



# **Request for Proposal**

**for the provision of services**

**relating to development of a**

**Code of Practice for Outdoor Pyrotechnic Displays**

**Issue Date: 18 December 2007**

# Instructions and Procedures

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## 1. Purpose

- 1.1 ERMA New Zealand is looking to develop a Code of Practice (COP) for Outdoor Pyrotechnic Displays. The purpose of the Code is to ensure the safe handling of pyrotechnics and the safe operation of outdoor pyrotechnic displays. It will cover practical aspects of conducting pyrotechnic displays and the firing of pyrotechnic articles. It will also address the skills and knowledge requirements of people involved in all aspects of outdoor pyrotechnic displays.

The Code will be of relevance to:

- persons wishing to hold a pyrotechnic display
  - persons in charge of a pyrotechnic display
  - pyrotechnics approved handlers
  - test certifiers involved in issuing test certificates for outdoor pyrotechnic displays and approved handler test certificates to pyrotechnic operators.
- 1.2 The purpose of this request for proposal (RfP) is to seek expressions of interest from organisations and individuals with an interest in developing this COP.

## 2. Background

- 2.1 The Guy Fawkes season, and other events involving pyrotechnics displays, are an important part of New Zealand's culture. In recent years, due to concerns about the misuse of retail fireworks by some sections of society, there has been a growing preference for public displays managed by qualified professionals. Increased government restrictions on the retail sale of fireworks, and calls by some groups for a ban on public sale of fireworks, will place greater importance in ensuring public displays are safe, and professionally managed.
- 2.2 The concept of developing a COP based on international best practice, and, in particular, on the Queensland Code of Practice: Control of Outdoor Fireworks Displays (2003), was put to a workshop of industry and enforcement agencies earlier in 2007. There was general agreement to progress such an initiative and a working group was subsequently established to facilitate the development of a Code.
- 2.3 A meeting of this working group was held in August 2007. The purpose and desired scope of a Code was discussed and an analysis of the Queensland Code was undertaken. This determined which sections of the Queensland Code should be replicated in a New Zealand one, which needed modification and which should not be reproduced, and also what additional material should be covered; based on the similarities and differences between the Queensland regulatory requirements and industry operational practices and those of New Zealand. This provided an indicative table of contents for the COP which will be a key input to the provision of services under this RfP.

- 2.4 In the 2007 Guy Fawkes season, there were a number of incidents at outdoor public pyrotechnics displays where either members of the public or a pyrotechnician were injured and required hospital treatment. Whilst such incidents are not common in New Zealand, they do indicate there is room for improvement in the area of pyrotechnics displays.
- 2.5 Also, in 2007, ERMA New Zealand carried out an audit of issued outdoor pyrotechnic display and pyrotechnic approved handler test certificates. The audit identified a number of areas, such as the determination of discharge areas and exclusion zones, where improvements could be made and proposed a number of recommendations, the majority of which are best addressed through the development of a COP. The output from this audit will also be available as an input to the development of the COP.
- 2.6 Other potential inputs to the provision of services would be the DOL Draft Code of Practice for Firework Displays, and the Australian Standard on Outdoor Pyrotechnic Displays, AS2187.4-1998.

### **3. Submitting a proposal**

- 3.1 You may submit only one proposal.
- 3.2 Your proposal (being an original and one copy) is to be submitted in a sealed envelope marked for the attention of Tania van Maanen, Compliance Advisor, bearing the proposer's identification and labelled:

**Proposal for development of a Code of Practice for Outdoor Pyrotechnic Displays**

- 3.3 Your proposal submitted as a result of this RfP is to be delivered to:

ERMA New Zealand  
Level 1, BP House  
20 Customhouse Quay  
PO Box 131  
WELLINGTON

**by 5.00 pm Wednesday 23 January 2008.**

- 3.4 An email copy of your proposal must also be received by ERMA New Zealand (tania.vanmaanen@ermanz.govt.nz) by the deadline for proposals.
- 3.5 Proposals submitted after the specified date (above) will not be considered.
- 3.6 ERMA New Zealand anticipates completing its evaluation of proposals by 28 January 2008.

- 3.7 Notification of the decision on the final choice of provider for this project will be made as soon as possible thereafter. A detailed project timeframe is provided below.

<b>Output</b>	<b>Timeframe</b>
RfP distributed	18 December 2007
RfP closes	23 January 2008
Successful tender advised	28 January 2008
Contracts signed	8 February 2008
Project commences	8 February 2008
First draft of the Code <sup>1</sup> provided to ERMA New Zealand	18 March 2008
Meeting of Working Group	26 March 2008
Feedback from Working Group provided to contractor	7 April 2008
Second draft of the Code provided to ERMA New Zealand	2 May 2008
Code open for Consultation	5 May 2008 – 13 June 2008
Meeting of Working Group	20 June 2008
Code finalised	16 July 2008
Code approved	30 July 2008

#### **4. Procedure**

- 4.1 The procedure that ERMA New Zealand will employ in selecting a preferred provider is as follows:
- a) a copy of the RfP will be forwarded to parties who ERMA New Zealand consider have an interest in submitting a proposal;
  - b) details of the RfP will also be posted on the ERMA New Zealand website [www.ermanz.govt.nz](http://www.ermanz.govt.nz) and the Government Electronic Tender Service website [www.gets.govt.nz](http://www.gets.govt.nz);
  - c) your proposal, including a draft project plan, must be received by the timeframe specified in paragraph 3.3;
  - d) the proposal will be evaluated according to evaluation criteria (see section 11) and a preferred provider selected;
  - e) negotiations, discussions and refinements may be entered into with preferred provider. The intention of these discussions will be to refine the scope of work for the purpose of the contract agreement;
  - f) a formal contract for service (in the form included in Appendix II of this RfP) will be entered into.
- 4.2 Any requests for additional information or clarification from a person or organisation wishing to submit a proposal should be made in writing. ERMA New Zealand undertakes to respond promptly and openly to all queries.

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<sup>1</sup> The report should include all associated documentation as specified in Appendix 1 under Deliverables.

- 4.3 ERMA New Zealand shall do all in its power to ensure that any proprietary data contained in any proposal is not disclosed to any unauthorised person either by ERMA New Zealand directly or on account of any failure by ERMA New Zealand to safeguard it.
- 4.4 All such proprietary data contained in a proposal must be clearly identified.

## **5. Required contents of proposals**

- 5.1 Your profile including:
- a) full legal name
  - b) address
  - c) contact person and his or her telephone and fax numbers and email address
  - d) your organisation's experience in providing services similar to those required by this project
- 5.2 Your personnel who are to carry out the project including:
- a) a relevant work history for each including qualifications, experience and skills
- 5.3 A summary of your understanding of our requirements and how you would carry out the project, as detailed in Appendix 1.
- 5.4 An analysis of your approach to carrying out the project including:
- a) methodology
  - b) the proposed stages
  - c) your estimate of your time and resources for each stage
  - d) timetable for completion of the project (if different to that in section 3.7)
  - e) the personnel who will carry out those stages
  - f) technical issues and how you will resolve them
  - g) the consultation you will undertake (with who and at which stages of the project)
  - h) how you will report to us on progress with the project
  - i) your requirements for resources from ERMA New Zealand
- 5.5 Pricing, including:
- a) the charge-out rates and dedicated hours for the personnel who will be carrying out the project
  - b) disbursements
- All prices must be exclusive of GST.
- 5.6 Whether you have or may have any conflicts of interest and, if so, how you propose to deal with them.
- 5.7 Your proposal must be signed by a person authorised to sign it on your company's behalf.

5.8 You may include an appendix with additional material.

## **6. References**

6.1 Proposers are to provide a capability profile, indicating similar projects completed relevant to the proposer's experience in the subject areas of the RfP. Proposers shall supply a minimum of two recent client referees and the name of responsible individuals for reference purposes.

## **7. Quality assurance**

7.1 Proposers are to provide ERMA New Zealand with the assurance that a rigorous internal quality assurance process is in place, for example, a peer review or external review process.

## **8. Financial considerations**

8.1 Fees quoted shall be inclusive of all and any costs (excluding GST) to be charged to ERMA New Zealand. Any disbursements should be clearly specified.

8.2 Costs should be detailed for each phase of the project.

8.3 No changes to the proposed fees will be accepted except by agreement in writing between the successful proposer and ERMA New Zealand.

## **9. Contract to be used**

9.1 ERMA New Zealand requires that the Contract for Services, a copy of which is attached as Appendix II of this RfP, form the basis for any contractual relationship that may result from this RfP. It is a condition of this RfP that proposers review this contract and identify in their proposal any term or condition which, in its present form, is unacceptable to the proposer and state the respect in which such term or condition requires modification in order to become acceptable to the proposer.

## **10. Open offer**

10.1 Each proposer agrees that any response submitted by it to this RfP will remain valid for a period of two months from the date of its receipt.

## **11. Evaluation criteria**

11.1 The criteria we will use to evaluate your proposal include the indicative evaluation criteria below. These criteria are not exhaustive, are not in any particular order, and will not necessarily be given any particular weight. In particular, the proposal with the lowest price may not be a proposal that is acceptable to us. The criteria, however, indicate some matters that we will take into account in evaluating proposals.

11.2 The evaluation criteria include:

- a) your ability to carry out the project in accordance with our requirements including:

- your ability to meet the timeframes specified in paragraph 3.7
  - your organisational capability (in particular, personnel resources and management capability)
  - your technical ability
  - your experience
  - the qualifications, experience and skills of your personnel who are to carry out the project
  - the comments from referees
- b) your understanding of our requirements
  - c) the quality of the approach proposed by you to carry out the project
  - d) the quality of your proposal, any presentation, and any response to our requests for further information
  - e) whether your pricing represents value for money
  - f) your assessment of project risks and how you plan to manage them
  - g) your ability to carry out the project without conflicts of interest.

## **12. Conditions**

- 12.1 Failure to comply with these instructions and the other specific provisions of this RfP may result in the proposal being rejected for that reason alone.
- 12.2 ERMA New Zealand reserves the right, without qualification, to select an individual, firm, or consortium for contract negotiations based on the content of the proposals and relevant information obtained from others concerning the proposer's record of past performance. It is imperative therefore, that each proposal contain the terms most favourable to ERMA New Zealand that the proposer can submit.
- 12.3 ERMA New Zealand reserves the right not to accept the lowest priced, or indeed, any proposal.
- 12.4 No legal obligations arise between ERMA New Zealand and the proposer unless and until the proposal is accepted and the Contract for Services entered into.
- 12.5 ERMA New Zealand reserves, at all times, the right to:
  - a) reject any proposal or part thereof;
  - b) accept any proposal either in whole or in part; or
  - c) discontinue negotiations at any time prior to the signing of a formal contract if it is of the opinion that the proposer is incapable of or unwilling to satisfy ERMA New Zealand's requirements.
- 12.6 Proposals will not be returned to proposers.

## **13. Confidentiality**

- 13.1 A proposer shall not disclose to anyone, other than its employees and officers directly connected with responding to this RfP who have a need to know information it contains, any information concerning this RfP.

13.2 No public statement or any other reference to this RfP or to the awarding of any subsequent contract shall be made without the prior written consent of ERMA New Zealand.

#### **14. Reservations**

14.1 Issuance of this RfP does not commit ERMA New Zealand to pay any costs incurred in the preparation and submission of a proposal, or to procure a contract for any services.

#### **15. ERMA New Zealand representative**

15.1 Proposers shall limit their contact with ERMA New Zealand to:

**Tania van Maanen**  
Compliance Advisor  
Hazardous Substances  
ERMA New Zealand  
PO Box 131  
Wellington

Telephone: 04 918 4879  
Facsimile: 04 914 0433  
Email: [tania.vanmaanen@ermanz.govt.nz](mailto:tania.vanmaanen@ermanz.govt.nz)

**Peter Dawson**  
Principal Scientist  
Hazardous Substances  
ERMA New Zealand  
PO Box 131  
Wellington

Telephone: 04 918 4833  
Facsimile: 04 914 0433  
Email: [peter.dawson@ermanz.govt.nz](mailto:peter.dawson@ermanz.govt.nz)

#### **16. Review**

16.1 If required, during the course of ERMA New Zealand's review of the proposer's proposal, the proposer shall agree to discuss this proposal further with ERMA New Zealand for the purposes of clarification or revision of any element of the proposal submitted by the proposer.

## APPENDIX I – Terms of Reference

<b>Project Name</b>	Development of a Code of Practice for Outdoor Pyrotechnic Displays
<b>Purpose</b>	<p>ERMA New Zealand is looking to develop a Code of Practice (COP) for Outdoor Pyrotechnic Displays. The purpose of the Code is to ensure the safe handling of pyrotechnics and the safe operation of outdoor pyrotechnic displays. It will cover practical aspects of conducting pyrotechnic displays and the firing of pyrotechnic articles. It will also address the skills and knowledge requirements of people involved in all aspects of outdoor pyrotechnic displays.</p> <p>The Code will be of relevance to:</p> <ul style="list-style-type: none"> <li>• persons wishing to hold a pyrotechnic display</li> <li>• persons in charge of a pyrotechnic display</li> <li>• pyrotechnics approved handlers</li> <li>• test certifiers involved in issuing test certificates for outdoor pyrotechnic displays and approved handler test certificates to pyrotechnic operators.</li> </ul>
<b>Background</b>	<p>The Guy Fawkes season, and other events involving pyrotechnics displays, are an important part of New Zealand’s culture. In recent years, due to concerns about the misuse of retail fireworks by some sections of society, there has been a growing preference for public displays managed by qualified professionals. Increased government restrictions on the retail sale of fireworks, and calls by some groups for a ban on public sale of fireworks, will place greater importance in ensuring public displays are safe, and professionally managed.</p> <p>The concept of developing a COP based on international best practice, and, in particular, on the Queensland Code of Practice: Control of Outdoor Fireworks Displays (2003), was put to a workshop of industry and enforcement agencies earlier in 2007. There was general agreement to progress such an initiative and a working group was subsequently established to facilitate the development of a Code.</p> <p>A meeting of this working group was held in August 2007. The purpose and desired scope of a Code was discussed and an analysis of the Queensland Code was undertaken. This determined which sections of the Queensland Code should be replicated in a New Zealand one, which needed modification and which should not be reproduced, and also what additional material should be covered; based on the similarities and differences between the Queensland regulatory requirements and industry operational practices and those of New Zealand. This</p>

	<p>provided an indicative table of contents for the COP which will be a key input to the provision of services under this RfP.</p> <p>Also, in 2007, ERMA New Zealand carried out an audit of issued outdoor pyrotechnic display and pyrotechnic approved handler test certificates. The audit identified a number of areas, such as the determination of discharge areas and exclusion zones, where improvements could be made and proposed a number of recommendations, the majority of which are best addressed through the development of a COP. The output from this audit will also be available as an input to the development of the COP.</p>																												
<p><b>Project Scope:</b></p>	<p>The objective of this project is to develop a Code of Practice for Outdoor Pyrotechnic Displays. A proposed timeline for this project is as follows:</p> <table border="1" data-bbox="491 763 1289 1429"> <thead> <tr> <th><b>Output</b></th> <th><b>Timeframe</b></th> </tr> </thead> <tbody> <tr> <td>RfP distributed</td> <td>18 December 2007</td> </tr> <tr> <td>RfP closes</td> <td>23 January 2008</td> </tr> <tr> <td>Successful tender advised</td> <td>28 January 2008</td> </tr> <tr> <td>Contracts signed</td> <td>8 February 2008</td> </tr> <tr> <td>Project commences</td> <td>8 February 2008</td> </tr> <tr> <td>First draft of the Code<sup>2</sup> provided to ERMA New Zealand</td> <td>18 March 2008</td> </tr> <tr> <td>Meeting of Working Group</td> <td>26 March 2008</td> </tr> <tr> <td>Feedback from Working Group provided to contractor</td> <td>7 April 2008</td> </tr> <tr> <td>Second draft of the Code provided to ERMA New Zealand</td> <td>2 May 2008</td> </tr> <tr> <td>Code open for Consultation</td> <td>5 May 2008 – 13 June 2008</td> </tr> <tr> <td>Meeting of Working Group</td> <td>20 June 2008</td> </tr> <tr> <td>Code finalised</td> <td>16 July 2008</td> </tr> <tr> <td>Code approved</td> <td>30 July 2008</td> </tr> </tbody> </table>	<b>Output</b>	<b>Timeframe</b>	RfP distributed	18 December 2007	RfP closes	23 January 2008	Successful tender advised	28 January 2008	Contracts signed	8 February 2008	Project commences	8 February 2008	First draft of the Code <sup>2</sup> provided to ERMA New Zealand	18 March 2008	Meeting of Working Group	26 March 2008	Feedback from Working Group provided to contractor	7 April 2008	Second draft of the Code provided to ERMA New Zealand	2 May 2008	Code open for Consultation	5 May 2008 – 13 June 2008	Meeting of Working Group	20 June 2008	Code finalised	16 July 2008	Code approved	30 July 2008
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<p><b>Inputs</b></p>	<ul style="list-style-type: none"> <li>• Queensland Code of Practice Control of Outdoor Fireworks Displays</li> <li>• DOL Draft Code of Practice for Firework Displays</li> <li>• Australian Standard on Outdoor Pyrotechnic Displays, AS2187.4-1998.</li> <li>• Output from ERMA New Zealand Pyrotechnic Display Code of Practice Working Group, Friday 3 August 2007, including analysis of Queensland Code of Practice.</li> </ul>																												

<sup>2</sup> The report should include all associated documentation as specified in Appendix 1 under Deliverables.

<p><b>Deliverables</b></p>	<ul style="list-style-type: none"> <li>• First draft of Code of Practice</li> <li>• Attendance at first meeting of ERMA New Zealand/industry working group</li> <li>• Second draft of Code of Practice</li> <li>• Summary of comments received from consultation on second draft and explanation of how addressed</li> <li>• Attendance at second meeting of ERMA New Zealand/industry working group</li> <li>• Final version of Code of Practice</li> </ul> <p>At the completion of the project, the contractor will provide ERMA New Zealand with a printed copy of the completed Code, plus an electronic version in MS Word. Pictures, diagrams etc can be provided in a separate format to be agreed between the contractor and ERMA New Zealand. The final document(s) provided must have taken into account any comments received from consultation.</p> <p>The contractor will also provide ERMA New Zealand with a summary of comments received from industry on the draft document(s) and an explanation on how the issues raised were addressed in the final document.</p>
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## APPENDIX II – ERMA New Zealand Standard Contract

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### CONTRACT FOR SERVICES

**DATED:** 200[ ]

**PARTIES:**

(a) The ENVIRONMENTAL RISK MANAGEMENT AUTHORITY (ERMA New Zealand); and

(b) [ ] ("the Contractor")

also referred to as “the Parties”.

#### 1. Interpretation

1.1. In this Agreement, unless the context otherwise requires:

"The Agreement" means this Agreement and includes any schedules together with any documents stated to be incorporated in it.

“Confidential Information” means any information which is made available to the Contractor or which the Contractor discovers or generates in the course of providing the Services or otherwise comes to the Contractor’s knowledge concerning applications to ERMA New Zealand (including any secret process, formula, other trade secret or commercially sensitive information) or business administration or operation of ERMA New Zealand or its customers, clients or applicants to it but does not include information which is in the public domain by any means other than improper disclosure by the Contractor.

“Contractor” means the individual or entity contracting with ERMA New Zealand under this Agreement and includes any Key Personnel or any other employee of, contractor to or any third party engaged by that individual or entity to undertake the Services or any part thereof.

"The Services" means the work to be performed by the Contractor as described in **Schedule 1**.

## 2. Term

- 2.1. This Agreement shall start on [            ], 200[ ] and remain in force until            ], 200[ ] unless it is ended earlier in accordance with this Agreement.

## 3. The Services

- 3.1. This Agreement is for the provision and completion of the Services. If the Contractor considers that changes to the Services are necessary, then the Contractor will advise ERMA New Zealand in writing as soon as this becomes apparent. If ERMA New Zealand considers it necessary to modify the Services it will advise the Contractor promptly. If either of these situations arises then, by mutual agreement, the terms of this Agreement may be extended to include additional work if required, and/or amend the aims and scope of the Services. No adjustment to the contract price shall occur without the prior written agreement of ERMA New Zealand.
- 3.2. The Contractor will work at ERMA New Zealand's premises and from its own premises, as appropriate.
- 3.3. The Contractor will carry out the Services with all due professional skill, care and diligence.
- 3.4. The Contractor at its own cost must make good any errors, omissions, defects or fault in the Services notified by ERMA New Zealand during the term of this Agreement or within one month of the expiry or termination of this Agreement. The Contractor must carry out the remedial work without delay and so as to avoid unnecessary inconvenience to ERMA New Zealand.
- 3.5. The Contractor will exercise all due care and skill in the handling and storage of equipment and records belonging to ERMA New Zealand or supplied to the Contractor for the purposes of providing the Services.
- 3.6. The Contractor must advise ERMA New Zealand promptly in writing if additional instructions or information is required from ERMA New Zealand to avoid any delay in the provision of Services.
- 3.7. If the Services are to be provided by the Contractor, in stages in accordance with **Schedule 1**, the Contractor must obtain the prior written approval of ERMA New Zealand before proceeding to the next stage.
- 3.8. The Contractor will notify ERMA New Zealand, in writing, when the Services have been completed.

## 4. Key Personnel

- 4.1. Key Personnel are those persons (if any) identified in **Schedule 2** to perform the Services.

- 4.2. If ERMA New Zealand decides that one of the Key Personnel is unsuitable:
- (a) it can require the Contractor not to have that person perform the Services, or any part thereof; and
  - (b) the Contractor must then replace that person with someone acceptable to ERMA New Zealand; and
  - (c) ERMA New Zealand shall not be liable for any cost or liability arising from the replacement of that person.
- 4.3. ERMA New Zealand's prior written approval must be obtained by the Contractor before the Key Personnel can be replaced or substituted.

## **5. Payment**

- 5.1. All prices and charges are expressed in New Zealand dollars and shall be exclusive of GST.
- 5.2. The Contractor's charges for the Services are set out in **Schedule 3**.
- 5.3. Payment will be settled on completion of the Services. Any disbursements must be approved, by ERMA New Zealand, in writing before they are incurred. In seeking reimbursement, the Contractor must attach the original receipts, which, in respect of receipts valued in excess of \$50, must be in the form of a GST tax invoice/receipt.

## **6. Expenses**

- 6.1. ERMA New Zealand is not responsible for payment of any wages, fees or expenses of any nature whatsoever incurred by the Contractor unless agreed in writing between the Parties before the expenditure is incurred.
- 6.2. In particular, ERMA New Zealand is not liable to provide day to day transportation or to pay wages, salaries, sickness pay, holiday allowances, nor any sum reflecting increases in wages arising out of wage orders, award changes, or in any manner whatsoever. The Contractor is an independent contractor and shall be responsible its own liability for tax and for levies under the Accident Insurance Act 1998 and its amendments

## **7. Confidentiality**

- 7.1. The Contractor will keep any Confidential Information confidential and only use it to provide the Services and for no other purposes.
- 7.2. In no circumstances will the Contractor have or acquire any ownership or property rights over any Confidential Information or any other information made available, discovered or generated under this Agreement (even if discovered or generated by the Contractor).

- 7.3. The Contractor must not disclose the Confidential Information to the Key Personnel or any other employee or person unless disclosure is essential to the provision of the Services and the Key Personnel or other employee or person has been informed of the confidential nature of the Confidential Information and has signed a Deed of Undertaking in relation to confidentiality in the form set out in **Schedule 4**.
- 7.4. The Contractor must observe all the security arrangements that apply to the provision of the Services and must do all in its power to ensure that information (including Confidential Information) relating to the Services is not disclosed to any unauthorised person either by the Contractor directly or by any failure by the Contractor to adequately safeguard ERMA New Zealand's information.
- 7.5. At the expiry or earlier termination of this Agreement the Contractor must, without delay, return to ERMA New Zealand all Confidential Information and any books, records, papers, equipment or other property in its possession belonging to ERMA New Zealand, or any other person supplied to the Contractor for the purposes of providing the Services or discovered or generated in the course of providing the Services.
- 7.6. Even at the expiry or earlier termination of this Agreement, the Contractor's obligations under this clause continue unless and until:
  - (a) ERMA New Zealand authorises disclosure in writing; or
  - (b) the Contractor is required by law to disclose the Confidential Information.

## **8. Conflict of Interest**

- 8.1. The Contractor agrees that it will not accept other assignments where there is likely to be a conflict of interest with the interests of ERMA New Zealand, a conflict of the duties of the Contractor to ERMA New Zealand with the Contractor's other potential duties, or where such assignments may lead to reduced availability of Services or impede completion of the Services.
- 8.2. The Contractor warrants that it has disclosed any other past or present business that may constitute a conflict of interest or duties in relation to the Services and those disclosures are recorded in **Schedule 5**.

## **9. Intellectual Property**

- 9.1. ERMA New Zealand has sole intellectual property rights over all the analyses, compilations, studies, notes, memoranda and other documents prepared by or for the Contractor in relation to the Services.
- 9.2. The Contractor warrants that all information provided to ERMA New Zealand on software will be provided in such a manner that its use by ERMA New Zealand is not subject to any software licensing, copyright, or other legal restrictions.

- 9.3. The Contractor retains the right to all code and working files generated as part of the Services. ERMA New Zealand is entitled to use the said code and resulting output in perpetuity.
- 9.4. The Contractor reserves the right to use materials developed as part of the Services, for promotion and marketing of its services and capabilities. Such usage shall not identify ERMA New Zealand without its prior written permission and shall not imply any endorsement thereof by ERMA New Zealand.

## **10. Anti-virus Software**

- 10.1. If the Contractor has remote access to the ERMA New Zealand computer network or is given electronic versions of material by ERMA New Zealand the Contractor must ensure that any computer that it is using (in relation to the access and/or the material) has current virus protection software satisfactory to ERMA New Zealand.

## **11. General Conditions**

- 11.1. Neither Party shall assign its rights under this Agreement without the prior written consent of the other Party.
- 11.2. No waiver of any breach of this Agreement shall be deemed to be a waiver of any other or any subsequent breach. The failure of either Party to enforce any provision of the Agreement at any time shall not be interpreted as a waiver of the provision.
- 11.3. This Agreement constitutes the entire agreement between the Parties and shall supersede all previous negotiations, commitments and/or writings. Any subsequent written variation signed by both Parties may be added to and shall then form part of this Agreement.
- 11.4. Neither Party shall be liable for failure to perform its obligations if the failure results from force majeure including but not limited to fire, explosion, industrial dispute, act of state such as a change in legislation, regulation or order made under legislative authority beyond their control.

## **12. Indemnity and insurance**

- 12.1. The Contractor indemnifies ERMA New Zealand, its employees and agents for any loss, claim, damage, expense, liability or proceeding they suffer as a direct or indirect result of a breach of any of the Contractor's obligations under this Agreement.
- 12.2. The Contractor must obtain (and provide details of) a comprehensive professional indemnity insurance policy and public liability policy (including provision for reasonable defence costs) that are available for the benefit of

ERMA New Zealand to meet the Contractor's obligations under this Agreement and undertakes to maintain that insurance at a level agreed with ERMA New Zealand for the duration of this Agreement and up to 6 years after its termination or completion if required by ERMA New Zealand.

### **13. Disputes**

13.1. If a dispute arises in relation to the provision of the Services, the Parties agree to endeavour in good faith to resolve the dispute.

13.2. If the Parties cannot resolve the dispute between themselves within 10 business days, then either Party may initiate mediation by giving written notice to the other Party. A mediator shall be agreed on by the Parties, but if the Parties cannot agree on one within 10 business days after the mediation has been initiated, then the mediator shall be appointed by the Chief Executive of ERMA New Zealand.

### **14. Remedies**

14.1. The Contractor acknowledges that damages alone are not an adequate remedy for breach of this Agreement and that the remedies for breach may include orders for specific performance, injunctive relief and/or damages.

### **15. Termination**

15.1. ERMA New Zealand may terminate this Agreement by notice in writing if:

- (a) in the opinion of ERMA New Zealand the Services are not carried out expeditiously and with reasonable diligence in accordance with this Agreement. and in a competent manner; or
- (b) the Contractor commits or allows to be committed any breach of the terms of this Agreement and fails to remedy the breach within 10 business days of notice in writing from ERMA New Zealand requiring the breach to be remedied; or
- (c) if the Contractor is an individual, he or she dies or commits an act of bankruptcy or makes or enters into any arrangement or composition with his or her creditors; or
- (d) if the Contractor is a company, it goes into liquidation or a receiver is appointed in respect of any of its assets; or
- (e) the Contractor is in breach of the provisions of this Agreement relating to the disclosure of Confidential Information, whether purposefully or accidentally.



Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**SIGNED** on behalf of the **CONTRACTOR**

By \_\_\_\_\_

in the presence of

Name: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

## **Schedule 1 – Scope of Services**

This schedule will detail the scope of service to be undertaken. It will be adapted from the RfP and the proposer's expression of interest in response to the RfP.

The scope will include:

- a) nature of work to be undertaken;
- b) process/methodology to be followed
- c) quality assurance processes to be implemented
- d) deliverables
- e) timelines.

## **Schedule 2 – Key Personnel**

This schedule will list the key personnel who will undertake the work set out in Schedule 1.

### **Schedule 3 – Contractor’s Charges**

This schedule will set out the Contractors charges as specified in the proposer’s expression of interest to the RfP. Charges will be exclusive of GST.

All disbursements must be clearly identified.



## **Schedule 5 – Conflicts of Interest**

This schedule should list any conflict of interest that the Contractor may have.

The Contractor should list existing and potential conflicts of interest that may arise during the performance of the Services, for example:

1. Contractor to identify any third party individual or entity with which the contractor has been previously been associated and who may have an interest in the contemplated Services
2. Contractor to detail so far as possible the nature of relationship with third parties
3. Contractor to detail so far as possible the nature of potential conflict with ERMA New Zealand in relation to contemplated Services
4. Contractor to advise whether relationship with third party is on-going or date of termination or scheduled termination.