

OUTPUT AGREEMENT

for

SERVICES RELATING TO SCIENCE AND TECHNOLOGY

between

**THE MINISTER OF
RESEARCH, SCIENCE AND TECHNOLOGY**

and

**RESEARCH AND EDUCATION ADVANCED NETWORK
NEW ZEALAND LIMITED**

1 July 2006 – 30 June 2007

Table of Contents	Page
SECTION ONE – PREFACE	3
SECTION TWO – OUTPUTS BEING PURCHASED	6
SECTION THREE - FINANCIAL PROVISIONS	8
SECTION FOUR - WHAT IS TO BE REPORTED	11
SECTION FIVE - SPECIAL REQUIREMENTS	12
SECTION SIX - HOW WE RELATE TO EACH OTHER	13
EXECUTION	14

AN AGREEMENT made the _____ day of _____ 2006

BETWEEN THE MINISTER OF RESEARCH, SCIENCE AND TECHNOLOGY acting on behalf of Her Majesty the Queen in Right of New Zealand (“the Minister”).

AND

RESEARCH AND EDUCATION ADVANCED NETWORK NEW ZEALAND LIMITED (“REANNZ”)

SECTION ONE – PREFACE

1.1 Purpose and scope of the agreement

This Agreement is intended to establish the framework for the relationship between REANNZ and the Minister. It sets the scene for a relationship expected to be co-operative rather than compliance based. The Parties will jointly identify and resolve problems that arise in the course of business and adopt a "no surprises" approach to information sharing.

1.2 Administration of Agreement

This Agreement is administered by the Ministry of Research, Science and Technology on behalf of the Minister. This includes monitoring REANNZ's performance in relation to this Agreement and administering this Agreement.

CCMAU has lead responsibility for dealing with REANNZ in relation to its statutory requirements including an annual Statement of Intent (Sol), Business Plan, quarterly and annual reports. CCMAU provides the Treasury and the Ministry with copies of:

- the REANNZ Sol and Business Plan (so that both organisations can comment before they are finalised);
- REANNZ's quarterly reports within three days of receiving them; and
- REANNZ's annual report within three days of receiving it.

1.3 Interpretation

In this Agreement unless the context otherwise requires:

“AARNET” means the Australian Academic Research Network

“Agreement” means this Output Agreement

“APAN” means Asia Pacific Advanced Network

“Business Day” means Monday to Friday inclusive but excludes any public holiday as defined under the Holidays Act 2003.

“CANARIE” means Canadian Research and Education Network

“CCMAU” means the Crown Company Monitoring Advisory Unit

“Chairperson” means the Chairperson of the Board of REANNZ

“Constitution” means the constitution of REANNZ

“GST” means Goods and Services Tax charged in accordance with the Goods and Service Tax Act 1985

“MCI” means Verizon Business

“Ministry” means the Ministry of Research, Science and Technology

“NREN” means National Research and Education Network

“Outputs” means the outputs described in clauses 2.1 and 2.2 of this Agreement

“Parties” means the Minister and REANNZ

“Party” means either the Minister or REANNZ

“PoP” means Point of Presence

“TCL” means Telstra Clear Limited

1.3 Construction

In the construction of this Agreement, unless the context requires otherwise:

- a) this Agreement is governed by and construed in accordance with the law of New Zealand;
- b) the headings and subheadings of this Agreement do not form part of the Agreement;
- c) references to Clauses, Schedules and Annexes are references to Clauses, Schedules and Annexes of this Agreement;
- d) reference to a statute, regulations, or other statutory instrument or by-law shall be deemed to be a reference to the statute, regulations, instrument or by-law as from time to time amended and includes substituted provisions which substantially correspond to those referred to;
- e) reference to a person includes a reference to a body corporate, to a Crown entity and to an unincorporated body of persons;
- f) anything required by this Agreement to be done on a day which is not a Business Day may be done on the next day which meets that definition; and
- g) in the event that any clause or any part of any clause contained in this contract is declared invalid, unenforceable or illegal, all other clauses or parts of clauses contained in this contract shall remain in full force.

1.4 Term of agreement

This Agreement is for the funding period 1 July 2006 to 30 June 2007. The term of this agreement will commence on 1 July 2006 and will continue until the parties have met their obligations under this agreement.

The Parties acknowledge that the Minister of RS&T and the Minister of Finance have approved funding for REANNZ (subject to appropriation by Parliament) through to 30 June

2011 or such time that the funding has been fully drawn down to deliver the project objectives, as recorded in the letter from Ministers to the chair of the REANNZ Board, and pursuant to briefing 2006-017 dated 26 January 2006. The Parties agree to work together in good faith to agree future output agreements, on similar terms and conditions, to enable REANNZ to access those funds.

1.5 Force majeure

Neither party shall be liable for any failure to perform or delay in performance of its obligations hereunder caused by circumstances beyond its reasonable control including but not limited to:

- a) fire, floods, storms, earthquakes or other act of God;
- b) any act of public enemy, war, riot, acts of civil or military authority;
- c) any act of a person engaged in subversive activity or sabotage;
- d) strikes, embargoes, slow-downs, lock-outs, or labour stoppages or disputes of any kind; and
- e) epidemics and quarantine restrictions.

1.6 Assignment

If REANNZ wishes to assign or transfer in whole or in part any of its rights or obligations under this Agreement it must first receive the written consent of the Minister.

1.7 Variation or changes to agreement

This Agreement may be varied during its term. Any variations agreed by the Parties must be in writing and signed by the Parties.

SECTION TWO – OUTPUTS BEING PURCHASED

2.1 What is being purchased

The outputs to be produced are the governance and operation of REANNZ on behalf of the Minister for the non-departmental Output Expense “Advanced Network” as specified in this Agreement.

2.2 Quantity, quality, timeliness

REANNZ will provide the outputs in accordance with the following performance measures and performance standards:

Performance Measures	Performance Standards
Governance	<ul style="list-style-type: none"> • All compliance documentation prepared • Completed financial audit
Administration	<ul style="list-style-type: none"> • Financial practices documented and implemented by July 2006 • EEO and Good Employer policies adopted and implemented by July 2006 • Web site and premises established by August 2006
Supply contracts with key vendors managed	<ul style="list-style-type: none"> • TCL network per the supply contract successfully implemented by November 2006, with extension in March 2007 • International Network provided by MCI by July 2006 • PoP accommodation provided as required by the national network agreement – generally by July 2006
Membership Agreement finalised and signed	17 user institutions signed by July 2006
Training for Member staff	Network technical workshops – 3 conducted by November 2006
Establish relationships with overseas NRENS	Interconnection agreements and Memoranda of Understanding with AARNET, Abilene, CANARIE, APAN by July 2006
Facilitate early use by exemplar applications	Network Proof of Concept (POC) initiated (project milestone) by August 2006
Appointment of key staff	<ul style="list-style-type: none"> • Chief Executive Officer appointed by July 2006 • 3 technical staff appointed, 2 by July, 1 by October 2006 • Technical Manager appointed by July 2006 • User Support Manager appointed by August 2006

The Minister recognises that REANNZ’s ability achieve these outputs is affected by other parties’ willingness to enter into agreements. REANNZ must advise the Minister if it does

not expect to meet the standards for these outputs or if it expects there to be a delay in meeting the standards.

2.3 Production of outputs

REANNZ will produce the Outputs within the amount in clause 3.1. The Minister will not be liable for payment of any other costs incurred by REANNZ and will only include amounts for the outputs unless specified in this Agreement or agreed to in writing.

REANNZ will manage the payment amounts made under this Agreement and interest earned from those in accordance with the Public Finance Act 1989 and Crown Entities Act 2004, and consistently with the purpose that Parliament appropriated the payment amounts for.

SECTION THREE - FINANCIAL PROVISIONS

3.1 Payment

The Minister will, during the term of this Agreement, pay REANNZ no more than \$11.655 million (inclusive of GST) for the Outputs delivered by REANNZ, in accordance with the payment instructions set out in clause 3.2.

Such payments will be subject to:

- REANNZ acting in accordance with its statutory powers and responsibilities under the Public Finance Act 1989 and Crown Entities Act 2004;
- REANNZ meeting the performance standards outlined in Section Two;
- REANNZ providing reports on its activities as specified in Section Four of this Agreement;
- final contract terms with vendors and actual milestone completion dates achieved; and
- the Minister being satisfied with the quality of the reports required under Section Four of this Agreement.

3.2 Payment instructions

Payments under clause 3.1 will be by cash disbursement in accordance with the payment profile below.

REANNZ CASH DISBURSEMENT PROFILE (Payment Instructions For Westpac)

BANK ACCOUNT DETAILS	Westpac, North End 318 Lambton Quay 03-0539-0246688-00
ACCOUNT NAME	<u>Research and Education Advanced Network NZ</u> Cheque Account
PAYMENT DATE	AMOUNT \$ incl. GST
20-Jul-06	251,000
21-Aug-06	228,000
20-Sept-06	7,665,000
20-Oct-06	183,000
20-Nov-06	2,392,000
20-Dec-06	183,000
22-Jan-07	130,000
20-Feb-07	131,000
20-Mar-07	130,000
20-Apr-07	121,000
21-May-07	121,000
20-Jun-07	120,000
TOTAL	11,655,000

Note: These amounts are additional to any delayed drawdown amounts from the 2005-6 financial year.

3.3 Notice of deferment

If REANNZ decides that it does not require full payment of any of the amounts due under the cash disbursement profile, it must send a written notice addressed to Geoff Palmer, Chief Financial Officer at the Ministry requesting that payment of part or all of the amount due to be paid under the cash disbursement profile be deferred to a later date within the term of this Agreement or into a future financial year.

REANNZ must give the Ministry as much notice as possible of a request for deferment, being no less than 5 Business Days prior to the payment date in the cash disbursement profile.

Any part of the amount in clause 3.1 not paid to REANNZ as a result of a deferment under this clause will be included in later payments to REANNZ under this Agreement (if requested by REANNZ) or under output agreements for future financial years.

3.4 Other revenue

REANNZ may charge third parties for the Outputs funded through this Agreement.

3.5 Deficit

REANNZ must inform the Minister without delay if, at any time during the year, REANNZ becomes aware that its financial position may become such that its ability to provide the Outputs is potentially compromised.

3.6 Accounting policies

REANNZ's accounting policies must be consistent with requirements under the Public Finance Act 1989, Crown Entities Act 2004, and Companies Act 1993.

3.7 Costing and pricing methodology

If, on review of REANNZ's quarterly reports, the Minister requires further information regarding the costing and pricing methodologies in relation to the Outputs, the Ministry will request further information from REANNZ using the process in clause 4.2

In particular, REANNZ may be required to supply information as to:

- a) the methods used by REANNZ to cost and price the Outputs;
- b) the manner in which indirect costs are allocated to classes of Outputs and to individual Outputs; and
- c) the costing and pricing of other outputs or activities as CCMAU may specify in its request.

3.8 Obtaining independent financial advice

The Minister may direct the Ministry to employ a third party to review financial information provided by REANNZ and to report to the Minister and REANNZ.

Prior to commencement of the review, payment for the third party, and any financial contribution to be made by REANNZ, if any, is to be agreed in writing. Where REANNZ is required by the Minister to pay for a review requested by the Minister it must identify where this finance shall come from and what Outputs, if any, will not be provided.

3.9 Review by Audit New Zealand

The Minister may appoint Audit New Zealand to review REANNZ's management of payments under this Agreement.

Any review will be at the sole cost of the Ministry unless Audit New Zealand is of the reasonable opinion that REANNZ has fraudulently misused or misappropriated the funds provided under this Agreement, in which case REANNZ will bear the full cost.

Under such an arrangement, Audit New Zealand shall have the rights and powers set out in the Public Audit Act 2001.

SECTION FOUR - WHAT IS TO BE REPORTED

4.1 Quarterly Reports

REANNZ will report on its performance of producing the Outputs through REANNZ's quarterly progress reports to CCMAU.

CCMAU will forward REANNZ's quarterly reports to the Ministry. The Ministry will review these reports on behalf of the Minister. The Ministry will review all reports and advise the Minister as to whether outputs have been produced and performance standards have been met.

4.2 Process to follow if Minister is not satisfied with reporting

If, on review of a quarterly report, the Minister requires further information, the Ministry will ask CCMAU to request this further information from REANNZ. REANNZ must supply information that is requested by CCMAU within any timeframe specified by CCMAU unless it has good reasons for refusing under section 134 of the Crown Entities Act 2004. The Ministry will review the further information provided and advise the Minister as to whether outputs have been produced and performance standards have been met.

4.3 “No surprises” to the Minister

In addition to the above reporting requirements, REANNZ must ensure that the Minister is adequately warned in advance, where prediction is possible, about:

- a) issues likely to attract external attention, or cause concern or embarrassment to the Government; and
- b) all significant matters for which REANNZ has a responsibility.

SECTION FIVE - SPECIAL REQUIREMENTS

5.1 Policy development

Where the Ministry undertakes policy activity in areas likely to be of interest to REANNZ, the Ministry will consult with REANNZ.

5.2 Providing information to the public

Where either party intends to provide to any third parties or make public any information about the other party, which is information received from that party (including in the course of normal business), the party intending to release the information will consult with the other party. This will apply where information is requested under the Official Information Act 1982, through Parliamentary Questions or through general enquiries from other Government agencies.

SECTION SIX - HOW WE RELATE TO EACH OTHER

6.1 Administration of agreement

The Chief Executive of the Ministry has delegated authority from the Minister to be the Minister's representative for the purposes of this Agreement. This includes receiving reports, monitoring REANNZ's performance, and administering this Agreement.

For the purpose of this Agreement, the primary points of contact and the addresses for forwarding all correspondence are:

For the Minister and the Ministry - General Manager, Investment and Performance Group
Ministry of Research, Science and Technology
PO Box 5336
Wellington

For REANNZ - Chief Executive
Research and Education Advanced Network New
Zealand Limited
PO Box 5336
Wellington

6.2 Conflict Resolution

Where a dispute or difference arises as to the performance of this Agreement the following procedures will apply:

- a) the Minister may give notice to the Chairperson to attend a meeting with the Minister;
- b) the notice must set out the area of REANNZ's performance that the Minister considers unsatisfactory and must include background information in support of the Minister's view;
- c) the Chairperson will have the opportunity at the meeting of satisfying the Minister of the measures being taken to ensure REANNZ's performance becomes satisfactory and of any programme, including dates, for implementing these measures. Others may attend with the agreement of the Minister;
- d) the Minister must ensure that a record of this meeting is kept and copied to the Chairperson;
- e) within five Business Days of receipt of the record of the meeting, the Chairperson may make written comment on any of the matters raised at the meeting whether or not these are covered in the written record; and
- f) on the basis of the Chairperson's statement, any proposed programme and any further comments received, the Minister may take whatever action he or she believes is appropriate.

EXECUTION

IN WITNESS of which the Agreement has been executed as a Deed

EXECUTED by and on behalf of)
HER MAJESTY THE QUEEN)
IN RIGHT OF NEW ZEALAND)
by **Hon. Steve Maharey**)
Minister of Research, Science)
Technology)

in the presence of)
)

Signature)
)

Address)
)

Occupation)
)

and by and on behalf of)
RESEARCH AND EDUCATION)
ADVANCED NETWORK)
NEW ZEALAND LIMITED)
)

by _____)
)

in the presence of:)
)

Signature)
)

Address)
)

Occupation)
)