

Request for Proposals

Evaluation of Cook Islands Social Impact Fund

Reference No. 151623

Date of Release: 22 December 2015

Ministry of Internal Affairs

Cook Islands Government



Glossary and Definitions

Term	Explanation
CIG	Cook Islands Government
CSO	Civil Society Organisation
Evaluation Steering Group	The group of people within the Proposal Management Team that will evaluate this Proposal
Evaluation Managers	The people who are responsible for managing the evaluation
Manual	The Cook Islands Government Sale and Purchase of Goods and Services Policy
MFEM	Ministry of Finance and Economic Management
MOIA	Ministry of Internal Affairs
NZ MFAT	New Zealand Ministry of Foreign Affairs and Trade
Proposal Management Team	The team that is responsible for the management of this Proposal, including the evaluation and administrative functions
RFP	Request for Proposal

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Introduction

Summary of Requirement

Through this RFP, the Cook Islands Ministry of Internal Affairs wishes to conduct an evaluation to inform decision making about the future of the Social Impact Fund (SIF). This RFP is for evaluation services as required under the grant funding agreement and will be used by Cook Islands Government, New Zealand Ministry of Foreign Affairs and Trade and its partners.

Submission of Proposal

Tenders will only be accepted electronically.

By emailing the tender bid as a pdf file to tenders@cookislands.gov.ck with the subject line "Evaluation of Cook Islands Social Impact Fund". Tenders must be received to the inbox of tenders@cookislands.gov.ck in the form specified in Appendix A by the due date. Failure to do so will result in the tender being disqualified. The receipt time on the inbox will be used as confirmation of receipt for the purposes of ensuring the tender submitted is within time limit.

NOTE: Hard copies and fax tenders will not be accepted.

Proposal Closing Time

Proposals close at **3:00 pm on Monday January 18th 2016.**

The bidder is responsible for ensuring that the proposal is sent to the tenders email address by the closing time.

Late proposals will not be accepted.

Contact Officers

Negotiations will not be permitted between the Evaluation Steering Group and Evaluation Managers and any prospective proposer during the proposal advertising period. However, prospective proposers may seek clarification of the tender documents prior to submitting their tenders. Any enquiries in relation to this proposal should be directed to the Contact Officers identified below, an email should be sent to both of their E-mail addresses. Proposers should note that to ensure no disadvantage to any proposers, responses to questions pertaining to this RFP will be shared with all potential tenderers through the Cook Islands Government Procurement Web Site www.procurement.gov.ck that will be updated as required through the tender period. Questions related to the RFP will close on 3:00 pm Friday January 8th 2016.

Any enquiries in relation to this RFP should be directed to both of the Contact Officers at the email addresses given below.

Name of Person: **Angeline Tuara**

Title: **Manager Social Impact Fund, Cook Islands Ministry of Internal Affairs**

E-mail: angeline.tuara@cookislands.gov.ck

Name of Person: **Hilary Gorman**

Title: **Senior Development Programme Coordinator, New Zealand High Commission Rarotonga**

E-mail: hilary.gorman@mfat.govt.nz

Selection Process

All proposals deposited in the Electronic Tender Box by the Closing Time will be considered. Tenders submitted in the form specified in Appendices A to this RFP will then proceed to the evaluation stage.

Evaluation of the responses to this RFP will be in accordance with the Evaluation Criteria described in Appendix C. Failure to comply with the tender conditions will result in immediate exclusion from the evaluation process.

Notification of Acceptance

Proposals shall remain open for acceptance and shall not be withdrawn for a period of sixty (60) working days from the Closing Date of the tender. Unsuccessful proposers shall be notified in writing by the Principal or their representative within 10 working days of acceptance of the successful proposer.

If no proposer is accepted by the Principal within twenty (20) working days after the Closing Date, each proposer will be notified in writing by the Principal or their representative whether their proposal is still under consideration or is no longer being considered.

The Evaluation Team reserves the right to contact referees and/or customers regarding the performance of the proposer as it may pertain to this RFP.

The Principal shall not be bound to accept the lowest priced tender or the highest scored tender or any proposal.

The proposer must confirm their acceptance of the terms of the contract for services attached at Appendix D. If the proposer is unable to agree to any clause, it must set out in a table form the clause reference, reason why the proposer cannot accept it and proposed alternative wording.

Probity

No gifts or entertainment of any nature will be permitted between any parties involved throughout the tender process, including: proposers or potential proposers, tender team members, evaluation team members, the Head of Ministry, or any other member or organisation that may have an involvement with any aspect of the tender process.

Statement of Requirements

The evaluation is required under the grant funding agreement and will be used by the Cook Islands Government (CIG), New Zealand Ministry of Foreign Affairs and Trade (NZ MFAT) and its partners to identify learnings focused on which parts of SIF have worked, which parts have not, and why to inform decision making about the future of SIF as described in full in Appendix B.

Conditions of Proposing

The Standard Conditions or the Standard Terms of Proposals as they are referred to in Step 5 of the Manual are the **Mandatory Criteria** applying to this Proposal. Any offer that does not meet the terms specified in the Standard Conditions below is **non-conforming** and will not be evaluated.

Standard Conditions

1. Proposals must be completed in the format contained in Appendices A of this RFP. If offers do not comply with this format, they will not be accepted. Additional details of the proposal can be included as an Appendix.
2. Tenders must be deposited in the required form in the Electronic Tender Box by the closing time as specified in this RFP.
3. All proposals and related documentation in respect of this RFP must be in the English language.
4. Proposers must propose to provide services for the whole of the contract as specified in the terms of reference.
5. Tenders must be presented in electronic copy only as specified in this RFT.
6. In order for any foreign entity to carry on business in the Cook Islands an application for approval must be sought from the Business Trade and Investment Board. It is the responsibility of the proposer to obtain appropriate approval. Any fees associated with the registration are to be covered by the proposer.
7. All prices must be in NZ dollars.

APPENDIX A**Form of Tender**

**Ministry of Internal Affairs
Bredina Drollet
Rarotonga, Cook Islands**

Having examined the Tender Documents in relation to Tender Reference No. _____ and dated __/__/201, released by the Ministry of Internal Affairs, we submit the following offer.

We offer to complete, handover to the Principal and remedy defects in the whole of the said terms of reference for the sum of [insert the price offered in text with the value in numbers thus (NZD\$_____)] stated exclusive of Value Added Tax, together with such other sums as may be ascertained in accordance with the Contract.

We undertake to complete and handover the whole of the Contract Works/Goods/Services within the period stated in the Conditions of Tendering.

We agree to abide by this Tender for a period of sixty (60) days from the date fixed for receiving the same and it shall remain binding upon us and may be accepted by you at any time before the expiry of that period.

Unless and until a Contract Agreement is prepared and executed, this Tender together with your written acceptance thereof, shall constitute a binding contract between us.

We understand that you are not bound to accept the lowest or any Tender you may receive.

We understand that no contract shall come into existence, and no legal or other obligations shall arise between us and you (or between us and any other agent of the Principal) in relation to the conduct, outcome or otherwise of the RFP, prior to and apart from your acceptance of our proposal.

We understand that you may contact the referees nominated by us in this offer and make whatever enquiries you deem necessary regarding our financial health and ability to deliver the Services. Further, during the assessment stage we understand and agree that you may request specific information from all proposers in order to assist your assessment. We acknowledge that a failure to provide such information may result in disqualification from the process.

We provide the following information required to be submitted with this Tender:

- Completed Schedule of Prices
- Proposed Subcontractors (*if relevant*)
- List of Referees you may contact in relation to this offer
- A brief proposal.

Signature: _____

Printed Name: _____

Position Held: _____

Proposer: _____

Address: _____

Date: _____

E-mail

Address: _____

Phone No.: _____

Facsimile No.: _____

Schedule of Prices

Rate per unit	NZD	15% VAT
Consultant fees (daily rate x number of days)		
Travel costs (including airfares and per diems for travel to Mangaia and international travel to the Cook Islands if applicable)		
Other expenses		
Overall contract value		
Additional expenses		

Proposed Subcontractors

Name: _____

Company: _____

Address: _____

E-mail Address: _____

Phone No.: _____

Facsimile No.: _____

Works/Skills to be performed. _____

Educational/Technical Qualifications: _____

Work Experience: _____

Referees who may be Contacted

Name: _____

Company: _____

Address: _____

E-mail Address: _____

Phone No.: _____

Facsimile No.: _____

**Nature of Relationship
with Proposer:** _____

APPENDIX B**Terms of Reference****Background Information**

The Cook Islands Social Impact Fund (SIF) supports civil society organisations to provide services that meet the needs of society's most vulnerable people. The SIF consists of two funding streams.

1. Contestable funding for civil society organisations that can provide single or multi-year services targeting: gender equality; children and youth; elderly; disabilities; domestic violence; and mental health.
2. Contestable funding for civil society organisations that can advance the Cook Islands National Policy on Gender Equality and Women's Empowerment.

Table 1: SIF Programme and project grants by sector and year

Sector	2013-14	2014-15	2015-16
Programme grants			
Disability	3	3	3
Youth/children	1	1	1
Gender/domestic violence	1	1	1
Crosscutting	0	0	0
Project grants			
Disability	0	3	4
Youth/children	5	5	1
Gender/domestic violence	4	1	2
Crosscutting	1	3	3

Of the programme grants all CSOs were based in Rarotonga with some of them conducting activities in the Pa Enua. Of the 32 project grants provided 9 were for organisations based in the Pa Enua including 5 for Mangaia, 1 for Atiu, 1 for Mauke, 1 for Palmerston and 1 for Pukapuka.

The SIF was established under a Grant Funding Agreement (GFA) between the Cook Islands Ministry of Internal Affairs (MOIA), the Cook Islands Ministry of Finance and Economic Management (MFEM) and the New Zealand Ministry of Foreign Affairs and Trade (NZ MFAT). The GFA was signed in 5 November of 2012 and will end on 31 August 2016, Variation No. 1 to the GFA was signed on 14 August 2013 and Variation No. 2 to the GFA was signed on 3

March 2014. The overarching goal of the GFA is 'to ensure improved well-being of vulnerable peoples through the contribution of Civil Society.

In total, the SIF oversees NZD \$3,386,000. Contributions to the fund include: \$1.8m from the New Zealand Ministry of Foreign Affairs and Trade (NZ MFAT); \$925,000 from the Australian Department of Foreign Affairs and Trade (DFAT) – provided through New Zealand's harmonised development programme, and; \$661,000 from the Cook Islands Government (CIG).

Purpose of the Evaluation

The evaluation is required under the GFA and will be used by the CIG, NZ MFAT and its partners to identify learnings focused on which parts of SIF have worked, which parts have not, and why. The evaluation will inform decision making about the future of SIF: should SIF continue, if so should it be adapted and how? The results of the evaluation will be reported to the funding partners, disseminated to CSOs as key stakeholders, and made publicly available through the CIG and NZ MFAT websites.

Scope of the Evaluation

The scope of the evaluation will include:

- the time period of the evaluation will cover November 2012 to December 2015;
- its geographic focus is the Cook Islands; and
- The target groups are vulnerable people; staff and members of CSOs; staff of MOIA, MFEM and NZ MFAT who have been involved with SIF; and people with knowledge of community and civil society issues within the Cook Islands.

Evaluation Criteria and Objectives

Criteria being assessed

The DAC criteria that will be assessed in this evaluation are:

- a) Relevance
- b) Effectiveness
- c) Efficiency
- d) Impact
- e) Sustainability

Objectives and evaluation questions

Objective 1: Relevance

To assess the extent to which the SIF has been relevant to the needs of its stakeholders.

- Is SIF relevant to meeting the priority needs of vulnerable people, and of CIG and NZ MFAT?
- To what extent is SIF relevant to meeting these needs?

Objective 2: Effectiveness

To assess progress against the outputs and outcomes.

- What progress has been made to assess the SIF's achievements against the outputs and short and medium term outcomes described in the Results Measurement Table?
- Have the key outputs, short and medium term outcomes been achieved? If yes, what and if no why?
- What (if any) unintended outcomes (positive and negative) were there? Why?

Objective 3: Efficiency (value for money)

To assess how efficiently the SIF has achieved its sought outputs.

- Have outputs been achieved in a timely manner? If yes/no why?
- Could the similar outputs be achieved with fewer funds? Could similar outputs be achieved in a different way?

Objective 4: Impact

To identify the overall effect of the initiative.

- What positive and negative medium and long term impacts at the societal level have resulted from this Activity?
- What would happen without SIF or a similar scheme?

Objective 5: Sustainability

Sustainability in the context of this evaluation refers to the ability of the impact of the programme to be maintained over time.

- Is the design of SIF still relevant for now and the foreseeable future? What, if any, needs to be changed going forward? For example, the types of services offered.
- To what extent has local ownership of the Activity developed?
- What critical success factors are in place to ensure sustainability?
- Is donor support required to maintain the provision of services?

Recommendations

- The evaluation will inform decision making about the future of SIF. A further objective is to develop conclusions and lessons learned (relevance, effectiveness, efficiency), and to use these to identify key recommendations that will go to help address whether the SIF should continue, adapted or be ended. If continued, what improvements are recommended.

Methodology for the Evaluation

In proposing an evaluation design, the evaluation team should identify the most appropriate approach, methodology and tools to generate credible evidence that corresponds to the evaluation's purpose and the questions being asked.

We envisage that this evaluation will include a short literature and documentation review in Phase One. Phase Two includes the fieldwork focused on engagement with a broad range of key stakeholders who have been either involved with SIF or have an extensive knowledge and understanding of Cook Islands Civil Society.

The fieldwork will take place mainly in Rarotonga with a visit to the Pa Enuu. Mangaia has been chosen as CSOs there received a total of five project grants. The costs associated with the fieldwork should be included within the proposed budget. The final design will be confirmed in the evaluation plan and in consultation between the evaluation team and the Steering Group.

Culturally responsive methodological approaches

There are a range of world-views and we encourage the use of culturally appropriate evaluation designs, methods and approaches to ensure the evaluation contributes to the body of knowledge of the Cook Islands and its people which are the focus of the evaluation.

Principles/Approach

The evaluation will deliver useful, credible findings relevant to the purpose of the evaluation. The recommendations will be pragmatic and actionable, and presented in a way that promotes learning.

In conducting the evaluation, the evaluation team will work in partnership with the SIF stakeholders to increase ownership and use of evaluations. The Steering Group will include representatives of CIG, NZ MFAT and Civil Society who will advise the design and fieldwork and provide feedback on the draft report. The partners and beneficiaries will be key participants in the fieldwork, the final report will be made available to them and they will be invited to a presentation of the key findings.

The evaluation team will be transparent and independent. They must have no vested interest in the outcomes of the evaluation and be independent of those responsible for policy making, design, delivery and management of the development intervention.

Evaluation Plan

The evaluation team will develop an evaluation plan using or being guided by the Te Tarai Vaka Evaluation Plan Template. The evaluation plan will be approved by the Steering Group. The intended results of the activity/programme (i.e. the goal, outcomes and outputs) will be clarified and described in a results diagram (program logic, logic model) in the evaluation plan. The plan may need to be redrafted if it does not meet required standards or is unclear. The evaluation plan must be approved prior to the start of any fieldwork or other substantive work. The evaluation plan is to be appended to the main written report.

It is anticipated that the evaluation plan will identify how the information needs can be met through current documentation (including undertaking documentary analysis), and what information gaps, will need to be filled through in-country fieldwork. Data collection methods, for example, in-depth interviews, focus groups, direct observation and case studies should be outlined. Research ethics including but not limited to risk, confidentiality and voluntary participation must be considered and addressed within the evaluation plan.

Team Composition

We envisage that the evaluation will be undertaken by an individual or a small team of independent contractors.

The attributes (knowledge, skills, experience) required of the evaluation team include:

- At least one team member must be an experienced evaluator, with expertise in undertaking development evaluations
- Relevant technical experience and knowledge of the role and functioning of Civil Society, engaging with and supporting vulnerable peoples, and gender equality
- Knowledge, experience and understanding of Cook Islands political, economic, social and cultural context
- Outstanding research, report writing and presentation skills
- Fluency in English and ability to speak Cook Islands Māori is desirable

Content of proposal

The proposal should be concise, well written and address the Terms of Reference.

1. *Proposed evaluation design:*

- Deliver a high-level evaluation design (briefly outlining the approach, methodology and tools) that will be used to meet the evaluation's purpose, objectives and address the questions
- Outline the strengths and limitations of the proposed methodology
- Identify key data and information sources along with any key assumptions.

Governance and Management

The evaluation will be jointly commissioned by CIG and NZ MFAT and the evaluation team will be accountable for its performance to CIG and NZ MFAT.

The evaluation will be governed by a Steering Group that will consist of representatives of MOIA, MFEM, NZ MFAT and a CSO representative. Key responsibilities of the Steering Group will include agreeing the Terms of Reference, evaluation plan and evaluation report.

The evaluation will be co-managed by Angeline Tuara, SIF Manager of MOIA and Hilary Gorman, Senior Development Programme Coordinator of NZ MFAT who will be responsible for day-to-day management and administration of the evaluation. Their responsibilities include contracting; briefing the evaluation team; managing feedback from reviews of the draft report; and liaising with the evaluation team throughout to ensure the evaluation is being undertaken as agreed.

The evaluator(s) will be engaged in accordance with the Purchase and Sale of Goods and Services Cook Islands Government Policy.

Outputs and Milestones

Anticipated key deliverables and delivery dates are as follows:

No.	Output/milestone	Description	Due date ¹	Indicative payment proportion of fees
1	Evaluation plan	Literature review, document review, briefing and finalised evaluation plan	18 February 2016	25%
2	Fieldwork complete	Fieldwork in Rarotonga and the island of Mangaia complete and preliminary results provided to stakeholders through a debriefing	18 March 2016	
3	Draft report	Preparation of draft report and submission to MOIA, MFEM and NZ MFAT Management response by CIG and NZ MFAT by 20 April 2016	8 April 2016	25%
4	Final report	Revised report submitted Acceptance/approval by steering group after any revisions of the draft are completed and debriefing by 2 May 2016	25 April 2016	50%
	Presentation of key findings	To present key findings & conclusions to CIG, NZMFAT and beneficiaries	13 May 2016	
Total				100%

¹ Due dates will be finalised within the evaluation plan.

Reporting Requirements

The evaluation report must meet quality standards as described in the Activity Evaluation Policy. It should be guided by the [Te Tarai Vaka evaluation report template](#) and should not be longer than 40 pages. The draft and final reports should be sent via email to the evaluation managers.

As this is an evidence-based evaluation, the findings, conclusions and recommendations must be based on clear evidence presented in a way that allows readers to form their own views on the validity and reliability of the findings, including assessing the vested interests of sources. Where there is conflicting evidence or interpretations, the report should note the differences and justify the findings.

The report must include a one to two page evaluation summary written in plain and simple language and targeted to Cook Islands CSOs and their beneficiaries, focused on identifying the evaluation's key findings, recommendations and lessons learned.

CIG and NZ MFAT will develop a management response to the evaluation's findings, conclusions and recommendations. CIG and NZ MFAT will publish the evaluation plan and report and its management response on its website.

The draft evaluation report will be reviewed by Cook Islands Government staff, stakeholders and/or experts. Further work or revisions of the report may be required if it is considered that the report does not meet the requirements of this TOR, if there are factual errors, if the report is incomplete, or if it is not of an acceptable standard.

It is the Cook Islands Governments' policy to make evaluation reports publicly available unless there is prior agreement not to do so. Information that could prevent the release of an evaluation report under the Official Information Act, or that would breach evaluation ethical standards, should not be included in the report. The final report will be approved for public release by the Cook Islands Government department responsible for commissioning the evaluation.


Relevant Reports and Documents

Relevant documents will be provided to the evaluation team prior to the evaluation. These key documents will form the basis of the document review and include:

- Grant Funding Agreement (GFA) Cook Islands Social Impact Fund
- Letter of Variation No 1 & 2
- 6-monthly Progress Reports produced by MOIA
- SIF Board Policy & Code of Conduct
- SIF Board Meeting Minutes
- Civil Society Engagement Policy (latest version)
- Cook Islands National Gender Policy
- CSO Register (latest version)
- Te Tarai Vaka Activity Evaluation Policy
- 2011 Census Report
- 2005-06 Cook Islands Household Expenditure Survey Report

Other key documents will be provided at the commencement of the evaluation.

Approval

	22/12/2015
Bredina Drollet Secretary of Internal Affairs & Chair of Evaluation Steering Group	<i>Date</i>

APPENDIX C**Evaluation Criteria**

In accordance with clause 24.5 of the Policy, Tenders that did not meet the Standard Conditions are deemed non-compliant.

Standard Conditions

Criterion	Complies Yes or No
1. Tender is completed in the format contained in Appendices A of the RFP.	
2. Tenders must be deposited in the required form in the Electronic Tender Box by the closing time specified in the RFP	
3. Proposal and related documentation must be in the English language.	
4. Proposer must tender to provide the whole of the tender specified in the RFP.	
5. Tenders must be presented in electronic copy only as specified in this RFT.	
6. All prices must be in NZ dollars.	

Special Conditions

A Weighted Criteria methodology will apply to the evaluation of the special conditions of this RFP. The assignment of weightings is based on the following principles:

- The Special Conditions that reflect the critical elements of the project will be assigned a weight
- Weightings will reflect the relative importance of each criterion
- Scores will be based on the information provided in the submitted proposals

Criteria	Weight %
<u>Non-Price Criteria</u>	
1. Locally established company locally supplied resources (labour and/or materials)	5
2. Compliance with contract terms	5
3. Past performance in completing similar evaluations	30
4. Appropriate qualifications and/or technical experience	20
5. Relevant knowledge of civil society and Pacific social and development issues	15
<u>Total Non-Price Elements</u>	75
Price	25
TOTAL WEIGHTING	100

Risk

The Evaluation Committee will conduct a Risk Assessment for each proposal submitted. This will identify the most significant risks presented by the proposal and consider the likelihood of the risk occurring; the consequence of that risk; and a risk mitigation strategy. In conclusion, the mitigated risk will be determined to form an overall measure of the risk represented by each proposal.

The Risk Mitigation Strategy may include the inclusion of specific clauses in the executed contract. Therefore, a proposal considered to be High Risk might still be selected subject to the Proposer's willingness to accept the proposed contract amendments.

APPENDIX D

Draft Contract

Note to Proposers: *This contract contains the applicable terms and conditions and will be completed as appropriate for the successful Proposer taking into account the services to be provided. Some terms may not be relevant depending on the services awarded.*



Schedule

Government: Her Majesty the Queen acting by and through [insert details of Ministry or Department]

Signed: _____

Name:

Position:

Date:

Consultant: [Insert Consultant details]

Signed: _____

Name:

Position:

Date:

Project:

Location:

Scope and Nature of the Services:

Programme for the Services:

Fees and Timing of Payments:

Insurance:

Contact Person:

Government Contact: [insert details]

Supplier Contact: [insert details]

Key Personnel:

TERMS AND CONDITIONS FOR THE ENGAGEMENT OF A CONSULTANT

Her Majesty the Queen acting by and through the Government of the Cook Islands (the "Government") agrees to engage the Consultant and the Consultant agrees to provide the Services described in the Schedule on the following conditions:

1. **Application:** These terms and conditions supersede any contrary provisions in any previous agreements between parties, written or otherwise. No right under these terms shall be deemed to be waived except by notice in writing by each party. In the event that any one or more of the provisions contained in these conditions are declared invalid by order, decree or judgment of any Court of competent jurisdiction, these conditions are to be read as if such provision had not been inserted.
2. **Services:** The Consultant shall perform the Services as described in the attached Schedule in accordance with any requirements set out in these terms and conditions and/or in the Schedule. The time of performance of the Services is a fundamental element of these terms and conditions. The Consultant shall notify the Government in writing immediately when the Consultant becomes aware there may be a delay in the delivery of the Services. The Government is entitled to cancel these terms and conditions or change its specification (without incurring additional charges) if the Services are not supplied on the supply dates or times specified in the Schedule. Where the Consultant has the benefit of any warranties or covenants from a third party in respect of the Services, the Consultant shall disclose and assign the benefit of the warranties and/or covenants to the Government.
3. **Skill:** The Consultant shall use the highest reasonable standard of skill, care and quality and employ techniques, methods, procedures and materials of a high quality and standard in accordance with best professional practice in rendering the Services. The Consultant will comply with all relevant (a) Cook Island standards and international standards (if not in conflict) (both general and industry-specific); (b) statutes; (c) regulations; (d) by-laws; (e) ordinances; and (f) Government policies, applicable in respect of the supply of the Services.
4. **Independent Judgment:** Where the Services require the Consultant to certify, decide or use discretion under a contract between the Government and a third party, the Consultant must act independently, and with professional skill and judgment, and according to the terms of the contract between the Government and the third party.
5. **Delay:** If at any time the Consultant's performance falls behind the programme set out in the Schedule then the Consultant shall notify the Government and, where the delays are due to matters within the control of the Consultant, shall take all practicable steps to remedy such delay.
6. **Variations:** The Government may order variations to the Services in writing or may request the Consultant to submit proposals for variation to the Services. Where the Consultant considers a direction from the Government or any other circumstance is or may give rise to a variation the Consultant shall notify the Government as soon as practicable.
7. **Payment:** The Government shall pay the Consultant for the Services the fees and expenses at the times and in the manner set out in the Schedule. The prices stated in the Schedule are fixed unless there is a written agreement stipulating the price may be varied, when it may be varied and how the price is to be determined. The price is exclusive of VAT. The Consultant is not entitled to claim expenses, surcharges, margins or disbursements except if otherwise agreed in advance and in writing by the Government.
8. **Liability:** Where the Consultant breaches these terms and conditions, the Consultant is liable to the Government for reasonably foreseeable claims, damages, liabilities, losses or expenses caused directly by the breach. The Consultant shall not be entitled to anticipatory profits or to special (including multiple or punitive), incidental or consequential damages or losses.
9. **Contribution to Loss:** If either Party is found liable to the other (whether in contract, tort or otherwise), and the claiming Party and/or a Third Party has contributed to the loss or damage, the liable Party shall only be liable to the proportional extent of its own contribution.
10. **Indemnity:** The Consultant indemnifies the Government in respect of all costs (including legal costs), claims, liabilities, losses, damage and expenses suffered or incurred by the Government and any other person claiming through the Government as a direct or indirect consequence of any unlawful, negligent, tortious, criminal, reckless or dishonest errors, acts or omission of the Consultant in the performance of its obligations under these terms and conditions. This indemnity survives the termination of these terms and conditions.
11. **Insurance:** The Consultant shall take out and maintain at its own cost, at all times during the continuance of these terms and conditions, such insurances as specified in the Schedule. All such insurance shall be on such terms and with such insurers as the Government may reasonably require. The Consultant shall, if requested by the Government, provide the Government with written evidence that all insurances are in force and shall produce, whenever reasonably

required by the Government, the relevant policies and evidence of payment of the current premiums. If the Consultant fails to provide such evidence the Government may, after notifying the Consultant in writing, arrange or keep in force that insurance and may, for the purpose of doing so, pay the relevant premiums and deduct a corresponding amount from any moneys payable by Government to the Consultant under these terms and conditions.

12. Intellectual Property: "Intellectual Property" includes copyright, designs, drawings, specifications, reports, data and documentation. All Intellectual Property arising from the provision of the Services ("New IP") is owned by the Government and the Consultant shall co-operate with the Government (including by signing documents) to help the Government protect its rights in the New IP. To the extent that New IP incorporates or requires Intellectual Property arising outside of the provision of the Services ("Pre-existing IP"), the Consultant licences, or shall procure the licence to the Pre-existing IP for the Government on a perpetual, royalty-free basis. The Consultant warrants and represents to the Government that the New IP and the Pre-existing IP will not infringe the Intellectual Property rights of any third party.

13. **Termination:** The Government may, at its convenience, terminate all or part of the Services by 10 days' written notice to the Consultant who shall immediately make arrangements to stop the Services and minimise further expenditure. The Consultant may, in the event the Government is in material default, terminate these terms and conditions by 10 days' written notice to the Government. Any suspension or termination shall not prejudice or affect the accrued rights or claims and liabilities of the parties. Further, the Government may terminate these terms and conditions immediately where, in the opinion of the Government, there has been serious misconduct by the Consultant. Serious misconduct includes, but is not limited to: bringing the Government into disrepute, where the Consultant, in the judgment of the Government, has engaged in corrupt or fraudulent practices in competing for or executing these terms and conditions, theft of property, offensive behaviour towards Government personnel, members of the public or contractors.

14. **Confidentiality:** The Consultant must keep confidential all information provided by the Government in relation to these terms and conditions and the provisions of the Services and not disclose the same without the written consent of the Government.

15. **Public Statements:** The Consultant must not make any public statements about the Services or these terms and conditions without the Government's written approval.

16. **General Warranties:** The Consultant represents, warrants and undertakes that: a. it has full power, capacity and authority to execute, deliver and perform its obligations under these terms and conditions;

b. it has and will continue to have, all necessary consents, permissions, licences and rights to enter into and perform its obligations under these terms and conditions;

c. there are no existing agreements, undertakings or arrangements which prevent it from entering into these terms and conditions or which would impede the performance of its obligations under these terms and conditions;

d. it has not offered any inducement in connection with the entering into or negotiation of these terms and conditions; and

e. it has not (nor is any of its representative directors or employees) a party to any litigation, proceedings or disputes which could adversely affect its ability to perform its obligations under these terms and conditions.

17. **Conflict:** The Consultant confirms it has no knowledge of any conflict of interest in providing the Services. If any conflict arises or has the potential to arise during the supply of the Services, the Consultant shall immediately inform the Government in writing and the Government will decide on the appropriate steps to be followed in such event, which may include the right of the Government to terminate these terms and conditions with immediate effect.

18. **Key Personnel:** The Key Personnel for the provision of the Services are as listed in the Schedule. Any change to the Key Personnel requires the written consent of the Government.

19. **Assignment:** The Consultant must not assign, transfer or subcontract all or part of its rights or obligations under these terms and conditions without the prior written consent of the Government's, such consent to be provided at the Government's absolute discretion.

20. **Law:** These terms and conditions are governed by the laws of the Cook Islands. The parties agree to submit to the exclusive jurisdiction of the High Court of the Cook Islands.