



SHORT FORM AGREEMENT FOR SUBCONSULTANT ENGAGEMENT (Commercial)

Between: Of And: of		<i>(name of consultant)</i> <i>(address of consultant)</i> <i>(name of subconsultant)</i> <i>(address of subconsultant)</i>
Project Name:	Location of Project:	
Client: <Consultant's client>		
Scope and Purpose of Services:		
Timetable for Performance of the Services:		
Fees, Expenses and Payment:		
Facilities and Information Supplied by the Consultant:		
<p><i>The Client has engaged the Consultant to provide certain services to the Project. The Consultant engages the Subconsultant to assist in the performance of its obligations under its agreement with the Client by providing the Services described above or on the attached documents. The Subconsultant agrees to perform the Services for the remuneration provided above. Both Parties agree to be bound by the provision of the Short Form Model Conditions of Subconsultant Engagement (overleaf) and any variations noted below. Once signed, this agreement, together with the conditions overleaf and any attachments, will replace all or any oral agreement previously reached between the Parties.</i></p>		
Variations to the Short Form Model Conditions of Subconsultant Engagement (overleaf):		
Signed for the Consultant by: Print Name: Date:	Signed for the Subconsultant by: Print Name: Date:	



SHORT FORM AGREEMENT FOR SUBCONSULTANT ENGAGEMENT

(Commercial)

1. The Subconsultant shall provide the Services as described above or in the attached documents in accordance with this Agreement. The Consultant and Subconsultant agree that the Services are acquired for the purposes of a business and that the provisions of the Consumer Guarantees Act 1993 are excluded in relation to the Services.
2. In providing the Services, the Subconsultant must use reasonable skill, care and diligence.
3. The Services and any required deliverables must be provided by the Subconsultant by the time or times stated above. The Subconsultant must immediately give written notice to the Consultant if it becomes aware of circumstances that will or may affect the Subconsultant's ability to provide the Services or provide the Services within the time or times stated or referred to above.
4. The Consultant acknowledges that the Consultant is authorised by the Client to engage the Subconsultant to assist in the provision of services under its agreement with the Client. The Consultant accepts the conditions of clauses 11, 12 and 13 on behalf of the Consultant and the Client and is responsible to ensure that the Client is aware of the agreements.
5. The Consultant must provide to the Subconsultant, free of cost, as soon as practicable following any request, such information which is in its possession and which it considers relevant to the Services. The Subconsultant must not, without the Consultant's prior written consent, use the information for purposes unrelated to the Services. In providing the information to the Subconsultant, the Consultant shall ensure compliance with the Copyright Act 1994 and shall identify any proprietary rights that any other person may have in any information provided.
6. The Consultant may order a variation to the Services, or may ask the Subconsultant to propose a variation to the Services. The Consultant and the Subconsultant shall agree, in writing, the cost and time of supply for the variation. Where practicable, the value and time of supply of the variation shall be agreed between the Consultant and the Subconsultant prior to the variation works commencing.
7. The Consultant must pay the Subconsultant the fees and expenses identified above or in the attached documents. The fees and expenses shall be adjusted if the Services are varied in accordance with this Agreement.
8. The Subconsultant shall be entitled to submit invoices on account of the fee and expenses (as may be adjusted in accordance with this Agreement) at the times stated in the above particulars or, if no times are stated, monthly. The Consultant shall pay each invoice properly submitted within thirty (30) days of the invoice being sent to the Consultant. Late payment shall constitute a default, which shall entitle the Subconsultant (a) to charge interest on the overdue amount from the due date for payment to the date of actual payment at the Subconsultant's overdraft rate plus 2%, and (b) to suspend further performance of its obligations under this Agreement. Payment of any invoice by the Consultant shall not imply approval or acceptance of the Services by the Consultant or the Client.
9. Where the Services are carried out on a time charge basis, the Subconsultant may purchase such incidental goods and/or services as are reasonably required for the Subconsultant to perform the Services. The cost of obtaining such incidental goods and/or services shall be payable by the Consultant. The Subconsultant shall maintain records which clearly identify time and expenses incurred.
10. To the extent that the amounts payable under this Agreement are not expressed to be GST inclusive, an additional amount for the GST incurred by the Subconsultant shall be added to those amounts.
11. The liability of the Subconsultant to the Consultant in respect of the Services, whether in contract, tort or otherwise, shall be limited to the lesser of five times the value of the fees and \$250,000. The Subconsultant shall only be liable to the Consultant and the Client for direct loss or damage suffered by the Consultant or the Client as the result of a breach by the Subconsultant of the Subconsultant's obligations under this Agreement and shall not be liable for any loss of profits or revenue.
12. 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 shall only be liable to the proportional extent of its own contribution.
13. The Subconsultant shall not be liable for any loss or damage occurring after a period of six years from the date on which the Services were completed, except to the extent of any formal claim made known to the Subconsultant before the expiry date.
14. The Subconsultant shall take out and maintain for the duration of the Services public liability insurance cover for a sum not less than \$1,000,000, or such higher sum stated elsewhere in this Agreement, and professional indemnity insurance for the amount of liability under clause 11. The Subconsultant shall use all reasonable endeavours to maintain the professional indemnity insurance for the duration of liability stated under clause 13.
15. Unless otherwise stated in this Agreement, the intellectual property/copyright in all drawings, specifications, reports, software and other material prepared by the Subconsultant for the purposes of carrying out the Services shall, upon creation, be jointly owned by the Subconsultant and the Consultant. The Subconsultant confirms that all intellectual property rights prepared or created by the Subconsultant in carrying out the Services will not infringe the intellectual property or other rights of any third party. The ownership of data and factual information collected by the Subconsultant shall, after payment by the Consultant, lie with the Consultant or, at the option of the Consultant, with the Client.
16. The Consultant must provide to the Subconsultant any health and safety management plan operated by the Consultant and/or the Client which is relevant to the Services. In the event that any employee, representative or contractor of the Subconsultant is required to attend on-site, the Subconsultant shall procure that the employee, representative or contractor complies with all site safety regulations and all reasonable requests of the Consultant regarding on-site health and safety practices.
17. Unless otherwise agreed to in writing, neither party shall disclose to any third party (other than for the purpose of taking legal advice in connection with a dispute), any information provided by the other pursuant to this Agreement unless such disclosure is required by law. Notwithstanding the above, the Consultant shall be entitled to disclose to the Client information provided to the Consultant by the Subconsultant as part of the Services.
18. The Consultant may suspend all or part of the Services or terminate the Agreement by notice to the Subconsultant. Upon receipt of the notice, the Subconsultant shall immediately make arrangements to stop the Services and minimise further expenditure. The Consultant and the Subconsultant may (in the event the other Party is in material default) terminate the Agreement by notice to the other party. Suspension or termination shall not prejudice or affect the accrued rights or claims and liabilities of the parties.
19. The Subconsultant must not assign, transfer or subcontract all or part of its rights or obligations under this Agreement without the prior written approval of the Consultant.
20. If there is a dispute between the Parties in relation to this Agreement, or any matter arising from it, the Parties will in good faith in the first instance use their best endeavours to resolve the dispute themselves. If the dispute cannot be resolved by the parties themselves within a reasonable time then they must explore whether the dispute can be resolved by use of an alternative resolution technique.
21. 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.

www.acenz.org.nz
0800 500 150

