

Consultancy Agreement

Insert Project Name

Contract No. insert

<<This page is to be deleted prior to documents being finalised for tender.>>

GUIDANCE NOTES

This proforma document provides the basis for the development of consultancy contracts for engagement of professional services. The purpose of the proforma is to provide consistency throughout NZTA's operations.

Format:

- **Black:** Black text is mandatory and may not be changed without approval prior to issue by the NZTA Project Manager, who will consult with the relevant NZTA staff on all changes made.
- **Red:** Red text is used for data which requires fields to be updated or at least considered for each contract. Text can be used as is, modified or replaced. All red text adjustments must have the NZTA Project Manager's approval. Red text must be converted to Black text, prior to tender document release.
- **<<Guidance Notes>>:** Blue text with yellow highlighting are guidance notes. Guidance notes must be deleted prior to tender document release.

For any questions or assistance with preparing this template contract, contact the NZTA Legal team (legalcommercial@nzta.govt.nz). Please note no changes are to be made to the black text without engagement with the NZTA Legal team (including pre-tender and during tender negotiations).

Any changes to the insurance requirements require approval from the NZTA insurance team (insurance@nzta.govt.nz).

CONTRACT AGREEMENT

Dated:

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

AND **[Insert full legal name of Consultant]** (the **Consultant**)

BACKGROUND

- A. The Client has issued invitations to tender for the performance of the Services to the Client in respect of **[insert high level description of the project]** (the **Client's Project**), the Consultant has submitted a tender and the Client has now accepted the Consultant's tender.
- B. The Client and the Consultant now wish to enter into this Agreement to record their agreement that the Client shall engage the Consultant to carry out the Services in respect of the Client's Project.
- C. This Agreement sets out the terms and conditions on which the Services shall be carried out by the Consultant.

THE PARTIES AGREE AS FOLLOWS:

- 1. The Client engages the Consultant to provide the Services and agrees to pay the Consultant in accordance with the terms of the Agreement and to undertake its other obligations set out in this Agreement.
- 2. The Consultant agrees to perform the Services on the terms of this Agreement.
- 3. The following documents shall form the Agreement in order of precedence. Where any conflict or inconsistency exists between any of the documents listed below, the document that appears first in the order of precedence shall prevail over the provision of any other document or documents appearing lower in the list.
 - (a) The Contract Agreement;
 - (b) The Special Conditions – Part A (Specific Conditions);
 - (c) The Special Conditions – Part B (Other Special Conditions);
 - (d) Conditions of Contract for Consultancy Services (Fourth Edition, December 2017);
 - (e) NZTA [Contractor Health, Safety and Wellbeing Expectations](#) documents;
 - (f) Appendix A: Scope, Purpose, Programme and Completion Date for the Services;
 - (g) Appendix B: Fees, Expenses and Payment;
 - (h) Appendix C: Client's Representative;
 - (i) Appendix D: Consultant's Key Personnel;
 - (j) Appendix E: Subconsultants and Subconsultants' Key Personnel;
 - (k) Appendix F: Other Consultants, Other Consultants' Insurances, Personnel, Equipment, Facilities and Information supplied by the Client;
 - (l) Appendix G: Client's Risk Identification and Notification.

(m) Appendix H: Consultant's Tender.

EXECUTED as an agreement:

SIGNED for and on behalf of the **New Zealand Transport Agency** by its delegate:

Signature of Authorised Signatory

Name of Authorised Signatory

SIGNED for and on behalf of **[insert]**:

Signature of Director/Authorised Signatory

Name of Director/Authorised Signatory

Signature of Director/Authorised Signatory

Name of Director/Authorised Signatory

SPECIAL CONDITIONS OF CONTRACT – PART A (SPECIFIC CONDITIONS OF CONTRACT)

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

6.2 Limitation of Liability

Two times the Anticipated Contract Value (exclusive of GST and disbursements) with a maximum limit of \$10,000,000.

<<Guidance Note: Engagement with the NZTA legal team (legalcommercial@nzta.govt.nz) on the liability cap is required where the anticipated contract value is >\$10m.>>

6.4 Duration of Liability

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

6.5 Insurance

Professional Indemnity

i. Amount of Cover

The amount of professional indemnity insurance required is \$[5,000,000 / \$2,000,000 / \$1,000,000] per claim and in the aggregate.

<<Guidance Note: Select the appropriate level of insurance based on the total anticipated value over the life of the contract:

- Contract value \$3m and over = select \$5m
- Contract value \$2m - \$3m = select \$2m
- Contract value less than \$2m = select \$1m.

If the options provided are not appropriate, discuss with the NZTA insurance team (insurance@nzta.govt.nz).>>

ii. Period of cover:

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

Public Liability

i. Amount of Cover:

The amount of public liability insurance required is \$5,000,000.00 per occurrence.

ii. Period of Cover:

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

12.8 Notices

Client's Address: New Zealand 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)

The General Conditions of Contract for Consultancy Services (Fourth Edition, December 2017) are amended as follows:

Section 1 Definitions and Interpretation

Section 1.1 Definitions

Add the following new definitions to clause 1.1:

Anticipated Contract Value means the total amount of fees that would be payable under this Agreement if the parties were to continue to properly perform all obligations under this Agreement (including any Variations) and is not limited to amounts that have become due and payable. Where this Agreement is priced on a time writing or rates basis, this means the then current total estimate of fees to perform all obligations under this Agreement.

Client's Personal Information means:

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

Data Breach means any incident that involving facilities, systems, personnel, suppliers and/or Subconsultants 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 Client's Personal Information; or
- (b) prevents the Client from accessing the Client's Personal Information on either a temporary or permanent basis; or
- (c) would prompt a reasonable and prudent person in the Client's position to notify (or consider notifying) the incident to the Privacy Commissioner and/or one or more individuals under the Privacy Act 2020.

Personal Information means:

all 'Personal Information' within the meaning of the Privacy Act 2020.

Prior Services means:

any of the Services that have been provided by the Consultant to the Client under any arrangement between the Parties which was made in contemplation of this Agreement.

Wilful Default means:

any intentional breach by the Consultant of a duty, obligation, term or condition in this Agreement which is intended by the Consultant to inflict damage, injury or loss.

Section 2 Obligations of the Consultant

2.1 The Services

The following is inserted after the words "the Agreement" in the fifth bullet point:

, the Services, the Works or the Client's Project; and

Add the following bullet points to the end of clause 2.1:

- provide sufficient employees (including Key Personnel) with the necessary qualifications, licenses, skills and experience to perform the Services to the standard required by this Agreement; and

- make the Key Personnel available as and when appropriate to perform their respective parts of the Services in accordance with the programme and completion date for the Services as set out in Appendix A and otherwise in accordance with the Consultant's obligations under this Agreement; and
- cooperate with the Client and use all reasonable endeavours to cooperate with any Other Consultants (as applicable); and
- keep the Client adequately informed as to the progress of the Services and report to the Client at the times and frequency and in the manner as reasonably requested by the Client; and
- at the Consultant's cost, correct any errors, omissions or both in any documentation prepared as part of the Services by the Consultant where the error or omission is the result of the Consultant failing to exercise the duty of care required by clause 2.2; and
- comply with all applicable legislation, regulations and any of the Client's rules, policies and standards that the Client may notify to the Consultant in writing from time to time (including the *Supplier Code of Conduct* issued by New Zealand Government Procurement (see <https://www.procurement.govt.nz/assets/procurement-property/documents/supplier-code-of-conduct.pdf>), except to the extent that compliance with any of the Client's rules, policies or standards would constitute a breach of the Consultant's duty of care under this Agreement. The Consultant may notify the Client where it considers any rule, policy or standard notified after the commencement of the Services results in a material increase in the Consultant's costs and such shall be treated as notice of a Variation for the purposes of clauses 2.13 and 7; and
- to the extent set out in Appendix A, demonstrate that the Services comply with applicable industry standards, regulations and laws relevant to the Services.

2.2 Duty of Care

Add the following to the end of clause 2.2:

for a project of a similar type and size to the Client's Project.

2.4 Subconsultants

Add the following to the end of the second paragraph:

The acts and omissions of any Subconsultant shall, for the purpose of this Agreement, be deemed to be the acts and omissions of the Consultant to the extent such acts or omissions arise in connection with the Services.

2.8 Conflicts of Interest

Delete the word "try" in the first sentence and replace with "use all reasonable endeavours".

Add the following to the end of clause 2.8:

The Consultant warrants that, as at the date of this Agreement and to the best of its knowledge and belief, no conflicts of interest exist relating to the Services or the Client's Project except as otherwise previously advised in writing to the Client.

2.10 Health and safety

Add the following to clause 2.10:

The Consultant must comply with, and shall ensure that any Subconsultant complies with, all health and safety requirements set out in the Client's [NZTA Z05 - 2025 Specification: Health, safety and wellbeing contractor expectations](#).

Section 3 Obligations of the Client

3.3 Client Decisions

Add the following to the end of clause 3.3:

The Consultant shall, in every case where it requires the Client to make a decision, accompany the request for a decision with a reasonable level of information to enable the Client to consider the matter at issue. The Client is entitled to request further information as may be reasonably required by the Client to assist it in making the relevant decision. The provision of information pursuant to this clause 3.3 shall be at no additional cost to the Client except where such is beyond what would reasonably be expected to be provided by the Consultant as part of the Services.

3.6 Instructions to Others

Add the following to the end of clause 3.6:

Notwithstanding the forgoing, in an urgent or emergency situation the Client may give instructions directly to Other Consultants and/or Third Parties directly contracted to the Client but in such an event the Client as soon as reasonably practicable must notify the Consultant that instructions have been given.

3.7 Client to Give Early Warning

The words “, as soon as reasonably practicable,” are inserted on the second line after the word “must”.

The following is inserted as a second paragraph:

The Client shall not be required to inform the Consultant of anything which will affect the scope or timing of the Services that is related to another Government agency or entity outside of the direct matters for which the Client is responsible as a Government agency or entity.

3.9 Approvals

Add the following to the end of clause 3.9:

Without limitation to the Client's obligations in the 4th bullet point of clause 3.2, any approval by the Client of information submitted to it by the Consultant (such information must in all cases be provided by email or in hard copy by the Consultant) shall not be taken to signify that the Client has checked the accuracy or completeness of such information received from the Consultant and shall not relieve the Consultant of any of its obligations under this Agreement unless approval is expressly given on that basis or the parties expressly agree such in writing.

Section 4 Personnel

4.3 Key Personnel

Clause 4.3 is deleted and replaced with the following:

The Consultant must obtain the Client's prior written consent before replacing or substituting any of the Key Personnel, including where the Client has required the replacement in accordance with this clause 4.3, such consent not to be unreasonably withheld or delayed.

The Client may, for good reason, require the Consultant to replace any Key Personnel, or any other person engaged by the Consultant or any Subconsultant, if they are unsuitable or are not sufficiently available to perform the Services. The cost of replacing any person pursuant to this clause shall be borne solely by the Consultant and any replacement or substitute person proposed must be no less skilled and experienced than the Key Personnel to be replaced.

If any Key Personnel are not available to perform the role and responsibilities required of that Key Personnel because of an act or omission of the Consultant, and the Consultant does not within a period acceptable to the Client replace the relevant Key Personnel with a person of equivalent skills and

experience, the Client reserves the right to deduct 20% of the value of the next payment due until such time as a suitable replacement has been made and notified to the Client. The monies withheld, shall be paid to the Consultant by payment as part of the payment due after the approved replacement has been made.

Section 5 Payment

5.1 Right to progress payments

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

Payment shall be due within ten (10) Working Days of receipt by the Client of a GST Invoice from the Consultant.

5.4 Disputed Invoices

Add the following to the end of clause 5.4:

Where requested by the Client, the Consultant will reissue an invoice to the Client for any undisputed amount.

5.5 Set-off

Add a new clause 5.5 as follows:

Provided that it first gives written notice to the Consultant, the Client is entitled to set-off against any sums that would otherwise be due to the Consultant under the Agreement any actual amount owing as a debt due and payable in respect of any claims the Client has against the Consultant in relation to the Client's Project. 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 this Agreement or otherwise.

Section 6 Liability and Insurance

6.2 Limitation of Liability

Add the following to the end of clause 6.2:

The aggregate liability limit shall not apply in the case of fraud or Wilful Default and shall not apply to the Client's liability to pay the Consultant's fee or any liability of either party which arises:

- in relation to any unauthorised use of the other party's Intellectual Property or Confidential Information in breach of this Agreement; or
- in relation to an indemnity provided by the Consultant under clause 9.4.

6.5 Insurance

The first bullet point is deleted and replaced with:

professional indemnity insurance for the amount as set out in the Special Conditions; and

Add the following to the end of clause 6.5:

The Consultant's public liability insurance shall include the Client (which shall include the Client's officers and employees) as additional insureds (or named on the policy) in respect of their vicarious liability arising from the Consultant's negligence in relation to the performance of this Agreement.

The Consultant insurances required to be taken out by the Consultant shall be with insurers with a minimum unsecured credit rating of least "A-" from Standard & Poor's (or equivalent) immediately on the execution of this Agreement. The Consultant shall keep them in force for the length of time set out in

the Special Conditions except that in the case of professional indemnity insurance the maintenance obligation is as stated in the second paragraph of this clause 6.5.

Section 7 Variations

Add a new clause 7.4 as follows:

7.4 Reduction in Scope

The Client may reduce the scope of the Client's Project and/or the scope of the Services and may engage another party to undertake any such works so removed from the scope. Where the Client orders a Variation to reflect this, the value of the Variation will be agreed in accordance with clauses 7.2 and 7.3, noting that in any such event the Consultant shall not be entitled to claim any breach, damages or loss of profit against the Client.

Section 8 Confidentiality

Add a new clause 8A as follows:

8A Privacy Obligations

- 8A.1** The Consultant must at all times comply with the Privacy Act 2020 and not do anything with the Client's Personal Information likely to cause the Client to breach the Privacy Act 2020.
- 8A.2** The Consultant must comply at all times with [Privacy at Waka Kotahi the NZ Transport Agency – A Guide for Suppliers and Service Providers](#).
- 8A.3** The Consultant must not use or disclose the Client's Personal Information (including to any Subconsultants) except as strictly necessary to deliver the Services and comply with this Agreement. The Consultant must ensure that any Subconsultant to whom it discloses the Client's Personal Information are subject to contractual restrictions on the handling, use and disclosure of that information no less strict than those in this Agreement.
- 8A.4** The Consultant must implement and maintain reasonable security safeguards to protect the Client's Personal Information, including from unauthorised access or disclosure.
- 8A.5** Except as agreed in writing, the Consultant must not store or process (or permit the storage or processing of) the Client's Personal Information in any location outside New Zealand or Australia.
- 8A.6** If the Consultant becomes aware of, or has reason to suspect the existence of, a Data Breach in respect of this Agreement, the Consultant must as soon as practicable notify the Client, take all practicable steps to mitigate the effects of the Data Breach, and co-operate with the Client's investigation of the Data Breach as the Client reasonably considers necessary to enable the Client to meet its obligations under the Privacy Act 2020.
- 8A.7** Unless required by law, the Consultant will not notify affected individuals or the Privacy Commissioner of any Data Breach in respect of this Agreement except with the Client's prior written agreement.
- 8A.8** The Consultant will 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.
- 8A.9** The Consultant will not comment publicly, including to the media, about any Data Breach or any breach of this clause 8A, without the written consent of the Client.

Section 9 Copyright of documents

Clause 9.1 is deleted and replaced with the following:

All New Intellectual Property held in any medium, whether electronic or otherwise shall be solely owned by the Client. The Client hereby grants the Consultant a royalty-free, non-exclusive, non-transferable

license in perpetuity to use, copy and modify such New Intellectual Property for any use. Where any New Intellectual Property includes Confidential Information, the Consultant's use of that New Intellectual Property is subject to ensuring compliance with clause 8.2 including redacting or removing all Confidential Information prior to any further use.

Clause 9.2 is amended by deleting the words "to the extent reasonably required to enable the Client to make use of the Services or use, adapt, update or amend the Works" **and replace with the following:**

in relation to or in connection with this Agreement, the Services, the Works or the Client's Project, including for the planning, design, engineering, procurement, construction, testing, commissioning, completion, operation, maintenance, repair, replacement, modification, renewal, expansion and/or alteration of the Services, Works or the Client's Project.

Clause 9.3 is amended by inserting the words: "part of the" after the words "concerning the" **on the fourth line.**

Clause 9.4 is amended by adding the following at the end:

The Consultant will indemnify the Client against any loss, claim, damage, expense, liability or proceeding suffered or incurred at any time by the Client as a direct result of any breach of any of the Consultant's obligations, undertakings or warranties contained or implied in this clause 9.4.

Section 10 Disputes

Clause 10.1 is deleted and replaced with the following:

If there is a dispute between the Parties in relation to this Agreement, or any matter arising from it, one party will give notice to the other party, describing the event or circumstance giving rise to the dispute, and the Parties will in good faith in the first instance use their reasonable endeavours to resolve the dispute themselves.

Clause 10.2 is deleted and replaced with the following:

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

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

Add a new clause 10.6 as follows:

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

Section 11 Termination

11.2 Payment on Early Termination

Add the following at the end of clause 11.2:

The Client will not in any circumstances be responsible for abandonment costs or lost fees for Services not performed as at the date of termination, loss of profit, lost opportunity costs or claims suffered by the Consultant, or for any fees for any Services for which the Client had not, as at the date of termination, instructed the Consultant to proceed with.

11.6 Suspension

Add a new clause 11.6 as follows:

The Client may suspend the performance of the Services by the Consultant at any time by written notice specifying the reasons why the Services are suspended. As soon as such notice is received by the Consultant, the Consultant will stop the performance of the Services. The Client may withdraw the suspension of the Services at any time by giving further written notice to the Consultant.

Suspension of the performance of the Services will not prejudice or affect the accrued rights or claims and liabilities of the Parties.

Where the Services are suspended other than for the default of the Consultant, the Client shall:

- grant the Consultant additional time to complete the Services commensurate with the period of suspension plus the period of time reasonably required by the Consultant to remobilise should the Client later withdraw the suspension, and the Consultant shall not be entitled to a Variation due to suspension under this clause 11.6;
- pay the Consultant for the Services provided to the date of suspension and any reasonable costs incurred by the Consultant solely as a result of such suspension (the Consultant will take all reasonable steps to minimise all such costs);
- have no claim against the Consultant solely by reason of any delay caused by or arising from the suspension; and
- not be responsible for any costs or losses resulting from any such suspension other than the reasonable costs which may be payable under the 2nd bullet above.

The Consultant may terminate this Agreement by written notice to the Client where the Services remain suspended for a continuous period of more than three months and the Client has not withdrawn the suspension or the parties have not agreed a further extension of the suspension.

Where the Client gives notice to the Consultant withdrawing a suspension the Consultant must remobilise, and as far as reasonably possible reassign Key Personnel to the Client's Project and provide sufficient employees (including Key Personnel) with the necessary qualifications, licenses, skills and experience to perform the Services to the standard required by this Agreement within a reasonable time from the date it receives the Client's notice.

Section 12 General provisions

12.6 Advertising

Add the following to the end of clause 12.6:

, or otherwise wishes to publicise or promote its involvement in the Client's Project.

12.10 Survival of Provisions

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

8A, 9, 10, 11, 12 and any other clauses which are, by their nature, intended to survive

12.15 Client's Regulatory Function

Add the following to the end of clause 12.15:

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

Add a new clause 12.19 as follows:

12.19 Prior Services

For the avoidance of doubt, where the Consultant has performed any Prior Services, this Agreement will retrospectively apply to those Prior Services from the date that it is executed by both Parties.

Add a new clause 12.20 as follows:

12.20 Duty to Mitigate

Without prejudice to any obligation by law or under this Agreement, each Party shall use its commercially reasonable endeavours to mitigate and minimise any losses, liabilities and costs arising out of, or in relation to, this Agreement.

Add a new clause 12.21 as follows:

12.21 Payments by Consultant

The Consultant, as between it and the Client, assumes responsibility for, is liable for payment of, and agrees that it will pay, or ensure the payment of, all taxes, levies, duties, and withholdings assessed on the Consultant, any subconsultant, or their employees or agents in relation to the Services, or as otherwise may be assessed as a consequence of the performance of the Services.

The Client may make (in addition to any other set-offs, deductions or withholdings permitted by the Agreement) any deductions or withholdings from any payments to the Consultant to the extent that it is required to do so by law.

APPENDIX A – SCOPE, PURPOSE, PROGRAMME AND COMPLETION DATE

1. The Client's Project

[insert]

2. Scope of Services

The Consultant will provide the following Services: xxxx <<Guidance note: This can reference a longer scope document that is attached to Appendix A.>>

3. Programme

The Services will commence on xxxxx. The completion date of the Services is xxxx. <<Guidance note: This can reference a programme attached to Appendix A.>>

4. Reporting

The Consultant will provide all reports, at the time, in the form, and addressing all matters as reasonably required by the Client in connection with the Services.

5. Deliverables

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

<<Guidance note: The relevant sections of this schedule should be reviewed and updated prior to tender release. This can reference a separate deliverable schedule attached to Appendix A.>>

The following outlines the major/milestone deliverables but is not to be deemed all-inclusive. Further deliverables with delivery dates and times may be specified in the Contract Scope and specifications.

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

APPENDIX B – FEES, EXPENSES AND PAYMENT

<<Guidance note: Select the appropriate payment method>>

1. FEES

FIXED PRICE QUOTE (EXCLUSIVE OF GST)

The Consultant has provided a fixed price quote based on the rates priced in the Services Schedule.

Payment will be made as a lump sum on completion of the relevant service. Where the Consultant 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.

Along with each invoice given by the Consultant under this Agreement, the Consultant will provide the Client with reasonable supporting information in relation to tasks worked on in relation to time to which the invoice relates.

<<Guidance note: The payment / pricing schedules can be added as attachments to Appendix B>>

Services Schedule

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

Additional Service Schedule

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

<<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 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.

Along with each invoice given by the Consultant under this Agreement, the Consultant will provide the Client with reasonable supporting information in relation to tasks worked on in relation to time to which the invoice relates.

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

<<Guidance note: The payment / pricing schedules can be added as attachments to Appendix B>>

Services Schedule

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

Additional Service Schedule

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

<<OR>>

RATES SCHEDULE

It is anticipated that the Consultant will deliver the Services using approximately 40 hours a week, at all times subject to up to the maximum amount of hours, and the maximum fee, stated in the table below. <<Guidance note: Update hours per week as appropriate>>

The parties acknowledge that while the maximum hours and fee stated below allow for approximately 40 hours a week to be performed, it is anticipated that some weeks may require more, and some will require less. There may also be weeks where no effort will be required. The maximum quantity of hours stated below is the Client's best estimate of effort required over the term.

<<Guidance note: The payment / pricing schedules can be added as attachments to Appendix B>>

Services Schedule

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

Additional Service Schedule

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

<<OR>>

SCHEDULE (EXCLUSIVE OF GST)

The Payment Schedule defines the pricing schedule items, which have been separately priced by the Consultant. The numbering shown corresponds to the numbering on the Pricing Schedule.

Along with each invoice given by the Consultant under this Agreement, the Consultant will provide the Client with reasonable supporting information in relation to tasks worked on in relation to time to which the invoice relates.

Services requested by the Client under a provisional sum, will be priced, by the Consultant, on the basis of a fixed price quote or time writing. Payment for any provisional sum shall not be made unless the Client has given specific written authority for each specific event associated with the item.

<<Guidance note: The payment / pricing schedules can be added as attachments to Appendix B>>

Pricing Schedule

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

Payment Schedule <<Guidance note: The relevant sections of this schedule should be reviewed and updated prior to tender release.>>

Item	Description
1	XXXXXXX Define payment
2	Other Define Payment

2. REIMBURSABLE EXPENSES

Reimbursable expenses includes travel to and from site, mileage, car hire, flights, accommodation, living away from home allowances, resource consent application fees, room hire for community engagement meetings and any other expenses that may be agreed with the Client, subject to the following:

- Reimbursable expenses (or disbursements) are claimable at cost only (unless an on-cost is allowed for in the Pricing Schedule) in association with additional services and other non-scheduled works, where agreed, unless otherwise specifically stated in the Payment Schedule.
- The Consultant may claim to be reimbursed the actual amount of expenses and disbursements (i.e. no margin / markup may be applied).
- All amounts claimed in relation to expenses and disbursements must be accompanied by receipts in order to be eligible for reimbursement.

The Consultant acknowledges and agrees that the Client is a public entity managing public funds, and the level and nature of expenses incurred must always be consistent of the principles of appropriate expenditure of public funds and value for money. Expenses, or parts of expenses, that are determined by the Client to be inconsistent with those principles will not be eligible for reimbursement.

3. PAYMENT

- Lump Sum items are all inclusive sums for the performance of a particular service and paid as specified in the payment schedule (if applicable). Payment methods include a single sum on completion of the service, specified proportions paid at specific times, prorated payments over a defined period or a mixture.
- Unit rate items are generally all-inclusive rates for a recurring or multiple services. The quantity stated in the schedule, while a reasonable assessment of the likely requirement, is a guide only. Payment will be made on the actual number of services requested and completed.
- Hourly rates will be for all costs excluding reimbursable costs.
- Where a provisional sum item is instructed by the Client (in writing), the Consultant will price that item on the basis of a fixed price quote or time writing.

An invoice submitted by the Consultant must:

- (a) be marked as a "Tax Invoice" and sent via email to apinvoices@nzta.govt.nz in PDF format only;
- (b) state the fees due (in New Zealand currency) and all GST due (if any) as well as the method of calculation;
- (c) contain the Consultant's name, address, NZBN and GST number (if the Consultant is registered for GST);
- (d) be addressed to the Client, contain the Agreement reference and include the Client's cost centre or WBS number;
- (e) state the date the invoice was issued and the date for payment;
- (f) contain bank account details for payment;
- (g) name this Agreement and provide a description of the Services supplied, including the amount of time spend in the delivery of the Services if the fees are based on an hourly fee rate or daily fee rate and be accompanied by reasonable supporting information (including any information required by the Client); and
- (h) be supported by GST receipts if expenses are claimed and any other verifying documentation reasonably requested by the Client.

In advance of submitting an invoice and, where requested by the Client, the Consultant must:

- (i) present a payment claim to the Client on a monthly basis demonstrating the progress made in delivering the Services within the claimed period, including all necessary documentation to verify the claim;
- (j) provide any additional evidence reasonably required by the Client to support the payment claim (at the Consultant's cost); and
- (k) if required by the Client, attend a meeting to discuss the payment claim.

The Consultant must then submit an invoice to the Client for the final approved payment claim amount. Where there is a difference between the payment claim and the final approved amount, the Consultant may consider the difference a disputed amount for the purposes of clause 5.3.

Where the Client has not requested a payment claim, the Consultant must submit an invoice to the Client on a monthly basis for approval and payment.

4. COST FLUCTUATIONS

Cost fluctuations shall not be paid on this Agreement. <<OR delete and insert the following clauses where the contract period is greater than 12 months and cost fluctuations are payable>>

Subject to the remainder of this section 4, the amounts payable by the Client to the Consultant under this Agreement shall be adjusted up or down by amounts calculated in accordance with the following formula:

$$C = \text{Value} \times (I/I' - 1)$$

where:

C = cost fluctuation adjustment for the month under consideration

Value = value of work completed during the month under consideration taken from the Payment Schedule but without deduction for retentions and excluding the cost fluctuation adjustment

I/I' = the value of the *NZ Transport Agency Waka Kotahi Professional services index* published on the Client's website for the month under consideration divided by the value of the index for the Base Date.

Base Date = The calendar quarter of month ending 12 months after the date this Agreement was executed by both parties

- Cost fluctuation adjustment shall be applied for costs incurred from the period commencing 12 months after the date this Agreement was executed by both parties.
- Cost fluctuations are calculated on a monthly basis.
- For the purpose of calculating the cost fluctuation adjustment, any daywork, prime cost sums, variations and other payment items which are based on actual cost, or current prices and any advances shall be excluded from the value of work completed.
- The Consultant shall not be entitled to claim cost fluctuation adjustment for work completed after the due date for completion greater than that which would apply had the work been completed on the due date for completion.
- The index values to be used in the calculation of the cost fluctuation shall be those first published by NZTA for the appropriate quarter.
- Where the index for the quarter has not yet been published, interim payments will be made on the basis of the index for the most recent quarter for which an index is available. A correction to the interim payment will be made following the publication of the applicable index and will be processed with subsequent progress payments.

- If at any time any of the Statistics New Zealand indexes which are inputs into the NZTA index or later indices are no longer published, or if the basis of any index is materially changed, the adjustment shall thereafter be calculated by using such other input index, or in such other manner as will fairly reflect the changes as previously measured by that index.

APPENDIX C – CLIENT’S REPRESENTATIVE

The Project Manager (acting as the Client’s Representative) is:

[Project Manager Name]

[Title]

NZ Transport Agency Waka Kotahi

[Address]

[CITY]

Telephone: [Phone no]

Email: [Email]

APPENDIX D – CONSULTANT’S KEY PERSONNEL, CONSULTANT’S REPRESENTATIVE, OTHER KEY PERSONNEL

<<Guidance note: Insert the relevant information received as part of the RFT response. This page is to be completed after tender award and before execution of the contract.>>

APPENDIX E – SUBCONSULTANTS AND SUBCONSULTANTS' KEY PERSONNEL

<<Guidance note: Insert the relevant information received as part of the RFT response. This page is to be completed after tender award and before execution of the contract.>>

APPENDIX F – OTHER CONSULTANTS, OTHER CONSULTANTS’ INSURANCES, PERSONNEL, EQUIPMENT, FACILITIES AND INFORMATION SUPPLIED BY THE CLIENT

<<Guidance note: Insert the relevant information or state “To be advised by the Client”.>>

APPENDIX G – CLIENT’S RISK IDENTIFICATION AND NOTIFICATION

<<Guidance note: This information is in PSG/4. This page is for the Project Manager to complete before the RFT is released. Insert the following clause if there are **no** known risks.>>

There are no known risks to health, safety and wellbeing for this project.

<<**OR** Insert the following and a table of hazards from PSG/4.>>

The following is a list of known identified risks to health, safety and wellbeing relevant to the Services:

APPENDIX H – CONSULTANT’S TENDER