

Contract [Number]
[Contract Name]
Contract Documents

Minor Works

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DOCUMENT CHANGE FORMAT CODES

This proforma document provides the basis for the development of physical works contract documents for Waka Kotahi NZ Transport Agency's (Waka Kotahi) **Measure and Value and Lump Sum (under \$400,000)** specific project contracts. The purpose of the proforma is to provide consistency throughout Waka Kotahi regional operations and to ensure that an appropriate level of detail is provided for tender documentation.

The model assumes more than 1 supplier will be invited to submit a tender. Consultant may add appropriate clauses from SM031 as required, for example non-price attribute section for relevant skills and/or methodology if required. SM031 Appendix A1 (Lowest Price conforming clauses) should be used as the source of amendments to this model.

Where a contract is to be negotiated with a single supplier (less than \$200,000), the Direct Appoint Minor Works proforma should be used.

Black

Black text is mandatory and may not be changed without approval prior to issue by the Waka Kotahi Project Manager, who will consult with the Waka Kotahi HNO Procurement Team on all material changes made.

Red

Red text is used for data which requires fields to be updated or at least considered for each contract and marked at the beginning with [and the end with]. Text can also be used as is, modified or replaced. All red text adjustments must have the Waka Kotahi Project Manager's approval. Red text must be converted to Black text, prior to tender document release.

Blue

Blue text is used for optional clauses which can be included as is or deleted in full. Blue text must be converted to Black text, prior to tender document release.

Purple

Purple text is used for prequalification clauses which are to be included for prequalification tenders only. Prequalification clause details must be prior approved with the Project Manager. Purple text must be converted to Black text, prior to tender document release.

<<Guidance Notes>>

Blue text with yellow highlighting and marked at the beginning with << and the end with >> are guidance notes for the Tender Document creator. Guidance notes must be removed prior to tender document release.

SET NO. _____

Contractor: _____
Address: _____

Contact Numbers: [Phone] _____
Engineer: [TBA] _____
Address: [Engineer Address] _____
Contact Numbers: [Phone] _____
Principal: New Zealand Transport Agency (Waka Kotahi NZ Transport Agency) _____
Address: [Principal Address] _____
Contact Numbers: [Phone] _____

Tender Close

Refer to IFT Section [1.6] for tender closing details.

CONSULTANT QUALITY RECORD			
Compiled by:	[Signature]	[Date]	<<Name Printed or Typed>>
Reviewed by:	[Signature]	[Date]	<<Name Printed or Typed>>
Released by:	[Signature]	[Date]	<<Name Printed or Typed>>
Document prepared by:	[Consultant Name, Street Address, PO Box, CITY]		
File No:	<<<to be advised>>>		
Document Release No:	[1]	Document Release Date:	[Date, Month, Year]
Computer Ref:	<<<to be advised>>>		

CONTENTS

<<Ensure the Table of Contents is updated once the final revisions have been undertaken as pagination may have changed. Highlight the TOC – right click – update field – update entire table >>

1	KEY INFORMATION FOR TENDERERS	4
1.1	Tender Submission.....	4
1.2	Key Contract Data	4
1.3	Communications between Tenderer and the Waka Kotahi Consultant.....	5
1.4	Quality Assurance	5
1.5	Probity	5
2	CONDITIONS OF TENDERING.....	7
3	SCHEDULE TO THE CONDITIONS OF TENDERING	9
4	NON-PRICE ATTRIBUTES.....	12
4.1	Attribute Submission.....	12
4.2	Tenderer and Tenderer’s Subcontractor Information.....	12
4.3	Relevant Skills	13
4.4	Methodology.....	13
5	TENDER INFORMATION SCHEDULE.....	15
5.1	General.....	15
5.2	Acknowledgement of Notices to Tenderers	15
5.3	Proposed Construction Programme	15
5.4	Tenderer Nominated Possession Of Site	15
6	TENDER EVALUATION PROCEDURE AND CONTRACT AWARD	16
6.1	General.....	16
6.2	Tender Evaluation Team	16
6.3	Tender Evaluation: Base Estimate	16
6.4	Tender Evaluation – Stage 1 (Price).....	17
6.5	Tender Evaluation – Stage 2 (Non-price Attributes)	17
6.6	Interviews	17
6.7	Tender Evaluation Report.....	17
6.8	Pre-Letting Meeting	18
6.9	Tender Acceptance	18
6.10	Tender Debriefing.....	19
7	TENDER EVALUATION MARKING FORMS	20
7.1	Tender Evaluation Marking Forms.....	20
8	TENDER FORM	23
9	SCHEDULE OF PRICES	24
10	PREAMBLE TO BASIS OF MEASUREMENT AND PAYMENT	25
10.1	Introduction.....	25
10.2	Definitions.....	25
10.3	Item Description.....	25

10.4	Item Quantity	25
10.5	Item Unit	25
10.6	Item Rate.....	26
10.7	Provisional Items	26
10.8	Provisional Sums.....	26
10.9	Monthly Statements.....	26
10.10	Payment Details	26
10.11	Quality Assurance	26
10.12	Variations	27
10.13	Unscheduled Work	27
11	BASIS OF MEASUREMENT AND PAYMENT	28
11.1	Description of item in Schedule of Prices	28
12	CONTRACT AGREEMENT	29
13	GENERAL CONDITIONS OF CONTRACT	31
14	SCHEDULE TO THE GENERAL CONDITIONS OF CONTRACT.....	32
14.1	Schedule 1 – Special Conditions of Contract - Specific Conditions of Contract	32
14.2	Schedule 2 - Special Conditions of Contract – Other Conditions of Contract.....	43
14.3	Schedule 3 – Form of Contractor’s performance bond	54
14.4	Schedule 4 – Form of Principal’s bond	55
14.5	Schedule 5 – Form of Contractor’s bond in lieu of retentions	56
14.6	Schedule 6 - Form of Producer Statement - Construction.....	58
14.7	Schedule 7 – Information on Contractor arranged insurance	60
14.8	Schedule 8 – Information on Contractor arranged Plant insurance	61
14.9	Schedule 9 – Information on public liability insurance	63
14.10	Schedule 10 – Information on Contractor arranged motor vehicle insurance	64
14.11	Schedule 11 – Information on Contractor arranged professional indemnity insurance.....	66
14.12	Schedule 12 – Information on principal arranged construction insurance	67
14.13	Schedule 15 – Practical Completion Certificate.....	68
14.14	Schedule 16 – Final Completion Certificate.....	69
15	PROJECT SPECIFICATION.....	70
15.1	Introduction.....	70
15.2	Scope	70
15.3	Health and Safety	70
15.4	Traffic Management.....	71
15.5	Statutory Approvals and Compliance	71
16	TECHNICAL SPECIFICATION	73
16.1	[Consultant to Complete].....	73
17	APPENDICES	74
18	DRAWINGS	75

1 KEY INFORMATION FOR TENDERERS

1.1 Tender Submission

- 1.1.1 In accordance with the Prequalification for Physical Works, this Contract has been classified as <<Guidance note: include work category(s) & classification level(s): eg “Construction – Level C” >>. Tenderers are reminded that under the terms of the Waka Kotahi NZ Transport Agency (Waka Kotahi) Prequalification System, only those prequalified to <<Guidance note: include work category & classification levels “Construction - Level A, B or C (4A, 4B or 4C)”>> are eligible to submit a tender.

1.2 Key Contract Data

- 1.2.1 The following table contains details of the key features of the Contract. The information and detail contained elsewhere within the Tender Documents shall have precedence over this table if there is any ambiguity or conflict with the following information.

TABLE 1.2: KEY CONTRACT DATA		
DESCRIPTION	KEY CONTRACT DATA	DOCUMENT REFERENCE
Type of contract	[Measure and Value/Lump Sum]	
Supplier selection method	[Lowest Price Conforming]	
Conditions of Contract	NZS 3910:2013	CC General Conditions
The Contract Works	This contract is for the construction of [>>>>>>>>>>>>>>>>>>] between [>>>>>>>>>>>>>>>>>>] and [>>>>>>>>>>>>>>>>>>]. The section is [>>>>] km long and includes [>>>>] bridges and [>>>>>>>>>>>>>>>>>>].	
Site Visit	A site visit has not been arranged. Tenderers wishing to view the site shall contact the Waka Kotahi consultant in accordance with the procedure outlined in section 1.3 below.	
Contract Period	[xxx] Weeks	CC Schedule 1, 10.2.1
Liquidated Damages	[\$X.XX] per calendar day	CC Schedule 1, 10.5.1
Defects Notification Period	[52] weeks	CC Schedule 1, 11.1
[Other]		<<State document and section/clause reference>>

- 1.2.2 The Principal has arranged for Principal Arranged Insurance (PAI) for the Contract Works and Public Liability for this contract.

- 1.2.3 Refer to the following Link for details of the PAI, policy: <http://nz.marsh.com/nzta-pai/>

1.3 Communications between Tenderer and the Waka Kotahi Consultant

- 1.3.1 All communications between the Consultant and tenderers must be in writing. For the purposes of this IFT, this includes e-mail communication, which may include attachments.
- 1.3.2 Communication must be clearly labelled with the Principal's assigned contract number and name. Communications not so addressed may be delayed and/or not actioned. All tenderer's queries shall be addressed to:

[Name of Consultant's Company]	
[Address 1]	
[Address 2]	
[CITY]	
For the Attention of:	[insert name of Consultant's Nominated Person]
Contract Number:	[contract number]
Contract Name:	[contract name]
Email:	[email address]

- 1.3.3 Tenderer's queries shall be raised with the Consultant's Nominated person as soon as possible but not later than **[eight]** Working Days before the tender closing date. Where the Principal considers it necessary and/or appropriate, they will endeavour to respond to all queries within **[48]** hours of receiving them.

1.4 Quality Assurance

- 1.4.1 The Contractor is expected to have systems certified to international quality standards (ISO 9001) and must have a project specific QMP that covers quality assurance and control minimum requirements as defined in Z/1.
- 1.4.2 Tenderers not having quality management systems formally certified to ISO 9001, will at least have a QMP that comply with the minimum requirements set out in Z/1.

1.5 Probity

- 1.5.1 An independent probity auditor has been appointed to overview the tendering process (up to contract award) and verify that the procedures set out in the Tender Documents are complied with. The Probity Auditor is not a member of the Tender Evaluation Team (TET). A tenderer concerned about any procedural issue has the right to contact the Probity Auditor and request a review. The outcome will be documented with copies sent to both the tenderer who raised the issue and the Principal. The name of the Probity Auditor and their contact details are as follows:

Shaun McHale
Managing Director, (Team Leader, Probity Assurance Services)
McHale Group Limited
Level 1, 187 Featherston Street
PO Box 25103
Wellington 6146

DDI: 04 496 5580
Mobile: 027 486 3412

[Insert Contract name]
Contract No: [insert no]

Waka Kotahi NZ Transport Agency
Instructions for Tendering
IFT 1

E-mail: shaun.mchale@mchalegroup.co.nz

2 CONDITIONS OF TENDERING

<<Guidance note: delete all / part of this section if negotiating directly with a single supplier (direct appoint)>>

- 2.1.1 The Conditions of Tendering are those included in NZS 3910: 2013 - Conditions of Contract for Building and Civil Engineering Construction as amended below.
- 2.1.2 Clause numbers refer to Conditions of Tendering clauses.

101 Interpretation

Add the following Clause 101.2

101.2 In these Tender Documents the following definitions apply:

- **ALTERNATIVE TENDER** means a tender that is proposing alternative methods, forms or materials which might produce a different quality or durability but within the scope specified in the Request for Tender (RFT).
- **CONFORMING TENDER** means a tender that meets or exceeds the requirements of the Tender Documents. Specifically, a Conforming Tender must score greater than 35 on all non-priced attributes.
- **NON CONFORMING TENDER**
- **NOTICE TO TENDERERS** means a notice issued to all Tenderers prior to the close of tenders, which upon issue becomes part of the Tender Documents.
- **PRINCIPAL** means New Zealand Transport Agency (Waka Kotahi NZ Transport Agency) (Waka Kotahi) and [Insert Local Authority name if joint Principal].
- **PROBITY AUDITOR** means the qualified person formally engaged and appointed by the Principal to oversee and advise on the probity of all processes leading up to the award of the Contract.
- **TENDER DOCUMENTS** means this document, which includes the Instructions for Tendering, as well as the Schedule of Prices, Basis of Payment, Conditions of Contract, Specifications, Drawings and Appendices.
- **TENDERS SECRETARY** means the person formally engaged and appointed by the Principal to oversee and administer the tender process leading up to the award of the Contract.
- **WAKA KOTAHI CONSULTANT** means the person formally engaged and appointed by the Principal to oversee and administer the tender process leading up to the award of the Contract.

102 Issue of Documents

Add the following Clause 102.2(d)

102.2 (d) To other tenderers without requiring return of the documents, providing a bona fide tender is submitted.

102.3 Tenderers will be provided with one electronic copy of the Tender Documents.

Electronic copies of forms and schedules are available for the convenience of Tenderers. In the event that the wording on a form or schedule submitted by a Tenderer differs from the wording of the form or schedule as contained in the Tender Documents, the wording on the form or schedule in the Tender Documents shall take precedence.

A Tender Document deposit [is / is not] required.

103 Tenderers to inform themselves

Clause 103.1 is deleted and replaced with the following

- 103.1** Each tenderer shall be deemed to have inspected the Site, examined the Tender Documents and any other information supplied in writing, satisfied itself that a reasonable level of investigation has been undertaken and to have satisfied itself as far as is practicable for an experienced contractor to the extent appropriate as to the correctness and sufficiency of its tender for the Contract Works and of the prices stated in its tender.

104 Ambiguities in Tender Documents

Add the following clause 104.4 and 104.5

- 104.4** Should any ambiguity as to interpretation arise between the contents and requirements of the Waka Kotahi *Procurement Manual* (the Procurement Manual), Part A of the Waka Kotahi *Contract Procedures Manual* (CPM), and the Tender Documents (TD), the order of precedence will be the Procurement Manual, CPM, TD.
- 104.5** Despite any other provision in these Conditions of Tendering the Principal may, on giving due notice to the Tenderers amend, suspend, cancel and/or re-issue the RFT, or any part of the RFT.

105 Submission of tenders

Clause 105.2 is deleted and replaced with the following

- 105.2** The Principal may at its sole discretion consider any tender received after the time stipulated, if the circumstances can be shown to be extreme, and beyond the control of the tenderer.

Add the following Clause 105.8

- 105.8** Alternative tenders will not be considered

106 Acceptance of Tender

Add the following clauses 106.3, 106.4 and 106.5

- 106.3** The Principal reserves the right to reject any or all tenders.
- 106.4** The Principal reserves the right, on giving reasonable notice to the tenderers, to amend, suspend, cancel and/ or re-issue the Tender Documents at any time before entry into the Contract. If the Principal withdraws from the tender process then no tenderer shall have any claim for compensation or otherwise against the Principal.
- 106.5** The Principal is under no obligation to check any tender for errors. Acceptance of a tender that contains errors will not invalidate any contract that may be negotiated on the basis of that tender.

108 Notification of acceptance

Clause 108.1 is deleted and replaced with the following

- 108.1** If no tender has been accepted within **two** Months after closing of tenders, each tenderer shall be notified in writing by the Principal or its agent whether its tender is or is not still under consideration.

Clause 108.2 is deleted and replaced with the following

- 108.2** **Unsuccessful** tenderers who have submitted *bona fide* tenders complying with the Tender Documents shall be notified by the Principal or its agent of the name and tender price of the successful tenderer and the other tender prices (if more than 3 conforming tenders received) within 10 Working Days of acceptance of tender.

3 SCHEDULE TO THE CONDITIONS OF TENDERING

The Schedule to Conditions of Tendering are those included in NZS 3910: 2013.

Clause numbers refer to Conditions of Tendering clauses.

Contract for:	[Contract Number, Contract Name]
----------------------	----------------------------------

Clause in Condition s of Tendering	Title and subject matter	Specific condition data (Expand cells if required)
102	Issue of documents	
102.2	Is a Tender Documents deposit required?	Select yes or no
	If yes, the amount of the Tender Documents deposit shall be:	[\$500] <<Guidance note: leave blank if "no" selected>>
103	Tenderers to inform themselves	
103.1	Is an appointment required to view the Site?	Select yes or no
	If yes, the appointment details are:	[Address] [Date] [Time]
105	Submission of tenders	
105.1	Tenders shall close at:	GETS eTenderbox [Time] Tuesday, 23 September 2014 <<Guidance note: generally tender close is on a Tuesday or Thursday>>
	Tender submission:	<<Either only use for LPC Basic / Advanced, otherwise delete row:>> Single electronic file, (pdf format) named Tender for Contract [Number and Name]. The file upload limit is 50 MB . Tenderers should allow adequate time for upload, system failure, etc. Tenderers should refer to the GETS website for instructions on uploading their tender submission files https://www.gets.govt.nz/SupplierUserTenderHelp.htm
	Are electronic tenders acceptable?	Select yes or no
105.3 (c)	Is supplementary information required to be submitted with the tender?	Select yes or no As detailed below:

Clause in Condition s of Tendering	Title and subject matter	Specific condition data <i>(Expand cells if required)</i>
--	--------------------------	--

<<Guidance note: use the table below for LPC Basic / Advanced>>

FILE 1 CONTENTS

ITEM	DESCRIPTION OF DOCUMENTS OR INFORMATION	REFERENCE	PAGE LIMIT
A	Tenderers must provide evidence of their eligibility to Tender:		
	Copy of Prequalification Certificate		1
	Quality Management System Certification (required for Prequalification Levels A, B or C only)		1
A	<p style="background-color: yellow;"><<Remove this Item A if using Prequalification without non price attributes>></p> <p>Tenderer's Non-price Attributes</p> <p>Tenderers must provide one (1) electronic copy of their non-price attribute submission (pdf format). The non-price attribute submission must be on single sided A4 or A3 size pages of ordinary type (12 point Times Roman or similar typeface). A3 size paper shall be deemed to be two A4 pages, and shall be numbered accordingly.</p> <p>Pages in excess of the stated page limits, excluding the additional pages, will not be considered in the evaluation of tenders.</p> <p>The page limit includes all subcontractor attribute information.</p> <p>Additional pages may be included as follows:</p> <ul style="list-style-type: none"> • Title Page (one page) • Covering Letter (one page but will not be considered as part of tender evaluation) • Index (one page) • CVs (two pages for each person nominated in the tender) • Draft Health and Safety Management Plan (ten pages) • Quality Management System Certification (one page) • Final PACE Assessment forms for any contract nominated under Track Record (five pages) • [Other] 	IFT Section [4]	[25]
B	Tender Information Schedule (including Outline Construction Programme (two A3 pages, legible font)	IFT Section [4]	Unlimited
C	Proposed Construction Programme		
D	Tender Tag and Clarification Statement	IFT Section [1]	Unlimited
E	Completed and signed Tender Form	Page TF 1	1
F	Completed Schedule of Prices	N/A	Unlimited
G	[Other]		

Clause in Conditions of Tendering	Title and subject matter	Specific condition data <i>(Expand cells if required)</i>
105.3(e)	Are the percentages for On-site Overheads and for Off-site Overheads and Profit required to be nominated in the tender?	Select Yes or No Select Yes or No <i>(see 9.3.8, 9.3.9 & 9.3.10 of the General Conditions)</i>
	Is the Working Day rate in compensation for time-related On-site Overheads and Off-site Overheads and Profit incurred in relation to an extension of time required to be nominated in the tender?	Select Yes or No Select Yes or No <i>(see 9.3.11 of the General Conditions)</i>
	Is the percentage for processing of Variations required to be nominated in the tender?	Select Yes or No Select Yes or No <i>(see 9.3.15 of the General Conditions)</i>
105.7	Are the rates included in the Schedule of Prices fully inclusive of all allowances for On-site Overheads and for Off-site Overheads and Profit?	Select Yes or No Select Yes or No <i>(see 9.3.8, 9.3.9 & 9.3.10 of the General Conditions)</i> <<Guidance Note: where Clauses 105.7 and 105.3(e) above are used, the consultant is to ensure the percentage is tested against the Provisional Sum(s) included in the Schedule of Prices. Clauses generally not used on Lump Sum contracts>>
107	Tender evaluation	
107.1	The tender evaluation method shall be:	Select method Select method

4 NON-PRICE ATTRIBUTES

4.1 Attribute Submission

<< Delete ALL non-purple clauses in this section if using LPC with no non price attributes i.e. LPC with Level D prequalification.

For Prequalification select one or more non-price attributes to suit the project where specific information is required. This should relate to the high risk or complex aspects of the project, and would not normally include Track Record or Relevant Experience, for which the prequalified Tenderer has already been approved Refer to guidance provided in Part A, Section 2.4.2 of SM021.

For example, for a major urban intersection upgrade, where the management of traffic to cause the least disruption is identified as the major risk, you may decide to only nominate Methodology that will have a weighting of 30%. Delete other non-price attributes.>>

- 4.1.1 As this tender is to be let under prequalification, [either: non-price attributes are not required or non-price attributes are required].
- 4.1.2 The Tenderer shall provide information on the non-price attributes listed below.
- 4.1.3 The Tenderer shall provide sufficient relevant information for each attribute for the Contractor and proposed key Subcontractors, to allow the Tender Evaluation Team (TET) to mark the attribute as provided for in the table below.

ATTRIBUTE	OVERALL ATTRIBUTE WEIGHTING % <<delete column if using LPC on pass/fail basis>>
Relevant Skills	Pass/Fail
Methodology	Pass / Fail
Price	[100]

<<Further guidance on the use of NPAs together with prequalification levels is provided in Section 2.4 of the Waka Kotahi Contract Procedures Manual (SM021) >>

4.2 Tenderer and Tenderer's Subcontractor Information

- 4.2.1 The submission for each attribute shall clearly distinguish the attributes of the tenderer and the tenderer's key Subcontractor(s).
- 4.2.2 For the purposes of this Contract, key Subcontractors are defined as subcontractors proposed to undertake greater than 10% of the works (by value).
- 4.2.3 The methodology shall clearly define the role of each key Subcontractor and the role of the main Contractor for each key part of the Contract Works. The key parts of the Contract Works are:
 - (a) [Earthworks;
 - (b) Piling;
 - (c) Pavement and surfacing;
 - (d) Structures]

<<Guidance Note: Ensure this list is consistent with the factors identified on the Methodology marking form.>>

<<Guidance note: If not using any, or using limited NPA's in conjunction with Prequalification, then delete the whole or part of the following section.>>

4.3 Relevant Skills

4.3.1 The Tenderer must nominate personnel for each of the key positions identified on the relevant skills tender evaluation marking Form and state the key practical experience, qualifications and training of each.

<<Guidance Note: Consultant to provide key factors sought for each sub attribute factor listed on the marking form.>>

4.3.2 The Tenderer must state the percentage of time and over what duration each of the above nominated persons will be allocated to the Contract and whether they will be based on or off the Site.

4.3.3 Attach a curriculum vitae (CV) for each of the key positions identified on the relevant skills tender evaluation marking form (two pages per CV). The CVs need to demonstrate specific experience relevant to the position. <<Either:>> CV's shall be appended in alphabetical order by surname <<or:>> CV's shall be appended in order of the relevant skills tender evaluation marking form.

4.4 Methodology

4.4.1 Tenderers must describe the methodology they will use to carry out the Contract Works on time and to the standards and requirements specified in the Contract Documents for those factors listed in the Methodology tender evaluation marking form.

4.4.2 The methodology should highlight any special features of the way the tenderer intends to work and their management of quality. It should also highlight how the tenderer will manage the perceived risks, including risks to health and safety identified as part of the scope of work.

4.4.3 Tenderers shall describe the measures taken in their programming of the works to avoid sealing activity in the Winter Period, and to ensure the timely completion of the works. Tenderers shall describe how progress against programme will be monitored to ensure programme slippage is identified early, and how it might be mitigated.

4.4.4 The Principal seeks a "no surprises" financial management and reporting strategy. The Tenderer's methodology shall describe how they would co-operate with the Principal to achieve this. In particular, Tenderers shall describe their proposed financial management and reporting methodology for this Contract and their approach to minimising the risk to the Principal of additional costs, this being one of the Principal's key objectives.

4.4.5 Tenderers shall demonstrate their understanding of how the Principal's customer values affect the Contract Works, and their methodology to give effect to these values (e.g. customer safety, minimising travel delay and disruption, minimising ride discomfort and nuisance, communications and public relations, and social and environmental impacts of construction).

4.4.6 The following highlights the specific information Tenderers may wish to include to cover each of the factors listed on the methodology marking sheets: <<Guidance Note: include a specific description of what is to be included in the Methodology for each factor listed on the marking form. These should be aligned to the projects key risk factors eg:

- (e) Organisational Structure
- (f) Provide a project staff organisational structure for this Contract using a diagram showing how both internal and external staff relates. Also show which positions would have personnel dedicated on Site, and which position will act as the Contractor's Representative (as NZS 3910:2013).

- (g) Within this structure describe the communication links between key parties (management team, Site staff, Subcontractors, designers, Principal, Network Consultant, etc), and indicate the proportion of time each person will be dedicated to this project;
- (h) Financial Management and Reporting:
- (i) Environmental and Consent Compliance (with reference to the Contractor's Social and Environmental Management Plan)
- (j) Liaison (Stakeholder Consultation)
- (k) Maintenance Management
- (l) Quality assurance (including quality systems, inspection and testing methodology and procedures to rectify defects, implement corrective actions and lessons learnt migration)
- (m) Management of Risk, including health and safety risks
- (n) Co-operative Work Environment
- (o) Permanent Stormwater Management
- (p) Asset information and data handover processes and controls

<<Factors should be limited to the key 6-8 that are critical to the successful outcome of the project.>>

5 TENDER INFORMATION SCHEDULE

5.1 General

5.1.1 Tenderer's shall complete the following Tender Information Schedule and include with their tender.

5.2 Acknowledgement of Notices to Tenderers

5.2.1 The tenderer must complete the following table listing the number(s) of the Notice(s) to Tenderers (NTT) or Notice(s) to Specific Tenderer (NTST) they have received during the tender period.

NTT NUMBERS	
NTST NUMBERS	

5.2.2 The tenderer must allow for the impact of changes from the Notices in their Tender.

5.3 Proposed Construction Programme

5.3.1 The tenderer shall attach an outline construction programme in Gantt chart form identifying and sequencing all the key elements of the Contract Works. The programme shall be based on the contract period, showing and linking the relevant construction tasks, the critical path, and any activities, which require additional information or decisions from the Engineer. The programme shall contain sufficient information to provide the Principal with confidence and reliability that the tenderer has a good understanding of the project requirements.

5.3.2 The Due Date of Completion based on the contract period specified in 10.2.1 in the Special Conditions of Contract must be within [Consultant to enter date] to the [Consultant to enter date]. The date of possession of site shall be clearly identified by the tenderer in the Outline Construction Programme. The identified date of possession of site shall be confirmed in the tender acceptance letter.

<< Guidance Note: This provision to be considered only on Small Contracts which can be constructed within one construction season. Consultant to expand this section to include other contract specific requirements for inclusion in programme. The identified date of possession of site shall be confirmed in the tender acceptance letter. >>

5.4 Tenderer Nominated Possession Of Site

5.4.1 The tenderer is to nominate the date on which Possession of Site will occur. The nominated date for Possession of Site shall be within the period <<insert earliest date>> and <<insert latest date>>.

TABLE 5.4: DATE OF POSSESSION OF SITE	
	DATE
For Contract Works	

<<Guidance Note: This option is to be used where some flexibility can be given to the Contractor for the date for commencement of the works to allow them time to plan for their optimal resource utilisation and completion>>.

6 TENDER EVALUATION PROCEDURE AND CONTRACT AWARD

6.1 General

- 6.1.1 Tenders for this contract will be evaluated using the Lowest Price Conforming Method.
- 6.1.2 The Principal's procedures for its implementation are outlined in the Waka Kotahi *Contract procedures manual* (SM021).
- 6.1.3 Only tenderers prequalified to the specified level are eligible to submit a tender.

6.2 Tender Evaluation Team

- 6.2.1 A Tender Evaluation Team (TET) has been nominated to evaluate the tenders for this Contract.
- 6.2.2 The TET, formed to evaluate tenders, will be:

[Name]	[Position, Company] (Leader)
[Name]	[Position, Company] (Qualified)
[Name]	[Position, Company]

<<Guidance note: one member of the TET needs to be a Qualified Evaluator for tenders >\$200,000. This person does not necessarily have to be the TET leader>>

6.3 Tender Evaluation: Base Estimate

- 6.3.1 The base estimate is an estimate based on the Tender Documents. For transparency purposes, the base estimate is given below:

BASE ESTIMATE:	[\$XXXM]
THIS INCLUDES SCHEDULE OF FIXED AMOUNTS OF :	[\$XXX K]

- 6.3.2 If the tenderers have any concerns regarding the accuracy of the base estimate, tenderers are able to submit their concerns up to 4.00 p.m., [5] working days prior to tender close, through the following process:
- Tenderers shall forward their comments on the accuracy of the base estimate directly to the probity auditor nominated in this IFT.
 - The probity auditor shall pass the comments (without revealing the tenderer's identity) to the Manager, Procurement Services.
- 6.3.3 The Manager, Procurement Services will consider the information and, if deemed necessary, issue further instructions to tenderers before tenders close. The Manager, Procurement Services shall not reveal any price sensitive information to the TET.

6.4 Tender Evaluation – Stage 1 (Price)

- 6.4.1 The tender evaluation process shall consist of ranking prequalified tenders in ascending order based on price, and either awarding the Contract to the lowest price Conforming Tender or, if appropriate, seeking a pre-award discussion with the preferred tenderer.

<<Guidance note: only use the clause above if tendering with prequalification without non-price attributes>>

6.5 Tender Evaluation – Stage 2 (Non-price Attributes)

<<Guidance note: Only use the clauses below if tendering with prequalification with non price attributes>>

- 6.5.1 The second stage in the tender evaluation process shall consist of determining tender acceptability when assessed against each of the non-price attributes.
- 6.5.2 The TET will individually read and evaluate the non-price attributes of the lowest priced tenderer only.
- 6.5.3 For the evaluation Relevant Skills the TET will take into account:
- (a) The Principal's records of contracts the tenderers have completed;
 - (b) Their personal knowledge of any of the tenderers experience;
 - (c) Information from referees of other organisations the tenderers have worked for.
- 6.5.4 For the evaluation of Methodology, the TET will take into account their personal views about best practice and the appropriate methodology to complete the contract works.
- 6.5.5 The TET will meet to agree the lowest priced tenderer's non price attribute mark. The TET will endeavour to reach a consensus. If the TET cannot reach a consensus, the TET Leader shall consider the teams' attribute marks and decide the final attribute mark.
- 6.5.6 Each attribute shall be marked on a pass/fail basis. Any attribute that scores a fail shall exclude that tender from further consideration. The TET will then commence evaluation of the next lowest price tenderer's non-price attributes
- 6.5.7 Determination of acceptability shall commence with the lowest priced tender and shall cease when the first conforming tender is determined.

6.6 Interviews

- 6.6.1 Interviews with individual tenderer(s) may be held during the evaluation period should any further clarification be required regarding the tenderer's submission.

6.7 Tender Evaluation Report

- 6.7.1 The Tender Evaluation Team (TET) will prepare a tender evaluation report. The Principal will use this report in accepting and awarding the contract according to its contract administration procedures.
- 6.7.2 The report will include recommendations regarding the preferred tender and tenderer, and any applicable terms or conditions relating to the tender acceptance.
- 6.7.3 If the Principal accepts the recommendation of the TET, either pre-award discussions will be undertaken with the preferred tenderer (if appropriate), or the contract will be awarded to the preferred tenderer.

6.8 Pre-Letting Meeting

- 6.8.1 Following opening of the price file and prior to the award of Contract, the Principal may hold a pre-letting meeting with the preferred tenderer.
- 6.8.2 Meetings will be convened by the Principal, who will involve their advisors on an 'as-required' basis. The tenderer is encouraged to include all key personnel, which would usually include the tenderer's owners representative, estimator, Contractor's Representative (as defined in NZS 3910, Clause 5.2).
- 6.8.3 The pre-letting meeting should be used to clarify the price and ensure the tenderer fully understands the scope of work. The preferred tenderer may be required to submit their methodology and other information to demonstrate they have sufficient capability to complete the works.
- 6.8.4 The pre-letting meeting will consist of 2 parts as follows:
- (a) PART 1: A contractual meeting aimed at minimising any outstanding issues associated with the tender submission and clarifying the interpretation of the scope of works. Resolution shall be minuted and included in the Contract.
 - (b) PART 2: A without prejudice discussion on project risks which will enable the Principal to increase confidence in its financial allocation. Discussions under Part 2 will not be binding on either the Principal or the tenderer. The Principal and the tenderer each agree they are not entitled to rely on anything said or done at that discussion or notes taken at the discussion.
- 6.8.5 Matters to be discussed in **Part 1** shall include, but not be limited to:
- (a) Resolving any outstanding issues including any ambiguities or shortcomings in the Tender Documents or tender submission;
 - (b) Confirming the tenderer's methodology and documenting specific intent where any potential misalignment is found;
 - (c) Resolving any difficulties or risk issues noted where tendered rates are considered unrealistic or unsustainable.
- 6.8.6 Matters to be discussed in **Part 2** shall include, but not be limited to:
- (a) Reviewing the Principal's risk register to establish completeness;
 - (b) Discussing uncertainty ranges associated with individual risks.

6.9 Tender Acceptance

- 6.9.1 The successful tenderer will be notified in writing at the earliest opportunity that its tender has been accepted.
- 6.9.2 All tenderers will be advised of the following:
- (a) Name of the successful tenderer;
 - (b) The tendered price of the successful tender;
 - (c) The names of all tenderers;
 - (d) The tendered prices of all tenderers, in ascending order, and without linkage to the tenderer's identity
- 6.9.3 In the event that less than 3 conforming tenders are received, only the information described in clause [5.6.2] items a), b) and c) will be provided.

6.10 Tender Debriefing

- 6.10.1 Within two weeks of the contract award, tenderers may request a meeting with Waka Kotahi consultant that includes at least one member of the Tender Evaluation Team. The purpose of the meeting will be to discuss the tenderers submission. Other tenderer's tender submission information and details will not be disclosed. The discussions will be confidential and will not be formally minuted.

7 TENDER EVALUATION MARKING FORMS

7.1 Tender Evaluation Marking Forms

<<Guidance note: Delete clause and all marking forms if Prequalification Tender without non price attributes>>

- 7.1.1 The TET will use the following tender evaluation marking forms to evaluate each tenderer's non-price attribute submission. <<Guidance Note: Consultants to ensure attribute % weightings in marking sheet are consistent with section [4] of the IFT.>>

RELEVANT SKILLS <<LPC BASIC/ADVANCED>>		FORM C	
KEY PERSONNEL	PRACTICAL EXPERIENCE	QUALIFICATIONS AND TRAINING	
	Pass / Fail	Pass / Fail	
Health and Safety Manager			
Contract Director			
Contractors Representative (as NZS3910, Clause 5.2)			
Senior Engineer (Earthworks)			
Senior Site Supervisor (Structures)			
Senior Site Supervisor (Pavement & Surfacing)			
Senior Site Supervisor (Earthworks)			
Quality Manager			
Environmental and Consent Compliance Manager			
Accredited Laboratory Personnel			
Traffic Manager (TTM)			
Communications and Engagement Personnel			
[Others]			
Tenderer		Relevant Skills Rating	
a) Evaluator's Comments (Continue on separate sheet if necessary)			
TET Note: Relevant skills relates to individuals, not the company, and should include relevant skills of key Subcontractors if the positions listed are to be filled by Subcontractors.			
<<Guidance note: for each role, a description of the key responsibilities should be provided, together with the qualifications and minimum number of years' experience >>			

METHODOLOGY <<LPC BASIC/ADVANCED>>		FORM E	
FACTOR		STANDARD	
		Pass / Fail	
Health and Safety			
Organisational Structure			
Financial management and Reporting			
Construction Programme			
Temporary Works			
Structures			
Earthworks			
Pavement and surfacing			
Environmental and Consent Compliance			
Liaison (including Iwi and stakeholder consultation)			
Quality assurance			
Management of Risk			
Co-operative work environment			
Customer Management			
Permanent stormwater management			
Miscellaneous			
Maintenance Operations			
[Others]			
Tenderer		Methodology Rating	
<<Guidance Notes:			
<ul style="list-style-type: none"> Above are examples only. The Consultant is to nominate factors relevant to their project. The factors should be limited to 5-8 and be project specific.>> 			
Evaluator's Comments (Continue on Separate Sheet if Necessary)			
<p>Note for TET: Methodology relates to the proposed method of carrying out the Contract Works, and should include methodology of key Subcontractors where work is to be carried out by Subcontractors.</p>			

8 TENDER FORM

TENDER FOR: Contract Number [NZTA Contract No]
[Contract Name]



Tenders Secretary
Waka Kotahi NZ Transport Agency
[Delivery Address]
[City]

1. The Tenderer (the undersigned): _____

(Hereinafter called "the tenderer") hereby offer to New Zealand Transport Agency (Waka Kotahi NZ Transport Agency) (Waka Kotahi) to make and execute the above-mentioned work in accordance with the drawings, specifications and conditions of contract for the sum (in words) of

\$(_____) excluding GST

2. The Tenderer is/is not (delete as applicable) a registered person in terms of the Goods and Services Act 1985.

The Tenderer's GST registration number is: _____

3. The Tenderer's current Prequalification Work Category(s) and Classification Level(s). _____

4. The tenderer understands that Waka Kotahi reserves the right to reject any or all tenders.

The Tenderer declares that at the time of submitting this tender, the Tenderer is not aware of any actual, potential or perceived conflict/s of interest in relation to the matters covered by these Tender Documents having made all reasonable and proper enquiries or that may prevent the Tenderer from undertaking the Contract Works and/or acting for Waka Kotahi and that the Tenderer will keep Waka Kotahi updated in relation to any such conflict of interest and/or any relationships or circumstances that may give rise to such conflict of interest in relation to the undertaking of the Contract Works.

6. The Tenderer agrees that this offer will remain valid for 3 months after tenders close.

7. The Tenderer understands that the Contract is included in the Principal's PAI programme.

Tenderer's Signature _____

Contact Name _____

Postal Address _____

Telephone No. _____

Email Address: _____

9 SCHEDULE OF PRICES

<<This page is to be left blank>>

Guidance Notes for preparing the Schedule of Prices (SoP)

1. When preparing the schedule of prices (SoP) The Consultant shall consider the use of the SoP by the contractor and the consultant in the Implementation phase, with the aim of efficient financial management during the construction phase of the project, to this end:
 - a. The Schedule should be in Excel Format, and in a form that can be issued to tenderers electronically.
 - b. The Consultant shall, as far as practicable:
 - structure the items in the SoP in accordance with the "standardised costing model" used in the *Waka Kotahi SM014 Cost Estimation Manual*.
 - Arrange the items sequentially in the SoP so as to follow the construction sequence of the works.
 - Structure items in the SoP so as to assist the contractor in the financial management of the project. The items should be scheduled to coincide with the sequencing of the construction of the works or the grouping together of works that are likely to be subcontracted out.
2. The Consultant is to refer to Waka Kotahi Specifications, which may require items to be itemised and scheduled in a particular way.
3. Each item in the schedule of prices shall have a corresponding method of payment in the basis of payment.
4. Where there is a risk of variations to a scheduled item (e.g. quantity), to the extent possible, items shall be scheduled with the appropriate unit of measurement (m, m², m³ etc.) so that any Variations can be fairly valued.
5. Where there is a risk of an item of work, which is not indicated on the contract drawings, the consultant shall consider the use provisional sums, where the Consultant nominates the amount the Contractors add to their tenders (and are removed from the price evaluation of tenders)

10 PREAMBLE TO BASIS OF MEASUREMENT AND PAYMENT

10.1 Introduction

10.1.1 This section outlines the basis of payment for this contract. The following overrides any basis of payment specified or implied elsewhere in the Contract Documents or in any Waka Kotahi standard specification, other standard, manual or publication referred to.

10.2 Definitions

10.2.1 The defined terms in this Basis of Measurement and Payment shall have the same meanings as defined in the Conditions of Contract.

10.3 Item Description

10.3.1 The item description identifies the work covered and shall be read in conjunction with the basis of payment. The Contractor shall determine the nature and extent of the work from the Drawings, Project Specifications and the Contract.

10.4 Item Quantity

10.4.1 Metric units shall be used for measurement throughout this contract.

10.4.2 The Contractor shall not rely on the quantities provided in the schedule of prices, or dimensions provided on the Design Drawings for ordering Materials or pricing.

10.4.3 For items not measured as Lump Sums, the quantity shall be measured net from dimensions stated in the contract. No allowance shall be made for over excavation, laps, cutting, waste etc. unless specifically stated. All cubic metre measurements shall be on a solid measure basis unless stated otherwise.

10.5 Item Unit

10.5.1 Units of measurement shown in the “unit” column of the schedule of prices have been abbreviated as follows:

ABBREVIATION	DESCRIPTION
Day	Calendar Day
Hr	Hour
LS	Lump Sum
m	Linear metre
m ²	Square metre
m ³	Cubic metre
No.	Number
%	Percent
t	Tonne

10.6 Item Rate

- 10.6.1 The tendered rate shall be deemed to include the costs of complying with all conditions, obligations and liabilities in the Contract Documents, and the supply of all Plant, labour, Materials and transportation required to complete the item of work.
- 10.6.2 Unless scheduled separately, all tendered rates shall include allowances for miscellaneous items, accommodation, supervision, normally expected risks, transport of equipment, temporary works, setting out, inspections, reporting, attendances at meetings, communications, programming, records, quantity measurement, claims for payment, testing and quality control measures, permits, administration, plus On-Site Overheads and Off-Site Overheads and Profit.

10.7 Provisional Items

- 10.7.1 Provisional Items provide for work that may or may not be carried out by the Contractor, but which must still to be priced by the Contractor. This work shall only be performed on the instruction of the Engineer.
- 10.7.2 The amount payable to the Contractor for work covered by provisional items shall be for the quantity or work directed by the Engineer, at the tendered rate.
- 10.7.3 The tendered rate for provisional items shall fully compensate the Contractor for all their costs for that item, including but not limited to: labour, Plant, Materials, On-Site Overheads, Off-Site Overheads and Profit.

10.8 Provisional Sums

- 10.8.1 Provisional Sums are amounts of money entered in the schedule of prices by Waka Kotahi. These sums provide for work that may or may not be carried out by the Contractor. Such work shall only be performed on the written instruction of the Engineer.

10.9 Monthly Statements

- 10.9.1 Unless the Principal and the Contractor agree otherwise in writing, the Contractor shall each month submit to the Engineer a progress payment claim. The progress payment claim shall:
- (a) Claim the appropriate payment for each item identified in the schedule of prices.
 - (b) Include an editable electronic file version of the claim.
 - (c) Comply with the requirements of clause 12.1 of the Contract.
- 10.9.2 Before payment, the Engineer will check all amounts claimed by the Contractor for work, and process the payment claim in accordance with 12.2 of the Contract.

10.10 Payment Details

- 10.10.1 Progress payments will be made in accordance with clauses 12.1 and 12.2 of the Contract.
- 10.10.2 All payments will be by direct credit only.

10.11 Quality Assurance

- 10.11.1 All costs incurred by the Contractor in undertaking and completing all quality assurance testing as specified in the contract documents shall be deemed to be incorporated in the tendered rates, unless scheduled separately.
- 10.11.2 Further to clause 12.1.3 of the Contract payment of 80% of the tendered rate will be made for any item for which the compliant results are available, but have not been submitted to the Engineer, until such time as all records and IANZ, or other approved, certified test results required by the Contract Documents have been submitted and accepted by the Engineer.

10.12 Variations

- 10.12.1 Variations, including Dayworks that constitute a change to the detailed design must be ordered by the Engineer in writing and shall be valued according to the procedures outlined in section 9 of the Contract.
- 10.12.2 Variations may be valued as positive (increased scope), or negative (reduced scope).
- 10.12.3 Variations will be valued in accordance with clause 9.3 of the Contract.

10.13 Unscheduled Work

- 10.13.1 No payment shall be made for any unscheduled work without the written approval of the Engineer.
- 10.13.2 Where payment is made on Dayworks, the Contractor's representative shall certify and provide to the Engineer the priced "daily job record sheet(s)" for all unscheduled works undertaken to meet the project specification. The representative must provide the original record sheet within 24 hours of the work being carried out.
- 10.13.3 Each record sheet shall contain the following:
 - (a) Description of work undertaken, including date undertaken, location and extent
 - (b) Labour Hours
 - (c) Type of plant, total plant hours, rate and total value claimed for each item of plant
 - (d) All invoices for Materials used, certified by the contractor as being accurate. Invoices for materials used which are not available within 24 hours of the work being carried out shall be forwarded to the Engineer within **48** hours of receipt from the supplier
 - (e) Signature, and name of the Contractors personnel supervising the work.

11 BASIS OF MEASUREMENT AND PAYMENT

11.1 Description of item in Schedule of Prices

SoP Item(s) <<give SoP item reference numbers here>>

<<Guidance Note: **The Consultant must tailor this part of the document to project specific needs.** The intention is that the order of the SoP follows the construction sequence. The order item split, is up to the Consultant to develop to best meet the needs of their project. No lump sum should be greater than 5-10% of the Engineers Estimate for the contract. Each item in the Schedule of Prices must have a corresponding basis of payment describing what work is included, and how it will be measured and paid. In writing this section consideration should be given to the particular method of measuring progress made, for each item>>

12 CONTRACT AGREEMENT

CONTRACT FOR _____

CONTRACT NUMBER _____

THIS AGREEMENT is made on _____ 20 _____

BETWEEN _____ ('the Contractor')

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

IT IS AGREED as follows:

1. The Contractor shall carry out the obligations imposed on the Contractor by the Contract.
2. The Principal shall pay the Contractor the sum of \$ _____
or such greater or less sum as shall become payable under the Contract together with goods and services tax at the times and in the manner provided in the Contract.
3. Each party agrees to the terms and conditions as set out in the Contract.
4. The Contract comprises the following documents:
 - (a) This Contract Agreement;
 - (b) The notification of acceptance of tender or award of Contract;
 - (c) The following post-tender documents <<Guidance note: identify any agreed post-tender documents to be included, for example correspondence or minutes of pre-let meetings dealing with tender tags etc>>

 - (d) Notices to Tenderers <<Guidance note: give details with dates>>:

 - (e) Schedule 1: Special Conditions of Contract – Specific Conditions of Contract;
 - (f) Schedule 2: Special Conditions of Contract – Other Conditions of Contract;
 - (g) The General Conditions of Contract NZS3910: 2013 (including other Schedules);
 - (h) Specifications issued prior to the Date of Acceptance of Tender;
 - (i) Drawings issued prior to the Date of Acceptance of Tender;
 - (j) The Schedule of Prices <<Delete if not applicable>>
 - (k) The Contractor's tender;
 - (l) The Tender Documents (including the Instructions for Tendering, the Schedule to the Conditions of Tendering and the Conditions of Tendering); and

- (m) The following additional documents: <<Identify any additional documents to be included for example agreed correspondence>>

5. The documents comprising the Contract shall be taken as mutually explanatory, but in the case of ambiguity or conflict the priority of documents shall be as listed in clause 4 above, with each document prevailing over a document lower in the list.
6. This Contract shall constitute the entire agreement between the parties. This Contract supersedes all prior negotiations, representations, and warranties, except insofar as the same are expressly incorporated herein.
7. This Contract may be executed in counterparts and by electronic signature, and provided each party has executed a counterpart, the counterparts together shall constitute a binding and enforceable agreement between the parties. A party shall be entitled to transmit an electronic copy of this Contract by email (or other electronic means) to the other party.

SIGNED BY

Authorised Signatory of Contractor

SIGNED BY

Authorised Signatory of Principal

13 GENERAL CONDITIONS OF CONTRACT

The General Conditions of Contract shall be those included in NZS 3910: 2013 **Conditions of Contract for Building and Civil Engineering Construction** and the following clauses.

<<Important Guidance note: **When preparing any part of this tender, document, if there are sections/schedules that you do not require e.g. Schedule 17 - Cost Fluctuations within the Conditions of Contract, , DO NOT DELETE these schedules and ensure that you insert text at top of page "This Section Not Used">>.**

14 SCHEDULE TO THE GENERAL CONDITIONS OF CONTRACT

Schedule 1 – Special Conditions of Contract - Specific Conditions of Contract

(Clause numbers refer to General Conditions)

Contract for: [Contract Number, Contract Name]

Clause in General Conditions	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>
1	INTERPRETATION	
1.2	Definitions	
	The Principal is:	New Zealand Transport Agency , a Crown entity, established on 1 August 2008 by Section 93 of the Land Transport Management Act 2003
	of:	Click to enter street address
1.2, 10.2	Separable Portions	
	<ul style="list-style-type: none"> Are there any Separable Portions in this Contract? 	Select yes or no
	<ul style="list-style-type: none"> If yes, the Separable Portions are as follows and as further defined in the Contract. 	Click to enter reference
2	THE CONTRACT	
2.1	Type of Contract	
2.1.1	This Contract is a:	<i>(select one to apply, (a) or (b))</i>
	(a) Lump sum contract governed by 2.2	<input type="checkbox"/>
	(b) Measure and value contract governed by 2.3	<input type="checkbox"/>
2.5	Local authority contracts in public places, and road contracts	
2.5.1	Is this Contract a local authority contract to which 2.5.2 applies	Select yes or no
2.5.2	Is this Contract a contract in a public place to which B1 and B2 of Appendix B apply?	Select yes or no
2.5.4	Is this Contract a road contract to which Appendix B applies?	Select yes or no
	If yes, the allowance under B3 shall be:	Refer to Schedule 1, 10.3.1
2.6	Evidence of Contract	
2.6.2	How is the Contract Agreement executed?	
	(a) As stated in 2.6	<input checked="" type="checkbox"/>
2.7	Documents prepared by the Engineer or Principal	
2.7.1	Copies of the Contract shall be supplied without charge to the Contractor in the following electronic format:	pdf

Clause in General Conditions	Title and subject matter	Specific condition data (Expand cells if required or add reference to further detail provided in Schedule 2.)
2.8	Documents prepared by the Contractor	
2.8.2	Copies of the documents referred to in 2.8.2 shall be supplied without charge to the Engineer:	
	• Number of hard copy sets:	Three (3)
	• In the following electronic form:	pdf
3.	BONDS	
3.1	Contractor's Bond	
3.1.1	Is a Contractor's Bond required? Note - Bonds are accepted in principle from those insurance companies and bond companies who hold a minimum interactive S&P rating of 'A'.	Select yes or no <<Guidance note: Default is no for performance bonds. Refer to section 1.9.8, 1.9.9, and 1.9.10. of the Waka Kotahi Contract Procedures Manual (SM021) for guidance on the bonding policy>>
3.2	Principal's Bond	
3.2.1	Is a Principal's Bond required?	
5.	GENERAL OBLIGATIONS	
5.4	Possession of the Site	
5.4.1	The Contractor shall be given possession of the Site	(select one to apply, (a) or (b))
	(a) 10 Working Days after the Date of Acceptance of Tender:	<input type="checkbox"/>
	(b) On the following date:	<input type="checkbox"/> Click to enter a date <input type="checkbox"/> The date as nominated in the Tender Information Schedule, within the period <<x>> to <<y>> <<Guidance note: use this option where the Contractor is allowed to nominate Possession of Site date>>
5.4.3	Limits on the Contractor's right of entry to adjoining properties are:	Nil or "As detailed in the Specification"
5.5	Separate Contractors	
5.5.1	Separate Contractors who may be carrying out work on the Site concurrently with the Contract Works are:	Contract Number, Contract Name [Contractor to be named]
5.5.2	Are facilities for Separate Contractors required?	Select yes or no
	If yes, details of facilities required are:	Click to enter text
5.6	Care of works and Site	
5.6.6(g)	Further risks specifically excepted are:	Nil <<Guidance note: default is NIL. Insurance should be consulted if you wish to change from the default>>
5.10	Programme	
5.10.4	Is the programme required to be a Comprehensive Programme?	Select yes or no
5.10.4(e)	If yes, other requirements for the Comprehensive Programme are:	Programme shall be consistent in principle, philosophy and milestones with the submitted Tender

Clause in General Conditions	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>
		Methodology and Tender Programme unless exception is requested and approved by the Engineer.
5.10.5	The Comprehensive Programme shall use the following software:	Click to enter text <<e.g. MS Project Version X>>
5.10.6	Updates of the Comprehensive Programme shall be provided at the following intervals:	Click to enter text <<To be determined based on the nature of the work e.g. fortnightly, monthly>>
5.11	Compliance with laws	
5.11.3	Exceptions to the Principal's obligations to obtain licences under 5.11.3 are:	Nil <<Default is "Nil" unless Principal feels that the Contractor is best to obtain certain licences.>>
5.11.4	Exceptions to the Contractor's obligations to give notices and obtain other licences under 5.11.4 are:	Nil
5.17	Safety plan	
	Is a Site-specific safety plan required to be prepared by the Contractor?	Select yes or no
5.18	Quality Management Plan	
	Is a Quality Management Plan (QMP) required to be prepared by the Contractor?	Select yes or no
5.19	Traffic management plan	
	Is a traffic management plan required to be prepared by the Contractor?	Select yes or no
5.20	As-built drawings and operation and maintenance manuals	
5.20.1(a)	Are as-built drawings required to be prepared by the Contractor?	Yes, as set out in the project specification
5.20.1(b)	Are operation and maintenance manuals required to be prepared by the Contractor?	Yes, as set out in the project specification
6.	THE ENGINEER	
6.1	Appointment of the Engineer	
6.1.2	The Engineer is:	Name, Company, Street Address
	Whose professional qualification is:	Click to enter text
6.4.6	The Principal will recover the cost for reinspection, remeasuring or retesting at the following rates:	
	• Engineer or other professional	[\$250.00] per hour (exclusive of GST)
	• Other personnel	[\$200.00] per hour (exclusive of GST)
	• Vehicle running	[\$1.00] per km (exclusive of GST)
	• Sub-consultant invoices	Cost plus [15%]
7.	INDEMNITY	
7.1.5	Liability Cap	[Insert amount of cap] <<Guidance note: click here for detailed guidance. For any Liability Cap assistance email Procurement@NZTA.govt.nz with the subject "Liability Cap assistance" >>

Clause in General Conditions	Title and subject matter	Specific condition data (Expand cells if required or add reference to further detail provided in Schedule 2.)
8.	INSURANCES	
8.1	General	
8.1.1	The party identified below shall arrange the following insurances referred to in the following clauses	
	8.3 or 8.8 Construction	PrincipalPrincipal
	8.8 Existing structure(s) and contents	<p>Select Principal if insurance is requiredSelect Principal if insurance is required</p> <p><<Guidance note: Approval for insurance levels by the Senior Managers Procurement and Risk and Assurance is required for any contract where construction work is contemplated on significant strategic parts of the Waka Kotahi asset, e.g., the Auckland Harbour Bridge, Newmarket Flyover, Thorndon Elevated Motorway, Christchurch Lyttleton Road Tunnel. While Waka Kotahi does not insure the roading network, bridges or tunnels, it is possible that Waka Kotahi may need to insure the asset being worked on. Note that this would only apply to contracts where the structure supporting the asset was being worked upon and there is a serious risk of structural damage. Note whether insurance currently exists on the structure. Existing property can include existing structures, buildings, plant, stock, machinery, equipment, supplies, contents and real property of every description either owned by the Named Insured or for which they assume responsibility, but only in respect of Events during the course of completing the Insured Operations. Existing Property is specifically excluded under this Policy unless an amount is specified against this item in the Schedule. Contract Works limit of liability for Principal's Existing Property is 25% of the estimated contract value at commencement subject to a minimum of \$2,500,000 and a maximum of \$25,000,000 on any one Occurrence on any one contract.>></p>
	8.4 Plant	ContractorContractor <<Guidance note: Default is "Contractor">>
	8.5 or 8.9 Public liability	PrincipalPrincipal
	8.5.2 Motor Vehicle	Contractor
	8.6 Professional Indemnity	Not requiredNot required <<Guidance note: Default is "not required" however if there is an element of design that the Contractor is required to do e.g. retaining wall, then they should be required to insure. The value of the level of insurance is stated in 8.6.1 below.>>
8.1.6	The following forces of nature shall be specifically insured under 8.3 or 8.8 as applicable:	<<Guidance note: Select "yes" on all items under 8.1.6 if PAI is used, otherwise yes or no, as appropriate given the location of the site, for Volcanic activity>>
	(a) Earthquake	Select yes or no
	(b) Tsunami	Select yes or no
	(c) Tornado	Select yes or no
	(d) Cyclone	Select yes or no

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>
	(e) Storm	Select yes or no
	(f) Flood	Select yes or no
	(g) Lightning strike	Select yes or no
	(h) Volcanic activity	Select yes or no
	(i) Landslip	Select yes or no
	(j) Hydrothermal Activity	Select yes or no
	(k) Geothermal Activity	Select yes or no
8.3, 8.8	Construction insurance <i>(These items are required to be completed whether the Contractor or the Principal is the insuring party (see 8.1 above))</i>	
8.3.2, 8.8	The following shall have their respective interests noted in the construction insurance policy:	<<Guidance Note: list any third parties interests that need to be a named "interested" in the insurance policy>>
8.3.3, 8.8	Where construction insurance is required (see 8.1 above), the amount of insurance to be effected for the Contract Works and Materials shall be for not less than the sum of the Contract Price, after acceptance of the tender or other offer, plus the following allowances:	
	(a) An allowance for the Cost of demolition, disposal and preparation for replacement work, equal to:	
	(ii) The percentage of the Contract Price adjusted as above, stated in the right hand column:	<input checked="" type="checkbox"/> 5%
	(b) An allowance for professional services fees including the Cost of clerks of works and inspectors, equal to:	
	(ii) The percentage of the Contract Price adjusted as above, stated in the right hand column:	<input checked="" type="checkbox"/> 5%
	(c) An allowance for items to be incorporated in the Contract Works, the Cost of which is not included in the Contract Price, equal to:	
	(i) The amount in the right hand column:	<input type="checkbox"/> [\$xxxxx] <<Guidance Note: Use absolute values if known>>
	(d) An allowance for an increase in the Contract Price due to Variations, equal to:	
	(i) The amount in the right hand column:	<input type="checkbox"/> [\$xxxxx] <<Guidance Note: If this amount is over 15%, you must contact insurance@nzta.govt.nz>>
	(e) An allowance for an increased construction Costs due to inflation, equal to:	
	(i) The amount in the right hand column:	<input checked="" type="checkbox"/> \$0.00

Clause in General Conditions	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>
	The insurance shall make provision for automatic change of cover for items (a) and (e) above, to provide insurance for any additions to or deductions from the Contract Price which occur after acceptance of the tender or other offer.	
8.4	Contractor arranged Plant insurance	
	Where Plant is required to be insured (see 8.1 above):	<i>(Select one to apply, (a) or (b))</i>
	(a) The Contractor shall insure the following items of Plant on Site for the amounts stated:	<input type="checkbox"/> [list specific items] <<Guidance note: List any items of plant of an exceptional nature and specifically critical to the timely completion of the Contract Works>>
	(b) The Contractor shall insure each item of Plant on the Site having a current market value of more than:	<input checked="" type="checkbox"/> \$200,000\$200,000 <<Guidance note: default is \$200k if required, otherwise choose "Not required">>
8.5	Contractor arranged public liability insurance	
8.5.1	Where required (see 8.1 above), public liability insurance shall be effected by the Contractor for an amount not less than:	N/A
8.5.2	Where required (see 8.1 above), motor vehicle third party liability insurance shall be effected for an amount not less than:	[\$5,000,000]
8.6	Contractor arranged professional indemnity insurance	
	<<Guidance Note: For low risk contracts the PI level should be calculated at 5 x the design fee at a minimum amount of \$500k and maximum of \$2M. For high risk project specific contracts Insurance Levels must be reviewed and approved by the Senior Managers Procurement and Risk and Assurance via Appendix XXIII of SM021 Manual (insurance@nzta.govt.nz). Contracts are considered high risk where: 1) the contract period is greater than 3 years, OR 2) the contract value is greater than \$50M, OR 3) bridge construction or retaining walls or other structures with a cost greater than \$10M OR 4) the contract involves works generally considered to be of a high risk nature e.g. particularly challenging geology, or a significant amount of work in a tidal zone.>>	
8.6.1	Where required (see 8.1 above), professional indemnity insurance for design by the Contractor shall be effected for an amount not less than:	
	• For any one claim:	[\$XXXXXX]
	• And for an amount in the aggregate of:	[\$XXXXXX]
8.6.2	Sub limits of liability for design of parts of the Contract Works by Subcontracts shall not be less than:	[List specific parts] or [Not required] <<Guidance note: list specific part(s) of Contract Works and applicable \$ sub-limits for any one claim and for an amount in the aggregate, or state if not required>>
8.8	Principal arranged construction insurance <i>(refer also to 8.3)</i>	
	In accordance with 8.7.2, the insurance policy wording title for 8.8.1 and 8.8.2 (a), (b), and (c) is:	Waka Kotahi as Principal and its Contractors and their Sub Contractors for their respective rights and interests
	In accordance with 8.7.2, the extraordinary exclusions, conditions, warranties or endorsements to the policy for 8.8.1 and 8.8.2 (a), (b) and (c) are:	Specific policy wording applicable to this contract will be provided by Risk and Assurance.
8.8.1	Where the Principal is required to effect construction insurance (see 8.1 above).	

Clause in General Conditions	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>																							
	The lead insurer can be found at:	https://www.marsh.com/nz/industries/transportation/nz-transport-agency-pai.html																							
	The Nominal Deductibles are:	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th rowspan="2"></th> <th colspan="3">Original Estimated Contract Value</th> </tr> <tr> <th>0 to 10m</th> <th>>10m to 50m</th> <th>>50m</th> </tr> </thead> <tbody> <tr> <td>Each loss except as below:</td> <td>\$10,000</td> <td>\$25,000</td> <td>\$50,000</td> </tr> <tr> <td>Major Perils</td> <td>\$25,000</td> <td>\$50,000</td> <td>\$100,000</td> </tr> <tr> <td>Wet Work Contracts</td> <td>\$150,000</td> <td>\$200,000</td> <td>\$300,000</td> </tr> <tr> <td>Tunnelling Contracts (including excavations / underpasses >100m)</td> <td>\$150,000</td> <td>\$200,000</td> <td>\$300,000</td> </tr> </tbody> </table> <p>For this contract, the Original Estimate Contract Value is in the range >\$0 to \$10m>\$0 to \$10m <<Guidance note: Consultant to ensure the above deductibles table is consistent with the latest and current Waka Kotahi PAI policy wording at the time of tender close>></p>		Original Estimated Contract Value			0 to 10m	>10m to 50m	>50m	Each loss except as below:	\$10,000	\$25,000	\$50,000	Major Perils	\$25,000	\$50,000	\$100,000	Wet Work Contracts	\$150,000	\$200,000	\$300,000	Tunnelling Contracts (including excavations / underpasses >100m)	\$150,000	\$200,000	\$300,000
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Tunnelling Contracts (including excavations / underpasses >100m)	\$150,000	\$200,000	\$300,000																						
8.8.2(a)	The existing structures are:	N/A <<Guidance note: default position is that this is not relevant to Waka Kotahi projects. If unsure email insurance@nzta.govt.nz for project specific guidance. If there are Waka Kotahi existing structures that are part of the physical works (i.e. additions, alterations, repairs, maintenance) then 8.8.2(a) and 8.8.2(c) need to be completed>>																							
8.8.2(b)	Other structures in the vicinity are:	N/A <<Guidance note: default position is that this is not relevant to Waka Kotahi projects. If unsure email insurance@nzta.govt.nz for project specific guidance>>																							
8.8.2(c)	Contents insurance are:	N/A <<Guidance note: default position is that this is not relevant to Waka Kotahi projects. If unsure email insurance@nzta.govt.nz for project specific guidance>>																							
8.9	Principal's option to insure public liability																								
8.9.1	Where required (see 8.1 above), the Principal shall effect public liability insurance for an amount not less than:	Select an optionSelect an option																							
	The lead insurer can be found at:	https://www.marsh.com/nz/industries/transportation/nz-transportation-agency-pai.html																							
	The Nominal Deductibles are:	<<Guidance note: The Nominal Deductibles should be inserted from https://www.marsh.com/nz/industries/transportation/nz-transport-agency-pai.html >>																							

Clause in General Conditions	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>												
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	Original Estimated Contract Value													
	0 to 5m	>5m to 10m	>10m											
Each occurrence (including Maintenance Contracts)														
	In accordance with 8.7.2:													
	<ul style="list-style-type: none"> The policy wording title is: 	Specific policy wording applicable to this contract will be provided by Risk and Assurance												
	<ul style="list-style-type: none"> Extraordinary exclusions, conditions, warranties, or endorsements to the policy are: 	Specific policy wording applicable to this contract will be provided by Risk and Assurance												
8.9.2	Such public liability insurance may include sub-limits for: <i>(specify as applicable or state 'not applicable')</i>													
10. TIME FOR COMPLETION														
10.1 Commencement														
10.1.3	Winter Period	[1 May] through [31 August] inclusive. <<Guidance Note: The Consultant shall consider the appropriate Winter Period for pavement and surfacing construction exclusion, noting that this will vary with the location of the works. If uncertain the Consultant shall consult with the Waka Kotahi Pavement Team. Any changes to the Winter Period will require consequential change to the Construction Season.>>												
	Construction Season	[1 September] through [30 April] inclusive. <<Guidance Note: Any changes to the Winter Period above will require changes to the Construction Season.>>												
10.2 Due Date for Completion														
10.2.1	The periods to be used for calculating the Due Date for Completion are:	<i>(select one to apply, (a), (b) or (c))</i>												
	(a) For the Contract Works:	Click to enter number of Working Days <i>(Working Days)</i>												
	(b) For any Separable Portions:	Click to enter number of Working Days <i>(Working Days)</i> Click to enter details												
10.3 Extensions of time														
10.3.1(b)	An allowance for inclement weather	Click to enter number of Working Days <i>(Working Days)</i>												
10.4 Practical Completion Certificate														
10.4.5	Prior to issue of the Practical Completion Certificate:	<i>(select one to apply, (a), (b) or (c))</i>												

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>
	(a) Producer Statements in the form of Schedule 6 are required;	<input checked="" type="checkbox"/> <<Default>>
	(b) Producer Statements as set out in the following parts of the Contract are required:	<input type="checkbox"/> [Project Specification Section X]
	(c) Producer Statements are not required.	<input type="checkbox"/>
10.5	Damages for late completion <<Guidance note: Where liquidated damages are provided for, the amount must be a genuine pre-estimate of the likely loss that would result from delay of completion. Where liquidated damages are provided for Separable Portions it may be necessary to provide different rates for each Separable Portion. Where liquidated damages are not provided, the Principal can recover and the Contractor will be liable only for such actual loss as the Principal can prove has resulted from the late completion, being loss of a kind reasonably foreseeable to the parties at the time the contract was made as being likely to result	
10.5.1	Liquidated damages shall be applied as follows:	
	• In respect of the Contract Works:	<input type="checkbox"/> [\$XXX] per Working Day
	• In respect of the Separable Portions:	<input type="checkbox"/> [\$XXX] per Working Day for each Separable Portion
11.	DEFECTS LIABILITY	
11.1	Defects Notification Period	
	The Defects Notification Period shall be: (3 Months unless otherwise stated)	
	• In respect of the Contract Works:	[52] weeks
	• In respect of the Separable Portions:	[52] weeks
11.3	Final Completion Certificate	
11.3.2	Prior to issue of the Final Completion Certificate:	<i>(select one to apply, (a), (b) or (c))</i>
	(a) Producer Statements in the form of Schedule 6 are required;	<input checked="" type="checkbox"/> <<Default>>
	(b) Producer Statements as set out in the following parts of the Contract are required:	<input type="checkbox"/> [Project Specification Section X]
	(c) Producer Statements are not required.	<input type="checkbox"/>
11.5	Warranties	
11.5.1		<i>(select one to apply, (a) or (b))</i>
	(a) No warranties are required;	<input checked="" type="checkbox"/>
	(b) The Contractor shall provide warranties as set out in the Contract for the following items of work:	<input type="checkbox"/> [State the items]
11.6	Guarantees	
11.6.1, 11.6.2		<i>(select one to apply, (a) or (b))</i>
	(a) No guarantees are required;	<input checked="" type="checkbox"/> <<Default>>

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>
	(b) The Contractor shall provide guarantees in the following form:	<input type="checkbox"/> [State form]
12.	PAYMENTS	
12.1	Contractor's payment claims	
12.1.3(b) (iii)	Advances for Materials delivered to the Site	
	(a) Advances for Materials delivered to the Site but which have yet to be incorporated in the Contract Works shall not be made;	<input checked="" type="checkbox"/>
12.1.3(b) (iv)	Advances for Temporary Works or Plant	
	(a) Advances for Temporary Works or Plant shall not be made.	<input checked="" type="checkbox"/>
12.1.3(b) (iv)	Advances for Materials not yet on Site	
	(a) Advances for Materials not yet on Site shall not be made.	<input checked="" type="checkbox"/>
12.3	Retention monies	
12.3.1, 12.3.2	The percentage to be retained from each progress payment and the limit of the total sums retained shall be in accordance with the following:	
	(a) For the Contract Works, a total retention of: <ul style="list-style-type: none"> • 10% on the first \$200,000, and • 5% on the next \$800,000, and • 1.75% on amounts in excess of \$1,000,000, and • With a maximum total retention when aggregated of \$200,000. 	<input checked="" type="checkbox"/>
<p>The amount to be retained in respect of the Contract Works in accordance with this clause shall not be reduced, until all Asset Register (RAMM) information, draft as-builts and operations and maintenance manuals required to be submitted at or before Practical Completion, have been submitted to the Engineer. The retention monies shall not be reduced, until all RAMM information, final as-builts and operations and maintenance manuals required to be submitted at or before the end of the Defects Notification Period has been submitted to the Engineer <<Guidance Note: Project Specification to detail all RAMM information required from the Contractor for RAMM updates.>></p>		
12.3.3	Bond in lieu of retention	<i>(select one to apply, (a) or (b))</i>
	(a) The Contractor may provide a bond in lieu of retentions. The percentage to be retained from each progress payment and the limit of the total sums retained shall be nil if the Contractor provides a Bond in Lieu of Retentions (Schedule 5). The value of the bond shall be the applicable retention amount plus a further 10%	<input type="checkbox"/> <<Guidance note: only select this clause if contract value greater than \$100,000>>
	(b) The Contractor may not provide a bond in lieu of retentions	<input type="checkbox"/> <<Guidance note: only select this clause if contract value less than \$100,000>>

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>
12.8	Cost fluctuations	
	(a) Cost fluctuations shall not be paid;	<input checked="" type="checkbox"/> <<Guidance note: For some contracts it may be appropriate to allow cost fluctuations – advice on same can be sought from procurement@nzta.govt.nz >>
12.13	Goods and services tax	
12.13.2	Payment Schedules provided by the Engineer:	<i>(select one to apply, (a) or (b))</i>
	(a) Shall not be in the form of a tax invoice;	<input type="checkbox"/>
	(b) Shall be in the form of a buyer created tax invoice and the parties agree not to issue any other tax invoice for items covered by the Payment Schedule.	<input type="checkbox"/>
13.	DISPUTES	
13.4	Arbitration	
13.4.3	If required, the arbitrator shall be nominated by the following Person:	The then President of the New Zealand Law Society or his or her nominee
15.	SERVICE OF NOTICES	
15.1.2	For the purposes of service of written notice:	
	(a) The address of the Principal is:	
	Postal address:	
	Delivery address:	
	Mark the attention of:	
	Email address:	
	Other agreed means of electronic communication and address detail:	
	(b) The address of the Contractor is:	
	Postal address:	
	Delivery address:	
	Mark the attention of:	
	Email address:	
	Other agreed means of electronic communication and address detail:	
	(c) The address of the Engineer is:	
	Postal address:	
	Delivery address:	
	Mark the attention of:	
	Email address:	
	Other agreed means of electronic communication and address detail:	

14.1 Schedule 2 - Special Conditions of Contract – Other Conditions of Contract

These conditions amend and supplement the General Conditions. Clause numbers refer to NZS 3910:2013.

SECTION 1 – INTERPRETATION

In addition to 1.2 Definitions, add in the following definitions:

- **CONSTRUCTION SEASON** means the period specified in Schedule 1.
- **DATA BREACH** means any incident involving facilities, systems, personnel, suppliers and/or Subcontractors that:
 - (a) Involves (or gives rise to a real risk of) unauthorised or accidental access to, or use, disclosure, alteration, loss or destruction of, any of the Principal's Personal Information; or
 - (b) prevents the Principal from accessing the Principal's Personal Information on either a temporary or permanent basis; or
 - (c) would prompt a reasonable and prudent person in the Principal's position to notify (or consider notifying) the incident to the Privacy Commissioner and/or one or more individuals under the NZ Privacy Laws.
- **HSAW ACT** means the Health and Safety at Work Act 2015.
- **JOINT VENTURE** has the meaning given to that term in 17.1.1.
- **LIABILITY CAP** has the meaning given to that term in 7.1.5.
- **LIVING WAGE RATE** means the higher of:
 - a) \$22.75 per hour; and
 - b) The New Zealand living wage hourly rate promoted by Living Wage Aotearoa New Zealand (or a similar or equivalent nationwide living wage hourly rate) at the time the relevant Contract Works are carried out.
- **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.
- **OIA** means the Official Information Act 1982.
- **PERSONAL INFORMATION** has the meaning given in the Privacy Act 2020.
- **PRINCIPAL'S PERSONAL INFORMATION** means Personal Information made available to the Contractor by or on behalf of the Principal, or collected by the Contractor for the Principal, in connection with this Contract.
- **RMA** means the Resource Management Act 1991.
- **STATUTORY FUNCTIONS** has the meaning given to that term in 1.3.11.
- **UNDERGROUND SERVICES** means existing pipework, cables, conduits, conveying services such as electricity, gas, water, waste and electronic communications, located below the existing ground service.
- **WILFUL DEFAULT** means an intentional or reckless act or omission carried out with disregard for harmful and avoidable consequences
- **WINTER PERIOD** means the period specified in Schedule 1.

Insert new 1.3.9 – 1.3.11 as follows:

- 1.3.9** If any one or more of the provisions contained in the Contract is invalid, illegal or unenforceable in any respect under any applicable Act or Regulation, the validity, legality and enforceability of the remaining provisions contained in the Contract will not in any way be affected or impaired.
- 1.3.10** No amendment to the Contract will be binding on the parties unless in writing and signed by an officer or representative of each party having the authority to do so.
- 1.3.11** The Contractor recognises that the Principal has certain statutory powers, functions and/or regulatory roles, and is bound by particular statutory responsibilities (**Statutory Functions**). The Contractor acknowledges and agrees that the Contract does not seek to derogate from such Statutory Functions and, accordingly:
- (a) nothing in the Contract in any way influences or restricts the exercise of the Statutory Functions, or binds the Principal to make a particular decision in respect of any Statutory Function exercised by it; and
 - (b) if there is a conflict between an obligation under the Contract, and a Statutory Function, the applicable Statutory Function prevails to the extent of the conflict.

SECTION 2 – THE CONTRACT

Delete 2.2.5 and replace with the following:

- 2.2.5** No discrepancy in the Schedule of Prices shall be treated as a Variation.

Delete 2.6 and replace with the following:

- 2.6.1** There is no contract or other legal relationship between the Contractor and the Principal until the Contract Agreement is executed by both parties, unless the parties agree otherwise in writing (including under any signed and countersigned notification of acceptance of tender or letter of award).

Delete 2.10 and replace with the following:

- 2.10.1** Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Contract by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under the Contract.
- 2.10.2** A waiver or consent given by a party under the Contract is only effective and binding on that party if it is given or confirmed in writing by that party.
- 2.10.3** Any waiver by a party of its rights, powers and/or remedies under 2.10.2 will not operate as a waiver of its rights, powers and/or remedies in respect of any subsequent or continuing breach of the Contract.

SECTION 4 – SUBCONTRACTS

Add the following at the end of 4.1.3:

The Contractor will be responsible for the acts, omissions and defaults of every Subcontractor (notwithstanding that the Subcontractor may have been approved by the Principal or the Engineer) in relation to or in connection with the Contract Works, including their officers, employees and agents, as if they were the acts, omissions or defaults of the Contractor (all such acts, omissions and defaults will be deemed to be acts, omissions and defaults of the Contractor), and the Contractor will remain primarily liable to discharge all of its obligations under the Contract.

Add a new 4.1.4 as follows:

- 4.1.4** Each subcontract entered into or proposed to be entered into by the Contractor will prohibit any assignment or novation of the subcontract by the Subcontractor and will prohibit any further subcontracting without the prior approval of the Engineer.

SECTION 5 - GENERAL OBLIGATIONS

Add new 5.1.7-5.1.11 as follows:

- 5.1.7** The Contractor must advise the Engineer of any potential or actual conflicts of interest within its own organisation or with any individual or organisation engaged to complete any of the Contract Works. This includes individuals and organisations engaged in any Subcontractor or other supply arrangement.
- 5.1.8** The Contractor must advise the Engineer the means that they intend to use to remove or mitigate such conflicts of interest.
- 5.1.9** The Engineer must inform the Principal of any conflicts of interest notified to the Engineer by the Contractor under 5.1.7, and the Engineer will, in discussion with the Principal and taking into account (but not bound by) the Contractor's intended action, decide the appropriate action required to remove or mitigate any actual or potential conflict of interest. The Engineer must ensure the Contractor implements such required action.
- 5.1.10** It is essential that the Contractor always acts in its dealings with the Principal, its officers, employees, advisers, contractors and agents in a manner consistent with the highest standards of probity. The Contractor must, if required by the Principal, comply with any probity guidelines and principles promulgated by or on behalf of the Principal from time to time, and must ensure that all Subcontractors do the same.
- 5.1.11** The Contractor 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 Principal to the Contractor from time to time.

Delete 5.7.1 and 5.7.2 and replace with the following:

- 5.7.1** The Contractor and the Principal shall comply with the HSAW Act. So far as the Site and the Contract Works are under the Contractor's control, the Contractor shall take all reasonably practicable steps to keep them in an orderly state and in such a condition as to avoid damage to Persons and property.
- 5.7.2** The Contractor shall take all reasonably practicable steps to:
- (a) provide and maintain a safe working environment;
 - (b) identify and manage all risks to health and safety;
 - (c) ensure that any employee, Subcontractor, visitor to the Site and other persons are protected as far as reasonably practicable from risks which are under the Contractor's control; and
 - (d) have proper procedures for dealing with emergencies that may arise.

Delete 5.7.4 and replace with the following:

- 5.7.4** The Contractor shall give to the Principal through the Engineer a copy of any report which the Contractor is required to make to a public authority under the HSAW Act.

Add a new 5.7A as follows;

5.7A Further health and safety provisions

- 5.7A.1** The Contractor will implement and carry out an audit and inspection regime as required by the Principal and/or any relevant health and safety requirements.

5.7A.2 The Contractor warrants to the Principal that the Contractor will, so far as is reasonably practicable, ensure that no act or omission of it, any Subcontractor and any Worker on any part of the Site (or any other area), does or is likely to give rise to the issue of an improvement or prohibition notice, enforcement proceedings or a prosecution under the HSAW Act against the Principal, the Contractor, a Subcontractor and/or any other Worker.

5.7A.3 The Principal (or the Engineer) may, at any time during performance of the Contract Works, conduct a compliance audit with respect to the Contractor's compliance with its health and safety obligations under the Contract. The Contractor must immediately comply with all requests and requirements of the Principal (or the Engineer) in relation to or in connection with any such audit. In addition, if the Principal or the Engineer is of the opinion that the Contractor has failed to comply with any health and safety obligations under the Contract, the Principal or the Engineer may advise the Contractor and instruct the Contractor to cease or not commence the Contract Works or part of the Contract Works until the Contractor complies. Any such instruction will not constitute a Variation.

Insert a new 5.10.11 as follows:

5.10.11 Any programme required by 5.10 is intended for use as a management and reporting tool. Nothing stated in any such programme, and no consent or approval given by the Principal or the Engineer in respect of any such programme, will relieve the Contractor of its obligation to proceed with the Contract Works and complete the Contract Works on or by the Due Dates for Completion and nor will anything in any such programme modify or vary amounts to be paid and/or the payment terms under the Contract.

Delete 5.11.1 and replace with the following:

5.11.1 In respect of the Contract and the Contract Works, the Principal and the Contractor shall comply with all statutes, secondary legislation, instruments, and bylaws that may be applicable to the Contract Works.

Delete 5.11.10 and replace with the following:

5.11.10 If, after the closing date for tenders, the Cost to the Contractor of performing the Contract increases or decreases by reason of:

- (a) the making of or an amendment to any statute, secondary legislation, instrument, or bylaw;
or
- (b) the imposition by the Government or a local authority of any royalty, fee, levy, or toll or any amendment to them,

and the effects are not otherwise provided for in the Contract, the effect shall be treated as a Variation.

Replace the word "The" with the words "The Principal (via the Engineer), the" before the word "Contractor" at the start of 5.21.1.

Replace the word "Either the" with the words "The Principal (via the Engineer), the" at the start of 5.21.2.

A new 5.22 is added as follows:

5.22 Information and Security

5.23.1 The Principal expects the Contractor will ensure that it and its personnel (including Subcontractors) providing the Contract Works will:

- (a) consistently demonstrate the principles and behaviours set out in the Principal's information management and security policies, processes, procedures and supporting controls (as advised to the Contractor from time to time);
- (b) not access the Principal's information or systems except to the extent necessary to provide the Contract Works and for no other reason;

- (c) take all reasonable steps to prevent breaches of records storage, information technology systems and equipment or no unlawful disposition or sharing of any data, information or records, including:
 - (i) preventing unauthorised use or destruction;
 - (ii) preventing unauthorised persons obtaining, or attempting to obtain access to the Contract Works or any of the Principal's data/information;
 - (iii) using or attempting to use any of the Principal's data/information for purposes not authorised or permitted by the Contract;
 - (iv) taking all steps necessary to prevent the introduction, contamination and spread of any virus or other malware into computer systems, and only use equipment, software and parts which are free of viruses; and
 - (v) except with the Principal's written permission, not introduce 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 Contract Works such as research, asset, customer or geo-coded data with metadata to minimum standards, appropriately structured and described, and in formats as agreed;
- (e) notify all information and security incidents and concerns to the Principal and the Engineer in a timely manner to facilitate a prompt response to help resolve issues and prevent or minimise any potential damage to data/information and equipment; and
- (f) return all material relating to physical and system access privileges immediately to the Principal at the end of the Contract.

Add new 5.24 as follows:

5.24 Resource Management Act 1991

5.24.1 In undertaking the Contract Works, the Contractor warrants to the Principal that neither it nor any Subcontractor will do or omit to do (or permit the same) anything, or use materials, substances or processes which:

- (a) would or could discharge a contaminant into the environment that is not in compliance with any Act, Regulation or licence (as defined in 5.11.2);
- (b) is a breach of any duty or obligation under the RMA; or
- (c) does or is likely to give rise to the issue of an abatement notice, enforcement proceedings or an excessive noise direction under the RMA against the Principal, the Contractor, Subcontractor or any other Person.

5.24.2 To the extent permitted by law, the Contractor will indemnify the Principal against any loss, claim, damage, expense, liability or proceeding suffered or incurred at any time by the Principal, as a direct or indirect result of an enforcement order, abatement notice, or excessive noise direction being issued to the Principal under the RMA or other legislation or any notice (including any order, direction or other enforcement mechanism), where such order, notice or direction is issued because the Contractor failed to comply with the provisions (including any conditions) of any outline plan, designation, resource consent, building consent, archaeological authority, other consent or other licence (as defined in 5.11.2) issued in respect of the Contract Works, or for failure to obtain any licence (as defined in 5.11.2) for the Contract Works.

Add new 5.24 as follows:

5.25 Living Wage

5.25.1 The Contractor must pay any employee or Subcontractor that performs security or cleaning services in connection with the Contract Works (including any such services provided in respect of the Site), a gross hourly rate (before deductions) equal to or more than the Living Wage Rate. The

Contractor shall also use reasonable endeavours to ensure that any employee or contractor engaged by a Subcontractor that performs security or cleaning services in connection with the Contract Works (including any such services provided in respect of the Site) is paid a gross hourly rate (before deductions) equal to or more than the Living Wage Rate.

- 5.25.2** The Contractor shall maintain a complete and correct set of records relating to the Contractor's compliance with its obligations under 5.25.1 and will use reasonable endeavours to ensure that each relevant Subcontractor also maintains a complete and correct set of records relating payment by that Subcontractor as contemplated by 5.25.1.
- 5.25.3** The Principal (or the Engineer) may, at any time during the performance of the Contract Works, conduct a compliance audit with respect to the Contractor's obligations (or a relevant Subcontractor's obligations) under 5.25.1. The Contractor must immediately comply with (and will use reasonable endeavours to ensure each relevant Subcontractor complies with) all request and requirements of the Principal (or the Engineer) in relation to or in connection with any such audit.
- 5.25.4** Any change to the Living Wage Rate shall be treated as a Variation and the value will be determined in accordance with 9.3, provided that the Contractor will not be entitled to recover any more margin than the Contractor would have received but for the change to the Living Wage Rate.
- 5.25.5** The Contractor must submit to the Principal on an annual basis throughout the duration of the Contract and on issue of the Final Completion Certificate, a signed declaration (in a form approved by the Principal) certifying that the Contractor (or a relevant Subcontractor) does comply with and has at all times complied with the obligations to pay a Living Wage Rate in accordance with this 5.25.

SECTION 7 - INDEMNITY

Add new 7.1.5-7.1.8 as follows:

- 7.1.5 Cap on Liability:** Notwithstanding any other provision in the Contract but subject to 7.1.6, the Contractor's maximum aggregate liability to the Principal under this Contract (including any indemnity under this Contract) arising out of or in connection with the performance of the Contract Works and any other obligation under the Contract shall be limited to the sum set out in Schedule 1 – Special Conditions (**Liability Cap**).
- 7.1.6 Exclusions from the Liability Cap:** The Liability Cap does not apply to nor will it be reduced by the Contractor's liability:
- (a) for Wilful Default, fraudulent or criminal acts, including by the Contractor's officers, employees, Subcontractors, consultants, or agents;
 - (b) for the Contractor's repudiation of the Contract;
 - (c) arising from abandonment of the Contract Works;
 - (d) under 7.1.1(b) and 7.1.1(c) (insofar as such Costs relate to liability under 7.1.1(b));
 - (e) under 5.12.2;
 - (f) that cannot be excluded at law;
 - (g) 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 Contractor, or due to the failure by the Contractor to maintain an insurance policy;
 - (h) for the breach of any statutory obligation; or
 - (i) for any costs or expense which the Contractor is obliged to expend in order to carry out or complete the Contract Works in accordance with the Contract.

- 7.1.7 Consequential Loss:** Notwithstanding any other provision of the Contract but subject to 7.1.8, neither party will be liable to the other party (whether based on contract, infringement, negligence, strict liability, tort or otherwise) for any loss of profit, loss of anticipated profits, loss of revenue, loss of use, loss of production or down time costs, loss of opportunity, loss of business, loss of contract, loss of goodwill, or the cost of obtaining any new financing or maintaining any existing financing nor for any indirect or consequential loss or damage in relation to the Contract Works.
- 7.1.8 Exclusions to Consequential Loss:** Notwithstanding 7.1.7, the Contractor shall remain liable for the following losses, which for the purpose of this 7.1.8 will be deemed direct losses:
- (a) liability for Wilful Default, fraudulent or criminal acts of the Contractor, including by the Contractor's officers, employees, contractors, consultants or agents;
 - (b) liability in the case of the Contractor repudiating the Contract;
 - (c) liability to indemnify the Principal under 5.12.2, 7.1.1(b) or 7.1.1(c);
 - (d) liability of the Contractor to the extent of amounts received (or, but for an act or omission of the Contractor or the Contractor's officers, employees, contractors, consultants or agents) by the Contractor in respect of any such liability pursuant to any of the insurance policies required to be effected and maintained in accordance with the Contract;
 - (e) liability that cannot be limited by law; and
 - (f) liability for any liquidated damages or damages for delay.

SECTION 8 - INSURANCES

A new 8.1.7 is added as follows:

- 8.1.7** Responsibility for pursuing any claim under any insurance policy shall rest with the party with whom the fault lies. Where the Contractor is pursuing a claim, the Contractor is required to advise the Engineer of the outcome of the claim and provide the Engineer with information in relation to the claim on request.

A new 8.2.3 (c) is added as follows:

- 8.2.3 (c)** The actions of one insured shall not affect the rights of any other insured.

Delete 8.5.1(c).

Delete 8.9.2(c).

SECTION 10 - TIME FOR COMPLETION

New 10.3.1, 10.3.8 -10.3.13 are added as follows:

- 10.3.1** No pavement or surfacing construction shall take place over the Winter Period without the prior written approval from the Engineer. Delivery of pavement and surfacing work shall be completed in the Construction Season. No final surfacing is to be undertaken without the prior written approval of the Engineer.
- 10.3.8** Where an extension of time granted by the Engineer necessitates surfacing and pavement construction activities to be programmed in the Winter Period, the Engineer may instruct that the Contract be suspended to avoid the completion of surfacing works in the Winter Period. In such a case the Contractor shall be entitled to only the direct and on-site overhead costs to maintain the site over the period of suspension. The Engineer may require that the Contractor apply a temporary holding surfacing or any other works required to maintain the site to an acceptable standard. No off-site overheads or profits shall be payable over this period regardless of the reason for the extension of time.

- 10.3.9** Where no extension of time is granted, the Contractor is responsible for applying a temporary holding surfacing or to complete any other works that may be necessary to maintain the site over the Winter Period, at no additional cost to the Principal.
- 10.3.10** Where there has been a delay to the Contract Works that does not entitle the Contractor to an extension of time pursuant to 10.3.1, or if in the Engineer's opinion it is likely that the Contractor will not achieve Practical Completion by the relevant Due Date for Completion, the Contractor shall, at its own cost, take all steps as the Engineer may reasonably require to expedite progress, including by applying additional resources, airfreighting items, working longer hours and/or otherwise accelerating the works, so as to ensure compliance with the schedule and programme requirements under the Contract.
- 10.3.11** The following rules will be applied to assessing a claim for an extension of time:
- (a) the Contractor's delay allowance included in any programme will be ignored;
 - (b) the event or circumstance which causes delay must be one which is mentioned in 10.3.1;
 - (c) the event or circumstance in respect of which the extension of time is sought must or will (either in isolation or borne out of other events or circumstances for which the Contractor does not assume responsibility for under the Contract) cause actual delay to the critical path elements of the Contract Works, which the Contractor must show and demonstrate to the reasonable satisfaction of the Engineer;
 - (d) for events or circumstances that concurrently cause the delay the Contractor will be entitled to an extension of time for only the net effect of the concurrent delay; and
 - (e) to the extent that the delay could have been reasonably avoided or mitigated, the Contractor will not be entitled to an extension of time.
- 10.3.12** The Contractor will be entitled to claim and the Principal will be entitled to grant an extension of time to the relevant Due Date for Completion whether or not the qualifying extension of time ground occurs before or after the relevant Due Date for Completion (including, for the avoidance of doubt, in relation to the net effect of any Variation).
- 10.3.13** The Principal may, at its sole and absolute discretion and notwithstanding any other provision of the Contract to the contrary, at any time and from time to time and for any reason it considers sufficient but without being under an obligation to do so, by notice to the Contractor unilaterally extend any Due Date(s) for Completion. For the avoidance of any doubt, any such extension will not require the Contractor to slow down the progress of the Contract Works and the Contractor is entitled to complete the Contract Works prior to the date of any such extended Due Date(s) for Completion. The Principal is not entitled to exercise its right under this 10.3.13 in order to defeat an entitlement of the Contractor under 10.3.7.

Add a new 10.5.4 as follows:

- 10.5.4** The parties agree that the liquidated damages represent no more than a genuine pre-estimate of the loss likely to be suffered by the Principal in the event of the Contractor failing to achieve Practical Completion by the respective Due Date for Completion and/or the liquidated damages are reasonable and proportionate to the Principal's legitimate interests in the Contractor achieving Practical Completion by the respective Due Date for Completion, and are not a penalty.

SECTION 11 - DEFECTS LIABILITY

Delete 11.2.3 and replace with the following:

- 11.2.3** The Principal shall be entitled to recover the Cost of the work undertaken by others under 11.2.2 from the Contractor, including all costs and expenses of assessment and supervision whether by the Engineer or otherwise, and a reasonable allowance for associated administrative and professional costs and expenses. As soon as practicable after the completion of the work the Engineer shall notify the Contractor of the work undertaken and its Cost.

A new 11.2.9 is added as follows:

- 11.2.9** An additional defects notification period equivalent in length to the original defects notification period shall apply to all works required to be remedied as a defect or required as a consequence of the remedy of a defect, unless the Engineer agrees otherwise in writing.

SECTION 12 – PAYMENTS

Add new 12.3.4-12.3.5 as follows:

- 12.3.4** The Principal shall be entitled to use retention monies to cover any costs, expenses, losses or damages incurred or to be incurred in connection with any default, omission or non-performance of the Contractor, including where the Principal resumes possession of the Site or terminates the Contract under 14.2.
- 12.3.5** Prior to the Principal using retention monies as provided in 12.3.4, the Principal will give the Contractor at least ten (10) Working Days written notice setting out:
- (a) the Principal's intention to use the retention money for that purpose; and
 - (b) details of the default, omission or non-performance to be remedied.

Add a new 12.14 as follows:

12.14 Set-off

The Principal is entitled to set-off, deduct or withhold against and from any sums that would otherwise be due to the Contractor amounts in respect of any genuine claims it may have against the Contractor in relation to or in connection with the Contract or the Contract Works, including damages for breach of contract by the Contractor, liquidated damages, omissions or defects or under any indemnities. This right of set-off, deduction and withholding is without prejudice to any other right of set-off, deduction or withholding provided for pursuant to the Contract or otherwise.

SECTION 14 – FRUSTRATION AND DEFAULT

Add a new 14.4 as follows:

14.4 Termination for convenience

- 14.4.1** Notwithstanding any other provision of the Contract, the Principal may, at any time and at its absolute and sole discretion, terminate the Contract for convenience by giving written notice of this to the Contractor. If the Principal exercises its right under this 14.4.1 it shall not be obliged to give the Contractor any reason or justification for doing so.
- 14.4.2** In the event the Principal exercises its right to terminate for convenience under 14.4.1, the Contract will terminate on the date given in the written notice under 14.4.1 and the Contractor shall be entitled to be paid:
- (a) the value of the Contract Works carried out at the date of termination, less the amounts previously paid;
 - (b) the Cost of Materials ordered for the Contract Works which have been delivered to the Contractor or of which the Contractor is legally obliged to accept delivery, and which the Contractor delivers to the Principal. These Materials shall become the property of the Principal upon delivery to the Principal;
 - (c) any Cost reasonably incurred by the Contractor in the expectation of completing the Contract Works in so far as such Cost is not covered by other payments under 14.4.2(a) or (b); and
 - (d) the Cost of any works necessitated by the removal of the Contractor's Plant and the carrying out of the Engineer's instructions for the making safe of the Contract Works.

A new Section 16 is added as follows:

SECTION 16 - PRIVACY OBLIGATIONS

16.1 Privacy

- 16.1.1** The Contractor must comply at all times with all NZ Privacy Laws and not do anything with the Principal's Personal Information likely to cause the Principal to breach any NZ Privacy Laws.
- 16.1.2** The Contractor 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/>).
- 16.1.3** The Contractor must not use or disclose the Principal's Personal Information (including to any Subcontractors) except as strictly necessary to deliver the Contract Works and comply with the Contract. The Contractor must ensure that any Subcontractors to whom it discloses the Principal's Personal Information are subject to contractual restrictions on the handling, use and disclosure of that information no less strict than those in the Contract.
- 16.1.4** The Contractor must implement and maintain reasonable security safeguards to protect the Principal's Personal Information, including from unauthorised access or disclosure.
- 16.1.5** Except as agreed in writing, the Contractor must not store or process (or permit the storage or processing of) the Principal's Personal Information in any location outside New Zealand.
- 16.1.6** The Contractor must promptly return and/or irreversibly erase all the Principal's Personal Information (at the Principal's option), once it is no longer required for the purposes of the delivery of the Contract Works, and otherwise where directed by the Principal.
- 16.1.7** If the Contractor becomes aware of, or has reason to suspect the existence of, a Data Breach, the Contractor must as soon as practicable notify the Principal, take all practicable steps to mitigate the effects of the Data Breach, and co-operate with the Principal's investigation of the Data Breach as the Principal reasonably considers necessary to enable the Principal to meet its obligations under the NZ Privacy Laws.
- 16.1.8** Unless required by law, the Contractor will not notify affected individuals or the Privacy Commissioner of any Data Breach except with the Principal's prior written agreement.
- 16.1.9** The Contractor will comply with any reasonable direction from the Principal, where the Principal reasonably considers that this is necessary to enable the Principal to comply with a notice or direction given to the Principal by the Privacy Commissioner.
- 16.1.10** The Contractor will not comment publicly, including to the media, about any Data Breach or any breach of this Section 16, without the written consent of the Principal.

A new section 17 is added as follows:

SECTION 17 - JOINT AND SEVERAL LIABILITY

17.1 Joint and several

- 17.1.1** To the extent that the Contractor is comprised of more than one Person in joint venture, partnership, consortium or other unincorporated grouping of two or more persons (Joint Venture):
- (a) those Persons will be jointly and severally liable to the Principal for all obligations, duties and liabilities of the Contractor under the contract;
 - (b) the Contractor will notify the Principal in writing as to which of those persons (if not each of them) will have the authority to bind the Contractor and in the absence of such written notification each such Person will be deemed to have the authority to bind the Contractor for all purposes (which cannot be retrospectively changed by the Contractor);

- (c) the Contractor must ensure that the composition or legal status of the Joint Venture is not altered or changed in any way whatsoever without the prior written consent of the Principal; and
- (d) all references to “Contractor” in the contract will be deemed to be a reference to each and every Person comprising the Contractor, together.

A new section 18 is added as follows:

SECTION 18 – CONFIDENTIALITY

18.1 Confidentiality

18.1.1 The Contractor and the Principal will ensure that any information identified as confidential, or which should reasonably be recognisable as confidential, acquired by it as a result (either directly or indirectly) of its entering into the Contract will be kept confidential subject to the following exceptions:

- (a) information which is in the public domain or could have been legally acquired by a party had it not entered into the Contract, will not be considered confidential;
- (b) a party may disclose confidential information to its professional advisors and insurers and otherwise to the extent required by law or pursuant to the requirements of any stock exchange;
- (c) disclosure by the Principal of confidential information to any ministry or other government agency performing a monitoring, oversight, or guidance role in relation to the Principal, or at the request of an officer of parliament, a parliamentary select committee, a royal commission, or a minister of the Crown (including for the purposes of a parliamentary question);
- (d) a party may disclose specific items of confidential information to a third party in accordance with the terms of any prior written consent between the parties; and
- (e) a party may disclose confidential information as reasonably necessary for the purposes of the Contract Works provided that the party shall ensure that such recipient is required to maintain such information as confidential on the same terms.

18.1.2 The Contractor must ensure that its Subcontractors are bound by confidentiality undertakings equivalent to this Section 18.

18.1.3 The Contractor will not make any statements to the media or others regarding the contents of the Contract or the execution of the Contract Works without the prior written approval of the Principal. Media requests for information relating to the Contract Works or the Principal’s assets or its business will be immediately referred by the Contractor to the Principal.

18.1.4 The Contractor acknowledges that the Principal is subject to the OIA and the Contractor agrees to cooperate fully in providing the Principal with any documents or other information that the Principal is required to provide in accordance with a request made under the OIA, or pursuant to questions raised in Parliament or in any select committee concerning the Contract.

14.2 Schedule 3 – Form of Contractor’s performance bond

SECTION NOT USED

14.3 Schedule 4 – Form of Principal’s bond

SECTION NOT USED

14.4 Schedule 5 – Form of Contractor’s bond in lieu of retentions

<<Guidance note: only use this schedule if 12.3.3(a) is selected, otherwise delete schedule and replace with the words **This Section Not Used**>>

CONTRACT FOR

THIS DEED is made on

BY

of

(*the Contractor*)

AND

of

(*the surety*)

(*Address of surety for service*)

IT IS MADE IN THE FOLLOWING CIRCUMSTANCES:

- A** The Contractor has entered into an agreement with
of (“the Principal”)
to carry out and fulfil the obligations imposed on the Contractor (“the Contract”).
- B** The Contractor has agreed to provide the Principal with security in the form of a bond in lieu of retentions additional to any other bond required under the Contract.
- C** Words and phrases with capital initial letters that are not otherwise defined in this bond shall have the meaning set out in the Contract.

BY THIS DEED:

- 1. THE** Contractor and surety are jointly and severally held and bound to the Principal in the sum of \$NZ. and bind themselves, their successors and assigns jointly and severally for the payment of that sum.
- 2. THE** conditions of this bond are that it shall be released if and when:
 - (a) The Final Completion Certificate has been issued for the Contract Works in accordance with 11.3 of the General Conditions; or
 - (b) The surety receives a notice from the Principal releasing the Contractor and surety from this bond.
- 3. EXCEPT** as provided in clause 2 above this bond shall be and remain in full force and effect.
- 4. THE** surety shall not be released from any liability under this bond:
 - (a) By any alteration in the terms of the Contract;
 - (b) By any alteration in the extent or nature of the Contract Works to be completed, delivered, and having defects remedied;

- (c) By any allowance of time by the Principal or by the Engineer appointed by the Principal under the Contract; or
- (d) By any forbearance or waiver by the Principal or by the Engineer in respect of any of the Contractor's obligations or in respect of any default on the part of the Contractor.

5. **THIS** bond shall be governed by New Zealand law.

In witness of which this deed has been executed.

SIGNED on behalf of the surety by:

Director

Director

SIGNED on behalf of the Contractor by:

Director

Director

NOTE – This bond shall be executed by the Contractor and by the surety in the manner required for execution of a deed. Any of these parties which are a company shall execute the bond by having it signed, under the name of the company, by two or more directors. If there is only one director, it is sufficient if the bond is signed under the name of the company by that director, but the signature shall be witnessed by another person. The witness shall not only sign, but shall also add his or her occupation and address. Alternatively, companies may execute under the power of attorney. Any party which is a body corporate (other than a company) shall execute in the same manner as a company by persons in a comparable position to a company director or otherwise in accordance with section 9 of the Property Law Act 2007. In the case of a party who is an individual, the party shall sign and the signature shall be witnessed by another person. The witness shall not only sign but must also add his or her occupation and address.

14.5 Schedule 6 - Form of Producer Statement - Construction

ISSUED BY _____ (Contractor)

TO New Zealand Transport Agency (Waka Kotahi NZ Transport Agency) _____ (Principal)

IN RESPECT OF _____ (Description of Contract Works)

AT _____
_____ (Address)

_____ has contracted to New Zealand Transport Agency (Waka Kotahi NZ Transport Agency)
_____ (Contractor) _____ (Principal)

to carry out and complete certain building works in accordance with a Contract titled _____
_____ ('the Contract')
_____ (Project)

I _____ (Duly Authorised Agent)

A duly authorised representative of _____ (Contractor)

believe on reasonable grounds that _____ (Contractor)

has carried out and completed:

- All
- Part only as specified in the attached particular of the contract works in accordance with the Contract

_____ Date _____

(Signature of Authorised Agent on behalf of)

[Insert Contract name]
Contract No: [insert no]

Waka Kotahi NZ Transport Agency
Instructions for Tendering
CC 1

(Contractor)

(Address)

14.6 Schedule 7 – Information on Contractor arranged insurance

SECTION NOT USED

14.7 Schedule 8 – Information on Contractor arranged Plant insurance

To whom it may concern:

From _____ (Name of Insurance Company)

(Branch)

(Address)

We confirm having effected Plant insurance for:

(The Contractor)

In respect of [Contract Number, Contract Name] _____ (Project Title)

Policy wording title is _____

We advise that special terms, copy attached, have been applied to this policy Yes/No

The following provisions apply:

- Annual policy
 Project specific policy

Policy expiry date _____

8.4

The insured are (GST exclusive):

All items of Plant Sum insured \$ _____

OR

Valued schedule of construction Plant insured (copy attached)

The policy deductible (GST inclusive) is: \$ _____

Policy cover terms included are:

8.2.2 Discretionary cancellation clause Yes/No

8.2.3(a) Reinstatement provision Yes/No

8.2.4 Void *ab initio* for non-payment of premium without prior notification Yes/No

No settlement delay due to exercise of subrogation Yes/No

We undertake that this policy will not be cancelled or amended by us within the period of insurance without written advice to the insured party which has arranged the insurances.

The insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2013.

**Insurance Company
Stamp**

(Or name of insurance broking company confirming cover)

Date _____

SIGNED BY _____

SIGNATORY TITLE _____

(Clause numbers refer to NZS 3910:2013 and are for information only)

14.8 Schedule 9 – Information on public liability insurance

<< Guidance note: For contracts where PAI is used, delete the following schedule and replace with Schedule 9 as downloaded from the Marsh insurance portal <http://nz.marsh.com/nzta-pai>>>

14.9 Schedule 10 – Information on Contractor arranged motor vehicle insurance

To whom it may concern:

From _____ (Name of Insurance Company)

(Branch)

(Address)

We confirm having effected motor fleet insurance for.

_____ (The Contractor)
In respect of [Contract Number, Contract Name] _____ (Project Title)

Policy wording title is _____

We advise that special terms, copy attached, have been applied to this policy Yes/No

The following provisions apply:

- Annual policy
- Project specific policy

Policy expiry date _____

8.5.2

The limits of liability are (GST exclusive):

Section 2 - Liability
For any one occurrence arising out of the same event \$ _____

The policy deductibles are:

Section 2 – Liability (GST inclusive) \$ _____
Plus under age penalties _____

8.2

Policy cover terms included are:

Section 2 Liability automatic reinstatement	Yes/No
Discretionary cancellation clause	Yes/No
Void <i>ab initio</i> for non-payment of premium without prior notification	Yes/No
No settlement delay due to exercise of subrogation	Yes/No

We undertake that this policy will not be cancelled or amended by us within the period of insurance without written advice to the insured party which has arranged the insurances.

The insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2013.

Insurance Company Stamp _____ **Date** _____
(Or name of insurance broking company confirming cover)

SIGNED BY _____

SIGNATORY TITLE _____

(Clause numbers refer to NZS 3910:2013 and are for information only)

14.10 Schedule 11 – Information on Contractor arranged professional indemnity insurance

To whom it may concern:

From _____ (Name of Insurance Company)

(Branch)

(Address)

We confirm having effected professional indemnity insurance for.

(The Contractor)

In respect of [Contract Number, Contract Name] (Project Title)

Policy wording title is _____

We advise that special terms, copy attached, have been applied to this policy Yes/No

The following provisions apply:

- Annual policy
 Project specific policy

Policy expiry date _____

8.6.1

The limits of liability are (GST exclusive):
 \$ _____ any one occurrence
 \$ _____ in the aggregate during the period of insurance
 Deductible (GST inclusive) \$ _____

We undertake that this policy will not be cancelled or amended by us within the period of insurance without written advice to the insured party which has arranged the insurances.

The insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2013.

**Insurance Company
 Stamp**

Date _____

(Or name of insurance broking company confirming cover)

SIGNED BY _____

SIGNATORY TITLE _____

(Clause numbers refer to NZS 3910:2013 and are for information only)

14.11 Schedule 12 – Information on principal arranged construction insurance

<<Guidance note: For contracts where PAI is used, insert Schedule 12 as downloaded from the Marsh insurance portal <http://nz.marsh.com/nzta-pai>. For contracts where PAI is not used, insert the words This Section Not Used >>

14.12 Schedule 15 – Practical Completion Certificate

This Practical Completion Certificate is issued under 10.4.3(a) or 10.4.4.

Contract for _____ **[Contract Number, Contract Name]**

Principal New Zealand Transport Agency (Waka Kotahi NZ Transport Agency), a Crown entity, established on 1 August 2008 by Section 93 of the Land Transport Management Act 2003 (Waka Kotahi) _____ *(‘the Principal’)*

Contractor _____ *(‘the Contractor’)*

This certificate relates to:

- (a) The whole of the Contract Works referred to above;
- (b) The following Separable Portion _____ *(specify)*

Receipt of the Contractor’s notice dated _____ and issued in accordance with 10.4.2 is acknowledged.

In accordance with 10.4.3(a) or 10.4.4 *(select one)*, the Engineer certifies that the Contract Works or Separable Portion to which this certificate relates qualify for a Practical Completion Certificate under 10.4, notwithstanding that there may be minor omissions and/or minor defects (as listed in the attached schedule) which satisfy the criteria in 10.4.1 (a), (b), and (c).

The Contractor is required to remedy all of the listed omissions or defects within the period stated in the attached schedule against the relevant omission or defect, or at the latest within _____ Working Days of the date of this certificate.

Practical Completion was achieved

on _____ *(insert date)* at _____ *(insert time)*

Signed by the Engineer _____

Name _____

Date _____

SCHEDULE

The following omissions and/or defects have been assessed as being of a minor nature satisfying the criteria in 10.4.1(a), (b), and (c) and were identified during an inspection carried out by the Engineer or Engineer’s Representative on _____ *(insert date)*

(list minor omissions and defects)

14.13 Schedule 16 – Final Completion Certificate

This certificate is a Final Completion Certificate issued under 11.3.1.

Contract for [Contract Number, Contract Name]

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

Contractor _____ *(the Contractor)*

This certificate relates to:

- (a) The whole of the Contract Works referred to above;
- (b) The following Separable Portion _____ *(specify)*

In accordance with 11.3.1, the Engineer certifies that the Contract Works or Separable Portion to which this certificate relates qualify for a Final Completion Certificate issued under 11.3

on _____ *(insert date)* at _____ *(insert time)*

Signed by the Engineer _____

Name _____

Date _____

15 PROJECT SPECIFICATION

15.1 Introduction

- 15.1.1 This project Specification describes the Principal's requirements for the construction, completion and correction of defects of the Contract Works.
- 15.1.2 The Contractor shall be responsible for the construction, completion and correction of defects of the Contract Works in line with, and so as to meet all requirements and provisions of this project Specification.
- 15.1.3 Unless otherwise described, all statements refer to the whole of the Contract Works.

15.2 Scope

- 15.2.1 The Scope of the Contract is as described below: <<Guidance Note: It is essential that an accurate and complete description of the Scope of the contract is provided. It must define all the features of the contract that are fundamental to the project and cannot be changed by the Contractor.

[Consultant to complete]

15.3 Health and Safety

- 15.3.1 The Contractor must implement processes that meet or exceed the requirements of the *Health and Safety at Work Act 2015*, its regulations, supporting codes of practice and any guidance material that represents good practice.
- 15.3.2 The Contractor must comply with the provisions outlined in the Waka Kotahi *Contractor Health and Safety Expectations*, and the other contract specific requirements as set out below. The latest version of the Waka Kotahi *Contractor Health and Safety Expectations* document can be accessed from the Waka Kotahi Highways Information Portal at <https://www.nzta.govt.nz/resources/contractor-health-and-safety-expectations>
- 15.3.3 The Contractor must comply with all health and safety requirements of Waka Kotahi, and any other relevant asset owner or authority (e.g. Auckland Transport, Auckland Council, KiwiRail, Watercare). Meeting these requirements will not relieve the Contractor of any of its responsibilities to comply with the Health and Safety at Work Act 2015.
- 15.3.4 The Contractor shall meet the requirements of Waka Kotahi Expectations for Management of Overhead and Underground Utilities Risks as outlined in the *Contractor Health and Safety Expectations* document.
- 15.3.5 The Contractor shall provide, maintain and enforce the appropriate use of Personal Protective Equipment (PPE) using a risk-based approaches outlined in the Waka Kotahi *Contractor Health and Safety Expectations* document.
- 15.3.6 The Contractor must meet the Waka Kotahi *Contractor Health and Safety Expectations* for the Management of Vehicle Safety and provide Temporary Traffic Management as outlined in the above section.
- 15.3.7 The Contractor shall provide incident notification, investigation and reporting as outlined in the Waka Kotahi *Contractor Health and Safety Expectations* document
- 15.3.8 The Contractor must provide health and safety performance and assurance reporting throughout the contract as outlined in the Waka Kotahi *Contractor Health and Safety Expectations* document.
- 15.3.9 All Waka Kotahi projects/work sites require workers to be competent in health and safety prior to entry. Waka Kotahi endorses the CHASNZ Site Access Requirements (https://secure.chasnz.org/downloads/resources/CHASNZ_Site_Access_Requirements_FINAL.pdf)

. Workers entering the site who have not attained this level of competency are not authorised to enter the site or must be supervised at all times while on site.

- 15.3.10 The Contractor's Senior Management contract team must undertake continuous professional development in HSW Competency of project leadership.
- 15.3.11 Waka Kotahi expects that all personnel working within 5 metres of hot bitumen be appropriately trained, by a recognized training provider, in the safe handling of bitumen.
- 15.3.12 The Contractor shall nominate and provide the CV of a qualified and experienced Construction H&S professional in Construction
- 15.3.13 All hazards and risks to health and safety shall be monitored and reviewed by the Health and Safety Manager. This is to ensure that all appropriate industry good practice risk controls are in place and effectively managing (eliminating, or minimising) these risks in accordance with the H&SMP, the Waka Kotahi *Contractor Health and Safety Expectations*, and relevant Acts and Regulations.
- 15.3.14 The Contractor will allow Waka Kotahi or the Engineer to conduct a site inspection and Audit on a monthly basis. During this time the Contractor will provide unrestricted access to any documentation or people.

15.4 Traffic Management

- 15.4.1 The Contractor shall ensure that disruption to road users and third parties during construction is kept to the minimum possible. The Contractor shall ensure that they provide for all vehicular and pedestrian traffic an alternative of an appropriate standard to all existing roads, footpaths, all accesses and premises adjacent to and affected by the Contract Works.
- 15.4.2 Traffic management (including cyclist and pedestrian traffic) shall be carried out as described by the Waka Kotahi *Code of Practice for Temporary Traffic Management*. The code of practice sets out the minimum requirements for traffic management and site safety for the Contract Works.
- 15.4.3 The level of Traffic Management required for this Contract is Level [1, 2 or 3].
- 15.4.4 Prior to opening the Works for use by the general travelling public, a pre-opening safety review shall be undertaken by the Engineer and the Principal's Road Safety Audit team, to approve the removal of any temporary works, speed limits and traffic management.
- 15.4.5 Prior to the issue of Practical Completion, a post construction safety audit must be completed by the Engineer and the Principal's Road Safety Audit team. The Contractor must endeavour to complete work instructed as a consequence of a post construction safety audit as soon as possible. Any instructed work associated with an identified serious or significant audit classification is to be rectified within 10 working days of receipt of the instruction. Where any such work cannot be completed within 10 days, the Contractor must immediately seek agreement from the Engineer for the timing of this work. Where work cannot be completed within 10 days then consideration must be given to completing appropriate temporary mitigation works until the work is undertaken.

15.5 Statutory Approvals and Compliance

- 15.5.1 The Contractor must comply with the conditions of all relevant Statutory Approvals and permitted activity requirements under the Resource Management Act 1991 and other relevant environmental legislation. If these requirements have not been confirmed by the Principal prior to works commencement, clarification must be sought.
- 15.5.2 The Contractor will have responsibility to maintain up to date records of compliance with all Statutory Approvals, including maintaining compliance records in CSVUE, the Waka Kotahi compliance management system, if requested.

- 15.5.3 The Contractor shall report any environmental incidents and non-compliances with Statutory Approvals gained in the name of Waka Kotahi to the Waka Kotahi Project Manager within 24 hours, along with the proposed mitigation.

16 TECHNICAL SPECIFICATION

16.1 [Consultant to Complete]

17 APPENDICES

APPENDIX REFERENCE	SUBJECT
A	[Consultant to Complete]
B	[Consultant to Complete]
C	[Consultant to Complete]
D	[Consultant to Complete]

18 DRAWINGS

DRAWING REFERENCE	DRAWING TITLE
[XXXX-XX-XXX]	[Consultant to Complete]
[XXXX-XX-XXX]	[Consultant to Complete]
[XXXX-XX-XXX]	[Consultant to Complete]
[XXXX-XX-XXX]	[Consultant to Complete]