

# Conditions of Crown Property Accreditation

Crown Property Regulatory



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# 1 Scope

This document sets out the Conditions of Crown Property Accreditation ('the Conditions') that all Accredited Suppliers must comply with when they undertake Crown property work that will require Land Information New Zealand (LINZ), staff members to perform the Statutory Functions delegated to them by the Minister for Land Information and the Chief Executive of LINZ.

These Conditions should be read in conjunction with the document *Procedures for Becoming a Crown Property Accredited Supplier*.

**Note** – The information contained in this document may be updated from time to time. This may affect the LINZ accreditation requirements.

Confirm that the date of this document is the same as that on the LINZ website <http://www.linz.govt.nz>.

## 2 Terms and Definitions

<b>Term</b>	<b>Definition</b>
Accreditation	Non-exclusive authorisation by LINZ Crown Property to carry out specific Crown property work that supports LINZ's discharge of a statutory function
Accredited Supplier	A company that, or individual who, has been accredited to carry out specific Crown property work that supports LINZ's discharge of a statutory function
Client (or client agency)	Any requiring authority (as defined in the Resource Management Act 1991) or any Crown agency, which deals with land pursuant to the legislation under which LINZ exercises a statutory function
Commissioner of Crown Lands (CCL)	An independent statutory officer responsible for Crown land, who leads LINZ's Crown Property Regulatory team that manages the Crown accreditation regime
Conditions	The Conditions of Crown property accreditation outlined in this document
Criteria for Accreditation	The criteria set out in Section 5.1 and Appendix A of the <i>Procedures for Becoming a Crown Property Accredited Supplier</i> document
Crown Property Standards	The procedures and standards set out in the LINZ Crown Property standards as updated from time to time
Information	All records and information that is supplied to the Accredited Supplier (including any Nominated Person) by LINZ or the client, or which the Accredited Supplier (including any Nominated Person) otherwise holds or generates while carrying out its investigative activities and work in order that LINZ can exercise its statutory functions
Nominated Person	A person employed or otherwise engaged by an Accredited Supplier and who has been accredited to undertake specific Crown property work
Parties	The parties are LINZ and the applicants for accreditation

Service(s)	Crown property work that the Accredited Supplier contracts with the client to perform that supports LINZ discharging a statutory function
Statutory Functions	Functions required to be performed by LINZ pursuant to legislation in relation to Crown property activities
Technical Documents	All policies, standards, guidelines, processes, instructions or other advice relating to the services notified to the Accredited Supplier by LINZ in addition to the relevant Crown Property Standards

### 3 Accreditation Term

These Conditions are effective from **13 February 2004** and will continue in effect until accreditation ceases in accordance with Clause 11.

### 4 Accredited Supplier's Obligations

The Accredited Supplier must, in undertaking the Services, comply with the following obligations:

- (a) Only perform those Services for which it has current accreditation;
- (b) Comply with, above all other considerations, all applicable legislation, statues and regulations;
- (c) Comply with all requirements of the Crown Property Standards, Technical Documents and any other Instructions issued by LINZ;
- (d) Maintain and utilise the Criteria of Accreditation set out in Section 5.1 and Appendix A of the document *Procedures for Becoming a Crown Property Accredited Supplier*;
- (e) Introduce or amend their management systems as necessary to comply with any introduction of new, or amendment of existing, Criteria of Accreditation within one month of notification by LINZ;
- (f) Comply with any additional conditions that LINZ may place on the Accredited Supplier's accreditation from time to time;
- (g) Maintain a clear and complete documented audit trail of all work undertaken under accreditation;
- (h) Ensure that all work undertaken and performed in connection with the Services is undertaken by or under the supervision of a Nominated Person with the appropriate category of accreditation;

- (i) Accept responsibility for the quality, veracity and completeness of any work performed in connection with the Services;
- (j) Provide complete reports and other outputs (including a copy of all relevant material reviewed by the Accredited Supplier in performing the Services for each transaction) as may be required by LINZ so that LINZ may perform its statutory functions;
- (k) Provide all relevant information that may be requested by LINZ relating to the Services performed by the Accredited Supplier;
- (l) Provide training to all relevant personnel (including the Nominated Persons) as may be required to ensure ongoing compliance with these Conditions or as may be required by LINZ;
- (m) Avoid any real or potential conflict of interest situation in undertaking the Services;
- (n) Not use their accreditation in any way that would bring LINZ into disrepute;
- (o) Ensure that all reports and recommendations provided to LINZ are signed by a Nominated Person holding the appropriate category of accreditation for the Service;
- (p) Ensure that all its Nominated Persons are aware of, and comply with, these Conditions, all current Crown Property Standards, Technical Documents and Instructions;
- (q) Ensure that it does not bind LINZ by contract or otherwise and does not hold itself out to any third party that it is entitled to exercise any statutory functions;
- (r) Advise LINZ promptly of any issues or circumstances that may affect their accreditation, compliance with these Conditions or LINZ's exercise of any statutory function; and
- (s) Advise LINZ promptly when any Nominated Person resigns or otherwise leaves the employment or is no longer engaged by the Accredited Supplier, providing the name of the Nominated Person and the date on which they ceased to be employed or engaged.



## 5 Audit and Inspection

The Accredited Supplier must, within 10 working days of receiving notice from LINZ or immediately, if LINZ in its sole opinion reasonably believes it requires immediate access, allow LINZ and its authorised employees, contractors, auditors and agents to inspect and evaluate the performance of the Accredited Supplier and any Nominated Person in relation to:

- compliance with these Conditions and the Criteria for Accreditation;
- compliance with any additional conditions placed on accreditation; and
- the provision of any Services.

The Accredited Supplier and any Nominated Person must allow LINZ's authorised personnel reasonable access to such information and documentation as LINZ may request to facilitate such audit.

### 5.1 Reporting

The Accredited Supplier acknowledges that LINZ may provide the Client with reports, including audit reports, in relation to the Accredited Supplier and Services undertaken for that Client.

## 6 Accredited Supplier Independent

The Accredited Supplier will hold LINZ harmless against any loss, damage, liability, cost or expense in connection with or arising from any and all claims by or on behalf of any person or persons for damages arising out of the fault or negligence of the Accredited Supplier, including its officers, agents, any Nominated Persons and other personnel and persons in contract with it in the performance of the Conditions of Accreditation or non-compliance with it as the case may be.

## 7 Indemnity

The Accredited Supplier will hold LINZ harmless against any loss, damage, liability, cost or expense in connection with or arising from any and all claims by or on behalf of any person or persons for damages arising out of the fault or negligence of the Accredited Supplier, including its officers, agents, any Nominated Persons and other personnel and persons in contract with it in the performance of the Conditions of Accreditation or non-compliance with it as the case may be.

## 8 Insurance

### 8.1 Effect insurance

The Accredited Supplier will take out and maintain in full force and effect professional indemnity insurance on terms and for an amount satisfactory to LINZ as outlined in the *Procedures for Becoming a Crown Property Accredited Supplier* document.

### 8.2 Evidence

The Accredited Supplier shall provide LINZ with evidence (including a certificate of currency) of the insurance cover effected and maintained in accordance with Clause 8.1 of these Conditions within one month of the Accredited Supplier's insurance renewal date.

### 8.3 Loss payable provision

If required by LINZ the Accredited Suppliers must use its best endeavours to:

- procure a loss payable provision that applies to the insurances effected by the Accredited Supplier under Clause 8.1 to the intent that the insurer must pay to LINZ the amount of any claim LINZ has against the Accredited Supplier which is covered by such insurance in property over the Accredited Supplier and any other persons; and
- provide to LINZ written evidence to the satisfaction of LINZ of the existence of the loss payable provision.

### 8.4 Survival

The provisions of this Clause 8 shall survive the termination of these Conditions or the Accredited Supplier's accreditation.

## 9 Information Ownership, Confidentiality and Custody

### 9.1 Ownership of Information

All Information remains the property of LINZ.

### 9.2 Use of Information

The Accredited Supplier shall only use the Information for the purposes of carrying out its obligations under these Conditions and in the performance of the Services and not for or in relation to the supply of any other services by the Accredited Supplier (including any Nominated Person) or for any other purpose that is not authorised by LINZ.

## 9.3 Disclosure to third party

The Accredited Supplier may not disclose any Information to a third party without the written permission of LINZ or the Client.

## 10 Conflict of Interest

If a situation arises where the interest of the Accredited Supplier or the Client could potentially be in conflict with the interests of LINZ, the Accredited Supplier must:

- Not undertake services or other actions for itself, a client or any other person that may give rise to a conflict between its own interests and those of LINZ;
- Take all action necessary to avoid a conflict of interest arising from, or the potential for a conflict of interest to arise in, undertaking work;
- Comply with any Instructions dealing with conflicts of interest issued by the CCL; and
- In the event of a conflict of interest or potential conflict of interest arising, immediately inform the CCL and provide details of the conflict or potential conflict.

## 11 Termination and Sanction

### 11.1 Termination and Sanction events

LINZ may, in its sole discretion, terminate accreditation or the approval of any Nominated Person or provide a sanction on the operations of an Accredited Supplier or Nominated Person upon terms and conditions it sees fit, by giving notice to the Accredited Supplier if any of the following events occur:

- a) The Accredited Supplier or any Nominated Person breaches these Conditions (including any Accredited Supplier Obligation) or makes any misrepresentation in its application to LINZ for accreditation in a material respect and such breach or misrepresentation is incapable of being remedied, or if capable of being remedied continues unremedied for 10 working days after written notice of such breach or misrepresentation has been given to the Accredited Supplier by LINZ;
- b) There is a change in effective management or control of the Accredited Supplier or the Accredited Supplier ceases to trade or carry on its business or materially changes its business operations;
- c) the failure of any Nominated Person to meet and comply with any of the Criteria for Accreditation, which failure in the reasonable opinion of LINZ means that the Accredited Supplier will be unable to perform any or any part of the Services;
- d) the Accredited Supplier notifies LINZ about a Nominated Person leaving and LINZ in its sole discretion determines that the Accredited Supplier will accordingly be unable to perform any of the Services;

- e) the Accredited Supplier or any Nominated Person becomes insolvent or is adjudicated bankrupt or is unable to pay its indebtedness as it falls due or stops or suspends, or threatens to stop or suspend payment of any of its indebtedness or begins negotiations or takes any proceedings to reschedule any of its indebtedness;
- f) the Accredited Supplier is placed in liquidation either compulsorily or voluntarily (except for the purpose of reconstruction or amalgamation) or if a receiver or statutory manager is appointed in respect of the whole or any part of its assets or makes an assignment for the benefit of or composition with its creditors or threatens to do any of these things;
- g) the Accredited Supplier or any Nominated Person mishandles trust account or other monies involved in the performance of the Services, or otherwise fails to meet the requirements of these Conditions or Crown Property Standards insofar as they relate to the handling of and accounting for such monies on behalf of LINZ or the Crown;
- h) there is any change or alteration in LINZ policy or any legislation which:
  - (i) In the opinion of LINZ affects, restricts or dispenses with the need for accreditation in respect of any of the Services; or
  - (ii) in the opinion of LINZ affects and has a material impact upon the ability of either party to comply with these Conditions.

## 11.2 Accreditation ceases

The Accredited Supplier's or Nominated Person's accreditation will cease:

- a) on the termination of accreditation by operation of Clause 11.1; or
- b) if the Accredited Supplier or a Nominated Person by written notice to LINZ relinquishes its accreditation.

## 12 Return of Information

Upon termination or expiry of accreditation the Accredited Supplier and any Nominated Person shall immediately cease to use the Information and shall if required by LINZ deliver the Information to LINZ.

### 12.1 Survival

The termination or expiry of accreditation will not affect those clauses in these Conditions which, are stated or by their nature are intended to survive termination.

## 13 Assignment

### 13.1 No Assignment by the Accredited Supplier

The Accredited Supplier must not assign, transfer or subcontract these Conditions or any benefits, interests or obligations arising under these Conditions without the written approval of LINZ. This includes situations where the transfer or allotment of shares or amendment of its constitution that passes effective control of the Accredited Supplier to any other person.

### 13.2 Assignment by LINZ

LINZ may assign, transfer or subcontract its interest in these Conditions to another government department, Crown entity or organisation without the need to obtain the consent of the Accredited Supplier.

## 14 Variation and Review

LINZ may at any time vary these Conditions by giving the Accredited Supplier written notice of not less than 10 working days of the variation and date on which it is to come into force. It will not be necessary for LINZ to obtain the agreement of the Accredited Supplier before the variation is effective.

## 15 Instructions

LINZ may publish any Crown Property Standard, Technical Document or Instruction which will be effective on the date specified in the notice. A Crown Property Standard, Technical Document or Instruction is not a variation of these Conditions and does not require the consent of the Accredited Supplier.

## 16 Confidentiality

### 16.1 Disclosure of Information

It is acknowledged that the Public Finance Act 1989, the Official Information Act 1982, the Privacy Act 1993, the Ombudsman Act 1975, the Local Government Official Information and Meetings Act 1987, the Public Records Act 2005 and other relevant statutory and regulatory requirements may require LINZ to disclose certain information relating to these Conditions and the Services.

### 16.2 Advertising and Public Statements

The Accredited Supplier may claim to be accredited (or make reference to accreditation in any advertising) only for work covered by the scope of activities which they have been

accredited by LINZ. The Accredited Supplier must not make any statement about their accreditation which is not authorised by LINZ.

If accreditation is terminated either by the Accredited Supplier or LINZ, the Accredited Supplier must immediately stop claiming to be accredited or using any material which makes such a claim.

## 17 Notices

LINZ will provide notice in writing, by email, personal delivery or by post to the Accredited Supplier to the address or contact details shown on the list of Accredited Suppliers on LINZ's website <http://www.linz.govt.nz>. These will be deemed to be received by the Accredited Supplier:

**Email** – in the case of an Accredited Supplier who has designated an information system for the purpose of receiving electronic communications, at the time that electronic communication is delivered by the sender's information system to the addressee at the place at which the Accredited Supplier's business or in the case of an Accredited Supplier who does not have a place of business, that Accredited Supplier's ordinary place of residence.

**Personal delivery** – when delivered; and

**Post** - on the third working day after posting by fastpost or by airmail.

## 18 Disputes

### 18.1 Avoiding disputes

LINZ and the Accredited Supplier will actively, openly and in good faith discuss such dispute or difference as to the meaning or application of any part of these Conditions with a view to a speedy resolution.

### 18.2 Initiating resolution

If a dispute fails to be resolved by direct negotiation or discussion either party may then initiate the following resolution procedures by giving written notice to the other party.

### 18.3 Negotiations

LINZ and the Accredited Supplier must notify the other, in writing, of their representative in any negotiations. Each representative must have authority to settle the dispute. The representatives must enter into negotiations to resolve the dispute within 5 working days after both parties have been advised of each other's representatives.

## 18.4 Arbitration

If LINZ and the Accredited Supplier fail to agree on a dispute resolution process within the set or extended time limit, or using an agreed dispute resolution process, fail to settle the dispute within a further 10 working days, then the dispute will be referred to arbitration in accordance with the Arbitration Act 1996. Either LINZ or the Accredited Supplier may commence the arbitration by giving written notice to the other stating the subject matter and details of the dispute and their desire to have the dispute referred to arbitration. The arbitration shall be conducted by one arbitrator to be agreed upon by LINZ and the Accredited Supplier, or failing agreement, to be appointed by the then President of the New Zealand Law Society. Unless the arbitrator determines otherwise the arbitrator's costs and other incidental costs shall be shared by LINZ and the Accredited Supplier.

## 18.5 Obligations continue

Pending resolution of a dispute, the Accredited Supplier must continue to comply with these Conditions as if no dispute had arisen.

# 19 Miscellaneous

## 19.1 Entire agreement

These Conditions, together with the Crown Property Standards, Technical Documents and Instructions constitute the entire agreement between the parties relating to the performance of the Services by the Accredited Supplier and supersedes and extinguishes all prior agreements and understandings between the parties relating to that matter.

## 19.2 Severability

In the event that any clause or any part of any clause contained in these Conditions is declared invalid, unenforceable or illegal, all other clauses or parts of clauses contained in these Conditions shall remain in full force and effect apart from the said clause or part of a clause which will be deemed deleted.

## 19.3 Waiver

No exercise or failure to exercise or delay in exercising any right or remedy by LINZ under these Conditions, shall constitute a waiver by LINZ of that or any other right or remedy available to LINZ.

## 19.4 Time of the essence

Time shall be of the essence as regards any date or period determined under these Conditions.

## 19.5 Governing law

These Conditions are governed by New Zealand law and subject to the dispute resolution provisions the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

## 19.6 Construction of certain references

In these Conditions, unless inconsistent with the context:

- a) a reference to a clause, schedule or annexure is a reference to a clause of, schedule to, or annexure to these Conditions;
- b) a reference to these Conditions or another document (including the Technical Documents) includes any variation, novation, or replacement of or supplement to either of them;
- c) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after the date of these Conditions);
- d) the singular includes the plural and vice versa;
- e) the word person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a state and an agency of state, in each case, whether or not having a separate legal personality;
- f) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns;
- g) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- h) words importing one gender include the other genders; and
- i) all headings and sub-headings in these Conditions are not deemed to be part of these Conditions or to be taken into consideration in interpreting and construing the Conditions.