

HEALTH, SAFETY & ENVIRONMENTAL AGREEMENT FOR CONTRACTORS

Date **2018**

PARTIES

TAUPO DISTRICT COUNCIL as principal and PCBU (“Council”)

THE CONTRACTOR NAMED IN SCHEDULE ONE as a PCBU engaged by Council (“Contractor”)

BACKGROUND

- A. The Contractor has approached the Council wanting to carry out works for Council.
- B. Council requires all of its Contractors including their contractors and employees, carrying out any work on behalf of Council, to comply with all health and safety legislation requirements and Council's health and safety policies and procedures.
- C. The Contractor has agreed to comply with Council's health and safety procedures and requirements in accordance with the terms of this Agreement.

1. Definitions:

1.1 In this Agreement unless the context indicates otherwise:

- (a) "**Authority**" means and includes every governmental, local, territorial and statutory authority having jurisdiction or authority over the location of the Scope of Works.
- (b) "**Council**" includes the Council's successors and permitted assigns, and the Council's agents, and employees;
- (c) "**Council's Contract Manager**" means the Council officer named in Schedule One of this Agreement.
- (d) "**Contractor**" includes the Contractor's permitted assigns and the Contractor's agents, employees, contractors and invitees;
- (e) "**Contractor Health and Safety Management Monthly Performance Report**" means the health and safety management performance report template included at Schedule Two.
- (f) "**Critical Risks**" means risks that have the potential to cause serious harm to workers or to the public, and includes but are not limited to:
 - a. Working alone/in isolation;
 - b. Working in confined spaces;
 - c. Working at heights;
 - d. High voltage work; Electrical Work
 - e. Exposure to hazardous substances; including Silica, Asbestos
 - f. Working over or near water;
 - g. Working on or near roads;
 - h. Unguarded machinery;
 - i. Crane Work;
 - j. Excavations; exposure to gas lines and services
 - k. Working under or near overhead services;
 - l. Working with Bitumen.
- (g) "**Hazardous Substances**" shall have the meaning given to it under the Health and Safety at Work (Hazardous Substances) Regulations 2017;
- (h) "**Hazardous Waste**" shall have the meaning given to it under the Health and Safety at Work (Hazardous Substances) Regulations 2017;
- (i) "**Specialist Equipment**" means any equipment that is required by codes of practice to be of a certain standard or specification and/or only used by persons who have the required qualifications and includes but is not limited to harnesses and gas detectors.
- (j) "**Notifiable Event**" shall have the meaning given to it under the Health and Safety at Work Act 2015.

- (k) “**Notifiable Works**” means all work that is particularly hazardous and shall have the meaning given to it under the Health and Safety in Employment Regulations 1995.
- (l) “**Person conducting a business or undertaking (PCBU)**” shall have the meaning given to it under the Health and Safety at Work Act 2015.
- (m) “**Scope of Works**” means the works to be carried out by the Contractor as detailed in Schedule One.

2. Interpretation:

2.1 In this Agreement unless the context indicates otherwise:

- (a) Expressions defined in the main body of this Agreement have the defined meaning in the whole of this Agreement including the background and the schedule;
- (b) Expressions undefined in this Agreement shall have the meaning given to them under the Health and Safety at Work Act 2015.
- (c) Section, clause and other headings are for ease of reference only and do not form any part of the context or affect this Agreement’s interpretation;
- (d) Where two or more persons are bound by a provision in this Agreement, that provision will bind those persons jointly and each of them severally;
- (e) Any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (f) References to parties are references to parties to this Agreement and include each party’s executors, administrators and successors;
- (g) References to persons include references to individuals, companies, partnerships, associations, trusts, government departments and local authorities in each case whether or not having separate legal personality;
- (h) Singular words include the plural and vice versa;
- (i) References to sections and clauses are references to sections and clauses of this Agreement; and
- (j) References to a statute include references to regulations, orders, rules or notices made under that statute and references to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or otherwise.

3. General Contactor Obligations

- 3.1 The Contractor acknowledges that it is a PCBU and it has a primary duty of care to ensure, as far as reasonably practicable, the health and safety of workers and others influenced by its work.
- 3.2 Acknowledging the Contractor’s primary duty of care, the Contractor must as far as reasonably practicable at all times:
 - (a) ensure that a safe work environment is maintained and safe work practices are followed to ensure that workers are not at risk to harm; and
 - (b) protect the public and all Council workers on or near the worksite from harm.
- 3.3 The Contractor must as far as is reasonably practicable, consult, co-operate and co-ordinate with the Council in respect of health and safety matters.

4. Contractor Prequalification

- 4.1 The Contractor must be registered on the Sitewise contractor pre-qualification scheme prior to the Commencement Date unless:
- (a) the Scope of Works is low risk (non-physical work undertaken by consultants such as but not limited to auditors); or
 - (b) the Contractor is already registered with PREQUAL Impac.

5. Safety Management Plans/Procedures

- 5.1 The Contractor must provide Council's Contract Manager for his or her approval, prior to the Commencement Date, a copy of its occupational safety and health control plan for the Scope of Works. The occupational safety and health control plan must:
- (a) reference applicable codes of practice and legislation;
 - (b) be appropriate for the level of risk involved in the Scope of Works.

6. Compliance with Rules and Council directions

- 6.1 The Contractor must at all times comply with all health, safety, and environmental rules (including statutes, ordinances, regulations, bylaws and policies), imposed by any Authority applicable to the Scope of the Works. Examples of such rules include but are not limited to, the Health and Safety at Work Act 2015, Health and Safety in Employment Regulations 1995, Resource Management Act 1991, and Council's Health & Safety Policy Statement, and Council's Drug and Alcohol Policy.
- 6.2 The Contractor must comply with the Council's reasonable directions and requirements relating to the Scope of Works and health, safety and environment.

7. Risk Management

- 7.1 The Contractor must provide Council's Contract Manager for his or her approval, prior to the Commencement Date, with a copy of its:
- (a) methods of risks assessment;
 - (b) hazard identification and controls; and
 - (c) risk register; for the Scope of Works.
- 7.2 Critical Risk mitigation controls must be signed off by the Contractor Project Manager and Council's Contract Manager.
- 7.3 The Contractor must notify Council and WorkSafe New Zealand in writing of all Notifiable Work due to be undertaken at least 72 hours before the commencement of any such works.

8. Competency & Training

- 8.1 The Contractor must ensure its workers have been adequately trained or have adequate knowledge and experience to carry out the Scope of Works as required by applicable legislation and regulations.
- 8.2 The Contractor must provide Council's Contract Manager for its approval, prior to the Commencement Date, with evidence of adequate competencies of all its workers when the Scope of Works involves:
- (a) Critical Risks; and/or
 - (b) the use of Specialist Equipment.

9. Machinery & Plant

- 9.1 The Contractor must ensure all machinery, plant, vehicles and tools used to carry out the Scope of Works are at all times:
- (a) in safe working condition; and
 - (b) regularly inspected.

10. Personal Protective Equipment (PPE)

- 10.1 The Contractor must ensure that protective equipment and clothing approved to a New Zealand Standard, or its equivalent, are supplied to, and used by, all personnel associated with the Scope of Works.

11. Hazardous Substances

- 11.1 The Contractor must provide Council's Contract Manager prior to the Commencement Date, with a list of all Hazardous Substances that the Contractor will bring to any sites involved in the Scope of Works, showing:
- (a) the form of the Hazardous Substances (i.e. solid, liquid or gas);
 - (b) the hazard classification number; and
 - (c) the quantities of each Hazardous Substance.
- 11.2 The Contractor must handle Hazardous Substances in accordance with legislative requirements, including but not limited to the Health and Safety at Work (Hazardous Substances) Regulations 2017.
- 11.3 The Contractor must provide Council's Contract Manager prior to the Commencement Date, with a list of all Hazardous Waste generated during the Scope of the Works, including the approximate quantities of each, and the methods of disposal.

12. Performance Monitoring

- 12.1 The Contractor must complete and submit the Contractor Health and Safety Management Monthly Performance Report on the dates detailed in Schedule One.

13. Emergency Preparedness

- 13.1 The Contractor must provide first aid facilities suitable for the number of persons the Contractor is employing or contracting to carry out the Scope of Works.
- 13.2 The Contractor must have prepared an emergency response plan for the Scope of Works.

14. Incident Reporting

- 14.1 The Contractor must report all incidents, near misses, accidents, Hazardous Substance spills and discharges to Council as soon as possible and in any case no later than 12 hours after the incident.
- 14.2 The Contractor must provide Council with a written report detailing the results of its full investigation of any serious harm incidents or near misses where the consequence may have resulted in serious harm.
- 14.3 If the Contractor is involved in a Notifiable Event during the Scope of the Works, the Contractor must freeze the work scene and immediately notify the event to Council's Contract Manager and WorkSafe New Zealand.

15. Security

- 15.1 The Contractor acknowledges that it is responsible for the security of all plant and equipment while on site.

16. General

- 16.1 The Contractor acknowledges that Council has provided the Contractor with copies of Council's policies, procedures and rules which the Contractor must comply with, as attached at Schedule Two.
- 16.2 The Contractor acknowledges that Council will conduct an induction with the Contractor prior to the Commencement Date. The Contractor must then communicate to all

employees and contractors of the Contractor, the provisions and requirements outlined in the induction, prior to the Commencement Date.

- 16.3 The Contractor acknowledges that Council has provided a list of any known hazards & risks that the Contractor may encounter on the Site and the appropriate precautions to be taken in relation to them, as attached at Schedule One.
- 16.4 The Contractor acknowledges that Council has the right to inspect the Contractor's activities for occupational health, safety and environmental protection measures at any time during the Term, and it may be subject to periodic checks by the Council to ensure compliance with this Agreement.
- 16.5 The Contractor acknowledges that Council reserves the right to seek amendments to this Agreement at any time for the purpose of improved safety and health for all parties.
- 16.6 The Contractor acknowledges that Council will conduct an evaluation and review of the Contractor's health and safety performance on completion of the Scope of Works or at the discretion of Council's Contract Manager.

17. Termination – breach

- 17.1 The Contractor acknowledges that Council may cancel this Agreement and direct the Contractor to stop works if the Contractor:
 - (a) breaches any of its obligations under this Agreement and fails to remedy that breach within the period specified in a notice from Council; or
 - (b) is issued with an improvement or prohibition notice by WorkSafe New Zealand; or
 - (c) is prosecuted for a breach of any health and safety related legislation.
- 17.2 If the Council cancels this Agreement under clause 17.1, then:
 - (a) The Contractor will be treated as having breached an essential term of this Agreement;
 - (b) The Contractor must compensate the Council for the Council's losses (if any) which arise as a result of termination following the Contractor's breach; and
 - (c) The Council may recover damages for that breach.

18. Notices

- 18.1 A notice or other form of communication required to be given by either party shall be deemed to have been sufficiently given if made in writing and served as provided in section 353 of the Property Law Act 2007.

19. Disputes

- 19.1 If the parties are unable to resolve a dispute by negotiation within a reasonable time either party may require the dispute to be escalated for resolution by their respective Chief Executives or equivalent officers.
- 19.2 If the parties are unable to resolve a dispute by negotiation of their respective Chief Executives within ten (10) working days of the dispute being escalated to their respective Chief Executives then the dispute shall be referred to mediation in which case:
 - (a) If the parties cannot agree on a suitably qualified mediator within five (5) working days of the dispute being referred to mediation, either party may request the chairperson or equivalent officer of LEADR New Zealand Inc to appoint a suitably qualified mediator;
 - (b) Unless otherwise agreed, the then current model mediation agreement issued by LEADR New Zealand Inc will be used; and
 - (c) The parties shall share the mediator's costs equally.
- 19.3 Notwithstanding the existence of a dispute and the operation of this clause 19, each party must continue to perform its obligations under this Agreement pending resolution of the dispute. Nothing in this Agreement affects the right of a party to institute court proceedings seeking urgent injunctive relief.

SCHEDULE ONE

Contractor:	Contractor name: Address: Contractor Manager name: Mobile contact: Email:
Council:	Council's Contract Manager: Address: Mobile contact: Email:
Commencement Date:	
Term:	
Site:	Location description:
Scope of Works:	Description:

<p>List “Critical Risks” involved in the Scope of Works:</p> <p>“Critical Risks” means risks that have the potential to cause serious harm to workers or to the public, and includes but are not limited to:</p> <ul style="list-style-type: none"> a. Working alone/in isolation; b. Working in confined spaces; c. Working at heights; d. High voltage work; Electrical Work e. Exposure to hazardous substances; including Silica, Asbestos f. Working over or near water; g. Working on or near roads; h. Unguarded machinery; i. Crane Work; j. Excavations; exposure to gas lines and services k. Working under or near overhead services; l. Working with Bitumen. 			
<p>Notifiable Work:</p>	<p>Yes/No</p> <p>If yes, has WorkSafe been notified?</p>		
<p>Prequalification details (refer clause 4.1)</p>	<p>Site wise registered:</p> <p>OR</p> <p>PREQUAL Impact registered:</p> <p>OR</p> <p>EXEMPT</p> <p>OR</p> <p>Low risk work (e.g. auditor or other similar consultant)</p>	<p>Yes</p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>	<p>No</p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>
<p>Occupational safety and health control plan-documentation provided:</p> <p>(refer clauses 5, 7, 11, 13.2)</p>	<p>Site Specific Safety Management Plan: (SSSP)</p> <p>Permit to Work:</p> <p>Safe Work Method Statement (SWMS)-critical risks</p>	<p>Yes</p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>	<p>No</p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>

Sub-contractor details:	<p>Sub-contractor name:</p> <p>Address:</p> <p>Sub-contractor contact name:</p> <p>Mobile contact:</p> <p>Email:</p> <p>Scope of work being undertaken by sub-contractor:</p> <p>Is the sub-contractor undertaking any critical risks? (refer clause 1.1(f))</p> <p>Is the sub-contractor Sitewise accredited?</p>
	<p>Sub-contractor name:</p> <p>Address:</p> <p>Sub-contractor contact name:</p> <p>Mobile contact:</p> <p>Email:</p> <p>Scope of work being undertaken by sub-contractor:</p> <p>Is the sub-contractor undertaking any critical risks? (refer clause 1.1(f))</p> <p>Is the sub-contractor Sitewise accredited?</p>

	<p>Sub-contractor name:</p> <p>Address:</p> <p>Contractor Manager name:</p> <p>Mobile contact:</p> <p>Email:</p> <p>Scope of work being undertaken by subcontractor:</p> <p>Is the sub-contractor Sitewise accredited?</p> <p>(note- if additional sub-contractors are being used please attach additional pages containing the details requested above)</p>
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SCHEDULE TWO

Contractor Handbook- including Council policies and procedures – refer clause 16.1

Signed for and on behalf of the)
TAUPO DISTRICT COUNCIL)
as the Principal and PCBU by its)
authorised officer:)

Name

Signature

Date

Signed by)
THE CONTRACTOR as the PCBU)
in the presence of:)

Name

Signature

Date

Witness to signature:

Signature of witness

Name of witness

Occupation

City/town of residence