

## CORPORATE OFFICE

Level 1  
32 Oxford Terrace  
Christchurch Central  
CHRISTCHURCH 8011

Telephone: 0064 3 364 4160  
Fax: 0064 3 364 4165  
[Ralph.LaSalle@cdhb.health.nz](mailto:Ralph.LaSalle@cdhb.health.nz)

22 October 2020

9(2)(a)

### RE Official information request CDHB 10379

I refer to your email dated 5 August 2020 requesting the following information under the Official Information Act from Canterbury DHB. Specifically:

1. From the start of 2019 to today's date (5 August 2020), details of all work the board has engaged EY to do.
  - a. Please list each engagement by date and provide details of the board's request, including letters of engagement and terms of reference.
4. Please provide copies of any reports produced by EY from this work – in a searchable format.

Please find attached:

**Appendix 1** the Canterbury DHB All of Government (AoG) Consultancy Services Order (CSO) dated 27 May 2020 for "Independent assessment of taskforce work programme". The estimated cost for this contract with Ernst Young is \$230,785 excluding GST and disbursements

### REPORT:

The Ernst Young (EY) review/report dated 30 June 2020 remains subject to ongoing review/verification/discussions between Canterbury DHB and Ernst Young. It also forms the basis of ongoing discussions between Canterbury DHB, the Ministry of Health and the Minister of Health (including relating to the 2020/21 Annual Plan yet to be finalised and approved by the Minister). We are therefore declining your request pursuant to sections 9(2)(i)(j) of the Official Information Act i.e.

*(i) ... enable a Minister of the Crown or any department or organisation holding the information to carry out, without prejudice or disadvantage, commercial activities; or*

*(j) ....enable a Minister of the Crown or any department or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)*

**Appendix 2:** the Canterbury DHB All of Government (AoG) Consultancy Services Order (CSO) dated May 2019 for “Regional Planning Framework Development **Phase one**. The estimated cost for this contract with Ernst Young was \$101,202 excluding GST and disbursements.

The Regional Planning Framework Phase One Overview 13-3-2019 – Presentation to the Alliance Board and ALT (CEs) outlining what would be delivered under Phase 1 (Proof of Concept) and discussing next steps into Phase 2 (Operational Model) for the ‘visualisation toolset’. Please find attached as **Appendix 2a**.

**Appendix 3:** the Canterbury DHB All of Government (AoG) Consultancy Services Order (CSO) dated 14 June 2019 for “Regional Planning Framework Development – Phase two”. The estimated cost for this contract with Ernst Young was \$203,934.50 excluding GST and disbursements.

#### **REPORTS:**

Ernst Young were not asked to deliver a report, but it was agreed that they would utilise their access to the national datasets to support the development of a data visualisation tool for the South Island. The product was developed to allow SI DHBs to interrogate the dataset at a range of levels to support local, but more particularly regional level analysis and decision making around services. The toolset is made available to the DHB analysts as well as the SI Alliance Programme Office.

**Appendix 4:** the Canterbury DHB All of Government (AoG) Consultancy Services Order (CSO) dated October 2019 for “Holidays Act compliance project – Phase 1. The estimated cost for this contract with Ernst Young was a range of \$229,977 - \$259,823 excluding GST and disbursements.

#### **REPORTS:**

##### **Appendix 4a: Holidays Act Review Findings Report October 2020 (Phase one)**

**Please note:** The other output mentioned in the ‘AoG Consultancy orders Agreement’ for the Holidays Act Review Phase (previously provided) is a liability assessment. We are withholding this document as it remains subject to ongoing review/verification/discussions between Canterbury DHB and Ernst Young. It also forms the basis of ongoing discussions between Canterbury DHB, the Ministry of Health and the Minister of Health (including relating to the 2020/21 Annual Plan yet to be finalised and approved by the Minister). We are therefore declining your request pursuant to sections 9(2)(i)(j) of the *Official Information Act*. i.e. (i) ... enable a Minister of the Crown or any department or organisation holding the information to carry out, without prejudice or disadvantage, commercial activities; or (j) ....enable a Minister of the Crown or any department or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)

**Please note:** For the Regional Planning Framework Agreement – this is a South Island Alliance decision to engage, not a Canterbury DHB decision, although Canterbury DHB is the contracting party. Canterbury DHB is liable for a Population Based Funding Formula (PBFF) share of the costs (currently 46.7% of regionally committed expenditure), with the balance being invoiced to the other South Island DHBs.

For reference, the South Island Alliance is the name of the regional collaboration framework agreed by the SI DHBs and does not represent a separate entity. The SI Alliance provides the method for working collectively and collaboratively on a range of projects and programmes.

**2. Please state what kind of procurement process was used for this work.**

The procurement process was via the All of Government (AOG) panel as it met the criteria. This enables the Canterbury DHB to select from a panel of pre-approved providers who have been selected following a process run by Ministry of Business, Innovation and Employment (MBIE).

**3. How much has EY invoiced to date for this work?**

The amount invoiced by Ernst Young in the period 1 January 2019 to 1 September 2020 (excluding GST, but including disbursements and AOG administration fees).

Independent Assessment of Taskforce Work Programme	-	\$240,598
Regional Planning Framework Development February – March 2019	-	\$106,267
June – September 2019	-	\$209,659
Holidays Act Compliance December 2019 – March 2020	-	\$262,002

**Please note** we have redacted information pursuant to section 9(2)(a) of the Official Information Act i.e. *“... to protect the privacy of natural persons, including those deceased.”* And section 9(2)(b) and 9(2)(b)(ii) i.e. *“....to protect the commercial position of the person who supplied the information, or who is the subject of the information”*.

I trust this satisfies your interest in this matter.

You may, under section 28(3) of the Official Information Act, seek a review of our decision to withhold information by the Ombudsman. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz); or Freephone 0800 802 602.

Please note that this response, or an edited version of this response, may be published on the Canterbury DHB website after your receipt of this response.

Yours sincerely



Ralph La Salle  
**Acting Executive Director**  
**Planning, Funding & Decision Support**

## AoG Consultancy Services Order (CSO)

### Part A – for Participating Agency (client) to complete

The Participating Agency (referred to as the client in Parts A – E of this Consultancy Services Order) will complete this and email the entire form (including all Parts) to the Provider.

<b>Today's Date</b>	27 May 2020	<b>CSO or Project name</b>	Independent assessment of taskforce work programme
<b>Agency</b>	Canterbury DHB	<b>Provider</b>	Ernst & Young Ltd
<b>Agency contact name and title</b>	Barry Bragg	<b>Provider contact name and title</b>	9(2)(a) [REDACTED]
	Chair of the Quality, Finance and Risk Committee (Executive contact to be confirmed)		Partner
<b>Agency email address</b>	9(2)(a) [REDACTED] john.hansen@cdhb.health.nz	<b>Provider email address</b>	9(2)(a) [REDACTED]
<b>Agency phone #</b>		<b>Provider phone #</b>	9(2)(a) [REDACTED]
<b>Sub Category</b>	Finance & Economics	<b>GCIO Assurance Sub Panel</b>	



## **A1. Purpose and any background information**

### **Taskforce Programme**

In 2019, alongside the Ministry of Health and EY, CDHB completed an operational review and sustainability plan with the aim to reduce the deficit by \$62.5m over four years. This would bring the forecast deficit to nil pre-interest, depreciation and capital charge (IDCC, approximately \$130m).

The outcomes of the review pointed to five key drivers of the deficit:

- Transition costs (earthquake and infrastructure related)
- FTE growth against forecast
- Sickness
- Resourcing (notably forecasting/deployment of resource relative to demand)
- Annual leave management

To address this deficit, CDHB has established five taskforce groups, each looking at a specific area where savings could be made. The taskforce groups are:

- Absenteeism
- Continuous improvement
- Resource optimisation
- Planning and funding contracts
- Revenue optimisation.

Each taskforce group has identified key areas of focus and developed savings targets for each financial year until FY23 (inclusive).

Progress is being monitored against the savings targets as outlined in the transition plans. The Board receives regular progress reports via the Quality, Finance and Risk Committee (QFARC).

### **Impacts of COVID-19**

The impact of COVID-19 and preparing for an outbreak has been disruptive to CDHB operations. Understanding the impact of COVID-19 on planned spending and the cost implications for addressing the backlog of deferred planned care will be critical to moving towards a more sustainable financial position.

### **Capital and use of the EQ Revenue**

CDHB lost a number of buildings in the 2010/11 earthquakes and many of their remaining buildings have earthquake damage. CDHB continues to operate in buildings that do not meet the required building standard for their Importance Level (IL) rating and are at risk of further damage and life safety hazard in another major earthquake. Under the Building Amendment Act (2016), CDHB are required to complete mandatory compliance and earthquake repairs by 2025.

The quantum of remaining EQ Revenue available to support urgent compliance works in earthquake damaged buildings is not clear to the Board. Previous decisions about how this fund has been allocated are not currently visible to the Board, and as such, how the fund has been spent and what remains will be a focus of this review.

### **Financial delegations policy**

The CE has delegations for Capital projects up to \$1m. The Board has expressed a desire to understand how the DHB's financial delegations policy compares with other large DHBs, and whether the policy needs to be adjusted to give the Board greater visibility of operational and capital spending decisions. As such, a fitness of purpose of the DHB's financial delegations policy will be undertaken.

### Benefits of an independent assessment

With some progress already achieved against targets and annual planning underway, now is an optimal time to stress test the programme to provide certainty to the Board that targets can be met and identify further opportunities for savings.

### A2. Specific questions / instructions for Provider

EY has permission to use information that has been gathered by EY for other assignments at Canterbury DHB (i.e. capital infrastructure and planning).

### A3. Additional Information e.g. risks to client, additional contact information

All information provided to EY will be treated in confidence.

### A4. Client specific requirements

All information provided to EY will be treated in confidence.

### A5. Timeframes

This engagement will start on 30 March 2020 and be completed by 5 June 2020. Further subsequent components of the project may be required and will be scoped as required by the Project Sponsor and EY, with timeframes agreed through variation to this CSO.

### A6. Indicative budget

The budget for this project is up to \$228,500 excluding GST and any disbursements. The budget consists of the following sub-components:

Taskforce review	\$180,000
EQ fund review and delegations policy	\$38,500
Impacts of COVID-19	\$10,000
<b>Total</b>	<b>\$228,500</b>

This budget is based on All of Government (AoG) rates which have been previously agreed for use across Government and District Health Boards. The AoG rates have been used in previous engagements at CDHB. EY will invoice on a time and materials basis, with regular reporting on progress against budget. Disbursements will be charged at cost.

EY will provide a timely estimate of any changes in professional fees resulting from material changes to scope or engagement activities, with such changes in scope or activities agreed to in advance by the Project Sponsor.

Indicative budgets for any subsequent components of the project will be scoped as required by the Project Sponsor and EY, with budgets and related conditions agreed through variation to this CSO.

**A7. Outputs of the Services**

The output of the Services will be written materials documenting EY's advice as per the Specific Services detailed in Section B.1.

**A8. Tables****A9. Provider liability cap**

The default liability cap(s) set out in Part F apply.

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## **Part B – for Provider to complete**

*The Provider will complete Part B and email the form back to the client*

### **B1. Specific Services to be provided**

#### **Scope**

#### ***Taskforce Programme***

To provide confidence of taskforce work programmes are delivering the expected benefits for long-term financial sustainability at Canterbury DHB and progress against targets, it is proposed that a review cover the following areas:

1. An assessment of the savings already claimed, whether the savings can be realised against DHB's deficit including an assessment of the longevity and sustainability of each savings initiative
  - Assessment of planned activity to achieve identified initiatives
2. An assessment of the current structure in place for the identification, implementation and the ongoing tracking of initiatives contained within each taskforce. The assessment would recognise interdependencies in the delivery of initiatives, indicate trade-offs and highlight the risks both clinical and financial, in a standardised approach. This assessment would be made in the context of the ease of implementation for savings initiatives and their potential financial benefit.
  - Assessment of the internal structures and coordinating mechanisms to deliver initiatives, with clear lines of accountability
  - Assessment of the ongoing delivery structure required to maintain delivery and provide assurance to the Board and Ministry
3. An assessment of the alignment of initiatives contained within each taskforce and the underlying drivers of cost, including the identification of areas of opportunity where the DHBs costs are disproportionately high:
  - An assessment of whether projected savings will offset real cost growth
4. An assessment of further opportunities for savings and service improvement and whether opportunities exist where variation in performance is greater than expected across the DHB.
5. Understanding the impact of the taskforce streams for projected expenditure, with clear tracking of expected benefits for longer term financial sustainability.
  - Assessment of the recurrent nature of savings initiatives.

#### ***Other areas that will be included in the review***

The Board has expressed a desire to look at a number of other areas that are critical to understanding the decisions and circumstances that have led to CDHB's current financial position, and a future path towards a sustainable programme of capital works and financial performance. These areas are:

1. EQ revenue
  - A review of receipt and allocation of EQ revenue, including an assessment of the allocation of funding after each drawdown from the Ministry of Health
  - A review of the approval process for each allocation
  - Remaining revenue available for projects

## 2. Financial delegations

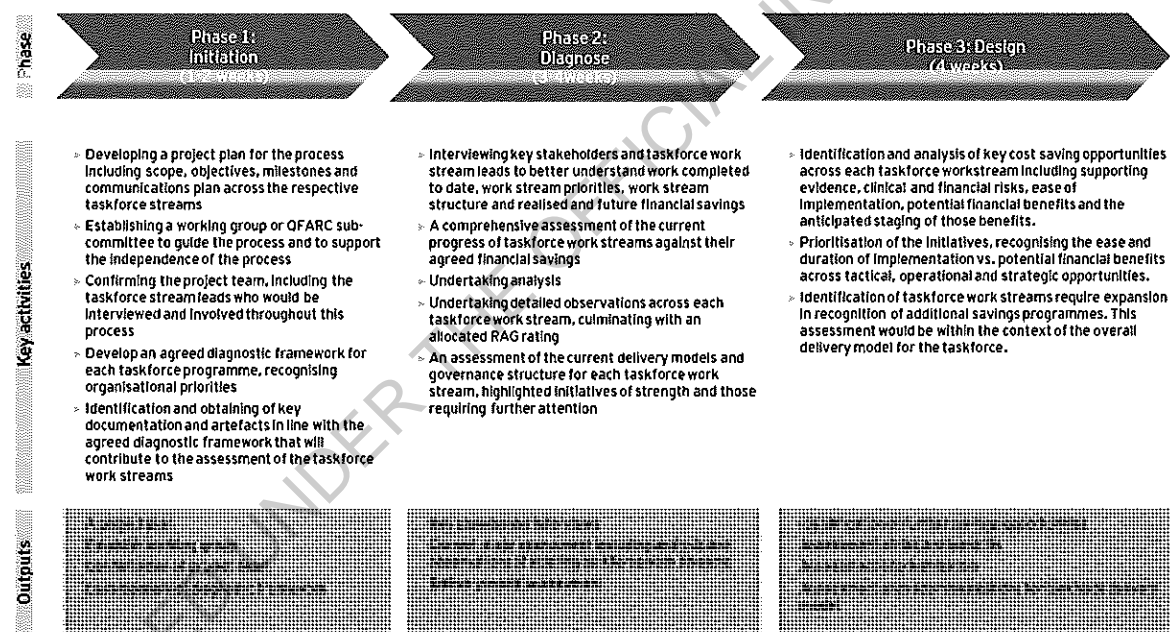
- Assessment on the financial delegations covering operating and capital expenditure in place at CDHB, including a comparison to other large DHBs pre and during the COVID-19 pandemic
- A review of major capital decisions against the delegations policy to assess whether there have been discrepancies in decision-making and policy
- Advice on fitness of purpose of current delegation policies, in particular given the scope of capital works to be addressed in the near future

## 3. Impacts of COVID-19

- An assessment of COVID-19 related activity, and operating and capital spending to test whether costs are proportionate to the level of care and preparedness involved
- An assessment of the impact of COVID-19 related activity on CDHB's financial position and progress made in the Taskforce Programme.

### Approach

EY has globally and locally tested methodologies to both evaluate savings initiatives and to benchmark services to identify cost drivers and quantify financial sustainability improvement opportunities. The pictogram below depicts the approach across the key phases, highlighting the key activities and outputs at each stage.



### Review of the CDHB taskforce progress and targets

EY will review the progress of the taskforce program, and its taskforce streams against their cost savings targets to date. The savings targets will be evaluated relative to further savings opportunities.

The work to be performed will incorporate both documentation/artefact review, analysis in line with EY globally and locally tested methodologies and discussions with taskforce members and other stakeholders, including but not limited to sub-committee of the QFARC. The review is anticipated to take approximately 10 weeks commencing 30 March 2020 and culminating in a final report presented to QFARC on 5 June 2020. The review will comprise of three phases, described below.

#### Phase 1: Initiation (1-2 weeks depending on stakeholder availability)

This phase initiates the review of the taskforce work programme in line with the scope outlined in A.1. It is expected that the DHB will have socialised EY's review with the taskforce stream leads and other personnel and the Executive has clearly communicated the importance of this work to key stakeholders.

Given the timelines of this phase, the review will heavily rely on prompt access to key documentation and artefacts that have informed analysis, planning and decisions within each of the taskforce work streams.

#### Phase 2: Diagnose (3-4 weeks dependent on access to key documentation and stakeholders)

This phase will better understand the current state of the taskforce programme overall and the progress of individual taskforce streams against their set targets. The analysis of this phase would be undertaken by reviewing key programme artefacts and conducting stakeholder interviews with the taskforce executive leadership team and individual taskforce leads. The diagnosis phase will cover points 1, 2 and 3 in line with the scope of this CSO.

#### Phase 3: Design (4 weeks dependent on stakeholder availability)

This design phase will develop the cost saving opportunities to realise savings based on the findings of Phase 2. Analysis will also support the identification of additional savings and assessment of the alignment of the priorities for each taskforce work stream. It will be critical to involve taskforce stakeholders in driving development of cost saving opportunities to ensure buy-in and engagement to sustain the implementation and long-term delivery of the identified savings initiatives. The design phase will cover points 4 and 5 in line with the scope of this CSO.

#### Final output

The final output of the review is expected to be a report to the QFARC on 5 June 2020. EY will also host a workshop with members of the Board and Executive team to discuss the key recommendations and next steps.

#### **Proposed EY Personnel**

Recognising the importance of this work we have dedicated an experienced team, with a cost-effective mix of senior leader, technical subject matter resources and consultant support. We have also recognised the importance in selecting a team with a strong presence in our Christchurch office. We have also assumed that the resources the DHB has committed to provide will be available, and their time on the project prioritised over business as usual tasks. Should these assumptions not hold, then additional time will be required by EY, which has not been factored into the indicative budget of this CSO. If this is the case, EY will discuss with the Project Sponsor at the earliest opportunity and agree any changes to scope, resourcing or fee necessary to meet the requirements of the DHB

Name	Role in delivering the services
9(2)(a)	Engagement Partner and executive leader of the project
	Engagement Manager and Lead for Strategy, Planning and Funding inputs
	Lead for Economics and Operational Excellence inputs
	Lead for the Financial inputs
Project support	A team of experienced Senior Consultants and Managers will support this project with analytics and review of key documentation.

B2. Sub Category and Tier to be Provided		
Selection	Sub-category of Services	Tier 1
	Accounting	
	Assurance	
	Audit	
	Finance and economics	•
	Procurement and logistics	
	Taxation	
	Business change	
	Human resource	
	Marketing and public relations	
	Operations management and risk	
	Policy, research and development	

B3. Can you confirm that the Nominated Personnel (if any) are available to provide the Services?
Yes

B4. Estimated timeframes
Ten weeks commencing 29 May 2020.

B5. Estimated Start and End Date			
Start	29 May 2020	End	7 August 2020

**B6. Estimate / Quote (excluding GST, if any)**

<b>Fees</b>	\$228,500
<b>Administration Fee (Tier 1 and 2 only)</b>	\$2,285
<i>(Optional)</i> The above Fees are apportioned as follows:	
Job Level 1	\$
Job Level 2	\$
Job Level 3	\$
Job Level 4	\$
Job Level 5	\$
Fixed Fee (Job Level 1)	\$
Fixed Fee (Job Level 2)	\$
Fixed Fee (Job Level 3)	\$
Fixed Fee (Job Level 4)	\$
Fixed Fee (Job Level 5)	\$
Monthly Retainer	\$
Subcontracting	\$
Expenses	\$
<b>Total Charges</b>	\$230,785
Identify whether the Total Charges is an Estimate / Quote and the method that the Charges have been calculated	Estimate based on anticipated time by EY resource, with range indicating uncertainty about intensity of effort required.

**Additional information / assumptions:**

The services will be performed by EY New Zealand. EY Ltd (Wellington) will liaise and invoice you directly.

As set out in clause 13.1(b)(iii) of the AoG consultancy agreement, we wish to advise that EY's servers are held offshore. We confirm that any Confidential Information is, and will remain, secure and protected.



Job Level	Indicative Characteristics
Level 5	<ul style="list-style-type: none"> <li>• 15+ years of extensive professional experience in their specialised field in a consultancy role.</li> <li>• An industry leader and key influencer who is respected for their professional proficiency and knowledge.</li> <li>• Recognised as a trusted adviser to ministers and/or senior executive teams.</li> <li>• Acts as the senior responsible person on major client engagements. Able to be accountable for leading complex projects/programs.</li> <li>• Responsible for leading a high performing team of professionals, including the coaching and mentoring of colleagues at Levels 1–4.</li> </ul>
Level 4	<ul style="list-style-type: none"> <li>• 10+ years of substantial professional experience in their specialised field in a consultancy role.</li> <li>• Strong theoretical base in subject area, with ability to apply best practice principles to the subject matter context.</li> <li>• Senior team leader with the ability to deputise for the senior responsible person and coach and mentor more junior staff.</li> <li>• Ability to coordinate contributions of other specialists to complete a joint project.</li> <li>• Can engage with clients at strategic/management level if required.</li> </ul>
Level 3	<ul style="list-style-type: none"> <li>• 3-10 years of notable professional experience in their specialised field in a consultancy role.</li> <li>• A trusted performer on a wide range of client-facing consultancy projects in both the private and public sectors.</li> <li>• Thorough knowledge of functional area, combining a broad grasp of relevant best practice principles.</li> <li>• Ability to participate in multi-disciplinary teams and to work independently (with limited supervision).</li> <li>• Performs professional level analysis requiring technical skills and independent initiative within a well-defined program of work.</li> <li>• Contacts with clients predominantly at a working level.</li> </ul>
Level 2	<ul style="list-style-type: none"> <li>• 1-3 years of demonstrable professional experience in their specialised field in a consultancy role.</li> <li>• Previous experience on a range of client-facing consultancy projects, preferably in both the private and public sectors.</li> <li>• Has a theoretical base in subject area, possibly supplemented through recent study, with the ability to translate theory into practice</li> <li>• Performs a variety of analytical tasks requiring independent initiative and knowledge.</li> <li>• Interacts with clients predominantly at the working level.</li> </ul>
Level 1	<ul style="list-style-type: none"> <li>• 0+ years of relevant professional experience in a professional environment.</li> <li>• Evidence of prior contributions to consultancy engagements.</li> <li>• Performs a range of administrative tasks to support the wider team.</li> <li>• Work is performed under the guidance of colleagues at Levels 3-5.</li> </ul>

**B7. Conflict of Interest declaration and Additional Information**

I, <sup>9(2)(a)</sup> [REDACTED] of Ernst & Young Ltd have made diligent inquiry whether Ernst & Young Ltd has any actual, potential or perceived Conflict of Interest were it to provide the Services described in this Consultancy Services Order and I have disclosed any actual, potential or perceived Conflict of Interest and how it will be managed below:

To the best of our knowledge, there are no actual or potential conflicts preventing us from providing these services. We have proven independence rules in place, should any conflicts arrive.

**B8. Additional information**

Ernst & Young may share certain information with EY member firms. At all times, Confidential Information will remain secure and protected.

**B9. Signatures**

Name of Provider's authorised signatory	<sup>9(2)(a)</sup> [REDACTED]
Signature of authorised signatory	<sup>9(2)(a)</sup> [REDACTED]

The client accepts and authorises this Consultancy Services Order	[Yes/No] <sup>9(2)(a)</sup> [REDACTED]
Name of client's authorised signatory	BARRY JOHN BRADBURY
Signature of authorised signatory	<sup>9(2)(a)</sup> [REDACTED]
Date of acceptance	18/16/2020
Client's job reference or purchase order number	

**Part C – Variations to Part A**

**LEAVE BLANK WHEN ISSUING CONSULTANCY SERVICES ORDER**

*The client will complete Part C if they wish to change any details in Part A*

**C1. Revised scope and/or timeframe**

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**Part D – Variations to Part B****LEAVE BLANK WHEN ISSUING CONSULTANCY SERVICES ORDER**

*The Provider will complete this only if and when it receives a Variation per Part C above from the client*

**D1. Revised Estimate (excluding GST, if any)****Revised Fees**

\$[Add in total Fees]

**Administration Fee (Tier 1 and 2 only)**

\$[1% of Fees for Services for which the Provider is Tier 1 or Tier 2]

*(Optional)* The above Fees are apportioned as follows:

Job Level 1

\$

Job Level 2

\$

Job Level 3

\$

Job Level 4

\$

Job Level 5

\$

Fixed Fee (Job Level 1)

\$

Fixed Fee (Job Level 2)

\$

Fixed Fee (Job Level 3)

\$

Fixed Fee (Job Level 4)

\$

Fixed Fee (Job Level 5)

\$

Monthly Retainer

\$

Subcontracting

\$

**Revised Expenses**

\$

**Total Charges**

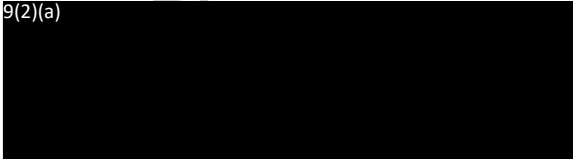
\$

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

Additional information / assumptions:

**Part E – Acceptance****LEAVE BLANK WHEN ISSUING CONSULTANCY SERVICES ORDER***The Provider and client to complete on acceptance of this Consultancy Services Order*

E1. Signatures	
Name of Provider's authorised signatory	
Signature of authorised signatory	

The client accepts and authorises this Consultancy Services Order	Yes [Yes/No]
Name of client's authorised signatory	BARRY SINGH SARTH
Signature of authorised signatory	9(2)(a) 
Date of acceptance	18/6/2020
Client's job reference or purchase order number	[if required]

**AoG Survey Programme:**

The Provider will send this AoG survey link to the Client at completion of this engagement or at periodic intervals for longer engagements. In addition, EY will seek independent feedback via our own survey programme where we will arrange for an EY representative to meet with you to discuss and assess our service quality.

Link to consultancy services survey:

<https://www.research.net/r/ClientSatisfactionSurvey-AoGcontracts-CSO>

Link to GCDO assurance sub-panel survey:

<https://www.research.net/r/GCDOAssuranceServices-CSO>

## Part F – Terms

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

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

#### 1. Appointment

##### 1.1 Appointment

- (a) The Participating Agency appoints the Provider to provide Services to the Participating Agency as detailed in this Consultancy Services Order and the Provider accepts that appointment, in accordance with the terms of this Consultancy Services Order.
- (b) Certain obligations of the Provider in this Consultancy Services Order do not apply to sub-categories of Services for which the Provider has been appointed as a Tier 3 Provider as follows:
  - (i) the Participating Agency may nominate specific Personnel to be the primary providers or to supervise the delivery of the Services but clauses 6.2(b) to 6.2(e) do not apply to any nominated Personnel;
  - (ii) the relevant Services are not required to meet or exceed the Service Levels specified in Schedule 3 (Performance Measurement) and clause 2.5(a), Schedule 3 (Performance Measurement) do not apply;
  - (iii) the Provider is not required to pay an Administration Fee and clause 8.3(a)(v) does not apply;
  - (iv) the Provider is not required to conduct the Agency Satisfaction Survey for the relevant Services and clause 5.1(h) does not apply;
  - (v) the Provider and Participating Agency are not obligated to escalate a dispute to the CoE's All-of-Government Procurement Manager, Centre of Expertise for Consultancy, in accordance with clause 13.2(c)(ii); and
  - (vi) as otherwise stated in this Consultancy Services Order.

#### 2. Services

##### 2.1 Services

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

##### 2.2 Agents may procure Services

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

##### 2.3 Timely performance

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

##### 2.4 Delay

- (a) If the Provider considers that it is (or is likely to be) prevented or delayed from achieving a date or time for performance (**Milestone**) specified in this Consultancy Services Order (**Delay**), it will:
  - (i) immediately provide notice verbally or in writing to the Participating Agency, setting out:
    - (A) the cause of the Delay and its expected duration;
    - (B) the effect of the Delay on its ability to perform its obligations under this Consultancy Services Order (including any future Milestones);
    - (C) what extension, if any, to the relevant Milestone is being sought; and
    - (D) what steps, if any, the Participating Agency may take to mitigate the effect of the Delay; and
  - (ii) take all reasonable steps necessary (including by the allocation of additional resources) to eliminate or avoid the Delay and, in all cases, mitigate its effects.

## Part F – Terms

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

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

- (b) If the Provider and Participating Agency agree that the Delay is acceptable or wish to amend the Milestone:
  - (i) the Provider will complete and submit Part C of this Consultancy Services Order to the Participating Agency; and
  - (ii) upon receipt of the completed Part C of this Consultancy Services Order, the Participating Agency must promptly advise the Provider in writing if the completed Part C is acceptable.
- (c) If the Provider does not achieve the Milestone (as amended from time to time) and the Participating Agency's acts or omissions, or those of its Personnel or third parties acting on its behalf, have not caused the Provider to fail to achieve the Milestone, the Participating Agency may, without prejudice to any other right or remedy, suspend payment of any Charges relating to this Consultancy Services Order until the Provider remedies the relevant failure.

#### 2.5 Service standards

- (a) The Provider must provide the Services in relation to the sub-categories for which the Provider has been appointed as a Tier 1 and Tier 2 Provider to a standard that reaches or exceeds the Service Levels specified in Schedule 3 (Performance Measurement).
- (b) In addition, the Provider must:
  - (i) provide the Services diligently, efficiently, effectively and in accordance with Industry Best Practice;
  - (ii) ensure that the Services to be performed under this Consultancy Services Order are provided on or before the date specified for performance (if any) in this Consultancy Services Order and, if no time is specified, within a reasonable time after the issue of this Consultancy Services Order;
  - (iii) ensure that all Documentation, information and advice (including Documentation, information and advice provided prior to the issue of this Consultancy Services Order) provided to the Participating Agency or published on the Provider Database is Fit for Purpose so that, without limitation, it contains sufficient content and detail to enable the Participating Agency to make use of it for the purpose for which it was requested;
  - (iv) act in the best interests of the Participating Agency in the provision of Services to the Participating Agency; and
  - (v) provide Services to the reasonable satisfaction of the Participating Agency (as reported to the CoE).

### 3. Estimates and Quotes

#### 3.1 Estimates and Quotes

- (a) The Provider must provide an Estimate or Quote for all Services to be provided under this Consultancy Services Order, unless the total Fees in respect of the Services under this Consultancy Services Order are likely to be less than \$10,000 (exclusive of GST) or such other amount as determined by the CoE and notified to the Provider.
- (b) Despite clause 3.1(a), if, during the course of providing the Services, the Provider becomes aware that the total Fees (excluding GST) are likely to exceed the amount referred to in clause 3.1(a), the Provider must provide an Estimate in accordance with clauses 3.1(c) to (e).
- (c) All Estimates and Quotes will be provided at no cost to the Participating Agency.
- (d) All Estimates and Quotes must specify the estimated timeframe to perform the Services requested in this Consultancy Services Order and the Rates of Personnel providing the Services and include any Expenses likely to be incurred in providing the Services.
- (e) All Quotes and Estimates must be provided to the Participating Agency in writing and must be included in this Consultancy Services Order.
- (f) To avoid doubt and without limiting clause 4.5(c) of the Services Agreement, if any Quote or Estimate is not acceptable to the Participating Agency, the Participating Agency and Provider may seek to negotiate a more favourable Quote or Estimate, including a decrease in the Rates on which the Quote or Estimate was based.

#### 3.2 If Charges exceed the Estimate

## Part F – Terms

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- (a) If during the course of providing the Services under this Consultancy Services Order, the Provider becomes aware that the total Charges (excluding GST) are likely to exceed the Estimate, the Provider must give written notice to the Participating Agency using Part D of this Consultancy Services Order as soon as the Provider becomes so aware, but no later than the time the costs accrued or incurred reach 80% of the Estimate.
- (b) The notice under clause 3.2(a) must specify a revised Estimate for the Services and include the reason the total Charges will exceed the original Estimate.
- (c) The Participating Agency has sole discretion whether to approve a revised Estimate and must act reasonably when deciding whether to approve a revised Estimate.
- (d) When a revised Estimate is approved, the Participating Agency must provide written notice of the same to the Provider.
- (e) If a Provider has provided an Estimate to the Participating Agency for Services, the Participating Agency is not liable to pay the Provider any amount exceeding the Estimate unless the Participating Agency has approved a revised Estimate.

#### 3.3 If Charges exceed the Quote

- (a) The Provider acknowledges that neither the CoE nor the Participating Agency are obliged to pay any Charges to the Provider in relation to Services performed under this Consultancy Services Order if those Charges exceed any Quote provided in relation to this Consultancy Services Order, unless the Participating Agency has given its prior written consent in accordance with clause 3.3(b).
- (b) If the Participating Agency agrees to allow the Provider to increase the Charges:
  - (i) the Provider will complete and submit Part D of this Consultancy Services Order to the Participating Agency; and
  - (ii) upon receipt of the completed Part D of this Consultancy Services Order, the Participating Agency must promptly advise the Provider (in writing) if the completed Part D is acceptable.

## 4. Conflicts of interest

### 4.1 Conflicts of interest

- (a) The Provider must, upon receipt of this Consultancy Services Order, make diligent inquiry whether it has any actual, potential or perceived Conflicts of Interest if it were to provide the Services specified in this Consultancy Services Order and, if no such Conflict of Interest exists, the Provider must provide confirmation to that effect to the Participating Agency.
- (b) If the Provider has an actual, potential or perceived Conflict of Interest, the Provider must immediately notify the Participating Agency and must not begin performing the Services without the prior written approval of the Participating Agency.
- (c) The Provider must take all reasonable steps to ensure that:
  - (i) a situation does not arise that might result in an actual, potential or perceived Conflict of Interest; and
  - (ii) any Personnel or Subcontractors of the Provider do not engage in any activity or obtain interests that might result in the Provider or such Personnel or Subcontractors having an actual, potential or perceived Conflict of Interest,that cannot be managed to the satisfaction of the Participating Agency.
- (d) If, after commencing Services under this Consultancy Services Order, the Provider becomes aware of any matter, circumstance, interest or activity that may give rise to any actual, potential or perceived Conflict of Interest, the Provider must immediately notify the Participating Agency of all relevant details and must immediately cease work on the Services until such time as the Participating Agency provides written notice confirming the Provider may continue to perform the Services or terminates the engagement of the Provider in respect to the Services to be performed under this Consultancy Services Order in accordance with clause 4.1(e).
- (e) If the Participating Agency considers that the Provider has an actual Conflict of Interest of sufficient gravity that the Provider can no longer perform Services for it, the Participating Agency may, by written notice to the Provider, terminate this Consultancy Services Order with immediate effect on the date of termination specified in that notice.



## Part F – Terms

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

## 5. Responsibilities

### 5.1 Provider responsibilities

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

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

### 5.2 Participating Agencies' responsibilities

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

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

## 6. Resourcing

### 6.1 General requirements

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

### 6.2 Provider's Nominated Personnel

## Part F – Terms

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- (a) The Participating Agency may, in this Consultancy Services Order, nominate specific Personnel (Nominated Personnel) to be the primary providers or to supervise the delivery of the Services.
- (b) If any Nominated Personnel nominated in this Consultancy Services Order are not available to provide or supervise the Services requested, the Provider must immediately notify the Participating Agency and provide details of other Personnel (if any) with the necessary skills and experience to provide or supervise the Services requested pursuant to this Consultancy Services Order.
- (c) Notice given under clause 6.2(b) must specify the period for which the Nominated Personnel will continue to be unavailable.
- (d) Upon receipt of notice under clause 6.2(b), the Participating Agency must notify the Provider whether the replacement Personnel are acceptable.
- (e) The Participating Agency is under no obligation to accept any replacement Personnel and, if it does not approve the replacement Personnel, the Provider may not commence or continue providing the Services.

#### 6.3 Personnel

- (a) The Provider will ensure that all of its Personnel who are engaged in the performance of the Provider's obligations under this Consultancy Services Order:
  - (i) have the requisite skills, expertise, qualifications and experience;
  - (ii) have, before performing any such obligations, obtained all security clearances and passed all probity checks required by, or necessary to provide the Services to, the Participating Agency;
  - (iii) comply with all health, safety, security and other policies, codes of conduct, procedures and reasonable directions as may be reasonably required by the Participating Agency from time to time; and
  - (iv) will carry out their respective duties with due care, skill and diligence.
- (b) The Participating Agency will notify the Provider of any security clearances and probity checks required by, or necessary to provide the Services to, the Participating Agency.

#### 6.4 Subcontracting

- (a) The Provider will not subcontract the performance of all or part of the Services or any of its other obligations under this Consultancy Services Order, except with the prior written consent of the Participating Agency.
- (b) The Provider is solely responsible for the selection of each Subcontractor and must ensure that each Subcontractor is creditworthy, qualified and has the relevant experience to perform the work it is required to carry out for the Provider.
- (c) To the extent permitted by Law, the Provider is and remains fully responsible for any act or omission of any Subcontractor.
- (d) The Provider must ensure that each Subcontract contains obligations on the Subcontractor that are consistent with the relevant terms of this Consultancy Services Order, including in relation to clauses 5.1 (Provider responsibilities), 6.3(a) (Personnel), 10 (Confidentiality), 11 (Intellectual Property) and 14 (Termination) and Schedule 3 (Performance Measurement), together with clause 15 (Audit) of the Services Agreement.
- (e) If, in the Participating Agency's reasonable opinion, a Subcontractor is:
  - (i) materially not performing in accordance with the terms of this Consultancy Services Order, the Participating Agency may, by notice to the Provider, require the Provider to procure that the Subcontractor performs the relevant obligations within 10 Business Days, failing which the Participating Agency may, by notice to the Provider, require the Provider to remove that Subcontractor; or
  - (ii) a material threat to the health, safety or security of the Personnel or property of the Participating Agency, or has breached security or confidentiality requirements of this Consultancy Services Order, the Participating Agency may, by notice to the Provider, require the Provider to remove that Subcontractor,

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

## Part F – Terms

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#### 7. Changes

##### 7.1 Change procedure

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

#### 8. Price and payment

##### 8.1 Calculation of Charges

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

##### 8.2 Participating Agency to pay for Services

- (a) The Participating Agency will pay the Provider the Charges applicable to any Services procured by the Participating Agency on the terms of this clause 8.
- (b) The Charges and Administration Fee comprise the total amount payable by the Participating Agency for the Services.

##### 8.3 Invoicing and payment

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

- (a) the Provider will render one itemised invoice to the Participating Agency at the end of each month during the Term for all Services performed during that month specifying (as applicable):
  - (i) the nature and amount of the Fees or other applicable fees and fee structures;
  - (ii) the Personnel and their applicable Rate;
  - (iii) the hours billed (by Personnel and in the aggregate);
  - (iv) the nature and amount of any Expenses (including any third party charges to be passed on to the Participating Agency);
  - (v) if applicable, the amount representing the Administration Fee;
  - (vi) how much of the Estimate or Quote has been used;
  - (vii) a brief description of the Services provided during that month; and
  - (viii) any other matters the Participating Agency may reasonably request;
- (b) each correctly rendered invoice will be payable on or before the 20th day of the month following the month in which the invoice was received;
- (c) the Participating Agency will have no obligation to pay any Charges which are invoiced more than 90 days after the date that such amount was required to be invoiced pursuant to this clause 8.3; and
- (d) the Provider may only invoice the Participating Agency for any Expenses at the cost actually incurred by the Provider.

##### 8.4 Invoice disputes

If the Participating Agency or the Provider disputes an invoice:

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

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

##### 8.5 Taxes

## Part F – Terms

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- (a) Except for any GST payable by the Participating Agency, any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including applicable interest and penalties) payable in connection with this Consultancy Services Order under any Law is to be paid by the Provider and not passed on to the Participating Agency unless otherwise expressly agreed in writing by the Participating Agency.
- (b) The Participating Agency may deduct from any payment to be made to the Provider any withholding taxes or other deductions that it is required by Law to make.

#### 8.6 Administration Fee

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

#### 8.7 Suspension of payment

- (a) Without prejudice to any other right or remedy that may be available to the Participating Agency, the Participating Agency may suspend payment of all or any part of the Charges if the CoE has notified the Provider that the Provider is in Material Breach, until that Material Breach is remedied.
- (b) If the Material Breach is not capable of remedy the Participating Agency and the Provider agree to treat the Charges as being in dispute and clause 14 will apply.

## 9. Warranties

### 9.1 General warranties

Each party represents, warrants and undertakes that:

- (a) it has full power, capacity and authority to execute, deliver and perform its obligations under this Consultancy Services Order;
- (b) it has, and will continue to have, all the necessary consents, permissions, licences and rights to enter into and perform its obligations under this Consultancy Services Order; and
- (c) this Consultancy Services Order constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

### 9.2 Provider's warranties

The Provider represents, warrants and undertakes that:

- (a) it will perform its obligations under this Consultancy Services Order with due care, skill, promptness and diligence at all times;
- (b) it has, and will have throughout the Term, sufficient Personnel to supply the Services and to perform its other obligations under this Consultancy Services Order;
- (c) it, and each of its Personnel engaged in the performance of the Services, has, and will have throughout the Term, the necessary expertise and all necessary governmental, regulatory or other approvals, permissions, consents, licences, qualifications, accreditations and requirements to provide the Services and perform its other obligations under this Consultancy Services Order;
- (d) it will comply with the requirements of all Laws as they relate to the provision of Services by the Provider;
- (e) the possession or use of any item of Intellectual Property supplied or licensed by it, or the use of any item of Intellectual Property by it to perform its obligations under this Consultancy Services Order, will not infringe the rights of any third party;
- (f) all Documentation (and any other information or advice supplied by it to the Participating Agency) and any information and data reported to the CoE will be accurate, complete and (as applicable) Fit for Purpose;
- (g) there are no existing agreements, undertakings or arrangements which prevent it from entering into this Consultancy Services Order, or which would impede the performance of its obligations under this Consultancy Services Order, or that it would breach by entering into this Consultancy Services Order;
- (h) it is not (and nor is any of its Personnel) a party to any litigation, proceedings or disputes which could adversely affect its ability to perform its obligations under this Consultancy Services Order; and

## Part F – Terms

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- (i) it has not offered any inducement in connection with the entering into or negotiation of this Consultancy Services Order, and will not offer any inducement in connection with the supply of Services to the Participating Agency.

#### 9.3 Continuous application

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

#### 9.4 Notification

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

#### 9.5 Other warranties excluded

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

### 10. Confidentiality

#### 10.1 Protection of Confidential Information

- (a) Subject to clauses 10.1(c) and 10.2, the Provider and the Participating Agency will treat as confidential and not disclose to any third party nor use for its own benefit any Confidential Information that is the Confidential Information of the other.
- (b) The Provider will:
  - (i) ensure that all Confidential Information of the Participating Agency (and any backup archives containing such Confidential Information) in the possession or control of the Provider from time to time is kept secure and managed and protected and only disclosed or otherwise dealt with in accordance with this Consultancy Services Order;
  - (ii) not use any Agency Information for its own purposes or for any purposes different from those contemplated by this Consultancy Services Order; and
  - (iii) advise the CoE in writing if any Confidential Information of the Participating Agency will be transferred or stored outside New Zealand before such information is transferred and will confirm that the requirements of this clause 10.1 will be met while such Confidential Information is stored outside New Zealand.
- (c) Clause 10.1(a) does not prevent the disclosure of Confidential Information:
  - (i) if that information was known, or becomes known, to the public through no act or default of the recipient;
  - (ii) that the recipient is required by Law or parliamentary practice (including parliamentary questions) to disclose, or to a Select Committee or to a Minister of the Crown, so long as the recipient provides notice of the required disclosure promptly upon receipt of notice of the required disclosure (if it is permitted to do so by Law);
  - (iii) that was lawfully known to the recipient prior to the date it was received;
  - (iv) that becomes available to the recipient from a source other than a party to this Consultancy Services Order, provided that the recipient has no reason to believe such source is itself bound by an obligation of confidence to the person that disclosed that information or is otherwise prohibited under Law from disclosing such information;
  - (v) to any Professional Adviser for the purposes of rendering professional services to a party in relation to this Consultancy Services Order;
  - (vi) to the extent that such disclosure is authorised by this Consultancy Services Order; or
  - (vii) if such disclosure is approved for release with the consent of the party from whom the Confidential Information is first received.

#### 10.2 Limited disclosure

- (a) The Provider may, subject to clause 10.2(d), disclose the Confidential Information of the Participating Agency to its Subcontractors, Personnel, Related Entities and Professional Advisers who need to know the

## Part F – Terms

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same for the sole purpose of enabling the Provider to perform its obligations and exercise its rights under this Consultancy Services Order.

- (b) The Participating Agency may, subject to clause 10.2(d), disclose the Confidential Information of the Provider to its third party suppliers, Personnel and Professional Advisers and any other Participating Agencies (including the CoE) who need to know the same in connection with the Services.
- (c) The Provider will not disclose the Participating Agency's Confidential Information to any of its Subcontractors, Related Entities or Professional Advisers, and the Participating Agency will not disclose the Provider's Confidential Information to any of its third party suppliers or Professional Advisers, unless the recipient has given a written confidentiality undertaking to the disclosing party in terms substantially similar to those set out in this clause 10.
- (d) Any undertaking given pursuant to clause 10.2(c) will be provided to the other party to this Consultancy Services Order on request.

#### 11. Intellectual Property

##### 11.1 Intellectual Property owned by Provider

- (a) The Participating Agency acknowledges that all:
  - (i) Intellectual Property held by the Provider before the Commencement Date;
  - (ii) Intellectual Property developed independently from this Consultancy Services Order by the Provider, and that is not developed, commissioned or created under or in connection with this Consultancy Services Order; and
  - (iii) adaptations and modifications to the Intellectual Property described in clauses 11.1(a)(i) and (ii), remains the Provider's sole and exclusive property (Provider IP).
- (b) To the extent that the Participating Agency needs to use any of the Provider IP to receive the full benefit of the Services, the Provider grants to the Participating Agency a royalty-free, non-exclusive licence (including, if agreed in this Consultancy Services Order, the right to sublicense) to use, copy, modify and distribute during the Term any Provider IP provided to the Participating Agency by or on behalf of the Provider.

##### 11.2 Intellectual Property owned by Participating Agency

- (a) The Provider acknowledges that the Participating Agency or its licensor has, and continues to have, sole and exclusive ownership of all Intellectual Property rights in all of the Agency Information together with all adaptations and modifications of such Agency Information (Pre-contract Participating Agency IP).
- (b) All Intellectual Property created or developed by the Provider or its employees or Subcontractors in performing the Services and developing the Documentation will be owned by the Participating Agency from the date the Intellectual Property is created or developed (Post-contract Participating Agency IP and, together with the Pre-contract Participating Agency IP, the Participating Agency IP).
- (c) If the Provider (or any of its Subcontractors) has under any Law any right in or claim to any of the Participating Agency IP or holds any of the Participating Agency IP, the Provider (by itself and for its Subcontractors):
  - (i) assigns to the Participating Agency all of its rights, title and interest in and to the Participating Agency IP from the date it was created or developed; and
  - (ii) waives all right of lien or similar rights as may now or later be claimed in the Participating Agency IP; and
  - (iii) waives all of its moral rights under Part 4 of the Copyright Act 1994 in the Participating Agency IP, and the Provider will sign all documents and do all acts and things that are necessary to give effect to this clause 11.2(c).
- (d) To the extent that the Provider needs to use any of the Participating Agency's IP for the purpose of performing its obligations under this Agreement, the Participating Agency grants to the Provider, subject to any written direction given by the Participating Agency, of a royalty-free, non-exclusive, non-transferable licence to use and store the Participating Agency's IP for the sole purpose of performing its obligations under this Consultancy Services Order during the Term.

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## Part F – Terms

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#### 11.3 Intellectual Property owned by third parties

- (a) To the extent that the Provider needs to use any Intellectual Property held or owned by a third party (Third Party IP) in performing the Services under this Consultancy Services Order, the Provider will use its best endeavours to obtain the fullest rights of use and licence of that Third Party IP (on terms and at a cost to be agreed with the Participating Agency) as are necessary for the performance of those Services for the benefit of the Participating Agency.
- (b) The Participating Agency acknowledges that the Provider may have limited ability to obtain rights and/or a licence to use any Third Party IP and, where the Provider, using its best endeavours, cannot obtain appropriate rights and/or a licence for the Participating Agency to use that Third Party IP, the warranty in clause 9.2(e) applies.

#### 12. Liability

##### 12.1 Indemnity

- (a) The Provider will, to the extent permitted by Law, indemnify the Participating Agency against all Losses suffered or incurred by the Participating Agency as a result of any:
  - (i) unlawful, malicious or negligent act or omission by the Provider;
  - (ii) personal injury, sickness, death or loss of, or damage to, tangible property due to an act or omission of the Provider; or
  - (iii) any other breach by the Provider of its obligations under this Consultancy Services Order.
- (b) The Provider will, subject to clause 12.1(c), indemnify the Participating Agency against all Losses suffered or incurred by the Participating Agency as a result of any claim that the possession or use of any Intellectual Property supplied or licensed by the Provider, or the use of any Intellectual Property used to provide the Services, infringes any third party's rights.
- (c) The Provider will have no liability under clause 12.1(b) to the extent that any IP Claim arises from any:
  - (i) modification by the Participating Agency of any item of Intellectual Property supplied or licensed by the Provider without the approval of the Provider;
  - (ii) use by the Participating Agency of Intellectual Property supplied or licensed by the Provider for any purpose disallowed by this Consultancy Services Order or the applicable Intellectual Property licence (but only if the licence has been provided to the Participating Agency prior to such use); or
  - (iii) use of Intellectual Property used to provide the Services if and to the extent that Intellectual Property was supplied by the Participating Agency.

##### 12.2 IP Claims

- (a) In the event of a claim under clause 12.1(b) (an IP Claim):
  - (i) the Participating Agency will give the Provider notice of the IP Claim as soon as practicable and, to the extent permissible by Law, permit the Provider (at the Provider's cost) to handle all negotiations for settlement and to control and direct any litigation that may follow (Control of the IP Claim);
  - (ii) if the Provider has Control of the IP Claim:
    - (A) the Participating Agency will provide all reasonable assistance to the Provider (at the Provider's cost) in the handling of any negotiations and litigation; and
    - (B) the Provider will keep the Participating Agency informed of the defence or negotiations of the IP Claim and diligently conduct any litigation or negotiations, using competent counsel and in a manner that does not adversely affect the name or reputation of the Participating Agency;
  - (iii) the Provider will not enter into any settlement or compromise in relation to the IP Claim without the prior written consent of the Participating Agency (which will not be unreasonably withheld); and
  - (iv) the Provider will notify the CoE of the IP Claim, and the outcome within 5 Business Days of the claim being concluded.
- (b) If any IP Claim disrupts the Participating Agency's use or enjoyment of a Service, the Provider will (unless otherwise requested by the CoE), at its own expense and at its option, immediately:

## Part F – Terms

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

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- (i) obtain for the Participating Agency the legal right to continued use of the infringing materials; or
- (ii) replace, modify or resupply the infringing materials so that there is no further infringement, without adversely affecting the performance or functionality of those materials.

#### 12.3 Maximum liability of Participating Agency

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

#### 12.4 Maximum liability of the Provider

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

- (a) in relation to the sub-categories for which the Provider has been appointed as a Tier 1 Provider, the greater of:
  - (i) 10 times the total Charges paid and payable under this Consultancy Services Order;
  - (ii) \$5,000,000; and
  - (iii) any greater amount or multiple set out in this Consultancy Services Order;
- (b) in relation to the sub-categories for which the Provider has been appointed as a Tier 2 Provider, the greater of:
  - (i) 10 times the total Charges paid and payable under this Consultancy Services Order;
  - (ii) \$2,000,000; and
  - (iii) any greater amount or multiple set out in this Consultancy Services Order; and
- (c) in relation to the sub-categories for which the Provider has been appointed as a Tier 3 Provider, the greater of:
  - (i) 10 times the total Charges paid and payable under this Consultancy Services Order;
  - (ii) \$1,000,000; and
  - (iii) any greater amount or multiple set out in this Consultancy Services Order.

#### 12.5 No double dipping

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

#### 12.6 Exclusions on liability

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

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

#### 12.7 Categories of loss

- (a) Irrespective of how liability arises, neither the Provider nor the Participating Agency will, under any circumstances, be liable for any indirect loss or damage (including consequential loss) arising under or in connection with this Consultancy Services Order.
- (b) The Participating Agency will not, under any circumstances, be liable for any loss of profits or loss of revenue suffered by the Provider in connection with this Consultancy Services Order.

#### 12.8 Force majeure



## Part F – Terms

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

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- (a) The Provider and the Participating Agency will not be liable to the other for any failure to perform its obligations under this Consultancy Services Order during the time and to the extent that such performance is prevented, wholly or substantially, by reason of any Force Majeure Event.
- (b) The party subject to the Force Majeure Event (the non-performing party) must:
  - (i) notify the other party as soon as practicable after the Force Majeure Event occurs and provide full information concerning the Force Majeure Event, including the extent of its inability to perform, an estimate of the time likely to be required to overcome the Force Majeure Event and the steps the non-performing party will take to comply with clauses 12.8(b)(ii) and 12.8(b)(iii);
  - (ii) use all reasonable endeavours to mitigate and remedy the effect of the Force Majeure Event and minimise the impact of the event on the other party; and
  - (iii) use all reasonable endeavours to perform its obligations under this Consultancy Services Order as far as is practicable,and the Participating Agency will not be required to pay Charges to the extent that the Provider fails to perform its obligations to the Participating Agency due to a Force Majeure Event.
- (c) If the non-performing party affected by the Force Majeure Event is the Provider, the Participating Agency may, to the extent that any Service requested by the Participating Agency under this Consultancy Services Order has not been delivered and delivery has, or will be, delayed by the Force Majeure Event, terminate this Consultancy Services Order, by notice to the Provider within five Business Days following receipt by the Participating Agency of notice of the Force Majeure Event, at no cost to the Participating Agency, subject to the Participating Agency paying for Services delivered up to the date of the Force Majeure Event.

#### 12.9 Insurance

- (a) During the Term and for a period of two years following the termination of this Consultancy Services Order, the Provider will, at its own expense, ensure that it maintains adequate insurance in respect of its potential liability for loss or damage under this Consultancy Services Order in accordance with Industry Best Practice, but as a minimum the Provider must hold:
  - (i) professional indemnity insurance;
  - (ii) public liability insurance in respect of the Services provided under this Consultancy Services Order; and
  - (iii) other insurance to cover standard commercial risks (including in respect of Documentation which is the property of the Participating Agency and in the Provider's possession or control).
- (b) The Provider will, at the Participating Agency's request, promptly provide satisfactory evidence that it has complied with its obligations in this clause 12.9.

#### 13. Dispute resolution

##### 13.1 Dispute

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

- (a) the Participating Agency and the Provider will each use its best efforts to resolve the dispute through good faith negotiations and informal dispute resolution techniques, and will continue to perform its obligations under this Consultancy Services Order as far as possible as if the dispute had not arisen, pending final settlement of the dispute; and
- (b) neither the Participating Agency nor the Provider will commence any formal proceedings relating to the dispute unless it has complied with clause 13.2.

##### 13.2 Escalation

- (a) The Participating Agency and the Provider will each advise its respective Representative (or equivalent person) of a dispute on the day that the dispute arises.
- (b) The Representatives will use their best efforts to resolve the dispute in accordance with clause 13.1(a).
- (c) If the dispute is not resolved:

## Part F – Terms

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

#### 13.3 Mediation

- (a) If a dispute is not resolved under clause 13.2, either party may, by written notice to the other, refer the dispute to mediation, or they may agree in writing to refer the dispute to mediation.
- (b) The mediation will be conducted by a single mediator in accordance with the terms of the Resolution Institute Standard Mediation Agreement and at a fee to be agreed by the parties.
- (c) If the parties fail to agree on the identity of the mediator and/or the mediator's fee within five Business Days of referral of the dispute to mediation, the mediator will be chosen, and the mediator's fee determined, by the chairperson for the time being of Resolution Institute (or his or her nominee).

#### 13.4 Urgent relief

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

#### 14. Termination

##### 14.1 Termination of Consultancy Services Order

The Participating Agency may terminate this Consultancy Services Order:

- (a) for convenience by giving the Provider at least one month's prior written notice;
- (b) by notice to the Provider with immediate effect on the date of termination specified in that notice, if the Provider commits a Material Breach which is:
  - (i) not capable of being remedied (and, for the avoidance of doubt, paragraphs (a) and (b) of the definition of "Material Breach" are deemed incapable of being remedied); or
  - (ii) capable of being remedied but which is not remedied to the satisfaction of the Participating Agency within 10 Business Days following the date of receipt by the Provider of the Participating Agency's notice of the Material Breach;
- (c) in accordance with clause 4.1(e) (Conflict of Interest); or
- (d) in accordance with clause 12.8(c) (Force Majeure Event).

##### 14.2 Consequences of termination or expiry

- (a) In the event of termination or expiry of this Consultancy Services Order, the Participating Agency will not be obliged to make any payment to the Provider except for any Charges payable for Services supplied pursuant to this Consultancy Services Order before the effective date of expiry or termination.
- (b) Termination or expiry will not, unless otherwise provided in this Consultancy Services Order, affect:
  - (i) any rights and remedies available to either party which have accrued up to and including the date of termination or expiry; and
  - (ii) the provisions of this Consultancy Services Order which expressly, or by their nature, survive termination or expiry, including clauses 15 (Entire agreement), 10 (Confidentiality), 11 (Intellectual Property), 12 (Liability), 13 (Dispute Resolution), 14.2 (Consequences of termination or expiry) and 16 (General) and Schedule 1 (Definitions);
  - (iii) the continued application of clauses of the Services Agreement which expressly, or by their nature, are intended to continue to apply to this Consultancy Services Order after termination or expiry of this Consultancy Services Order, including clauses 1.4 (Precedence) and 15 (Audit).
- (c) After expiry or termination of this Consultancy Services Order for any reason, each party will, within five Business Days of receiving notice from the other party, return all Documentation, Confidential Information or other property belonging to the other party (or destroy such Confidential Information, if requested), except if such Documentation, Confidential Information or other property is required to be retained by any Law.

## Part F – Terms

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

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#### 15. Entire agreement

##### 15.1 Entire agreement

- (a) This Consultancy Services Order is intended to be read in conjunction with the Services Agreement. The provisions of the Services Agreement (not already included in this Consultancy Services Order) which confer rights, obligations or benefits on the parties or the CoE in respect of this Consultancy Services Order are intended to apply to this Consultancy Services Order.
- (b) Subject to clause 15.1(a), no other terms or conditions, including any conditions of sale, invoices or any other communication not included in this Consultancy Services Order (**Communication**), will be incorporated into this Consultancy Services Order, even if at some later date the other party (including, in the case of the Participating Agency) signs or otherwise purports to accept those terms and conditions or the terms of that Communication.
- (c) For the avoidance of doubt, and without limiting clauses 15.1(a) and 15.1(b):
  - (i) any Communication which is expressed or intended to operate as an indemnity, warranty, representation, undertaking, condition or other term of such a nature is hereby disappplied and excluded from this Consultancy Services Order; and
  - (ii) any part of this Consultancy Services Order which describes the nature, scope, price or manner of delivery of Services will, subject to clause 15.1(c)(i), form part of this Consultancy Services Order, but only to the extent that it does not conflict with any other part of this Consultancy Services Order.

#### 16. General

##### 16.1 Interpretation

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

##### 16.2 Relationship of the parties

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

##### 16.3 Costs

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

##### 16.4 Assignment

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

##### 16.5 Public disclosures

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

##### 16.6 Notices

- (a) Unless otherwise specified in this Consultancy Services Order, each notice or other communication under this Consultancy Services Order will be made in writing and delivered by post, personal delivery or email to the addressee at the addressee's postal address, physical address or email address (as applicable) and marked for the attention of the person or office holder (if any) from time to time designated for that purpose by the addressee.
- (b) The Provider's postal address, physical address and email address is set out in the Provider Database and may be amended by the Provider at any time.
- (c) The Participating Agency's postal address, physical address and email address is as notified by the Participating Agency to the Provider and may be amended by the Participating Agency at any time.
- (d) A notice or other communication will be deemed to be received:

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## Part F – Terms

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

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

#### 16.7 Severability

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

#### 16.8 Waiver

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

#### 16.9 Remedies cumulative

Except as is expressly stated otherwise in this Consultancy Services Order:

- (a) the rights, powers and remedies provided in this Consultancy Services Order are cumulative and are not exclusive of any rights, powers or remedies provided by Law or under this Consultancy Services Order; and
- (b) the exercise of any rights, powers and remedies provided in this Consultancy Services Order will not prejudice the exercise of any other right, power or remedy under this Consultancy Services Order or existing at Law.

#### 16.10 Counterparts

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

#### 16.11 Governing law and jurisdiction

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

## SCHEDULE 1: DEFINITIONS

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

**Administration Fee** means the amount referred to in clause 8.6;

**Agency Information** means all:

## Part F – Terms

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

but excluding the Provider's working papers;

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

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

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

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

**CoE** means the Ministry of Business, Innovation and Employment, the Centre of Expertise for Consultancy Services;

**Commencement Date** is the date on which this Consultancy Services Order is signed by both parties or, if two dates, the later date;

**Confidential Information** means:

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

**Conflict of Interest** means any matter, circumstance, interest or activity of the Provider, its Personnel or Subcontractors, arising by whatever means that directly or indirectly conflicts with:

- (a) the duties of the Provider and any of its Personnel or Subcontractors to the Participating Agency; or
- (b) the interests of the Participating Agency in relation to this Consultancy Services Order or otherwise in respect to the provision of consultancy services to the Participating Agency either before or after the Commencement Date;

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

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

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

**Control** means, in relation to the Provider or any ultimate or intermediate holding company or Holding Entity of the Provider, the power to:

- (a) manage, directly or indirectly, the operation of the business; or
- (b) control, directly or indirectly, the composition of the board of directors or board of management or equivalent governing body,

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of the Provider or such ultimate or intermediate holding company or Holding Entity, whether through the ownership of voting securities, by contract or otherwise, and for these purposes "holding company" will have the same meaning as in section 5 of the Companies Act 1993;

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

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

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

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

**Fit for Purpose** means, in relation to any Service or Documentation to be provided by the Provider to the Participating Agency, that such Services or Documentation are, in descending order of priority, fit for the purpose(s):

- (a) expressly made known in writing by the Participating Agency to the Provider (including in this Consultancy Services Order); or
- (b) for which the Provider, given its knowledge of the Participating Agency and understanding why the Services or Documentation are required, has reason to expect such Services or Documentation to be used;

**Force Majeure Event** means an event or circumstance beyond the reasonable control of either party which makes it impossible or illegal to perform, or prevents compliance with, or the performance of, a party's obligations under this Consultancy Services Order, including:

- (a) fire, floods, tsunamis, storms, tempest, earthquake or other act of God;
- (b) any act of a public enemy, war, riot, or act of civil or military authority;
- (c) nuclear, chemical or biological contamination; and
- (d) subject to paragraph (g) of this definition, any act of a third party engaged in subversive or terrorist activity or sabotage, but does not include an event to the extent that:
  - (e) the effect of that event could have been substantially prevented, avoided or overcome or mitigated by:
    - (i) implementation of any contracted business continuity or disaster recovery service, or any contingency plans agreed between the parties or which a party has represented it has in place; or
    - (ii) exercising a reasonable standard of care; or
    - (iii) using information provided by the other party or which is available in the public domain; or
  - (f) it is an event for which the party affected is or was directly responsible; or
  - (g) that event is constituted or caused by any act or omission of Personnel or a Subcontractor unless and to the extent that the Personnel or Subcontractor was itself affected by an event, which if it occurred in relation to either party would have been a Force Majeure Event; or
  - (h) that event is constituted or caused by an Insolvency Event or the insolvency of a Subcontractor or lack of funds for any reason;

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

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

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

**Insolvency Event** means, in relation to the Provider:

- (a) the presentation of an application for its liquidation that is not discharged within 30 days of its filing or which is not demonstrated to the Participating Agency prior to the expiry of that 30 day period as being an application that is frivolous or vexatious;

## Part F – Terms

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- (b) any step taken in or toward the making of any compromise, proposal or deed of arrangement with all or some of its creditors;
- (c) the appointment of a liquidator, receiver, statutory manager, administrator or similar official, to it;
- (d) the suspension or threatened suspension by it of the payment of its debts;
- (e) cessation by it of a whole or any relevant part of its business in New Zealand;
- (f) the enforcement of any security against the whole or a substantial part of its assets; or
- (g) any other insolvency event or proceedings analogous to any of the foregoing occurring in any relevant jurisdiction;

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

**Law** means:

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

in any jurisdiction that is applicable to this Consultancy Services Order;

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

**Material Breach** means any material breach by the Provider of the terms of this Consultancy Services Order or the occurrence of any event having a material effect on the ability of the Provider to perform its obligations under this Consultancy Services Order (other than a Force Majeure Event), including:

- (a) the occurrence of an Insolvency Event in relation to the Provider or the likely occurrence of an Insolvency Event;
- (b) the occurrence of a change in Control of the Provider or any ultimate or intermediate holding company or Holding Entity of the Provider that the CoE has not previously approved (acting reasonably);
- (c) any representation or warranty made by the Provider in terms of this Consultancy Services Order being found to be untrue or incorrect; and
- (d) any failure on the part of the Provider to comply with, observe or perform any of the terms of this Consultancy Services Order in circumstances where that contract breach or that contract breach together with other contract breaches is considered by the Participating Agency on reasonable grounds to cause the Provider to be unable or unwilling, or be likely to be unable or unwilling, to perform its obligations under this Consultancy Services Order;

**Maximum Rates** means the maximum Rates payable to the Provider for providing the Services, as recorded in the Provider Database, excluding Expenses;

**Panel** means the All-of-Government panel of providers who provide consultancy services to Participating Agencies, including any sub-panel, as detailed on [www.procurement.govt.nz](http://www.procurement.govt.nz);

**Participating Agency** means the Participating Agency that is a party to this Consultancy Services Order;

**Participating Agencies** means each of the CoE and every other Eligible Agency that is a party to the memorandum of understanding between the CoE and all other Participating Agencies relating to the management of their relationship with each other and with the Provider in relation to the Services, as amended from time to time;

**Personnel** includes partners, principals, directors, employees, agents, officers and individual independent contractors;

**Professional Adviser** means any accounting, legal, procurement or technical professional;

**Provider Database** means the IT platform described in Schedule 7 (Provider Database) to the Services Agreement;

## Part F – Terms

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**Quote** means a fixed price, capped price or other pre-agreed basis for establishing the Charges for Services required by the Participating Agency where the Provider is prevented from increasing the Charges without the prior written consent of the Participating Agency;

**Rates** means the rates (whether hourly, daily or weekly or other time-related basis) payable to the Provider for providing the Services, determined in accordance with Schedule 2 (Pricing), excluding Expenses;

**Related Entity** means a related company under the Companies Act 1993 (New Zealand) or a related body corporate under the Corporations Act 200, provided that any reference in the Companies Act 1993 to a "company" is deemed to include any partnership, body corporate, association or other entity, whether corporate or unincorporated, irrespective of the place of incorporation or registration of that partnership, body corporate, association or other entity;

**Representative** has the meaning given in paragraph 3.1 of Schedule 5 (Governance) to the Services Agreement);

**Service Level** means a required standard for the Provider's performance of its obligations under this Consultancy Services Order, as described in Schedule 3 (Performance Measurement);

**Service Level Default** means a failure by the Provider to meet one or more Service Levels;

**Services** means the consultancy services provided from time to time under the terms of this Consultancy Services Order;

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

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

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

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

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

## SCHEDULE 2: PRICING

### 1. Introduction

This Schedule sets out general principles underlying the Charges.

### 2. Principles

#### 2.1 Participating Agency will only pay for Services ordered

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

#### 2.2 No minimum volume

The Participating Agency is not required to meet a minimum aggregate expenditure or volume level for any Services.

#### 2.3 No interest

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

#### 2.4 Rates

4/5



## Part F – Terms

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

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

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

#### 3. Charges

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

### SCHEDULE 3: PERFORMANCE MEASUREMENT

#### 1. Introduction

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

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

#### 2. Service Levels

##### 2.1 Format

Each Service Level is described in Annexure A using the following format:

Parameter	Description
Description	Description of what the Service Level will measure
Purpose	Why it is important to Participating Agencies that the Service Level is met
Calculation	Method for calculating the Service Level
Service Level	The performance standard that the Provider is required to meet or exceed

##### 2.2 Service Levels must be met

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

##### 2.3 Changes to Service Levels

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

#### 3. Performance measurement

##### 3.1 Failure to meet Service Levels

If the Provider fails to achieve one or more of the Service Levels in any Contract Quarter in respect of this Consultancy Services Order, it will:

## Part F – Terms

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

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

- (a) take such steps and do all things necessary, as soon as possible, to correct the failure; and
- (b) notify the Participating Agency of the reasons for the failure and the steps that the Provider is taking to ensure that the failure is not repeated; and
- (c) consider whether the Charges for the Services that are subject to the Service Level Default should be reduced to reflect the lower value of the Services provided.

#### Annexure A: Service Levels

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

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

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

## AoG Consultancy Services Order (CSO)

### PART A – for Participating Agency to (client) complete

The Participating Agency (referred to as the client in Parts A-E of this CSO) will complete this and email the entire form (including all Parts) to the Provider.

Date		Client	South Island Alliance Programme Office
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#### Client Details

Contact name & title	9(2)(a)	Contact phone & e-mail	9(2)(a) 9(2)(a)@siapo.health.nz
Client reference	TBC	Project Name	South Island Service and Facility Framework – Scoping Phase

#### Provider Details

Provider name	EY NZ Limited	Contact phone & e-mail	9(2)(a)
Nominated Personnel	[Contract title / client unique job reference / purchase order number]	Project name	[optional name]
Sub category	Finance and Economics		

#### Purpose and any background information

- ▶ The South Island Alliance is looking to develop a service framework for the region encompassing:
  - ▶ Population dynamics across the region – population growth, population shifts, historical trends and forecasts
  - ▶ Service demand
  - ▶ Linkages to existing and planned capacity
  - ▶ Potential interventions to influence demand for services and future capacity requirements (inclusive of hospitals; primary and community care facilities)



It is envisaged that the Service Framework is underpinned by a dynamic modelling tool that allows current and future service configuration scenarios to be designed based on demographic trends and population shifts across the region.

The [South Island Alliance] has decided to undertake a two phase approach for this work:

**Phase One:** (February 2019-March 2019) A 4-6 week scoping phase to design a high level Proof of Concept modelling framework that demonstrates the potential outputs and planning scenarios alongside an investigation into the appropriate datasets and information required to support such a tool. Phase One would also deliver more specific design specifications for the framework and model.

**Phase Two** (March-July 2019) A four to five month period of work to design the Service Planning Framework and populate with "live data" as a tool for regional service and facility planning reflecting:

- The current population dynamics for the South Island at a regional and sub-regional level.
- Forecast demand for services.
- The current service landscape/map including specialities.
- Current capacity constraints and planned developments that we know of now relative to anticipated demand.

A proof of concept regional planning model will be part of the framework that allows a limited number of specific change scenarios reflecting model of care changes to be overlaid on the current population dynamics and demand forecasting. IDFs will be part of the model.

In addition a draft "optimisation plan" will be developed that consolidates existing strategies to manage demand and reflects known and agreed priority issues including intra-region dynamics, early identified "duplications" of provision and other issues which might be resolved over the short-term.

If appropriate the work should also be sufficiently advanced to provide input into the Health System Review.

#### Specific questions / instructions for the provider

#### Additional information - optional

Criminal Record Check ☐

Right to work in New Zealand check ☐

Verification of Qualifications ☐

Reference checking ☐

#### Client specific requirements

Not applicable

Timeframes (deliverables/milestones)	Due Date
Agree draft CSO	By 15 February 2019
Identify data resources/data sets available. Develop high level data plan. Project charter and accountability documentation	By 22 February 2019
Refine approach and data plan Undertake data stocktake Draft high level modelling methodology	By 1 March 2019
Undertake high level POC design including modelling methodology and model demonstrations	From late February-22 March 2019
Complete final project plan and charter documents. Complete Board paper for Chairs and CEOs on proposed approach.	By 31 March 2019

Indicative budget

Outputs of the Service
<p>For Phase One the key outputs are:</p> <ul style="list-style-type: none"> <li>- Draft data plan citing data sources required to develop the framework and stocktake of those data sources</li> <li>- Draft modelling methodology and approach including phasing of proposed modelling work</li> <li>- Demonstration high level POC with demonstration interface, examples of outputs and potential scenario design</li> </ul>



- Plan for modelling development over period March-July 2019

The modelling approach should allow South Island Chairs and CEOs to understand how the elements below will contribute to the design of the modelling approach ie

- Forecast demand for services.
- Demographic and population shifts
- The current service landscape/map including specialities.
- Current capacity constraints and planned developments that we know of now relative to anticipated demand.

#### Provider liability cap

As per Part F.

## PART B

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

#### Specific Services to be provided

The Provider will enable the achievement of the terms of reference for this project and support the delivery of the outputs set out in this CSO. Key activities/specific services in this regard include:

- Developing a stocktake of data available and data required to support the development of the framework and modelling tool
- A description of the modelling methodology and approach including a plan (including resources required) for the model development over the period March-July 2019
- A high-level demonstration "proof of concept" showing the types of outputs and scenarios such a tool can provide
- An overview of the service/facilities framework showing how demographics, current service configuration and facilities networks and projected interventions to influence future scenarios will be reflected in the framework.

Can you confirm that the Nominated Personnel (if any) is available to provide the Services

Yes ☐

No ☐

Can you confirm that the timeframe is acceptable

Yes ☐

No ☐

Estimated Start and End Date			
Start	15 February 2019	End	1 April 2019

Deliverables							
Deliverable / Milestone	Performance Standards	Due date	Name of consultant	Level (1-5)	Hourly / Daily Fee Rate	Hours / days	Total Fees (Excl. GST)
Identify data resources/data sets available.  Develop high level data plan.  Project charter and accountability documentation	By 22 February 2019		9(2)(a)	5	9(2)(b)(ii)		
				5			
				4			
				3			
				2			
				2			
Refine approach and data plan  Undertake data stocktake	By 1 March 2019		9(2)(a)	5			
				5			
				4			
				3			
				2			
				2			
Draft high level modelling methodology  Undertake high level POC design including modelling methodology and model demonstrations	From late-February to 22 March 2019		9(2)(a)	5			
				5			
				4			
				3			
				2			
				2			

Complete final project plan and charter documents.  Complete Board paper for Chairs and CEOs on proposed approach.	By 31 March 2019		9(2)(a)		9(2)(b)(ii)
				5	
				5	
				4	
				3	
				2	
				2	
Total					\$100,200.00

Estimate / Quote (excluding GST, if any)	
Fees	\$ 100,200.00
<b>Administration Fee (Tier 1 &amp; 2 only)</b>	\$ 1,002.00
<i>(Optional)</i> The above Fees are apportioned as follows:	
Job Level 1	\$
Job Level 2	\$
Job Level 3	\$
Job Level 4	\$
Job Level 5	\$
Fixed Fee (Job Level 1)	\$
Fixed Fee (Job Level 2)	\$
Fixed Fee (Job Level 3)	\$
Fixed Fee (Job Level 4)	\$
Fixed Fee (Job Level 5)	\$
Monthly Retainer	\$
Subcontracting	\$
<b>Expenses</b>	\$ See below
<b>Total Charges</b>	\$101,202
Identify whether the Total Charges is an Estimate / Quote and the method that the Charges have been calculated	Estimate based on budget set out in CSO
Additional information / assumptions:	
Expenses will be charged at cost and on agreement with the South Island Alliance. These include flights to Christchurch for Wellington and Auckland based staff and associated travel costs.	



Job Level	Indicative Characteristics
Level 5	<ul style="list-style-type: none"> <li>• 15+ years of extensive professional experience in their specialised field in a consultancy role.</li> <li>• An industry leader and key influencer who is respected for their professional proficiency and knowledge.</li> <li>• Recognised as a trusted adviser to ministers and/or senior executive teams.</li> <li>• Acts as the senior responsible person on major client engagements. Able to be accountable for leading complex projects/programs.</li> <li>• Responsible for leading a high performing team of professionals, including the coaching and mentoring of colleagues at Levels 1–4.</li> </ul>
Level 4	<ul style="list-style-type: none"> <li>• 10+ years of substantial professional experience in their specialised field in a consultancy role.</li> <li>• Strong theoretical base in subject area, with ability to apply best practice principles to the subject matter context.</li> <li>• Senior team leader with the ability to deputise for the senior responsible person and coach and mentor more junior staff.</li> <li>• Ability to coordinate contributions of other specialists to complete a joint project.</li> <li>• Can engage with clients at strategic/management level if required.</li> </ul>
Level 3	<ul style="list-style-type: none"> <li>• 3-10 years of notable professional experience in their specialised field in a consultancy role.</li> <li>• A trusted performer on a wide range of client-facing consultancy projects in both the private and public sectors.</li> <li>• Thorough knowledge of functional area, combining a broad grasp of relevant best practice principles.</li> <li>• Ability to participate in multi-disciplinary teams and to work independently (with limited supervision).</li> <li>• Performs professional level analysis requiring technical skills and independent initiative within a well-defined program of work.</li> <li>• Contacts with clients predominantly at a working level.</li> </ul>
Level 2	<ul style="list-style-type: none"> <li>• 1-3 years of demonstrable professional experience in their specialised field in a consultancy role.</li> <li>• Previous experience on a range of client-facing consultancy projects, preferably in both the private and public sectors.</li> <li>• Has a theoretical base in subject area, possibly supplemented through recent study, with the ability to translate theory into practice</li> <li>• Performs a variety of analytical tasks requiring independent initiative and knowledge.</li> <li>• Interacts with clients predominantly at the working level.</li> </ul>
Level 1	<ul style="list-style-type: none"> <li>• 0+ years of relevant professional experience in a professional environment.</li> <li>• Evidence of prior contributions to consultancy engagements.</li> <li>• Performs a range of administrative tasks to support the wider team.</li> <li>• Work is performed under the guidance of colleagues at Levels 3-5.</li> </ul>

**Conflict of Interest declaration**

I, 9(2)(a) [REDACTED] have made diligent inquiry whether EY has any actual, potential or perceived Conflict of Interest were it to provide the Services described in this Consultancy Services Order and I have disclosed any actual, potential or perceived Conflict of Interest and how it will be managed below:

None identified.

**Additional information****PART C**

LEAVE BLANK WHEN ISSUING CONSULTANCY SERVICES ORDER

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

**Revised scope and/or timeframe**



## PART D

### LEAVE BLANK WHEN ISSUING CONSULTANCY SERVICES ORDER

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

#### Revised Estimate (excluding GST, if any)

Fees

\$(Add in Total for Fees for Services)

Administration Fee (Tier 1 & 2 only)

\$(Tier 1 and Tier 2 Providers - 1% of Fees for Services ONLY, not expenses)

(Optional) The above Fees are apportioned as follows:

Job Level 1

\$

Job Level 2

\$

Job Level 3

\$

Job Level 4

\$

Job Level 5

\$

Fixed Fee (Job Level 1)

\$

Fixed Fee (Job Level 2)

\$

Fixed Fee (Job Level 3)

\$

Fixed Fee (Job Level 4)

\$

Fixed Fee (Job Level 5)

\$

Monthly Retainer

\$

Subcontracting

\$

Expenses

\$

Total Charges

\$

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

Additional information / assumptions:

**PART E - Acceptance****LEAVE BLANK WHEN ISSUING CONSULTANCY SERVICES ORDER***The Provider and the client to complete on acceptance of this Consultancy Services Order*

<b>The Provider confirms they have completed any necessary checks as outlined in Part A (Additional Information)</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>Name of Provider's authorised signatory</b>	9(2)(a) [REDACTED]	
<b>Signature of authorised signatory</b>	9(2)(a) [REDACTED]	

<b>The client accepts and authorises this Consultancy Services Order</b>	Yes <input type="checkbox"/>	9(2)(a) [REDACTED]
<b>Name of client's authorised signatory</b>	[REDACTED]	
<b>Signature of authorised signatory</b>	David Meates	
<b>Date of acceptance</b>		
<b>Client's job reference or purchase order number</b>	[if required]	



## Part F – Terms

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

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

#### 1. Appointment

##### 1.1 Appointment

- (a) The Participating Agency appoints the Provider to provide Services to the Participating Agency as detailed in this Consultancy Services Order and the Provider accepts that appointment, in accordance with the terms of this Consultancy Services Order.
- (b) Certain obligations of the Provider in this Consultancy Services Order do not apply to sub-categories of Services for which the Provider has been appointed as a Tier 3 Provider as follows:
  - (i) the Participating Agency may nominate specific Personnel to be the primary providers or to supervise the delivery of the Services but clauses 6.2(b) to 6.2(e) do not apply to any nominated Personnel;
  - (ii) the relevant Services are not required to meet or exceed the Service Levels specified in Schedule 3 (Performance Measurement) and clause 2.5(a), Schedule 3 (Performance Measurement) do not apply;
  - (iii) the Provider is not required to pay an Administration Fee and clause 8.3(a)(v) does not apply;
  - (iv) the Provider is not required to conduct the Agency Satisfaction Survey for the relevant Services and clause 5.1(h) does not apply;
  - (v) the Provider and Participating Agency are not obligated to escalate a dispute to the CoE's All-of-Government Procurement Manager, Centre of Expertise for Consultancy, in accordance with clause 13.2(c)(ii); and
  - (vi) as otherwise stated in this Consultancy Services Order.

#### 2. Services

##### 2.1 Services

- (a) The Provider will provide Services to the Participating Agency in accordance with

the terms of this Consultancy Services Order.

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

##### 2.2 Agents may procure Services

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

##### 2.3 Timely performance

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

##### 2.4 Delay

- (a) If the Provider considers that it is (or is likely to be) prevented or delayed from achieving a date or time for performance (**Milestone**) specified in this Consultancy Services Order (**Delay**), it will:
  - (i) immediately provide notice verbally or in writing to the Participating Agency, setting out:
    - (A) the cause of the Delay and its expected duration;
    - (B) the effect of the Delay on its ability to perform its obligations under this Consultancy Services Order (including any future Milestones);
    - (C) what extension, if any, to the relevant Milestone is being sought; and
    - (D) what steps, if any, the Participating Agency

may take to mitigate the effect of the Delay; and

- (ii) take all reasonable steps necessary (including by the allocation of additional resources) to eliminate or avoid the Delay and, in all cases, mitigate its effects.
- (b) If the Provider and Participating Agency agree that the Delay is acceptable or wish to amend the Milestone:
  - (i) the Provider will complete and submit Part C of this Consultancy Services Order to the Participating Agency; and
  - (ii) upon receipt of the completed Part C of this Consultancy Services Order, the Participating Agency must promptly advise the Provider in writing if the completed Part C is acceptable.
- (c) If the Provider does not achieve the Milestone (as amended from time to time) and the Participating Agency's acts or omissions, or those of its Personnel or third parties acting on its behalf, have not caused the Provider to fail to achieve the Milestone, the Participating Agency may, without prejudice to any other right or remedy, suspend payment of any Charges relating to this Consultancy Services Order until the Provider remedies the relevant failure.

2.5

#### Service standards

- (a) The Provider must provide the Services in relation to the sub-categories for which the Provider has been appointed as a Tier 1 and Tier 2 Provider to a standard that reaches or exceeds the Service Levels specified in Schedule 3 (Performance Measurement).
- (b) In addition, the Provider must:
  - (i) provide the Services diligently, efficiently, effectively and in accordance with Industry Best Practice;
  - (ii) ensure that the Services to be performed under this Consultancy Services Order are provided on or before the date specified for performance (if any) in this Consultancy Services Order and, if no time is specified, within a reasonable time after the issue of this Consultancy Services Order;
  - (iii) ensure that all Documentation, information and advice (including Documentation, information and advice provided prior to the issue of this Consultancy Services Order) provided to the Participating Agency or published on the Provider Database is Fit for Purpose so that, without limitation, it contains sufficient content and detail to enable the Participating Agency

to make use of it for the purpose for which it was requested;

- (iv) act in the best interests of the Participating Agency in the provision of Services to the Participating Agency; and
- (v) provide Services to the reasonable satisfaction of the Participating Agency (as reported to the CoE).

### 3. Estimates and Quotes

#### 3.1 Estimates and Quotes

- (a) The Provider must provide an Estimate or Quote for all Services to be provided under this Consultancy Services Order, unless the total Fees in respect of the Services under this Consultancy Services Order are likely to be less than \$10,000 (exclusive of GST) or such other amount as determined by the CoE and notified to the Provider.
- (b) Despite clause 3.1(a), if, during the course of providing the Services, the Provider becomes aware that the total Fees (excluding GST) are likely to exceed the amount referred to in clause 3.1(a), the Provider must provide an Estimate in accordance with clauses 3.1(c) to (e).
- (c) All Estimates and Quotes will be provided at no cost to the Participating Agency.
- (d) All Estimates and Quotes must specify the estimated timeframe to perform the Services requested in this Consultancy Services Order and the Rates of Personnel providing the Services and include any Expenses likely to be incurred in providing the Services.
- (e) All Quotes and Estimates must be provided to the Participating Agency in writing and must be included in this Consultancy Services Order.
- (f) To avoid doubt and without limiting clause 4.5(c) of the Services Agreement, if any Quote or Estimate is not acceptable to the Participating Agency, the Participating Agency and Provider may seek to negotiate a more favourable Quote or Estimate, including a decrease in the Rates on which the Quote or Estimate was based.

#### 3.2

#### If Charges exceed the Estimate

- (a) If during the course of providing the Services under this Consultancy Services Order, the Provider becomes aware that the total Charges (excluding GST) are likely to exceed the Estimate, the Provider must give written notice to the Participating Agency using Part D of this Consultancy Services Order as soon as the Provider becomes so aware, but no later than the time the costs accrued or incurred reach 80% of the Estimate.
- (b) The notice under clause 3.2(a) must specify a revised Estimate for the Services and include the reason the total

Charges will exceed the original Estimate.

- (c) The Participating Agency has sole discretion whether to approve a revised Estimate and must act reasonably when deciding whether to approve a revised Estimate.
- (d) When a revised Estimate is approved, the Participating Agency must provide written notice of the same to the Provider.
- (e) If a Provider has provided an Estimate to the Participating Agency for Services, the Participating Agency is not liable to pay the Provider any amount exceeding the Estimate unless the Participating Agency has approved a revised Estimate.

### 3.3 If Charges exceed the Quote

- (a) The Provider acknowledges that neither the CoE nor the Participating Agency are obliged to pay any Charges to the Provider in relation to Services performed under this Consultancy Services Order if those Charges exceed any Quote provided in relation to this Consultancy Services Order, unless the Participating Agency has given its prior written consent in accordance with clause 3.3(b).
- (b) If the Participating Agency agrees to allow the Provider to increase the Charges:
  - (i) the Provider will complete and submit Part D of this Consultancy Services Order to the Participating Agency; and
  - (ii) upon receipt of the completed Part D of this Consultancy Services Order, the Participating Agency must promptly advise the Provider (in writing) if the completed Part D is acceptable.

## 4. Conflicts of interest

### 4.1 Conflicts of interest

- (a) The Provider must, upon receipt of this Consultancy Services Order, make diligent inquiry whether it has any actual, potential or perceived Conflicts of Interest if it were to provide the Services specified in this Consultancy Services Order and, if no such Conflict of Interest exists, the Provider must provide confirmation to that effect to the Participating Agency.
- (b) If the Provider has an actual, potential or perceived Conflict of Interest, the Provider must immediately notify the Participating Agency and must not begin performing the Services without the prior written approval of the Participating Agency.
- (c) The Provider must take all reasonable steps to ensure that:
  - (i) a situation does not arise that might result in an actual,

potential or perceived Conflict of Interest; and

- (ii) any Personnel or Subcontractors of the Provider do not engage in any activity or obtain interests that might result in the Provider or such Personnel or Subcontractors having an actual, potential or perceived Conflict of Interest,

that cannot be managed to the satisfaction of the Participating Agency.

- (d) If, after commencing Services under this Consultancy Services Order, the Provider becomes aware of any matter, circumstance, interest or activity that may give rise to any actual, potential or perceived Conflict of Interest, the Provider must immediately notify the Participating Agency of all relevant details and must immediately cease work on the Services until such time as the Participating Agency provides written notice confirming the Provider may continue to perform the Services or terminates the engagement of the Provider in respect to the Services to be performed under this Consultancy Services Order in accordance with clause 4.1(e).
- (e) If the Participating Agency considers that the Provider has an actual Conflict of Interest of sufficient gravity that the Provider can no longer perform Services for it, the Participating Agency may, by written notice to the Provider, terminate this Consultancy Services Order with immediate effect on the date of termination specified in that notice.
- (f) Any approval or notice given by the Participating Agency pursuant to clause 4.1(b) or 4.1(d) may require the Provider to take steps reasonably required by the Participating Agency to manage the Conflict of Interest, and the Provider must provide written notice confirming its acceptance of those steps before it may commence or continue to provide the Services under this Consultancy Services Order.

## 5. Responsibilities

### 5.1 Provider responsibilities

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

- (a) respond promptly, accurately and adequately to any requests for information made by the Participating Agency in relation to the Services, including requests for advice;
- (b) in performing Services for the Participating Agency under this Consultancy Services Order comply with all privacy and other policies and guidelines issued by the Participating Agency and notified or made available to the Provider;
- (c) obtain, maintain and comply with any governmental, regulatory or other



approvals, permissions, consents, licences, and requirements necessary to provide the Services and perform its obligations under this Consultancy Services Order;

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

## 5.2 Participating Agencies' responsibilities

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

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

involving the CoE in accordance with clause 13.

## 6. Resourcing

### 6.1 General requirements

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

### 6.2 Provider's Nominated Personnel

- (a) The Participating Agency may, in this Consultancy Services Order, nominate specific Personnel (**Nominated Personnel**) to be the primary providers or to supervise the delivery of the Services.
- (b) If any Nominated Personnel nominated in this Consultancy Services Order are not available to provide or supervise the Services requested, the Provider must immediately notify the Participating Agency and provide details of other Personnel (if any) with the necessary skills and experience to provide or supervise the Services requested pursuant to this Consultancy Services Order.
- (c) Notice given under clause 6.2(b) must specify the period for which the Nominated Personnel will continue to be unavailable.
- (d) Upon receipt of notice under clause 6.2(b), the Participating Agency must notify the Provider whether the replacement Personnel are acceptable.
- (e) The Participating Agency is under no obligation to accept any replacement Personnel and, if it does not approve the replacement Personnel, the Provider may not commence or continue providing the Services.

### 6.3 Personnel

- (a) The Provider will ensure that all of its Personnel who are engaged in the performance of the Provider's obligations under this Consultancy Services Order:
  - (i) have the requisite skills, expertise, qualifications and experience;
  - (ii) have, before performing any such obligations, obtained all security clearances and passed all probity checks required by, or necessary to provide the Services to, the Participating Agency;
  - (iii) comply with all health, safety, security and other policies, codes of conduct, procedures and reasonable directions as may be reasonably required by the Participating Agency from time to time; and



- (iv) will carry out their respective duties with due care, skill and diligence.
  - (b) The Participating Agency will notify the Provider of any security clearances and probity checks required by, or necessary to provide the Services to, the Participating Agency.
- 6.4 **Subcontracting**
- (a) The Provider will not subcontract the performance of all or part of the Services or any of its other obligations under this Consultancy Services Order, except with the prior written consent of the Participating Agency.
  - (b) The Provider is solely responsible for the selection of each Subcontractor and must ensure that each Subcontractor is creditworthy, qualified and has the relevant experience to perform the work it is required to carry out for the Provider.
  - (c) To the extent permitted by Law, the Provider is and remains fully responsible for any act or omission of any Subcontractor.
  - (d) The Provider must ensure that each Subcontract contains obligations on the Subcontractor that are consistent with the relevant terms of this Consultancy Services Order, including in relation to clauses 5.1 (Provider responsibilities), 6.3(a) (Personnel), 10 (Confidentiality), 11 (Intellectual Property) and 14 (Termination) and Schedule 3 (Performance Measurement), together with clause 15 (Audit) of the Services Agreement.
  - (e) If, in the Participating Agency's reasonable opinion, a Subcontractor is:
    - (i) materially not performing in accordance with the terms of this Consultancy Services Order, the Participating Agency may, by notice to the Provider, require the Provider to procure that the Subcontractor performs the relevant obligations within 10 Business Days, failing which the Participating Agency may, by notice to the Provider, require the Provider to remove that Subcontractor; or
    - (ii) a material threat to the health, safety or security of the Personnel or property of the Participating Agency, or has breached security or confidentiality requirements of this Consultancy Services Order, the Participating Agency may, by notice to the Provider, require the Provider to remove that Subcontractor,
 and the Provider will ensure the immediate removal of that Subcontractor.

## 7. Changes

### 7.1 Change procedure

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

## 8. Price and payment

### 8.1 Calculation of Charges

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

### 8.2 Participating Agency to pay for Services

- (a) The Participating Agency will pay the Provider the Charges applicable to any Services procured by the Participating Agency on the terms of this clause 8.
- (b) The Charges and Administration Fee comprise the total amount payable by the Participating Agency for the Services.

### 8.3 Invoicing and payment

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

- (a) the Provider will render one itemised invoice to the Participating Agency at the end of each month during the Term for all Services performed during that month specifying (as applicable):
  - (i) the nature and amount of the Fees or other applicable fees and fee structures;
  - (ii) the Personnel and their applicable Rate;
  - (iii) the hours billed (by Personnel and in the aggregate);
  - (iv) the nature and amount of any Expenses (including any third party charges to be passed on to the Participating Agency);
  - (v) if applicable, the amount representing the Administration Fee;
  - (vi) how much of the Estimate or Quote has been used;
  - (vii) a brief description of the Services provided during that month; and
  - (viii) any other matters the Participating Agency may reasonably request;
- (b) each correctly rendered invoice will be payable on or before the 20th day of the month following the month in which the invoice was received;
- (c) the Participating Agency will have no obligation to pay any Charges which are invoiced more than 90 days after the

- date that such amount was required to be invoiced pursuant to this clause 8.3; and
- (d) the Provider may only invoice the Participating Agency for any Expenses at the cost actually incurred by the Provider.

#### 8.4 Invoice disputes

If the Participating Agency or the Provider disputes an invoice:

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

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

#### 8.5 Taxes

- (a) Except for any GST payable by the Participating Agency, any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including applicable interest and penalties) payable in connection with this Consultancy Services Order under any Law is to be paid by the Provider and not passed on to the Participating Agency unless otherwise expressly agreed in writing by the Participating Agency.
- (b) The Participating Agency may deduct from any payment to be made to the Provider any withholding taxes or other deductions that it is required by Law to make.

#### 8.6 Administration Fee

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

#### 8.7 Suspension of payment

- (a) Without prejudice to any other right or remedy that may be available to the Participating Agency, the Participating Agency may suspend payment of all or any part of the Charges if the CoE has notified the Provider that the Provider is in Material Breach, until that Material Breach is remedied.
- (b) If the Material Breach is not capable of remedy the Participating Agency and the Provider agree to treat the Charges as being in dispute and clause 14 will apply.

### 9. Warranties

#### 9.1 General warranties

Each party represents, warrants and undertakes that:

- (a) it has full power, capacity and authority to execute, deliver and perform its obligations under this Consultancy Services Order;
- (b) it has, and will continue to have, all the necessary consents, permissions, licences and rights to enter into and perform its obligations under this Consultancy Services Order; and
- (c) this Consultancy Services Order constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

#### 9.2

#### Provider's warranties

The Provider represents, warrants and undertakes that:

- (a) it will perform its obligations under this Consultancy Services Order with due care, skill, promptness and diligence at all times;
- (b) it has, and will have throughout the Term, sufficient Personnel to supply the Services and to perform its other obligations under this Consultancy Services Order;
- (c) it, and each of its Personnel engaged in the performance of the Services, has, and will have throughout the Term, the necessary expertise and all necessary governmental, regulatory or other approvals, permissions, consents, licences, qualifications, accreditations and requirements to provide the Services and perform its other obligations under this Consultancy Services Order;
- (d) it will comply with the requirements of all Laws as they relate to the provision of Services by the Provider;
- (e) the possession or use of any item of Intellectual Property supplied or licensed by it, or the use of any item of Intellectual Property by it to perform its obligations under this Consultancy Services Order, will not infringe the rights of any third party;
- (f) all Documentation (and any other information or advice supplied by it to the Participating Agency) and any information and data reported to the CoE will be accurate, complete and (as applicable) Fit for Purpose;
- (g) there are no existing agreements, undertakings or arrangements which prevent it from entering into this Consultancy Services Order, or which would impede the performance of its obligations under this Consultancy Services Order, or that it would breach by entering into this Consultancy Services Order;
- (h) it is not (and nor is any of its Personnel) a party to any litigation, proceedings or disputes which could adversely affect its ability to perform its obligations under this Consultancy Services Order; and
- (i) it has not offered any inducement in connection with the entering into or

negotiation of this Consultancy Services Order, and will not offer any inducement in connection with the supply of Services to the Participating Agency.

**9.3 Continuous application**

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

**9.4 Notification**

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

**9.5 Other warranties excluded**

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

**10. Confidentiality**

**10.1 Protection of Confidential Information**

(a) Subject to clauses 10.1(c) and 10.2, the Provider and the Participating Agency will treat as confidential and not disclose to any third party nor use for its own benefit any Confidential Information that is the Confidential Information of the other.

(b) The Provider will:

- (i) ensure that all Confidential Information of the Participating Agency (and any backup archives containing such Confidential Information) in the possession or control of the Provider from time to time is kept secure and managed and protected and only disclosed or otherwise dealt with in accordance with this Consultancy Services Order;
- (ii) not use any Agency Information for its own purposes or for any purposes different from those contemplated by this Consultancy Services Order; and
- (iii) advise the CoE in writing if any Confidential Information of the Participating Agency will be transferred or stored outside New Zealand before such information is transferred and will confirm that the requirements of this clause 10.1 will be met while such Confidential Information is stored outside New Zealand.

(c) Clause 10.1(a) does not prevent the disclosure of Confidential Information:

- (i) if that information was known, or becomes known, to the public through no act or default of the recipient;
- (ii) that the recipient is required by Law or parliamentary practice (including parliamentary

questions) to disclose, or to a Select Committee or to a Minister of the Crown, so long as the recipient provides notice of the required disclosure promptly upon receipt of notice of the required disclosure (if it is permitted to do so by Law);

(iii) that was lawfully known to the recipient prior to the date it was received;

(iv) that becomes available to the recipient from a source other than a party to this Consultancy Services Order, provided that the recipient has no reason to believe such source is itself bound by an obligation of confidence to the person that disclosed that information or is otherwise prohibited under Law from disclosing such information;

(v) to any Professional Adviser for the purposes of rendering professional services to a party in relation to this Consultancy Services Order;

(vi) to the extent that such disclosure is authorised by this Consultancy Services Order; or

(vii) if such disclosure is approved for release with the consent of the party from whom the Confidential Information is first received.

**10.2**

**Limited disclosure**

(a) The Provider may, subject to clause 10.2(d), disclose the Confidential Information of the Participating Agency to its Subcontractors, Personnel, Related Entities and Professional Advisers who need to know the same for the sole purpose of enabling the Provider to perform its obligations and exercise its rights under this Consultancy Services Order.

(b) The Participating Agency may, subject to clause 10.2(d), disclose the Confidential Information of the Provider to its third party suppliers, Personnel and Professional Advisers and any other Participating Agencies (including the CoE) who need to know the same in connection with the Services.

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

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

## 11. Intellectual Property

### 11.1 Intellectual Property owned by Provider

- (a) The Participating Agency acknowledges that all:
- (i) Intellectual Property held by the Provider before the Commencement Date;
  - (ii) Intellectual Property developed independently from this Consultancy Services Order by the Provider, and that is not developed, commissioned or created under or in connection with this Consultancy Services Order; and
  - (iii) adaptations and modifications to the Intellectual Property described in clauses 11.1(a)(i) and (ii),

remains the Provider's sole and exclusive property (**Provider IP**).

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

### 11.2 Intellectual Property owned by Participating Agency

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

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

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

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

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

- (iii) waives all of its moral rights under Part 4 of the Copyright Act 1994 in the Participating Agency IP,

and the Provider will sign all documents and do all acts and things that are necessary to give effect to this clause 11.2(c).

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

### 11.3 Intellectual Property owned by third parties

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

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

## 12. Liability

### 12.1 Indemnity

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

- (i) unlawful, malicious or negligent act or omission by the Provider;
- (ii) personal injury, sickness, death or loss of, or damage to, tangible property due to an act or omission of the Provider; or
- (iii) any other breach by the Provider of its obligations under this Consultancy Services Order.

- (b) The Provider will, subject to clause 12.1(c), indemnify the Participating Agency against all Losses suffered or incurred by the Participating Agency as a



result of any claim that the possession or use of any Intellectual Property supplied or licensed by the Provider, or the use of any Intellectual Property used to provide the Services, infringes any third party's rights.

- (c) The Provider will have no liability under clause 12.1(b) to the extent that any IP Claim arises from any:
- (i) modification by the Participating Agency of any item of Intellectual Property supplied or licensed by the Provider without the approval of the Provider;
  - (ii) use by the Participating Agency of Intellectual Property supplied or licensed by the Provider for any purpose disallowed by this Consultancy Services Order or the applicable Intellectual Property licence (but only if the licence has been provided to the Participating Agency prior to such use); or
  - (iii) use of Intellectual Property used to provide the Services if and to the extent that Intellectual Property was supplied by the Participating Agency.

## 12.2 IP Claims

- (a) In the event of a claim under clause 12.1(b) (an IP Claim):
- (i) the Participating Agency will give the Provider notice of the IP Claim as soon as practicable and, to the extent permissible by Law, permit the Provider (at the Provider's cost) to handle all negotiations for settlement and to control and direct any litigation that may follow (Control of the IP Claim);
  - (ii) if the Provider has Control of the IP Claim:
    - (A) the Participating Agency will provide all reasonable assistance to the Provider (at the Provider's cost) in the handling of any negotiations and litigation; and
    - (B) the Provider will keep the Participating Agency informed of the defence or negotiations of the IP Claim and diligently conduct any litigation or negotiations, using competent counsel and in a manner that does not adversely affect the name or reputation of the Participating Agency;
  - (iii) the Provider will not enter into any settlement or compromise in relation to the IP Claim without the prior written consent of the

Participating Agency (which will not be unreasonably withheld); and

- (iv) the Provider will notify the CoE of the IP Claim, and the outcome within 5 Business Days of the claim being concluded.
- (b) If any IP Claim disrupts the Participating Agency's use or enjoyment of a Service, the Provider will (unless otherwise requested by the CoE), at its own expense and at its option, immediately:
  - (i) obtain for the Participating Agency the legal right to continued use of the infringing materials; or
  - (ii) replace, modify or resupply the infringing materials so that there is no further infringement, without adversely affecting the performance or functionality of those materials.

## 12.3

### Maximum liability of Participating Agency

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

## 12.4

### Maximum liability of the Provider

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

- (a) in relation to the sub-categories for which the Provider has been appointed as a Tier 1 Provider, the greater of:
  - (i) 10 times the total Charges paid and payable under this Consultancy Services Order;
  - (ii) \$5,000,000; and
  - (iii) any greater amount or multiple set out in this Consultancy Services Order;
- (b) in relation to the sub-categories for which the Provider has been appointed as a Tier 2 Provider, the greater of:
  - (i) 10 times the total Charges paid and payable under this Consultancy Services Order;
  - (ii) \$2,000,000; and
  - (iii) any greater amount or multiple set out in this Consultancy Services Order; and
- (c) in relation to the sub-categories for which the Provider has been appointed as a Tier 3 Provider, the greater of:
  - (i) 10 times the total Charges paid and payable under this Consultancy Services Order;
  - (ii) \$1,000,000; and

- (iii) any greater amount or multiple set out in this Consultancy Services Order.
- 12.5 **No double dipping**
- A party to this Consultancy Services Order (or the CoE acting on behalf of the Participating Agency in accordance with the Services Agreement) cannot recover for the same Loss under both this Consultancy Services Order and the Services Agreement.
- 12.6 **Exclusions on liability**
- The limitations on liability set out in clauses 12.3 and 12.4 will not limit the liability of:
- (a) the Provider under clauses 12.1(a) and 12.1(b) (other than in respect of negligent acts or omissions under clause 12.1(a)(i) and breach by the Provider of its obligations under this Consultancy Services Order under clause 12.1(a)(iii), which are subject to the limitations of liability in clauses 12.3 and 12.4);
  - (b) the Provider for any fraudulent act or omission; or
  - (c) either party for any breach of confidentiality.
- 12.7 **Categories of loss**
- (a) Irrespective of how liability arises, neither the Provider nor the Participating Agency will, under any circumstances, be liable for any indirect loss or damage (including consequential loss) arising under or in connection with this Consultancy Services Order.
  - (b) The Participating Agency will not, under any circumstances, be liable for any loss of profits or loss of revenue suffered by the Provider in connection with this Consultancy Services Order.
- 12.8 **Force majeure**
- (a) The Provider and the Participating Agency will not be liable to the other for any failure to perform its obligations under this Consultancy Services Order during the time and to the extent that such performance is prevented, wholly or substantially, by reason of any Force Majeure Event.
  - (b) The party subject to the Force Majeure Event (the **non-performing party**) must:
    - (i) notify the other party as soon as practicable after the Force Majeure Event occurs and provide full information concerning the Force Majeure Event, including the extent of its inability to perform, an estimate of the time likely to be required to overcome the Force Majeure Event and the steps the non-performing party will take to comply with clauses 12.8(b)(ii) and 12.8(b)(iii);
    - (ii) use all reasonable endeavours to mitigate and remedy the effect of the Force Majeure Event and

- minimise the impact of the event on the other party; and
- (iii) use all reasonable endeavours to perform its obligations under this Consultancy Services Order as far as is practicable,

and the Participating Agency will not be required to pay Charges to the extent that the Provider fails to perform its obligations to the Participating Agency due to a Force Majeure Event.

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

## 12.9 Insurance

- (a) During the Term and for a period of two years following the termination of this Consultancy Services Order, the Provider will, at its own expense, ensure that it maintains adequate insurance in respect of its potential liability for loss or damage under this Consultancy Services Order in accordance with Industry Best Practice, but as a minimum the Provider must hold:
  - (i) professional indemnity insurance;
  - (ii) public liability insurance in respect of the Services provided under this Consultancy Services Order; and
  - (iii) other insurance to cover standard commercial risks (including in respect of Documentation which is the property of the Participating Agency and in the Provider's possession or control).
- (b) The Provider will, at the Participating Agency's request, promptly provide satisfactory evidence that it has complied with its obligations in this clause 12.9.

## 13. Dispute resolution

### 13.1 Dispute

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

- (a) the Participating Agency and the Provider will each use its best efforts to

resolve the dispute through good faith negotiations and informal dispute resolution techniques, and will continue to perform its obligations under this Consultancy Services Order as far as possible as if the dispute had not arisen, pending final settlement of the dispute; and

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

### 13.2 Escalation

- (a) The Participating Agency and the Provider will each advise its respective Representative (or equivalent person) of a dispute on the day that the dispute arises.
- (b) The Representatives will use their best efforts to resolve the dispute in accordance with clause 13.1(a).
- (c) If the dispute is not resolved:
  - (i) within 10 Business Days, the dispute will be escalated to senior representatives of the Provider and the Participating Agency with delegated authority to resolve the dispute; and
  - (ii) in relation to the sub-categories for which the Provider has been appointed as a Tier 1 and Tier 2 Provider, within a further 10 Business Days, the dispute will be escalated to the CoE's Manager, All-of-Government Contracts and the Provider's Chief Executive.

### 13.3 Mediation

- (a) If a dispute is not resolved under clause 13.2, either party may, by written notice to the other, refer the dispute to mediation, or they may agree in writing to refer the dispute to mediation.
- (b) The mediation will be conducted by a single mediator in accordance with the terms of the Resolution Institute Standard Mediation Agreement and at a fee to be agreed by the parties.
- (c) If the parties fail to agree on the identity of the mediator and/or the mediator's fee within five Business Days of referral of the dispute to mediation, the mediator will be chosen, and the mediator's fee determined, by the chairperson for the time being of Resolution Institute (or his or her nominee).

### 13.4 Urgent relief

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

## 14. Termination

### 14.1 Termination of Consultancy Services Order

The Participating Agency may terminate this Consultancy Services Order:

- (a) for convenience by giving the Provider at least one month's prior written notice;
- (b) by notice to the Provider with immediate effect on the date of termination specified in that notice, if the Provider commits a Material Breach which is:
  - (i) not capable of being remedied (and, for the avoidance of doubt, paragraphs (a) and (b) of the definition of "Material Breach" are deemed incapable of being remedied); or
  - (ii) capable of being remedied but which is not remedied to the satisfaction of the Participating Agency within 10 Business Days following the date of receipt by the Provider of the Participating Agency's notice of the Material Breach;
- (c) in accordance with clause 4.1(e) (Conflict of Interest); or
- (d) in accordance with clause 12.8(c) (Force Majeure Event).

### 14.2 Consequences of termination or expiry

- (a) In the event of termination or expiry of this Consultancy Services Order, the Participating Agency will not be obliged to make any payment to the Provider except for any Charges payable for Services supplied pursuant to this Consultancy Services Order before the effective date of expiry or termination.
- (b) Termination or expiry will not, unless otherwise provided in this Consultancy Services Order, affect:
  - (i) any rights and remedies available to either party which have accrued up to and including the date of termination or expiry; and
  - (ii) the provisions of this Consultancy Services Order which expressly, or by their nature, survive termination or expiry, including clauses 15 (Entire agreement), 10 (Confidentiality), 11 (Intellectual Property), 12 (Liability), 13 (Dispute Resolution), 14.2 (Consequences of termination or expiry) and 16 (General) and Schedule 1 (Definitions);
  - (iii) the continued application of clauses of the Services Agreement which expressly, or by their nature, are intended to continue to apply to this Consultancy Services Order after termination or expiry of this Consultancy Services Order, including clauses 1.4 (Precedence) and 15 (Audit).
- (c) After expiry or termination of this Consultancy Services Order for any reason, each party will, within five Business Days of receiving notice from

the other party, return all Documentation, Confidential Information or other property belonging to the other party (or destroy such Confidential Information, if requested), except if such Documentation, Confidential Information or other property is required to be retained by any Law.

## **15. Entire agreement**

### **15.1 Entire agreement**

- (a) This Consultancy Services Order is intended to be read in conjunction with the Services Agreement. The provisions of the Services Agreement (not already included in this Consultancy Services Order) which confer rights, obligations or benefits on the parties or the CoE in respect of this Consultancy Services Order are intended to apply to this Consultancy Services Order.
- (b) Subject to clause 15.1(a), no other terms or conditions, including any conditions of sale, invoices or any other communication not included in this Consultancy Services Order (**Communication**), will be incorporated into this Consultancy Services Order, even if at some later date the other party (including, in the case of the Participating Agency) signs or otherwise purports to accept those terms and conditions or the terms of that Communication.
- (c) For the avoidance of doubt, and without limiting clauses 15.1(a) and 15.1(b):
  - (i) any Communication which is expressed or intended to operate as an indemnity, warranty, representation, undertaking, condition or other term of such a nature is hereby disappplied and excluded from this Consultancy Services Order; and
  - (ii) any part of this Consultancy Services Order which describes the nature, scope, price or manner of delivery of Services will, subject to clause 15.1(c)(i), form part of this Consultancy Services Order, but only to the extent that it does not conflict with any other part of this Consultancy Services Order.

## **16. General**

### **16.1 Interpretation**

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

### **16.2 Relationship of the parties**

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

### **16.3 Costs**

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

term of this Consultancy Services Order expressly provides otherwise.

### **16.4 Assignment**

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

### **16.5 Public disclosures**

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

### **16.6 Notices**

- (a) Unless otherwise specified in this Consultancy Services Order, each notice or other communication under this Consultancy Services Order will be made in writing and delivered by post, personal delivery or email to the addressee at the addressee's postal address, physical address or email address (as applicable) and marked for the attention of the person or office holder (if any) from time to time designated for that purpose by the addressee.
- (b) The Provider's postal address, physical address and email address is set out in the Provider Database and may be amended by the Provider at any time.
- (c) The Participating Agency's postal address, physical address and email address is as notified by the Participating Agency to the Provider and may be amended by the Participating Agency at any time.
- (d) A notice or other communication will be deemed to be received:
  - (i) in the case of a letter sent to the addressee's postal address, on the third Business Day after posting;
  - (ii) in the case of personal delivery, on receipt; and
  - (iii) in the case of an email, at the time the email leaves the communications system of the sender, provided that the sender:
    - (A) does not receive any error message relating to the sending of the email at the time of sending; and
    - (B) has obtained confirmation that the email has been delivered to the recipient (which confirmation may be in the form of an automated delivery receipt from the



communications system  
of the recipient),

on the Business Day on which it  
is dispatched or, if dispatched  
after 5 p.m. (in the place of  
receipt), on the next Business  
Day after the date of dispatch.

#### 16.7 Severability

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

#### 16.8 Waiver

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

#### 16.9 Remedies cumulative

Except as is expressly stated otherwise in this Consultancy Services Order:

- (a) the rights, powers and remedies provided in this Consultancy Services Order are cumulative and are not exclusive of any rights, powers or remedies provided by Law or under this Consultancy Services Order; and
- (b) the exercise of any rights, powers and remedies provided in this Consultancy Services Order will not prejudice the exercise of any other right, power or remedy under this Consultancy Services Order or existing at Law.

#### 16.10 Counterparts

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

#### 16.11 Governing law and jurisdiction

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

## SCHEDULE 1: DEFINITIONS

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

**Administration Fee** means the amount referred to in clause 8.6;

**Agency Information** means all:

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

but excluding the Provider's working papers;

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

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

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

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

**CoE** means the Ministry of Business, Innovation and Employment, the Centre of Expertise for Consultancy Services;

**Commencement Date** is the date on which this Consultancy Services Order is signed by both parties or, if two dates, the later date;

**Confidential Information** means:

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

**Conflict of Interest** means any matter, circumstance, interest or activity of the Provider, its Personnel or Subcontractors, arising by whatever means that directly or indirectly conflicts with:

- (a) the duties of the Provider and any of its Personnel or Subcontractors to the Participating Agency; or
- (b) the interests of the Participating Agency in relation to this Consultancy Services Order or otherwise in respect to the provision of consultancy services to the Participating Agency either before or after the Commencement Date;

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

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

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

**Control** means, in relation to the Provider or any ultimate or intermediate holding company or Holding Entity of the Provider, the power to:

- (a) manage, directly or indirectly, the operation of the business; or
- (b) control, directly or indirectly, the composition of the board of directors or board of management or equivalent governing body,

of the Provider or such ultimate or intermediate holding company or Holding Entity, whether through the ownership of voting securities, by contract or otherwise, and for these purposes "holding company" will have the same meaning as in section 5 of the Companies Act 1993;

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

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

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

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

**Fit for Purpose** means, in relation to any Service or Documentation to be provided by the Provider to the Participating Agency, that such Services or Documentation are, in descending order of priority, fit for the purpose(s):

- (a) expressly made known in writing by the Participating Agency to the Provider (including in this Consultancy Services Order); or
- (b) for which the Provider, given its knowledge of the Participating Agency and understanding why the

Services or Documentation are required, has reason to expect such Services or Documentation to be used;

**Force Majeure Event** means an event or circumstance beyond the reasonable control of either party which makes it impossible or illegal to perform, or prevents compliance with, or the performance of, a party's obligations under this Consultancy Services Order, including:

- (a) fire, floods, tsunamis, storms, tempest, earthquake or other act of God;
- (b) any act of a public enemy, war, riot, or act of civil or military authority;
- (c) nuclear, chemical or biological contamination; and
- (d) subject to paragraph (g) of this definition, any act of a third party engaged in subversive or terrorist activity or sabotage,

but does not include an event to the extent that:

- (e) the effect of that event could have been substantially prevented, avoided or overcome or mitigated by:
  - (i) implementation of any contracted business continuity or disaster recovery service, or any contingency plans agreed between the parties or which a party has represented it has in place; or
  - (ii) exercising a reasonable standard of care; or
  - (iii) using information provided by the other party or which is available in the public domain; or
- (f) it is an event for which the party affected is or was directly responsible; or
- (g) that event is constituted or caused by any act or omission of Personnel or a Subcontractor unless and to the extent that the Personnel or Subcontractor was itself affected by an event, which if it occurred in relation to either party would have been a Force Majeure Event; or
- (h) that event is constituted or caused by an Insolvency Event or the insolvency of a Subcontractor or lack of funds for any reason;

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

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

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

**Insolvency Event** means, in relation to the Provider:

- (a) the presentation of an application for its liquidation that is not discharged within 30 days of its filing or which is not demonstrated to the Participating Agency prior to the expiry of that 30 day period as being an application that is frivolous or vexatious;
- (b) any step taken in or toward the making of any compromise, proposal or deed of arrangement with all or some of its creditors;
- (c) the appointment of a liquidator, receiver, statutory manager, administrator or similar official, to it;
- (d) the suspension or threatened suspension by it of the payment of its debts;



- (e) cessation by it of a whole or any relevant part of its business in New Zealand;
- (f) the enforcement of any security against the whole or a substantial part of its assets; or
- (g) any other insolvency event or proceedings analogous to any of the foregoing occurring in any relevant jurisdiction;

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

**Law** means:

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

in any jurisdiction that is applicable to this Consultancy Services Order;

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

**Material Breach** means any material breach by the Provider of the terms of this Consultancy Services Order or the occurrence of any event having a material effect on the ability of the Provider to perform its obligations under this Consultancy Services Order (other than a Force Majeure Event), including:

- (a) the occurrence of an Insolvency Event in relation to the Provider or the likely occurrence of an Insolvency Event;
- (b) the occurrence of a change in Control of the Provider or any ultimate or intermediate holding company or Holding Entity of the Provider that the CoE has not previously approved (acting reasonably);
- (c) any representation or warranty made by the Provider in terms of this Consultancy Services Order being found to be untrue or incorrect; and
- (d) any failure on the part of the Provider to comply with, observe or perform any of the terms of this Consultancy Services Order in circumstances where that contract breach or that contract breach together with other contract breaches is considered by the Participating Agency on reasonable grounds to cause the Provider to be unable or unwilling, or be likely to be unable or unwilling, to perform its obligations under this Consultancy Services Order;

**Maximum Rates** means the maximum Rates payable to the Provider for providing the Services, as recorded in the Provider Database, excluding Expenses;

**Panel** means the All-of-Government panel of providers who provide consultancy services to Participating Agencies,

including any sub-panel, as detailed on [www.procurement.govt.nz](http://www.procurement.govt.nz);

**Participating Agency** means the Participating Agency that is a party to this Consultancy Services Order;

**Participating Agencies** means each of the CoE and every other Eligible Agency that is a party to the memorandum of understanding between the CoE and all other Participating Agencies relating to the management of their relationship with each other and with the Provider in relation to the Services, as amended from time to time;

**Personnel** includes partners, principals, directors, employees, agents, officers and individual independent contractors;

**Professional Adviser** means any accounting, legal, procurement or technical professional;

**Provider Database** means the IT platform described in Schedule 7 (Provider Database) to the Services Agreement;

**Quote** means a fixed price, capped price or other pre-agreed basis for establishing the Charges for Services required by the Participating Agency where the Provider is prevented from increasing the Charges without the prior written consent of the Participating Agency;

**Rates** means the rates (whether hourly, daily or weekly or other time-related basis) payable to the Provider for providing the Services, determined in accordance with Schedule 2 (Pricing), excluding Expenses;

**Related Entity** means a related company under the Companies Act 1993 (New Zealand) or a related body corporate under the Corporations Act 200, provided that any reference in the Companies Act 1993 to a "company" is deemed to include any partnership, body corporate, association or other entity, whether corporate or unincorporated, irrespective of the place of incorporation or registration of that partnership, body corporate, association or other entity;

**Representative** has the meaning given in paragraph 3.1 of Schedule 5 (Governance) to the Services Agreement);

**Service Level** means a required standard for the Provider's performance of its obligations under this Consultancy Services Order, as described in Schedule 3 (Performance Measurement);

**Service Level Default** means a failure by the Provider to meet one or more Service Levels;

**Services** means the consultancy services provided from time to time under the terms of this Consultancy Services Order;

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

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

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

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



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

## SCHEDULE 2: PRICING

### 1. Introduction

This Schedule sets out general principles underlying the Charges.

### 2. Principles

#### 2.1 Participating Agency will only pay for Services ordered

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

#### 2.2 No minimum volume

The Participating Agency is not required to meet a minimum aggregate expenditure or volume level for any Services.

#### 2.3 No interest

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

#### 2.4 Rates

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

### 3. Charges

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

## SCHEDULE 3: PERFORMANCE MEASUREMENT

### 1. Introduction

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

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

## 2. Service Levels

### 2.1 Format

Each Service Level is described in Annexure A using the following format:

Parameter	Description
Description	Description of what the Service Level will measure
Purpose	Why it is important to Participating Agencies that the Service Level is met
Calculation	Method for calculating the Service Level
Service Level	The performance standard that the Provider is required to meet or exceed

### 2.2 Service Levels must be met

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

### 2.3 Changes to Service Levels

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

## 3. Performance measurement

### 3.1 Failure to meet Service Levels

If the Provider fails to achieve one or more of the Service Levels in any Contract Quarter in respect of this Consultancy Services Order, it will:

- (a) take such steps and do all things necessary, as soon as possible, to correct the failure; and
- (b) notify the Participating Agency of the reasons for the failure and the steps that the Provider is taking to ensure that the failure is not repeated; and
- (c) consider whether the Charges for the Services that are subject to the Service Level Default should be reduced to reflect the lower value of the Services provided.

## Annexure A: Service Levels

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

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

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

RELEASED UNDER THE OFFICIAL INFORMATION ACT



**Mary Howell**

**From:** 9(2)(a)  
**Sent:** Tuesday, 21 May 2019 9:26 a.m.  
**To:** Tony MacDonald (Planning & Funding)  
**Cc:** Mary Howell; Jeannie Bayly; Andrea Boyd  
**Subject:** SI ALLIANCE: Outstanding Sign off for EY CSO

Good morning.

We've finalised the actions and outcomes from last week's ALT.

The note below is part of the 'Decisions List' arising from the meeting and confirms sign off for the updated cost of Phase 1 (\$105,000) and expenditure on completion of Phase 2 of the project.

We have not yet finalised the CSO for Phase 2 of the work with EY but that should be taken care of shortly.

This documentation should now provide final confirmation for completion of the CSO review and sign off to enable an invoice to be raised by EY.

Any questions, please let me know ASAP.

ITEM #	Requestor	Decision/ Subject	Type	Value (if any)	Sought by / Sponsor	Outcome
7	SIAPO / 9(2)(a) 9(2)(a)	<b>Regional Analytical Toolkit:</b> Expenditure increase – Phase 1	Approve final invoice of \$105,000 (\$100,200 initially approved)	\$105,000	9(2)(a)	Action: Agreement to complete Phase II (increased from \$192,950 to \$196k) + \$61k for training and documentation. Agree to close Phase II out for \$196k, but need to provide a decent set of documentation, without spending \$61k on training.

Regards,

Mark

9(2)(a)

**South Island Alliance Programme Office**  
Level 4, 32 Oxford Terrace, Christchurch Central  
PO Box 639, Christchurch 8140

9(2)(a)

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# Regional Planning Framework

## Phase One Overview

South Island Alliance Programme Office



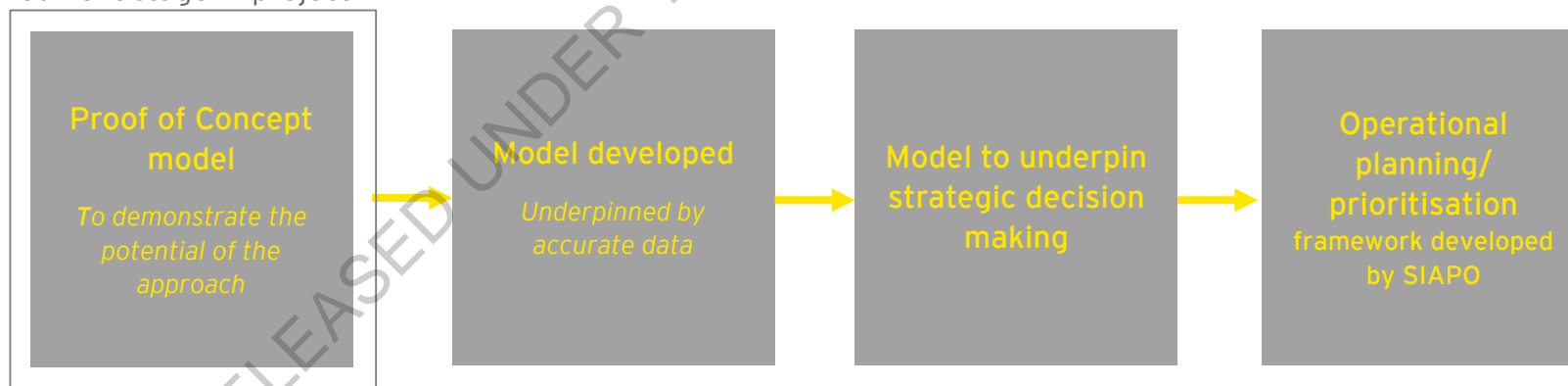
The better the question. The better the answer.  
The better the world works.

# Purpose

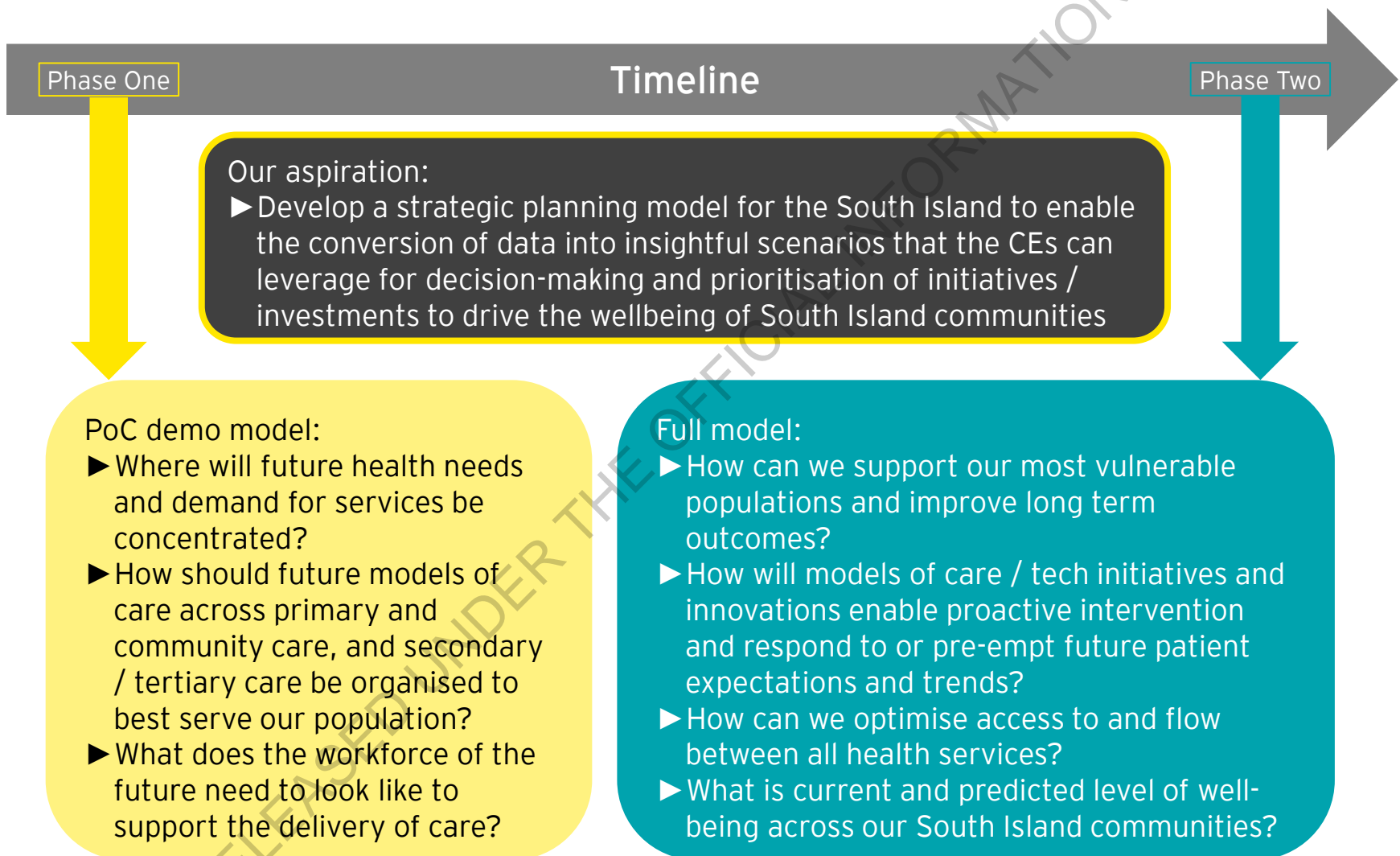
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- ▶ To develop a Proof of Concept (PoC) model that demonstrates to Chief Executives (CEs) how a model could be used to plan strategically, in the context of future health needs of South Islanders, future models of care, and the impacts on service and facility planning
- ▶ The PoC model will support better informed planning by providing information about expected demand and capacity requirements, and model of care impacts on service/infrastructure requirements under different scenarios

Current stage in project



# Our aspiration



# Scope and Approach

---

- ▶ Phase One will be initially limited to creating a Proof of Concept (PoC) model based upon information EY has readily available:
  - ▶ National minimum dataset (NMDS)
  - ▶ National non-admitted patient collection (NNPAC) - for ED data
- ▶ If possible, the PoC will be extended to include Primary Care data from South Island PHOs, including the PHO register and GP consultation events by professional type, matched by NHI to NMDS and NNPAC
- ▶ As the focus of this work is on longer term strategic planning, the model will focus on the 5-10 year horizon in the context of a 20 year horizon as the 'North star'
- ▶ Using the above data we aim to create a PoC tool which can explore particular focus areas relating to population change, models of care and service planning, and help to answer questions about how demand and capacity requirements could change under different service configurations or models of care

# Building the PoC Model

---

For Phase One, EY will deliver the following outputs:

Output One	Output Two	Output Three	Output Four
Profile health needs and location of the <b>future population</b> across the Region	Identify the impact of <b>future model of care / tech / patient expectation changes</b> across the Region	Model impact of <b>service-level changes on care delivery</b> in the Region	Identify how <b>microsimulation techniques</b> might be used to quantify the impact of interventions

The above outputs will include consideration of:

Benefits to patient, whānau and communities	Impact on workforce
Changes to patient flow	Impact on health system





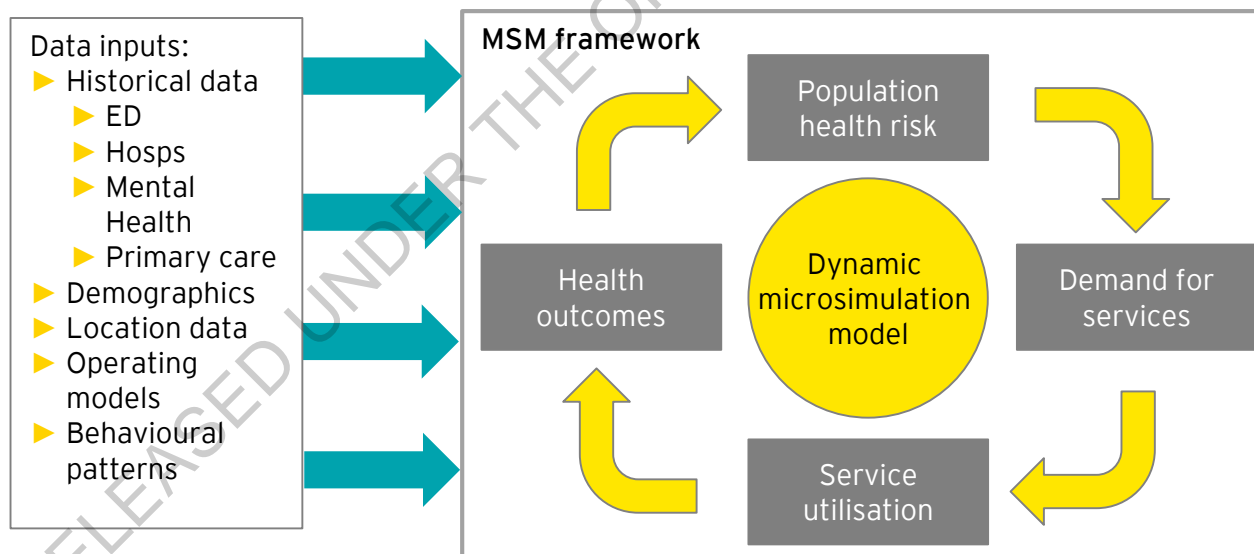
# Intended outputs

	Output One	Output Two	Output Three	Output Four
Outputs	Future population	Models of care	Service-level change	Microsimulation potential
Capability	<ul style="list-style-type: none"> <li>▶ Identify population health needs to 2038</li> <li>▶ Identify health needs by demographics, community, event types, etc.</li> </ul>	<p>Using population health needs to 2038:</p> <ul style="list-style-type: none"> <li>▶ Understand current access pressures</li> <li>▶ Identify impact of initiatives and innovations</li> <li>▶ Identify capacity challenges</li> </ul>	<p>Using population health needs to 2038:</p> <ul style="list-style-type: none"> <li>▶ Explore redistribution of volumes between services and the impact on ability to deliver / capacity</li> </ul>	<p>Consider MSM techniques to:</p> <ul style="list-style-type: none"> <li>▶ Identify potential use cases for MSM to model the impact of new interventions on rest of system</li> </ul>



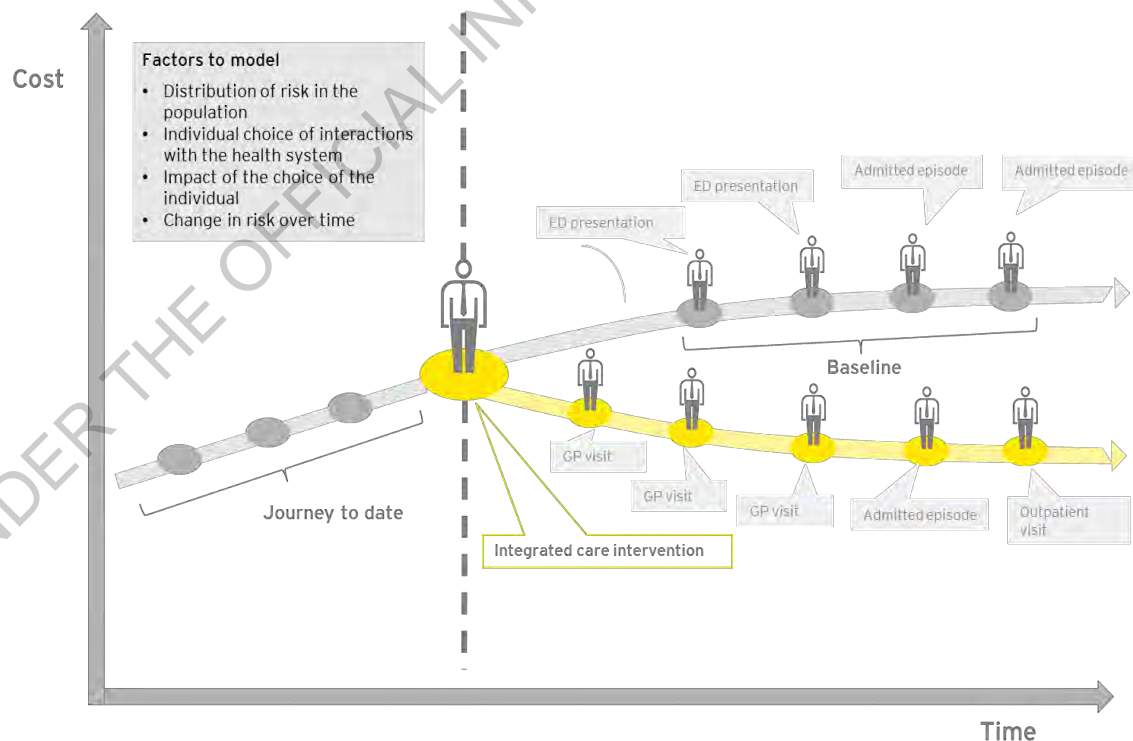
# Microsimulation model

- ▶ Microsimulation modelling (MSM) is a technique used to describe events and outcomes at a person-level with the goal of providing insight to inform service, infrastructure and policy decisions, for example:
  - ▶ At a service level this could model ASH events incorporating behavioural patterns and patient flow through the wider health system
  - ▶ At an infrastructure level this could model patient propensity of attending hospital which could be applied to any new developments to understand any implications
  - ▶ At a policy level this could model outcomes and savings from implementing healthcare homes



# Changing the patient pathway

- ▶ MSMs can be developed and integrated with any front-end interface and can model any scenario desired, allowing the user to better understand:
  - ▶ Patient pathways through system
  - ▶ Opportunities for improved targeting / service delivery
  - ▶ Demand for services
  - ▶ Health care costs
  - ▶ And much more...





# Next steps

---

- ▶ EY to identify data requirements (inputs, transformations and outputs) and any gaps for the PoC model
- ▶ EY to define type and format of each analytical output
- ▶ EY to design and structure model front end (dashboard)
- ▶ EY will set up regular group updates/connect sessions to ensure there is a high level of collaboration across EY and SIAPO
- ▶ Timeframe for the completion of the PoC is 6 weeks (end March 2019).

## About EY

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## AoG Consultancy Services Order (CSO)

### PART A – for Participating Agency to (client) complete

The Participating Agency (referred to as the client in Parts A-E of this CSO) will complete this and email the entire form (including all Parts) to the Provider.

Date	14 June 2019	Client	Canterbury District Health Board on behalf of the South Island Alliance
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#### Client Details

Contact name & title	9(2)(a)	Contact phone & e-mail	9(2)(a)
Client reference		Project Name	South Island Service and Facility Framework – Phase Two

#### Provider Details

Provider name	Ernst & Young Limited	Contact phone & e-mail	9(2)(a)
Nominated Personnel	[Contract title / client unique job reference / purchase order number]	Project name	
Sub category	Finance and Economics		

#### Client profile

Canterbury District Health Board on behalf of the South Island Alliance, being an alliance between Nelson Marlborough District Health Board, Canterbury District Health Board, West Coast District Health Board, Southern District Health Board and South Canterbury District Health Board to carry out certain objectives to create and support a clinically and financially sustainable health system for the South Island



#### A) Purpose

The South Island Alliance is looking to develop a service framework for the region encompassing:

- Population dynamics across the region – population growth, population shifts, historical trends and forecasts
- Service demand
- Linkages to existing and planned capacity
- Potential interventions to influence demand for services and future capacity requirements (inclusive of hospitals; primary and community care facilities).

It is envisaged that the Service Framework is underpinned by a dynamic modelling tool that allows current and future service configuration scenarios to be designed based on demographic trends and population shifts across the region.

The South Island Alliance has decided to undertake a two-phase approach for the dynamic modelling tool work:

**Phase One:** (February 2019 - March 2019) A 4-6 week scoping phase to design a high level Proof of Concept modelling framework that demonstrates the potential outputs and planning scenarios alongside an investigation into the appropriate datasets and information required to support such a tool. Phase One has now been completed.

**Phase Two** (June – September 2019) Approximately 12 week period of work to design the Service Planning Framework and populate with "live data" as a tool for regional service and facility planning reflecting:

- The current population dynamics for the South Island at a regional and sub-regional level.
- Forecast demand for services.
- The current service landscape/map including specialities.
- Current capacity constraints and planned developments that we know of now relative to anticipated demand.

A proof of concept regional planning model will be part of the framework that allows a limited number of specific change scenarios reflecting model of care changes to be overlaid on the current population dynamics and demand forecasting. Inter District Flows will be part of the model.

In addition a draft "optimisation plan" will be developed that consolidates existing strategies to manage demand and reflects known and agreed priority issues including intra-region dynamics, early identified "duplications" of provision and other issues which might be resolved over the short-term.

If appropriate the work should also be sufficiently advanced to provide input into the Health System Review.

#### B) Specific questions / instructions for the provider

- EY are required to engage with DHB decision support teams/ and any other relevant people to ensure the dynamic modelling tool includes all required data sets, and where not currently able to be included, provide a road map for the on loading of future data sets.

#### C) Additional information - optional

Criminal Record Check <input type="checkbox"/>	Right to work in New Zealand check <input type="checkbox"/>
Verification of Qualifications <input type="checkbox"/>	Reference checking <input type="checkbox"/>

#### D) Client specific requirements

Not applicable

E) Timeframes (deliverables/milestones)	Due Date
Fortnightly status update reports to client.	On commencement of project.
Updates to the Oversight Group on weeks 4 and 8	As outlined within the project plan.
Confirmation of Ongoing Maintenance requirements and Costs	By week 8 of the project.
Presentation to the South Island Alliance ALT and Board	August 2019
Optimisation plan	Week 10 of the project
Handover	As agreed with client, following acceptance of the product.

F) Indicative cost for operation delivery
<p>While the costings contained within this CSO are for the delivery of the stated product, for transparency it is important that a functional costing is understood by the SI DHBs. For functionality the key costs include, development, technical hosting, maintenance and ongoing user costs.</p> <p>For transparency the following assumptions have been agreed by all parties:</p> <ul style="list-style-type: none"> <li>• Ernst &amp; Young are to produce a working dynamic modelling tool that meets the requirements of the SI DHBs as outlined in (A);</li> <li>• Ernst &amp; Young and the SI DHBs will work together to determine the support and ongoing maintenance of the tool, agreement is to be reached prior to completion of the tool;</li> <li>• The SI DHBs will host the technical requirements of the tool.</li> </ul>

G) Outputs of the Service
<ol style="list-style-type: none"> <li>1. <b>Phase one:</b> a high level Proof of Concept modelling framework that demonstrates the potential outputs and planning scenarios; <b>Completed</b></li> <li>2. <b>Phase two:</b> a dynamic modelling tool for regional service and facility planning as outlined in (A) and within the agreed cost;</li> <li>3. <b>Optimisation plan:</b> a hard and soft copy of a optimisation plan which documents the application of the tool to describe specific scenarios for issues that are of current concern or pressure for the south island region. These are to be identified by the SI DHBs to make sure they capture the issues you are concerned with</li> <li>4. <b>Handover:</b> hard and soft copy handover material and two face to face training presentation with analytical staff from participating DHBs will be provided to enable the operation of the tool. Presentations of the tool for senior stakeholders will be provided separately of this.</li> <li>5. <b>Hosting:</b> documents required for the SI DHBs to transition the hosting of the tool to a SI DHB local server, with a local server database, and allow local server user access.</li> </ol>

H) Provider liability cap
As per Part F.



## PART B

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

### Specific Services to be provided

The Provider will enable the achievement of the terms of reference for this project and support the delivery of the outputs set out in this CSO. Phase two consists of the following components:

#### *Extending the Proof of Concept (POC) model*

Building out the POC includes:

- Extending the underlying data to include NHI level information from primary care, aged residential care, ED attendances, hospitalisations and any other datasets of interest
- Benchmarking across the system
- Further refinement to the dashboard to create a faster and more accessible interface
- Testing 1-2 scenarios.

Optimisation plan:

Developing the optimisation plan includes: applied in the

- Identifying specific scenarios for issues that are of current concern or pressure for the south island region
- Applying the dynamic modelling tool decision framework to the scenarios
- Identifying dimensions of system performance, as informed by the model
- Linking and aligning existing decision-making frameworks to model outputs to the specific scenarios being forecast/modelled
- Identifying the resources at the disposal of DHBs to achieve desired results to the specific scenarios being forecast/modelled

#### *Handover and training*

Handover material and 1-2 face to face training sessions will be given at the completion of the project.

#### *Project timeline and check in points*

A high level timeline of the project is provided below. A detailed project planning that outlines the specific activities and timing of these will be developed as a part of the project establishment.

Component	Week										
	1	2	3	4	5	6	7	8	9	10	11
1. Project establishment: detailed project planning											
2. Data collection and transfer											
3. Data manipulation											
4. Model build											
5. Scenario development											
6. Decision making framework											
7. Finalisation and handover											

We will provide fortnightly status update reports, and propose to provide updates to the Oversight Group on weeks 4 and 8, and will have workshops with them on weeks 2, 4 and 10.

Workshops and meetings will be scheduled with the project Oversight Group and the Technical Advisory Group as a mechanism to seek decisions and test the direction of the work. A schedule of workshops and meetings is depicted in the table below.

Workshop / Meeting	Proposed week
<b>Oversight Group</b>	
Identify core questions for phase 2	2
Data prioritisation and governance arrangements	2
Identify scenarios for model	4
Model interface and interactivity	4
Test components and scenarios for decision making framework	4
Test decision making framework and pilot application	8
Presentation of model and scenarios	10
<b>Technical Advisory Group</b>	
Test assumptions for scenarios	4
Test data manipulation and design decisions	4
Model interface and interactivity	4
Test decision making framework scenarios and application for live examples	7
Presentation of model and scenarios	10

The ability to meet the depicted timelines is dependent on timely delivery of data and decisions being made by the Oversight Group. An initial list of decisions needed from the Oversight Group are:

Decisions needed by the end of Week 2:

- Key datasets to include
- How data is to be transferred

Decisions needed by the end of Week 4:

- Scenarios we want to deep dive on descriptively, e.g., patient journeys
- Hosting of the tool post completion of the project.

EY holds national collections data and can begin analysis using these datasets ahead of decisions about data transfer. However, if local datasets are to be included (such as PHO data), we would need to have access to this data by Week 5 to complete the project within the described timeframes.



### Hosting options for the tool

EY will work with the SI DHBs to transition the hosting of the tool to a SI DSHB local server, with a local server database, and allow local server user access. Other options for hosting arrangements will be worked through as required.

### Definitions

This project contains a number of key technical terms which describe different analytical methods. Some of the key terms are defined below:

South Island Alliance: The South Island Alliance brings together the region's five district health boards (DHBs).

Modelling: Modelling uses statistical techniques to approximate reality from data. For example, data collected through service interaction is used to build a picture of the population and their health needs.

Predictions/ predictive analytics: Predictive analytics uses a variety of statistical techniques to analyse past events to make predictions about unknown future events. In this context the tool will make predictions about the size, demographics and distribution of the south island population and their likely future health needs and service use.

Microsimulation: Microsimulation is an analytical technique which predicts peoples' outcomes over time. It does this by using information about people's demographics, wellbeing, health status and historical service use. The output of microsimulation modelling is year on year projections of future health status and service use for every individual in the NZ resident population, which is then aggregated to different subpopulations of interest. The benefits of using microsimulation as an analytical technique are:

- There is a lot of flexibility in what can be reported, as the modelling is conducted at a very granular level
- It provides a baseline of what will happen in the future if nothing changes in system settings or population health
- It provides the infrastructure to test the impact of different scenarios on service demand and the incidence and prevalence of disease.

Microsimulation is built in a more granular way than other modelling techniques to create predictive analytics.

Dashboard: The outputs from the modelling are displayed in an interactive interface, called a dashboard. The benefits of presenting data in this way is that it provides a simple way to disseminate analytics to a wide group of users while minimising privacy risk. This is because the dashboard displays aggregates and does not enable users to identify individuals. Dashboards also allow a lot of user interaction and discovery, by enabling the users to look at different subgroups or areas of interest.

Scenarios: Scenarios are alternative service or population situations, which are simulated to test the impact of different service provision or a different profile of health need on the predictions generated by the model. For example, alternative models of care can be simulated to test the impact on demand for secondary health services in future.

Can you confirm that the Nominated Personnel (if any) is available to provide the Services	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Can you confirm that the timeframe is acceptable	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

Estimated Start and End Date			
Start	12 June 2019	End	30 September 2019

# Estimate / Quote (excluding GST, if any)

Fees	\$ 198,450
<b>Administration Fee (Tier 1 &amp; 2 only)</b>	\$1,984.50
<i>(Optional)</i> The above Fees are apportioned as follows:	
Job Level 1	\$
Job Level 2	\$
Job Level 3	\$
Job Level 4	\$
Job Level 5	\$
Fixed Fee (Job Level 1)	\$
Fixed Fee (Job Level 2)	\$
Fixed Fee (Job Level 3)	\$
Fixed Fee (Job Level 4)	\$
Fixed Fee (Job Level 5)	\$
Monthly Retainer	\$
Subcontracting	\$
<b>Expenses</b>	\$ 3,500 (estimate)
<b>Total Charges</b>	\$203,934.50
Identify whether the Total Charges is an Estimate / Quote and the method that the Charges have been calculated	The costs by component are provided in the table below.

## Additional information / assumptions:

Expenses will be charged at cost and on agreement with the South Island Alliance. These include flights to Christchurch for Wellington and Auckland based staff and associated travel costs. We have estimated the expenses to be \$3,500.

Costs by week for the POC extension and decision-making framework are presented below:

	Week										
Resource	1	2	3	4	5	6	7	8	9	10	11
9(2)(a)	1	1	1	1	1	1	1	1	1	1	1
	2	2	2	2	2	2	2	2	2	2	2
	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
		2	2						2		
	5	5	5	5	5	5	5	5	5	5	5
<b>Total days</b>	10.5	12.5	10.5	10.5	10.5	10.5	10.5	10.5	10.5	12.5	12.5
<b>Total cost</b>	\$17,250	\$20,150	\$20,150	\$17,250	\$17,250	\$17,250	\$17,250	\$17,250	\$20,150	\$17,250	\$17,250



Job Level	Indicative Characteristics
Level 5	<ul style="list-style-type: none"> <li>• 15+ years of extensive professional experience in their specialised field in a consultancy role.</li> <li>• An industry leader and key influencer who is respected for their professional proficiency and knowledge.</li> <li>• Recognised as a trusted adviser to ministers and/or senior executive teams.</li> <li>• Acts as the senior responsible person on major client engagements. Able to be accountable for leading complex projects/programs.</li> <li>• Responsible for leading a high performing team of professionals, including the coaching and mentoring of colleagues at Levels 1–4.</li> </ul>
Level 4	<ul style="list-style-type: none"> <li>• 10+ years of substantial professional experience in their specialised field in a consultancy role.</li> <li>• Strong theoretical base in subject area, with ability to apply best practice principles to the subject matter context.</li> <li>• Senior team leader with the ability to deputise for the senior responsible person and coach and mentor more junior staff.</li> <li>• Ability to coordinate contributions of other specialists to complete a joint project.</li> <li>• Can engage with clients at strategic/management level if required.</li> </ul>
Level 3	<ul style="list-style-type: none"> <li>• 3-10 years of notable professional experience in their specialised field in a consultancy role.</li> <li>• A trusted performer on a wide range of client-facing consultancy projects in both the private and public sectors.</li> <li>• Thorough knowledge of functional area, combining a broad grasp of relevant best practice principles.</li> <li>• Ability to participate in multi-disciplinary teams and to work independently (with limited supervision).</li> <li>• Performs professional level analysis requiring technical skills and independent initiative within a well-defined program of work.</li> <li>• Contacts with clients predominantly at a working level.</li> </ul>
Level 2	<ul style="list-style-type: none"> <li>• 1-3 years of demonstrable professional experience in their specialised field in a consultancy role.</li> <li>• Previous experience on a range of client-facing consultancy projects, preferably in both the private and public sectors.</li> <li>• Has a theoretical base in subject area, possibly supplemented through recent study, with the ability to translate theory into practice</li> <li>• Performs a variety of analytical tasks requiring independent initiative and knowledge.</li> <li>• Interacts with clients predominantly at the working level.</li> </ul>
Level 1	<ul style="list-style-type: none"> <li>• 0+ years of relevant professional experience in a professional environment.</li> <li>• Evidence of prior contributions to consultancy engagements.</li> <li>• Performs a range of administrative tasks to support the wider team.</li> <li>• Work is performed under the guidance of colleagues at Levels 3-5.</li> </ul>

#### Conflict of Interest declaration

I, <sup>9</sup>(2)(a) have made diligent inquiry whether EY has any actual, potential or perceived Conflict of Interest were it to provide the Services described in this Consultancy Services Order and I have disclosed any actual, potential or perceived Conflict of Interest and how it will be managed below:

#### PART C LEAVE BLANK WHEN ISSUING CONSULTANCY SERVICES ORDER

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

#### Revised scope and/or timeframe



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

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

**Revised Estimate (excluding GST, if any)**

**Fees**

**\$[Add in Total for Fees for Services]**

**Administration Fee (Tier 1 & 2 only)**

**\$[Tier 1 and Tier 2 Providers - 1% of Fees for Services ONLY, not expenses]**

*(Optional) The above Fees are apportioned as follows:*

Job Level 1

\$

Job Level 2

\$

Job Level 3

\$

Job Level 4

\$

Job Level 5

\$

Fixed Fee (Job Level 1)

\$

Fixed Fee (Job Level 2)

\$

Fixed Fee (Job Level 3)

\$

Fixed Fee (Job Level 4)

\$

Fixed Fee (Job Level 5)

\$

Monthly Retainer

\$

Subcontracting

\$

**Expenses**

\$

**Total Charges**

\$

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

Additional information / assumptions:

**PART E - Acceptance**  
**LEAVE BLANK WHEN ISSUING CONSULTANCY SERVICES ORDER**

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

The Provider confirms they have completed any necessary checks as outlined in Part A (Additional Information)

Yes ☐

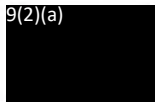
No ☐

Name of Provider's authorised signatory

9(2)(a)

Signature of authorised signatory

9(2)(a)

The client accepts and authorises this Consultancy Services Order	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Name of client's authorised signatory		
Signature of authorised signatory	9(2)(a) 	<b>Justine White</b> Executive Director Finance & Corporate Services
Date of acceptance	18/9/19	
Client's job reference or purchase order number	[if required]	

RELEASED UNDER THE OFFICIAL INFORMATION ACT



## Part F – Terms

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

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

#### 1. Appointment

##### 1.1 Appointment

- (a) The Participating Agency appoints the Provider to provide Services to the Participating Agency as detailed in this Consultancy Services Order and the Provider accepts that appointment, in accordance with the terms of this Consultancy Services Order.
- (b) Certain obligations of the Provider in this Consultancy Services Order do not apply to sub-categories of Services for which the Provider has been appointed as a Tier 3 Provider as follows:
  - (i) the Participating Agency may nominate specific Personnel to be the primary providers or to supervise the delivery of the Services but clauses 6.2(b) to 6.2(e) do not apply to any nominated Personnel;
  - (ii) the relevant Services are not required to meet or exceed the Service Levels specified in Schedule 3 (Performance Measurement) and clause 2.5(a), Schedule 3 (Performance Measurement) do not apply;
  - (iii) the Provider is not required to pay an Administration Fee and clause 8.3(a)(v) does not apply;
  - (iv) the Provider is not required to conduct the Agency Satisfaction Survey for the relevant Services and clause 5.1(h) does not apply;
  - (v) the Provider and Participating Agency are not obligated to escalate a dispute to the CoE's All-of-Government Procurement Manager, Centre of Expertise for Consultancy, in accordance with clause 13.2(c)(ii); and
  - (vi) as otherwise stated in this Consultancy Services Order.

#### 2. Services

##### 2.1 Services

- (a) The Provider will provide Services to the Participating Agency in accordance with

the terms of this Consultancy Services Order.

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

##### 2.2 Agents may procure Services

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

##### 2.3 Timely performance

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

##### 2.4 Delay

- (a) If the Provider considers that it is (or is likely to be) prevented or delayed from achieving a date or time for performance (**Milestone**) specified in this Consultancy Services Order (**Delay**), it will:
  - (i) immediately provide notice verbally or in writing to the Participating Agency, setting out:
    - (A) the cause of the Delay and its expected duration;
    - (B) the effect of the Delay on its ability to perform its obligations under this Consultancy Services Order (including any future Milestones);
    - (C) what extension, if any, to the relevant Milestone is being sought; and
    - (D) what steps, if any, the Participating Agency

may take to mitigate the effect of the Delay; and

- (ii) take all reasonable steps necessary (including by the allocation of additional resources) to eliminate or avoid the Delay and, in all cases, mitigate its effects.
- (b) If the Provider and Participating Agency agree that the Delay is acceptable or wish to amend the Milestone:
  - (i) the Provider will complete and submit Part C of this Consultancy Services Order to the Participating Agency; and
  - (ii) upon receipt of the completed Part C of this Consultancy Services Order, the Participating Agency must promptly advise the Provider in writing if the completed Part C is acceptable.
- (c) If the Provider does not achieve the Milestone (as amended from time to time) and the Participating Agency's acts or omissions, or those of its Personnel or third parties acting on its behalf, have not caused the Provider to fail to achieve the Milestone, the Participating Agency may, without prejudice to any other right or remedy, suspend payment of any Charges relating to this Consultancy Services Order until the Provider remedies the relevant failure.

## 2.5

### Service standards

- (a) The Provider must provide the Services in relation to the sub-categories for which the Provider has been appointed as a Tier 1 and Tier 2 Provider to a standard that reaches or exceeds the Service Levels specified in Schedule 3 (Performance Measurement).
- (b) In addition, the Provider must:
  - (i) provide the Services diligently, efficiently, effectively and in accordance with Industry Best Practice;
  - (ii) ensure that the Services to be performed under this Consultancy Services Order are provided on or before the date specified for performance (if any) in this Consultancy Services Order and, if no time is specified, within a reasonable time after the issue of this Consultancy Services Order;
  - (iii) ensure that all Documentation, information and advice (including Documentation, information and advice provided prior to the issue of this Consultancy Services Order) provided to the Participating Agency or published on the Provider Database is Fit for Purpose so that, without limitation, it contains sufficient content and detail to enable the Participating Agency

to make use of it for the purpose for which it was requested;

- (iv) act in the best interests of the Participating Agency in the provision of Services to the Participating Agency; and
- (v) provide Services to the reasonable satisfaction of the Participating Agency (as reported to the CoE).

## 3. Estimates and Quotes

### 3.1 Estimates and Quotes

- (a) The Provider must provide an Estimate or Quote for all Services to be provided under this Consultancy Services Order, unless the total Fees in respect of the Services under this Consultancy Services Order are likely to be less than \$10,000 (exclusive of GST) or such other amount as determined by the CoE and notified to the Provider.
- (b) Despite clause 3.1(a), if, during the course of providing the Services, the Provider becomes aware that the total Fees (excluding GST) are likely to exceed the amount referred to in clause 3.1(a), the Provider must provide an Estimate in accordance with clauses 3.1(c) to (e).
- (c) All Estimates and Quotes will be provided at no cost to the Participating Agency.
- (d) All Estimates and Quotes must specify the estimated timeframe to perform the Services requested in this Consultancy Services Order and the Rates of Personnel providing the Services and include any Expenses likely to be incurred in providing the Services.
- (e) All Quotes and Estimates must be provided to the Participating Agency in writing and must be included in this Consultancy Services Order.
- (f) To avoid doubt and without limiting clause 4.5(c) of the Services Agreement, if any Quote or Estimate is not acceptable to the Participating Agency, the Participating Agency and Provider may seek to negotiate a more favourable Quote or Estimate, including a decrease in the Rates on which the Quote or Estimate was based.

### 3.2 If Charges exceed the Estimate

- (a) If during the course of providing the Services under this Consultancy Services Order, the Provider becomes aware that the total Charges (excluding GST) are likely to exceed the Estimate, the Provider must give written notice to the Participating Agency using Part D of this Consultancy Services Order as soon as the Provider becomes so aware, but no later than the time the costs accrued or incurred reach 80% of the Estimate.
- (b) The notice under clause 3.2(a) must specify a revised Estimate for the Services and include the reason the total

Charges will exceed the original Estimate.

- (c) The Participating Agency has sole discretion whether to approve a revised Estimate and must act reasonably when deciding whether to approve a revised Estimate.
- (d) When a revised Estimate is approved, the Participating Agency must provide written notice of the same to the Provider.
- (e) If a Provider has provided an Estimate to the Participating Agency for Services, the Participating Agency is not liable to pay the Provider any amount exceeding the Estimate unless the Participating Agency has approved a revised Estimate.

### 3.3 If Charges exceed the Quote

- (a) The Provider acknowledges that neither the CoE nor the Participating Agency are obliged to pay any Charges to the Provider in relation to Services performed under this Consultancy Services Order if those Charges exceed any Quote provided in relation to this Consultancy Services Order, unless the Participating Agency has given its prior written consent in accordance with clause 3.3(b).
- (b) If the Participating Agency agrees to allow the Provider to increase the Charges:
  - (i) the Provider will complete and submit Part D of this Consultancy Services Order to the Participating Agency; and
  - (ii) upon receipt of the completed Part D of this Consultancy Services Order, the Participating Agency must promptly advise the Provider (in writing) if the completed Part D is acceptable.

## 4. Conflicts of interest

### 4.1 Conflicts of interest

- (a) The Provider must, upon receipt of this Consultancy Services Order, make diligent inquiry whether it has any actual, potential or perceived Conflicts of Interest if it were to provide the Services specified in this Consultancy Services Order and, if no such Conflict of Interest exists, the Provider must provide confirmation to that effect to the Participating Agency.
- (b) If the Provider has an actual, potential or perceived Conflict of Interest, the Provider must immediately notify the Participating Agency and must not begin performing the Services without the prior written approval of the Participating Agency.
- (c) The Provider must take all reasonable steps to ensure that:
  - (i) a situation does not arise that might result in an actual,

potential or perceived Conflict of Interest; and

- (ii) any Personnel or Subcontractors of the Provider do not engage in any activity or obtain interests that might result in the Provider or such Personnel or Subcontractors having an actual, potential or perceived Conflict of Interest,

that cannot be managed to the satisfaction of the Participating Agency.

- (d) If, after commencing Services under this Consultancy Services Order, the Provider becomes aware of any matter, circumstance, interest or activity that may give rise to any actual, potential or perceived Conflict of Interest, the Provider must immediately notify the Participating Agency of all relevant details and must immediately cease work on the Services until such time as the Participating Agency provides written notice confirming the Provider may continue to perform the Services or terminates the engagement of the Provider in respect to the Services to be performed under this Consultancy Services Order in accordance with clause 4.1(e).
- (e) If the Participating Agency considers that the Provider has an actual Conflict of Interest of sufficient gravity that the Provider can no longer perform Services for it, the Participating Agency may, by written notice to the Provider, terminate this Consultancy Services Order with immediate effect on the date of termination specified in that notice.
- (f) Any approval or notice given by the Participating Agency pursuant to clause 4.1(b) or 4.1(d) may require the Provider to take steps reasonably required by the Participating Agency to manage the Conflict of Interest, and the Provider must provide written notice confirming its acceptance of those steps before it may commence or continue to provide the Services under this Consultancy Services Order.

## 5. Responsibilities

### 5.1 Provider responsibilities

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

- (a) respond promptly, accurately and adequately to any requests for information made by the Participating Agency in relation to the Services, including requests for advice;
- (b) in performing Services for the Participating Agency under this Consultancy Services Order comply with all privacy and other policies and guidelines issued by the Participating Agency and notified or made available to the Provider;
- (c) obtain, maintain and comply with any governmental, regulatory or other



approvals, permissions, consents, licences, and requirements necessary to provide the Services and perform its obligations under this Consultancy Services Order;

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

## 5.2 Participating Agencies' responsibilities

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

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

involving the CoE in accordance with clause 13.

## 6. Resourcing

### 6.1 General requirements

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

### 6.2 Provider's Nominated Personnel

- (a) The Participating Agency may, in this Consultancy Services Order, nominate specific Personnel (**Nominated Personnel**) to be the primary providers or to supervise the delivery of the Services.
- (b) If any Nominated Personnel nominated in this Consultancy Services Order are not available to provide or supervise the Services requested, the Provider must immediately notify the Participating Agency and provide details of other Personnel (if any) with the necessary skills and experience to provide or supervise the Services requested pursuant to this Consultancy Services Order.
- (c) Notice given under clause 6.2(b) must specify the period for which the Nominated Personnel will continue to be unavailable.
- (d) Upon receipt of notice under clause 6.2(b), the Participating Agency must notify the Provider whether the replacement Personnel are acceptable.
- (e) The Participating Agency is under no obligation to accept any replacement Personnel and, if it does not approve the replacement Personnel, the Provider may not commence or continue providing the Services.

### 6.3 Personnel

- (a) The Provider will ensure that all of its Personnel who are engaged in the performance of the Provider's obligations under this Consultancy Services Order:
  - (i) have the requisite skills, expertise, qualifications and experience;
  - (ii) have, before performing any such obligations, obtained all security clearances and passed all probity checks required by, or necessary to provide the Services to, the Participating Agency;
  - (iii) comply with all health, safety, security and other policies, codes of conduct, procedures and reasonable directions as may be reasonably required by the Participating Agency from time to time; and

- (iv) will carry out their respective duties with due care, skill and diligence.
- (b) The Participating Agency will notify the Provider of any security clearances and probity checks required by, or necessary to provide the Services to, the Participating Agency.

#### 6.4 Subcontracting

- (a) The Provider will not subcontract the performance of all or part of the Services or any of its other obligations under this Consultancy Services Order, except with the prior written consent of the Participating Agency.
- (b) The Provider is solely responsible for the selection of each Subcontractor and must ensure that each Subcontractor is creditworthy, qualified and has the relevant experience to perform the work it is required to carry out for the Provider.
- (c) To the extent permitted by Law, the Provider is and remains fully responsible for any act or omission of any Subcontractor.
- (d) The Provider must ensure that each Subcontract contains obligations on the Subcontractor that are consistent with the relevant terms of this Consultancy Services Order, including in relation to clauses 5.1 (Provider responsibilities), 6.3(a) (Personnel), 10 (Confidentiality), 11 (Intellectual Property) and 14 (Termination) and Schedule 3 (Performance Measurement), together with clause 15 (Audit) of the Services Agreement.
- (e) If, in the Participating Agency's reasonable opinion, a Subcontractor is:
  - (i) materially not performing in accordance with the terms of this Consultancy Services Order, the Participating Agency may, by notice to the Provider, require the Provider to procure that the Subcontractor performs the relevant obligations within 10 Business Days, failing which the Participating Agency may, by notice to the Provider, require the Provider to remove that Subcontractor; or
  - (ii) a material threat to the health, safety or security of the Personnel or property of the Participating Agency, or has breached security or confidentiality requirements of this Consultancy Services Order, the Participating Agency may, by notice to the Provider, require the Provider to remove that Subcontractor,

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

### 7. Changes

#### 7.1 Change procedure

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

### 8. Price and payment

#### 8.1 Calculation of Charges

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

#### 8.2 Participating Agency to pay for Services

- (a) The Participating Agency will pay the Provider the Charges applicable to any Services procured by the Participating Agency on the terms of this clause 8.
- (b) The Charges and Administration Fee comprise the total amount payable by the Participating Agency for the Services.

#### 8.3 Invoicing and payment

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

- (a) the Provider will render one itemised invoice to the Participating Agency at the end of each month during the Term for all Services performed during that month specifying (as applicable):
  - (i) the nature and amount of the Fees or other applicable fees and fee structures;
  - (ii) the Personnel and their applicable Rate;
  - (iii) the hours billed (by Personnel and in the aggregate);
  - (iv) the nature and amount of any Expenses (including any third party charges to be passed on to the Participating Agency);
  - (v) if applicable, the amount representing the Administration Fee;
  - (vi) how much of the Estimate or Quote has been used;
  - (vii) a brief description of the Services provided during that month; and
  - (viii) any other matters the Participating Agency may reasonably request;
- (b) each correctly rendered invoice will be payable on or before the 20th day of the month following the month in which the invoice was received;
- (c) the Participating Agency will have no obligation to pay any Charges which are invoiced more than 90 days after the

date that such amount was required to be invoiced pursuant to this clause 8.3; and

- (d) the Provider may only invoice the Participating Agency for any Expenses at the cost actually incurred by the Provider.

#### 8.4 Invoice disputes

If the Participating Agency or the Provider disputes an invoice:

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

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

#### 8.5 Taxes

- (a) Except for any GST payable by the Participating Agency, any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including applicable interest and penalties) payable in connection with this Consultancy Services Order under any Law is to be paid by the Provider and not passed on to the Participating Agency unless otherwise expressly agreed in writing by the Participating Agency.
- (b) The Participating Agency may deduct from any payment to be made to the Provider any withholding taxes or other deductions that it is required by Law to make.

#### 8.6 Administration Fee

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

#### 8.7 Suspension of payment

- (a) Without prejudice to any other right or remedy that may be available to the Participating Agency, the Participating Agency may suspend payment of all or any part of the Charges if the CoE has notified the Provider that the Provider is in Material Breach, until that Material Breach is remedied.
- (b) If the Material Breach is not capable of remedy the Participating Agency and the Provider agree to treat the Charges as being in dispute and clause 14 will apply.

### 9. Warranties

#### 9.1 General warranties

Each party represents, warrants and undertakes that:

- (a) it has full power, capacity and authority to execute, deliver and perform its obligations under this Consultancy Services Order;
- (b) it has, and will continue to have, all the necessary consents, permissions, licences and rights to enter into and perform its obligations under this Consultancy Services Order; and
- (c) this Consultancy Services Order constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

#### 9.2

#### Provider's warranties

The Provider represents, warrants and undertakes that:

- (a) it will perform its obligations under this Consultancy Services Order with due care, skill, promptness and diligence at all times;
- (b) it has, and will have throughout the Term, sufficient Personnel to supply the Services and to perform its other obligations under this Consultancy Services Order;
- (c) it, and each of its Personnel engaged in the performance of the Services, has, and will have throughout the Term, the necessary expertise and all necessary governmental, regulatory or other approvals, permissions, consents, licences, qualifications, accreditations and requirements to provide the Services and perform its other obligations under this Consultancy Services Order;
- (d) it will comply with the requirements of all Laws as they relate to the provision of Services by the Provider;
- (e) the possession or use of any item of Intellectual Property supplied or licensed by it, or the use of any item of Intellectual Property by it to perform its obligations under this Consultancy Services Order, will not infringe the rights of any third party;
- (f) all Documentation (and any other information or advice supplied by it to the Participating Agency) and any information and data reported to the CoE will be accurate, complete and (as applicable) Fit for Purpose;
- (g) there are no existing agreements, undertakings or arrangements which prevent it from entering into this Consultancy Services Order, or which would impede the performance of its obligations under this Consultancy Services Order, or that it would breach by entering into this Consultancy Services Order;
- (h) it is not (and nor is any of its Personnel) a party to any litigation, proceedings or disputes which could adversely affect its ability to perform its obligations under this Consultancy Services Order; and
- (i) it has not offered any inducement in connection with the entering into or

negotiation of this Consultancy Services Order, and will not offer any inducement in connection with the supply of Services to the Participating Agency.

**9.3 Continuous application**

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

**9.4 Notification**

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

**9.5 Other warranties excluded**

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

**10. Confidentiality**

**10.1 Protection of Confidential Information**

(a) Subject to clauses 10.1(c) and 10.2, the Provider and the Participating Agency will treat as confidential and not disclose to any third party nor use for its own benefit any Confidential Information that is the Confidential Information of the other.

(b) The Provider will:

(i) ensure that all Confidential Information of the Participating Agency (and any backup archives containing such Confidential Information) in the possession or control of the Provider from time to time is kept secure and managed and protected and only disclosed or otherwise dealt with in accordance with this Consultancy Services Order;

(ii) not use any Agency Information for its own purposes or for any purposes different from those contemplated by this Consultancy Services Order; and

(iii) advise the CoE in writing if any Confidential Information of the Participating Agency will be transferred or stored outside New Zealand before such information is transferred and will confirm that the requirements of this clause 10.1 will be met while such Confidential Information is stored outside New Zealand.

(c) Clause 10.1(a) does not prevent the disclosure of Confidential Information:

(i) if that information was known, or becomes known, to the public through no act or default of the recipient;

(ii) that the recipient is required by Law or parliamentary practice (including parliamentary

questions) to disclose, or to a Select Committee or to a Minister of the Crown, so long as the recipient provides notice of the required disclosure promptly upon receipt of notice of the required disclosure (if it is permitted to do so by Law);

(iii) that was lawfully known to the recipient prior to the date it was received;

(iv) that becomes available to the recipient from a source other than a party to this Consultancy Services Order, provided that the recipient has no reason to believe such source is itself bound by an obligation of confidence to the person that disclosed that information or is otherwise prohibited under Law from disclosing such information;

(v) to any Professional Adviser for the purposes of rendering professional services to a party in relation to this Consultancy Services Order;

(vi) to the extent that such disclosure is authorised by this Consultancy Services Order; or

(vii) if such disclosure is approved for release with the consent of the party from whom the Confidential Information is first received.

**10.2**

**Limited disclosure**

(a) The Provider may, subject to clause 10.2(d), disclose the Confidential Information of the Participating Agency to its Subcontractors, Personnel, Related Entities and Professional Advisers who need to know the same for the sole purpose of enabling the Provider to perform its obligations and exercise its rights under this Consultancy Services Order.

(b) The Participating Agency may, subject to clause 10.2(d), disclose the Confidential Information of the Provider to its third party suppliers, Personnel and Professional Advisers and any other Participating Agencies (including the CoE) who need to know the same in connection with the Services.

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

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



## 11. Intellectual Property

### 11.1 Intellectual Property owned by Provider

- (a) The Participating Agency acknowledges that all:
- (i) Intellectual Property held by the Provider before the Commencement Date;
  - (ii) Intellectual Property developed independently from this Consultancy Services Order by the Provider, and that is not developed, commissioned or created under or in connection with this Consultancy Services Order; and
  - (iii) adaptations and modifications to the Intellectual Property described in clauses 11.1(a)(i) and (ii),

remains the Provider's sole and exclusive property (**Provider IP**).

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

### 11.2 Intellectual Property owned by Participating Agency

- (a) The Provider acknowledges that the Participating Agency or its licensor has, and continues to have, sole and exclusive ownership of all Intellectual Property rights in all of the Agency Information together with all adaptations and modifications of such Agency Information (**Pre-contract Participating Agency IP**).
- (b) All Intellectual Property created or developed by the Provider or its employees or Subcontractors in performing the Services and developing the Documentation will be owned by the Participating Agency from the date the Intellectual Property is created or developed (**Post-contract Participating Agency IP**) and, together with the Pre-contract Participating Agency IP, the **Participating Agency IP**).
- (c) If the Provider (or any of its Subcontractors) has under any Law any right in or claim to any of the Participating Agency IP or holds any of the Participating Agency IP, the Provider (by itself and for its Subcontractors):
- (i) assigns to the Participating Agency all of its rights, title and interest in and to the Participating Agency IP from the date it was created or developed; and

- (ii) waives all right of lien or similar rights as may now or later be claimed in the Participating Agency IP; and
- (iii) waives all of its moral rights under Part 4 of the Copyright Act 1994 in the Participating Agency IP,

and the Provider will sign all documents and do all acts and things that are necessary to give effect to this clause 11.2(c).

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

### 11.3 Intellectual Property owned by third parties

- (a) To the extent that the Provider needs to use any Intellectual Property held or owned by a third party (**Third Party IP**) in performing the Services under this Consultancy Services Order, the Provider will use its best endeavours to obtain the fullest rights of use and licence of that Third Party IP (on terms and at a cost to be agreed with the Participating Agency) as are necessary for the performance of those Services for the benefit of the Participating Agency.
- (b) The Participating Agency acknowledges that the Provider may have limited ability to obtain rights and/or a licence to use any Third Party IP and, where the Provider, using its best endeavours, cannot obtain appropriate rights and/or a licence for the Participating Agency to use that Third Party IP, the warranty in clause 9.2(e) applies.

## 12. Liability

### 12.1 Indemnity

- (a) The Provider will, to the extent permitted by Law, indemnify the Participating Agency against all Losses suffered or incurred by the Participating Agency as a result of any:
- (i) unlawful, malicious or negligent act or omission by the Provider;
  - (ii) personal injury, sickness, death or loss of, or damage to, tangible property due to an act or omission of the Provider; or
  - (iii) any other breach by the Provider of its obligations under this Consultancy Services Order.
- (b) The Provider will, subject to clause 12.1(c), indemnify the Participating Agency against all Losses suffered or incurred by the Participating Agency as a



result of any claim that the possession or use of any Intellectual Property supplied or licensed by the Provider, or the use of any Intellectual Property used to provide the Services, infringes any third party's rights.

- (c) The Provider will have no liability under clause 12.1(b) to the extent that any IP Claim arises from any:
- (i) modification by the Participating Agency of any item of Intellectual Property supplied or licensed by the Provider without the approval of the Provider;
  - (ii) use by the Participating Agency of Intellectual Property supplied or licensed by the Provider for any purpose disallowed by this Consultancy Services Order or the applicable Intellectual Property licence (but only if the licence has been provided to the Participating Agency prior to such use); or
  - (iii) use of Intellectual Property used to provide the Services if and to the extent that Intellectual Property was supplied by the Participating Agency.

## 12.2 IP Claims

- (a) In the event of a claim under clause 12.1(b) (an IP Claim):
- (i) the Participating Agency will give the Provider notice of the IP Claim as soon as practicable and, to the extent permissible by Law, permit the Provider (at the Provider's cost) to handle all negotiations for settlement and to control and direct any litigation that may follow (**Control of the IP Claim**);
  - (ii) if the Provider has Control of the IP Claim:
    - (A) the Participating Agency will provide all reasonable assistance to the Provider (at the Provider's cost) in the handling of any negotiations and litigation; and
    - (B) the Provider will keep the Participating Agency informed of the defence or negotiations of the IP Claim and diligently conduct any litigation or negotiations, using competent counsel and in a manner that does not adversely affect the name or reputation of the Participating Agency;
  - (iii) the Provider will not enter into any settlement or compromise in relation to the IP Claim without the prior written consent of the

Participating Agency (which will not be unreasonably withheld); and

- (iv) the Provider will notify the CoE of the IP Claim, and the outcome within 5 Business Days of the claim being concluded.
- (b) If any IP Claim disrupts the Participating Agency's use or enjoyment of a Service, the Provider will (unless otherwise requested by the CoE), at its own expense and at its option, immediately:
  - (i) obtain for the Participating Agency the legal right to continued use of the infringing materials; or
  - (ii) replace, modify or resupply the infringing materials so that there is no further infringement, without adversely affecting the performance or functionality of those materials.

## 12.3 Maximum liability of Participating Agency

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

## 12.4 Maximum liability of the Provider

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

- (a) in relation to the sub-categories for which the Provider has been appointed as a Tier 1 Provider, the greater of:
  - (i) 10 times the total Charges paid and payable under this Consultancy Services Order;
  - (ii) \$5,000,000; and
  - (iii) any greater amount or multiple set out in this Consultancy Services Order;
- (b) in relation to the sub-categories for which the Provider has been appointed as a Tier 2 Provider, the greater of:
  - (i) 10 times the total Charges paid and payable under this Consultancy Services Order;
  - (ii) \$2,000,000; and
  - (iii) any greater amount or multiple set out in this Consultancy Services Order; and
- (c) in relation to the sub-categories for which the Provider has been appointed as a Tier 3 Provider, the greater of:
  - (i) 10 times the total Charges paid and payable under this Consultancy Services Order;
  - (ii) \$1,000,000; and

	(iii) any greater amount or multiple set out in this Consultancy Services Order.	minimise the impact of the event on the other party; and
12.5	<b>No double dipping</b> A party to this Consultancy Services Order (or the CoE acting on behalf of the Participating Agency in accordance with the Services Agreement) cannot recover for the same Loss under both this Consultancy Services Order and the Services Agreement.	(iii) use all reasonable endeavours to perform its obligations under this Consultancy Services Order as far as is practicable,  and the Participating Agency will not be required to pay Charges to the extent that the Provider fails to perform its obligations to the Participating Agency due to a Force Majeure Event.
12.6	<b>Exclusions on liability</b> The limitations on liability set out in clauses 12.3 and 12.4 will not limit the liability of:  (a) the Provider under clauses 12.1(a) and 12.1(b) (other than in respect of negligent acts or omissions under clause 12.1(a)(i) and breach by the Provider of its obligations under this Consultancy Services Order under clause 12.1(a)(iii), which are subject to the limitations of liability in clauses 12.3 and 12.4);  (b) the Provider for any fraudulent act or omission; or  (c) either party for any breach of confidentiality.	(c) If the non-performing party affected by the Force Majeure Event is the Provider, the Participating Agency may, to the extent that any Service requested by the Participating Agency under this Consultancy Services Order has not been delivered and delivery has, or will be, delayed by the Force Majeure Event, terminate this Consultancy Services Order, by notice to the Provider within five Business Days following receipt by the Participating Agency of notice of the Force Majeure Event, at no cost to the Participating Agency, subject to the Participating Agency paying for Services delivered up to the date of the Force Majeure Event.
12.7	<b>Categories of loss</b>  (a) Irrespective of how liability arises, neither the Provider nor the Participating Agency will, under any circumstances, be liable for any indirect loss or damage (including consequential loss) arising under or in connection with this Consultancy Services Order.  (b) The Participating Agency will not, under any circumstances, be liable for any loss of profits or loss of revenue suffered by the Provider in connection with this Consultancy Services Order.	<b>12.9 Insurance</b>  (a) During the Term and for a period of two years following the termination of this Consultancy Services Order, the Provider will, at its own expense, ensure that it maintains adequate insurance in respect of its potential liability for loss or damage under this Consultancy Services Order in accordance with Industry Best Practice, but as a minimum the Provider must hold:  (i) professional indemnity insurance;  (ii) public liability insurance in respect of the Services provided under this Consultancy Services Order; and  (iii) other insurance to cover standard commercial risks (including in respect of Documentation which is the property of the Participating Agency and in the Provider's possession or control).
12.8	<b>Force majeure</b>  (a) The Provider and the Participating Agency will not be liable to the other for any failure to perform its obligations under this Consultancy Services Order during the time and to the extent that such performance is prevented, wholly or substantially, by reason of any Force Majeure Event.  (b) The party subject to the Force Majeure Event (the non-performing party) must:  (i) notify the other party as soon as practicable after the Force Majeure Event occurs and provide full information concerning the Force Majeure Event, including the extent of its inability to perform, an estimate of the time likely to be required to overcome the Force Majeure Event and the steps the non-performing party will take to comply with clauses 12.8(b)(ii) and 12.8(b)(iii);  (ii) use all reasonable endeavours to mitigate and remedy the effect of the Force Majeure Event and	(b) The Provider will, at the Participating Agency's request, promptly provide satisfactory evidence that it has complied with its obligations in this clause 12.9.
	<b>13. Dispute resolution</b>	
	<b>13.1 Dispute</b> In the event of any dispute, difference or question arising out of, or in connection with, this Consultancy Services Order or its formation (a dispute):  (a) the Participating Agency and the Provider will each use its best efforts to	

resolve the dispute through good faith negotiations and informal dispute resolution techniques, and will continue to perform its obligations under this Consultancy Services Order as far as possible as if the dispute had not arisen, pending final settlement of the dispute; and

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

### 13.2 Escalation

- (a) The Participating Agency and the Provider will each advise its respective Representative (or equivalent person) of a dispute on the day that the dispute arises.
- (b) The Representatives will use their best efforts to resolve the dispute in accordance with clause 13.1(a).
- (c) If the dispute is not resolved:
  - (i) within 10 Business Days, the dispute will be escalated to senior representatives of the Provider and the Participating Agency with delegated authority to resolve the dispute; and
  - (ii) in relation to the sub-categories for which the Provider has been appointed as a Tier 1 and Tier 2 Provider, within a further 10 Business Days, the dispute will be escalated to the CoE's Manager, All-of-Government Contracts and the Provider's Chief Executive.

### 13.3 Mediation

- (a) If a dispute is not resolved under clause 13.2, either party may, by written notice to the other, refer the dispute to mediation, or they may agree in writing to refer the dispute to mediation.
- (b) The mediation will be conducted by a single mediator in accordance with the terms of the Resolution Institute Standard Mediation Agreement and at a fee to be agreed by the parties.
- (c) If the parties fail to agree on the identity of the mediator and/or the mediator's fee within five Business Days of referral of the dispute to mediation, the mediator will be chosen, and the mediator's fee determined, by the chairperson for the time being of Resolution Institute (or his or her nominee).

### 13.4 Urgent relief

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

## 14. Termination

### 14.1 Termination of Consultancy Services Order

The Participating Agency may terminate this Consultancy Services Order:

- (a) for convenience by giving the Provider at least one month's prior written notice;
- (b) by notice to the Provider with immediate effect on the date of termination specified in that notice, if the Provider commits a Material Breach which is:
  - (i) not capable of being remedied (and, for the avoidance of doubt, paragraphs (a) and (b) of the definition of "Material Breach" are deemed incapable of being remedied); or
  - (ii) capable of being remedied but which is not remedied to the satisfaction of the Participating Agency within 10 Business Days following the date of receipt by the Provider of the Participating Agency's notice of the Material Breach;
- (c) in accordance with clause 4.1(e) (Conflict of Interest); or
- (d) in accordance with clause 12.8(c) (Force Majeure Event).

### 14.2 Consequences of termination or expiry

- (a) In the event of termination or expiry of this Consultancy Services Order, the Participating Agency will not be obliged to make any payment to the Provider except for any Charges payable for Services supplied pursuant to this Consultancy Services Order before the effective date of expiry or termination.
- (b) Termination or expiry will not, unless otherwise provided in this Consultancy Services Order, affect:
  - (i) any rights and remedies available to either party which have accrued up to and including the date of termination or expiry; and
  - (ii) the provisions of this Consultancy Services Order which expressly, or by their nature, survive termination or expiry, including clauses 15 (Entire agreement), 10 (Confidentiality), 11 (Intellectual Property), 12 (Liability), 13 (Dispute Resolution), 14.2 (Consequences of termination or expiry) and 16 (General) and Schedule 1 (Definitions);
  - (iii) the continued application of clauses of the Services Agreement which expressly, or by their nature, are intended to continue to apply to this Consultancy Services Order after termination or expiry of this Consultancy Services Order, including clauses 1.4 (Precedence) and 15 (Audit).
- (c) After expiry or termination of this Consultancy Services Order for any reason, each party will, within five Business Days of receiving notice from

the other party, return all Documentation, Confidential Information or other property belonging to the other party (or destroy such Confidential Information, if requested), except if such Documentation, Confidential Information or other property is required to be retained by any Law.

## **15. Entire agreement**

### **15.1 Entire agreement**

- (a) This Consultancy Services Order is intended to be read in conjunction with the Services Agreement. The provisions of the Services Agreement (not already included in this Consultancy Services Order) which confer rights, obligations or benefits on the parties or the CoE in respect of this Consultancy Services Order are intended to apply to this Consultancy Services Order.
- (b) Subject to clause 15.1(a), no other terms or conditions, including any conditions of sale, invoices or any other communication not included in this Consultancy Services Order (**Communication**), will be incorporated into this Consultancy Services Order, even if at some later date the other party (including, in the case of the Participating Agency) signs or otherwise purports to accept those terms and conditions or the terms of that Communication.
- (c) For the avoidance of doubt, and without limiting clauses 15.1(a) and 15.1(b):
  - (i) any Communication which is expressed or intended to operate as an indemnity, warranty, representation, undertaking, condition or other term of such a nature is hereby disapplied and excluded from this Consultancy Services Order; and
  - (ii) any part of this Consultancy Services Order which describes the nature, scope, price or manner of delivery of Services will, subject to clause 15.1(c)(i), form part of this Consultancy Services Order, but only to the extent that it does not conflict with any other part of this Consultancy Services Order.

## **16. General**

### **16.1 Interpretation**

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

### **16.2 Relationship of the parties**

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

### **16.3 Costs**

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

term of this Consultancy Services Order expressly provides otherwise.

### **16.4 Assignment**

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

### **16.5 Public disclosures**

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

### **16.6 Notices**

- (a) Unless otherwise specified in this Consultancy Services Order, each notice or other communication under this Consultancy Services Order will be made in writing and delivered by post, personal delivery or email to the addressee at the addressee's postal address, physical address or email address (as applicable) and marked for the attention of the person or office holder (if any) from time to time designated for that purpose by the addressee.
- (b) The Provider's postal address, physical address and email address is set out in the Provider Database and may be amended by the Provider at any time.
- (c) The Participating Agency's postal address, physical address and email address is as notified by the Participating Agency to the Provider and may be amended by the Participating Agency at any time.
- (d) A notice or other communication will be deemed to be received:
  - (i) in the case of a letter sent to the addressee's postal address, on the third Business Day after posting;
  - (ii) in the case of personal delivery, on receipt; and
  - (iii) in the case of an email, at the time the email leaves the communications system of the sender, provided that the sender:
    - (A) does not receive any error message relating to the sending of the email at the time of sending; and
    - (B) has obtained confirmation that the email has been delivered to the recipient (which confirmation may be in the form of an automated delivery receipt from the



communications system of the recipient),

on the Business Day on which it is dispatched or, if dispatched after 5 p.m. (in the place of receipt), on the next Business Day after the date of dispatch.

#### 16.7 Severability

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

#### 16.8 Waiver

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

#### 16.9 Remedies cumulative

Except as is expressly stated otherwise in this Consultancy Services Order:

- (a) the rights, powers and remedies provided in this Consultancy Services Order are cumulative and are not exclusive of any rights, powers or remedies provided by Law or under this Consultancy Services Order; and
- (b) the exercise of any rights, powers and remedies provided in this Consultancy Services Order will not prejudice the exercise of any other right, power or remedy under this Consultancy Services Order or existing at Law.

#### 16.10 Counterparts

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

#### 16.11 Governing law and jurisdiction

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

## SCHEDULE 1: DEFINITIONS

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

**Administration Fee** means the amount referred to in clause 8.6;

**Agency Information** means all:

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

but excluding the Provider's working papers;

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

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

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

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

**CoE** means the Ministry of Business, Innovation and Employment, the Centre of Expertise for Consultancy Services;

**Commencement Date** is the date on which this Consultancy Services Order is signed by both parties or, if two dates, the later date;

**Confidential Information** means:

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

**Conflict of Interest** means any matter, circumstance, interest or activity of the Provider, its Personnel or Subcontractors, arising by whatever means that directly or indirectly conflicts with:

- (a) the duties of the Provider and any of its Personnel or Subcontractors to the Participating Agency; or
- (b) the interests of the Participating Agency in relation to this Consultancy Services Order or otherwise in respect to the provision of consultancy services to the Participating Agency either before or after the Commencement Date;

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

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

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

**Control** means, in relation to the Provider or any ultimate or intermediate holding company or Holding Entity of the Provider, the power to:

- (a) manage, directly or indirectly, the operation of the business; or
- (b) control, directly or indirectly, the composition of the board of directors or board of management or equivalent governing body,

of the Provider or such ultimate or intermediate holding company or Holding Entity, whether through the ownership of voting securities, by contract or otherwise, and for these purposes "holding company" will have the same meaning as in section 5 of the Companies Act 1993;

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

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

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

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

**Fit for Purpose** means, in relation to any Service or Documentation to be provided by the Provider to the Participating Agency, that such Services or Documentation are, in descending order of priority, fit for the purpose(s):

- (a) expressly made known in writing by the Participating Agency to the Provider (including in this Consultancy Services Order); or
- (b) for which the Provider, given its knowledge of the Participating Agency and understanding why the

Services or Documentation are required, has reason to expect such Services or Documentation to be used;

**Force Majeure Event** means an event or circumstance beyond the reasonable control of either party which makes it impossible or illegal to perform, or prevents compliance with, or the performance of, a party's obligations under this Consultancy Services Order, including:

- (a) fire, floods, tsunamis, storms, tempest, earthquake or other act of God;
- (b) any act of a public enemy, war, riot, or act of civil or military authority;
- (c) nuclear, chemical or biological contamination; and
- (d) subject to paragraph (g) of this definition, any act of a third party engaged in subversive or terrorist activity or sabotage,

but does not include an event to the extent that:

- (e) the effect of that event could have been substantially prevented, avoided or overcome or mitigated by:
  - (i) implementation of any contracted business continuity or disaster recovery service, or any contingency plans agreed between the parties or which a party has represented it has in place; or
  - (ii) exercising a reasonable standard of care; or
  - (iii) using information provided by the other party or which is available in the public domain; or
- (f) it is an event for which the party affected is or was directly responsible; or
- (g) that event is constituted or caused by any act or omission of Personnel or a Subcontractor unless and to the extent that the Personnel or Subcontractor was itself affected by an event, which if it occurred in relation to either party would have been a Force Majeure Event; or
- (h) that event is constituted or caused by an Insolvency Event or the insolvency of a Subcontractor or lack of funds for any reason;

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

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

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

**Insolvency Event** means, in relation to the Provider:

- (a) the presentation of an application for its liquidation that is not discharged within 30 days of its filing or which is not demonstrated to the Participating Agency prior to the expiry of that 30 day period as being an application that is frivolous or vexatious;
- (b) any step taken in or toward the making of any compromise, proposal or deed of arrangement with all or some of its creditors;
- (c) the appointment of a liquidator, receiver, statutory manager, administrator or similar official, to it;
- (d) the suspension or threatened suspension by it of the payment of its debts;



- (e) cessation by it of a whole or any relevant part of its business in New Zealand;
- (f) the enforcement of any security against the whole or a substantial part of its assets; or
- (g) any other insolvency event or proceedings analogous to any of the foregoing occurring in any relevant jurisdiction;

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

**Law** means:

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

in any jurisdiction that is applicable to this Consultancy Services Order;

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

**Material Breach** means any material breach by the Provider of the terms of this Consultancy Services Order or the occurrence of any event having a material effect on the ability of the Provider to perform its obligations under this Consultancy Services Order (other than a Force Majeure Event), including:

- (a) the occurrence of an Insolvency Event in relation to the Provider or the likely occurrence of an Insolvency Event;
- (b) the occurrence of a change in Control of the Provider or any ultimate or intermediate holding company or Holding Entity of the Provider that the CoE has not previously approved (acting reasonably);
- (c) any representation or warranty made by the Provider in terms of this Consultancy Services Order being found to be untrue or incorrect; and
- (d) any failure on the part of the Provider to comply with, observe or perform any of the terms of this Consultancy Services Order in circumstances where that contract breach or that contract breach together with other contract breaches is considered by the Participating Agency on reasonable grounds to cause the Provider to be unable or unwilling, or be likely to be unable or unwilling, to perform its obligations under this Consultancy Services Order;

**Maximum Rates** means the maximum Rates payable to the Provider for providing the Services, as recorded in the Provider Database, excluding Expenses;

**Panel** means the All-of-Government panel of providers who provide consultancy services to Participating Agencies,

including any sub-panel, as detailed on [www.procurement.govt.nz](http://www.procurement.govt.nz);

**Participating Agency** means the Participating Agency that is a party to this Consultancy Services Order;

**Participating Agencies** means each of the CoE and every other Eligible Agency that is a party to the memorandum of understanding between the CoE and all other Participating Agencies relating to the management of their relationship with each other and with the Provider in relation to the Services, as amended from time to time;

**Personnel** includes partners, principals, directors, employees, agents, officers and individual independent contractors;

**Professional Adviser** means any accounting, legal, procurement or technical professional;

**Provider Database** means the IT platform described in Schedule 7 (Provider Database) to the Services Agreement;

**Quote** means a fixed price, capped price or other pre-agreed basis for establishing the Charges for Services required by the Participating Agency where the Provider is prevented from increasing the Charges without the prior written consent of the Participating Agency;

**Rates** means the rates (whether hourly, daily or weekly or other time-related basis) payable to the Provider for providing the Services, determined in accordance with Schedule 2 (Pricing), excluding Expenses;

**Related Entity** means a related company under the Companies Act 1993 (New Zealand) or a related body corporate under the Corporations Act 2000, provided that any reference in the Companies Act 1993 to a "company" is deemed to include any partnership, body corporate, association or other entity, whether corporate or unincorporated, irrespective of the place of incorporation or registration of that partnership, body corporate, association or other entity;

**Representative** has the meaning given in paragraph 3.1 of Schedule 5 (Governance) to the Services Agreement;

**Service Level** means a required standard for the Provider's performance of its obligations under this Consultancy Services Order, as described in Schedule 3 (Performance Measurement);

**Service Level Default** means a failure by the Provider to meet one or more Service Levels;

**Services** means the consultancy services provided from time to time under the terms of this Consultancy Services Order;

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

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

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

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

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

## SCHEDULE 2: PRICING

### 1. Introduction

This Schedule sets out general principles underlying the Charges.

### 2. Principles

#### 2.1 Participating Agency will only pay for Services ordered

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

#### 2.2 No minimum volume

The Participating Agency is not required to meet a minimum aggregate expenditure or volume level for any Services.

#### 2.3 No interest

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

#### 2.4 Rates

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

### 3. Charges

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

## SCHEDULE 3: PERFORMANCE MEASUREMENT

### 1. Introduction

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

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

### 2. Service Levels

#### 2.1 Format

Each Service Level is described in Annexure A using the following format:

Parameter	Description
Description	Description of what the Service Level will measure
Purpose	Why it is important to Participating Agencies that the Service Level is met
Calculation	Method for calculating the Service Level
Service Level	The performance standard that the Provider is required to meet or exceed

#### 2.2 Service Levels must be met

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

#### 2.3 Changes to Service Levels

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

### 3. Performance measurement

#### 3.1 Failure to meet Service Levels

If the Provider fails to achieve one or more of the Service Levels in any Contract Quarter in respect of this Consultancy Services Order, it will:

- (a) take such steps and do all things necessary, as soon as possible, to correct the failure; and
- (b) notify the Participating Agency of the reasons for the failure and the steps that the Provider is taking to ensure that the failure is not repeated; and
- (c) consider whether the Charges for the Services that are subject to the Service Level Default should be reduced to reflect the lower value of the Services provided.



## Annexure A: Service Levels

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

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

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

## IAoG Consultancy Services Order (CSO)

### Part A – for Participating Agency (client) to complete

The Participating Agency (referred to as the client in Parts A – E of this Consultancy Services Order) will complete this and email the entire form (including all Parts) to the Provider.

<b>Today's Date</b>	16 September 2019	<b>CSO or Project name</b>	CDHB HOLIDAYS ACT REVIEW
<b>Agency</b>	CANTERBURY DISTRICT HEALTH BOARD ("CDHB")	<b>Provider</b>	Ernst & Young Ltd
<b>Agency contact name and title</b>	9(2)(a) Head of Employment Relations, Compensation and Benefits	<b>Provider contact name and title</b>	9(2)(a) Partner - Advisory
<b>Agency email address</b>	9(2)(a)	<b>Provider email address</b>	9(2)(a)
<b>Agency phone #</b>	9(2)(a)	<b>Provider phone #</b>	9(2)(a)
<b>Sub Category</b>	Compliance Audit	<b>GCDO Assurance Sub Panel</b>	Yes

### A1. Purpose and any background information

The Labour Inspectorate (a division of the Ministry of Business, Innovation and Employment ("MBIE")) carried out audits of the District Health Boards ("DHB's") and found them to be non-compliant with the Holidays Act 2003 ("Holidays Act"). Representatives of the DHBs and CTU approached the Labour Inspectorate regarding a national process for the identification, rectification and remediation of their Holidays Act non-compliance.

The DHBs, CTU, affiliated unions and the Labour Inspectorate have worked together to agree on a baseline document for the DHBs to be audited against and an overall framework to follow.

MBIE has issued a Memorandum of Understanding (MoU) that outlines the actions the DHBs will take to assess compliance with the Holidays Act.

## A2. Specific questions / instructions for Provider

The provider is to:

- Carry out a review of CDHB's and West Coast DHB ("WCDHB") payroll systems configurations to confirm non-compliance against the Baseline document in MBIEs MoU
- Develop and agree sampling methodology (process & sample size) using the guidance in the Framework document
- Analyse the sample against the requirements of the Baseline document

The timeframe for the work is 3 months from the commencement of the Review phase.

## A3. Additional Information e.g. risks to client, additional contact information

## A4. Client specific requirements

CDHB's and WCDHB's Information Privacy and Security Policy applies.

Information used in this project is classified as "C3 – In Confidence".

Please note:

**CDHB and WCDHB prohibits the use of cloud storage to store or transmit any CDHB C2, C3 or C4 classified information unless prior exemption from the NHITB has been granted.**[HF1]

## A5. Timeframes

Services are required from week commencing 2 December 2019 for a period of 3 months. Prior to the week commencing 2 December 2019, we will issue a full document request list and prepare for workshops. Workshops will begin in the week commencing 2 December 2019.

## A6. Indicative budget

N/A

## A7. Outputs of the Services

*[Any deliverables or outputs required to be delivered to the client as part of the Services?]*

- Phased summary report to the Project team and the Steering Committee on:
  - The detailed issues in payroll (system configuration and process) leading to non-compliance with the Holidays Act 2003 as agreed in the Baseline document.
  - Recommendations arising from the issues identified to ensure that CDHB and WCDHB's payroll system and process are compliant with the Holidays Act.
- Based on the analysed sample, carry out a liability estimation for both, current and former employees.

## A8. Tables

### A9. Provider liability cap

Use this box if the client wants to increase the liability cap of the Provider (e.g. for a high risk engagement) above what is set out in the Services Agreement (refer to Part F of this Consultancy Services Order). Leave blank if the default liability cap(s) set out in Part F apply.

**[Option A – specified amount cap:**

The maximum liability of the Provider to the CoE and the client for all Losses under or in connection with this Consultancy Services Order in respect of all claims will not exceed \$[insert amount].]

**[Option B – multiple of fees cap:**

The maximum liability of the Provider to the CoE and the client for all Losses under or in connection with this Consultancy Services Order in respect of all claims will not exceed an amount that is equal to [insert number (being more than 10)] times the total Charges paid and payable under this Consultancy Services Order].]

**[Option C – combination of options A and B:**

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

- \$[insert amount]; and
- An amount that is equal to [insert number (being more than 10)] times the total Charges paid and payable under this Consultancy Services Order].]



**Part B – for Provider to complete**

*The Provider will complete Part B and email the form back to the client*

**Background / context**

Compliance with the Holidays Act is a challenge for a significant number of New Zealand organisations. CDHB are part of the DHB working group that has worked alongside the Labour Inspectorate (a division within the Ministry of Business Innovation and Employment ("MBIE")) and the Unions to agree a consistent way forward that will be implemented across all New Zealand District Health Board's ("DHB's").

The framework to address Holidays Act issues across the DHB's has been agreed with each of the DHB's CEO's. In addition, the Labour Inspectorate has agreed that previous Enforceable Undertakings ("EU's") will be redacted and rather each DHB will sign a Memorandum of Understanding ("MOU") committing to address and remediate the issues identified.

CDHB has been scheduled to be in phase three of the overall DHB's programme of work (phase three is scheduled to commence in January / February 2020) however CDHB wish to progress more quickly with understanding the issues and developing the plan to remediate any issues identified.

CDHB also manages the WCDHB payroll system and processes (with costs passed through to WCDHB) as such WCDHB will be included in the CDHB. CDHB and WCDHB utilise different instances of the Ascender payroll system.

The remediation programme will cover the period 1 May 2010 through to the change in systems and processes to address the instances of non-compliance identified.

**Review phase: key objectives**

The key objectives of CDHB and WCDHB's review phase and liability quantification will be:

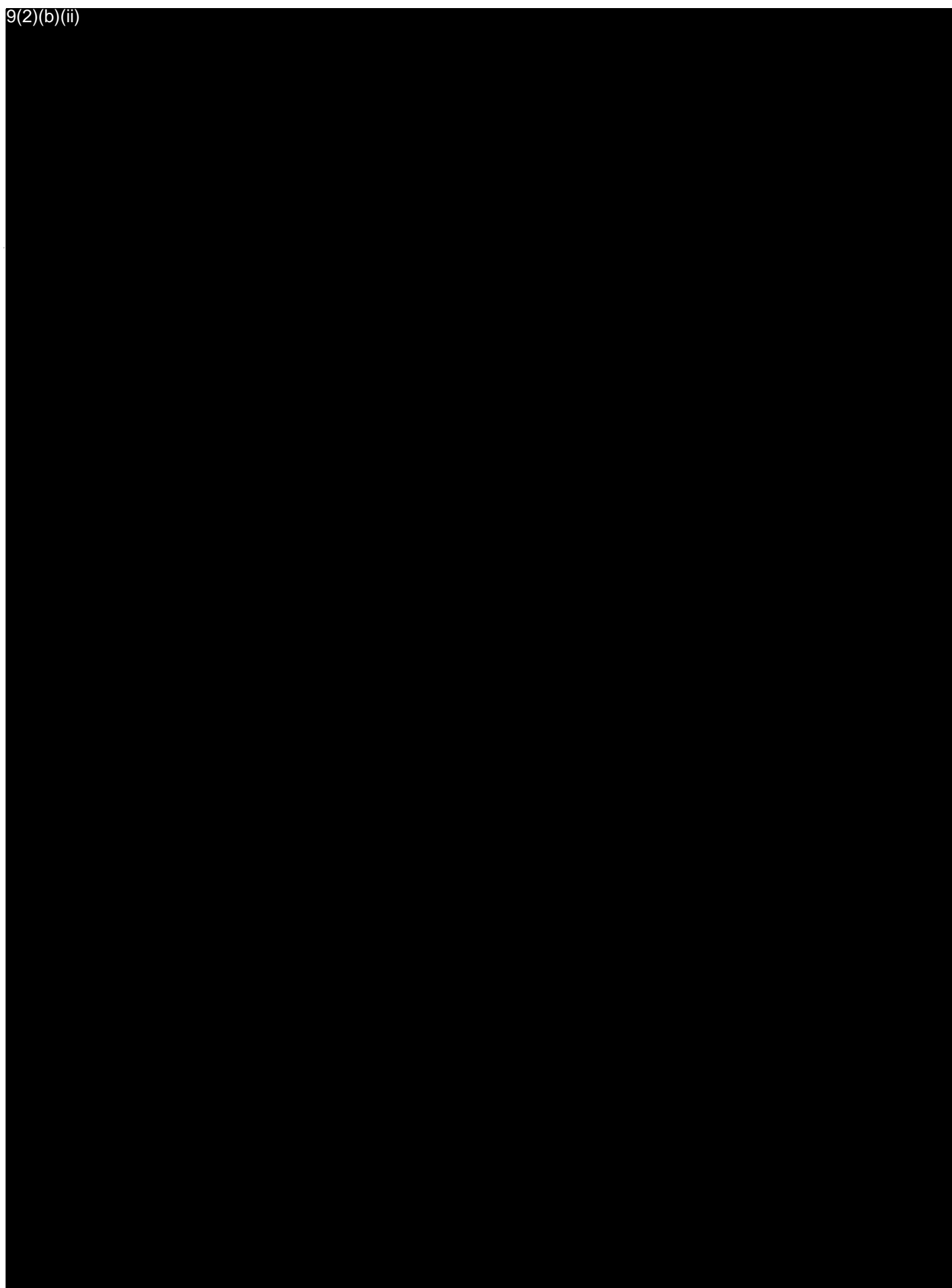
- ▶ The assessment of compliance covers all areas of the organisation and considers the key employee groups.
- ▶ The selection of employees to be part of the sample across the DHB is documented and agreed.
- ▶ Any areas of non-compliance (compared to the Baseline document) are appropriately identified and understood.
- ▶ An appropriate methodology is developed and validated for key judgements not included in the agreed Baseline document (i.e. what is regular or irregular payments for ordinary weekly pay).
- ▶ A robust liability estimation methodology is developed and agreed that includes an estimation of payment liabilities and on costs (e.g. superannuation) for CDHB and WCDHB.
- ▶ Is completed in a timely manner as agreed with key stakeholders.

**Remediation programme overview**

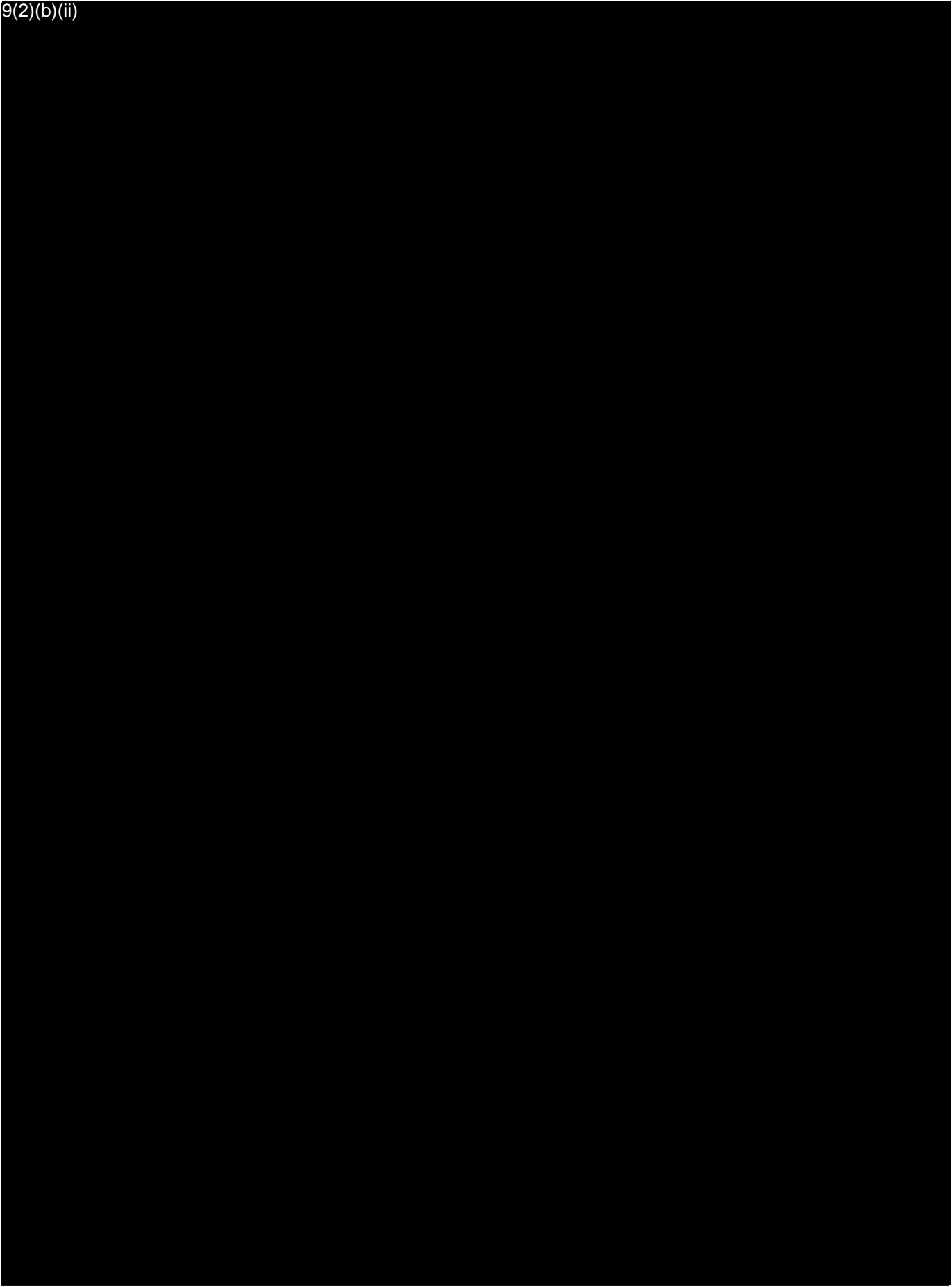
The CDHB and WCDHB Holidays Act remediation programme is a significant programme of work that will be completed in phases. EY has outlined the three phases and the key workstreams in each phase is shown in the diagram below.



9(2)(b)(ii)

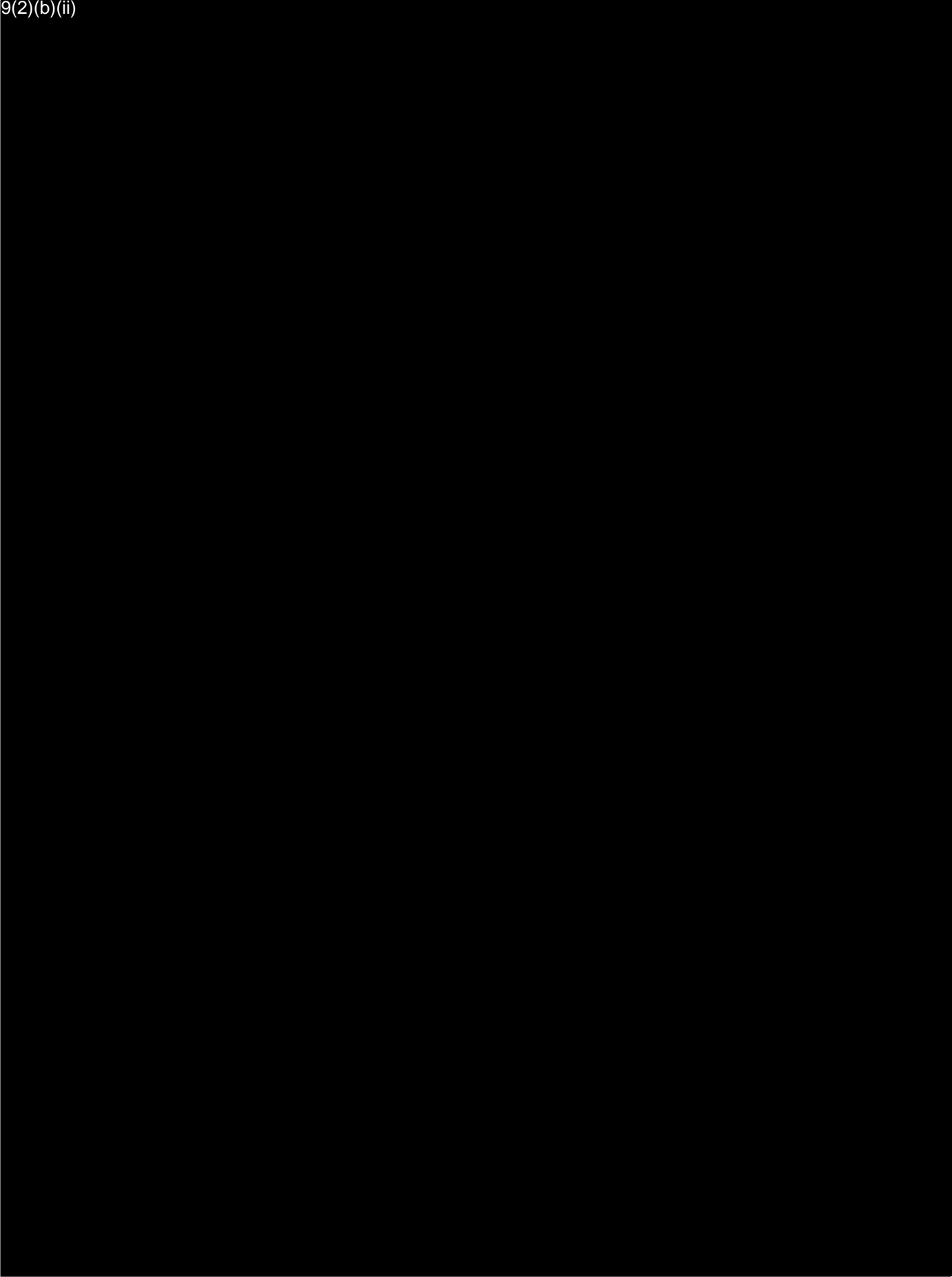


9(2)(b)(ii)

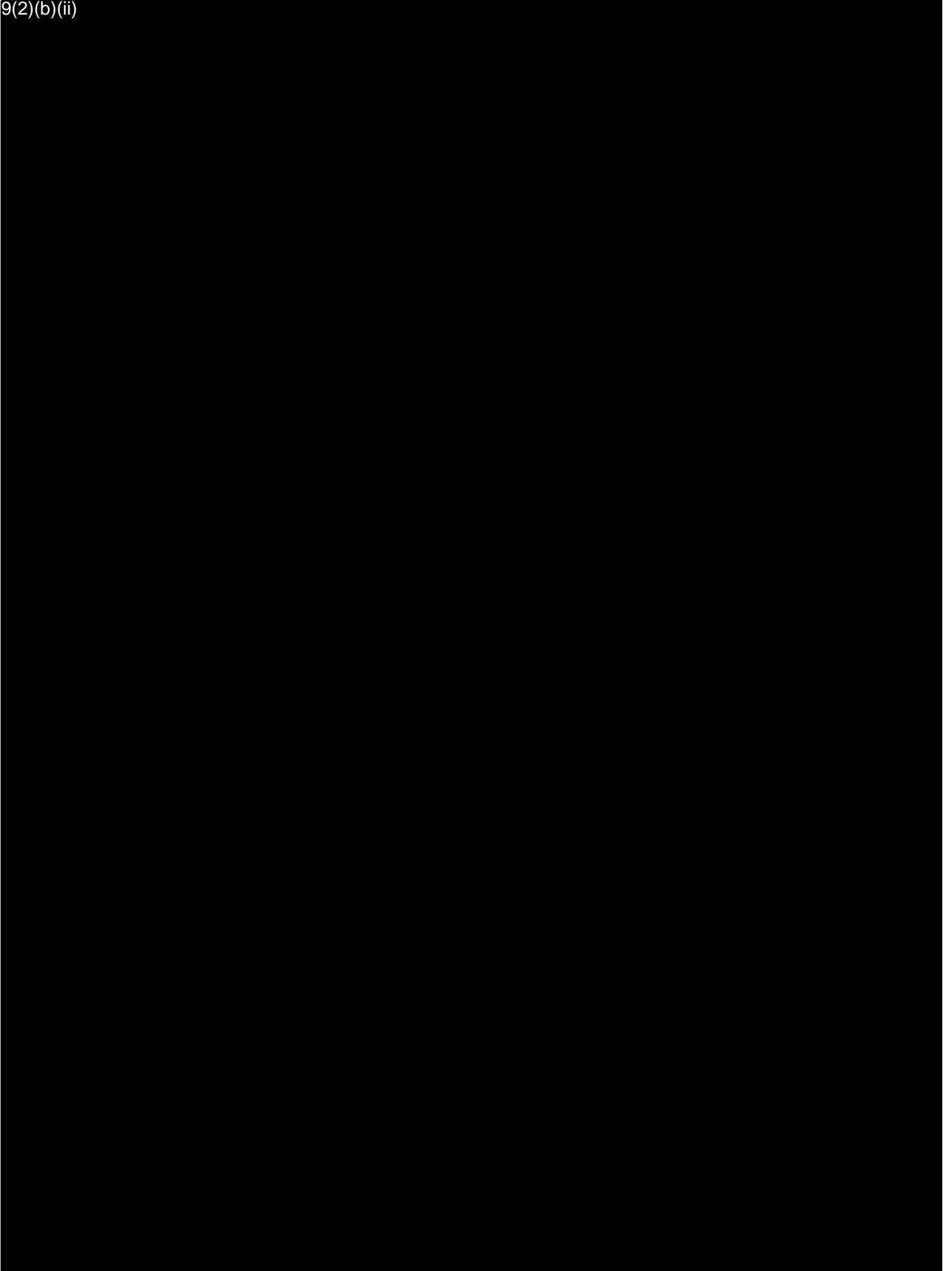





9(2)(b)(ii)



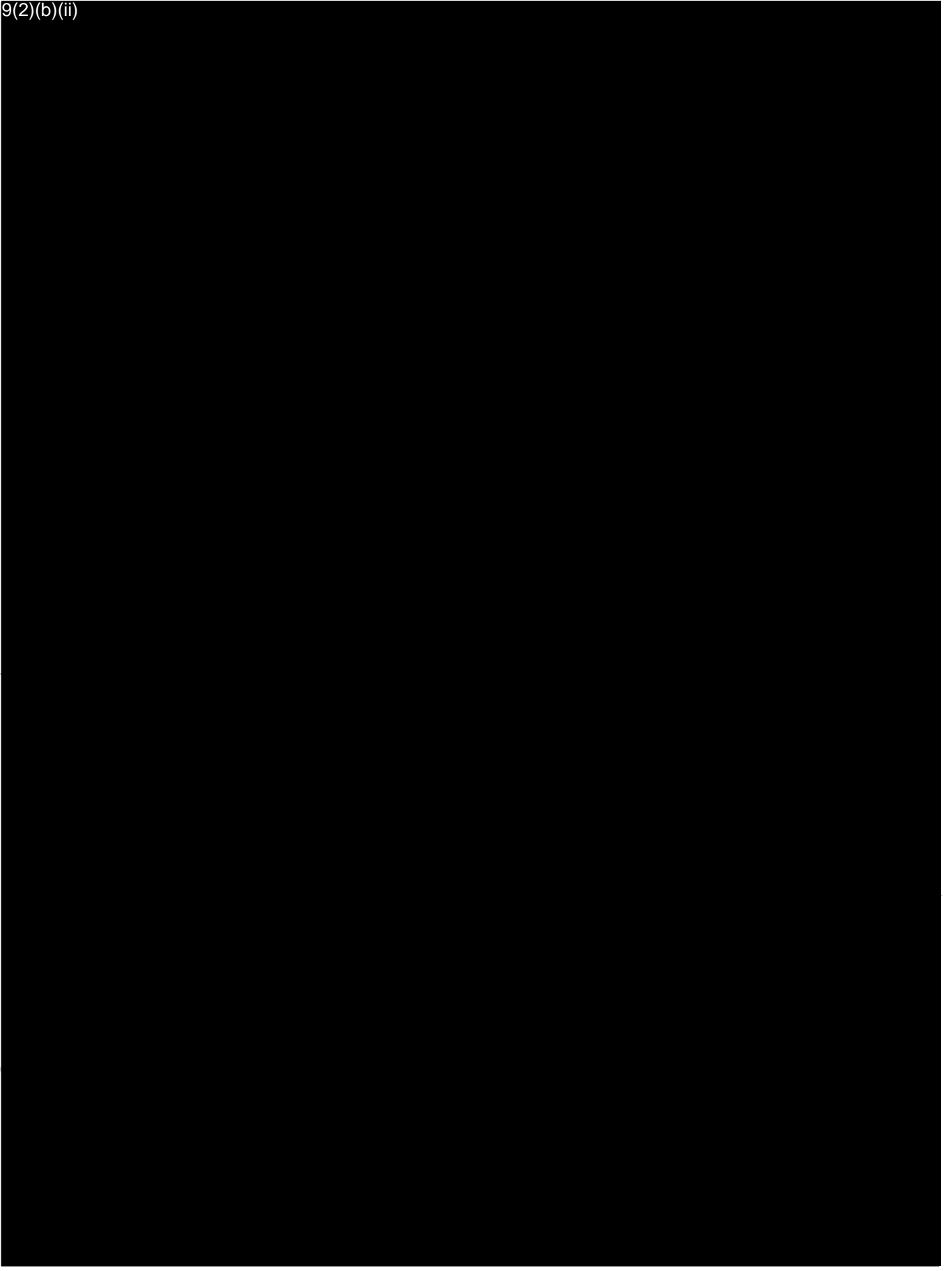
9(2)(b)(ii)



9(2)(b)(ii)

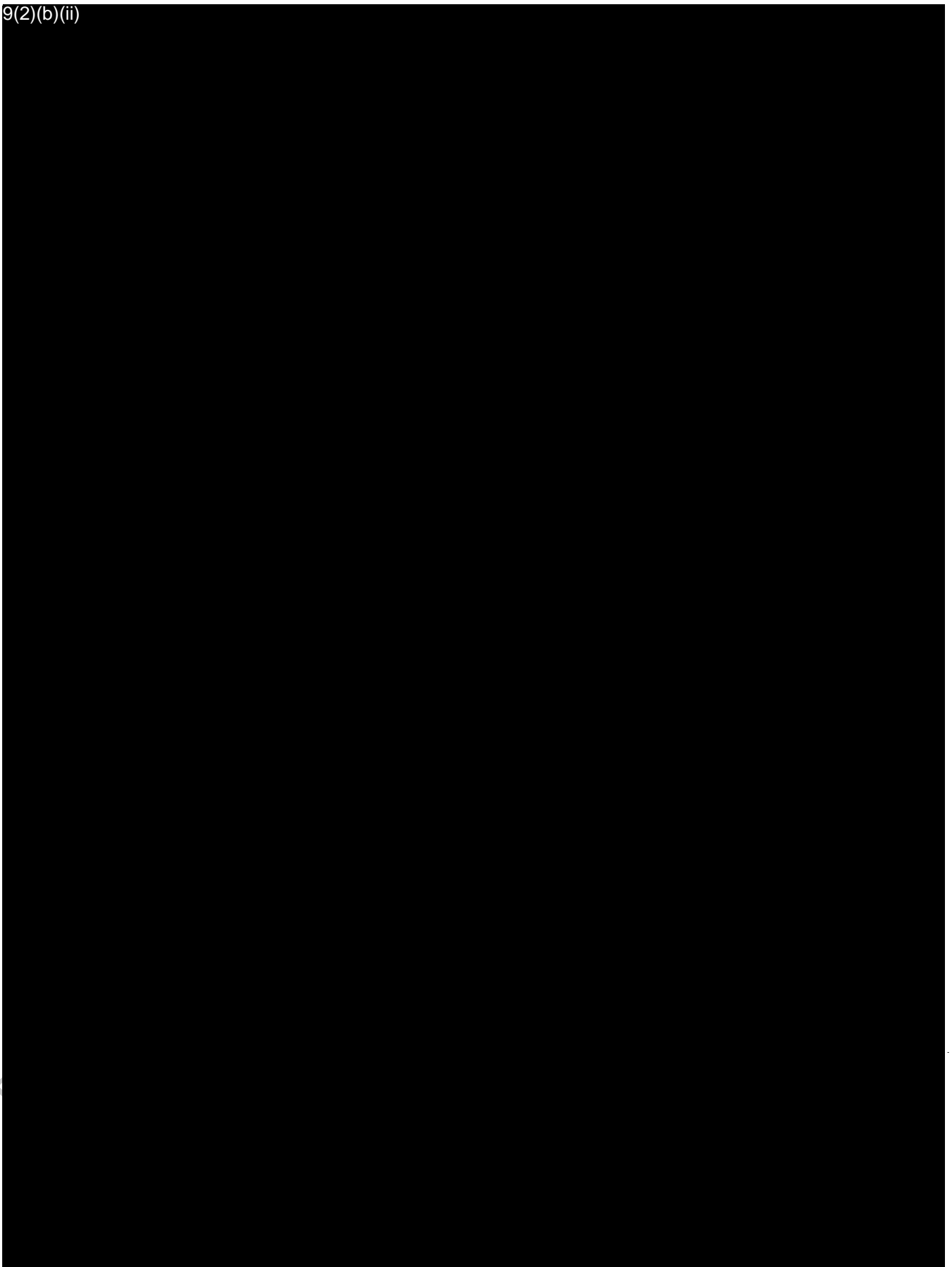


9(2)(b)(ii)

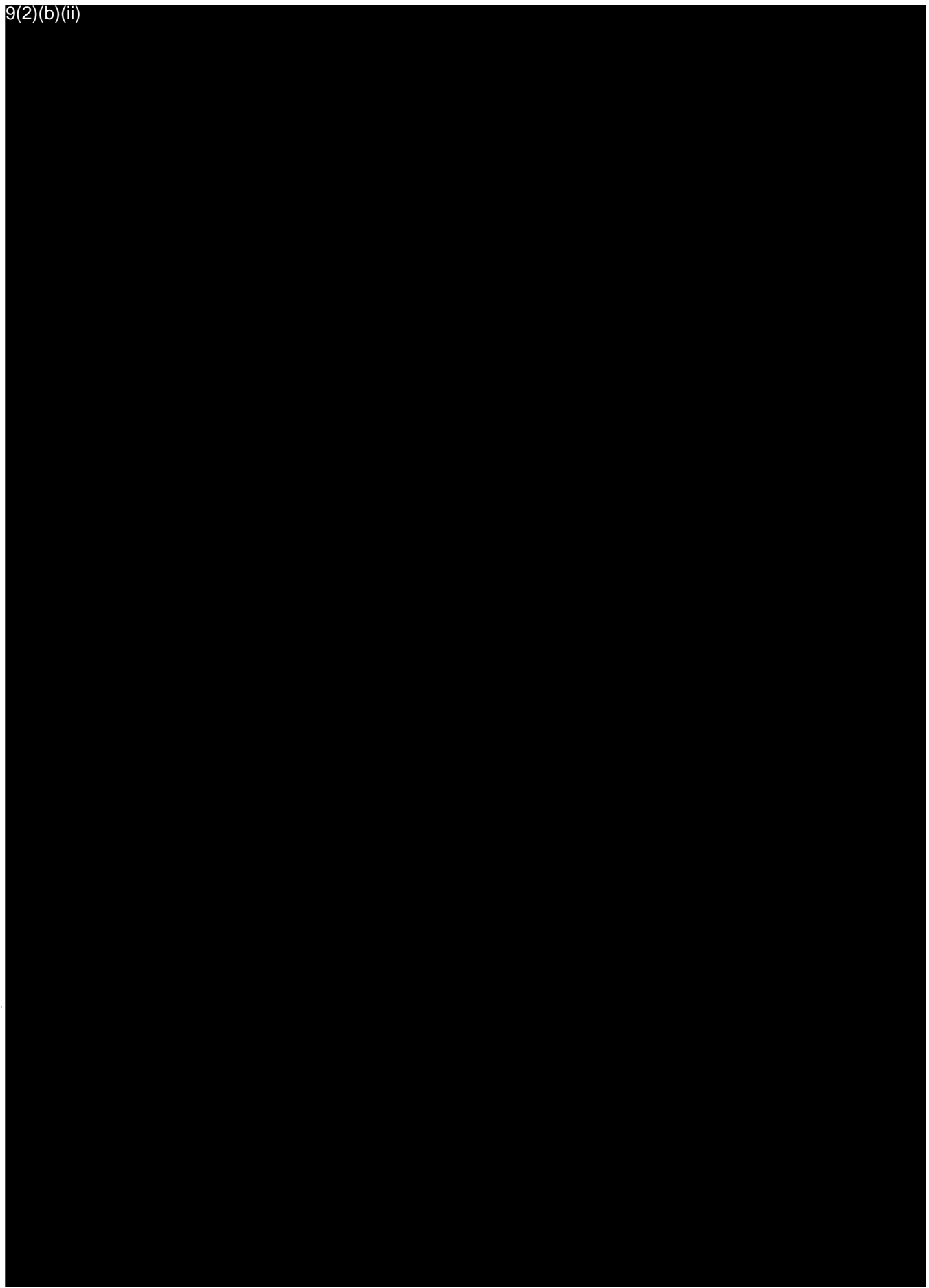




9(2)(b)(ii)



9(2)(b)(ii)



The engagement will be delivered in phases and as such the estimated fees are broken down by each phase below. The range provided utilises different resource mixes from the fully onshore to a combination of onshore and offshore resources.

Step	Fee range (\$)
CDHB current employees annual leave and bereavement, alternative, public holidays, sick and domestic ("BAPSD") leave.	\$64,050 - \$73,325
CDHB - Former employees annual leave, BAPSD leave and termination payments.	\$34,425 - \$43,800
WCDHB – Current and former employees annual leave, BAPSD leave and termination payments (for former employees only).	\$82,950 - \$89,350
CDHB and WCDHB – Casual employees assessment	\$13,675 - \$18,175
Liability estimation approach	\$32,600
<b>Total</b>	<b>\$227,700 - \$257,250</b>

B2. Sub Category and Tier to be Provided		
Selection	Sub-category of Services	Tier (1/2/3) [EY are Tier 1]
	Accounting	
	Assurance	
EY	Audit	1
	Finance and economics	
	Procurement and logistics	
	Taxation	
	Business change	
	Human resource	
	Marketing and public relations	
	Operations management and risk	
	Policy, research and development	

**B3. Can you confirm that the Nominated Personnel (if any) are available to provide the Services?**

Yes

**B4. Can you confirm that the timeframe is acceptable?**

Yes

**B5. Estimated Start and End Date****Start**

2 December 2019

**End**

12 March 2020

**B6. Estimate / Quote (excluding GST, if any)**

Fees

\$227,700 - \$257,250

**Administration Fee (Tier 1 and 2 only)**

\$2,277 - 2,573

*(Optional)* The above Fees are apportioned as follows:

Job Level 1

\$

Job Level 2

\$

Job Level 3

\$

Job Level 4

\$

Job Level 5

\$

Fixed Fee (Job Level 1)

\$

Fixed Fee (Job Level 2)

\$

Fixed Fee (Job Level 3)

\$

Fixed Fee (Job Level 4)

\$

Fixed Fee (Job Level 5)

\$

Monthly Retainer

\$

Subcontracting

\$

**Expenses**

\$

**Total Charges**

\$

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

Estimate. Value provided is the higher end of the range provided.

**Additional information / assumptions:**

The services will be performed by Ernst & Young Ltd. Ernst & Young Ltd will liaise and invoice you directly.

As set out in clause 10.1(b)(iii) of the AoG terms and conditions, we wish to advise that EY's servers are held offshore. We confirm that any Confidential Information is, and will remain, secure and protected.

Job Level	Indicative Characteristics
Level 5	<ul style="list-style-type: none"> <li>• 15+ years of extensive professional experience in their specialised field in a consultancy role.</li> <li>• An industry leader and key influencer who is respected for their professional proficiency and knowledge.</li> <li>• Recognised as a trusted adviser to ministers and/or senior executive teams.</li> <li>• Acts as the senior responsible person on major client engagements. Able to be accountable for leading complex projects/programs.</li> <li>• Responsible for leading a high performing team of professionals, including the coaching and mentoring of colleagues at Levels 1–4.</li> </ul>
Level 4	<ul style="list-style-type: none"> <li>• 10+ years of substantial professional experience in their specialised field in a consultancy role.</li> <li>• Strong theoretical base in subject area, with ability to apply best practice principles to the subject matter context.</li> <li>• Senior team leader with the ability to deputise for the senior responsible person and coach and mentor more junior staff.</li> <li>• Ability to coordinate contributions of other specialists to complete a joint project.</li> <li>• Can engage with clients at strategic/management level if required.</li> </ul>
Level 3	<ul style="list-style-type: none"> <li>• 3-10 years of notable professional experience in their specialised field in a consultancy role.</li> <li>• A trusted performer on a wide range of client-facing consultancy projects in both the private and public sectors.</li> <li>• Thorough knowledge of functional area, combining a broad grasp of relevant best practice principles.</li> <li>• Ability to participate in multi-disciplinary teams and to work independently (with limited supervision).</li> <li>• Performs professional level analysis requiring technical skills and independent initiative within a well-defined program of work.</li> <li>• Contacts with clients predominantly at a working level.</li> </ul>
Level 2	<ul style="list-style-type: none"> <li>• 1-3 years of demonstrable professional experience in their specialised field in a consultancy role.</li> <li>• Previous experience on a range of client-facing consultancy projects, preferably in both the private and public sectors.</li> <li>• Has a theoretical base in subject area, possibly supplemented through recent study, with the ability to translate theory into practice</li> <li>• Performs a variety of analytical tasks requiring independent initiative and knowledge.</li> <li>• Interacts with clients predominantly at the working level.</li> </ul>
Level 1	<ul style="list-style-type: none"> <li>• 0+ years of relevant professional experience in a professional environment.</li> <li>• Evidence of prior contributions to consultancy engagements.</li> <li>• Performs a range of administrative tasks to support the wider team.</li> <li>• Work is performed under the guidance of colleagues at Levels 3-5.</li> </ul>



**B7. Conflict of Interest declaration and Additional Information**

I, <sup>9(2)(a)</sup> of Ernst & Young Ltd have made diligent inquiry whether Ernst & Young Ltd has any actual, potential or perceived Conflict of Interest were it to provide the Services described in this Consultancy Services Order and I have disclosed any actual, potential or perceived Conflict of Interest and how it will be managed below:

To the best of our knowledge, there are no actual or potential conflicts preventing us from providing these services. We have proven independence rules in place, should any conflicts arrive.

**B8. Additional information**

*[Use this section for any specific requirements – e.g. security, health or other policies and procedures, confidentiality requirements etc.]*

EY may share certain information with EY member firms. At all times, Confidential Information will remain secure and protected.

*Note, the MSA takes precedence so do not add conflicting clauses, only additional ones that are relevant to this engagement.*

**B9. Signatures**

Name of Provider's authorised signatory	<sup>9(2)(a)</sup>
Signature of authorised signatory	<sup>9(2)(a)</sup>

The client accepts and authorises this Consultancy Services Order	[Yes/No]
Name of client's authorised signatory	David Meates
Signature of authorised signatory	<sup>9(2)(a)</sup>
Date of acceptance	15 October 2019
Client's job reference or purchase order number	

## AoG Consultancy Services

### Part C – Variations to Part A

LEAVE BLANK WHEN ISSUING CONSULTANCY SERVICES ORDER

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

CSO date and date of this variation	CSO: Variation:	CSO or Project name	
Agency		Provider	Ernst & Young Ltd
Agency contact name and title	[name]	Provider contact name and title	[name]
	[title]		[title]
Agency email address		Provider email address	9(2)(a)
Agency phone #		Provider phone #	
Sub Category	[title: accounting, assurance, business change...]	GCDO Assurance Sub Panel	[yes/no]

### C1. Revised scope and/or timeframe to above CSO

--

**Part D – Variations to Part B****LEAVE BLANK WHEN ISSUING CONSULTANCY SERVICES ORDER**

*The Provider will complete this only if and when it receives a Variation per Part C above from the client*

**D1. Revised Estimate (excluding GST, if any)****Revised Fees**

\$[Add in total Fees]

**Administration Fee (Tier 1 and 2 only)**

\$[1% of Fees for Services for which the Provider is Tier 1 or Tier 2]

*(Optional)* The above Fees are apportioned as follows:

Job Level 1

\$

Job Level 2

\$

Job Level 3

\$

Job Level 4

\$

Job Level 5

\$

Fixed Fee (Job Level 1)

\$

Fixed Fee (Job Level 2)

\$

Fixed Fee (Job Level 3)

\$

Fixed Fee (Job Level 4)

\$

Fixed Fee (Job Level 5)

\$

Monthly Retainer

\$

Subcontracting

\$

**Revised Expenses**

\$

**Total Charges**

\$

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

Additional information / assumptions:

**Part E – Acceptance****LEAVE BLANK WHEN ISSUING CONSULTANCY SERVICES ORDER***The Provider and client to complete on acceptance of this Consultancy Services Order***E1. Signatures**

<b>Name of Provider's authorised signatory</b>	
<b>Signature of authorised signatory</b>	

<b>The client accepts and authorises this Consultancy Services Order</b>	<b>[Yes/No]</b>
<b>Name of client's authorised signatory</b>	
<b>Signature of authorised signatory</b>	
<b>Date of acceptance</b>	
<b>Client's job reference or purchase order number</b>	<b>[if required]</b>

**AoG Survey Programme:**

EY will send this AoG survey link to you at completion of this engagement or at periodic intervals for longer engagements. In addition, EY will seek independent feedback via our own survey programme where we will arrange for an EY representative to meet with you to discuss and assess our service quality.

Link to consultancy services survey:

<https://www.research.net/r/ClientSatisfactionSurvey-AoGcontracts-CSO>

Link to GCDO assurance sub-panel survey:

<https://www.research.net/r/GCDOAssuranceServices-CSO>

## Part F – Terms

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

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

1. Appointment	2. Services
1.1 Appointment	2.1 Services
(a) The Participating Agency appoints the Provider to provide Services to the Participating Agency as detailed in this Consultancy Services Order and the Provider accepts that appointment, in accordance with the terms of this Consultancy Services Order.	(a) The Provider will provide Services to the Participating Agency in accordance with the terms of this Consultancy Services Order.
(b) Certain obligations of the Provider in this Consultancy Services Order do not apply to sub-categories of Services for which the Provider has been appointed as a Tier 3 Provider as follows:	(b) The Provider will use all reasonable endeavours to ensure that, on the date the Documentation is provided under this Consultancy Services Order, such Documentation is in a readable and readily useable format.
(i) the Participating Agency may nominate specific Personnel to be the primary providers or to supervise the delivery of the Services but clauses 6.2(b) to 6.2(e) do not apply to any nominated Personnel;	2.2 Agents may procure Services
(ii) the relevant Services are not required to meet or exceed the Service Levels specified in Schedule 3 (Performance Measurement) and clause 2.5(a), Schedule 3 (Performance Measurement) do not apply;	The Participating Agency may, by notice to the Provider and the CoE, appoint one or more third parties to procure Services under this Consultancy Services Order on the Participating Agency's behalf and/or receive invoices, as if that agent was a Participating Agency, provided that any such procurement is for the sole benefit of the Participating Agency.
(iii) the Provider is not required to pay an Administration Fee and clause 8.3(a)(v) does not apply;	2.3 Timely performance
(iv) the Provider is not required to conduct the Agency Satisfaction Survey for the relevant Services and clause 5.1(h) does not apply;	The Provider will ensure that the Services to be performed under this Consultancy Services Order are provided on or before the date specified for performance (if any) in this Consultancy Services Order and, if no time is specified, within a reasonable time after the issue of the Consultancy Services Order.
(v) the Provider and Participating Agency are not obligated to escalate a dispute to the CoE's All-of-Government Procurement Manager, Centre of Expertise for Consultancy, in accordance with clause 13.2(c)(ii); and	2.4 Delay
(vi) as otherwise stated in this Consultancy Services Order.	(a) If the Provider considers that it is (or is likely to be) prevented or delayed from achieving a date or time for performance (Milestone) specified in this Consultancy Services Order (Delay), it will:
	(i) immediately provide notice verbally or in writing to the Participating Agency, setting out:
	(A) the cause of the Delay and its expected duration;
	(B) the effect of the Delay on its ability to perform its obligations under this Consultancy Services



- Order (including any future Milestones);
- (C) what extension, if any, to the relevant Milestone is being sought; and
  - (D) what steps, if any, the Participating Agency may take to mitigate the effect of the Delay; and
- (ii) take all reasonable steps necessary (including by the allocation of additional resources) to eliminate or avoid the Delay and, in all cases, mitigate its effects.
- (b) If the Provider and Participating Agency agree that the Delay is acceptable or wish to amend the Milestone:
- (i) the Provider will complete and submit Part C of this Consultancy Services Order to the Participating Agency; and
  - (ii) upon receipt of the completed Part C of this Consultancy Services Order, the Participating Agency must promptly advise the Provider in writing if the completed Part C is acceptable.
- (c) If the Provider does not achieve the Milestone (as amended from time to time) and the Participating Agency's acts or omissions, or those of its Personnel or third parties acting on its behalf, have not caused the Provider to fail to achieve the Milestone, the Participating Agency may, without prejudice to any other right or remedy, suspend payment of any Charges relating to this Consultancy Services Order until the Provider remedies the relevant failure.

## 2.5

### Service standards

- (a) The Provider must provide the Services in relation to the sub-categories for which the Provider has been appointed as a Tier 1 and Tier 2 Provider to a standard that reaches or exceeds the Service Levels specified in Schedule 3 (Performance Measurement).
- (b) In addition, the Provider must:
  - (i) provide the Services diligently, efficiently, effectively and in accordance with Industry Best Practice;
  - (ii) ensure that the Services to be performed under this Consultancy Services Order are provided on or before the date specified for performance (if any) in this Consultancy Services Order and, if no time is specified, within a reasonable time after the issue of this Consultancy Services Order;
  - (iii) ensure that all Documentation, information and advice (including Documentation, information and advice provided prior to the issue

of this Consultancy Services Order) provided to the Participating Agency or published on the Provider Database is Fit for Purpose so that, without limitation, it contains sufficient content and detail to enable the Participating Agency to make use of it for the purpose for which it was requested;

- (iv) act in the best interests of the Participating Agency in the provision of Services to the Participating Agency; and
- (v) provide Services to the reasonable satisfaction of the Participating Agency (as reported to the CoE).

## 3. Estimates and Quotes

### 3.1 Estimates and Quotes

- (a) The Provider must provide an Estimate or Quote for all Services to be provided under this Consultancy Services Order, unless the total Fees in respect of the Services under this Consultancy Services Order are likely to be less than \$10,000 (exclusive of GST) or such other amount as determined by the CoE and notified to the Provider.
- (b) Despite clause 3.1(a), if, during the course of providing the Services, the Provider becomes aware that the total Fees (excluding GST) are likely to exceed the amount referred to in clause 3.1(a), the Provider must provide an Estimate in accordance with clauses 3.1(c) to (e).
- (c) All Estimates and Quotes will be provided at no cost to the Participating Agency.
- (d) All Estimates and Quotes must specify the estimated timeframe to perform the Services requested in this Consultancy Services Order and the Rates of Personnel providing the Services and include any Expenses likely to be incurred in providing the Services.
- (e) All Quotes and Estimates must be provided to the Participating Agency in writing and must be included in this Consultancy Services Order.
- (f) To avoid doubt and without limiting clause 4.5(c) of the Services Agreement, if any Quote or Estimate is not acceptable to the Participating Agency, the Participating Agency and Provider may seek to negotiate a more favourable Quote or Estimate, including a decrease in the Rates on which the Quote or Estimate was based.

### 3.2

#### If Charges exceed the Estimate

- (a) If during the course of providing the Services under this Consultancy Services Order, the Provider becomes aware that the total Charges (excluding GST) are likely to exceed the Estimate, the Provider must give written notice to

the Participating Agency using Part D of this Consultancy Services Order as soon as the Provider becomes so aware, but no later than the time the costs accrued or incurred reach 80% of the Estimate.

- (b) The notice under clause 3.2(a) must specify a revised Estimate for the Services and include the reason the total Charges will exceed the original Estimate.
- (c) The Participating Agency has sole discretion whether to approve a revised Estimate and must act reasonably when deciding whether to approve a revised Estimate.
- (d) When a revised Estimate is approved, the Participating Agency must provide written notice of the same to the Provider.
- (e) If a Provider has provided an Estimate to the Participating Agency for Services, the Participating Agency is not liable to pay the Provider any amount exceeding the Estimate unless the Participating Agency has approved a revised Estimate.

### 3.3

#### If Charges exceed the Quote

- (a) The Provider acknowledges that neither the CoE nor the Participating Agency are obliged to pay any Charges to the Provider in relation to Services performed under this Consultancy Services Order if those Charges exceed any Quote provided in relation to this Consultancy Services Order, unless the Participating Agency has given its prior written consent in accordance with clause 3.3(b).
- (b) If the Participating Agency agrees to allow the Provider to increase the Charges:
  - (i) the Provider will complete and submit Part D of this Consultancy Services Order to the Participating Agency; and
  - (ii) upon receipt of the completed Part D of this Consultancy Services Order, the Participating Agency must promptly advise the Provider (in writing) if the completed Part D is acceptable.

## 4. Conflicts of interest

### 4.1 Conflicts of interest

- (a) The Provider must, upon receipt of this Consultancy Services Order, make diligent inquiry whether it has any actual, potential or perceived Conflicts of Interest if it were to provide the Services specified in this Consultancy Services Order and, if no such Conflict of Interest exists, the Provider must provide confirmation to that effect to the Participating Agency.
- (b) If the Provider has an actual, potential or perceived Conflict of Interest, the Provider must immediately notify the Participating Agency and must not begin performing the Services without the prior

written approval of the Participating Agency.

- (c) The Provider must take all reasonable steps to ensure that:
  - (i) a situation does not arise that might result in an actual, potential or perceived Conflict of Interest; and
  - (ii) any Personnel or Subcontractors of the Provider do not engage in any activity or obtain interests that might result in the Provider or such Personnel or Subcontractors having an actual, potential or perceived Conflict of Interest,

that cannot be managed to the satisfaction of the Participating Agency.

- (d) If, after commencing Services under this Consultancy Services Order, the Provider becomes aware of any matter, circumstance, interest or activity that may give rise to any actual, potential or perceived Conflict of Interest, the Provider must immediately notify the Participating Agency of all relevant details and must immediately cease work on the Services until such time as the Participating Agency provides written notice confirming the Provider may continue to perform the Services or terminates the engagement of the Provider in respect to the Services to be performed under this Consultancy Services Order in accordance with clause 4.1(e).
- (e) If the Participating Agency considers that the Provider has an actual Conflict of Interest of sufficient gravity that the Provider can no longer perform Services for it, the Participating Agency may, by written notice to the Provider, terminate this Consultancy Services Order with immediate effect on the date of termination specified in that notice.
- (f) Any approval or notice given by the Participating Agency pursuant to clause 4.1(b) or 4.1(d) may require the Provider to take steps reasonably required by the Participating Agency to manage the Conflict of Interest, and the Provider must provide written notice confirming its acceptance of those steps before it may commence or continue to provide the Services under this Consultancy Services Order.

## 5. Responsibilities

### 5.1 Provider responsibilities

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

- (a) respond promptly, accurately and adequately to any requests for information made by the Participating Agency in relation to the Services, including requests for advice;
- (b) in performing Services for the Participating Agency under this

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

## 5.2 Participating Agencies' responsibilities

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

- (a) to manage its operational relationship with the Provider, including in relation to the fulfilment of this Consultancy Services Order;
- (b) to notify the Provider of all relevant policies, guidelines and procedures of the Participating Agency that the Provider must comply with when performing the Services under this Consultancy Services Order;
- (c) to provide adequate instructions and information to the Provider to allow it to perform the Services under this Consultancy Services Order;
- (d) to make timely decisions where approvals or consents are reasonably

sought by the Provider in performing the Services under this Consultancy Services Order;

- (e) to pay the Charges; and
- (f) to use its best efforts to resolve any dispute directly with the Provider before involving the CoE in accordance with clause 13.

## 6. Resourcing

### 6.1 General requirements

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

### 6.2 Provider's Nominated Personnel

- (a) The Participating Agency may, in this Consultancy Services Order, nominate specific Personnel (**Nominated Personnel**) to be the primary providers or to supervise the delivery of the Services.
- (b) If any Nominated Personnel nominated in this Consultancy Services Order are not available to provide or supervise the Services requested, the Provider must immediately notify the Participating Agency and provide details of other Personnel (if any) with the necessary skills and experience to provide or supervise the Services requested pursuant to this Consultancy Services Order.
- (c) Notice given under clause 6.2(b) must specify the period for which the Nominated Personnel will continue to be unavailable.
- (d) Upon receipt of notice under clause 6.2(b), the Participating Agency must notify the Provider whether the replacement Personnel are acceptable.
- (e) The Participating Agency is under no obligation to accept any replacement Personnel and, if it does not approve the replacement Personnel, the Provider may not commence or continue providing the Services.

### 6.3 Personnel

- (a) The Provider will ensure that all of its Personnel who are engaged in the performance of the Provider's obligations under this Consultancy Services Order:
  - (i) have the requisite skills, expertise, qualifications and experience;
  - (ii) have, before performing any such obligations, obtained all security clearances and passed all probity checks required by, or necessary to provide the Services to, the Participating Agency;

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

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

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

#### 6.4 Subcontracting

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

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

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

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

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

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

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

Provider to remove that Subcontractor, and the Provider will ensure the immediate removal of that Subcontractor.

#### 7. Changes

##### 7.1 Change procedure

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

#### 8. Price and payment

##### 8.1 Calculation of Charges

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

##### 8.2 Participating Agency to pay for Services

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

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

##### 8.3 Invoicing and payment

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

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

- (i) the nature and amount of the Fees or other applicable fees and fee structures;
- (ii) the Personnel and their applicable Rate;
- (iii) the hours billed (by Personnel and in the aggregate);
- (iv) the nature and amount of any Expenses (including any third party charges to be passed on to the Participating Agency);
- (v) if applicable, the amount representing the Administration Fee;
- (vi) how much of the Estimate or Quote has been used;
- (vii) a brief description of the Services provided during that month; and
- (viii) any other matters the Participating Agency may reasonably request;

(b) each correctly rendered invoice will be payable on or before the 20th day of the

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

#### 8.4 Invoice disputes

If the Participating Agency or the Provider disputes an invoice:

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

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

#### 8.5 Taxes

- (a) Except for any GST payable by the Participating Agency, any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including applicable interest and penalties) payable in connection with this Consultancy Services Order under any Law is to be paid by the Provider and not passed on to the Participating Agency unless otherwise expressly agreed in writing by the Participating Agency.
- (b) The Participating Agency may deduct from any payment to be made to the Provider any withholding taxes or other deductions that it is required by Law to make.

#### 8.6 Administration Fee

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

#### 8.7 Suspension of payment

- (a) Without prejudice to any other right or remedy that may be available to the Participating Agency, the Participating Agency may suspend payment of all or any part of the Charges if the CoE has notified the Provider that the Provider is in Material Breach, until that Material Breach is remedied.
- (b) If the Material Breach is not capable of remedy the Participating Agency and the Provider agree to treat the Charges as being in dispute and clause 14 will apply.

## 9. Warranties

### 9.1 General warranties

Each party represents, warrants and undertakes that:

- (a) it has full power, capacity and authority to execute, deliver and perform its obligations under this Consultancy Services Order;
- (b) it has, and will continue to have, all the necessary consents, permissions, licences and rights to enter into and perform its obligations under this Consultancy Services Order; and
- (c) this Consultancy Services Order constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

### 9.2 Provider's warranties

The Provider represents, warrants and undertakes that:

- (a) it will perform its obligations under this Consultancy Services Order with due care, skill, promptness and diligence at all times;
- (b) it has, and will have throughout the Term, sufficient Personnel to supply the Services and to perform its other obligations under this Consultancy Services Order;
- (c) it, and each of its Personnel engaged in the performance of the Services, has, and will have throughout the Term, the necessary expertise and all necessary governmental, regulatory or other approvals, permissions, consents, licences, qualifications, accreditations and requirements to provide the Services and perform its other obligations under this Consultancy Services Order;
- (d) it will comply with the requirements of all Laws as they relate to the provision of Services by the Provider;
- (e) the possession or use of any item of Intellectual Property supplied or licensed by it, or the use of any item of Intellectual Property by it to perform its obligations under this Consultancy Services Order, will not infringe the rights of any third party;
- (f) all Documentation (and any other information or advice supplied by it to the Participating Agency) and any information and data reported to the CoE will be accurate, complete and (as applicable) Fit for Purpose;
- (g) there are no existing agreements, undertakings or arrangements which prevent it from entering into this Consultancy Services Order, or which would impede the performance of its obligations under this Consultancy Services Order, or that it would breach by entering into this Consultancy Services Order;



- (h) it is not (and nor is any of its Personnel) a party to any litigation, proceedings or disputes which could adversely affect its ability to perform its obligations under this Consultancy Services Order; and
- (i) it has not offered any inducement in connection with the entering into or negotiation of this Consultancy Services Order, and will not offer any inducement in connection with the supply of Services to the Participating Agency.

### 9.3 Continuous application

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

### 9.4 Notification

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

### 9.5 Other warranties excluded

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

## 10. Confidentiality

### 10.1 Protection of Confidential Information

- (a) Subject to clauses 10.1(c) and 10.2, the Provider and the Participating Agency will treat as confidential and not disclose to any third party nor use for its own benefit any Confidential Information that is the Confidential Information of the other.
- (b) The Provider will:
  - (i) ensure that all Confidential Information of the Participating Agency (and any backup archives containing such Confidential Information) in the possession or control of the Provider from time to time is kept secure and managed and protected and only disclosed or otherwise dealt with in accordance with this Consultancy Services Order;
  - (ii) not use any Agency Information for its own purposes or for any purposes different from those contemplated by this Consultancy Services Order; and
  - (iii) advise the CoE in writing if any Confidential Information of the Participating Agency will be transferred or stored outside New Zealand before such information is transferred and will confirm that the requirements of this clause 10.1 will be met while such Confidential Information is stored outside New Zealand.
- (c) Clause 10.1(a) does not prevent the disclosure of Confidential Information:

- (i) if that information was known, or becomes known, to the public through no act or default of the recipient;
- (ii) that the recipient is required by Law or parliamentary practice (including parliamentary questions) to disclose, or to a Select Committee or to a Minister of the Crown, so long as the recipient provides notice of the required disclosure promptly upon receipt of notice of the required disclosure (if it is permitted to do so by Law);
- (iii) that was lawfully known to the recipient prior to the date it was received;
- (iv) that becomes available to the recipient from a source other than a party to this Consultancy Services Order, provided that the recipient has no reason to believe such source is itself bound by an obligation of confidence to the person that disclosed that information or is otherwise prohibited under Law from disclosing such information;
- (v) to any Professional Adviser for the purposes of rendering professional services to a party in relation to this Consultancy Services Order;
- (vi) to the extent that such disclosure is authorised by this Consultancy Services Order; or
- (vii) if such disclosure is approved for release with the consent of the party from whom the Confidential Information is first received.

### 10.2 Limited disclosure

- (a) The Provider may, subject to clause 10.2(d), disclose the Confidential Information of the Participating Agency to its Subcontractors, Personnel, Related Entities and Professional Advisers who need to know the same for the sole purpose of enabling the Provider to perform its obligations and exercise its rights under this Consultancy Services Order.
- (b) The Participating Agency may, subject to clause 10.2(d), disclose the Confidential Information of the Provider to its third party suppliers, Personnel and Professional Advisers and any other Participating Agencies (including the CoE) who need to know the same in connection with the Services.
- (c) The Provider will not disclose the Participating Agency's Confidential Information to any of its Subcontractors, Related Entities or Professional Advisers, and the Participating Agency will not disclose the Provider's Confidential Information to any of its third party suppliers or Professional Advisers, unless the recipient has given a written

confidentiality undertaking to the disclosing party in terms substantially similar to those set out in this clause 10.

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

## 11. Intellectual Property

### 11.1 Intellectual Property owned by Provider

- (a) The Participating Agency acknowledges that all:
- (i) Intellectual Property held by the Provider before the Commencement Date;
  - (ii) Intellectual Property developed independently from this Consultancy Services Order by the Provider, and that is not developed, commissioned or created under or in connection with this Consultancy Services Order; and
  - (iii) adaptations and modifications to the Intellectual Property described in clauses 11.1(a)(i) and (ii),
- remains the Provider's sole and exclusive property (Provider IP).

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

### 11.2 Intellectual Property owned by Participating Agency

- (a) The Provider acknowledges that the Participating Agency or its licensor has, and continues to have, sole and exclusive ownership of all Intellectual Property rights in all of the Agency Information together with all adaptations and modifications of such Agency Information (Pre-contract Participating Agency IP).
- (b) All Intellectual Property created or developed by the Provider or its employees or Subcontractors in performing the Services and developing the Documentation will be owned by the Participating Agency from the date the Intellectual Property is created or developed (Post-contract Participating Agency IP) and, together with the Pre-contract Participating Agency IP, the Participating Agency IP).
- (c) If the Provider (or any of its Subcontractors) has under any Law any right in or claim to any of the Participating Agency IP or holds any of the Participating Agency IP, the Provider (by itself and for its Subcontractors):

- (i) assigns to the Participating Agency all of its rights, title and interest in and to the Participating Agency IP from the date it was created or developed; and
- (ii) waives all right of lien or similar rights as may now or later be claimed in the Participating Agency IP; and
- (iii) waives all of its moral rights under Part 4 of the Copyright Act 1994 in the Participating Agency IP,

and the Provider will sign all documents and do all acts and things that are necessary to give effect to this clause 11.2(c).

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

### 11.3 Intellectual Property owned by third parties

- (a) To the extent that the Provider needs to use any Intellectual Property held or owned by a third party (Third Party IP) in performing the Services under this Consultancy Services Order, the Provider will use its best endeavours to obtain the fullest rights of use and licence of that Third Party IP (on terms and at a cost to be agreed with the Participating Agency) as are necessary for the performance of those Services for the benefit of the Participating Agency.
- (b) The Participating Agency acknowledges that the Provider may have limited ability to obtain rights and/or a licence to use any Third Party IP and, where the Provider, using its best endeavours, cannot obtain appropriate rights and/or a licence for the Participating Agency to use that Third Party IP, the warranty in clause 9.2(e) applies.

## 12. Liability

### 12.1 Indemnity

- (a) The Provider will, to the extent permitted by Law, indemnify the Participating Agency against all Losses suffered or incurred by the Participating Agency as a result of any:
- (i) unlawful, malicious or negligent act or omission by the Provider;
  - (ii) personal injury, sickness, death or loss of, or damage to, tangible property due to an act or omission of the Provider; or

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

not adversely affect the name or reputation of the Participating Agency;

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

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

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

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

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

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

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

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

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

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

#### 12.3

#### Maximum liability of Participating Agency

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

#### 12.2 IP Claims

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

#### 12.4

#### Maximum liability of the Provider

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

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

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

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

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

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

(ii) \$5,000,000; and

(iii) any greater amount or multiple set out in this Consultancy Services Order;

(B) the Provider will keep the Participating Agency informed of the defence or negotiations of the IP Claim and diligently conduct any litigation or negotiations, using competent counsel and in a manner that does

(b) in relation to the sub-categories for which the Provider has been appointed as a Tier 2 Provider, the greater of:

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

(ii) \$2,000,000; and

(iii) any greater amount or multiple set out in this Consultancy Services Order; and

- (c) in relation to the sub-categories for which the Provider has been appointed as a Tier 3 Provider, the greater of:
- (i) 10 times the total Charges paid and payable under this Consultancy Services Order;
  - (ii) \$1,000,000; and
  - (iii) any greater amount or multiple set out in this Consultancy Services Order.

**12.5 No double dipping**

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

**12.6 Exclusions on liability**

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

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

**12.7 Categories of loss**

- (a) Irrespective of how liability arises, neither the Provider nor the Participating Agency will, under any circumstances, be liable for any indirect loss or damage (including consequential loss) arising under or in connection with this Consultancy Services Order.
- (b) The Participating Agency will not, under any circumstances, be liable for any loss of profits or loss of revenue suffered by the Provider in connection with this Consultancy Services Order.

**12.8 Force majeure**

- (a) The Provider and the Participating Agency will not be liable to the other for any failure to perform its obligations under this Consultancy Services Order during the time and to the extent that such performance is prevented, wholly or substantially, by reason of any Force Majeure Event.
- (b) The party subject to the Force Majeure Event (the non-performing party) must:
  - (i) notify the other party as soon as practicable after the Force Majeure Event occurs and provide full information concerning the Force Majeure Event, including the extent of its inability to perform, an estimate of the time likely to be required to

overcome the Force Majeure Event and the steps the non-performing party will take to comply with clauses 12.8(b)(ii) and 12.8(b)(iii);

- (ii) use all reasonable endeavours to mitigate and remedy the effect of the Force Majeure Event and minimise the impact of the event on the other party; and
- (iii) use all reasonable endeavours to perform its obligations under this Consultancy Services Order as far as is practicable.

and the Participating Agency will not be required to pay Charges to the extent that the Provider fails to perform its obligations to the Participating Agency due to a Force Majeure Event.

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

**12.9**

**Insurance**

- (a) During the Term and for a period of two years following the termination of this Consultancy Services Order, the Provider will, at its own expense, ensure that it maintains adequate insurance in respect of its potential liability for loss or damage under this Consultancy Services Order in accordance with Industry Best Practice, but as a minimum the Provider must hold:
  - (i) professional indemnity insurance;
  - (ii) public liability insurance in respect of the Services provided under this Consultancy Services Order; and
  - (iii) other insurance to cover standard commercial risks (including in respect of Documentation which is the property of the Participating Agency and in the Provider's possession or control).
- (b) The Provider will, at the Participating Agency's request, promptly provide satisfactory evidence that it has complied with its obligations in this clause 12.9.

### 13. Dispute resolution

#### 13.1 Dispute

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

- (a) the Participating Agency and the Provider will each use its best efforts to resolve the dispute through good faith negotiations and informal dispute resolution techniques, and will continue to perform its obligations under this Consultancy Services Order as far as possible as if the dispute had not arisen, pending final settlement of the dispute; and
- (b) neither the Participating Agency nor the Provider will commence any formal proceedings relating to the dispute unless it has complied with clause 13.2.

#### 13.2 Escalation

- (a) The Participating Agency and the Provider will each advise its respective Representative (or equivalent person) of a dispute on the day that the dispute arises.
- (b) The Representatives will use their best efforts to resolve the dispute in accordance with clause 13.1(a).
- (c) If the dispute is not resolved:
  - (i) within 10 Business Days, the dispute will be escalated to senior representatives of the Provider and the Participating Agency with delegated authority to resolve the dispute; and
  - (ii) in relation to the sub-categories for which the Provider has been appointed as a Tier 1 and Tier 2 Provider, within a further 10 Business Days, the dispute will be escalated to the CoE's Manager, All-of-Government Contracts and the Provider's Chief Executive.

#### 13.3 Mediation

- (a) If a dispute is not resolved under clause 13.2, either party may, by written notice to the other, refer the dispute to mediation, or they may agree in writing to refer the dispute to mediation.
- (b) The mediation will be conducted by a single mediator in accordance with the terms of the Resolution Institute Standard Mediation Agreement and at a fee to be agreed by the parties.
- (c) If the parties fail to agree on the identity of the mediator and/or the mediator's fee within five Business Days of referral of the dispute to mediation, the mediator will be chosen, and the mediator's fee determined, by the chairperson for the time being of Resolution Institute (or his or her nominee).

### 13.4 Urgent relief

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

### 14. Termination

#### 14.1 Termination of Consultancy Services Order

The Participating Agency may terminate this Consultancy Services Order:

- (a) for convenience by giving the Provider at least one month's prior written notice;
- (b) by notice to the Provider with immediate effect on the date of termination specified in that notice, if the Provider commits a Material Breach which is:
  - (i) not capable of being remedied (and, for the avoidance of doubt, paragraphs (a) and (b) of the definition of "Material Breach" are deemed incapable of being remedied); or
  - (ii) capable of being remedied but which is not remedied to the satisfaction of the Participating Agency within 10 Business Days following the date of receipt by the Provider of the Participating Agency's notice of the Material Breach;
- (c) in accordance with clause 4.1(e) (Conflict of Interest); or
- (d) in accordance with clause 12.8(c) (Force Majeure Event).

#### 14.2 Consequences of termination or expiry

- (a) In the event of termination or expiry of this Consultancy Services Order, the Participating Agency will not be obliged to make any payment to the Provider except for any Charges payable for Services supplied pursuant to this Consultancy Services Order before the effective date of expiry or termination.
- (b) Termination or expiry will not, unless otherwise provided in this Consultancy Services Order, affect:
  - (i) any rights and remedies available to either party which have accrued up to and including the date of termination or expiry; and
  - (ii) the provisions of this Consultancy Services Order which expressly, or by their nature, survive termination or expiry, including clauses 15 (Entire agreement), 10 (Confidentiality), 11 (Intellectual Property), 12 (Liability), 13 (Dispute Resolution), 14.2 (Consequences of termination or expiry) and 16 (General) and Schedule 1 (Definitions);
  - (iii) the continued application of clauses of the Services Agreement which expressly, or by their nature, are intended to



continue to apply to this Consultancy Services Order after termination or expiry of this Consultancy Services Order, including clauses 1.4 (Precedence) and 15 (Audit).

- (c) After expiry or termination of this Consultancy Services Order for any reason, each party will, within five Business Days of receiving notice from the other party, return all Documentation, Confidential Information or other property belonging to the other party (or destroy such Confidential Information, if requested), except if such Documentation, Confidential Information or other property is required to be retained by any Law.

## **15. Entire agreement**

### **15.1 Entire agreement**

- (a) This Consultancy Services Order is intended to be read in conjunction with the Services Agreement. The provisions of the Services Agreement (not already included in this Consultancy Services Order) which confer rights, obligations or benefits on the parties or the CoE in respect of this Consultancy Services Order are intended to apply to this Consultancy Services Order.
- (b) Subject to clause 15.1(a), no other terms or conditions, including any conditions of sale, invoices or any other communication not included in this Consultancy Services Order (Communication), will be incorporated into this Consultancy Services Order, even if at some later date the other party (including, in the case of the Participating Agency) signs or otherwise purports to accept those terms and conditions or the terms of that Communication.
- (c) For the avoidance of doubt, and without limiting clauses 15.1(a) and 15.1(b):
- (i) any Communication which is expressed or intended to operate as an indemnity, warranty, representation, undertaking, condition or other term of such a nature is hereby disappplied and excluded from this Consultancy Services Order; and
  - (ii) any part of this Consultancy Services Order which describes the nature, scope, price or manner of delivery of Services will, subject to clause 15.1(c)(i), form part of this Consultancy Services Order, but only to the extent that it does not conflict with any other part of this Consultancy Services Order.

## **16. General**

### **16.1 Interpretation**

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

### **16.2 Relationship of the parties**

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

### **16.3 Costs**

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

### **16.4 Assignment**

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

### **16.5 Public disclosures**

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

### **16.6 Notices**

- (a) Unless otherwise specified in this Consultancy Services Order, each notice or other communication under this Consultancy Services Order will be made in writing and delivered by post, personal delivery or email to the addressee at the addressee's postal address, physical address or email address (as applicable) and marked for the attention of the person or office holder (if any) from time to time designated for that purpose by the addressee.
- (b) The Provider's postal address, physical address and email address is set out in the Provider Database and may be amended by the Provider at any time.
- (c) The Participating Agency's postal address, physical address and email address is as notified by the Participating Agency to the Provider and may be amended by the Participating Agency at any time.
- (d) A notice or other communication will be deemed to be received:
- (i) in the case of a letter sent to the addressee's postal address, on the third Business Day after posting;
  - (ii) in the case of personal delivery, on receipt; and
  - (iii) in the case of an email, at the time the email leaves the communications system of the sender, provided that the sender:
    - (A) does not receive any error message relating to

the sending of the email at the time of sending; and

- (B) has obtained confirmation that the email has been delivered to the recipient (which confirmation may be in the form of an automated delivery receipt from the communications system of the recipient),

on the Business Day on which it is dispatched or, if dispatched after 5 p.m. (in the place of receipt), on the next Business Day after the date of dispatch.

#### 16.7 Severability

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

#### 16.8 Waiver

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

#### 16.9 Remedies cumulative

Except as is expressly stated otherwise in this Consultancy Services Order:

- (a) the rights, powers and remedies provided in this Consultancy Services Order are cumulative and are not exclusive of any rights, powers or remedies provided by Law or under this Consultancy Services Order; and
- (b) the exercise of any rights, powers and remedies provided in this Consultancy Services Order will not prejudice the exercise of any other right, power or remedy under this Consultancy Services Order or existing at Law.

#### 16.10 Counterparts

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

#### 16.11 Governing law and jurisdiction

- (a) This Consultancy Services Order is governed by, and will be construed in accordance with, the laws of New Zealand.

- (b) Subject to clause 13, each party irrevocably submits to the exclusive jurisdiction of the New Zealand courts for the purpose of hearing and determining any dispute under, or in connection with, this Agreement.

### SCHEDULE 1: DEFINITIONS

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

**Administration Fee** means the amount referred to in clause 8.6;

**Agency Information** means all:

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

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

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

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

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

**CoE** means the Ministry of Business, Innovation and Employment, the Centre of Expertise for Consultancy Services;

**Commencement Date** is the date on which this Consultancy Services Order is signed by both parties or, if two dates, the later date;

**Confidential Information** means:

- (a) all information and trade secrets already communicated or subsequently communicated under or in connection with this Consultancy Services Order, including information obtained during the negotiation of this Consultancy Services Order or in the performance of this Consultancy Services Order and information on the Provider Database;
- (b) any information about the business or property of either party including any information;

- (i) relating to the financial position of that party;
- (ii) concerning that party's suppliers and customers; or
- (iii) relating to that party's internal management, structure, Personnel or strategies;
- (c) the terms of this Consultancy Services Order; and
- (d) Agency Information;

**Conflict of Interest** means any matter, circumstance, interest or activity of the Provider, its Personnel or Subcontractors, arising by whatever means that directly or indirectly conflicts with:

- (a) the duties of the Provider and any of its Personnel or Subcontractors to the Participating Agency; or
- (b) the interests of the Participating Agency in relation to this Consultancy Services Order or otherwise in respect to the provision of consultancy services to the Participating Agency either before or after the Commencement Date;

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

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

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

**Control** means, in relation to the Provider or any ultimate or intermediate holding company or Holding Entity of the Provider, the power to:

- (a) manage, directly or indirectly, the operation of the business; or
- (b) control, directly or indirectly, the composition of the board of directors or board of management or equivalent governing body,

of the Provider or such ultimate or intermediate holding company or Holding Entity, whether through the ownership of voting securities, by contract or otherwise, and for these purposes "holding company" will have the same meaning as in section 5 of the Companies Act 1993;

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

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

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

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

**Fit for Purpose** means, in relation to any Service or Documentation to be provided by the Provider to the Participating Agency, that such Services or Documentation are, in descending order of priority, fit for the purpose(s):

- (a) expressly made known in writing by the Participating Agency to the Provider (including in this Consultancy Services Order); or
- (b) for which the Provider, given its knowledge of the Participating Agency and understanding why the Services or Documentation are required, has reason to expect such Services or Documentation to be used;

**Force Majeure Event** means an event or circumstance beyond the reasonable control of either party which makes it impossible or illegal to perform, or prevents compliance with, or the performance of, a party's obligations under this Consultancy Services Order, including:

- (a) fire, floods, tsunamis, storms, tempest, earthquake or other act of God;
- (b) any act of a public enemy, war, riot, or act of civil or military authority;
- (c) nuclear, chemical or biological contamination; and
- (d) subject to paragraph (g) of this definition, any act of a third party engaged in subversive or terrorist activity or sabotage,

but does not include an event to the extent that:

- (e) the effect of that event could have been substantially prevented, avoided or overcome or mitigated by:
  - (i) implementation of any contracted business continuity or disaster recovery service, or any contingency plans agreed between the parties or which a party has represented it has in place; or
  - (ii) exercising a reasonable standard of care; or
  - (iii) using information provided by the other party or which is available in the public domain; or
- (f) it is an event for which the party affected is or was directly responsible; or
- (g) that event is constituted or caused by any act or omission of Personnel or a Subcontractor unless and to the extent that the Personnel or Subcontractor was itself affected by an event, which if it occurred in relation to either party would have been a Force Majeure Event; or
- (h) that event is constituted or caused by an Insolvency Event or the insolvency of a Subcontractor or lack of funds for any reason;

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

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

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

**Insolvency Event** means, in relation to the Provider:

- (a) the presentation of an application for its liquidation that is not discharged within 30 days of its filing or which is not demonstrated to the Participating Agency prior to

the expiry of that 30 day period as being an application that is frivolous or vexatious;

- (b) any step taken in or toward the making of any compromise, proposal or deed of arrangement with all or some of its creditors;
- (c) the appointment of a liquidator, receiver, statutory manager, administrator or similar official, to it;
- (d) the suspension or threatened suspension by it of the payment of its debts;
- (e) cessation by it of a whole or any relevant part of its business in New Zealand;
- (f) the enforcement of any security against the whole or a substantial part of its assets; or
- (g) any other insolvency event or proceedings analogous to any of the foregoing occurring in any relevant jurisdiction;

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

**Law** means:

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

in any jurisdiction that is applicable to this Consultancy Services Order;

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

**Material Breach** means any material breach by the Provider of the terms of this Consultancy Services Order or the occurrence of any event having a material effect on the ability of the Provider to perform its obligations under this Consultancy Services Order (other than a Force Majeure Event), including:

- (a) the occurrence of an Insolvency Event in relation to the Provider or the likely occurrence of an Insolvency Event;
- (b) the occurrence of a change in Control of the Provider or any ultimate or intermediate holding company or Holding Entity of the Provider that the CoE has not previously approved (acting reasonably);
- (c) any representation or warranty made by the Provider in terms of this Consultancy Services Order being found to be untrue or incorrect; and
- (d) any failure on the part of the Provider to comply with, observe or perform any of the terms of this Consultancy Services Order in circumstances where that contract breach or that contract breach together

with other contract breaches is considered by the Participating Agency on reasonable grounds to cause the Provider to be unable or unwilling, or be likely to be unable or unwilling, to perform its obligations under this Consultancy Services Order;

**Maximum Rates** means the maximum Rates payable to the Provider for providing the Services, as recorded in the Provider Database, excluding Expenses;

**Panel** means the All-of-Government panel of providers who provide consultancy services to Participating Agencies, including any sub-panel, as detailed on [www.procurement.govt.nz](http://www.procurement.govt.nz);

**Participating Agency** means the Participating Agency that is a party to this Consultancy Services Order;

**Participating Agencies** means each of the CoE and every other Eligible Agency that is a party to the memorandum of understanding between the CoE and all other Participating Agencies relating to the management of their relationship with each other and with the Provider in relation to the Services, as amended from time to time;

**Personnel** includes partners, principals, directors, employees, agents, officers and individual independent contractors;

**Professional Adviser** means any accounting, legal, procurement or technical professional;

**Provider Database** means the IT platform described in Schedule 7 (Provider Database) to the Services Agreement;

**Quote** means a fixed price, capped price or other pre-agreed basis for establishing the Charges for Services required by the Participating Agency where the Provider is prevented from increasing the Charges without the prior written consent of the Participating Agency;

**Rates** means the rates (whether hourly, daily or weekly or other time-related basis) payable to the Provider for providing the Services, determined in accordance with Schedule 2 (Pricing), excluding Expenses;

**Related Entity** means a related company under the Companies Act 1993 (New Zealand) or a related body corporate under the Corporations Act 200, provided that any reference in the Companies Act 1993 to a "company" is deemed to include any partnership, body corporate, association or other entity, whether corporate or unincorporated, irrespective of the place of incorporation or registration of that partnership, body corporate, association or other entity;

**Representative** has the meaning given in paragraph 3.1 of Schedule 5 (Governance) to the Services Agreement);

**Service Level** means a required standard for the Provider's performance of its obligations under this Consultancy Services Order, as described in Schedule 3 (Performance Measurement);

**Service Level Default** means a failure by the Provider to meet one or more Service Levels;

**Services** means the consultancy services provided from time to time under the terms of this Consultancy Services Order;

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

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

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

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

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

## SCHEDULE 2: PRICING

### 1. Introduction

This Schedule sets out general principles underlying the Charges.

### 2. Principles

#### 2.1 Participating Agency will only pay for Services ordered

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

#### 2.2 No minimum volume

The Participating Agency is not required to meet a minimum aggregate expenditure or volume level for any Services.

#### 2.3 No interest

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

#### 2.4 Rates

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

### 3. Charges

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

## SCHEDULE 3: PERFORMANCE MEASUREMENT

### 1. Introduction

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

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

## 2. Service Levels

### 2.1 Format

Each Service Level is described in Annexure A using the following format:

Parameter	Description
Description	Description of what the Service Level will measure
Purpose	Why it is important to Participating Agencies that the Service Level is met
Calculation	Method for calculating the Service Level
Service Level	The performance standard that the Provider is required to meet or exceed

### 2.2 Service Levels must be met

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

### 2.3 Changes to Service Levels

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

## 3. Performance measurement

### 3.1 Failure to meet Service Levels

If the Provider fails to achieve one or more of the Service Levels in any Contract Quarter in respect of this Consultancy Services Order, it will:

- (a) take such steps and do all things necessary, as soon as possible, to correct the failure; and
- (b) notify the Participating Agency of the reasons for the failure and the steps that the Provider is taking to ensure that the failure is not repeated; and
- (c) consider whether the Charges for the Services that are subject to the Service Level Default should be reduced to reflect the lower value of the Services provided.



# Annexure A: Service Levels

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

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

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

RELEASED UNDER THE OFFICIAL INFORMATION ACT

Canterbury and West  
Coast District Health  
Board  
Holidays Act 2003 Review  
Report

October 2020

*Confidential and not for wider distribution*

RELEASED UNDER THE OFFICIAL INFORMATION ACT

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# 1. Executive summary

## 1.1 Background

The Holidays Act 2003 Review for Canterbury District Health Board ("CDHB") and West Coast District Health Board ("WCDHB") has been completed in accordance with the Consultancy Service Order ("CSO") dated 16 September 2019 and signed on 15 October 2019.

The Labour Inspectorate (a division of the Ministry of Business, Innovation and Employment ("MBIE")) carried out audits of the District Health Boards ("DHB's") and found them to be non-compliant with the Holidays Act 2003 ("Holidays Act"). Representatives of the DHBs and New Zealand Council of Trade Unions ("CTU") approached the Labour Inspectorate regarding a national process for the identification, rectification and remediation of their Holidays Act non-compliance.

The DHBs, CTU, affiliated Unions and the Labour Inspectorate have worked together to agree on a Baseline document for the DHBs to be audited against and an overall framework to address Holidays Act issues across the DHB's. The framework has been agreed with each of the DHB's CEO's. It should be noted that the Baseline was agreed in April 2019 but applies to leave taken from 1 May 2010 onwards.

In addition, the Labour Inspectorate has agreed that previous Enforceable Undertaking's ("EU's") will be redacted and rather each DHB will sign a Memorandum of Understanding ("MOU") committing to address and remediate the issues identified<sup>1</sup>. The MOU was signed by MBIE on 5 February 2020 following the agreement from the 20 DHB's, NZ Blood Service, Council of Trade Unions and other unions. The remediation programme will cover the period 1 May 2010 through to the change in systems and processes to address the instances of non-compliance identified.

The CSO noted a report would be issued that provided:

- ▶ Detailed issues in the payroll (system configuration and process) leading to non-compliance with the Holidays Act as agreed in the Baseline document.
- ▶ Recommendations arising from the issues to ensure that CDHB and WCDHB's payroll system and process are compliant with the Holidays Act.

Subsequent to this, and in addition to the requirements of the Review agreed in the MOU and Baseline documents, EY will carry out a separate liability estimation for CDHB and WCDHB management for both current and former employees. The liability estimate will be reported separately.

This report details the issues identified with the payroll system configuration and processes leading to non-compliance with the Holidays Act as agreed in the Baseline document for historical remediation and provides overarching recommendations to address the areas of non-compliance identified going forwards.

As part of completing the Review a workshop was held with CDHB and WCDHB management, Unions and other stakeholders to understand how CDHB and WCDHB pay their employees for each leave type. The current calculation methodologies were documented and agreed for both CDHB and WCDHB at the Steering Committee meeting on 5 February 2020. They have been included at Appendix A and B for reference. Sample employee selection methodologies were also agreed at the Steering Committee meeting on 5 February 2020 and have been included at Appendix C and D. Gross earnings were reviewed and agreed at the workshops held on 3 December 2019 and 12 December 2019 and have been included at Appendix E and F.

## 1.2 Summary of findings

As an organisation with multiple Union relationships, 24/7 delivery of service and varying working practices the DHB payroll, and their compliance with both the Holidays Act and the Baseline document is very complex.

In order to complete the review, 196 sample employees were selected from the 21,803 CDHB staff, and 60 sample employees from the 2,513 WCDHB staff, that were employed between 1 May 2010 and 30 June 2019. More than 10 years' worth of data was obtained for the sample employees, consisting of payroll data, employee master data, audit logs and timesheet information. Sampling identified 52 separate MECA/SECA for CDHB and a further 23 for WCDHB along with IEA's at both DHB's. All MECA/SECA's which were sampled along with a selection of IEA's. By covering all MECA/SECA arrangements, the complex and intricate working

<sup>1</sup> The MOU defines the calculations to be performed for the remediation only. Going forwards DHB's are required to be compliant with the Holiday's Act.



arrangements of the DHB were reviewed. The detailed sampling methodology is included at appendix C and D of this report.

There were several areas where CDHB and WCDHB were compliant with the Act. These areas include:

- Where it is known what an employee would work on a given day, payment of bereavement, alternative, public holidays not worked and sick leave is paid at the employees Relevant Daily Pay ("RDP") including any additional allowances the employee would have earned had they been at work that day.
- An employee's Ordinary Weekly Pay ("OWP"), where the employees weeks earnings are known and their profile accurately captures their working pattern, is accurately calculated including any additional allowances the employee would have earned for that week or proportion of a week.
- Termination calculations completed by the system were identified as being non-compliant several years ago. CDHB have actively instigated a manual workaround to identify notional public holidays and include all termination payments in the employee's gross earnings since their last anniversary date.

However, there are several areas of non-compliance with the Baseline document, the Holidays Act or both that have been identified. The table below provides a summary of these areas of non-compliance identified at CDHB and WCDHB in this review phase.

The recalculation models for the sample employees have been provided separately to CDHB and WCDHB in review workshops on 3 March 2020 and 9 March 2020.

#### CDHB summary of findings

##### Annual leave

Title	Description	Compliance driver
Calculation of annual leave	<p>CDHB pays employees their annual leave using the higher of the employee's average hourly rate ("AHR") (as equivalent to Average Weekly Earnings ("AWE")) or ordinary rate (as an equivalent to the employees Ordinary Weekly Pay ("OWP")) which is the higher of the employee's base rate and the average hourly rate using the employees four-week ordinary earnings.</p> <p>As per the agreed Baseline document, employees should receive the higher of AWE, OWP using section 8(1) of the Holidays Act and OWP using section 8(2) of the Holidays Act ("hereby known as OWP2"). CDHB does not currently apply the Holidays Act definitions of these calculations to their system-based calculations.</p>	<p>Non-compliant with the Baseline document.</p> <p>Where an employee is non-variable the comparison to OWP2 is not required by the Holidays Act.</p>
AWE and OWP2 divisor	<p>Both the average rate and four-week ordinary rate is calculated using the earnings in the 52- or four-week period divided by the contracted hours in the same period.</p> <p>When an employee changes their profiled hours throughout the year, CDHB apply a smoothing period that slowly reduces or increases the employee's contracted hours for the divisor. This means the average hourly rate is further averaged based on the employees prior working pattern and their current working pattern.</p> <p>The Holidays Act requires AWE is calculated by the employee's gross earnings divided by the number of weeks in the same period (generally 52 but may be less for employees who have yet to work a year for the DHB) and OWP2 to be calculated by the employees ordinary earnings (including any regular additional payments) divided by four.</p>	<p>Non-compliant with the Baseline document and the Holidays Act.</p>

Title	Description	Compliance driver
Gross earnings and ordinary earnings inclusions	The Holidays Act requires allowances that are part of an employee's contractual agreements or are communicated to the employee (i.e. not specifically included in the employee's contract but communicated by another means e.g. via email, etc.)  In our sample employee population, 20 additional allowances have been identified for inclusion in the gross earnings calculations. Refer to Appendix E for further details.	Non-compliant with the Baseline document and the Holidays Act.
	The Holidays Act requires allowances that are part of an employee's ordinary working week to be included in ordinary earnings, which may vary weekly, but are regularly received by the employee.  In our sample employee population, 89 allowance codes have been identified as not being included in ordinary earnings. Refer to Appendix E for further details	Non-compliant with the Baseline document and the Holidays Act.
Leave without pay ("LWOP")	Employees who take significant periods of LWOP have their role changed and their annual leave accrual is stopped until the pay period they return. Shorter periods of LWOP are entered into the payroll transaction data and the employee will continue to accrue leave.  The Holidays Act requires the employee still to receive four weeks leave at their anniversary date after a period of LWOP longer than one week. The Act provides for either the employees AWE weeks divisor is to be reduced when calculating an employee's annual leave or the anniversary date for leave entitlement to be extended. Both changes are by the number of continuous weeks of LWOP less one week. The method applied should be agreed with the employee in advance of the period of LWOP.  Lastly, the requirements of the current MECA in incorporating instances of LWOP in leave calculations does not align with the Holidays Act.	Non-compliant with the Baseline document and the Holidays Act.
Entitlement	An employee is entitled to a statutory four weeks of annual leave. CDHB employees, dependent on the relevant MECA or SECA, may receive five or six weeks of annual leave entitlement at each anniversary.  At CDHB, employees annual leave is accrued based on hours contracted in each pay period and awarded in hours rather than weeks. Where employees change their contracted hours through the year, their entitlement at anniversary will be incorrect. Depending on the change of hours either too much or insufficient leave could be provided.	Non-compliant with the Baseline document and the Holidays Act.  The Framework notes that historical entitlement balances would be required at the employee's initiation, however the issue has been included in the signed MOU.
Cash up of annual leave	An employee is entitled to cash up one week of their statutory entitlement in each entitlement year and any contractual leave entitlement over and above the statutory four weeks (i.e. an employee receiving five weeks leave can cash up one week's statutory leave and one week's contractual leave) subject to agreement of their employer.  Historically, CDHB have used the same allowance code to cash up statutory and contractual annual leave, making differentiating between the two types of cash up not possible. This code is currently excluded from gross earnings, meaning the cash up of contractual	Non-compliant with the Baseline document and the Holidays Act.

Title	Description	Compliance driver
	leave is incorrectly excluded from the employee's gross earnings. Contractual leave cash ups should be included in the employee's gross earnings and statutory leave cash ups are to be excluded from gross earnings.	
Continuous leave	Employees annual leave is calculated based on each pay period in which it occurs. Where a period of leave is continuous over multiple pay periods the original rate should be paid throughout the leave period. CDHB calculate an employee's leave in each pay period as such an employee taking continuous leave across two pay periods may be paid leave at different rates.	Non-compliant with the Baseline document and the Holidays Act.
Term time working arrangements	Term time employees are being paid base rate for all annual leave taken. An employee's four statutory weeks of annual leave should be calculated and paid at the greater of AWE or OWP (either OWP or OWP2) in line with the Holidays Act or for rectification at the higher of AWE, OWP and OWP2 in line with the Baseline document. The duration of leave required to cover term time working arrangements results in employees accruing negative leave balances as no additional entitlement is provided in the system beyond their four statutory weeks. There is no limit to the number of negative leave days they can take. If an employee has a negative balance of leave at time of termination, no termination calculation is performed as it is assumed that the negative balance (equivalent to annual leave taken in advance) will be larger than any other amounts owed.	Non-compliant with the Baseline document and the Holidays Act.

Bereavement, Alternative, Public Holiday, Sick and Family Violence ("BAPSF") leave

Title	Description	Compliance driver
Calculation of Relevant Daily Pay ("RDP") and Average Daily Pay ("ADP")	Where it can be determined what an employee would earn on a day, an employee can be paid RDP for BAPSF leave. CDHB pay employees their BAPSF leave using RDP which uses the employees rostered or profiled hours and includes hourly allowances and penal payments due for the BAPSF leave day. As per the Baseline document, employees should receive the higher of their RDP and ADP. CDHB do not currently calculate ADP.	Non-compliant with the Baseline document. For employees whose RDP can be determined this is compliant with the Holidays Act except for public holidays worked (noted below).
Public holidays worked	Where an employee works on a public holiday, the employee is entitled by the Holidays Act to be paid the higher of 1.5 times their RDP rate or their rate including penal rates specific to the day worked. To calculate RDP, CDHB includes the employee's base rate and applicable allowances. A number of allowances are paid at a penal rate, which is the equivalent to 1.5 times the ordinary rate. Some additional allowances paid on a public holiday are paid at ordinary rate and not at a minimum of time and a half. Examples of these allowances include no meal break (NMB.5), night duty (NGHT) and afternoon duty (AFTN). Other allowances, for example on call (OCPH) are paid at time and a half.	Non-compliant with the Baseline document and the Holidays Act.

Title	Description	Compliance driver
Public holiday not worked	<p>Public holidays not worked are paid at the employees RDP for the day, based on their roster and including any relevant allowances.</p> <p>As per the Baseline document and the Holidays Act, this should be paid at the higher of the employees RDP or ADP.</p>	<p>Non-compliant with the Baseline document.</p> <p>For employees whose RDP can be determined this is compliant with the Holidays Act.</p>
Sick leave	<p>Sick leave balances are held in hours rather than days. Where employees work variable hours each day this may lead to under or over entitlement of the statutory requirement of five days.</p> <p>Sick leave is paid at the employees RDP for the day, based on their roster and including any relevant allowances.</p> <p>As per the Baseline document and the Holidays Act, this should be paid at the higher of the employees RDP or ADP.</p>	<p>Entitlement is non-compliant with the Baseline document and the Holidays Act for employees who work variable hours each day.</p> <p>Payment is non-compliant with the Baseline document.</p> <p>For employees whose RDP can be determined this is compliant with the Holidays Act.</p>
Bereavement leave	<p>Bereavement leave is paid at the employees RDP for the day, based on their roster and including any relevant allowances.</p> <p>As per the Baseline document and the Holidays Act, this should be paid at the higher of the employees RDP or ADP.</p>	<p>Payment is non-compliant with the Baseline document.</p> <p>For employees whose RDP can be determined this is compliant with the Holidays Act.</p>
Family violence leave	<p>CDHB use a special leave code (SPEC) to pay any family violence leave to employees. This is paid at base rate multiplied by the hours taken for the employee.</p> <p>As per the Baseline document and the Holidays Act, this should be paid at the higher of the employees RDP or ADP.</p>	<p>Non-compliant with the Baseline document and the Holidays Act.</p>
Alternative leave	<p>CDHB hold alternative leave balances in days and pay in hours. The hours paid reflect the employee's roster for the day taken.</p> <p>As per the Baseline document and the Holidays Act, alternative leave should be paid at the higher of RDP or ADP based on the day they would have worked.</p>	<p>Payment is non-compliant with the Baseline document.</p> <p>For employees whose RDP can be determined this is compliant with the Holidays Act.</p>

Termination calculations

Title	Description	Compliance driver
Termination payments	<p>An employee's final pay includes entitlements due to be paid using the Holidays Act's annual leave and BAPSF leave calculations.</p> <p>As such, the incorrect calculation of annual leave and BAPSF leave identified above will also be present in the employee's final pay calculation and therefore impacts the accuracy and compliance of the termination calculation and payment.</p> <p>CDHB manually recalculate an employee's termination payment using an excel spreadsheet alongside the balances provided in PSe. After the manual calculation, the values are entered into the system under the relevant codes.</p>	Non-compliant with the Baseline document and the Holidays Act.
Alternative leave on termination	<p>CDHB hold alternative leave balances in days and pay in hours.</p> <p>Alternative leave paid at termination is currently paid at the employee's annual leave rate.</p> <p>As per the Baseline document and the Holidays Act, alternative leave on termination should be paid at the higher of RDP or ADP based on the employees last working day.</p>	Non-compliant with the Baseline document and the Holidays Act.
Notional public holidays on termination	<p>CDHB manually assess the entitlement of notional public holidays on a prior 12 week working pattern.</p> <p>The employee is paid their notional public holidays at their RDP of the day based on their roster pattern.</p> <p>As per the Baseline document and the Holidays Act, notional public holidays should be paid at the higher of RDP or ADP based on the employees last working day.</p>	<p>Payment is non-compliant with the Baseline document.</p> <p>For employees whose RDP can be determined this is compliant with the Holidays Act.</p>
Closedown periods	<p>Some departments at CDHB closedown for the Christmas period. Staff in these departments are encouraged to take leave but can work at an alternative location if requested.</p> <p>If a closedown happens before an employee becomes entitled to annual holiday, and the employee is required to take leave, the employer must pay the employee eight percent of their gross earnings to the date of the closedown and reset their anniversary date. While no sample employee showed evidence of this situation, the payroll team confirmed there was no process to change the employees anniversary date should the situation arise.</p>	<p>Non-compliant with the Holidays Act.</p> <p>Closedown is not considered as part of the Baseline document.</p>
RMO transfers	<p>RMO's have the ability, based on the agreement in the relevant MECA, to transfer up to 240 hours of leave to another DHB when moving between DHB's.</p> <p>CDHB will complete the termination calculation and then remove the agreed number of hours (up to 240) and the 8% current years leave calculation from the termination calculation.</p> <p>As the employee is leaving the employment of CDHB this should be paid out in full.</p>	<p>Non-compliant with the Holidays Act.</p> <p>Transfer of leave is not considered as part of the Baseline document.</p>

Casual employees

Title	Description	Compliance driver
Casual employees - annual leave	<p>There is currently no process to determine whether an employee is genuinely working a casual working pattern.</p> <p>The Holidays Act only provides for casual employees to be paid Pay As You Go ("PAYG") leave when their working pattern is so intermittent</p>	Non-compliant with the Baseline document and the Holidays Act.



Title	Description	Compliance driver
	<p>or irregular that it is impracticable for the employer to provide the employee with 4 weeks' annual leave.</p> <p>Our analysis of casual employee working pattern, in line with the specific gap test agreed to confirm if a casual employee has a working pattern and therefore should be provided with annual leave, identified employees that should not have been paid PAYG leave.</p>	
Casual employees - PAYG leave	<p>If an employee has multiple jobs where one role is casual and the other permanent the employee will not receive PAYG on their casual earnings. The employee's casual gross earnings will be included in the employee's total gross earnings, but no additional leave entitlement is calculated for the casual contract.</p> <p>CDHB should take additional legal advice on this but, where the casual work does not meet the definition in the point above (i.e. the work is not intermittent or irregular), a leave entitlement should be provided. Conversely, if the employee's casual role is separately contracted from their permanent role, and it is substantially different to their permanent role, the casual PAYG leave should be paid as an identifiable component of the employees pay at a minimum of 8% of their gross earnings.</p>	May not be compliant with the Holidays Act. Payment of employees with multiple roles in this way is not considered as part of the Baseline document.
Casual employees - Otherwise Working Day ("OWD") public holiday not worked	<p>A casual employee may be entitled to payment for a public holiday not worked if the day is deemed to be an otherwise working day.</p> <p>CDHB do not have a consistent or documented approach to the determination of an otherwise working day. As a result, the casual employee may not be paid for public holidays not worked that could be deemed an otherwise working day for the employee.</p> <p>The Baseline document and Holidays Act define an otherwise working day as whether, but for the day being a period of BAPSF leave, the employee would otherwise work on that day.</p>	Non-compliant with the Baseline document and the Holidays Act.
Casual employees - public holiday worked	<p>If an employee works on a public holiday they are paid time and a half (or double depending on the MECA). An alternative day would only be provided if submitted by the employee's manager. There is no analysis completed or policy as to when an employee would receive an alternative day.</p> <p>When an employee works on a public holiday, and it is an otherwise working day for that employee, they are entitled to an alternative holiday.</p>	Non-compliant with the Baseline document and the Holidays Act.

Other

Title	Description	Compliance driver
Employee working profiles	CDHB employee working profiles for part time and / or multi-job employees do not accurately reflect the employee's actual working pattern as the system has not been updated to reflect changes in working hours or only captures one element of their multiple job roles. Some employees are also recorded as having no profiles but have a working pattern in the transaction data.	Non-compliant with the Baseline document and the Holidays Act.
ORDSAL employees	<p>For employees who are paid via the ORDSAL method, their base hours are automatically processed through PSe. Rosters for these employees in Microster reflect a proxy working pattern, based on a Monday - Friday assumption.</p> <p>This lack of accurate profile data impacts all calculations associated with the Holidays Act.</p>	Non-compliant with the Baseline document and the Holidays Act.

## WCDHB summary of findings

Annual leave

Title	Description	Compliance driver
Calculation of annual leave	<p>WCDHB pays employees their annual leave using the higher of the employee's average rate ("AHR") (as equivalent to Average Weekly Earnings ("AWE")) or ordinary rate (as an equivalent to the employees OWP) which is the higher of the employee's base rate and the average hourly rate using the employees four-week ordinary earnings.</p> <p>As per the agreed Baseline document, employees should receive the higher of AWE, OWP using section 8(1) of the Holidays Act and OWP2 using section 8(2) of the Holidays Act. WCDHB does not currently apply the Holidays Act definitions of these calculations.</p>	Non-compliant with the Baseline document. Where an employee is non-variable the comparison to OWP2 is not required by the Holidays Act.
AWE and OWP2 divisor	<p>Both the average rate and four-week ordinary rate is calculated using the earnings in the 52- or four-week period divided by the hours worked in the same period.</p> <p>The Holidays Act require that AWE is calculated by the employee's gross earnings divided by the number of weeks in the same period (generally 52 but may be less for employees who have yet to work a year for the DHB) and OWP2 to be calculated by the employee's ordinary earnings (including any regular additional payments) divided by four.</p>	Non-compliant with the Baseline document and the Holidays Act.
Gross earnings and ordinary earnings inclusions	<p>The Holidays Act requires allowances that are part of an employee's contractual agreements or are communicated to the employee (i.e. not specifically included in the employee's contract but communicated by another means e.g. via email, etc.)</p> <p>In our sample employee population, 10 additional allowances have been identified for inclusion in the gross earnings calculations. Refer to Appendix F for further details.</p>	Non-compliant with the Baseline document and the Holidays Act.
	<p>The Holidays Act requires allowances that are part of an employee's ordinary working week to be included in ordinary earnings, which may vary weekly, but are regularly received by the employee.</p> <p>In our sample employee population, 49 allowance codes have been identified as not being included in ordinary earnings. Refer to Appendix F for further details.</p>	Non-compliant with the Baseline document and the Holidays Act.
Leave without pay ("LWOP")	<p>Employees who take significant periods of LWOP have their role changed and their annual leave accrual is stopped until the pay period they return. Shorter periods of LWOP are entered into the payroll transaction data and the employee will continue to accrue leave.</p> <p>The Holidays Act requires the employee still to receive four weeks leave at their anniversary date after a period of LWOP longer than one week. The Act provides for either the employees AWE weeks divisor is to be reduced when calculating an employee's annual leave or the anniversary date for leave entitlement to be extended. Both changes are by the number of continuous weeks of LWOP less one week. The method applied should be agreed with the employee in advance of the period of LWOP.</p> <p>Lastly, the requirements of the current MECA in incorporating instances of LWOP in leave calculations does not align with the Holidays Act.</p>	Non-compliant with the Baseline document and the Holidays Act.
Entitlement	<p>An employee is entitled to a statutory four weeks of annual leave. WCDHB employees, dependent on the relevant MECA or SECA, may receive five or six weeks of annual leave entitlement at each anniversary.</p>	Non-compliant with the Baseline document and the Holidays Act.

Title	Description	Compliance driver
	At WCDHB, employees annual leave is accrued based on hours worked in each pay period and awarded in hours rather than weeks. Where employees change their hours worked through the year, their entitlement at anniversary will be incorrect. Depending on the change of hours either too much or insufficient leave could be provided.	The Framework notes that historical entitlement balances would be required at the employee's initiation, however the issue has been included in the signed MOU.
Cash up of annual leave	An employee is entitled to cash up one week of their statutory entitlement in each entitlement year and any contractual leave entitlement over and above the statutory four weeks (i.e. an employee receiving five weeks leave can cash up one week's statutory leave and one week's contractual leave) subject to the agreement of their employer.  Historically, WCDHB have used the same allowance code to cash up statutory and contractual annual leave, making differentiating between the two types of cash up not possible. This code is currently excluded from gross earnings, meaning the cash up of contractual leave is incorrectly excluded from the employee's gross earnings.	Non-compliant with the Baseline document and the Holidays Act.
Continuous leave	Employees annual leave is calculated based on each pay period in which it occurs. Where a period of leave is continuous over multiple pay periods the original rate should be paid throughout the leave period.  WCDHB calculate an employee's leave in each pay period as such an employee taking continuous leave across two pay periods may be paid leave at different rates.	Non-compliant with the Baseline document and the Holidays Act.

Bereavement, Alternative, Public Holiday, Sick and Family Violence ("BAPSF") leave

Title	Description	Compliance driver
Calculation of Relevant Daily Pay ("RDP") and Average Daily Pay ("ADP")	Where it can be determined what an employee would earn on a day an employee can be paid RDP for BAPSF leave. WCDHB pay employees their BAPSF leave using RDP which uses the employees rostered or profiled hours and includes hourly allowances and penal payments due for the BAPSF leave day. Where this cannot be determined, WCDHB pay BAPSF leave using the employees' AHR from the annual leave calculations.  As per the Baseline document, employees should receive the higher of their RDP and ADP. WCDHB do not currently calculate ADP.	Non-compliant with the Baseline document. For employees whose RDP can be determined this is compliant with the Holidays Act except for public holidays worked (noted below).
Public holidays worked	Where an employee works on a public holiday, the employee is entitled by the Holidays Act to be paid the higher of 1.5 times their RDP rate or their rate including penal rates specific to the day worked. To calculate RDP WCDHB includes the employee's base rate and applicable allowances.  Some additional allowances paid on a public holiday are paid at ordinary rate and not at a minimum of time and a half. Examples of these allowances include night duty (NGHT). Other allowances, for example on call (OCPH) are paid at time and a half.	Non-compliant with the Baseline document and the Holidays Act.

Title	Description	Compliance driver
Public holiday not worked	Public holidays not worked are paid at the employees RDP for the day, based on their roster and including any relevant allowances. As per the Baseline document and the Holidays Act, this should be paid at the higher of the employees RDP or ADP.	Non-compliant with the Baseline document. For employees whose RDP can be determined this is compliant with the Holidays Act.
Sick leave	Sick leave balances are held in hours rather than days. Where employees work variable hours each day this may lead to under or over entitlement of the statutory requirement of five days. Sick leave is paid at the employees RDP for the day, based on their roster and including any relevant allowances. Where this is not known the employee is paid their AHR for the day. As per the Baseline document and the Holidays Act, this should be paid at the higher of the employees RDP or ADP.	Entitlement is non-compliant with the Baseline document and the Holidays Act for employees who work variable hours each day. Payment is non-compliant with the Baseline document. For employees whose RDP can be determined this is compliant with the Holidays Act.
Bereavement leave	Bereavement leave is paid at the employees RDP for the day, based on their roster and including any relevant allowances. Where this is not known the employee is paid their AHR for the day. As per the Baseline document and the Holidays Act, this should be paid at the higher of the employees RDP or ADP.	Payment is non-compliant with the Baseline document. For employees whose RDP can be determined this is compliant with the Holidays Act.
Family violence leave	WCDHB use a special leave code (SPEC) to pay any family violence leave to employees. This is paid at base rate multiplied by the hours taken for the employee. As per the Baseline document and the Holidays Act, this should be paid at the higher of the employees RDP or ADP.	Non-compliant with the Baseline document and the Holidays Act.
Alternative leave	WCDHB hold alternative leave balances in days and pay in hours. Alternative leave is paid at the employees RDP for the day, based on their roster and including any relevant allowances. Where this is not known the employee is paid their AHR for the day. As per the Baseline document and the Holidays Act, alternative leave should be paid at the higher of RDP or ADP based on the day they would have worked.	Payment is non-compliant with the Baseline document. For employees whose RDP can be determined this is compliant with the Holidays Act.

Termination calculations

Title	Description	Compliance driver
Termination payments	<p>An employee's final pay includes entitlements due to be paid using the Holidays Act's annual leave and BAPSF leave calculations.</p> <p>As such, the incorrect calculation of annual leave and BAPSF leave identified above will also be present in the employee's final pay calculation and therefore impacts the accuracy and compliance of the termination calculation and payment.</p> <p>Historically, WCDHB have used the same allowance code to pay entitled annual leave at termination and cash up annual leave. As the cash-up code is excluded from gross earnings, entitled annual leave may also have been excluded from gross earnings when a manual check of the termination payment was not made.</p>	Non-compliant with the Baseline document and the Holidays Act.
Employee Termination Date	<p>When an employee terminates whilst on LWOP or Parental Leave, WCDHB record the employee's termination date at the date that resignation was handed in.</p> <p>The employee should have their termination date recorded as their last working day before taking leave and the termination calculation should be based on the entitlements and earnings at the date of going on leave and not resignation.</p>	Non-compliant with the Baseline document and the Holidays Act.
Alternative leave on termination	<p>WCDHB hold alternative leave balances in days and pay in hours.</p> <p>Alternative leave paid at termination is currently paid at the employee's AHR.</p> <p>As per the Baseline document and the Holidays Act, alternative leave on termination should be paid at the higher of RDP or ADP based on the employees last working day.</p>	Non-compliant with the Baseline document and the Holidays Act.
Notional public holidays on termination	<p>Entitled annual leave (including any leave entitlement following parental leave) extends the employee's termination date. There is no clear process or data available to confirm if any public holidays occurring in this period are paid for employees who work variable rosters or variable hours.</p> <p>For ORDSAL employees the system assumes a Monday to Friday working pattern meaning additional public holidays may be awarded at termination if the employee's working pattern does not include the day the holiday falls on</p>	Non-compliant with the Baseline document and the Holidays Act.
Closedown periods	<p>Some departments at WCDHB closedown for the Christmas period. Staff in these departments are encouraged to take leave but can work at an alternative location if requested.</p> <p>If a closedown happens before an employee becomes entitled to annual holiday and the employee is required to take leave, the employer must pay the employee eight percent of their gross earnings to the date of the closedown and reset their anniversary date.</p> <p>While no sample employee showed evidence of this situation, the payroll team confirmed there was no process to change the employee's anniversary date should the situation arise.</p>	<p>Non-compliant with the Holidays Act.</p> <p>Closedown is not considered as part of the Baseline document.</p>
RMO transfers	<p>RMO's have the ability, based on the agreement in the relevant MECA, to transfer up to 240 hours of leave to another DHB when moving between DHB's.</p> <p>WCDHB will complete the termination calculation and then remove the agreed number of hours (up to 240) and the 8% current years leave calculation from the termination calculation.</p> <p>As the employee is leaving the employment of WCDHB this should be paid out in full.</p>	<p>Non-compliant with the Holidays Act.</p> <p>Transfer of leave is not considered as part of the Baseline document.</p>



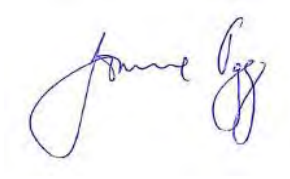
Casual employees

Title	Description	Compliance driver
Casual employees - annual leave	<p>There is currently no process to determine whether an employee is genuinely casual. The Holidays Act only provides for casual employees to be paid Pay As You Go ("PAYG") leave when their working pattern is so intermittent or irregular that it is impracticable for the employer to provide the employee with four weeks' annual leave.</p> <p>In addition, the Baseline document provides for a specific gap test to confirm if a casual employee should be provided with annual leave. Our analysis of casual employee working pattern, in line with the specific gap test agreed to confirm if a casual employee has a working pattern and therefore should be provided with annual leave, identified employees that should not have been paid PAYG leave.</p>	Non-compliant with the Baseline document and the Holidays Act.
Casual employees - Otherwise Working Day ("OWD") public holiday not worked	<p>A casual employee may be entitled to payment for a public holiday not worked if the day is deemed to be an otherwise working day. WCDHB do not have a consistent or documented approach to the determination of an otherwise working day. As a result, the casual employee may not be paid for public holidays not worked that could be deemed an otherwise working day for the employee.</p> <p>The Baseline document and Holidays Act define an otherwise working day as whether, but for the day being a period of BAPSF leave, the employee would otherwise work on that day.</p>	Non-compliant with the Baseline document and the Holidays Act.
Casual employees - public holiday worked	<p>If an employee works on a public holiday they are paid time and a half (or double depending on the MECA). An alternative day would only be provided if submitted by the employee's manager. There is no analysis completed or policy as to when an employee would receive an alternative day.</p> <p>When an employee works on a public holiday, and it is an otherwise working day for that employee, they are entitled to an alternative holiday.</p>	Non-compliant with the Baseline document and the Holidays Act.

Other

Title	Description	Compliance driver
Employee working profiles	<p>WCDHB employee working profiles for part time and / or multi-job employees do not accurately reflect the employee's actual working pattern as the system has not been updated to reflect their increased working hours or only captures one element of their multiple job roles.</p> <p>Some employees are also recorded as having no profiles but have a working pattern in the transaction data.</p>	Non-compliant with the Baseline document and the Holidays Act.
Employee's days worked	<p>WCDHB use paper timesheets to record employee's hours worked and any additional allowances due. These hours and allowances are then summarised for entry into the payroll system.</p> <p>For employee who are paid via ORDSAL, base hours are automatically processed through PSe, which assumes a Monday to Friday profile and any leave and allowances are processed via leave requests.</p> <p>This lack of accurate profile data impacts all calculations associated with the Holidays Act. This may require WCDHB to go back through the paper records to confirm accurate calculations.</p>	Non-compliant with the Baseline document and the Holidays Act.

Yours sincerely  
Ernst & Young Limited

A handwritten signature in blue ink, appearing to read 'Joanne Ogg', is positioned above the printed name.

Joanne Ogg  
Partner - Consulting

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## 2. Findings and recommendations summary

In order for CDHB and WCDHB to achieve a compliant payroll system and associated processes in relation to the Holidays Act, a number of changes are required. The table below provides additional detail for the findings identified to date including recommendations related to technology, data, policy, process, people and communication to show the complexity of some of the changes required. As CDHB and WCDHB completes its Rectification Programme the actions below will be expanded upon and built into a detailed project plan to deliver all actions required.

CDHB

Issue description	Current methodology	Remediation methodology	Go forwards methodology	Changes Required					
				Technology	Data	Policy	Process	People	Communication
Calculation of annual leave	<p>CDHB pay employee's annual leave at the higher of their average rate and ordinary rate, where the ordinary rate is the higher of the employee's base rate and their four week average.</p> <p>These are calculated as follows:</p> <ul style="list-style-type: none"> <li>Average rate: Employees gross earnings for the past 52 weeks (or less if the employee is in their first year of employment), divided by the contracted hours in the same period.</li> <li>Ordinary rate: The higher of the employee's base rate (excluding any penal rates) and the four-week ordinary earnings divided by the contracted hours in the same period.</li> </ul>	<p>As required by the Baseline document an employee's annual leave should be calculated and paid at the greater of:</p> <ul style="list-style-type: none"> <li>The employee's OWP at the beginning of the annual holidays; and</li> <li>The employee's OWP2 for the previous four weeks immediately before the end of the pay period immediately before the annual holidays; and</li> <li>The employee's Average Weekly Earnings ("AWE") for the previous 12 months immediately before the end of the last pay period before the annual holidays.</li> </ul> <p>OWP is the amount an employee is normally/usually paid each week and includes regular allowances.</p> <p>OWP2 is the employee's previous four weeks ordinary earnings divided by four.</p> <p>AWE is the employee's previous 52 weeks gross earnings (or less if the employee is in their first year of employment), divided by 52 (less any weeks of LWOP).</p>	<p>CDHB should review and agree the methodology for the determination of when an employee's OWP can be determined and therefore the employee's annual leave can be calculated and paid at the greater of:</p> <ul style="list-style-type: none"> <li>The employee's OWP at the beginning of the annual holidays, or</li> <li>The employee's OWP2 for the previous four weeks immediately before the end of the pay period immediately before the annual holidays.</li> <li>The employee's Average Weekly Earnings ("AWE") for the previous 12 months immediately before the end of the last pay period before the annual holidays.</li> </ul> <p>OWP is the amount an employee is normally/usually paid each week and includes regular allowances.</p> <p>OWP2 is the employee's previous four weeks ordinary earnings divided by four.</p> <p>AWE is the employee's previous 52 weeks gross earnings (or less if the employee is in their first year of employment), divided by 52 (less any weeks of LWOP).</p> <p>Should CDHB look to utilise only one calculation methodology for OWP, based on the employees working pattern and if their OWP can be determined, there will also need to be systems and processes to accurately identify which calculation should be applied.</p>	<p>✓</p> <p>PSe will need to be appropriately updated to recalculate employees leave payments based on these agreed methodologies.</p>		<p>✓</p> <p>The threshold for the determination of OWP should be defined and agreed.</p> <p>Employees permanent allowances should be determined if they form part of the AWE or OWP2 payment.</p>	<p>✓</p> <p>A process should be implemented to identify and confirm where an employee's working pattern has changed and therefore the calculations required have changed.</p> <p>A periodic process should be developed that enables CDHB to review the assumptions and decisions made to assess if an employee's OWP can be determined and that these continue to reflect the working practices and agreements at CDHB.</p>	<p>✓</p> <p>Training for business managers on the impacts of changing working patterns and the impacts on leave calculations so they know what to "flag" to payroll.</p>	<p>✓</p> <p>Information and guidance on CDHB's intranet will need to be updated to reflect changes to the way annual leave payments are calculated.</p> <p>FAQ's should be developed for employees impacted by the change in annual leave calculations.</p>
AWE and OWP2 divisor	<p>The employee's average hourly rate is used in place of AWE for annual leave payments. The employee's average rate is calculated using the employee's gross earnings for the past 52 weeks and dividing by the</p>	<p>AWE is calculated as the gross earnings for the 12 months (or 52 weeks for fortnightly and weekly employees as has been agreed by the DHB's) immediately before the end of the last pay period before the annual holidays are taken, divided by 52.</p> <p>If the employee has been working less than 12 months, then the</p>	<p>AWE is calculated as the gross earnings for the 12 months (or 52 weeks for fortnightly and weekly employees as has been agreed by the DHB's) immediately before the end of the last pay period before the annual holidays are taken, divided by 52.</p> <p>If the employee has been working less than 12 months, then the divisor is reduced so that it represents the</p>	<p>✓</p> <p>PSe will need to be appropriately updated to recalculate employees leave payments based on these</p>					<p>✓</p> <p>As mentioned above (issue 1), CDHB will need to update the intranet guidance and information to reflect changes</p>

Issue description	Current methodology	Remediation methodology	Go forwards methodology	Changes Required					
				Technology	Data	Policy	Process	People	Communication
	contracted hours for that same period.  The employee's ordinary rate is used in place of OWP of annual leave payments. The second calculation for ordinary rate is the four-week ordinary earnings divided by the contracted hours in the same period.	divisor is reduced so that it represents the number of whole or part weeks since the start of their employment. The divisor is also reduced by consecutive weeks of leave without pay after the first week.  OWP2 is calculated as the gross earnings for the 4 weeks immediately before the end of the last pay period before the annual holidays are taken, divided by four.  There is no adjustment to the divisor if the employee has been working for less than four weeks or has taken consecutive weeks of leave without pay.	number of whole or part weeks since the start of their employment. The divisor is also reduced by consecutive weeks of leave without pay after the first week.  OWP2 is calculated as the gross earnings for the 4 weeks immediately before the end of the last pay period before the annual holidays are taken, divided by four.  There is no adjustment to the divisor if the employee has been working for less than four weeks or has taken consecutive weeks of leave without pay.	agreed methodologies.					to the way that annual leave payments are calculated.
Gross and ordinary earnings inclusions and exclusions	An employee's AWE and ADP utilises the employee's gross earnings as a basis for the calculations. An employee's OWP2 utilises the employee's ordinary earnings as a basis for the calculations.  Allowance codes have been identified that are incorrectly included or excluded from gross and ordinary earnings (please refer to appendix E for the earnings inclusions used during the Review).  It should be noted that for the full remediation the list of allowances should be re-assessed for the full employee population.	Gross and ordinary earnings should include the required allowance transactions and payments.	Gross and ordinary earnings should include the required allowance transactions and payments.	✓  PSe will need to be appropriately updated so the relevant allowances are included or excluded from gross and ordinary earnings.			✓  A process should be implemented to periodically review gross and ordinary earnings inclusions / exclusions in line with current assumptions, usage and business practices.		✓  The FAQ's developed should include an overview of the allowances and payments included in gross and ordinary earnings and how these changes have impacted calculations for leave payments.
Leave Without Pay ("LWOP") is not applied correctly.	When an employee takes LWOP their role is changed to stop their annual leave accrual until they return, or for shorter periods LWOP hours are entered into the transaction data.  The contracted hours during the period of LWOP are recorded as zero, meaning the divisor is reduced by the hours of LWOP taken.  As the divisor for the average rate is being reduced when LWOP has been taken, CDHB are currently using a form of leave without pay adjustment, albeit not the	The methodology for the determination of LWOP approach will need to be determined and agreed.  There are two suggested methodologies to manage LWOP: ► Extend the time required before the employee becomes entitled to annual holidays by the number of weeks of the LWOP less one; or ► Modify the AWE divisor to reflect the number of whole or part weeks greater than one week that the employee who on LWOP.	For each MECA/SECA, CDHB will have to assess if the contractual agreement can apply or apply the methodology required by the Act.  This will require configuring PSe to reduce the AWE divisor under certain circumstances, and to extend the employees anniversary year in others.	✓  PSe will need to be appropriately updated to recalculate employees leave entitlements based on these agreed methodologies.	✓  LWOP will need to be captured in different ways to enable the application of the appropriate MECA methodologies.	✓  Where the MECA/SECA agreement is non-compliant with the Holidays Act, the MECA/SECA will require to be updated.	✓  A process should be implemented whereby the approach to LWOP is discussed with each employee as it occurs (if this is outside of an agreed MECA/SECA). Further processes may be required if the system is unable to apply	✓  As part of the rollout of changes to the business, training should be provided to the business on the requirements of LWOP and the information required by Payroll.	✓  Include/update guidance on the treatment of LWOP on CDHB's intranet site.



Issue description	Current methodology	Remediation methodology	Go forwards methodology	Changes Required					
				Technology	Data	Policy	Process	People	Communication
	<p>methodology required by the Holidays Act.</p> <p>This methodology is also reducing the divisor for the ordinary rate, where weeks of LWOP should not reduce the divisor.</p> <p>Additionally, where employment is considered continuous and the employee's entitlement is impacted by LWOP, the current process reduces the employee's entitlement at their anniversary date rather than extending the employees anniversary date out by the weeks of leave without pay less one.</p>						the appropriate LWOP methodologies automatically.		
<p>"Accrual" and entitlement to annual leave is recorded in hours rather than weeks and is not updated where employees change work patterns.</p>	<p>CDHB use an employee's contracted hours to "accrue" leave (in hours rather than weeks) from the employee's start date to their anniversary date, at which point it becomes entitled leave.</p> <p>When an employee changes working pattern during the year, there is a smoothing period that slowly reduces or increases the employee's hours contracted for accrual.</p> <p>As a result, an employee's entitlement at their anniversary date may be under or over stated based on the work pattern at the employee's anniversary date.</p> <p>Similarly, the amount of annual leave an employee is already entitled to is not updated to reflect the changes in an employee's work pattern.</p> <p>The current approach used by CDHB to track annual leave entitlement may not provide employees with the required four weeks of annual leave.</p>	<p>The approach to leave entitlements in the remediation programme differs between the agreed Baseline document and MoU.</p> <p>The approach to be taken for remediation needs to be agreed across the DHB programme.</p>	<p>Upon their anniversary of employment, an employee should become entitled to four weeks statutory leave (in CDHB's case, this may be five or six weeks depending on the MECA/SECA the employee is on) based on the working pattern at the employee's anniversary date (less any leave taken in advance).</p> <p>Any change of working pattern during the year should also trigger a change to the entitled leave balance, to convert it into the equivalent weeks at the new working pattern.</p>	<p>✓</p> <p>PSe will need to be appropriately updated to recalculate employees leave entitlements based on their profiled working pattern at their anniversary date.</p>	<p>✓</p> <p>Data records will need to be updated in a timely manner between Microster and PSe so the entitlement balances are accurately reflected.</p>	<p>✓</p> <p>Update leave policies to reflect when changes to employees working patterns need to be reflected in their entitlement.</p>	<p>✓</p> <p>A process will need to be implemented to capture and communicate any retrospective changes required.</p>	<p>✓</p> <p>Training will need to be provided to both the payroll team, rostering team and business leaders as to how and when to inform payroll of a change in working pattern.</p>	<p>✓</p> <p>Employees changing working patterns will need to be informed of the impact the changes will have on their leave balances in advance of the changes being applied.</p>
Cash up of leave	<p>In the past, CDHB have not had separate codes for cashing up of statutory and contractual leave.</p> <p>As annual leave has not been split between contractual and</p>	<p>The approach to the remediation of cashed up leave will need to be determined as part of the remediation programme i.e. is this a leave entitlement that is required to be provided to the</p>	<p>Employees should only be able to cash up one week of statutory annual leave in each entitlement year.</p> <p>CDHB have introduced a statutory cash up code which is being used for go forwards payments.</p>	<p>✓</p> <p>PSe should prevent the cash out of more than one week of entitled</p>	<p>✓</p> <p>Entitlement balances will need to be split between contractual and</p>	<p>✓</p> <p>CDHB policy on leave cash ups will need to be updated to reflect</p>	<p>✓</p> <p>Should automation not be possible a process to check the</p>	<p>✓</p> <p>Training should be provided to managers to provide guidance on</p>	<p>✓</p> <p>Existing guidance and information on CDHB's intranet will need to be</p>

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	<p>statutory it is not clear if employees are therefore cashing up more than one week of statutory leave.</p> <p>This means that for gross earnings will be including both statutory and contractual leave when statutory leave should not be included in gross earnings.</p> <p>CDHB use the same allowance codes for cashing up of leave and paying any entitled leave at termination, although the termination calculation is completed outside of the system.</p>	<p>employee again where more than one week of the employee's statutory entitlement has been cashed up.</p> <p>The approach to distinguish between both statutory and contractual and cashed up and leave at termination will need to be determined as part of the remediation programme. This is required to correctly allocate the leave and gross earnings to the right recalculations.</p>	<p>CDHB should introduce a cash up and termination annual leave code so that leave can be correctly allocated in any future Holidays Act reviews.</p>	<p>leave in any employee anniversary year.</p>	<p>statutory for annual leave.</p>	<p>compliance with the Holidays Act and any changes to entitlement categories.</p>	<p>appropriate balances and prior transactions in the entitlement year will need to be created for the Payroll team to follow.</p>	<p>what leave cash ups are allowed in what time period to prevent inappropriate requests being sent to the Payroll team.</p>	<p>updated to reflect any changes to the cash up of annual leave.</p>
<p>Payments for continuous periods of annual leave across pay periods are treated as two different leave payments.</p>	<p>If an employee's period of annual leave covers more than one pay period, PSe calculates the leave rate using two different time periods as each pay run is taken as a new period of leave.</p>	<p>An employee's annual leave should be calculated at the commencement of the annual leave for the whole period of leave.</p>	<p>An employee's annual leave should be calculated at the commencement of the annual leave for the whole period of leave.</p>	<p>✓</p> <p>PSe should flag consecutive weeks of annual leave and automatically adjust the rate paid as appropriate. If this is not possible in PSe, CDHB should implement exception reporting and manual processes to identify and manage this. It may be possible for the system to produce an exception report (i.e. when a second leave rate is less than the previous period).</p>	<p>✓</p> <p>CDHB should investigate how leave should be recorded to capture all leave as a continuous period of leave in PSe.</p>		<p>✓</p> <p>Should automation of continuous leave across pay periods not be possible, exception reporting (i.e. of leave paid at a lower rate than the previous period) should be implemented and a process for the review and validation of this exception reporting developed.</p>	<p>✓</p> <p>Should the changes required need leave to be entered into Microster in a certain manner this should be communicated to all employees and their managers.</p>	<p>✓</p> <p>Guidance for entering leave should be updated to meeting the requirements of PSe and Microster.</p>
<p>Term time employees</p>	<p>Term time employees are on a separate annual leave scheme where they have no cap on annual leave, which is paid out at base rate.</p> <p>If the employee has a negative balance, no termination calculation is performed as it is assumed that the negative balance will</p>	<p>In line with the Holidays Act, all employees are entitled to four weeks statutory annual leave, paid out at the greater of AWE, OWP and OWP2. The employees MECA/SECA may further provide for the additional leave to be paid in line with the Holidays Act.</p>	<p>Term time employees should have their statutory four weeks of annual leave paid at the greater of AWE, OWP and OWP2. Further leave entitlements should be paid in line with the MECA/SECA.</p>	<p>✓</p> <p>PSe will need to be appropriately updated so the relevant weeks are calculated in line with the Holidays Act.</p>	<p>✓</p> <p>Employees leave entitlements will need to be split between their statutory entitlements and their</p>	<p>✓</p> <p>Policies regarding the amounts of leave the employees can take should be developed.</p>	<p>✓</p> <p>A process should be implemented to periodically review term time employees to ensure that their statutory weeks are</p>		<p>✓</p> <p>Term time employees will need to be informed of the impact the changes will have on their payments in advance of the</p>

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	be larger than any other amount owed.				contractual additional leave.		correctly calculated.		changes being applied.
ADP is not calculated.	CDHB calculate an employee's BAPSF leave at the employee's RDP, being what the employee would have earned on the day and is typically base pay plus daily allowances.	<p>The Baseline document requires CDHB to pay employees the greater of:</p> <ul style="list-style-type: none"> <li>▶ The employee's RDP being the amount the employee would have earned had they worked that day, including any allowances or overtime.</li> <li>▶ The employee's ADP where ADP is calculated as the employee's gross earnings for the previous 52 weeks divided by the total number of days and part days worked or paid in that same period.</li> </ul>	<p>CDHB should review and agree the methodology for the determination of when the amount the employee would have earned can be determined and therefore the employee's leave can be calculated at RDP.</p> <p>Should CDHB not be able to consistently determine an employee's RDP then ADP should be applied.</p> <p>As part of this CDHB will also need to create systems and processes to accurately identify which calculation should be applied.</p>	<p>✓</p> <p>Depending on the approach taken by CDHB PSe will need to be updated so that the higher of RDP and ADP is paid to the employee or the employees can be split to either be an ADP or an RDP employee.</p> <p>Where ADP is utilised, PSe should be updated to calculate ADP using the employee's gross earnings from the previous 52 weeks divided by the number of whole or part days worked by the employee.</p>	<p>✓</p> <p>To accurately calculate ADP, CDHB will need to implement a days' worked accumulator.</p> <p>CDHB may choose to use Microster to capture this information.</p>	<p>✓</p> <p>Should Microster not be able to extend to all employees, or this is not practical, a policy will need to be developed to determine the days worked by these employees each week.</p> <p>The threshold for the determination when what an employee would earn on a day can be defined should be defined and agreed.</p>	<p>✓</p> <p>Salaried employees who are profiled to work Monday-Friday may need to be reviewed to confirm the correct days worked (and paid) are being recorded.</p> <p>Reviewing offline rostering information for accuracy and completeness should be included in the business managers review processes.</p> <p>A periodic process should be developed that enables CDHB to review the assumptions and decisions made to assess if an employee's RDP cannot be determined and that these continue to reflect the working practices and agreements at CDHB.</p>	<p>✓</p> <p>Training should also be developed for managers to capture and provide the right information for payroll (in time capture systems), depending on the system and data changes to be made.</p>	<p>✓</p> <p>Guidance and information on CDHB's intranet will need to be updated to reflect changes to policies, procedures and systems that are used by employees.</p> <p>This may include information about the requirement to record the days worked in timesheets, and how payments for leave may be impacted.</p> <p>FAQ's should also be developed for employees impacted by the ADP calculation.</p>
Statutory holidays worked are not paid using RDP multiplied by 1.5.	<p>When employees work a statutory holiday, this is recorded in Microster to reflect the hours they worked on that day.</p> <p>The employee is paid the additional 0.5 (or more depending on the MECA/SECA) using an additional code.</p> <p>Allowances due for working on the public holiday are</p>	<p>Statutory holidays worked to be paid using 1.5 times the employee's RDP and should include payments that the employee would have received had the employee worked on the day. This includes regular allowances.</p> <p>CDHB needs to calculate payment for statutory holidays worked using the employee's RDP, including relevant allowances,</p>	<p>Statutory holidays worked should be paid using the higher of the employee's RDP that relates to the time worked on the day, multiplied by 1.5 or their contractual rate for the day including any penal rates. RDP should include payments that the employee would have received had the employee worked on the day. This includes regular allowances.</p> <p>CDHB needs to calculate payment for statutory holidays worked using the</p>	<p>✓</p> <p>PSe should be updated to pay the allowances associated with the hours worked at 1.5 times on public holidays worked.</p>	<p>✓</p> <p>Dependent on the ability of PSe to capture all public holiday worked payments correctly there may require additional input or data to be</p>		<p>✓</p> <p>A process should be implemented to periodically review statutory holiday payments, particularly when new MECA/SECA</p>	<p>✓</p> <p>Training should be developed for business managers to capture and provide the right information for payroll (in time capture systems),</p>	<p>✓</p> <p>Existing guidance and information on CDHB's intranet will need to be updated to reflect any changes to calculations and recording of</p>

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	typically paid at normal rate and not 1.5 times the rate for the hours worked.	that relates to the time worked by the employee, multiplied by 1.5. Employees are paid an additional 1.5 or 2 times their RDP depending on the MECA/SECA they are on. Because the same codes are used to pay this additional amount, analysis will be required to determine the factor for each employee.	employee's RDP, including relevant allowances, that relates to the time worked by the employee, multiplied by 1.5 or the rate required by the MECA/SECA where this is higher.		entered in Microster.		agreements are implemented.	depending on the system and data changes to be made.	public holidays worked.
Public holidays not worked	Public holidays not worked are paid at the employees RDP.	Employees should be paid what they were rostered to work for a public holiday not worked at the employee's RDP or ADP	Employees should be paid what they were rostered to work for a public holiday not worked at the employee's RDP or ADP.	✓ PSe update to correctly calculate public holidays not worked.				✓ Training should be developed for business managers to capture and provide the right information for payroll (in time capture systems), depending on the system and data changes to be made.	✓ CDHB will need to update the intranet guidance and information to reflect changes to the way that payments for public holidays not worked are calculated.
Sick leave	Sick leave entitlement is in hours, with the hours provided based on either a 7, 8, 10, 11.5 or 12 hour day. Casual employees are provided with 40 hours sick leave entitlement after six months of employment. When an employee changes their working pattern, the employee may not have enough hours to take five days sick leave. Sick leave is paid at the employees RDP.	Sick leave should be held in days for all employees. The statutory sick entitlement is five days per year after completing six months employment. Employees should be paid what they were rostered to work for a sick day at the employee's RDP or ADP	Sick leave should be held in days for all employees and not pro-rated. The statutory sick entitlement is five days per year after completing six months employment. Employees should be paid what they were rostered to work for a sick day at the employee's RDP or ADP.	✓ PSe update to hold sick leave entitlement in days. PSe update to correctly calculate sick leave.	✓ Dependent on the ability of PSe to capture sick leave in days rather than hours there may require additional input or data to be entered in Microster.			✓ Training should be developed for business managers to capture and provide the right information for payroll (in time capture systems), depending on the system and data changes to be made.	✓ CDHB will need to update the intranet guidance and information to reflect changes to the way that sick payments are calculated.
Bereavement leave	Bereavement leave is paid at the employees RDP.	Employees should be paid what they were rostered to work for a bereavement day at the employee's RDP or ADP	Employees should be paid what they were rostered to work for a bereavement day at the employee's RDP or ADP.	✓ PSe update to correctly calculate bereavement leave.				✓ Training should be developed for business managers to capture and provide the right information for payroll (in time capture systems), depending on	✓ CDHB will need to update the intranet guidance and information to reflect changes to the way that bereavement payments are calculated.

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								the system and data changes to be made.	
Family violence leave	Family violence leave is paid on a special leave code (SPEC) and is paid at the employee's base rate.  The special leave code (SPEC) is also used for other special leave so that it remains confidential to the employee the type of leave being taken.	Employee's family violence leave should be calculated at the higher of RDP and ADP in line with the Holidays Act.  Without tracing back all special leave code payments to the type of leave, all payments made on SPEC will be recalculated as assumed Family Violence Leave from April 2019 onwards.	Employee's family violence leave should be calculated at the higher of RDP and ADP in line with the Holidays Act.	✓  PSe update to correctly calculate family violence leave.				✓  Training should be developed for business managers to capture and provide the right information for payroll (in time capture systems), depending on the system and data changes to be made.	✓  PSe CDHB will need to update the Intranet guidance and information to reflect changes to the way that family violence payments are calculated.
Alternative leave	CDHB hold alternative leave balances in PSe in days and pay in hours.  Alternative leave is paid at the employees RDP	As per the Baseline document and the Holidays Act, alternative leave should be paid at the higher of RDP or ADP based on the day they would have worked.	Alternative leave should be calculated at the higher of RDP and ADP in line with the Holidays Act.	✓  PSe update to correctly calculate alternative leave.				✓  Training should be developed for business managers to capture and provide the right information for payroll (in time capture systems), depending on the system and data changes to be made.	✓  PSe CDHB will need to update the Intranet guidance and information to reflect changes to the way that alternative payments are calculated.
Termination payments are calculated manually	CDHB manually calculate employee's termination payments.	In line with the Baseline document and Holidays Act, termination payments will calculate: <ul style="list-style-type: none"> <li>▶ Entitled annual leave outstanding;</li> <li>▶ Entitled alternative leave outstanding;</li> <li>▶ Any notional public holidays that the employee is due after their termination date is extended by any entitled annual leave; and</li> <li>▶ 8/10/12% of gross earnings including the above termination payments since the employee's last anniversary date</li> </ul>	In order to minimise risks with Holidays Act compliance, the payroll system should calculate all leave and termination payments, and CDHB payroll team should only manually check that they system is calculating as expected periodically.  Allowance codes should be set up for each element of the termination calculation and not be reused codes from other payments made during the course of an individual's employment.	✓  PSe update to correctly calculate termination payments in the system.	✓  Accurate employee working patterns including profile days to be captured in PSe or able to be imported from Microster at termination.			✓  Training should be developed for the payroll team to monitor termination calculations and how to rectify non-compliance of termination payments through PSe.	✓  CDHB will need to update the intranet guidance and information to reflect changes to the way that termination payments are calculated.



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Alternative leave on termination	CDHB currently pay the balance of an employee's alternative leave in hours at termination. This is currently paid at the employee's AHR.	In line with the Baseline document, this will be the higher of the employees ADP and RDP based on the employee's last day of work.	Alternative leave should be paid in days and not hours. At termination the employees alternative leave should be paid at the higher of the employee's RDP or ADP at the last day of work.	✓ Pse will need to be configured to pay the leave out at termination based on the employees last working day.	✓ Pse will need to be configured to pay alternative leave in days based on the employees last working day.			✓ Training should be developed for business managers to capture and provide the right information for payroll (in time capture systems), depending on the system and data changes to be made.	✓ CDHB will need to update the intranet guidance and information to reflect changes to the way that termination payments are calculated.
Notional public holidays on termination	CDHB manually assess an employee's prior 12 week working pattern to determine if an employee is entitled to a notional public holiday. Notional public holidays are paid at the employee's RDP.	An employee is only entitled to a notional public holiday if the holiday falls on what would have been an otherwise working day for the employee. The employees actual working pattern will need to be reflected in the calculation of notional public holidays. The calculation of the notional public holiday payment will be at the higher of ADP or RDP.	An employee is only entitled to a notional public holiday if the holiday falls on what would have been an otherwise working day for the employee. The employees actual working pattern will need to be reflected in the calculation of notional public holidays. The calculation of the notional public holiday payment will be either ADP or RDP based on the employees working pattern.	✓ PSe will need to be able to recognise the employees working pattern so that only public holidays that fall on an otherwise working day for the employee are paid.	✓ Microster may need to be updated to provide the information relating to what is an otherwise working day through to PSe.		✓ A process should be developed for consistency that includes specific details about how to recognise notional public holidays for employees on termination.		✓ CDHB will need to update the intranet guidance and information to reflect changes to the way that termination payments are calculated.
Closedown periods for departments	Some departments at CDHB are closed for the Christmas period. Staff in these departments are encouraged to take leave but can work at an alternative location if they request it.	If a closedown happens before an employee becomes entitled to annual holiday and the employee is required to take leave, the employer must pay the employee eight percent of their gross earnings to the date of the closedown and reset their anniversary date.	If a closedown happens before an employee becomes entitled to annual holiday and the employee is required to take leave, the employer must pay the employee eight percent of their gross earnings to the date of the closedown and reset their anniversary date.	✓ PSe will need to be able to apply the updated anniversary date to the employee should it be required.		✓ A policy should be developed for departments that experience a closedown so that a new anniversary date can be determined.	✓ A clear process should be developed that details how an employee's anniversary date will change and what accrued leave they would be due at the closedown date.		✓ For any employees impacted by closedown periods, FAQ's and / or an explanation should be developed about the adjustment in anniversary date.
RMO transfers	CDHB currently allows the transfer of up to 240 hours of leave to another DHB when an RMO transfers. CDHB currently completes a full termination transaction, and then reduces the termination calculation by the hours of leave (and	Employees full leave liability, and the associated termination payment should be recalculated. Where the employee has been able to transfer leave to another DHB, this balance transferred should be included in the calculation performed by CDHB.	When an employee transfers between DHB's, their termination calculation must include all leave balances at the time of transfer. Leave balances cannot be transferred between DHB's.			✓ The policy regarding leave transfers should be updated to reflect the changes required.			✓ For any employees impacted by the change in policy, FAQ's and / or an explanation should be developed

Issue description	Current methodology	Remediation methodology	Go forwards methodology	Changes Required					
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	associated 8% current year calculation).								about the transferring of leave.
There is no clear, consistent and documented definition of a regular working pattern for casual employees.	There is no consistent definition or policy that describes what constitutes a regular working pattern for a casual employee.	An assessment of casual employees will need to be completed in line with the Baseline document and the approach to applying the Baseline principles. This practical application has yet to be agreed.	<p>CDHB should only place truly casual employees on casual contracts.</p> <p>A monitoring system should be implemented to track employee working patterns and highlight when an employee's working pattern has changed.</p> <p>This monitoring system may be automated through PSe, Microster or Business Intelligence ("BI"). Alternatively, if it is not possible to have employee working patterns automatically tracked and assessed, the CDHB payroll team should have a defined and systematic process to check and confirm whether there is a working pattern for casual employees. CDHB will need to clearly define what constitutes a regular working pattern, and the relevant policy and process where a regular working pattern is established for a casual employee.</p>	<p>✓</p> <p>PSe / Microster / BI reporting should be updated so that it can detect and notify payroll when a working pattern is established for casual employees. This will require the systems to have the ability to compare worked/ rostered hours with historic hours and the employee's profile hours.</p>	<p>✓</p> <p>Working day data should be consistently recorded so that employee working patterns can be accurately monitored.</p> <p>The data to be captured (depending on the approach to monitoring take) will need to be agreed.</p>	<p>✓</p> <p>A policy should be developed that includes specific details of when a casual employee may be hired, and associated approvals required.</p> <p>A policy will also need to be developed to clearly define when an employee is considered to have a regular working pattern.</p>	<p>✓</p> <p>A clear process should be developed that details the steps and actions that should be taken if a casual employee is identified as having a regular working pattern. This should include relevant escalations should the business rules not be followed.</p>	<p>✓</p> <p>Training should be provided to managers to provide guidance on what is and is not a casual employee and where questions or changes in an employee's working pattern should be addressed.</p>	<p>✓</p> <p>For any employees impacted by the review of leave entitlements (including casual employees identified as entitled to annual leave), FAQ's and / or an explanation should be developed</p> <p>For casual employees, where a regular working pattern is identified then an approach to transferring the employee to permanent employment should be determined and communicated to the employee.</p>
Employees who have multiple jobs are not being paid PAYG for their casual job	<p>If an employee has multiple jobs where one role is casual and the other permanent the employee will not receive PAYG on the casual earnings.</p> <p>The employee's casual gross earnings will be included in the employee's total gross earnings, but no extra leave is calculated for the casual contract.</p>	<p>It is currently assumed that employees who have multiple jobs where one job is casual and the other permanent should have their earnings separated by tenure.</p> <p>The permanent earnings will go into leave recalculations and the casual earnings will have their PAYG 8% of gross earnings calculated.</p> <p>CDHB may wish to get legal advice on this methodology, based on the information provided to the employee on taking on the casual role.</p>	Depending on legal advice, the earnings from any casual employment may require the 8% PAYG loading added.	<p>✓</p> <p>PSe will need to be appropriately updated to separate earnings for employees with multiple job where one is casual and the other permanent.</p>			<p>✓</p> <p>A clear process should be developed that details the steps and actions that should be taken when an employee takes on multiple jobs where one is casual.</p>	<p>✓</p> <p>Training should be developed for business managers to capture and provide the right information for payroll (in time capture systems), depending on the system and data changes to be made.</p>	<p>✓</p> <p>Information and guidance on CDHB's intranet will need to be updated to reflect changes to the way multiple jobs are treated.</p> <p>FAQ's should be developed for employees impacted by the changes.</p>
Otherwise working day for casual employees is not documented and	If a casual employee does not work a public holiday, they generally will not get paid for the public holiday as not worked. The employee's	An assessment of casual employees will need to be completed in line with the Baseline document and the approach to applying the Baseline	The requirements for a public holiday to be considered an otherwise working day for casual employees will need to be clearly defined and documented.	<p>✓</p> <p>PSe / Microster / BI reporting should be</p>	<p>✓</p> <p>Working day data and thresholds for</p>	<p>✓</p> <p>A policy should be developed that identifies</p>		<p>✓</p> <p>Training should be developed for business</p>	<p>✓</p> <p>Guidance and information on CDHB's intranet</p>

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is not being consistently applied.	manager has the option to pay the employee for the public holiday not worked if they input the hours into Microster.  If casual employee works a public holiday, there is no analysis completed or policy as to when an employee would receive an alternative day.	principles as agreed with the Labour Inspectorate.	A monitoring system and allocation of otherwise working days may be automated through PSe, Microster or BI. Alternatively, if it is not possible to have employee working patterns automatically tracked and assessed, the CDHB payroll team should have a defined and systematic process to check and confirm whether there is a working pattern for casual employees.	updated so that public holidays not worked are identified and if possible applied when the day is an otherwise working day for the employee.	otherwise working days should be consistently recorded so that employee working patterns can be accurately monitored.  The data to be captured (depending on the approach to monitoring take) will need to be agreed.	when a day is considered an otherwise working day for casual employees, making them entitled to payments for a public holiday not worked.		managers to capture and provide the right information for payroll (in time capture systems), depending on the system and data changes to be made.	should include details on when a public holiday is considered an otherwise working day.
Employee working profiles	CDHB employee working profiles for part time and / or multi-job employees do not accurately reflect the employee's actual working pattern as the system is not been updated to reflect changes in working hours or only captures one element of their multiple job roles.  Some employees are also recorded as having no profiles but have a working pattern in the transaction data.	The employee's payroll masterdata may not be able to be used in the remediation calculation and other data may need to be used.  The methodology for each employee group will need to be reviewed and agreed as part of the remediation programme of work.	Employee working profiles will need to reflect the accurate working patterns of the employees.	✓  PSe upgrade will need to be implemented.	✓  Employee profiles will need to be updated following the PSe upgrade to accurately reflect employee working patterns.			✓  Training should be developed for business managers to capture and provide the right information for Payroll where employee working profiles change so this is captured in an accurate and timely manner.	✓  CDHB should provide communication and guidance to affected employees as to the changes in capturing and recording of working patterns and the effects of this.
Employees days worked are not accurately recorded	CDHB employees use Microster to schedule employees work and record hours worked each week.  For employees who are paid via ORDSAL, base hours are automatically processed through PSe and any leave and allowances are imported from Microster.  Rosters either reflect the employees working pattern or are a proxy for the employee's pattern, depending on the department and role of each employee.	The employee's Microster data may not be accurate enough to be used in the remediation calculation and other data may need to be used.  The methodology for each employee group will need to be reviewed and agreed as part of the remediation programme of work.	Employee rosters should be entered to reflect accurate days worked for all employees.		✓  Employee rosters will need to be updated to accurately reflect the days worked each fortnight.			✓  Training should be developed for business managers to capture and provide the right information for payroll and roster teams so this is captured in an accurate and timely manner.	✓  CDHB should provide communication and guidance to affected employees as to the changes in capturing and recording of working patterns and the effects of this.

## WCDHB

Issue description	Current methodology	Remediation methodology	Go forwards methodology	Changes Required					
				Technology	Data	Policy	Process	People	Communication
Calculation of annual leave	<p>WCDHB pay employee's annual leave at the higher of their average rate and ordinary rate, where the ordinary rate is the higher of the employee's base rate and their four week average.</p> <p>These are calculated as follows:</p> <ul style="list-style-type: none"> <li>Average rate: Employees gross earnings for the past 52 weeks (or less if the employee is in their first year of employment), divided by the base hours worked (not including overtime) in the same period.</li> <li>Ordinary rate: The higher of the employee's base rate (excluding any penal rates) and the four-week ordinary earnings divided by the base hours worked in the same period.</li> </ul>	<p>As required by the Baseline document an employee's annual leave should be calculated and paid at the greater of:</p> <ul style="list-style-type: none"> <li>The employee's OWP at the beginning of the annual holidays; and</li> <li>The employee's OWP2 for the previous four weeks immediately before the end of the pay period immediately before the annual holidays; and</li> <li>The employee's Average Weekly Earnings ("AWE") for the previous 12 months immediately before the end of the last pay period before the annual holidays.</li> </ul> <p>OWP is the amount an employee is normally/usually paid each week and includes regular allowances.</p> <p>OWP2 is the employee's previous four weeks ordinary earnings divided by four.</p> <p>AWE is the employee's previous 52 weeks gross earnings (or less if the employee is in their first year of employment), divided by 52 (less any weeks of LWOP).</p>	<p>WCDHB should review and agree the methodology for the determination of when an employee's OWP can be determined and therefore the employee's annual leave can be calculated and paid at the greater of:</p> <ul style="list-style-type: none"> <li>The employee's OWP at the beginning of the annual holidays, or</li> <li>The employee's OWP2 for the previous four weeks immediately before the end of the pay period immediately before the annual holidays.</li> <li>The employee's Average Weekly Earnings ("AWE") for the previous 12 months immediately before the end of the last pay period before the annual holidays.</li> </ul> <p>OWP is the amount an employee is normally/usually paid each week and includes regular allowances.</p> <p>OWP2 is the employee's previous four weeks ordinary earnings divided by four.</p> <p>AWE is the employee's previous 52 weeks gross earnings (or less if the employee is in their first year of employment), divided by 52 (less any weeks of LWOP).</p> <p>Should WCDHB look to utilise only one calculation methodology for OWP, based on the employees working pattern and if their OWP can be determined, there will also need to be systems and processes to accurately identify which calculation should be applied.</p>	<p>✓</p> <p>PSe will need to be appropriately updated to recalculate employees leave payments based on these agreed methodologies.</p>		<p>✓</p> <p>The threshold for the determination of OWP should be defined and agreed. Employees permanent allowances should be determined if they form part of the AWE or OWP2 payment</p>	<p>✓</p> <p>A process should be implemented to identify and confirm where an employees working pattern has changed and therefore the calculations required have changed.</p> <p>A periodic process should be developed that enables WCDHB to review the assumptions and decisions made to assess if an employees OWP can be determined and that these continue to reflect the working practices and agreements at WCDHB.</p>	<p>✓</p> <p>Training for business managers on the impacts of changing working patterns and the impacts on leave calculations so they know what to "flag" to payroll.</p>	<p>✓</p> <p>Information and guidance on WCDHB's intranet will need to be updated to reflect changes to the way annual leave payments are calculated. FAQ's should be developed for employees impacted by the change in annual leave calculations.</p>
AWE and OWP2 divisor	<p>The employee's average hourly rate is used in place of AWE for annual leave payments. The employee's average rate is calculated using the employee's gross earnings for the past 52 weeks and dividing by the base hours worked (not including overtime) for that same period.</p> <p>The employee's ordinary rate is used in place of OWP of annual leave payments. The second calculation for ordinary rate is the four-week</p>	<p>AWE is calculated as the gross earnings for the 12 months (or 52 weeks for fortnightly and weekly employees as has been agreed by the DHB's) immediately before the end of the last pay period before the annual holidays are taken, divided by 52.</p> <p>If the employee has been working less than 12 months, then the divisor is reduced so that it represents the number of whole or part weeks since the start of their employment. The divisor is also reduced by consecutive</p>	<p>AWE is calculated as the gross earnings for the 12 months (or 52 weeks for fortnightly and weekly employees as has been agreed by the DHB's) immediately before the end of the last pay period before the annual holidays are taken, divided by 52.</p> <p>If the employee has been working less than 12 months, then the divisor is reduced so that it represents the number of whole or part weeks since the start of their employment. The divisor is also reduced by consecutive weeks of leave without pay after the first week.</p>	<p>✓</p> <p>PSe will need to be appropriately updated to recalculate employees leave payments based on these agreed methodologies.</p>					<p>✓</p> <p>WCDHB will need to update the intranet guidance and information to reflect changes to the way that annual leave payments are calculated.</p>



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	ordinary earnings divided by the base hours worked in the same period.	weeks of leave without pay after the first week. OWP2 is calculated as the gross earnings for the 4 weeks immediately before the end of the last pay period before the annual holidays are taken, divided by four. There is no adjustment to the divisor if the employee has been working for less than four weeks or has taken consecutive weeks of leave without pay.	OWP2 is calculated as the gross earnings for the 4 weeks immediately before the end of the last pay period before the annual holidays are taken, divided by four. There is no adjustment to the divisor if the employee has been working for less than four weeks or has taken consecutive weeks of leave without pay.						
Gross and ordinary earnings inclusions and exclusions	An employee's AWE and ADP utilises the employee's gross earnings as a basis for the calculations. An employee's OWP2 utilises the employee's ordinary earnings as a basis for the calculations. Allowance codes have been identified that are incorrectly included or excluded from gross and ordinary earnings (please refer to appendix F for the earnings inclusions used during the Review). It should be noted that for the full remediation the list of allowances should be re-assessed for the full employee population.	Gross and ordinary earnings should include the required allowance transactions and payments.	Gross and ordinary earnings should include the required allowance transactions and payments.	✓ PSe will need to be appropriately updated so the relevant allowances are included or excluded from gross and ordinary earnings.			✓ A process should be implemented to periodically review gross and ordinary earnings inclusions / exclusions in line with current assumptions, usage and business practices.		✓ The FAQ's developed should include an overview of the allowances and payments included in gross and ordinary earnings and how these changes have impacted calculations for leave payments.
Leave Without Pay ("LWOP") is not applied correctly.	When an employee takes LWOP their role is changed to stop their annual leave accrual until they return, or for shorter periods LWOP hours are entered into the transaction data. The hours worked during the period of LWOP are recorded as zero, meaning the divisor is reduced by the hours of LWOP taken. As the divisor for the average rate is being reduced when LWOP has been taken, WCDHB are currently using a form of leave without pay adjustment, albeit not the methodology required by the Holidays Act. This methodology is also reducing the divisor for the ordinary rate, where weeks of	The methodology for the determination of LWOP approach will need to be determined and agreed. There are two suggested methodologies to manage LWOP: ► Extend the time required before the employee becomes entitled to annual holidays by the number of weeks of the LWOP less one; or ► Modify the AWE divisor to reflect the number of whole or part weeks greater than one week that the employee who on LWOP.	For each MECA/SECA, CDHB will have to assess if the contractual agreement can apply or apply the methodology required by the Act. This will require configuring PSe to reduce the AWE divisor under certain circumstances, and to extend the employees anniversary year in others.	✓ PSe will need to be appropriately updated to recalculate employees leave entitlements based on these agreed methodologies.	✓ LWOP will need to be captured in different ways to enable the application of the appropriate MECA methodologies.	✓ Where the MECA/SECA agreement is non-compliant with the Holidays Act, the MECA/SECA will require to be updated.	✓ A process should be implemented whereby the approach to LWOP is discussed with each employee as it occurs (if this is outside of an agreed MECA/SECA). Further processes may be required if the system is unable to apply the appropriate LWOP methodologies automatically.	✓ As part of the rollout of changes to the business, training should be provided to the business on the requirements of LWOP and the information required by Payroll.	✓ Include/update guidance on the treatment of LWOP on WCDHB's intranet site.



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	LWOP should not reduce the divisor. Additionally, where employment is considered continuous and the employee's entitlement is impacted by LWOP, the current process reduces the employee's entitlement at their anniversary date rather than extending the employees anniversary date out by the weeks of leave without pay less one.								
"Accrual" and entitlement to annual leave is recorded in hours rather than weeks and is not updated where employees change work patterns.	WCDHB use an employee's hours worked to "accrue" leave (in hours rather than weeks) from the employee's start date to their anniversary date, at which point it becomes entitled leave. Annual leave accrual is capped dependent on the employee's scheme (e.g. 160-hour scheme for a fulltime employee). As a result, an employee's entitlement at their anniversary date may be under stated based on the work pattern at the employee's anniversary date if the "accrued" leave balance does not add up to four weeks of the employees current working pattern. Similarly, the amount of annual leave an employee is already entitled to is not updated to reflect the changes in an employee's work pattern. The current approach used by WCDHB to track annual leave entitlement may not provide employees with the required four weeks of annual leave.	The approach to leave entitlements in the remediation programme differs between the agreed Baseline document and MoU. The approach to be taken for remediation needs to be agreed across the DHB programme.	Upon their anniversary of employment, an employee should become entitled to four weeks statutory leave (in WCDHB's case, this may be five or six weeks depending on the MECA/SECA the employee is on) based on the working pattern at the employee's anniversary date (less any leave taken in advance). Any change of working pattern during the year should also trigger a change to the entitled leave balance, to convert it into the equivalent weeks at the new working pattern.	✓ PSe will need to be appropriately updated to recalculate employees leave entitlements based on their profiled working pattern at their anniversary date.	✓ Data records will need to be updated in a timely manner between so the entitlement balances are accurately reflected.	✓ Update leave policies to reflect when changes to employees working patterns need to be reflected in their entitlement.	✓ A process will need to be implemented to capture and communicate any retrospective changes required.	✓ Training will need to be provided to both the payroll team, rostering team and business leaders as to how and when to inform payroll of a change in working pattern.	✓ Employees changing working patterns will need to be informed of the impact the changes will have on their leave balances in advance of the changes being applied.
Cash up of leave	In the past, WCDHB have not had separate codes for cashing up of statutory and contractual leave. As annual leave has not been split between contractual and statutory it is not clear if employees are therefore	The approach to the remediation of cashed up leave will need to be determined as part of the remediation programme i.e. is this a leave entitlement that is required to be provided to the employee again where more than one week of the employee's	Employees should only be able to cash up one week of statutory annual leave in each entitlement year. WCDHB have introduced a statutory cash up code which is being used for go forwards payments. WCDHB should introduce a cash up and termination annual leave code so	✓ PSe should prevent the cash out of more than one week of entitled leave in any employee	✓ Entitlement balances will need to be split between contractual and statutory for annual leave.	✓ WCDHB policy on leave cash ups will need to be updated to reflect compliance with the Holidays Act and any changes to	✓ Should automation not be possible a process to check the appropriate balances and prior transactions in	✓ Training should be provided to managers to provide guidance on what leave cash ups are allowed in what time period to	✓ Existing guidance and information on WCDHB's intranet will need to be updated to reflect any changes to the

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	cashing up more than one week of statutory leave. This means that for gross earnings will be including both statutory and contractual leave when statutory leave should not be included in gross earnings. Additionally, WCDHB use the same allowance codes for cashing up of leave and paying any entitled leave at termination.	statutory entitlement has been cashed up. The approach to distinguish between both statutory and contractual and cashed up and leave at termination will need to be determined as part of the remediation programme. This is required to correctly allocate the leave and gross earnings to the right recalculations.	that leave can be correctly allocated in any future Holidays Act reviews.	anniversary year.		entitlement categories.	the entitlement year will need to be created for the Payroll team to follow.	prevent inappropriate requests being sent to the Payroll team.	cash up of annual leave.
Payments for continuous periods of annual leave across pay periods are treated as two different leave payments.	If an employee's period of annual leave covers more than one pay period, PSe calculates the leave rate using two different time periods as each pay run is taken as a new period of leave.	An employee's annual leave should be calculated at the commencement of the annual leave for the whole period of leave.	An employee's annual leave should be calculated at the commencement of the annual leave for the whole period of leave.	✓ PSe should flag consecutive weeks of annual leave and automatically adjust the rate paid as appropriate. If this is not possible in PSe, WCDHB should implement exception reporting and manual processes to identify and manage this. It may be possible for the system to produce an exception report (i.e. when a second leave rate is less than the previous period).	✓ WCDHB should investigate how leave should be recorded to capture all leave as a continuous period of leave in PSe.		✓ Should automation of continuous leave across pay periods not be possible, exception reporting (i.e. of leave paid at a lower rate than the previous period) should be implemented and a process for the review and validation of this exception reporting developed.	✓ Should the changes required need leave to be entered into Microster in a certain manner this should be communicated to all employees and their managers.	✓ Guidance for entering leave should be updated to meeting the requirements of PSe and Microster.
ADP is not calculated.	WCDHB calculate an employee's BAPSF leave at the employee's RDP, being what the employee would have earned on the day and is typically base pay plus daily allowances. If WCDHB do not have the information about the shift that the employee would have worked on the day, the employee is paid at their AHR.	The Baseline document requires WCDHB to pay employees the greater of: ► The employee's RDP being the amount the employee would have earned had they worked that day, including any allowances or overtime. ► The employee's ADP where ADP is calculated as the employee's gross earnings for the previous 52 weeks divided by the total number of days	WCDHB should review and agree the methodology for the determination of when the amount the employee would have earned can be determined and therefore the employee's leave can be calculated at RDP. Should WCDHB not be able to consistently determine an employee's RDP then ADP should be applied. As part of this WCDHB will also need to be systems and processes to accurately identify which calculation should be applied.	✓ Depending on the approach taken by WCDHB PSe will need to be updated so that the higher of RDP and ADP is paid to the employee or the employees can be split to either	✓ To accurately calculate ADP, WCDHB will need to implement a days' worked accumulator that can be consistently updated.	✓ A policy will need to be developed to determine the days worked by employees each week.  The threshold for the determination when what an employee would	✓ Salaried employees who are profiled to work Monday-Friday may need to be reviewed to confirm the correct days worked (and paid) are being recorded.	✓ Training should also be developed for managers to capture and provide the right information for payroll (in time capture systems), depending on the system and	✓ Guidance and information on WCDHB's intranet will need to be updated to reflect changes to policies, procedures and systems that are used by employees.

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		and part days worked or paid in that same period.		be an ADP or an RDP employee. Where ADP is utilised, PSe should be updated to calculate ADP using the employee's gross earnings from the previous 52 weeks divided by the number of whole or part days worked by the employee.		earn on a day can be defined should be defined and agreed.	Reviewing offline rostering information for accuracy and completeness should be included in the business managers review processes. A periodic process should be developed that enables WCDHB to review the assumptions and decisions made to assess if an employee's RDP cannot be determined and that these continue to reflect the working practices and agreements at WCDHB.	data changes to be made.	This may include information about the requirement to record the days worked in timesheets, and how payments for leave may be impacted. FAQ's should also be developed for employees impacted by the ADP calculation.
Statutory holidays worked are not paid using RDP multiplied by 1.5.	When employees work a statutory holiday, this is recorded on the employee's timesheet to reflect the hours they worked on that day. The employee is paid the additional 0.5 (or more depending on the MECA/SECA) using an additional code. Allowances due for working on the public holiday are typically paid at normal rate and not 1.5 times the rate for the hours worked.	Statutory holidays worked to be paid using 1.5 times the employee's RDP and should include payments that the employee would have received had the employee worked on the day. This includes regular allowances. WCDHB needs to calculate payment for statutory holidays worked using the employee's RDP, including relevant allowances, that relates to the time worked by the employee, multiplied by 1.5.	Statutory holidays worked should be paid using the higher of the employee's RDP that relates to the time worked on the day, multiplied by 1.5 or their contractual rate for the day including any penal rates. RDP should include payments that the employee would have received had the employee worked on the day. This includes regular allowances. WCDHB needs to calculate payment for statutory holidays worked using the employee's RDP, including relevant allowances, that relates to the time worked by the employee, multiplied by 1.5 or the rate required by the MECA/SECA where this is higher.	✓ PSe should be updated to pay the allowances associated with the hours worked at 1.5 times on public holidays worked.	✓ Dependent on the ability of PSe to capture all public holiday worked payments correctly there may require additional input or data to be captured.		✓ A process should be implemented to periodically review statutory holiday payments, particularly when new MECA/SECA agreements are implemented.	✓ Training should be developed for business managers to capture and provide the right information for payroll (in time capture systems), depending on the system and data changes to be made.	✓ Existing guidance and information on WCDHB's intranet will need to be updated to reflect any changes to calculations and recording of public holidays worked.
Public holidays not worked	Public holidays not worked are paid at the employees RDP.	Employees should be paid what they were rostered to work for a public holiday not worked at the employee's RDP or ADP	Employees should be paid what they were rostered to work for a public holiday not worked at the employee's RDP or ADP.	✓ PSe update to correctly calculate public holidays not worked.				✓ Training should be developed for business managers to capture and provide the right information for	✓ WCDHB will need to update the intranet guidance and information to reflect changes to the way that payments for

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								payroll (in time capture systems), depending on the system and data changes to be made.	public holidays not worked are calculated.
Sick leave	Sick leave entitlement is in hours, with the hours provided based on either a 7, 8, 10, or 12 hour day. Casual employees are provided with 40 hours sick leave entitlement after six months of employment. When an employee changes their working pattern, the employee may not have enough hours to take 5 days sick leave. Sick leave is paid at the employees RDP, when their roster is known. Where it is not known the employee is paid using their annual leave average rate.	Sick leave should be held in days for all employees. The statutory sick entitlement is five days per year after completing six months employment. Employees should be paid for what they were rostered to work for a day of sick leave, at the employee's RDP or ADP.	Sick leave should be held in days for all employees and not pro-rated. The statutory sick entitlement is five days per year after completing six months employment. Employees should be paid for what they were rostered to work for a day of sick leave, at the employee's RDP or ADP.	✓ PSe update to hold sick leave entitlement in days.	✓ Dependent on the ability of PSe to capture sick leave in days rather than hours there may require additional input or data to be entered in any timesheet system implemented.			✓ Training should be developed for business managers to capture and provide the right information for payroll (in time capture systems), depending on the system and data changes to be made.	✓ WCDHB will need to update the intranet guidance and information to reflect changes to the way that sick payments are calculated.
Bereavement leave	Bereavement leave is paid at the employees RDP, when their roster is known. Where it is not known the employee is paid using their annual leave average rate.	Employees should be paid what they were rostered to work for a bereavement day at the employee's RDP or ADP	Employees should be paid what they were rostered to work for a bereavement day at the employee's RDP or ADP.	✓ PSe update to correctly calculate bereavement leave.				✓ Training should be developed for business managers to capture and provide the right information for payroll (in time capture systems), depending on the system and data changes to be made.	✓ CDHB will need to update the intranet guidance and information to reflect changes to the way that bereavement payments are calculated.
Family violence leave	Family violence leave is paid on a discretionary sick leave code (DISC) and is paid at the employee's base rate. The discretionary sick leave code (DISC) is also used for other discretionary sick leave so that it remains confidential to the employee the type of leave being taken.	Employee's family violence leave should be calculated at the higher of RDP and ADP in line with the Holidays Act. Without tracing back all discretionary sick leave payments to the type of leave, all payments made on DISC will be recalculated as assumed Family Violence Leave from April 2019 onwards.	Employee's family violence leave should be calculated at the higher of RDP and ADP in line with the Holidays Act.	✓ PSe update to correctly calculate family violence leave.				✓ Training should be developed for business managers to capture and provide the right information for payroll (in time capture systems), depending on	✓ WCDHB will need to update the Intranet guidance and information to reflect changes to the way that family violence leave payments are calculated.

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								the system and data changes to be made.	
Alternative leave	WCDHB hold alternative leave balances in days and pay in hours.  Alternative leave is paid at the employees RDP where the shift that would have been worked is known. Where it is not known the employees average rate from their annual leave calculation is used.	As per the Baseline document and the Holidays Act, alternative leave should be paid at the higher of RDP or ADP based on the day they would have worked.	Alternative leave should be calculated at the higher of RDP and ADP in line with the Holidays Act.	✓ PSe update to correctly calculate alternative leave.				✓ Training should be developed for business managers to capture and provide the right information for payroll (in time capture systems), depending on the system and data changes to be made.	✓ PSe WCDHB will need to update the Intranet guidance and information to reflect changes to the way that alternative payments are calculated.
Termination without return from parental leave or LWOP	When an employee terminates whilst on extended LWOP or parental leave, their termination date is entered as the date that the employee resigns.	When an employee terminates whilst on LWOP or parental leave, their termination date should be adjusted to the employee's last working day before taking unpaid leave.	When an employee terminates whilst on LWOP or parental leave, their termination date should be adjusted to the employee's last working day before taking unpaid leave.		✓ Information on the employees last day will need to be recorded in the system and the termination calculation performed based on that date.		✓ A process should be developed to adjust an employee's termination date accordingly when they termination whilst on LWOP or parental leave.	✓ Training should be provided to managers and the payroll team about the adjustment of termination dates for employees.	✓ WCDHB will need to update the Intranet guidance and information to reflect changes to the way that termination dates and payments are calculated.
Allowance codes on termination	When an employee terminates, their entitled annual leave is paid using the same code as cash up of statutory annual leave which is excluded from gross earnings.	In line with the Baseline document and Holidays Act, termination payments will calculate: <ul style="list-style-type: none"> <li>▶ Entitled annual leave outstanding;</li> <li>▶ Entitled alternative leave outstanding;</li> <li>▶ Any notional public holidays that the employee is due after their termination date is extended by any entitled annual leave; and</li> </ul> 8/10/12% of gross earnings including the above termination payments since the employee's last anniversary date	Additional allowance codes should be added to the system for the calculation of each element of an employee's termination calculation.	✓ PSe update to correctly calculate termination payments in the system.	✓ Accurate employee working patterns including profile days to be captured in PSe or able to be imported from Microster at termination.			✓ Training should be developed for the payroll team to monitor termination calculations and how to rectify non-compliance of termination payments through PSe.	✓ WCDHB will need to update the intranet guidance and information to reflect changes to the way that termination payments are calculated.



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Alternative leave on termination	WCDHB currently pay the balance of an employee's alternative leave in hours at termination.  This is currently paid at the employee's annual leave average rate.	In line with the Baseline document, this will be the higher of the employees ADP and RDP at the employee's last day of work for WCDHB.	Alternative leave should be paid in days and not hours.  At termination the employees alternative leave should be paid at the higher of the employee's RDP or ADP at the last day of work.	✓  Pse will need to be configured to pay the leave out at termination based on the employees last working day.					✓  WCDHB will need to update the intranet guidance and information to reflect changes to the way that termination payments are calculated.
Notional public holidays on termination	For WCDHB, entitled annual leave (including any leave entitlement following parental leave) extends the employee's termination date and any public holidays occurring in this period are paid at RDP if they are assessed as due.  Additionally, for employees paid via ORDSAL, the system assumes a Monday to Friday working pattern for all employees meaning additional public holidays may be awarded at termination.	An employee is only entitled to a notional public holiday if the holiday falls on what would have been an otherwise working day for the employee. The employees actual working pattern will need to be reflected in the calculation of notional public holidays.  The calculation of the notional public holiday payment will be at the higher of ADP or RDP.	An employee is only entitled to a notional public holiday if the holiday falls on what would have been an otherwise working day for the employee. The employees actual working pattern will need to be reflected in the calculation of notional public holidays.  The calculation of the notional public holiday payment will be either ADP or RDP based on the employees working pattern and the assessment of if a day's pay can be determined.	✓  PSe will need to be able to recognise the employees working pattern so that only public holidays that fall on an otherwise working day for the employee are paid.	✓  Any new electronic timesheet system will provide the information relating to what is an otherwise working day through to PSe.		✓  A process should be developed for consistency that includes specific details about how to recognise notional public holidays for employees on termination.		✓  WCDHB will need to update the intranet guidance and information to reflect changes to the way that termination payments are calculated.
Closedown periods for departments	Some departments at WCDHB are closed for the Christmas period.  Staff in these departments are encouraged to take leave but can work at an alternative location if they request it.	If a closedown happens before an employee becomes entitled to annual holiday and they are required to take leave, the employer must pay the employee eight percent of their gross earnings to the date of the closedown and reset their anniversary date.	If a closedown happens before an employee becomes entitled to annual holiday and they are required to take leave, the employer must pay the employee eight percent of their gross earnings to the date of the closedown and reset their anniversary date.	✓  PSe will need to be able to apply the updated anniversary date to the employee should it be required.		✓  A policy should be developed for departments that experience a closedown so that a new anniversary date can be determined.	✓  A clear process should be developed that details how an employee's anniversary date will change and what accrued leave they would be due at the closedown date.		✓  For any employees impacted by closedown periods, FAQ's and / or an explanation should be developed about the adjustment in anniversary date.
RMO transfers	WCDHB currently allows the transfer of up to 240 hours of leave to another DHB when an RMO transfers.  WCDHB currently completes a full termination transaction, and then reduces the termination calculation by the hours of leave (and associated 8% current year calculation).	Employees full leave liability, and the associated termination payment should be recalculated. Where the employee has been able to transfer leave to another DHB, this balance transferred should be included in the calculation performed by WCDHB.	When an employee transfers between DHB's, their termination calculation must include all leave balances at the time of transfer. Leave balances cannot be transferred between DHB's.			✓  The policy regarding leave transfers should be updated to reflect the changes required.			✓  For any employees impacted by the change in policy, FAQ's and / or an explanation should be developed about the transferring of leave.

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				Technology	Data	Policy	Process	People	Communication
There is no clear, consistent and documented definition of a regular working pattern for casual employees.	There is no consistent definition or policy that describes what constitutes a regular working pattern for a casual employee.	An assessment of casual employees will need to be completed in line with the Baseline document and the approach to applying the Baseline principles. This practical application has yet to be agreed.	WCDHB should only place truly casual employees on casual contracts. A monitoring system should be implemented to track employee working patterns and highlight when an employee's working pattern has changed.  This monitoring system may be automated through PSe or an automated timesheet system. Alternatively, if it is not possible to have employee working patterns automatically tracked and assessed, the WCDHB payroll team should have a defined and systematic process to check and confirm whether there is a working pattern for casual employees. WCDHB will need to clearly define what constitutes a regular working pattern, and the relevant policy and process where a regular working pattern is established for a casual employee.	✓  PSe should be updated so that it can detect and notify payroll when a working pattern is established for casual employees. This will require the systems to have the ability to compare worked/rostered hours with historic hours and the employee's profile hours.	✓  Working day data should be consistently recorded so that employee working patterns can be accurately monitored.  The data to be captured (depending on the approach to monitoring take) will need to be agreed.	✓  A policy should be developed that includes specific details of when a casual employee may be hired, and associated approvals required. A policy will also need to be developed to clearly define when an employee is considered to have a regular working pattern.	✓  A clear process should be developed that details the steps and actions that should be taken if a casual employee is identified as having a regular working pattern. This should include relevant escalations should the business rules not be followed.	✓  Training should be provided to managers to provide guidance on what is and is not a casual employee and where questions or changes in an employee's working pattern should be addressed.	✓  For any employees impacted by the review of leave entitlements (including casual employees identified as entitled to annual leave), FAQ's and / or an explanation should be developed  For casual employees, where a regular working pattern is identified then an approach to transferring the employee to permanent employment should be determined and communicated to the employee.
Otherwise working day for casual employees is not documented and is not being consistently applied.	If a casual employee does not work a public holiday, they generally will not get paid for the public holiday as not worked. The employee's manager has the option to pay the employee for the public holiday not worked if they input the hours on the employee's paper timesheet.  If casual employee works a public holiday, there is no analysis completed or policy as to when an employee would receive an alternative day.	An assessment of casual employees will need to be completed in line with the Baseline document and the approach to applying the Baseline principles as agreed with the Labour Inspectorate.	The requirements for a public holiday to be considered an otherwise working day for casual employees will need to be clearly defined and documented. A monitoring system and allocation of otherwise working days may be automated through PSe, or timesheet keeping. Alternatively, if it is not possible to have employee working patterns automatically tracked and assessed, the WCDHB payroll team should have a defined and systematic process to check and confirm whether there is a working pattern for casual employees.	✓  PSe reporting should be updated so that public holidays not worked are identified and if possible applied when the day is an otherwise working day for the employee.	✓  Working day data and thresholds for otherwise working days should be consistently recorded so that employee working patterns can be accurately monitored.  The data to be captured (depending on the approach to monitoring take) will need to be agreed.	✓  A policy should be developed that identifies when a day is considered an otherwise working day for casual employees, making them entitled to payments for a public holiday not worked.		✓  Training should be developed for business managers to capture and provide the right information for payroll (in time capture systems), depending on the system and data changes to be made.	✓  Guidance and information on WCDHB's intranet should include details on when a public holiday is considered an otherwise working day.

Issue description	Current methodology	Remediation methodology	Go forwards methodology	Changes Required					
				Technology	Data	Policy	Process	People	Communication
Employee working profiles	WCDHB employee working profiles for part time and / or multi-job employees do not accurately reflect the employee's actual working pattern as the system has not been updated to reflect changes in working hours or only captures one element of their multiple job roles. Some employees are also recorded as having no profiles but have a working pattern in the transaction data.	The employee's payroll masterdata may not be able to be used in the remediation calculation and other data may need to be used. The methodology for each employee group will need to be reviewed and agreed as part of the remediation programme of work.	Employee working profiles will need to reflect the accurate working patterns of the employees.	✓ PSe upgrade will need to be implemented.	✓ Employee profiles will need to be updated following the PSe upgrade to accurately reflect employee working patterns.			✓ Training should be developed for business managers to capture and provide the right information for Payroll where employee working profiles change so this is captured in an accurate and timely manner.	✓ CDHB should provide communication and guidance to affected employees as to the changes in capturing and recording of working patterns and the effects of this.
Employees days worked are not accurately recorded	WCDHB use paper timesheets to record employee's hours worked and any additional allowances due. For employees who are paid via ORDSAL, base hours are automatically processed through PSe and any leave and allowances are processed via leave requests.	The employee's paper timesheet data may not be accurate enough to be used in the remediation calculation and other data may need to be used. The methodology for each employee group will need to be reviewed and agreed as part of the remediation programme of work.	Employee's timesheets should be accurately and consistently recorded to reflect accurate days worked for all employees.	✓ WCDHB should introduce an automated timesheet recording system to increase consistency in shift recording.	✓ Employee rosters will need to be updated to accurately reflect the days worked each fortnight.			✓ Training should be developed for business managers to capture and provide the right information for payroll and roster teams so this is captured in an accurate and timely manner.	✓ WCDHB should provide communication and guidance to affected employees as to the changes in capturing and recording of working patterns and the effects of this.

## Appendix A CDHB leave payment rules

### Payroll basis

Most employees are paid on a fortnightly basis (two fortnight tranches are paid, FN1 and FN2). Employees who are paid on a weekly basis (under the pay group WKL) are generally tradespeople and cleaners. CDHB also process a separate pay for the charity MAIA Health Foundation. The payroll system, Ascender PS Enterprise ("PSe") holds the payroll and HR information for employees.

Employees are paid via timesheets processed through:

- ▶ Microster, CDHB's rostering and time recording system,
- ▶ via paper time sheets for employees at Canterbury Laundry Services, or
- ▶ via "ORDSAL", an automatic payment of the employee's standard is working hours.

If employees are due additional allowances, these are processed via Microster or manually claimed via an exception sheet.

Microster is the rules and costing engine for CDHB, applying the Multiple Employee Collective Agreement ("MECA") awards to each employee prior to the import of data into PSe. When there are changes to employee's profiles, these are made in PSe and then updated into Microster on a regular basis.

### Time recording

CDHB employees use Microster to schedule employees work and record hours worked each week. For employees who are paid via ORDSAL, base hours are automatically processed through PSe and any leave and allowances are imported from Microster. Rosters either reflect the employees working pattern or are a proxy for the employee's pattern, depending on the department and role of each employee. Employees enter their hours worked, and these are approved by their manager on a weekly basis. Managers and/or their delegates are responsible for ensuring that employees shift's and leave are recorded in Microster, including any additional allowances due or additional hours worked.

Other manual payments such as cash ups, higher duties, pay rate changes, parental payments, negative leave, other one-off or standard outside MECA payments, and anything not set up in Microster are made in PSe.

Where changes are made to an employee's record for the week (e.g. hours worked adjusted) this is updated in Microster and reimported into PSe.

### Leave payment

The table below details the basis on which each leave category is paid to the selected employee.

Description	Element	Pay/accrual basis
Annual leave	ANNL ANNLPAR ANNLPARSMO LSL AL_CASH4 (cash up)	CDHB pay and accrue annual leave in hours.  Annual leave is accrued on the employee's contracted hours. A small minority (historic Compass and Spotless employees transferred to CDHB) accrue on hours worked. Employees are entitled to four weeks statutory annual leave per entitlement year, five weeks per year after five years' service and any additional weeks of entitlement as per their MECA. Senior Medical Officers ("SMOs") and Resident Medical Officers ("RMOs") are entitled to six weeks leave per entitlement year.

Description	Element	Pay/accrual basis
	ANNLPDOUT (cash up) PAL_CASH4 (cash up) ALPARPDOUT (cash up) ALPRSMOPD (cash up) LSLPDOUT (cash up)	<p>Employees annual leave is paid at the higher of their average rate and ordinary rate.</p> <p>These are calculated as follows:</p> <p>Average rate: Employees gross earnings for the past 52 weeks (or less if the employee is in their first year of employment), divided by the contracted hours in the same period.</p> <p>Ordinary rate: The higher of the employee's base rate (excluding any penal rates) and the four-week ordinary earnings divided by the contracted hours in the same period.</p> <p>Gross and ordinary earnings are calculated dependant on the allowance codes flagged within PSe.</p> <p>Most multijob employees are employed on multiple roles under the same employee number. Gross and ordinary earnings from both jobs are combined to calculate the average and four-week ordinary rates. When the calculated average and four weekly rates are compared to the base rate, it will be the base rate for the job the leave was taken under used.</p> <p>When an employee changes profiled hours, there is a smoothing period that slowly reduces or increases the employee's hours contracted for the divisor.</p> <p>Leave without pay ("LWOP")</p> <p>When an employee takes a significant pre-approved period of LWOP the employee's role is changed and their annual leave accrual is stopped until the pay period that they return. For shorter periods of LWOP, this is entered as a transaction in the payroll data and the employee will continue to accrue leave during this time. When an employee takes leave after a period of LWOP, the contracted hours during the period of LWOP are recorded as zero, meaning the divisor is reduced by the hours of LWOP taken.</p> <p>Parental leave</p> <p>When an employee is on parental leave, their employment role is changed in the payroll system and they are put on a different accrual scheme (PLANNL). Employees continue to accrue annual leave and the balance is shown separately to their normal annual leave entitlement. Regardless of when it is taken, it is paid at the average rate only.</p> <p>Annual leave cash up</p> <p>Employees are able to cash up one week of statutory leave per entitlement year. They are able to cash up their additional contractual leave. There is an approval process to request the leave and this will only be approved if there is entitled leave available.</p> <p>Consecutive leave</p> <p>If an employee takes leave across multiple pay periods, the leave rate for each pay period is calculated separately.</p> <p>Long service leave</p>



Description	Element	Pay/accrual basis
		<p>For most employees long service leave is paid at the higher of the average rate or the base rate. Some are paid at only base rate. Long service leave entitlement is dependent on each employee's MECA.</p> <p>Rehire</p> <p>If an employee returns within three months (12 months for a nurse) the employee will retain their original commencement date for the purposes of long service leave and additional contractual entitlements.</p> <p>Shutdown</p> <p>Some services at Burwood Hospital are closed for one to two weeks over the Christmas period. Staff in these services are encouraged to take leave but can work at an alternative location if they request it.</p>
Public holiday not worked	BORD PHOL ROFF	<p>CDHB pay employees for public holidays not worked at the employee's Relevant Daily Pay ("RDP"). CDHB do not perform an Average Daily Pay ("ADP") calculation.</p> <p>RDP is calculated as the employee's base rate plus penal rates and allowances for the hours are applicable to that rostered day.</p>
	<p>Additional codes paid when not working specific shifts:</p> <p>AFNW            HFNW            HWNW            NGNW            OT2NW            OTNW            P1NW            PENW            WKNW</p>	<p>It is the responsibility of the employee's manager to determine whether a public holiday would be the employee's otherwise working day or not. For employees who are paid automatically via ORDSAL, the payroll system views the employees as working Monday to Friday and not their actual roster. These employees are therefore automatically paid for a public holiday not worked.</p>
Public holiday worked	STAT	<p>When an employee works a public holiday, CDHB will pay the employee at time and a half (or double time, depending on the MECA) for the hours worked. Specific additional codes are used on a public holiday worked to pay allowances and penal rates. These are not paid at time and a half.</p>
	<p>Additional codes paid when working specific shifts:</p>	

Description	Element	Pay/accrual basis
	STAF STOT STNG STWD STAH STAR OCPH OCWK PCADPH08 PCADPH22 ADPH08 ADPH22 CBPH08 CBPH22	<p>An alternative day is recorded automatically for employees who are rostered as working on the public holiday in Microster. Otherwise, the alternative day must be claimed manually.</p> <p>If an employee only works for part of the public holiday, they are paid time and a half or double time for the hours worked on the public holiday and the balance of hours for the day (based on the employee profile as rostered by the manager) is paid as a public holiday not worked.</p> <p>If an employee works across midnight into or out of a public holiday the employee will only be paid for the public holiday worked for the hours that fall in the public holiday (i.e. the shift will be paid partially at ordinary time and partially as a public holiday worked). The employee is still provided with an alternative day.</p>
Sick leave	SICK SICKHRS	<p>CDHB pay employees for sick leave at RDP as previously described. CDHB do not perform an ADP calculation.</p> <p>Sick leave entitlement is in hours, with the hours provided based on either a 7, 8, 10, 11.5 or 12 hour day. The employee is paid their RDP based on the hours rostered for the day taken.</p> <p>Microster holds contractual sick leave and statutory sick leave as two separate balances. Contractual sick leave is paid using base rate only for the hours taken. The system will pay statutory sick leave prior to contractual sick leave.</p>
	Refer to public holiday not worked for additional codes paid when not working.	
Bereavement leave	BERE	<p>CDHB pay employees for bereavement leave at RDP as previously described. CDHB do not perform an ADP calculation.</p> <p>As with other bereavement, alternative, public holiday, sick or family violence ("BAPSF") leave types, bereavement leave is paid in hours.</p>
	Refer to public holiday not worked for additional codes	

Description	Element	Pay/accrual basis
	paid when not working.	It is the managers discretion how many days/hours the employee is entitled to.
Alternative leave	LIEU LIEUHRS LIEUPDOUT (cash up)	<p>CDHB refer to alternative leave as lieu days.</p> <p>CDHB pay employees for alternative leave at RDP as previously described. CDHB do not perform an ADP calculation.</p> <p>Alternate days are held in the system as days but are paid to employees in hours, based on their roster for the day taken. Only whole days in lieu can be taken. If the employee decides to take half a day of lieu, they will be paid for half a day of hours but the whole day is reduced from the balance.</p> <p>If an employee chooses to cash out any alternative leave, they can do so after 12 months from being entitled to the day. When the leave is cashed up, it is paid at the higher of the annual leave rates as described above at the time that leave was taken.</p>
	Refer to public holiday not worked for additional codes paid when not working.	
Family violence leave	SPEC	CDHB use the special leave code to pay family violence leave.
	Refer to public holiday not worked for additional codes paid when not working.	CDHB pay employees for SPEC leave at base rate. CDHB do not perform an ADP calculation.
Termination	Leave payments: ANNLPDOUT ALPARDOUT ALPRSMOPD ANNLTTERM LIEUPDOUT PLON PHOLFIN	<p>Termination payments are manually calculated and reviewed by the payroll team using an offline spreadsheet alongside the balances provided in PSe.</p> <p>The payroll team manually calculate gross earnings, obtain and confirm leave balances, leave in advance, lieu days, shift leave and entitlement to notional public holidays from the system and calculate the termination pay manually. The values are then entered into the system under the relevant codes to pay the employee.</p> <p>Any entitled annual leave outstanding is calculated at the annual leave rates. SMO's also receive any relevant permanent allowances between the actual termination and effective termination date. Parental annual leave at termination will be paid at the average rate only.</p> <p>Entitled annual leave (including any leave entitlement following parental leave) extends the employee's termination date and any public holidays occurring in this period are paid at RDP if they are assessed as due. Should the employee be due</p>

Description	Element	Pay/accrual basis
	<p>LSLPDOUT</p> <p>Additional payments at termination:</p> <p>AVALPDOUT</p> <p>GRAT</p> <p>EXCSPDOUT</p> <p>OCLVEPDOUT</p> <p>NGNWPDOUT</p> <p>RRTAPDOUT</p> <p>RECLPDOUT</p> <p>SEVR</p> <p>SHFTP DOUT</p> <p>CMETILPDOUT</p> <p>WKNWPDOUT</p>	<p>a notional public holiday then their termination date is further extended by the number of notional public holidays. If the employee is transferring from permanent to casual, they will not get paid out for notional public holidays. Any other leave with outstanding balances (long service leave, shift leave) that are paid out do not extend the termination date. An employee's otherwise working day is assessed on the prior 12 weeks working pattern to determine if they would be due the public holiday.</p> <p>Any alternative days owed are paid out using the annual leave rates.</p> <p>Gross earnings from the pay period after the anniversary has fallen to the termination date, including termination payments for leave are multiplied by 8,10 or 12% (MECA dependant) to calculate the annual leave accrual amount. Any annual leave that has been taken in advance is deducted from the annual leave accrual amount before being paid to the employee.</p> <p>If an employee does not return from extended LWOP or parental leave, they are terminated at the date that they started the LWOP or parental leave. If an employee on parental leave is paid for keeping in touch hours, they are still terminated at the day that the parental leave commenced.</p> <p>If the employee has multiple jobs (unless casual), and one role terminates no termination payment is made. The employee's leave related to that job remains available to them in their remaining job.</p>
Casual employees	<p>PH8%</p> <p>PH8%PMT</p> <p>PHRM</p> <p>PHRMPMT</p> <p>PHSM</p> <p>PHSMPMT</p>	<p>Casual employees utilise Microster to record all shifts worked. When the employee is required to work, they are scheduled onto the roster. Depending on the MECA, casual employees are due the same allowances as permanent staff.</p> <p>Every pay period, the casual employee's gross earnings receive an 8% loading (pay as you earn ("PAYE") holiday pay) in a separate allowance code. Due to their MECA, any casual RMO's and SMO's get 11.55% loading. This loading is added onto penal rates and allowances as well as their ordinary hours. In all cases this is shown as a separate amount on the employee's payslip.</p> <p>If an employee has multiple jobs where one role is casual and the other permanent the employee will not receive PAYE on the casual earnings. The employee's casual gross earnings will be included in the employee's total gross earnings, but no extra leave is calculated for the casual contract.</p> <p>Employees who are on parental leave may be employed as a casual, receiving PAYE on their casual earnings. This role does not count towards the employee's keeping in touch days.</p> <p>If an employee works a public holiday, they are paid time and a half (or double depending on the MECA). An alternative day would only be provided if submitted by the employee's manager. There is no analysis completed or policy as to when an employee would receive an alternative day.</p>

Description	Element	Pay/accrual basis
		<p>If an employee does not work a public holiday, they generally will not get paid for the public holiday as not worked. The employee's manager has the option to pay the employee for the public holiday not worked if they input the hours into Microster.</p> <p>Casual employees are provided with 40 hours sick leave entitlement after six months employment or as stated in the MECA. When the casual employee takes sick leave, they are paid for the hours rostered plus any penal rates.</p>

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## Appendix B WCDHB leave payment rules

### Payroll basis

Employees are paid on a fortnightly basis (two fortnight tranches are paid, WF1 and WF2). The payroll system, Ascender PS Enterprise ("PSe") holds the payroll and HR information for employees.

Employees are paid either via manual timesheets that are provided to the payroll team to enter fortnightly for each alternate pay group, or via "ORDSAL" which is an automatic payment of the employee's contracted working hours.

The WCDHB payroll team manually apply the Multiple Employee Collective Agreement ("MECA") awards including relevant additional allowances to each employee prior to the inputting the data into PSe. When there are changes to employee's profiles, these are processed by the WCDHB Admin Team before the Payroll Team updates the employee's record in PSe as required.

PSe was implemented for WCDHB in April 2010. Prior to this, the payroll system used was StarGarden HRMS ("StarGarden"). Transactional data is not available for this system. All employees average gross earnings were loaded into PSe as part of the implementation process.

### Time recording

Where the employees are not paid via ORDSAL, WCDHB use manual timesheets to record the employee's hours worked each fortnight. Rosters are controlled per department and the Payroll Team only receives the hours worked at the end of the fortnight when they receive the timesheets. Timesheets are reviewed and approved by the employee's manager and submitted to payroll as they are responsible for ensuring that employees' shifts and leave are recorded, including any additional allowances and hours worked. For employees who are paid via ORDSAL, leave requests are processed through MAX People and Capability Services or paper forms that are processed manually. For home support workers, timesheets from excel are provided to the payroll team to be manually entered in PSe.

### Leave payment

The table below details the basis on which each leave category is paid to the selected employee.

Description	Element	Pay/accrual basis
Annual leave	ANNL	WCDHB pay and accrue annual leave in hours.
	ANNLPAR	Annual leave is accrued based on the employee's hours worked in each pay period. Employees are entitled to four weeks annual leave per entitlement year. They may be entitled to additional weeks of entitlement depending on their MECA. Senior Medical Officers ("SMOs") and Resident Medical Officers ("RMOs") are entitled to six weeks leave per entitlement year. Annual leave accrual is capped dependent on the employee's scheme. An employee on a 160 hour scheme cannot accrue more than 160 hours of annual leave in a year.
	ANNLPARSMO	
	LSL	Employees annual leave is paid at the higher of their average rate and ordinary rate.
	AL_CASH4 (cash up)	
	ANNLPDOUT (cash up)	These are calculated as follows:  Average rate: Employees gross earnings for the past 52 weeks (or less if the employee is in their first year of employment), divided by the base hours worked (not including any overtime).
	PAL_CASH4 (cash up)	
	ALPARPDOUT (cash up)	
	ALPRSMOPD (cash up)	

Description	Element	Pay/accrual basis
	LSPDOUT (cash up)	Ordinary rate: The higher of the employee's base rate (excluding any penal rates) and the four-week ordinary earnings divided by the base hours worked in the same period.
	Unpaid leave codes LWOP	Gross and ordinary earnings are calculated dependant on the allowance codes flagged within PSe.  WCDHB treat employees with multiple jobs in a number of different ways depending on what type of roles they are (permanent or casual) and when they were set up. Employees may have two different employee numbers (one for each role) or a single employee number. Where both roles are permanent, both will accrue leave on the hours worked and gross and ordinary earnings of both roles are combined to create the annual leave average calculations and compared to the base rate of the role that the leave is being taken under.
	Unpaid leave codes available but not present in the sample payroll data LVENOTPD	Where one is casual and the other permanent, leave will only be accrued on the permanent role. PAYG leave will be paid on the casual gross earnings.  Leave without pay ("LWOP")  When an employee takes a pre-approved period of LWOP greater than a week, the employee's role is changed, and their annual leave accrual is stopped until the pay period that they return.  For shorter periods of LWOP, this is entered as a transaction in the payroll data, and the employee will continue to accrue leave during this time. LWOP is included in the annual leave divisor hours (equivalent to hours worked). When an employee takes leave after a period of LWOP, as the hours worked during the period of LWOP are recorded, so the divisor has not been reduced by the hours of LWOP taken.  Parental leave  When an employee is on parental leave, their employment role is changed in the payroll system and they are put on a different annual leave accrual scheme (ANNLPAR). Under this scheme, the employee will accrue leave on their contracted hours. Employees continue to accrue annual leave and the balance is shown separately to their normal annual leave entitlement. Regardless of when it is taken, it is paid at the employee's average rate only.  Annual leave cash up  Employees are only able to cash up one week of statutory leave per entitlement year. They are able to cash up their additional contractual leave. There is an approval process to request the annual leave cash up and this will only be approved if there is entitled leave available.  Consecutive leave  If an employee takes leave across multiple pay periods, the leave rate for each pay period is calculated separately.  Long service leave  Long service leave is paid at the higher of the employee's average rate or the base rate. Long service leave entitlement is dependent on each employee's MECA.

Description	Element	Pay/accrual basis
		<p>Rehire</p> <p>If an employee returns within three months or MECA depending the employee will retain their original commencement date for the purposes of long service leave and additional contractual entitlements.</p> <p>Shutdown</p> <p>The operating theatres are closed for one to two weeks over the Christmas period. Staff in this department are encouraged to take leave but can work through if they do not have balance available.</p>
Public holiday not worked	PHOL	<p>WCDHB pay employees for public holidays not worked at the employee's Relevant Daily Pay ("RDP") when the details of the shift that would have been worked are provided. If the employee does not work Monday to Friday daytime hours and the payroll team do not have information about the shift that the employee would have worked on that day, the employee is paid at their average rate, utilising the same calculation as described for annual leave.</p> <p>RDP is calculated as the employee's base rate plus penal rates and allowances for the hours recorded and approved by the employee's manager for that day.</p> <p>It is the responsibility of the employee's manager to determine whether a public holiday would be the employee's otherwise working day or not. For employees who are paid automatically via ORDSAL, the payroll system views the employees as working Monday to Friday and not their actual roster. These employees are therefore automatically paid for a public holiday not worked. This is not recorded as a separate transaction in the payroll data.</p>
	<p>Additional codes available but not present in the sample payroll data</p> <p>BORD</p> <p>ROFF</p>	
	<p>Additional codes paid when not working specific shifts:</p> <p>NGNW</p> <p>OT2NW</p> <p>P1NW</p>	

Description	Element	Pay/accrual basis
	WKNW SANW	
	Additional codes available but not present in the sample payroll data AFNW HFNW OTNW PENW	
Public holiday worked	STAT	When an employee works a public holiday, WCDHB will pay the employee at time and a half (or double time, depending on the MECA) for the hours worked. Specific additional codes are used on a public holiday worked to pay allowances and penal rates.
	Additional codes paid when working specific shifts: NGHT OCPH OCWK OCW7	An alternative day is manually credited.  If an employee only works for part of the public holiday, they are paid time and a half or double time for the hours worked on the public holiday, the balance of hours based on the employee profile is paid at single time as a public holiday not worked.  If an employee works across midnight into or out of a public holiday the employee will only be paid for the public holiday worked for the hours that fall in the public holiday (i.e. the shift will be paid partially at ordinary time and partially as a public holiday worked). The employee is provided with one alternate day.
	Additional codes available but not present in the sample payroll data STNG	

Description	Element	Pay/accrual basis
	STWD STAH STAR STAF STOT STHF STHW	
Sick leave	SICK	WCDHB pay employees for statutory sick leave at RDP as previously described. If the payroll team do not have information about the shift that the employee would have worked on that day, they are paid at their average rate as previously described.  Contractual sick leave is paid using base rate only for the hours taken. The system will pay statutory sick leave prior to contractual sick leave. Employee's sick leave is held in hours based on a 7, 8, 10 or 12 hour day. Where an employee takes sick leave hours greater than their profiled day, the actual hours taken is deducted from their balance so more than a day may be deducted.  For home-based support, sick leave balances are held in days. When an employee takes a sick day, they will be paid for the hours rostered to work that day and one day will be removed for the balance.
	Refer to public holiday not worked for additional codes paid when not working.	
Bereavement leave	BERE	WCDHB pay employees for the first three statutory days of bereavement leave at RDP as previously described. If the payroll team do not have information about the shift that the employee would have worked on that day, they are paid at their average rate as previously described. After the first three days, WCDHB pay bereavement leave at base rate.  As with other bereavement, alternative, public holiday, sick or family violence ("BAPSF") leave types, bereavement leave is paid in hours.  It is the managers discretion how many days/hours the employee is entitled to.
	Refer to public holiday not worked for additional codes paid when not working.	
Alternative leave	LIEU LIEUHRS LIEUPDOUT (cash up)	WCDHB refer to alternative leave as lieu days.  WCDHB pay employees for alternative leave at RDP as previously described. If the payroll team do not have information about the shift that the employee would have worked on that day, they are paid at their average rate as previously described.
	Refer to public holiday not worked for	Alternate days are held in the system as days but are paid to employees in hours, based on their timesheet for the day taken. Only whole days in lieu can be taken. If the employee decides to take half a day of lieu, they will be paid for half a day of hours but the whole day is reduced from the balance.



Description	Element	Pay/accrual basis
	additional codes paid when not working.	If an employee chooses to cash out any alternative leave, they can do so after 12 months from being entitled to the day. When the leave is cashed up, it is paid at the higher of the annual leave rates as described above at the time that leave was taken.
Family violence leave	DISC	WCDHB use a discretionary sick leave code to pay family violence leave.
	Refer to public holiday not worked for additional codes paid when not working.	WCDHB pay employees for DISC leave at base rate.
Termination	Leave payments: ANNLPDOUT ALPARDOUT ALPRSMOPD ANNLTTERM LIEUPDOUT PHOLFIN LSLPDOUT	<p>Termination payments are calculated in PSe and reviewed by the Payroll Team using an Excel spreadsheet to check calculations and taxes due.</p> <p>Any entitled annual leave outstanding is calculated using the annual leave calculations previously described. SMO's also receive any relevant permanent allowances between the actual termination and effective termination date (the effective termination date being the date of termination and moved out to capture any entitled leave the employee has). Parental annual leave at termination will be paid at the average rate only.</p> <p>Entitled annual leave (including any leave entitlement following parental leave) extends the employee's termination date and any public holidays occurring in this period are paid at RDP if they are assessed as due. Should the employee be due a notional public holiday then their termination date is further extended by the number of notional public holidays. An employee's otherwise working day is manually assessed on their working pattern to determine if they would be due the public holiday. If the employee is transferring from permanent to casual, all entitlements at termination are paid out. Any other leave with outstanding balances (e.g. long service leave, shift leave etc.) that are paid out do not extend the termination date.</p>
	Additional payments at termination: AVALFIN GRAT EXCSFIN RRTAFIN SEVR SHFTPDOUT CMETILPDOUT NRCBFIN	<p>Any alternative days owed are paid out using the annual leave rates previously described.</p> <p>Gross earnings from the pay period after the anniversary has fallen to the termination date, including termination payments for leave are multiplied by 8/10/12% (MECA dependant) to calculate the annual leave accrual amount. Any annual leave that has been taken in advance is deducted from the annual leave accrual amount before being paid to the employee.</p> <p>If an employee does not return from extended LWOP or parental leave, they are terminated at the date that they hand in their resignation.</p> <p>If the employee has multiple jobs (unless casual), and one role terminates no termination payment is made. The employee's leave related to that job remains available to them in their remaining job.</p>

Description	Element	Pay/accrual basis
	PBASFIN	
	Additional codes available but not present in the sample payroll data RECLPDOUT	
Casual employees	PH8% PH8%PMT PHRM PHRMPMT PHSM PHSMPMT	<p>Casual employees are entered in PSe and when the employee is required to work, they are scheduled onto the roster by their manager. Casual employee submit timesheets just like permanent variable hours employee's noted above. Depending on the MECA, casual employees are due the same allowances as permanent staff.</p> <p>Every pay period, the casual employee's gross earnings receive an 8% loading (PAYG holiday pay) in a separate allowance code. This is automatically calculated in PSe. Due to their MECA, any casual RMO's and SMO's get an 11.55% PAYG loading. This loading is added onto penal rates and allowances as well as their ordinary hours. In all cases this is shown as a separate amount on the employee's payslip.</p> <p>If an employee has multiple jobs where one role is casual and the other permanent and the employee is on separate employee numbers, they will receive PAYG on the casual earnings. The employee's casual gross earnings will not be included in the employee's total gross earnings.</p> <p>Employees who are on parental leave may be employed as a casual, receiving PAYG on their casual earnings. This role does not count towards the employee's keeping in touch days.</p> <p>If an employee works a public holiday, they are paid time and a half (or double depending on the MECA). An alternative day is not credited to the employee. There is no analysis completed or policy as to when an employee would receive an alternative day.</p> <p>If an employee does not work a public holiday, they generally will not get paid for the public holiday as not worked. The employee's manager has the option to pay the employee for the public holiday not worked if they input the hours to the timesheets.</p> <p>After six months employment, casual employees are provided with their statutory sick leave entitlement. There is no balance provided to the employee but a manual check is performed on prior absences to ensure that the employee has entitlement available. When the casual employee takes sick leave, they are paid for the hours rostered plus any penal rates.</p>

## Appendix C CDHB employee sample selection methodology

### Background / context

Compliance with the Holidays Act is a challenge for a significant number of New Zealand organisations. Canterbury District Health Board ("CDHB") are part of the New Zealand District Health Boards ("DHB") working group that has worked alongside the Labour Inspectorate (a division within the Ministry of Business Innovation and Employment ("MBIE")) and the Unions to agree a consistent way forward that will be implemented across all DHB's.

The framework to address Holidays Act issues across the DHB's has been agreed with each of the DHB's CEO's. In addition, the Labour Inspectorate has agreed that previous Enforceable Undertaking's ("EU's") will be redacted and rather each DHB will sign a Memorandum of Understanding ("MOU") committing to address and remediate the issues identified<sup>2</sup>.

The remediation programme will cover the period 1 May 2010 through to the change in systems and processes to address the instances of non-compliance identified.

The first stage of the programme of work is to complete a review of CDHB's current practices relating to Holidays Act calculations.

This paper provides an overview of the sampling and calculation methodology applied to select the CDHB employee sample for the Holidays Act review.

### Sampling methodology overview

The information below provides an overview of the key aspects of the sampling methodology applied in determining the employee sample selection for CDHB.

Sampling Period: 1 May 2010 - 30 June 2019.

Total number of employees in the period (including terminated employees): 21,803<sup>3</sup>.

Sample size:

196 employees have been selected from the entire population and comprises of casual, current and terminated employees.

Sample approach:

The requirements of the 12.04.19 Framework - Agreed Document ("Framework") and 20190412 Baseline Agreed Document ("Baseline") have been considered when selecting the sample employees for recalculations. The key categories for the employee sample based on the Framework document are shown below.

Framework sample requirement	Payroll information
Full time fixed hours	FT flag is marked, and employee is paid ordinary hours on 'ORDSAL' code.
Full time variable hours	FT flag is marked, and employee is paid ordinary hours on 'ORD' code.
Part time fixed hours	PT flag is marked, and employee is paid ordinary hours on 'ORDSAL' code.
Part time variable hours	PT flag is marked, and employee is paid ordinary hours on 'ORD' code.
Casual	Employee type contains "Casual".
Terminated	The employee's employment instance has a date in the date of leaving field within the scope period.
Multiple job holders	Employee has an indicator of have multiple roles.

<sup>2</sup> The MOU defines the calculations to be performed for the remediation only. Going forwards DHB's are required to be compliant with the Holiday's Act.

<sup>3</sup> This population is exclusive of any employee who has terminated before 1 May 2010 or employed after 30 June 2019. 33 employees who are solely in governance positions (determined by only being on the Award 'DFS - Director Fee for Services') are also excluded from this population.

When an employee is paid on the pay code 'ORDSAL', they will present a more fixed working pattern than employees who are paid on the ordinary pay code 'ORD'. As a result, employees who have been paid on the code 'ORDSAL' are considered to have fixed hours and employees who have been paid on the code 'ORD' are considered to have variable hours.

In addition to the requirements of the DHB's Framework and Baseline documents sample employees have been selected to cover the following CDHB specific groupings:

#### Professional groups

- ▶ Senior Medical Officers ("SMO's")
- ▶ Resident Medical Officers ("RMO's")
- ▶ Midwives and Nurses
- ▶ Allied Health
- ▶ Support (e.g. Kitchen Assistant, Orderly etc.)
- ▶ Management/Admin ("Admin")

#### Other sample considerations

The ratios of current versus terminated and permanent versus casual employees have been reviewed to confirm they are representative of the proportion (by professional groups) of the full population of employees at CDHB.

Employees from throughout the sample scope period have been selected to capture different system configurations and process changes.

Employees have been selected that cover all the employment agreements in place during the sample period.

#### Summary of employees selected

##### Overall summary

The table below provides a summary of the sample employees by both the DHB Framework categories and CDHB's professional groups.

Employees may have moved between categories (e.g. fixed full time to fixed part time) as well as groups (e.g. Support to Admin) during the sample period and their tenure at CDHB.

The table below captures all positions / areas for the sample 196 employees in the scope period and as employees may have worked under multiple categories or professional groups (e.g. due to job changes) the total in the table exceeds the total of 196.

Categorisation	Admin	Allied Health	Midwives and Nurses	RMO	SMO	Support	TOTAL
Full time fixed hours	13	3	2	11	7	4	40
Full time variable hours	14	31	41	3	4	10	103
Part time fixed hours	11	1	2	3	7	1	25
Part time variable hours	17	22	56	3	6	6	110
Casual	1	5	9	2	1	2	20
Terminated	15	14	30	4	5	7	75
Multiple job holders	4	10	10	1	3	1	29
TOTAL	75	86	150	27	33	31	

#### Current and terminated employees by professional group

101 current and 75 terminated employees have been selected. The table below shows the number of employees by professional group and these employees current or last employment status.

Grouping	Current	Terminated
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Admin	16	15
Allied Healthcare	23	14
Midwives and Nurses	40	30
RMO	10	4
SMO	5	5
Support	7	7
TOTAL	101	75

## Casual employees by professional group

A sample of 20 casual employees were selected from the following employment groups.

Grouping	Current and Terminated
Admin	1
Allied Healthcare	5
Midwives and Nurses	9
RMO	2
SMO	1
Support	2
TOTAL	20

## Sample employees by employment agreement

The table below captures all employee agreements for the sample 196 employees in the scope period and as such exceeds the total of 196.

Award	Award Description	Sample Employees
APR	APEX Med Physicist Registrars	1
AAT	APEX Anaesthetic Tech SECA	1
ACP	APEX Clin Physiologists/Tech	1
AM1	APEX Med Rad Techs 35 Hours/wk	3
AM2	APEX Med Rad Techs 40 Hours/wk	1
AMP	APEX Medical Physicists	2
APH	APEX Physiotherapists	1
APS	APEX Psychologists	1
APY	APEX Pharmacists	2
ART	APEX Radiation Therapists	1
AS1	APEX Sonographers 35 Hours/Wk	1
AS2	APEX Sonographers 40 Hours/Wk	2
ASO	APEX Scientific Officers	1
ASW	Amalgamated Support Services	1
BRE	Brackenridge Estate NZNO/NUPE	4
BRX	Brackenridge Estate Expired	2
CLS	Canterbury Linen Services E Tu	1
CSE	E tu/Comb Supp Serv Shift Eng	2
CSL	E tu Supp Services/ Electric	1
CSS	E tu Support Services	3



Award	Award Description	Sample Employees
EFC	E Tu Food Ser 11.5h Cater Asst	1
EFS	E Tu Food, Serv (Ex Compass)	1
ESE	E tu Supp Services/Shift Eng	1
ICA	Ind Emp Clerical & Admin (PSA)	11
IM1	Ind Emp SchA1-MH & PMH (PSA)	1
MLW	Medical Laboratory Workers	2
MMW	Meras Midwives & Snr Midwives	3
NAH	NUPE Allied Health & Technical	1
NAM	NUPE Mental Health Nursing	1
NDT	NUPE Dental	2
NDZ	Mirror NUPE Dental	1
NNS	NZNO Nursing / Midwifery	71
NNZ	Mirror NZNO Nursing/Midwifery	2
NSA	NUPE SchA-MH/PMHexcl ClinCo EX	1
NSD	NUPE Clerical Administration	2
NSS	NUPE Support Services	1
PA1	PSA AH S1exc MHlth/PMH Exp2015	18
PA3	PSA AH SA3 -Clinical Psych	2
PAT	PSA AH, Public Health & Tech	15
PCA	PSA Clerical & Admin CEA	12
PCZ	Mirror PSA Administrative CEA	1
PDN	PSA AH Dental Nse Exp2015	3
PM1	PSA SI SchA1 -MH/PMH	2
PSD	PSA AH Dental Therapy	1
RMO	Resident Medical Officers	17
RMX	Resident Medical Off Expired	1
SFQ	E TU Serv & Food Pay Equity	1
SFW	E TU Service & Food Workers	3
SIE	SI Shared Services Agency	1
SMO	Senior Med and Dental Officers	10
SMZ	Mirror Sen Med and Dental Off	1
STO	Specialty Trainees of NZ (RMO)	2
	Individual Employee Agreements <sup>4</sup>	70

Further details of the ratios, samples and movements between are shown in the sample employee spreadsheet ("CDHB 196 samples selected by EY - includes full employee list - Final").

<sup>4</sup> All Individual Employee Agreements ("IEA's") have been grouped under this single title for sampling purposes.

## Appendix D WCDHB employee sample selection methodology

### Background / context

Compliance with the Holidays Act is a challenge for a significant number of New Zealand organisations. West Coast District Health Board ("WCDHB") are part of the New Zealand District Health Boards ("DHB") working group that has worked alongside the Labour Inspectorate (a division within the Ministry of Business Innovation and Employment ("MBIE")) and the Unions to agree a consistent way forward that will be implemented across all DHB's.

The framework to address Holidays Act issues across the DHB's has been agreed with each of the DHB's CEO's. In addition, the Labour Inspectorate has agreed that previous Enforceable Undertaking's ("EU's") will be redacted and rather each DHB will sign a Memorandum of Understanding ("MOU") committing to address and remediate the issues identified<sup>5</sup>.

The remediation programme will cover the period 1 May 2010 through to the change in systems and processes to address the instances of non-compliance identified.

The first stage of the programme of work is to complete a review of WCDHB's current practices relating to Holidays Act calculations.

This paper provides an overview of the sampling and calculation methodology applied to select the WCDHB employee sample for the Holidays Act review.

### Sampling methodology overview

The information below provides an overview of the key aspects of the sampling methodology applied in determining the employee sample selection for WCDHB.

Sampling Period: 1 May 2010 - 30 June 2019.

Total number of employees in the period (including terminated employees): 2,513.

Sample size:

60 employees have been selected from the entire population and comprises of casual, current and terminated employees.

Sample approach:

The requirements of the 12.04.19 Framework - Agreed Document ("Framework") and 20190412 Baseline Agreed Document ("Baseline") been considered when selecting the sample employees for recalculations. The key categories for the employee sample based on the Framework document are shown below.

Framework sample requirement	Payroll information
Full time fixed hours	FT flag is marked, and employee is paid ordinary hours on 'ORDSAL' code.
Full time variable hours	FT flag is marked, and employee is paid ordinary hours on 'ORD' code.
Part time fixed hours	PT flag is marked, and employee is paid ordinary hours on 'ORDSAL' code.
Part time variable hours	PT flag is marked, and employee is paid ordinary hours on 'ORD' code.
Casual	Employee type contains "Casual".
Terminated	The employee's employment instance has a date in the date of leaving field within the scope period.
Multiple job holders	Employee has an indicator of have multiple roles.

When an employee is paid on the pay code 'ORDSAL', they will present a more fixed working pattern than employees who are paid on the ordinary pay code 'ORD'. As a result, employees who have been paid on the code

<sup>5</sup> The MOU defines the calculations to be performed for the remediation only. Going forwards DHB's are required to be compliant with the Holiday's Act.

'ORDSAL' are considered to have fixed hours and employees who have been paid on the code 'ORD' are considered to have variable hours.

In addition to the requirements of the DHB's Framework and Baseline documents sample employees have been selected to cover the following WCDHB specific groupings:

#### Professional groups

- ▶ Senior Medical Officers ("SMO's")
- ▶ Resident Medical Officers ("RMO's")
- ▶ Midwives and Nurses
- ▶ Allied Health
- ▶ Support (e.g. Kitchen Assistant, Orderly etc.)
- ▶ Management/Admin ("Admin")

#### Other sample considerations

The ratios of current versus terminated and permanent versus casual employees have been reviewed to confirm they are representative of the proportion (by professional groups) of the full population of employees at WCDHB.

Employees from throughout the sample scope period have been selected to capture different system configurations and process changes.

Employees have been selected that cover all the employment agreements in place during the sample period.

#### Summary of employees selected

##### Overall summary

The table below provides a summary of the sample employees by both the DHB Framework categories and WCDHB's professional groups.

Employees may have moved between categories (e.g. fixed full time to fixed part time) as well as groups (e.g. Support to Admin) during the sample period and their tenure at WCDHB.

The table below captures all positions / areas for the sample 60 employees in the scope period and as employees may have worked under multiple categories or professional groups (e.g. due to job changes) the total in the table exceeds the total of 60.

Categorisation	Admin	Allied Health	Midwives and Nurses	RMO	SMO	Support	TOTAL
Full time fixed hours	3	4	5	4	1	1	18
Full time variable hours	1	6	8	1	1	4	21
Part time fixed hours	4	4	2	1	3	1	15
Part time variable hours	3	7	11	1	1	3	26
Casual	2	1	4	1	1	1	10
Terminated	5	9	11	2	2	2	31
Multiple job holders	1	1	1	0 <sup>6</sup>	1	1	5
TOTAL	19	32	42	10	10	13	

#### Current and terminated employees by professional group

19 current and 31 terminated employees have been selected. The table below shows the number of employees by professional group and these employees current or last employment status.

<sup>6</sup> In the population of WCDHB, there are no RMO employees who are identified as multiple job holders.

Grouping	Current	Terminated
Admin	3	5
Allied Healthcare	3	9
Midwives and Nurses	6	11
RMO	2	2
SMO	3	2
Support	2	2
TOTAL	19	31

#### Casual employees by professional group

A sample of 10 casual employees were selected from the following employment groups.

Grouping	Current and Terminated
Admin	2
Allied Healthcare	1
Midwives and Nurses	4
RMO	1
SMO	1
Support	1
TOTAL	10

#### Sample employees by employment agreement

The table below captures all employee agreements for the sample 60 employees in the scope period and as such exceeds the total of 60.

Award	Award Description	Sample Employees
AM1	APEX Med Rad Techs 35 Hours/wk	1
WIT	APEX WCDHB IT Services	1
WPH	WCDHB Pharmacy (APEX)	1
ESF	E Tu Service & Food Workers	1
ESP	E Tu Spotless Food & Serv SECA	1
WSS	WCDHB Support Services (E tu)	4
IEA	Ind Employment Agreements	25
MLW	Medical Laboratory Workers	1
MMW	Meras Midwives & Snr Midwives	2
NNS	NZNO Nursing / Midwifery	10
NNZ	Mirror NZNO Nursing/Midwifery	1
PA1	PSA AH S1exc MHith/PMH Exp2015	4
PA3	PSA AH SA3 -Clinical Psych	1
PAT	PSA AH, Public Health & Tech	4
PCA	PSA Clerical & Admin CEA	5
PCZ	Mirror PSA Administrative CEA	1
PM1	PSA SI SchA1 -MH/PMH	7
PWT	PSA WCDB Telephonists	1
WHB	WCDHB Home Based Support (PSA)	4

Award	Award Description	Sample Employees
WHQ	WC Home Based Supp Pay Eq (PSA	1
RMO	Resident Medical Officers	5
SMO	Senior Med and Dental Officers	5
STO	Specialty Trainees of NZ (RMO)	1
NPH	Primary Health Care	1
	Individual Employee Agreements <sup>7</sup>	25

Further details of the ratios, samples and movements between are shown in the sample employee spreadsheet ("WCDHB 60 samples selected by EY - includes full employee list - Final").

<sup>7</sup> All individual Employee Agreements ("IES's") have been grouped under this single title for sampling purposes.

## Appendix E CDHB earnings inclusions and exclusions

The table below details the allowance codes that are included in the Gross Earnings ("GE") and Ordinary Earnings ("OE") used for annual leave payment calculations based on the sample population tested. The analysis performed for the below tables included allowance codes that are present in the sample data received for CDHB. A full analysis of all allowance codes will be required in the completion of the remediation and rectification phases.

Allowance Code	Allowance Description	CDHB GE	CDHB OE	EY GE	EY OE	Comment
72WK	>72 Hours per week	Y	N	Y	Y	
ACCF	ACCWk Related 1st wk	N	Y	Y	Y	In line with the Framework, the first week of ACC compensation paid by the employee is included in gross earnings.
ACCN	ACC Non Wk Related	Y	Y	N	N	
AD0800	Add Duties - 0800 - 2200	Y	N	Y	Y	
AD2200	Add Duties 2200 - 0800	Y	N	Y	Y	
ADD	Additional Duties	Y	N	Y	Y	
ADDH	Add Duties House Sur	Y	N	Y	Y	
ADDORD	Ordinary additional hrs	Y	Y	Y	Y	
ADDR	Add Duties Reg/SHO	Y	N	Y	Y	
ADDRAD	Add Duties Radiology SMO	Y	N	Y	Y	
ADPH08	Add Duties PH - 0800 - 2200	Y	N	Y	Y	
ADPH22	Add Duties PH - 2200 - 0800	Y	N	Y	Y	
ADRN	Add Duties Sen Reg AdvTrng Nt	Y	N	Y	Y	
ADRT	Add Duties Sen Reg AdvTrng	Y	N	Y	Y	
AFTN	Afternoon Duty Allow	Y	N	Y	Y	
AL_CASH4	Annual Lve 4th Wk Payout	N	N	N	N	Providing this code is only used to cash up the first week of statutory annual leave, it is not included in gross earnings.
ALPARPDOUT	Parental Annual Leave Paid Out	N	N	Y	N	
ANNL	Annual Leave	Y	Y	Y	Y	
ANNLPAR	Annual Leave	Y	Y	Y	Y	
ANNLPDOUT	Annual Lve Paid Out	N	N	Y	N	After discussion with CDHB, this code is used to pay out cashed up leave and entitled leave at termination.
ANNLTERM	AnnualLve Pd on Term	N	N	N	N	
ARAL	Add Responsibility	Y	N	Y	Y	
ARRS	Arrears	Y	N	Y	Y	Arrears payments could be for greater than the prior four weeks.



Allowance Code	Allowance Description	CDHB GE	CDHB OE	EY GE	EY OE	Comment
AVAL	Availability	Y	N	Y	Y	
AVALPMT	Availability	Y	N	Y	Y	
BERE	Bereavement Leave	Y	Y	Y	Y	
BRAL	Body Removal Allow	Y	N	Y	Y	
BRCLTH	Brackenridge Clothing	N	N	N	N	
BROR	Bridge Ord ovr 80hrs	Y	Y	Y	Y	
BSAL	Broken Shift Allow	Y	N	Y	Y	
CB0800	Call Back 0800 - 2200	Y	N	Y	Y	
CB1.5	Call Back @ T1.5	Y	N	Y	Y	
CB2200	Call Back - 2200 - 0800	Y	N	Y	Y	
CBPH08	Call Back PH 0800 - 2200	Y	N	Y	Y	
CBRE	Call Back Reg/SHO NghtWkd Rate	Y	N	Y	Y	
CBRG	Call Back Reg/SHOs	Y	N	Y	Y	
CBT2	Call Back @ T2	Y	N	Y	Y	
CCVR	Cross Cover	Y	N	Y	Y	
CCVR2	Cross Cover RMO half rate	Y	N	Y	Y	
CLTH	Clothing Allowance	N	N	N	N	
CLTHPMT	Clothing Allowance	N	N	N	N	
CME	Cont Med Ed SMO	Y	Y	Y	Y	
CMEIT	CME IT Reimbursement tx	N	N	N	N	
CMEREIMB	CME Expense Reimbursement	N	N	N	N	
CMETIL	CME TIL	Y	Y	Y	Y	
CONF	Conference Leave	Y	Y	Y	Y	
COUR	Course Leave	Y	Y	Y	Y	
CREM	Cremation Allowance	Y	N	Y	N	
CTAG	Clin Training Agency	Y	Y	Y	Y	
CTED	Continuing Education	Y	Y	Y	Y	
DAOA	DAO - Available	Y	N	Y	Y	
DAORPMT	DAO - On Roster	N	N	Y	Y	
DFEE	Directors Fees	N	N	N	N	
DISC	Sick Discretionary	Y	Y	N	N	Where sick leave is paid on this code is truly discretionary, it is not included in gross earnings.
DNHL	Dent Therp Sch Hols	Y	Y	Y	Y	
EDNZ	Education Leave	Y	Y	Y	Y	
EDTH	ExtraDuties Hse Surg	Y	N	Y	Y	
EDTR	Extra Duties Reg/SHO	Y	N	Y	Y	
EPUPMT	Expert User Allow	N	N	Y	Y	
EQUPLMT	Equalisation Payment	Y	N	Y	Y	
EXCS	Excessive Hrs Allow	Y	N	Y	Y	

Allowance Code	Allowance Description	CDHB GE	CDHB OE	EY GE	EY OE	Comment
EXCSPDOUT	Excess Paid Out On Final Pay	Y	N	Y	N	
EXCSPMT	Excessive Hrs Allow	Y	N	Y	Y	
EXPREIMB	Expense Reimbursement	N	N	N	N	
FFSV	Fee for Serv Payment	Y	N	Y	Y	
FTWR	Footwear Payment	N	N	N	N	
FTWRPMT	Footwear Payment	N	N	N	N	
GRAT	Gratuity	N	N	Y	N	
H&ST	Hlth & Safety Train	Y	Y	Y	Y	
HDAL	Higher Duties Allow	Y	N	Y	Y	
HDALPMT	Higher Duties Allow	Y	N	Y	Y	
IBTR	In Between Travel Time	Y	N	Y	Y	
JURY	Jury Service Leave	Y	Y	Y	Y	
LAUNDRY1	Laundry Allowance 1	N	N	N	N	
LAUNDRY2	Laundry Allowance 2	N	N	N	N	
LIEU	Lieu Day	Y	Y	Y	Y	
LIEUHRS	Lieu Day	Y	Y	Y	Y	
LIEUPDOUT	Lieu Days Paid Out	N	N	Y	N	
LSL	Long Service Leave	Y	Y	Y	Y	
LSLPDOUT	LongSve Lve Paid Out	N	N	Y	N	
LSUM	Lump Sum Payment	Y	N	Y	N	
LWOP	Leave Without Pay	Y	Y	N	N	
MEAL	Meal Allowance	N	N	N	N	
MED	Med Defence Insuranc	N	N	N	N	
MEDE	Med Education RMO	Y	Y	Y	Y	
MEDG	Med Defense Insuranc-15% gst	N	N	N	N	
MILE	Mileage	N	N	N	N	
MINT	Miscellaneous NonTax	N	N	N	N	
MIST	MiscellaneousTaxable	Y	N	N	N	
MLDT	Mileage -Dental/Hme Bse Supp	N	N	N	N	
MVNT	Motor Vech Allow NT	N	N	N	N	
MVNTPMT	Motor Vech Allow NT	N	N	N	N	
N9B.5	No 9 Hr Break T.5	Y	N	Y	Y	
N9BT1	No 9 Hr Break T1	Y	N	Y	Y	
NGAL	Night Allowance	Y	N	Y	Y	
NGHT	Night Duty	Y	N	Y	Y	
NGNW	Night Duty Not Wkd	Y	N	Y	Y	
NMB.5	No Meal Break T.5	Y	N	Y	Y	
NMBT1	No Meal Break T1	Y	N	Y	Y	
NO8H	No 8 Hour Break	Y	N	Y	Y	
NTRA	Night Rate	Y	N	Y	Y	
NUISANCEC	Nuisance Calls APEX	Y	N	Y	N	
OCAEPMT	OnCall Available Emp	Y	N	Y	Y	

Allowance Code	Allowance Description	CDHB GE	CDHB OE	EY GE	EY OE	Comment
OCIN	On Call Info Serv/Secondary	Y	N	Y	Y	
OCLVE	On Call Leave MRT	Y	Y	Y	Y	
OCLVEPDOUT	On Call Leave MRT Paid Out	Y	Y	Y	N	
OCMF	On Call Mon To Fri	Y	N	Y	Y	
OCPH	On Call Public Hol	Y	N	Y	Y	
OCR4	On Call RMOs 1:4	Y	N	Y	Y	
OCRM	On Call RMOs	Y	N	Y	Y	
OCWK	On Call Weekend/Stat	Y	N	Y	Y	
OPLISTDAY	Outplace List Day SCross/St G	Y	N	Y	Y	
OPLISTNGHT	Outplace List Night SCross/St G	Y	N	Y	Y	
ORD	Ordinary	Y	Y	Y	Y	
ORDSAL	Ordinary -Salary	Y	Y	Y	Y	
ORDSAL-2	Ordinary Salary-PC2	Y	Y	Y	Y	
OT1.5	Overtime @ T1.5	Y	N	Y	Y	
OT2	Overtime @ T2	Y	N	Y	Y	
P1/2	Penal 1/2	Y	N	Y	Y	
P1/2NPMT	Phone 1/2 Non Taxabl	N	N	N	N	
PACTPMT	Pharmacy PACT Allowance	Y	Y	Y	Y	
PAIDBRK	Paid Break Between Duties	Y	Y	Y	Y	
PAL_CASH4	Parent Annl Lve 4th Wk Payout	N	N	N	N	Providing this code is only used to cash up the first week of statutory annual leave, it is not included in gross earnings.
PAR	Parental Lump Sum	Y	N	Y	Y	
PARPMT	Parental Lump Sum pd by period	Y	N	Y	Y	
PBAS	Pers Alw Basic Hours	Y	N	Y	Y	
PBASPMT	Pers Alw Basic Hours	Y	N	Y	Y	
PCAD0800	Reg Phone On Call 0800-2200	Y	N	Y	Y	
PDRP	Pro Dev &Recognition	Y	Y	Y	Y	
PFNT	Phone Full NT	N	N	N	N	
PFNTPMT	Phone Full NT	N	N	N	N	
PFTX	Phone Full Taxable	Y	N	Y	Y	
PFTXPMT	Phone Full Taxable	N	N	Y	Y	
PH8%	Prop Hols 8%	N	N	Y	Y	
PH8%PMT	Prop Hols 8%	N	N	Y	Y	
PHOL	Public Holiday	Y	Y	Y	Y	
PHRMPMT	Prop Hols RMO 11.55%	N	N	Y	Y	
PHSMPMT	Prop Hols SMO 11.55%	N	N	Y	Y	
PNL1	Penal 1	Y	N	Y	Y	

Allowance Code	Allowance Description	CDHB GE	CDHB OE	EY GE	EY OE	Comment
PRAG	Practice Cert Reim- 15%gst	N	N	N	N	
PRAGTRN	Practice Cert Reim- 12.5%gst	N	N	N	N	
PROF	Professional Fees	N	N	N	N	
PROG	Profession Fees - 15%gst	N	N	N	N	
QUAKE	Earthquake	Y	Y	Y	Y	
RECL	Rost AH On Call Dut	Y	N	Y	Y	
RECLPMT	Rost AH On Call Dut	Y	N	Y	Y	
RESTRDO	RMO Rest Day	Y	Y	Y	Y	
RISK	At Risk Payment	Y	N	Y	N	Where a code is truly discretionary, this can be excluded from gross earnings.
RRTA	Recruit & Retention	Y	N	Y	Y	
RRTAPMT	Recruit & Retention	Y	N	Y	Y	
RUBB	Rubbish Run Duties	Y	N	Y	Y	
S1.5	Shift Work at T1.5	Y	N	Y	Y	
SERH	Service Holiday CLS	Y	Y	Y	Y	
SEVR	Severence	N	N	Y	N	
SFAL	CLS Shift Allowance	Y	N	Y	Y	
SHFT	Shift Leave	Y	Y	Y	Y	
SHFTPDOUT	Shift Leave Paid Out	N	N	Y	N	
SICK	Sick Leave	Y	Y	Y	Y	
SICKHRS	Sick Leave	Y	Y	Y	Y	
SLND	Sick Leave -No deduction	Y	Y	Y	Y	
SLWP	Sick Lve Without Pay	Y	Y	N	N	
SNOW	Snowed In	Y	Y	Y	Y	
SOCK	Sock Payment	N	N	Y	N	
SOVR	Sleepover Allowance	Y	Y	Y	Y	
SPCBPMT	Spec Contribtion All	N	N	Y	Y	
SPEC	Special Paid Leave	Y	Y	Y	Y	
STAH	Stat AddDut Hse Surg	Y	N	Y	Y	
STAR	Stat Add Duties Reg	Y	N	Y	Y	
STAT	Stat Holiday Duty	Y	Y	Y	Y	
STDN	Stand down	Y	Y	Y	Y	
STDY	Study Leave	Y	Y	Y	Y	
STRU	Strike - Unpaid	Y	Y	N	N	
STWK	Stop Work	Y	Y	Y	Y	
TEA	Tea Allowance	N	N	N	N	
TEAPMT	Tea Allowance	N	N	Y	Y	
TIL	Time in Lieu	Y	Y	Y	Y	
TOOL	Tool Allowance	N	N	N	N	
TOOLPMT	Tool Allowance	N	N	Y	Y	
TRAN	Transport Allowance	N	N	N	N	

Allowance Code	Allowance Description	CDHB GE	CDHB OE	EY GE	EY OE	Comment
TRAV	Travel Hours SMO's	Y	Y	Y	Y	
TRCB	Transport 4 Callback	Y	N	Y	Y	
TRNG	Training Grant RMO-15%gst	N	N	N	N	
TRNGTRN	Training Grant RMO-Non GST	N	N	N	N	
UDEL	Union Delegates Lve	Y	Y	Y	Y	
UEDU	Union Education Lve	Y	Y	Y	Y	
WEND	Weekend Duty	Y	N	Y	Y	
WINF	Work Inj (First Wk)	Y	Y	Y	Y	
WINF\$	Work Inj (First Wk) \$\$	Y	N	Y	Y	
WINS	Wk Inj Subsequent Wks	Y	Y	N	N	
WINS\$	Wk Inj Subsequent Wks \$\$	Y	N	N	N	
WINU	ACC WR Unpaid	Y	Y	N	N	
WKBR	Weekend Brackenridge	Y	Y	Y	Y	
WKNW	Weekend Not Wkd	Y	N	Y	Y	
WKNWPDOUT	Weekend Duty on Final Pay	Y	N	Y	N	
XMNY	BRE Xmas/NewYear	Y	N	Y	N	

## Appendix F WCDHB earnings inclusions and exclusions

The table below details the allowance codes that are included in the Gross Earnings ("GE") and Ordinary Earnings ("OE") used for annual leave payment calculations based on the sample population tested. The analysis performed for the below tables included allowance codes that are present in the sample data received for WCDHB. A full analysis of all allowance codes will be required in the completion of the remediation and rectification phases.

Allowance Code	Allowance Description	WCDHB GE	WCDHB OE	EY GE	EY OE	Comment
ACCN	ACC Non Wk Related	Y	Y	N	N	
ACPT	Medical Spec Acc Payment	N	N	Y	Y	
ADDH	Add Duties House Sur	Y	N	Y	Y	
ADDR	Add Duties Reg/SHO	Y	N	Y	Y	
AL_CASH4	Annual Lve 4th Wk Payout	N	N	N	N	
ANNL	Annual Leave	Y	Y	Y	Y	
ANNLPAR	Annual Leave	Y	Y	Y	Y	
ANNLPDOUT	Annual Lve Paid Out	N	N	Y	N	
ANNLTERM	AnnualLve Pd on Term	N	N	N	N	
ARRS	Arrears	Y	N	Y	Y	
AVAL	Availability	Y	N	Y	Y	
AVALPMT	Availability	Y	N	Y	Y	
BERE	Bereavement Leave	Y	Y	Y	Y	
BRPR	Boiler Repair	Y	N	Y	Y	
CB1.5	Call Back @ T1.5	Y	N	Y	Y	
CBT2	Call Back @ T2	Y	N	Y	Y	
CCVR	Cross Cover	Y	N	Y	Y	
CLTH	Clothing Allowance	N	N	N	N	
CLTHPMT	Clothing Allowance	N	N	N	N	
CME	Cont Med Ed SMO	Y	Y	Y	Y	
CMETIL	CME TIL	Y	Y	Y	Y	
CMETILPDOT	CME TIL Paid Out	N	N	Y	N	
CONF	Conference Leave	Y	Y	Y	Y	
COUR	Course Leave	Y	Y	Y	Y	
EDTR	Extra Duties Reg/SHO	Y	N	Y	Y	
ERBO	RMO End of Run Bonus	Y	N	Y	N	
EXCS	Excessive Hrs Allow	Y	N	Y	Y	
EXCSPMT	Excessive Hrs Allow	Y	N	Y	Y	
EXPREIMB	Expense Reimbursement	N	N	N	N	
GRAT	Gratuity	N	N	Y	N	
HDAL	Higher Duties Allow	Y	N	Y	Y	
HNDV	Handover Allowance	Y	N	Y	Y	
IMRSPMT	Immediate Response Allowance	Y	N	Y	Y	
JURY	Jury Service Leave	Y	Y	Y	Y	
LIEU	Lieu Day	Y	Y	Y	Y	
LIEUHRS	Lieu Day	Y	Y	Y	Y	



Allowance Code	Allowance Description	WCDHB GE	WCDHB OE	EY GE	EY OE	Comment
LIEUPDOUT	Lieu Days Paid Out	N	N	Y	N	
LSL	Long Service Leave	Y	Y	Y	Y	
LSLPDOUT	LongSve Lve Paid Out	N	N	Y	N	
LSUM	Lump Sum Payment	Y	N	Y	N	
LWOP	Leave Without Pay	Y	Y	N	N	
MEDE	Med Education RMO	Y	Y	Y	Y	
MEDG	Med Defense Insuranc-15%gst	N	N	N	N	
MILE	Mileage	N	N	N	N	
MINT	Miscellaneous NonTax	N	N	N	N	
MIST	MiscellaneousTaxable	Y	N	N	N	
MLHB	Mileage -Home Based	N	N	N	N	
N9B.5	No 9 Hr Break T.5	Y	N	Y	Y	
N9BT1	No 9 Hr Break T1	Y	N	Y	Y	
NGHT	Night Duty	Y	N	Y	Y	
NGNW	Night Duty Not Wkd	Y	N	Y	Y	
NMB.5	No Meal Break T.5	Y	N	Y	Y	
NMBT1	No Meal Break T1	Y	N	Y	Y	
NRCBPMT	Non Routine CallBack	Y	N	Y	Y	
NSTOC	Nursing Telephone On Call	Y	N	Y	Y	
OC5M	On Call 5pm to midnight	Y	N	Y	Y	
OCLL	On Call /24hr period	Y	N	Y	Y	
OCLVE	On Call Leave MRT	Y	Y	Y	Y	
OCM7	On Call M-F 7am-5pm	Y	N	Y	Y	
OCMF	On Call Mon To Fri	Y	N	Y	Y	
OCMN	On Call Midnight to 7am	Y	N	Y	Y	
OPH	On Call Public Hol	Y	N	Y	Y	
OCW7	On Call Weekend/Stat 7AM - 5PM	Y	N	Y	Y	
OCWK	On Call Weekend/Stat	Y	N	Y	Y	
OFFN	Offensive material allowance	Y	N	Y	Y	
ORD	Ordinary	Y	Y	Y	Y	
ORDSAL	Ordinary -Salary	Y	Y	Y	Y	
ORDSAL-2	Ordinary Salary-PC2	Y	Y	Y	Y	
ORDSAL-3	Ordinary Salary-PC3	Y	Y	Y	Y	
OT1	Overtime @ T1	Y	N	Y	Y	
OT1.5	Overtime @ T1.5	Y	N	Y	Y	
OT2	Overtime @ T2	Y	N	Y	Y	
P1/2T	Phone 1/2 Taxable	Y	N	Y	Y	
P1/2TPMT	Phone 1/2 Taxable	Y	N	Y	Y	
PAL_CASH4	Parent Annl Lve 4th Wk Payout	N	N	N	N	
PAR	Parental Lump Sum	Y	N	Y	Y	
PBAS	Pers Alw Basic Hours	Y	N	Y	Y	

Allowance Code	Allowance Description	WCDHB GE	WCDHB OE	EY GE	EY OE	Comment
PBASPMT	Pers Alw Basic Hours	Y	N	Y	Y	
PH8%	Prop Hols 8%	N	N	Y	Y	
PH8%PMT	Prop Hols 8%	N	N	Y	Y	
PHOL	Public Holiday	Y	Y	Y	Y	
PHOLFIN	Public Holidays Final Pay	Y	Y	Y	N	
PHRMPMT	Prop Hols RMO 11.55%	N	N	Y	Y	
PIKE	Pike River Special Leave	Y	Y	Y	Y	
PNL1	Penal 1	Y	N	Y	Y	
PRAG	Practice Cert Reim- 15% GST	N	N	N	N	
PROG	Profession Fees - 15%gst	N	N	N	N	
RECD	Recreation Day	Y	Y	Y	Y	
RESTRDO	RMO Rest Day	Y	Y	Y	Y	
SABB	Sabbatical Leave	Y	Y	Y	Y	
SATM	Saturday Morning 1st 3 hrs	Y	N	Y	Y	
SEVR	Severance	Y	N	Y	N	
SHFT	Shift Leave	Y	Y	Y	Y	
SHFTPDOUT	Shift Leave Paid Out	N	N	Y	N	
SICK	Sick Leave	Y	Y	Y	Y	
SLWP	Sick Lve Without Pay	Y	Y	N	N	
SNOW	Snowed In	Y	Y	Y	Y	
SPEC	Special Paid Leave	Y	Y	Y	Y	
STAT	Stat Holiday Duty	Y	Y	Y	Y	
STDY	Study Leave	Y	Y	Y	Y	
STPS	Saturday Pm & Sunday shift	Y	N	Y	Y	
STRU	Strike - Unpaid	Y	Y	N	N	
UDEL	Union Delegates Lve	Y	Y	Y	Y	
WEND	Weekend Duty	Y	N	Y	Y	
WKNW	Weekend Not Wkd	Y	N	Y	Y	

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