

Project no: **TAR 21/##**

Date of commencement: **## Month 202#**

This Agreement is between the Researcher -

#### The Researcher

**Name:** <<Research organisation>>

**Postal address:** <<Mail address>>, «Mail\_Add\_Sub»<<Mail add suburb>>, <<Mail add city>>

**Physical address:** <<Physical address>>, «Mail\_Add\_Sub»<<Mail add suburb>>, <<Mail add city>>

**Contact person:** <<Contact name>>  
*Email:* <<contact email>>  
*Phone:* <<Contact phone #>>      *Mobile:* <<Contact mobile #>>

and the New Zealand Transport Agency -

#### The Purchaser

**Name:** **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

**Address:** Private Bag 6995, WELLINGTON 6141  
50 Victoria Street, WELLINGTON 6011

**Research owner:** New Zealand Transport Agency Research Owner name  
Research Owner position  
*Email:* [research.owner@nzta.govt.nz](mailto:research.owner@nzta.govt.nz)  
*Phone:* + 64 \* 894 \*\*\*\*

**Coordinator:** Karen Brodie  
Coordinator National Programmes  
*Email:* [karen.brodie@nzta.govt.nz](mailto:karen.brodie@nzta.govt.nz)  
*Phone:* + 64 7 928 7921

for the provision of research services comprised in -

#### The Project

**Title:** <<Project name>> *Ref:* <<Project ref>>

**Final Draft Report submission date:** <<Final draft report submission date>> (or such other date agreed under this Agreement)

**Maximum cost:** <<Total NZTA funding>> (excl GST) (or such other amount agreed under this Agreement)

**Project leader:** <<Project leader>>  
*Email:* <<Project leader email>>  
*Phone:* <<Proj lead phone #>>      *Mobile:* <<Proj lead mobile #>>

**By signing this Agreement each of the Parties agrees to be bound according to its terms.**

The Parties agree:

## General

### *Interpretation and definitions*

- 1 **Interpretation:** In this Agreement, unless the context otherwise requires:
  - a a reference to a statute includes all regulations made under, and amendments made to, that statute; any statute passed in substitution for that statute; or any statute incorporating any of its provisions, to the extent that they are incorporated;
  - b any reference to a Schedule or clause shall be reference to the Schedule forming part of this Agreement or a clause within this Agreement;
  - c any reference to a paragraph shall be reference to a paragraph within the Schedule of this Agreement;
  - d headings are inserted for convenience only and are to be ignored in interpreting this Agreement;
  - e all amounts are in New Zealand dollars;
  - f the singular includes the plural and vice versa; and
  - g the word 'person' includes a natural person and any body or entity whether incorporated or not.
- 2 **Definitions:** In this Agreement, unless the context otherwise requires, the following words shall have the following meaning:

<b>'Agreement'</b>	means this Agreement and includes the Research Brief along with variations agreed in writing by the Parties after the date of this agreement.
<b>'Author'</b>	means the person or persons who are the authors of the Research Product.
<b>'Confidential Information'</b>	means any information, verbal or written, personal or otherwise, including documents, plans, software, trade secrets, and Intellectual Property of a party. Confidential Information includes information either party uses, acquires, or creates in relation to the Project. It does not include information which has been developed by the Researcher independently of the Project, or which is generally available to and known by the public other than due to a breach of the provisions of clauses 43 to 49 inclusive.
<b>'Data Breach'</b>	means any incident involving facilities, systems, personnel, suppliers and/or subcontractors of the Researcher that: (a) involves (or gives rise to a real risk of) unauthorised or accidental access to, use, disclosure, alteration, loss or destruction of, any of Waka Kotahi Personal Information; or (b) prevents Waka Kotahi from accessing Waka Kotahi Personal Information on either a temporary or permanent basis; or (c) would prompt a reasonable and prudent person in the position of Waka Kotahi to notify (or consider notifying) the incident to the Privacy Commissioner and/or one or more individuals under NZ Privacy Laws.
<b>'Final Draft Report'</b>	the completed research report which has addressed peer review comments and is submitted to the Waka Kotahi Coordinator (named on the first page of this Agreement) for editing.

<b>‘Final Research Report’</b>	the research report that has been edited by Transport Agency’s research report editor and published on Waka Kotahi website.
<b>‘GST’</b>	means goods and services tax payable under the NZ Goods and Services Tax Act 1985.
<b>‘Insolvency Event’</b>	means, in respect of a party [other than for the purpose of solvent reconstruction or amalgamation]: <ul style="list-style-type: none"> <li>a a receiver, manager, or liquidator is appointed over the party’s undertaking or assets or the party enters into any assignment, composition or arrangement with its creditors;</li> <li>b is unable to pay its debts when due, or is deemed unable to pay its debts under any law, or suspends payment to its creditors, or</li> <li>c a distress, attachment or other execution is levied or enforced upon or commenced against any substantial part of the party’s assets and is not stayed within 14 days.</li> </ul>
<b>‘Intellectual Property Rights’</b>	means any copyright, patents, trade marks, trade names, service marks, registered designs and all goodwill rights associated with such works, domain names, symbols, logos and all other Intellectual Property Rights and interests in any jurisdiction.
<b>‘NZ Privacy Laws’</b>	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; in each case as amended or replaced from time to time.
<b>‘NZ Transport Agency Coordinator’</b>	means Waka Kotahi staff member responsible for managing Waka Kotahi administrative requirements in relation to the research undertaken under this Agreement.
<b>‘NZ Transport Agency Research Owner’</b>	means Waka Kotahi (or Ministry of Transport) staff member responsible for managing Waka Kotahi contractual requirements in relation to the research undertaken under this Agreement.
<b>‘Parties’</b>	means Waka Kotahi and the Researcher.
<b>‘Personal Information’</b>	has the meaning given in the Privacy Act 2020.
<b>‘Project’</b>	means the project named on the first page of this Agreement.
<b>‘Project Steering Group’</b>	means the Project Steering Group as detailed in the Research Brief which is attached to this Agreement as Schedule 1.
<b>‘Researcher’</b>	means the research organisation specified on page 1 of this Agreement with whom Waka Kotahi enters into this Agreement.
<b>‘Research Brief’</b>	means the brief attached to this Agreement and forming part of these terms (Schedule 1).
<b>‘Researcher’s Existing Intellectual Property Rights’</b>	means all Intellectual Property Rights owned by the Researcher prior to the date the Researcher signed this Agreement.
<b>‘Research Peer Review Guidelines’</b>	means the Research Peer Review Guidelines available on the Waka Kotahi website attached as Schedule 2.

<b>‘Research Product’</b>	means the outputs the Researcher produces from the Research Brief and in performing the Services under this Agreement excluding the Researcher’s internal administrative documents and correspondence, but including any working paper submitted to Waka Kotahi.
<b>‘Researcher’s Resulting Intellectual Property Rights’</b>	means all Intellectual Property Rights in any material created or produced by the Researcher in providing the Services under this Agreement that does not form part of the Research Product and was not specified or anticipated in the Research Brief.
<b>‘Research Task’</b>	means the tasks and/or milestones detailed in Schedule 1 undertaken to complete the Research Product.
<b>‘Service Fee’</b>	means the fee set out in Schedule 1 of this Agreement.
<b>‘Services’</b>	means the research, outputs and related services specified in the Research Brief.
<b>‘Supplier Code of Conduct’</b>	means the New Zealand Procurement Supplier Code of Conduct at <a href="https://www.procurement.govt.nz/assets/procurement-property/documents/supplier-code-of-conduct.pdf">https://www.procurement.govt.nz/assets/procurement-property/documents/supplier-code-of-conduct.pdf</a> .
<b>‘Third Party Intellectual Property Rights’</b>	means all Intellectual Property Rights licensed to the Researcher by third parties which form part of the Research Product.
<b>‘Waka Kotahi’</b>	means the agency established under section 93 of the Land Transport Management Act 2003.
<b>‘Waka Kotahi Existing Intellectual Property Rights’</b>	means all Intellectual Property Rights owned by or licensed to Waka Kotahi prior to the date the Researcher signed this Agreement, and which are used to create or form part of the Research Product.
<b>‘Waka Kotahi Personal Information’</b>	means Personal Information made available to the Researcher by or on behalf of Waka Kotahi, or collected by the Researcher for Waka Kotahi, in connection with this Agreement.
<b>‘Unforeseen and Uncontrollable Event’</b>	<p>means an event where the Researcher could not have prevented that event or overcome its effects at a reasonable cost and by exercising reasonable care. Without limiting the foregoing, for the purposes of this Agreement, the following are Unforeseen and Uncontrollable Events:</p> <ul style="list-style-type: none"> <li>a operation of uncontrollable natural forces such as fire, earthquake, storm and flood</li> <li>b strike, lockout, work stoppage or other labour hindrance</li> <li>c explosion, public mains electrical supply failure, or nuclear accident</li> <li>d civil disruption, sabotage, riot, insurrection, epidemic, national emergency (whether in fact or law) or act of war (whether declared or not)</li> <li>e unavoidable accident, or inability to obtain or delay in obtaining adequate labour, contractors, equipment, materials, transport or supplies.</li> </ul> <p>A lack of funds, for any reason, is not an Unforeseen and Uncontrollable Event.</p>

### ***Our purpose***

- 3 Waka Kotahi is entering into this Agreement as part of its Land Transport Research Programme. The Research Programme is an important element of the Waka Kotahi overall strategy for meeting its statutory objective to allocate resources and to undertake its functions in a way that contributes to an affordable, integrated, safe, responsive and sustainable land transport system.

### ***Relationship***

- 4 This Agreement is a purchase agreement between Waka Kotahi and the Researcher, and the Researcher acknowledges that the Researcher is providing the Services as an independent contractor, not as a Waka Kotahi employee.

### ***These are the only terms***

- 5 This Agreement is the only agreement the Researcher has with Waka Kotahi for providing the Services. It replaces all earlier agreements or understandings there may have been between both Parties for provision of these Services.

### ***Duration of this Agreement***

- 6 This Agreement takes effect from the date it is signed by both Parties and remains in force until both Parties have fully performed all of their obligations under this Agreement, or until it is sooner ended according to its terms.

### ***Variation***

- 7 This Agreement may be varied provided there is written agreement between the Parties.

### ***Administration***

- 8 The Researcher's first point of contact for all matters relating to this Agreement, including any change or variation to these terms, is the Waka Kotahi Agency Coordinator (named on the first page of this Agreement), or any other person that Waka Kotahi may designate from time to time.

## **Providing the Services**

### ***The Services the Researcher agrees to provide***

- 9 The Researcher agrees to provide the Services in every respect according to the Research Brief.

### ***Performance standards***

- 10 In providing the Services, the Researcher is required to exercise all reasonable care, skill and diligence and work to the professional standards normally accepted for the conduct of research of the type specified in the Research Brief.
- 11 The Researcher must ensure that its staff have the necessary skills, experience, training and resources to successfully deliver the Services and agrees that it will comply with the Supplier Code of Conduct.
- 12 The Researcher warrants that, as at the date this Agreement is signed, it has no conflict of interest in providing the Services or entering into this Agreement and that it will do its best to avoid situations that may lead to a conflict of interest arising while this Agreement remains in force. The Researcher must advise Waka Kotahi immediately in writing if any conflict of interest arises while this Agreement is in force and will work with Waka Kotahi to manage that conflict.

### ***Researcher's authorised representative to liaise with Waka Kotahi***

- 13 The Researcher will nominate either the Project Leader or the Researcher's Contact Person named on the first page of this Agreement as the Researcher's authorised representative for the purposes of liaising and consulting with Waka Kotahi to the extent that Waka Kotahi reasonably requires for the effective administration of this Agreement.

### ***Changes to personnel***

- 14 The Researcher may not change the Project Leader or remove, replace or add to any of the personnel named in the Research Brief without first obtaining Waka Kotahi written approval; such approval not being unreasonably withheld.

### ***Subcontracting***

- 15 If the Researcher wishes to enter into a subcontract for the provision of any part of the Services, the Researcher must first obtain Waka Kotahi written approval; such approval not being unreasonably withheld.
- 16 Entering into a subcontract for the provision of any part of the Services does not release the Researcher from the Researcher's obligation to provide the Services in accordance with the terms of this Agreement. The Researcher shall remain liable for the Services of any subcontractor as if its Services were the Researcher's Services.

### ***Auditing the Project***

- 17 The Project may from time to time be audited at Waka Kotahi cost. Waka Kotahi may engage a third party to conduct an audit, but will take all reasonable steps to ensure that the third party is made aware of, and complies with the duty of confidence owed to the Researcher under clause 43. Any audit may investigate any or all of: research progress against agreed milestones, research results, and financial and personnel records relating to the Project. Waka Kotahi will provide reasonable advance notice of the audit, which will be conducted during ordinary business hours.
- 18 Following any audit under clause 17, Waka Kotahi may request changes to the specification of the Research Brief, or changes in the procedure and practices of the research or Researcher, where Waka Kotahi considers this is necessary.

### ***Peer review***

- 19 The Project will be peer reviewed in accordance with Waka Kotahi Research Peer Review Guidelines (Schedule 2) and the requirements of the Research Brief (Schedule 1) as agreed with the Waka Kotahi Research Owner. The Researcher shall arrange and pay all costs associated with the peer reviewing of this Project and this cost is included by the Researcher in the total cost of the Project.
- 20 Interim peer reviews may be required and their timing will be identified in the Research Brief.
- 21 At least two signed peer review forms (as set out in the Research Peer Review Guidelines) are to be submitted to Waka Kotahi before the Final Draft Report will be released by Waka Kotahi for editing.
- 22 Waka Kotahi reserves the right to obtain, at Waka Kotahi cost, following the Researcher's submission of the Final Draft Report pursuant to clause 28 below, a further peer review by a reviewer chosen by Waka Kotahi, where Waka Kotahi considers this is necessary for any reason.
- 23 The Researcher shall, within reason and within the Project cost as agreed with the Waka Kotahi Research Owner, address the concerns of the peer review undertaken under clause 22.

### **Review by the Project Steering Group**

- 24 Either of the Parties may request and obtain a review of the Project, or of any Research Task, by the Project Steering Group, if there are reasonable grounds to believe that:
- a a change to the specifications of the Research Brief may be required; or
  - b the objectives of the Research Brief are unlikely to be realised.
- 25 Following a review under clause 24, Waka Kotahi may:
- a decide to continue with this Agreement under its existing terms;
  - b negotiate with the Researcher to vary this Agreement; or
  - c end this Agreement under clause 89.
- 26 Despite clause 24, the Project Steering Group may review the Research Product, or a draft research report at any time and provide feedback on it for the Researcher to address.

### **Progress reporting**

- 27 The Researcher must keep Waka Kotahi fully informed of progress with the Project, giving Waka Kotahi oral and written reports on the progress of the Project that Waka Kotahi, or Waka Kotahi agent, reasonably requires (the minimum formal reporting requirement is monthly reporting).

### **Research report**

- 28 On the relevant due date, the Researcher will provide Waka Kotahi with the Final Draft Report as specified in the Research Brief.
- 29 The Final Draft Report must be submitted as an electronic MS Word copy, ready for editing by Waka Kotahi contracted editors. The electronic copy must include all tables, graphs, images and maps in the main body of the report, and not as separate documents.
- 30 Waka Kotahi reserves the right to review the Final Draft Report, and/or to seek reviews of the report, and to recommend changes as appropriate prior to forwarding the report to the contracted editors.
- 31 The Researcher's report shall be written to comply with Waka Kotahi Research Report Style Guide.

### **Editing and publishing**

- 32 Waka Kotahi shall arrange for the Final Draft Report to be edited, in consultation with the Researcher, and may profile the report in an article in Waka Kotahi's newsletter *NZTA Research*. The Researcher, Author and/or the Researcher's authorised representative must co-operate with Waka Kotahi contracted editors and writers and provide as much assistance to those editors during the editing process as they may reasonably require. Likewise, such cooperation is required with the preparation of newsletter articles. The Researcher must advise the NZ Transport Agency Coordinator of any issues arising from these processes.
- 33 If Waka Kotahi decides to publish the Final Research Report:
- a Waka Kotahi shall provide any editing and publishing services for the Draft Final Report and for any article in Waka Kotahi's publication *NZTA Research* at Waka Kotahi's own cost;
  - b Waka Kotahi shall publish the Final Research Report on Waka Kotahi's website, thereby enabling it to be downloaded free of charge; and
  - c the Final Research Report shall be published under the name of the Researcher and/or Author and shall include a disclaimer as to Waka Kotahi's responsibility for the contents and use of the Final Research Report, in a form to be determined by Waka Kotahi.

## Payment

### *Payment for services*

- 34 Waka Kotahi shall pay the Researcher for the Services in accordance with the payment arrangements set out in clauses 35 to 37 inclusive.

### *The Researcher must invoice Waka Kotahi*

- 35 The Researcher shall invoice Waka Kotahi for each research milestone defined in the Research Brief as the Researcher completes it. The Researcher may invoice Waka Kotahi on other or alternative occasions, but only if Waka Kotahi agrees in writing.

### *Proper completion*

- 36 Waka Kotahi is not obliged to pay on the Researcher's invoice unless the Research Tasks contributing to the milestone have been properly completed according to the Research Brief and the Researcher has otherwise complied with the terms of this Agreement. If the Research Tasks are not properly completed, Waka Kotahi may withhold payment until they are completed.

### *Payment*

- 37 Being satisfied on reasonable grounds that all Research Tasks for a milestone have been properly completed, Waka Kotahi shall pay to the Researcher's nominated account the amount set out in the Researcher's invoice up to the maximum amount (excluding GST) specified in the Research Brief for that milestone. Invoices must be accompanied by a completed Monthly Progress Report. Waka Kotahi will only accept invoices for milestones that are 100% complete and will seek verification from the NZ Transport Agency Research Owner to ensure the milestone has been completed. Valid invoices received will be paid by the 20th day of the following month.

## Retentions

### *Final payment*

- 38 A minimum of ten percent [10%] of the project's cost or \$10,000 (whichever is the lesser) will be retained until the Final Draft Report has been edited in accordance with clause 32, and the Final Research Report has been published on Waka Kotahi website. The final payment is conditional on the Researcher's participation in the editing process in accordance with clause 32. If Waka Kotahi is satisfied on reasonable grounds that the Researcher has complied with clause 32, then the Researcher may invoice Waka Kotahi for, and Waka Kotahi shall release, the amount retained:
- a where Waka Kotahi decides to publish the Final Research Report, following publication of the Final Research Report, or within 60 working days of the completion of the Project (whichever is the sooner, or otherwise as agreed with the Researcher; or
  - b where Waka Kotahi decides not to publish the Final Research Report then within 20 working days after the completion of the Project or otherwise as agreed with the Researcher.

### *Uncompleted projects or milestones*

- 39 The Researcher acknowledges that funding for the Project or milestone (as specified in the Research Brief – Schedule 1) cannot be confirmed beyond the financial year in which the Project or milestone completion date falls. Accordingly, funding for uncompleted projects or milestones shall not automatically be available for any subsequent financial year, and the Researcher must request Waka Kotahi's prior approval for any carryover of the Project or milestones to a subsequent financial year. Any carryover falls within Waka Kotahi sole discretion and will be considered in light of Waka Kotahi's rights under clause 42. Such requests must be made by the date advised by the Waka Kotahi Coordinator, unless agreed otherwise.



## Deadlines

### *Time is of the essence*

- 40 The Researcher must provide the Services promptly in accordance with the timeframes set out in this Agreement. If the Services are not, in the reasonable opinion of Waka Kotahi, provided in accordance with the timeframes set out in this Agreement, Waka Kotahi may pursue its remedies under this Agreement immediately without waiting a reasonable time for the Researcher to remedy its failure.

### *Dealing with delays or potential delays*

- 41 The Researcher must promptly advise Waka Kotahi of any delay or potential delay in completing a Research Task so that together the Parties may negotiate remedial action to avoid or minimise that delay or potential delay.
- 42 At the Researcher's request, Waka Kotahi may agree to extend the completion date for a research milestone or for the Project as a whole, but Waka Kotahi is not obliged to grant extensions. If Waka Kotahi does grant an extension, such extension shall be treated as a change to these terms, confirmed by a written variation to this Agreement, and clause 40 will apply to the extended timeframes.

## Confidentiality and Privacy

### *Confidentiality and use*

- 43 Except as permitted by these clauses 43-49, a party shall keep the other party's Confidential Information confidential and shall not, without the prior written approval of the other party, disclose the other party's Confidential Information or use that Confidential Information for any purpose other than the purpose of this Agreement (which in the case of Waka Kotahi, will include obtaining the full benefit of the Agreement and all rights granted under it).
- 44 A party will not be in breach of clause 43 in circumstances where it is legally compelled to disclose the other party's Confidential Information, or where disclosure is required by any government agency, minister of the Crown or parliamentary officer or body, provided that party gives the other party notice of the requirement as soon as practicable before such disclosure is made (if such notice is permitted by law).
- 45 Either party may disclose Confidential Information to its directors, employees, contractors, officer or agents, provided that party ensures each such person complies with the restrictions in these clauses 43-49 as if such person were a party to this Agreement.
- 46 Either party may also disclose Confidential Information if and to the extent the information:
- a was known to the receiving party before the information was disclosed to it;
  - b is disclosed to the receiving party on a non-confidential basis by a third party who has the right to make the disclosure;
  - c is generally available to the public through no fault of the receiving party; or
  - d is developed by the receiving party independently of the information disclosed by the disclosing party.
- 47 At the request of Waka Kotahi, the Researcher must ensure the prompt return, destruction or erasure (depending on Waka Kotahi instructions) of all copies or reproductions of Confidential Information held by the Researcher, its personnel and subcontractors, except that the Researcher may retain a copy for audit, insurance or legal purposes. All Confidential Information retained by the Researcher must be kept confidential in accordance with clauses 43-46.
- 48 Clauses 43-47 shall survive the termination of this Agreement.

- 49 The Researcher acknowledges that it may be necessary or appropriate for Waka Kotahi to disclose Confidential Information held by Waka Kotahi pursuant to the Official Information Act 1982 or otherwise pursuant to public law or other legal obligations of Waka Kotahi.

### **Privacy obligations**

- 50 The Researcher must comply at all times with all NZ Privacy Laws and not do anything with Waka Kotahi Personal Information likely to cause Waka Kotahi to breach any NZ Privacy Laws.
- 51 The Researcher 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/>).
- 52 The Researcher must not use or disclose Waka Kotahi Personal Information (including to any subcontractors or employees) except as strictly necessary to comply with this Agreement. The Researcher must ensure that any subcontractors to whom it discloses Waka Kotahi Personal Information are subject to contractual restrictions on the handling, use and disclosure of that information no less strict than those in this Agreement.
- 53 The Researcher must implement and maintain reasonable security safeguards to protect Waka Kotahi Personal Information, including from unauthorised use or disclosure.
- 54 Except as agreed in writing, the Researcher must not store or process (or permit the storage or processing of) Waka Kotahi Personal Information in any location outside New Zealand.
- 55 The Researcher must promptly return and/or irreversibly erase all Waka Kotahi Personal Information (at Waka Kotahi option), once no longer required for the purposes of this Agreement, and otherwise where directed by Waka Kotahi.
- 56 If the Researcher becomes aware of, or has reason to suspect the existence of, a Data Breach, the Researcher must as soon as practicable notify Waka Kotahi, take all practicable steps to mitigate the effects of the Data Breach, and co-operate with the Waka Kotahi investigation of the Data Breach as Waka Kotahi reasonably considers necessary to enable Waka Kotahi to meet its obligations under NZ Privacy Laws.
- 57 Unless required by law, the Researcher will not notify affected individuals or the Privacy Commissioner of any Data Breach except with the prior written agreement of Waka Kotahi.
- 58 The Researcher will comply with any reasonable direction from Waka Kotahi, where Waka Kotahi reasonably considers that this is necessary to enable Waka Kotahi to comply with a notice or direction given to Waka Kotahi by the Privacy Commissioner.
- 59 The Researcher will not comment publicly, including to the media, about any Data Breach, or any breach of clauses 50-58, without the written consent of Waka Kotahi.
- 60 Clauses 50-59 survive the expiration or earlier termination of this Agreement.

### **Breach by personnel, subcontractors**

- 61 A breach of any of these *Confidentiality and use* or *Privacy obligations* provisions by the Researcher's staff or subcontractors amounts to a breach by the Researcher of this Agreement.

## **Intellectual Property Rights**

### **A note about this section**

- 62 An important purpose of this section is to give Waka Kotahi all the rights Waka Kotahi needs to own and use the Research Product (for which Waka Kotahi is paying the Researcher), and to avoid the need for Waka Kotahi to obtain further consents relating to the Research Product from anyone in the future.

### ***Waka Kotahi Intellectual Property Rights***

- 63 Exclusive ownership of and title to any Intellectual Property Rights (except for the Researcher's Existing Intellectual Property Rights, the Researcher's Resulting Intellectual Property Rights and the Third Party Intellectual Property Rights) in the Research Product shall immediately and directly vest in Waka Kotahi upon their creation. To the extent such ownership does not so vest, the Researcher irrevocably assigns such Intellectual Property Rights to Waka Kotahi.

### ***Waka Kotahi Existing Intellectual Property Rights***

- 64 The Researcher acknowledges that Waka Kotahi's Existing Intellectual Property Rights remain Waka Kotahi's exclusive property. Waka Kotahi grants the Researcher a non-exclusive licence to use Waka Kotahi's Existing Intellectual Property Rights, but only for the purpose of the Researcher performing, and to the extent necessary for the Researcher to perform, the Researcher's obligations under this Agreement.

### ***Licence of Intellectual Property Rights***

- 65 Waka Kotahi grants the Researcher a non-exclusive licence to exercise the Intellectual Property Rights in the Research Product that are owned by Waka Kotahi, provided that:
- a the Researcher must notify Waka Kotahi before the Researcher exercises any Intellectual Property Rights licensed by Waka Kotahi under this clause; and
  - b Waka Kotahi may revoke such licence at any time if Waka Kotahi believes on reasonable grounds that the Researcher's exercise of such Intellectual Property Rights may be detrimental to the national benefit or is in some other way inappropriate.

### ***Third Party Intellectual Property Rights***

- 66 The Researcher shall at its own cost procure for Waka Kotahi the full right to use any Third Party Intellectual Property Rights for the purpose of using or dealing with the Research Product in any way, including (without limitation) its publication, licence and sale.

### ***The Researcher's Intellectual Property Rights***

- 67 Waka Kotahi acknowledges that the Researcher's Existing Intellectual Property Rights and the Researcher's Resulting Intellectual Property Rights are the Researcher's exclusive property. The Researcher grants Waka Kotahi a perpetual, non-exclusive, transferable, irrevocable licence to use the Researcher's Existing Intellectual Property Rights and the Researcher's Resulting Intellectual Property Rights and permit third parties to use these rights for:
- a the purpose of using or dealing with the Research Product in any way, including (without limitation) its publication, licence and sale; or
  - b any other purpose that may be agreed between the Parties in writing.

### ***The Researcher's confirmations***

- 68 The Researcher confirms to Waka Kotahi that:
- a the creation and use of the Research Product and the assignment, grant or licence of any rights by the Researcher to Waka Kotahi under this Agreement shall not infringe the rights (including the Intellectual Property Rights) of any person;
  - b the Researcher has, or shall, obtain all necessary licences, releases, waivers and approvals required to perform the Researcher's obligations under this Agreement;
  - c the Researcher has not entered, and shall not enter, into any licence or agreement with any person which conflicts with the rights the Researcher grant under this Agreement;

- d the Researcher shall do everything that Waka Kotahi consider is needed to be done to protect, perfect or enforce any of the rights granted or licensed to Waka Kotahi by the Researcher under this Agreement;

***[The following two sub-clauses shall apply only where the Researcher engages a full- or part-time student to perform all or part of the research services]***

- e the Researcher shall ensure that, where any student completes a report, dissertation or thesis which contains results, data, or information from the Project, the student shall inform Waka Kotahi and, on request, make a copy available to Waka Kotahi for review. If, following Waka Kotahi review, Waka Kotahi considers such report, dissertation or thesis contains commercially sensitive or otherwise Confidential Information, Waka Kotahi may notify the Researcher of this and the Researcher must ensure the report, dissertation or thesis is not released to any examiner until the examiner has signed a confidentiality agreement in respect of that information; and
- f the Researcher shall ensure that no report, dissertation or thesis that contains results, data, or information from the Project is published by any student unless and until the Final Draft Report required to be produced by the Researcher under the Research Brief has been peer reviewed and submitted to Waka Kotahi in accordance with clause 28 of this Agreement, provided that this period of restriction on publication shall not exceed 12 months. Where the thesis contains commercially sensitive or Confidential Information, the thesis may be embargoed for a period to be agreed between the Parties.

#### ***Indemnity in relation to third party rights***

- 69 The Researcher indemnifies Waka Kotahi from any expenses, damage or liability incurred by Waka Kotahi arising out of any third party claim that the supply of the Services to Waka Kotahi or Waka Kotahi exploitation of them in accordance with this Agreement infringes a third party's rights.

#### ***Use of names***

- 70 The Researcher must not without first obtaining Waka Kotahi written approval:
- a use the name 'New Zealand Transport Agency', or any of its derivatives in any proposal, promotional material, public statement or publication, or
  - b otherwise enable Waka Kotahi to be identified as the purchaser of the Researcher's services, except to the extent necessary for the performance of this Agreement.
- 71 However, where Waka Kotahi has published the fact that the Researcher is or has been or shall be providing the Services to Waka Kotahi, the Researcher need not obtain Waka Kotahi prior written approval to disclose that fact in the context of this clause.
- 72 In providing Waka Kotahi approval under clause 70 for the use of the name 'New Zealand Transport Agency' or the identification of Waka Kotahi, Waka Kotahi may require the Researcher to publish a disclaimer in a form to be determined by Waka Kotahi.
- 73 The obligations in clauses 62 to 72 inclusive are continuing ones and survive the termination of this Agreement for whatever reason.

### **Unforeseen and Uncontrollable Events**

#### ***Inability to provide the Services***

- 74 If the Researcher is prevented from providing the Services due to an Unforeseen and Uncontrollable Event then, provided the Researcher has complied with clause 75 below, during the time and to the extent that the Researcher is unable to provide the Services because of that event, the Researcher shall not be liable for its failure to provide the Services.

- 75 If the Researcher is prevented from providing the Services due to an Unforeseen and Uncontrollable Event, it must notify Waka Kotahi promptly why it is unable to provide the Services and to what extent. The Researcher must also give Waka Kotahi an estimate of how long it will be before it shall be able to provide the Services again. The foregoing notwithstanding, the Researcher must take all reasonable steps to overcome the situation.
- 76 If, because of an Unforeseen and Uncontrollable Event, the Researcher is unable to provide the Services for any period then, on giving the Researcher 10 working days' notice, Waka Kotahi may terminate this Agreement. Waka Kotahi termination of this Agreement under this clause 76 does not affect the Researcher's rights or Waka Kotahi rights relating to anything that happened beforehand.

## **Indemnity**

- 77 The Researcher indemnifies Waka Kotahi against all costs, losses, or damages resulting from any claim against Waka Kotahi (or against any of Waka Kotahi's agents, employees or contractors) that may result directly from the Researcher's failure to use proper and professional reasonable skill and care in the provision of the Services under this Agreement, or in the performance of any of the Researcher's obligations at law. However, the Researcher shall not be liable to the extent to which Waka Kotahi has contributed to any such costs, losses or damages. To the extent permitted by law, the Researcher's total liability to Waka Kotahi arising out of or in connection with this Agreement for all claims taken together is limited to three times the value of the maximum cost (excluding GST) specified on the first page of this Agreement.

## **Insurance requirements**

### ***Insurance policies required***

- 78 The Researcher must have and maintain from the commencement of this Agreement appropriate policies of insurance (including cover for public liability, professional indemnity and statutory liability), with a reputable insurer. The policies must be kept in full force during the Researcher's provision of the Services. The policies must provide sufficient indemnity for liabilities arising from all acts, errors, or omissions during or related to the Researcher's provision of the Services. Within 5 Working Days of the commencement of this Agreement, or on request, the Researcher will make available to Waka Kotahi a copy of each certificate of currency of the insurance policies required under this Agreement.

### ***The Researcher must not prejudice insurance***

- 79 The Researcher must comply with its obligations under its policies of insurance and ensure that neither it nor any of its subcontractors does anything that might invalidate those policies.

### ***Producing insurance certificates***

- 80 At Waka Kotahi's request, the Researcher must produce to Waka Kotahi a certificate signed by or on behalf of the Researcher's insurers certifying that the insurance required under this Agreement is in force and confirming the period for which it has been taken out.

### ***Notifying possible claims***

- 81 The Researcher must notify Waka Kotahi of any claim relating to this Agreement, and of any event or circumstances relating to this Agreement that may give rise to a claim under its policies of insurance, and keep Waka Kotahi fully informed of developments in relation to that claim or event or those circumstances.

## Resolving disputes

### *If a dispute arises*

- 82 If a dispute arises between the Researcher and Waka Kotahi about anything relating to this Agreement or the rights or responsibilities arising from it, then the party claiming a dispute has arisen must give written notice to the other party specifying the nature of the dispute, and both of the Parties shall do their best to resolve the dispute by agreement between themselves. If the dispute has not been resolved within 10 working days following notification of the dispute, then either of the Parties may, by written notice to the other, refer the matter to mediation.
- 83 If the dispute is referred to mediation, the Parties shall appoint a mediator within seven days of the written notice of such referral. If the Parties fail to agree on the appointment, the mediator shall be appointed by the President of the New Zealand Law Society or the President's nominee.
- 84 If the dispute is not resolved by agreement or mediation, then the dispute must be referred to arbitration by a single arbitrator in accordance with the Arbitration Act 1996.

### *Providing the Services during a dispute*

- 85 While a dispute continues, and if Waka Kotahi directs the Researcher to do so, the Researcher must continue to provide the Services. Where the Researcher continues to provide the Services at Waka Kotahi's direction, Waka Kotahi shall continue to pay for those Services according to this Agreement.

## Assignment

### *Assignment of this Agreement*

- 86 The Researcher may assign this Agreement provided the Researcher is not in breach of it, but the Researcher must first obtain Waka Kotahi written approval to the assignment, such approval not being unreasonably withheld. To obtain Waka Kotahi approval the Researcher must, at the Researcher's own expense (and without limitation):
- a satisfy Waka Kotahi that the proposed assignee (that is, the person or organisation to whom the Researcher wishes to sell or transfer this Agreement) is in all respects suitable as a provider of the Services; and
  - b ensure that the proposed assignee enters into a deed of covenant (or other appropriate legal agreement) with Waka Kotahi agreeing to comply with the terms of this Agreement.

### *Change of ownership requires Waka Kotahi approval*

- 87 If the Researcher is a company, any change in the actual ownership of the main shareholdings of the company or its holding company, which in effect alters who controls the company, shall be treated as an assignment for the purposes of clause 86 and requires Waka Kotahi prior written approval.

## Giving notice

- 88 If one of the Parties gives the other notice under this Agreement, it must be in writing and either delivered by hand or sent by post or sent by facsimile or emailed to the other's address, facsimile number or email address set out on page 1 (or otherwise advised in writing). A notice sent by post shall be regarded as having been received on the second day after the day on which it is posted. A notice delivered by hand or sent by facsimile shall be regarded as having been received on the day it is sent. A notice sent by email will be regarded as having been received on the day it was sent.

## Ending this Agreement before completion

### *Waka Kotahi right to end this Agreement after an audit or review*

- 89 Waka Kotahi may end this Agreement immediately by giving notice to the Researcher to that effect if, after an audit (under clause 17) or review (under clauses 19 to 24) of the Project and consultation with the Researcher, Waka Kotahi believes on reasonable grounds that the research objectives are unlikely to be realised or that the research budget will be exceeded.

### *Waka Kotahi right to end this Agreement in certain events*

- 90 Without affecting any other rights and remedies Waka Kotahi may have, Waka Kotahi may end this Agreement immediately by giving the Researcher notice to that effect if:
- a being a company, other body corporate, partnership or individual, an Insolvency Event occurs in relation to the Researcher;
  - b the Researcher breaches this Agreement by failing to meet a deadline;
  - c the Researcher breaches this Agreement and the breach the Researcher commits is incapable of being remedied (for instance, a breach of confidentiality); or
  - d Waka Kotahi decides not to continue with the Project because of a change in Waka Kotahi overall funding priorities due to a material reduction in Waka Kotahi income.

### *Mutual right to end this Agreement*

If one of the Parties breaches this Agreement (not being a breach covered by clause 90), the other Party must give that one notice of the breach and require in the notice that the breach be remedied within 10 working days of receiving the notice. If the breach is not remedied within that time then, without further notice and without affecting any other rights and remedies the other Party may have, the other Party may end this Agreement.

### *The Researcher's obligations on the ending of this Agreement*

- 91 If this Agreement is ended before completion of the Project, the Researcher must promptly deliver to Waka Kotahi:
- a all of the work the Researcher has done in relation to the Project, including any software developed or used by the Researcher for the purposes of the Project, except the Researcher's internal administrative documentations and correspondence, but including the working papers detailed in the Schedule 1; and
  - b all of the information the Researcher has gathered in relation to the Project, which forms part of the Research Product, together with a list of any other relevant information.
- 92 Subject to clause 47, the Researcher may retain a single copy of these materials solely for the Researcher's records.

### *Waka Kotahi obligations on the ending of this Agreement*

- 93 If this Agreement is ended before completion of the Project, then where it is ended by Waka Kotahi under clauses 89 to 91 inclusive, and Waka Kotahi has received the Researcher's invoice and has verified that the milestones claimed have been properly completed, Waka Kotahi shall pay the Researcher a Service Fee for the work that the Researcher has done up to that time according to the Research Brief.

**Schedules:**

- 1 Research Brief
- 2 Peer Review Guidelines

**SIGNED by the Parties:**

<p>SIGNED for, and on behalf of, <b>New Zealand Transport Agency</b> by:</p>  <p><b>Signature:</b></p> <p><b>Name:</b> Jonathan Boow</p> <p><b>Designation:</b> Research and Evaluation Programme Manager</p> <p><b>Date:</b> .....</p>	<p>SIGNED for, and on behalf of <b>[the Researcher]</b> by:</p>  <p><b>Signature:</b> .....</p> <p><b>Name:</b> .....</p> <p><b>Designation:</b> .....</p> <p><b>Date:</b> .....</p>
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### RESEARCH PROJECT PEER REVIEW GUIDELINES

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#### Introduction

Waka Kotahi requires that all projects funded through its Research Programme undergo external peer reviews by at least two external peer reviewers. This process and the participation of peer reviewers are integral to the success of the Waka Kotahi Research Programme.

These Peer Review Guidelines together with the Peer Review Form have been issued to explain the peer review process and to ensure that Waka Kotahi receives a satisfactory report at the completion of a research project.

#### When are peer reviews required?

Two peer reviews are required upon the completion of a research project and before the presentation of any Final Draft Report to the NZ Transport Agency Research Programme Coordinator for editing and publishing. Peer review may also be necessary after the completion of individual stages or tasks if specified as milestones in the approved Research Brief which is attached to the Research Agreement.

Researchers are required to allow sufficient time for the peer reviews when preparing their Research Briefs. It is important that the time required for the peer review does not affect the completion of a project by its due date.

#### Roles and responsibilities

##### *Waka Kotahi role*

Waka Kotahi is responsible for approving the peer reviewers nominated by the researcher to undertake the peer reviews of the research report and any milestone peer reviews.

Waka Kotahi may also, at Waka Kotahi cost, seek a further peer review by a reviewer chosen by Waka Kotahi, where Waka Kotahi considers this is necessary for any reason.

##### *Researcher responsibilities*

The researcher, as agreed with Waka Kotahi, must organise and manage the peer reviewers and the peer review process and timing.

The Research Brief, negotiated and agreed with Waka Kotahi, must include a clear description of the peer reviews that will be undertaken during the course of the project, at what point those reviews will be completed, and by whom. The peer reviewers shall be expert peers or end-users of the research who have given their prior agreement to the project's timeframe. This will contribute to the timely provision of peer review comments and/or advice.

In summary, when preparing the Research Brief the researcher, in consultation with the NZ Transport Agency Research Owner, should ensure that the following arrangements have been made to fulfil the peer review process

requirements:

- that suitable independent peer reviewers who have particular knowledge of the specific topic addressed by the project are selected
- that the timing of peer review milestones is identified in the project brief
- that written agreement is obtained from nominated peer reviewers to confirm that they will undertake the review within the proposed timeframe, using the Peer Review Agreement Form
- that peer review costs and disbursements (if applicable) are included in the total cost of the project
- that time is included in the Research Brief for the researcher to consider and address the peer review findings.

During the course of conducting the research project, the researcher has the responsibility to ensure:

- that peer reviewers are kept informed of any significant variations or changes in scope to the project, as approved by Waka Kotahi
- that all documentation and communication between the researcher and peer reviewers relating to the peer review process of the research project is recorded and kept on file for future reference
- that the draft research report is forwarded to the nominated peer reviewers for review, together with a copy of this Peer Review Guidelines document and the Peer Review Sign-off Form, which should be completed as required by the researcher and the peer reviewers
- that peer review comments are incorporated into the Final Draft Report as agreed between the researcher and the peer reviewers
- that Peer Review Sign-off Forms have been completed and signed by both Parties, confirming that all issues have been satisfactorily addressed, and that the Final Draft Report is technically sound and delivers the agreed objectives and is now complete for publishing
- that the Final Draft Report is forwarded to the Waka Kotahi Research Programme Coordinator together with a signed copy of each Peer Review Sign-off Form
- that Waka Kotahi is notified of any issues relating to the peer review of the research project on which there is disagreement between the researcher and peer reviewer/s. Such notification should be presented either before or at the time the Final Draft Report is presented.

**Note:** A peer reviewer is not to be a member of the Project Steering Group.

#### *Roles of the peer reviewers*

Overall, the roles of peer reviewers are:

- to peer review the progress of a project, as specified in the approved Research Brief, and to act as a mentor if required
- to peer review the researcher's report upon completion of the project. Such review must satisfy the peer reviewers that the research project/report is technically sound and delivers the agreed research project objectives as specified in the approved Research Brief for the project.

These roles are explained in more detail below.

## **Review process**

### *Milestone peer review*

If there is a designated peer review milestone (or more than one) during the course of a Research Brief, the peer reviewers are to investigate progress, methodology and results to ensure that the project is on target and likely to meet the objectives set out in the approved Research Brief. Peer reviewers should forward any comments or concerns to the researcher. The Peer Review Sign-off Form can be used to indicate the progress of the peer review over the duration of the research project.

### *Final peer review*

Upon completion of the research project the draft report is to be forwarded to the nominated peer reviewers together with a copy of the Peer Review Form. Peer reviewers are to submit any comments on the content of the report to the researcher. Any amendments agreed between the peer reviewer/s and the researcher should then be incorporated into the Final Draft Report by the researcher, prior to its submission to the NZ Transport Agency Coordinator National Programmes.

Once the peer review process is complete such that the peer reviewers are satisfied their comments have been addressed and the research report is satisfactory, a Peer Review Sign-off Form for each peer reviewer is to be signed by both the researcher and the peer reviewer to certify that the report is technically sound and delivers the agreed research project objectives.

It is then the researcher's responsibility to forward the Final Draft Report and the two signed Peer Review Sign-off Forms to the NZ Transport Agency Coordinator National Programmes so that the report can be edited and prepared for publishing.

## **Concerns or disagreements**

Peer reviewers should consult with the researcher in the first instance should they have any concerns. However, because peer reviewers undertake peer review on behalf of Waka Kotahi, they should keep the NZ Transport Agency Research Owner informed of any concerns or of any disagreement between the researcher and the peer reviewer/s about the research or the content of the report.

## **Confidentiality**

Researchers provide information and documentation to peer reviewers on the understanding that intellectual property belonging to the researcher remains the property of the researcher. Such information and documentation is not to be distributed to third parties without the written permission of the researcher. Researchers provide information and documentation to peer reviewers on the understanding that peer reviewers will observe the confidentiality of the information and will not use it for their individual or organisation's advantage.

## **Waka Kotahi rights**

Waka Kotahi reserves the right, after considering the suitability of the nominated peer reviewers and Research Brief, to request that an alternative or additional peer reviewer is engaged. In addition, Waka Kotahi A may appoint another person as a peer reviewer if a dispute occurs during a project.

Waka Kotahi may also direct that additional review milestones be added to a research project's schedule.

Waka Kotahi reserves the right to obtain at its own cost, following the submission of the Final Draft Report, a further peer review by a reviewer chosen by Waka Kotahi, where Waka Kotahi considers this necessary for any reason.

### **Contact details**

The Waka Kotahi Research Programme is managed from its National Office in Wellington. The Research Programme Coordinator's contact details are:

Coordinator National Programmes

New Zealand Transport Agency

50 Victoria St

Private Bag 6995

Wellington 6141

Ph 04 894 6160

Fax 04 894 6100

[research@nzta.govt.nz](mailto:research@nzta.govt.nz)

[www.nzta.govt.nz](http://www.nzta.govt.nz)

This completed form confirms the peer reviewer's availability to review draft reports, as presented by the researcher, for the project described below. It further confirms the reviewer's understanding that confidentiality of the information contained within these draft reports will be observed. A copy of this agreement is to be submitted to the researcher, who will forward it to the NZ Transport Agency Coordinator National Programmes.

**Project number:** TAR

**Project title:**

### Peer reviewer name and details

**Peer reviewer:**

**Organisation:**

**Contact details**

**Address:**

**Phone:**

**Fax:**

**Email:**

### Researcher name and details

**Project leader:**

**Organisation:**

**Contact details**

**Address:**

**Phone:**

**Fax:**

**Email:**

I understand that each draft report, together with any other documentation supporting that report, submitted for peer review will remain the intellectual property of the researcher and is not to be distributed to third parties without the permission of the researcher. For review purposes I will observe the confidentiality of the information and will not use the information to the advantage of either my organisation or myself.

**Peer reviewer signature:** \_\_\_\_\_ **Date:**

This completed form confirms that the peer reviewer is satisfied that the researcher has adequately addressed the peer review comments. This form and the Final Draft Report are to be submitted by the researcher to the NZ Transport Agency Coordinator National Programmes.

**Researcher name and details**

**Project leader:**

**Organisation:**

**Contact details**

**Address:**

**Phone:**

**Fax:**

**Email:**

**Peer reviewer name and details**

**Peer reviewer:**

**Organisation:**

**Contact details**

**Address:**

**Phone:**

**Fax:**

**Email:**

**PROJECT DETAILS**

*Project number:*            **TAR**

*Project title:*

<i>Draft #</i>	<i>Date submitted</i>	<i>Date returned</i>

**Peer review completion**

**Draft peer reviewer comments (or as attached) :**

**Researcher comments (optional) :**

We are satisfied that all issues have been satisfactorily addressed in the Final Draft Report, and that it is technically sound and delivers the agreed objectives. It is now complete for publishing.

**Researcher signature:** \_\_\_\_\_

**Date:**

**Peer reviewer signature:** \_\_\_\_\_

**Date:**