

28 April 2023

s9(2)(a)

Fakaalofa lahi atu s9(2)(a)

RESPONSE TO AN OFFICIAL INFORMATION ACT REQUEST

On 28 March 2023, you contacted the Ministry for Pacific Peoples (the Ministry) requesting under the Official Information Act 1982 (OIA), information relating to our climate reduce certification. On 3 April 2023, you amended your request to include a further question which has been included as question five below.

Please note that under section 15(1AA) of the OIA, if a request is amended or clarified after the date on which it is received, the department or organisation that receives the request may treat the amended or clarified request as a new request that, for the purposes of subsection (1), replaces the original request. I have outlined your specific requests and my responses to each below.

1. *How many years has your Ministry been affiliated with Toitū?*

The Ministry has been affiliated with Toitū Envirocare (Toitū) for less than one year.

2. *How much does it cost your Ministry to maintain certification, including fees from Toitū and costs related to meeting these requirements?*

a. *If different, what were the initial up-front costs to achieve compliance with certification standards and achieve certification in the first place?*

The set up costs totalled \$940.00 (excluding GST). In 2022, the cost for the Ministry to maintain certification, including fees from Toitū and costs related to meeting these requirements was \$10,438.00 (excluding GST).

Wellington (National Office)

Level 1, ASB House
101-103 The Terrace
PO Box 833, Wellington 6140
Ph: 04 473 4493
Fax: 04 473 4301

Auckland

9 Ronwood Ave, Manukau
PO Box 97005
South Auckland Mail Centre 2240
Ph: 09 265 3200
Fax: 09 265 3202

Christchurch

Level 1, BNZ Centre
120 Hereford St
Private Bag 4741
Christchurch 8011
Fax: 03 353 9499

3. *Does the Ministry plan to achieve CarbonZero/Carbon Positive certification, and if so, why, and under what timeframe?*
- a. *If not, why?*

The Ministry plans to follow the 1.5 Degree pathway reduction (as per the Carbon Neutral Government Programme Cabinet direction) from the baseline year to 2025 of 21% and 2030 of 42%. The Ministry is progressing work to assess and inform whether we can achieve CarbonZero certification. The assessment involves resetting our baseline year to a more realistic year of activity while continuing to identify improvements that can support carbon neutrality.

Once we have solidified our baseline year, we will be in a better position to establish a timeline for achieving CarbonZero/Carbon Positive certification; this work will include establishing reduction plans, targets, initiatives, and the specific emissions we plan to target. The Ministry will also commit to purchasing carbon credits in 2025, for the remaining balance of our emissions to follow the Carbon Neutral Government Programme and remain carbon neutral moving forward.

4. *Has the Ministry considered other certification/auditors, or in-house auditing of their climate emissions as an alternative to Toitū?*

The Ministry considered other certification/auditors from the Ministry for Environment's [Suppliers of emissions expertise and services list](#) but did not consider in-house auditing of our climate emissions as we do not have the in-house expertise.

5. *Please provide copy of any contracts signed, any other applicable conditions or criteria your agency must abide by as part of accreditation.*

A copy of the Ministry's contract with Toitū is attached. Please note that some information has been withheld under section 9(2)(a) of the OIA to protect the privacy of natural persons. I am satisfied that there are no other public interest considerations that render it desirable to make the information withheld under section 9 of the OIA available.

In line with standard OIA practice, the Ministry proactively publishes some of its responses to OIA requests. As such, this letter may be published on the Ministry for Pacific Peoples' website. Your personal details will be removed, and the Ministry will not publish any information that would identify you or your organisation.

Should you wish to discuss this response with us, please feel free to contact the Ministry at: oia_requests@mpp.govt.nz.

If you are dissatisfied with this response, you have the right, under section 28(3) of the OIA, to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Fakaaue lahi

A handwritten signature in blue ink, appearing to read 'Leatigaga Jason Tualima', is positioned above the typed name.

Leatigaga Jason Tualima
**Deputy Secretary,
Corporate Services**

Contract for Services

Contract Details

Toitū Environmental Services Agreement
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The Parties

The Buyer:

Ministry for Pacific Peoples

NZBN 9429041908914

Level 1, ASB Building, 101-103 The Terrace Wellington, New Zealand 6011
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and

The Supplier:

Enviro-Mark Solutions Limited (trading as Toitū Envirocare)

NZBN 9429031348959

54 Gerald Street, Lincoln 7608, New Zealand

The Contract

Agreement

The Buyer appoints the Supplier to deliver the Services described in this Contract and the Supplier accepts that appointment. This Contract sets out the Parties' rights and obligations.

Parts of this Contract

The documents forming this Contract are:

1. **Contract Details:** This section
2. **Schedule 1:** Contract Details and Description of Services
3. **Schedule 2:** [GMC Form 1 SERVICES | Schedule 2 \(3rd Edition\) \(procurement.govt.nz\)](#) (Crown) / [GMC Form 2 SERVICES | Schedule 2 \(3rd Edition\) \(procurement.govt.nz\)](#) (non-Crown)
4. Any other attachments described at Schedule 1 which may include the following Specific Terms:
 - 4.1 Attachment 1 to Schedule 1 – Environmental Certification Terms

How to read this Contract

- Together the above documents form the whole Contract.
- Clause numbers in Schedule 1 refer to clauses in Schedule 2 unless identified otherwise.
- Words starting with capital letters have a special meaning. The special meaning is stated in the Definitions section of Schedule 2 and in the relevant Definitions sections in each of Attachment 1 to Schedule 1.
- Where a word starting with a capital letter in Attachments 1 of Schedule 1 does not have a special meaning in the relevant Attachment in which the word appears, then the meaning set out in the Definitions section of Schedule 2 will apply.

- In the event of inconsistency, the Specific Terms in Attachments 1-4 of Schedule 1 will take precedence and will prevail over the terms set out in Schedule 2.

Acceptance

In signing this Contract each Party acknowledges that it has read and agrees to be bound by it.

Signed for and on behalf of the Ministry for Pacific Peoples



(signature)

Name: Jason Tualima

Position: Deputy Secretary Corporate Services

Date: 20/06/2022

Signed for and on behalf of Enviro-Mark Solutions Limited (trading as Toitū Envirocare)



(signature)

Name: s9(2)(a)

Position: Head of Sales

Date: 9/05/2022

Schedule 1

Description of Services

Contract Management and Personnel

Start Date	On the date both parties have signed this Contract	<i>Reference Schedule 2 clause 1</i>
End Date	This Contract will continue in force until terminated in accordance with replacement clause 1.2 of Schedule 2	<i>Reference Schedule 2 clause 1</i>

Contract Managers

Reference Schedule 2 clause 4

	Buyer's Contract Manager	Supplier's Contract Manager
Name:	Jacinta Taliauli	s9(2)(a)
Title / position:	Manager, Procurement, Property and Provider Strategy	Business Development Manager – Public Sector
Address:	Level 1, ASB Building, 101-103 The Terrace Wellington, New Zealand 6011	Level 6, 17 Whitmore St Wellington 6011
Phone:	s9(2)(a)	s9(2)(a)
Email:	procurement@mpp.govt.nz	s9(2)(a)

Addresses for Notices

Reference Schedule 2 clause 14

	Buyer's address	Supplier's address
For the attention of:	As above	As above
c.c. Contract Manager		
Delivery address:		
Postal address:		
Email:		

Description of Services

Context

The Supplier provides environmental certification services to assure entities that their greenhouse gas emissions inventory is complete and accurate, and their management plans to reduce emissions and understand their carbon liabilities in their organisation and more widely through the supply chain to meet the Supplier's certification criteria (**Services**). The Buyer wishes to access the Services and obtain certification under the Supplier's carbonreduce certification programme (**Programme**) as described below:

- The Supplier’s carbonreduce certification Programme provides assurance that the Buyer has prepared its greenhouse gas emissions inventory in conformance with ISO 14064-1 (2018), developed an emissions management plan, set emissions reduction targets and made progress in reducing emissions.

This Contract sets out the terms and conditions on which the Supplier has agreed to provide the Services to the Buyer for the Term specified and the Buyer has agreed to pay the Supplier for the Services.

Description of Services

The Buyer is purchasing the Services for the following Membership Level (which becomes the **Buyer Membership Level**) (tick applicable Buyer Membership Level):

CARBON LITE PLUS

The Services are offered to help the Buyer achieve and maintain certification under the Toitū carbonreduce Programme

The Services provided by the Supplier to the Buyer are made up of the following:

- (1) Set Up Services;
- (2) Annual Membership Services; and
- (3) Audit and Certification Services as applicable to the Buyer Membership Level and further detailed in the table below.

<u>Set Up Services</u>	<u>Annual Membership Services</u>	<u>Audit and Certification Services</u>
<p>Provided subject to the following Contract terms:</p> <ul style="list-style-type: none"> • Contract Details (Page 1) • Schedules 1 and 2; • Attachments 1 and 3 to Schedule 1 	<p>Provided subject to the following Contract terms:</p> <ul style="list-style-type: none"> • Contract Details (Page 1) • Schedules 1 and 2; • Attachments 1,2 and 3 to Schedule 1 	<p>Provided subject to the following Contract terms:</p> <ul style="list-style-type: none"> • Contract Details (Page 1) • Schedules 1 and 2; • Attachments 1,2, 3 and 4 to Schedule 1
Carbon Lite Plus		
<p>Set Up Services are for the Programme in the first year only. These Services include: Up to 4 hours</p> <ul style="list-style-type: none"> • Onsite scope assessment and related Services under the 	<p>Annual Membership Services. These Services include: <i>Carbon Measurement and Reduction Services</i></p> <ul style="list-style-type: none"> • Software licence for 1 user under the terms set out in Attachment 1 to Schedule 1, clause 5. • Tools and materials in the software including emissions factors. 	<p>Audit and Certification Services. These Services include: Verification, Audit and Certification Estimate time: 15-18 hours Verification audit and technical review includes:</p> <ul style="list-style-type: none"> • Planning, desk review and process agreement • Evaluation of boundaries, data collection, processes and controls;

<p>Certification Terms set out in Attachment 1 to Schedule 1.</p> <ul style="list-style-type: none"> • Prepare a project plan, brief project team if required. • Discuss and agree the base year and reporting period for your inventory. • Set organisational boundaries, identify emissions sources and set scopes. • Additional software tool training and extra support required for set up and project kick-off. 	<ul style="list-style-type: none"> • Guidance materials, templates and other membership only online resources. <p><i>Account Management Support and Training</i></p> <ul style="list-style-type: none"> • Technical account manager support (Up to 12 hours) • Introduction to the programme rules and resources; • Tailored project plan for you; • Training and support on environmental measurements and management and reduction opportunities; • Audit preparation. <p><i>Audit and Certification Services</i> in accordance with the terms set out in Attachment 1 and 2 to Schedule 1.</p> <ul style="list-style-type: none"> • Verification audit of compliance with the programme; • Technical review and certification under the programme. <p><i>Marketing and Branding</i> in accordance with the terms set out in Attachment 1 and 2 to Schedule 1.</p> <ul style="list-style-type: none"> • Programme Marks Licence under the terms set out in Attachment 2 to Schedule 1. • Training on the use of our Programme Marks. • Newsletters • Best-practice workshops and networking events • Inclusion of your name, logo and level of certification on our website; 	<ul style="list-style-type: none"> • Evidence collection via interviews, site visit(s), desk-based analysis and data and document reviews; • Evaluation of findings and closure of identified issues; • Preparation of report to include peer review and independent opinion; • Delivers a public disclosure page for external use and confidential internal verification report for management on completion; • Certification issued under the Toitū carbonreduce Programme in accordance with the terms set out in Attachment 1 to Schedule 1.
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	<ul style="list-style-type: none"> Framed certificate of your organisations' Certification. 	
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Deliverables and Milestones

Deliverables and Milestones

In performing the Services, the Supplier will complete the following key Milestones by the due dates stated below:

Deliverable/Milestone	Performance Standards	Due date
Provision of the following Buyer Membership Level Services: <ul style="list-style-type: none"> Set Up Services Annual Membership Services Programme Marks Licence Software Licence 	As set out in Attachments 1-4 to Schedule 1 of this Contract	[Within 3 months from start of contract]
Provision of the following Buyer Membership Level Services: <ul style="list-style-type: none"> Audit and Certification Services. Verification audit and technical review. Certification under the Certification Terms. 	As set out in Attachments 1-4 to Schedule 1 of this Contract.	[Within 8 months from start of contract] Once, ready for audit, auditing period may be divided into an interim and final audit. This will be discussed by with your technical account manager.

Specific code of conduct / policies/ health & safety / protective security / legislative requirement

Not applicable

Supplier's Reporting Requirements

Reference Schedule 2 clause 5.2

Report to:	Description of report	Due date
Buyer's Contract Manager	Pre-audit check of information and report back on any issues or inaccuracies	At least six weeks prior to annual audit (interim being conducted by the Supplier)
	Verification and Audit	[6 – 7 months from start of contract]
	Audit Review	[7 – 8 months from start of contract]

Buyer's Reporting Requirements

Reference Attachment 1 to Schedule 1. You agree that You are aiming to achieve the Certification based on the Verification parameters and assumptions set by You and agreed by Us, which are:

Objective	Toitū carbonreduce Certification in accordance with ISO 14064-1:2018 (organisation inventory).
Scope	All relevant sources as required by the Programme (i.e. All Category 1 and 2 emissions; Category 3 emissions associated with business travel and freight paid for by the organisation; Category 4 emissions associated with waste disposed of by the organisation, and the transmissions and distribution of electricity and natural gas where appropriate; and any Sector specific mandatory emissions sources as outlined by the Programme, within the boundary indicated for the operations of the nominated legal entity inside or outside New Zealand.
Criteria	Technical Requirements (organisation) version 3.0, Certification Mark Guide version 2.0, ISO 14064-3:2019 (verification).
Consolidation Approach	To be determined.
Materiality	Errors, omissions and exclusions when aggregated do not exceed 5% of the total inventory.
Level of Assurance	Reasonable Assurance for Category 1 and 2. Limited Assurance for Category 3, 4, 5 and 6.
Service Levels	Technical Account Management Support Hours: Up to 12 hours. Estimated Audit and Certification Hours: Up to 15-18 hours (subject to the Appendix of Terms).

Charges

The following section sets out the Charges. Charges are the total maximum amount payable by the Buyer to the Supplier for delivery of the Services. Charges include Fees, and where agreed, Expenses and Daily Allowances. The Charges for this Contract are set out below.

Fees

Reference Schedule 2 clause 3

The Supplier's Fees will be calculated as follows:

Services	Cost
Set up fees (Up to 4 Hours) <ul style="list-style-type: none"> • Introduction to the programme • Tailored remote project kick-off sessions and plan • Training and support on your carbon footprint and management opportunities • Extra remote support to prepare for your first audit 	\$940

Buyer Membership Level Services Fees for the following: (Up to 12 hours) <ul style="list-style-type: none"> • Annual Membership Services • Programme Marks Licence • Software Licence 	\$6,850
Buyer Membership Level Services Fees for the following: (Up to 15-18 hours) <ul style="list-style-type: none"> • Audit and Certification Services • Verification audit and technical review • Certification under the Certification Terms. 	\$3,588-4,293
Such other Fees as set out in any Attachment to this Contract or agreed in writing between the parties.	As per Attachment or agreed in writing

The Fees as detailed in the Contract will be fixed for the first twelve months and thereafter subject to variation by agreement of the parties at no more than twelve-monthly intervals.

Each request by a party for a variation in the Fees will be in writing and will be supported by documentary evidence to justify and permit verification of the variation claimed.

The Fees are the total amounts payable in connection with the Services provided to the Buyer by the Supplier under this Contract (including account management, supply of Services to the Buyer, all licences required by the Buyer to use and benefit from the Services, attending meetings, quotations, surveys, invoices and reporting to the Buyer). No management Fee or any other additional amount may be charged to the Buyer without written confirmation from a relevant Authorised Representative of the Buyer.

Where the Buyer requests additional services (which may include Auditor or other Subcontractor services) from the Supplier, this will be charged at the current hourly rate as agreed between the parties.

Expenses

Reference Schedule 2 clause 3

Actual and reasonable — general Expenses

The Buyer will pay the Supplier's actual and reasonable Expenses incurred in delivering the Services on a case by case basis provided that:

- a. the Buyer has given prior written consent to the Supplier incurring the Expense
- b. the Expense is charged at actual and reasonable cost:
- c. If the Expense is for a meal, the Expense does not include alcohol or mini-bar items and is no greater than:
 - \$87 excluding GST over a 24 hour period for a traveller who is travelling in an area that is different to where they normally work;
 - \$44 excluding GST where no overnight stay is required, and travel is greater than 12 hours;
 - \$18 excluding GST where no overnight stay is required, and travel is less than 12 hours.
- d. If the Expense is for accommodation in New Zealand, the Expense is not greater than \$161 excluding GST per night per traveller.
- e. if the Expense is for air travel, the air travel is booked through a Travel Management Company on the All-of-Government panel.
- f. the claim for Expenses is supported by GST receipts.

Daily Allowance*Reference Schedule 2 clause 3***No Daily Allowances are payable.****Invoices***Reference Schedule 2 Subject to clauses 3 and 11.7*

The Supplier must send the Buyer an invoice for the Charges at the following times:

On the following dates subject to completion of the relevant Deliverables/Milestones.

Deliverable/Milestone	Due date	Amount due (exc GST)
Set up Fees (Up to 4 Hours) <ul style="list-style-type: none"> • Introduction to the programme • Tailored remote project kick-off sessions and plan • Training and support on your carbon footprint and management opportunities • Extra remote support to prepare for your first audit 	Payable in accordance with Schedule 2 clause 3.3.	\$940
Provision of the following Buyer Membership Level Services: (Up to 12 Hours) <ul style="list-style-type: none"> • Annual Membership Services • Programme Marks Licence • Software Licence 	Payable in accordance with Schedule 2 clause 3.3.	\$6,850
Buyer Membership Level Services for the following: (Up to 15-19 Hours) <ul style="list-style-type: none"> • Audit and Certification Services • Verification audit and technical review • Certification under the Certification Terms 	Payable in accordance with Schedule 2 clause 3.3	\$3,588-4,293
Total (excluding GST)		\$11,378-\$12,083

Address for invoices*Reference Schedule 2 clause 3*

	Buyer's address
For the attention of:	
Address:	
PO Number or Cost Centre (if required)	

Insurance*Reference Schedule 2 Clause 8.1*

The Buyer does not require any specific insurance under this Contract other than the requirements under clause 8.1 of Schedule 2.

Changes to Schedule 2 and attachments

Schedule 2 of this Contract is amended as follows:

Existing clause 1.2 is deleted and a new clause 1.2 is inserted as follows:

"1.2 This Contract will continue in force until terminated in accordance with replacement clause 1.3 or clause 11 of Schedule 2.

Existing clause 1.3 is deleted and a new Clause 1.3 is inserted as follows:

"1.3 The Supplier will review the Buyer's emissions footprint and membership level on an annual basis as both may change over time. Where the Supplier wishes to make a fee adjustment it will advise the Buyer of this not less than 40 Business Days prior to the anniversary of the Start Date (each anniversary of the Start Date will be the fee adjustment - date). If the Buyer does not agree to accept the fee adjustment, the Buyer may terminate this Contract by giving the Supplier at least 20 Business Days written notice."

The following sentence is added at the end of Clause 6.3:

- "The Buyer may not transfer any of its rights or obligations or its Certification under this Contract without to Supplier's prior written consent, which will not unreasonably be withheld."

A new clause 8.2 is added:

"8.2 Limitation of Liability"

Each Party's liability to the other Party (whether in contract, tort including negligence, or otherwise) under or in connection with this Contract:

- a. will not exceed the total Fees paid by the Buyer to the Supplier;
- b. is limited to losses caused directly by that Party, and
- c. does not include any loss of revenue or profits, loss of anticipated savings, loss of opportunity, loss of production or loss of data, however caused.

Clause 10 is subject to any relevant dispute resolution provisions set out in Attachment 1 of Schedule 1.

Clauses 12.1 and 12.2 are deleted and replaced (as applicable) with the specific Intellectual Property Rights provisions set out in Attachment to Schedule 1.

Clause 13.1.c is replaced with the following:

c. if the use or disclosure is required or anticipated by the Government Procurement Rules [[Government Procurement Rules | New Zealand Government Procurement and Property](#)], or required by law (including under the Official Information Act 1982 or Local Government Official Information and Meetings Act 1987), Ministers or parliamentary convention or any other regulation, rules or policy that is binding on that Party;

Clauses 17.5 is amended to include the following words (underlined):

"**Publication:** Subject to clause 8.2 in Attachment 1 to Schedule 1, the Supplier must..."

The Definitions section is amended as follows:

The following Definitions are deleted and replaced with the definitions below:

- **Confidential Information** is information, including data and personal information, that:
 - a. is by its nature confidential
 - b. is marked by either Party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence'

- c. is provided by either Party or a third party 'in confidence'
 - d. either Party knows or ought to know is confidential, or
 - e. is of a sensitive nature or commercially sensitive to either Party; and includes, in the case of the Supplier, the Supplier's Pre-existing Intellectual Property Rights.
- **Pre-existing Intellectual Property Rights** Any:
 - a. Intellectual Property Rights of a party which:
 - i. exist at the date of this Contract; or
 - ii. are not developed under this Contract; and
 - b. modifications or enhancements to the items in paragraph a. of this definition that cannot be used independently of those items.

The following Definitions are deleted:

- **New Intellectual Property Rights**

The following new Definitions are added

- **Carbon Credit** means a tradeable unit representing the avoidance, reduction or removal of one tonne of carbon dioxide equivalent greenhouse gas emissions.
- **Certification** means the Supplier's certification of the Buyer under and in accordance with the Toitū carbonreduce and/or Toitū carbonzero Programme (or any level of Certification within the Programme if applicable).
- **Certification Period** means the period of time stated on the Certification for which the Certification is valid as long as the provisions set out in this Contract are met.
- **Offsetting and Offsetting Services** means the act of cancelling Carbon Credits in order to balance or compensate for an equivalent volume of greenhouse gas emissions measured as carbon dioxide equivalents.
- **Programme Marks** means the word marks and logo marks licensed to the Buyer and used by the Buyer under the terms of Appendix 1 to Attachment 2 of Schedule 1 as evidence that the Buyer's organisation, product, service or event (as applicable) meets the Programme requirements as set out in the Technical Requirements, these additional terms and the Programme Mark Guide.
- **Territory** means New Zealand.

Attachments

Reference 'Parts of this Contract' described at Page 1

Attachment 1 to Schedule 1

Certification Terms

Introduction

- A. The terms set out in this Attachment 1 to Schedule 1 (**Attachment 1**) outline the terms that apply to the Supplier's provision of the Services to the Buyer and will prevail in the event of any conflict or inconsistency with Schedule 2.

It is agreed

1. Audit and Certification Fees

- 1.1. After the Buyer executes and returns this Contract the Supplier or the Auditor may carry out a scope assessment of the Services. The Buyer agrees that if, as a result of the scope assessment, the Supplier needs to increase or decrease the estimate of the time it will take to perform the Audit, the Supplier will notify the Buyer of the adjusted Audit and Certification Fees. If the Buyer does not agree to accept the adjusted Audit and Certification Fees the Buyer may terminate the Contract by giving the Supplier at least 20 Business Days written notice and paying any unrecoverable Audit-related Costs the Supplier has incurred up to the date the Buyer's notice is received.
- 1.2. If during the Audit it becomes necessary to increase or decrease the time spent on the Buyer's Audit, the Supplier will notify the Buyer in writing of the revised estimate of the time it will take to perform the Audit and the adjusted Audit and Certification Fees. If the Buyer does not agree to accept the adjusted Audit and Certification Fees the Buyer may terminate the Contract by giving the Supplier at least 20 Business Days written notice and paying any Audit-related Costs the Supplier has incurred up to the date the Buyer's notice is received.
- 1.3. If the Buyer agrees to an adjustment to the Audit and Certification Fees under Clause 1.1 or 1.2, such adjusted Audit and Certification Fees will become the new Audit and Certification Fees for the Services provided under this Contract. The payment terms in clause 3.2 of Schedule 2 will apply.
- 1.4. The Buyer may request that the Supplier engages an external Auditor as a Subcontractor to carry out the Buyer's Audit, in which case the Buyer and Supplier must agree on the following before the external Auditor is engaged by the Supplier:
 - a. the terms under which the Supplier will contract the Auditor;
 - b. the fees and disbursements of the Auditor that will be payable by the Buyer in addition to the Supplier's Certification Fee.

2. Intellectual Property

- 2.1. The Buyer acknowledges and agrees that it will not receive or acquire any intellectual property rights relating to the Services and/or the Programme other than a licence to use the Programme Marks in the manner expressly provided for in this Contract and in the Programme Marks Licence Terms at Attachment 2 to Schedule 1.
- 2.2. The Buyer will own all data that relates solely to the Buyer and which the Supplier has obtained in connection with the Programme ("Programme Data"). Subject to clause 2.4, the Supplier may use the Programme Data in order to provide the Services to the Buyer.
- 2.3. The Supplier provides the Buyer with a royalty-free, non-transferrable right to use the Supplier's Intellectual Property as reasonably required in order for the Buyer to execute the

Toitū carbonreduce programme. Any rights to the Programme Marks will be used in accordance with clause 6.

- 2.4. The Supplier will have the right to use, manipulate and publish in any form data that has been anonymised by removing identifying information and/or aggregated and products created from the Programme Data for benchmarking and Toitū Programme development purposes.

3. Certification

- 3.1. In order for the Buyer to participate in the Programme and for the Supplier to carry out the Buyer's Certification, the Supplier will provide the Buyer with a copy of the Documentation in either hard copy or electronic form (via the Supplier's website on password-protected pages) and a licence to use the Supplier's Software in accordance with clause 5 of this Attachment 1 to Schedule.
- 3.2. The Supplier will treat the Buyer fairly and without discrimination throughout the provision of the Services.
- 3.3. The Supplier will award the Buyer Certification (at the level the Buyer has achieved if applicable) if the Buyer meets the Technical Requirements and has paid the applicable Fees set out in Schedule 1 to this Contract. The Supplier may, at its sole discretion, refuse to award the Buyer Certification where:
- The Supplier believes it has evidence of the Buyer's current or recent non-compliance with the international standards and/or regulations relevant to the Programme; and/or
 - The Supplier, acting reasonably, believes that awarding Certification poses an unacceptable threat to its impartiality, or may damage its reputation and/or the credibility of the Programme.
- 3.4. Upon Certification, the Supplier will grant the Buyer a licence to use the Programme Marks in accordance with the Programme Marks Licence Terms set out at Attachment 2 to Schedule 1 of this Contract.
- 3.5. The Buyer must not:
- make any representation relating to the Programme or the Buyer's Certification, except to the extent permitted by this Contract and the terms on which Certification was granted to the Buyer;
 - make any representation relating to the Programme or the Buyer's Certification, that may deceive or mislead any person as to the nature and / or scope of the Buyer's Certification and / or status of the Buyer's membership with the Programme;
 - do or omit to do anything which may bring the Programme into disrepute, or otherwise damage the credibility of the Programme; or
 - purport to transfer the Certification.

4. Audit and Verification (if Applicable)

- 4.1. Audits are conducted when requested by the Buyer (when the Buyer considers it will meet the requirements of the Programme), and if not requested by the Buyer, annually within 12 months of the date of the previous on-site Audit, unless otherwise specified by the Supplier.
- 4.2. Prior to the Audit the Supplier will send the Buyer a pre-audit engagement letter and the Buyer must agree to comply with any requirements specified in that letter as they may supersede and will take precedence over the terms of Schedule 1. Once it has been signed by both parties, the pre-audit engagement letter will be deemed to form part of these Certification Terms.
- 4.3. The Supplier will advise the Buyer of the names of the Auditors selected to conduct the Audit. The Buyer may object to an individual Auditor or Auditors only on the grounds that they are in a position of conflict due to an activity or relationship which compromises or may compromise their impartiality in conducting the Audit (or any other reasonable grounds agreed to by the Supplier in writing in advance of the Audit).

- 4.4. The date for conducting the Audit will be arranged in consultation with the Buyer. If the Buyer postpones or cancels the Audit after it has agreed the date with the Supplier, the Buyer will pay the Supplier any unrecoverable disbursement costs. Notwithstanding the provisions under Schedule 2, if the Buyer cancels the Audit less than 20 Days before the agreed date, the Buyer will also pay any of the Supplier's unrecoverable Audit-related Costs
- 4.5. The Buyer will:
- a. provide the Auditors with access (during the Buyer's normal business hours and subject to the Buyer's reasonable access and security requirements) to the Buyer's records, premises and staff in order to conduct the Audit;
 - b. provide the Auditors with such information and data as reasonably required by the Auditors to conduct the Audit. If the Buyer has not submitted the required information and data at least 20 Days prior to the agreed date for Audit, an additional Audit may be required and the Buyer will pay the Supplier for additional time and disbursement costs;
 - c. comply with the Supplier's reasonable requests in relation to the Audit in a timely manner and not obstruct the Audit in any way; and
 - d. allow observers from any Accreditation Body and if the Buyer agrees, trainers and trainee Auditors, to observe the Audit. The Buyer will be notified in advance if this is required and upon request the Supplier can provide the Buyer with a copy of any confidentiality obligations such observers, trainers and trainee Auditors have provided to the Supplier prior to commencing any such observation.
- 4.6. The Buyer will take all reasonable steps to ensure that the health and safety of the Auditors, the Supplier's staff, technical experts and observers (Personnel) is not compromised while on the Buyer's premises. If any of the Supplier's Personnel identifies a risk to health and safety while on the Buyer's premises, the Supplier will notify the Buyer of this and may suspend the Audit until such risk has been removed to the Supplier's reasonable satisfaction.
- 4.7. If the Audit is stopped at the Auditor's discretion (acting reasonably), the Buyer will pay the Supplier for the work completed up to the point where the Audit stopped.
- 4.8. In the event that the Audit report includes one or more non-conformances, the Buyer must rectify such non-conformance(s) to the satisfaction of the Auditor within the number of Days specified in the non-conformance log issued by the Auditor (which must give the Buyer a reasonable opportunity to correct the non-conformance). If the close-out of non-conformances exceeds this period, the Buyer and the Supplier will agree on any additional fees (which may include the Supplier's fees for another Audit to be performed at the Supplier's discretion where due to the passage of time the Supplier can no longer rely on the previous Audit) which the Supplier will charge to the Buyer on a time and disbursements basis. For the purposes of this clause 4.8, "close out" means either:
- a. where the non-conformance is an error, the correction of that error to the Supplier's reasonable satisfaction; or
 - b. where the Audit findings require certain actions to be implemented by the Buyer, receipt by the Supplier of sufficient evidence to show that such actions have been implemented.
- 4.9. The Buyer warrants that all information and data provided by it for the purposes of the Audit and any additional Audits (whether under Clause 4.5(b), 4.8 or otherwise) are accurate, complete, up to date and not misleading.

5. Use of Software

- 5.1. In the provision of the Services the Supplier may grant to the Buyer a non-transferable and non-exclusive licence to use the Software on the following conditions:
- a. The Buyer has no right to transfer, assign, sublicense or otherwise onward distribute the Software to any third party;
 - b. The Buyer agrees and warrants that it will:

- (i) use the Software in accordance with this Contract;
- (ii) use the Software solely for the purposes of the Services;
- (iii) not use the Software for any commercial purposes in relation to third parties;
- (iv) not intentionally interfere with or disrupt the operation of the Software; and
- (v) maintain the security of its usernames and passwords at all times.

5.2. The Buyer acknowledges that:

- a. While the Supplier takes a commercially reasonable degree of care to ensure the Software meets generally accepted software development standards, the Supplier does not warrant that it is free of bugs or errors.
- b. The Buyer is responsible for obtaining and properly using any computer equipment, software and communications services necessary for the Buyer to use the Software and the Buyer is solely responsible for any damage to its computer systems or loss of data that may result from its use of the Software.

6. Use of Programme Marks

6.1 Where in the course of the provision of the Services, the Supplier gives the Buyer permission to use any Marks, the Buyer will:

- (a) use the Marks in all the Buyer's published material and branding in accordance with the Certification Mark Guide and this Contract;
- (b) not use the Marks unless the Buyer has a current Certification under the Programme or (where expressly permitted in writing by the Supplier) is working towards Certification and has paid all applicable Fees;
- (c) not sublicense the Marks or otherwise allow any third party to use the Marks without the Supplier's prior written approval (which may be subject to conditions);
- (d) if the Buyer is uncertain about correct usage of the Marks, provide the Supplier with drafts of any material the Buyer intends to produce and obtain the Supplier's written approval to such use prior to release of the material;
- (e) maintain accurate and up to date records of all the Buyer's use of the Marks and, if requested by the Supplier on at least 20 Days notice, permit an independent Auditor to inspect such records (at the Supplier's cost) during the Buyer's normal business hours to assess the Buyer's use of the Marks;
- (f) during any Audit other than the first Audit, provide to the Auditor on request examples of the Buyer's use of the Marks;
- (g) not alter any of the Marks in any way, except with the Supplier's prior written approval; and
- (h) comply with all the Supplier's reasonable directions in relation to the Buyer's use of the Marks.

6.2 The Buyer is responsible for ensuring that their use of the Marks is not likely to mislead or deceive, or place the Supplier in breach of any legal requirements, or result in an infringement or alleged infringement of any third party's Intellectual Property Rights. The Supplier will not be liable to the Buyer or any third party for a claim that the Buyer's use of the Marks is misleading or deceptive, places the Supplier in breach of any legal requirements or results in an infringement or alleged infringement of any third party's Intellectual Property Rights.

6.3 The Buyer must only use the Marks (and not any other mark or design) in relation to the Buyer's Certification or as otherwise agreed by the Supplier.

7. Offsetting Services (if Applicable)

7.1. Where the Buyer requires Offsetting Services for its Certification, the provisions of the Toitū Offsetting Service Terms, which the Supplier will provide to the Buyer, will apply.

8. Public Statements

- 8.1. During the Certification Period, the Buyer may publicise its Certification, and use any Programme promotional material provided by the Supplier for publicity and advertising purposes, in accordance with the Supplier's reasonable directions.
- 8.2. Unless otherwise agreed with the Buyer in writing, the Supplier's JAS-ANZ accreditation requires the Supplier to publicise the Buyer's Certification and/or Programme status once initial Certification is achieved. The Supplier may also make a statement on the 'Suspended or Withdrawal' section of its website for a period of three months regarding the Buyer's Certification in the following circumstances:
 - (a) if the Buyer does not take all steps necessary to complete re-Certification, the Supplier may publish the Buyer's name on the Website stating that the Buyer's Certification has been suspended or withdrawn and inform the relevant Accreditation Body of such fact;
 - (b) if the Buyer's Certification has been suspended or withdrawn, the Supplier may publish the Buyer's name on the Website stating that the Buyer's Certification has been suspended or withdrawn and inform the relevant Accreditation Body of such fact; or
 - (c) if there is any confusion relating to the Buyer's Certification, the Supplier may issue a statement clarifying the matter and inform the relevant Accreditation Body of such fact.
- 8.3. The Supplier will maintain a register of all current Licensees and will make the register available for public inspection.

9. Complaints and Appeals

- 9.1. If the Supplier receives any complaints from third parties about the Buyer in relation to the Buyer's Certification, the Supplier will notify the Buyer of this and investigate the complaint. The Supplier will provide a copy of the investigation report to the Buyer and the complainant. If as a result of the investigation the Supplier, acting reasonably, considers that the Buyer's Certification is no longer valid, the Supplier may (at its sole discretion and without liability to the Buyer) either suspend or withdraw the Buyer's Certification.
- 9.2. If the investigation determines that the Buyer's Certification is not valid due to the Supplier's error or default and the Buyer's Certification is suspended or withdrawn, the Supplier will refund to the Buyer that proportion of Fees paid in advance for the period between the date of suspension or withdrawal and the anniversary of the Start Date.

10. Modification, Suspension or Discontinuance of Programme

- 10.1. Notwithstanding any of the Supplier's other rights and subject to clause 11.1, the Supplier reserves the right at any time, and from time-to-time, to modify or discontinue (either temporarily or permanently) the Programme or any part of it (with at least 20 Business Days written notice). The Supplier agrees that it will not be in breach of the Contract or liable to the Buyer or any third party for any modification, suspension or discontinuance of the Programme.
- 10.2. Where the Programme is modified in a manner that the Buyer, acting reasonably, considers materially changes the nature of the benefits to be received by it, then the Buyer may withdraw from the Programme and terminate this Contract by giving the Supplier at least 20 Business Days written notice. The Buyer will be liable to pay the Supplier only for Services provided or expenses incurred up until the date termination takes effect.

11. Change of Circumstance, Withdrawal and Suspension

- 11.1. The Buyer must advise the Supplier as soon as practicable of any circumstances which may affect its ability to meet the Technical Requirements and other standards and specifications as listed in this Contract. Notwithstanding the Supplier's other rights, the Supplier may (at its option) either suspend or withdraw the Buyer's Certification if the Supplier considers that the Certification is no longer valid due to a change in the Buyer's circumstances.

- 11.2. Following Certification, notwithstanding the Supplier's other rights, where the Supplier has reason to believe that the Buyer's circumstances have changed but the Buyer has not notified the Supplier, the Supplier may conduct additional Audits at any time to determine whether the Buyer continues to meet the Technical Requirements. If an additional Audit identifies that the Buyer no longer meet the Technical Requirements, the Supplier will give the Buyer notice of its findings and the Buyer will have 20 Business Days from the date of such notice to remedy the non-conformance and the Buyer will reimburse the Supplier for the reasonable cost of the additional Audit. If the Buyer does not remedy the non-conformance to the Supplier's satisfaction within the 20 Business Day period, the Supplier may (at its option) either suspend or withdraw the Buyer's Certification.
- 11.3. If the Supplier exercises its right to suspend the Buyer's Certification under Clause 9.1 or 9.2 of these Certification Terms, then:
- a. during the suspension (which will be for a period of not more than 6 months), the Supplier and the Buyer will meet and, in good faith, try to resolve the issue; and
 - b. if the Buyer's Certification has been suspended for 6 months, then at such time the Supplier will (at its option) either re-instate or withdraw the Buyer's Certification.
- 11.4. Where an Audit date has been agreed prior to any written notice of termination of this Contract by the Buyer, Clause 4.4 of these Certification Terms applies.

12. Consequences of Expiry, Withdrawal, Suspension and Termination

- 12.1. If the Supplier suspends the Buyer's Certification for any reason, then (until the suspension has been lifted at the Supplier's sole discretion) the Buyer must cease all use of the Programme Marks and cease all other representations to the effect that the Buyer has Certification, and the Buyer must not place into the market or circulate any products, services, promotional material or any other matter bearing any of the Programme Marks or make any representation that the Buyer has Certification.
- 12.2. In addition to the rights set out in Clause 11 of Schedule 2 of this Contract, if the Buyer withdraws from the Programme, or the Supplier withdraws the Buyer's Certification for any reason, or the Buyer's Certification has expired, then this Contract will automatically terminate.
- 12.3. In addition to the provisions of Clause 11 of Schedule 2, upon expiry or termination of this Contract for any reason, the Buyer must:
- a. immediately cease all use of the Programme Marks and cease all other representations to the effect that the Buyer has Certification;
 - b. immediately pay to the Supplier all amounts owing under this Contract; and
 - c. not place into the market or circulate any products, services, promotional material or any other matter bearing any of the Programme Marks or make any representation that the Buyer has Certification.
- 12.4. Notwithstanding Clause 10.1 and Clause 10.2 of these Certification Terms, the Buyer is not required to withdraw from sale or circulation any products, services, promotional material or other matter bearing any of the Programme Marks or otherwise referring to the Buyer's Certification which have been placed into the market prior to the suspension or withdrawal of the Buyer's Certification or the termination of this Contract (as the case may be).

13. Refund of Fees

- 13.1. Where the Programme is discontinued under Clause 8.1 of these Certification Terms, the Buyer's obligation to pay any Fees not then owing will cease and the Supplier will refund to the Buyer such proportion of the Fees that the Buyer has paid that relate to a period that has not expired at the date the Programme is so modified, suspended or discontinued.
- 13.2. Subject to Clause 11.1, if the Buyer is not awarded Certification, or the Buyer withdraws from the Programme, or the Buyer's Certification is suspended or terminated, the

Buyer will pay all outstanding monies owing under this Contract (including any amounts owing under Clause 4.4 of these Certification Terms) and the Supplier will not refund the Buyer any amounts paid under this Contract.

14. Definitions and Interpretation

14.1. In this Contract, unless the context requires otherwise:

- a. **Accreditation Body** means an international accreditation agency or body that the Supplier uses in relation to the Programme
- b. **Annual Membership Fee** means the Buyer's annual membership fee for becoming a member of the Programme based on the Buyer's organisational environmental profile and service requirements as advised to the Supplier by the Buyer and as set out in the Attachments to this Contract or as otherwise advised to the Buyer in writing from time to time.
- c. **Audit** means the assessment undertaken by the Supplier or an Auditor to confirm that the Buyer complies with the Technical Requirements. This process may include verification of data and information.
- d. **Auditor** means an internal or external Auditor that the Supplier may appoint to assess the Buyer's compliance with the Technical Requirements of the Programme.
- e. **Audit and Certification Fees** means the fees the Supplier calculates using its hourly rate and reflecting the time it estimates it will take to complete the Buyer's Audit, any technical review and the Buyer's Certification, which estimate may be varied by the scope assessment (if any) and completion of the actual Audit as further outlined in Clause 1.
- f. **[Pre-]Audit Costs** means any unrecoverable out-of-pocket expenses (including cancellation fees) plus time spent by the Supplier's staff and Auditors planning, preparing for [and conducting] Audits
- g. **Certification** means the Supplier's certification of the Buyer under and in accordance with the Programme (or any level of Certification within the Programme if applicable).
- h. **Certification Mark Guide** means the certification mark use guide issued by the Supplier, as amended by Us from time to time.
- i. **Documentation** means any documents related to the Buyer's participation in the Programme, notes, templates, registers, checklists and any other documents the Supplier may issue to the Buyer whether in hard or electronic copy in relation to the Programme. For the avoidance of doubt, Intellectual Property Rights include Documentation.
- j. **Level** means a level, step or stage of Certification in the Programme, where applicable to the Programme.
- k. **Licensee** means a person that has been granted Certification under a Certification Programme operated by the Supplier.
- l. **Marks** means the word marks and logo marks issued to the Buyer and used by the Buyer as evidence that the Buyer's organisation, product, service or event (as applicable) meets the Programme requirements as set out in the Technical Requirements, these Environmental Certification Terms and the Certification Mark Guide.
- m. **Programme** means the certification programme specified in Schedule 1.
- n. **Programme Mark Guide** means the Programme mark use guide issued by the Supplier, as amended by the Supplier from time to time.
- o. **Software** means the software the Supplier may grant the Buyer access to for the purposes of the Buyer's receipt of the Services and includes any environmental measurement and management software the Supplier may make available to the Buyer under this Contract.

- p. **Technical Requirements** means a document issued by the Supplier which contains the technical requirements or rules for Certification, as amended by the Supplier from time to time. A copy is available on request.

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