

SHORT FORM AGREEMENT FOR CONSULTANT ENGAGEMENT

BETWEEN: **KĀINGA ORA—HOMES AND COMMUNITIES (CLIENT)**

AND: **GEOSCIENCES LIMITED (CONSULTANT)**

collectively referred to as the *Parties* and individually as a *Party*. If two or more persons or entities are named as the Consultant, they are jointly and severally liable as the Consultant under this Agreement.

PROJECT and LOCATION:

- AR109331 - 11-12 Neeve Place and 9a White Street, Taradale, Napier.
- AR109756 - 112-114 Vogel Street and 66 Burgoyne Street, Woodville.
- AR106665 - 22-30 Marshall Avenue, Whanganui.
- AR106667 - 12-14 Matarawa Street and 18 Wakefield Street, Whanganui.
- AR106666 - 11-21 Churchill Crescent & 58-66 Smithfield Road, Tawhero, Whanganui.
- AR110717 - 6 Teitei Drive, Ohakune.

THE SERVICES: Environmental site assessment services as described in Appendix A: Scope of Services.

Subject to clause 5, the Services include all things or tasks which may be reasonably inferred from or necessary for the performance of those Services and such other things or tasks which the Consultant must do to comply with this Agreement (and whether performed before or after the date of this Agreement).

PROGRAMME: As per the Commencement Date, Completion Date and any Fixed Term Expiry Date.

COMMENCEMENT DATE: Two days after the date of execution of this Agreement.

COMPLETION DATE: 30 October 2022

FIXED TERM EXPIRY DATE: Not applicable.

FEE AND TIMING OF PAYMENTS:

FEE: Total fee (excluding GST) of **\$39,168.90**, comprised of:

Service	Fee Type	Amount (excl. GST)
Lab Analysis (4 Suite)	s 9(2)(b)(ii)	
Lab Analysis (Asbestos)		
6 x Technical reports		

(PSI DSI Reports, Site Management Plan, Soil Removal Record)	s 9(2)(b)(ii)
Disbursements	

Additional services (if required)	Fee Type	Amount (excl. GST)
Secondary assessment of primary soil samples	s 9(2)(b)(ii)	

The total fee payable under this Agreement must not exceed \$50,000.00 (including GST).

TIMING: The Client will pay any valid invoice by the 20th day of the month following the month in which the invoice is dated, providing:

1. The invoice is emailed to invoices@kaingaora.govt.nz no later than the 5th Working Day of that following month; and
2. The correct Kāinga Ora order number related to this Agreement is recorded on the invoice.

An order number for this Agreement can be obtained by the Consultant from the relevant Development or Programme Manager for this Agreement.

INFORMATION OR SERVICES TO BE PROVIDED BY THE CLIENT: Nil.

INSURANCE AND LIABILITY:

Public Liability: \$1,000,000.
Professional Indemnity: \$250,000. Professional Indemnity will be provided for 6 years after completion of the Services.
Limitation of Liability: \$250,000.

AGREEMENT:

The Client engages the Consultant to provide the Services and the Consultant agrees to perform the Services for the Fee and on the terms and conditions set out in this Agreement.

The following documents form this Agreement in order of precedence:

1. This Short Form Agreement;
2. The Special Conditions (if any);
3. The Short Form Model Conditions of Engagement; and
4. Appendix A: Scope of Services.

Once signed, this Agreement will replace all or any oral or written agreement previously reached between the Parties. Legal terms and conditions set out in any documents attached to this Agreement will have no application.

CLIENT AUTHORISED SIGNATORY(IES):

PRINT NAME: Brent Limmer
DATE: 27/09/2022
Manager - Investment and Planning

CONSULTANT AUTHORISED SIGNATORY(IES):
Digitally signed by Carl O'Brien
DN: cn=Carl O'Brien,
o=GeoScience Ltd, ou=
email=Carl@geoscience.co.nz,
c=NZ,
Date: 2022.09.26 09:30:01
+1200

PRINT NAME: Carl O'Brien
DATE: 20/09/22

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Released under the Official Information Act

SHORT FORM MODEL CONDITIONS OF ENGAGEMENT

- 1 In providing the Services the Consultant must:
 - 1.1 perform the Services in accordance with the Programme (if any), any other programme or timing notified to the Consultant by the Client from time to time and otherwise in a timely manner;
 - 1.2 provide, sufficient employees with the necessary qualifications, skills and experience to perform the Services to the standards required by this Agreement;
 - 1.3 use reasonable endeavours to ensure any of the Consultant's personnel that are named in any document attached to this Agreement remain involved in and are not removed from the Services without the Client's prior consent;
 - 1.4 ensure all personnel involved in the provision of the Services are fit, proper, trained and appropriately supervised for such involvement (including any interaction with the Client's tenants and in respect of the protection of confidential information) and that the Consultant makes and keeps a record of appropriate probity investigations in this respect;
 - 1.5 comply with all applicable laws, codes, standards and rules;
 - 1.6 comply with, and take all practicable steps to ensure that its personnel and subconsultants comply with, the Immigration Act 2009 and the Employment Relations Act 2000;
 - 1.7 consult, co-operate and co-ordinate with any other consultant of the Client as required;
 - 1.8 if requested by the Client, promptly re-perform (at its own cost) any Services which do not comply with this Agreement;
 - 1.9 if any part of the Services are to be carried out on the Location:
 - (a) minimise disruption and inconvenience to the Client's tenants, any other person who the Client is responsible, and other occupiers of the Location;
 - (b) make good any damage caused by the fault of the Consultant at the Location, to the Client's reasonable satisfaction;
 - (c) obtain and comply with the Client's directions as to permitted dates and times of access;
 - (d) comply with the Client's code of conduct;
 - (e) not knowingly or recklessly do anything that causes the Client to be in breach of any obligation; and
 - 1.10 comply with the Client's reasonable directions, requirements and applicable policies and procedures (including without limitation, as to confidentiality and confidential information, probity investigations, record keeping, incident reporting systems, tenant liaison and health and safety) all as attached or as notified by the Client to the Consultant in writing from time to time.
- 2 This Agreement continues from the Commencement Date (if any) until:
 - 2.1 the Fixed Term Expiry Date (if any);
 - 2.2 the Services are completed;
 - 2.3 the Project is completed (as notified by the Client to the Consultant in writing); or
 - 2.4 it is terminated in accordance with this Agreement, whichever is earlier. The Parties may agree to extend the term of this Agreement.
 - 3 The Consultant must use the degree of skill, care and diligence reasonably expected of a competent professional consultant providing services similar to the Services.
 - 4 Any terms and conditions enclosed or referred to within earlier correspondence between the Parties (whether or not attached to this Agreement) do not apply to this Agreement.
 - 5 Notwithstanding anything else in this Agreement, nothing in this Agreement shall be construed as a delegation of the Client's functions or powers to the Consultant, whether under the Crown Entities Act 2004 or otherwise and, in relation to any such matters, the Consultant's role is recommendatory only.

- 6 The Consultant will not assign or subcontract all or any part of its rights and obligations under this Agreement without the prior written approval of the Client, which may be refused without giving reasons. Any approved assignment or subcontracting of rights and obligations will not relieve the Consultant from any liability or obligation under this Agreement.
- 7 The Client will provide to the Consultant, free of cost, as soon as practicable following any request for information, information in the Client's power to obtain and which the Client agrees relates to the Services. The Consultant will not, without the Client's prior written consent, use information provided by the Client for purposes unrelated to the Services.
- 8 The Consultant and its personnel must keep confidential the terms of this Agreement and all information provided to or obtained by the Consultant in respect of or arising out of this Agreement, the Services or the business and operations of the Client, and protect all such information as confidential information, except:
- 8.1 for information already in the public domain;
- 8.2 for information that is reasonably necessary for the Consultant to disclose to enable the Consultant to perform the Services (subject to the Consultant obtaining confidentiality undertakings from the person to whom the information is disclosed);
- 8.3 for information disclosed with the Client's prior written consent; and
- 8.4 as required by law.
- 9 The Consultant must not:
- 9.1 make any public or media statements to anyone about this Agreement, the Services, or the Works; or
- 9.2 display any details of this Agreement, the Services or the Works in its advertising or marketing material (including on social media), without the Client's written approval.
- 10 The Client may order variations to the Services in writing or may request the Consultant to submit proposals for variation to the Services. Where the Consultant considers a direction from the Client or any other circumstance is a variation the Consultant will notify the Client as soon as practicable. The notice will include details of the estimated costs of the variation, likely impact on the Programme and Completion Date for the Services and recommend how to proceed. No additional Fee will be payable by the Client in respect of a variation unless the additional Fee has been agreed or determined and the Client has directed the Consultant in writing to proceed with the variation.
- 11 Where practicable the Parties will agree on the value and timing of supply of the variation before any variation works are commenced. If the Parties are unable to agree then the matter will be treated as a dispute and resolved in accordance with clause 32.
- 12 The Client must pay the Consultant the Fees for the Services at the times and in the manner set out in this Agreement unless there is a dispute as to the amount payable. If the Client disputes an invoice, or part of an invoice, the Client must promptly give the reasons for withholding the disputed amount and pay any undisputed amount. Payment will be made by direct credit to a bank account nominated by the Consultant. The Client may set off any amount due and payable by the Consultant to the Client (whether in respect of damages or otherwise) against any payment due to the Consultant under this Agreement.
- 13 If consistent with the meaning and intent of the Fee and this Agreement, then the Consultant may submit monthly invoices to the Client.
- 13.1 As a precondition to any entitlement to payment, the Consultant must provide a valid tax invoice along with all documentation (including signed weekly timesheets, where applicable if Services are undertaken on a time charge basis) and any other supporting information required by the Client.
- 13.2 All invoices will specify the amount payable and include reasonable detail of the Services performed during the relevant period.
- 13.3 If this Agreement is subject to the Construction Contracts Act 2002 (CCA), the Client may dispute an invoice or payment claim, or part of an invoice or payment claim by providing to the Consultant, within 20 Working Days of receipt of the invoice, a payment schedule in accordance with the CCA setting out the amounts that the Client intends to withhold from the invoiced amount.

- 14 Unless the Short Form Agreement provides otherwise, the Fee includes all out-of-pocket expenses and overheads incurred in the provision of the Services by the Consultant and the Consultant will not be entitled to any other payments or reimbursements.
- 15 Late payment of any invoice which is not disputed will constitute a default, and if the default continues unremedied for 20 Working Days after the Consultant has given written notice to the Client advising of the default and requesting payment, the Client will pay default interest on overdue amounts from the date payment falls due to the date of payment at the rate of the Consultant's overdraft rate plus 2 percentage points.
- 16 Where the Consultant is negligent or breaches this Agreement, the Consultant is liable to the Client for reasonably foreseeable claims, damages, liabilities, losses and expenses caused directly by the negligence or breach. Neither Party will be liable to the other under this Agreement for a Party's indirect, consequential or special loss, loss of opportunity or loss of profit, however arising, whether under contract, in tort or otherwise.
- 17 The maximum aggregate amount payable, whether in contract, tort or otherwise, in relation to claims, damages, liabilities, losses or expenses, shall be the greater of five times the Fee (exclusive of GST and disbursements) and the limit of liability specified in the Short Form Agreement.
- 18 Without limiting any defences a Party may have under the Limitation Act 2010, neither Party shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on a Party within 6 years from completion of the Services.
- 19 The Consultant must take out and maintain in full force and effect during the term of this Agreement comprehensive insurance cover with responsible and reputable insurers as would be prudent for persons engaged in businesses similar to the Consultant in the same geographic area. Such insurance must include cover for the matters and the amounts and for the duration specified in the Short Form Agreement. The Consultant must, on demand, produce certificates of the insurer evidencing the currency of the relevant insurances.
- 20 If either Party is found liable to the other (whether in contract, tort or otherwise), and the claiming Party and/or a third party has contributed to the loss or damage, the liable Party will only be liable to the proportional extent of its own contribution.
- 21 Subject to clause 22, intellectual property prepared or created by the Consultant in carrying out the Services (*New Intellectual Property*) shall be solely owned by the Client. The Consultant may not copy, use, disclose, distribute or sell any New Intellectual Property without the express written consent of the Client (which it may grant or withhold in the Client's sole and absolute discretion on whatever conditions the Client deems appropriate) except as required for the purpose of delivering the Services.
- 22 If the Project includes buildings that exceed 3 levels, then:
- 22.1 all New Intellectual Property shall be jointly owned by the Client and the Consultant; and
- 22.2 the Client and the Consultant hereby grant to the other an unrestricted, royalty-free licence in perpetuity to copy or use such New Intellectual Property.
- 23 Intellectual property owned by a Party prior to the commencement of this Agreement (*Pre-Existing Intellectual Property*) and intellectual property created by a Party independently of this Agreement remains the property of that Party. The Consultant hereby grants to the Client an unrestricted royalty-free licence to use and copy Pre-existing Intellectual Property to the extent reasonably required to enable the Client to make use of the Services or use, adapt, update or amend the Works. The ownership of data and factual information collected by the Consultant and paid for by the Client shall, after payment by the Client, lie with the Client. The Consultant does not warrant the suitability of New Intellectual Property or Pre-existing Intellectual Property for any purpose other than the Services or any other use stated in, or reasonably inferred from, the Agreement.
- 24 The Consultant:
- 24.1 warrants that as at the date of this Agreement it and its employees and associated entities have no conflict of interest in providing the Services or entering into this Agreement; and
- 24.2 must use its best endeavours to ensure that conflicts of interest do not arise, whether on the part of the Consultant or

- any of its personnel, and must notify the Client immediately in writing if it is thought that a conflict of interest may arise or has arisen.
- 25 The Consultant must:
- 25.1 comply with the requirements of, and its obligations under the Health and Safety at Work Act 2015;
- 25.2 so far as is reasonably practicable, consult, co-operate and coordinate activities with the Client and other relevant parties;
- 25.3 have in place a health and safety management plan that is appropriate for the Services; and
- 25.4 comply with any health and safety plan of the Client and all other persons who conduct a business or undertaking who have a duty in relation to the same matter.
- 26 The Parties must review and discuss the progress of the Services as agreed from time to time, or as reasonably requested. No consent, review or approval by the Client of any document or Services provided by the Consultant will reduce the liability of the Consultant in respect of, or signify that the Client has checked the accuracy or completeness of, such matter.
- 27 If the Consultant's performance of the Services falls behind the Programme, then the Consultant must immediately notify the Client and, where due to matters within the Consultant's control, the Consultant will take all practicable steps to accelerate performance of the Services to meet the Programme.
- 28 The Consultant must notify the Client immediately of any actual or anticipated issues that could:
- 28.1 significantly impact on the Services or the Fee; or
- 28.2 receive media attention.
- 29 If the Client decides for good reason that any one of the Consultant's personnel involved in the performance of the Services is unsuitable, then:
- 29.1 the Client may require the Consultant to not have that person perform the Services;
- 29.2 the Consultant must replace that person with someone acceptable to the Client; and
- 29.3 the Client must not bear any cost or liability arising from the replacement of that person.
- 30 Subject to the other provisions of this Agreement, this Agreement will terminate on completion of the Services but without prejudice to any obligation of either Party to the other which remains unfulfilled or incomplete at that date. The Client may suspend or terminate all or part of the Services by notice to the Consultant who must immediately make arrangements to stop the Services and minimise further expenditure. The Client and the Consultant may (in the event the other Party is in material default) terminate the Agreement by notice to the other Party. Suspension or termination will not prejudice or affect the accrued rights or claims and liabilities of the Parties but the Consultant will not be entitled to any compensation for un-performed Services or anticipated future Fee.
- 31 Should any event occur which:
- 31.1 is beyond the control of either Party; and
- 31.2 is neither directly nor indirectly caused by either Party; and
- 31.3 prevents the performance of the Services (in whole or in part) required under this Agreement,
- then those Services will be suspended until such time that it becomes practicable to recommence the Services. This does not include events personal to either Party, such as ill-health or lack of funding or resources.
- If there is a reasonable likelihood that the Services are not able to be recommenced, then this Agreement may be terminated by the Client.
- In circumstances where the Services or part of the Services have to be suspended or delayed, the Consultant will be allowed extra time to complete the Services and such extra time should be reasonable in the circumstances.
- If the suspension continues for more than 6 months, then this Agreement may be terminated by the Consultant.
- 32 The Parties must attempt in good faith in the first instance to settle any dispute by themselves. If they are unable to resolve the dispute

themselves within a reasonable time they must attempt in good faith to resolve it by mediation. If the dispute is not resolved within a reasonable time then either Party may refer the dispute to arbitration by a sole arbitrator under the Arbitration Act 1996. The Parties must agree on the arbitrator to be appointed within 10 Working Days of the referral and if they cannot agree the arbitrator will be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc. Subject to the CCA, if applicable, no dispute gives either Party the right to suspend its obligations under this Agreement.

33 The obligations of the Consultant under this Agreement shall for the purposes of Part 2, Subpart 1 (Contractual privity) of the Contract and Commercial Law Act 2017 be deemed to be for the benefit of Housing New Zealand Limited and Housing New Zealand Build Limited (including any successors and assigns) and shall be enforceable by Housing New Zealand Limited and Housing New Zealand Build Limited against the Consultant but not so as to impose any greater liability, including in aggregate, on the Consultant towards Housing New Zealand Limited and Housing New Zealand Build Limited than the Consultant owes or owed to the Client.

34 If the Client has regulatory functions outside of the Agreement, the Client shall be deemed not to be acting in the capacity of the Client under this Agreement when exercising these functions in good faith.

35 Where there is reference to any payment under this Agreement, applicable GST is to be added to the amount of that payment (subject to the provision of a valid GST invoice and to anything to the contrary in this Agreement).

36 This Agreement is governed by the New Zealand law, the New Zealand courts, have jurisdiction in respect of this Agreement, and all amounts are payable in New Zealand dollars.

37 Definitions and Interpretation:

37.1 Words or phrases defined in the Short Form Agreement have a corresponding meaning in this Agreement.

37.2 In this Agreement, the singular shall include the plural, the masculine shall include the feminine, and vice versa when the context requires.

37.3 *Working Day* means a calendar day other than a Saturday, Sunday, statutory or other public holiday.

37.4 *Works* means the physical and other works (if any) relating to the Services, to be carried out by a contractor or the Client, including goods and equipment to be supplied to the Client.

SPECIAL CONDITIONS

The following Special Conditions are part of this Agreement. To the extent there is any conflict between the Short Form Model Conditions of Engagement (clauses 1 to 37) and the Special Conditions, the Special Conditions will apply and are paramount.

Not applicable.

Released under the Official Information Act

Appendix A: Scope of Services

The Services

The Consultant shall provide environmental site assessment services in relation to the Client's Project, including:

- The proposed detailed site investigation (DSI) of each cluster will be undertaken in general accordance with the MfE CLMG's No. 1 and No. 5 and will encompass the following:
 - Desktop assessment of available site history including commentary on:
 - An historical appraisal of the properties by a study of historical aerial photographs.
 - A review of the certificates of titles of each property.
 - A review of the property files held by council.
 - A review of previous environmental / geotechnical reports if available.
 - A site visit for the purpose of collecting soil samples.
 - A systematic inspection of the land surface for asbestos fragments along traverse lines 3-5m apart and intersecting at 90 degrees as per the BRANZ Guidelines.
 - The preparation of a report in accordance with Contaminated Land Management Guideline No.1 – "Reporting on contaminated Sites in New Zealand" (Ministry for the Environment, 2011) detailing the findings of this investigation and the recommendations, if any, for further work. If necessary, this report will include a Remediation Action Plan and/or Site Management Plan based on the investigation results.
 - Where required by the findings of the DSI, the preparation of a Soil Removal Record / Site Completion / Site validation report in general accordance with Contaminated Land Management Guideline No. 1 – "Reporting on contaminated Sites in New Zealand" (Ministry for the Environment, 2011) detailing the completion of remedial works.

Tags, Qualifications, and Excluded Services

Nil

TIMING: The Client will pay any valid invoice by the 20th day of the month following the month in which the invoice is dated, providing:

1. The invoice is emailed to invoices@kaingaora.govt.nz no later than the 5th Working Day of that following month; and
2. The correct Kāinga Ora order number related to this Agreement is recorded on the invoice.

An order number for this Agreement can be obtained by the Consultant from the relevant Development or Programme Manager for this Agreement.

INFORMATION OR SERVICES TO BE PROVIDED BY THE CLIENT:

- Any supporting background documentation (such as hydrology reports, groundwater information, maps, photos and other ecological reports).

INSURANCE AND LIABILITY:

Public Liability: \$1,000,000.

Professional Indemnity: \$250,000. Professional Indemnity will be provided for 6 years after completion of the Services.

Limitation of Liability: \$250,000.

AGREEMENT:

The Client engages the Consultant to provide the Services and the Consultant agrees to perform the Services for the Fee and on the terms and conditions set out in this Agreement.

The following documents form this Agreement in order of precedence:


1. This Short Form Agreement;
2. The Special Conditions (if any);
3. The Short Form Model Conditions of Engagement; and
4. Appendix A: Scope of Services.

Once signed, this Agreement will replace all or any oral or written agreement previously reached between the Parties. Legal terms and conditions set out in any documents attached to this Agreement will have no application.

CLIENT AUTHORISED SIGNATORY(IES):

PRINT NAME: 
Giles Tait
DATE: 21-February-2023

CONSULTANT AUTHORISED SIGNATORY(IES):


Helen Marr
DATE: 21 February 2023

SHORT FORM MODEL CONDITIONS OF ENGAGEMENT

- 1 In providing the Services the Consultant must:
 - 1.1 perform the Services in accordance with the Programme (if any), any other programme or timing notified to the Consultant by the Client from time to time and otherwise in a timely manner;
 - 1.2 provide, sufficient employees with the necessary qualifications, skills and experience to perform the Services to the standards required by this Agreement;
 - 1.3 use reasonable endeavours to ensure any of the Consultant's personnel that are named in any document attached to this Agreement remain involved in and are not removed from the Services without the Client's prior consent;
 - 1.4 ensure all personnel involved in the provision of the Services are fit, proper, trained and appropriately supervised for such involvement (including any interaction with the Client's tenants and in respect of the protection of confidential information) and that the Consultant makes and keeps a record of appropriate probity investigations in this respect;
 - 1.5 comply with all applicable laws, codes, standards and rules;
 - 1.6 comply with, and take all practicable steps to ensure that its personnel and subconsultants comply with, the Immigration Act 2009 and the Employment Relations Act 2000;
 - 1.7 consult, co-operate and co-ordinate with any other consultant of the Client as required;
 - 1.8 if requested by the Client, promptly re-perform (at its own cost) any Services which do not comply with this Agreement;
 - 1.9 if any part of the Services are to be carried out on the Location:
 - (a) minimise disruption and inconvenience to the Client's tenants, any other person who the Client is responsible, and other occupiers of the Location;
 - (b) make good any damage caused by the fault of the Consultant at the Location, to the Client's reasonable satisfaction;
 - (c) obtain and comply with the Client's directions as to permitted dates and times of access;
 - (d) comply with the Client's code of conduct;
 - (e) not knowingly or recklessly do anything that causes the Client to be in breach of any obligation; and
 - 1.10 comply with the Client's reasonable directions, requirements and applicable policies and procedures (including without limitation, as to confidentiality and confidential information, probity investigations, record keeping, incident reporting systems, tenant liaison and health and safety) all as attached or as notified by the Client to the Consultant in writing from time to time.
- 2 This Agreement continues from the Commencement Date (if any) until:
 - 2.1 the Fixed Term Expiry Date (if any);
 - 2.2 the Services are completed;
 - 2.3 the Project is completed (as notified by the Client to the Consultant in writing); or
 - 2.4 it is terminated in accordance with this Agreement,whichever is earlier. The Parties may agree to extend the term of this Agreement.
- 3 The Consultant must use the degree of skill, care and diligence reasonably expected of a competent professional consultant providing services similar to the Services.
- 4 Any terms and conditions enclosed or referred to within earlier correspondence between the Parties (whether or not attached to this Agreement) do not apply to this Agreement.
- 5 Notwithstanding anything else in this Agreement, nothing in this Agreement shall be construed as a delegation of the Client's functions or powers to the Consultant, whether under the Crown Entities Act 2004 or otherwise and, in relation to any such matters, the Consultant's role is recommendatory only.

- 6 The Consultant will not assign or subcontract all or any part of its rights and obligations under this Agreement without the prior written approval of the Client, which may be refused without giving reasons. Any approved assignment or subcontracting of rights and obligations will not relieve the Consultant from any liability or obligation under this Agreement.
- 7 The Client will provide to the Consultant, free of cost, as soon as practicable following any request for information, information in the Client's power to obtain and which the Client agrees relates to the Services. The Consultant will not, without the Client's prior written consent, use information provided by the Client for purposes unrelated to the Services.
- 8 The Consultant and its personnel must keep confidential the terms of this Agreement and all information provided to or obtained by the Consultant in respect of or arising out of this Agreement, the Services or the business and operations of the Client, and protect all such information as confidential information, except:
- 8.1 for information already in the public domain;
 - 8.2 for information that is reasonably necessary for the Consultant to disclose to enable the Consultant to perform the Services (subject to the Consultant obtaining confidentiality undertakings from the person to whom the information is disclosed);
 - 8.3 for information disclosed with the Client's prior written consent; and
 - 8.4 as required by law.
- 9 The Consultant must not:
- 9.1 make any public or media statements to anyone about this Agreement, the Services, or the Works; or
 - 9.2 display any details of this Agreement, the Services or the Works in its advertising or marketing material (including on social media),
- without the Client's written approval.
- 10 The Client may order variations to the Services in writing or may request the Consultant to submit proposals for variation to the Services. Where the Consultant considers a direction from the Client or any other circumstance is a variation the Consultant will notify the Client as soon as practicable. The notice will include details of the estimated costs of the variation, likely impact on the Programme and Completion Date for the Services and recommend how to proceed. No additional Fee will be payable by the Client in respect of a variation unless the additional Fee has been agreed or determined and the Client has directed the Consultant in writing to proceed with the variation.
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 - 13.3 If this Agreement is subject to the Construction Contracts Act 2002 (CCA), the Client may dispute an invoice or payment claim, or part of an invoice or payment claim by providing to the Consultant, within 20 Working Days of receipt of the invoice, a payment schedule in accordance with the CCA setting out the amounts that the Client intends to withhold from the invoiced amount.

- 14 Unless the Short Form Agreement provides otherwise, the Fee includes all out-of-pocket expenses and overheads incurred in the provision of the Services by the Consultant and the Consultant will not be entitled to any other payments or reimbursements.
- 15 Late payment of any invoice which is not disputed will constitute a default, and if the default continues unremedied for 20 Working Days after the Consultant has given written notice to the Client advising of the default and requesting payment, the Client will pay default interest on overdue amounts from the date payment falls due to the date of payment at the rate of the Consultant's overdraft rate plus 2 percentage points.
- 16 Where the Consultant is negligent or breaches this Agreement, the Consultant is liable to the Client for reasonably foreseeable claims, damages, liabilities, losses and expenses caused directly by the negligence or breach. Neither Party will be liable to the other under this Agreement for a Party's indirect, consequential or special loss, loss of opportunity or loss of profit, however arising, whether under contract, in tort or otherwise.
- 17 The maximum aggregate amount payable, whether in contract, tort or otherwise, in relation to claims, damages, liabilities, losses or expenses, shall be the greater of five times the Fee (exclusive of GST and disbursements) and the limit of liability specified in the Short Form Agreement.
- 18 Without limiting any defences a Party may have under the Limitation Act 2010, neither Party shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on a Party within 6 years from completion of the Services.
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- 20 If either Party is found liable to the other (whether in contract, tort or otherwise), and the claiming Party and/or a third party has contributed to the loss or damage, the liable Party will only be liable to the proportional extent of its own contribution.
- 21 Subject to clause 22, intellectual property prepared or created by the Consultant in carrying out the Services (*New Intellectual Property*) shall be solely owned by the Client. The Consultant may not copy, use, disclose, distribute or sell any New Intellectual Property without the express written consent of the Client (which it may grant or withhold in the Client's sole and absolute discretion on whatever conditions the Client deems appropriate) except as required for the purpose of delivering the Services.
- 22 If the Project includes buildings that exceed 3 levels, then:
- 22.1 all New Intellectual Property shall be jointly owned by the Client and the Consultant; and
- 22.2 the Client and the Consultant hereby grant to the other an unrestricted, royalty-free license in perpetuity to copy or use such New Intellectual Property.
- 23 Intellectual property owned by a Party prior to the commencement of this Agreement (*Pre-Existing Intellectual Property*) and intellectual property created by a Party independently of this Agreement remains the property of that Party. The Consultant hereby grants to the Client an unrestricted royalty-free licence to use and copy Pre-existing Intellectual Property to the extent reasonably required to enable the Client to make use of the Services or use, adapt, update or amend the Works. The ownership of data and factual information collected by the Consultant and paid for by the Client shall, after payment by the Client, lie with the Client. The Consultant does not warrant the suitability of New Intellectual Property or Pre-existing Intellectual Property for any purpose other than the Services or any other use stated in, or reasonably inferred from, the Agreement.
- 24 The Consultant:
- 24.1 warrants that as at the date of this Agreement it and its employees and associated entities have no conflict of interest in providing the Services or entering into this Agreement; and
- 24.2 must use its best endeavours to ensure that conflicts of interest do not arise, whether on the part of the Consultant or

any of its personnel, and must notify the Client immediately in writing if it is thought that a conflict of interest may arise or has arisen.

25 The Consultant must:

- 25.1 comply with the requirements of, and its obligations under the Health and Safety at Work Act 2015;
- 25.2 so far as is reasonably practicable, consult, co-operate and coordinate activities with the Client and other relevant parties;
- 25.3 have in place a health and safety management plan that is appropriate for the Services; and
- 25.4 comply with any health and safety plan of the Client and all other persons who conduct a business or undertaking who have a duty in relation to the same matter.

26 The Parties must review and discuss the progress of the Services as agreed from time to time, or as reasonably requested. No consent, review or approval by the Client of any document or Services provided by the Consultant will reduce the liability of the Consultant in respect of, or signify that the Client has checked the accuracy or completeness of, such matter.

27 If the Consultant's performance of the Services falls behind the Programme, then the Consultant must immediately notify the Client and, where due to matters within the Consultant's control, the Consultant will take all practicable steps to accelerate performance of the Services to meet the Programme.

28 The Consultant must notify the Client immediately of any actual or anticipated issues that could:

- 28.1 significantly impact on the Services or the Fee; or
- 28.2 receive media attention.

29 If the Client decides for good reason that any one of the Consultant's personnel involved in the performance of the Services is unsuitable, then:

- 29.1 the Client may require the Consultant to not have that person perform the Services;

29.2 the Consultant must replace that person with someone acceptable to the Client; and

29.3 the Client must not bear any cost or liability arising from the replacement of that person.

30 Subject to the other provisions of this Agreement, this Agreement will terminate on completion of the Services but without prejudice to any obligation of either Party to the other which remains unfulfilled or incomplete at that date. The Client may suspend or terminate all or part of the Services by notice to the Consultant who must immediately make arrangements to stop the Services and minimise further expenditure. The Client and the Consultant may (in the event the other Party is in material default) terminate the Agreement by notice to the other Party. Suspension or termination will not prejudice or affect the accrued rights or claims and liabilities of the Parties but the Consultant will not be entitled to any compensation for un-performed Services or anticipated future Fee.

31 Should any event occur which:

- 31.1 is beyond the control of either Party; and
- 31.2 is neither directly nor indirectly caused by either Party; and
- 31.3 prevents the performance of the Services (in whole or in part) required under this Agreement,

then those Services will be suspended until such time that it becomes practicable to recommence the Services. This does not include events personal to either Party, such as ill-health or lack of funding or resources.

If there is a reasonable likelihood that the Services are not able to be recommenced, then this Agreement may be terminated by the Client.

In circumstances where the Services or part of the Services have to be suspended or delayed, the Consultant will be allowed extra time to complete the Services and such extra time should be reasonable in the circumstances.

If the suspension continues for more than 6 months, then this Agreement may be terminated by the Consultant.

32 The Parties must attempt in good faith in the first instance to settle any dispute by themselves. If they are unable to resolve the dispute

themselves within a reasonable time they must attempt in good faith to resolve it by mediation. If the dispute is not resolved within a reasonable time then either Party may refer the dispute to arbitration by a sole arbitrator under the Arbitration Act 1996. The Parties must agree on the arbitrator to be appointed within 10 Working Days of the referral and if they cannot agree the arbitrator will be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc. Subject to the CCA, if applicable, no dispute gives either Party the right to suspend its obligations under this Agreement.

33 The obligations of the Consultant under this Agreement shall for the purposes of Part 2, Subpart 1 (Contractual privity) of the Contract and Commercial Law Act 2017 be deemed to be for the benefit of Housing New Zealand Limited and Housing New Zealand Build Limited (including any successors and assigns) and shall be enforceable by Housing New Zealand Limited and Housing New Zealand Build Limited against the Consultant but not so as to impose any greater liability, including in aggregate, on the Consultant towards Housing New Zealand Limited and Housing New Zealand Build Limited than the Consultant owes or owed to the Client.

34 If the Client has regulatory functions outside of the Agreement, the Client shall be deemed not to be acting in the capacity of the Client under this Agreement when exercising these functions in good faith.

35 Where there is reference to any payment under this Agreement, applicable GST is to be added to the amount of that payment (subject to the provision of a valid GST invoice and to anything to the contrary in this Agreement).

36 This Agreement is governed by the New Zealand law, the New Zealand courts, have jurisdiction in respect of this Agreement, and all amounts are payable in New Zealand dollars.

37 Definitions and Interpretation:

37.1 Words or phrases defined in the Short Form Agreement have a corresponding meaning in this Agreement.

37.2 In this Agreement, the singular shall include the plural, the masculine shall include the feminine, and vice versa when the context requires.

37.3 Working Day means a calendar day other than a Saturday, Sunday, statutory or other public holiday.

37.4 Works means the physical and other works (if any) relating to the Services, to be carried out by a contractor or the Client, including goods and equipment to be supplied to the Client.

Released under the Official Information Act

SPECIAL CONDITIONS

The following Special Conditions are part of this Agreement. To the extent there is any conflict between the Short Form Model Conditions of Engagement (clauses 1 to 37) and the Special Conditions, the Special Conditions will apply and are paramount.

Not applicable.

Released under the Official Information Act

Appendix A: Scope of Services

The Services

The Consultant shall provide ecological assessment services in relation to the Client's Project, including:

- Walk the full site and carry out rapid habitat assessments of the waterways and riparian areas, and eDNA samples (to help identify stream inhabitants such as tuna/eels, whitebait species/Galaxiids and any stream macroinvertebrates) at key locations. Locations of native and pest plant vegetation will be noted.
- Note flow and pooling, stream bed type and form, and note in-stream habitat values.
- Photograph and take GPS points of key aspects.
- Confirm stream type and permanence noting that (definitions from Horizons 'Essential Freshwater' supporting material):
 - An ephemeral waterway is an area of land with no defined stream bed and which is above the water table at all times. It only flows during, and shortly after, rain events.
 - An intermittent watercourse is where stream reaches cease to flow for some periods of the year because the bed can be above the water table at times.
 - A permanent watercourse has continually flowing reaches of a river or stream.
 - Both intermittent and permanent streams will have an 'active bed' – this means the bed of a river that is intermittently flowing and where the bed is predominantly unvegetated and comprises sand, gravel, boulders or similar material.
 - Additionally, from schedule E (Horizons One Plan):
 - Wetland areas include permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions. The presence of water may be permanent, seasonal (ephemeral) or periodical, and is not always present as an open body.
 - Ephemeral wetlands are usually of moderate fertility and neutral pH, characterised by a marked seasonal high water table, ponding and drying. Change in water levels can be very dramatic to the point of complete drying and fluctuations between aquatic and terrestrial plant species can occur. Ephemeral wetlands are fed by groundwater or an adjacent waterbody. Ephemeral wetlands typically support turf habitat (generally < 3 cm tall). Ephemeral wetlands sometimes support rushland scrub.

If applicable, the Consultant will also complete the Services so as to achieve 6 Homestar Design Rating, to enable the Client to achieve a 6 Homestar Built Rating.

Tags, Qualifications, and Excluded Services

Not applicable.

SHORT FORM AGREEMENT FOR CONSULTANT ENGAGEMENT

BETWEEN: KĀINGA ORA—HOMES AND COMMUNITIES (*CLIENT*)

AND: KĀHU ENVIRONMENTAL LIMITED (1986913) (*CONSULTANT*)

collectively referred to as the *Parties* and individually as a *Party*. If two or more persons or entities are named as the Consultant, they are jointly and severally liable as the Consultant under this Agreement.

PROJECT: AP111980

LOCATION: Teitei Drive, Ohakune

THE SERVICES: Cultural Assessment Services as described in Appendix A: Scope of Services.

Subject to clause 5, the Services include all things or tasks which may be reasonably inferred from or necessary for the performance of those Services and such other things or tasks which the Consultant must do to comply with this Agreement (and whether performed before or after the date of this Agreement).

PROGRAMME: As per the Commencement Date, the Completion Date and any Fixed Term Expiry Date.

COMMENCEMENT DATE: Upon execution of this Agreement.

COMPLETION DATE: 4 months from the Commencement Date.

FIXED TERM EXPIRY DATE: Not applicable.

FEE AND TIMING OF PAYMENTS:

FEE: Total fee (excluding GST) of **\$40,580.00** plus disbursements, comprised of:

Service	s 9(2)(b)(ii)
Research and Investigations - Undertake research and background investigations necessary to prepare expert advice	
Meetings/hui - Meetings/hui internal tracking project	
Travel - Time spent travelling to site visit and wānanga	
Site visit - Site visit with the applicant and Tangata Whenua, wānanga on values, wānanga on options to address the effects	
Engagement - Engagement with the applicant, consultants and iwi	
Report preparation - Developing and finalising the report, updating CIA in response to feedback and undertake approval process	
Internal peer review	
Planning Services - Work with the applicant to implement recommendations into consent	
Planning assessment - evaluation of planning instruments	

Disbursement	Amount (excl. GST)
Mileage	at IRD rates

The total fee payable under this Agreement must not exceed \$50,000.00 (excluding GST).

TIMING: The Client will pay any valid invoice by the 20th day of the month following the month in which the invoice is dated, providing:

1. The invoice is emailed to invoices@kaingaora.govt.nz no later than the 5th Working Day of that following month; and
2. The correct Kāinga Ora order number related to this Agreement is recorded on the invoice.

An order number for this Agreement can be obtained by the Consultant from the relevant Development or Programme Manager for this Agreement.

INFORMATION OR SERVICES TO BE PROVIDED BY THE CLIENT: Nil.

INSURANCE AND LIABILITY:

Public Liability: \$1,000,000.

Professional Indemnity: \$250,000. Professional Indemnity will be provided for 6 years after completion of the Services.

Limitation of Liability: \$250,000.

AGREEMENT:


The Client engages the Consultant to provide the Services and the Consultant agrees to perform the Services for the Fee and on the terms and conditions set out in this Agreement.

The following documents form this Agreement in order of precedence:


1. This Short Form Agreement;
2. The Special Conditions (if any);
3. The Short Form Model Conditions of Engagement; and
4. Appendix A: Scope of Services.

Once signed, this Agreement will replace all or any oral or written agreement previously reached between the Parties. Legal terms and conditions set out in any documents attached to this Agreement will have no application.

CLIENT AUTHORISED SIGNATORY(IES):


PRINT NAME: Giles Tait
DATE: 20/04/2023

CONSULTANT AUTHORISED SIGNATORY(IES):


PRINT NAME: Phillip Percy, Director
DATE: 19 April 2023

SHORT FORM MODEL CONDITIONS OF ENGAGEMENT

- 1 In providing the Services the Consultant must:
 - 1.1 perform the Services in accordance with the Programme (if any), any other programme or timing notified to the Consultant by the Client from time to time and otherwise in a timely manner;
 - 1.2 provide, sufficient employees with the necessary qualifications, skills and experience to perform the Services to the standards required by this Agreement;
 - 1.3 use reasonable endeavours to ensure any of the Consultant's personnel that are named in any document attached to this Agreement remain involved in and are not removed from the Services without the Client's prior consent;
 - 1.4 ensure all personnel involved in the provision of the Services are fit, proper, trained and appropriately supervised for such involvement (including any interaction with the Client's tenants and in respect of the protection of confidential information) and that the Consultant makes and keeps a record of appropriate probity investigations in this respect;
 - 1.5 comply with all applicable laws, codes, standards and rules;
 - 1.6 comply with, and take all practicable steps to ensure that its personnel and subconsultants comply with, the Immigration Act 2009 and the Employment Relations Act 2000;
 - 1.7 consult, co-operate and co-ordinate with any other consultant of the Client as required;
 - 1.8 if requested by the Client, promptly re-perform (at its own cost) any Services which do not comply with this Agreement;
 - 1.9 if any part of the Services are to be carried out on the Location:
 - (a) minimise disruption and inconvenience to the Client's tenants, any other person who the Client is responsible, and other occupiers of the Location;
 - (b) make good any damage caused by the fault of the Consultant at the Location, to the Client's reasonable satisfaction;
 - (c) obtain and comply with the Client's directions as to permitted dates and times of access;
 - (d) comply with the Client's code of conduct;
 - (e) not knowingly or recklessly do anything that causes the Client to be in breach of any obligation; and
 - 1.10 comply with the Client's reasonable directions, requirements and applicable policies and procedures (including without limitation, as to confidentiality and confidential information, probity investigations, record keeping, incident reporting systems, tenant liaison and health and safety) all as attached or as notified by the Client to the Consultant in writing from time to time.
- 2 This Agreement continues from the Commencement Date (if any) until:
 - 2.1 the Fixed Term Expiry Date (if any);
 - 2.2 the Services are completed;
 - 2.3 the Project is completed (as notified by the Client to the Consultant in writing); or
 - 2.4 it is terminated in accordance with this Agreement,whichever is earlier. The Parties may agree to extend the term of this Agreement.
 - 3 The Consultant must use the degree of skill, care and diligence reasonably expected of a competent professional consultant providing services similar to the Services.
 - 4 Any terms and conditions enclosed or referred to within earlier correspondence between the Parties (whether or not attached to this Agreement) do not apply to this Agreement.
 - 5 Notwithstanding anything else in this Agreement, nothing in this Agreement shall be construed as a delegation of the Client's functions or powers to the Consultant, whether under the Crown Entities Act 2004 or otherwise and, in relation to any such matters, the Consultant's role is recommendatory only.

- 6 The Consultant will not assign or subcontract all or any part of its rights and obligations under this Agreement without the prior written approval of the Client, which may be refused without giving reasons. Any approved assignment or subcontracting of rights and obligations will not relieve the Consultant from any liability or obligation under this Agreement.
- 7 The Client will provide to the Consultant, free of cost, as soon as practicable following any request for information, information in the Client's power to obtain and which the Client agrees relates to the Services. The Consultant will not, without the Client's prior written consent, use information provided by the Client for purposes unrelated to the Services.
- 8 The Consultant and its personnel must keep confidential the terms of this Agreement and all information provided to or obtained by the Consultant in respect of or arising out of this Agreement, the Services or the business and operations of the Client, and protect all such information as confidential information, except:
- 8.1 for information already in the public domain;
 - 8.2 for information that is reasonably necessary for the Consultant to disclose to enable the Consultant to perform the Services (subject to the Consultant obtaining confidentiality undertakings from the person to whom the information is disclosed);
 - 8.3 for information disclosed with the Client's prior written consent; and
 - 8.4 as required by law.
- 9 The Consultant must not:
- 9.1 make any public or media statements to anyone about this Agreement, the Services, or the Works; or
 - 9.2 display any details of this Agreement, the Services or the Works in its advertising or marketing material (including on social media),
- without the Client's written approval.
- 10 The Client may order variations to the Services in writing or may request the Consultant to submit proposals for variation to the Services. Where the Consultant considers a direction from the Client or any other circumstance is a variation the Consultant will notify the Client as soon as practicable. The notice will include details of the estimated costs of the variation, likely impact on the Programme and Completion Date for the Services and recommend how to proceed. No additional Fee will be payable by the Client in respect of a variation unless the additional Fee has been agreed or determined and the Client has directed the Consultant in writing to proceed with the variation.
- 11 Where practicable the Parties will agree on the value and timing of supply of the variation before any variation works are commenced. If the Parties are unable to agree then the matter will be treated as a dispute and resolved in accordance with clause 32.
- 12 The Client must pay the Consultant the Fees for the Services at the times and in the manner set out in this Agreement unless there is a dispute as to the amount payable. If the Client disputes an invoice, or part of an invoice, the Client must promptly give the reasons for withholding the disputed amount and pay any undisputed amount. Payment will be made by direct credit to a bank account nominated by the Consultant. The Client may set off any amount due and payable by the Consultant to the Client (whether in respect of damages or otherwise) against any payment due to the Consultant under this Agreement.
- 13 If consistent with the meaning and intent of the Fee and this Agreement, then the Consultant may submit monthly invoices to the Client.
- 13.1 As a precondition to any entitlement to payment, the Consultant must provide a valid tax invoice along with all documentation (including signed weekly timesheets, where applicable if Services are undertaken on a time charge basis) and any other supporting information required by the Client.
 - 13.2 All invoices will specify the amount payable and include reasonable detail of the Services performed during the relevant period.
 - 13.3 If this Agreement is subject to the Construction Contracts Act 2002 (CCA), the Client may dispute an invoice or payment claim, or part of an invoice or payment claim by providing to the Consultant, within 20 Working Days of receipt of the invoice, a payment schedule in accordance with the CCA setting out the amounts that the Client intends to withhold from the invoiced amount.

- 14 Unless the Short Form Agreement provides otherwise, the Fee includes all out-of-pocket expenses and overheads incurred in the provision of the Services by the Consultant and the Consultant will not be entitled to any other payments or reimbursements.
- 15 Late payment of any invoice which is not disputed will constitute a default, and if the default continues unremedied for 20 Working Days after the Consultant has given written notice to the Client advising of the default and requesting payment, the Client will pay default interest on overdue amounts from the date payment falls due to the date of payment at the rate of the Consultant's overdraft rate plus 2 percentage points.
- 16 Where the Consultant is negligent or breaches this Agreement, the Consultant is liable to the Client for reasonably foreseeable claims, damages, liabilities, losses and expenses caused directly by the negligence or breach. Neither Party will be liable to the other under this Agreement for a Party's indirect, consequential or special loss, loss of opportunity or loss of profit, however arising, whether under contract, in tort or otherwise.
- 17 The maximum aggregate amount payable, whether in contract, tort or otherwise, in relation to claims, damages, liabilities, losses or expenses, shall be the greater of five times the Fee (exclusive of GST and disbursements) and the limit of liability specified in the Short Form Agreement.
- 18 Without limiting any defences a Party may have under the Limitation Act 2010, neither Party shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on a Party within 6 years from completion of the Services.
- 19 The Consultant must take out and maintain in full force and effect during the term of this Agreement comprehensive insurance cover with responsible and reputable insurers as would be prudent for persons engaged in businesses similar to the Consultant in the same geographic area. Such insurance must include cover for the matters and the amounts and for the duration specified in the Short Form Agreement. The Consultant must, on demand, produce certificates of the insurer evidencing the currency of the relevant insurances.
- 20 If either Party is found liable to the other (whether in contract, tort or otherwise), and the claiming Party and/or a third party has contributed to the loss or damage, the liable Party will only be liable to the proportional extent of its own contribution.
- 21 Subject to clause 22, intellectual property prepared or created by the Consultant in carrying out the Services (*New Intellectual Property*) shall be solely owned by the Client. The Consultant may not copy, use, disclose, distribute or sell any New Intellectual Property without the express written consent of the Client (which it may grant or withhold in the Client's sole and absolute discretion on whatever conditions the Client deems appropriate) except as required for the purpose of delivering the Services.
- 22 If the Project includes buildings that exceed 3 levels, then:
- 22.1 all New Intellectual Property shall be jointly owned by the Client and the Consultant; and
- 22.2 the Client and the Consultant hereby grant to the other an unrestricted, royalty-free license in perpetuity to copy or use such New Intellectual Property.
- 23 Intellectual property owned by a Party prior to the commencement of this Agreement (*Pre-Existing Intellectual Property*) and intellectual property created by a Party independently of this Agreement remains the property of that Party. The Consultant hereby grants to the Client an unrestricted royalty-free licence to use and copy Pre-existing Intellectual Property to the extent reasonably required to enable the Client to make use of the Services or use, adapt, update or amend the Works. The ownership of data and factual information collected by the Consultant and paid for by the Client shall, after payment by the Client, lie with the Client. The Consultant does not warrant the suitability of New Intellectual Property or Pre-existing Intellectual Property for any purpose other than the Services or any other use stated in, or reasonably inferred from, the Agreement.
- 24 The Consultant:
- 24.1 warrants that as at the date of this Agreement it and its employees and associated entities have no conflict of interest in providing the Services or entering into this Agreement; and
- 24.2 must use its best endeavours to ensure that conflicts of interest do not arise, whether on the part of the Consultant or

any of its personnel, and must notify the Client immediately in writing if it is thought that a conflict of interest may arise or has arisen.

25 The Consultant must:

- 25.1 comply with the requirements of, and its obligations under the Health and Safety at Work Act 2015;
- 25.2 so far as is reasonably practicable, consult, co-operate and coordinate activities with the Client and other relevant parties;
- 25.3 have in place a health and safety management plan that is appropriate for the Services; and
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- 28.1 significantly impact on the Services or the Fee; or
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- 29.1 the Client may require the Consultant to not have that person perform the Services;

29.2 the Consultant must replace that person with someone acceptable to the Client; and

29.3 the Client must not bear any cost or liability arising from the replacement of that person.

30 Subject to the other provisions of this Agreement, this Agreement will terminate on completion of the Services but without prejudice to any obligation of either Party to the other which remains unfulfilled or incomplete at that date. The Client may suspend or terminate all or part of the Services by notice to the Consultant who must immediately make arrangements to stop the Services and minimise further expenditure. The Client and the Consultant may (in the event the other Party is in material default) terminate the Agreement by notice to the other Party. Suspension or termination will not prejudice or affect the accrued rights or claims and liabilities of the Parties but the Consultant will not be entitled to any compensation for un-performed Services or anticipated future Fee.

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- 31.1 is beyond the control of either Party; and
- 31.2 is neither directly nor indirectly caused by either Party; and
- 31.3 prevents the performance of the Services (in whole or in part) required under this Agreement,

then those Services will be suspended until such time that it becomes practicable to recommence the Services. This does not include events personal to either Party, such as ill-health or lack of funding or resources.

If there is a reasonable likelihood that the Services are not able to be recommenced, then this Agreement may be terminated by the Client.

In circumstances where the Services or part of the Services have to be suspended or delayed, the Consultant will be allowed extra time to complete the Services and such extra time should be reasonable in the circumstances.

If the suspension continues for more than 6 months, then this Agreement may be terminated by the Consultant.

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themselves within a reasonable time they must attempt in good faith to resolve it by mediation. If the dispute is not resolved within a reasonable time then either Party may refer the dispute to arbitration by a sole arbitrator under the Arbitration Act 1996. The Parties must agree on the arbitrator to be appointed within 10 Working Days of the referral and if they cannot agree the arbitrator will be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc. Subject to the CCA, if applicable, no dispute gives either Party the right to suspend its obligations under this Agreement.

33 The obligations of the Consultant under this Agreement shall for the purposes of Part 2, Subpart 1 (Contractual privity) of the Contract and Commercial Law Act 2017 be deemed to be for the benefit of Housing New Zealand Limited and Housing New Zealand Build Limited (including any successors and assigns) and shall be enforceable by Housing New Zealand Limited and Housing New Zealand Build Limited against the Consultant but not so as to impose any greater liability, including in aggregate, on the Consultant towards Housing New Zealand Limited and Housing New Zealand Build Limited than the Consultant owes or owed to the Client.

34 If the Client has regulatory functions outside of the Agreement, the Client shall be deemed not to be acting in the capacity of the Client under this Agreement when exercising these functions in good faith.

35 Where there is reference to any payment under this Agreement, applicable GST is to be added to the amount of that payment (subject to the provision of a valid GST invoice and to anything to the contrary in this Agreement).

36 This Agreement is governed by the New Zealand law, the New Zealand courts, have jurisdiction in respect of this Agreement, and all amounts are payable in New Zealand dollars.

37 Definitions and Interpretation:

37.1 Words or phrases defined in the Short Form Agreement have a corresponding meaning in this Agreement.

37.2 In this Agreement, the singular shall include the plural, the masculine shall include the feminine, and vice versa when the context requires.

37.3 Working Day means a calendar day other than a Saturday, Sunday, statutory or other public holiday.

37.4 Works means the physical and other works (if any) relating to the Services, to be carried out by a contractor or the Client, including goods and equipment to be supplied to the Client.

Released under the Official Information Act

SPECIAL CONDITIONS

The following Special Conditions are part of this Agreement. To the extent there is any conflict between the Short Form Model Conditions of Engagement (clauses 1 to 37) and the Special Conditions, the Special Conditions will apply and are paramount.

Cultural information, taonga works, and mātauranga Māori:

The Client acknowledges Article 11 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the Crown's commitment to addressing the issues raised by the Wai262 claim and the Waitangi Tribunal report, Ko Aotearoa Tēnei.

Any cultural information, taonga works, and mātauranga Māori (together defined as Cultural Property) provided to the Client by or on behalf of mana whenua (Māori) in the course of the provision of the Services, whether included in Deliverables or not, is and shall remain the Cultural Property of the relevant mana whenua group.

The Consultant will provide the Client in writing with the details of all Cultural Property that has been included in the Deliverables or used to produce the Deliverables. To the extent that Cultural Property is included in the Deliverables:

- a. The Consultant will introduce the Client to the relevant mana whenua group that exercises guardianship over the Cultural Property and the Client and the mana whenua group shall enter into a separate agreement concerning any conditions around the use of the Cultural Property and Deliverables and any other matters such as licence conditions, royalty payments and any requirements for the formal acknowledgement of the Cultural Property;
- b. If the Client does not enter into a separate agreement with mana whenua as described in clause [9.4.a], the Consultant warrants that it has obtained all necessary consents and approvals to
- c. License the Cultural Property to the Client on the terms of this Contract (as may be amended in the relevant Statement of Work);and
- d. Regardless of whether 9.4.a or 9.4.b applies:
 - the Client will at all times acknowledge any statements of Cultural Property authorship, ownership, copyright, or attribution included in the Deliverables;
 - the Client will not do anything that could reasonably be expected to threaten the integrity of, or control by mana whenua over, or jeopardise the economic or other potential to the Cultural Property provided to the Client in the course of the provision of the Services; and
 - The Client will respect the right of mana whenua to participate in, benefit from, and make decisions about the application, development, and use of the Cultural Property provided to the Client in the course of the provision of the Services and recognise and leverage their use in a manner that supports Māori aspirations.
 - To allow the Client to be aware of and fulfil any IP rights being granted to Maori / manawhenua, a copy of any Intellectual Property agreement intended to be entered into between manawhenua and the Consultant for the purposes of clause[9.4,] is to be presented to and approved by the Client before any such agreement is signed by the Consultant.

Appendix A: Scope of Services

The Services

The Consultant shall provide Cultural Assessment Services services in relation to the Client's Project, including the attached.

If applicable, the Consultant will also complete the Services so as to achieve 6 Homestar Design Rating, to enable the Client to achieve a 6 Homestar Built Rating.

Tags, Qualifications, and Excluded Services

Not applicable.

Released under the Official Information Act

Your Project

Ruapehu District Council (RDC) is planning a major development at 6 Teitei Drive Ohakune. RDC will establish social housing units utilising the Comprehensive Residential Development Rules of the Ruapehu District Plan. Some additional development will also likely be undertaken through a partnership with private parties.

We understand that Kainga Ora Homes and Communities have been engaged by RDC to undertake the proposed development.

The development is for approximately 44 social housing lots (under the Crown Infrastructure Partners project) and an additional 150 Lots. This is approximately 200 lots in total. It is our understanding that the proposed development will require a Discretionary Subdivision or Non-Complying Activity consent application to the Ruapehu District Council (depending on the level of compliance with lot size). Alternatively, the proposed development consent could be sought through an application to the Minister for the Environment for referral to an expert consenting panel using the COVID-19 Recovery (Fast-track Consenting) Act 2020.

We understand from expert assessments the proposed site is:

- considered to be on highly productive land
- at risk of flooding in several areas of the site (surface inundation and groundwater)
- at risk of flooding around the existing waterway and will be protected from 1 in 200 year (0.5% AEP) events
- liquefiable
- identified as situated on a historic lake or stream beds and lake terraces.

We understand the development will need the following infrastructure:

- power and telecommunications

- wastewater and stormwater
- reticulated water
- roading and transportation.

We also understand that earthworks to establish and develop the site will be required.

The proposed development is in the Ngāti Rangi area of interest. As mana whenua, Ngāti Rangi has identified that there are potential effects on Ngāti Rangi values and aspirations.

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Project scope

Ngāti Rangī has asked Kāhu Environmental to undertake a cultural impact assessment (CIA) for the development at Teitei Drive, Ohakune on behalf of the iwi. A CIA will provide an understanding of how the activities of the proposed development will impact values associated with Ranginui, Papa-tū-a-nuku, Tangaroa-i-te-wai-tai, Tāne, and on Ngāti Rangitanga and Ngāti Rangī kōrero and people.

What we'll do

We'll provide:

1. A CIA that reflects the values, positions and obligations of Ngāti Rangī, Rukutia te Mana (the Ngāti Rangī Settlement), and the Ngāti Rangī Taiao Management Plan
2. Clear and robust evidence for decision-making
3. Details of other ways of knowing and relating to the environment, utilising mātauranga Māori, and
4. An opportunity for improved project outcomes.

We'll facilitate a clear process that will include

1. A literature review of all key documents
2. Hui preparation (plan hui dates, times, venue and catering with Ngāti Rangī)
3. Undertake a site visit with the applicant and Ngāti Rangī (half day). For Ngāti Rangī, this will be Ngā Waihua o Paerangi Trust staff, Ngā Pou Taiao members, and other uri as may be appropriate
4. Hold a half-day wānanga with Ngāti Rangī to understand and identify:
 - a. cultural and environmental values,
 - b. impacts of the project on these values, and
 - c. options to address those impacts
5. Further information gathering, including from the project's technical advisors where required
6. Zoom hui with Ngāti Rangī to develop further ideas and recommendations to address the impacts of the project

7. Development of a CIA report and provision of a draft to Ngā Pou Taiao and Ngāti Rangi Trust for feedback
8. Discuss feedback on the draft with Ngā Pou Taiao and Ngā Waihua o Paerangi Trust staff
9. Provision of a final CIA report, approved by Ngā Pou Taiao and Ngā Waihua o Paerangi Trust
10. Evaluation of the planning instruments regarding the development
11. Support for Kainga Ora and Ngāti Rangi to implement the recommendations of the report.

Our assumption

1. This proposal has been prepared on the assumption that the proposed consent application is not yet locked in and that there remains scope for amendments to address cultural impacts and mitigate potential effects.
2. There may be a need to obtain expert advice on stormwater management. We have not included time in this proposal to assist with engaging and managing such experts, but can provide an updated fee estimate should this expert input be required
3. The costs for the facilitation of wānanga, catering and iwi time to undertake the CIA process will be covered via an external arrangement between Kainga Ora and Ngā Waihua o Paerangi Trust.

What we'll deliver

We'll deliver a CIA report that will:

1. provide an overview of Ngāti Rangi as tangata whenua and their relationships with the area, including the awa and whenua
2. provide an overview of the proposed activities
3. identify significant cultural features and sites within the project area

4. describe key cultural values and aspirations
5. identify and describe the potential and actual effects, including positive effects, the project will have on Ngāti Rangī values, aspirations, features and sites
6. recommend ways to avoid, remedy and mitigate any adverse effects on Ngāti Rangī values, features and sites and to ensure the development is in line with Te Mana Tupua o Te Waiū-o-Te-Ika and Ngā Toka Tupua o Te Waiū-o-Te-Ika
7. incorporate advice from rangatira, hapū representatives, and key mātauranga advisors within Ngāti Rangī.

Timeline and estimate

An estimate is attached to this proposal. In addition to the fees in the estimate, mileage and other disbursements reasonably necessary to undertake the work will be charged at cost plus GST.

We expect a draft CIA will be delivered to Ngāti Rangī within 16 weeks of the contract with Kāhu Environmental being signed.

This timeline has been suggested after consultation with Ngāti Rangī, Ngā Pou Taiao after consideration of their availability. However we understand your need for urgency to get the project underway, and the aim would be to complete it earlier where possible.

SHORT FORM AGREEMENT FOR CONSULTANT ENGAGEMENT

BETWEEN: KĀINGA ORA—HOMES AND COMMUNITIES (CLIENT)

AND: MORPHUM ENVIRONMENTAL LIMITED (1067587) (CONSULTANT)

collectively referred to as the *Parties* and individually as a *Party*. If two or more persons or entities are named as the Consultant, they are jointly and severally liable as the Consultant under this Agreement.

PROJECT: AP111980

LOCATION: Teitei Drive, Ohakune

THE SERVICES: UUD - complex and greenfields services as described in Appendix A: Scope of Services.

Subject to clause 5, the Services include all things or tasks which may be reasonably inferred from or necessary for the performance of those Services and such other things or tasks which the Consultant must do to comply with this Agreement (and whether performed before or after the date of this Agreement).

PROGRAMME: As per the Commencement Date and any Fixed Term Expiry Date.

COMMENCEMENT DATE: Upon execution of this Agreement.

FIXED TERM EXPIRY DATE: Not applicable.

FEE AND TIMING OF PAYMENTS:

FEE: Total fee (excluding GST) of **\$15,000.00**, comprised of:

Service	Fee Type	Amount (excl. GST)
Wetlands Assessment	Estimated	\$15,000.00

Any fee in addition to the fee set out above must be paid in accordance with the table below, provided that the Client has first agreed to that fee and additional services in writing.

Role / Additional Service (if required)	Hourly Rate (excl. GST)
Principal Scientist - s 9(2)(a)	s 9(2)(b)(ii)
Principal Ecological Engineer - s 9(2)(a)	
Graduate professional - s 9(2)(a)	

The total fee payable under this Agreement must not exceed \$50,000.00 (excluding GST).

TIMING: The Client will pay any valid invoice by the 20th day of the month following the month in which the invoice is dated, providing:

- The invoice is emailed to invoices@kaingaora.govt.nz no later than the 5th Working Day of that following month; and
- The correct Kāinga Ora order number related to this Agreement is recorded on the invoice.

An order number for this Agreement can be obtained by the Consultant from the relevant Development or Programme Manager for this Agreement.

INFORMATION OR SERVICES TO BE PROVIDED BY THE CLIENT: Nil.

INSURANCE AND LIABILITY:

Public Liability: \$1,000,000.
 Professional Indemnity: \$250,000. Professional Indemnity will be provided for 6 years after completion of the Services.
 Limitation of Liability: \$250,000.

AGREEMENT:

The Client engages the Consultant to provide the Services and the Consultant agrees to perform the Services for the Fee and on the terms and conditions set out in this Agreement.

The following documents form this Agreement in order of precedence:


1. This Short Form Agreement;
2. The Special Conditions (if any);
3. The Short Form Model Conditions of Engagement; and
4. Appendix A: Scope of Services.

Once signed, this Agreement will replace all or any oral or written agreement previously reached between the Parties. Legal terms and conditions set out in any documents attached to this Agreement will have no application.

CLIENT AUTHORISED SIGNATORY(IES):


PRINT NAME: Giles Tait
DATE: 01/05/2023

CONSULTANT AUTHORISED SIGNATORY(IES):


PRINT NAME: Dean Watts
DATE: 28/04/2023

Released under the Official Information Act

SHORT FORM MODEL CONDITIONS OF ENGAGEMENT

- 1 In providing the Services the Consultant must:
 - 1.1 perform the Services in accordance with the Programme (if any), any other programme or timing notified to the Consultant by the Client from time to time and otherwise in a timely manner;
 - 1.2 provide, sufficient employees with the necessary qualifications, skills and experience to perform the Services to the standards required by this Agreement;
 - 1.3 use reasonable endeavours to ensure any of the Consultant's personnel that are named in any document attached to this Agreement remain involved in and are not removed from the Services without the Client's prior consent;
 - 1.4 ensure all personnel involved in the provision of the Services are fit, proper, trained and appropriately supervised for such involvement (including any interaction with the Client's tenants and in respect of the protection of confidential information) and that the Consultant makes and keeps a record of appropriate probity investigations in this respect;
 - 1.5 comply with all applicable laws, codes, standards and rules;
 - 1.6 comply with, and take all practicable steps to ensure that its personnel and subconsultants comply with, the Immigration Act 2009 and the Employment Relations Act 2000;
 - 1.7 consult, co-operate and co-ordinate with any other consultant of the Client as required;
 - 1.8 if requested by the Client, promptly re-perform (at its own cost) any Services which do not comply with this Agreement;
 - 1.9 if any part of the Services are to be carried out on the Location:
 - (a) minimise disruption and inconvenience to the Client's tenants, any other person who the Client is responsible, and other occupiers of the Location;
 - (b) make good any damage caused by the fault of the Consultant at the Location, to the Client's reasonable satisfaction;
 - (c) obtain and comply with the Client's directions as to permitted dates and times of access;
 - (d) comply with the Client's code of conduct;
 - (e) not knowingly or recklessly do anything that causes the Client to be in breach of any obligation; and
 - 1.10 comply with the Client's reasonable directions, requirements and applicable policies and procedures (including without limitation, as to confidentiality and confidential information, probity investigations, record keeping, incident reporting systems, tenant liaison and health and safety) all as attached or as notified by the Client to the Consultant in writing from time to time.
- 2 This Agreement continues from the Commencement Date (if any) until:
 - 2.1 the Fixed Term Expiry Date (if any);
 - 2.2 the Services are completed;
 - 2.3 the Project is completed (as notified by the Client to the Consultant in writing); or
 - 2.4 it is terminated in accordance with this Agreement,whichever is earlier. The Parties may agree to extend the term of this Agreement.
- 3 The Consultant must use the degree of skill, care and diligence reasonably expected of a competent professional consultant providing services similar to the Services.
- 4 Any terms and conditions enclosed or referred to within earlier correspondence between the Parties (whether or not attached to this Agreement) do not apply to this Agreement.
- 5 Notwithstanding anything else in this Agreement, nothing in this Agreement shall be construed as a delegation of the Client's functions or powers to the Consultant, whether under the Crown Entities Act 2004 or otherwise and, in relation to any such matters, the Consultant's role is recommendatory only.

- 6 The Consultant will not assign or subcontract all or any part of its rights and obligations under this Agreement without the prior written approval of the Client, which may be refused without giving reasons. Any approved assignment or subcontracting of rights and obligations will not relieve the Consultant from any liability or obligation under this Agreement.
- 7 The Client will provide to the Consultant, free of cost, as soon as practicable following any request for information, information in the Client's power to obtain and which the Client agrees relates to the Services. The Consultant will not, without the Client's prior written consent, use information provided by the Client for purposes unrelated to the Services.
- 8 The Consultant and its personnel must keep confidential the terms of this Agreement and all information provided to or obtained by the Consultant in respect of or arising out of this Agreement, the Services or the business and operations of the Client, and protect all such information as confidential information, except:
- 8.1 for information already in the public domain;
 - 8.2 for information that is reasonably necessary for the Consultant to disclose to enable the Consultant to perform the Services (subject to the Consultant obtaining confidentiality undertakings from the person to whom the information is disclosed);
 - 8.3 for information disclosed with the Client's prior written consent; and
 - 8.4 as required by law.
- 9 The Consultant must not:
- 9.1 make any public or media statements to anyone about this Agreement, the Services, or the Works; or
 - 9.2 display any details of this Agreement, the Services or the Works in its advertising or marketing material (including on social media),
- without the Client's written approval.
- 10 The Client may order variations to the Services in writing or may request the Consultant to submit proposals for variation to the Services. Where the Consultant considers a direction from the Client or any other circumstance is a variation the Consultant will notify the Client as soon as practicable. The notice will include details of the estimated costs of the variation, likely impact on the Programme and Completion Date for the Services and recommend how to proceed. No additional Fee will be payable by the Client in respect of a variation unless the additional Fee has been agreed or determined and the Client has directed the Consultant in writing to proceed with the variation.
- 11 Where practicable the Parties will agree on the value and timing of supply of the variation before any variation works are commenced. If the Parties are unable to agree then the matter will be treated as a dispute and resolved in accordance with clause 32.
- 12 The Client must pay the Consultant the Fees for the Services at the times and in the manner set out in this Agreement unless there is a dispute as to the amount payable. If the Client disputes an invoice, or part of an invoice, the Client must promptly give the reasons for withholding the disputed amount and pay any undisputed amount. Payment will be made by direct credit to a bank account nominated by the Consultant. The Client may set off any amount due and payable by the Consultant to the Client (whether in respect of damages or otherwise) against any payment due to the Consultant under this Agreement.
- 13 If consistent with the meaning and intent of the Fee and this Agreement, then the Consultant may submit monthly invoices to the Client.
- 13.1 As a precondition to any entitlement to payment, the Consultant must provide a valid tax invoice along with all documentation (including signed weekly timesheets, where applicable if Services are undertaken on a time charge basis) and any other supporting information required by the Client.
 - 13.2 All invoices will specify the amount payable and include reasonable detail of the Services performed during the relevant period.
 - 13.3 If this Agreement is subject to the Construction Contracts Act 2002 (CCA), the Client may dispute an invoice or payment claim, or part of an invoice or payment claim by providing to the Consultant, within 20 Working Days of receipt of the invoice, a payment schedule in accordance with the CCA setting out the amounts that the Client intends to withhold from the invoiced amount.

- 14 Unless the Short Form Agreement provides otherwise, the Fee includes all out-of-pocket expenses and overheads incurred in the provision of the Services by the Consultant and the Consultant will not be entitled to any other payments or reimbursements.
- 15 Late payment of any invoice which is not disputed will constitute a default, and if the default continues unremedied for 20 Working Days after the Consultant has given written notice to the Client advising of the default and requesting payment, the Client will pay default interest on overdue amounts from the date payment falls due to the date of payment at the rate of the Consultant's overdraft rate plus 2 percentage points.
- 16 Where the Consultant is negligent or breaches this Agreement, the Consultant is liable to the Client for reasonably foreseeable claims, damages, liabilities, losses and expenses caused directly by the negligence or breach. Neither Party will be liable to the other under this Agreement for a Party's indirect, consequential or special loss, loss of opportunity or loss of profit, however arising, whether under contract, in tort or otherwise.
- 17 The maximum aggregate amount payable, whether in contract, tort or otherwise, in relation to claims, damages, liabilities, losses or expenses, shall be the greater of five times the Fee (exclusive of GST and disbursements) and the limit of liability specified in the Short Form Agreement.
- 18 Without limiting any defences a Party may have under the Limitation Act 2010, neither Party shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on a Party within 6 years from completion of the Services.
- 19 The Consultant must take out and maintain in full force and effect during the term of this Agreement comprehensive insurance cover with responsible and reputable insurers as would be prudent for persons engaged in businesses similar to the Consultant in the same geographic area. Such insurance must include cover for the matters and the amounts and for the duration specified in the Short Form Agreement. The Consultant must, on demand, produce certificates of the insurer evidencing the currency of the relevant insurances.
- 20 If either Party is found liable to the other (whether in contract, tort or otherwise), and the claiming Party and/or a third party has contributed to the loss or damage, the liable Party will only be liable to the proportional extent of its own contribution.
- 21 Subject to clause 22, intellectual property prepared or created by the Consultant in carrying out the Services (*New Intellectual Property*) shall be solely owned by the Client. The Consultant may not copy, use, disclose, distribute or sell any New Intellectual Property without the express written consent of the Client (which it may grant or withhold in the Client's sole and absolute discretion on whatever conditions the Client deems appropriate) except as required for the purpose of delivering the Services.
- 22 If the Project includes buildings that exceed 3 levels, then:
- 22.1 all New Intellectual Property shall be jointly owned by the Client and the Consultant; and
- 22.2 the Client and the Consultant hereby grant to the other an unrestricted, royalty-free license in perpetuity to copy or use such New Intellectual Property.
- 23 Intellectual property owned by a Party prior to the commencement of this Agreement (*Pre-Existing Intellectual Property*) and intellectual property created by a Party independently of this Agreement remains the property of that Party. The Consultant hereby grants to the Client an unrestricted royalty-free licence to use and copy Pre-existing Intellectual Property to the extent reasonably required to enable the Client to make use of the Services or use, adapt, update or amend the Works. The ownership of data and factual information collected by the Consultant and paid for by the Client shall, after payment by the Client, lie with the Client. The Consultant does not warrant the suitability of New Intellectual Property or Pre-existing Intellectual Property for any purpose other than the Services or any other use stated in, or reasonably inferred from, the Agreement.
- 24 The Consultant:
- 24.1 warrants that as at the date of this Agreement it and its employees and associated entities have no conflict of interest in providing the Services or entering into this Agreement; and
- 24.2 must use its best endeavours to ensure that conflicts of interest do not arise, whether on the part of the Consultant or

any of its personnel, and must notify the Client immediately in writing if it is thought that a conflict of interest may arise or has arisen.

25 The Consultant must:

- 25.1 comply with the requirements of, and its obligations under the Health and Safety at Work Act 2015;
- 25.2 so far as is reasonably practicable, consult, co-operate and coordinate activities with the Client and other relevant parties;
- 25.3 have in place a health and safety management plan that is appropriate for the Services; and
- 25.4 comply with any health and safety plan of the Client and all other persons who conduct a business or undertaking who have a duty in relation to the same matter.

26 The Parties must review and discuss the progress of the Services as agreed from time to time, or as reasonably requested. No consent, review or approval by the Client of any document or Services provided by the Consultant will reduce the liability of the Consultant in respect of, or signify that the Client has checked the accuracy or completeness of, such matter.

27 If the Consultant's performance of the Services falls behind the Programme, then the Consultant must immediately notify the Client and, where due to matters within the Consultant's control, the Consultant will take all practicable steps to accelerate performance of the Services to meet the Programme.

28 The Consultant must notify the Client immediately of any actual or anticipated issues that could:

- 28.1 significantly impact on the Services or the Fee; or
- 28.2 receive media attention.

29 If the Client decides for good reason that any one of the Consultant's personnel involved in the performance of the Services is unsuitable, then:

- 29.1 the Client may require the Consultant to not have that person perform the Services;

29.2 the Consultant must replace that person with someone acceptable to the Client; and

29.3 the Client must not bear any cost or liability arising from the replacement of that person.

30 Subject to the other provisions of this Agreement, this Agreement will terminate on completion of the Services but without prejudice to any obligation of either Party to the other which remains unfulfilled or incomplete at that date. The Client may suspend or terminate all or part of the Services by notice to the Consultant who must immediately make arrangements to stop the Services and minimise further expenditure. The Client and the Consultant may (in the event the other Party is in material default) terminate the Agreement by notice to the other Party. Suspension or termination will not prejudice or affect the accrued rights or claims and liabilities of the Parties but the Consultant will not be entitled to any compensation for un-performed Services or anticipated future Fee.

31 Should any event occur which:

- 31.1 is beyond the control of either Party; and
- 31.2 is neither directly nor indirectly caused by either Party; and
- 31.3 prevents the performance of the Services (in whole or in part) required under this Agreement,

then those Services will be suspended until such time that it becomes practicable to recommence the Services. This does not include events personal to either Party, such as ill-health or lack of funding or resources.

If there is a reasonable likelihood that the Services are not able to be recommenced, then this Agreement may be terminated by the Client.

In circumstances where the Services or part of the Services have to be suspended or delayed, the Consultant will be allowed extra time to complete the Services and such extra time should be reasonable in the circumstances.

If the suspension continues for more than 6 months, then this Agreement may be terminated by the Consultant.

32 The Parties must attempt in good faith in the first instance to settle any dispute by themselves. If they are unable to resolve the dispute

themselves within a reasonable time they must attempt in good faith to resolve it by mediation. If the dispute is not resolved within a reasonable time then either Party may refer the dispute to arbitration by a sole arbitrator under the Arbitration Act 1996. The Parties must agree on the arbitrator to be appointed within 10 Working Days of the referral and if they cannot agree the arbitrator will be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc. Subject to the CCA, if applicable, no dispute gives either Party the right to suspend its obligations under this Agreement.

33 The obligations of the Consultant under this Agreement shall for the purposes of Part 2, Subpart 1 (Contractual privity) of the Contract and Commercial Law Act 2017 be deemed to be for the benefit of Housing New Zealand Limited and Housing New Zealand Build Limited (including any successors and assigns) and shall be enforceable by Housing New Zealand Limited and Housing New Zealand Build Limited against the Consultant but not so as to impose any greater liability, including in aggregate, on the Consultant towards Housing New Zealand Limited and Housing New Zealand Build Limited than the Consultant owes or owed to the Client.

34 If the Client has regulatory functions outside of the Agreement, the Client shall be deemed not to be acting in the capacity of the Client under this Agreement when exercising these functions in good faith.

35 Where there is reference to any payment under this Agreement, applicable GST is to be added to the amount of that payment (subject to the provision of a valid GST invoice and to anything to the contrary in this Agreement).

36 This Agreement is governed by the New Zealand law, the New Zealand courts, have jurisdiction in respect of this Agreement, and all amounts are payable in New Zealand dollars.

37 Definitions and Interpretation:

37.1 Words or phrases defined in the Short Form Agreement have a corresponding meaning in this Agreement.

37.2 In this Agreement, the singular shall include the plural, the masculine shall include the feminine, and vice versa when the context requires.

37.3 Working Day means a calendar day other than a Saturday, Sunday, statutory or other public holiday.

37.4 Works means the physical and other works (if any) relating to the Services, to be carried out by a contractor or the Client, including goods and equipment to be supplied to the Client.

Released under the Official Information Act

SPECIAL CONDITIONS

The following Special Conditions are part of this Agreement. To the extent there is any conflict between the Short Form Model Conditions of Engagement (clauses 1 to 37) and the Special Conditions, the Special Conditions will apply and are paramount.

Not applicable.

Released under the Official Information Act

Appendix A: Scope of Services

The Services

The Consultant shall provide UUD - complex and greenfields services in relation to the Client's Project, including:

- Investigate, assess and clearly delineate possible wetland area.
- Define the legal status of the area for the purposes of obtaining resource consent with the local council authority.
- Convey the wider environmental context to inform recommendations for ensuring development appropriately protects and enhancing ecological values.
- Provide a detailed report outlining the above finding and recommendations.

If applicable, the Consultant will also complete the Services so as to achieve 6 Homestar Design Rating, to enable the Client to achieve a 6 Homestar Built Rating.

Tags, Qualifications, and Excluded Services

Not applicable.

Released under the Official Information Act

Variation Request 1

Kāinga Ora, Teitei Drive development, Oakhune – Wetland Effects assessment.

Client Details	Kāinga Ora	
Project Reference	60 Teitei Drive	
Project Manager	Giles Tait	
Morphum Details		
Project Reference	P04109	
Project Manager	Stu Farrant	
Contract Details	Contract Sum (ex GST)	Completion Date
Original	\$15,000.00	28/07/2023
Variations Approved to Date	\$0.00	
Current	\$15,000.00	
This Variation Request No 1	\$2,355.00	16/06/2023
Total Including this Variation	\$17,535.00	

Variation to SFA Signed by Morphum 28/4/2023 & Kainga Ora 1/5/2023

Reasons for this variation request

Morphum was requested to, has undertaken a site visit and supplied a memo detailing the delineation of wetlands on the site as well as providing site specific stormwater management recommendations. Kaianga ora have requested the wetland assessment is updated to include and assessment of the effects to support the project's overall Ecological Impact Assessment. This will build on detail already provided in the memo dated 17/5/2023.

The updates are to specifically include:

1. Ecological conditions of the existing wetlands, including:
 - a. If the wetlands have classification as a wetland under NES-F, and the rationale of such conclusion
 - b. Their ecological values
2. Potential effects on the wetland post-development of stage one, without mitigations, including:
 - a. Potential changes or loss of any extent and values of the wetlands
 - b. Their ecological values (without mitigations in place)

3. Potential effects on the wetlands post-development of stage one, with proposed mitigations, including:
 - a. Outline the proposed mitigations (such as necessary considerations for the design of any new culvert(s), enrichment planting within the streams)
 - b. For each mitigation, ideally, we should be able to quantify them, such as riparian planting within 10m buffer of the stream or extend the wetland to make up the potential loss;
 - c. Their ecological values (with mitigations in place)
4. Consideration of aspects which may not be covered in the primary EclA which is an ecological effects assessment of the streams.

Proposed Scope Change	Proposed fee	Requested time extension
Project Management	s 9(2)(b)(ii)	16/06/2023
Wetland effects assessment and QA		16/06/2023

Project Leader



Name: Stu Farrant

Date: 12 June 2023

Project manager



Name: Andrew Rossaak

Date: 12 June 2023

Client Authorisation of Variation



Name: Giles Tait

Date: 12 June 2023

SHORT FORM AGREEMENT FOR CONSULTANT ENGAGEMENT

BETWEEN: KĀINGA ORA—HOMES AND COMMUNITIES (*CLIENT*)

AND: ISTHMUS GROUP LIMITED (380822) (*CONSULTANT*)

collectively referred to as the *Parties* and individually as a *Party*. If two or more persons or entities are named as the Consultant, they are jointly and severally liable as the Consultant under this Agreement.

PROJECT: AR110717

LOCATION: Teitei Drive, Ohakune

THE SERVICES: Planning services as described in Appendix A: Scope of Services.

Subject to clause 5, the Services include all things or tasks which may be reasonably inferred from or necessary for the performance of those Services and such other things or tasks which the Consultant must do to comply with this Agreement (and whether performed before or after the date of this Agreement).

PROGRAMME: As per the Commencement Date and any Fixed Term Expiry Date.

COMMENCEMENT DATE: Upon execution of this Agreement.

FIXED TERM EXPIRY DATE: Not applicable.

FEE AND TIMING OF PAYMENTS:

FEE: Total fee (excluding GST) of **\$15,500.00** plus disbursements, comprised of:

Service	Fee Type	Amount (excl. GST)
Phase 1: Convert 2 no. existing hand drawn concepts onto CAD (Completed Jan 2023)	s 9(2)(b)(ii)	
Phase 2: Final Master Plan (Completed March 2023)		
	Fi	
	Es	
Disbursement		
Disbursements		

Any fee in addition to the fee set out above must be paid in accordance with the table below, provided that the Client has first agreed to that fee and additional services in writing.

Role / Additional Service (if required)	Hourly Rate (excl. GST)
Principal	s 9(2)(b)(ii)
Associate	
Senior	
Intermediate	
Graduate	

The total fee payable under this Agreement must not exceed \$50,000.00 (excluding GST).

TIMING: The Client will pay any valid invoice by the 20th day of the month following the month in which the invoice is dated, providing:

- The invoice is emailed to invoices@kaingaora.govt.nz no later than the 5th Working Day of that following month; and
- The correct Kāinga Ora order number related to this Agreement is recorded on the invoice.

An order number for this Agreement can be obtained by the Consultant from the relevant Development or Programme Manager for this Agreement.

INFORMATION OR SERVICES TO BE PROVIDED BY THE CLIENT: Nil.

INSURANCE AND LIABILITY:

Public Liability: \$1,000,000.

Professional Indemnity: \$250,000. Professional Indemnity will be provided for 6 years after completion of the Services.

Limitation of Liability: \$250,000.

AGREEMENT:

The Client engages the Consultant to provide the Services and the Consultant agrees to perform the Services for the Fee and on the terms and conditions set out in this Agreement.

The following documents form this Agreement in order of precedence:

1. This Short Form Agreement;
2. The Special Conditions (if any);
3. The Short Form Model Conditions of Engagement; and
4. Appendix A: Scope of Services.

Once signed, this Agreement will replace all or any oral or written agreement previously reached between the Parties. Legal terms and conditions set out in any documents attached to this Agreement will have no application.

CLIENT AUTHORISED SIGNATORY(IES):

PRINT NAME: Giles Tait
DATE: 09.01.22

CONSULTANT AUTHORISED SIGNATORY(IES):

PRINT NAME: Bradley Ward
DATE: 09.01.22

Released under the Official Information Act

SHORT FORM MODEL CONDITIONS OF ENGAGEMENT

- 1 In providing the Services the Consultant must:
 - 1.1 perform the Services in accordance with the Programme (if any), any other programme or timing notified to the Consultant by the Client from time to time and otherwise in a timely manner;
 - 1.2 provide, sufficient employees with the necessary qualifications, skills and experience to perform the Services to the standards required by this Agreement;
 - 1.3 use reasonable endeavours to ensure any of the Consultant's personnel that are named in any document attached to this Agreement remain involved in and are not removed from the Services without the Client's prior consent;
 - 1.4 ensure all personnel involved in the provision of the Services are fit, proper, trained and appropriately supervised for such involvement (including any interaction with the Client's tenants and in respect of the protection of confidential information) and that the Consultant makes and keeps a record of appropriate probity investigations in this respect;
 - 1.5 comply with all applicable laws, codes, standards and rules;
 - 1.6 comply with, and take all practicable steps to ensure that its personnel and subconsultants comply with, the Immigration Act 2009 and the Employment Relations Act 2000;
 - 1.7 consult, co-operate and co-ordinate with any other consultant of the Client as required;
 - 1.8 if requested by the Client, promptly re-perform (at its own cost) any Services which do not comply with this Agreement;
 - 1.9 if any part of the Services are to be carried out on the Location:
 - (a) minimise disruption and inconvenience to the Client's tenants, any other person who the Client is responsible, and other occupiers of the Location;
 - (b) make good any damage caused by the fault of the Consultant at the Location, to the Client's reasonable satisfaction;
 - (c) obtain and comply with the Client's directions as to permitted dates and times of access;
 - (d) comply with the Client's code of conduct;
 - (e) not knowingly or recklessly do anything that causes the Client to be in breach of any obligation; and
 - 1.10 comply with the Client's reasonable directions, requirements and applicable policies and procedures (including without limitation, as to confidentiality and confidential information, probity investigations, record keeping, incident reporting systems, tenant liaison and health and safety) all as attached or as notified by the Client to the Consultant in writing from time to time.
- 2 This Agreement continues from the Commencement Date (if any) until:
 - 2.1 the Fixed Term Expiry Date (if any);
 - 2.2 the Services are completed;
 - 2.3 the Project is completed (as notified by the Client to the Consultant in writing); or
 - 2.4 it is terminated in accordance with this Agreement,whichever is earlier. The Parties may agree to extend the term of this Agreement.
 - 3 The Consultant must use the degree of skill, care and diligence reasonably expected of a competent professional consultant providing services similar to the Services.
 - 4 Any terms and conditions enclosed or referred to within earlier correspondence between the Parties (whether or not attached to this Agreement) do not apply to this Agreement.
 - 5 Notwithstanding anything else in this Agreement, nothing in this Agreement shall be construed as a delegation of the Client's functions or powers to the Consultant, whether under the Crown Entities Act 2004 or otherwise and, in relation to any such matters, the Consultant's role is recommendatory only.

- 6 The Consultant will not assign or subcontract all or any part of its rights and obligations under this Agreement without the prior written approval of the Client, which may be refused without giving reasons. Any approved assignment or subcontracting of rights and obligations will not relieve the Consultant from any liability or obligation under this Agreement.
- 7 The Client will provide to the Consultant, free of cost, as soon as practicable following any request for information, information in the Client's power to obtain and which the Client agrees relates to the Services. The Consultant will not, without the Client's prior written consent, use information provided by the Client for purposes unrelated to the Services.
- 8 The Consultant and its personnel must keep confidential the terms of this Agreement and all information provided to or obtained by the Consultant in respect of or arising out of this Agreement, the Services or the business and operations of the Client, and protect all such information as confidential information, except:
- 8.1 for information already in the public domain;
 - 8.2 for information that is reasonably necessary for the Consultant to disclose to enable the Consultant to perform the Services (subject to the Consultant obtaining confidentiality undertakings from the person to whom the information is disclosed);
 - 8.3 for information disclosed with the Client's prior written consent; and
 - 8.4 as required by law.
- 9 The Consultant must not:
- 9.1 make any public or media statements to anyone about this Agreement, the Services, or the Works; or
 - 9.2 display any details of this Agreement, the Services or the Works in its advertising or marketing material (including on social media),
- without the Client's written approval.
- 10 The Client may order variations to the Services in writing or may request the Consultant to submit proposals for variation to the Services. Where the Consultant considers a direction from the Client or any other circumstance is a variation the Consultant will notify the Client as soon as practicable. The notice will include details of the estimated costs of the variation, likely impact on the Programme and Completion Date for the Services and recommend how to proceed. No additional Fee will be payable by the Client in respect of a variation unless the additional Fee has been agreed or determined and the Client has directed the Consultant in writing to proceed with the variation.
- 11 Where practicable the Parties will agree on the value and timing of supply of the variation before any variation works are commenced. If the Parties are unable to agree then the matter will be treated as a dispute and resolved in accordance with clause 32.
- 12 The Client must pay the Consultant the Fees for the Services at the times and in the manner set out in this Agreement unless there is a dispute as to the amount payable. If the Client disputes an invoice, or part of an invoice, the Client must promptly give the reasons for withholding the disputed amount and pay any undisputed amount. Payment will be made by direct credit to a bank account nominated by the Consultant. The Client may set off any amount due and payable by the Consultant to the Client (whether in respect of damages or otherwise) against any payment due to the Consultant under this Agreement.
- 13 If consistent with the meaning and intent of the Fee and this Agreement, then the Consultant may submit monthly invoices to the Client.
- 13.1 As a precondition to any entitlement to payment, the Consultant must provide a valid tax invoice along with all documentation (including signed weekly timesheets, where applicable if Services are undertaken on a time charge basis) and any other supporting information required by the Client.
 - 13.2 All invoices will specify the amount payable and include reasonable detail of the Services performed during the relevant period.
 - 13.3 If this Agreement is subject to the Construction Contracts Act 2002 (CCA), the Client may dispute an invoice or payment claim, or part of an invoice or payment claim by providing to the Consultant, within 20 Working Days of receipt of the invoice, a payment schedule in accordance with the CCA setting out the amounts that the Client intends to withhold from the invoiced amount.

- 14 Unless the Short Form Agreement provides otherwise, the Fee includes all out-of-pocket expenses and overheads incurred in the provision of the Services by the Consultant and the Consultant will not be entitled to any other payments or reimbursements.
- 15 Late payment of any invoice which is not disputed will constitute a default, and if the default continues unremedied for 20 Working Days after the Consultant has given written notice to the Client advising of the default and requesting payment, the Client will pay default interest on overdue amounts from the date payment falls due to the date of payment at the rate of the Consultant's overdraft rate plus 2 percentage points.
- 16 Where the Consultant is negligent or breaches this Agreement, the Consultant is liable to the Client for reasonably foreseeable claims, damages, liabilities, losses and expenses caused directly by the negligence or breach. Neither Party will be liable to the other under this Agreement for a Party's indirect, consequential or special loss, loss of opportunity or loss of profit, however arising, whether under contract, in tort or otherwise.
- 17 The maximum aggregate amount payable, whether in contract, tort or otherwise, in relation to claims, damages, liabilities, losses or expenses, shall be the greater of five times the Fee (exclusive of GST and disbursements) and the limit of liability specified in the Short Form Agreement.
- 18 Without limiting any defences a Party may have under the Limitation Act 2010, neither Party shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on a Party within 6 years from completion of the Services.
- 19 The Consultant must take out and maintain in full force and effect during the term of this Agreement comprehensive insurance cover with responsible and reputable insurers as would be prudent for persons engaged in businesses similar to the Consultant in the same geographic area. Such insurance must include cover for the matters and the amounts and for the duration specified in the Short Form Agreement. The Consultant must, on demand, produce certificates of the insurer evidencing the currency of the relevant insurances.
- 20 If either Party is found liable to the other (whether in contract, tort or otherwise), and the claiming Party and/or a third party has contributed to the loss or damage, the liable Party will only be liable to the proportional extent of its own contribution.
- 21 Subject to clause 22, intellectual property prepared or created by the Consultant in carrying out the Services (*New Intellectual Property*) shall be solely owned by the Client. The Consultant may not copy, use, disclose, distribute or sell any New Intellectual Property without the express written consent of the Client (which it may grant or withhold in the Client's sole and absolute discretion on whatever conditions the Client deems appropriate) except as required for the purpose of delivering the Services.
- 22 If the Project includes buildings that exceed 3 levels, then:
- 22.1 all New Intellectual Property shall be jointly owned by the Client and the Consultant; and
- 22.2 the Client and the Consultant hereby grant to the other an unrestricted, royalty-free license in perpetuity to copy or use such New Intellectual Property.
- 23 Intellectual property owned by a Party prior to the commencement of this Agreement (*Pre-Existing Intellectual Property*) and intellectual property created by a Party independently of this Agreement remains the property of that Party. The Consultant hereby grants to the Client an unrestricted royalty-free licence to use and copy Pre-existing Intellectual Property to the extent reasonably required to enable the Client to make use of the Services or use, adapt, update or amend the Works. The ownership of data and factual information collected by the Consultant and paid for by the Client shall, after payment by the Client, lie with the Client. The Consultant does not warrant the suitability of New Intellectual Property or Pre-existing Intellectual Property for any purpose other than the Services or any other use stated in, or reasonably inferred from, the Agreement.
- 24 The Consultant:
- 24.1 warrants that as at the date of this Agreement it and its employees and associated entities have no conflict of interest in providing the Services or entering into this Agreement; and
- 24.2 must use its best endeavours to ensure that conflicts of interest do not arise, whether on the part of the Consultant or

any of its personnel, and must notify the Client immediately in writing if it is thought that a conflict of interest may arise or has arisen.

25 The Consultant must:

- 25.1 comply with the requirements of, and its obligations under the Health and Safety at Work Act 2015;
- 25.2 so far as is reasonably practicable, consult, co-operate and coordinate activities with the Client and other relevant parties;
- 25.3 have in place a health and safety management plan that is appropriate for the Services; and
- 25.4 comply with any health and safety plan of the Client and all other persons who conduct a business or undertaking who have a duty in relation to the same matter.

26 The Parties must review and discuss the progress of the Services as agreed from time to time, or as reasonably requested. No consent, review or approval by the Client of any document or Services provided by the Consultant will reduce the liability of the Consultant in respect of, or signify that the Client has checked the accuracy or completeness of, such matter.

27 If the Consultant's performance of the Services falls behind the Programme, then the Consultant must immediately notify the Client and, where due to matters within the Consultant's control, the Consultant will take all practicable steps to accelerate performance of the Services to meet the Programme.

28 The Consultant must notify the Client immediately of any actual or anticipated issues that could:

- 28.1 significantly impact on the Services or the Fee; or
- 28.2 receive media attention.

29 If the Client decides for good reason that any one of the Consultant's personnel involved in the performance of the Services is unsuitable, then:

- 29.1 the Client may require the Consultant to not have that person perform the Services;

29.2 the Consultant must replace that person with someone acceptable to the Client; and

29.3 the Client must not bear any cost or liability arising from the replacement of that person.

30 Subject to the other provisions of this Agreement, this Agreement will terminate on completion of the Services but without prejudice to any obligation of either Party to the other which remains unfulfilled or incomplete at that date. The Client may suspend or terminate all or part of the Services by notice to the Consultant who must immediately make arrangements to stop the Services and minimise further expenditure. The Client and the Consultant may (in the event the other Party is in material default) terminate the Agreement by notice to the other Party. Suspension or termination will not prejudice or affect the accrued rights or claims and liabilities of the Parties but the Consultant will not be entitled to any compensation for un-performed Services or anticipated future Fee.

31 Should any event occur which:

- 31.1 is beyond the control of either Party; and
- 31.2 is neither directly nor indirectly caused by either Party; and
- 31.3 prevents the performance of the Services (in whole or in part) required under this Agreement,

then those Services will be suspended until such time that it becomes practicable to recommence the Services. This does not include events personal to either Party, such as ill-health or lack of funding or resources.

If there is a reasonable likelihood that the Services are not able to be recommenced, then this Agreement may be terminated by the Client.

In circumstances where the Services or part of the Services have to be suspended or delayed, the Consultant will be allowed extra time to complete the Services and such extra time should be reasonable in the circumstances.

If the suspension continues for more than 6 months, then this Agreement may be terminated by the Consultant.

32 The Parties must attempt in good faith in the first instance to settle any dispute by themselves. If they are unable to resolve the dispute

themselves within a reasonable time they must attempt in good faith to resolve it by mediation. If the dispute is not resolved within a reasonable time then either Party may refer the dispute to arbitration by a sole arbitrator under the Arbitration Act 1996. The Parties must agree on the arbitrator to be appointed within 10 Working Days of the referral and if they cannot agree the arbitrator will be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc. Subject to the CCA, if applicable, no dispute gives either Party the right to suspend its obligations under this Agreement.

33 The obligations of the Consultant under this Agreement shall for the purposes of Part 2, Subpart 1 (Contractual privity) of the Contract and Commercial Law Act 2017 be deemed to be for the benefit of Housing New Zealand Limited and Housing New Zealand Build Limited (including any successors and assigns) and shall be enforceable by Housing New Zealand Limited and Housing New Zealand Build Limited against the Consultant but not so as to impose any greater liability, including in aggregate, on the Consultant towards Housing New Zealand Limited and Housing New Zealand Build Limited than the Consultant owes or owed to the Client.

34 If the Client has regulatory functions outside of the Agreement, the Client shall be deemed not to be acting in the capacity of the Client under this Agreement when exercising these functions in good faith.

35 Where there is reference to any payment under this Agreement, applicable GST is to be added to the amount of that payment (subject to the provision of a valid GST invoice and to anything to the contrary in this Agreement).

36 This Agreement is governed by the New Zealand law, the New Zealand courts, have jurisdiction in respect of this Agreement, and all amounts are payable in New Zealand dollars.

37 Definitions and Interpretation:

37.1 Words or phrases defined in the Short Form Agreement have a corresponding meaning in this Agreement.

37.2 In this Agreement, the singular shall include the plural, the masculine shall include the feminine, and vice versa when the context requires.

37.3 Working Day means a calendar day other than a Saturday, Sunday, statutory or other public holiday.

37.4 Works means the physical and other works (if any) relating to the Services, to be carried out by a contractor or the Client, including goods and equipment to be supplied to the Client.

Released under the Official Information Act

SPECIAL CONDITIONS

The following Special Conditions are part of this Agreement. To the extent there is any conflict between the Short Form Model Conditions of Engagement (clauses 1 to 37) and the Special Conditions, the Special Conditions will apply and are paramount.

Not applicable.

Released under the Official Information Act

Appendix A: Scope of Services

The Services

The Consultant shall provide Planning services in relation to the Client's Project, including:

- Creating a master plan for the Client's Project to establish a vision and value proposition that will establish an economically viable and vibrant community.
- Working closely with the Client to undertake an innovative master planning process which will test and refine a number of uses, typologies and densities across the Site to inform a feasibility study and concept master plan to a resource consent level.
- Producing a high quality residential suburb that is derived through careful site planning. The master plan will be flexible enough to respond to change over time and will explore a range of residential products from conventional through to higher density development scenarios based around key public amenities.
- Converting two existing hand drawn concepts onto CAD by end of January 2023.
- Incorporating data upon topographical, flood path behaviours, flora, geotech, existing infrastructure 3-waters, road access.
- Design development including design meetings, various iterations of design (number unknown) to progress design to a standard suitable for resource consent.

If applicable, the Consultant will also complete the Services so as to achieve 6 Homestar Design Rating, to enable the Client to achieve a 6 Homestar Built Rating.

Tags, Qualifications, and Excluded Services

The Consultant has not allowed for:

- Any consents or Council process (including preparation and attendance at a hearing).

Released under the Official Information Act

SHORT FORM AGREEMENT FOR CONSULTANT ENGAGEMENT

BETWEEN: KĀINGA ORA—HOMES AND COMMUNITIES (CLIENT)

AND: TRAFFIC PLANNING CONSULTANTS LIMITED (443467) (CONSULTANT)

collectively referred to as the *Parties* and individually as a *Party*. If two or more persons or entities are named as the Consultant, they are jointly and severally liable as the Consultant under this Agreement.

PROJECT: AR110717

LOCATION: Teitei Drive, Ohakune

THE SERVICES: Traffic Engineering services as described in Appendix A: Scope of Services.

Subject to clause 5, the Services include all things or tasks which may be reasonably inferred from or necessary for the performance of those Services and such other things or tasks which the Consultant must do to comply with this Agreement (and whether performed before or after the date of this Agreement).

PROGRAMME: As per the Commencement Date and any Fixed Term Expiry Date.

COMMENCEMENT DATE: Upon execution of this Agreement.

FIXED TERM EXPIRY DATE: Not applicable.

FEE AND TIMING OF PAYMENTS:

FEE: Total fee (excluding GST) of **\$18,400.00**, comprised of:

Service	Fee Type	Amount (excl. GST)
Assessment & Resource Consenting	s 9(2)(b)(ii)	
Engineering Plan Approval		
Respond to additional information request		
Meeting Attendance (10 x meetings)		

The total fee payable under this Agreement must not exceed \$50,000.00 (excluding GST).

TIMING: The Client will pay any valid invoice by the 20th day of the month following the month in which the invoice is dated, providing:

1. The invoice is emailed to invoices@kaingaora.govt.nz no later than the 5th Working Day of that following month; and
2. The correct Kāinga Ora order number related to this Agreement is recorded on the invoice.

An order number for this Agreement can be obtained by the Consultant from the relevant Development or Programme Manager for this Agreement.

INFORMATION OR SERVICES TO BE PROVIDED BY THE CLIENT: Nil.

INSURANCE AND LIABILITY:

Public Liability: \$1,000,000.
 Professional Indemnity: \$250,000. Professional Indemnity will be provided for 6 years after completion of the Services.
 Limitation of Liability: \$250,000.

AGREEMENT:

The Client engages the Consultant to provide the Services and the Consultant agrees to perform the Services for the Fee and on the terms and conditions set out in this Agreement.

The following documents form this Agreement in order of precedence:

1. This Short Form Agreement;
2. The Special Conditions (if any);
3. The Short Form Model Conditions of Engagement; and
4. Appendix A: Scope of Services.

Once signed, this Agreement will replace all or any oral or written agreement previously reached between the Parties. Legal terms and conditions set out in any documents attached to this Agreement will have no application.

CLIENT AUTHORISED SIGNATORY(IES):

PRINT NAME: Giles Tait
DATE: 22/12/2022

CONSULTANT AUTHORISED SIGNATORY(IES):

PRINT NAME: Bryce Hall
DATE: 21/12/22

Released under the Official Information Act

SHORT FORM MODEL CONDITIONS OF ENGAGEMENT

- 1 In providing the Services the Consultant must:
 - 1.1 perform the Services in accordance with the Programme (if any), any other programme or timing notified to the Consultant by the Client from time to time and otherwise in a timely manner;
 - 1.2 provide, sufficient employees with the necessary qualifications, skills and experience to perform the Services to the standards required by this Agreement;
 - 1.3 use reasonable endeavours to ensure any of the Consultant's personnel that are named in any document attached to this Agreement remain involved in and are not removed from the Services without the Client's prior consent;
 - 1.4 ensure all personnel involved in the provision of the Services are fit, proper, trained and appropriately supervised for such involvement (including any interaction with the Client's tenants and in respect of the protection of confidential information) and that the Consultant makes and keeps a record of appropriate probity investigations in this respect;
 - 1.5 comply with all applicable laws, codes, standards and rules;
 - 1.6 comply with, and take all practicable steps to ensure that its personnel and subconsultants comply with, the Immigration Act 2009 and the Employment Relations Act 2000;
 - 1.7 consult, co-operate and co-ordinate with any other consultant of the Client as required;
 - 1.8 if requested by the Client, promptly re-perform (at its own cost) any Services which do not comply with this Agreement;
 - 1.9 if any part of the Services are to be carried out on the Location:
 - (a) minimise disruption and inconvenience to the Client's tenants, any other person who the Client is responsible, and other occupiers of the Location;
 - (b) make good any damage caused by the fault of the Consultant at the Location, to the Client's reasonable satisfaction;
 - (c) obtain and comply with the Client's directions as to permitted dates and times of access;
 - (d) comply with the Client's code of conduct;
 - (e) not knowingly or recklessly do anything that causes the Client to be in breach of any obligation; and
- 2 This Agreement continues from the Commencement Date (if any) until:
 - 2.1 the Fixed Term Expiry Date (if any);
 - 2.2 the Services are completed;
 - 2.3 the Project is completed (as notified by the Client to the Consultant in writing); or
 - 2.4 it is terminated in accordance with this Agreement,whichever is earlier. The Parties may agree to extend the term of this Agreement.
- 3 The Consultant must use the degree of skill, care and diligence reasonably expected of a competent professional consultant providing services similar to the Services.
- 4 Any terms and conditions enclosed or referred to within earlier correspondence between the Parties (whether or not attached to this Agreement) do not apply to this Agreement.
- 5 Notwithstanding anything else in this Agreement, nothing in this Agreement shall be construed as a delegation of the Client's functions or powers to the Consultant, whether under the Crown Entities Act 2004 or otherwise and, in relation to any such matters, the Consultant's role is recommendatory only.

- 6 The Consultant will not assign or subcontract all or any part of its rights and obligations under this Agreement without the prior written approval of the Client, which may be refused without giving reasons. Any approved assignment or subcontracting of rights and obligations will not relieve the Consultant from any liability or obligation under this Agreement.
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- 8 The Consultant and its personnel must keep confidential the terms of this Agreement and all information provided to or obtained by the Consultant in respect of or arising out of this Agreement, the Services or the business and operations of the Client, and protect all such information as confidential information, except:
- 8.1 for information already in the public domain;
 - 8.2 for information that is reasonably necessary for the Consultant to disclose to enable the Consultant to perform the Services (subject to the Consultant obtaining confidentiality undertakings from the person to whom the information is disclosed);
 - 8.3 for information disclosed with the Client's prior written consent; and
 - 8.4 as required by law.
- 9 The Consultant must not:
- 9.1 make any public or media statements to anyone about this Agreement, the Services, or the Works; or
 - 9.2 display any details of this Agreement, the Services or the Works in its advertising or marketing material (including on social media),
- without the Client's written approval.
- 10 The Client may order variations to the Services in writing or may request the Consultant to submit proposals for variation to the Services. Where the Consultant considers a direction from the Client or any other circumstance is a variation the Consultant will notify the Client as soon as practicable. The notice will include details of the estimated costs of the variation, likely impact on the Programme and Completion Date for the Services and recommend how to proceed. No additional Fee will be payable by the Client in respect of a variation unless the additional Fee has been agreed or determined and the Client has directed the Consultant in writing to proceed with the variation.
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- 13.1 As a precondition to any entitlement to payment, the Consultant must provide a valid tax invoice along with all documentation (including signed weekly timesheets, where applicable if Services are undertaken on a time charge basis) and any other supporting information required by the Client.
 - 13.2 All invoices will specify the amount payable and include reasonable detail of the Services performed during the relevant period.
 - 13.3 If this Agreement is subject to the Construction Contracts Act 2002 (CCA), the Client may dispute an invoice or payment claim, or part of an invoice or payment claim by providing to the Consultant, within 20 Working Days of receipt of the invoice, a payment schedule in accordance with the CCA setting out the amounts that the Client intends to withhold from the invoiced amount.

- 14 Unless the Short Form Agreement provides otherwise, the Fee includes all out-of-pocket expenses and overheads incurred in the provision of the Services by the Consultant and the Consultant will not be entitled to any other payments or reimbursements.
- 15 Late payment of any invoice which is not disputed will constitute a default, and if the default continues unremedied for 20 Working Days after the Consultant has given written notice to the Client advising of the default and requesting payment, the Client will pay default interest on overdue amounts from the date payment falls due to the date of payment at the rate of the Consultant's overdraft rate plus 2 percentage points.
- 16 Where the Consultant is negligent or breaches this Agreement, the Consultant is liable to the Client for reasonably foreseeable claims, damages, liabilities, losses and expenses caused directly by the negligence or breach. Neither Party will be liable to the other under this Agreement for a Party's indirect, consequential or special loss, loss of opportunity or loss of profit, however arising, whether under contract, in tort or otherwise.
- 17 The maximum aggregate amount payable, whether in contract, tort or otherwise, in relation to claims, damages, liabilities, losses or expenses, shall be the greater of five times the Fee (exclusive of GST and disbursements) and the limit of liability specified in the Short Form Agreement.
- 18 Without limiting any defences a Party may have under the Limitation Act 2010, neither Party shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on a Party within 6 years from completion of the Services.
- 19 The Consultant must take out and maintain in full force and effect during the term of this Agreement comprehensive insurance cover with responsible and reputable insurers as would be prudent for persons engaged in businesses similar to the Consultant in the same geographic area. Such insurance must include cover for the matters and the amounts and for the duration specified in the Short Form Agreement. The Consultant must, on demand, produce certificates of the insurer evidencing the currency of the relevant insurances.
- 20 If either Party is found liable to the other (whether in contract, tort or otherwise), and the claiming Party and/or a third party has contributed to the loss or damage, the liable Party will only be liable to the proportional extent of its own contribution.
- 21 Subject to clause 22, intellectual property prepared or created by the Consultant in carrying out the Services (*New Intellectual Property*) shall be solely owned by the Client. The Consultant may not copy, use, disclose, distribute or sell any New Intellectual Property without the express written consent of the Client (which it may grant or withhold in the Client's sole and absolute discretion on whatever conditions the Client deems appropriate) except as required for the purpose of delivering the Services.
- 22 If the Project includes buildings that exceed 3 levels, then:
- 22.1 all New Intellectual Property shall be jointly owned by the Client and the Consultant; and
- 22.2 the Client and the Consultant hereby grant to the other an unrestricted, royalty-free license in perpetuity to copy or use such New Intellectual Property.
- 23 Intellectual property owned by a Party prior to the commencement of this Agreement (*Pre-Existing Intellectual Property*) and intellectual property created by a Party independently of this Agreement remains the property of that Party. The Consultant hereby grants to the Client an unrestricted royalty-free licence to use and copy Pre-existing Intellectual Property to the extent reasonably required to enable the Client to make use of the Services or use, adapt, update or amend the Works. The ownership of data and factual information collected by the Consultant and paid for by the Client shall, after payment by the Client, lie with the Client. The Consultant does not warrant the suitability of New Intellectual Property or Pre-existing Intellectual Property for any purpose other than the Services or any other use stated in, or reasonably inferred from, the Agreement.
- 24 The Consultant:
- 24.1 warrants that as at the date of this Agreement it and its employees and associated entities have no conflict of interest in providing the Services or entering into this Agreement; and
- 24.2 must use its best endeavours to ensure that conflicts of interest do not arise, whether on the part of the Consultant or

any of its personnel, and must notify the Client immediately in writing if it is thought that a conflict of interest may arise or has arisen.

25 The Consultant must:

25.1 comply with the requirements of, and its obligations under the Health and Safety at Work Act 2015;

25.2 so far as is reasonably practicable, consult, co-operate and coordinate activities with the Client and other relevant parties;

25.3 have in place a health and safety management plan that is appropriate for the Services; and

25.4 comply with any health and safety plan of the Client and all other persons who conduct a business or undertaking who have a duty in relation to the same matter.

26 The Parties must review and discuss the progress of the Services as agreed from time to time, or as reasonably requested. No consent, review or approval by the Client of any document or Services provided by the Consultant will reduce the liability of the Consultant in respect of, or signify that the Client has checked the accuracy or completeness of, such matter.

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29.3 the Client must not bear any cost or liability arising from the replacement of that person.

30 Subject to the other provisions of this Agreement, this Agreement will terminate on completion of the Services but without prejudice to any obligation of either Party to the other which remains unfulfilled or incomplete at that date. The Client may suspend or terminate all or part of the Services by notice to the Consultant who must immediately make arrangements to stop the Services and minimise further expenditure. The Client and the Consultant may (in the event the other Party is in material default) terminate the Agreement by notice to the other Party. Suspension or termination will not prejudice or affect the accrued rights or claims and liabilities of the Parties but the Consultant will not be entitled to any compensation for un-performed Services or anticipated future Fee.

31 Should any event occur which:

31.1 is beyond the control of either Party; and

31.2 is neither directly nor indirectly caused by either Party; and

31.3 prevents the performance of the Services (in whole or in part) required under this Agreement,

then those Services will be suspended until such time that it becomes practicable to recommence the Services. This does not include events personal to either Party, such as ill-health or lack of funding or resources.

If there is a reasonable likelihood that the Services are not able to be recommenced, then this Agreement may be terminated by the Client.

In circumstances where the Services or part of the Services have to be suspended or delayed, the Consultant will be allowed extra time to complete the Services and such extra time should be reasonable in the circumstances.

If the suspension continues for more than 6 months, then this Agreement may be terminated by the Consultant.

32 The Parties must attempt in good faith in the first instance to settle any dispute by themselves. If they are unable to resolve the dispute

themselves within a reasonable time they must attempt in good faith to resolve it by mediation. If the dispute is not resolved within a reasonable time then either Party may refer the dispute to arbitration by a sole arbitrator under the Arbitration Act 1996. The Parties must agree on the arbitrator to be appointed within 10 Working Days of the referral and if they cannot agree the arbitrator will be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc. Subject to the CCA, if applicable, no dispute gives either Party the right to suspend its obligations under this Agreement.

- 33 The obligations of the Consultant under this Agreement shall for the purposes of Part 2, Subpart 1 (Contractual privity) of the Contract and Commercial Law Act 2017 be deemed to be for the benefit of Housing New Zealand Limited and Housing New Zealand Build Limited (including any successors and assigns) and shall be enforceable by Housing New Zealand Limited and Housing New Zealand Build Limited against the Consultant but not so as to impose any greater liability, including in aggregate, on the Consultant towards Housing New Zealand Limited and Housing New Zealand Build Limited than the Consultant owes or owed to the Client.
- 34 If the Client has regulatory functions outside of the Agreement, the Client shall be deemed not to be acting in the capacity of the Client under this Agreement when exercising these functions in good faith.
- 35 Where there is reference to any payment under this Agreement, applicable GST is to be added to the amount of that payment (subject to the provision of a valid GST invoice and to anything to the contrary in this Agreement).
- 36 This Agreement is governed by the New Zealand law, the New Zealand courts, have jurisdiction in respect of this Agreement, and all amounts are payable in New Zealand dollars.
- 37 Definitions and Interpretation:
- 37.1 Words or phrases defined in the Short Form Agreement have a corresponding meaning in this Agreement.
- 37.2 In this Agreement, the singular shall include the plural, the masculine shall include the feminine, and vice versa when the context requires.
- 37.3 Working Day means a calendar day other than a Saturday, Sunday, statutory or other public holiday.

- 37.4 Works means the physical and other works (if any) relating to the Services, to be carried out by a contractor or the Client, including goods and equipment to be supplied to the Client.

SPECIAL CONDITIONS

The following Special Conditions are part of this Agreement. To the extent there is any conflict between the Short Form Model Conditions of Engagement (clauses 1 to 37) and the Special Conditions, the Special Conditions will apply and are paramount.

Not applicable.

Released under the Official Information Act

Appendix A: Scope of Services

The Services

The Consultant shall provide Traffic Engineering services in relation to the Client's Project, including:

- Undertaking a Site investigation.
- Review of background information and the adjacent road network including traffic flows, traffic crashes and provision for pedestrians.
- Estimate the amount of traffic generated by the proposal and review the likely effects of this traffic on the surrounding road network. This includes localised traffic modelling of nearby intersections.
- Contribute to the development of the masterplan including design of the road layout, advice on road geometry, access, circulation, pedestrian provisions, vehicle tracking, waste management and planning provisions.
- Preparation of an Integrated Transport Assessment Report covering the items listed above as well as undertaking an assessment against the relevant transportation standards in the Ruapehu District Council District Plan.
- Respond to additional information requests if required for the resource consent application.
- Prepare a draft detailed design package (road marking and traffic signage) including sight lines diagrams and vehicle tracking plans.
- Coordination with other design team members to prepare the design.
- Liaise with Ruapehu District Council and relevant stakeholders for feedback on the design through the EPA process.
- Meeting attendance.

If applicable, the Consultant will also complete the Services so as to achieve 6 Homestar Design Rating, to enable the Client to achieve a 6 Homestar Built Rating.

Tags, Qualifications, and Excluded Services

Not applicable.

Released under the Official Information Act

Released under the Official Information Act

SHORT FORM AGREEMENT FOR CONSULTANT ENGAGEMENT

BETWEEN: KĀINGA ORA—HOMES AND COMMUNITIES (*CLIENT*)

AND: BARKER & ASSOCIATES LIMITED (684644) (*CONSULTANT*)

collectively referred to as the *Parties* and individually as a *Party*. If two or more persons or entities are named as the Consultant, they are jointly and severally liable as the Consultant under this Agreement.

PROJECT: AR110717

LOCATION: Teitei Drive, Ohakune

THE SERVICES: Planning services as described in Appendix A: Scope of Services.

Subject to clause 5, the Services include all things or tasks which may be reasonably inferred from or necessary for the performance of those Services and such other things or tasks which the Consultant must do to comply with this Agreement (and whether performed before or after the date of this Agreement).

PROGRAMME: As per the Commencement Date and any Fixed Term Expiry Date.

COMMENCEMENT DATE: Upon execution of this Agreement.

FIXED TERM EXPIRY DATE: Not applicable.

FEE AND TIMING OF PAYMENTS:

FEE: Total fee (excluding GST) of **\$31,500.00**, comprised of:

Service	Fee Type	Amount (excl. GST)
Prepare and lodge a subdivision consent application	s 9(2)(b)(ii)	
Prepare and lodge regional consents		

Any fee in addition to the fee set out above must be paid in accordance with the table below, provided that the Client has first agreed to that fee and additional services in writing.

Role / Additional Service (if required)	Hourly Rate (excl. GST)
Partner/director	s 9(2)(b)(ii)
Senior planner	

The total fee payable under this Agreement must not exceed \$50,000.00 (excluding GST).

TIMING: The Client will pay any valid invoice by the 20th day of the month following the month in which the invoice is dated, providing:

- The invoice is emailed to invoices@kaingaora.govt.nz no later than the 5th Working Day of that following month; and
- The correct Kāinga Ora order number related to this Agreement is recorded on the invoice.

An order number for this Agreement can be obtained by the Consultant from the relevant Development or Programme Manager for this Agreement.

INFORMATION OR SERVICES TO BE PROVIDED BY THE CLIENT: Nil.

INSURANCE AND LIABILITY:

Public Liability:	\$1,000,000.
Professional Indemnity:	\$250,000. Professional Indemnity will be provided for 6 years after completion of the Services.
Limitation of Liability:	\$250,000.

AGREEMENT:


The Client engages the Consultant to provide the Services and the Consultant agrees to perform the Services for the Fee and on the terms and conditions set out in this Agreement.

The following documents form this Agreement in order of precedence:

1. This Short Form Agreement;
2. The Special Conditions (if any);
3. The Short Form Model Conditions of Engagement; and
4. Appendix A: Scope of Services.

Once signed, this Agreement will replace all or any oral or written agreement previously reached between the Parties. Legal terms and conditions set out in any documents attached to this Agreement will have no application.

CLIENT AUTHORISED SIGNATORY(IES):

PRINT NAME: 
Giles Tait
DATE: 22/12/2022

CONSULTANT AUTHORISED SIGNATORY(IES):

PRINT NAME: 
Gerard Thompson
DATE: 22 December 2022

Released under the Official Information Act

SHORT FORM MODEL CONDITIONS OF ENGAGEMENT

- 1 In providing the Services the Consultant must:
 - 1.1 perform the Services in accordance with the Programme (if any), any other programme or timing notified to the Consultant by the Client from time to time and otherwise in a timely manner;
 - 1.2 provide, sufficient employees with the necessary qualifications, skills and experience to perform the Services to the standards required by this Agreement;
 - 1.3 use reasonable endeavours to ensure any of the Consultant's personnel that are named in any document attached to this Agreement remain involved in and are not removed from the Services without the Client's prior consent;
 - 1.4 ensure all personnel involved in the provision of the Services are fit, proper, trained and appropriately supervised for such involvement (including any interaction with the Client's tenants and in respect of the protection of confidential information) and that the Consultant makes and keeps a record of appropriate probity investigations in this respect;
 - 1.5 comply with all applicable laws, codes, standards and rules;
 - 1.6 comply with, and take all practicable steps to ensure that its personnel and subconsultants comply with, the Immigration Act 2009 and the Employment Relations Act 2000;
 - 1.7 consult, co-operate and co-ordinate with any other consultant of the Client as required;
 - 1.8 if requested by the Client, promptly re-perform (at its own cost) any Services which do not comply with this Agreement;
 - 1.9 if any part of the Services are to be carried out on the Location:
 - (a) minimise disruption and inconvenience to the Client's tenants, any other person who the Client is responsible, and other occupiers of the Location;
 - (b) make good any damage caused by the fault of the Consultant at the Location, to the Client's reasonable satisfaction;
 - (c) obtain and comply with the Client's directions as to permitted dates and times of access;
 - (d) comply with the Client's code of conduct;
 - (e) not knowingly or recklessly do anything that causes the Client to be in breach of any obligation; and
 - 1.10 comply with the Client's reasonable directions, requirements and applicable policies and procedures (including without limitation, as to confidentiality and confidential information, probity investigations, record keeping, incident reporting systems, tenant liaison and health and safety) all as attached or as notified by the Client to the Consultant in writing from time to time.
- 2 This Agreement continues from the Commencement Date (if any) until:
 - 2.1 the Fixed Term Expiry Date (if any);
 - 2.2 the Services are completed;
 - 2.3 the Project is completed (as notified by the Client to the Consultant in writing); or
 - 2.4 it is terminated in accordance with this Agreement,whichever is earlier. The Parties may agree to extend the term of this Agreement.
- 3 The Consultant must use the degree of skill, care and diligence reasonably expected of a competent professional consultant providing services similar to the Services.
- 4 Any terms and conditions enclosed or referred to within earlier correspondence between the Parties (whether or not attached to this Agreement) do not apply to this Agreement.
- 5 Notwithstanding anything else in this Agreement, nothing in this Agreement shall be construed as a delegation of the Client's functions or powers to the Consultant, whether under the Crown Entities Act 2004 or otherwise and, in relation to any such matters, the Consultant's role is recommendatory only.

- 6 The Consultant will not assign or subcontract all or any part of its rights and obligations under this Agreement without the prior written approval of the Client, which may be refused without giving reasons. Any approved assignment or subcontracting of rights and obligations will not relieve the Consultant from any liability or obligation under this Agreement.
- 7 The Client will provide to the Consultant, free of cost, as soon as practicable following any request for information, information in the Client's power to obtain and which the Client agrees relates to the Services. The Consultant will not, without the Client's prior written consent, use information provided by the Client for purposes unrelated to the Services.
- 8 The Consultant and its personnel must keep confidential the terms of this Agreement and all information provided to or obtained by the Consultant in respect of or arising out of this Agreement, the Services or the business and operations of the Client, and protect all such information as confidential information, except:
- 8.1 for information already in the public domain;
- 8.2 for information that is reasonably necessary for the Consultant to disclose to enable the Consultant to perform the Services (subject to the Consultant obtaining confidentiality undertakings from the person to whom the information is disclosed);
- 8.3 for information disclosed with the Client's prior written consent; and
- 8.4 as required by law.
- 9 The Consultant must not:
- 9.1 make any public or media statements to anyone about this Agreement, the Services, or the Works; or
- 9.2 display any details of this Agreement, the Services or the Works in its advertising or marketing material (including on social media),
- without the Client's written approval.
- 10 The Client may order variations to the Services in writing or may request the Consultant to submit proposals for variation to the Services. Where the Consultant considers a direction from the Client or any other circumstance is a variation the Consultant will notify the Client as soon as practicable. The notice will include details of the estimated costs of the variation, likely impact on the Programme and Completion Date for the Services and recommend how to proceed. No additional Fee will be payable by the Client in respect of a variation unless the additional Fee has been agreed or determined and the Client has directed the Consultant in writing to proceed with the variation.
- 11 Where practicable the Parties will agree on the value and timing of supply of the variation before any variation works are commenced. If the Parties are unable to agree then the matter will be treated as a dispute and resolved in accordance with clause 32.
- 12 The Client must pay the Consultant the Fees for the Services at the times and in the manner set out in this Agreement unless there is a dispute as to the amount payable. If the Client disputes an invoice, or part of an invoice, the Client must promptly give the reasons for withholding the disputed amount and pay any undisputed amount. Payment will be made by direct credit to a bank account nominated by the Consultant. The Client may set off any amount due and payable by the Consultant to the Client (whether in respect of damages or otherwise) against any payment due to the Consultant under this Agreement.
- 13 If consistent with the meaning and intent of the Fee and this Agreement, then the Consultant may submit monthly invoices to the Client.
- 13.1 As a precondition to any entitlement to payment, the Consultant must provide a valid tax invoice along with all documentation (including signed weekly timesheets, where applicable if Services are undertaken on a time charge basis) and any other supporting information required by the Client.
- 13.2 All invoices will specify the amount payable and include reasonable detail of the Services performed during the relevant period.
- 13.3 If this Agreement is subject to the Construction Contracts Act 2002 (CCA), the Client may dispute an invoice or payment claim, or part of an invoice or payment claim by providing to the Consultant, within 20 Working Days of receipt of the invoice, a payment schedule in accordance with the CCA setting out the amounts that the Client intends to withhold from the invoiced amount.

- 14 Unless the Short Form Agreement provides otherwise, the Fee includes all out-of-pocket expenses and overheads incurred in the provision of the Services by the Consultant and the Consultant will not be entitled to any other payments or reimbursements.
- 15 Late payment of any invoice which is not disputed will constitute a default, and if the default continues unremedied for 20 Working Days after the Consultant has given written notice to the Client advising of the default and requesting payment, the Client will pay default interest on overdue amounts from the date payment falls due to the date of payment at the rate of the Consultant's overdraft rate plus 2 percentage points.
- 16 Where the Consultant is negligent or breaches this Agreement, the Consultant is liable to the Client for reasonably foreseeable claims, damages, liabilities, losses and expenses caused directly by the negligence or breach. Neither Party will be liable to the other under this Agreement for a Party's indirect, consequential or special loss, loss of opportunity or loss of profit, however arising, whether under contract, in tort or otherwise.
- 17 The maximum aggregate amount payable, whether in contract, tort or otherwise, in relation to claims, damages, liabilities, losses or expenses, shall be the greater of five times the Fee (exclusive of GST and disbursements) and the limit of liability specified in the Short Form Agreement.
- 18 Without limiting any defences a Party may have under the Limitation Act 2010, neither Party shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on a Party within 6 years from completion of the Services.
- 19 The Consultant must take out and maintain in full force and effect during the term of this Agreement comprehensive insurance cover with responsible and reputable insurers as would be prudent for persons engaged in businesses similar to the Consultant in the same geographic area. Such insurance must include cover for the matters and the amounts and for the duration specified in the Short Form Agreement. The Consultant must, on demand, produce certificates of the insurer evidencing the currency of the relevant insurances.
- 20 If either Party is found liable to the other (whether in contract, tort or otherwise), and the claiming Party and/or a third party has contributed to the loss or damage, the liable Party will only be liable to the proportional extent of its own contribution.
- 21 Subject to clause 22, intellectual property prepared or created by the Consultant in carrying out the Services (*New Intellectual Property*) shall be solely owned by the Client. The Consultant may not copy, use, disclose, distribute or sell any New Intellectual Property without the express written consent of the Client (which it may grant or withhold in the Client's sole and absolute discretion on whatever conditions the Client deems appropriate) except as required for the purpose of delivering the Services.
- 22 If the Project includes buildings that exceed 3 levels, then:
- 22.1 all New Intellectual Property shall be jointly owned by the Client and the Consultant; and
- 22.2 the Client and the Consultant hereby grant to the other an unrestricted, royalty-free license in perpetuity to copy or use such New Intellectual Property.
- 23 Intellectual property owned by a Party prior to the commencement of this Agreement (*Pre-Existing Intellectual Property*) and intellectual property created by a Party independently of this Agreement remains the property of that Party. The Consultant hereby grants to the Client an unrestricted royalty-free licence to use and copy Pre-existing Intellectual Property to the extent reasonably required to enable the Client to make use of the Services or use, adapt, update or amend the Works. The ownership of data and factual information collected by the Consultant and paid for by the Client shall, after payment by the Client, lie with the Client. The Consultant does not warrant the suitability of New Intellectual Property or Pre-existing Intellectual Property for any purpose other than the Services or any other use stated in, or reasonably inferred from, the Agreement.
- 24 The Consultant:
- 24.1 warrants that as at the date of this Agreement it and its employees and associated entities have no conflict of interest in providing the Services or entering into this Agreement; and
- 24.2 must use its best endeavours to ensure that conflicts of interest do not arise, whether on the part of the Consultant or

any of its personnel, and must notify the Client immediately in writing if it is thought that a conflict of interest may arise or has arisen.

25 The Consultant must:

- 25.1 comply with the requirements of, and its obligations under the Health and Safety at Work Act 2015;
- 25.2 so far as is reasonably practicable, consult, co-operate and coordinate activities with the Client and other relevant parties;
- 25.3 have in place a health and safety management plan that is appropriate for the Services; and
- 25.4 comply with any health and safety plan of the Client and all other persons who conduct a business or undertaking who have a duty in relation to the same matter.

26 The Parties must review and discuss the progress of the Services as agreed from time to time, or as reasonably requested. No consent, review or approval by the Client of any document or Services provided by the Consultant will reduce the liability of the Consultant in respect of, or signify that the Client has checked the accuracy or completeness of, such matter.

27 If the Consultant's performance of the Services falls behind the Programme, then the Consultant must immediately notify the Client and, where due to matters within the Consultant's control, the Consultant will take all practicable steps to accelerate performance of the Services to meet the Programme.

28 The Consultant must notify the Client immediately of any actual or anticipated issues that could:

- 28.1 significantly impact on the Services or the Fee; or
- 28.2 receive media attention.

29 If the Client decides for good reason that any one of the Consultant's personnel involved in the performance of the Services is unsuitable, then:

- 29.1 the Client may require the Consultant to not have that person perform the Services;

29.2 the Consultant must replace that person with someone acceptable to the Client; and

29.3 the Client must not bear any cost or liability arising from the replacement of that person.

30 Subject to the other provisions of this Agreement, this Agreement will terminate on completion of the Services but without prejudice to any obligation of either Party to the other which remains unfulfilled or incomplete at that date. The Client may suspend or terminate all or part of the Services by notice to the Consultant who must immediately make arrangements to stop the Services and minimise further expenditure. The Client and the Consultant may (in the event the other Party is in material default) terminate the Agreement by notice to the other Party. Suspension or termination will not prejudice or affect the accrued rights or claims and liabilities of the Parties but the Consultant will not be entitled to any compensation for un-performed Services or anticipated future Fee.

31 Should any event occur which:

- 31.1 is beyond the control of either Party; and
- 31.2 is neither directly nor indirectly caused by either Party; and
- 31.3 prevents the performance of the Services (in whole or in part) required under this Agreement,

then those Services will be suspended until such time that it becomes practicable to recommence the Services. This does not include events personal to either Party, such as ill-health or lack of funding or resources.

If there is a reasonable likelihood that the Services are not able to be recommenced, then this Agreement may be terminated by the Client.

In circumstances where the Services or part of the Services have to be suspended or delayed, the Consultant will be allowed extra time to complete the Services and such extra time should be reasonable in the circumstances.

If the suspension continues for more than 6 months, then this Agreement may be terminated by the Consultant.

32 The Parties must attempt in good faith in the first instance to settle any dispute by themselves. If they are unable to resolve the dispute

themselves within a reasonable time they must attempt in good faith to resolve it by mediation. If the dispute is not resolved within a reasonable time then either Party may refer the dispute to arbitration by a sole arbitrator under the Arbitration Act 1996. The Parties must agree on the arbitrator to be appointed within 10 Working Days of the referral and if they cannot agree the arbitrator will be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc. Subject to the CCA, if applicable, no dispute gives either Party the right to suspend its obligations under this Agreement.

33 The obligations of the Consultant under this Agreement shall for the purposes of Part 2, Subpart 1 (Contractual privity) of the Contract and Commercial Law Act 2017 be deemed to be for the benefit of Housing New Zealand Limited and Housing New Zealand Build Limited (including any successors and assigns) and shall be enforceable by Housing New Zealand Limited and Housing New Zealand Build Limited against the Consultant but not so as to impose any greater liability, including in aggregate, on the Consultant towards Housing New Zealand Limited and Housing New Zealand Build Limited than the Consultant owes or owed to the Client.

34 If the Client has regulatory functions outside of the Agreement, the Client shall be deemed not to be acting in the capacity of the Client under this Agreement when exercising these functions in good faith.

35 Where there is reference to any payment under this Agreement, applicable GST is to be added to the amount of that payment (subject to the provision of a valid GST invoice and to anything to the contrary in this Agreement).

36 This Agreement is governed by the New Zealand law, the New Zealand courts, have jurisdiction in respect of this Agreement, and all amounts are payable in New Zealand dollars.

37 Definitions and Interpretation:

37.1 Words or phrases defined in the Short Form Agreement have a corresponding meaning in this Agreement.

37.2 In this Agreement, the singular shall include the plural, the masculine shall include the feminine, and vice versa when the context requires.

37.3 Working Day means a calendar day other than a Saturday, Sunday, statutory or other public holiday.

37.4 Works means the physical and other works (if any) relating to the Services, to be carried out by a contractor or the Client, including goods and equipment to be supplied to the Client.

Released under the Official Information Act

SPECIAL CONDITIONS

The following Special Conditions are part of this Agreement. To the extent there is any conflict between the Short Form Model Conditions of Engagement (clauses 1 to 37) and the Special Conditions, the Special Conditions will apply and are paramount.

Not applicable.

Released under the Official Information Act

Appendix A: Scope of Services

The Services

The Consultant shall provide Planning services in relation to the Client's Project, including:

- Providing overview of Ruapehu District Plan and Horizons Regional Plan controls.
- Assisting with briefing the specialist team and coordinate their inputs.
- Attending project meetings.
- Reviewing and providing feedback on development concepts and expert reports.
- Undertaking a site visit.
- Set up and attend pre-application meeting(s) with Council.
- Assist with consultation (if required).
- Preparing and lodging the subdivision consent application.
- Preparing and lodging regional consents.
- Responding to any further information requests.

If applicable, the Consultant will also complete the Services so as to achieve 6 Homestar Design Rating, to enable the Client to achieve a 6 Homestar Built Rating.

Tags, Qualifications, and Excluded Services

Not applicable.

Released under the Official Information Act