

19 November 2021



Kia ora

### **Te Matapihi – Central Library**

I refer to your request made under the Local Government Official Information and Meetings Act 1987 (the Act), received on 15 October 2021. You requested the following information:

- *Any reports prepared for the council by Beca Group which relate to viscous dampers as an option for the Central Library*
- *Any communication between Beca and council staff which relate to viscous dampers as an option for the Central Library*

*We have sought clarification from you to part two of your request. You have clarified you are after 2020 correspondence between BECA and council officers.*

Te Matapihi Ki Te Ao Nui (The Wellington Central Library) is an iconic Wellington city building. It is a core part of Te Ngākau Civic Precinct and holds architectural and cultural significance. The Council embarked on an extensive public consultation exercise to determine what should be done with the building. The outcome of that consultation process was a decision to retain the building, subject to extensive engineering to improve its earthquake resilience.

Wellington City Council has **granted** your request for information.

#### *Part one Beca reports*

We have considered the attached Reverse Design Brief from Beca and Consultancy Services Order (CSO) to be relevant to your request. I considered that releasing them unredacted:

- would disclose Beca's trade secrets. Therefore, section 7(2)(b)(i) of the Act applies.
- would unreasonably prejudice the commercial position of Beca. Therefore, section 7(2)(b)(ii) of the Act applies.
- would disclose information provided to Council under an obligation of confidence, the release of which would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied and would likely otherwise damage the public interest if released. Therefore, section 7(c)(i) and (ii) of the Act applies.

For context, the Fluid Viscous Dampers (FVD) proposal uses a novel methodology that is unique to BECA. It is confidential and a trade secret to Beca. The Council and Beca have entered into an understanding of confidentiality in respect of the process. The New Zealand engineering market is limited, and currently under significant capacity constraints. It is in the public interest that the Council continues to have the ability to access such services.

Some minor redactions for privacy purposes have also been made, under s 7(2)(a) of the Act.

I have considered the public interest in the circumstances. I consider in all these situations the reasons for withholding the information outweigh other considerations rendering it desirable in the public interests to make the information available (see section 7(1)).

*Part two communications between Council and BECA*

You have requested email correspondence between council officers and BECA over the 2020 period.

As discussed, it will take us some time to prepare the information for release which includes redacting or withholding information in accordance with the Act. I hope to provide you with a response by 1 December 2021 if not sooner.

**Right of review**

If you are not satisfied with the Council's response, you may request the Office of the Ombudsman to investigate the Council's decision. Further information is available on the Ombudsman website, [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).

If you have any questions, please feel free to contact me.

Kind regards



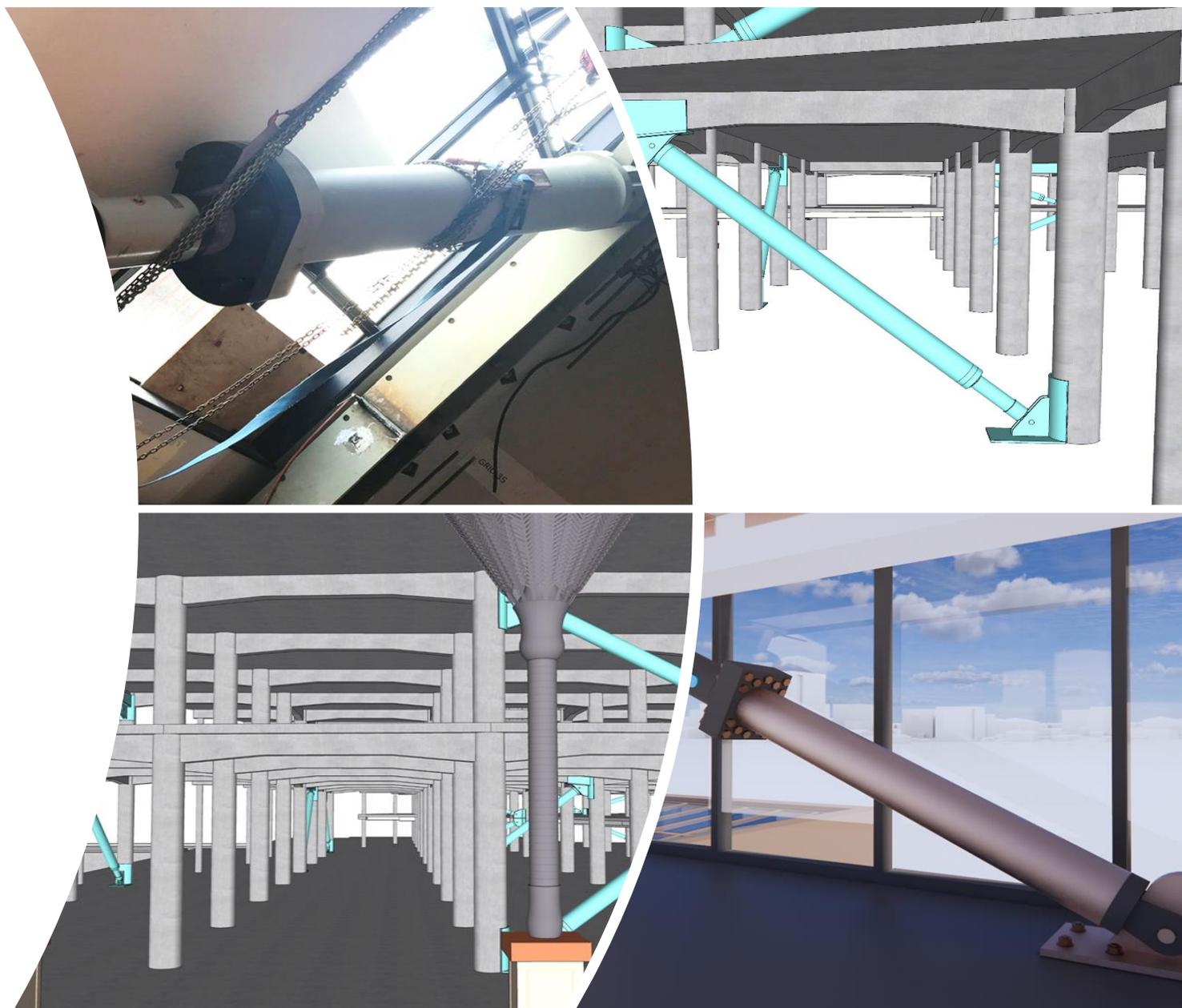
Gareth Hancock

**Team Leader Official Information**

# Wellington Central Library – Reverse Design Brief for Viscous Damper Strengthening Option

Prepared by Wellington City Council and Beca Limited

21 May 2021



## Revision History

Revision N°	Prepared By	Description	Date
0	██████████	Draft issue for client review	18/05/2021
Final	WCC	Final version for issue to Beca	21/05/2021

## Document Acceptance

Action	Name	Signed	Date
Prepared by	██████████		18/05/2021
Reviewed by	██████████		18/05/2021
Approved by	██████████		18/05/2021
on behalf of	Beca Limited		
Finalised by	Wellington City Council and it's consultants 21/05/2021		

## Contents

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<b>1</b>	<b>Introduction from Wellington City Council .....</b>	<b>1</b>
<b>2</b>	<b>Introduction from Beca .....</b>	<b>1</b>
<b>3</b>	<b>Background.....</b>	<b>1</b>
<b>4</b>	<b>The Approach.....</b>	<b>1</b>
<b>5</b>	<b>Description of the Building.....</b>	<b>2</b>
<b>6</b>	<b>Design Criteria .....</b>	<b>3</b>
<b>7</b>	<b>Resilience Rating.....</b>	<b>4</b>
<b>8</b>	<b>Seismic Loading Specification.....</b>	<b>5</b>
8.1	Design Spectra .....	5
8.2	Nonlinear Time History Analysis.....	5
8.3	Ground Motion Records.....	5
<b>9</b>	<b>Elements of Building Investigation &amp; Strengthening.....</b>	<b>5</b>
9.1	Hollowcore Support .....	5
9.2	Diaphragm Strengthening.....	6
9.3	Design of Viscous Dampers .....	6
9.4	Connection of Dampers to the Structure .....	6
9.5	Existing Moment Resisting Frames .....	6
9.6	Columns.....	7
9.7	Foundations .....	7
<b>10</b>	<b>Proposed Compliance Path .....</b>	<b>7</b>
<b>11</b>	<b>Independent Review .....</b>	<b>7</b>
<b>12</b>	<b>Programme.....</b>	<b>7</b>
<b>13</b>	<b>Information Provided.....</b>	<b>7</b>
<b>14</b>	<b>Deliverables.....</b>	<b>8</b>

## 1 Introduction from Wellington City Council

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The following reverse brief was requested by Wellington City Council after an approach by Beca Ltd (Beca) with an alternative solution for the remediation and seismic strengthening of the Te Matapihi Central Library building, which purports to offer a considerable saving of time and cost for a viscous damper solution that can provide an highly resilience outcome for the building, comparable to base isolation.

The final reverse brief, which is this document, was prepared initially be Beca and has been reviewed and finalised by Wellington City Council and its advisors.

Hereafter, all references to “we” relate to Beca.

## 2 Introduction from Beca

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The following sets out a reverse brief for the work we will carry out on a viscous damper option to seismically retrofit the Wellington Central Library. The brief has been reviewed by the Wellington City Council, their engaged engineer, Ruamoko Solutions, and their Quantity Surveyor, RLB, and amended to facilitate comparison with the current base isolation option prepared by Aurecon. A full design features report, covering the complete range of loading conditions and hazards, will be produced as part of a following project stage.

The objective of the brief is to set out the basis for our approach to confirm that a viscous damper scheme is viable and expected to deliver seismic performance that is equivalent to that documented for the current base isolation option.

## 3 Background

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The Wellington Central Library is a five-storey reinforced concrete moment resisting framed building with hollowcore precast floors. Existing seismic assessments by others indicate that the high flexibility of the structural lateral system particularly influences the performance available from the precast floors, severely limiting the building seismic rating.

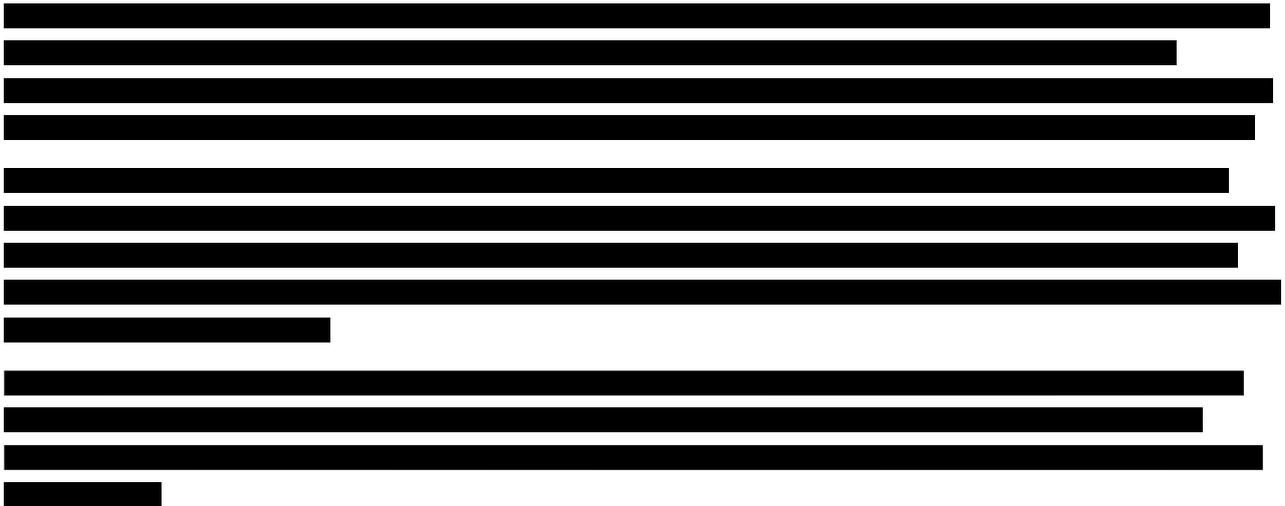
A base isolation option (Scheme C) has been developed by others to a brief that we assume is acceptable to the Wellington City Council (WCC). We have developed this brief for a viscous damper scheme based on that assumption.

Beca has proposed a retrofit scheme consisting of cleverly designed and positioned viscous dampers that can be expected to reduce building drifts under seismic loading to a level that, together with targeted detail and connection improvements, will provide confidence that the required performance is met.

## 4 The Approach

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[REDACTED]



## 5 Description of the Building

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The Wellington Central Library is located on the corner of Victoria and Harris Streets in Wellington City. It was constructed in the 1990s.

The building extends over five levels (above ground) and has a basement for car parking and other utility functions.

The building is irregular in plan with Levels 1 and 2 extending over the full plan area and a mezzanine and upper levels over a reduced area. Levels 3 and 4 extend over the pedestrian access route on the two street frontages.

The structural system in the building is ductile reinforced concrete moment resisting frames with a pin-ended detail to the beams in the outer bays in the lower levels of the building. Seismic assessments carried out for the building indicate that the frame has been detailed at a level which should ensure an adequate level of ductile response (around a ductility of 4).

The typical floors are constructed of precast hollowcore units with concrete topping reinforced with a single layer of non-ductile mesh. Seating to the hollowcore units is indicated as 50 – 60 mm with no bearing strips in evidence. The mezzanine floor is precast Double T and rib and infill units supported on concrete and steel framing.

The wall cladding comprises both curtainwall glazing and precast panels.

The building is founded on concrete bored belled piles. Investigations completed by others indicate that bedrock is encountered at depths varying from 7 m to 14 m below street level.

Previous assessments prepared for the building by others indicated that the existing frames achieve a score of 60 -70%NBS (IL2) and, in addition to issues with the hollowcore seating, there were also potential issues with:

- Insufficient seating for stairs and escalators
- Insufficient allowance for movement at precast panel supports
- Floor diaphragm capacity.

The internal floors on Levels 3 and 4 are intended to be extended and this is included in this option.

It is required that the ground floor level is raised by 600mm for flood level purposes. The Beca scheme shall provide for this raised floor in their solution to facilitate comparison with the base isolation option.

## 6 Design Criteria

The targeted design criteria for the base isolated scheme as reported in the documentation made available and as we interpret them for the viscous damper scheme are summarised in Table 4.1:

Table 4.1 Targeted Design Criteria for Base Isolation and Viscous Damper Options

Limit State & Risk Factor (NZS1170.5)	Target for Base Isolated (BI) option	Corresponding Target for Viscous Damper option	Design Return period (yrs)	Maximum calculated interstorey drift in structure	Maximum calculated upper floor accelerations
SLS1 R=0.25			25	0.35%	
SLS2 R=1.0			500	0.5% <sup>(1)</sup>	
ULS R=1.3			1000	0.5% <sup>(2)</sup>	
CALS-1 R=1.63			1800	0.8%	0.5g <sup>(3) (7)</sup>
MCE R=1.8			2500	1.3%	
XXX%ULS <sup>(5)</sup>			XXXX <sup>(5)</sup>	XXX% < 2.5%	



## 8 Seismic Loading Specification

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### 8.1 Design Spectra

[Redacted text block]

### 8.2 Nonlinear Time History Analysis

[Redacted text block]

### 8.3 Ground Motion Records

[Redacted text block]

## 9 Elements of Building Investigation & Strengthening

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### 9.1 Hollowcore Support

[Redacted text block]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

## 9.2 Diaphragm Strengthening

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

## 9.3 Design of Viscous Dampers

[Redacted]

## 9.4 Connection of Dampers to the Structure

[Redacted]

[Redacted]

[Redacted]

## 9.5 Existing Moment Resisting Frames

Beca shall consider the capacity of existing moment resisting frames (beams, columns and joints) and develop any improvement required in sufficient detail to enable cost estimation.

## 9.6 Columns

Column strengthening or detailing improvement (such as local confinement) requirements that may emerge from the analysis will be developed in sufficient detail to enable cost estimation.

## 9.7 Foundations

The objective will be to provide a damping solution that minimises the impact on existing foundations. The available information on the foundations will be considered, to set parameters for the damper design process to deliver this outcome.

# 10 Proposed Compliance Path

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Although the development of the damper scheme is considered unique, once developed it can be tested for compliance using the non-linear time history route set out in B1/VM1 of the Building Code (NZS 1170.5). We will be using such analyses to confirm compliance. This also enables others to independently check compliance of the solution via the same route.

We understand that WCC is proposing to appoint a firm of engineers to evaluate the Beca scheme.

We note that it is very unlikely that the traditional approaches commonly used to proportion viscous dampers in buildings will be sufficient to evaluate the Beca scheme.

# 11 Independent Review

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Beca will commission an independent review by Professor (Emeritus) Athol Carr of the University of Canterbury. Professor Carr has undertaken review of two current damper schemes Beca has designed for Wellington buildings, which are nearing completion on site. He is a renowned international expert in the field of nonlinear computational dynamics and has performed non-linear dynamic analysis of building structures, offering the best available independent confirmation of such analysis. Prof. Carr also acted as the facilitator for the nonlinear time history analysis panel for the Royal Commission for inquiry into building failures caused by the Canterbury earthquake sequence.

# 12 Programme

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Beca will deliver a viscous damper design layout for costing, 6 weeks after agreement of the design brief for this initial stage.

# 13 Information Provided

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Beca acknowledges receipt of the following information from WCC, for the purpose of this commission:

- Detailed Seismic Assessment Report (dated 21 February 2013)

- Existing Structural Drawings – Combined (vol. 1 of 2)
- Existing Structural Drawings – Combined (vol. 2 of 2)
- Wellington Central Library Seismic Strengthening Structural Design Features Report (dated 7 October 2020) Revision E
- Central Library Seismic Upgrade – Structural Services design (dated 20 September 2020)
- Central Library Hollowcore Seismic Assessment Revision 2 (dated 16 July 2019)
- WCC Central Library Structural Strengthening Works – Precast Panel and Stair Seismic Strengthening Developed for Costing only (excludes Lateral Frame, Hollowcore and Basement Works (dated 21 September 2020)
- Central Wellington Library Seismic Strengthening Geotechnical Report, 21 December 2020
- Central Library Project – Cost Estimate Summary (Option C).

### **Drawing sets and associated documents with Extensions to Levels 3 and 4 (880m<sup>2</sup> circa)**

1. Structural & Services Engineering Commentary
2. Structural Drawings
3. Mechanical Services Drawings
4. Architectural Drawings
5. Architectural Outline Spec.

Beca will rely on the information received for the purpose of this commission.

Site investigations by Beca are precluded by the timeframe for this commission.

## 14 Deliverables

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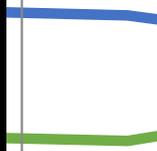
We propose the following deliverables at this stage, in sufficient detail to allow both pricing and review functions to be undertaken independently:

- Floor plans showing damper positioning, on-floor works including diaphragm ties and strengthening, hollowcore floor supports, any foundation or column strengthening works required. This will include co-ordinated details of the following:
  - Construction methodology & temporary works
  - Demolition & site preparation
  - Central staircases remediation
  - External façade pre-cast concrete panel remediation
  - Ground floor high voltage room/substation remediation. NB - This room remains in place and live/active during construction
  - Raised ground floor slab
- Details of typical damper and other connections of new strengthening elements to the existing structure.
- Elevations of key damper frames.
- 3D model of damper layout.

- A detailed cost estimate by Beca of the viscous damper scheme detailing the savings achieved.
- Nonlinear time history analysis report summarising key assumptions and analysis methods, sufficient for a peer reviewer to undertake an independent analysis in parallel for comparison. The report shall summarise key results, including base shears, floor accelerations, building displacements and drifts, and acceleration response spectra for each floor (including ground floor).
- Building performance report summarising the key criteria adopted to ensure the nominated USCR resilience rating is achieved at each limit state. The report shall include justification for the criteria adopted.

The above information shall form the basis of an engineering review. It is noted that such reviews are a fluid process and may require additional information to be supplied or discussion with the designer to allow completion of the review.

Remaining  
information  
withheld



# AoG Consultancy Services Order

Ref: 2021-020

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

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

Today's Date	10 May 2021	Project Name	Central Library / Te Matapihi Viscous Damper optioneering
Agency	Wellington City Council ("Buyer" or "Council")	Provider	Beca Limited
Agency Contact Name and Title	Claire Richardson, Chief Operating Officer	Provider Contact Name and Title	██████████ Director Local Government Advisory
Agency email Address	<a href="mailto:claire.richardson@wcc.govt.nz">claire.richardson@wcc.govt.nz</a>	Provider email address	██████████@beca.com
Agency phone #	021 958 483	Provider Phone #	Direct: ██████████ Mobile: ██████████
Nominated Personnel	██████████		
Sub Category	Civil / structural / geotechnical engineering & environmental services		
GCDO Assurance Sub Panel	No	Protective Security Services Sub Panel	No

### A1. Purpose and any background information

Purpose Statement: The purpose of this commission is to provide structural engineering services in relation to a feasibility study for a viscous damper seismic retrofit scheme for the Wellington Central Library. The study is to determine whether viscous dampers are a feasible alternative to base isolation as part of strengthening the Central Library to achieve a high level of resilience, being in excess of 100%NBS ('Option C' as recommended to Council by resolution of its Strategy and Policy Committee on 28 October 2020.) and can provide cost and programme benefits.

Council is undertaking a project to remediate the Wellington Central Library |Te Matapihi (the Project).

As the Project prepares to enter the next stage of the project, moving from preliminary designs to detailed designs through to the completion of the construction and defects period, a number of procurement activities are being progressed. One of these is the procurement of the structural engineering consulting for the next stage of the process.

While options have progressed to date on the basis of a high resilience solution premised on a base isolation design, Beca has advised the Council that it has an alternate solution that it believes could save the project a substantial amount of cost and achieve the same quality as a base isolation solution. While this approach has been unsolicited, it is not considered unique (i.e. does not constitute a Unique, Unsolicited Proposal).

While some investigation of a viscous dampers solution has previously been undertaken, to ensure that the Council is prudent in its consideration of options, it has agreed to allow Beca to complete an assessment and report back to Council on the viability, suitability and affordability of a viscous dampers solution for the project.

Based on the value and nature of services required, the assessment is being conducted as a direct procurement and Beca is being engaged under this Consulting Services Order under the All of Government Consulting Services panel.

The engagement will be subject to NDA's, noting that Council must be able to circulate necessary information as part of any subsequent procurement process (if that process allows for submission of viscous dampers solutions).

If the Council's assessment of the Beca report confirms that viscous dampers option is:

- viable and reasonably considered to be able to achieve the benefits claimed, then (at the Council's sole discretion) the procurement of the consulting services may be varied to include options wider than just a base isolation, or
- not viable and reasonably considered to be able to achieve the benefits claimed, then the procurement of the consulting services will proceed seeking to pursue a base isolation design.

The Council will have an evaluation panel assess Beca's report and will report back to the Project Board on their findings. This will include representation from Council and Council's external project managers and quantity surveyors, as well as independent technical engineering expertise.

## **A2. Specific questions / instructions for Provider**

Council is seeking consultancy services from the Provider to

1. Produce a reverse brief that details how it will deliver a seismic solution (Viscous Dampers) for the Project that addresses the seismic performance of its solution to meet a similar equivalency to that of a base isolated solution to deliver on Councils requirement of a "High Resilience" building, with programme and cost savings that are real and measurable, to be detailed and provided within 3 working days of this CSO being executed by both parties.
2. Council will review the reverse brief and confirm its requirements (The Final Brief), within 3 working days of receipt.
3. Beca will then have 6 weeks to respond from the date of receipt of the Final Brief.
4. Within 6 weeks of receiving the Provider's response to the Final Brief, Council will review the Provider's response, seeking to confirm the seismic performance of the proposed Viscous Dampers solution and the impact on the programme and cost benefits as assessed through the evaluation team, and will confirm whether any further consideration of the proposed solution will be considered, as set out in A1 above.

The Provider will liaise in the first instance with the Project's Procurement Advisor (Paul Perniskie).

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

The Provider acknowledges that the Central Library ground floor is required to be raised above the water table. This elevation was to be achieved during the base-isolation of the building and the Supplier will allow for such elevation in delivering the Services. The building ground floor is expected to be elevated by 600mm as at the time this CSO is entered into.

Further the Provider is advised that levels 3 and 4 of the Central Library Building are to be extended by 440m<sup>2</sup> circa (shell and core) for a total increase in floor plates for levels 3 and 4 of 880m<sup>2</sup> circa. The Provider is to allow for this floor increase in its viscous damper solution.

Notwithstanding anything else in the Service Agreement or this CSO, the Provider and the Participating Agency agree that Part F is amended as follows:

1. The words (**Provider IP**) are deleted from the end of clause 11.1.
2. A new clause 11.1(A2) is inserted as follows:  
“11.1(a2) Any intellectual property created or developed by the Provider or its employees or Subcontractors in performing the Services and developing the Documentation will be owned by the Provider from the date the Intellectual Property is created or developed. (together with the intellectual property described in clause 11.1(a), the **Provider IP**)”
3. Delete clause 11.2(b)

The Provider and the Participating Agency agree that they will not under any circumstances (including in dispute) assert that the provisions above are unenforceable due the operation of any other provision of the Service Agreement or this CSO.

For clarity the Provider considers the following to be its IP for this project and its Confidential Information:

- The process Beca uses to determine the damper arrangements that both meets the nominated performance criteria and minimises the number of dampers
- Number of dampers
- Damper arrangement within the structure
- The specification of the damper properties

#### A4. Client specific requirements

Access to stakeholders, subject matter experts and approvers will be reasonably available.

#### A5. Timeframes

The CSO will cover the period from 10 May to the sooner of the completion of the services or 20 August 2021.

**A6. Indicative budget**

The CSO has a fixed fee lump sum of [REDACTED] plus GST.

**A7. Outputs of the Services**

Reverse Brief (Draft)

Beca Response to Final Brief

Clarification answers to queries arising from Beca Response and associated materials

**A8. Tables**

Nil

**A9. Provider liability cap**

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

**Part B – for Provider to complete***The Provider will complete Part B and email the form back to the client***B1. Specific Services to be provided***As detailed in A2 above and the Final Brief.***B2. Sub Category and Tier to be Provided**

Selection	Sub-category of Services	Tier (1/2/3)
	Accounting	
	Assurance	
•	Construction consulting (Structural and Seismic)	1
	Audit	
	Finance and economics	
	Procurement and logistics	
	Taxation	
	Business change	
	Human resource	
	Marketing and public relations	
	Operations management and risk	
	Policy, research and development	

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

Yes

**B4. Can you confirm that the timeframe is acceptable?**

Yes

**B5. Estimated Start and End Date**

<b>Start</b>	xx May 2021	<b>End</b>	xx August 2021
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**B6. Estimate / Quote (excluding GST, if any)**

<b>Fees</b>	████████ fixed fee lump sum
<b>Administration Fee (Tier 1 and 2 only)</b>	n/a
<i>(Optional)</i> The above Fees are apportioned as follows:	
Job Level 1	
Job Level 2	
Job Level 3	
Job Level 4	
Job Level 5	
Fixed Fee (Job Level 1)	
Fixed Fee (Job Level 2)	
Fixed Fee (Job Level 3)	
Fixed Fee (Job Level 4)	
Fixed Fee (Job Level 5)	
Monthly Retainer	
Subcontracting	
<b>Expenses</b>	Nil Anticipated
<b>Total Charges</b>	████████
Identify whether the Total Charges is an Estimate / Quote and the method that the Charges have been calculated	Costs are calculated on a fixed fee lump sum of ██████████

Additional information / assumptions:

Prices are in NZD and excludes GST. Other than reimbursements of any direct costs (e.g. travel costs, incurred with prior approval) no other costs will apply. We have made the following assumptions

- Key personnel (including project personnel, subject matter experts, stakeholders, users and decision makers) will be reasonably available, and approval of documents and decisions will occur in a reasonable timeframe.
- If any aspects of the engagement change that put the budget, timelines or quality of deliverables at risk these will be raised with and discussed with CSO Contract Manager.

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

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

I, [REDACTED] Chief Structural Engineer have made diligent inquiry whether Beca Ltd has any actual, potential or perceived Conflict of Interest were it to provide the Services described in this Consultancy Services Order and I have disclosed any actual, potential or perceived Conflict of Interest and how it will be managed below:

I have not identified, and therefore have no disclosure of, any actual, potential or perceived Conflicts of Interest related to this engagement.

**B8. Additional information**

The Participating Agency will provide the Supplier with the following information that the Participating Agency has within its control at the time this CSO is entered into:

- Detailed Seismic Assessment Report (dated 21 February 2013);
- Existing Structural Drawings – Combined (vol. 1 of 2);
- Existing Structural Drawings – Combined (vol. 2 of 2);
- Wellington Central Library Seismic Strengthening Structural Design Features Report (dated 7 October 2020) Revision E;
- Central Library Seismic Upgrade – Structural Services design (dated 20 September 2020);
- Central Library Hollowcore Seismic Assessment Revision 2 (dated 16 July 2019);
- WCC Central Library Structural Strengthening Works – Precast Panel and Stair Seismic Strengthening Developed for Costing only (excludes Lateral Frame, Hollowcore and Basement Works (dated 21 September 2020);
- Central Wellington Library Seismic Strengthening Geotechnical Report, 21 December 2020; and
- Central Library Project – Cost Estimate Summary (Option C).

**Drawing sets and associated documents with Extensions to Levels 3 and 4 (880m2 circa)**

- 1) Structural & Services Engineering Commentary;
- 2) Structural Drawings;
- 3) Mechanical Services Drawings
- 4) Architectural Drawings; and
- 5) Architectural Outline Spec.

**B9. Signatures**

Name of Provider's authorised signatory

[REDACTED]

Signature of authorised signatory

[REDACTED]

The client accepts and authorises this Consultancy Services Order

[Yes/No]

<b>Name of client's authorised signatory</b>	
<b>Signature of authorised signatory</b>	
<b>Date of acceptance</b>	
<b>Client's job reference or purchase order number</b>	<b>CSO 2021-020</b>

Please send this link below to your agency contacts to complete after each engagement. For long engagements, we recommend sending this at key milestones to seek feedback throughout the engagement.

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

GCDO Assurance (<https://www.research.net/r/GCDOAssuranceServices-CSO>)

**Part C – Variations to Part A**

**LEAVE BLANK WHEN ISSUING CONSULTANCY SERVICES ORDER**

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

**Revised scope and/or timeframe**

--

**Part D – Variations to Part B**

**LEAVE BLANK WHEN ISSUING CONSULTANCY SERVICES ORDER**

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

Revised Estimate (excluding GST, if any)	
<b>Revised Fees</b>	\$(Add in total Fees)
<b>Administration Fee (Tier 1 and 2 only)</b>	\$(1% of Fees for Services for which the Provider is Tier 1 or Tier 2)
<i>(Optional) The above Fees are apportioned as follows:</i>	
Job Level 1	\$
Job Level 2	\$
Job Level 3	\$
Job Level 4	\$
Job Level 5	\$
Fixed Fee (Job Level 1)	\$
Fixed Fee (Job Level 2)	\$
Fixed Fee (Job Level 3)	\$
Fixed Fee (Job Level 4)	\$
Fixed Fee (Job Level 5)	\$
Monthly Retainer	\$
Subcontracting	\$
<b>Revised Expenses</b>	\$
<b>Total Charges</b>	\$
Identify whether the Total Charges is an Estimate / Quote and the method that the Charges have been calculated	
Additional information / assumptions:	

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

<b>E1. Signatures</b>	
<b>Name of Provider’s authorised signatory</b>	
<b>Signature of authorised signatory</b>	

<b>The client accepts and authorises this Consultancy Services Order</b>	<b>[Yes/No]</b>
<b>Name of client’s authorised signatory</b>	
<b>Signature of authorised signatory</b>	
<b>Date of acceptance</b>	
<b>Client’s job reference or purchase order number</b>	<b>[if required]</b>

Please send this link below to your agency contacts to complete after each engagement. For long engagements, we recommend sending this at key milestones to seek feedback throughout the engagement.

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

GCDO Assurance (<https://www.research.net/r/GCDOAssuranceServices-CSO>)

## Part F – Terms

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

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

1. **Appointment**
- 1.1 **Appointment**
- (a) The Participating Agency appoints the Provider to provide Services to the Participating Agency as detailed in this Consultancy Services Order and the Provider accepts that appointment, in accordance with the terms of this Consultancy Services Order.
- (b) Certain obligations of the Provider in this Consultancy Services Order do not apply to sub-categories of Services for which the Provider has been appointed as a Tier 3 Provider as follows:
- (i) the Participating Agency may nominate specific Personnel to be the primary providers or to supervise the delivery of the Services but clauses 6.2(b) to 6.2(e) do not apply to any nominated Personnel;
- (ii) the relevant Services are not required to meet or exceed the Service Levels specified in Schedule 3 (Performance Measurement) and clause 2.5(a), Schedule 3 (Performance Measurement) do not apply;
- (iii) the Provider is not required to pay an Administration Fee and clause 8.3(a)(v) does not apply;
- (iv) the Provider is not required to conduct the Agency Satisfaction Survey for the relevant Services and clause 5.1(h) does not apply;
- (v) the Provider and Participating Agency are not obligated to escalate a dispute to the CoE's All-of-Government Procurement Manager, Centre of Expertise for Consultancy, in accordance with clause 13.2(c)(ii); and
- (vi) as otherwise stated in this Consultancy Services Order.
2. **Services**
- 2.1 **Services**
- (a) The Provider will provide Services to the Participating Agency in accordance with
- the terms of this Consultancy Services Order.
- (b) The Provider will use all reasonable endeavours to ensure that, on the date the Documentation is provided under this Consultancy Services Order, such Documentation is in a readable and readily useable format.
- 2.2 **Agents may procure Services**
- The Participating Agency may, by notice to the Provider and the CoE, appoint one or more third parties to procure Services under this Consultancy Services Order on the Participating Agency's behalf and/or receive invoices, as if that agent was a Participating Agency, provided that any such procurement is for the sole benefit of the Participating Agency.
- 2.3 **Timely performance**
- The Provider will ensure that the Services to be performed under this Consultancy Services Order are provided on or before the date specified for performance (if any) in this Consultancy Services Order and, if no time is specified, within a reasonable time after the issue of the Consultancy Services Order.
- 2.4 **Delay**
- (a) If the Provider considers that it is (or is likely to be) prevented or delayed from achieving a date or time for performance (**Milestone**) specified in this Consultancy Services Order (**Delay**), it will:
- (i) immediately provide notice verbally or in writing to the Participating Agency, setting out:
- (A) the cause of the Delay and its expected duration;
- (B) the effect of the Delay on its ability to perform its obligations under this Consultancy Services Order (including any future Milestones);
- (C) what extension, if any, to the relevant Milestone is being sought; and
- (D) what steps, if any, the Participating Agency

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

## 2.5

### Service standards

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

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

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

## 3. Estimates and Quotes

### 3.1 Estimates and Quotes

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

### 3.2

#### If Charges exceed the Estimate

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

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

**3.3 If Charges exceed the Quote**

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

**4. Conflicts of interest**

**4.1 Conflicts of interest**

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

potential or perceived Conflict of Interest; and

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

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

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

**5. Responsibilities**

**5.1 Provider responsibilities**

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

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

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

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

## 5.2 Participating Agencies' responsibilities

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

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

involving the CoE in accordance with clause 13.

## 6. Resourcing

### 6.1 General requirements

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

### 6.2 Provider's Nominated Personnel

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

### 6.3 Personnel

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

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

- 7. Changes**
- 
- 7.1 **Change procedure**
- The Participating Agency may agree any variations to this Consultancy Services Order with the Provider using Part C of the Consultancy Services Order.
- 8. Price and payment**
- 
- 8.1 **Calculation of Charges**
- The Charges will be calculated in accordance with the terms of Schedule 2 (Pricing).
- 8.2 **Participating Agency to pay for Services**
- (a) The Participating Agency will pay the Provider the Charges applicable to any Services procured by the Participating Agency on the terms of this clause 8.
  - (b) The Charges and Administration Fee comprise the total amount payable by the Participating Agency for the Services.
- 8.3 **Invoicing and payment**
- Except as otherwise provided in Schedule 2 (Pricing) or as agreed with the Participating Agency in this Consultancy Services Order, the Provider will invoice the Participating Agency (or, if the Participating Agency has instructed the Provider in writing, the third party agent) for the Charges and the Participating Agency will pay those Charges, in accordance with the following terms:
- (a) the Provider will render one itemised invoice to the Participating Agency at the end of each month during the Term for all Services performed during that month specifying (as applicable):
    - (i) the nature and amount of the Fees or other applicable fees and fee structures;
    - (ii) the Personnel and their applicable Rate;
    - (iii) the hours billed (by Personnel and in the aggregate);
    - (iv) the nature and amount of any Expenses (including any third party charges to be passed on to the Participating Agency);
    - (v) if applicable, the amount representing the Administration Fee;
    - (vi) how much of the Estimate or Quote has been used;
    - (vii) a brief description of the Services provided during that month; and
    - (viii) any other matters the Participating Agency may reasonably request;
  - (b) each correctly rendered invoice will be payable on or before the 20th day of the month following the month in which the invoice was received;
  - (c) the Participating Agency will have no obligation to pay any Charges which are invoiced more than 90 days after the

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

**8.4 Invoice disputes**

If the Participating Agency or the Provider disputes an invoice:

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

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

**8.5 Taxes**

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

**8.6 Administration Fee**

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

**8.7 Suspension of payment**

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

**9. Warranties**

**9.1 General warranties**

Each party represents, warrants and undertakes that:

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

**9.2 Provider's warranties**

The Provider represents, warrants and undertakes that:

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

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

**9.3 Continuous application**

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

**9.4 Notification**

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

**9.5 Other warranties excluded**

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

**10. Confidentiality**

**10.1 Protection of Confidential Information**

- (a) Subject to clauses 10.1(c) and 10.2, the Provider and the Participating Agency will treat as confidential and not disclose to any third party nor use for its own benefit any Confidential Information that is the Confidential Information of the other.
- (b) The Provider will:
  - (i) ensure that all Confidential Information of the Participating Agency (and any backup archives containing such Confidential Information) in the possession or control of the Provider from time to time is kept secure and managed and protected and only disclosed or otherwise dealt with in accordance with this Consultancy Services Order;
  - (ii) not use any Agency Information for its own purposes or for any purposes different from those contemplated by this Consultancy Services Order; and
  - (iii) advise the CoE in writing if any Confidential Information of the Participating Agency will be transferred or stored outside New Zealand before such information is transferred and will confirm that the requirements of this clause 10.1 will be met while such Confidential Information is stored outside New Zealand.
- (c) Clause 10.1(a) does not prevent the disclosure of Confidential Information:
  - (i) if that information was known, or becomes known, to the public through no act or default of the recipient;
  - (ii) that the recipient is required by Law or parliamentary practice (including parliamentary

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

- (iii) that was lawfully known to the recipient prior to the date it was received;
- (iv) that becomes available to the recipient from a source other than a party to this Consultancy Services Order, provided that the recipient has no reason to believe such source is itself bound by an obligation of confidence to the person that disclosed that information or is otherwise prohibited under Law from disclosing such information;
- (v) to any Professional Adviser for the purposes of rendering professional services to a party in relation to this Consultancy Services Order;
- (vi) to the extent that such disclosure is authorised by this Consultancy Services Order; or
- (vii) if such disclosure is approved for release with the consent of the party from whom the Confidential Information is first received.

**10.2 Limited disclosure**

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

## 11. Intellectual Property

### 11.1 Intellectual Property owned by Provider

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

### 11.2 Intellectual Property owned by Participating Agency

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

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

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

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

### 11.3 Intellectual Property owned by third parties

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

## 12. Liability

### 12.1 Indemnity

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

	<p>result of any claim that the possession or use of any Intellectual Property supplied or licensed by the Provider, or the use of any Intellectual Property used to provide the Services, infringes any third party's rights.</p>		<p>Participating Agency (which will not be unreasonably withheld); and</p>
	<p>(c) The Provider will have no liability under clause 12.1(b) to the extent that any IP Claim arises from any:</p>		<p>(iv) the Provider will notify the CoE of the IP Claim, and the outcome within 5 Business Days of the claim being concluded.</p>
	<p>(i) modification by the Participating Agency of any item of Intellectual Property supplied or licensed by the Provider without the approval of the Provider;</p>		<p>(b) If any IP Claim disrupts the Participating Agency's use or enjoyment of a Service, the Provider will (unless otherwise requested by the CoE), at its own expense and at its option, immediately:</p>
	<p>(ii) use by the Participating Agency of Intellectual Property supplied or licensed by the Provider for any purpose disallowed by this Consultancy Services Order or the applicable Intellectual Property licence (but only if the licence has been provided to the Participating Agency prior to such use); or</p>		<p>(i) obtain for the Participating Agency the legal right to continued use of the infringing materials; or</p>
	<p>(iii) use of Intellectual Property used to provide the Services if and to the extent that Intellectual Property was supplied by the Participating Agency.</p>		<p>(ii) replace, modify or resupply the infringing materials so that there is no further infringement, without adversely affecting the performance or functionality of those materials.</p>
		12.3	<p><b>Maximum liability of Participating Agency</b></p> <p>In addition to its obligation to pay the Charges, the maximum aggregate liability of the Participating Agency to the Provider under or in connection with this Consultancy Services Order will be, in respect of all Losses, limited to the total Charges paid and payable under this Consultancy Services Order.</p>
12.2	<p><b>IP Claims</b></p>		
	<p>(a) In the event of a claim under clause 12.1(b) (an <b>IP Claim</b>):</p>	12.4	<p><b>Maximum liability of the Provider</b></p> <p>The maximum liability of the Provider to the Participating Agency for all Losses under or in connection with this Consultancy Services Order in respect of all claims will not exceed:</p>
	<p>(i) the Participating Agency will give the Provider notice of the IP Claim as soon as practicable and, to the extent permissible by Law, permit the Provider (at the Provider's cost) to handle all negotiations for settlement and to control and direct any litigation that may follow (<b>Control of the IP Claim</b>);</p>		<p>(a) in relation to the sub-categories for which the Provider has been appointed as a Tier 1 Provider, the greater of:</p>
	<p>(ii) if the Provider has Control of the IP Claim:</p>		<p>(i) 10 times the total Charges paid and payable under this Consultancy Services Order;</p>
	<p>(A) the Participating Agency will provide all reasonable assistance to the Provider (at the Provider's cost) in the handling of any negotiations and litigation; and</p>		<p>(ii) \$5,000,000; and</p>
	<p>(B) the Provider will keep the Participating Agency informed of the defence or negotiations of the IP Claim and diligently conduct any litigation or negotiations, using competent counsel and in a manner that does not adversely affect the name or reputation of the Participating Agency;</p>		<p>(iii) any greater amount or multiple set out in this Consultancy Services Order;</p>
	<p>(iii) the Provider will not enter into any settlement or compromise in relation to the IP Claim without the prior written consent of the</p>		<p>(b) in relation to the sub-categories for which the Provider has been appointed as a Tier 2 Provider, the greater of:</p>
			<p>(i) 10 times the total Charges paid and payable under this Consultancy Services Order;</p>
			<p>(ii) \$2,000,000; and</p>
			<p>(iii) any greater amount or multiple set out in this Consultancy Services Order; and</p>
			<p>(c) in relation to the sub-categories for which the Provider has been appointed as a Tier 3 Provider, the greater of:</p>
			<p>(i) 10 times the total Charges paid and payable under this Consultancy Services Order;</p>
			<p>(ii) \$1,000,000; and</p>

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

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

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

### 13.2 Escalation

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

### 13.3 Mediation

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

### 13.4 Urgent relief

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

## 14. Termination

### 14.1 Termination of Consultancy Services Order

The Participating Agency may terminate this Consultancy Services Order:

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

### 14.2 Consequences of termination or expiry

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

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

## 15. Entire agreement

### 15.1 Entire agreement

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

## 16. General

### 16.1 Interpretation

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

### 16.2 Relationship of the parties

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

### 16.3 Costs

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

term of this Consultancy Services Order expressly provides otherwise.

### 16.4 Assignment

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

### 16.5 Public disclosures

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

### 16.6 Notices

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

communications system of the recipient),

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

#### 16.7 Severability

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

#### 16.8 Waiver

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

#### 16.9 Remedies cumulative

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

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

#### 16.10 Counterparts

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

#### 16.11 Governing law and jurisdiction

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

## SCHEDULE 1: DEFINITIONS

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

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

**Agency Information** means all:

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

but excluding the Provider's working papers;

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

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

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

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

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

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

**Confidential Information** means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

but does not include an event to the extent that:

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

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

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

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

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

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

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

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

**Law** means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Related Entity** means a related company under the Companies Act 1993 (New Zealand) or a related body corporate under the Corporations Act 2001, provided that any reference in the Companies Act 1993 to a "company" is deemed to include any partnership, body corporate, association or other entity, whether corporate or unincorporated, irrespective of the place of incorporation or registration of that partnership, body corporate, association or other entity;

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

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

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

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

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

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

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

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

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

## SCHEDULE 2: PRICING

### 1. Introduction

This Schedule sets out general principles underlying the Charges.

### 2. Principles

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

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

#### 2.2 No minimum volume

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

#### 2.3 No interest

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

#### 2.4 Rates

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

### 3. Charges

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

## SCHEDULE 3: PERFORMANCE MEASUREMENT

### 1. Introduction

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

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

## 2. Service Levels

### 2.1 Format

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

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

### 2.2 Service Levels must be met

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

### 2.3 Changes to Service Levels

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

## 3. Performance measurement

### 3.1 Failure to meet Service Levels

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

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

**Annexure A: Service Levels**

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

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

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

## Gareth Hancock

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**From:** [REDACTED]@beca.com>  
**Sent:** Thursday, 30 July 2020 5:06 pm  
**To:** Karen Wallace new  
**Cc:** [REDACTED]; Barbara McKerrow  
**Subject:** Central Library discussion

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Hi Karen,

Small world, how is it being back at WCC? I've been at Beca now for close to 12 months and I'm thoroughly enjoying the new challenge and the opportunity to still be involved in some exciting projects.

One of my colleagues [REDACTED] caught up with Barbara last week for breakfast and she mentioned that you have been tasked with leading/paving the way forward for the Central Library. She has also mentioned the volume of interest WCC has received from the engineering and architecture community (let alone the general community) – unsurprising given the challenges and prominence of the building!

Barbara suggested we met so you can outline the approach you will be taking in the coming months, and she said you may be interested in some of the thinking we have done about strengthening Central Library. [REDACTED] (our [REDACTED]) and [REDACTED] (a Technical Director in our Wellington Structural team) have undertaken reasonably detailed analysis of the structure and think it would be an ideal candidate for using viscous dampers to bring it up to a resilient, 100% of code standard, and a potentially more resilient outcome than base isolation (comparable with the [REDACTED] 'preferred' outcome), and with less risk in construction.

Dampers are a long established option, but in the past 2-3 years Beca have undertaken considerable research that has generated significant new IP around how they should be installed – we're using them in our strengthening design work on the St James Theatre and in other locations across Wellington.

We think the strengthening part of bringing the Central Library back into use would cost around [REDACTED] – and would be surprised if the overall cost for an ambitious refurbishment came in at more than [REDACTED].

I also totally understand that we have not had access to the level of detail that others may have been exposed too, but I would have thought that it would be worth while exploring these ideas further given the scale and public interest in the project.

Let me know sometimes that would work for you to discuss further and I can bring [REDACTED] with me to provide the technical expertise.

I look forward to hearing from you soon.

Kind regards

[REDACTED]

BECA

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[REDACTED]@beca.com

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## Gareth Hancock

---

**From:** [REDACTED]@beca.com>  
**Sent:** Thursday, 1 October 2020 5:00 pm  
**To:** Kate Smylie  
**Cc:** [REDACTED]; Peter Brennan; [REDACTED]  
**Subject:** RE: Central Library - Peer Review - Feedback due today 5pm

Katie

Please find below our feedback/questions on the documents supplied.

Regards

[REDACTED]

[REDACTED]

Beca  
Phone: +64 4 473 7551 Fax: +64 4 473 7911  
DDI: +[REDACTED] Mob: +[REDACTED]  
[www.beca.com](http://www.beca.com)



Outside of scope

## **Potential Scheme B – Viscous Dampers**

We believe that a properly designed damper scheme could potentially deliver a performance for the structure above the ground level at least as good as the base isolation scheme in Scheme C but could equally be tailored to any level of remediation and cost target.

**Viscous Dampers:** A properly designed viscous damper system minimizes the base shear, member actions and drifts. In the cited papers in the report, the dampers are not designed dynamically using an explicit performance based approach so the observations that are being made do not reflect what is possible. This is not well understood and the advantages of a properly designed system tailored to the response characteristics of the base structure can be significant and can be shown to outperform other remedial options. We believe that the measures outlined in Scheme A would be necessary in any scheme including dampers but the need for additional “strengthening/stiffening” may only be necessary when considering additional dampers/larger dampers against additional structure. The significant benefits are the minimization of intervention in the structure when compared with what is required to achieve the same levels of acceleration and interstorey drift reduction for a base isolation option. Therefore we do not agree with the statement that a purely viscously damped solution can only provide equivalent performance to the 80%NBS(IL3) BRB solution. An ADRS plot cannot show the benefits of a properly designed damper solution.

Sensitivity: General

---

**From:** Kate Smylie <Kate.Smylie@wcc.govt.nz>

**Sent:** Thursday, 1 October 2020 9:32 am

**Cc:** [REDACTED] Peter Brennan  
<Peter.Brennan@wcc.govt.nz>

**Subject:** Central Library - Peer Review - Feedback due today 5pm

Good Morning all,

As per previous emails, in order to stay on track with our tight timeline for the Central Library Building, your feedback as part of the peer review process is required by 5pm today.

Just wanting to check in as to if you are on track with this?

My initial email said to forward directly to Ken Elwood. I have since sent an email correcting this error. If you have sent to Ken already, please forward on to me for collation.

Otherwise please send to me directly today.

Any questions please let me know.

Kind regards,

Kate

NOTICE: This email, if it relates to a specific contract, is sent on behalf of the Beca company which entered into the contract. Please contact the sender if you are unsure of the contracting Beca company or visit our web page <http://www.beca.com> for further information on the Beca Group. If this email relates to a specific contract, by responding you agree that, regardless of its terms, this email and the response by you will be a valid communication for the purposes of that contract, and may bind the parties accordingly. This e-mail together with any attachments is confidential, may be subject to legal privilege and applicable privacy laws, and may contain proprietary information, including information protected by copyright. If you are not the intended recipient, please do not copy, use or disclose this e-mail; please notify us immediately by return e-mail and then delete this e-mail.

## Gareth Hancock

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**From:** [REDACTED]@beca.com>  
**Sent:** Wednesday, 28 October 2020 11:01 am  
**To:** Barbara McKerrow  
**Cc:** Karen Wallace new  
**Subject:** RE: Central Library and the use of dampers

Good to hear,

Hope you had a nice refreshing long weekend!!!

I really appreciate your thoughts and I can promise I don't want to over complicate what is already a very complicated matter. But I trust [REDACTED] and [REDACTED] and I know that their new IP optimizes the way to use/fit dampers which produces some outstanding results and save significant cost. We are not aware of anybody else in the market with this new capability. Sorry to put a spanner in the works but I think its worth digging a bit further.

Kind regards

[REDACTED]

BECA  
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[REDACTED]@beca.com

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[igniteyourthinking.beca.com](http://igniteyourthinking.beca.com)



Sensitivity: General

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**From:** Barbara McKerrow <Barbara.Mckerrow@wcc.govt.nz>  
**Sent:** Wednesday, 28 October 2020 10:53 am  
**To:** [REDACTED]@beca.com>  
**Cc:** Karen Wallace new <karenwallacenew@gmail.com>  
**Subject:** RE: Central Library and the use of dampers

Kia ora [REDACTED]

I was away over the weekend and didn't see your email. I have asked Karen Wallace to respond to a number of your points to make sure we have a common understanding of the process thus far.

Regards

Barbara

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**From:** [REDACTED] <[REDACTED]@beca.com>  
**Sent:** 25 October 2020 10:38  
**To:** Barbara McKerrow <Barbara.Mckerrow@wcc.govt.nz>  
**Subject:** FW: Central Library and the use of dampers

Hi Barbara,

Sorry to contact you at the weekend but this is of high enough importance that I thought I would reach out, as attached below I have also emailed Karen and Peter. In essence I'd like to thank the team for involving Beca in the review process but reading the Council report it looks as though this has not gone far enough. We had anticipated that by including Dampers in the review would mean that we would get a chance to show/prove the IP that we have developed in applying this technology (which we believe at this time is unique to Beca) which provides exceptional results at a much reduced cost [REDACTED]. This has not been the case, instead what looks like may have happened is that Dunning Thornton's and Aurecon have looked into Dampers done some investigation (without our IP input) and come to the view that this tech can't achieve the same results as option C. As highlighted below we strongly disagree with this conclusion and believe that we can provide a Dampers solution which will meet the building performance needs of Council and reduce the costs of the project significantly.

Please don't hesitate to give me a call to discuss further, or would welcome the opportunity to talk in person about how this can be resolved.

Kind regards

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] <[REDACTED]@beca.com>  
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[igniteyourthinking.beca.com](http://igniteyourthinking.beca.com)



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**From:** [REDACTED]  
**Sent:** Sunday, 25 October 2020 8:50 am  
**To:** Karen Wallace <[karenwallaceneu@gmail.com](mailto:karenwallaceneu@gmail.com)>; Peter Brennan <[Peter.Brennan@wcc.govt.nz](mailto:Peter.Brennan@wcc.govt.nz)>  
**Cc:** [REDACTED]  
**Subject:** Central Library and the use of dampers

Hi Karen and Peter,

Sorry for the email over the long weekend, I hope you are having a good one.

First I must say thank you for including Beca as part of the review, however we have been left slightly surprised and perplexed after reading the report which is going to Council next week.

I note in the papers released for next week's Strategy and Policy Committee meeting there is a comment (69) that:

*Their initial analysis is that they could achieve an improvement on the performance of the Option B scheme but could not achieve the performance of the Option C scheme.*

We strongly disagree with this statement, which was Aurecon's position in their report and at the meeting. We believe (supported by Holmes) that it was probably not correct. Holmes acknowledged that they had not attempted a solution at that time, but our opinion was based on more substance – Beca has invested significant amounts of time and money into viscous damper R&D in recent years, and is currently delivering strengthened buildings using dampers in Wellington, including WCC's St James Theatre building, and Argosy's development at Stewart Dawson's Corner. The decision of the meeting was that dampers were an option worthy of future consideration, but since then we have heard nothing.

Unfortunately given that the performance objectives were only provided in the meeting papers it was not possible for us to be more definitive at the meeting, but we remain of the view that an option incorporating dampers has:

- Significant cost benefits over the three options presented
- Meets, and potentially exceeds, the stated performance objectives of Scheme C
- Gives WCC flexibility in the programme for your investment into Central Library
- Potential for the building to be back in use faster

From the costing information (dated May 2020) that was provided as part of the public consultation documentation we believe that we have identified the cost of the structural works and associated works required for implementation for Scheme C (base isolated existing structure) as approaching [REDACTED] (including in proportion the contractor's margin and contingencies etc).

From preliminary analyses we have performed (at our own cost) we believe that a damper scheme matching the performance objectives of Scheme C can be provided at a significant reduction (in the order of tens of millions of dollars) in cost for the structural upgrade. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [Redacted]

These reductions are slightly offset by additional structural engineering fees. Work proposed in Options B and C to provide additional support to the precast floor units would still be expected for a damper option.

The benefits of dampers beyond reduction in cost are:

- [Redacted]

We accept that further work is required to quantify the costs of a damper scheme but we feel confident that such a scheme will show significant benefits over the other schemes that have been presented. There is also the potential to look carefully at various damper schemes and the performance objectives that they meet to reach a considered decision on an appropriate level of cost/performance tradeoff.

If this is of interest we would be happy to work with WCC to develop a concept option for inclusion in your draft Long Term Plan. This would not be a lengthy piece of work, but it would give WCC comfort on the performance and costs of a damper scheme.

We would welcome the chance to discuss our thoughts in person if that helps.

Kind regards

## Gareth Hancock

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**From:** [REDACTED]@beca.com>  
**Sent:** Friday, 4 December 2020 2:37 pm  
**To:** Barbara McKerrow  
**Cc:** Tom Williams  
**Subject:** Re: Wellington Central Library

Ok thanks Barbara,

I look forward to you call.

Hi Tom, happy to discuss at breakfast on Wednesday or prior if you want to give me a call.

Kind regards

[REDACTED]

Sent from my iPhone

On 4/12/2020, at 2:22 PM, Barbara McKerrow <Barbara.Mckerrow@wcc.govt.nz> wrote:

Hello [REDACTED]  
Thanks for your update.  
I am going to hand over this dialogue to Tom Williams our Chief Infrastructure Officer who is responsible for our major capital projects programme and process. You will hear from Tom.  
I would also like to have a quick discussion with you about the way in which Beca is communicating with us. I will give you a call.  
Regards  
Barbara

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**From:** [REDACTED]@beca.com>  
**Sent:** 02 December 2020 18:11  
**To:** Barbara McKerrow <Barbara.Mckerrow@wcc.govt.nz>  
**Subject:** Wellington Central Library

Hi Barbara,  
Thanks again for your time yesterday. I would once again like to thank you and the team for your patience and effort in trying to find a way to reaching a satisfactory outcome. I had a session with [REDACTED] this morning who is our [REDACTED] and is extremely highly regarded amongst his peers.  
I will outline what happened from our view and our understanding of how the review process would unfold. Thankfully the chain of events is getting clearer from our side (apologies for a lack of some info yesterday) which is great, although there still seems to be a slight miscommunication. The actions that I took out of our meeting yesterday were to get detail on:

1. Did we receive the emails from WCC about the review?

**Yes we did [REDACTED] received these and commented as follows on the 1<sup>st</sup> of October:** (For clarity Viscous Dampers was mentioned in a paragraph

but there was no detail, so it was almost impossible to review in any detail other than to disagree that they couldn't provide a viable solution.)

- **Potential Scheme B – Viscous Dampers.** *We believe that a properly designed damper scheme could potentially deliver a performance for the structure above the ground level at least as good as the base isolation scheme in Scheme C but could equally be tailored to any level of remediation and cost target.*
  - **Viscous Dampers:** *A properly designed viscous damper system minimizes the base shear, member actions and drifts. In the cited papers in the report, the dampers are not designed dynamically using an explicit performance based approach so the observations that are being made do not reflect what is possible. This is not well understood and the advantages of a properly designed system tailored to the response characteristics of the base structure can be significant and can be shown to outperform other remedial options. We believe that the measures outlined in Scheme A would be necessary in any scheme including dampers but the need for additional “strengthening/stiffening” may only be necessary when considering additional dampers/larger dampers against additional structure. The significant benefits are the minimization of intervention in the structure when compared with what is required to achieve the same levels of acceleration and interstorey drift reduction for a base isolation option. Therefore we do not agree with the statement that a purely viscously damped solution can only provide equivalent performance to the 80%NBS(IL3) BRB solution. An ADRS plot cannot show the benefits of a properly designed damper solution.*
2. Did [REDACTED] discuss a dampers solution with [REDACTED]?
- Yes.** Prior to the meeting on the 7<sup>th</sup> October spoke with [REDACTED] and mentioned that we believe that our method/IP for designing a Viscous Dampers scheme could provide the same if not greater building performance of either the A,B or C schemes. [REDACTED] mentioned that this would be discussed and would be on the agenda for the meeting on the 7<sup>th</sup> of October.
3. At the meeting on the 7<sup>th</sup> October Viscous Dampers were discussed although somewhat late in the meeting. Both [REDACTED] and the representative from Holmes Construction raised the issue that Viscous Dampers could be a viable solution for the library.

Unfortunately from this point we had assumed (incorrectly) that we would get an opportunity to input or at least provide comment into a dampers scheme, but this never happened – we heard nothing, and we understand WCC officers did not follow up on the damper conversation with [REDACTED].

The next thing we heard on dampers was in the Council meeting papers for the vote on which option to pursue. The papers stated that experts panels *initial analysis is that they (Dampers) could achieve an improvement on the performance of the Option B scheme but could not achieve the performance of the Option C scheme.* We strongly disagree with this statement, which was Aurecon's position in their report and at the meeting. We believe (supported by Holmes) that it was probably not correct. Holmes acknowledged that they had not attempted a solution at that time, but our opinion was based on more substance – Beca has invested significant amounts of time and money into viscous damper R&D in recent years, and is currently delivering strengthened buildings using dampers in Wellington, including WCC's St James Theatre building, and Argosy's development at Stewart Dawson's

Corner. We understand that Aurecon may have been asked to develop a dampers scheme after the meeting on the 7th, but we have no knowledge of this. Since the meeting we have undertaken further modelling of our damper scheme as we believed that this would be useful pre-work for an anticipated damper option, as outlined above. This has provided us with more certainty, and we stand by our previous claims for the benefits of using dampers to strengthen the Central Library.

- [REDACTED]
- [REDACTED]
- [REDACTED]

Our team could pull together a presentation (within a week because of the pre work) which would highlight how our dampers would perform in the library building. Our interest in the building as Wellingtonians means we have done significant modelling of our dampers scheme as we appreciate you need a viable solution that meets the expectations of your Councillors for Central Library to be a strong, resilient building, but at a significantly reduced cost. We would just like to have the opportunity to present what we think is a really exciting, innovative solution that would be a significant 'win' for WCC.

We would be happy for [REDACTED] be present at this presentation as this would give you a level of independency which I totally understand is desirable.

If you are happy to arrange a presentation, please come back with some dates that work for you.

Thanks again for your time,

Kind regards

[REDACTED]

BECA

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Mobile: [REDACTED]

[REDACTED]@beca.com

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[igniteyourthinking.beca.com](http://igniteyourthinking.beca.com)

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