

NETWORK OUTCOMES CONTRACT 2019

Volume 1: Conditions of Contract

SYSTEM MANAGEMENT

3 MARCH 2020

VERSION 3.1

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More information

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[DOCUMENT CHANGE FORMAT CODES

Black

Black text is mandatory and may not be changed without approval from the Network Outcomes Contract Clarification Governance Group.

Black

Struck out black text is used for removing mandatory content that has been prior approved by the Network Outcomes Contract Clarification Governance Group to be removed. Struck out text provides transparency of changes to an otherwise nationally consistent document. All struck out text must be confirmed within Section 7 of the Specifications.

Red

Red text is used for data which requires fields to be updated or at least considered for each contract. Text can also be used as is, modified or replaced. All red text adjustments must have the Manager System Management's approval.

Blue

Blue text is used for optional clauses which can be included as is or deleted in full.

<<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.]

CONTRACT AGREEMENT

CONTRACT FOR []

CONTRACT NUMBER []

THIS AGREEMENT is made on [] 20 []

BETWEEN [] ('the Contractor')

AND 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 (the Transport Agency)

<<Insert Local Authority Name if Joint Principals>>

IT IS AGREED as follows:

1. The Contractor shall carry out the obligations imposed on the Contractor by the Contract.
- 2.
3. 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, with the order of precedence as defined under Schedule 18:
 - (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. Items included under 4(c) should only include those post tender documents which have the effect of amending any items within 4(d) to 4(l), otherwise they should be included under 4(o)>>

 []

 []

- (d) Schedule 2: Special Conditions of Contract – Other Conditions of Contract;
- (e) Schedule 1: Special Conditions of Contract – Specific Conditions of Contract;
- (f) The General Conditions of Contract NZS3917: 2013 (including other Schedules);
- (g) Specifications issued prior to the Date of Acceptance of Tender;
- (h) Appendices
- (i) Drawings issued prior to the Date of Acceptance of Tender;
- (j) The Schedule of Prices & Basis of Payment
- (k) The Contractor's tender;
- (l) Notices to Tenderers <<guidance note: give details with dates>>

 []

[]

[]

(Select if *NOT* applicable)

- (m) The Schedule to the Conditions of Tendering;
- (n) The Conditions of Tendering; and
- (o) The following additional documents: <<Identify any additional documents to be included for example agreed correspondence>>]

[] _____
>[] _____
>[] _____
>[] _____
>[] _____
>[] _____

5. 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.

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 3917: 2013 **Conditions of contract for building and civil engineering - Fixed term** 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)

<<Guidance note: remove all "guidance notes" for final publication.>>]

Contract for:	[Contract Number, Contract Name]	
Clause in General Conditions	Title and subject matter	Specific condition data (Expand cells if required or add reference to further detail provided in Schedule 2.)
1	INTERPRETATION	
1.2	Definitions	
	The Principal is:	The Principal is: the 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 (the Transport Agency)
	of:	[Click to enter street address]
	and:	<<insert Local Authority Name if Joint Principal, otherwise delete row, and clause 1.2(a) below.>>
	(a) Principal's Joint Venture Agreement	<<include joint Principal's agreement.>>
1.2, 10.2	Separable Portions	
	• Are there any Separable Portions in this Contract?	No
2	THE CONTRACT	
2.1	Type of Contract	
2.1.1	This Contract is a:	
	(a) Lump sum contract governed by 2.2 in respect of any Capital Works Services	<input type="checkbox"/>
	(b) Measure and value contract governed by 2.3 in respect of all Contract Works that are not Capital Works Services	<input checked="" type="checkbox"/>
2.4	Cost reimbursement contract	Clause 2.4 shall not apply to this contract
2.5	Local authority contracts	
2.5.1	Is this Contract a local authority contract to which 2.5.2 applies	State yes or no <<select yes if contract includes local authority roads>>
2.6	Evidence of Contract	
2.6.2	How is the Contract Agreement executed?	(a)

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>
	(a) As stated in 2.6.2	<input checked="" type="checkbox"/>
2.7	Documents prepared by the Engineer or Principal	
2.7.1	Copies of the Contract shall be supplied without charge to the Contractor in the following electronic format:	A single pdf copy shall be supplied.
3.	BONDS	
3.1	Contractor's Bond	
3.1.1	Is a Contractor's Bond required? Note - Bonds are accepted in principle from those insurance companies and banks approved by the Transport Agency. The current approved list is scheduled in the Transport Agency's "Contract Procedures Manual" (SM021).	No
3.1.2	If yes, the amount of the Contractor's Bond shall be:	Nil
3.2	Principal's Bond	
3.2.1	Is a Principal's Bond required?	No
5.	GENERAL OBLIGATIONS	
5.4	Occupancy of the Site	
5.4.4	Limits on the Contractor's right of entry to adjoining properties are:	Nil or List Details <<Nil is default. If deemed to apply, Regions are to provide details of specific right of entry requirements as required >>
5.5	Separate Contractors	
5.5.1	Separate Contractors who may be carrying out work on the Site concurrently with the Contract Works are:	<input type="checkbox"/> Traffic Counting <input type="checkbox"/> Bridge Consultancy <input type="checkbox"/> Structure Bridge Renewals <input type="checkbox"/> Tunnels <input type="checkbox"/> Traffic Signals <input type="checkbox"/> Street Lighting <input type="checkbox"/> Street Cleaning <input type="checkbox"/> High Speed Data <input type="checkbox"/> RAMM Condition Rating <input type="checkbox"/> National ITS Contracts <<check boxes and / or add where applicable>>]
5.5.2	Are facilities for Separate Contractors required?	[Select yes or no]
	If yes, details of facilities required are:	[Enter text as required]
5.6	Care of works and Site	
5.6.6(f)	Further risks specifically excepted are:	Nil <<Default is "Nil" unless Principal feels that certain risks (in addition to those set out in 5.6.6 are to be excluded).>>

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>
5.11	Compliance with laws	
5.11.3	Exceptions to the Principal's obligations to obtain licences under 5.11.3 are:	<< Principal to consider and list those licences that the Contractor is best placed to obtain e.g. re corridor access requests, any council consents/certificates etc.>>]
5.11.4	Exceptions to the Contractor's obligations to give notices and obtain other licences under 5.11.4 are:	Nil <<Default is "Nil" unless Principal feels that the Principal is best to obtain certain licences.>>]
5.11.8	Prior to the issue of the Certificate of Expiry:	<i>(select one to apply, (a), (b) or (c))</i>
	(a) Producer Statements in the form of Schedule 6 are required;	<input type="checkbox"/>
	(b) Producer Statements as set out in the following parts of the Contract are required;	<input checked="" type="checkbox"/> <i>As noted in the Maintenance Specification and as required for building consents.</i>
	(c) Producer Statements are not required	<input type="checkbox"/>
5.17	Safety plan	
	Is a Site-specific safety plan required to be prepared by the Contractor?	Yes And shall be submitted as stated under Specification Section 4.1 (Health and Safety Management Plan)
5.18	Quality plan	
	Is a quality plan required to be prepared by the Contractor?	Yes And shall be submitted as stated under Specification Section 4.2. (Quality Management Plan)
5.19	Traffic management plan	
	Is a traffic management plan required to be prepared by the Contractor?	Yes And shall be submitted as stated under Specification Section 4.3 (Traffic Control Plan).
5.20	As-built drawings and operation and maintenance manuals	
5.20.1(a)	Are as-built drawings required to be prepared by the Contractor?	Yes, for additional works and emergency works as instructed.
5.20.1(b)	Are operation and maintenance manuals required to be prepared by the Contractor?	No
5.20.1(c)	Are maintenance records required to be prepared or updated by the Contractor?	Yes
5.22	Key Personnel	
	Key personnel to which 5.22.1 applies are:	[Select (a) or (b)]
	(a) As stated in the Contractor's Tender.	<input type="checkbox"/>
	(b) The following:	<input type="checkbox"/> [Enter list as required]
6.	THE ENGINEER	
6.1	Appointment of the Engineer	

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>
6.1.2	The Engineer is:	To be confirmed refer Schedule 2 – Special Conditions of Contract – Other Conditions of Contract section 6.
	Whose professional qualification is:	CPEng and Transport Agency accredited to Engineer to Contract Level 3.
6.4.6	The Principal will recover the cost for reinspection, remeasuring or retesting at the following rates:	
	• Engineer or other professional	[\$220.00]per hour (exclusive of GST)
	• Engineer's Representative	[\$150.00]per hour (exclusive of GST)
	• Contract Manager Other personnel	[\$150.00]per hour (exclusive of GST)
	• Vehicle running	[\$1.00]per km (exclusive of GST)
8.	INSURANCES	
8.1	General	
8.1.1	The party identified below shall arrange the following insurances referred to in the following clauses	
	8.3 or 8.8 Construction	Principal <<Guidance note: Principal (PAI) set as default. Exemption requires sub VAC approval>>
	8.9 Existing property	[Select Principal if insurance is required <<Guidance note: Principal (PAI) set as default. Exemption requires sub VAC approval>>
	8.4 Plant	Contractor <<Guidance note: Default is "Contractor">>
	8.5 or 8.10 Public liability	[Select Contractor or Principal <<Guidance note: Principal (PAI) set as default. Exemption requires sub VAC approval>>
	8.5.2 Motor Vehicle	Contractor
	8.6 Professional Indemnity	Contractor <<Guidance note: Default is "Contractor" 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:
	(a) Landslip	Yes
	(b) Earthquake	Yes
	(c) Tsunami	Yes
	(d) Tornado	Yes
	(e) Cyclone	Yes

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>
	(f) Storm	Yes
	(g) Flood	Yes
	(h) Lightning strike	Yes
	(i) Volcanic activity	[Select yes or no]
	(j) Hydrothermal activity	[Select yes or no]
	(k) Geothermal activity	[Select yes or no]
8.3, 8.8	Construction insurance <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 "Insured" in the insurance policy, or insert "Nil">>
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 Contract Price, after acceptance of the tender or other offer, plus the following allowances:	
	(a) 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%]
	(b) 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>
	(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 items to be incorporated in the Contract Works, the Cost of which is not included in the Contract Price, 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%]
	(d) An allowance for an increase in the Contract Price due to Variations, 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%]

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>
	(e) An allowance for an increased construction Costs due to inflation, equal to:	(Select one to apply, (i) or (ii))
	(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%]
The insurance shall make provision for automatic change of cover for items (a) to (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.		
8.4 Contractor arranged Plant insurance		
	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 an exceptional nature and specifically critical to the timely completion of the Contract Works>>
	(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">>
8.5 Contractor arranged public liability insurance		
8.5.1	Where required (see 8.1 above), public liability insurance shall be effected by the Contractor for an amount not less than:	[\$5,000,000]
	Such public liability insurance may include sub limits:	
	• For liability arising out of vibration, weakening or removal of support, of not less than:	[\$250,000.00] <<Guidance note: For any contract in an urban or built up area, cover shall be increased to the full minimum limit of \$5M. Ensure your sub-limits match those listed within Schedule 9>>
8.5.2	Where required (see 8.1 above), motor vehicle third party liability insurance shall be effected for an amount not less than:	[\$5,000,000]
8.6 Contractor arranged professional indemnity insurance		
<<For high risk project-specific contracts Insurance Levels must be reviewed and approved by the "Insurance Risk Sub VAC" via Appendix XXIII of SM021 Manual (insurance@Transport Agency.govt.nz).>>		
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:	
	• For any one claim:	\$1,000,000.00
	• And for an amount in the aggregate of:	[\$XXXXXX]
8.6.2	Sub limits of liability for design of parts of the Contract Works by Subcontracts shall not be less than:	[List specific parts] or [Not required] <<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>>

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>																											
8.8	Principal arranged construction insurance (refer also to 8.3)																												
	In accordance with 8.7.2, the insurance policy wording title is:	Transport Agency PAI policy – details renewed annually																											
	In accordance with 8.7.2, the extraordinary exclusions, conditions, warranties or endorsements to the policy are:	Specific policy wording applicable to this contract can be read at the following website: http://nz.marsh.com/Transport Agency-pai																											
8.8.1	Where the Principal is required to effect construction insurance (see 8.1 above).																												
	The lead insurer is:	[List insurer or insurers] <<Guidance note: the insurer is reviewed annually, check http://nz.marsh.com/Transport Agency-pai >>]																											
	Address of lead insurer:	<<Guidance note: the insurer is reviewed annually, check http://nz.marsh.com/Transport Agency-pai >>]																											
	The Nominal Deductibles are:																												
		<table border="1"> <thead> <tr> <th rowspan="2"></th> <th colspan="3">Original Estimated Contract Value</th> </tr> <tr> <th>>0 to 10m</th> <th>>10m to 20m</th> <th>>20m</th> </tr> </thead> <tbody> <tr> <td>Each loss except as below:</td> <td>\$10,000</td> <td>\$25,000</td> <td>\$50,000</td> </tr> <tr> <td>Major Perils</td> <td>\$25,000</td> <td>\$50,000</td> <td>\$100,000</td> </tr> <tr> <td>Wet Work Contracts</td> <td>\$300,000</td> <td>\$300,000</td> <td>\$300,000</td> </tr> <tr> <td>Tunnelling Contracts (including excavations / underpasses >100m)</td> <td>\$300,000</td> <td>\$300,000</td> <td>\$300,000</td> </tr> <tr> <td>LEG 3/06 Defects Claims</td> <td>\$250,000</td> <td>\$250,000</td> <td>\$500,000</td> </tr> </tbody> </table> <p>For this contract, the Original Estimate Contract Value is in the range [Select Value</p> <p><<Guidance note: Ensure the above deductibles table is consistent with the Transport Agency's latest and current PAI policy wording at the time of tender close http://nz.marsh.com/Transport Agency-pai>></p>		Original Estimated Contract Value			>0 to 10m	>10m to 20m	>20m	Each loss except as below:	\$10,000	\$25,000	\$50,000	Major Perils	\$25,000	\$50,000	\$100,000	Wet Work Contracts	\$300,000	\$300,000	\$300,000	Tunnelling Contracts (including excavations / underpasses >100m)	\$300,000	\$300,000	\$300,000	LEG 3/06 Defects Claims	\$250,000	\$250,000	\$500,000
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LEG 3/06 Defects Claims	\$250,000	\$250,000	\$500,000																										
8.9	Principal arranged existing property insurance	Nil																											

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>												
		<<Guidance note: default position is that this is not relevant to Transport Agency contracts. If unsure email insurance@Transport Agency.govt.nz for project specific guidance>>												
8.9.1(b)	Other structures in the vicinity are:	Nil <<Guidance note: default position is that this is not relevant to Transport Agency contracts. If unsure email insurance@Transport Agency.govt.nz for project specific guidance>>												
8.9.1(c)	Contents insurance are:	Nil <<Guidance note: default position is that this is not relevant to Transport Agency contracts. If unsure email insurance@Transport Agency.govt.nz for project specific guidance>>												
8.10	Principal's option to insure public liability													
	Where required (see 8.1 above), the Principal shall effect public liability insurance for an amount not less than:	\$20,000,000 <<Guidance note: Consultant to ensure the below deductibles table is consistent with the Transport Agency's latest and current PAI policy wording at the time of tender close>>												
	The lead insurer is:	[List insurer or insurers] <<Guidance note: the insurer is reviewed annually, check http://nz.marsh.com/Transport Agency-pai >>												
	Address of lead insurer:	<<Guidance note: leave this blank>>												
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	Original Estimated Contract Value													
	>0 to 5m	>5m to 10m	>10m											
Each occurrence (including Maintenance Contracts)	\$10,000*	\$20,000*	\$25,000*											
	In accordance with 8.7.2:													

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"> The policy wording title is: 	Specific policy wording applicable to this contract can be read at the following website: http://nz.marsh.com/Transport Agency-pai
	<ul style="list-style-type: none"> Extraordinary exclusions, conditions, warranties, or endorsements to the policy are: 	Specific policy wording applicable to this contract can be read at the following website: http://nz.marsh.com/Transport Agency-pai
8.9.2	Such public liability insurance may include sub-limits for: <i>(specify as applicable or state 'not applicable')</i>	
	<ul style="list-style-type: none"> Liability arising out of vibration, weakening or removal of support 	\$100,000 Specific policy wording applicable to this contract can be read at the following website: http://nz.marsh.com/Transport Agency-pai
9. VARIATIONS		
9.3 Valuation of Variations		
9.3.9	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 checked="" type="checkbox"/>
	(b) The prices and rates in the Schedule of Prices are exclusive of On-site Overheads;	<input type="checkbox"/>
9.3.7	The allowance for On-site Overheads to be added in accordance with 9.3.7 is:	<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 checked="" type="checkbox"/>
	(iv) A reasonable percentage.	<input type="checkbox"/>
9.3.10	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 Off-site Overheads and Profit;	<input checked="" type="checkbox"/>
	(b) The price and rates in the Schedule of Prices are exclusive of Off-site Overheads and Profit;	<input type="checkbox"/>
9.3.7	The allowance for Off-site Overheads and Profit to be added in accordance with 9.3.7 is:	<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 checked="" type="checkbox"/>
	(iv) A reasonable percentage.	<input type="checkbox"/>
9.3.14	For processing of Variations, the percentage to be paid in accordance with 9.3.14 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"/>

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>
	(d) A reasonable Cost of processing the Variations.	<input checked="" type="checkbox"/> <<Guidance note: This is to be agreed via negotiation with contractor on a case by case basis>>
10.	TIME FOR COMPLETION	
10.1	Date of Commencement	
	(a) For the Contract Works:	[Click here to enter a date]
10.2	Date of Expiry	
10.2.1	(a) For the Contract Works:	<i>(select one to apply, (i) or (ii))</i>
	(i) [7]Years with a maximum term of [9]years	<input type="checkbox"/> Subject to Schedule 2, clause 10.5, and the performance management framework requirements as set out in section 2 of the Specifications
11.	DEFECTS LIABILITY	
11.4	Final Completion Certificate	
11.4.2(a)	Prior to issue of the Final Completion Certificate:	
	(a) Producer Statements in the form of Schedule 6 are required	<input type="checkbox"/> As specified in the Specification or as otherwise required from time to time in respect of Capital Works Services <<Guidance note: Default option where works are of a nature where producer statements may be required e.g. capital works>>
	(b) Producer Statements as set out in the following parts of the Contract are required	Not applicable
	(c) Producer Statements are not required	<input type="checkbox"/> <<Guidance note: Default option where works are of a nature where producer statements are not required e.g. maintenance works>>
11.4.2(b)	Prior to issue of the Final Completion Certificate:	
	(b) As-built drawings and operation and maintenance manuals are not required.	<input checked="" type="checkbox"/>
11.4.2(c)	Prior to issue of the Final Completion Certificate:	<i>(select one to apply, (a) or (b))</i>
	(a) Outstanding maintenance records are required;	<input checked="" type="checkbox"/>
	(b) Outstanding maintenance records are not required.	<input type="checkbox"/>
11.6	Warranties	
11.6.1		
	(a) No warranties are required;	<input type="checkbox"/> <<Guidance note: Only relevant if no warranties are required (e.g. where no warranties are included in Schedule 13)>>
	(b) The Contractor shall provide warranties as set out in the Contract for the following items of work:	<input checked="" type="checkbox"/> <<Default>>] The Contractor shall provide subcontractor warranties, and warranties as required by the Specifications or as may otherwise be required

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>
		for Capital Works Services. If warranties for Capital Works Services are required, the Principal will propose a form of warranty to be delivered by Contractor and a duly executed warranty will be a pre-condition to the Contractor receiving payment in respect of such Capital Works Services. In the event the warranty relates to a portion of the Capital Works Services that have been subcontracted, the form of warranty will require the Contractor and the relevant Subcontractor to be jointly and severally liable.
11.7	Guarantees	
11.7.1,11.7.2		
	(a) No guarantees are required;	<input checked="" type="checkbox"/> <<Default>> <<Guidance note: despite this default position, consider if guarantees (e.g. from a parent or associated company or other guarantees (e.g. Directors' / Shareholders' guarantees) are required (e.g. if there are issues with the Contractor entity's solvency). Note Subcontractor warranties and manufacturers warranties are dealt with under clause 11.6>>]
	(b) The Contractor shall provide guarantees in the following form:	<input type="checkbox"/> [State form]
	(c) The Contractor will provide Subcontractor continuity guarantees in the form set out in Schedule 18, duly signed by the applicable Subcontractors	<input checked="" type="checkbox"/> Only required in special cases such as tunnels or other specialist works
12.	PAYMENTS	
12.1	Contractor's payment claims	
12.1.3(b) (iii)	Advances for Materials delivered to the Site	
	(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"/> <<Default>>
12.1.3(b) (iv)	Advances for Temporary Works or Plant	
	(a) Advances for Temporary Works or Plant shall not be made.	<input checked="" type="checkbox"/> <<Default>>
12.1.3(b) (iv)	Advances for Materials not yet on Site	
	(a) Advances for Materials not yet on Site shall not be made.	<input checked="" type="checkbox"/> <<Default>>
12.3	Retention monies	
12.3.1,12.3.2	Retentions shall or shall not apply as follows:	<i>(select one to apply, (a) or (b))</i>
	(a) Retentions shall not apply	<input type="checkbox"/>

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) Retentions shall apply as follows:	<input checked="" type="checkbox"/>
	(ii) The retention formula in the right hand column.	<input checked="" type="checkbox"/> For the Contract Works, a total retention of: <ul style="list-style-type: none"> • 10% on the first \$200,000, and • 5% on the next \$800,000, and • 1.75% on amounts in excess of \$1,000,000, and • With a maximum total retention when aggregated of \$200,000, and • With a defects liability retention of half the total retention.
12.3.3	Bond in lieu of retention	
	(a) The Contractor may provide a bond in lieu of retentions.	<input checked="" type="checkbox"/> 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%.
12.8	Cost fluctuations	<i>(select one to apply, (a), (b) or (c))</i>
	(b) Cost fluctuations shall be paid in accordance with the method described in:	<input checked="" type="checkbox"/> Schedule 17
12.13	Goods and services tax	
12.13.2	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 checked="" type="checkbox"/>
12.14	Performance payments	<i>(select one to apply, (a) or (b))</i>
12.14.1, 12.14.2	(a) Performance payments shall not apply;	<input type="checkbox"/>
	(b) Performance payments shall apply, and the performance indicators and performance payments are contained in the following parts of the Contract:	<input checked="" type="checkbox"/> Maintenance Specification and Basis of Payment
12.15	Liquidated damages	
12.15.1, 12.15.2	(a) Liquidated damages shall not apply	<input type="checkbox"/> <input checked="" type="checkbox"/>
13.	DISPUTES	
13.4	Arbitration	

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>
13.4.3	If required, the arbitrator shall be nominated by the following Person:	The President of the Arbitrators' and Mediators' Institute of New Zealand Inc will appoint the arbitrator
15.	SERVICE OF NOTICES	
15.1.2	For the purposes of service of written notice:	
	(a) The address of the Principal is:	[]
	Postal address:	[]
	Delivery address:	[]
	Mark for 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 for 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 for the attention of:	[]
	Email address:	[]
	Other agreed means of electronic communication and address detail:	[]

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

In addition to 1.2, Definitions, the following definitions are provided:

BROADER OUTCOMES means the New Zealand Government's priorities and expectations of Government agencies with respect to their procurement activities secondary benefits generated due to the way goods, services or works are produced or delivered, as further described in the Government Procurement Rules (4th Ed) and at <https://www.procurement.govt.nz/broader-outcomes/>, and in other such guidance materials as notified by the Principal to the Contractor from time to time.

CAPITAL WORKS SERVICES means any additional works which the Principal instructs the Contractor to carry out under Conditions of Contract Schedule 2 Clause 5.1B that are in the nature of capital or construction works, as distinct from operations and maintenance.

CONFIDENTIAL INFORMATION means any information relating to the Principal and its clients whatsoever in any form that the Contractor and its personnel, including Subcontractors, either directly or indirectly may have or know as a consequence of carrying out the Contract Works. Information shall include but is not limited to information the Contractor and its personnel view on anything relating to the Contract Works or anything it sees in the Principal's premises or in any premises while carrying out the Contract Works but which excludes Confidential Information which:

- is published or otherwise has become part of the public domain other than through any act or omission of the recipient; or
- has been furnished by the recipient by persons other than the Principal (which term in this instance includes persons employed by or acting for the Principal) as a matter of legal right and without restriction on disclosure; or
- was already in the possession of the recipient without restriction on disclosure, or
- is required to be disclosed by any law or in relation to any proceedings or action before any court, tribunal or other competent authority or body, but only to the extent so required.

CONSTRUCTION SEASON means 1 October to 30 April inclusive unless stated otherwise in Section 6 of the Maintenance Specification.

CONTRACT AREA means the geographical area from time to time covered by this Contract as set out in the Contract documents.

CONTRACT MANAGEMENT PERSONNEL means the Contractor's Representative or Contract Manager (see Information for Tenderers, Clause 4.4).

CONTRACT PERIOD means the period defined in clause 10.2.1.

CONTRACT WORKS means the supply and, where applicable, installation, of all labour, Plant and Materials together with all other works and services including supervision and administration, for the management, operation and maintenance of the assets described in the Specifications in accordance with the Contract as well as all other works and services to be performed by the Contractor under the Contract, including any Capital Works Services.

DATA BREACH means any incident that:

- (a) involves unauthorised access to, or use or disclosure of, any of the Principal's Personal Information; or
- (b) exposes the Principal's Personal Information to a more than negligible risk of unauthorised access, use or disclosure (for example, losing an unencrypted storage device, or storing information in an unsecured online repository); 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 Privacy Laws.

GOOD INDUSTRY PRACTICE means, without limiting or prejudicing any higher standards or higher requirements under the Contract, the exercise of that degree of skill, care, diligence, prudence (including good, safe and prudent practice) and foresight that would reasonably be expected to be observed by a highly skilled and highly experienced contractor engaged in carrying out activities the same as or similar to the Contract Works under the same or similar circumstances.

HSE LEGISLATION means all statutes, regulations and other subordinate legislation in force, or that come into force, in New Zealand prior to the Date of Expiry in respect of health and safety (including the Health and Safety at Work Act 2015, all regulations made under those acts and all published codes of practice, standards and guidelines).

NETWORK means the network described in Specifications, Section 1.

PERSONAL INFORMATION means any information about an individual (whether or not it is possible to identify the individual from that information), and includes all 'Personal Information' within the meaning of the Privacy Act 1993.

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.

PRIVACY LAWS means (i) the Privacy Act 1993, and any regulations, codes of practice and approved information sharing agreements made under it; and (ii) any other laws insofar as they regulate the collection, processing, storage, use and/or disclosure of information about individuals; in each case as amended or replaced from time to time.

PROPOSED TIME FOR COMPLETION OF CAPITAL WORKS SERVICES has the meaning given to that term in Conditions of Contract Schedule 2 Clause 9.1A.1.

WINTER PERIOD means [June] to [September] inclusive.

Delete the existing working day definition and replace with the following:

WORKING DAY means any calendar day other than Sunday or a Public Holiday where the day observed as the Public Holiday falls on any day of the week.

Insert new clause 1.3.9 as follows:

1.3.9.1 References to the Principal

References to the Principal in the contract are references [to the [COMPLETE] Council and << Guidance note: Delete where NZTA is the sole contract principal>>] the Transport Agency. Except where the entities constituting the Principal are referred to individually, all provisions in the contract relating to the Principal shall be deemed to be the references to the entities constituting the Principal acting jointly.

<< Guidance note: Where the contract has a joint principal the following clauses 1.3.9.2 and 1.3.9.3 are to be added, otherwise deleted.>>]

1.3.9.2 Several Liability of Principal

Notwithstanding 1.3.8(a), the liability of the Transport Agency and the [COMPLETE] Council under the contract shall not be joint but shall be several, to the intent that:

- i. In respect of the Transport Agency this contract shall only apply to those State Highways for which Transport Agency has statutory responsibility as described in the Schedule of Prices and the Specifications. The Transport Agency is not liable to the Contractor for the separate

acts or omissions of, or for any breach of any obligations or warranty in the contract by the **[COMPLETE]** Council.

- ii. In respect of the **[COMPLETE]** Council this contract shall only apply to those local roads for which the **[COMPLETE]** Council has statutory responsibility as described in the Schedule of Prices and the Specifications. The **[COMPLETE]** Council is not liable to the Contractor for the separate acts or omissions of, or for any breach of any obligations or warranty in the contract by the Transport Agency.

1.3.9.3 Payment for Services

In accordance with the principle of several liability, the lump sum and measure and value payments for the Contract Works shall be divided between the Transport Agency and the **[COMPLETE]** Council as follows:

- i. The Transport Agency shall only be liable to the Contractor for payments for Contract Works provided in respect of the State Highways for which Transport Agency has statutory responsibility as described in the Schedule of Prices and the Specifications.
- ii. The **[COMPLETE]** Council shall only be liable to the Contractor for payments for Contract Works provided in respect of those local roads for which the **[COMPLETE]** Council has statutory responsibility as described in the Schedule of Prices and the Specifications.

Whenever the Contractor submits a payment claim in accordance with clause 12.1 or 12.4 of the General Conditions, the Contractor shall specify in the payment claim the amount that is payable by the Transport Agency and the respective Council apportioned in accordance with the above requirements

Section 2 – The contract

2.3.2 is expanded as follows:

The Principal does not warrant that any quantities in the Schedule of Prices are accurate and/or complete and the Contractor is entirely responsible for satisfying itself about such things and will not be entitled to any additional payment, any extension of time, any Variation, compensation or any other relief whatsoever in relation to or in connection with any inaccuracies or incompleteness in any such quantities and will not claim otherwise.

2.3.4 is deleted and replaced as follows:

2.3.4 The Contractor acknowledges and agrees that no new rates may be added to the Schedule of Prices unless agreed in writing by the Principal on a case-by-case basis.

Clause 2.8.2 is deleted and replaced with:

2.8.2 The Contractor shall upon request by the Engineer supply without charge hard copy sets of copies of Drawings and Specifications which have been prepared by, or on behalf of, the Contractor as provided in the Specifications.

Section 5 – General obligations

Insert a new clause 5.1B as follows:

5.1B Capital Works Services

5.1B.1 Following receipt of a notice to proceed from the Principal under 9.2.1(b)(ii), the Contractor shall immediately commence carrying out the relevant Capital Works Services.

5.1B.2 The Contractor shall use its best endeavours to complete the Capital Works Services by the Proposed Time for Completion of Capital Works Services.

- 5.1B.3** The Contractor shall carry out any Capital Works Services in accordance with Good Industry Practice and shall ensure that the Capital Works Services are free of defects and comply with, and are operable in accordance with, all applicable Acts, Regulations and licences (as this term is defined in 5.11.2).

Insert new clause 5.1.7 as follows:

- 5.1.7** During the term of the contract the Contractor must advise the Engineer of any potential or actual conflicts of interest with any individual or company engaged to complete any part of the Contract Works. This includes Subcontractors and individuals and companies engaged under any other supply arrangement to supply any part of the Contract Works. The Contractor must advise the Engineer of the means by which it intends to remove or mitigate such conflicts of interest. The Engineer must inform the Principal of any conflicts of interest notified to the Engineer by the Contractor in accordance with this clause, and the Principal will, in discussion with the Engineer 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.

Insert new clause 5.1.8 as follows:

- 5.1.8** The Contractor must achieve certain Key Performance Indicators (KPIs) as set out in the contract.

Insert new clause 5.5.4 as follows:

- 5.5.4** The parties acknowledge that independent third parties including utility operators, whether working with specific permission from the Principal and/or the Engineer or not, are not separate Contractors under this Contract. These third parties may undertake works, which are similar, or the same as the Contract Works and where such work is required as a consequence of the actions and/or omissions of the third party. The Contractor is not entitled to make any claim in relation to the activities or works to be undertaken by such third parties.

Notwithstanding any other provisions of the Contract, the Principal will use its reasonable endeavours to ensure the Contractor receives notification of any third parties who are likely to work in the Contract Area and during the time the Contractor is carrying out Contract Works, but without being liable to the Contractor in any way should notification not be given.

Insert new clause 5.7A as follows:

5.7A Further health and safety provisions

- 5.7A.1** Without limiting the generality of anything else in the Contract, the Contractor is responsible for all health and safety matters in relation to the Contract Works and any other works or services carried out by any other Person on any part of the Site under the care or control of the Contractor for the period from the date the Contractor is first granted exclusive occupancy of the applicable part of the Site until the Date of Expiry, in accordance with the relevant legislative requirements.
- 5.7A.2** The Contractor must comply with and must ensure that all Subcontractors and its and their employees and agents, as well as any other Person and their employees and agents carrying out any works or services on any part of the Site under the care or control of the Contractor, comply with their obligations under the HSE Legislation and any subsequent health and/or safety legislation, and all regulations, approved codes of practice and with the Principal's occupational health and safety system.

- 5.7A.3** The Contractor acknowledges to the Principal that as between the Principal and the Contractor, the Contractor is the person managing and in control of the Site and accordingly has the responsibility for the health and safety of all persons in and about the Site involved in or in any way affected by the execution of the Contract Works or any works or services carried out by any other Person on any part of the Site under the care or control of the Contractor.
- 5.7A.4** The Contractor will take primary responsibility to ensure that all necessary induction of all persons on the Site in terms of the HSE Legislation, its rules, obligations and codes, and that the occupational health and safety systems of the Principal and the Contractor, are carried out and observed by the Contractor. The Contractor will also take primary responsibility to ensure that all necessary supervision of all persons on any part of the Site under the management, care or control of the Contractor in terms of the HSE Legislation, and the occupational health and safety systems of the Principal and the Contractor, is carried out by the Contractor.
- 5.7A.5** The Contractor will implement and carry out an audit and inspection regime as required by the Principal and/or any Act or Regulation to ensure compliance by all Persons involved with the Contract Works on the Site or other works or services carried out by any other Person on any part of the Site under the management, care or control of the Contractor with the HSE Legislation, its regulations, obligations and codes, and the occupational health and safety systems of the Principal and the Contractor.
- 5.7A.6** The Contractor has allowed in the Contract Price and in its programme for the requirements of the Contract in relation to health and safety.
- 5.7A.7** The Contractor warrants to the Principal that the Contractor will take all practicable steps and do everything reasonably practicable, to ensure that no act or omission of it, any Subcontractor, any of its and their employees and agents, as well as of any other Person and any of their employees and agents carrying out any work on any part of the Site under the care or control of the Contractor, does or is likely to give rise to the issue of an improvement or prohibition notice, enforcement proceedings or a prosecution under the HSE Legislation against the Principal, the Contractor, a Subcontractor and/or any other Person.
- 5.7A.8** 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 at no cost to the Principal. In addition, if the Principal or the Engineer is of the opinion that the Contractor has failed to comply with any part of this 5.7A, 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 at no cost to the Principal. Any such instruction will not constitute a Variation.
- 5.7A.9** Where there are overlapping health and safety duties across the Person Conducting Business or Undertaking (PCBUs) then consultation, co-operation and coordination between the relevant Parties will occur to determine, agree, and record the health and safety management requirements for workers associated with the Contract Works.
- 5.7A.10** These health and safety provisions are in addition to, and do not replace or exclude, the Contractor's obligation to comply with any other health and safety obligations either under this Contract or at law.
- 5.7A.11** To the extent permitted by law, the Contractor indemnifies and shall keep indemnified the Principal against all costs, damages, loss and expense incurred or suffered by the Principal for any breach by the Contractor of the requirements of the health and safety provisions of this Contract and HS Law.

Insert new clauses 5.12.3 through 5.12.10 as follows:

- 5.12.3** For the purposes of this contract, “**Intellectual Property Rights**” means all intellectual property rights and interests, including without limitation, copyright, trade marks, designs, patents and other proprietary rights whether or not registered and whether or not capable of registration, vested or contingent, in any part of the world, including any intellectual property rights in photographs and video footage taken by the Contractor at the Site, and all applications and rights to apply for registration, all renewals and extensions and all or any goodwill relating to or attached to these rights, together with any and all Confidential Information and know-how .
- 5.12.4** Intellectual Property Rights developed before the Date of Commencement of this contract remain the property of their owner as at the Date of Commencement (**Existing IP**). The Contractor grants to the Principal, or agrees to procure the grant to the Principal of, an unrestricted, royalty-free licence to use and copy any pre-existing intellectual property rights to the extent reasonably required to enable the Principal to use, maintain, adapt, update or amend the Contract Works.
- 5.12.5** All new Intellectual Property Rights of the Contractor that are not developed, commissioned or created under or in connection with this contract remain the property of the Contractor (**Independent IP**).
- 5.12.6** Subject to 5.12.5, all new Intellectual Property Rights relating to Contract Works Material that are developed, commissioned or created under, or in connection with, this contract (**New IP**) will be owned by the Principal as they are created by The Contractor. For the avoidance of doubt, New IP does not include any improvements, developments, adaptations or modifications made to the Contractor’s Existing IP in the performance of this contract (**Modified IP**).
- 5.12.7** Notwithstanding any other provisions of the contract, any New IP developed, commissioned or created by the Contractor under or in connection with this contract which is not related to the Contract Works Materials and/or is not predominantly for or connected to the performance of the Contract Works but which has general industry application shall be the absolute property of the Contractor, and the Contractor shall grant to the Principal an unrestricted, perpetual, non-exclusive, worldwide, royalty-free licence to use such Intellectual Property Rights (at its own risk) for any purpose and without any obligation to obtain the Contractor’s consent or to account for any future benefits.
- 5.12.8** In all cases where the Principal does not own the Intellectual Property Rights in the Contract Works (being Existing IP or Modified IP), the Contractor grants, or agrees to procure the grant to the Principal of, an unrestricted, perpetual, non-exclusive, worldwide and royalty-free licence to use, all such Intellectual Property Rights (at its own risk) for any purpose.
- 5.12.9** The Contractor warrants that any Existing IP and Modified IP provided by the Contractor and incorporated into the Contract Works do not infringe intellectual property rights of any third party. The Contractor indemnifies the Principal in respect of any direct or indirect expenses, damage or liability incurred by the Principal in connection with any third party claim that the Principal’s use of the Existing IP or Modified IP infringes a third party’s rights.
- 5.12.10** The Contractor must ensure that any sub-contract contains:
- (a) a perpetual, non-exclusive, worldwide, royalty free licence to use any New IP for any purpose, in favour of the Principal, such licence to include the right to use, copy, modify and distribute the New IP; and
 - (b) a licence in favour of the Principal in respect of any other intellectual property rights on the same terms as agreed between the Principal and the Contractor.

Section 5.20 As-built drawings, manuals, and maintenance records

The first sentence of 5.20.3(a) is deleted and replaced as follows:

Within 15 Working Days following completion of any Capital Works Services or other installation required by the Contract Works, the Contractor shall submit to the Engineer the draft as-built drawings and operations and maintenance manuals for Capital Works Services.

A new clause 5.22 Key Personnel is added as follows:

5.22.1 The Contractor must employ the key personnel named in the Special Conditions in the positions nominated in the Contractor's Tender or in the Special Conditions (**Key Personnel**), and ensure that the Key Personnel are dedicated to the Contract Works until they have, in the opinion of the Principal or Contract Board, completed their relevant functions in relation to the Contract Works.

5.22.2 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 Contract Board.
- b) Replace any of the Key Personnel if they are unable to undertake work due to termination of employment, resignation, illness, disability or 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 Contract 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) Seek approval from the Principal or Contract Board in relation to any proposed replacement; and
 - (iv) If requested by the Principal or Contract Board, provide details of the proposed replacement to the Principal or Contract Board.
- c) Ensure that each of the Key Personnel is available as per the level of commitment 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.

A new clause 5.23 Broader Outcomes is added as follows:

5.23.1 The Broader Outcomes from Rule 16 of the Government Procurement Rules apply to this contract.

5.23.2 In order to ensure this contract delivers, and enabled the Principal to comply with its obligations in relation to, the Broader Outcomes and otherwise best meet public value (Broader Outcomes Compliance), the Contract Managers from both parties will meet within six months of contract signing in order to assess such requirements and whether a Variation to this contract is appropriate.

5.23.3 The Contractor must not require any unreasonable conditions (including unreasonable Charges) to undertake a Variation relating to Broader Outcomes Compliance and must not refuse a request for a Variation relating to Broader Outcomes Compliance unless the Contractor can demonstrate to the Principal's reasonable satisfaction that the Variation: (a) is not technically feasible, or; (b) is not reasonably related or connected to the Services.

5.23.4 Without limiting any specific requirements incorporated by a Variation relating to Broader Outcomes Compliance, the Contractor must use all reasonable endeavours to comply with and achieve the Broader Outcomes, and not do anything that would result in the Principal failing to comply with its Broader Outcomes obligations, in relation to this Contract and the Services.

A new clause 5.24 Information and Security is added as follows:

5.24.1 The Contractor acknowledges that the Principal has requirements for appropriate security and information management processes that equally apply to its consultants and service providers.

Delivery of services by the Contractor must align with relevant legislation and guidelines, inclusive of the Government's Protective Security Requirements (PSR), Public Records Act (PRA), Privacy Act, Crimes Act, Official Information Act, and any other legislation in so far as relates to the provision of Services.

5.24.2 The Principal expects the Contractor will ensure that it and its personnel providing the Services will:

1. Consistently demonstrate principles and behaviours set out in the Principal's information management and security policies, processes, procedures and supporting controls. Any significant and/or repeated breaches of these standards shall be considered a breach of this Contract and the Contractor shall indemnify the Principal against any consequences.
2. Not access Principal's information or systems except to the extent necessary to provide the Services and for no other reason.
3. Take all reasonable steps to prevent breaches of records storage, information technology systems and equipment, including:
 - a. preventing unauthorised use;
 - b. preventing unauthorised persons obtaining, or attempting to obtain access to the Services or Deliverables or any Principal data/information;
 - c. using or attempting to use any Principal data/information for purposes not authorised or permitted by this Contract;
 - d. 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
 - e. except with the Principal's written permission, not introduce or use magnetic media, flash drives or any other form of portable data storage.
4. Provide interim and final data/information sets, created in the delivery of the service such as research, asset, customer or geo-coded data in formats as agreed.
5. Provide immediate right of access to all data/information/records held by the Contractor, to assess compliance.
6. Ensure no unlawful disposition or sharing of any data/information/records that are in the Service Contractor's possession during the Contract, including:
 - a. unauthorised destruction (destruction that is contrary to the Principal's authorised current disposal authority);
 - b. transfer to a third party; and
 - c. loss, damage or alteration.
7. Complete the appropriate Principal induction procedures.
8. Accept there will be occasions when enhanced physical security measures are adopted in response to emergencies or a heightened threat environment, during which the Contractor will be informed of their responsibilities and will promptly comply with all reasonable measures (which may include spot audit checks and searches) in such situations.
9. Before performing any obligations under this Contract, have passed all probity checks and obtained any relevant national security clearance required as necessary to provide the Services to the Principal; as well as attend and complete any additional specific security training in so far as it relates to the provision of Services.
10. Notify all information and security incidents and concerns to the Principal in a timely manner to facilitate a prompt response to help resolve issues and prevent or minimise any potential

damage to individuals, data/information, equipment and the Principal – incidents or concerns which have Health & Safety implications should follow Health & Safety Incident Reporting procedures.

11. Without limiting any other provisions of the Contract, use all reasonable endeavours to avoid damaging or adversely affecting the Principal's reputation.
12. Return and irreversibly erase all Principal information and records at the end of the contract, noting that these must comply with the Principal's information and record standards.
13. Return and irreversibly erase all material relating to physical and system access privileges immediately to the Principal at the end of the Contract.
14. Accept that any staff who hold a national security clearance will have ongoing obligations under legislation which will survive after the end of the Contract.

5.24.3 The Contractor acknowledges that it is required to abide by the guidelines contained in the official Principal policy statements, including the Data Security Policy Statement, the Data Security Policy Statement, and the Protective Security Policy Statements.

Section 6 – Engineer's Powers and Responsibilities

A new clause 6.1.2.1 is added as follows:

6.1.2.1 The name of the Engineer shall be notified to the Contractor by the Transport Agency within five days following contract award. The Engineer shall be from a non-contracted party and shall not be a Transport Agency employee.

Clause 6.2.1 is deleted and replaced with:

6.2.1 The role of the Engineer in the administration of this contract is:

- a) Independently of either contracting party, to fairly and impartially make decisions entrusted to him or her under the Contract Documents, to confirm the valuation of the Contract Works and issue certificates at due times.
- b) To deal with contract administration other than issues relating to the day-to-day identification, programming and management of general maintenance activities; and
- c) Not to supervise the Contract Works.

Clause 6.3.3 is deleted and replaced with:

6.3.3 The Engineer's representative may exercise any of the powers vested in the Engineer under the contract except:

- a) The reviewing of matters in dispute
- b) Any other powers excluded by the Engineer by written notice to the Contractor.

Section 8 – Insurance

A new clause 8.1.7 is added as follows:

8.1.7 Responsibility for pursuing any claim under any insurance policy shall rest with the party bearing the deductible or excess. 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.

A new clause 8.2.3 (c) is added as follows:

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

A new clause 8.2.7 (c) is added as follows:

8.2.7 Where the Special Conditions so provide and without limiting its obligations under 5.6, 5.7 and 7.1, the Contractor shall effect statutory liability insurance for the Contractor's breach of any statutory requirements for which the Contractor is responsible (but excluding the contractor's obligations under the Health and Safety at Work Act) including fines, penalties and defence costs, for an amount not less than that stated in the Special Conditions for any one claim or series of claims arising out of the same occurrence and in the aggregate.

A new clause 8.5.1 (d) is added as follows:

8.5.1 (d) Public Liability Insurance shall include liability arising out of damage to Underground Services and will be for a sub limit amount not less than **\$250,000.00**.

<<Guidance note: For any contract where works are taken out above Underground Services of significant economic importance cover shall be increased to the full minimum limit of \$5M. Ensure your sub-limits match those listed within Schedule 9.>>]

Section 9 - Variations

Clause 9.1.5 is deleted and replaced with

9.1.5 The value of Variations shall, either:

- a) Be added to, or deducted from, the Contract Price; or
- b) Be offset, in part or in full, by a Variation instructing an addition to, or deduction from, the Contract Works.

A new clause 9.1A is added as follows:

9.1A Contractor to provide information

9.1A.1 Following a request by the Principal (which request for the avoidance of doubt is not an order for a Variation) in respect of a proposed or potential Variation, the Contractor shall promptly, at its cost, prepare and submit to the Principal and the Engineer:

- (a) where the proposed or potential Variation relates to Capital Works Services:
 - (i) sketch plans, specifications and drawings in respect of the proposed Capital Works Services;
 - (ii) a detailed and substantiated quotation for the proposed Capital Works Services which shall, to the extent applicable or appropriate, be based on the rates set out in the Schedule of Prices and may be submitted in the form of a fixed price lump sum; and
 - (iii) a programme setting out the proposed date for completion of the Capital Works Service (the Proposed Time for Completion of Capital Works Services); and
- (b) where the proposed or potential Variation relates to any other proposed or potential Variation, that is not Capital Works Services, a detailed and substantiated quotation for the proposed or potential Variation, which shall, to the extent applicable or appropriate, be based on the rates set out in the Schedule of Prices and may be submitted in the form of a fixed price lump sum.

9.1A.2 The Engineer shall take into account the information submitted by the Contractor under 9.1A.1 in determining the value of the relevant Variation should an actual Variation proceed.

9.1A.3 In the event the Principal decides, in its sole and absolute discretion, to accept a fixed price lump sum quotation submitted by the Contractor under 9.1A.1(a) or 9.1A.1(b), the Contract Price shall be adjusted accordingly, the provisions of 9.3 shall not apply, and, notwithstanding anything to the contrary, the Contractor will be paid the fixed price lump sum amount for the Variation.

Clause 9.1.1 is deleted and replaced with:

9.1.1 The Principal may order any Variations to the Contract Works which:

- (a) Increase or decrease the quantity of any work;
- (b) Omit any work;
- (c) Change the character or quality of any Material or work;
- (d) Require additional work to be done;
- (e) Change the level, line, position, or dimensions of any part of the Contract Works;
- (f) Change the timing and/or sequence in which the Contract Works are to be carried out;
- (g) Change the hours within which work may be carried out.
- (h) Instructs the Contractor to carry out Capital Works Services (for the avoidance of any doubt, the Principal (and thus the Engineer) is not obliged to instruct any Capital Works Services).

Clause 9.2.1 is deleted and replaced with:

9.2.1

- (a) The Contractor shall not vary the Contract Works without an order in writing from the Principal.
- (b) The Contractor shall not commence any Capital Works Services until such time as it has:
 - (i) submitted the relevant information to the Principal and the Engineer in accordance with 9.1A.1(a) (even where the Engineer may not have requested that information); and
 - (ii) subsequently received a written notice to proceed from the Principal.

Clause 9.2.2 is deleted and replaced with:

9.2.2 Where an instruction is given by the Principal, the Engineer or his or her representative, which is not in writing or is not expressly stated to be a Variation, and the Contractor considers that the instruction involves a Variation, it shall as soon as is practicable and in any event no later than one Month of after receiving the instruction give written notice to the Engineer and Principal to that effect. Any written notice received after one Month from the date of instruction may not, in the Principal's sole discretion, be accepted by the Principal for consideration as a Variation. Unless the Principal by notice in writing within one Month rejects the Contractor's claim the instruction shall be treated as if it was a Variation.

Clause 9.2.3 is deleted and replaced with:

9.2.3 Where the Contractor considers circumstances have arisen that give rise to a claim for a Variation under this Contract (which is not the subject of an instruction under 9.1 or held in accordance with the Contract to be a Variation instruction under 9.2.2, the Contractor should it wish to make a claim in relation to those circumstances, must as soon as is practicable and in any event within one Month of becoming aware of that matter give written notice to the Engineer to that effect. Any such notice must set out the circumstances that the Contractor claims have arisen and their likely effect with sufficient detail to enable the Engineer to make enquiry into and verify the circumstances and their effect. The Contractor shall provide full details of its claim within 1 Month of the cessation of the circumstances giving rise to the claim.

Clause 9.3.12 is amended as follows:

- 9.3.12** Where the Base Value is a negative figure, the amount to be deducted shall include allowance for Off-site overheads and Profit, and On-site Overheads.

Section 10 – Time for Completion

New Clauses 10.1.3 and 10.5 are added as follows:

- 10.1.3** No pavement and surfacing renewals shall take place over the Winter Period. No pavement and surfacing renewals shall take place outside the construction season without the prior approval from the Principal.

10.5 Contract Period and Adjustments

- 10.5.1** The Contract Period will be seven years, as adjusted in accordance with clause 10.5.2. Nothing in this clause 10.5 prejudices the Principal's right to terminate this contract including in accordance with this clause 10.5 or clause 14.

- 10.5.2** The Contract Period will be adjusted as follows:

- a) Subject to clause 10.5.2(b):
 - (i) The Contractor's performance will be assessed for the period to 1 July every year during the Contract Period (**Annual Performance Assessment**).
 - (ii) The annual performance assessment under the Specifications will be determined quarterly, being July to September, October to December, January to March, and April to June (each an **Assessment Period**).
- b) Where an Annual Performance Assessment rates the overall performance level as Minimum Condition of Satisfaction, Best Practice or Outstanding (as per the Specifications), the Contract Period is increased by a year (**Contract Extension**).
- c) Any Contract Extension shall be on the same terms and conditions as the then current term of the contract, including this right to extend the Contract Period, provided that in no circumstances shall the total Contract Period (including all rights to extend) exceed 9 years from the Date of Commencement.
- d) The Contractor and Principal shall document the Contract Extension in writing. Each party shall bear their own costs with regard to the preparation and execution of that document.
- e) Where an Annual Performance Assessment within the contract period rates the overall annual performance level as poor (as per the Specifications), the Principal may elect to either:
 - (i) reduce the Contract Period by a year until a minimum contract period of 3 years is reached from the Date of Commencement; or
 - (ii) terminate the contract provided that, prior to terminating the contract under this clause 10.5.2(f)(ii), the Principal must first give written notice to the Contractor requesting that the Contractor improve its overall performance level to a standard acceptable to the Principal (in its absolute discretion) within a timeframe specified by the Principal.

- h) If, following an Annual Performance Assessment, the Contract Period has less than 24 months remaining, then no further Contract Extensions can be earned, and this contract will terminate at the end of the then applicable Contract Period.

10.5.3 The Principal will give prompt written notice to the Contractor of any Contract Extension or reduction of the Contract Period under this clause 10.5.

10.5.4 Notwithstanding anything else in this contract, the Principal is not obliged to effect any Contract Extensions if, at its absolute discretion, it determines that a Contract Extension is not in its operational interests. Before making any such determination, the Principal will consult with the Contractor.

Section 11 – Defects Liability

New Clauses 11.1.4, 11.1.5, 11.1.6 and 11.1.7 are added as follows:

11.1.4 The Contractor is liable for all defects on renewal sites constructed within the last two years before contract completion. The Defects Notification Period applies to each renewal site within that period. All defects as defined in the Specifications Section 6.1 shall be addressed, to the satisfaction of the Principal, which are deemed to be as a result of poor construction.

11.1.5 For pavement rehabilitation sites constructed within the last two years before contract completion the Pavement Rehabilitation Post Construction Design Assessment requirements as defined in Specifications, Section 6.2.4 shall apply. The assessment outside the Contract Period shall be completed by the Principal.

11.1.6 For resurfacing sites constructed within the last two years before contract completion the Chip Seal and AC Post Construction Design Assessment requirements as defined in Specifications, Section 6.3.5 & 6.3.6 shall apply. The assessment outside the Contract Period shall be completed by the Principal.

11.1.7 The Defects Notification Period shall be in respect of the renewal sites:

- (a) In respect of the Contract Works:
- i. Term of the Contract (all works), plus
 - ii. Sealed Road Resurfacing, constructed in the last two years of the contract - 104 weeks commencing at practical completion at each site.
 - iii. Pavement Rehabilitation, constructed in the last two years of the contract - 104 weeks commencing at practical completion at each site

New Clause 11.9 is added as follows:

11.9 Other Warranties

11.9.1 The Contractor must obtain warranties and guarantees for workmanship and Materials that are obtainable in the ordinary course of business, in respect of the services, fixtures, fittings, appliances and other Materials, Plant and equipment included in the Contract Works (***Other Warranties***).

11.9.2 The Contractor must, as a pre-condition to issuance of the Final Completion Certificate, and to the satisfaction of the Principal, assign all of its rights and interest under all relevant Other Warranties to the Principal.

11.9.3 Where the Contractor fails to assign all of its rights and interest under all Other Warranties to the Principal, the Contractor must hold such Other Warranties, and all rights and interest that arise under such Other Warranties, in trust for the benefit of the Principal and will, if called upon to do so by the Principal, exercise all such rights and interest and account to the Principal for all sums received on account thereof.

Section 12 – Payment

<<Delete amendment to 12.1.1 if NZTA sole Principal>> **Clause 12.1.1 is deleted and replaced with the following:**

12.1.1 The Contractor shall submit to the Engineer separate payment claims under the Contract for those parts of the Contract Works completed by the Contractor relevant to each Principal.

Clause 12.1.3(c) is deleted and replaced with the following:

12.1.3(c) Indicate the due date for payment which shall be 17 Working Days after the date of service of the payment claim; and

<<Delete amendment to 12.1.3(e) if NZTA sole Principal>> **New Clause 12.1.3(e) is added as follows:**

12.1.3(e) Be split into separate claims for each party that comprises the Principal with such separate claims containing the following:

- (i) all of the information required above under this clause;
- (ii) a breakdown as to whether the claim includes a claim against lump sum payments and measure and value payments.

Clause 12.2.8 is deleted and replaced with the following:

12.2.8 The schedule amount under 12.2.2(d) or 12.2.5(d) as the case may be, together with the amount of goods and services tax payable shall be paid by the Principal to the Contractor within 10 Working Days after the date on which the Contractor's payment claim was served on the Engineer under 12.1.1.

New Clause 12.2.10 is added as follows:

12.2.10 The Principal reserves the right to deduct moneys from payments, otherwise due to the Contractor in respect of the implementation of schemes covered in Section 2 and Section 6 of the Specifications and the Basis of Payment Preamble, in addition to and not in substitution for the Principal's other rights and remedies under the contract arising from any breach by the Contractor of its obligations under the contract.

<<Delete new clause 12.1.3(e) if NZTA sole Principal>> **New Clause 12.1.3(e) is added as follows:**

12.1.3(e) Be split into separate claims for each party that comprises the Principal with such separate claims containing the following:

- (i) all of the information required above under this clause;

- (ii) a breakdown as to whether the claim includes a claim against lump sum payments and measure and value payments.

New Clause 12.1.3(f) is added as follows:

12.1.3(f) Include all information required as set out in the Basis of Payments and/or the Specifications.

New Clause 14.4 is added as follows:

14.4 Termination

14.4.1 The Principal may terminate or suspend this Contract or any part of it immediately by notice in writing if the Contractor:

- (a) commits or permits any act or omission which in the Principal's reasonable opinion creates any immediate unacceptable risk to the health and safety to any person or engages in any conduct or practice that is detrimental or harmful to the good name, goodwill or reputation of the Principal;
- (b) commits an act of bankruptcy or makes or enters into any arrangement or composition with its creditors or is dissolved;
- (c) assigns any of the Contractor's benefits (other than money) or purports to assign its obligations under this Contract without prior written agreement from the Principal;
- (f) abandons or repudiates this Contract; or
- (g) commits a series of breaches of this Contract or part which, even though remedied, continues to occur and impacts on the Principal, or interferes with the day to day provision of the Contract Works.

14.4.2 Upon termination of this Contract, the Contractor shall to the relevant extent:

- (a) take all reasonable steps to keep the Principal aware of any matters that come to the attention of the Contractor which require the Principal to act to protect its interests;
- (b) unless otherwise instructed by the Engineer or the Principal complete all outstanding Contract Works;
- (c) immediately return to the Principal, at no charge to Principal, all of the Principal's property of any kind whatsoever;
- (d) transfer to the Principal all resource consents, permits, licences or authorisations relating to carrying out of the Contract Works as are held by the Contractor and are transferable to the Principal;
- (e) provide to the Principal copies of such of the Contractor's records relating to the provision of the Contract Works as will enable the Principal to determine accurate details of the outputs achieved by the Contractor in the performance of the Contract Works;
- (f) forward all claims for payment for the Contract Works (if any) to the Principal within 20 Working Days the date of the notice of termination;
- (g) if requested by the Principal, within two months from the date of termination, assign or novate to the Principal any agreements it has with any Subcontractors and/or other third parties which Principal requires to be transferred; and
- (h) if required by the Principal, continue to perform any Contract Works which the Principal designates, on the same terms and conditions in this Contract and at the price then

applicable under this contract for such Contract Works, until an alternative provider of the Contract Works begins to perform the Contract Works.

- 14.4.3** The Contractor shall continue to perform the Contract Works until all obligations under this contract have been completed. If the Contractor does not complete these obligations within twenty (20) Working Days after the termination date or such longer period as the Principal agrees in writing, the Principal may complete the outstanding obligations and the costs so incurred shall be recoverable from the Contractor.

New Clause 16 is added as follows:

16 Confidentiality

- 16.1** The Contractor agrees that all Confidential Information it becomes aware of as a consequence of this Contract shall be treated as confidential. The Contractor shall take all reasonable precautions to ensure that Confidential Information is not in any way disclosed to any third party other than as required to perform the Contract Works or by any law or court.
- 16.2** The Contractor shall ensure that its personnel, its Subcontractors and the Subcontractor's personnel are aware of and comply with this confidentiality obligation.
- 16.3** Where requested by the Engineer, the Contractor shall procure signed confidentiality undertakings (in such form as is reasonably required by the Principal) from its personnel (including Subcontractor personnel) who will

New Section 16 – Privacy Obligations is added as follows:

- 16.1** The Contractor must:
- a) comply at all times with all Privacy Laws; and
 - b) not do anything with the Principal's Personal Information that would, or would be likely to cause the Principal to breach any Privacy Laws; and
 - c) not use or disclose the Principal's Personal Information except to the extent strictly necessary to deliver the Contract Works and comply with this Contract; and
 - d) implement and maintain reasonable security safeguards to protect the Principal's Personal Information against loss, unauthorised access, use, modification, or disclosure, or any other misuse; and
 - e) not transfer, store, or make available, or permit the transfer, storage, or making available, of the Principal's Personal Information, outside New Zealand or Australia, except as clearly contemplated in this Contract, or otherwise with the express written consent of the Principal; and
 - f) ensure that only those Subcontractors and Employees of the Contractor who are authorised and who require access to the Principal's Personal Information to perform their duties in respect of this Contract, are given such access; and
 - g) promptly seek and follow the Principal's instructions as to the return, secure destruction and/or complete and irreversible erasure of all the Principal's Personal Information, once it is no longer required for the purposes of the delivery of the Contract Works under this Contract, and otherwise where directed by the Principal; and
 - h) comply with any reasonable requests, directions, or guidelines given to it by the Principal relating to compliance with this Section 16; and
 - i) co-operate with any privacy assessment by the Principal of the Contractor's privacy policies and practices in so far as they are relevant to the protection of the Principal's Personal Information, including completing self-assessments on request.

16.2 If the Contractor becomes aware of, or has reason to suspect the existence of, a Data Breach involving facilities, systems, personnel, suppliers and/or Subcontractors of the Contractor:

- a) the Contractor must promptly notify the Principal;
- b) the Principal may take any steps it believes in good faith are necessary to protect the Principal's Personal Information, which may include suspending any supply, collection or use of the Principal's Personal Information under this Contract;
- c) the Contractor will provide all reasonable co-operation to assist the Principal in securing or recovering the Principal's Personal Information in question; and
- d) the Contractor will co-operate with the Principal's investigation of the Data Breach, including investigating and reporting to the Principal on the background and causes of the Data Breach, the information and/or individuals that may be affected, and the identities of any personnel implicated or suspected in the Data Breach.

16.3 The Contractor must immediately notify the Principal if the Contractor becomes aware of any breach or possible breach of the Privacy Laws or of its obligations under this Section 16. The Contractor must take all practicable steps to mitigate the effects of any such breach, and must fully cooperate with the Principal for that purpose.

16.4 The Contractor will not comment publicly, including to the media, about any Data Breach, or any breach of this Section 16, without the express written consent of the Principal. To the extent permitted by law, the Contractor will promptly refer to the Principal any request for access to or correction of the Principal's Personal Information, and any complaint received or notified concerning its handling of the Principal's Personal Information, and the Contractor will not respond to any such request, complaint or notification except with the Principal's written approval.

16.5 The Contractor must ensure that all of the Contractor's Employees or Subcontractors who have access to the Principal's Personal Information comply with the Contractor's obligations under this Section 16, and are made aware of, and receive appropriate training in relation to, the Privacy Laws and the requirements of this Section 16.

16.6 The Contractor will indemnify the Principal against any loss suffered by the Principal or liability incurred by it that may arise out of, or in consequence of, a failure to comply with this Section 16.

16.7 This Section 16 survives the expiration or earlier termination of this Contract.

- (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 4 – Form of Principal’s bond

This Section Not Used

Schedule 5 - Form of Contractor's bond in lieu of retentions

CONTRACT FOR []

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 the Transport Agency <<and <<insert Local Authority name>>> ("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 11.4 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 7 - Information on Contractor arranged construction insurance

<<Guidance note: 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:

landslip earthquake tsunami

tornado cyclone storm

flood lightning strike volcanic activity

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 \$ [] _____

TOTAL SUM INSURED \$ [] _____

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. Discretionary cancellation clause [Yes/No]
2
- 8.2. Reinstatement provision on building and contents [Yes/No]
3
- 8.2. Severally insured [Yes/No]
3
- No Settlement delay due to exercise of subrogation [Yes/No]
- 8.2. Void *ab initio* for non-payment of premium with prior notification [Yes/No]
4

Policy extensions included are:

		Sub limit (if applicable)
8.3. Transit (in New Zealand) 1	Yes/No	\$ <input type="text"/>
8.3. Materials in storage (in New Zealand) 1	Yes/No	\$ <input type="text"/>
Testing and commissioning	Yes/No	\$ <input type="text"/>
Expediting expenses	Yes/No	\$ <input type="text"/>
Overseas airfreight	Yes/No	\$ <input type="text"/>

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 3917:2013.

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

SIGNED BY

SIGNATORY TITLE

(Clause numbers refer to NZS 3917:2013 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:

8.2.2 Discretionary cancellation clause [Yes/No]

8.2.3(a) Reinstatement provision [Yes/No]

8.2.4 Void *ab initio* 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 3917:2013.

<<insert Contract Name>>
Network Outcomes Contract
Contract No: <<insert no>>

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

SIGNED BY

SIGNATORY TITLE

(Clause numbers refer to NZS 3917:2013 and are for information only)

<<insert Contract Name>>
Network Outcomes Contract
Contract No: <<insert no>>

Waka Kotahi NZ Transport Agency
Conditions of Contract

Schedule 9 - Information on public liability insurance

<<Guidance note: As PAI is applied to this contract, download and insert Schedule 9 from the Marsh insurance portal http://nz.marsh.com/Transport_Agency-pai>>]

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 (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	<input type="text"/> [Yes/No]
Discretionary cancellation clause	<input type="text"/> [Yes/No]
Void <i>ab initio</i> for non-payment of premium without prior notification	<input type="text"/> [Yes/No]
No settlement delay due to exercise of subrogation	<input type="text"/> [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 3917:2013.

Insurance Company Date
Stamp _____
(Or name of insurance broking company confirming cover)

<<insert Contract Name>>
Network Outcomes Contract
Contract No: <<insert no>>

Waka Kotahi NZ Transport Agency
Conditions of Contract

SIGNED BY

SIGNATORY TITLE

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



Schedule 12 - Information on Principal arranged construction and existing property insurance

<<Guidance note: As PAI is applied to this contract, download and insert Schedule 9 from the Marsh insurance portal http://nz.marsh.com/Transport_Agency_pai>>]

Schedule 13 – Form of Contract (or Subcontractor) warranty

This Section Not Used

Schedule 14 – Agreement for off-site Materials

<<Guidance note: Payments as provided for under 12.1.3(b)(iv) are not include under this contact **This Section Not Used.** >>]

Schedule 15 – Certificate on Expiry

This Certificate on Expiry is issued under 10.3.1.

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 (the Transport Agency) *(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 10.3.1, the Engineer certifies that the Contract Works or Separable Portion to which this certificate relates qualify for a Certificate on Expiry under 10.3, notwithstanding that there may be obligations of the Contractor under the Contract which remain unperformed or not properly performed (as listed in the attached list of outstanding obligations) in terms of 10.3.2.

(a) By this certificate the Engineer gives notice to the Contractor under 11.3.1 that the Engineer may instruct others to undertake those obligations listed in Part A of the attached list of outstanding obligations; *(delete if not applicable)*

(b) The Contractor is required to carry out and complete those obligations listed in Part B of the attached list of outstanding obligations by the date stated against the relevant obligation, failing which the Engineer may give notice under 11.3.1. *(delete if not applicable)*

The Contract Works Period expired

at the end of [[*(insert date).*

Signed by the Engineer [[

Name [[

Date [[



LIST OF OUTSTANDING OBLIGATIONS

Obligations of the Contractor under the Contract which remain unperformed or not properly performed in terms of 10.3.2 and were identified during an inspection carried out by the Engineer or Engineer's Representative on.....*[(insert date)]*

Part A – Obligations which may be completed by others at the Contractor's Cost in accordance with 11.3.2 and 11.3.3

[(list outstanding obligations)]

Part B – Obligations the Contractor must complete by the date stated failing which the Engineer may give notice under 11.3.1.

[(list outstanding obligations with date for completion against each)]

[]

[]

[]

[]

Schedule 16 – Final Completion Certificate

This certificate is a Final Completion Certificate issued under 11.4.1.

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 (the Transport Agency) *(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 11.4.1, the Engineer certifies that the Contract Works or Separable Portion to which this certificate relates qualify for a Final Completion Certificate issued under 11.4

on [] *(insert date)* at [] *(insert time)*

Signed by the Engineer []

Name []

Date []

Schedule 17 - Cost Fluctuations

Contract for: <<insert number and name>>

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 (p₁ / 100) x (p₂ / 100)) x (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

p₁ = 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 91%

p₂ = The proportion of costs to be adjusted by the index after excluding bitumen supply is fixed for the duration of the contract and has a value of 100%

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 *NZ Transport Agency Bitumen cost adjustment series* for the month under consideration, published on the NZ Transport Agency website

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

3. The index shall be the *NZ Transport Agency network outcome index (costs excluding bitumen)* as published on the Transport Agency 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. 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.
6. 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.

7. The index values to be used in the calculation of the cost fluctuation in clause 2 shall be those first published by the Transport Agency for the appropriate quarter.
8. 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.
9. If at any time any of the Statistics New Zealand indexes which are inputs into the Transport Agency 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.
10. If at any time any of the inputs into the *NZ Transport Agency bitumen cost adjustment series* referred to in clause 2 or later clauses are no longer published, or if the basis of the *NZ Transport Agency bitumen 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 *NZ Transport Agency bitumen cost adjustment series*.
11. 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.

Schedule 18 - Contract Risk Profile

Contract Works Risk Profile

Contract for: <<insert number and name>>

The Works Risk Profile describes the payment mechanism for each of the specified items.

The Contractor will not be penalised for non-compliance on a performance measure where the defect lies within a Principal risk item. The Contractor will be expected to manage the process for bringing these items within compliance through collaboration with the Principal.

If a Principal's risk eventuates as a result of the Contractor's non-compliance, then the risk exclusion for that event becomes the Contractor's risk, including all costs and reinstatement.

Contract Works Risk Profile			
Work Description		Party Responsible	Contract Payment Mechanism
1	Changes to Network centreline length.	Principal	By agreed variation
2	Maintaining private accessways and pedestrian facilities located outside the kerb line and/or edge of seal in the urban areas except where listed in Appendix Table 1.5.3.	Principal	Not in scope
3	Maintaining private accessways in rural areas.	Contractor and Principal	Where there is a pre-existing seal this is within the lump sum but excluded from OPM measurement. Where there is not a pre-existing seal, the Principal may choose to seal on a case by case basis.
4	Clean culverts under accessways in maintained side drains.	Contractor	Within the Lump Sum items
5	Legislative, regulatory, Principal's policy and MOU changes during Contract Period.	Principal	By agreed variation
6	Maintaining pavement and surfacing, within 5m of any rail, at railway level crossings. This includes obtaining permits.	Contractor	Within the Lump Sum items
Value Management Proposition			
7	Any change for the KRA system including KPIs, measures, reporting or weightings.	Contractor	Within the Lump Sum items
8	Maintenance of asset growth during the Contract Period.	Contractor	Variation to the Lump Sum by an asset growth rates. For major additions by agreed variation.

Contract Works Risk Profile

Work Description		Party Responsible	Contract Payment Mechanism
9	Adjustment to the 3 yearly lump sum pavement maintenance cost.	Principal and Contractor	By agreed variation
Contract Management			
10	Unscheduled inspections and reporting after a significant event.	Principal	By agreed variation
11	Maintenance, use of and management of stockpile and disposal Sites.	Contractor	Within the Lump Sum items
12	Liability for unplanned damages to services and assets which were not agreed and were caused by the Contractor's operation, excluding planned reinstatements.	Contractor	Within the Lump Sum items
13	Lump sum activity related land entry agreements.	Contractor	Within the Lump Sum items
14	Deterioration to assets beyond the limit of Contract Works resulting from any traffic diversion or detour: a) to the extent that the event causing the traffic diversion or detour is the Principal's risk; b) where the traffic diversion or detour is instructed or implemented by the New Zealand Police, provided that the Contractor diligently completes works to allow the highway to be reopened to traffic.	Principal	By agreed variation
Network Management			
15	RAMM updating as a result of third party activities or other Principal-engaged Contract Works.	Principal	By agreed variation
16	Asset integrity after the Period of Defects Notification for third party works that have been consent-approved by the Principal and monitored by the Contractor.	Contractor	Within the Lump Sum items
17	Defects on projects completed by other Principal-engaged suppliers within the individual liability periods.	Principal	By agreed variation
18	The first 10 hours of any Incident Response event, as defined in Maintenance Specification Section 6.8.1 Incident Response.	Contractor	Within the Lump Sum items
19	Monitoring geological threats not included in Appendix 5.10, Geological Hazard Site Inspection Register.	Principal	By agreed variation
20	Preparation of geotechnical preliminary and detailed assessment Reports	Principal	By agreed variation
21	Resource consent application and compliance activities for all lump sum work completed during this contract.	Contractor	Within the Lump Sum items
22	Resource consent and designation compliance activities that existed prior to commencement of the contract, as shown in Appendix 5.6, Statutory Approvals - Resource Consents and Designations.	Contractor	Within the Lump Sum items
23	Compliance with Principals gravel extraction consent conditions	Contractor	Within the Lump Sum items
24	Payment of gravel extraction royalties	Contractor	Within the Lump Sum items

Contract Works Risk Profile			
Work Description		Party Responsible	Contract Payment Mechanism
25	Routine Surveillance inspections of bridges and other structures and reporting.	Contractor	Within the Lump Sum items
26	General, Principal and Special inspections of bridges and other structures inspection and reporting.	Principal	Outside scope
27	Treatments of Priority A Sites, as identified within the annual skid resistance exception report excluding the Contractor's own completed work.	Principal	By agreed variation
28	On road aggregate ESC value (polishing) below the specified ESC value (IL-0.02), as measured at minimum after 24 months from construction by the Principal's SCRIM survey.	Contractor	Within the Lump Sum items
29	Achievement of on road aggregate ESC value (polishing) greater than or equal to 0.55.	Principal	By agreed variation
30	Treatment of surface texture and texture variation that would impact on long term performance of resurfacing works.	Contractor	Within the Lump Sum items.
31	Area requiring pre-reseal texturing to enable the application of a single coat chip seal and is less than or equal to 6% of the total area to be sealed	Contractor	Within the Lump Sum items
32	Area requiring pre-reseal texturing to enable the application of a single coat chip seal and is greater than 6% of the total area to be sealed	Principal	Measure and Value item
33	Involvement with capital project development and coordination for projects scheduled within Appendix 3.3.	Contractor	Within the Lump Sum items
Physical Works			
34	Work required addressing vibration and road noise complaints as a result of work completed by the Contractor, or completed by third parties who were consent-approved, which was monitored by the Contractor and the work is outside the Period of Defects Notification.	Contractor	Within the Lump Sum items
35	Work required addressing vibration and road noise complaints for pavements that are otherwise in good condition, i.e. no defect(s).	Principal	By agreed variation
36	Completion of second coat seals on capital works projects completed under other contracts.	Principal	Outside scope
37	Planned and agreed reinstatement of traffic detector loops and weather sensors due to physical works completed under this Contract.	Principal	By agreed variation
38	Renewal or installation of culverts.	Principal	By agreed variation
39	All bridge and other structures structural component repairs.	Principal	Outside Scope
40	Bridge and other structures component replacements.	Principal	By agreed variation
41	Reinstatement of all damaged barriers, terminal end systems, and structure sight rails and structure handrails.	Principal	Routine Maintenance rates or by agreed variation

Contract Works Risk Profile

Work Description		Party Responsible	Contract Payment Mechanism
42	Removal of debris and aggregate from bridge abutments and piers.	Principal	By agreed variation
43	Repair of debris protection fences.	Principal	By agreed variation
44	Maintaining privately owned signs, such as heritage trail signs.	Principal	By agreed variation
45	Reinstatement of all standard and non-standard signs and supports with a sign face area greater than 2.025m ² area from vandalism (other than graffiti), theft and vehicle crash damage.	Principal	By agreed variation
46	Renewal or component replacement of sign gantries.	Principal	By agreed variation
47	All maintenance (excluding cleaning and slip bases checks) and replacement of signs with a face area greater than 2.025m ² area.	Principal	By agreed variation
48	Cleaning of signs with a face area greater than 2.025m ² area.	Contractor	Within the Lump Sum items
49	Renewal and maintenance of noise walls.	Principal	By agreed variation
50	Rectification of existing barrier height and alignment non-compliance.	Principal	By agreed variation
51	All frost and ice treatment, and snow clearance work	Principal	Measure and Value applicable items
52	All monitoring to establish the need to respond to winter hazards, outside of the defined winter period	Contractor	Within the Lump Sum items
53	Renewal of non-repairable rest area furniture, and facilities, including rubbish bins.	Principal	By agreed variation
54	Emptying of stock effluent disposal receptors.	Principal	Outside of scope
55	Structural maintenance of weigh station platform and control gear.	Principal	Outside of Scope
56	Maintenance and operation of heavy commercial facility buildings.	Principal	Outside of Scope
57	Replacement, maintenance and repair of electronic signs.	Contractor and Principal	Paid in accordance with Appendix 6.13, Electronic Sign Scope and Responsibility and 6.14, Basic Electronic Warning Signs Maintenance Checklist.
58	Installation, Maintenance or Replacement of audio tactile profiled road Marking	Principal	Measure and Value applicable items
59	Energy costs associated with operating the Principal's assets.	Principal	Outside of scope
60	Maintenance of all electrical wiring beyond the Montrose box. In the absence of a Montrose box, beyond the base of a pole.	Principal	Outside of scope
61	Crash damage or structural renewal of street light assets.	Principal	By agreed variation
62	Work qualifying as Emergency Reinstatement under Work Category 141, see Transport Agency's Planning and Investment Knowledge Base.	Principal	By agreed variation
63	The removal of the first 50 cubic metres in total volume of slip, rockfall or slope debris material	Contractor	Within the Lump Sum items

Contract Works Risk Profile

Work Description	Party Responsible	Contract Payment Mechanism
64 Road slumping settlement / slumping / dropout / washout of any part of the formation and pavement between the edge lines where more than: a) 100mm of gradual vertical subsidence or horizontal movement has occurred at each location and every such site in any 12-month period b) 100mm of vertical subsidence or horizontal movement has occurred at each location and every such site in any single event.	Principal	By agreed variation
65 Treatment of recurring hazards as defined in Appendix 6.18, Recurring Hazards.	Contractor	By agreed variation
66 Maintenance of rail level crossing warning devices	Principal	Outside of scope
67 Renewal of existing stock-truck effluent disposal facilities	Principal	Outside of scope
68 Renewal of catch fences provided for protection of the carriageway from slip material	Principal	By agreed variation
69 Repairs to rock face mesh protection and catch fences	Principal	By agreed variation
70 Renewal of any special treatment of stormwater run-off from the road not related to contract works to maintain water quality	Principal	By agreed variation
71 Maintenance or renewal of ramp metering equipment	Principal	Risk allocated in accordance with Appendix 6.13
72 Maintenance or renewal of surveillance devices and traffic monitoring equipment, such as closed-circuit television systems	Principal	Risk allocated in accordance with Appendix 6.13
73 Tunnel ventilation systems operation	Principal	By agreed variation
74 Maintenance and operation of emergency telephones	Principal	Outside of scope
75 Specialist Culvert Inspections: Use of specialist equipment such as CCTV to determine culvert condition where this can't be ascertained by visual inspection	Principal	By agreed variation
76 Traffic signal maintenance and repairs	Principal	Outside of scope
77 Rectification of damage to assets caused by falling trees	Principal	By agreed variation
78 Removal and disposal of unauthorised signs	Contractor	Within the Lump Sum items
79 Adjustments to service covers located within maintenance or renewal works not previously adjusted by Contractor.	a/Contractor b/Principal	a/Within Measure and Value applicable items for renewals. b/All other sites by agreed variation.
80 Renewal of separated footpaths, cycle paths, shared paths and bridle paths	Principal	Out of scope
81 The installation, maintenance, replacement and removal of flexible posts and temporary fencing which are not part of the Contractor's works	Principal	By agreed variation

All

Contract Works Risk Profile

Work Description		Party Responsible	Contract Payment Mechanism
82	Accuracy of Principal's information provided to the Contractor at tender and Contract commencement	Contractor	Within the Lump Sum items
83	Dump fees for all rubbish and spoil, excluding emergency works.	Contractor	Within the Lump Sum items
84	Maintenance of Footpaths.	Principal	By agreed variation

Schedule 19 - Form of Subcontractor Continuity Guarantee

Contract for:

DATE: [[●]]

PARTY

[**Name of Subcontractor**] (the **Subcontractor**)

BACKGROUND

- A New Zealand Transport Agency(Waka Kotahi NZ Transport Agency) (the **Principal**) has engaged [insert](the Contractor) to carry out certain works pursuant to a collections and facilities operations contract dated [●] (the **Contract**).
- B The Contractor has, with the consent of the Principal, subcontracted a portion (or portions) of the Contract Works under the Contract to the Subcontractor (the **Subcontract Works**), as described in the contract between the Subcontractor and the Contractor dated [●] (the **Subcontract**), a copy of which is contained in the Schedule to this deed.
- C Pursuant to the provisions of the Contract, it is a condition that the Contractor and Subcontractor enter into this deed in favour of the Principal.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed, unless the context otherwise requires, words and expressions defined in the Contract and not otherwise defined in this deed have the same meanings when used in this deed.

1.2 Interpretation

In this deed, unless the context otherwise requires:

- (a) covenants given in this deed by more than one person or entity bind each of them jointly and severally;
- (b) paragraph headings are not to be used to construe this deed;
- (c) words importing the singular number include the plural number and vice versa;
- (d) words of any gender include the other gender and bodies corporate;
- (e) a party includes its successors, permitted assigns and permitted novatees;
- (f) except where expressly provided to the contrary all references in this deed to “including”, “includes” or “include” are to be read as if that reference is followed by the words “without limitation”;

- (g) references to a clause, clauses, Schedule or Schedules will, unless otherwise specified, be a reference to the corresponding clause, clauses, Schedule or Schedules in this deed; and
- (h) the rule of construction known as contra proferentem will not apply to this deed.

2 CONTINUITY

The Subcontractor covenants that in the event of the Contract being terminated for any reason whatsoever or the Principal resuming exclusive occupancy of the Site under the Contract, the Subcontractor will, if required by the Principal, complete the Subcontract Works for the Principal under the same terms and conditions and for the same consideration as originally agreed between the Contractor and the Subcontractor, such terms and conditions being set out in the Subcontract annexed in the Schedule to this deed.

3 DISPUTE RESOLUTION

- 3.1 If any dispute or difference arises between the Subcontractor and the Contractor which is in any way connected with this deed or the Subcontract, the Subcontractor must promptly give notice in writing of that dispute or difference with details, to the Principal.
- 3.2 Any dispute or difference (a **Dispute**) between the Principal and the Subcontractor arising out of this deed will be referred to arbitration in accordance with the provisions of the Arbitration Act 1996 or any statutory re-enactment or modification thereof.
- 3.3 The Dispute will be referred to a sole arbitrator. If the Principal and the Subcontractor fail to agree upon a sole arbitrator within 15 days after receipt of the notice of Dispute, the arbitrator will be appointed by the then President of the Arbitrators' and Mediators' Institute of New Zealand (or by his or her nominee).
- 3.4 Notwithstanding clauses 3.2 and 3.3, if any dispute or difference arises under this deed which is related to a dispute or difference under the Contract, the parties agree that, subject to any discretion to the contrary of a court, arbitrator or mediator, as the case may be, or unless otherwise required by the Principal, the dispute or difference is to be dealt with at the same time and in conjunction with the dispute or difference under the Contract.

4 ASSIGNMENT AND NOVATION

- 4.1 The Subcontractor may not assign, charge or novate, whether in part or in whole, any of its rights, benefits or obligations under this deed without the prior written consent of the Principal (which it may or may not give at its discretion).
- 4.2 The Subcontractor acknowledges and agrees that the Principal may assign, charge or novate all or any part of its rights and/or obligations under this deed to any assignee, chargee or novatee of the Principal under the Contract or to any other Person without the Subcontractor's consent.
- 4.3 The Subcontractor must, if and when requested by the Principal, promptly do all things and execute all such documents reasonably necessary to give effect to any assignment, charge or novation by the Principal, including in the case of a novation, entering into a deed of novation with the Principal and the relevant Person nominated by the Principal in a form required by the Principal.

5 MISCELLANEOUS

5.1 Contracts and Commercial Law Act 2017

The Subcontractor acknowledges and agrees that, pursuant to section 12 of the Contracts and Commercial Law Act 2017, the rights and benefits under this deed will accrue to and be enforceable by not only the Principal but also any other assignee or novatee of the Principal's interest under this deed.

5.2 Governing law

This deed is governed by and will be construed in accordance with the laws of New Zealand, and without limitation or prejudice to clause 3 the Subcontractor irrevocably submits to the non-exclusive jurisdiction of the courts of New Zealand and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

EXECUTION

Executed as a deed

EXECUTED by [●] as Subcontractor
by
]

[]

[Director

[Director]

[Print name]

Print name

[Witness to both signatures]

[Print name]

[Occupation]

Address

Address of the Subcontractor

Physical address:]

Postal address:]

Facsimile:]

Email:]

Telephone:]

Attention:]

[NOTE: This document is to be executed as a deed. Accordingly:

- companies should sign by two directors, unless there is only one director of the company in which case that director should sign and his/her signature should be witnessed by another person (as well as signing, the witness should record his/her name, occupation and address); and

<<insert Contract Name>>
Network Outcomes Contract
Contract No: <<insert no>>

Waka Kotahi NZ Transport Agency
Conditions of Contract

- where a party to this deed is an individual, that person should sign and his/her signature should be witnessed by another person (as well as signing, the witness should record his/her name, occupation and address).]

<<insert Contract Name>>
Network Outcomes Contract
Contract No: <<insert no>>

Waka Kotahi NZ Transport Agency
Conditions of Contract

SCHEDULE
SUBCONTRACT

ORDER OF DOCUMENTATION PRECEDENCE

In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

- a) The Contract Agreement
- b) The notification of acceptance of tender or award of Contract
- c) The following post-tender documents, for example correspondence or minutes of pre-let meetings etc.

[]

[]

- d) Notices to Tenderers
- e) Schedule 2: Special Conditions of Contract – Other Conditions of Contract
- f) Schedule 1: Special Conditions of Contract – Specific Conditions of Contract
- g) The General Conditions of Contract NZS3917: 2013 (including other Schedules)
- h) Specifications issued prior to the Date of Acceptance of Tender
- i) Appendices
- j) Drawings issued prior to the Date of Acceptance of Tender
- k) The Schedule of Prices & Basis of Payment
- l) The Contractor's tender.
- m) The schedule to conditions of tendering
- n) The conditions of tendering
- o) The following additional documents:

<<add as appropriate>>]