

# Conditions of Contract

[Project Name]

Contract No. [Contract Number]



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## DOCUMENT CHANGE FORMAT CODES

This proforma document provides the basis for the development of physical works contract documents for Waka Kotahi NZ Transport Agency's (Waka Kotahi) **ECI** contracts. The purpose of the proforma is to provide consistency throughout the regional operations of Waka Kotahi and to ensure that an appropriate level of detail is provided in tender documentation.

### **Black**

Black text is mandatory and may not be changed without approval prior to issue by the Waka Kotahi Project Manager, who will consult with the Waka Kotahi Procurement Team on all material changes made.

### **Red**

Red text is used for data which requires fields to be updated or at least considered for each contract and marked at the beginning with [ and the end with ]. Text can also be used as is, modified or replaced. All red text adjustments must have the Waka Kotahi Project Manager's approval. Red text must be converted to Black text, prior to tender document release.

### **Blue**

Blue text is used for optional clauses which can be included as is or deleted in full. Blue text must be converted to Black text, prior to tender document release.

### **Purple**

Purple text is used for prequalification clauses which are to be included for prequalification tenders only. Prequalification clause details must be prior approved with the Project Manager. Purple text must be converted to Black text, prior to tender document release.

### **Green**

Green text has been used for optional text relating to novation of the Consultant, which can either be used or deleted in its entirety. The inclusion of these clauses shall be agreed with the Waka Kotahi Project Manager. All finalised text converted to Black text, prior to tender document release.

### **<<Guidance Notes>>**

Blue text with yellow highlighting and marked at the beginning with << and the end with >> are guidance notes for the Tender Document creator. Guidance notes must be removed prior to tender document release.

<<Important Guidance note: When preparing any part of this tender, document, if there are sections/schedules that you do not require e.g. Schedule 18 - Cost Fluctuations within the Conditions of Contract, **DO NOT DELETE** these schedules and ensure that you insert text at top of page "This Section Not Used">>.

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## CONTRACT AGREEMENT

**CONTRACT FOR** \_\_\_\_\_

**CONTRACT NUMBER** \_\_\_\_\_

**THIS AGREEMENT** is made on \_\_\_\_\_ 20 \_\_\_\_\_

**BETWEEN** \_\_\_\_\_ ('the Contractor')

**AND** New Zealand Transport Agency, a Crown entity, established on 1 August 2008 by Section 93 of the Land Transport Management Act 2003 ('the Principal')

**IT IS AGREED** as follows:

1. The Contractor shall carry out the obligations imposed on the Contractor by the Contract.
2. The Principal shall pay the Contractor the sum of \$ \_\_\_\_\_  
or such greater or less sum as shall become payable under the Contract together with goods and services tax at the times and in the manner provided in the Contract.
3. Each party agrees to the terms and conditions as set out in the Contract.
4. The Contract comprises the following documents:
  - (a) This Contract Agreement;
  - (b) The notification of acceptance of tender or award of Contract;
  - (c) The following post-tender documents <<Guidance note: identify any agreed post-tender documents to be included, for example correspondence or minutes of pre-let meetings dealing with tender tags etc.>>
  - (d) Notices to Tenderers <<guidance note: give details with dates>>:  
\_\_\_\_\_  
\_\_\_\_\_
  - (e) Schedule 1: Special Conditions of Contract – Specific Conditions of Contract;
  - (f) Schedule 2: Special Conditions of Contract – Other Conditions of Contract;
  - (g) The General Conditions of Contract NZS3916: 2013 (including other Schedules);
  - (h) The Principal's Requirements and Specifications issued prior to the Date of Acceptance of Tender;
  - (i) Drawings issued prior to the Date of Acceptance of Tender;
  - (j) The Schedule of Prices <<Delete if not applicable>>
  - (k) The Contractor's tender;
  - (l) The Tender Documents (including the Instructions for Tendering, the Schedule to the Conditions of Tendering and the Conditions of Tendering); and
  - (m) The following additional documents: <<Identify any additional documents to be included for example agreed correspondence>>

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5. The documents comprising the Contract shall be taken as mutually explanatory, but in the case of ambiguity or conflict the priority of documents shall be as listed in clause 4 above, with each document prevailing over a document lower in the list.
6. This Contract shall constitute the entire agreement between the parties. This Contract supersedes all prior negotiations, representations, and warranties, except insofar as the same are expressly incorporated herein.
7. This Contract may be executed in counterparts and by electronic signature, and provided each party has executed a counterpart, the counterparts together shall constitute a binding and enforceable agreement between the parties. A party shall be entitled to transmit an electronic copy of this Contract by email (or other electronic means) to the other party.

SIGNED BY \_\_\_\_\_ Authorised Signatory of Contractor

SIGNED BY \_\_\_\_\_ Authorised Signatory of Principal

## GENERAL CONDITIONS

The General Conditions of Contract shall be those included in NZS 3916: 2013 **Conditions of Contract for Building and Civil Engineering - Design and Construct** and the following clauses.

# SCHEDULES TO THE GENERAL CONDITIONS OF CONTRACT

## Schedule 1 – Special Conditions of Contract – Specific Conditions of Contract

(Clause numbers refer to General Conditions)

<b>Contract for:</b>	[Contract Number, Contract Name]
----------------------	----------------------------------

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>
<b>1</b>	<b>INTERPRETATION</b>	
<b>1.2</b>	<b>Definitions</b>	
	The Principal is:	<b>New Zealand Transport Agency</b> , a Crown entity, established on 1 August 2008 by Section 93 of the Land Transport Management Act 2003
	of:	<a href="#">Click to enter street address</a>
<b>1.2, 10.2</b>	Separable Portions	
	<ul style="list-style-type: none"> <li>Are there any Separable Portions in this Contract?</li> </ul>	Yes
	<ul style="list-style-type: none"> <li>If yes, the Separable Portions are as follows and as further defined in the Contract.</li> </ul>	Schedule 2 – Special Conditions, 2.1.4
<b>2</b>	<b>THE CONTRACT</b>	
<b>2.1</b>	<b>Type of Contract</b>	
<b>2.1.1</b>	This Contract is a:	<i>(select one to apply, (a) or (b))</i>
	(a) Lump sum contract governed by 2.2	<input type="checkbox"/> Separable Portion [ 1, 2 and 3]
	(b) Cost reimbursement contract governed by 2.3	<input type="checkbox"/> Separable Portion [1 and 2]
<b>2.3</b>	<b>Cost reimbursement contract</b>	
<b>2.3.1</b>	Allowance(s) which are to be added to Net Cost in a cost reimbursement contract or for parts of the Contract Works which are required to be carried out on a cost reimbursement basis: <i>(If percentages are shown as zero or nil, allowances for overheads and profit are deemed to be included in Net Cost.)</i>	
	<ul style="list-style-type: none"> <li>Allowance for On-site Overheads:</li> </ul>	[%]
	<ul style="list-style-type: none"> <li>Allowance for Off-site Overheads and Profit:</li> </ul>	i) 0% Contractor's on-cost on all Consultant's fees for all Separable Portions; ii) [5%] Contractors on-cost on all other costs indirectly incurred on the Principal's behalf; iii) [15%] for all other costs <<Guidance note: consideration should be given to the % specified or if negotiation with each Separable Portion is more appropriate>>
<b>2.4</b>	<b>Local authority contracts in public places, and road contracts</b>	
<b>2.4.1</b>	Is this Contract a local authority contract to which 2.4.2 applies	No



Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>
2.4.3	Is this Contract a contract in a public place to which B1 and B2 of Appendix B apply?	Yes
2.4.4	Is this Contract a road contract to which Appendix B applies?	Yes
	If yes, the allowance under B3 shall be:	Refer to Schedule 1, 10.3.1
<b>2.5</b>	<b>Evidence of Contract</b>	
2.5.2	How is the Contract Agreement executed?	
	(a) As stated in 2.5	<input checked="" type="checkbox"/>
<b>2.6</b>	<b>Documents prepared by the Engineer or Principal</b>	
2.6.1	Copies of the Contract shall be supplied without charge to the Contractor in the following electronic format:	pdf
<b>2.7</b>	<b>Documents prepared by the Contractor</b>	
2.7.2	Copies of the documents referred to in 2.7.2 shall be supplied without charge to the Engineer:	
	• Number of hard copy sets:	[2]
	• In the following electronic form:	pdf
<b>3.</b>	<b>BONDS</b>	
<b>3.1</b>	<b>Contractor's Bond</b>	
3.1.1	Is a Contractor's Bond required? Note - Bonds are accepted in principle from those insurance companies and bond companies who hold a minimum interactive S&P rating of 'A'.	No  <<Guidance note: Default is no for performance bonds. Refer to section 1.9.8, 1.9.9, and 1.9.10 of the Waka Kotahi Contract Procedures Manual (SM021) for guidance on the bonding policy>>
3.1.2	If yes, the amount of the Contractor's Bond shall be:	[Click to enter value (\$) or % Contract Price <<Guidance note: refer to section 1.9.8, 1.9.9, and 1.9.10 of the Waka Kotahi Contract Procedures Manual" (SM021) for guidance on the bonding policy>>
<b>3.2</b>	<b>Principal's Bond</b>	
3.2.1	Is a Principal's Bond required?	No
<b>4.</b>	<b>SUBCONTRACTS</b>	
<b>4.1</b>	<b>General</b>	
4.1.1	Is the transfer of design agreements required?	Select yes or no <<If the transfer of design agreements are required, include Schedule 17>>
<b>5.</b>	<b>GENERAL OBLIGATIONS</b>	
5.1.10, 5.1.12, 5.1.14, 5.1.15	Time for review of Design Documentation by Engineer	(select one to apply, (a) or (b))
	(a) 10 Working Days;	<input type="checkbox"/>
	(b) Within the following time:	<input type="checkbox"/> Click to enter reference

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>
<b>5.4</b>	<b>Possession of the Site</b>	
<b>5.4.1</b>	The Contractor shall be given possession of the Site	<i>(select one to apply, (a) or (b))</i>
	(a) 10 Working Days after the Date of Acceptance of Tender:	<input type="checkbox"/>
	(b) On the following date:	<input checked="" type="checkbox"/> 10 Working Days after the commencement of Separable Portion 3
<b>5.4.3</b>	Limits on the Contractor's right of entry to adjoining properties are:	Nil or "As detailed in the Principal's Requirements"
<b>5.5</b>	<b>Separate Contractors</b>	
<b>5.5.1</b>	Separate Contractors who may be carrying out work on the Site concurrently with the Contract Works are:	Contract Number, Contract Name [Contractor to be named]
<b>5.5.2</b>	Are facilities for Separate Contractors required?	Click to enter text
	If yes, details of facilities required are:	Click to enter text
<b>5.6</b>	<b>Care of works and Site</b>	
<b>5.6.6(f)</b>	Further risks specifically excepted are:	Nil <<Guidance note: default is NIL. Risk and Insurance should be consulted if you wish to change from the default>>
<b>5.10</b>	<b>Programme</b>	
<b>5.10.4</b>	Is the programme required to be a Comprehensive Programme?	Yes
<b>5.10.4(e)</b>	If yes, other requirements for the Comprehensive Programme are:	Programme shall be consistent in principle, philosophy and milestones with the submitted Tender Methodology and Tender Programme unless exception is requested and approved by the Engineer.
<b>5.10.5</b>	The Comprehensive Programme shall use the following software:	Click to enter text <<e.g. MS Project Version X>>
<b>5.10.6</b>	Updates of the Comprehensive Programme shall be provided at the following intervals:	Click to enter text <<To be determined based on the nature of the work e.g. fortnightly, monthly>>
<b>5.11</b>	<b>Compliance with laws</b>	
<b>5.11.3</b>	Exceptions to the Principal's obligations to obtain licences under 5.11.3 are:	Nil <<Default is "Nil" unless Principal feels that the Contractor is best to obtain certain licences.>>
<b>5.11.4</b>	Exceptions to the Contractor's obligations to give notices and obtain other licences under 5.11.4 are:	Nil
<b>5.17</b>	<b>Safety plan</b>	
	Is a Site-specific safety plan required to be prepared by the Contractor?	Yes and shall be submitted 2 weeks from the commencement of Separable Portion 3
<b>5.18</b>	<b>Quality management plan</b>	

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>
	Is a quality management plan required to be prepared by the Contractor?	Yes and shall be submitted <b>2</b> weeks from the commencement of each Separable Portion
<b>5.19</b>	<b>Traffic management plan</b>	
	Is a traffic management plan required to be prepared by the Contractor?	Yes and shall be submitted <b>2</b> weeks from the commencement of Separable Portion 3
<b>5.20</b>	<b>As-built drawings and operation and maintenance manuals</b>	
<b>5.20.1(a)</b>	Are as-built drawings required to be prepared by the Contractor?	Yes, as set out in the project specification
<b>5.20.1(b)</b>	Are operation and maintenance manuals required to be prepared by the Contractor?	Yes, as set out in the project specification
<b>5.22</b>	<b>Key Personnel</b>	
<b>5.22.2</b>	Amount withheld where the Contractor fails to replace the relevant Key Personnel in accordance with 5.22.2.	<b>20%</b> of the value of the next payment claim
<b>6.</b>	<b>THE ENGINEER</b>	
<b>6.1</b>	<b>Appointment of the Engineer</b>	
<b>6.1.2</b>	The Engineer is:	<b>Name, Company, Street Address</b>
	Whose professional qualification is:	<b>Click to enter text</b>
<b>6.4.6</b>	The Principal will recover the cost for reinspection, remeasuring or retesting at the following rates:	
	• Engineer or other professional	<b>[\$250.00]</b> per hour (exclusive of GST)
	• Other personnel	<b>[\$200.00]</b> per hour (exclusive of GST)
	• Vehicle running	<b>[\$1.00]</b> per km (exclusive of GST)
	• Sub-consultant invoices	Cost plus <b>[15%]</b>
<b>7.</b>	<b>INDEMNITY</b>	
<b>7.1.5</b>	Liability Cap	<b>[Insert amount of cap]</b> <b>&lt;&lt;Guidance note: click <a href="#">here</a> for detailed guidance.          For any Liability Cap assistance email          Procurement@NZTA.govt.nz with the subject "Liability          Cap assistance" &gt;&gt;</b>
<b>8.</b>	<b>INSURANCES</b>	
<b>8.1</b>	<b>General</b>	
<b>8.1.1</b>	The party identified below shall arrange the following insurances referred to in the following clauses	

<b>Clause</b> <i>in General</i> <i>Conditions</i>	<b>Title and subject matter</b>	<b>Specific condition data</b> <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>
	8.3 or 8.8 Construction	<p><b>Select Contractor or Principal</b></p> <p>&lt;&lt;Guidance note: Select Principal for all contracts covered by the Waka Kotahi PAI policy. Select in consultation with the Project Manager. Construction projects covered by PAI include but are not limited to:</p> <ul style="list-style-type: none"> <li>• Contract work with a value of less than \$200,000,000</li> <li>• Existing property less than \$2,500,000</li> <li>• Maximum contract period of 36 months on any one contract, excluding Network Outcome Contracts</li> <li>• Bridge &amp; Wet Works Contracts of less than \$25,000,000</li> <li>• Tunnelling contracts of less than \$5,000,000</li> </ul> <p>For any contracts over any of the above limits, please contact <a href="mailto:insurance@nzta.govt.nz">insurance@nzta.govt.nz</a>&gt;&gt;</p>
	8.8 Existing structure(s) and contents)	<p><b>Select Principal if insurance is required</b></p> <p>&lt;&lt;Guidance note: Approval for insurance levels by the Senior Managers Procurement and Risk and Assurance is required for any contract where construction work is contemplated on significant strategic parts of the Waka Kotahi asset, e.g., the Auckland Harbour Bridge, Newmarket Flyover, Thorndon Elevated Motorway, Christchurch Lyttleton Road Tunnel. While Waka Kotahi does not insure the roading network, bridges or tunnels, it is possible that Waka Kotahi may need to insure the asset being worked on. Note that this would only apply to contracts where the structure supporting the asset was being worked upon and there is a serious risk of structural damage. Note whether insurance currently exists on the structure. Existing property can include existing structures, buildings, plant, stock, machinery, equipment, supplies, contents and real property of every description either owned by the Named Insured or for which they assume responsibility, but only in respect of Events during the course of completing the Insured Operations. Existing Property is specifically excluded under this Policy unless an amount is specified against this item in the Schedule. Contract Works limit of liability for Principal's Existing Property is 25% of the estimated contract value at commencement subject to a minimum of \$2,500,000 and a maximum of \$25,000,000 on any one Occurrence on any one contract.&gt;&gt;</p>
	8.4 Plant	<p>Contractor</p> <p>&lt;&lt;Guidance note: Default is "Contractor"&gt;&gt;</p>
	8.5 or 8.9 Public liability	Contractor
	8.5.2 Motor Vehicle	Contractor

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>
	8.6 Professional Indemnity	Not required  <<Guidance note: Default is "not required" however if there is an element of design that the Contractor is required to do e.g. design of a retaining wall, then they should be required to insure. The value of the level of insurance is stated in 8.6.1 below.>>
8.1.6	The following forces of nature shall be specifically insured under 8.3 or 8.8 as applicable:	<<Guidance note: Select "yes" on all items under 8.1.6 if PAI is used, otherwise yes or no, as appropriate given the location of the site, for Volcanic activity.>>
	(a) Earthquake	Select yes or no
	(b) Tsunami	Select yes or no
	(c) Tornado	Select yes or no
	(d) Cyclone	Select yes or no
	(e) Storm	Select yes or no
	(f) Flood	Select yes or no
	(g) Lightning strike	Select yes or no
	(h) Volcanic activity	Select yes or no
	(i) Landslip	Select yes or no
	(j) Hydrothermal Activity	Select yes or no
	(k) Geothermal Activity	Select yes or no
8.3, 8.8	<b>Construction insurance</b> <i>(These items are required to be completed whether the Contractor or the Principal is the insuring party (see 8.1 above))</i>	
8.3.2, 8.8	The following shall have their respective interests noted in the construction insurance policy:	<<Guidance Note: list any third parties interests that need to be a named "interested" in the insurance policy>>
8.3.3, 8.8	Where construction insurance is required (see 8.1 above), the amount of insurance to be effected for the Contract Works and Materials shall be for not less than the sum of the following:	
	(a) The Contract Price for Separable Portion 3 after the acceptance of tender of other offer, excluding any additions or deductions which may be required to be made during the course of the contract;	
	(b) An allowance for the Cost of demolition, disposal and preparation for replacement work, equal to:	<i>(Select one to apply, (i) or (ii))</i>
	(i) The amount in the right hand column:	<input type="checkbox"/> [\$xxxxx]
	(ii) The percentage of the Contract Price adjusted as above, stated in the right hand column:	<input type="checkbox"/> [5%]
	(c) An allowance for professional services fees including the Cost of clerks of works and inspectors, equal to:	<i>(Select one to apply, (i) or (ii))</i>

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>
	(i) The amount in the right hand column:	<input type="checkbox"/> [\$xxxxx] <<Guidance Note: Use absolute values if known>>
	(ii) The percentage of the Contract Price adjusted as above, stated in the right hand column:	<input type="checkbox"/> [5%]
	(d) An allowance for items to be incorporated in the Contract Works, the Cost of which is not included in the Contract Price, equal to:	(Select one to apply, (i) or (ii))
	(i) The amount in the right hand column:	<input type="checkbox"/> [\$xxxxx] <<Guidance Note: If this amount is over 15%, you must contact insurance@nzta.govt.nz>>
	(ii) The percentage of the Contract Price adjusted as above, stated in the right hand column:	<input type="checkbox"/> [5%]
	(e) An allowance for increased constructions costs not already provided for in the Contact Price during the period from the acceptance of tender or other offer until the issue of the Defects Liability certificate for the Contract Works, equal to	(Select one to apply, (i) or (ii))
	(i) The amount in the right hand column:	<input type="checkbox"/> [\$xxxxx] <<Guidance Note: This value may be up to \$3,000,000 depending on the contract value. Contract works clause 2.1 (f) Inflation Protection has a \$1,000,000 sub limit for contracts under \$50,000,000 and a \$3,000,000 sub limit for contracts over \$50,000,000>>
	(ii) The percentage of the Contract Price adjusted as above, stated in the right hand column:	<input type="checkbox"/> [5%]
The insurance shall make provision for automatic change of cover for items (a) and (e) above, to provide insurance for any additions to or deductions from the Contract Price which occur after acceptance of the tender or other offer.		
<b>8.4</b>	<b>Contractor arranged Plant insurance</b>	
	Where Plant is required to be insured (see 8.1 above):	(Select one to apply, (a) or (b))
	(a) The Contractor shall insure the following items of Plant on Site for the amounts stated:	<input type="checkbox"/> [list specific items] <<Guidance Note: List any items of plant of exceptional nature and specifically critical to the timely completion of the contract>>
	(b) The Contractor shall insure each item of Plant on the Site having a current market value of more than:	<input checked="" type="checkbox"/> \$200,000 <<Guidance note: default is \$200k if required, otherwise choose "Not required">>
<b>8.5</b>	<b>Contractor arranged public liability insurance</b> <<Guidance note: all ECI contracts are to be referred to insurance@nzta.govt.nz for the approval of insurance amounts – Appendix XXIII SM021>>	
<b>8.5.1</b>	Where required (see 8.1 above), public liability insurance shall be effected by the Contractor for an amount not less than:	i) For Separable Portion 1 [\$x,xxx,xxx] ii) For Separable Portion 2 [\$x,xxx,xxx] iii) For Separable Portion 3 [\$5,000,000]
	Such public liability insurance may include sub limits:	

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>																							
8.5.2	Where required (see 8.1 above), motor vehicle third party liability insurance shall be effected for an amount not less than:	i) For Separable Portion 1 Nil ii) For Separable Portion 2 Nil iii) For Separable Portion 3 <b>[\$5,000,000]</b>																							
8.6	<b>Contractor arranged professional indemnity insurance</b> <<Guidance Note: <b>For low risk contracts</b> the PI level should be calculated at 5 x the design fee at a minimum amount of \$500k and maximum of \$2M. <b>For high risk project specific contracts Insurance Levels must be reviewed and approved by Senior Managers Procurement and Risk and Assurance. Contracts are considered high risk where:</b> 1) the contract period is greater than 3 years, OR 2) the contract value is greater than \$50M, OR 3) bridge construction or retaining walls or other structures with a cost greater than \$10M OR 4) the contract involves works generally considered to be of a high risk nature e.g. particularly challenging geology, or a significant amount of work in a tidal zone.>>																								
8.6.1	Where required (see 8.1 above), professional indemnity insurance for design by the Contractor shall be effected for an amount not less than:																								
	<ul style="list-style-type: none"> <li>For any one claim:</li> </ul>	<b>[\$XXXXXX]</b>																							
	<ul style="list-style-type: none"> <li>And for an amount in the aggregate of:</li> </ul>	<b>[\$XXXXXX]</b>																							
8.6.2	Sub limits of liability for design of parts of the Contract Works by Subcontracts shall not be less than:	<b>[List specific parts] or [Not required]</b> <<Guidance note: list specific part(s) of Contract Works and applicable \$ sub-limits for any one claim and for an amount in the aggregate, or state if not required>>																							
8.8	<b>Principal arranged construction insurance</b> <i>(refer also to 8.3)</i> <<Guidance note: For use on contracts that fall under the Waka Kotahi PAI policy. >>																								
	In accordance with 8.7.2, the insurance policy wording title for 8.8.1 and 8.8.2 (a), (b), and (c) is:	Waka Kotahi as Principal and its Contractors and their Sub Contractors for their respective rights and interests																							
	In accordance with 8.7.2, the extraordinary exclusions, conditions, warranties or endorsements to the policy for 8.8.1 and 8.8.2 (a), (b) and (c) are:	Specific policy wording applicable to this contract will be provided by Risk and Assurance																							
8.8.1	Where the Principal is required to effect construction insurance (see 8.1 above).																								
	The lead insurer can be found at:	<a href="https://www.marsh.com/nz/industries/transportation/nz-transport-agency-pai.html">https://www.marsh.com/nz/industries/transportation/nz-transport-agency-pai.html</a>																							
	The Nominal Deductibles are:																								
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/ underpasses >100m)														
<b>8.8.2(a)</b>	The existing structures are:	<p>N/A</p> <p>&lt;&lt;Guidance note: default position is that this is not relevant to Waka Kotahi projects. If unsure email <a href="mailto:insurance@nzta.govt.nz">insurance@nzta.govt.nz</a> for project specific guidance. If there are Waka Kotahi existing structures that are part of the physical works (i.e. additions, alterations, repairs, maintenance) then 8.8.2(a) and 8.8.2(c) need to be completed&gt;&gt;</p>												
<b>8.8.2(b)</b>	Other structures in the vicinity are:	<p>N/A</p> <p>&lt;&lt;Guidance note: default position is that this is not relevant to Waka Kotahi projects. If unsure email <a href="mailto:insurance@nzta.govt.nz">insurance@nzta.govt.nz</a> for project specific guidance&gt;&gt;</p>												
<b>8.8.2(c)</b>	Contents insurance are:	<p>N/A</p> <p>&lt;&lt;Guidance note: default position is that this is not relevant to Waka Kotahi projects. If unsure email <a href="mailto:insurance@nzta.govt.nz">insurance@nzta.govt.nz</a> for project specific guidance&gt;&gt;</p>												
<b>8.9</b>	<b>Principal's option to insure public liability</b>	<p>&lt;Guidance note: For use on contracts that fall under the Waka Kotahi PAI policy. &gt;&gt;</p>												
	Where required (see 8.1 above), the Principal shall effect public liability insurance for an amount not less than:	<b>Select an option</b>												
	The lead insurer can be found at:	<a href="https://www.marsh.com/nz/industries/transportation/nz-transport-agency-pai.html">https://www.marsh.com/nz/industries/transportation/nz-transport-agency-pai.html</a>												
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Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>
	In accordance with 8.7.2:	
	<ul style="list-style-type: none"> <li>The policy wording title is:</li> </ul>	Specific policy wording applicable to this contract will be provided by Risk and Assurance
	<ul style="list-style-type: none"> <li>Extraordinary exclusions, conditions, warranties, or endorsements to the policy are:</li> </ul>	Specific policy wording applicable to this contract will be provided by Risk and Assurance
<b>9.</b>	<b>VARIATIONS</b>	
	<<Guidance note: this should be consistent with the approach selected under the IFT (Schedule of Conditions of Tendering 105.3(e)). Please contact <a href="mailto:insurance@nzta.govt.nz">insurance@nzta.govt.nz</a> for all increases over 15% of the contract value>>	
<b>9.3</b>	<b>Valuation of Variations</b>	
<b>9.3.9</b>	For On-site Overheads:	<i>(select one to apply, (a) or (b))</i>
	(a) The prices and rates in the Schedule of Prices are inclusive of full allowance for On-site Overheads;	<input type="checkbox"/>
	(b) The prices and rates in the Schedule of Prices are exclusive of On-site Overheads and the allowances for On-site Overheads to be added in accordance with 9.3.9 is:	<input type="checkbox"/> <i>(select one to apply, (i), (ii), (iii), or (iv))</i>
	(i) Agreed percentage:	<input type="checkbox"/> [XX%]
	(ii) As nominated in the Schedule of Prices.	<input type="checkbox"/>
	(iii) As nominated in the Contractor's tender.	<input type="checkbox"/>
	(iv) A reasonable percentage.	<input type="checkbox"/>
<b>9.3.10</b>	For Off-site Overheads and Profit:	<i>(select one to apply, (a) or (b))</i>
	(a) The price and rates in the Schedule of Prices are inclusive of full allowance for Off-site Overheads and Profit;	<input type="checkbox"/>
	(b) The prices and rates in the Schedule of Prices are exclusive of Off-site Overheads and the allowances for Off-site Overheads and Profit to be added in accordance with 9.3.10 is:	<input type="checkbox"/> <i>(select one to apply, (i), (ii), (iii), or (iv))</i>
	(i) Agreed percentage:	<input type="checkbox"/> [XX%]
	(ii) As nominated in the Schedule of Prices.	<input type="checkbox"/>
	(iii) As nominated in the Contractor's tender.	<input type="checkbox"/>
	(iv) A reasonable percentage.	<input checked="" type="checkbox"/> <<Guidance note: this is the preferred default, although (iii) may be adopted with the Waka Kotahi Project Manager's approval>>
<b>9.3.11</b>	For time related Cost, the Working Day rate in compensation for time-related On-site Overheads and Off-site Overheads and Profit in relation to an extension of time to be applied in accordance with 9.3.11 is:	<i>(select one to apply, (a), (b), (c,) or (d))</i>
	(a) Agreed percentage:	<input type="checkbox"/> [XX%]

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>
	(b) As nominated in the Schedule of Prices.	<input type="checkbox"/>
	(c) As nominated in the Contractor's tender.	<input type="checkbox"/>
	(d) Reasonable compensation.	<input type="checkbox"/>
<b>9.3.15</b>	For processing of Variations, the percentage to be paid in accordance with 9.3.15 is:	<i>(select one to apply, (a), (b), (c,) or (d))</i>
	(a) Agreed percentage:	<input type="checkbox"/> [XX%]
	(b) As nominated in the Schedule of Prices.	<input type="checkbox"/>
	(c) As nominated in the Contractor's tender.	<input type="checkbox"/>
	(d) A reasonable Cost of processing the Variations.	<input checked="" type="checkbox"/> <<Guidance note: this is the preferred default, although (c) may be adopted with the Waka Kotahi Project Manager's approval>>
<b>10.</b>	<b>TIME FOR COMPLETION</b>	
<b>10.1</b>	<b>Commencement</b>	
<b>10.1.3</b>	<b>Winter Period</b>	[1 May] through [31 August] inclusive. <<Guidance Note: The Consultant shall consider the appropriate Winter Period for pavement and surfacing construction exclusion, noting that this will vary with the location of the works. If uncertain the Consultant shall consult with the Waka Kotahi Pavement Team. Any changes to the Winter Period will require consequential change to the Construction Season.>>
	<b>Construction Season</b>	[1 September] through [30 April] inclusive. <<Guidance Note: Any changes to the Winter Period above will require changes to the Construction Season.>>
<b>10.2</b>	<b>Due Date for Completion</b>	
<b>10.2.1</b>	The periods to be used for calculating the Due Date for Completion are:	<i>(select one to apply, (a), (b) or (c))</i>
	(a) For the Contract Works:	Click to enter number of Working Days <i>(Working Days)</i>
	(b) For any Separable Portions:	i) Separable Portion 1: [52] Weeks ii) Separable Portion 2: As agreed during the negotiation of this Separable Portion iii) Separable Portion 3: As agreed during the negotiation of this Separable Portion
	(c) In respect of the Contract Works the Number of Weeks nominated by the Contractor in their Tender Submission	Nil <<Guidance note: only used where the tenderer nominated duration process is used in the IFT>>
<b>10.4</b>	<b>Extensions of time</b> <<Guidance Note: The Consultant is reminded of the importance of specifying an accurate allowance for wet weather. This should be done on the basis of a robust assessment of the period to be allowed by the Contractor, based on historical wet weather records appropriate to the area and to the site. The Consultant should be aware of the different risk allocations associated with the options and select the one option appropriate to the project.>>	
<b>10.3.1(b)</b>	An allowance for inclement weather:	<< Guidance Note: If an allowance for inclement weather is to be provided for in the programme then select this first option and the appropriate wording for using an independent station or not. If the programme

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>
		<p>contains no allowance for inclement weather then select the "Nil" option and delete balance of text.&gt;&gt;</p> <p>[insert number] Working Days.</p> <p>No extension of time will be granted for "wet days" lost due to inclement weather in the period [Date] to [Date] for earthworks operations or surfacing works.</p> <p>A "wet day" is a working day in which the rainfall is [5] mm or greater. Any of the two immediately following days on which rainfall is [1] mm or greater shall also qualify as "wet days".</p> <p>&lt;&lt; Guidance note: to be used where practical to use an independent station&gt;&gt;</p> <ul style="list-style-type: none"> <li>This allowance is based on automatic weather station [identify weather station reference (eg NIWA NRC Station No. A547338) and physical location], records from [date] to [date]</li> <li>"wet days" are determined from the average over the [XX] year record</li> <li>All rainfall shall be measured at the specified weather station</li> </ul> <p>&lt;&lt; Guidance note: to be used where impractical to use an independent station due to location or cost&gt;&gt;</p> <ul style="list-style-type: none"> <li>This allowance is based on the average number of days that can be worked on Site in conventional earthworks operations from [Date] to [Date], and surfacing works from [Date] to [Date]</li> <li>The rain gauge will be located [location], and constructed in accordance with New Zealand meteorological standards</li> <li>Measurement of daily rainfall will be carried out by the Contractor. Rainfall data will be reported to the Engineer on a weekly basis.</li> </ul> <p>&lt;&lt;OR&gt;&gt;</p> <p>Nil. Full allowance for inclement weather is included in the Due Date for Completion.</p>
<b>10.4</b>	<b>Practical Completion Certificate</b>	
<b>10.4.5</b>	Prior to issue of the Practical Completion Certificate:	<i>(select one to apply, (a), (b) or (c))</i>
	(a) Producer Statements in the form of Schedule 6 are required;	<input checked="" type="checkbox"/> <<Default>>
	(b) Producer Statements as set out in the following parts of the Contract are required:	<input type="checkbox"/> Principal's Requirements [Appendix B]
	(c) Producer Statements are not required.	<input type="checkbox"/>
<b>10.5</b>	<b>Damages for late completion</b>	<p>&lt;&lt;Guidance note: Where liquidated damages are provided for, the amount must be a genuine pre-estimate of the likely loss that would result from delay of completion. Where liquidated damages are provided for Separable Portions it may be necessary to provide different rates for each Separable Portion.</p> <p>Where liquidated damages are not provided, the Principal can recover and the Contractor will be liable only for such actual loss as the Principal can prove has resulted from the late completion, being loss of a kind reasonably foreseeable to the parties at the time the contract was made as being likely to result&gt;&gt;</p>

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>
10.5.1	Liquidated damages shall be applied as follows:	
	<ul style="list-style-type: none"> <li>In respect of the Contract Works:</li> </ul>	<input type="checkbox"/> [\$\$\$] per Working Day
	<ul style="list-style-type: none"> <li>In respect of the Separable Portions:</li> </ul>	<input checked="" type="checkbox"/> i) Separable Portion 1: Nil ii) Separable Portion 2: Nil iii) Separable Portion 3: As determined by the Engineer during negotiation of this Separable Portion
<b>10.6</b>	<b>Bonus for early completion</b>	
10.6.1	Is a bonus to be payable?	Yes or no
	<ul style="list-style-type: none"> <li>If yes, the bonus for the Contract Works is:</li> </ul>	[#####] per Working Day
	<ul style="list-style-type: none"> <li>If yes, bonuses for any Separable Portions are:</li> </ul>	[#####] per Working Day
<b>11.</b>	<b>DEFECTS LIABILITY</b>	
<b>11.1</b>	<b>Defects Notification Period</b>	
	The Defects Notification Period shall be: (3 Months unless otherwise stated)	
	<ul style="list-style-type: none"> <li>In respect of the Contract Works:</li> </ul>	[52] weeks
	<ul style="list-style-type: none"> <li>In respect of the Separable Portions:</li> </ul>	i) Separable Portion 1: Nil ii) Separable Portion 2: Nil iii) Separable Portion 3: [52] weeks
<b>11.3</b>	<b>Final Completion Certificate</b>	
11.3.2	Prior to issue of the Final Completion Certificate:	<i>(select one to apply, (a), (b) or (c))</i>
	(a) Producer Statements in the form of Schedule 6 are required;	<input checked="" type="checkbox"/> <<Default>>
	(b) Producer Statements as set out in the following parts of the Contract are required:	<input type="checkbox"/> Principal's Requirements [Appendix B]
	(c) Producer Statements are not required.	<input type="checkbox"/>
<b>11.5</b>	<b>Warranties</b>	
11.5.1		<i>(select one to apply, (a) or (b))</i>
	(a) No warranties are required;	<input checked="" type="checkbox"/>
	(b) The Contractor shall provide warranties as set out in the Contract for the following items of work:	<input type="checkbox"/> [State the items]
<b>11.6</b>	<b>Guarantees</b>	
11.6.1, 11.6.2		<i>(select one to apply, (a) or (b))</i>
	(a) No guarantees are required;	<input checked="" type="checkbox"/> <<Default>>
	(b) The Contractor shall provide guarantees in the following form:	<input type="checkbox"/> [State form]

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>
<b>12.</b>	<b>PAYMENTS</b>	
<b>12.1</b>	<b>Contractor's payment claims</b>	
<b>12.1.3(b) (iii)</b>	<b>Advances for Materials delivered to the Site</b>	<i>(select one to apply, (a) or (b))</i>
	(a) Advances for Materials delivered to the Site but which have yet to be incorporated in the Contract Works shall not be made;	<input checked="" type="checkbox"/> <<Guidance note: this is the default, the Waka Kotahi Project Manager's approval is required if option (b) below is selected>>
	(b) Advances for Materials delivered to the Site but which have yet to be incorporated in the Contract Works shall be made, subject to the following conditions:	<input type="checkbox"/> Written agreement from the Engineer
<b>12.1.3(b) (iv)</b>	<b>Advances for Temporary Works or Plant</b>	<i>(select one to apply, (a) or (b))</i>
	(a) Advances for Temporary Works or Plant shall not be made.	<input checked="" type="checkbox"/> <<Guidance note: this is the default. The Waka Kotahi Project Manager's approval is required if option (b) below is selected>>
	(b) Advances for Temporary Works or Plant shall be made, subject to the following conditions:	<input type="checkbox"/> [state any conditions]
<b>12.1.3(b) (iv)</b>	<b>Advances for Materials not yet on Site</b>	<i>(select one to apply, (a) or (b))</i>
	(a) Advances for Materials not yet on Site shall not be made.	<input checked="" type="checkbox"/> <<Guidance note: this is the default. The Waka Kotahi Project Manager's approval is required if option (b) below is selected>>
	(b) Advances for Materials not yet on Site shall be made, subject to the following conditions:	<input type="checkbox"/> (a) The Contractor agrees to execute an Agreement in respect of off-site materials in the form as set out in the Fourteenth Schedule of these Conditions of Contract or other appropriate form as notified by the Principal. (b) The Contractor shall ensure that at all times the Materials are fully insured in accordance with the provisions of clauses 8.1 and 8.4 of the General Conditions of Contract (as appropriate), and supply evidence of same to the Principal. (c) The Contractor shall keep the Principal indemnified against loss, damage costs, claims, expenses or liability incurred by the Principal in respect to any loss of, or damage to, or defect in all or part of the Materials to the extent that the Principal is not so indemnified under clause 7.1 of the General Conditions of Contract

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>
		<p>(d) Materials shall be stored on approved sites in such a manner that will ensure the preservation of the quality, fitness for the work and security. They shall be so located and disposed that prompt and proper inspection may be made. The Contractor warrants that in relation to such Materials, those Materials when incorporated into the Contract Works will be compliant with any technical requirements as required under the Contract Document. The Engineer shall be given reasonable access to inspect the relevant Materials.</p> <p>(e) Following payment to the Contractor ownership of the Materials shall vest in the Principal as legal and beneficial owner free of all charges and encumbrances of any nature whatsoever. The Contractor shall ensure that all secured creditors of the Contractor are given written notice of the existence of the Principal's ownership of the Materials and of the conditions of the relevant advance. Should any portion of the Materials no longer be required for the Contract Works, the Contractor shall be responsible for all costs of storage, handling and disposal of the surplus Materials. The Contractor shall only dispose of such surplus Materials following a written instruction from the Engineer. Ownership of such surplus Materials shall re-vest in the Contractor as the Contractor disposes of such surplus Materials. The Principal shall recover the value of disposed material from subsequent progress payments, at the same rates as paid to the Contractor for the Materials stored off site.</p> <p>(f) The advance payment for the Materials, shall be recovered progressively by deduction from progress payments as such Materials are incorporated into the Contract Works</p>
<b>12.3</b>	<b>Retention monies</b>	
<b>12.3.1, 12.3.2</b>	The percentage to be retained from each progress payment and the limit of the total sums retained shall be in accordance with the following:	<i>(select one to apply, (a) or (b))</i>
	<p>(a) For the Contract Works, a total retention of:</p> <ul style="list-style-type: none"> <li>• 10% on the first \$200,000, and</li> <li>• 5% on the next \$800,000, and</li> </ul>	<p><input checked="" type="checkbox"/></p> <p>For Separable Portions 1 and 2: Nil            Separable Portion 3: The scale on the left.</p>

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>
	<ul style="list-style-type: none"> <li>1.75% on amounts in excess of \$1,000,000, and</li> <li>With a maximum total retention when aggregated of \$200,000</li> </ul>	<p>&lt;&lt;Default for D&amp;C Basic and contracts less than \$20 million &gt;&gt;</p> <ul style="list-style-type: none"> <li></li> </ul>
	<p>(b) For the Contract Works, the retention scale in the right hand column:</p>	<p><input type="checkbox"/></p> <p>For Separable Portions 1 and 2: Nil          Separable Portion 3: The following:          [Nil] &lt;&lt;use this if Bond in Lieu of retentions option selected. Value of bond should be the applicable retention plus 10%&gt;&gt; &lt;&lt;OR&gt;&gt;</p> <p>A total retention of:</p> <ul style="list-style-type: none"> <li>[XX%] on the first [\$xxx,xxx], plus</li> <li>[x%] of the next [\$xxx,xxx], plus</li> <li>[x%] on amounts in excess of [\$xxx,xxx], and</li> <li>With a maximum total retention of [\$xxx,xxx] when aggregated</li> </ul> <p>&lt;&lt;Guidance note: for large construction contracts over \$20 million, the capped retention limit needs to be approved via the Senior Managers Procurement and Risk &amp; Assurance&gt;&gt;</p>
<p>The amount to be retained in respect of the Contract Works in accordance with this clause shall not be reduced, until all Asset Register (RAMM) information required to be submitted at or before Practical Completion, has been submitted to the Engineer. The retention monies shall not be reduced, until all RAMM information required to be submitted at or before the end of the Defects Notification Period has been submitted to the Engineer &lt;&lt;Guidance Note: Project Specification to detail all RAMM information required from the Contractor for RAMM updates.&gt;&gt;</p>		
<b>12.3.3</b>	<b>Bond in lieu of retention</b>	<i>(select one to apply, (a) or (b))</i>
	<p>(a) The Contractor may provide a bond in lieu of retentions. The percentage to be retained from each progress payment and the limit of the total sums retained shall be nil if the Contractor provides a Bond in Lieu of Retentions (Schedule 5). The value of the bond shall be the applicable retention amount plus a further 10%</p>	<input type="checkbox"/>
	<p>(b) The Contractor may not provide a bond in lieu of retentions</p>	<input type="checkbox"/>
<b>12.8</b>	<b>Cost fluctuations</b>	<i>(select one to apply, (a), (b) or (c))</i>
	<p>(a) Cost fluctuations shall not be paid;</p>	<p><input checked="" type="checkbox"/></p> <p>In respect of Separable Portions 1 and 2 &lt;&lt;Guidance note: For some contracts it may be appropriate to allow cost fluctuations for separable portions 1 &amp; 2 – advice on same can be sought from procurement@nzta.govt.nz &gt;&gt;</p>
	<p>(b) Cost fluctuations shall be paid in accordance with Appendix A;</p>	<p><input type="checkbox"/> &lt;&lt;Guidance Note: This option is not used with Waka Kotahi contracts&gt;&gt;</p>

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>
	(c) Cost fluctuations shall be paid in accordance with the method described in Schedule 18	<input checked="" type="checkbox"/> In respect of Separable Portion 3 <<Guidance note: choose this option. when contract includes bitumen supply or if the contract period exceeds 12 months>>
<b>12.13</b>	<b>Goods and services tax</b>	
<b>12.13.2</b>	Payment Schedules provided by the Engineer:	<i>(select one to apply, (a) or (b))</i>
	(a) Shall not be in the form of a tax invoice;	<input type="checkbox"/>
	(b) Shall be in the form of a buyer created tax invoice and the parties agree not to issue any other tax invoice for items covered by the Payment Schedule.	<input type="checkbox"/>
<b>13.</b>	<b>DISPUTES</b>	
<b>13.4</b>	<b>Arbitration</b>	
<b>13.4.3</b>	If required, the arbitrator shall be nominated by the following Person:	The then President of the New Zealand Law Society or his or her nominee
<b>15.</b>	<b>SERVICE OF NOTICES</b>	
<b>15.1.2</b>	For the purposes of service of written notice:	
	(a) The address of the Principal is:	
	Postal address:	
	Delivery address:	
	Mark the attention of:	
	Email address:	
	Other agreed means of electronic communication and address detail:	
	(b) The address of the Contractor is:	
	Postal address:	
	Delivery address:	
	Mark the attention of:	
	Email address:	
	Other agreed means of electronic communication and address detail:	
	(c) The address of the Engineer is:	
	Postal address:	
	Delivery address:	
	Mark the attention of:	
	Email address:	
	Other agreed means of electronic communication and address detail:	



## Schedule 2 – Special Conditions of Contract – Other Conditions of Contract

These conditions amend and supplement the General Conditions. Clause numbers refer to NZS 3916:2013.

### SECTION 1 – INTERPRETATION

*In addition to 1.2 Definitions, add in the following definitions:*

- **CONSTRUCTION SEASON** means the period specified in Schedule 1.
- **DATA BREACH** means any incident involving facilities, systems, personnel, suppliers and/or Subcontractors that:
  - (a) involves (or gives rise to a real risk of) unauthorised or accidental access to, or use, disclosure, alteration, loss or destruction of, any of the Principal's Personal Information; or
  - (b) prevents the Principal from accessing the Principal's Personal Information on either a temporary or permanent basis; or
  - (c) would prompt a reasonable and prudent person in the Principal's position to notify (or consider notifying) the incident to the Privacy Commissioner and/or one or more individuals under the NZ Privacy Laws.
- **HSAW ACT** means the Health and Safety at Work Act 2015.
- **JOINT VENTURE** has the meaning given to that term in 17.1.1.
- **KEY PERSONNEL** means the Contractor's personnel nominated for the positions under the relevant skills Form C in the Contractor's Tender and any other persons identified by the Principal as key personnel with the Contractor's prior approval.
- **LIABILITY CAP** has the meaning given to that term in 7.1.5.
- **LIVING WAGE RATE** means the higher of:
  - (a) \$22.75 per hour; and
  - (b) The New Zealand living wage hourly rate promoted by Living Wage Aotearoa New Zealand (or similar or equivalent nationwide living wage hourly rate) at the time the relevant Contract Works are carried out.
- **NZ PRIVACY LAWS** means the Privacy Act 2020, and any New Zealand laws, regulations, codes of practice and approved information sharing agreements insofar as they regulate the collection, processing, storage, use and/or disclosure of information about individuals.
- **OIA** means the Official Information Act 1982.
- **PERSONAL INFORMATION** has the meaning given in the Privacy Act 2020.
- **PRINCIPAL'S PERSONAL INFORMATION** means Personal Information made available to the Contractor by or on behalf of the Principal, or collected by the Contractor for the Principal, in connection with this Contract.
- **PROJECT MANAGEMENT BOARD** means the project board formed by the Principal and the Contractor for the project.
- **RMA** means the Resource Management Act 1991.
- **STATUTORY FUNCTIONS** has the meaning given to that term in 1.3.11.
- **UNDERGROUND SERVICES** means existing pipework, cables, conduits, conveying services such as electricity, gas, water, waste and electronic communications, located below the existing ground service.

- **WILFUL DEFAULT** means an intentional or reckless act or omission carried out with disregard for harmful and avoidable consequences.
- **WINTER PERIOD** means the period specified in Schedule 1.

*Insert new 1.3.9 – 1.3.11 as follows:*

- 1.3.9** If any one or more of the provisions contained in the Contract is invalid, illegal or unenforceable in any respect under any applicable Act or Regulation, the validity, legality and enforceability of the remaining provisions contained in the Contract will not in any way be affected or impaired.
- 1.3.10** No amendment to the Contract will be binding on the parties unless in writing and signed by an officer or representative of each party having the authority to do so.
- 1.3.11** The Contractor recognises that the Principal has certain statutory powers, functions and/or regulatory roles, and is bound by particular statutory responsibilities (**Statutory Functions**). The Contractor acknowledges and agrees that the Contract does not seek to derogate from such Statutory Functions and, accordingly:
- (a) nothing in the Contract in any way influences or restricts the exercise of the Statutory Functions, or binds the Principal to make a particular decision in respect of any Statutory Function exercised by it; and
  - (b) if there is a conflict between an obligation under the Contract, and a Statutory Function, the applicable Statutory Function prevails to the extent of the conflict.

## **SECTION 2 – THE CONTRACT**

*Add new 2.1.3, 2.1.4 and 2.1.5:*

- 2.1.3** The Contract is an early contractor involvement contract that involves the participation of the Contractor in the development of the project at an early stage.
- 2.1.4** The Contract is divided in three Separable Portions:
- (a) Separable Portion 1: [Investigation and Preliminary Design (Detailed Business Case)];
  - (b) Separable Portion 2: [Project Development, Planning, Post Lodgement Planning and Specimen Design (Pre-implementation)];
  - (c) Separable Portion 3: [Detailed Design and Construction (Pre-implementation and Implementation)].
- 2.1.5** Prior to commencement of each of Separable Portions [1, 2] and 3, the Principal and the Contractor shall enter negotiations and endeavour to agree the commercial terms and programme for the relevant Separable Portion. The Principal and the Contractor shall bear their own Costs in the negotiation. The Principal reserves the right to exercise its discretions under 10.8 at any stage of the negotiation.
- 2.1.6** Any amendments to the Contract agreed as part of the negotiations for subsequent Separable Portions will be documented in an amendment agreement signed by both the Principal and the Contractor.

*Delete 2.2.5 and replace with the following:*

- 2.2.5** No discrepancy in the Schedule of Prices shall be treated as a Variation.

*Delete 2.9 and replace with the following:*

- 2.9.1** Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Contract by a party does

not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under the Contract.

- 2.9.2** A waiver or consent given by a party under the Contract is only effective and binding on that party if it is given or confirmed in writing by that party.
- 2.9.3** Any waiver by a party of its rights, powers and/or remedies under 2.9.2 will not operate as a waiver of its rights, powers and/or remedies in respect of any subsequent or continuing breach of the Contract.

## **SECTION 4 – SUBCONTRACTS**

*Add the following at the end of 4.1.3:*

The Contractor will be responsible for the acts, omissions and defaults of every Subcontractor (notwithstanding that the Subcontractor may have been approved by the Principal or the Engineer) in relation to or in connection with the Contract Works, including their officers, employees and agents, as if they were the acts, omissions or defaults of the Contractor (all such acts, omissions and defaults will be deemed to be acts, omissions and defaults of the Contractor), and the Contractor will remain primarily liable to discharge all of its obligations under the Contract.

*Add a new 4.1.6 as follows:*

- 4.1.6** Each subcontract entered into or proposed to be entered into by the Contractor will prohibit any assignment or novation of the subcontract by the Subcontractor and will prohibit any further subcontracting without the prior approval of the Engineer.

## **SECTION 5 – GENERAL OBLIGATIONS**

*Delete 5.1.9 and replace with the following:*

- 5.1.9** The Contractor shall:
- (a) as part of the programme it is to prepare under 5.10, submit to the Engineer for approval a documentation programme which makes allowance for draft Design Documentation to be submitted to the Engineer in a manner and at a rate which will give the Engineer a reasonable opportunity to review such documentation within the period of time provided in this 5.1; and
  - (b) submit the Design Documentation it prepares to the Engineer in accordance with the documentation programme approved by the Engineer under 5.1.9(a)

*Add the following to 5.1.13:*

- 5.1.13** No review of, comments upon, rejection or approval of, or failure to review or comment upon or reject or approve, any Design Documentation prepared by the Contractor or any other direction by the Engineer about the Design Documentation shall:
- (a) relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities whether under the Contract Documents or otherwise according to law; or
  - (b) prejudice the Principal's rights against the Contractor whether under the Contract Documents or otherwise according to law.

*Add new 5.1.17 - 5.1.21 as follows:*

- 5.1.17** The Contractor must advise the Engineer of any potential or actual conflicts of interest within its own organisation or with any individual or organisation engaged to complete any of the Contract Works. This includes individuals and organisations engaged in any Subcontractor or other supply arrangement.
- 5.1.18** The Contractor must advise the Engineer the means that it intends to use to remove or mitigate such conflicts of interest.

- 5.1.19** The Engineer must inform the Principal of any conflicts of interest notified to the Engineer by the Contractor under 5.1.17, and the Engineer will, in discussion with the Principal and taking into account (but not bound by) the Contractor's intended action, decide the appropriate action required to remove or mitigate any actual or potential conflict of interest. The Engineer must ensure the Contractor implements such required action.
- 5.1.20** It is essential that the Contractor always acts in its dealings with the Principal, its officers, employees, advisers, contractors and agents in a manner consistent with the highest standards of probity. The Contractor must, if required by the Principal, comply with any probity guidelines and principles promulgated by or on behalf of the Principal from time to time, and must ensure that all Subcontractors do the same.
- 5.1.21** The Contractor must comply with the *Standards of Integrity and Conduct* issued by the State Services Commission (see <https://www.procurement.govt.nz/assets/procurement-property/documents/supplier-code-of-conduct.pdf>) and any other relevant codes of conduct notified by the Principal to the Contractor from time to time.

*Delete 5.7.1 and 5.7.2 and replace with the following:*

- 5.7.1** The Contractor and the Principal shall comply with the HSAW Act. So far as the Site and the Contract Works are under the Contractor's control, the Contractor shall take all reasonably practicable steps to keep them in an orderly state and in such a condition as to avoid damage to Persons and property.
- 5.7.2** The Contractor shall take all reasonably practicable steps to:
- (a) provide and maintain a safe working environment;
  - (b) identify and manage all risks to health and safety;
  - (c) ensure that any employee, Subcontractor, visitor to the Site and other persons are protected as far as reasonably practicable from risks which are under the Contractor's control; and
  - (d) have proper procedures for dealing with emergencies that may arise.

*Delete 5.7.4 and replace with the following:*

- 5.7.4** The Contractor shall give to the Principal through the Engineer a copy of any report which the Contractor is required to make to a public authority under the HSAW Act.

*Add a new 5.7A as follows;*

**5.7A Further health and safety provisions**

- 5.7A.1** The Contractor will implement and carry out an audit and inspection regime as required by the Principal and/or any relevant health and safety requirements.
- 5.7A.2** The Contractor warrants to the Principal that the Contractor will, so far as is reasonably practicable, ensure that no act or omission of it, any Subcontractor and any Worker on any part of the Site (or any other area), does or is likely to give rise to the issue of an improvement or prohibition notice, enforcement proceedings or a prosecution under the HSAW Act against the Principal, the Contractor, a Subcontractor and/or any other Worker.
- 5.7A.3** The Principal (or the Engineer) may, at any time during performance of the Contract Works, conduct a compliance audit with respect to the Contractor's compliance with its health and safety obligations under the Contract. The Contractor must immediately comply with all requests and requirements of the Principal (or the Engineer) in relation to or in connection with any such audit. In addition, if the Principal or the Engineer is of the opinion that the Contractor has failed to comply with any health and safety obligations under the Contract, the Principal or the Engineer may advise the Contractor and instruct the Contractor to cease or not commence the Contract Works or part of the Contract Works until the Contractor complies. Any such instruction will not constitute a Variation.

Add a new 5.10.11 as follows:

**5.10.11** Any programme required by 5.10 is intended for use as a management and reporting tool. Nothing stated in any such programme, and no consent or approval given by the Principal or the Engineer in respect of any such programme, will relieve the Contractor of its obligation to proceed with the Contract Works and complete the Contract Works on or by the Due Dates for Completion and nor will anything in any such programme modify or vary amounts to be paid and/or the payment terms under the Contract.

Delete 5.11.1 and replace with the following:

**5.11.1** In respect of the Contract and the Contract Works, the Principal and the Contractor shall comply with all statutes, secondary legislation, instruments, and bylaws that may be applicable to the Contract Works.

Delete 5.11.10 and replace with the following:

**5.11.10** If, after the closing date for tenders, the Cost to the Contractor of performing the Contract increases or decreases by reason of:

- (a) the making of or an amendment to any statute, secondary legislation, instrument, or bylaw; or
- (b) the imposition by the Government or a local authority of any royalty, fee, levy, or toll or any amendment to them,

and the effects are not otherwise provided for in the Contract, the effect shall be treated as a Variation.

Replace the word "The" with the words "The Principal (via the Engineer), the" before the word "Contractor" at the start of 5.21.1.

Replace the word "Either the" with the words "The Principal (via the Engineer), the" at the start of 5.21.2.

Add new 5.22 as follows:

## **5.22 Key Personnel**

**5.22.1** The Contractor must use all reasonable endeavours to:

- (a) supply and retain the Key Personnel and not remove the Key Personnel from their position without the prior written approval of the Principal or Project Management Board;
- (b) replace any of the Key Personnel if they are unable to undertake work due to termination of employment, resignation, illness, disability, death or other circumstances reasonably beyond the control of the Contractor. The parties acknowledge that the Contractor's primary focus is to ensure the continuity and quality of the performance of its obligations. Consequently, the Contractor must:
  - (i) promptly advise the Principal or Project Management Board if it is necessary to replace Key Personnel; and
  - (ii) provide a suitable replacement or substitute during the period of unavailability that has at least the same or better status, skills, qualifications, expertise and experience as the Key Personnel to be replaced; and
  - (iii) consult with the Principal or Project Management Board in relation to any proposed replacement; and
  - (iv) if requested by the Principal or Project Management Board, provide details of the proposed replacement to the Principal or Project Management Board; and
- (c) ensure that each of the Key Personnel is available at the times set out in the Contractor's Tender or as otherwise required to ensure the completion of such portion of the services as are assigned to them.

**5.22.2** If any Key Personnel are not available to perform the role and responsibilities required of that Key Personnel because of an act or omission of the Contractor, and the Contractor does not within a period acceptable to the Principal **and Project Management Board** replace the relevant Key Personnel with a person of equivalent skills and experience, the Principal reserves the right to withhold the amount specified in Schedule 1 – Special Conditions until such time as a suitable replacement has been made and notified to the Principal **and Project Management Board**. The monies retained, shall be paid to the Contractor by payment as part of the progress payment due after the replacement has been made.

*Add new 5.23 as follows:*

## **5.23 Information and Security**

**5.23.1** The Principal expects the Contractor will ensure that it and its personnel (including Subcontractors) providing the Contract Works will:

- (a) consistently demonstrate the principles and behaviours set out in the Principal's information management and security policies, processes, procedures and supporting controls (as advised to the Contractor from time to time);
- (b) not access the Principal's information or systems except to the extent necessary to provide the Contract Works and for no other reason;
- (c) take all reasonable steps to prevent breaches of records storage, information technology systems and equipment or no unlawful disposition or sharing of any data, information or records, including:
  - (i) preventing unauthorised use or destruction;
  - (ii) preventing unauthorised persons obtaining, or attempting to obtain access to the Contract Works or any of the Principal's data/information;
  - (iii) using or attempting to use any of the Principal's data/information for purposes not authorised or permitted by the Contract;
  - (iv) taking all steps necessary to prevent the introduction, contamination and spread of any virus or other malware into computer systems, and only use equipment, software and parts which are free of viruses; and
  - (v) except with the Principal's written permission, not introduce or use magnetic media, flash drives or any other form of portable data storage.
- (d) provide interim and final data/information sets, created in the delivery of the Contract Works such as research, asset, customer or geo-coded data with metadata to minimum standards, appropriately structured and described, and in formats as agreed;
- (e) notify all information and security incidents and concerns to the Principal and the Engineer in a timely manner to facilitate a prompt response to help resolve issues and prevent or minimise any potential damage to data/information and equipment; and
- (f) return all material relating to physical and system access privileges immediately to the Principal at the end of the Contract.

*Add new 5.24 as follows:*

## **5.24 Resource Management Act 1991**

**5.24.1** In undertaking the Contract Works, the Contractor warrants to the Principal that neither it nor any Subcontractor will do or omit to do (or permit the same) anything, or use materials, substances or processes which:

- (a) would or could discharge a contaminant into the environment that is not in compliance with any Act, Regulation or licence (as defined in 5.11.2);

- (b) is a breach of any duty or obligation under the RMA; or
- (c) does or is likely to give rise to the issue of an abatement notice, enforcement proceedings or an excessive noise direction under the RMA against the Principal, the Contractor, Subcontractor or any other Person.

**5.24.2** To the extent permitted by law, the Contractor will indemnify the Principal against any loss, claim, damage, expense, liability or proceeding suffered or incurred at any time by the Principal, as a direct or indirect result of an enforcement order, abatement notice, or excessive noise direction being issued to the Principal under the RMA or other legislation or any notice (including any order, direction or other enforcement mechanism), where such order, notice or direction is issued because the Contractor failed to comply with the provisions (including any conditions) of any outline plan, designation, resource consent, building consent, archaeological authority, other consent or other licence (as defined in 5.11.2) issued in respect of the Contract Works, or for failure to obtain any licence (as defined in 5.11.2) for the Contract Works.

*Add new 5.25 as follows:*

## **5.25 Living Wage**

- 5.25.1** The Contractor must pay any employee or Subcontractor that performs security or cleaning services in connection with the Contract Works (including any such services provided in respect of the Site), a gross hourly rate (before deductions) equal to or more than the Living Wage Rate. The Contractor shall also use reasonable endeavours to ensure that any employee or contractor engaged by a Subcontractor that performs security or cleaning services in connection with the Contract Works (including any such services provided in respect of the Site) is paid a gross hourly rate (before deductions) equal to or more than the Living Wage Rate.
- 5.25.2** The Contractor shall maintain a complete and correct set of records relating to the Contractor's compliance with its obligations under 5.25.1 and will use reasonable endeavours to ensure that each relevant Subcontractor also maintains a complete and correct set of records relating payment by that Subcontractor as contemplated by 5.25.1.
- 5.25.3** The Principal (or the Engineer) may, at any time during the performance of the Contract Works, conduct a compliance audit with respect to the Contractor's obligations (or a relevant Subcontractor's obligations) under 5.25.1. The Contractor must immediately comply with (and will use reasonable endeavours to ensure each relevant Subcontractor complies with) all request and requirements of the Principal (or the Engineer) in relation to or in connection with any such audit.
- 5.25.4** Any change to the Living Wage Rate shall be treated as a Variation and the value will be determined in accordance with 9.3, provided that the Contractor will not be entitled to recover any more margin than the Contractor would have received but for the change to the Living Wage Rate.
- 5.25.5** The Contractor must submit to the Principal on an annual basis throughout the duration of the Contract and on issue of the Final Completion Certificate, a signed declaration (in a form approved by the Principal) certifying that the Contractor (or a relevant Subcontractor) does comply with and has at all times complied with the obligations to pay a Living Wage Rate in accordance with this 5.25.

## **SECTION 7 – INDEMNITY**

*Add new 7.1.5-7.1.8 as follows:*

- 7.1.5 Liability Cap:** Notwithstanding any other provision in this Contract but subject to 7.1.6, the Contractor's maximum aggregate liability to the Principal under this Contract (including any indemnity under the Contract) arising out of or in connection with the performance of the Contract

Works and any other obligation under this Contract shall be limited to the sum set out in Schedule 1 – Special Conditions (**Liability Cap**).

**7.1.6 Exclusions from the Liability Cap:** The Liability Cap does not apply to nor will it be reduced by the Contractor's liability:

- (a) for Wilful Default, fraudulent or criminal acts, including by the Contractor's officers, employees, Subcontractors, consultants, or agents;
- (b) for the Contractor's repudiation of the Contract;
- (c) arising from abandonment of the Contract Works;
- (d) under 7.1.1(b) and 7.1.1(c) (insofar as such Costs relate to liability under 7.1.1(b));
- (e) under 5.12.2;
- (f) that cannot be excluded at law;
- (g) for the amount of any insurance proceeds recovered under an insurance policy, including any proceeds that would have been recovered, but for any failure to claim and/or breach of the relevant insurance policy by the Contractor, or due to the failure by the Contractor to maintain an insurance policy;
- (h) for the breach of any statutory obligation; or
- (i) for any costs or expense which the Contractor is obliged to expend in order to carry out or complete the Contract Works in accordance with the Contract.

**7.1.7 Consequential Loss:** Notwithstanding any other provision of the Contract but subject to 7.1.8, neither party will be liable to the other party (whether based on contract, infringement, negligence, strict liability, tort or otherwise) for any loss of profit, loss of anticipated profits, loss of revenue, loss of use, loss of production or down time costs, loss of opportunity, loss of business, loss of contract, loss of goodwill, or the cost of obtaining any new financing or maintaining any existing financing nor for any indirect or consequential loss or damage in relation to the Contract Works.

**7.1.8 Exclusions to Consequential Loss:** Notwithstanding 7.1.7, the Contractor shall remain liable for the following losses, which for the purpose of this 7.1.8 will be deemed direct losses:

- (a) liability for Wilful Default, fraudulent or criminal acts of the Contractor, including by the Contractor's officers, employees, Subcontractors, consultants or agents;
- (b) liability in the case of the Contractor repudiating the Contract;
- (c) liability to indemnify the Principal under 5.12.2, 7.1.1(b) or 7.1.1(c);
- (d) liability of the Contractor to the extent of amounts received (or, but for an act or omission of the Contractor or the Contractor's officers, employees, contractors, consultants or agents) by the Contractor in respect of any such liability pursuant to any of the insurance policies required to be effected and maintained in accordance with the Contract;
- (e) liability that cannot be limited by law; and
- (f) liability for any liquidated damages or damages for delay.

## SECTION 8 – INSURANCES

*Add new 8.1.7 as follows:*

**8.1.7** Responsibility for pursuing any claim under any insurance policy shall rest with the party with whom the fault lies. Where the Contractor is pursuing a claim, the Contractor is required to advise the Engineer of the outcome of the claim and provide the Engineer with information in relation to the claim on request.

*Add new 8.2.3(c) as follows:*



**8.2.3 (c)** The actions of one insured shall not affect the rights of any other insured.

*Delete 8.5.1(c).*

*Delete 8.9.2(c).*

## **SECTION 10 – TIME FOR COMPLETION**

*Delete 10.1.1 and replace with the following:*

**10.1.1** The Contract period shall commence on the execution of the Contract Agreement.

*Add new 10.1.3 as follows:*

**10.1.3** No pavement or surfacing construction shall take place over the Winter Period without the prior written approval of the Engineer. Delivery of pavement and surfacing work shall be completed in the Construction Season. No final surfacing is to be undertaken without the prior written approval of the Engineer.

*Add new 10.3.8 - 10.3.13 as follows:*

**10.3.8** Where an extension of time granted by the Engineer necessitates surfacing activities to be programmed in the Winter Period, the Engineer may instruct that the Contract be suspended to avoid the completion of surfacing works in the Winter Period. In such a case the Contractor shall be entitled to only the direct and on-site overhead costs to maintain the site over the period of suspension. The Engineer may require that the Contractor apply a temporary holding surfacing or any other works required to maintain the site to an acceptable standard. No off-site overheads or profits shall be payable over this period regardless of the reason for the extension of time.

**10.3.9** Where no extension of time is granted, the Contractor is responsible for applying a temporary holding surfacing or to complete any other works that may be necessary to maintain the site over the Winter Period, at no additional cost to the contract.

**10.3.10** Where there has been a delay to the Contract Works that does not entitle the Contractor to an extension of time pursuant to 10.3.1, or if in the Engineer's opinion it is likely that the Contractor will not achieve Practical Completion by the relevant Due Date for Completion, the Contractor shall, at its own cost, take all steps as the Engineer may reasonably require to expedite progress, including by applying additional resources, airfreighting items, working longer hours and/or otherwise accelerating the works, so as to ensure compliance with the schedule and programme requirements under the Contract.

**10.3.11** The following rules will be applied to assessing a claim for an extension of time:

- (a) the Contractor's delay allowance included in any programme will be ignored;
- (b) the event or circumstance which causes delay must be one which is mentioned in 10.3.1;
- (c) the event or circumstance in respect of which the extension of time is sought must or will (either in isolation or borne out of other events or circumstances for which the Contractor does not assume responsibility for under the Contract) cause actual delay to the critical path elements of the Contract Works, which the Contractor must show and demonstrate to the reasonable satisfaction of the Engineer;
- (d) for events or circumstances that concurrently cause the delay the Contractor will be entitled to an extension of time for only the net effect of the concurrent delay; and
- (e) to the extent that the delay could have been reasonably avoided or mitigated, the Contractor will not be entitled to an extension of time.

**10.3.12** The Contractor will be entitled to claim and the Principal will be entitled to grant an extension of time to the relevant Due Date for Completion whether or not the qualifying extension of time ground occurs before or after the relevant Due Date for Completion (including, for the avoidance of doubt, in relation to the net effect of any Variation).

**10.3.13** The Principal may, at its sole and absolute discretion and notwithstanding any other provision of the Contract to the contrary, at any time and from time to time and for any reason it considers sufficient but without being under an obligation to do so, by notice to the Contractor unilaterally extend any Due Date(s) for Completion. For the avoidance of any doubt, any such extension will not require the Contractor to slow down the progress of the Contract Works and the Contractor is entitled to complete the Contract Works prior to the date of any such extended Due Date(s) for Completion. The Principal is not entitled to exercise its right under this 10.3.13 in order to defeat an entitlement of the Contractor under 10.3.7.

*Add a new 10.5.4 as follows:*

**10.5.4** The parties agree that the liquidated damages represent no more than a genuine pre-estimate of the loss likely to be suffered by the Principal in the event of the Contractor failing to achieve Practical Completion by the respective Due Date for Completion and/or the liquidated damages are reasonable and proportionate to the Principal's legitimate interests in the Contractor achieving Practical Completion by the respective Due Date for Completion, and are not a penalty.

*Add new 10.8 as follows:*

## **10.8 Principal's Discretion**

**10.8.1** Without limiting the rights and discretions reserved to the Principal in the Contract Documents, the Principal may, at its sole discretion, for any reason whatsoever and without prior notice, elect to terminate the Contract following Practical Completion of any Separable Portion and prior to commencement of the subsequent Separable Portion.

**10.8.2** If the Principal elects to terminate the contract under 10.8.1:

- (a) the Principal shall give written notice to the Contractor of its decision and the Contract shall thereupon be terminated;
- (b) the Contractor shall not have any claim for compensation or otherwise against the Principal in respect of its decision; and
- (c) the Principal may engage other contractors to undertake the project.

## **SECTION 11 – DEFECTS LIABILITY**

*Delete 11.2.3 and replace with the following:*

**11.2.3** The Principal shall be entitled to recover the Cost of the work undertaken by others under 11.2.2 from the Contractor, including all costs and expenses of assessment and supervision whether by the Engineer or otherwise, and a reasonable allowance for associated administrative and professional costs and expenses. As soon as practicable after the completion of the work the Engineer shall notify the Contractor of the work undertaken and its Cost.

*Add new 11.2.9 as follows:*

**11.2.9** An additional Defects Notification Period equivalent in length to the original Defects Notification Period shall apply to all works required to be remedied as a defect or required as a consequence of the remedy of a defect, unless the Engineer agrees otherwise in writing.

## **SECTION 12 – PAYMENTS**

*Add new 12.3.4-12.3.5 as follows:*

**12.3.4** The Principal shall be entitled to use retention monies to cover any costs, expenses, losses or damages incurred or to be incurred in connection with any default, omission or non-performance of the Contractor, including where the Principal resumes possession of the Site or terminates the Contract under 14.2.

**12.3.5** Prior to the Principal using retention monies as provided in 12.3.4, the Principal will give the Contractor at least ten (10) Working Days written notice setting out:

- (a) the Principal's intention to use the retention money for that purpose; and
- (b) details of the default, omission or non-performance to be remedied.

Add a new 12.14 as follows:

#### **12.14 Set-off**

The Principal is entitled to set-off, deduct or withhold against and from any sums that would otherwise be due to the Contractor amounts in respect of any genuine claims it may have against the Contractor in relation to or in connection with the Contract or the Contract Works, including damages for breach of contract by the Contractor, liquidated damages, omissions or defects or under any indemnities. This right of set-off, deduction and withholding is without prejudice to any other right of set-off, deduction or withholding provided for pursuant to the Contract or otherwise.

### **SECTION 14 – FRUSTRATION AND DEFAULT**

Add a new 14.4 as follows:

#### **14.4 Termination for convenience**

- 14.4.1** Notwithstanding any other provision of the Contract, the Principal may, at any time and at its absolute and sole discretion, terminate the Contract for convenience by giving written notice of this to the Contractor. If the Principal exercises its right under this 14.4.1 it shall not be obliged to give the Contractor any reason or justification for doing so.
- 14.4.2** In the event the Principal exercises its right to terminate for convenience under 14.4.1, the Contract will terminate on the date given in the written notice under 14.4.1 and the Contractor shall be entitled to be paid:
  - (a) the value of the Contract Works carried out at the date of termination, less the amounts previously paid;
  - (b) the Cost of Materials ordered for the Contract Works which have been delivered to the Contractor or of which the Contractor is legally obliged to accept delivery, and which the Contractor delivers to the Principal. These Materials shall become the property of the Principal upon delivery to the Principal;
  - (c) any Cost reasonably incurred by the Contractor in the expectation of completing the Contract Works in so far as such Cost is not covered by other payments under 14.4.2(a) or (b); and
  - (d) the Cost of any works necessitated by the removal of the Contractor's Plant and the carrying out of the Engineer's instructions for the making safe of the Contract Works.

Add a new Section 16 as follows:

### **SECTION 16 – PRIVACY OBLIGATIONS**

#### **16.1 Privacy**

- 16.1.1** The Contractor must comply at all times with all NZ Privacy Laws and not do anything with the Principal's Personal Information likely to cause the Principal to breach any NZ Privacy Laws.
- 16.1.2** The Contractor must comply at all times with *Privacy at Waka Kotahi the NZ Transport Agency – A Guide for Suppliers and Service Providers* (<https://www.nzta.govt.nz/about-us/about-this-site/privacy-guide-for-suppliers-and-service-providers/>).
- 16.1.3** The Contractor must not use or disclose the Principal's Personal Information (including to any Subcontractors) except as strictly necessary to deliver the Contract Works and comply with the Contract. The Contractor must ensure that any Subcontractors to whom it discloses the Principal's Personal Information are subject to contractual restrictions on the handling, use and disclosure of that information no less strict than those in the Contract.

- 16.1.4** The Contractor must implement and maintain reasonable security safeguards to protect the Principal's Personal Information, including from unauthorised access or disclosure.
- 16.1.5** Except as agreed in writing, the Contractor must not store or process (or permit the storage or processing of) the Principal's Personal Information in any location outside New Zealand.
- 16.1.6** The Contractor must promptly return and/or irreversibly erase all the Principal's Personal Information (at the Principal's option), once it is no longer required for the purposes of the delivery of the Contract Works, and otherwise where directed by the Principal.
- 16.1.7** If the Contractor becomes aware of, or has reason to suspect the existence of, a Data Breach, the Contractor must as soon as practicable notify the Principal, take all practicable steps to mitigate the effects of the Data Breach, and co-operate with the Principal's investigation of the Data Breach as the Principal reasonably considers necessary to enable the Principal to meet its obligations under the NZ Privacy Laws.
- 16.1.8** Unless required by law, the Contractor will not notify affected individuals or the Privacy Commissioner of any Data Breach except with the Principal's prior written agreement.
- 16.1.9** The Contractor will comply with any reasonable direction from the Principal, where the Principal reasonably considers that this is necessary to enable the Principal to comply with a notice or direction given to the Principal by the Privacy Commissioner.
- 16.1.10** The Contractor will not comment publicly, including to the media, about any Data Breach or any breach of this Section 16, without the written consent of the Principal.

*Add a new section 17 as follows:*

## **SECTION 17 – JOINT AND SEVERAL LIABILITY**

### **17.1 Joint and several**

- 17.1.1** To the extent that the Contractor is comprised of more than one Person in joint venture, partnership, consortium or other unincorporated grouping of two or more persons (Joint Venture):
- (a) those Persons will be jointly and severally liable to the Principal for all obligations, duties and liabilities of the Contractor under the contract;
  - (b) the Contractor will notify the Principal in writing as to which of those persons (if not each of them) will have the authority to bind the Contractor and in the absence of such written notification each such Person will be deemed to have the authority to bind the Contractor for all purposes (which cannot be retrospectively changed by the Contractor);
  - (c) the Contractor must ensure that the composition or legal status of the Joint Venture is not altered or changed in any way whatsoever without the prior written consent of the Principal; and
  - (d) all references to "Contractor" in the Contract will be deemed to be a reference to each and every Person comprising the Contractor, together.

*A new section 18 is added as follows:*

## **SECTION 18 – CONFIDENTIALITY**

### **18.1 Confidentiality**

- 18.1.1** The Contractor and the Principal will ensure that any information identified as confidential, or which should reasonably be recognisable as confidential, acquired by it as a result (either directly or indirectly) of its entering into the Contract will be kept confidential subject to the following exceptions:
- (a) information which is in the public domain or could have been legally acquired by a party had it not entered into the Contract, will not be considered confidential;

- (b) a party may disclose confidential information to its professional advisors and insurers and otherwise to the extent required by law or pursuant to the requirements of any stock exchange;
- (c) disclosure by the Principal of confidential information to any ministry or other government agency performing a monitoring, oversight, or guidance role in relation to the Principal, or at the request of an officer of parliament, a parliamentary select committee, a royal commission, or a minister of the Crown (including for the purposes of a parliamentary question);
- (d) a party may disclose specific items of confidential information to a third party in accordance with the terms of any prior written consent between the parties; and
- (e) a party may disclose confidential information as reasonably necessary for the purposes of the Contract Works provided that the party shall ensure that such recipient is required to maintain such information as confidential on the same terms.

**18.1.2** The Contractor must ensure that its Subcontractors are bound by confidentiality undertakings equivalent to this Section 18.

**18.1.3** The Contractor will not make any statements to the media or others regarding the contents of the Contract or the execution of the Contract Works without the prior written approval of the Principal. Media requests for information relating to the Contract Works or the Principal's assets or its business will be immediately referred by the Contractor to the Principal.

**18.1.4** The Contractor acknowledges that the Principal is subject to the OIA and the Contractor agrees to cooperate fully in providing the Principal with any documents or other information that the Principal is required to provide in accordance with a request made under the OIA, or pursuant to questions raised in Parliament or in any select committee concerning the Contract.

### **Schedule 3 – Form of Contractor’s performance bond**

**THIS SECTION IS NOT USED**

## Schedule 4 – Form of Principal’s bond

**THIS SECTION IS NOT USED**

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## Schedule 5 – Form of Contractor’s bond in lieu of retentions

**CONTRACT FOR**

**(Separable Portion 3 only)**

**THIS DEED** is made on \_\_\_\_\_

**BY** \_\_\_\_\_

of \_\_\_\_\_

*(‘the Contractor’)*

**AND** \_\_\_\_\_

of \_\_\_\_\_

*(‘the surety’)*

\_\_\_\_\_  
*(Address of surety for service)*

### IT IS MADE IN THE FOLLOWING CIRCUMSTANCES:

- A** The Contractor has entered into an agreement with Waka Kotahi (“the Principal”) to carry out and fulfil the obligations imposed on the Contractor (‘the Contract’).
- B** The Contractor has agreed to provide the Principal with security in the form of a bond in lieu of retentions additional to any other bond required under the Contract.
- C** Words and phrases with capital initial letters that are not otherwise defined in this bond shall have the meaning set out in the Contract.

### BY THIS DEED:

- 1. **THE** Contractor and surety are jointly and severally held and bound to the Principal in the sum of \$NZ .  
and bind themselves, their successors and assigns jointly and severally for the payment of that sum.
- 2. **THE** conditions of this bond are that it shall be released if and when:
  - (a) The Final Completion Certificate has been issued for the Contract Works in accordance with 11.3 of the General Conditions; or
  - (b) The surety receives a notice from the Principal releasing the Contractor and surety from this bond.
- 3. **EXCEPT** as provided in clause 2 above this bond shall be and remain in full force and effect.
- 4. **THE** surety shall not be released from any liability under this bond:
  - (a) By any alteration in the terms of the Contract;
  - (b) By any alteration in the extent or nature of the Contract Works to be completed, delivered, and having defects remedied;
  - (c) By any allowance of time by the Principal or by the Engineer appointed by the Principal under the Contract; or
  - (d) By any forbearance or waiver by the Principal or by the Engineer in respect of any of the Contractor’s obligations or in respect of any default on the part of the Contractor.
- 5. **THIS** bond shall be governed by New Zealand law.



In witness of which this deed has been executed.

**SIGNED** on behalf of the surety by:

---

Director

---

Director

**SIGNED** on behalf of the Contractor by:

---

Director

---

Director

NOTE – This bond shall be executed by the Contractor and by the surety in the manner required for execution of a deed. Any of these parties which are a company shall execute the bond by having it signed, under the name of the company, by two or more directors. If there is only one director, it is sufficient if the bond is signed under the name of the company by that director, but the signature shall be witnessed by another person. The witness shall not only sign, but shall also add his or her occupation and address. Alternatively, companies may execute under the power of attorney. Any party which is a body corporate (other than a company) shall execute in the same manner as a company by persons in a comparable position to a company director or otherwise in accordance with section 9 of the Property Law Act 2007. In the case of a party who is an individual, the party shall sign and the signature shall be witnessed by another person. The witness shall not only sign but must also add his or her occupation and address.

---

## Schedule 6 – Form of Producer Statement - Construction

ISSUED BY \_\_\_\_\_ (Contractor)

TO New Zealand Transport Agency (Waka Kotahi NZ Transport Agency) (Principal)

IN RESPECT OF \_\_\_\_\_ (Description of Contract Works)

AT \_\_\_\_\_  
\_\_\_\_\_ (Address)

\_\_\_\_\_ has contracted to New Zealand Transport Agency (Waka Kotahi NZ Transport Agency)  
\_\_\_\_\_ (Contractor) \_\_\_\_\_ (Principal)

to carry out and complete certain building works in accordance with a Contract titled \_\_\_\_\_  
\_\_\_\_\_ ('the Contract')  
\_\_\_\_\_ (Project)

I \_\_\_\_\_ (Duly Authorised Agent)

a duly authorised representative of \_\_\_\_\_ (Contractor)

believe on reasonable grounds that \_\_\_\_\_ (Contractor)

has carried out and completed:

All

Part only as specified in the attached particular of the contract works in accordance with the Contract

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date

\_\_\_\_\_  
(Signature of Authorised Agent on behalf of)

\_\_\_\_\_  
(Contractor)

\_\_\_\_\_  
(Address)

## Schedule 7 – Information on Contractor arranged construction insurance

<<Guidance note: Where this form is used, the Waka Kotahi Risk and Assurance Team must view it. For contracts where PAI is used, delete the following schedule and replace with the words **This Section Not Used**>>

### To whom it may concern:

From \_\_\_\_\_ (Name of Insurance Company)  
\_\_\_\_\_  
(Branch)  
\_\_\_\_\_  
(Address)

We confirm having effected construction insurance for:

\_\_\_\_\_  
(The Contractor)  
New Zealand Transport Agency (Waka Kotahi NZ Transport Agency) (The Principal)  
In respect of [Contract Number, Contract Name] \_\_\_\_\_ (Project Title)

Policy wording title is \_\_\_\_\_

The following provisions apply:

- Project specific policy
- Annual run-off policy
- Annual cut-off policy

We advise that special terms, copy attached, have been applied to this policy Yes/No

### 8.1.6

The following forces of nature are insured:

- earthquake
- cyclone
- lightning strike
- tsunami
- storm
- volcanic activity
- tornado
- flood
- Landslip
- Hydrothermal Activity
- Geothermal Activity

### 8.3.3

The sums insured are (GST exclusive):

Contract Price	\$	_____
(a) Costs of demolition	\$	_____
(b) Professional fees	\$	_____
(c) Value of items to be incorporated	\$	_____
(d) An allowance for an increase in construction costs	\$	_____
(e) An allowance for increased reconstruction costs	\$	_____
<b>TOTAL SUM INSURED</b>	<b>\$</b>	_____

The policy deductibles are (GST inclusive)

Non-earthquake \$ \_\_\_\_\_  
Natural disaster \_\_\_\_\_ % of \_\_\_\_\_ minimum of \$ \_\_\_\_\_  
Other (name) \_\_\_\_\_ \$ \_\_\_\_\_

**8.2.3(a)**

Construction period from \_\_\_\_\_ to \_\_\_\_\_  
Insurance maintenance period \_\_\_\_\_  
Policy expiry date \_\_\_\_\_

Policy cover terms included are:

- 8.2.2** Discretionary cancellation clause Yes/No
- 8.2.3** Reinstatement provision on building and contents Yes/No
- 8.2.3** Severally insured Yes/No
- No Settlement delay due to exercise of subrogation Yes/No
- 8.2.4** Void *ab initio* for non-payment of premium with prior notification Yes/No

Policy extensions included are:

			Sub limit (if applicable)
<b>8.3.1</b>	Transit (in New Zealand)	Yes/No	\$ _____
<b>8.3.1</b>	Materials in storage (in New Zealand)	Yes/No	\$ _____
	Testing and commissioning	Yes/No	\$ _____
	Expediting expenses	Yes/No	\$ _____
	Overseas airfreight	Yes/No	\$ _____

We undertake that this policy will not be cancelled or amended by us within the period of insurance without written advice to the insured party which has arranged the insurances.

The insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3916:2013.

**Insurance Company**

Stamp \_\_\_\_\_ Date \_\_\_\_\_

(Or name of insurance broking company confirming cover)

**SIGNED BY** \_\_\_\_\_

**SIGNATORY TITLE** \_\_\_\_\_

(Clause numbers refer to NZS 3916:2013 and are for information only)

## Schedule 8 – Information on Contractor arranged Plant insurance

### To whom it may concern:

From \_\_\_\_\_ (Name of Insurance Company)  
\_\_\_\_\_  
(Branch)  
\_\_\_\_\_  
(Address)

We confirm having effected Plant insurance for:

\_\_\_\_\_ (The Contractor)  
In respect of [Contract Number, Contract Name] \_\_\_\_\_ (Project Title)

Policy wording title is \_\_\_\_\_

We advise that special terms, copy attached, have been applied to this policy Yes/No

The following provisions apply:

- Annual policy  
 Project specific policy

Policy expiry date \_\_\_\_\_

### 8.4

The insured are (GST exclusive):

- All items of Plant Sum insured \$ \_\_\_\_\_  
OR  
 Valued schedule of construction Plant insured (copy attached)

The policy deductible (GST inclusive) is: \$ \_\_\_\_\_

Policy cover terms included are:

- |                 |   |        |
|-----------------|---|--------|
| <b>8.2.2</b>    | Discretionary cancellation clause   | Yes/No |
| <b>8.2.3(a)</b> | Reinstatement provision   | Yes/No |
| <b>8.2.4</b>    | Void <i>ab initio</i> for non-payment of premium without prior notification | Yes/No |
|                 | No settlement delay due to exercise of subrogation                          | Yes/No |

We undertake that this policy will not be cancelled or amended by us within the period of insurance without written advice to the insured party which has arranged the insurances.

The insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3916:2013.

[Insert Contract name]  
Contract No: [insert no]

Waka Kotahi NZ Transport Agency  
Conditions of Contract  
CC 1

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**Insurance Company  
Stamp** \_\_\_\_\_

**Date** \_\_\_\_\_

*(Or name of insurance broking company confirming cover)*

**SIGNED BY** \_\_\_\_\_

**SIGNATORY TITLE** \_\_\_\_\_

*(Clause numbers refer to NZS 3916:2013 and are for information only)*

## Schedule 9 – Information on public liability insurance

<<Guidance note: For contracts where PAI is used, delete the following schedule and replace with Schedule 9 as downloaded from the Marsh insurance portal <http://nz.marsh.com/nzta-pai>>>

### To whom it may concern:

From \_\_\_\_\_ (Name of Insurance Company)  
\_\_\_\_\_  
(Branch)  
\_\_\_\_\_  
(Address)

We confirm having effected public liability insurance to indemnify the Principal and the Contractor against legal liability to third parties for damage, loss or injury caused by an act or omission of the Contractor arising out of the performance of the Contract Works.

\_\_\_\_\_  
(The Contractor)  
\_\_\_\_\_  
(The Principal)  
In respect of [Contract Number, Contract Name] \_\_\_\_\_ (Project Title)

Policy wording title is \_\_\_\_\_

We advise that special terms, copy attached, have been applied to this policy Yes/No

The following provisions apply:

- Annual policy  
 Project specific policy

Policy expiry date \_\_\_\_\_

### 8.5, 8.9

The insured are (GST exclusive):

The limit of indemnity (GST exclusive) \$ \_\_\_\_\_

Sub-limit insured for (GST exclusive)

Underground Services \$ \_\_\_\_\_

Deductible (GST inclusive) is \$ \_\_\_\_\_

Deductible for Underground Services (GST inclusive)

If the Contractor, carrying out excavations to uncover ground services, before commencement of the excavation, has not checked with the relevant authorities and/or owner of the underground services about their exact location and has not exercised reasonable care to avoid causing damage to the underground services, nor been subject to standover supervision by asset owner or their nominated specialist subcontractor, the deductible will be \$2,000,000. If the Contractor does meet these conditions before commencement, the standard public liability deductible will apply \$ \_\_\_\_\_

The policy also covers liability arising out of:

The ownership/use of Plant not required to be registered for road use Yes/No

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The use of hired Plant	Yes/No
The ownership/use of watercraft over 8m	Yes/No
The ownership/use of aircraft	Yes/No
The use of explosives	Yes/No

**8.2, 8.7**

Policy cover terms included are:

Reinstatement provision	Yes/No
Number of reinstatements	_____
Discretionary cancellation clause	Yes/No
Void <i>ab initio</i> for non-payment of premium without prior notification	Yes/No
Severally insured	Yes/No
No settlement delay due to exercise of subrogation	Yes/No

We undertake that this policy will not be cancelled or amended by us without written advice to the insured party which has arranged the insurances.

The insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2013.

**Insurance Company  
Stamp** \_\_\_\_\_

**Date** \_\_\_\_\_

(Or name of insurance broking company confirming cover)

**SIGNED BY** \_\_\_\_\_

**SIGNATORY TITLE** \_\_\_\_\_

(Clause numbers refer to NZS 3910:2013 and are for information only)



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## Schedule 10 – Information on Contractor arranged motor vehicle insurance

### To whom it may concern:

From \_\_\_\_\_ (Name of Insurance Company)  
\_\_\_\_\_ (Branch)

\_\_\_\_\_ (Address)

We confirm having effected motor fleet insurance for.

\_\_\_\_\_ (The Contractor)

In respect of [Contract Number, Contract Name] \_\_\_\_\_ (Project Title)

Policy wording title is \_\_\_\_\_

We advise that special terms, copy attached, have been applied to this policy Yes/No

The following provisions apply:

- Annual policy  
 Project specific policy

Policy expiry date \_\_\_\_\_

### 8.5.2

The limits of liability are (GST exclusive):

Section 2 - Liability

For any one occurrence arising out of the same event \$ \_\_\_\_\_

The policy deductibles are:

Section 2 – Liability (GST inclusive) \$ \_\_\_\_\_

Plus under age penalties

### 8.2

Policy cover terms included are:

Section 2 Liability automatic reinstatement	Yes/No
Discretionary cancellation clause	Yes/No
Void <i>ab initio</i> for non-payment of premium without prior notification	Yes/No
No settlement delay due to exercise of subrogation	Yes/No

We undertake that this policy will not be cancelled or amended by us within the period of insurance without written advice to the insured party which has arranged the insurances.

The insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3916:2013.

[Insert Contract name]  
Contract No: [insert no]

Waka Kotahi NZ Transport Agency  
Conditions of Contract  
CC 1

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**Insurance Company Stamp** \_\_\_\_\_ **Date** \_\_\_\_\_  
(Or name of insurance broking company confirming cover)

**SIGNED BY** \_\_\_\_\_

**SIGNATORY TITLE** \_\_\_\_\_

(Clause numbers refer to NZS 3916: 2013 and are for information only)

## Schedule 11 – Information on Contractor arranged professional indemnity insurance

### To whom it may concern:

From \_\_\_\_\_ (Name of Insurance Company)  
\_\_\_\_\_ (Branch)

\_\_\_\_\_ (Address)

We confirm having effected professional indemnity insurance for.

\_\_\_\_\_ (The Contractor)

In respect of [Contract Number, Contract Name] \_\_\_\_\_ (Project Title)

Policy wording title is \_\_\_\_\_

We advise that special terms, copy attached, have been applied to this policy Yes/No

The following provisions apply:

- Annual policy  
 Project specific policy

Policy expiry date \_\_\_\_\_

### 8.6.1

The limits of liability are (GST exclusive):           \$ \_\_\_\_\_ any one occurrence  
  \$ \_\_\_\_\_ in the aggregate during  
  \$ \_\_\_\_\_ the period of insurance

Deductible (GST inclusive)   \$ \_\_\_\_\_

We undertake that this policy will not be cancelled or amended by us within the period of insurance without written advice to the insured party which has arranged the insurances.

The insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3916:2013.

**Insurance Company**  
**Stamp** \_\_\_\_\_ **Date** \_\_\_\_\_  
(Or name of insurance broking company confirming cover)

**SIGNED BY** \_\_\_\_\_

**SIGNATORY TITLE** \_\_\_\_\_

(Clause numbers refer to NZS 3916:2013 and are for information only)

## Schedule 12 – Information on Principal arranged construction insurance

<<Guidance note: For contracts where PAI is used, insert Schedule 12 as downloaded from the Marsh insurance portal <http://nz.marsh.com/nzta-pai>. For contracts where PAI is not used, insert the words **This Section Not Used** >>

## Schedule 13 – Form of Contract (or Subcontractor) warranty

**THIS SECTION IS NOT USED**

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## Schedule 14 – Agreement for off-site Materials

<<Guidance note: **Either:** Only use this Schedule where 12.1.3(b)(iv) has been selected, otherwise delete the following schedule and insert the words **This Section Not Used** **OR:** delete the following agreement and state **[This Section Not Used]** if using D&C (Basic)>>

**THIS AGREEMENT** is dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

**BETWEEN** New Zealand Transport Agency (Waka Kotahi NZ Transport Agency), a \_\_\_\_\_ (*‘the Principal’*)  
Crown entity, established on 1 August 2008 by Section 93 of the Land  
Transport Management Act 2003 (Waka Kotahi)

**AND** \_\_\_\_\_ (*‘the Contractor’*)

**AND** \_\_\_\_\_ (*‘the Subcontractor’*)

### INTRODUCTION

- A** By a contract dated ..... day of .....20 .....  
and known as ..... (*‘the Contract’*)  
made between the Principal and the Contractor, the Contractor agreed to carry out the work and obligations imposed on the Contractor by the Contract (*‘the Contract Works’*).
- B** The Contractor and the Subcontractor have entered into a subcontract for the performance of part of the Contract Works and/or the supply of Materials described in Schedule A to this agreement (*‘the Materials’*) and intended to be used by the Contractor and/or the Subcontractor in the Contract Works.
- C** The Contractor or the Subcontractor (as nominated in Schedule C) (*‘the Bailee’*) proposed to store the Materials at the premises of the bailee (*‘the premises’*) as identified in Schedule B as bailee for the Principal, for the purpose of storage, fabrication, sub-assembly, or as otherwise required for the Contract Works prior to being delivered to the Site for incorporation into the Contract Works.
- D** The Contractor has requested the Principal to authorise the Engineer to certify payment for the materials notwithstanding that the Materials have not been delivered to the Site.
- E** The Principal has agreed to authorise the Engineer to certify payment for the Materials, notwithstanding that the Materials have not been delivered to Site, subject to all the provisions of this agreement having been fulfilled.

### SCHEDULE A

Description of Materials inclusive of work performed on them:

---

### SCHEDULE B

The location in New Zealand at which the Materials will be stored is:

---

## SCHEDULE C

'The Bailee' shall be:

The Contractor

OR

The Subcontractor

### IT IS AGREED AS FOLLOWS:

1. **THE** Materials to which this agreement relates are those described in Schedule A to this agreement, all of which Materials are currently on the premises identified in Schedule B.
2. **THE** Premises identified in Schedule B are in the sole control of the party identified in Schedule C and that party shall act as bailee of the Materials until such time as the Materials are delivered to the Site or taken possession of by the Principal.
3. **THE** undertakings, warranties, covenants, agreements and other obligations of the Contractor or the Subcontractor shall bind and be deemed to have been given or assumed by each of them severally and by both of them jointly.
4. **THE** Contractor and the Subcontractor agree that they will cause the materials to be set apart at the premises and be clearly and visibly marked individually or in sets as being the property of the Principal and their destination as being the Site. The method used to mark the Material and the procedures by which the mark is applied to the Materials shall be as required by the Contract or as otherwise approved by the Principal.
5. **NEITHER** the Contractor nor the Subcontractor will permit, allow, or cause the Materials to be taken away from the Premises, except:
  - (a) For the purpose of being transported to the Site and used in the Contract Works; or
  - (b) That the Principal may at its sole discretion take possession of the Materials for use other than for the Contract Works;provided that:
  - (c) Where the Principal takes possession of any Materials under clause 5(b) above, and the Contractor thereby suffers delay of the Contractor or the Subcontractor incurs additional cost, the taking of possession shall be treated as a Variation under the Contract, unless the taking of possession is pursuant to clauses 14.2.1 or 14.2.2 of the Contract; and
  - (d) Where the Principal takes possession of any Materials under clause 5(b) above, and additional work has been carried out on those Materials since being paid for by the Principal, the Principal shall pay the Contractor for that additional work in accordance with the Contract before taking possession of the Materials.
6. **THE** Engineer, upon being satisfied that the materials have been set apart and marked as required by this agreement, and upon the Contractor providing satisfactory evidence that the requirements of clauses 12 and 20 below have been fully satisfied, shall include in any Payment Schedule issued by the Engineer under the Contract a sum representing the reasonable value of such Materials calculated in accordance with the Contract.
7. **UPON** the Principal having made payment for the Materials, less any retentions or deductions prescribed in the Contract, title to such materials shall immediately vest in the Principal free of all security interests, charges and encumbrances of any nature whatsoever.

8. **WHERE** the Contractor receives payment for Materials and the Subcontractor is entitled to some or all of the Principal's payment, the Contractor shall promptly pay the Subcontractor for such materials.
9. **UPON** the request of the Subcontractor, the Engineer shall advise the Subcontractor whether the Contractor has received any payment from the Principal for such Materials.
10. **THE** Contractor and the Subcontractor agree that the Materials will be held by the Contractor or the Subcontractor solely as bailee for the Principal and such bailment will constitute a security interest in favour of the Principal for the purpose of the Personal Property Securities Act 1999 ('the PPSA').
11. **THE** Principal shall (at the Contractor's reasonable cost) register a financing statement of the Personal Property Securities Register ('the PPSR') listing the Principal as secured party and the Contractor and the Subcontractor as debtors for any security interest arising from the bailment of the Materials referred to in this agreement.
12. **THE** Bailee shall promptly do all things including executing any documents and providing all information which the Principal requires to ensure that the Principal receives and maintains at all times a first ranking security interest in the Materials. This shall include procuring from any third party who has registered a financing statement against the Bailee, a waiver, in a form acceptable to the Principal, of any security interest or claim which might otherwise extend to the Materials or their proceeds.
13. **THE** Bailee shall not discharge or amend any financing statement registered under clause 11 above without the prior written consent of the Principal.
14. **NOTHING** in sections 114(1)(a), 133, and 134 of the PPSA shall apply to this agreement.
15. **ANY** rights of the Contractor and the Subcontractor as debtors under sections 116, 120(2), 121, 125, 126, 127, 129, 131, and 148 of the PPSA shall not apply to this agreement.
16. **THE** Bailee hereby grants to the Principal reasonable, free, and unencumbered right of access to the Premises to:
  - (a) Inspect the materials, and verify or undertake the marking and setting apart of the Materials;
  - (b) Take possession of the Materials for the purpose of delivery to the Site and inclusion in the Contract Works;
  - (c) Remove the materials from the Premises for the purposes of delivery to the Site and inclusion in the Contract Works; and
  - (d) Take possession of the Materials for use other than for the Contract Works,And in each case in a manner that does not cause damage to any other property at the premises. The Bailee shall take all steps and do all things as shall be necessary to ensure that the Principal obtains access to the premises for the purposes of this agreement.
17. **THE** Bailee shall not, except as permitted in clause 5, remove or cause or permit the Materials to be moved from the Premises. The Bailee shall nevertheless be responsible to the Principal for any loss or damage thereto and for any costs of storage and handling.
18. **THE** Bailee shall, when required to do so by the Contractor or the Principal, arrange for the transportation of the materials to the Site. Such transportation shall be at the costs of the Bailee in all things including loading, unloading, and freight.
19. **WHERE** the Materials are not insured under the construction policy provided in accordance with 8.3.1 or 8.8.1 of the Contract, the Bailee shall, at its expense:
  - (a) Effect a material damage insurance policy covering all of the materials subject to this agreement in the name of the Principal, as provided in 8.2.1 of the Contract for the full duration of the off-



site storage. Such insurance may include an exclusion for loss or damage sustained during processing;

- (b) Effect a transit insurance policy for transit of all the Materials from the premises to the Site in the name of the Principal to the satisfaction of the principal, as provided in 8.2.1 of the Contract for the full duration of the off-site storage.
- 20. WITHIN** 15 Working Days of the date of this agreement, the Bailee shall furnish the Principal and the Contractor with evidence of such insurance.
- 21. THE** Bailee represents and warrants to the Principal and to the Contractor (where applicable) that:
- (a) It has good and clear title to the Materials;
  - (b) It has the ability to assign and transfer the Materials to the Principal or the Contractor; and
  - (c) The Materials will be transferred to the Principal or the Contractor free of any security interest.
- 22. THE** Bailee undertakes that, if it charges or mortgages all or any part of its property (either real or personal), assets, or undertaking, it will obtain written confirmation from the charge or mortgagee that the chargee or the mortgage over such property, assets, or undertaking does not extend to the Materials once they have been paid for by the Principal or the Contractor (as applicable).
- 23. NOTHING** in this agreement shall be deemed to limit, waive, or affect the Engineer's powers under the Contract to order the removal from Site or the Premises of Materials which are not in accordance with the Contract and the substitution by the Contractor at its own risk and expense of proper Material. Nothing in this agreement shall be deemed to limit, waive, or affect any other powers conferred on the Engineer and/or the Principal under the Contract.
- 24. EACH** party shall pay its own costs of and incidental to the negotiation, preparation, execution, and any amendment of this agreement.
- 25. WORDS** and phrases in this agreement shall have the same meanings as are ascribed to them under the Contract except where the context or any express provision of this agreement requires otherwise.

**SIGNED BY** \_\_\_\_\_ (Authorised Signatory)

of \_\_\_\_\_ (Principal)

**SIGNED BY** \_\_\_\_\_ (Authorised Signatory)

of \_\_\_\_\_ (Contractor)

**SIGNED BY** \_\_\_\_\_ (Authorised Signatory)

of \_\_\_\_\_ (Subcontractor)

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## Schedule 15 – Practical Completion Certificate

This Practical Completion Certificate is issued under 10.4.3(a) or 10.4.4.

**Contract for** [Contract Number, Contract Name]

---

**Principal** New Zealand Transport Agency (Waka Kotahi NZ Transport Agency), a Crown entity, established on 1 August 2008 by Section 93 of the Land Transport Management Act 2003 (Waka Kotahi) *(‘the Principal’)*

**Contractor** \_\_\_\_\_ *(‘the Contractor’)*

This certificate relates to:

- (a) The whole of the Contract Works referred to above;
- (b) The following Separable Portion \_\_\_\_\_ *(specify)*

Receipt of the Contractor’s notice dated .....and issued in accordance with 10.4.2 is acknowledged.

In accordance with  10.4.3(a) or  10.4.4 *(select one)*, the Engineer certifies that the Contract Works or Separable Portion to which this certificate relates qualify for a Practical Completion Certificate under 10.4, notwithstanding that there may be minor omissions and/or minor defects (as listed in the attached schedule) which satisfy the criteria in 10.4.1 (a), (b), and (c).

The Contractor is required to remedy all of the listed omissions or defects within the period stated in the attached schedule against the relevant omission or defect, or at the latest within..... Working Days of the date of this certificate.

Practical Completion was achieved  
on \_\_\_\_\_ *(insert date)* at \_\_\_\_\_ *(insert time)*

Signed by the Engineer \_\_\_\_\_

Name \_\_\_\_\_

Date \_\_\_\_\_

### SCHEDULE

The following omissions and/or defects have been assessed as being of a minor nature satisfying the criteria in 10.4.1(a), (b), and (c) and were identified during an inspection carried out by the Engineer or Engineer’s Representative on.....*(insert date)*

*(list minor omissions and defects)* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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## Schedule 16 – Final Completion Certificate

This certificate is a Final Completion Certificate issued under 11.3.1.

**Contract for** [Contract Number, Contract Name]

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**Principal** New Zealand Transport Agency (Waka Kotahi NZ Transport Agency), a Crown entity, established on 1 August 2008 by Section 93 of the Land Transport Management Act 2003 (Waka Kotahi) *(the Principal)*

**Contractor** \_\_\_\_\_ *(the Contractor)*

This certificate relates to:

- (a) The whole of the Contract Works referred to above;
- (b) The following Separable Portion \_\_\_\_\_ *(specify)*

In accordance with 11.3.1, the Engineer certifies that the Contract Works or Separable Portion to which this certificate relates qualify for a Final Completion Certificate issued under 11.3

on \_\_\_\_\_ *(insert date)* at \_\_\_\_\_ *(insert time)*

Signed by the Engineer \_\_\_\_\_

Name \_\_\_\_\_

Date \_\_\_\_\_

## Schedule 17 – Deed of Novation

<<Guidance Note: Only use this Schedule where 4.1.1 has been selected otherwise delete the following schedule and insert the words **This Section Not Used** >>

**THIS DEED** is made on \_\_\_\_\_ (*'the Effective Date'*)

**BY** New Zealand Transport Agency (Waka Kotahi NZ Transport Agency), a \_\_\_\_\_ (*'the Principal'*)  
Crown entity, established on 1 August 2008 by Section 93 of the Land  
Transport Management Act 2003 (Waka Kotahi)

\_\_\_\_\_ (*'the Contractor'*)

\_\_\_\_\_ (*'the Consultant'*)

### IT IS MADE IN THE FOLLOWING CIRCUMSTANCES

- A** The Principal and the Consultant are parties to \_\_\_\_\_  
\_\_\_\_\_ entered into on  
\_\_\_\_\_, a copy of which is attached and marked 'A' (*'the Contract'*).
- B** With effect on and from the Effective Date, the Principal wishes to:
- (i) Transfer all of its rights and obligations under the Contract to the Contractor, and
  - (ii) Be released from its obligations under the Contract.
- C** With effect on and from the Effective Date, the Contractor wishes to accept the transfer of all the Principal's rights and obligations under the Contract.

### THE PARTIES AGREE

1. **THIS** deed shall take effect from the date of its execution (*'the Effective Date'*).
2. **THE** Principal:
  - (a) Transfers to the Contractor all of its rights and obligations under the Contract;
  - (b) Warrants that it has performed all of its obligations under the Contract up to the Effective Date;  
and
  - (c) Shall remain liable to the Consultant for any breach of the Contract by the Principal which occurred prior to the Effective Date.
3. **THE** Contractor:
  - (a) Accepts the transfer with effect from the Effective Date;
  - (b) Confirms that, as from the Effective Date:
    - (i) The Contractor is substituted for the Principal under the Contract as if it had originally executed the Contract in place of the Principal
    - (ii) All references in the Contract to the Principal are to be read and construed as if they were references to the Contractor
    - (iii) The Contractor may exercise all the Principal's rights under the Contract;
  - (c) Shall perform all of the Principal's obligations under the Contract from the effective Date.

4. **THE** Consultant:
  - (a) Consents to the transfer;
  - (b) Releases the Principal from all of its obligations under the Contract for the period following the Effective Date (but for of any breach of the Contract that occurred prior to the Effective Date);
  - (c) Confirms that, as from the Effective Date:
    - (i) The Contractor is substituted for the Principal under the Contract as if it had originally executed the Contract in place of the Principal
    - (ii) All references in the Contract to the Principal are to be read and construed as if they were references to the Contractor
    - (iii) The Contractor may exercise all the Principal's rights under the Contract;
  - (d) Shall remain liable to the Principal for any breach of the Contract by the Consultant which occurred prior to the effective Date.
5. **THE** terms of the Contract continue in full force and effect.
6. **EACH** party is to pay its own costs (including, without limitation, legal expenses) in entering into this deed.
7. **EACH** party is, at its own expenses and at the request of the other party, to execute and deliver or cause its successors and permitted assigns to do all things as may be reasonably requested by tat other party to obtain the full benefit of this document according to its true intent.
8. **AN** amendment to this deed will only be effective if it is in writing and signed by all parties.
9. **THIS** deed shall be construed and take effect in accordance with the laws of New Zealand.

**EXECUTED as a deed**

**SIGNED** of behalf of the Principal by:

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*Director*

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*Director*

**SIGNED** of behalf of the Contractor by:

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*Director*

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*Director*

**SIGNED** of behalf of the Consultant by:

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*Director*

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*Director*

**NOTE –**

- (1) A copy of the design agreement being transferred ('the Contract') shall be attached and marked 'A'.
- (2) This deed shall be executed by the Contract, the Principal, and the Consultant in the manner required for execution of a deed. Any of these parties which are a company shall execute the deed by having it signed, under the name of the company, by two or more directors. If there is only one director, it is sufficient if the deed is signed under the name of the company by that director, but the signature shall be witnessed by another person. The witness shall not only sign, but shall also add his or her occupation and address. Alternatively, companies may execute under the power of attorney. Any party which is a body corporate (other than a company) shall execute in the same manner as a company by persons in a comparable position to a company director or otherwise in accordance with section 9 of the property Law Act 2007. In the case of a party who is an individual, the party shall sign and the signature shall be witnessed by another person. The witness shall not only sign but must also add his or her occupation and address.

## Schedule 18 – Cost fluctuations

<<The content of this schedule is based on Appendix 2 to the document Contract Price Adjustment for Cost Fluctuation: Infrastructure Contracts. You will need to refer to that document for guidance on how to adapt this schedule to your contract.

The content of this schedule assumes that one index is to be used, either the *Waka Kotahi structures (costs excluding bitumen) index* or the *Waka Kotahi construction other than structures (costs excluding bitumen) index*. Where the contract scope includes both structures and other construction then it will probably be necessary to use both the above indexes to determine cost fluctuation payments. Appendix 3 to Contract Price Adjustment for Cost Fluctuation: Infrastructure Contracts describes how that should be done and provides two alternative models for this Schedule 17.>>

1. The provisions of this Schedule shall apply when provided for in the Special Conditions.
2. The amounts payable by the Principal, to the Contractor under the contract shall be adjusted up or down by amounts calculated in accordance with the following two-part formula on a monthly basis:

$$C = CI + CB$$

Where

C = Cost fluctuation adjustment for the month under consideration

CI = [ (Value x (p<sub>+</sub> / 100) (I / I' - 1) ]

CB = [ Volume x (Bit - Bit') ]

And

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

p = The proportion of costs excluding bitumen supply (an estimate of total contract costs excluding bitumen supply divided by an estimate of total contract costs) is fixed for the duration of the contract and has a value of << Z% - refer Contract Price Adjustment for Cost Fluctuation: Infrastructure Contracts for guidance on how to set the value of 'p' >>

I / I' = The value of the index defined in clause 3 for the month under consideration divided by the value of the index for the month during which tenders closed

Volume = Volume of residual bitumen binder applied during the month under consideration (litres) taken from the Payment Schedule. Residual bitumen is the non-volatile fraction of the bitumen binder that remains in service after evaporation. Volume is measured at 15 degrees Celsius

Bit = Value of the *Waka Kotahi Bitumen cost adjustment series* for the month under consideration, published on the Waka Kotahi website

Bit' = Value of the *Waka Kotahi Bitumen cost adjustment series* for the month during which tenders closed, published on the Waka Kotahi website.

3. The index shall be << either the *Waka Kotahi structures (costs excluding bitumen) index* or the *Waka Kotahi construction other than structures (costs excluding bitumen) index*>> as published on the Waka Kotahi website.
4. Cost Fluctuation provisions shall be applied from the commencement of the contract period. ~~except that for months 1 to 12 of the contract period CI shall be deemed = \$Nil.~~

5. Cost fluctuations are calculated on a monthly basis.
6. For the purpose of calculating the cost fluctuation adjustment in clause 2, any Daywork, Prime Cost Sums, Variations and other payment items which are based on actual cost, or current prices and any advances shall be excluded from the valuation of work completed.
7. The Contractor shall not be entitled to claim cost fluctuation adjustment for work completed after the Due Date for Completion greater than that which would apply had the work been completed on the Due Date for Completion.
8. The index values to be used in the calculation of the cost fluctuation in clause 2 shall be those first published by Waka Kotahi for the appropriate quarter.
9. Where the index for the quarter has not yet been published, interim payments shall be made on the basis of the index for the most recent quarter for which an index is available. A correction to the interim monthly payment will be made following the publication of the applicable index and will be processed with subsequent progress payments.
10. If at any time any of the Statistics New Zealand indexes which are inputs into the Waka Kotahi index(es) referred to in clause 2 or later clauses are no longer published, or if the basis of any index is materially changed, the adjustment shall thereafter be calculated by using such other input index, or in such other manner as will fairly reflect the changes as previously measured by that index.
11. If at any time any of the inputs into the *Waka Kotahi-bitumen cost adjustment series* referred to in clause 2 or later clauses are no longer published, or if the basis of the *Waka Kotahi cost adjustment series* is materially changed, the adjustment shall thereafter be calculated by using such other inputs, or in such other manner as will fairly reflect the changes as previously measured by the *Waka Kotahi bitumen cost adjustment series*.
12. The Principal has developed a web based tool, called “The Adjuster” that is available to Suppliers, refer <https://adjuster.nz/>. The Adjuster calculates contract price adjustments for cost fluctuation using the bitumen volume based method.