

**Ministry for Primary Industries**  
Manatū Ahu Matua



*Growing and Protecting New Zealand*

**AGREEMENT FOR SERVICES**

**BETWEEN**

**HER MAJESTY THE QUEEN** in right of New Zealand acting by and through the Minister for Primary Industries and the Minister's authorised delegates at the Ministry for Primary Industries ("**MPI**").

**AND**

**[FULL LEGAL NAME OF CONTRACTOR]**, having NZBN **[insert number]** (the "**Contractor**").

**AGREEMENT**

The Contractor will provide the Services on the terms and conditions set out in the following Schedules:

**Schedule 1: Specific Terms**

**Schedule 2: General Terms**

**SIGNATURE**

**SIGNED** for and on behalf of **MPI** by the person named below, being a person duly authorised to enter obligations on behalf of MPI:

**SIGNED** for and on behalf of the **Contractor** by the person named below, being a person duly authorised to enter obligations on behalf of the Contractor:

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Signature

Name:

Title:

Date:

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Signature

Name:

Title:

Date:

## SCHEDULE 1: SPECIFIC TERMS

### 1. BACKGROUND

MPI wishes to provide funding to primary industries businesses in earthquake-affected regions for recovery, long term land use planning, and technical advice. This funding is to enable farmers, growers, and foresters to access professional advisory services, if their properties are within the Hurunui, Kaikoura and Marlborough regions and affected/disrupted by the earthquakes in November 2016. MPI will pay the Contractor to provide such services, up to the value of \$5,000 per property.

### 2. TERM

Commencement Date: [Insert date]

End Date: [Insert date]

### 3. CONTACT DETAILS

The initial contact persons for each Party are below.

	Contract Manager
MPI	[Name] [Title] [Address] Phone: [TBC] Email: [TBC]
Contractor	[Name] [Title] [Address] Phone: [TBC] Email: [TBC]

### 4. SERVICES

#### 4.1. Services to MPI

Each time a Client requests that the Contractor perform Services, the Contractor will:

- provide each Client with a quote or estimate for the Services; and
- provide a copy of the quote or estimate to MPI.

If both MPI and the Client approve, the Contractor may commence performing Services for that Client.

#### 4.2. [Optional] Services to Clients

In addition to any Services described in the Contractor's Application Form, the Contractor may provide the following types of Services to Clients:

- [X]
- [X]

### 5. PRICE

The Contractor may invoice MPI on or by the 5th Business Day following the month in which Services were provided to Clients, provided that:

- the total of all Invoices from the Contractor in respect of each Client are for no more than \$5000 (plus GST, if any);
- together with the Invoices the Contractor provides MPI with:
  - the Agreement number (if any);
  - a summary of the Services provided to that Client and the period during which those Services were provided;
  - written evidence that the Client has received and is satisfied with the Contractor's Services;
  - the relevant charges (and, in respect of any charges calculated on the basis of time spent, the hours worked and applicable hourly rates).

## 6. Reporting

The Contractor will report to MPI as follows, and as otherwise reasonably required by MPI, in any format reasonably required by MPI and at no cost to MPI:

Type of Report	Report To	Due Date
<b>Schedule of up-coming work</b> Provide a summary sheet of work to be undertaken and completed in the next calendar month, including number of properties, locations, estimated individual costs and total monthly invoice costs of all jobs.	MPI Contract Manager	The last Business Day of each month
<b>Summary of individual work completed</b> A summary sheet of work completed for each work request is to be completed, detailing any recommendations and/or findings (template to be provided by MPI)	MPI Contract Manager	Submit with invoices
<b>Work requests for approval</b> A copy of the work request form completed by the farmer (template to be provided by MPI) is to be provided to MPI	MPI Contract Manager	Submit for approval once quote or estimate has been completed for work requester

MPI may request documentary evidence from the Contractor in relation to any item reported against.

## SCHEDULE 2: GENERAL TERMS

### 1. DEFINITIONS

In this Agreement, unless the context requires otherwise:

**Agreement** means this agreement including all schedules, annexes, appendices and attachments.

**Application Form** means the document of the same name completed and submitted by the Contractor, prior to execution of this Agreement, to become an MPI-approved supplier of advisory services.

**Business Day** means any day not being a Saturday or Sunday, a public holiday observed in Wellington, or the period from 26 to 31 December each year.

**Client** means a farmer, grower, forester, or other primary producer within the Hurunui, Kaikoura and Marlborough regions who was adversely affected by the earthquake in November 2016.

**Commencement Date** means the commencement date for this Agreement as specified in Schedule 1.

**Contractor's Contract Manager** means the person identified in Schedule 1 under the heading Contact Details.

**Confidential Information** includes the terms of this Agreement and any information exchanged during the negotiation of this Agreement, and, in relation to each Party, means information provided by, obtained from, or relating to that Party, that becomes known to the other Party under or in connection with this Agreement, which:

- a) is by its nature confidential or is provided in confidence;
- b) is marked as 'confidential', 'in confidence', 'restricted', 'commercial in confidence' or with a similar designation;
- c) the other Party knows or ought to know is confidential; or
- d) is commercially sensitive to that Party.

**Conflict of Interest** in relation to the Contractor means any conflict of the Contractor's interests or obligations with its responsibilities under this Agreement and in providing the Services such that the Contractor's 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.

**Control** means the power to directly or indirectly manage the operation of the Contractor's business or control the composition of the Contractor's board of directors or board of management.

**End Date** means (subject to clause 4.1) the earlier of the end date set out in Schedule 1, or if applicable the date of effective termination of this Agreement.

**GST** means goods and services tax payable at the applicable rate pursuant to the Goods and Services Tax Act 1985.

**Invoice** means a tax invoice as defined in the Goods and Services Tax Act 1985.

**MPI's Contract Manager** means the person identified in Schedule 1 under the heading Contact Details.

**Personnel** of any person, means all individuals directly or indirectly engaged by that person. Examples include: directors, employees, contract staff, agents, consultants, specialists, support staff and co-opted or seconded staff.

**Price** means the price payable by MPI, including expenses (if any), as specified in Schedule 1.

**Services** includes both services provided to MPI and professional services provided to Clients (of the type described in the Contractor's Application Form, and as may be set out more particularly in Schedule 1).

**Term** has the meaning given in clause 4.1.

## **2. INTERPRETATION**

In this Agreement, unless the context requires otherwise:

- a) to the extent that there is any conflict or ambiguity between the two Schedules, Schedule 2 will take priority unless Schedule 1 expressly states otherwise. If any other part of this Agreement is contrary to or inconsistent with any other part of this Agreement, then Schedule 2 will prevail;
- b) a reference to any statute, regulation, or expression of government policy includes any amendments, re-enactments or replacements of that statute, regulation, or expression of government policy from time to time.

## **3. ENTERING THIS AGREEMENT**

3.1. Each Party represents and warrants that it is authorised to enter into and perform its obligations under this Agreement.

3.2. The Contractor represents and warrants that:

- a) all information that was provided by the Contractor to MPI prior to MPI's execution of this Agreement, including in the Application Form, is accurate, complete, and true; and
- b) during the Term, the Contractor will maintain the capability, capacity, and key personnel described in the Application Form.

The Contractor acknowledges that MPI is entering into this Agreement in reliance on these representations and warranties, and that a breach of the same will be a material breach of this Agreement.

## **4. TERM**

4.1. This Agreement commences on the Commencement Date, and, unless terminated in accordance with this Agreement, will remain in force until the close of the End Date, at which time it shall automatically expire. MPI will not be liable to pay the Price for any Services provided before the Commencement Date, but may choose to at its discretion.

## **5. PROVISION OF THE SERVICES**

5.1. The Contractor will supply the Services on the terms and conditions of this Agreement.

5.2. The Contractor will ensure that:

- a) the Services are provided promptly with due diligence, care and skill; by appropriately trained, qualified, experienced and supervised persons; and to MPI's satisfaction and meeting the requirements set out in this Agreement and as reasonably specified by MPI in writing from time to time;
- b) all information it provides as part of the Services is factually correct and contains no material omissions.

5.3. The Contractor must:

- a) provide MPI with all information relating to the Services as requested by MPI from time to time, and provide the information immediately if the information is required by MPI to comply with its statutory, parliamentary or other reporting obligations;
- b) consult with and keep MPI informed about all aspects of the Services as appropriate or as reasonably required by MPI;
- c) notify MPI promptly of any actual or anticipated issues that could receive media attention;
- d) provide all equipment and resources necessary to provide the Services;
- e) comply with the Standards of Integrity and Conduct issued by the State Services Commission (see [www.ssc.govt.nz](http://www.ssc.govt.nz));
- f) advise MPI of any change to the criminal record of the Contractor or its Personnel during the term of this Agreement.

## **6. PRICE AND PAYMENT**

6.1. The Price specifies the total amount payable by MPI for the provision of the Services. All costs, disbursements and other expenses incurred by the Contractor are deemed included in the Price.

6.2. Subject to clause 6.3, MPI will pay by the 20th day of the month the Contractor's Invoices received on or before the 5<sup>th</sup> Business Day of that month. Payment by MPI is not evidence that the Services to which the invoice relates have been provided in accordance with this Agreement.

- 6.3. If MPI has a bona fide dispute in relation to all or any portion of any Invoice, whether in relation to the performance of the Services, the accuracy of the Invoice or otherwise, MPI may withhold payment of the amount subject to the dispute, provided that:
- a) MPI will pay the undisputed amount when it becomes due and payable (and the Contractor will, if requested by MPI, issue a separate Invoice in respect of the undisputed amount); and
  - b) the Contractor will continue to perform its obligations under this Agreement while the dispute is resolved.
- 6.4. The Contractor will provide MPI with all information MPI may require to check the time spent, the rate charged and the overall computation of the time based charges. MPI will not be required to make payment of any time based charges for which the Contractor is unable to provide appropriate timesheets, third party invoices and any other reasonable supporting documentation.

## **7. SUBCONTRACTORS**

- 7.1. The Contractor may not subcontract any of its obligations under this Agreement unless such subcontracting was disclosed in its Application Form, or if MPI gives its prior written approval.
- 7.2. The Contractor must ensure that each subcontract it enters into is on terms that are consistent with this Agreement to the extent relevant and material for the performance of the subcontractor's obligations, and each subcontract restricts the ability of the subcontractor to further subcontract its obligations.
- 7.3. The Contractor will not be relieved of any of its liabilities or obligations under this Agreement by entering into any subcontract.

## **8. CONFLICTS OF INTEREST**

- 8.1. The Contractor warrants that as at the Commencement Date it has no Conflict of Interest other than as disclosed in its Application Form, and must do its best to avoid situations that may lead to any Conflict of Interest arising during the Term. The Contractor must immediately notify MPI in writing of any matter, event or circumstance that gives rise to any Conflict of Interest.

## **9. COMPLIANCE WITH LAWS**

- 9.1. The Contractor will ensure that in performing its obligations under this Agreement it will comply with all relevant laws, regulations, and codes and standards of practice in New Zealand and any other relevant jurisdiction. The Contractor is responsible for ensuring that every necessary and prudent authorisation (including consents, permits and licences) is obtained to allow the Contractor to perform its obligations under this Agreement.

## **10. CONFIDENTIALITY**

- 10.1. Each Party will keep confidential and secure and not use or disclose to any third party any of the other Party's Confidential Information except:
- a) to its professional advisers or Personnel directly concerned with the implementation or operation of this Agreement and to the extent necessary for performing its obligations under this Agreement;
  - b) as required by law, court order, other legal obligation, or Ministerial request, or parliamentary rules or convention;
  - c) under the Official Information Act 1982;
  - d) to the extent necessary to subcontract to parties as approved by MPI in accordance with this Agreement;
  - e) where the information subsequently becomes part of the public domain through no fault of the Party receiving the information;
  - f) in accordance with any procurement rules or guidance endorsed by Cabinet.
- 10.2. The Contractor will comply with the Privacy Act 1993 when performing Services, and will not disclose any personal information acquired under to this Agreement to any person other than MPI, or the individual to whom the information relates, except with MPI's consent or in accordance with the Privacy Act 1993.
- 10.3. Each Party acknowledges that a breach of any obligation of confidence under this Agreement may cause the other Party irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to any claim for damages and any other remedies available at law or equity, the non-breaching Party may seek specific performance or injunctive relief against any breach or threatened breach by the other Party, its Personnel, agents or contractors of this clause 10. Each Party undertakes to provide the other Party with any assistance possible in any such action against any of that first Party's Personnel, agents or contractors.

## **11. MEDIA RELATIONS**

- 11.1. The Contractor must obtain MPI's prior written approval before making any public reference to MPI or this Agreement, including in the Contractor's publications, public statements, promotional material or promotional activities.
- 11.2. Neither Party may post on websites, social networking sites or publicly display objectionable or derogatory comments about the Services, this Agreement, each other, or any of their Personnel.
- 11.3. The Contractor will refer any enquiries from the media or any other person about the terms or performance of this Agreement to the MPI Contract Manager. If the MPI Contract Manager cannot be contacted, the Contractor will instead contact the person holding the office of MPI National Procurement and Contracts Manager.

## **12. LIABILITY**

- 12.1. The Contractor will be liable to MPI for the acts, defaults and omissions of its Personnel, agents and subcontractors, as fully as if they were the acts, defaults or omissions of the Contractor.
- 12.2. Under no circumstances will MPI be liable under or in connection with this Agreement for any indirect damages, nor for any loss of business, opportunity, income, savings, or profit. Subject to the foregoing, MPI's liability to the Contractor arising under or in connection with this Agreement will be limited to the amount actually paid to the Contractor under this Agreement at the time the liability arose.
- 12.3. The Contractor indemnifies MPI against all cost, loss, damage, and expense in relation to the Services provided to Clients, including against any claim by a Client against MPI in relation to the Services.
- 12.4. The limitations and exclusions of liability in this clause 12 apply irrespective of how liability arises, whether in contract, equity, tort (including negligence), statutory duty or otherwise.

## **13. INSURANCE**

- 13.1. The Contractor must effect and maintain insurance with a reputable insurer sufficient to cover its obligations under this Agreement for the Term and for three years after, including but not limited to its liabilities and indemnities under this Agreement.

## **14. TERMINATION**

- 14.1. Where MPI has a right to terminate this Agreement, that right shall be deemed to include the right to temporarily suspend in whole or in part the operation of this Agreement, without prejudice to that Party's right to later terminate this Agreement in its entirety.
- 14.2. MPI may terminate this Agreement at its convenience and without cause by giving 10 Business Days' written notice to the Contractor.
- 14.3. Either Party may terminate this Agreement, immediately on written notice to the other Party, where the other Party commits a breach of this Agreement that:
  - a) is not capable of being remedied (in the reasonable opinion of the terminating Party) and has a material adverse effect on the terminating Party; or
  - b) is capable of being remedied, but has not been remedied to the terminating Party's reasonable satisfaction within 10 Business Days (or such longer period as the terminating Party may allow in writing) of the non-defaulting Party giving the defaulting Party written notice:
    - (i) stating the nature of the breach, what is required to remedy it and the time and date by which it must be remedied; and
    - (ii) which must be given within three months after the non-defaulting Party became aware of the breach.
- 14.4. MPI may terminate this Agreement immediately on written notice to the Contractor, if the Contractor:
  - a) becomes insolvent or bankrupt; has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed; becomes subject to any form of external administration; or becomes unable to pay its debts as they become due or is presumed to be unable to pay its debts under section 287 of the Companies Act 1993;
  - b) ceases to carry on business of the type or within the scope of which the Services fall, or if MPI is not satisfied that the Contractor's business or any aspect of it remains compatible with performance of the Services;
  - c) fails or is unable to rectify any deficiency in the Services uncovered by MPI as a result of an audit conducted under clause 16;
  - d) does something, or fails to do something, that, in MPI's opinion, results in damage to MPI's reputation or business, or the reputation or business of the New Zealand government;

- e) has any Conflict of Interest that:
  - (i) in MPI's opinion is so material as to impact adversely on the delivery of the Services, MPI or the New Zealand government;
  - (ii) the Contractor failed to notify MPI of; or
  - (iii) in MPI's opinion, the Contractor is unable or unwilling to resolve or deal with as required by MPI acting reasonably;
- f) assigns this Agreement other than in accordance with clause 18.4, or is subject to a change of Control; or
- g) provides information to MPI that is misleading or inaccurate in any material respect.

## **15. EFFECT OF EXPIRY OR TERMINATION**

15.1. On giving or receiving a notice of termination, the Contractor must stop providing the Services; and immediately do everything reasonably possible to reduce its losses, costs and expenses arising from the termination of this Agreement.

15.2. On the End Date:

- a) all payments outstanding or incurred prior to the End Date will become immediately due and payable on a daily pro-rata basis calculated up to the End Date;
- b) MPI will only be liable to pay the Price that was due for Services provided before the End Date, and the Contractor will promptly provide MPI with a refund in respect of anything paid in respect of the period after the End Date;
- c) each Party will on request of the other Party return to the other Party all of the other Party's property (including any Intellectual Property) and information (including Confidential Information) obtained under this Agreement, except:
  - i) for Intellectual Property whose license under this Agreement extends beyond the End Date; or
  - ii) for copies of information held for record keeping purposes only; or
  - iii) as otherwise permitted by this Agreement, and
- d) each Party will deal with the property or information referred to in subclause (c) above in a manner reasonably requested by the other Party including (if requested by the other Party) providing a certificate from that Party's Contract Manager to the effect that the obligation in paragraph (c) has been complied with.

15.3. Expiry or termination of this Agreement will not:

- a) prejudice any other rights and remedies of the Parties under this Agreement or otherwise provided by law; or
- b) affect any part of this Agreement which expressly, or by its nature, survives termination or expiry, including clauses 10, 11, 12, 13, 15, 16, 17, and 18.

## **16. RECORDKEEPING AND AUDIT**

16.1. The Contractor must keep and maintain full, accurate, and up to date records, including financial records, in relation to the provision of Services and all monies paid and payable by MPI under or in relation to this Agreement.

16.2. At any time during the term of this Agreement, or after the End Date where the Parties are in dispute, any Personnel or authorised agent of MPI may conduct an audit for the purpose of:

- a) determining the Contractor's compliance with this Agreement and whether Services invoiced for by the Contractor have been supplied according to this Agreement; or
- b) assisting in resolving a matter in dispute between the Parties.

16.3. During an audit conducted under this clause 16, MPI may:

- a) enter any premises of the Contractor or its subcontractors used in connection with provision of the Services at any reasonable time during Business Hours;
- b) inspect any records held under clause 16.1 in relation to the provision of Services or any matter in dispute between the Parties;
- c) meet with and/or contact and speak to any or all Personnel involved with provision of the Services.



## **17. NOTICES**

- 17.1. Any notice or other communication under this Agreement will be deemed to be validly given if in writing and delivered by hand, registered mail, national post or email (subject to the remainder of this clause 17) to the receiving Party's Contract Manager as specified in Schedule 1.
- 17.2. Unless the contrary is shown, any notice will be deemed to have been given on the date when actually delivered personally or by registered mail, on the second Business Day following posting to a national address, and on the date that receipt of an emailed notice is acknowledged by the recipient personally (that is, not by any automatically generated system email).
- 17.3. The Parties agree that no notice required or permitted to be given pursuant to clause 14 (Termination) may be given by email.

## **18. MISCELLANEOUS**

- 18.1. Except to the extent expressly provided for in this Agreement, this Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, representations, and understandings, whether written or oral.
- 18.2. Only a Party to this Agreement may enforce, and have any benefit of, this Agreement.
- 18.3. Nothing in this Agreement creates an employment, fiduciary, partnership, agency or joint venture relationship between MPI and the Contractor. Neither Party has authority to bind or represent the other Party in any way or for any purpose. This Agreement is not an exclusive arrangement between the Parties and MPI may enter into contracts with third parties in respect of the same or similar Services.
- 18.4. The Contractor may not assign any of its rights under this Agreement without MPI's prior written approval.
- 18.5. The Contractor will notify MPI as soon as reasonably practicable of any expected change of Control of the Contractor, and notify promptly of any actual change of Control of the Contractor.