

Schedule 1 - Specialist Workforce Terms and Conditions

1. Background

- 1.1 The Contractor agrees to provide specialist services as required by NZQA. These services (could be one or more roles) will be formalised through Specialist Workforce Engagement Letters (“SWEL”), using the template provided in Appendix 1. Each SWEL will outline the specific services to be performed.

2. Contractor’s Understandings

- 2.1 The Contractor acknowledges that:
- (a) There is no exclusivity in the engagement of the Contractor to provide any such specialist services;
 - (b) the Rate and other relevant information will be provided when NZQA contacts the Contractor as described in (b) of this clause;
 - (c) the Contractor must adhere to NZQA policies and procedures in providing specialist services, which will be communicated as part of the relevant information mention in (b) of this clause;
 - (d) this contract is a contract for services, and that the relationship between the Parties is strictly that of purchaser and Contractor, with no employment, partnership, or joint venture created or implied;
 - (e) the Contractor will not at any time hold themselves out as, or represent themselves as, an agent, partner, or employee of NZQA. The Contractor may only claim to act on behalf of NZQA in relation to the SWEL;
 - (f) Sub-contracting of the specialist services, or any part thereof, is prohibited.

3. SWELTerm

- 3.1 The term of each SWEL is specified within the letter itself.
- 3.2 If the Contractor does not complete all services within the SWEL term, the Contract Manager may require completion of the outstanding services or pay for partial completion and make alternative arrangements for the remainder.

4. Parties Conduct

- 4.1 Both Parties agree to:
- (a) Act in good faith with honesty, integrity, openness, and accountability;
 - (b) provide reasonable assistance to ensure the specialist services are completed in a timely and professional manner;
 - (c) discuss matters related to each SWEL, including any specialist services-related issues;
 - (d) notify each other promptly of any actual or anticipated issues that could attract media attention or significantly impact the provision of the specialist services;
 - (e) comply with all applicable laws and regulations.
- 4.2 While performing services under a SWEL, the Contractor will:
- (a) Exercise due care, skill, and diligence, meeting professional and cultural standard;
 - (b) comply with the NZQA policies and procedures as outlined in clause 2.1(d).

- 4.3 The Contract Manager is NZQA's primary contact for any issues under a SWEL and is responsible for relationship management and ensuring satisfactory completion of the role. NZQA will inform the Contractor of any change of Contract Manager.

5. Health and Safety

5.1 The Contractor:

- (a) Acknowledges their obligations under the Health and Safety at Work Act 2015, including as a 'PCBU';
- (b) Will ensure that their action and/or inaction does not place the health and/or safety of any of NZQA's personnel, or that of any other contractor to NZQA at risk;
- (c) Will adhere to NZQA's health and safety policies and procedures.

6. Role Rates, Invoicing and Payment

6.1 Rates and payment terms will be specified in the SWEL.

6.2 Contractors (Withholding Tax) must submit claims through Timeflier:

- (a) Approved claims will be paid by the 1st of the following month if submitted by the deadline specified in the SWEL.

6.3 Contractors (Companies or GST registered) must submit a valid tax invoice containing the details set out in clause 5.4:

- (a) If received on or before the 3rd Working Day of a month, payment will be made by the 20th calendar day of that month;
- (b) if received after the 3rd Working Day, payment will be made by the 20th calendar day of the following month.

6.4 A valid a tax invoice must:

- (a) Be marked 'Tax invoice';
- (b) for GST-registered Contractors, include the Contractor's name, address, and GST number;
- (c) include NZQA's name and address and be addressed to the Contract Manager or other person stated in the SWEL;
- (d) state the invoice date;
- (e) provide a description of the services that have been supplied, including hours worked;
- (f) state the NZD amount due, correctly calculated with all GST;
- (g) include GST receipts for claimed expenses and any other documentation requested by NZQA.

6.5 NZQA may deduct applicable withholding taxes from payments. The Contractor is responsible for obtaining any valid exemption certificates (STC) and understanding tax liabilities related to SWEL income.

7. Information management

7.1 The Contractor must secure all Records, in accordance with NZQA Information Security/Management policies.

7.2 Upon request, the Contractor must provide information to NZQA in usable format within a reasonable timeframe and co-operate with NZQA for compliance with statutory, and reporting obligations.

7.3 All Records must be returned to NZQA within 5 Working Days after the SWEL's End Date.

8. Confidential Information

8.1 Each Party will protect the other's Confidential Information from unauthorised access or use and will not disclose it except;

- (a) As necessary for providing or using the specialist services;

- (b) with prior written approval;
- (c) as required by law or parliamentary convention; or
- (d) if the information becomes public through no breach of confidentiality.

8.2 If confidentiality requirements are specified in a SWEL, the Contractor must adhere to them.

9. Conflict of Interest

- 9.1 The Contractor must declare all conflicts of interest to NZQA at the Start Date of a SWEL. Conflicts that can be managed, NZQA will provide instructions on how to address them.
- 9.2 If any potential conflict arises the Contractor will immediately notify NZQA in writing.
- 9.3 The Contractor will not promote their or a third party's business or services in the delivery of the specialist services.
- 9.4 If NZQA deems a conflict unmanageable, it may terminate the SWEL immediately.

10. Resolving disputes

- 10.1 The Contractor and Contract Manager will first try to resolve disputes through best efforts.
- 10.2 If unresolved within 5 Working Days, the dispute may be escalated to the relevant Deputy Chief Executive at NZQA.
- 10.3 If still unresolved, the Parties will be referred to mediation, and failing this, to arbitration in accordance with the Arbitration Act 1996. In the event that the dispute proceeds to mediation or arbitration, the mediator or arbitrator will be appointed by agreement. If the parties are unable to agree on a suitable mediator or arbitrator, then the relevant local branch of the NZ Law Society will be asked to appoint a person with experience in dealing with disputes between organisations and independent contractors. The costs of any mediation or arbitration will be met equally by the parties.
- 10.4 During disputes, both Parties will continue to perform their obligations under the SWEL as much as possible.

11. Ending a SWEL

- 11.1 Either Party may terminate a SWEL with 10 Working Days' notice, effective on the 11th Working Day.
- 11.2 In the event of termination under clause 11.1 NZQA and the Contractor will continue to perform their respective obligations under this contract until the end of the notice period.
- 11.3 The Parties may mutually agree to terminate a SWEL on a date they determined.
- 11.4 NZQA may terminate a SWEL (as appropriate) immediately if:
 - (a) The Contractor becomes bankrupt or insolvent;
 - (b) an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent is appointed;
 - (c) the Contractor ceases business or activities related to the specialist services being performed;
 - (d) clause 14.4 applies;
 - (e) the Contractor fails to meet SWEL requirements and does not remedy the issue as described in 11.4;
 - (f) the Contractor fails to perform its obligations;
 - (g) the Contractor actions or omissions cause significant public or political concern;
 - (h) the Contractor provides materially misleading or inaccurate information.
- 11.5 Upon termination under clause 11.4 NZQA will only be obliged to pay the Contractor for specialist services already performed to the date of termination and the Contractor will not be obliged to provide the specialist services beyond the date of termination.
- 11.6 If the Contractor fails to meet SWEL requirements but the failure is remediable, NZQA will notify the Contractor of concerns, potential remedies, and a deadline for resolution.

11.7 Clauses that naturally survive termination, including those on Contractor's Understandings, Information Management, Confidential Information, Resolving disputes, Ending a SWEL, Intellectual Property Rights, General and Definitions, will continue in force.

12. Intellectual Property Rights

12.1 All Records are the property of NZQA.

12.2 The Contractor will, upon termination of this contract, or at any other time as requested by NZQA, return all property belonging to or relating to NZQA, and all copies of the same.

13. Notices

13.1 Notices must be delivered by hand or sent by post, courier, fax or email to that Party's addresses. Each Party will promptly notify of any address changes.

13.2 Notices by hand, post, courier, or fax must be signed by the sender. Email from NZQA must be sent by the Contract Manager or a more senior employee.

14. Extraordinary Events

14.1 Neither Party will be liable for failure to perform obligations due to Extraordinary Event.

14.2 The Parties may agree on how to manage an Extraordinary Event.

14.3 To claim suspension of obligations due to an Extraordinary Event, the affected Party must notify the other of:

- (a) The nature of the event;
- (b) the extent of non-performance;
- (c) the expected duration;
- (d) Steps taken to minimise impact.

14.4 If NZQA deems an Extraordinary Event compromises it needs, it may terminate the SWEL immediately.

15. Variations to SWELs

15.1 Any variations to a SWEL must be agreed upon in writing by both Parties.

16. Indemnity and Insurance

16.1 The Contractor will indemnify NZQA for any costs, liabilities, damages or other loss (including, without limitation, in connection with any third-party claims), that arise as a result of any action or inaction of the Contractor in relation to the Contractor's performance of the specialist services as set out in the SWEL.

16.2 The Contractor will arrange and maintain appropriate insurance (including public liability insurance) in respect of the performance of the specialist services under the SWEL.

17. General

17.1 The terms of this contract constitutes the entire agreement between the parties and supersede all previous negotiations, communications and commitments whether written or oral.

17.2 A Party may exercise its rights regarding the other Party's non-compliance at any time, unless agreed otherwise.

17.3 The Contractor must obtain NZQA's written approval before referencing NZQA or a SWEL in publicity.

17.4 The Contractor must not post any comments on social media, or otherwise, about the SWEL, the specialist services or NZQA, without the agreement of NZQA.

18. Execution

18.1 SWELs may be executed electronically.

19. Definitions

19.1 Terms have the following meanings unless the context indicates otherwise:

Attachment – an attachment to a SWEL.

Confidential Information - Information that is confidential by nature, marked as confidential, provided in confidence, or known to be confidential.

Conflict of Interest – A situation where personal or business interests may conflict with obligations under a SWEL. This may be actual, potential, or perceived.

Contract Manager - The person designated in the SWEL.

Contractor - The Party named as Contractor in the SWEL.

Extraordinary Event - An event beyond reasonable control, not preventable by the affected Party.

Notice - Formal or legal communication between Parties.

NZQA – The New Zealand Qualifications Authority.

Party or Parties - Either or both of NZQA and the Contractor, as applicable.

Records - All information provided by NZQA or generated by the Contractor for the SWEL, including reports, invoices.

Role – A specialist workforce service as outlined in the SWEL

SWEL – A Specialist Workforce Engagement Letter

Working Day – Has the same meaning as in section 13 of the Legislation Act 2019.

Appendix 1

Specialist Workforce Engagement Letter

Specialist Workforce Engagement Letter



Details

Purchaser	New Zealand Qualifications Authority
Contractor's full name; or Company name and individual provided (if applicable)	
Role	
SWEL Start Date	
SWEL End Date	
Contract Manager	

The Agreement

Agreement

NZQA engages the Contractor to perform the specialist services described in this SWEL and the Contractor accepts that engagement. This SWEL sets out the Parties' rights and obligations.

This Specialist Workforce Engagement Letter is to be read with and incorporates the following documents (forming our entire agreement):

1. Schedule 1 – Specialist Workforce Terms and Conditions	available at: https://www2.nzqa.govt.nz/about-us/working-at-nzqa/policies/
2. NZQA's Policies, Procedures and Code of Conduct for Contractors.	

How to read this Specialist Workforce Engagement Letter

For the avoidance of doubt, definitions in clause 17 of the Specialist Workforce Terms and Conditions apply to this SWEL.

Acceptance

Accepting or declining this SWEL will be electronically through the Specialist Workforce (SWF) Careers Centre.

Description of Services

Claiming

Role Rates –fees and expenses (including daily allowances)