additional information:
 - f. the results from reference checks, site visits, product testing and any other due diligence
 - g. the ease of contracting with a Respondent based on that Respondent's feedback on the Proposed Contract (where these do not form part of the weighted criteria)
 - h. any matter that materially impacts on the Buyer's trust and confidence in the Respondent
 - i. any other relevant information that the Buyer may have in its possession.
- The Buyer will advise Respondents if they have been shortlisted or not. Being shortlisted does not constitute acceptance by the Buyer of the Respondent's Proposal, or imply or create any obligation on the Buyer to enter into negotiations with, or award a Contract for delivery of the Requirements to any shortlisted Respondent/s. At this stage in the RFP

process the Buyer will not make public the names of the shortlisted Respondents.



i. Negotiations

- a. The Buyer may invite a Respondent to enter into negotiations with a view to contract. Where the outcome is unsatisfactory the Buyer may discontinue negotiations with a Respondent and may then initiate negotiations with another Respondent.
- b. The Buyer may initiate concurrent negotiations with more than one Respondent. In concurrent negotiations the Buyer will treat each Respondent fairly, and:
 - c. prepare a negotiation plan for each negotiation
 - d. advise each Respondent, that it wishes to negotiate with, that concurrent negotiations will be carried out
 - e. hold separate negotiation meetings with each Respondent.
- c. Each Respondent agrees that any legally binding contract entered into between the Successful Respondent and the Buyer will be essentially in the form set out in Section 5, the Proposed Contract.



j. Respondent's debrief

- a. At any time after shortlisting Respondents the Buyer will offer all Respondents who have not been shortlisted a debrief. Each Respondent will have 30 Business Days, from the date of offer, to request a debrief. When a Respondent requests a debrief, the Buyer will provide the debrief within 30 Business Days of the date of the request, or of the date the Contract is signed, whichever is later.
- b. The debrief may be provided by letter, email, phone or at a meeting. The debrief will:
 - c. provide the reasons why the Proposal was or was not successful
 - d. explain how the Proposal performed against the pre-conditions (if applicable) and the evaluation criteria
 - e. indicate the Proposal's relative strengths and weaknesses
 - f. explain, in general terms, the relative advantage/s of the successful Proposal
 - g. seek to address any concerns or questions from the Respondent
 - h. seek feedback from the Respondent on the RFP and the RFP process.



k. Notification of outcome

- a. At any point after conclusion of negotiations, but no later than 30 Business Days after the date the Contract is signed, the Buyer will inform all unsuccessful Respondents of the name of the Successful Respondent, if any. The Buyer may make public the name of the Successful Respondent and any unsuccessful Respondent. Where applicable, the Buyer will publish a Contract Award Notice on GETS.



l. Issues and complaints

- a. A Respondent may, in good faith, raise with the Buyer any issue or complaint about the RFP, or the RFP process at any time.
- b. The Buyer will consider and respond promptly and impartially to the Respondent's issue or complaint.
- c. Both the Buyer and Respondent agree to act in good faith and use their best endeavours to resolve any issue or complaint that may arise in relation to the RFP.
- d. The fact that a Respondent has raised an issue or complaint is not to be used by the Buyer to unfairly prejudice the Respondent's ongoing participation in the RFP process or future contract opportunities.

Standard RFP conditions



m. Buyer's Point of Contact

- a. All enquiries regarding the RFP must be directed by email to the Buyer's Point of Contact. Respondents must not directly or indirectly approach any representative of the Buyer, or any other person, to solicit information concerning any aspect of the RFP.
- b. Only the Point of Contact, and any authorised person of the Buyer, are authorised to communicate with Respondents regarding any aspect of the RFP. The Buyer will not be bound by any statement made by any other person.
- c. The Buyer may change the Point of Contact at any time. The Buyer will notify Respondents of any such change. This notification may be posted on GETS or sent by email.
- d. Where a Respondent has an existing contract with the Buyer then business as usual communications, for the purpose of managing delivery of that contract, will continue using the usual contacts. Respondents must not use business as usual contacts to lobby the Buyer, solicit information or discuss aspects of the RFP.



n. Conflict of Interest

- a. Each Respondent must complete the Conflict of Interest declaration in the Response Form and must immediately inform the Buyer should a Conflict of Interest arise during the RFP process. A material Conflict of Interest may result in the Respondent being disqualified from participating further in the RFP.

o. Ethics

- a. Respondents must not attempt to influence or provide any form of personal inducement, reward or benefit to any representative of the Buyer in relation to the RFP.
- b. A Respondent who attempts to do anything prohibited by paragraphs 6.13.a. and d. and 6.15.a. may be disqualified from participating further in the RFP process.
- c. The Buyer reserves the right to require additional declarations, or other evidence from a Respondent, or any other person, throughout the RFP process to ensure probity of the RFP process.

p. Anti-collusion and bid rigging

- a. Respondents must not engage in collusive, deceptive or improper conduct in the preparation of their Proposals or other submissions or in any discussions or negotiations with the Buyer. Such behaviour will result in the Respondent being disqualified from participating further in the RFP process. In submitting a Proposal the Respondent warrants that its Proposal has not been prepared in collusion with a Competitor.
- b. The Buyer reserves the right, at its discretion, to report suspected collusive or anti-competitive conduct by Respondents to the appropriate authority and to give that authority all relevant information including a Respondent's Proposal.

q. Confidential Information

- a. The Buyer and Respondent will each take reasonable steps to protect Confidential Information and, subject to paragraph 6.17.c. and without limiting any confidentiality undertaking agreed between them, will not disclose Confidential Information to a third party without the other's prior written consent.
- b. The Buyer and Respondent may each disclose Confidential Information to any person who is directly involved in the RFP process on its behalf, such as officers, employees, consultants, contractors, professional advisors, evaluation panel members, partners, principals or directors, but only for the purpose of participating in the RFP.
- c. Respondents acknowledge that the Buyer's obligations under paragraph 6.17.a. are subject to requirements imposed by the Official Information Act 1982 (OIA), the Privacy Act 1993, parliamentary and constitutional convention and any other obligations imposed by law. The Buyer will not be in breach of its obligations if Confidential Information is

disclosed by the Buyer to the appropriate authority because of suspected collusive or anti-competitive tendering behaviour. Where the Buyer receives an OIA request that relates to a Respondent's Confidential Information the Buyer will consult with the Respondent and may ask the Respondent to explain why the information is considered by the Respondent to be confidential or commercially sensitive.



r. Confidentiality of RFP information

- a. For the duration of the RFP, to the date of the announcement of the Successful Respondent, or the end of the RFP process, the Respondent agrees to keep the RFP strictly confidential and not make any public statement to any third party in relation to any aspect of the RFP, the RFP process or the award of any Contract without the Buyer's prior written consent.
- b. A Respondent may disclose RFP information to any person described in paragraph 6.17.b. but only for the purpose of participating in the RFP. The Respondent must take reasonable steps to ensure that such recipients do not disclose Confidential Information to any other person or use Confidential Information for any purpose other than responding to the RFP.

s. Costs of participating in the RFP process

- a. Each Respondent will meet its own costs associated with the preparation and presentation of its Proposal and any negotiations.

t. Ownership of documents

- a. The RFP and its contents remain the property of the Buyer. All Intellectual Property rights in the RFP remain the property of the Buyer or its licensors. The Buyer may request the immediate return or destruction of any or all RFP documents and any copies. Respondents must comply with any such request in a timely manner.
- b. All documents forming the Proposal will, when delivered to the Buyer, become the property of the Buyer. Proposals will not be returned to Respondents at the end of the RFP process.
- c. Ownership of Intellectual Property rights in the Proposal remain the property of the Respondent or its licensors. However, the Respondent grants to the Buyer a non-exclusive, non-transferable, perpetual licence to retain, use, copy and disclose information contained in the Proposal for any purpose related to the RFP process.

u. No binding legal relations

- i. Neither the RFP, nor the RFP process, creates a process contract or any legal relationship between the Buyer and any Respondent, except in respect of:
 - i. the Respondent's declaration in its Proposal
 - ii. the Offer Validity Period
 - iii. the Respondent's statements, representations and/or warranties in its Proposal and in its correspondence and negotiations with the Buyer
 - iv. the Evaluation Approach to be used by the Buyer to assess Proposals as set out in Section 3 and in the RFP-Terms (as varied by Section 1, paragraph 1.6, if applicable)
 - v. the standard RFP conditions set out in paragraphs 6.13 to 6.26
 - vi. any other matters expressly described as binding obligations in Section 1, paragraph 1.6.
- ii. Each exception in paragraph 6.21.a. is subject only to the Buyer's reserved rights in paragraph 6.23.
- iii. Except for the legal obligations set out in paragraph 6.21.a. no legal relationship is formed between the Buyer and any Respondent unless and until a Contract is entered into between those parties.



v. Elimination

- 3 The Buyer may exclude a Respondent from participating in the RFP if the Buyer has evidence of any of the following, and is considered by the Buyer to be material to the RFP:
 - 4 the Respondent has failed to provide all information requested, or in the correct format, or materially breached a term or condition of the RFP
 - 5 the Proposal contains a material error, omission or inaccuracy
 - 6 the Respondent is in bankruptcy, receivership or liquidation
 - 7 the Respondent has made a false declaration
 - 8 there is a serious performance issue in a historic or current contract delivered by the Respondent
 - 9 the Respondent has been convicted of a serious crime or offence
 - 10 there is professional misconduct or an act or omission on the part of the Respondent which adversely reflects on the integrity of the Respondent
 - 11 the Respondent has failed to pay taxes, duties or other levies
 - 12 the Respondent represents a threat to national security or the confidentiality of sensitive government information
 - 13 the Respondent is a person or organisation designated as a terrorist by New Zealand Police.

w. Buyer's additional rights

- i. Despite any other provision in the RFP the Buyer may, on giving due notice to Respondents:
 - c. amend, suspend, cancel and/or re-issue the RFP, or any part of the RFP
 - d. make any material change to the RFP (including any change to the timeline, Requirements or Evaluation Approach) on the condition that Respondents are given a reasonable time within which to respond to the change.
- ii. Despite any other provision in the RFP the Buyer may:
 - a. accept a late Proposal if it is the Buyer's fault that it is received late
 - b. in exceptional circumstances, accept a late Proposal where it considers that there is no material prejudice to other Respondents. The Buyer will not accept a late Proposal if it considers that there is risk of collusion on the part of a Respondent, or the Respondent may have knowledge of the content of any other Proposal
 - c. in exceptional circumstances, answer a question submitted after the Deadline for Questions, if applicable
 - d. accept or reject any Proposal, or part of a Proposal
 - e. accept or reject any non-compliant, non-conforming or alternative Proposal
 - f. decide not to accept the lowest priced conforming Proposal unless this is stated as the Evaluation Approach
 - g. decide not to enter into a Contract with any Respondent
 - h. liaise or negotiate with any Respondent without disclosing this to, or doing the same with, any other Respondent
 - i. provide or withhold from any Respondent information in relation to any question arising in relation to the RFP. Information will usually only be withheld if it is deemed unnecessary, is commercially sensitive to a Respondent, is inappropriate to supply at the time of the request or cannot be released for legal reasons
 - j. amend the Proposed Contract at any time, including during negotiations with a shortlisted Respondent

- k. waive irregularities or requirements in or during the RFP process where it considers it appropriate and reasonable to do so.
- iii. The Buyer may request that a Respondent/s agrees to the Buyer:
 - 6 selecting any individual element/s of the Requirements that is offered in a Proposal and capable of being delivered separately, unless the Proposal specifically states that the Proposal, or elements of the Proposal, are to be taken collectively
 - 7 selecting two or more Respondents to deliver the Requirements as a joint venture or consortium.



x. **New Zealand law**

- i. The laws of New Zealand shall govern the RFP and each Respondent agrees to submit to the exclusive jurisdiction of the New Zealand courts in respect of any dispute concerning the RFP or the RFP process.

y. **Disclaimer**

- a. The Buyer will not be liable in contract, tort, equity, or in any other way whatsoever for any direct or indirect damage, loss or cost incurred by any Respondent or any other person in respect of the RFP process.
- b. Nothing contained or implied in the RFP, or RFP process, or any other communication by the Buyer to any Respondent shall be construed as legal, financial or other advice. The Buyer has endeavoured to ensure the integrity of such information. However, it has not been independently verified and may not be updated.
- c. To the extent that liability cannot be excluded, the maximum aggregate liability of the Buyer, its agents and advisors is \$1.

z. **Precedence**

- i. Any conflict or inconsistency in the RFP shall be resolved by giving precedence in the following descending order:
 - i. Section 1, paragraph 1.6
 - ii. Section 6 (RFP-Terms)
 - iii. all other Sections of this RFP document
 - iv. any additional information or document provided by the Buyer to Respondents through the Buyer’s Point of Contact or GETS.
- ii. If there is any conflict or inconsistency between information or documents having the same level of precedence the later information or document will prevail.

Definitions

In relation to the RFP the following words and expressions have the meanings described below.

Advance Notice A notice published by the buyer on GETS in advance of publishing the RFP. An Advance Notice alerts the market to a contract opportunity. Where used, an Advance Notice forms part of the RFP.

Business Day Any week day in New Zealand, excluding Saturdays, Sundays, New Zealand (national) public holidays and all days from Boxing Day up to and including the day after New Year’s Day.

Buyer The Buyer is the government agency that has issued the RFP with the intent of purchasing the goods or services described in the Requirements. The term Buyer includes its officers, employees, contractors, consultants, agents and

	representatives.
Competitors	Any other business that is in competition with a Respondent either in relation to the goods or services sought under the RFP or in general.
Confidential Information	<p>Information that:</p> <ol style="list-style-type: none"> 1. is by its nature confidential 2. is marked by either the Buyer or a Respondent as ‘confidential’, ‘commercially sensitive’, ‘sensitive’, ‘in confidence’, ‘top secret’, ‘secret’, classified’ and/or ‘restricted’ 3. is provided by the Buyer, a Respondent, or a third party in confidence 4. the Buyer or a Respondent knows, or ought to know, is confidential. <p>Confidential information does not cover information that is in the public domain through no fault of either the Buyer or a Respondent.</p>
Conflict of Interest	<p>A Conflict of Interest arises if a Respondent’s personal or business interests or obligations do, could, or be perceived to, conflict with its obligations to the Buyer under the RFP or in the provision of the goods or services. It means that the Respondent’s independence, objectivity or impartiality can be called into question. A Conflict of Interest may be:</p> <ul style="list-style-type: none"> ▪ actual: where the conflict currently exists ▪ potential: where the conflict is about to happen or could happen, or ▪ perceived: where other people may reasonably think that a person is compromised.
Contract	The written Contract/s entered into by the Buyer and Successful Respondent/s for the delivery of the Requirements.
Contract Award Notice	Government Rules of Sourcing, Rule 45 requires a Buyer to publish a Contract Award Notice on GETS when it has awarded a contract that is subject to the Rules.
Deadline for Proposals	The deadline that Proposals are to be delivered or submitted to the Buyer as stated in Section 1, paragraph 1.2.
Deadline for Questions	The deadline for suppliers to submit questions to the Buyer as stated in Section 1, paragraph 1.2, if applicable.
Evaluation Approach	The approach used by the Buyer to evaluate Proposals as described in Section 3 and in Section 6 (as varied by Section 1, paragraph 1.6, if applicable).
GETS	Government Electronic Tenders Service available at www.gets.govt.nz
GST	The goods and services tax payable in accordance with the New Zealand Goods and Services Tax Act 1985.
Intellectual Property	All intellectual property rights and interests, including copyright, trademarks, designs, patents and other proprietary rights, recognised or protected by law.
Offer Validity Period	The period of time when a Proposal (offer) is held open by the Respondent for acceptance by the Buyer as stated in Section 1, paragraph 1.6.
Point of Contact	The Buyer and each Respondent are required to appoint a Point of Contact. This is the channel to be used for all communications during the RFP process. The Buyer’s Point of Contact is identified in Section 1, paragraph 1.3. The Respondent’s Point of Contact is identified in its Proposal.
Price	The total amount, including all costs, fees, expenses and charges, to be charged by the Successful Respondent for the full delivery of the Requirements. Each

	Respondent's Proposal must include its Price.
Proposal	The response a Respondent submits in reply to the RFP. It comprises the Response Form, the Respondent's bid, financial and pricing information and all other information submitted by a Respondent.
Proposed Contract	The Contract terms and conditions proposed by the Buyer for the delivery of the Requirements as described in Section 5.
RFP	Means the Request for Proposal.
Registration of Interest	A formal request by a Buyer asking potential suppliers to register their interest in a procurement. It is the first step in a multi-step tender process.
Request for Proposal (RFP)	The RFP comprises the Advance Notice (where used), the Registration of Interest (where used), this RFP document (including the RFP-Terms) and any other schedule, appendix or document attached to this RFP, and any subsequent information provided by the Buyer to Respondents through the Buyer's Point of Contact or GETS.
RFP-Terms	Means the Request for Proposal - Process, Terms and Conditions as described in Section 6.
RFP Process, Terms and Conditions (shortened to RFP-Terms)	The government's standard process, terms and conditions that apply to RFPs as described in Section 6. These may be varied at the time of the release of the RFP by the Buyer in Section 1, paragraph 1.6. These may be varied subsequent to the release of the RFP by the Buyer on giving notice to Respondents.
Requirements	The goods and/or services described in Section 2 which the Buyer intends to purchase.
Respondent	A person, organisation, business or other entity that submits a Proposal in response to the RFP. The term Respondent includes its officers, employees, contractors, consultants, agents and representatives. The term Respondent differs from a supplier, which is any other business in the market place that does not submit a Proposal.
Response Form	The form and declaration prescribed by the Buyer and used by a Respondent to respond to the RFP, duly completed and submitted by a Respondent as part of the Proposal.
Successful Respondent	Following the evaluation of Proposals and successful negotiations, the Respondent/s who is awarded a Contract/s to deliver all or part of the Requirements.