



4 May 2023

Tēnā koe

On 28 March 2023, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act), the following information:

*This is a request for official information under the Official Information Act 1982 relating to the climate reduce certification your Ministry has received from Toitū.*

*We request information that answers the following questions:*

- 1. How many years has your Ministry been affiliated with Toitū?*
- 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?*
- 3. Does the Ministry plan to achieve CarbonZero/Carbon Positive certification, and if so, why, and under what timeframe?*
  - a. If not, why?*
- 4. Has the Ministry considered other certification/auditors, or in-house auditing of their climate emissions as an alternative to Toitū?*

On 3 April 2023, you added an additional item to your request, in particular:

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

*I completely understand that this extends the due date for response until the 4th of May.*

To aid clarity, each part of your request will be responded to in-turn:

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

The Ministry has been contracting with Toitū since 17 May 2021.

*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 cost for set up services and Annual Membership is \$33,350 including GST. The cost for the financial year 2018/19 base year audit was \$15,485 excluding GST. The cost for annual audit and certification for financial year 2021/22 and financial year 2022/23 is \$17,273 including GST.

*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 has received Toitū carbonreduce certification for financial year 2018/19 and financial year 2021/22. Additional certification requirements have not yet been scoped.

In line with Government expectations, the Ministry has established a Carbon Neutral Government Programme. The Ministry is a Tranche 1 Organisation who were required to report annual emissions and a reduction plan from December 2022 to Ministry for the Environment. Under this programme we are required to offset remaining gross emissions from 2025 to achieve carbon neutrality.

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

The end date of the initial term of the contract with Toitū is 16 May 2024. In line with the Government Procurement Rules, during 2023 the Ministry will scope future certification and auditing requirements and develop a procurement approach accordingly.

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

Please see the **Appendix** which provides the following documents within scope of this question:

- The Ministry's Contract for Services Agreement with Toitū Envirocare
- A Contract Variation between the Ministry and Toitū Envirocare
- The Ministry's carbonreduce certification with Toitū Envirocare.

Please note that some information has been withheld under section 9(2)(k) of the Act in order to prevent the disclosure or use of official information for improper gain or improper advantage.

Additionally, some information has been withheld under section 9(2)(a) of the Act in order to protect the privacy of natural persons. The need to protect the privacy of these individuals outweighs any public interest in this information.

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any attached documents available to the wider public. The Ministry will do this by publishing this letter and attachments on the Ministry's website. Your personal details will be deleted, and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact [OIA\\_Requests@msd.govt.nz](mailto:OIA_Requests@msd.govt.nz).

If you are not satisfied with this response, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or 0800 802 602.

Ngā mihi nui



Karen Dawson  
Group General Manager  
**Commercial Operations**

# Contract for Services

## Contract Details

Toitū Environmental Services Agreement
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### The Parties

#### The Buyer:

Ministry of Social Development
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9(2)(k)
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The Aurora Centre, 56 The Terrace, Wellington 6011, New Zealand
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and

#### The Supplier:

Enviro-Mark Solutions Limited (trading as Toitū Envirocare)
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9(2)(k)
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54 Gerald Street, Lincoln 7608, New Zealand
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### 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:** [Standard Terms and Conditions GMC Form 2 SERVICES](#) | Schedule 2 (3<sup>rd</sup> Edition) available at: [www.procurement.govt.nz](http://www.procurement.govt.nz)
4. Any other attachments described at Schedule 1 including the following Specific Terms:
  - 4.1 Attachment 1 to Schedule 1 – Certification Terms
  - 4.2 Attachment 2 to Schedule 1 – Programme Marks Licence Terms
  - 4.3 Attachment 3 to Schedule 1 – Emanage SaaS Licence Terms
  - 4.4 Attachment 4 to Schedule 1 – Offsetting Service 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 Attachments 1, 2, 3 and 4 to Schedule 1.



- Where a word starting with a capital letter in Attachments 1-4 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 shall 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 of Social Development**

9(2)(a)  
\_\_\_\_\_  
(signature)

**Name:** 9(2)(a)  
**Position:** Manager Procurement Practice  
**Date:** 17/05/2021

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

9(2)(a)  
\_\_\_\_\_  
(signature)

**Name:** 9(2)(a)  
**Position:** GM Sales & Marketing  
**Date:** 19/05/2021

# Schedule 1

## Description of Services

### **Contract Management and Personnel**

<b>Start Date</b>	17/05/2021	Reference Schedule 2 clause 1
<b>End Date</b>	24 months from Start Date of this Contract	Reference Schedule 2 clause 1
<b>Renewal</b>	Renewal terms in replacement clause 1.3 of Schedule 2.	Reference Schedule 2 clause 1

### **Contract Managers**

Reference Schedule 2 clause 4

	<b>Buyer's Contract Manager</b>	<b>Supplier's Contract Manager</b>
<b>Name:</b>	9(2)(a)	9(2)(a)
<b>Title / position:</b>	Manager Business Improvement & Support	General Manager Sales & Marketing
<b>Address:</b>	The Aurora Centre, 56 The Terrace Wellington 6011	Suite 9, Level 2, 20 Augustus Terrace
<b>Phone:</b>	9(2)(a)	9(2)(a)
<b>Email:</b>	9(2)(a)@msd.govt.nz	9(2)(a)

### **Addresses for Notices**

Reference Schedule 2 clause 14

	<b>Buyer's address</b>	<b>Supplier's address</b>
<b>For the attention of</b>	9(2)(a)	As above
<b>c.c. Contract Manager</b>		
<b>Delivery address:</b>	The Aurora Centre, 56 The Terrace Wellington 6011	
<b>Postal address:</b>	PO Box 1556, Wellington 6140	
<b>Email:</b>	9(2)(a)@msd.govt.nz	

### **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, developed an emissions management plan, set emissions reduction targets and made progress in reducing emissions.
- The Supplier's carbonzero certification Programme provides assurance that the Buyer has prepared its greenhouse gas emissions inventory in conformance with ISO 14064-1, developed an emissions management plan, set emissions reduction targets, made progress in reducing emissions and offset the remaining emissions using approved certified Carbon Credits.

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.

What are the overarching goals, objectives and outcomes you want to achieve?

## Description of Services

What is the nature of the Services?

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

<input type="checkbox"/>	CARBON LITE
<input type="checkbox"/>	CARBON LITE PLUS
<input type="checkbox"/>	CARBON STANDARD
<input type="checkbox"/>	CARBON STANDARD PLUS
<input checked="" type="checkbox"/>	CARBON PREMIUM

The Services are offered to help the Buyer achieve and maintain certification under the 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 & 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 &amp; Certification Services</u>
Provided subject to the following Contract terms: <ul style="list-style-type: none"> <li>• Contract Details (Page 1)</li> <li>• Schedules 1 and 2;</li> </ul>	Provided subject to the following Contract terms: <ul style="list-style-type: none"> <li>• Contract Details (Page 1)</li> <li>• Schedules 1 and 2;</li> <li>• Attachments 1,2 and 3 to Schedule 1</li> </ul>	Provided subject to the following Contract terms: <ul style="list-style-type: none"> <li>• Contract Details (Page 1)</li> <li>• Schedules 1 and 2;</li> <li>• Attachments 1,2, 3 and 4 to Schedule 1</li> </ul>

<ul style="list-style-type: none"> <li>• <b>Attachments 1 and 3 to Schedule 1</b></li> </ul>		
<b>Carbon Lite</b>		
<p>Set Up Services are for the Programme in the first year only. These Services include:</p> <ul style="list-style-type: none"> <li>• Onsite scope assessment and related Services under the Certification Terms set out in Attachment 1 to Schedule 1.</li> <li>• Prepare a project plan, brief project team if required.</li> <li>• Discuss and agree the base year and reporting period for your inventory.</li> <li>• Set organisational boundaries, identify emissions sources and set scopes.</li> <li>• Additional software tool training and extra support required for set up and project kick-off.</li> </ul>	<p>Annual Membership Services. These Services include:</p> <p><i>Carbon Measurement and Reduction Services</i></p> <ul style="list-style-type: none"> <li>• Emanage SaaS Licence for 1 user under the terms set out in Attachment 3 to Schedule 1.</li> <li>• Tools and materials in the software including emissions factors.</li> <li>• Guidance materials, templates and other membership only online resources.</li> </ul> <p><i>Account Management Support and Training</i></p> <ul style="list-style-type: none"> <li>• Technical account manager support (8-12 hours);</li> <li>• Introduction to the programme rules and resources;</li> <li>• Tailored project plan for you;</li> <li>• Training and support on environmental measurements and management and reduction opportunities;</li> <li>• Audit preparation.</li> </ul> <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"> <li>• Verification audit of compliance with the programme;</li> <li>• Technical review and certification under the programme.</li> </ul>	<p>Audit and Certification Services. These Services include:</p> <p>Verification, Audit and Certification Estimate time: 8-10 hours</p> <p>Verification audit and technical review includes:</p> <ul style="list-style-type: none"> <li>• Planning, desk review and process agreement</li> <li>• Evaluation of boundaries, data collection, processes and controls;</li> <li>• Evidence collection via interviews, site visit(s), desk-based analysis and data and document reviews;</li> <li>• Evaluation of findings and closure of identified issues;</li> <li>• Preparation of report to include peer review and independent statement;</li> <li>• Delivers a public disclosure page for external use and confidential internal verification report for management on completion;</li> <li>• Certification issued under the carbonreduce Programme in accordance with the terms set out in Attachment 1 to Schedule 1.</li> <li>• Where seeking Toitū carbonzero certification, Offset remaining emissions in accordance with the provisions of Attachment 4 to Schedule 1.</li> </ul>



	<p><i>Marketing and Branding in accordance with the terms set out in Attachment 1 and 2 to Schedule 1.</i></p> <ul style="list-style-type: none"> <li>• Programme Marks Licence under the terms set out in Attachment 2 to Schedule 1.</li> <li>• Training on the use of our Programme Marks.</li> <li>• Newsletters</li> <li>• Best-practice workshops and networking events</li> <li>• Inclusion of your name, logo and level of certification on our website;</li> <li>• Framed certificate of your organisations' Certification.</li> </ul>	
<b>Carbon Lite Plus</b>		
First year only, as above with additional hours as required based on the organisation	<p>As with Carbon Lite, plus:</p> <ul style="list-style-type: none"> <li>• Technical account manager support (16-22 hours)</li> <li>• Total of 2 software users</li> </ul>	<p>Verification, Audit and Certification Estimate:</p> <p>11-16 hours</p> <p>Services as described above</p>
<b>Carbon Standard</b>		
First year only, as above with additional hours as required based on organisation	<p>As with Carbon Lite, plus:</p> <ul style="list-style-type: none"> <li>• Technical account manager support (16-22 hours)</li> <li>• Total of 2 software users</li> </ul>	<p>Verification, Audit and Certification Estimate:</p> <p>17-24 hours</p> <p>Services as described above</p>
<b>Carbon Standard Plus</b>		
First year only, as above with additional hours as required based on organisation	<p>As with Carbon Lite, plus:</p> <ul style="list-style-type: none"> <li>• Technical account manager support (22-28 hours)</li> <li>• Total of 3 software users</li> </ul>	<p>Verification, Audit and Certification Estimate:</p> <p>25-30 hours</p> <p>Services as described above</p>
<b>Carbon Premium</b>		

First year only, as above with additional hours as required based on organisation	<p>Everything in Carbon Lite, plus:</p> <ul style="list-style-type: none"> <li>• Key technical account manager support (28+ hours)</li> <li>• Total of 4 software users</li> <li>• Provision of benchmarking information into your emissions management plan (if available)</li> <li>• Marketing presentation and communications plan to leverage certification credentials</li> <li>• Joint media release</li> <li>• One selected onsite training session per year (from options list which will be advised to the Buyer by the Supplier)</li> </ul>	<p>Verification, Audit and Certification Estimate:</p> <p>32-75 hours</p> <p>Services as described above</p>
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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
<p>Provision of the following Buyer Membership Level Services:</p> <ul style="list-style-type: none"> <li>• Set Up Services</li> <li>• Annual Membership Services</li> <li>• Programme Marks Licence</li> <li>• Emanage SaaS Licence</li> </ul>	As set out in Attachments 1-4 to Schedule 1 of this Contract	[Within 3 months from start of contract]
<p>Provision of the following Buyer Membership Level Services:</p> <ul style="list-style-type: none"> <li>• Audit and Certification Services.</li> <li>• Verification audit and technical review.</li> </ul>	As set out in Attachments 1-4 to Schedule 1 of this Contract.	[Within 8 months from start of contract]

<ul style="list-style-type: none"> <li>• Certification under the Certification Terms.</li> </ul>		
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**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
<b>Buyer's Contract Manager</b>	Pre-audit check of information and report back on any issues or inaccuracies	At least two weeks prior to annual audit 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:*

<b>Objective</b>	Toitū carbonreduce Certification in accordance with ISO 14064-1 (organisation inventory).
<b>Scope</b>	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 within New Zealand.
<b>Criteria</b>	Technical Requirements (organisation) version 2.0, Certification Mark Guide version 2.0, ISO 14064-3 (verification).
<b>Consolidation Approach</b>	Operational control.
<b>Materiality</b>	Errors, omissions and exclusions when aggregated do not exceed 5% of the total inventory.
<b>Level of Assurance</b>	Assurance levels will determined and confirmed with you prior to audit.
<b>Service Levels</b>	Technical Account Management Support Hours: Up to 34 hours. Estimated Audit and Certification Hours: Up to 65 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
Buyer Membership Level Services Fees for the following: (Up to 34 Hours) <ul style="list-style-type: none"> <li>Set Up Services</li> <li>Annual Membership Services</li> <li>Programme Marks Licence</li> <li>Emanage SaaS Licence</li> </ul>	\$29,000
Buyer Membership Level Services Fees for the following: (Up to 65 Hours) <ul style="list-style-type: none"> <li>Audit and Certification Services</li> <li>Verification audit and technical review</li> <li>Certification under the Certification Terms.</li> </ul>	\$15,020
Offsetting Services Fee – Applicable for Toitū carbonzero programme only	N/A
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 there after 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 \$/hour 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:

- 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)
Provision of the following Buyer Membership Level Services: (Up to 34 Hours) <ul style="list-style-type: none"> <li>• Set Up Services</li> <li>• Annual Membership Services</li> <li>• Programme Marks Licence</li> <li>• Emanage SaaS Licence</li> </ul>	Payable on the 20th of the month following the date of invoice.	\$29,000
Buyer Membership Level Services for the following: (Up to 65 Hours) <ul style="list-style-type: none"> <li>• Audit and Certification Services</li> <li>• Verification audit and technical review</li> <li>• Certification under the Certification Terms</li> </ul>	Payable on the 20th of the month following the date of invoice	\$15,020
<b>Total (exc GST)</b>		<b>\$44,020</b>

## Address for invoices

*Reference Schedule 2 clause 3*

	<b>Buyer's address</b>
For the attention of:	Name of Senior Manager or Contract Manager
Address:	Insert address for invoices: physical, postal, or email
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:**

**Schedule 2 of this Contract is amended as follows:**

*Clause 1.2 is amended as follows:*

"This Contract ends on the End Date (Initial Term) unless terminated earlier or renewed in accordance with Clause 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 30 Business Days prior to the anniversary of the Start Date (each anniversary of the Start Date will be the Fee Adjustment Date).

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

This Contract may be renewed for an additional period of three (3) years from the End Date (Renewal Term), provided the Buyer notifies the Supplier of its intention to renew this Contract at least sixty (60) Business Days prior to the End Date and the Supplier notifies the Buyer of its acceptance of the Renewal Term prior to the End Date.

*Clause 2.3(a) is deleted and replaced with the following new clause 2.3(a):*

- on time and to the required performance standards or quality set out in Schedule 1 or reasonably notified by the Buyer to the Supplier from time to time;
- with due care, skill and diligence, and to the appropriate professional standard or in accordance with good industry practice as would be expected from a reputable leading supplier in the relevant industry.

*Clause 2 3(d) is deleted and replaced with the following clause:*

d. comply with any relevant codes of conduct listed in Schedule 1, or notified by the Buyer to the Supplier from time to time, including the Supplier Code of Conduct issued by the Procurement Functional Leader – see [www.procurement.govt.nz](http://www.procurement.govt.nz).

*The following wording is inserted at the end of clause 2.8.a:*

"takes Treaty of Waitangi principles into account when performing the Services. The Supplier acknowledges that the Buyer is a crown entity and is therefore required to act consistently with the Treaty, and that the Buyer will have due regard to the Treaty when designing and monitoring Services that impact on economic opportunities and social outcomes for Māori"

*A new clause 3.5 is inserted as follows:*

3.5 The Supplier should pay its Subcontractors promptly, and offer them payment terms no less favourable than in this Contract. If the Buyer becomes aware that the Supplier has not paid its Subcontractors without reasonable justification, then the Buyer may choose to pay those Subcontractors directly, and deduct those amounts from the Charges that would otherwise have been due to the Supplier.

*New wording is added to the end of clause 5.1.e as follows:*

“(which includes any reporting obligation, publication, or information disclosure anticipated by the Government Procurement Rules).”

*Clause 6.3 is amended to include the following sentence:*

- “The Buyer may not transfer any of its rights or obligations or its Certification under this Contract.”

*A new bullet point is inserted in clause 7.2.b as follows:*

- must ensure that any subcontract it enters into contains any provisions which the Buyer, acting reasonably, advises is necessary in order to ensure compliance with Rule 25 of the Government Procurement Rules.

*Clause 10 is subject to the relevant Dispute Resolution provisions set out in Attachments 1-4 of Schedule 1.*

*Clauses 11.5 and 11.6 are deleted.*

*Clause 11.9 is added and inserted after 11.8:*

“The Buyer may terminate this Contract immediately, by giving notice, if the Supplier is considered by the Buyer, on reasonable grounds, to have defrauded the Buyer (whether or not the Buyer prosecutes the Supplier)”

*Clause 12.1 is deleted and replaced with the specific Intellectual Property Rights provisions under each Attachment (as applicable) to Schedule 1.*

*Clause 12.2 is replaced with the following:*

**12.2 Supplier warranty:** The Supplier warrants that the Services and the Buyer’s use of anything provided by the Supplier and/or incorporated in the Services and Deliverables by the Supplier will not infringe the rights, including Intellectual Property Rights, of any third party. Despite anything else in this Contract, the Supplier’s liability for breach of the warranty in this clause is not subject to any limitation or cap on liability that may be stated elsewhere in this Contract.

*Clause 13.1.c is replaced with the following:*

c. if the use or disclosure is required or anticipated by the Government Procurement Rules, or required by law (including under the Official Information Act 1982), Ministers or parliamentary convention or any other regulation, rules or policy that is binding on that Party;

*The following Clause 13A is inserted into Schedule 2 immediately after Clause 13:*

### **13A. Protection of Personal Information**

13A.1 The Supplier will comply with the Health Information Privacy Code 1994 (where the Supplier is a health agency) and the Privacy Act 1993 including:

- a. ensuring that any personal or health information a Supplier holds about a Buyer’s client is protected by reasonable security safeguards against loss or unauthorised access, use modification or disclosure;
- b. appointing a privacy officer; and
- c. having a privacy policy that:
  - includes what to do if there is a privacy breach (including procedures to promptly advise the Buyer); and
  - complies with any reasonable Buyer’s policy that the Buyer provides to the Supplier.

13A.2 The Supplier agrees that the Buyer may assess the Supplier's privacy policy and practices. The Supplier will cooperate with any privacy assessment, including completing self-assessments on request.

13A.3 The Supplier shall escalate a privacy breach concerning information that relates to Services in this Contract to the Buyer under the following procedure:

- Any breach will be notified to the Buyer's Contract Manager by phone and email as soon the Supplier is aware of the breach situation.
- The Supplier and the Buyer will then work together to manage consequences and implications of the breach.
- The Supplier will not comment publicly, including to the media, about the breach without written permission of the Buyer's Contract Manager.

*Clause 16.1 is amended to include the following words (underlined):*

"Any change to this Contract is called a Variation. Except as set out in an Attachment, a Variation must be agreed..."

*Clauses 16.5 – 16.6 are deleted and replaced with the specific provisions relating to publication under each Attachment to Schedule 1*

*A new Clause 16.11 is added as follows:*

#### **Liability**

With respect to the liability of the parties:

- a. Subject to clause 16.11c, neither party is liable to the other under or in connection with this Contract for any claim for indirect, consequential or incidental loss or damage.
- b. Subject to clauses 16.11a and 16.11c, the maximum aggregate liability of either party under or in connection with this Contract whether arising in contract, tort (including, without limit, negligence) or otherwise shall not exceed the amount of the Fees paid to the Supplier under this Contract in the applicable calendar year.
- c. Clauses 16.11a and 16.11b do not apply to limit either party's liability for:
  - i. a breach of clause 13;
  - ii. either party's liability for an infringement of the other party's Intellectual Property Rights; or
  - iii. either party's liability for fraud or wilful breach (being an act or omission that the relevant party knows to be a breach of this Agreement but continues to conduct or permit).

*Clause 2.6 is deleted and replaced with the following Clause 17 in Schedule 2, immediately after Clause 16 (General):*

#### **17. Health & Safety:**

1. In performing its obligations under this Contract, the Supplier must:
  - a. Comply, and ensure the Supplier's Personnel and Subcontractors comply, with all relevant health and safety legislation including the Health and Safety at Work Act 2015 ("HSAWA");
  - b. so far as reasonably practicable, ensure the health and safety of:
    - i. The Buyer's and the Supplier's personnel; and
    - ii. The Buyer's Clients;
  - c. take all practical steps to ensure that no act or omission gives rise to, or is likely to give rise to, the issue of an improvement or prohibition notice, enforcement action or a prosecution under any health and safety legislation (including the HSAWA) against the Buyer or the Supplier;
  - d. advise the Buyer in writing as soon as possible of:

- i. any hazards or risks that the Supplier or its Subcontractors identifies or creates, and all accidents, incidents and near misses, relating to the Services on the Buyer's premises or otherwise within the Buyer's control;
  - ii. all notifiable events (as defined in the HSAWA) relating to the Services;
  - iii. any contact by any regulatory agency in relation to any health, safety or environmental matter relating to the Services (unless the Supplier is prohibited by law from so advising the Buyer);
- e. comply with the Buyer's reasonable instructions in relation to any matter referred to in subclause (d).
2. **Right of removal:** The Supplier must promptly remove from any site any employee or agent of the Supplier (or employee or agent of any Subcontractor of the Supplier), performing the Services, as the Buyer may reasonably require.
3. **Onsite work plan:** If the Supplier is performing any Services on the Buyer's premises or a third party's premises, or the Buyer is on the Supplier's or a third party's premises, for reasons related to this Contract, prior to commencing work on those premises both parties shall:
  - a. meet and consult (with any other suppliers or third parties as may be required) on the security, health and safety policies, safety and works requirements and any other local instructions for those premises; and
  - b. develop an onsite work plan detailing the agreed safety processes and procedures both parties are required to follow when performing any Services on those premises, and comply with that plan.

*The following Clause 18 is inserted into Schedule 2 immediately following Clause 17:*

**18. Anti-Collusion:** The Supplier must not consult or communicate with any other supplier, or potential supplier, of the Services to the Buyer, or enter into any arrangement or understanding with any other supplier, or potential supplier, of the Services to the Buyer in relation to any matter which is likely to or may have the effect of reducing competition for the Services including:

- a. Prices for the Services
- b. Methods, factors or formulas used to calculate prices for the Services
- c. The quality, quantity of specifications of the Services.

*The following Clause 19 is inserted into Schedule 2 immediately after Clause 18:*

**19. Natural Environment:** The Supplier must perform the Services in a manner that gives appropriate regard to the protection of the natural environment, including by looking for opportunities to reduce emissions and waste impacts, such as by procuring and using low-waste and low emissions goods and services where practicable.

*A new definition is inserted in the definitions section as follows:*

**Government Procurement Rules** means the document of that name issued by the Ministry of Business, Innovation, and Employment (fourth edition, effective from 1 October 2019), and any associated guidance issued from time to time.

*The Definitions section is amended as follows:*

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

- **Confidential Information** is 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 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 Definitions are added as new Definitions:*

- **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 carbonreduce and/or 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.
- **Created Materials** means anything created by or on behalf of the Supplier, whether tangible or intangible.
- **Initial Term** has the meaning set out in clause 1.2 of Schedule 2 (as amended by Schedule 1) and the word "Term" (where it appears in any Attachments to this Contract) shall have the same meaning.
- **Renewal Term** has the meaning set out in clause 1.3 of Schedule 2 (as amended by Schedule 1)
- **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.
- **Offset Project** means a project validated by an approved authority as meeting the requirements of a designated standard and where the avoidance, reduction or removal of greenhouse gas emissions for the previous twelve months have been verified by a body accredited by the approved authority.
- **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

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

### It is agreed

#### 1. Certification Fees

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- 1.1 After the Buyer's execution and return of this Contract the Supplier or the Auditor may carry out an onsite scope assessment of the Services. The Buyer agrees that as a result of the onsite scope assessment the Buyer may need to vary the estimate of the time it will take to perform the Audit and adjust the Certification Fee accordingly.
- 1.2 If during the Audit it becomes necessary to spend additional time on the Buyer's Audit, The Supplier will notify the Buyer in writing accordingly and adjust the Certification Fee, except where such adjustment will result in a material increase from the Supplier's estimate of the time it will take to perform the Buyer's Audit, in which event the Supplier will notify the Buyer in writing in advance.
- 1.3 If there is an adjustment to the Certification Fee under Clause 1.2 or 1.3, such adjusted Certification Fee will become the new Certification Fee for the Services under this Contract.
- 1.4 If the Buyer requests and gives prior written approval the Supplier to engage an external Auditor as a Subcontractor for the Buyer's Audit:
- (a) The Buyer agrees to and will comply with the terms under which the Supplier contracted the Auditor;
  - (b) The Buyer acknowledges that any cost estimate of the Audit from that Auditor is only a part of the Certification Fee to be charged by the Supplier; and
  - (c) The Buyer will pay all fees and disbursements of the Auditor as notified by the Supplier to the Buyer

#### 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 in the Programme Marks Licence Terms at Attachment 2 to Schedule 1.
- 2.2 The Buyer will own the data which relates solely to the Buyer that the Supplier has obtained in connection with the Programme ("Programme Data"). Subject to clause 2.4, The Supplier may use the Buyer's Intellectual Property and 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 its carbonreduce programme. Any rights to the Programme Marks will be used in accordance with Attachment 2 to Schedule 1.

- 2.4 The Supplier will have the right to use, manipulate and publish in any form anonymised and/or aggregated data and products created from the Programme Data and the Buyer's Pre-existing Intellectual Property for any reasonable purpose. For the avoidance of doubt, the Intellectual Property Rights in the foregoing derived, anonymised and/or aggregated data shall be owned by the Buyer.

### 3. Certification

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- 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 Emanage SaaS offering in accordance with the Emanage SaaS Licence Terms set out at Attachment 3 of Schedule 1 of this Contract.
- 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:
- (a) 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
  - (b) The Supplier 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 Certification will be valid for the Certification Period specified on the certificate issued by the Supplier provided that the Buyer continues to meet the Technical Requirements (as advised by the Supplier from time to time), undergo surveillance Audits as specified by the Supplier, pay the applicable Fees when due and otherwise comply with the terms of this Contract.
- 3.5 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.
- 3.6 The Buyer must not:
- (a) 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;
  - (b) 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;
  - (c) do or omit to do anything which may bring the Programme into disrepute, or otherwise damage the credibility of the Programme; or
  - (d) purport to transfer the Certification.

### 4. Audit and Verification

---

- 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 previous on-site Audit, unless otherwise specified by the Supplier.
- 4.2 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).



- 4.3 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 five Days before the agreed date, the Buyer will also pay the Supplier a cancellation fee of 50% of the Certification Fee.
- 4.4 The Buyer will:
- (a) provide the Auditors with access (during the Buyer's normal business hours) 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 at least five days prior to the agreed date for the Audit; if the Buyer has not submitted the required information and data at least five 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 will not obstruct the Audit in any way; and
  - (d) allow observers from any Accreditation Body, as well as trainers and trainee Auditors, to observe the Audit. You 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 have provided to the Supplier prior to commencing any such observation.
- 4.5 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 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.
- 4.6 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.
- 4.7 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. If the close-out of non-conformances exceeds this period, the Buyer will pay the Supplier 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 4.7, "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.
- 4.8 The Buyer warrants that all information and data provided by it for the purposes of the Audit and any additional Audits (whether pursuant to Clause 4.4(b), 4.7 or otherwise) are accurate, complete, up to date and not misleading.

## **5. Offsetting Services (if applicable)**

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- 5.1 Where the Buyer requires Offsetting Services for its Certification, the provisions of Attachment 4 to Schedule 1 will apply.

## **6. Public Statements**

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- 6.1 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.
- 6.2 Unless otherwise agreed with the Buyer in writing, the Supplier may publicise the Buyer's application for Certification and/or the Buyer's participation in the Programme. 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.
- 6.3 The Supplier will maintain a register of all current Licensees and will make the register available for public inspection.

## **7. Complaints and Appeals**

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- 7.1 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 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.
- 7.2 If the Buyer has any complaints about the Supplier's Audit and Certification Services, or a Certification decision, such complaints will be dealt with in the manner set out on the Website. The provisions of this clause specifically over-ride clause 10 in Schedule 2 of this Contract.
- 7.3 The Buyer will provide the Supplier with all assistance and information that the Supplier may reasonably require for the purposes of resolving any complaint the Supplier receives.

## **8. Modification, Suspension or Discontinuance of Programme**

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- 8.1 Notwithstanding any of the Supplier's other rights, 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 or without 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.
- 8.2 Where the Programme is modified in a manner that the Buyer, acting reasonably, consider materially changes the nature of the benefits to be received by it, then the Buyer may withdraw from the Programme by giving the Supplier the required length of written notice as set out in the Standard Terms at Schedule 2.

## **9. Change of Circumstance, Withdrawal and Suspension**

---

- 9.1 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 or advised by the Supplier from time to time at the request of the Buyer. 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.
- 9.2 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.
- 9.3 If the Supplier exercises its right to suspend the Buyer's Certification under Clause 10.1 or 10.2 of these Certification Terms, then:
- (a) during the suspension (which shall 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.
- 9.4 Where an Audit date has been agreed prior to any written notice of termination of this Contract by the Buyer, Clause 4.3 of these Certification Terms applies.

## **10. Consequences of Expiry, Withdrawal, Suspension and Termination**

---

- 10.1 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.
- 10.2 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.
- 10.3 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 pursuant to 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.
- 10.4 Notwithstanding Clause 11.1 and Clause 11.2 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).

## 11. Refund of Fees

---

- 11.1 Where the Programme is discontinued pursuant to Clause 9.1 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.
- 11.2 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 4.3 of these Certification Terms) and the Supplier will not refund the Buyer any amounts paid pursuant to this Contract.

## 12. Definitions and Interpretation

---

- 12.1 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) **Certification Fee** means the fee 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) **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.

- (g) **Level** means a level, step or stage of Certification in the Programme, where applicable to the Programme.
- (h) **Licensee** means a person that has been granted Certification under a Certification Programme operated by the Supplier.
- (i) **Programme Mark Guide** means the Programme mark use guide issued by the Supplier, as amended by the Supplier from time to time.
- (j) **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

# Attachment 2 to Schedule 1

## Programme Marks Licence Terms

### Introduction

---

- A. The Supplier owns the Programme Marks.
- B. The Supplier has agreed to license the Programme Marks to the Buyer on the terms and conditions contained in this Attachment 2. The terms set out in this Attachment 2 to Schedule 1 shall prevail in the event of any conflict or inconsistency with Schedule 2.

### It is agreed

#### 1. Definitions and interpretation

---

- 1.1 **Definitions:** In this Attachment, unless the context otherwise requires:

**Authorised Purpose** means the right to use the Programme Marks for:

- (a) promotion of the Buyer's compliance with the Supplier's greenhouse gas emissions reduction programme and the Programme Mark Guide; and
- (b) any other purpose agreed in writing between the parties from time to time;

**Term** means from when Certification is granted by the Supplier to the Buyer under the Certification Terms until the end of the Certification Period (which may include any additional period of time covering recertification by the Buyer in accordance with the Certification Terms);

#### 2. Licence of Programme Marks

---

- 2.1 **Term:** This Attachment 2 will commence on the date of Certification of the Buyer under the Certification Terms and will remain in force for the Term, unless and until the Contract is terminated.

- 2.2 **Licence:** In accordance with the terms and conditions of this Attachment 2 and in consideration for payment of the Fees under Schedule 1 of this Contract, the Supplier grants to Buyer a non-transferable (except as expressly provided in this Schedule) right to use the Programme Marks in accordance with the Authorised Purpose throughout the Territory for the Term.

#### 3. Use of Programme Marks

---

- 3.1 The Buyer shall:

- (c) use the Programme Marks in accordance with the Programme Mark Guide, this Attachment 2 to Schedule 1 and the Contract;
  - (d) not use the Programme Marks unless the Buyer has a current Certification under the Programme or (where expressly permitted in writing by the Supplier) are working towards Certification and have paid all applicable Fees;
  - (c) not sublicense the Programme Marks or otherwise allow any third party (including, without limitation, a retailer or a distributor) to use the Programme Marks without the Supplier's prior written approval (which may be subject to conditions);
  - (d) provide the Buyer with drafts of all material the Buyer intends to produce that use any of the Programme Marks and/or contain any references in relation to the Certification and/or the Programme, 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 Programme Marks and, if requested by the Supplier on reasonable notice, permit an independent Auditor to inspect such records (at the Supplier's cost) during the Buyer's normal business hours to assess use of the Programme Marks;
  - (f) during any Audit other than the first Audit, provide to the Auditor on request examples of the Buyer's use of the Programme Marks;
  - (g) not alter any of the Programme 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 Programme Marks.
- 3.2 The Buyer is responsible for ensuring that the Buyer's use of the Programme Marks is not likely to mislead or deceive. The Supplier will not be liable to the Buyer or any third party for a claim that the Buyer's use of the Programme Marks is misleading or deceptive.
- 3.3 The Buyer must only use the Programme Marks (and not any other mark or design) in relation to the Buyer's Certification or as otherwise agreed by the Supplier, the Buyer may not create or use its own or another trade mark in association with the Buyer's Certification or in combination with the Programme Mark.
- 3.4 If the Buyer wishes to continue to use the Programme Marks after the Certification Period the Buyer must apply for and obtain recertification in accordance with the Certification Terms.

#### 4. Intellectual Property Rights

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- 4.1 **Ownership:** The Buyer acknowledges that all Intellectual Property Rights in the Programme Marks belong to the Supplier. The Buyer will not contest or dispute such ownership.
- 4.2 **Updates:** The Supplier will make any new versions of the Programme Marks available to the Buyer. The new version of the Programme Marks will be provided by the Supplier to the Buyer within 20 Business Days of the new version being completed by the Supplier.

4.3 **Undertakings:** The Buyer undertakes that it will:

- (a) not reproduce, adapt, vary or modify the Programme Marks, except as expressly permitted by this Attachment 2 to Schedule 1;
- (b) not use the Programme Mark for any other Purpose than that set out in this Attachment 2 ; and
- (c) not transfer, assign or otherwise deal in or grant a security interest in the Programme Marks or the Buyer's rights under this Attachment 2, except as expressly permitted by this Attachment 2.

4.4 The provisions of this clause 4 shall prevail in the event of any conflict or inconsistency with Schedule 2.

5. **Warranties**

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5.1 **No infringement:** The Supplier warrants that to the best of its knowledge the Programme Marks do not infringe the Intellectual Property Rights of any third party.

5.2 **Exclusions:** Except as expressly provided in this Attachment 2, all representations or warranties (statutory, express or implied), except any which may not lawfully be excluded, are expressly excluded, including without prejudice to the generality of the foregoing, the implied warranties of merchantability and fitness for a particular purpose.



**APPENDIX 1 –PROGRAMME MARKS**

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# Attachment 3 to Schedule 1

## Emanage SaaS Licence Terms

### Background

- (A) The Supplier has developed certain software applications and platforms which it makes available via the internet for the purpose of recording, calculating, managing and reporting greenhouse gas emissions and other requirements of the Certification Programme.
- (B) The Buyer wishes to use Supplier's service in its business operations.
- (C) Supplier has agreed to provide, and the Buyer has agreed to take and pay for (the fee for which is incorporated into the Supplier's Fees), the Supplier's Software Services subject to the terms and conditions of the Contract and this Schedule.

### 1. Definitions and Interpretation

---

- 1.1 The terms of this Attachment 3 to Schedule 1 shall prevail in the event of any conflict or inconsistency with Schedule 2.

- 1.2 In this Attachment, unless the context otherwise requires or it is specified otherwise:

**Authorised Users** means:

- (a) the Related Users;
- (b) the Buyer's employees, agents, and independent contractors; and
- (c) in respect of the Related Users, that Related Users' employees, agents, independent contractors who are authorised by the Related User to use the Subscription Services and the Documentation;

**Buyer Data** means the data inputted by a Buyer, Authorised User, or Related User on a Buyer's behalf for the purpose of using the Subscription Services or facilitating a Buyer's use of the Subscription Services;

**Documentation** means the documentation (if any) made available by Supplier under this Attachment (whether in hardcopy or electronic form), which sets out a description of the Subscription Services and the user instructions for the Subscription Services;

**Implementation Services** means those services necessary for implementation as advised by the Supplier from time to time;

**Membership Level** means the Buyer Membership Level for the Programme as set out in Schedule 1 of this Contract;

**Normal Business Hours** means 8.30 am to 5.00 pm local New Zealand Standard Time, each Business Day;

**Related Users** means the entities specified in Part 4 of Appendix 1, based on the Buyer's Membership Level, if any;

**Renewal Period** means the renewal period, as set out in Part 3 of Appendix 1;

**Service Levels** means:

- (a) in respect of the Subscription Services, the service levels set out in Part 5 of Appendix 1; and
- (b) in respect of the Support Services, the service levels set out in Part 3 of Appendix 2;

**SaaS Services** means the Subscription Services, Support Services, Implementation Services and any additional services agreed between the Supplier and the Buyer;

**Software means** the online software applications provided by Supplier, as set out in Part 1 of Appendix 1;

**Subscription Services** means the subscription services provided by Supplier to the Buyer under this Attachment that allows Authorised Users access to the Software via [www.toitu.co.nz](http://www.toitu.co.nz) or any other website notified by Supplier from time to time, as may be more particularly described in the Documentation;

**Subscription Term** means the Initial Subscription Term together with any subsequent Renewal Periods;

**Support Services** means the support services that Supplier will provide in relation to the Subscription Services, as set out in Appendix 2;

**Third Party Provider** has the meaning set out in clause 7.4(c); and

**Virus means** any thing or device (including any software, malware, code, file or program) which may:

- (a) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device;
- (b) prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or
- (c) adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

## 2. Licence

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2.1 Supplier grants to the Buyer a non-exclusive, non-transferable right to:

- (a) access and use the Subscription Services and the relevant Documentation; and
- (b) permit the Authorised Users to access and use the Subscription Services and the Documentation,

during the Subscription Term solely for the internal business operations of the Buyer, all on the terms and conditions set out in this Contract. Use by the Buyer and each Authorised User of the Subscription Services and the Documentation is strictly limited to the Territory. Notwithstanding the foregoing, if the Territory applicable to the Buyer is worldwide, the Buyer and all Authorised Users may use the Subscription Services and the Documentation anywhere around the world.

2.2 The Buyer will:

- (a) ensure that only the Authorised Users access and use the Subscription Services and the Documentation;
  - (b) keep a secure password for its access and use of the Subscription Services and Documentation and keep this password confidential, and procure that each Authorised User does the same;
  - (c) permit the Supplier, by giving at least 72 hours' prior notice, to audit the Subscription Services in order to establish whether the Subscription Services are being used in accordance with this Attachment;
  - (d) promptly disable any login account if the Supplier discovers (through undertaking the audits referred to in clause 2.2(c)) that any login details have been provided to any person who is not an Authorised User; and
  - (e) on demand, pay to the Supplier an amount of any underpayment of Fees discovered by the Supplier through undertaking the audits referred to in clause 2.2(c).
- 2.3 The Buyer will not access, store, distribute or transmit any Viruses, and the Supplier may, without liability to the Buyer, disable the Buyer's access to the Subscription Services if the Buyer is in breach of this clause.
- 2.4 The Buyer will not:
- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
    - (i) and except to the extent expressly permitted under this Attachment, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
    - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
  - (b) access all or any part of the Subscription Services and Documentation in order to build a product or service which competes with the Subscription Services and/or the Documentation;
  - (c) use the Subscription Services and/or Documentation to provide services to third parties except to the extent the provision of such services can reasonably be contemplated through the use of the Subscription Services; or
  - (d) make the Subscription Services and/or Documentation available to any third party except the Authorised Users.
- 2.5 The Buyer will use all reasonable endeavours to prevent any unauthorised access to, or use of, the Subscription Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

### 3. SaaS Services

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- 3.1 The Supplier will, during the Subscription Term, provide the Subscription Services and make available the Documentation to the Buyer on and subject to the terms of this Contract.
- 3.2 The Supplier will use commercially reasonable endeavours to provide the Subscription Services in accordance with the Service Levels.

- 3.3 The Supplier will, as part of the Subscription Services and at no additional cost to the Buyer, provide the Implementation Services (if any) as advised by the Supplier from time to time. So that the Supplier can provide the Implementation Services, the Buyer will co-operate with the Supplier and provide the Supplier with all relevant information reasonably requested by the Supplier. All expenses properly incurred by the Supplier in connection with the Implementation Services will be reimbursed as an additional charge.
- 3.4 Where the Buyer requires any additional services, it shall notify the Supplier and the Supplier will provide those services on a subscription or time and material basis at its then-current standard hourly rates.
- 3.5 The Supplier will, as part of the Subscription Services and at no additional cost to the Buyer, provide the Buyer with Support Services during Normal Business Hours. The Supplier may change the Support Services in its sole and absolute discretion from time to time.
- 3.6 The Buyer acknowledges that the Supplier regularly upgrades and updates the Subscription Services and that the Subscription Services are continually evolving. Some of these changes will occur automatically, while others may require the Buyer to schedule and implement the changes. The Buyer will, where required, upgrade its software and/or equipment in order to make efficient use of the Subscription Services. The Supplier will provide the Buyer with reasonable notice of any such changes.

#### 4. **Buyer Data**

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- 4.1 The Buyer will own all rights, title and interest in and to all of its Buyer Data and, as between the parties, the Buyer will have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Buyer Data.
- 4.2 Each party will take appropriate technical, physical and organisational measures and safeguards against unauthorised or unlawful processing of the Buyer Data or its accidental loss, destruction or damage and the Supplier will, as part of these measures, use reasonable endeavours to back-up Buyer Data. The Buyer acknowledges that if there is any loss or damage to Buyer Data, the Buyer's sole and exclusive remedy will be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Buyer Data from the latest back-up of such Buyer Data maintained by the Supplier. The Supplier will not be responsible for any loss, destruction, alteration or disclosure of Buyer Data caused by any third party.
- 4.3 The Buyer acknowledges and agrees that the Supplier may retain and use the Buyer Data for the purpose of:
- (a) during the Subscription Term:
    - (i) performing Supplier's obligations under the contract;
    - (ii) ensuring that the Buyer is complying with the terms and conditions of the Contract;
    - (iii) improving or enhancing the Subscription Services;
    - (iv) assessing the performance of the Buyer's business, including comparing or benchmarking such performance against the performance of the Supplier's other Buyers' businesses or industry practice;
    - (v) assessing what other services the Supplier may provide and promote to the Buyer, including offering services that may assist in improving environmental performance;
  - (b) following the expiry or termination of the Contract:

- (i) performing data analysis on an aggregated and anonymous basis, and manipulating, publishing and/or exploiting that aggregated and anonymised data (whether on a commercial basis or otherwise) in any form and for any purpose; and
- (ii) complying with applicable laws, regulatory requirements, codes or practice or guidance issued by regulatory authorities,

provided that the Supplier complies with its confidentiality obligations under Schedule 2 of this Contract.

## 5. Buyer's Obligations

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### 5.1 The Buyer will:

- (a) provide the Supplier with all necessary co-operation in relation to this Attachment, and all necessary access to such information as may be required by the Supplier, so that the Supplier can provide the SaaS Services including but not limited to Subscriber Data, security access information and configuration services;
- (b) comply with all applicable laws and regulations with respect to its activities under this Attachment;
- (c) carry out all other Buyer responsibilities set out in this Attachment in a timely and efficient manner. In the event of any delays in the Buyer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that it, and the Authorised Users, use the Subscription Services and the Documentation in accordance with the terms and conditions of this Attachment and will be responsible for any Authorised User's breach of this Attachment. The Buyer will indemnify the Supplier against all costs, losses, damages and expenses arising out of or in connection with the Authorised Users' use of the Subscription Services;
- (e) ensure that its network and systems comply with the relevant specifications as may be specified by the Supplier from time to time; and
- (f) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Buyer's network connections or telecommunications links or caused by the internet.

## 6. Intellectual Property Rights

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### 6.1 The Buyer acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights:

- (a) in, or created during the performance of, the SaaS Services; and
- (b) in the Documentation,

together with all modification, enhancements and other developments to the SaaS Services and Documentation (whether or not recommended or suggested by Customer).

### 6.2 Except as expressly stated in this Attachment, this Attachment does not grant the Buyer any rights to, or in, the Intellectual Property Rights, or any other rights or licences in respect of the SaaS Services or the Documentation.

- 6.3 Supplier confirms that it has all the rights in relation to the Subscription Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Attachment.
- 6.4 Supplier will indemnify the Buyer against any claim that the Subscription Services or Documentation infringes the New Zealand Intellectual Property Rights of any third party, and will indemnify the Buyer for any amounts awarded against the Buyer in judgment or settlement of such claims, provided that:
- (a) Supplier is given prompt notice of any such claim;
  - (b) the Buyer provides reasonable co-operation to Supplier in the defence or settlement of such claim, at Supplier's expense; and
  - (c) Supplier is given sole authority to defend or settle the claim.
- 6.5 In the defence or settlement of any claim, the Supplier may procure the right for the Buyer to continue using the Subscription Services, replace or modify the Subscription Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Contract on five Business Days' notice to the Buyer without any additional liability.
- 6.6 In no event will the Supplier, its employees, agents and sub-contractors be liable to the Buyer to the extent that the alleged infringement is based on:
- (a) a modification of the Subscription Services or Documentation by anyone other than the Supplier;
  - (b) use of the Subscription Services or Documentation in a manner contrary to the instructions given by Supplier; or
  - (c) use of the Subscription Services or Documentation after notice of the alleged or actual infringement from Supplier or any appropriate authority.
- 6.7 The foregoing states the Buyer's sole and exclusive rights and remedies, and the Supplier's entire obligations and liability, for infringement of the Intellectual Property Rights of any third party.

## **7. Warranties and Liability**

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- 7.1 Supplier warrants that:
- (a) the Subscription Services will function substantially as described in the Documentation; and
  - (b) the SaaS Services will be provided with reasonable skill and care.
- 7.2 If the Subscription Services do not function substantially in accordance with the Documentation, Supplier will, at its option, either:
- (a) modify the Subscription Services to conform to the Documentation; or
  - (b) provide a workaround solution that will reasonably meet Buyer's requirements.

If neither of the options in paragraphs (a) or (b) is commercially feasible, either party may terminate the Contract by giving written notice to the other party, in which case the Supplier will refund to the Buyer all applicable Fees pre-paid to the Supplier in relation to the Subscription Services on a pro rata basis. Such correction or substitution constitutes the Buyer's sole and exclusive remedy for any breach of the warranty set out in clause 7.1.

- 7.3 The Supplier will not be liable for a breach of the warranty in clause 7.1 to the extent of any non-conformance which is caused by use of the Subscription Services contrary to the Documentation and any other Supplier instructions, or modification or alteration of the Subscription Services by any party other than the Supplier or Supplier's duly authorised contractors or agents.
- 7.4 Notwithstanding clause 7.1, the Supplier does not warrant:
- (a) that the Buyer's use of the Subscription Services will be uninterrupted or error-free;
  - (b) that the Supplier will support, maintain or continue to offer the Subscription Services;
  - (c) that the Subscription Services, Documentation and/or the information obtained by the Buyer through the Subscription Services will be in customised formats specific to the Buyer, or meet the Buyer's requirements except to the extent that those requirements have specifically been agreed in writing between the parties.
- 7.5 Except as expressly set out in this Attachment, the SaaS Services and the Documentation are provided on an "as is" basis and all representations, conditions or warranties (whether express or implied, statutory or otherwise, and including warranties of merchantability and fitness for a particular purpose) in respect of the SaaS Services are expressly excluded.
- 7.6 The Buyer acknowledges that:
- (a) it remains fully responsible for any act or omission of the Authorised Users; and
  - (b) no Authorised User may make a claim relating to this Attachment provided that where any Authorised User suffers any loss or damage, which, if suffered by the Buyer would be recoverable from the Supplier, then the Buyer may make that claim on behalf of the Authorised User.



**APPENDIX 1 –SERVICE DETAILS****1. Software**

“Toitū Emanage” is a software tool for recording, calculating, managing and reporting greenhouse gas emissions.

**2. Initial Subscription Term**

The Initial Term of this Contract.

**3. Renewal Term**

The Renewal Term of this Contract.

**4. Related Users and Territory**

The Buyer will be entitled to identify the number of Related Users based on the Buyer’s Membership Level.

Buyer and Related Users	Territory
Buyer	New Zealand
Related Users: <i>[Insert related users being licensed under this Appendix]</i>	New Zealand

**5. Service Levels**

The Supplier will use reasonable commercial endeavours to ensure the Subscription Services are available 24 hours a day, seven days a week, except for:

- (a) planned maintenance, including Microsoft automatic updates on any day between the hours of 5am and 6am (NZST), or where at least 48 hours’ prior notice has been given to the Buyer; and
- (b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Buyer at least 6 Normal Business Hours’ notice in advance.

**APPENDIX 2 – SUPPORT SERVICES****A. Definitions**

For the purposes of this Appendix 2:

**Fault** means a failure of the Subscription Service to function substantially as described in the Documentation;

**Fault Classification** means the classifications specified in the table below:

<b>Fault Classification</b>	<b>Description</b>
<b>Priority 1</b>	The Subscription Service is down or unavailable. The Subscription Service is inoperable, seriously impacted or data is lost or destroyed.
<b>Priority 2</b>	Performance or availability is critically degraded, with major disruption to operation. A Subscription Service feature is inoperable or the Subscription Service is severely restricted in its use.
<b>Priority 3</b>	Performance or availability is non-critically degraded, with minor disruption to operation.
<b>Priority 4</b>	A minor problem causing minimal disruption to operation.

**Support Services** means:

- (a) providing and maintaining the Supplier's hosting environment for the provision of the Subscription Services;
- (b) advice on rectifying bugs or deficiencies of an inherent nature in the Subscription Service;
- (c) the investigation and diagnosis of Faults; and
- (d) the repair and correction of Faults,

but does not include any additional services.

**B. Provision of Support Services**

- (a) Supplier will provide the Support Services by e-mail or telephone during Normal Business Hours. Fault logging facilities will be provided via the following email: [info@toitu.co.nz](mailto:info@toitu.co.nz).
- (b) The Support Services do not include services provided by the Supplier relating to or resulting from:
  - (i) time spent travelling to the Buyer's site where the Subscription Services are being used;
  - (ii) misuse of the Subscription Services or failure to use the Subscription Services in accordance with the Documentation or this Attachment 3;
  - (iii) unauthorised attempts to repair, replace, modify or maintain the Subscription Services by persons other than Supplier;
  - (iv) support provided outside Normal Business Hours;

- (v) fluctuations in external power supplies or faults in communications networks;
  - (vi) failure by the Buyer to operate the Subscription Services in accordance with any environmental conditions specified by the Supplier.
- (c) The Buyer will:
- (i) promptly report to the Supplier all Faults which the Buyer discovers via the email Fault logging facility referred to in Part 2(a) of this Appendix;
  - (ii) ensure that:
    - (A) a system administrator is available to be the prime point of contact with the Supplier in the event of any Faults or queries;
    - (B) the system administrator has a good understanding of the Subscription Services and its operation;
  - (iii) make all reasonable efforts at investigation and diagnosis of Faults before contacting Supplier;
  - (iv) maintain a list of all Subscription Services problems to assist with the diagnosis and resolution of Faults;
  - (v) when notifying Supplier of Faults, correctly classify the nature and severity of the Fault in accordance with the Fault Classifications.

#### C. Service Levels

The following Service Levels will apply to the provision of Support Services:

- (a) Fault logging email facility will be available 24 hours per day, 7 days per week, 365 days per year;
- (b) Response (via phone or email) and resolution times in relation to a Fault logged via the email facility are as follows:

Fault Classification	Response Time (during Normal Business Hours)	Resolution Time (during Normal Business Hours) *
Priority 1	One hour	One Business Day
Priority 2	One hour	One Business Day
Priority 3/4	One hour	Five Business Days

\*The resolution times set out above will be extended by adding any time period resulting from the matters listed in Parts 2(b)(i) – (vi) of this Appendix.

#### D. Escalation

Any failure by the Supplier to provide any Support Service in accordance with this Attachment 3 will be dealt with and, if required by either party, escalated, in accordance with the following table:

Supplier Escalation Contact	Buyer Escalation Contact
9(2)(a)	9(2)(a)



# Attachment 4 to Schedule 1

## Offsetting Service Terms

### Introduction

---

- A. The terms set out in this Attachment 4 to Schedule 1 outline the additional terms that apply where the Buyer requires Carbon Credits to be sourced from Offset Projects and cancelled for its Certification.

### It is agreed

#### 1. Registry and Administration Fees and Payment

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- 1.1 The terms of this Attachment 4 to Schedule 1 shall prevail in the event of any conflict or inconsistency with Schedule 2.
- 1.2 For the purposes of this Attachment 4 the terms “Cancel”/“Cancelling” and/or “Cancellation” means the act of moving Carbon Credits from a listed account to a cancellation account in a registry to ensure that the carbon credits may not be listed, on-traded or otherwise used again
- 1.3 Where the Buyer requires Carbon Credits to be sourced and Cancelled for its Certification, then subject to clause 2 below, the Supplier will source and Cancel Carbon Credits on the Buyer’s behalf on the following terms.
- 1.4 At the time of the Buyer’s Audit:
- (a) The Supplier will advise the Buyer of the quantity of estimated Carbon Credits the Buyer may require to be sourced and Cancelled for its Certification;
  - (b) The Supplier will provide the Buyer with information about the options for eligible Offset Projects which are available that comply with the Programme requirements; and
  - (c) The Buyer will select and notify the Supplier of the Offset Project options from which the Buyer requests the Supplier to purchase and Cancel Carbon Credits on the Buyer’s behalf.
- 1.5 Prior to the Buyer’s Certification:
- (a) The Supplier will confirm the quantity of Carbon Credits the Buyer will require to be sourced and Cancelled for its Certification; and
  - (b) The Supplier will invoice the Buyer the costs associated with purchasing and Cancelling (or equivalent) the Carbon Credits from the eligible Offset Project options the Buyer has selected (including GST and any fees charged by the supplier of the Carbon Credits, transactional fees charged by the registry (“Registry Fees”) and any Administration Fee the Supplier may notify to the Buyer.
- 1.6 Upon the Buyer’s payment of the invoice referred to clause 1.5(b), the Supplier will:

- (a) Purchase and Cancel the Carbon Credits;
- (b) Request the third-party registry that has issued or listed the Carbon Credits for the Buyer's selected Offset Projects ("Registry") to transfer the purchased Carbon Credits into the Supplier's account on the Registry; and
- (c) Request the Registry to retire or Cancel the Carbon Credits on the Buyer's behalf or take other equivalent action to ensure that the Carbon Credits cannot be used again.

1.7 The Buyer acknowledges that any Carbon Credits provided to it under this Attachment 4 are provided on the following terms:

- (a) The Buyer understands that the Offset Project options it selected at the time of its Audit may no longer be available to purchase prior to the Buyer's Certification in which event it will select alternative Offset Projects from which the Buyer requests the Supplier to purchase and Cancel Carbon Credits on the Buyer's behalf;
- (b) The Supplier selects Offset Projects on the basis of publicly available Audit reports prepared by third parties who are approved or selected by the standards body under which the Offset Project is registered;
- (c) The Supplier selects the Offsetting Project on the basis of their Carbon Credit availability as advised to the Supplier by third party registries authorised to list or issue those Carbon Credits;
- (d) The Supplier does not represent or make any warranty in respect of the accuracy, reliability and/or completeness of information provided by third party Auditors or registries (including the Registry);
- (e) The Supplier makes no representations as to the achievement of the underlying environmental benefits of the Offsetting Projects from which the Carbon Credits listed or issued on the Registry were sourced; and
- (f) The Supplier does not control the operational aspects of any the Registry and does not warrant the accuracy of information relating to the Carbon Credits including their availability or the Cancellation or retirement of them.

## 2. Sourcing of own Carbon Credits

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2.1 Where the Buyer requires 10,000 or more Carbon Credits per annum to be Cancelled for its Certification, the Buyer may source its own Carbon Credits, in which case the Buyer will:

- (a) seek the Supplier's prior approval for the Offset Projects from which the Buyer wishes to source Carbon Credits before the Buyer's scheduled Audit date;
- (b) pay any approval assessment fee the Supplier may notify to the Buyer for the Buyer's review and approval of any such Offset Projects not already approved by the Supplier;
- (c) arrange for the final Carbon Credit volume (100% of required offset) to be transferred into the Programme's relevant registry account within 10 Days of confirmation from the Supplier of the final volume required, for subsequent Cancellation; and
- (d) pay any Registry Fees and any other administration or related fee the Supplier may notify to the Buyer.

## 3. Optional Certified Products

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3.1 Where the Buyer offers an optional certified product or service to its clients:

- (a) The Buyer will purchase and Cancel Carbon Credits in advance for the period detailed in this Contract, based upon a forecast estimate, and agree to purchase and Cancel further Carbon Credits as identified at subsequent Audits; and
- (b) if an organisation listed in this Contract leaves the Programme and still has products on sale with the Programme Marks, the Buyer will agree, based on an agreed estimate, to ensure that all of the emissions associated with such products have been offset through the Cancellation of the required volume of Carbon Credits.

#### **4. Changes in Situation**

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- 4.1 If after the Supplier has purchased Carbon Credits on the Buyer's behalf the Buyer withdraws from the Programme prior to its Certification and in accordance with the provisions of this Contract then unless the Supplier has retired, Cancelled or taken other equivalent action to ensure that the Carbon Credits cannot be used again, the Supplier will use its reasonable endeavours to sell the purchased Carbon Credits at the rate available to it at that time, and refund the Buyer the monies it receives for the sale less any Registry Fees and any Administration Fees the Supplier may notify to the Buyer.
- 4.2 If the final volume of Carbon Credits required for Certification is less than the volume the Supplier has purchased for the Buyer in accordance with this Contract, then unless the Supplier has retired, Cancelled or taken other equivalent action to ensure that the Carbon Credits cannot be used again, the Supplier will at its discretion either:
  - (a) use its reasonable endeavours to use the purchased Carbon Credits for offsetting another Buyer at the rate available to the Supplier at that time, and refund the Buyer the monies the Supplier receive for the sale less any Registry Fees and any Administration Fees the Supplier may notify to the Buyer; or
  - (b) the Supplier may hold these Carbon Credits for the Buyer's next Certification.
- 4.3 If the final volume of Carbon Credits required for Certification is greater than the volume the Supplier has purchased for the Buyer in accordance with this Contract, the Buyer must purchase additional Carbon Credits from the Supplier at the prices the Supplier advises to the Buyer.
- 4.4 Where re-Certification is not sought at the expiry of the Certification Period, an assessment will be conducted with the Buyer to ensure that all emissions actually created by it during the Certification Period have been offset. Where such emissions have not been offset, the Supplier will notify the Buyer and the Buyer must purchase, or direct the Supplier to Cancel, the required Carbon Credits. To the extent that the Buyer does not purchase, or does not direct the Supplier to Cancel, the required Carbon Credits within 15 Days of the Supplier's notice, then the Supplier may (at its option) Cancel such Carbon Credits and invoice the Buyer for the relevant amount, and the Buyer must pay the Supplier such amount within 10 Business Days.



CONTRACT VARIATION #006510000076J7RAAQ

Ministry of Social Development

Enviro-Mark Solutions Limited (trading as Toitū Envirocare)

Contract: Toitū Environmental Services Agreement (carbonreduce programme)

Original Contract dated: 19 May 2021

Variation dated: 27 September 2022

VARIATION

Ministry of Social Development and Enviro-Mark Solutions Limited are Parties to the Contract.

The Parties agree to vary the Contract. The scope of the Variation is set out in the attached Schedule of Changes.

This Variation is effective from 27 September 2022 or the later of the dates it is signed by both parties.

Subject to the changes made in this and any other Variations, the Contract Details of the Contract and the terms and conditions not varied below remain in place.

Words used but not defined in this Variation have the same meaning as they do in the Contract.

ACCEPTANCE

Signed for and on behalf of  
Ministry of Social Development:



Signature

Name: *Tammy Gillies*

Position: *GM Procurement; Commercial*

Date: *29/09/22*

PO number (if required):

Signed for and on behalf of  
Enviro-Mark Solutions Limited:

9(2)(a)

Signature

Name: 9(2)(a)

Position: Team Leader Business Development

Date: 27 September 2022



## SCHEDULE OF CHANGES

This Contract Variation outlines the amendments requested by the Ministry of Social Development to the original Contract. Amendments include:

### 1. CHANGE TO END DATE

1.1 The End Date of the Initial Term, as stated in the Contract, is amended to 16 May 2024.

1.2 Additional extensions to the Contract will require a new Contract or a Contract Variation at least sixty (60) Business Days prior to the new End Date.

### 2. CHANGE TO CONTRACT MANAGER

2.1 The Supplier's Contract Manager stated in the Contract is amended as follows:

	Buyer's Contract Manager	Supplier's Contract Manager
Name:	9(2)(a)	9(2)(a)
Title / position:	Manager Business Improvement & Support	Business Development Manager
Address:	The Aurora Centre, 56 The Terrace Wellington 6011	Level 6, 17 Whitmore Street Wellington 6011
Phone:	9(2)(a)	9(2)(a)
Email:	9(2)(a)@msd.govt.nz	9(2)(a)

### 3. CHANGE TO SCOPE OF SERVICES AND FEES

3.1 The Fees already charged for Services delivered under the original Contract include:

Services	Fees (incl. GST)	Invoice details
Annual Membership (2021)	\$33,350	Paid (Inv. 6622)
Annual Membership (2022)	\$33,350	Paid (Inv. 0779)

3.2 The Fees stated in the original Contract for Services that are yet to be invoiced are as follows:

Services	Fees (incl. GST)	Invoice details
FY 21/22 Audit and Certification (delivered Feb 22 & Aug 22)	\$17,273	Inv. TBC
FY 22/23 Audit and Certification (to be delivered in 2023 dates to be confirmed)	\$17,273	Inv. TBC

3.3 The Fees stated in the original Contract are amended as follows:

Services	Fees (excl. GST)	Timeframe
FY 18/19 base year Audit	\$15,485	Dates To be confirmed
Total	\$15,485	

The audits for FY 21/22 and 22/23 are covered in the original Contract fees. The Ministry of Social Development will only be charged what is used of its hour allocation.

Please note: Since the original Contract was signed, Toitū Envirocare have increased their Audit hourly fees from \$228 to \$235 and Certification hourly fees from \$248 to \$256 excl GST.

3.4 The total Fees now due under the Contract are:

Total Fees in the original 2-year Contract (excl. GST)	\$88,040
Additional Fees – Contract Variation (excl. GST)	\$15,485
<b>Total cumulative Fees (excl. GST)</b>	<b>\$103,525</b>

#### 4. CHANGE TO CONTRACT TERMS AND CONDITIONS

In the "Changes to Schedule 2 and attachments" part of the Contract, the following amendments are made to the Terms and Conditions:

1. In the section Attachment 1 to Schedule 1

(a) The following new clause 4.1A is added to clause 4, Audit and Verification:

4.1A "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. The pre-audit engagement letter will be deemed to be incorporated by reference in these Certification Terms."





# SUMMARY OF TOITŪ CARBONREDUCE CERTIFICATION

FOR MINISTRY OF SOCIAL DEVELOPMENT



**MINISTRY OF SOCIAL  
DEVELOPMENT**  
TE MĀNATŪ WHAKAHIATO ORA

Summary for 01 July 2021 to 30 June 2022

# TOITŪ CARBONREDUCE ORGANISATION CERTIFIED: MINISTRY OF SOCIAL DEVELOPMENT

Toitū carbonreduce means committing to ongoing reductions while achieving annual measurement for at least the Toitū mandatory emissions.<sup>ii</sup>



Measured emissions to ISO  
**14064-1:2018** and Toitū  
requirements



Managing and reducing against  
Toitū requirements

This report provides a summary of the annual greenhouse gas (GHG) emissions inventory and management report for Ministry of Social Development as part of the annual work to achieve Toitū carbonreduce certification. Additional details of the annual achievements, commitments, and verification are available on request from Ministry of Social Development.

This report is to demonstrate that we meet the requirements of carbonreduce certification, ensuring that our inventory and processes have been verified as required by the CNGP. It also serves as a starting point in developing our reduction plan as part of our reporting requirements under CNGP.

## ACHIEVEMENTS

These achievements have been verified in line with ISO 14064-3:2019 and Toitū carbonreduce Programme Technical Requirements for the 01 July 2021 to 30 June 2022 measurement period.

## EMISSIONS MEASUREMENT

Ministry of Social Development's greenhouse gas emissions for this year (01 July 2021 to 30 June 2022) were 5,450.93 tCO<sub>2</sub>e. Ministry of Social Development has measured the emissions resulting from its operational activities, purchased energy, and selected impacts from its value chain activities, including business travel, freight, and waste sent to landfill. The annual inventory is detailed in the following table. Emissions and reductions are reported using a location-based methodology.<sup>iii</sup>

Category (ISO 14064-1:2018)	Scopes (GHG Protocol)	GHG emissions (tCO <sub>2</sub> e)		
		Base Year 2018/2019	Previous Year 2020/2021	Current Year 2021/2022
Category 1: Direct emissions	Scope 1	1,605.95	0.00	758.27
Category 2: Indirect emissions from imported energy (location-based method*)	Scope 2	1,697.08	0.00	1,641.14
Category 3: Indirect emissions from transportation	Scope 3	1,674.29	0.00	1,686.42
Category 4: Indirect emissions from products used by organisation	Scope 3	1,258.07	0.00	1,365.09



		GHG emissions (tCO <sub>2</sub> e)		
Category 5: Indirect emissions associated with the use of products from the organisation	Scope 3	0.00	0.00	0.00
Category 6: Indirect emissions from other sources	Scope 3	0.00	0.00	0.00
Total gross emissions*		6,235.39	0.00	5,450.93
Category 1 direct removals		0.00	0.00	0.00
<b>Total net emissions</b>		<b>6,235.39</b>	<b>0.00</b>	<b>5,450.93</b>

\*Gross and net emissions are reported using a location-based methodology. Contact Ministry of Social Development for full details.

The operational GHG emission sources included in this inventory are shown in Figure 1 below.

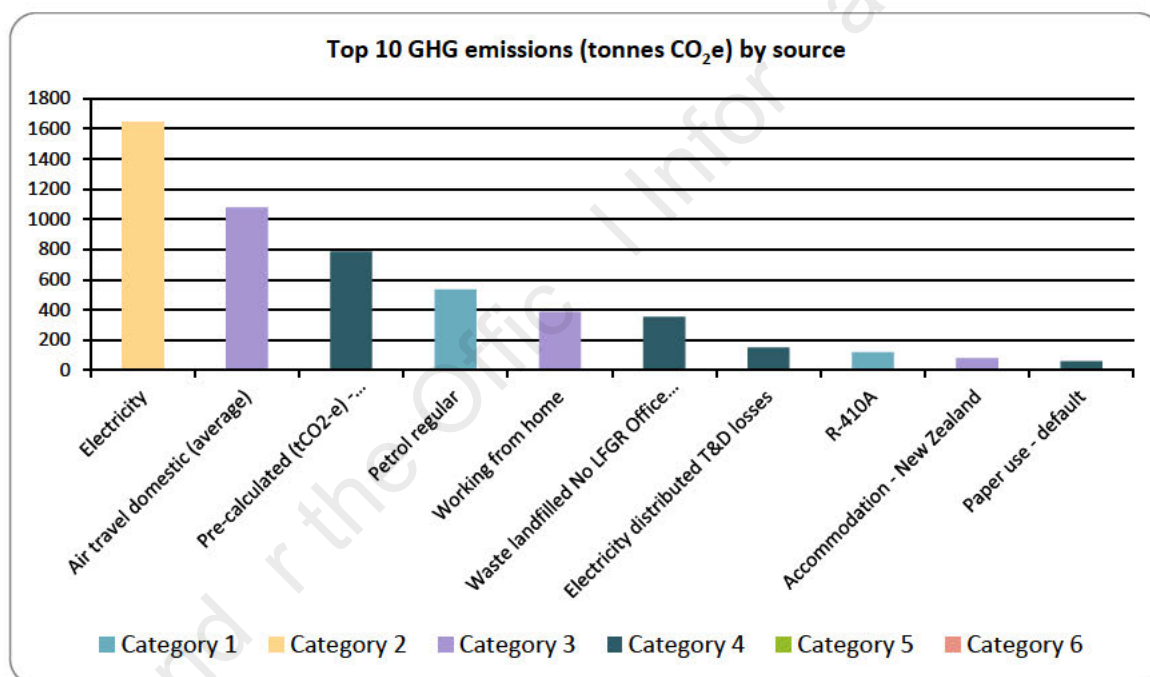


Figure 1: Top 10 GHG emissions (tonnes CO<sub>2</sub>e) by source

## SCOPE OF MEASURED INVENTORY

### CONSOLIDATION APPROACH

An operational control consolidation approach was used to account for emissions. Organisational boundaries were set with reference to the methodology described in the GHG Protocol and ISO 14064-1:2018 standards.<sup>iv</sup>

An operational control approach aligns with our intended uses. We measure and manage emissions that we have control and ability to influence.

## BOUNDARIES

MSD is a Public Service Department that reports to 7 Ministers (Hon Carmel Sepuloni, Hon Priyana Radhakrishnan, Hon Poto Williams, Hon Dr Megan Woods, Hon Peeni Henara, Hon Marama Davidson, Hon Dr Ayesha Verrall) across 8 portfolios (Social Development and Employment; ACC; Youth; Diversity, Inclusion and Ethnic Communities; Disability Issues; Children; Housing; Seniors). We have 9 Business Groups: Office of the Chief Executive; Service Delivery; Māori, Communities and Partnerships; Strategy and Insights; Policy; People and Capability; Organisational Assurance and Communication; Business Integration; Transformation.

National Office is based in the Wellington CBD across several buildings. MSD has offices and sites around the country for service delivery. Our work is primarily service centre / office and desk based, however, case managers also use our company fleet to visit clients and partner organisations out in the field.

We provide various corporate shared services arrangements for several other agencies within MSD, these include Independent Children's Monitor, Whaikaha, Oranga Tamariki, and the Social Wellbeing Agency. They are included within the People and Capability business group. Whaikaha did not exist during FY 2021/2022, and Oranga Tamariki and the Social Wellbeing Agency are required to conduct their own reporting separately and so these agencies are excluded from our reporting boundary. The Independent Children's Monitor will transition to being supported by the ERO, at which point they will cease to be included in our reporting boundary.

### Ministry of Social Development Legal Structure FY22

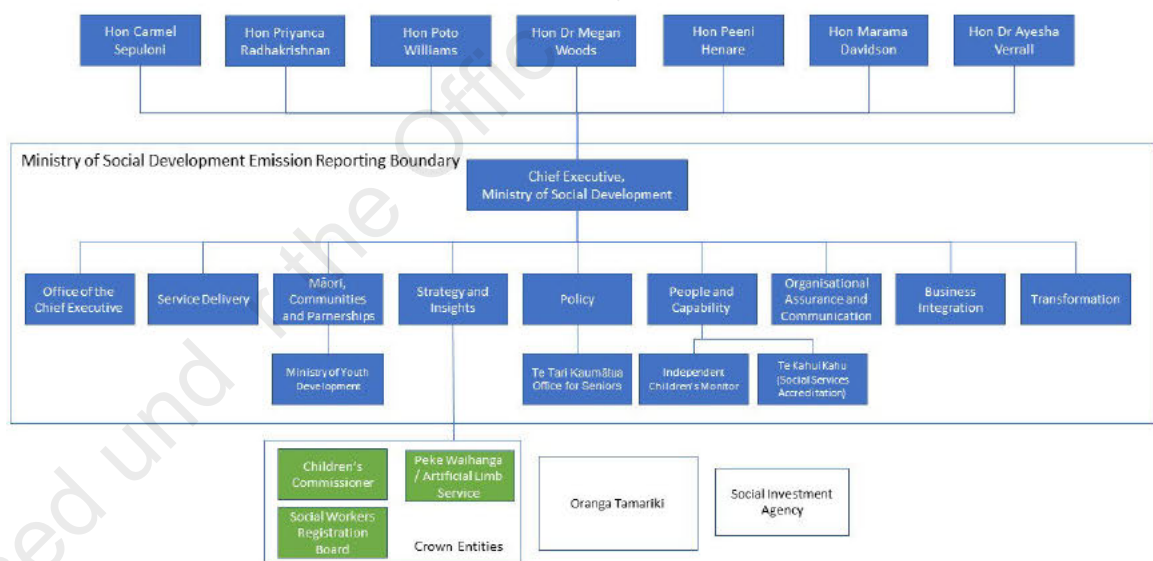


Figure 2: Organisational structure showing business units included and excluded

No business units were excluded. Excluded emissions do not exceed 5% of the total footprint within the organisation boundary stated.

## MANAGING AND REDUCING

This is the fourth year of reporting under the Toitū carbonreduce programme. An absolute decrease in Category 1 and 2 emissions of 903.62 tCO<sub>2</sub>e has occurred against base year. A reduction in emissions intensity (for Category 1, 2 and mandatory Category 3 and 4 emissions) of 2.42 tCO<sub>2</sub>e/\$M has been achieved, this has not been calculated on a 4-year rolling average as years 2 & 3 are yet to be verified.

Performance against target has not been provided



Figure 3: Performance against target since the base year

(Based on unverified FY19 data, to confirm when verified prior to certification).

Our absolute emissions have reduced by 13.8% since our baseline year FY19. This is largely due to the reduction in domestic and international flights and accommodation, fleet, and taxi as MSD adapted to COVID conditions. Refrigerant losses, paper use, water supply, wastewater and outsourced printing (Bluestar) also reduced. During this period our electricity and gas, postage and courier, waste, freight, mileage and rental cars, boiler use, and (of course) working from home went up. If we maintain the reduction in key travel areas and increase efficiency in other key focuses areas, such as electricity, we should be on track to meet our 2025 and 2030 targets.

## COMMITMENTS

### REDUCTION TARGETS

Ministry of Social Development is committed to managing and reducing its emissions. Ministry of Social Development's commitments, including GHG emissions reduction targets and plans, have been reviewed and are in line with Toitū carbonreduce programme requirements.

These targets reflect the level of ambition required to meet our CNGP requirements and limit warming to 1.5 degrees to avert catastrophic climate change. This is our responsibility as a government agency and as a social service focused agency with the wellbeing of New Zealanders at the forefront of our work.

Ministry of Social Development commits to reduce total category 1 and 2 emissions in compliance with Toitū requirements. To do so, Ministry of Social Development will establish reduction targets, pathways and plans in the coming months to be validated at the next Toitū carbonreduce/net carbonzero verification.

Looking ahead, Ministry of Social Development is currently focused on the following projects.

Objective	Focus areas	Responsibility	Status
Improve electricity efficiency to reduce associated emissions - company-wide	Lighting - transitioning all to LEDs	9(2)(a)	Existing project, opportunities to scale and speed up.
	Conduct energy audits on big energy use sites to develop site specific reduction plans.		Site identification underway with SmartPower
Reduce emissions associated with company fleet	Transition fleet to EVs and install charging infrastructure		Behind schedule for FY23
	Fleet optimisation		TBC
Reduce business travel and associated emissions	Travel emission budgets		Nil
	Update travel policy to include carbon and sustainability		Nil



Objective	Focus areas	Responsibility	Status
	Work with key stakeholders (Orbit, budget managers, team admin) to improve information and decision making	National Accounting Centre	Nil
Reduce emissions associated with courier and postage	Review use of courier and postage and work with relevant business units to understand areas we can increase efficiency and/or digitalise.	Finance 9(2) ( Procurement 9(2)(a)	Nil
Reduce emissions associated with waste to landfill	Conduct a waste audit/s	Site managers and office managers	Nil
	Information based education and engagement campaign	Site managers and office managers	Nil
	Consider soft plastic collection for targeted sites	Site managers and office managers	Nil
Increase awareness of emissions and sustainability across the organisation	Share information on inventory and emission sources via org wide channels (TVs, intranet)	Comms	Nil
	Include environmental responsibility and emission budgets in reports to budget managers	Finance	Nil
	Develop a sustainability strategy and policy	Office of Chief Executive	Nil
	Include sustainability in induction material	HR	Nil

## CERTIFICATE DETAILS

<b>Certification status:</b>	Toitū carbonreduce certified organisation
<b>Certificate number:</b>	2022328J, Year 1 of 3 year certificate period
<b>Valid until:</b>	24 November 2025
<b>Measurement period:</b>	01 July 2021 to 30 June 2022
<b>Base year:</b>	01 July 2018 to 30 June 2019
<b>Audited by:</b>	Toitū Envirocare
<b>Level of assurance:</b>	Reasonable for all mandatory categories excluding waste to landfill and Limited for all non-mandatory categories including waste to landfill

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<sup>i</sup> ©Enviro-Mark Solutions Limited 2020.

**Disclaimer:** This Certification Summary Statement is a summary of the information (validated and verified for relevant components of the certification) considered for certification and the certification decision. It should not be taken to represent the full submission for certification. Whilst every effort has been made to ensure that the information in this Statement is accurate and complete, Enviro-Mark Solutions Limited (trading as Toitū Envirocare) does not, to the maximum extent permitted by law, give any warranty or guarantee relating to the accuracy or reliability of the information.

<sup>ii</sup> The mandatory sources that must be included in any Toitū carbon programme inventory include:

- All direct emissions from the activities of the organisation, or the part of the organisation being certified. Direct emissions come from assets owned or controlled by the organisation, such as emissions from fleet vehicles, boilers, generators and HVAC systems.
- All emissions from imported energy (electricity, heat and steam)
- Emissions from business travel and freight paid for by the organisation
- Emissions associated with waste disposed of by the organisation, as well as the transmission and distribution of electricity, and natural gas

<sup>iii</sup> All purchased and generated energy emissions are dual reported using both the location-based method and market-based method in the certified Inventory Report and appendices. This summary document presents the information using the location-based method. Note that reductions and any required compensation are assessed using that method. Dual reporting illustrates the role of supplier choice, onsite renewable energy generation and contractual instruments in managing indirect emissions from energy alongside any ongoing energy efficiency and reduction efforts. This dual reporting aligns with ISO 14064-1:2018 and the GHG Protocol. Please contact this organisation for the dual reporting details applicable to this inventory.

<sup>iv</sup> Control: the organisation accounts for all GHG emissions and/or removals from facilities over which it has financial or operational control. Equity share: the organisation accounts for its portion of GHG emissions and/or removals from respective facilities.