## APPENDIX B

## 

### MASTER SERVICES AGREEMENT

**For the provision of Conservation and Stonemasonry**

Manatū Taonga, Ministry for Culture and Heritage

Insert Suppliers Full Legal Name

Insert date

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# Details

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# Date: Insert date

Parties

|  |  |
| --- | --- |
| **Buyer** | |
| Name | Manatū Taonga, Ministry for Culture and Heritage |
| Short name | Manatū Taonga |
| Notice details | 131 Lambton Quay, Wellington |
| Email/Attention | Category A/B: Insert Te Pae Mahara personnel or delete if other category  Category C: Insert Te Pae Māpuna personnel or delete if other category |
| **Supplier** | |
| Name |  |
| Notice details |  |
| Email |  |

# Background

1. Manatū Taonga is New Zealand’s Ministry for Arts, Culture and Heritage (Manatū Taonga) and has a responsibility to maintain and conserve a range of protected objects, war graves, historic graves and memorials in New Zealand and in the Pacific.
2. The Supplier provides the Services as defined in Clause 2 and specified in Schedule 1 and Schedule 2.
3. Manatū Taonga issued a Request for Quotes that is always open for the selection of a panel of suppliers of the services (the RFQ). Manatū Taonga selected the Supplier to become a member of the Panel based on the Supplier’s response to the RFQ.
4. The Supplier has represented that it has the expertise and a proven track record to successfully provide the Services.
5. The purpose of this Agreement is to record the terms on which the Supplier:
   1. is appointed to the Panel; and
   2. will provide the Services to Manatū Taonga if selected from the Panel to do so.

# Agreed Terms

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## Defined terms and interpretation

### 1.1 Defined terms

In this document:

**Agreement** means this agreement together with any variations agreed between the parties in accordance with clause 27.

**Agreement Year** means any twelve-month period commencing on the Commencement Date of this Agreement or any anniversary thereof.

**Associated Person** means any associate of Manatū Taonga, any related body corporate of Manatū Taonga and its associates and any person or entity with which Manatū Taonga may deal or be concerned;

**Confidential Information** means all information that one Party or its agents (“Providing Party”) provides to the other Party (“Receiving Party”) or which the Receiving Party becomes aware of regarding the structure, business, assets, liabilities, operations, or strategies of the Providing Party (including, but not restricted to, all documents, unpatented designs, drawings, data, specifications, reports, manufacturing processes, testing procedures and all other technical business and similar information) whether before or after the date of this Agreement.

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

**Supplier’s Staff** means the Supplier’s employees, agents, representatives, servants, or Subcontractors, or Subcontractor’s Staff, employed or appointed by the Supplier to carry out any or all of the Supplier’s obligations under this Agreement.

**Deliverables** means and includes all the work to be delivered by the Supplier as a result of providing the Services, as detailed in the relevant Statement of Work.

**Disengagement Services** means all services that are required by Manatū Taonga and that the Supplier is reasonably capable of providing to transition some or all the Services to Manatū Taonga or a new supplier of services similar to the Services.

**End Date** means the date specified as the expiry date in Schedule 1.

**Facility** means the facilities that Manatū Taonga advises in the Statement of Work where the Supplier will perform the Services at in accordance with this Agreement.

**Fees** means the fees payable by Manatū Taonga to the Supplier as specified in the applicable Statement of Work, subject to such additions to, or deductions from, that price as may be made in accordance with this Agreement.

**Force Majeure Event** means, in relation to either Party (the "Non-Performing Party"), an event or circumstance which is beyond the reasonable control of the Non-Performing Party and which is:

(a) an act of God;

(b) an act of public enemy, or declared or undeclared war or threat of war; or

(c) a terrorist act, blockade, revolution, riot, insurrection, civil commotion or public demonstration (other than one caused by the Non-Performing Party),

but does not include any event or circumstance which could have been avoided, prevented or circumvented by the exercise, by the Non-Performing Party, of best industry practice.

**GST** means goods and services tax chargeable pursuant to the GST Act.

**GST Act** means the Goods and Services Tax Act 1985, as amended from time to time.

**Incorporated Documents** means any document either:

* + 1. listed in Schedule 1;
    2. specified in a Statement of Work;
    3. attached to this Agreement;
    4. provided by Manatū Taonga; and/or
    5. provided by the Supplier and approved by Manatū Taonga.

**Intellectual Property Rights** includes, without limitation, all rights and interests, whether registered or not and whether registrable or not, in and to copyright, trademarks, service marks, designs, patents, database rights, business names, trade names, domain names, layout designs, rights in any undisclosed or confidential information (such as trade secrets or inventions), other proprietary and similar intellectual property rights and any rights to registration of such rights (whether created before or after the commencement of this Agreement) as may exist anywhere in the world.

**Key Personnel** means the persons specified in Schedule 1 or any Statement of Work.

**New Intellectual Property** means all Intellectual Property Rights created, made, or discovered by the Supplier or the Supplier’s Staff in the relation to the carrying out of Supplier’s service obligations under this Agreement.

**Panel** means the group of suppliers appointed to Manatū Taonga’s Monumental Stonemasons and Conservators Panel to provide work of the nature contemplated by this Agreement.

**Panellist** means any one of the suppliers appointed to the Panel.

**Pre-existing Intellectual Property** means all Intellectual Property Rights owned by or licensed to a Party as at the commencement of this Agreement or which are generated or licensed by a Party independently of this Agreement.

**Relationship Manager** means the person specified in Schedule 1 or any Statement of Work.

**Renewal Period** means the renewal period specified in Schedule 1 (if any).

**Schedule** means a schedule to this Agreement.

**Secondary Procurement Process** means a process conducted by Manatū Taonga among Panellists, to determine the Panellist or Panellists most appropriate to undertake a piece of work. Manatū Taonga will determine the conduct and evaluation of any Secondary Procurement Process. The Secondary Procurement Processes’ form may include:

1. a value for money assessment, where Manatū Taonga will “call off” based on rates, data sheets and other information provided;
2. a more involved process involving the issue of further request for proposal, request for quotation or similar document where the invited Panellist or Panellists will be required to respond with a further proposal; and/or
3. other forms Manatū Taonga may determine, having regard to value for money and other considerations.

**Services** means the services to be performed by the Supplier under this Agreement as defined in clause 2 and particularised in Schedule 1.

**Subcontractor** means any person to whom performance of any part or all the Supplier’s obligations under this Agreement has been subcontracted in accordance with clause 8.1(c) including the Subcontractor’s Staff.

**Subcontractor’s Staff** means the Subcontractor’s employees, agents, representatives, servants or Suppliers.

**Term** means the period specified in clause 3.1 during which the Services are to be supplied.

**Trademark** means a trademark created, owned or used by, or licensed to, Manatū Taonga or any of its Associated Persons, irrespective of whether that trademark is registered or registrable.

**Working Day** means a day, other than a Saturday or Sunday, on which banks in Wellington are open.

### 1.2 Interpretation

In this Agreement unless the context otherwise requires:

1. words importing the singular include the plural and vice versa;
2. words importing any gender include the other gender;
3. words importing persons include companies, other corporations and any body of persons (whether incorporated or unincorporated);
4. references to a person include the legal personal representatives, successors, and permitted assigns of that person;
5. headings are for convenience only and shall not form part of this Agreement;
6. any reference to any statute or regulations is a reference to that statute or those regulations as amended or replaced from time to time.

## 2. Provision of the Services

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2.1 Manatū Taonga appoints the Supplier and the Supplier accepts the appointment, to provide services. When Manatū Taonga requests the Supplier to perform services, the parties will execute a Statement of Work setting out all activities, services, works, matters, things and materials to be provided or performed by the Supplier (Services). Once executed the Statement of Work will form part of this Agreement.

2.2 The Supplier acknowledges that Manatū Taonga is not obliged to order any Service(s) from the Supplier and may order the same or similar services as contemplated by this Agreement:

1. from another member of the Panel; or
2. from a third party who is not a member of the Panel if Manatū Taonga considers that no member of the Panel is able to provide the relevant Service in accordance with Manatū Taonga’s requirements at that date.

2.3 The Parties agree that, if Manatū Taonga selects the Supplier to provide any Service(s) to Manatū Taonga the Service(s) shall be provided in accordance with this Agreement and the relevant Statement of Work.

2.4 In the event of any conflict between the body of this Agreement and a Statement of Work, the provisions of this Agreement will prevail to the extent of that inconsistency.

2.5 Work will be allocated to Panellists by following a Secondary Procurement Process.

2.6 Manatū Taonga will determine the form of and conduct any Secondary Procurement Process and will determine which Panellists (and how many) are invited to participate. Manatū Taonga reserves the right to direct purchase, where only one Panellist is invited to take part in, or responds to, a Secondary Procurement Process.

2.7 Manatū Taonga, in its sole discretion, will be responsible for conducting Secondary Procurement Processes, and for making selections from the Panel and allocating pieces of work. When a need for work arises, and it is appropriate for Manatū Taonga to use the Panel to fulfil that need, work will be allocated to the Panellist who, following a Secondary Procurement Process, is selected by Manatū Taonga as most suitable.

2.8 Factors Manatū Taonga may consider in conducting and evaluating a Secondary Procurement Process and determining suitability for work may include reliability; expertise; capability; experience and track record; capacity and availability; price; proposed approach; previous history working on the site or project and any other factor Manatū Taonga determines.

2.9 Manatū Taonga will notify the Supplier if it has been selected to provide Services in relation to a specific piece of work. Such a status will be subject and conditional to both parties preparing and signing a Statement of Work.

2.10 The Supplier acknowledges it is not guaranteed to receive any offers of work, offers to participate in a Secondary Procurement Process or that any minimum amount of Services will be purchased. The Supplier also acknowledges that it may not be invited to participate in any Secondary Procurement Processes.

2.11 The nature of this Panel appointment may involve the Supplier working closely alongside other Panellists and other service providers in any provision of the Services. The Supplier will always co-operate and act in good faith with all other Panellists and service providers and in a manner aimed at achieving the best possible outcomes for Manatū Taonga.

2.12 The Supplier also acknowledges and agrees that Manatū Taonga preserves the ability to and may at any time source any work needs from providers not on the Panel at Manatū Taonga’s sole discretion.

2.13 Manatū Taonga may already have existing contractual arrangements with providers who are providing services that are similar or identical to the Services and any such arrangements are not disturbed by the formation of the Panel or by this Agreement.

## 3. Term

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3.1 Subject to clause 3.2 (if specified in schedule 1) this Agreement commences on the Commencement Date and will continue in full force and effect in respect of all matter contemplated by it until:

(a) the End Date; or

(b) this Agreement is otherwise terminated in accordance with its terms.

3.2 If specified in Schedule 1, Manatū Taonga may extend this Agreement at its sole discretion for the Renewal Period (if any) by giving written notice to the Supplier at any time prior to the End Date.

## 4. Supplier’s Responsibilities

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4.1 The Supplier agrees with Manatū Taonga to perform the Services during the Term in accordance with this Agreement in return for the Fees.

4.2 In performing the Services, the Supplier shall:

(a) exercise the degree of skill, care and diligence reasonably expected of a Supplier performing services like the Services and in accordance with best industry practice;

(b) supply appropriately skilled personnel and appropriate resources;

(c) provide documents, reports, and other materials necessary to enable Manatū Taonga to receive the full benefit of the Services;

(d) provide the Services in accordance with any Incorporated Documents;

(e) comply with:

(i) all relevant statutes, regulations and rules or requirements of any government, local or public authority and professional codes of conduct or practice that may be applicable to the Services; and

(ii) all directions as to safety or safe practices from time to time issued by or on behalf of Manatū Taonga;

(f) co-operate with any third parties engaged by Manatū Taonga in relation to the Services and act in the best interests of Manatū Taonga when dealing with third parties engaged by Manatū Taonga; and

(g) keep detailed records of all things done by it in relation to the Services.

4.3 The Supplier and Supplier’s Staff are independent Suppliers and this Agreement does not, and shall not be construed to, create an employment, joint venture, agency, trust or partnership relationship between the Supplier and Manatū Taonga. The Supplier shall keep Manatū Taonga indemnified from and against all liability, claims and demands in respect of or arising out of any assertion by the Supplier contrary to this clause 4.3.

4.4 Subject to clause 9.6, the Supplier is responsible for paying all taxes, levies and payments relating to all payments made by Manatū Taonga to the Supplier for the Services, including, without limitation, the salaries, fees and costs of the Supplier’s Staff, including all relevant and employee benefits. The Supplier shall keep Manatū Taonga indemnified from and against all liability, claims and demands in respect of or arising out of any non-payment of the same.

4.5 The Supplier shall, at the request of Manatū Taonga, replace members of the Supplier’s Staff who are deemed unsuitable by Manatū Taonga (acting reasonably) for the tasks assigned to them.

## Standards, Delay and Failure to Provide Services

* 1. If the Supplier becomes aware that there is or is likely to be a delay in providing any or all of the Deliverables and/or Services by any time frame set out in the Statement of Work or otherwise communicated by Manatū Taonga to the Supplier, the Supplier will:

1. immediately inform Manatū Taonga verbally and in writing of:
2. the delay or likely delay;

(ii) the cause of the delay or likely delay; and

(iii) the steps the Supplier will take to minimise the delay under clause; and

(b) take all practicable steps to ensure the delay does not occur and, if the delay does occur, to minimise the period of delay; and

(c) take all steps reasonably required by Manatū Taonga to ensure the delay does not occur, and, if the delay does occur, to minimise the period of delay.

* 1. Manatū Taonga may, when acting reasonably it considers the Supplier has:
  + failed to provide some or all of the Deliverables and/or Services or associated deliverables set out in the relevant Statement of Work; or
  + provided Deliverables and/or Services or associated deliverables that contain errors, omissions; or
  + failed to meet the standard of care set out in clause 4.2(a); or
  + the Services provided are not in Manatū Taonga’s reasonable opinion of an acceptable standard or quality, (“deficient work” or “deficiency”):

1. by notice in writing require the Supplier to by the date stated in the notice remedy the failure or deficiency;
2. withhold any payment due to the Supplier until Manatū Taonga is satisfied that the failure or deficiency has been remedied or, if it cannot be remedied, deduct a portion from any Fees due to the Supplier to reflect the deficiency as determined by Manatū Taonga (acting reasonably; and/or
3. immediately terminate this Agreement.

## Key Personnel

* 1. The Supplier will ensure that, subject to this clause 6, the Key Personnel will be the persons principally used by the Supplier to provide the Services.
  2. If any of the Key Personnel become unavailable to provide the Services for any reason, the Supplier will inform Manatū Taonga immediately. The Supplier will ensure that a replacement person of similar experience and with enough skills and expertise to perform the role is appointed as soon as is reasonably practicable at no extra charge.
  3. Notwithstanding clause 6.1, the Supplier will only engage or employ persons to perform the Services who have enough skills, experience and knowledge to perform the duties allocated to them.

## Subcontractors

* 1. The Supplier shall:
  2. supply the Services and carry out its obligations under this Agreement as prime Supplier, and shall be responsible and liable, as primary obligor, for all work carried out by any Subcontractor and for any act or omission of any Subcontractor;
  3. notify Manatū Taonga of, and consult with Manatū Taonga about, any Subcontractor it proposes to appoint to perform any of its obligations under this Agreement, including the identity of any proposed Subcontractor and any other information about the proposed Subcontractor reasonably requested by Manatū Taonga; and
  4. not appoint any Subcontractor without Manatū Taonga’s prior written consent. Manatū Taonga reserves the right to reject any or all Subcontractors proposed.
  5. The Supplier shall ensure that any Subcontractor does not appoint any further Subcontractors without Manatū Taonga’s prior written consent.

## Warranties

* 1. The Supplier always warrants that:

1. it has the right to provide the Services;
2. it has the authority to enter into this Agreement; and
3. the Services must, to the extent required under 4.2(a) and not more, meet the requirements and the specifications set out in any Statement of Work.
   1. The Supplier warrants that it will conduct itself under this Agreement, act as a Panellist, and provide any Services to a professional standard and that it will give appropriate priority to Manatū Taonga’s requirements, and that it will utilise trained, experienced and qualified personnel in any work done for Manatū Taonga.

## Fees

* 1. In consideration for carrying out the Services in accordance with this Agreement, Manatū Taonga shall pay to the Supplier the Fees, in accordance with clause 9 and 10.
  2. The Fees will be set out in the applicable Statement of Work.
  3. If the Fees are calculated on a time and materials basis, the Supplier shall:

1. use all reasonable endeavours to complete the Services within the estimate set out in the Statement of Work (“the Estimate”);
2. advise Manatū Taonga immediately if its Fees are likely to exceed the Estimate; and
3. limit its Fees to the Estimate or any revised Estimate agreed between the Supplier and Manatū Taonga in writing.
   1. The Supplier agrees that Manatū Taonga is not liable to pay any fees in excess of the Estimate if the Supplier has failed to comply with clause 9.3(b).
   2. If the Fees are specified as a fixed price, then:
4. the Fees, together with any disbursements, comprises the total remuneration payable by Manatū Taonga to the Supplier for the Services; and
5. the Fees cannot be exceeded without Manatū Taonga’s prior written consent.

* 1. The Fees are the total amount payable by Manatū Taonga for the Services and are inclusive of all costs, fees, duties and taxes (other than GST) relating to the supply of the Services.
  2. No cost or expense incurred by the Supplier in performing any of its obligations or exercising any of its rights under this Agreement shall be charged to Manatū Taonga, unless specifically provided for in this Agreement.

9.8 If Manatū Taonga is required by law to make any deduction or withholding on account of taxation from, on or in relation to, any amount paid or payable by Manatū Taonga under this Agreement, Manatū Taonga will deduct such amount from the amount to be paid to the Supplier and pay the same to the applicable taxation authority. For the avoidance of doubt, Manatū Taonga is not obliged in any way to indemnify the Supplier for, or gross up, the payments under this Agreement by reason of any such deduction or withholding.

## Payment

* 1. Manatū Taonga will issue the Supplier a Statement of Work (SOW) number before commencement of the Services. More than one SOW may be provided if there are different Services or pieces of work being undertaken by the Supplier. The Supplier must include the relevant Manatū Taonga SOW number (where provided by Manatū Taonga) on all invoices.
  2. The Supplier will issue invoices within 5 Working Days of the end of each month or relevant work period specified in a SOW. The Supplier must send all invoices to the email address indicated on the SOW (or otherwise notified to the Supplier).
  3. The Supplier must issue a single consolidated invoice for each SOW number each month. If any invoice does not quote a SOW number or provide enough information to allow verification to the SOW, the Supplier accepts that payment of the invoice will be delayed.
  4. Manatū Taonga is only obliged to pay the Supplier on receiving a valid tax invoice. For a tax invoice to be valid, the invoice must specify the GST payable in respect of the Services, must comply with the GST Act (and contain all the particulars specified under section 24 thereof) and must include such information as is reasonably required by Manatū Taonga from time to time to verify the claims for payment, including but not restricted to the volume of Services supplied, the supply dates and the Fees charged.

* 1. Except in the case of disputed amounts or incomplete invoices, Manatū Taonga shall pay the amount due under a valid tax invoice by the 20th of the month following the month in which a valid tax invoice is received by Manatū Taonga.
  2. Any invoices requiring corrections will require a full credit note and the corrected invoice will need to be re-issued.

* 1. Payment of invoices issued by the Supplier does not constitute acceptance of the Services by Manatū Taonga.
  2. Manatū Taonga shall have the right to deduct or set off any amount payable as a debt due by the Supplier to Manatū Taonga under this Agreement from any payment to be made by Manatū Taonga to the Supplier under this Agreement.
  3. If Manatū Taonga disputes any amount set out in an invoice, Manatū Taonga shall use reasonable endeavours to advise the Supplier in writing of the amount in dispute and the reason for the dispute before the due date for payment of the relevant invoice. If not all in an invoice is disputed, the Supplier will replace the original disputed invoice with two invoices, one of which will contain the undisputed amount of the original invoice and the other which will contain the disputed amount of the original invoice. Manatū Taonga shall pay any undisputed invoice in accordance with this Agreement. Failure by Manatū Taonga to notify the Supplier in accordance with this clause shall not prevent Manatū Taonga from disputing any item in an invoice later (including without limitation a date after the date on which the invoice was paid).

* 1. In the event of a dispute regarding an invoice:

1. Manatū Taonga and the Supplier shall initiate the dispute resolution procedure in clause 26; and
2. after the dispute has been resolved:
   1. Manatū Taonga shall pay any amounts found to be payable by Manatū Taonga within 5 Working Days; or
   2. if it is found that Manatū Taonga has overpaid the Supplier under an invoice, the Supplier shall issue a credit note to Manatū Taonga in respect of that amount within 5 Working Days. The credit note must comply with the GST Act and contain all the particulars specified under section 25(3) thereof.

## Meetings, Audit and Reports

* 1. The Supplier shall hold such meetings with Manatū Taonga as may be reasonably required by Manatū Taonga from time to time, to discuss the Agreement and any other matters relating to the provision of the Services.
  2. The Supplier will provide such reports and photographs to Manatū Taonga as are required by Manatū Taonga (acting reasonably) including any specified in a Statement of Work.
  3. The Supplier shall:

1. on reasonable notice from Manatū Taonga, provide Manatū Taonga and any person authorised by Manatū Taonga with any documentation, information and explanations:
   1. relating to the Services;
   2. relating to the Supplier’s performance of and compliance with this Agreement;
   3. relating to any invoice; and/or
   4. required to enable any audit under clause 11.5 to be undertaken; and
2. maintain all the underlying records and base data on which any price has been calculated or for any disbursements for the Term and keep such records and data for two years after the expiry or termination of the Agreement. Manatū Taonga may, subject to clause 11.4, inspect, and take copies of, all such records during the Term, and this right shall continue for two years after the expiry or termination of the Agreement. 11.4 Manatū Taonga’s rights to access information pursuant to clause 11.4 do not extend to access to, or inspection of, the Supplier’s internal financial management information.

## Relationship Management

* 1. Each Party will, immediately following the Commencement Date, appoint a person (“Relationship Manager”) who will:

1. serve as the primary point of contact with the other Party; and
2. have overall responsibility for the performance of that Party’s obligations under this Agreement.   
   1. Each party may replace its Relationship Manager from time to time provided, it gives prior notice of such replacement.
   2. Manatū Taonga reserves the right to approve the replacement for the Relationship Manager.

## Business Continuity Plan

* 1. The Supplier will:

1. at all times have in place, maintain and implement an adequate business continuity and disaster recovery plans/procedures to minimise interruptions to the Services;
2. provide a copy of its business continuity and disaster recovery plans/procedures to Manatū Taonga on request; and
3. consider in good faith any amendments to the business continuity and disaster recovery plans/procedures proposed by Manatū Taonga. Any agreed amendments to business continuity and disaster recovery plans/procedures will be included in any Statement of Work.

## Change Control

* 1. At any time prior to acceptance of the Services by Manatū Taonga, either Party may request changes or variations to the Services by submitting to the other Party a change request (“Change Request”).

* 1. Any Change Request must contain the reason for, and an outline including the effect of, the proposed change and include any such information as is reasonably necessary to enable the other Party to consider the request.
  2. Where a Change Request results in a price increase, the Supplier will only charge Manatū Taonga for a Change Request to the extent it cannot reasonably be considered already within the scope of the Services. The Parties will use genuine efforts to agree a reasonable price considering the nature and extent of the Change Request.
  3. Where the receiving Party is Manatū Taonga, following receipt of a Change Request Manatū Taonga will notify the Supplier that it:

1. accepts the Change Request; or
2. wishes to renegotiate the terms upon which the change will be implemented, including without limitation any change to milestone dates or fees; or
3. rejects the Change Request in which case the Agreement shall continue in force unchanged, providing always that if the Supplier identifies any such Change Request as critical, Manatū Taonga must first give the Supplier the opportunity to propose an alternative solution before deciding whether to exercise its right of rejection.
   1. Where the receiving Party is the Supplier, following receipt of a Change Request the Supplier will notify Manatū Taonga that it:
4. accepts the Change Request; or
5. wishes to renegotiate the terms upon which the change will be implemented, including without limitation any change to milestone dates or fees.   
   1. Once the Change Request has been signed by both parties, this Agreement (including Schedule 1 and any SOW as relevant) will be deemed to be amended to reflect the terms of the Change Request.

* 1. The Parties acknowledge and agree that Manatū Taonga is not obliged to approve or pay for any changes requested by the Supplier if those changes are required due to an act or omission of the Supplier that was the Supplier’s fault and has had a detrimental effect on the delivery of the Services or the cost of the Services. To avoid doubt, and without limiting any of Manatū Taonga’s other rights in this Agreement, the Supplier will be obliged to carry out any changes required due to an act or omission of the Supplier that was the Supplier’s fault and has had a detrimental effect on the delivery of the Services or the cost of the Services to the standards required by this Agreement and at the Supplier’s cost.
  2. For the avoidance of doubt, this clause 14 does not apply to any change to the Agreement other than operational changes to the Services. The terms of this Agreement may only be changed in accordance with clause 27.

## Disengagement Services

* 1. Where services similar to the Services will be provided by a new supplier following the end of this Agreement, the Supplier will provide Disengagement Services unless Manatū Taonga advises in writing that these are not required, provided that the Supplier will not be obliged to divulge any of its Confidential Information or transfer any of its Pre-existing Intellectual Property to a new supplier of the Services, unless otherwise agreed in writing between Manatū Taonga and the Supplier:
  2. Manatū Taonga will pay the Supplier’s reasonable costs in complying with this clause 15.

## Termination of this Agreement

* 1. Manatū Taonga may terminate this Agreement and/or any Statement of Work at any time by giving not less than the number of Working Days written notice set out in Schedule 1 to the Supplier, in which event the Supplier shall be paid for the Services which are due to be, and have been, supplied up to the date of termination. Manatū Taonga is not obliged to make any further payment to the Supplier as a result of termination.
  2. If specified in Schedule 1, the Supplier may terminate this Agreement on 3 months’ written notice to Manatū Taonga.
  3. Either Party (“Terminating Party”) may terminate this Agreement and/or any Statement of Work immediately by written notice to the other Party (“Other Party”):

1. if the Other Party commits a material breach of this Agreement, provided that in the case of a breach capable of remedy, such breach has not been remedied within 10 Working Days of receipt by the Other Party of notice from the Terminating Party requiring the breach to be remedied; or
2. if:
   1. the Other Party ceases business or voluntarily suspends its business for more than 5 Working Days;
   2. the Other Party becomes bankrupt (if the Other Party is an individual);
   3. the Other Party arranges, or enters into a composition, with its creditors;
   4. a resolution is passed, or an application or an order is made, to place the Other Party into liquidation (except for the purposes of a solvent reconstruction or amalgamation); or
   5. a receiver, manager, trustee, administrator or similar is appointed over some or all the Other Party’s business or assets.
   6. If this Agreement and/or any Statement of Work is terminated by Manatū Taonga under clause 16.3, Manatū Taonga may withhold any payments due at the date of termination and treat all such sums as security for any money owed by the Supplier to Manatū Taonga and all damages, losses, costs and expenses which Manatū Taonga may sustain or incur as a result of such termination.
   7. Upon termination of this Agreement and/or any Statement of Work, the Supplier shall:
3. discontinue the supply of the Services;
4. immediately do everything possible to mitigate any costs incurred as a result of termination; and
5. without limiting clauses 15 and 16, promptly ensure that all documents, drawings, reports and calculations, all electronic versions of the same, and all Deliverables and information issued to or prepared by the Supplier by, for, or on behalf of, Manatū Taonga are given to Manatū Taonga, and that all copies of the same are (at Manatū Taonga’s request) destroyed.
   1. Termination of this Agreement and/or any Statement of Work shall not affect:
6. any rights of a Party against any other Party which have accrued up to and including termination; and
7. the provisions of this Agreement which expressly or by their nature survive termination, including (without limitation) clauses 11, 12, 15, 16, 17, 20, 21, 22 and 26.

## Liability

* 1. Where the Supplier breaches this Agreement, the Supplier is liable to Manatū Taonga for reasonably foreseeable claims, damages, liabilities (including any liability of Manatū Taonga to a third party), losses or expenses caused directly by the breach. A Party shall not be liable to the other Party under this Agreement for the other Party’s indirect, consequential or special loss, or loss of profit, however arising, whether under contract, in tort or otherwise..
  2. Notwithstanding anything to the contrary in this Agreement, Manatū Taonga’s maximum aggregate liability arising out of or in connection with this Agreement, however such liability may arise (including without limitation any liability arising out of Manatū Taonga’s negligence or the negligence of any Manatū Taonga Associated Persons, officers, directors, employees, agents, successors or assigns) in respect of all events occurring in any Agreement Year shall be limited to the aggregate amount of the Fees paid by Manatū Taonga to the Supplier in that Agreement Year.
  3. None of Manatū Taonga’s Associated Persons, officers, directors, employees, agents, successors or assigns shall have any personal liability in connection with this Agreement.
  4. For the purposes of the Contracts (Privity) Act 1982, clauses 17.1, 17.2 and 18.2 are entered into for the benefit of, and are enforceable by, Manatū Taonga’s officers, directors, employees, agents, representatives and Associated Persons (including the Associated Persons’ directors, employees, officers, agents and representatives).

## Insurance

* 1. Unless otherwise agreed, the Supplier, at its own cost, shall:

1. obtain and maintain, and shall ensure that its Subcontractors obtain and maintain, in effect for so long as shall be required in the performance of the Supplier’s obligations under this Agreement, the following insurances:
   1. public liability insurance (with a goods/product extension where appropriate) for an amount not less than two million New Zealand dollars (NZ$2,000,000) for any one event or series of events arising out of the same event and in the aggregate;
   2. if specified as being required by Manatū Taonga in Schedule 1, professional indemnity insurance for the Supplier’s performance of its obligations under this Agreement for an amount not less than the amount specified in Schedule 1 for any one claim or series of claims arising out of the same occurrence and in the aggregate; and
   3. any other insurance required by law or deemed by the Supplier or Manatū Taonga (acting reasonably) to be necessary in addition to those set out in this clause 18.1 to support and protect the Supplier in relation to any liability undertaken under this Agreement.
   4. The Supplier, at its own cost, shall in all respects comply with its obligations under the Accident Compensation Act 2001.
   5. The Supplier shall:
2. on request by Manatū Taonga, provide evidence of the policies required pursuant to clause 18.1 in the form of a certificate of currency from the Supplier’s insurer;
3. on receipt of any notice of cancellation of the policies, provide a copy of the notice to Manatū Taonga; and
4. unless otherwise notified, take any action which may be necessary to ensure prompt settlement of any claim that may arise.
   1. Any such insurance taken out by the Supplier shall fully cover its liabilities under this contract and shall note the interest of Manatū Taonga and shall be endorsed such that the underwriters waive their rights of recourse on Manatū Taonga.

## Assignment

* 1. The Supplier shall not assign any of its rights or obligations under this Agreement, except with the prior written consent of Manatū Taonga. This clause 19.1 shall not prevent the Supplier subcontracting its obligations in accordance with clause 7.1(c).
  2. Manatū Taonga may at any time assign any of its rights or transfer by novation any of its rights and obligations under the Agreement to any person or combination of persons and must give notice of any such assignment as soon as reasonably possible thereafter to the Supplier.

## Intellectual Property

* 1. All Pre-existing Intellectual Property shall remain the property of the Party who is the owner at the time the Parties sign this Agreement. The Supplier grants to Manatū Taonga, or agrees to procure the grant to Manatū Taonga of, an unrestricted, royalty-free, irrevocable, nonexclusive licence to use Pre-existing Intellectual Property to the extent reasonably required to enable Manatū Taonga to make use of the Services or adapt, alter, market and/or sell the Services.
  2. All New Intellectual Property arising under or in relation to this Agreement shall be, unless expressly provided otherwise, the absolute property of Manatū Taonga and will vest in Manatū Taonga immediately upon its creation. The Supplier shall, if requested by Manatū Taonga, take all actions and execute all necessary documents required to vest any New Intellectual Property in Manatū Taonga and to give effect to this clause 20.2
  3. The Supplier grants to Manatū Taonga a perpetual, non-exclusive, worldwide and royalty-free licence to use, all Intellectual Property Rights in the Deliverables. Manatū Taonga will attribute this work appropriately to the Supplier. This licence includes the right to copy and distribute the Deliverables.
  4. The Supplier warrants that neither the New Intellectual Property, Manatū Taonga’s use of the Supplier’s Pre-existing Intellectual Property, nor the supply of the Services will infringe the Intellectual Property Rights of any third party.
  5. The Supplier indemnifies Manatū Taonga against all claims, costs, damages, expenses or other liabilities relating to an infringement of any Intellectual Property Rights in respect of any New Intellectual Property, any use by Manatū Taonga of the Supplier’s Pre-existing Intellectual Property, any Services supplied, or equipment, materials, or processes used by the Supplier in relation to the Services. The Supplier’s liability under this clause is limited to the relevant Insurance cover under the Agreement.
  6. For the purposes of this clause 20 Manatū Taonga’s rights and the benefits received under this Agreement extend to any Associated Person in accordance with the Contracts Privity Act 1982.

## Legal Name

* 1. The Supplier must not use or permit any use of Manatū Taonga’s legal name, brand name, logo, slogans or any description of Manatū Taonga (other than as expressly required under this Agreement for the performance of this Services), unless the Supplier obtains prior written consent from Manatū Taonga (such consent to be at Manatū Taonga’s discretion).
  2. The Supplier may publish or otherwise use the New Intellectual Property for academic and teaching purposes with adherence to cultural sensitivities and appropriate permissions sought when deemed necessary. The Supplier will advise Manatū Taonga of any such publication or other use.
  3. For the avoidance of doubt, this clause 21 is in addition to the rights and obligations in clause 20.

## Confidentiality

* 1. Each Party (“Receiving Party”) shall:

1. keep the other Party’s (“Providing Party”) Confidential Information confidential and secure;
2. not disclose or permit disclosure of the Providing Party’s Confidential Information to any third party except to enable the Receiving Party to perform its obligations or receive any benefit under this Agreement, in which case the Receiving Party will not disclose such information until the third party has entered into a confidentiality agreement approved by the Providing Party or, insofar as that is not reasonably practicable, an agreement under which the third party agrees:
3. to be bound by the provisions of this clause 22; and
4. that such agreement is entered into for the benefit of the Providing Party; and
5. ensure that any Manatū Taonga staff or the Supplier’s Staff (as applicable) with access to any of the Providing Party’s Confidential Information shall be subject to the same obligations as the Receiving Party and the Receiving Party shall take all reasonable steps to ensure that Manatū Taonga staff or the Supplier’s Staff (as applicable) are made aware of and perform such obligations and the Receiving Party shall be liable to the Providing Party for any failure by those staff to comply with such obligations.
   1. Notwithstanding clause 22.1, this clause shall not apply to any disclosure of Confidential Information:
6. required to be disclosed by law; or
7. that the Providing Party agrees to in writing before the disclosure is made; or
8. is or becomes publicly available through no fault of the Receiving Party; or
9. is independently acquired or developed by the Receiving Party without breaching any of its obligations under this Agreement or at law, and without the benefit or use of any of the Providing Party’s Confidential Information disclosed by the Providing Party; or
10. is lawfully acquired by the Receiving Party from a third party, provided such information is not obtained as a result of a breach by that third party of any confidentiality obligations owing to the Providing Party.
    1. The Supplier, or any of its personnel, must not make or authorise any public or media statements to anyone about this Agreement (including the existence, subject matter and/or contents of this Agreement) without Manatū Taonga’s prior written approval (such consent to be at Manatū Taonga’s discretion). For the avoidance of doubt, any questions in relation to such announcements must first be directed to Manatū Taonga.
11. Upon the expiry or earlier termination of the Agreement, each Party shall, as far as reasonably practicable, as soon as reasonably possible but in any case, within 20 Working Days:
12. return to the Providing Party (without keeping or making a copy); or
13. at the Providing Party’s option, destroy, all Confidential Information furnished by or attained from the Providing Party in connection with this Agreement, except for information which the Providing Party agrees in writing can be retained or is retained for archival purposes.

## Health, Safety and Security

* 1. The Supplier agrees that it and each of the Supplier’s Staff are aware of their health and safety obligations under law (including the Health and Safety at Work Act 2015 (Act))

* 1. Without limiting the Supplier’s other obligations under this clause, Manatū Taonga and the Supplier agree to co-operate, consult and co-ordinate with each other to enable each of them to comply with their respective obligations under each other’s health and safety policies and the Act.
  2. The Supplier will:

1. ensure that the Supplier and any of the Supplier’s Staff when on the Facilities comply strictly with all Manatū Taonga’s health and safety policies, procedures and requirements relating to the property in question;
2. inform Manatū Taonga about all injuries and incidents, and the issues to be reported under 24.3(c)(iv) related to the Services or the Supplier’s obligations under this Agreement; and
3. operate and comply with the Supplier’s Health, Safety and Security policies and procedures, The Supplier will provide a copy of its policies and procedures to Manatū Taonga on request. The parties record that the Supplier’s policies and procedures include;
   * 1. the Supplier maintaining a reporting system which records details of operative hours, near misses, dangerous situations, minor mishaps, lost time incidents and accidents. The Supplier will provide reports to Manatū Taonga on request;
     2. the Supplier ensuring that incidents are investigated with a view to preventing similar incidents reoccurring in the future, identifying any new hazards and implementing appropriate controls to minimise the probability of similar incidents occurring in the future;
     3. the Supplier maintaining procedures that describe the appropriate equipment that must be used, training the Supplier’s Staff on the use of such equipment and having procedures in place to ensure the proper use of such equipment;
     4. the Supplier training or procuring the training of the Supplier’s Staff on the hazards of work and maintaining and exercising appropriate controls, including a hazard register and process reviews and competency requirements for all high risk works.

## Notices

* 1. Every notice or other communication given under or in connection with this Agreement shall be in writing and addressed to the relevant Party and delivered, or sent by electronic mail or pre-paid registered mail, or sent by facsimile, to the person and address for notices for the recipient Party set out in the Schedule 1, or any other notice details as are notified by a Party to the other Party in accordance with this clause 24 from time to time. Any notice so sent shall be deemed to have been received:

1. if sent by personal or courier delivery, at the time and date that the notice is handed to a representative of the recipient;
2. if sent by facsimile transmission, on the day of transmission if received before 5.00pm on a Working Day, and otherwise on the next Working Day;
3. if sent by electronic mail, on the day of transmission if received before 5.00pm on a Working Day, and otherwise on the next Working Day; and
4. if by pre-paid mail, 3 Working Days from the day of posting.

## 25. Force Majeure

25.1 Where either Manatū Taonga or the Supplier is unable, wholly or in part, by reason of a Force Majeure Event, to carry out any obligations under this Agreement and:

1. that Party gives the other Party immediate written notice of the nature and expected duration of, and the obligation affected by, the Force Majeure Event; and
2. that Party uses all reasonable endeavours to:
3. mitigate the effects of the Force Majeure Event on that Party’s obligations under this Agreement; and
4. perform that Party’s obligations under this Agreement despite the Force Majeure Event,
5. that obligation is suspended for so long as, and to the extent that, it is affected by the Force Majeure Event.

25.2 If by reason of a Force Majeure Event the delay or non-performance of either Manatū Taonga’s or the Supplier’s obligations continues for more than 30 days, the Party not relying on the Force Majeure Event may terminate this Agreement by giving 7 days written notice to the other Party.

## Dispute Resolution

* 1. Disputes shall:

1. be referred first for resolution to the representative of each Party (or his or her nominee), as named in Schedule 1 of the Agreement;
2. if the representatives (or their nominees) cannot resolve the dispute within 2 Working Days of the issue being referred to them (or such longer period as they agree), the dispute shall be referred for resolution to the chief executive (or his or her nominee) of each Party; and
3. if the chief executives (or their nominees) cannot resolve the dispute within 10 Working Days of the issue being referred to them (or such longer period as they agree), the dispute will be resolved under clauses 26.2 to 26.5.
   1. If the Parties fail to resolve the dispute under clause 26.1, the Parties will try to settle the dispute by mediation. Either Party may initiate mediation after the expiry of the period set out in clause 26.1(c) by giving written notice (“Mediation Notice”) to the other Party, and:
   2. the mediator must be agreed by the Parties or, if the Parties cannot agree on a mediator within 5 Working Days after the Mediation Notice has been given, then the Parties shall promptly request the chairperson of LEADR New Zealand Inc (or his or her nominee) to select the mediator;
   3. the mediator will set the timetable (including the date by which the mediation will expire irrespective of whether the dispute has been resolved, which will not be more than 5 Working Days from the commencement of the mediation); and
   4. if the dispute has not been resolved within the timeframe specified by the mediator, unless the Parties otherwise agree, the dispute resolution procedure will terminate and each of the Parties will be entitled to pursue such legal remedies as it thinks fit.
   5. Any discussions or negotiations to resolve a dispute under clause 26.1 or any mediation shall be held in Wellington.
   6. Except where the dispute renders it impossible to do so (and except for payment obligations in respect of any amounts disputed in an invoice), the Parties will continue performing their respective obligations under this Agreement while the dispute is being resolved, unless and until such obligations are terminated or expire in accordance with this Agreement. Each Party must use all reasonable endeavours to ensure that, where a dispute is reasonably foreseeable, it is dealt with at a sufficiently early stage to minimise the effect on the ability of any Party to perform its obligations under this Agreement.
   7. Each Party will pay its own costs for resolving any dispute under this dispute resolution procedure, provided that the remuneration of any mediator will be shared equally between the Parties.
   8. Nothing in this Agreement will preclude either Party from taking immediate steps to seek urgent equitable relief before a Court.

## Variations

* 1. Instructions, interpretations, decisions or acts of Manatū Taonga which are made to:
  2. achieve compliance with this Agreement by the Supplier; or
  3. require the Supplier to correct errors, omissions, defective workmanship or any other failure of the Supplier,

shall not be considered variations to this Agreement.

## General

* 1. This Agreement shall be governed and construed in accordance with the laws of New Zealand, and the parties submit to the exclusive jurisdiction of the Courts of New Zealand.
  2. The failure of either Party to insist upon strict performance of any of the provisions of this Agreement shall not be deemed a waiver of that or any subsequent breach of or default in such terms or conditions.
  3. This Agreement:
  4. constitutes the entire agreement between Manatū Taonga and the Supplier and supersedes all prior negotiations, representations or agreements related to the Services; and
  5. may be amended only by an amendment in writing signed by both Parties.
  6. If any provision of this Agreement is held to be invalid, the remainder of this Agreement shall remain in full force.
  7. Each Party shall take all action and execute all further documents necessary to give full effect to this Agreement.

## 

## Signing Page

**EXECUTED** as an agreement

SIGNED by Manatū Taonga, Ministry of Culture and Heritage by:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Full name of authorised signatory Signature of authorised signatory

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date

SIGNED by SUPPLIER by:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Full name of director/authorised signatory Signature of director/authorised signatory

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date

# Schedule 1 – Details

|  |  |
| --- | --- |
| **Commencement Date** | Insert date |
| **Expiry Date** | 15 March 2031 |
| **Supplier’s Services Short Description** | Manatū Taonga appoints the Supplier and the Supplier accepts the appointment, to provide services through the Panel of Suppliers for Conservation and Stonemasonry. When Manatū Taonga requests the Supplier to perform services, the parties will execute a Statement of Work setting out all activities, services, works, matters, things and materials to be provided or performed by the Supplier. Once executed the Statement of Work will form part of this Agreement (Schedule 2). |
| **Renewal Period (clause 1.1)** | Review each year in March |
| **Right to Renew by Manatū Taonga (clause 3.2)** | Yes |
| **Notice of Termination from Manatū Taonga (clause 17.1)** | The number of Working Days written notice required is 30 |
| **Termination by Supplier (clause 17.2)** | Supplier has a right to termination |
| **Key Personnel** | Category A/B: Email  Category C: Email |
| **Relationship Manager** | Insert |
| **Professional Indemnity Insurance (clause 19.1)** | To be specified in individual Statements of Work. It is preferred to have at least $2 million but on a case by case basis we may consider another amount, e.g. aggregate cost of one year of fees quoted in a Statement of Work. Sometimes the liability may be three or five times the value of the contract. |
| **Manatū Taonga Notice Details** | Category A/B: Email  Category C: Email |
| **Supplier’s Notice Details** | Email:  Attention: |
| **Manatū Taonga’s Dispute Resolution Contact** | Category A/B: Brodie.Stubbs@mch.govt.nz  Category C: Kartini.Havell@mch.govt.nz |

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# Schedule 2 – Statement of Work