
Contract Number and Name

Short Form Agreement for Engineering Consultancy Professional Services

Between Waka Kotahi NZ Transport Agency and the Consultant

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

Set No [insert within signing sets]

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Short Form Agreement

Form of Agreement for Engagement of Engineering Consultant

Contract Number and Name

For the Delivery of Professional Services to the NZ Transport Agency by the Consultant

This contract is made on the **Number** day of **Month Year** <<Guidance note: date contract is to start>>

Parties

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

And

2. **Name of Location**
(the Consultant).

Background

1. The NZ Transport Agency (Transport Agency) wishes to undertake the works (“the Project”) described in Annexure 1 to this Agreement (“Annexure 1”).
2. The Client and the Consultant have agreed that the Consultant will, on the terms and conditions set out in this Agreement, undertake and provide the Services in respect of the Project.

THE PARTIES AGREE as follows:

1. AGREEMENT

The term “Agreement” shall include each of the following documents:

- 1.1 This Form of Agreement for Engagement of Engineering Consultant
- 1.2 The Appendices
- 1.3 The “Conditions of Contract for Consultancy Services, Fourth Edition” ([CCCS](#)) – December 2017 (“the General Conditions”);
- 1.4 The Special Conditions – Part A (Specific Conditions)
- 1.5 The Special Conditions – Part B (Other Special Conditions)
- 1.6 The Services and/or Deliverables as set out in Annexure 1.
- 1.7 This Agreement ends twelve months following the start date unless terminated earlier.

SIGNED for and on behalf of

The NZ Transport Agency by

In the presence of a WITNESS

Signature: _____

Signature: _____

Name: _____

acting pursuant to delegated authority

Name: _____

Occupation: _____

Address: _____

SIGNED for and on behalf of

The Consultant by

Signature: _____

Name: _____

Occupation: _____

Address: _____

In the presence of a WITNESS

Signature: _____

Name: _____

Occupation: _____

Address: _____

2. APPENDICES

2.1 Appendices

The appendices referred to in the General Conditions are linked to this Form of Agreement for Engagement of Engineering Consultant as follows:

Appendix A: Scope, Purpose, Programme and Completion Date	Refer to Annexure 1.
Appendix B: Fees, Expenses and Payment	Refer to Annexure 1.
Appendix C: Client's Representative	Detailed in Annexure 1.
Appendix D: Consultant's Key Personnel	Detailed in Annexure 1.
Appendix E: Subconsultants	The parties acknowledge and agree that no part of the Services will be carried out by a Subconsultant unless otherwise stated in Annexure 1.
Appendix F: Other Consultants, Other Consultants' insurance, Personnel, Equipment, Facilities, and Information supplied by the Client	Where applicable, these are listed in Annexure 1.
Appendix G: Client's Risk Identification and Notification	These are listed under "Risks Known to the Client" in Annexure 1.

SPECIAL CONDITIONS – PART A (SPECIFIC CONDITIONS OF CONTRACT)

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

Section 5 Payment

- 5.1 The time for payments shall be with 10 Working Days after the date of service of the payment claim.

Section 6 Liability and Insurance

6.2 Limitation of Liability

The maximum aggregate amount payable whether in contract, tort or otherwise, in relation to all claims, damages, liabilities, losses or expenses, under this Agreement will be \$500,000.00.

<<Guidance note: for contracts considered high risk, the limitation of liability should be increased. The altered amount is to be approved by the Senior Manager Procurement as per Appendix XXIII of the Contract Procedures Manual (SM021)>>

6.4 Duration of Liability

The Duration of Liability shall be six years from the date of completion of the Services.

6.5 Insurance – Professional Indemnity

The Consultant shall take out and maintain Professional Indemnity Insurance as follows:

i. Amount of Cover

The minimum amount of Professional Indemnity Insurance will be for the amount specified in Clause 6.2 (Limitation of Liability) above, with at least one automatic reinstatement of the minimum amount per 12-month period of insurance.

<<Guidance note: for contracts considered high risk, the amount of cover should be increased. The altered amount is to be approved by the Senior Manager Procurement as per Appendix XXIII of the Contract Procedures Manual (SM021)>>

ii. Period of cover:

The Consultant shall maintain Professional Indemnity Insurance for the duration of the Services and a further period as stated under Clause 6.4 (Duration of Liability) above.

6.5 Public Liability Insurance

The Consultant shall take out and maintain Public Liability Insurance as follows:

i. Amount of Cover:

The minimum amount of Public Liability will be the sum of \$5,000,000.00.

ii. Period of Cover:

The Consultant shall maintain Public Liability Insurance cover until the date of completion of the Services.

<<Guidance note: insurances can be waived for low risk, low dollar value commissions. The Senior Manager Procurement is the delegated authority for waiving insurance requirements. If insurances are to be waived, clauses 6.2 and 6.4 can be replaced with **Insurances are waived for this contract**>>

Section 12 General Provisions

12.8 Notices

All notices under this Agreement shall be sent to the following addresses by hand, post, email, or to such other addresses as are from time-to-time nominated in writing by the parties:

Client's Address: Waka Kotahi NZ Transport Agency

Physical Address:

Postal Address:

Email address:

**Consultant's
Address:**

Physical Address:

Postal Address:

Email address:

SPECIAL CONDITIONS OF CONTRACT – PART B (OTHER CONDITIONS OF CONTRACT)

These conditions amend and supplement the General Conditions. Clause numbers refer to CCCS 2017.

Section 1 Definitions and Interpretation

Section 1.1 Definitions

Add new definitions as follows:

Data Breach means any incident that:

- (a) involves unauthorised or accidental access to, or use, disclosure, alteration, loss or destruction of, any of the Client's Personal Information; or
- (b) exposes the Client's Personal Information to a more than negligible risk of unauthorised or accidental access, use, disclosure, alteration, loss or destruction (for example, losing an unencrypted storage device, or storing information in an unsecured online repository); or
- (c) prevents the Client from accessing the Client's Personal Information on either a temporary or permanent basis; or
- (d) would prompt a reasonable and prudent person in the Client's position to notify (or consider notifying) the incident to the Privacy Commissioner and/or one or more individuals under NZ Privacy Laws.

Personal Information means any information about an individual (whether or not it is possible to identify the individual from that information), and includes all 'Personal Information' within the meaning of the Privacy Act 2020.

Client's Personal Information means Personal Information made available to the Consultant by or on behalf of the Client, or collected by the Consultant for the Client, in connection with this Contract.

NZ Privacy Laws means

- (a) the Privacy Act 2020, and any regulations, codes of practice and approved information sharing agreements made under it; and
- (b) any other New Zealand laws insofar as they regulate the collection, processing, storage, use and/or disclosure of information about individuals;

in each case as amended or replaced from time to time.

Section 2 Obligations of the Consultant

In respect of Clause 2.10 Health and Safety.

2.10 Health and safety

Add the following to clause 2.10:

The parties acknowledge and agree that they will comply with all health and safety requirements set out in the Waka Kotahi *Contractor Health and Safety Expectations*. The parties acknowledge this is deemed to form part of this Agreement. The Client will provide a copy of this document to the Consultant on request.

Section 8 Confidentiality

Add a new clause as follows:

8A Privacy Obligations

8A.1 The Consultant must:

- a) comply at all times with all NZ Privacy Laws; and
- b) not do anything with the Client's Personal Information that would, or would be likely to cause the Client to, breach any NZ Privacy Laws; and
- c) comply at all times with *Privacy at Waka Kotahi 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/>); and
- d) not use or disclose the Client's Personal Information except to the extent strictly necessary to deliver the Services and comply with this Contract; and
- e) implement and maintain reasonable security safeguards to protect the Client's Personal Information against loss, unauthorised access, use, modification, or disclosure, or any other misuse; and
- f) not store or process (or permit the storage or processing of) the Client's Personal Information, at any location outside New Zealand, except as clearly contemplated in this Contract, or otherwise with the express written consent of the Client; and
- g) ensure that only those Subconsultants and employees of the Consultant who are authorised and who require access to the Client's Personal Information to perform their duties in respect of this Contract, are given such access, and that all such Subconsultants are subject to contractual restrictions on the handling, use and disclosure of the Client's Personal Information no less strict than those in this Contract; and
- h) promptly seek and follow the Client's instructions as to the return, secure destruction and/or complete and irreversible erasure of all the Client's Personal Information once it is no longer required for the purposes of the delivery of the Services under this Contract, and otherwise where directed by the Client; and
- i) comply with any reasonable requests, directions, or guidelines given to it by the Client relating to compliance with this Clause 8A; and
- j) comply with any reasonable direction from the Client, where the Client reasonably considers that this is necessary to enable the Client to comply with a notice or direction given to the Client by the Privacy Commissioner; and
- k) cooperate with any privacy assessment by the Client of the Consultant's privacy policies and practices in so far as they are relevant to the protection of the Client's Personal Information, including completing self-assessments on request.

8A.2 If the Consultant becomes aware of, or has reason to suspect the existence of, a Data Breach involving facilities, systems, personnel, suppliers and/or Subconsultants of the Consultant:

- a) the Consultant must as soon as practicable notify the Client;

- b) the Consultant will provide all reasonable assistance to the Client to enable the Client to notify affected individuals and the Privacy Commissioner of the Data Breach in accordance with the NZ Privacy Laws;
- c) unless required by law, the Consultant will not notify affected individuals or the Privacy Commissioner except with the Client's prior written agreement;
- d) the Client may take any steps it believes in good faith are necessary to protect the Client's Personal Information, which may include suspending any supply, collection or use of the Client's Personal Information under this Contract;
- e) the Consultant will provide all reasonable co-operation to assist the Client in securing or recovering the Client's Personal Information in question; and
- f) the Consultant will co-operate with the Client's investigation of the Data Breach, including investigating and reporting to the Client on the background and causes of the Data Breach, the information and/or individuals that may be affected, and the identities of any personnel implicated or suspected in the Data Breach.

8A.3 The Consultant must immediately notify the Client if the Consultant becomes aware of any breach or possible breach of the NZ Privacy Laws or of its obligations under this clause 8.A. The Consultant must take all practicable steps to mitigate the effects of any such breach, and must fully cooperate with the Client for that purpose.

8A.4 The Consultant will not comment publicly, including to the media, about any Data Breach, or any breach of this clause 8.A, without the express written consent of the Client. To the extent permitted by law, the Consultant will promptly refer to the Client any request for access to or correction of the Client's Personal Information, and any complaint received or notified concerning its handling of the Client's Personal Information, and the Consultant will not respond to any such request, complaint or notification except with the Client's written approval.

8A.5 The Consultant must ensure that all of the Consultant's Employees or Subconsultants who have access to the Client's Personal Information comply with the Consultant's obligations under this clause 8.A, and are made aware of, and receive appropriate training in relation to, the NZ Privacy Laws and the requirements of this clause 8.A.

8A.6 The Consultant will indemnify the Client against any loss suffered by the Client or liability incurred by it that may arise out of, or in consequence of, a failure to comply with this clause 8.A.

Section 12 General provisions

12.10 Survival

Clause 12.10 is amended by adding "8.A" after "8".

12.14 GST

Clause 12.14 is amended by adding the following wording:

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

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

12.15 Client's regulatory function

Add the following to the end of clause 12.15:

12.15 For the avoidance of doubt, any exercise of a regulatory function by the Client shall not constitute a breach of this Agreement.

ANNEXURE 1

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

Item 1 Client's Representative

[Name]

[Title]

Waka Kotahi NZ Transport Agency

[Street Address]

[PO Box Number]

[CITY]

Email: [Email address]

Tel: [Tel number]

Item 2 The Consultant

*Consultant's Representative

[Name]

[Title]

[Street Address]

[PO Box Number]

[CITY]

Email: [Email address]

Tel: [Tel number]

Item 3 The Project

Suggested Sub-Headings:

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

*Item 4 Fees, Expenses and Payment

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

Fixed Price Quote (exclusive of GST)

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

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

<<OR>>

Time Writing to Fee Budget (exclusive of GST)

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

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

<<OR>>

Schedule (exclusive of GST)

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

Item 5 Schedules

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

Additional Services Schedule

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

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

Contract Pricing Schedule

Item	Description	Unit	Rate	Amount
1	XXXXXXXX	L.S./[X] ea.		
2	[Other] [list items and define payment]	L.S./[X] ea		

Item	Description	Unit	Rate	Amount
				Total
				\$XX,XXX.XX

Payment Schedule

Item	Description
1	XXXXXXX Define payment
2	Other Define Payment

Deliverable Schedule

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

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

Item 6 Appendices

*Waka Kotahi Contractor Health and Safety Expectations

[Consultant’s offer of service letter]

[Other]