Contract Number and Name

Short Form Agreement for Professional Services <<Guidance note: [TBC value/scope for when this short form version should be used] >>

Between Waka Kotahi NZ Transport Agency and the Consultant

The Consultant	[insert within signing sets]
Address	[insert within signing sets]

Form of Agreement for Engagement of Professional Services (Short Form)

Contract Number and Name

For the delivery of professional services to NZ Transport Agency by the Consultant

This Agreement is made on the Number day of Month Year

Parties

1. New Zealand Transport Agency, a Crown entity, established on 1 August 2008 by Section 93 of the *Land Transport Management Act 2003* (the Client).

And

2. Name of Location
(the Consultant).

Background

1. The Client wishes to undertake the works ("the Client's Project") described in Annexure 1 to this Agreement.

2. The Client has agreed to engage the Consultant to undertake and provide the Services in respect of the Project.

3. This Agreement sets out the terms and conditions on which the Services will be carried out by the Consultant.

NOW IT IS AGREED as follows:

1.1 The Client engages the Consultant to provide the Services and agrees to pay the Consultant in accordance with the terms of the Agreement and to undertake its other obligations set out in this Agreement.

1.2 The Consultant agrees to perform the Services on the terms of this Agreement.

1.3 The following documents shall form the Agreement in order of precedence.: Where any conflict or inconsistency exists between any of the documents listed below, the document that appears first in the order of precedence shall prevail over the provision of any other document or documents appearing lower in the list.

- Form of Agreement for Engagement of Consultant
- The Special Conditions – Part A (Specific Conditions)
- The Special Conditions – Part B (Other Special Conditions)
- Conditions of Contract for Consultancy Services, Fourth Edition (CCCS) – December 2017;
- Waka Kotahi Contractor Health and Safety Expectations document
- The Appendices

SIGNED for and on behalf of

Waka Kotahi New Zealand Transport Agency by

Signature: _____

Name: _____

acting pursuant to delegated authority

In the presence of a WITNESS

Signature:

Name: _____

Occupation: _____

Address: _____

_____

SIGNED for and on behalf of

The Consultant by

Signature: _____

Name: _____

Occupation: _____

Address: _____

_____

In the presence of a WITNESS

Signature: _____

Name: _____

Occupation: _____

Address: _____

_____

SPECIAL CONDITIONS OF CONTRACT – PART A
Specific Conditions of Contract

References are from clauses in the General Conditions of Contract for Consultancy Services, Fourth Edition (CCCS) – December 2017.

6.2 Limitation of Liability

$500,000.00.

<<Guidance note: for contracts considered high risk, the limitation of liability should be increased. The altered amount is to be approved by the appropriate delegated financial authority (with endorsement from the Insurance advisory committee) in accordance with clause 1.8.3 of the Contract Procedures Manual (SM021)>>

6.4 Duration of Liability

The duration of liability shall be six years from the date of completion of the Services, or from the date of termination of the Agreement, whichever is the earlier.

6.5 Insurance

Professional Indemnity

i. Amount of Cover

The minimum amount of professional indemnity insurance required is $2,000,000, with at least one automatic reinstatement of the minimum amount per 12-month period of insurance.

<<Guidance note: for contracts considered high risk and where the liability limit is increased, the amount of cover should be increased. The altered amount is to be approved by the appropriate delegated financial authority (with endorsement from the Commercial advisory committee) in accordance with clause 1.8.3 of the of the Contract Procedures Manual (SM021)>>

ii. Period of cover:

The professional indemnity insurance shall be maintained until the date on which all of the Services have been completed and a further run-off period of six years.

Public Liability

i. Amount of Cover:

The minimum amount of Public Liability Insurance required is $5,000,000.00.

ii. Period of Cover:

The public liability insurance shall be maintained until all of the Services have been completed.

<<Guidance note: insurances can be waived for low risk, low dollar value commissions. Requests for waiving of insurances must be approved by the appropriate delegated financial authority (with endorsement from the Commercial advisory committee) in accordance with clause 1.8.3 of the Contract Procedures Manual (SM021). If insurances are to be waived, clauses 6.2 and 6.4 can be replaced with **Insurances are waived for this contract**>>

12.8 Notices

Client's Address: Waka Kotahi NZ Transport Agency

Physical Address:

Postal Address:

Email address:

Consultant's Address:

Physical Address:

Postal Address:

Email address:

SPECIAL CONDITIONS OF CONTRACT – PART B (Other Conditions of Contract)

Clause references below refer to clauses in the General Conditions of Contract for Consultancy Services, Fourth Edition (CCCS) – December 2017, as may be amended by the Special Conditions -Part B Other Conditions of Contract. The General Conditions of Contract for Consultancy Services are amended as follows:

Section 1 Definitions and Interpretation

1.1 Definitions

Add the following new definitions to clause 1.1:

Client's Personal Information

Client's Personal Information means:

> Personal Information made available to the Consultant by or on behalf of the Client, or collected by the Consultant for the Client, in connection with this Agreement.

Data Breach

Data Breach means:

> Any incident involving facilities, systems, personnel, suppliers and/or subconsultants of the Consultant that:
>
> (a) involves (or gives rise to a real risk of) unauthorised or accidental access to, use, disclosure, alteration, loss or destruction of, any of the Client's Personal Information; or
>
> (b) prevents the Client from accessing the Client's Personal Information on either a temporary or permanent basis; or
>
> (c) would prompt a reasonable and prudent person in the Client's position to notify (or consider notifying) the incident to the Privacy Commissioner and/or one or more individuals under NZ Privacy Laws.

NZ Privacy Laws

NZ Privacy Laws means:

> the Privacy Act 2020, and any New Zealand laws, regulations, codes of practice and approved information sharing agreements insofar as they regulate the collection, processing, storage, use and/or disclosure of information about individuals.

Personal Information

Personal Information has:

> the meaning given in the Privacy Act 2020.

Section 2 Obligations of the Consultant

2.10 Health and safety

Add the following to clause 2.10:

The Consultant must comply with all health and safety requirements set out in Waka Kotahi *Contractor Health and Safety Expectations* document. The Client will provide a copy of this document to the Consultant on request.

Add a new clause 2.14 as follows:

2.14 Code of Conduct

The Consultant must comply with the *Standards of Integrity and Conduct* issued by the State Services Commission (see https://www.procurement.govt.nz/assets/procurement-property/documents/supplier-code-of-conduct.pdf) and any other relevant codes of conduct notified by the Client to the Consultant from time to time.

Section 5 Payment

The second paragraph in clause 5.1 is deleted and replace with the following:

Payment shall be due within ten (10) Working Days of receipt by Waka Kotahi of a Tax Invoice from the Consultant. The tax invoice must:

(a) be sent via email to apinvoices@nzta.govt.nz in PDF format only;

(b) state the fees due and method of calculation;

(c) show all GST due, if any;

(d) be in New Zealand currency;

(e) be marked as "Tax Invoice";

(f) contain the Consultant's name, address, NZBN and GST number if the Consultant is registered for GST;

(g) be addressed to the Client and include the Client's reference number;

(h) states the date the invoice was issued and the date for payment;

(i) bank account details for payment;

(j) name this Agreement and provide a description of the Services supplied, including the amount of time spend in the delivery of the Services if the fees are based on an hourly fee rate or daily fee rate;

(k) contain the Agreement reference, costs centre or WBS number if there is one provided by the Client; and

(l) be supported by GST receipts if expenses are claimed and any other verifying documentation reasonably requested by the Client.

Section 6 Liability and Insurance

6.2 Limitation of Liability

Clause 6.2 is deleted and replaced with the following:

The maximum aggregate liability of the Consultant for any claims, damages, liabilities, losses or expenses suffered or incurred whether in contract for breach of this Agreement, under indemnity, in tort including negligence, in equity, under any statute, or otherwise arising out of any act or omission by the Consultant done or not done in connection with the Services or this Agreement shall be limited to the maximum

aggregate sum as specified in the Special Conditions. The aggregate liability limit shall not apply nor be reduced by the Consultant's liability in the case of fraud, wilful misconduct, wilful default, gross negligence or repudiation or for the amount of any insurance proceeds recovered under an insurance policy, including any proceeds that would have been recovered, but for any failure to claim and/or breach of the relevant insurance policy by the Consultant, or due to the failure by the Consultant to maintain an insurance policy.

Section 8 Confidentiality

Add a new clause 8A as follows:

8A Privacy Obligations

8A.1 The Consultant must comply at all times with all NZ Privacy Laws and not do anything with the Client's Personal Information likely to cause the Client to breach any NZ Privacy Laws.

8A.2 The Consultant must comply at all times with *Privacy at Waka Kotahi the NZ Transport Agency – A Guide for Suppliers and Service Providers* (https://www.nzta.govt.nz/about-us/about-this-site/privacy-guide-for-suppliers-and-service-providers/).

8A.3 The Consultant must not use or disclose the Client's Personal Information (including to any Subconsultants or employees) except as strictly necessary to comply with this Agreement. The Consultant must ensure that any Subconsultants to whom it discloses the Client's Personal Information are subject to contractual restrictions on the handling, use and disclose of that information no less strict than those in this Agreement.

8A.4 The Consultant must implement and maintain reasonable security safeguards to protect the Client's Personal Information, including from unauthorised access or disclosure.

8A.5 Except as agreed in writing, the Consultant must not store or process (or permit the storage or processing of) the Client's Personal Information in any location outside New Zealand.

8A.6 The Consultant must promptly return and/or irreversibly erase all the Client's Personal Information (at the Client's option), once no longer required for the purposes of the delivery of the Services under this Agreement, or otherwise where directed by the Client.

8A.7 If the Consultant becomes aware of, or has reason to suspect the existence of, a Data Breach, the Consultant must as soon as practicable notify the Client, take all practicable steps to mitigate the effects of the Data Breach, and co-operate with the Client's investigation of the Data Breach as the Client reasonably considers necessary to enable the Client to meet its obligations under NZ Privacy Laws.

8A.8 Unless required by law, the Consultant will not notify affected individuals or the Privacy Commissioner of any Data Breach except with the Client's prior written agreement.

8A.9 The Consultant will comply with any reasonable direction from the Client, where the Client reasonable considers that this is necessary to enable the Client to comply with a notice or direction given to the Client by the Privacy Commissioner.

8A.10 The Consultant will not comment publicly, including to the media, about any Data Breach or any breach of this clause 8A, without the written consent of the Client.

Add a new clause 8B as follows:

8B Information and security requirements

8B.1 The Consultant acknowledges that the Client has requirements for appropriate security and information management processes that equally apply to its consultants and service providers.

8B.2 Delivery of the Services by the Consultant must align with relevant legislation and guidelines, inclusive of the Government's Protective Security Requirements (PSR), *Public Records Act* (PRA), *Privacy Act, Crimes Act, Official Information Act*, *Contract and Commercial Law Act 2017* and any other legislation in so far as relates to the provision of Services.

8B.3 The Client expects the Consultant will ensure that it and its personnel providing the Services will:

a) consistently demonstrate principles and behaviours set out in the Client's information management and security policies, processes, procedures and supporting controls as notified to the Consultant in writing by the Client at the date of this Agreement. Any significant and/or repeated breaches of these standards shall be considered a breach of this Agreement;

b) not access the Client's information or systems except to the extent necessary to provide the Services or meet its obligations under this Agreement and for no other reason;

c) take all reasonable steps to prevent breaches of records storage, information technology systems and equipment, including:

i) preventing unauthorised use;

ii) preventing unauthorised persons obtaining, or attempting to obtain access to the Services or any of the Client's data/information;

iii) using or attempting to use any of the Client's data/information for purposes not authorised or permitted by this Agreement;

iv) taking all steps necessary to prevent the introduction, contamination and spread of any virus into computer systems, and only use equipment, software and parts which are free of viruses; and

v) except with written permission from the Client, not introduce into or use magnetic media, flash drives or any other form of portable data storage;

d) provide interim and final data/information sets, created in the delivery of the Services such as research, asset, customer or geo-coded data with metadata to minimum standards, appropriately structured and described, and in formats as agreed;

e) take all reasonable steps to ensure no unlawful disposition of any data/information/records that are in the Consultant's possession during the term of the Agreement, including:

i) unauthorised destruction (destruction that is contrary to the Client's authorised current disposal authority);

ii) transfer to a third party; and

iii) loss, damage or alteration;

f) complete the appropriate induction procedures of the Client;

g) accept there will be occasions when enhanced physical security measures are adopted in response to emergencies or a heightened threat environment, during which Consultant will be informed of their responsibilities and will promptly comply with all reasonable measures (which may include spot audit checks and searches) in such situations at the additional cost of the Client;

h) before performing any obligations under this Agreement, have passed all probity checks and obtained any relevant national security clearance required as necessary to provide the Services to the Client; as well as attend and complete any additional specific security training in so far as it relates to the provision of Services;

i) notify all information and security incidents and concerns amounting to a breach of this Agreement to the Client in a timely manner to facilitate a prompt response to help resolve issues and prevent or minimise any potential damage to individuals, data/information, equipment and the Client – incidents or concerns which have Health & Safety implications should follow Client's Incident Reporting procedures;

j) without limiting any other provisions of the Contract, use all reasonable endeavours to avoid damaging or adversely affecting the Client's reputation; and

k) accept that any staff who hold a national security clearance will have ongoing obligations under legislation which will survive after the end of the Agreement.

Section 10 Disputes

Clause 10.1 is amended by adding the words "one party will give notice to the other party, describing the event or circumstance giving rise to the dispute, and" ***after the words*** "from it," ***in the first line.***

Clause 10.1 is amended by deleting the words "best endeavours" ***and replacing them with*** "reasonable endeavours".

Clause 10.2 is deleted and replaced with the following:

If the parties cannot resolve the dispute themselves within a reasonable time (but in any event within 20 Working Days of receipt of notice under clause 10.1 or such longer period agreed in writing), then either Party may require that the dispute be referred to mediation by serving written notice on the other.

Clause 10.3 is amended by deleting the words "a reasonable time" ***and replacing them with*** "20 Working Days of the date of either Party's notice requiring mediation issued pursuant to clause 10.2 (or such longer or shorter period as may be expressly agreed by the Parties)".

Add a new clause 10.6 as follows:

10.6 Nothing in this clause 10 shall prevent or prejudice the ability of either party to apply to any court in order to seek interim injunctive relief against the other.

Section 12 General provisions

12.10 Survival

Clause 12.10 is amended by deleting "8 and 9" and replacing with:

8, 8A, 9, 10, 11 and 12

12.14 GST

Add the following to clause 12.14 :

New Zealand taxes will be added/deducted to/from payments to overseas consultants in accordance with New Zealand current law, in particular:

- Goods and Services Tax (GST);
- Income Tax;
- Non-Resident Contractors Tax (NRCT).

12.15 Client's regulatory function

Add the following to the end of clause 12.15:

For the avoidance of doubt and notwithstanding anything to the contrary in this Agreement, any exercise of a regulatory function by the Client shall not constitute a breach of this Agreement.

APPENDIX A

<<May be set-out in following or other formats or as attached "offer made, offer accepted" letters. Please note that data marked with an asterisk(*) must be supplied or specifically noted as not applicable to this contract.>>

Scope, Purpose, Programme and Completion Date

The Client's Project

Suggested Sub-Headings:

* **Key Personnel**
* **Sub-consultants (if any)**
* **Scope of Services**
* **Reporting**
* **Deliverables**
* **Inputs** (including Other Consultants, Other Consultants' insurance, personnel, equipment, facilities and information supplied by the Client)
* **Client's Risk Identification and Notification (refer PSG/4 *Hazard Identification)***
* **[Other]**

[insert]

Deliverable Schedule

The following is the Time Schedule for Deliverables. It outlines the major/milestone deliverables but is not to be deemed all-inclusive.

No	Deliverable	Time for Delivery
1.	[Other]	[Insert]
2.	[Other]	[Insert]

APPENDIX B

Fees, Expenses and Payment

<<Guidance note: Select one of the three payment choices below>>

Fixed Price Quote (exclusive of GST)

Where requested, the Consultant shall provide a fixed price quote based on the rates priced in the Additional Services Schedule.

Payment will be made as a Lump Sum on completion of the additional service. Where the Tenderer has entered a zero rate for any item, or part thereof, payment for any work instructed under this item is deemed to be included elsewhere in the schedule rates and no additional payment shall be made until the hours or kms specified against the item have been exceeded.

<<OR>>

Time Writing to Fee Budget (exclusive of GST)

The Consultant shall record all costs against each task in terms of the rates priced in the Additional Services Schedule and, where applicable, shall provide the Client with an itemised assessment of the expected totals and final cost. The Client may set a ceiling for expenditure. The Consultant shall allow for the complete disclosure of all items which comprise a priced task if so requested by the Client.

Payment will be made monthly on the basis of agreed work completed.

<<OR>>

Schedule (exclusive of GST)

This payment schedule defines the pricing schedule items, which must be separately priced by the Consultant, and the terms of their payment. The numbering shown corresponds to the numbering on the Contract Pricing Schedule.

<<Guidance Note: use the following option if you selected "Fixed Price Quote (exclusive of GST)" or "Time Writing to Fee Budget (exclusive of GST)" in Item 4 above>>

Services Schedule

Item	Description	Unit	Qty	Rate	Amount
1.1	[Position description / Name]	Hours	[X]		
11.2	[Position description / Name]	Hours	[X]		
				TOTAL SERVICES	**$XX,XXX.XX**

Additional Service Schedule

Item	Description	Unit	Qty	Rate	Amount
1.1	[Description / Name]	Hours	[X]		

Item	Description	Unit	Qty	Rate	Amount
11.2	[Description / Name]	Hours	[X]		
				TOTAL ADDITIONAL SERVICES	**$XX,XXX.XX**

<<OR: use the following options if you selected "schedule (exclusive of GST)" in Item 4 above>>

Contract Pricing Schedule

Item	Description	Unit	Rate	Amount
1	XXXXXXXX	L.S./[X] ea.		
2	[Other] [list items and define payment]	L.S./[X] ea		
				Total **$XX,XXX.XX**

Payment Schedule

Item	Description
1	XXXXXXX Define payment
2	Other Define Payment

APPENDIX C

Client's Representative

[Name]
[Title]
Waka Kotahi NZ Transport Agency
[Street Address]
[PO Box Number]
[CITY]

Email: [Email address]
Tel: [Tel number]

APPENDIX D

Consultant's Key Personnel

***Consultant's Representative**

[Name]
[Title]
[Street Address]
[PO Box Number]
[CITY]

Email: [Email address]
Tel: [Tel number]

APPENDIX E

Subconsultant's Key Personnel

[insert or "Not applicable"]

APPENDIX F

Other Consultants, Other Consultants' insurance, Personnel, Equipment, Facilities and Information supplied by the Client

[insert or "Not applicable"]

APPENDIX G

Client's Risk Identification and Notification

[insert or "Not applicable"]

Additional Appendices

***Waka Kotahi Contractor Health and Safety Expectations**

[Consultant's offer of service letter]

[Other]