

Construction Contract

Insert Project Name

Contract No. insert

DRAFT

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<<This page is to be deleted prior to documents being finalised for tender.>>

GUIDANCE NOTES

This proforma document provides the basis for the development of physical works contracts for NZTA's construct only contracts. The purpose of the proforma is to provide consistency throughout NZTA's operations.

Format:

- **Black:** Black text is mandatory and may not be changed without approval prior to issue by the NZTA Project Manager, who will consult with the relevant NZTA staff on all changes made including the NZTA Legal team.
- **Red:** Red text is used for data which requires fields to be updated or at least considered for each contract. Text can be used as is, modified or replaced. All red text adjustments must have the NZTA Project Manager's approval. Red text must be converted to Black text, prior to tender document release.
- **<<Guidance Notes>>:** Blue text with yellow highlighting are guidance notes. Guidance notes must be deleted prior to tender document release.
- If schedules are not required, the text can be deleted and replaced with "This Schedule is not used"

For any questions or assistance with preparing this template contract, contact the NZTA Legal team. Please note no changes are to be made to the black text without engagement with the NZTA Legal team (including pre-tender and during tender negotiations).

Contract Agreement

CONTRACT TITLE _____

CONTRACT NUMBER _____

THIS AGREEMENT is made on _____ 20 _____

BETWEEN _____ ('the Contractor')

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

IT IS AGREED as follows:

1. The Contractor shall carry out the obligations imposed on the Contractor by the Contract.
2. The Principal shall pay the Contractor the sum of \$ _____ or such greater or less sum as shall become payable under the Contract together with goods and services tax at the times and in the manner provided in the Contract.
3. Each party agrees to the terms and conditions as set out in the Contract.
4. The Contract comprises the following documents:
 - (a) This Contract Agreement;
 - (b) The notification of acceptance of tender or award of Contract;
 - (c) The following post-tender documents <<Guidance note: identify any agreed post-tender documents to be included, for example correspondence or minutes of pre-let meetings dealing with tender tags etc>>

 - (d) Schedule 2: Special Conditions of Contract – Other Conditions of Contract;
 - (e) Schedule 1: Special Conditions of Contract – Specific Conditions of Contract (Parts A and B);
 - (f) The General Conditions of Contract NZS3910:2023 (including other Schedules);
 - (g) The Drawings identified in Annexure 1 – List of Drawings;
 - (h) The Specifications identified in Annexure 2 – List of Specifications;
 - (i) The Schedule of Prices and the Basis of Payment;
 - (j) The Contractor's tender;
 - (k) Notices to Tenderers: <<Guidance note: give details with dates>>

 - (l) The Tender Documents; and
 - (m) The following additional documents: <<Guidance note: Identify any additional documents to be included for example agreed correspondence>>

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

EXECUTED as an agreement:

SIGNED for and on behalf of the **New Zealand Transport Agency** by its delegate:

Signature of Authorised Signatory

Name of Authorised Signatory

SIGNED for and on behalf of **[insert]**:

Signature of Director/Authorised Signatory

Name of Director/Authorised Signatory

Signature of Director/Authorised Signatory

Name of Director/Authorised Signatory

General Conditions

The General Conditions of Contract shall be those included in NZS 3910:2023 **Conditions of Contract for Building and Civil Engineering Construction** and the following clauses.

Schedule 1 (Part A) – Special Conditions of Contract – Specific Conditions of Contract

Contract Title:	Construction Contract (3910:2023) (June 2024)
Contract Number:	Insert contract number
Contract For:	Insert project name

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>
1	INTERPRETATION	
1.2	Definitions	
	The Contractor's Representative is:	Insert name
	of:	Insert name of organisation
	The Principal is:	New Zealand Transport Agency
	of:	Insert the street address
	The Principal's Representative is:	Insert name
	of:	New Zealand Transport Agency
1.2, 10.2	Separable Portions	
	<ul style="list-style-type: none"> Are there any Separable Portions in this Contract? 	Select yes or no
	<ul style="list-style-type: none"> If yes, the Separable Portions are as follows and as further defined in the Contract. 	List the Separable Portions or insert 'Not applicable'
1.2,2.5	Target Price	
	The Target Price is	Not applicable
2	THE CONTRACT	
2.1	Type of Contract Price	
2.1.1	This Contract Price is:	<i>(select one or more to apply (i), (ii), (iii), and/or (iv))</i>
	(i) Lump sum contract governed by 2.2	<input type="checkbox"/>
	(ii) Measure and value contract governed by 2.3	<input type="checkbox"/>
	(iii) Cost reimbursement governed by 2.4	<input type="checkbox"/> <<Guidance note: Discuss with NZTA Legal before selecting this option>>
	(iv) Target Price governed by 2.5	<input type="checkbox"/> <<Guidance note: Discuss with NZTA Legal before selecting this option>>

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>
2.2.4	Is this a lump sum contract in which the Schedule of Prices is a full schedule of quantities and 2.2.4 applies?	No <<Guidance note: Discuss with NZTA Project Manager before changing this as it will allow Variations under 2.2.4 >>
2.4	Cost reimbursement Contract Price <<Guidance note: Discuss with NZTA Legal before making any changes to this section 2.4 >>	
2.4.1	Allowance(s) which are to be added to Net Cost in a cost reimbursement Contract Price or for parts of the Contract Works which are required to be carried out on a cost-reimbursement basis: <i>(if percentages are shown as zero or nil, allowances for Preliminary & General are deemed to be included in Net Cost.)</i>	
	• Allowance for Preliminary & General:	Not applicable
	• Allowance for Margin:	Not applicable
2.4.4	Indicative estimates of the Contract Price	
	Are indicative estimates required?	Not applicable
2.5	Target Contract Price <<Guidance note: Discuss with NZTA Legal before making any changes to this section 2.5 >>	
2.5.1	Where 2.5.1 applies:	
	The Principal's and Contractor's share of any saving shall be the following percentage of saving (as defined in 2.5.1(a)):	Not applicable
	The Principal's and Contractor's share of any overrun shall be the following percentage of saving (as defined in 2.5.1(b)):	Not applicable
	The Contractor's share of any overrun shall be capped at the following:	Not applicable
2.5.2	Clauses providing for Variations or adjustments to the Contract Price that will not apply to vary or adjust the Contract Price	Not applicable
2.6	Local authority contracts, contracts in public places, and road contracts	
2.6.1	Is this Contract a local authority contract to which 2.6.1 applies	No
2.6.2	Is this Contract a contract in a public place to which B1 and B2 of Appendix B apply?	Yes
2.6.3	Is this Contract a road contract to which Appendix B applies?	Yes, refer to Schedule 1 (Part A) 10.3.1 for the allowance
2.7	Evidence of Contract	
2.7.4	Electronic format and hard copies	
	Is an electronic copy required?	Yes
	If an electronic copy of the Contract is required, a copy of the Contract shall be supplied without	PDF

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>
	charge to the Contractor in the following electronic format:	
	Are hard copies required?	Select yes or no
	If hard copies of the Contract are required, copies of the Contract shall be provided to the Contractor as follows:	<i>(Select (i), (ii) and/or (iii), delete where not applicable.)</i> <input type="checkbox"/> (i) An original signed set; <input type="checkbox"/> (ii) Insert number hard copies; <input type="checkbox"/> (iii) Insert number hard copies of any additional consent documents.
2.8 Documents prepared or provided by the Contract Administrator or Principal		
2.8.1	Copies of the documents referred to in 2.8.1 shall be supplied without charge to the Contractor in the following electronic format:	PDF
2.9 Documents prepared or provided by the Contractor		
2.9.2	Copies of the documents referred to in 2.9.2 shall be supplied without charge to each of the Contract Administrator and Independent Certifier in the following electronic format:	PDF
	<ul style="list-style-type: none"> Are hard copy sets also required? 	Select yes or no
	<ul style="list-style-type: none"> If 'yes', how many copies? 	Insert number
3 BONDS		
3.1 Contractor's Bond		
3.1.1	Is a Contractor's Bond required?	No <<Guidance note: Discuss with NZTA Legal if the estimated value of the Contract is greater than \$100m >>
3.1.2	If yes, the amount of the Contractor's Bond shall be:	Not applicable
3.2 Principal's Bond		
3.2.1	Is a Principal's Bond required?	No
4 SUBCONTRACTS		
4.2	Nominated Subcontractors	
4.2.1	The Principal nominates the following Subcontractors:	List Nominated Subcontractors or insert 'Not applicable'
5. GENERAL OBLIGATIONS		
5.2 Design responsibilities		
5.2.1	The Contractor is responsible for the design of those parts of the Contract Works:	Insert 'As detailed in the Specifications' or 'Not applicable'
5.2.2	The Principal is responsible for the following parts of the design of the Temporary Works:	Insert 'As detailed in the Specifications' or 'None'

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>
5.5 Possession of the Site		
5.5.1	The Contractor shall be given possession of the Site:	
	For the Contract Works:	<i>(Select one to apply, (i) or (ii))</i>
(i)	10 Working Days after the Date of Acceptance of Tender:	<input type="checkbox"/>
(ii)	On the following date:	<input type="checkbox"/> Select a date or insert 'Not applicable'
	For Separable Portions:	List each Separable Portion and the date for possession or insert 'Not applicable'
	Possession of the Site is subject to compliance with the following preconditions:	<input type="checkbox"/> The Contractor's and Principal's obligations under 8.2.5 and 8.7.5 <input type="checkbox"/> Insert any other precondition or delete
5.5.3	Limits on the Contractor's right of entry to adjoining properties are:	Insert 'As detailed in the Specifications' or 'None'
5.6 Separate Contractors		
5.6.1	Separate Contractors who may be carrying out work on the Site concurrently with the Contract Works are:	List each Separate Contractor or insert 'Not applicable'
5.6.2	Are facilities for Separate Contractors required?	Select yes or no
	If yes, details of facilities required are:	Insert details or insert 'Not applicable'
5.7 Care of the Contract Works and Site		
5.7.6(g)	Further risks specifically excepted are:	Nil
5.10 Management Plans		
	The following Management Plans are required:	<i>(Select yes or no for each Management Plan)</i>
	Traffic management plan <ul style="list-style-type: none"> If yes, requirements for the traffic management plan are stated in: 	Yes As detailed in the Specifications
	Environmental management plan <ul style="list-style-type: none"> If yes, requirements for the environmental management plan are stated in: 	Select yes or no Insert 'As detailed in the Specifications' or delete
	Quality management plan <ul style="list-style-type: none"> If yes, requirements for the quality management plan are stated in: 	Select yes or no Insert 'As detailed in the Specifications' or delete
	Sustainability management plan <ul style="list-style-type: none"> If yes, requirements for the sustainability management plan are stated in: 	Select yes or no Insert 'As detailed in the Specifications' or delete
	Other(s)	Select yes or no

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>
	<ul style="list-style-type: none"> If other(s), requirements for the other management plan/s are: 	Insert 'As detailed in the Specifications' or delete
5.13	Programme	
5.13.4	Is the programme required to be a Comprehensive Programme?	Yes
5.13.4(e)	If yes, other requirements for the Comprehensive Programme are:	As detailed in the Specifications
5.13.5	The Comprehensive Programme shall use the following software:	As detailed in the Specifications
5.13.6	Updates of the Comprehensive Programme shall be provided at the following intervals:	As detailed in the Specifications
5.14	Compliance with laws and Consents	
5.14.2	Exceptions to the Principal's obligations to obtain Consents for the Contract Works under 5.14.2 are:	Nil
5.14.3	Exceptions to the Contractor's obligations to give notices and obtain other Consents for Temporary Works under 5.14.3 are:	Nil
5.19	Supply by Principal	
5.19.1	Principal supplied items are:	Insert 'As detailed in the Specifications' or 'Not applicable'
5.20	Completion Records	
5.20.1	Are Completion Records to be prepared by the Contractor?	Yes
5.20.3(d)	The number of sets of Completion Records required is:	As detailed in the Specifications
5.22	Reporting	
5.22.1	Are reports required, and if so, how frequently?	Yes, as detailed in the Specifications
5.22.1	If yes, what matters are to be covered in the report(s)?	As detailed in the Specifications
5.22.1	If yes, in what form should the report be provided?	As detailed in the Specifications
6	CONTRACT ADMINISTRATION	
6.1	Appointment of the Contract Administrator and Independent Certifier	
6.1.2	The Contract Administrator is:	Insert name
	The Independent Certifier is:	Insert name
7	INDEMNITY	
7.2	Contractor's liability limit	

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>
7.2	Is this a contract to which 7.2 applies?	Yes
7.2.1	Subject to 7.2.2 and 7.2.3, the maximum aggregate liability of the Contractor to the Principal under or in connection with the Contract is:	Insert the appropriate option: (a) Contract value ≤ \$25m = insert the higher of \$20m or 200% of the Contract Price, (b) Contract value \$25m ≤ \$500m = insert the higher of \$50m or 100% of the Contract Price, or (c) Contract value > \$500m = insert \$500m
8 INSURANCES Refer to Schedule 1 (Part B – Insurances)		
9 VARIATIONS AND CONTRACT PRICE ADJUSTMENTS		
9.3 Valuation of Variations		
9.3.10	For Preliminary and General:	<i>(select one to apply, (i), (ii) or (iii))</i>
	(i) The prices and rates in the Schedule of Prices are inclusive of full allowance for Preliminary and General (so 9.3.9(a) or 9.3.10(c) applies to the valuation of Variations)	<input type="checkbox"/>
	(ii) The prices and rates in the Schedule of Prices are exclusive of Preliminary & General (so 9.3.10(a) or 9.3.10(b) applies to the valuation of Variations)	<input type="checkbox"/>
	(iii) Where 9.3.10(b) applies to the valuation of Variations, the allowance for Preliminary & General to be added in accordance with 9.3.10 is:	<input type="checkbox"/> <i>(if (iii) is selected, select one to apply, (A), (B), (C), or (D))</i>
	(A) Agreed percentage:	<input type="checkbox"/>
	(B) As nominated in the Schedule of Prices.	<input type="checkbox"/>
	(C) As nominated in the Contractor's tender.	<input type="checkbox"/>
	(D) A reasonable percentage.	<input type="checkbox"/>
9.3.11	For Margin:	<i>(select one to apply, (i), (ii) or (iii))</i>
	(i) The price and rates in the Schedule of Prices are inclusive of full allowance for Margin (and 9.3.9(b) or 9.3.11(c) applies to the valuation of Variations)	<input type="checkbox"/>
	(ii) The prices and rates in the Schedule of Prices are exclusive of Margin (and 9.3.11(a) or 9.3.11(b) applies to the valuation of Variations)	<input type="checkbox"/>
	(iii) Where 9.3.11(b) applies to the valuation of Variations, the allowance for Margin to be added in accordance with 9.3.11 is:	<input checked="" type="checkbox"/> <i>(if (iii) is selected, select one to apply, (A), (B), (C), or (D))</i>
	(A) Agreed percentage:	<input type="checkbox"/>
	(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 percentage.	<input checked="" type="checkbox"/>
9.3.12	For time related Cost, the Working Day Rate in compensation for time-related Preliminary & General and Margin in relation to an extension of time to be applied in accordance with 9.3.12 is:	<i>(select one to apply, (i), (ii), (iii), or (iv))</i>
	(i) Agreed Working Day Rate	<input type="checkbox"/> \$[] per Working Day
	(ii) As nominated in the Schedule of Prices.	<input type="checkbox"/>
	(iii) As nominated in the Contractor's tender.	<input type="checkbox"/>
	(iv) Reasonable compensation.	<input type="checkbox"/>
9.3.16	For processing of Variations, the percentage to be paid in accordance with 9.3.16 is:	<i>(select one to apply, (i), (ii), (iii), or (iv))</i>
	(i) Agreed percentage:	<input type="checkbox"/>
	(ii) As nominated in the Schedule of Prices.	<input type="checkbox"/>
	(iii) As nominated in the Contractor's tender.	<input type="checkbox"/>
	(iv) A reasonable Cost of processing the Variations.	<input checked="" type="checkbox"/>
9.6	Cost Fluctuations	
9.6.1	Appendix A shall apply unless option (i) or (ii) is selected as an alternative:	<i>(Select one to apply, (i) or (ii))</i>
	(i) Cost fluctuations shall not be paid	<input type="checkbox"/>
	(ii) Cost fluctuation shall be paid in accordance with the method described in:	<input checked="" type="checkbox"/> Schedule 17 <<Guidance note: Select this option when contract includes bitumen supply of if the contract period exceeds 12 months.>>
9.11	Final Account	
9.11.1(a)	The Contractor shall submit the Interim Final Account within the following period after the issue of the Practical Completion Certificate for the whole of the Contract Works:	<i>(Select one to apply)</i> <input type="checkbox"/> 3 months; or <input type="checkbox"/> The following period Insert period
10	TIME FOR COMPLETION	
10.1	Commencement	
10.1.3	Winter Period	1 May through 31 August inclusive. <<Guidance Note: Insert the appropriate Winter Period for pavement and surfacing construction exclusion. Align with the Construction Season.>>
	Construction Season	1 September through 30 April inclusive. <<Guidance Note: Align with the Winter Period.>>
10.2	Due Date for Completion	

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>
10.2.1	The date(s) or period(s) to be used for calculating the Due Date for Completion are: (a) For the Contract Works: (b) For any Separable Portions:	(select one to apply, (a), or (b)) Insert date or number of Working Days Insert date or number of Working Days
10.3	Extensions of time	
10.3.1(b)	An allowance for inclement weather:	<p><< Guidance Note: If an allowance for inclement weather is to be provided for in the programme then select this first option and the appropriate wording for using an independent station or not. If the programme contains no allowance for inclement weather then select the "Nil" option below and delete balance of text.>></p> <p>Insert number Working Days.</p> <p>No extension of time will be granted for "wet days" lost due to inclement weather in the period Insert date to Insert date for earthworks operations or surfacing works.</p> <p>A "wet day" is a working day in which the rainfall is Insert amount i.e. 5 mm or greater. Any of the two immediately following days on which rainfall is Insert amount i.e. 1 mm or greater shall also qualify as "wet days".</p> <p><< Guidance Note: To be used where it is practical to use an independent station>></p> <ul style="list-style-type: none"> This allowance is based on automatic weather station Insert weather station reference and physical location, records from Insert date to Insert date. "wet days" are determined from the average over the Insert range year record All rainfall shall be measured at the specified weather station <p><< Guidance note: to be used where impractical to use an independent station due to location or cost>></p> <ul style="list-style-type: none"> This allowance is based on the average number of days that can be worked on Site in conventional earthworks operations from Insert date to Insert date, and surfacing works from Insert date to Insert date. The rain gauge will be located Insert location, and constructed in accordance with New Zealand meteorological standards Measurement of daily rainfall will be carried out by the Contractor. Rainfall data will be reported to the Contract Administrator on a weekly basis. <p><<OR>></p> <p>Nil. Full allowance for inclement weather is included in the Due Date for Completion.</p>
10.4	Practical Completion Certificate	

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>
10.4.5	Prior to issue of the Practical Completion Certificate, the Contractor shall provide:	
10.4.5(a)	Producer Statements:	<i>(select one to apply, (i), (ii) or (iii))</i>
	(i) Producer Statements in the form of Schedule 6 are required;	<input checked="" type="checkbox"/>
	(ii) Producer Statements as set out in the following parts of the Contract are required:	<input type="checkbox"/>
	(iii) Producer Statements are not required.	<input type="checkbox"/>
10.4.5(b)	Completion Records required for Practical Completion by 5.20:	<input type="checkbox"/>
10.4.5(c)	Any warranties or guarantees required by 11.5.2	<input type="checkbox"/>
10.5 Damages for late completion		
10.5.1	Are liquidated damages applicable?	Select yes or no
	Where applicable liquidated damages shall be applied as follows:	
	<ul style="list-style-type: none"> In respect of the Contract Works: 	\$Insert amount per Working Day
	<ul style="list-style-type: none"> In respect of any Separable Portion(s): 	\$Insert amount per Working Day for each Separable Portion
10.6 Bonus for early completion		
10.6.1	Is a bonus to be payable?	No
	<ul style="list-style-type: none"> If yes, the bonus for the Contract Works is: 	Not applicable
	<ul style="list-style-type: none"> If yes, bonuses for any Separable Portions are: 	Not applicable
11 DEFECTS LIABILITY		
11.1	Defects Notification Period	
	The Defects Notification Period shall be 3 Months unless otherwise stated below:	
	<ul style="list-style-type: none"> For the Contract Works: 	Insert period – standard 52 weeks
	<ul style="list-style-type: none"> For any Separable Portions: 	Insert period or insert 'Not applicable'
11.3 Final Completion Certificate		
11.3.2	Before issue of the Final Completion Certificate:	<i>(select one to apply, (i), (ii) or (iii))</i>
11.3.2(a)	Producer Statements	
	(i) Producer Statements in the form of Schedule 6 are required;	<input checked="" 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>
	(ii) Producer Statements as set out in the following parts of the Contract are required:	<input type="checkbox"/>
	(iii) Producer Statements are not required.	<input type="checkbox"/>
11.3.2(b)	Completion Records required for final completion	<input checked="" type="checkbox"/>
11.5 Warranties and guarantees		
11.5.1	Warranties	<i>(select one to apply, (i) or (ii))</i>
	(i) No warranties are required;	<input checked="" type="checkbox"/>
	(ii) The Contractor shall provide warranties as for the following items of work:	<input type="checkbox"/>
11.5.2	Warranties shall be provided:	<i>(select one to apply, (i) or (ii))</i>
	(i) Before the issue of the Practical Completion Certificate	<input type="checkbox"/>
	(ii) At another time:	<input type="checkbox"/>
11.5.1 / 11.5.3	Guarantees	<i>(select one to apply, (i) or (ii))</i>
	(i) No guarantees are required	<input checked="" type="checkbox"/>
	(ii) The Contractor shall provide guarantees in the following form(s):	<input type="checkbox"/>
12 PAYMENTS		
12.1 Contractor's payment claims		
12.1.3(b)(iii)	Advances for Materials delivered to the Site	<i>(select one to apply, (i) or (ii))</i>
	(i) 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"/>
	(ii) Advances for Materials delivered to the Site but which have yet to be incorporated in the Contract Works shall be made, subject to the following conditions:	<input type="checkbox"/> (a) At the sole discretion of the Principal; (b) Payment will be made at 80% of the value of the Materials; and (c) Any advances made will be recovered progressively by deduction from progress payments as such Materials are incorporated into the Contract Works
12.1.3(b)(iv)	Advances for Temporary Works or Plant	<i>(select one to apply, (i) or (ii))</i>
	(i) Advances for Temporary Works or Plant shall not be made.	<input checked="" type="checkbox"/>
	(ii) Advances for Temporary Works or Plant shall be made, subject to the following conditions:	<input type="checkbox"/>
12.1.3(b)(iv)	Advances for Materials not yet on Site	<i>(select one to apply, (i) or (ii))</i>

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>
	(i) Advances for Materials not yet on Site shall not be made	<input checked="" type="checkbox"/>
	(ii) Advances for Materials not yet on Site shall be made, subject to the following conditions:	<input type="checkbox"/> <ul style="list-style-type: none"> (a) At the sole discretion of the Principal; (b) The Contractor first enters into an Off Site Materials Agreement in the form attached at Schedule 14; (c) Payment will be made at 80% of the value of the Materials; and (d) Any advances made will be recovered progressively by deduction from progress payments as such Materials are incorporated into the Contract Works
12.3	Retention monies	
12.3.1, 12.3.2	The percentage to be retained from each progress payment, the GST exclusive amount, and the limit of to be retained shall be in accordance with the following:	<i>(select one to apply, (i) or (ii))</i>
	(i) 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, • With a maximum total retention when aggregated of \$200,000; and • With a defects liability retention of half the maximum total retention 	<input checked="" type="checkbox"/>
	(ii) The retention scale in the right hand column:	<input type="checkbox"/> <<Guidance note: Discuss with TS Commercial Team where the estimated value of the Contract is greater than \$20m (as the capped retention amount will not be sufficient)>>
12.3.6	Bond in lieu of retention	<i>(select one to apply, (i) or (ii))</i>
	(i) The Contractor may provide a bond in lieu of retentions.	<input checked="" type="checkbox"/> The value of the bond shall be the total applicable retention amount specified in 12.3.1 above, plus 10%. <<Guidance note: Discuss this option with TS Commercial Team>>
	The time within which the Contractor shall provide the bond in lieu of retentions is:	<i>(if (i) is selected, select one to apply, (A) or (B))</i>
	(A) Within 2 Months of the Date of Acceptance of Tender	<input checked="" type="checkbox"/>
	(B) Within the time stated	<input type="checkbox"/>
	(ii) The Contractor may not provide a bond in lieu of retentions	<input type="checkbox"/>
12.8	Goods and services tax	
12.8.2	Taxable supply information shall be provided by:	<i>(select one to apply, (i) or (ii))</i>

Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2.)</i>
	(i) The Principal In the form of Payment Schedules provided by the Independent Certifier containing buyer-created taxable supply information	<input checked="" type="checkbox"/>
	(ii) The Contractor	<input type="checkbox"/>
13 DISPUTES		
13.3 Arbitration		
13.3.3	If required, the arbitrator shall be nominated by the following Person:	The then President of the New Zealand Law Society or his or her nominee
15. SERVICE OF NOTICES		
15.1.2 For the purposes of service of written notice:		
	(i) The Principal's address is:	
	Postal address:	Click to enter text
	Delivery address:	Click to enter text
	Mark for the attention of:	Click to enter text
	Email address:	Click to enter text
	Other agreed means of electronic communication and address detail:	Click to enter text
	(ii) The Contractor's address is:	
	Postal address:	Click to enter text
	Delivery address:	Click to enter text
	Mark for the attention of:	Click to enter text
	Email address:	Click to enter text
	Other agreed means of electronic communication and address detail:	Click to enter text
	(iii) The Independent Certifier's address is:	
	Postal address:	Click to enter text
	Delivery address:	Click to enter text
	Mark for the attention of:	Click to enter text
	Email address:	Click to enter text
	Other agreed means of electronic communication and address detail:	Click to enter text
	(iv) The Contract Administrator's address is:	

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>
	Postal address:	Click to enter text
	Delivery address:	Click to enter text
	Mark for the attention of:	Click to enter text
	Email address:	Click to enter text
	Other agreed means of electronic communication:	Click to enter text

Schedule 1 (Part B) – Special Conditions of Contract – Specific Conditions of Contract

Contract Title:	Construction Contract 3910:2023 (NZTA June 2024)
Contract Number:	Insert contract number
Contract For:	Insert project name

Clause <i>In General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add reference to further detail provided in Schedule 2)</i>
8	INSURANCE <<Guidance note: Refer to insurance guidance note before making any changes to the default insurance settings>>	
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
	8.8 Existing structure(s) and contents	Not applicable
	8.4 Plant	Contractor
	8.5 or 8.9 Public liability	Principal
	8.5.2 Motor Vehicle	Contractor
	8.6 Professional Indemnity	Not required
8.1.6	The following forces of nature shall be specifically insured under 8.3 or 8.8 as applicable:	
	(i) Landslip	Yes
	(ii) Earthquake	Yes
	(iii) Tsunami	Yes
	(iv) Tornado	Yes
	(v) Cyclone	Yes
	(vi) Storm	Yes
	(vii) Flood	Yes
	(viii) Lightning strike	Yes
	(ix) Volcanic activity	Yes
	(x) Hydrothermal Activity	Yes
	(xi) Geothermal Activity	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>
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:	Not applicable
8.3.3, 8.8	Where construction insurance is required (<i>see 8.1 above</i>), the amount of insurance to be effected for the Contract Price, after acceptance of the tender or other offer, plus the following allowances:	
	(i) An allowance for the Cost of demolition, disposal and preparation for replacement work, equal to:	<i>(Select one to apply, (A) or (B))</i>
	(A) The amount in the right-hand column:	<input checked="" type="checkbox"/> Insert the appropriate option: (a) Contract value ≤ \$50m = insert \$7.5m, (b) Contract value \$50m - \$100m = insert \$12m, or (c) Contract value \$100m - \$200m = insert \$20m
	(B) The percentage in the right-hand column of the Contract Price adjusted as above:	<input type="checkbox"/>
	(ii) An allowance for professional fees including the Cost of clerks of works and inspectors, equal to:	<i>(Select one to apply, (A) or (B))</i>
	(A) The amount in the right-hand column:	<input checked="" type="checkbox"/> Insert the appropriate option: (a) Contract value ≤ \$50m = insert \$5m, (b) Contract value \$50m - \$100m = insert \$10m, or (c) Contract value \$100m - \$200m = insert \$20m
	(B) The percentage in the right-hand column of the Contract Price adjusted as above:	<input type="checkbox"/>
	(iii) 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, (A) or (B))</i>
	(A) The amount in the right-hand column:	<input checked="" type="checkbox"/> Not applicable (to be included)
	(B) The percentage in the right-hand column of the Contract Price adjusted as above:	<input type="checkbox"/>
	(iv) An allowance for an increase in the Contract Price due to Variations, equal to:	<i>(Select one to apply, (A) or (B))</i>
	(A) The amount in the right-hand column:	<input type="checkbox"/>
	(B) The percentage in the right-hand column of the Contract Price adjusted as above:	<input checked="" type="checkbox"/> Up to 15%
	(v) An allowance for increased construction Costs due to inflation, equal to:	<i>(Select one to apply, (A) or (B))</i>
	(A) The amount in the right-hand column:	<input checked="" type="checkbox"/> Insert the appropriate option: (a) Contract value < \$50m = insert \$1m, (b) Contract value > \$50m = insert \$3m

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) The percentage in the right-hand column of the Contract Price adjusted as above:	<input type="checkbox"/>
8.4	Contractor-arranged Plant insurance	
	Where Plant is required to be insured (see 8.1 above):	<i>(Select one to apply, (i) or (ii))</i>
	(i) The Contractor shall insure the following items of Plant on Site for the amounts stated:	<input type="checkbox"/>
	(ii) 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
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:	Not applicable
	Such public liability insurance may include a sub-limit for liability arising out of vibration, weakening, or removal of support, of not less than:	Not applicable
8.5.2	Where required (see 8.1 above), motor vehicle third party liability insurance shall be effected for an amount not less than:	Not applicable
8.6	Contractor-arranged professional indemnity insurance	
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:	Not applicable
	• And for an amount in the aggregate of:	Not applicable
8.6.2	Sub limits of liability for design of parts of the Contract Works by Subcontractors shall not be less than:	Not applicable
8.8	Principal-arranged construction insurance (refer also to 8.3)	
	In accordance with 8.7.2, the insurance policy wording title for 8.8.1 and 8.8.2 (a), 8.8.2(b), and 8.8.2(c) is:	The Principal, the Contractor and Subcontractors for their respective rights and interests
	In accordance with 8.7.2, the extraordinary exclusions, conditions, warranties or endorsements to the policy for 8.8.1 and 8.8.2 (a), 8.8.2(b), and 8.8.2(c) are:	Refer to the NZTA Principal Arranged Insurance website
8.8.1	Where the Principal is required to effect construction insurance (see 8.1 above):	
	The lead insurer can be found at:	Refer to the NZTA Principal Arranged Insurance website

Clause	Title and subject matter	Specific condition data			
<i>In General Conditions</i>		<i>(Expand cells if required or add reference to further detail provided in Schedule 2)</i>			
	The Nominal Deductibles are:		Contract value < \$10m	Contract value \$10m - \$50m	Contract value > \$50m
		Each loss, except as noted below	\$25,000	\$25,000	\$50,000
		Major Perils	\$25,000	\$50,000	\$100,000
		Wet Work Contracts	\$150,000	\$200,000	\$300,000
		Tunneling Contracts (including excavations/underpasses greater than 100m)	\$150,000	\$200,000	\$300,000
8.8.2(a)	The existing structures are:	N/A			
8.8.2(b)	Other structures in the vicinity are:	N/A			
8.8.2(c)	Contents insurance:	N/A			
8.9	Principal's option to insure public liability				
8.9.1	Where required (see 8.1 above), the Principal shall effect public liability insurance for an amount not less than:	\$100,000,000			
	The lead insurer can be found at:	Refer to the NZTA Principal Arranged Insurance website			
	The Nominal Deductibles are:	\$100,000			
	In accordance with 8.7.2:				
	<ul style="list-style-type: none"> The policy wording title is: 	Refer to the NZTA Principal Arranged Insurance website			
	<ul style="list-style-type: none"> Extraordinary exclusions, conditions, warranties, or endorsements to the policy are: 	Refer to the NZTA Principal Arranged Insurance website			
8.9.2	Such public liability insurance may include a sub-limit of liability arising out of vibration, weakening, or removal of support of not less than:	\$100,000,000			

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

These conditions amend and supplement the General Conditions. Clause numbers refer to NZS 3910:2023.

SECTION 1 – INTERPRETATION

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

- **CONSTRUCTION SEASON** means the period specified in the Specific Conditions, Schedule 1 (Part A).
- **DATA BREACH** means any incident involving facilities, systems, personnel, suppliers and/or Subcontractors that:
 - (a) involves (or gives rise to a real risk of) unauthorised or accidental access to, or use, disclosure, alteration, loss or destruction of, any of the Principal's Personal Information; or
 - (b) prevents the Principal from accessing the Principal's Personal Information on either a temporary or permanent basis; or
 - (c) would prompt a reasonable and prudent person in the Principal's position to notify (or consider notifying) the incident to the Privacy Commissioner and/or one or more individuals under the NZ Privacy Laws.
- **HSWA ACT** means the Health and Safety at Work Act 2015.
- **JOINT VENTURE** has the meaning given to that term in 17.1.1.
- **KEY PERSONNEL** means the Contractor's personnel listed in Schedule 18 (if any) and any person appointed as a replacement under 5.23.2.
- **LIVING WAGE RATE** means the New Zealand living wage hourly rate promoted by Living Wage Aotearoa New Zealand (or similar or equivalent nationwide living wage hourly rate) at the time the relevant Contract Works are carried out.
- **OIA** means the Official Information Act 1982.
- **PERSONAL INFORMATION** has the meaning given in the Privacy Act 2020.
- **PRINCIPAL'S PERSONAL INFORMATION** means Personal Information made available to the Contractor by or on behalf of the Principal, or collected by the Contractor for the Principal, in connection with this Contract.
- **PRIVACY LAWS** means the Privacy Act 2020, and any New Zealand laws, regulations, codes of practice and approved information sharing agreements insofar as they regulate the collection, processing, storage, use and/or disclosure of information about individuals.
- **PROJECT MANAGEMENT BOARD** means the project board formed by the Principal and the Contractor for the Contract (if applicable).
- **STATUTORY FUNCTIONS** has the meaning given to that term in 1.3.10.
- **WINTER PERIOD** means the period specified in the Specific Conditions, Schedule 1 (Part A).

Add new 1.3.8 - 1.3.10 as follows:

- 1.3.8** If any one or more of the provisions contained in the Contract is invalid, illegal or unenforceable in any respect under any applicable Act or Regulation, the validity, legality and enforceability of the remaining provisions contained in the Contract will not in any way be affected or impaired.
- 1.3.9** No amendment to the Contract will be binding on the parties unless in writing and signed by an officer or representative of each party having the authority to do so.

- 1.3.10** The Contractor recognises that the Principal has certain statutory powers, functions and/or regulatory roles, and is bound by particular statutory responsibilities (**Statutory Functions**). The Contractor acknowledges and agrees that the Contract does not seek to derogate from such Statutory Functions and, accordingly:
- (a) nothing in the Contract in any way influences or restricts the exercise of the Statutory Functions, or binds the Principal to make a particular decision in respect of any Statutory Function exercised by it; and
 - (b) if there is a conflict between an obligation under the Contract, and a Statutory Function, the applicable Statutory Function prevails to the extent of the conflict.

SECTION 2 – THE CONTRACT

Delete 2.7.1 and 2.7.2 replace with the following:

- 2.7.1** There is no contract or other legal relationship between the Contractor and the Principal until the Contract Agreement is executed by both parties, unless the parties agree otherwise in writing (including under any signed and countersigned notification of acceptance of tender or letter of award).

Add the following to the end of 2.10.2:

provided that a change in control will not occur (and will not be an assignment of the Contract for the purposes of this 2.10.2) as a result of the transfer, issue, redemption, buyback, cancellation, repurchase or reorganisation of marketable securities in the Contractor or the parent company of the Contractor where the Contractor or the parent company of the Contractor is listed on a recognised public stock exchange or as a result of solvent internal restructuring.

Add the following to the end of 2.11:

Any waiver by a party of its rights, powers and/or remedies under this 2.11 will not operate as a waiver of its rights, powers and/or remedies in respect of any subsequent or continuing breach of the Contract.

SECTION 4 – SUBCONTRACTS

Add the following at the end of 4.1.3:

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

Add a new 4.1.4 as follows:

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

SECTION 5 – GENERAL OBLIGATIONS

Add new 5.1.5 - 5.1.9 as follows:

- 5.1.5** The Contractor warrants that, as at the date of this Contract, it has no conflict of interest in undertaking the Contract Works or entering into the Contract, and it will use its best endeavours to avoid situations that may lead to a conflict of interest arising while the Contract remains in force. The Contractor must notify the Contract Administrator of any potential or actual conflicts of interest within its own organisation or with any individual or organisation engaged by the Contractor to complete any of the Contract Works.

- 5.1.6** The Contractor must advise the Contract Administrator of the means that it intends to use to remove or mitigate conflicts of interest notified to the Contract Administrator in accordance with 5.1.5.
- 5.1.7** The Contract Administrator will issue an Instruction as to any action required to remove or mitigate any actual or potential conflict of interest notified to the Contract Administrator in accordance with 5.1.5. Any such Instruction will not constitute a Variation.
- 5.1.8** It is essential that the Contractor always acts in its dealings with the Principal (including its officers, employees, contractors and agents), the Principal's Representative, the Contract Administrator, the Independent Certifier, and any Advisers in a manner consistent with the highest standards of probity. The Contractor must, if required by the Principal, comply with any probity guidelines and principles of Principal, and must ensure that all Subcontractors do the same.
- 5.1.9** The Contractor must comply with the *Standards of Integrity and Conduct* issued by the State Services Commission (see <https://www.procurement.govt.nz/assets/procurement-property/documents/supplier-code-of-conduct.pdf>) and any other relevant codes of conduct notified by the Principal to the Contractor from time to time.

Add the following to the end of 5.8.3 "in respect of the Contract Works. The Contractor shall also provide to the Principal, through the Contract Administrator, a copy of all information prepared or collected in preparation for, or anticipation of, such disclosure".

Add new 5.8.7 - 5.8.9 as follows:

- 5.8.7** The Contractor will implement and carry out an audit and inspection regime as required by the Principal and/or any relevant health and safety requirements, including those set out in the Specifications.
- 5.8.8** The Contractor warrants to the Principal that the Contractor will, so far as is reasonably practicable, ensure that no act or omission of it, any Subcontractor and any Worker (as such term is defined in the HSAW Act) on any part of the Site (or any other area), does or is likely to give rise to the issue of an improvement or prohibition notice, enforcement proceedings or a prosecution under the HSAW Act against the Principal, the Contractor, a Subcontractor and/or any other Worker.
- 5.8.9** The Principal (or the Contract Administrator) 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 Contract Administrator) in relation to or in connection with any such audit. In addition, if the Principal or the Contract Administrator is of the opinion that the Contractor has failed to comply with any health and safety obligations under the Contract, the Contract Administrator may advise the Contractor and Instruct the Contractor to cease or not commence the Contract Works or part of the Contract Works until the Contractor complies. Any such Instruction will not constitute a Variation.

Delete 5.9.3 and 5.9.4 and replace with the following:

- 5.9.3** Within 5 Working Days of receipt of the Contractor's Site-specific safety plan, or revised Site-specific safety plan, the Contract Administrator shall notify the Contractor of any comments on the Site-specific safety plan, and the Contractor shall submit a revised Site-specific safety plan incorporating the comments.
- 5.9.4** The Contractor shall not commence any part of the Contract Works on Site until a Site-specific safety plan has been provided to the Contractor Administrator and any comments received from the Contract Administrator have been addressed.

Delete 5.10.2 and 5.10.3 and replace with the following:

- 5.10.2** Within 5 Working Days of receipt of the relevant Management Plans, or revised Management Plans, the Contract Administrator shall notify the Contractor of any comments on the relevant Management Plan, and the Contractor shall submit a revised Management Plan incorporating the comments.

- 5.10.3** The Contractor shall not commence any part of the Contract Works on Site until a relevant Management Plan, relating to that part of the Contract Works, has been provided to the Contractor Administrator and any comments received from the Contract Administrator have been addressed.

Add a new 5.10.5 as follows:

- 5.10.5** No review, acceptance or approval by the Contract Administrator of a Management Plan or the Site-specific safety plan, shall relieve the Contractor of any obligation or liability under the Contract.

Add a new 5.13.11 as follows:

- 5.13.11** Any programme required by 5.13 is intended for use as a management and reporting tool. Nothing stated in any such programme, and no consent or approval given by the Principal or the Contract Administrator in respect of any such programme, will relieve the Contractor of its obligation to proceed with the Contract Works and complete the Contract Works on or by the Due Date(s) for Completion and nor will anything in any such programme modify or vary amounts to be paid and/or the payment terms under the Contract.

Add a new 5.22.2 as follows:

- 5.22.2** The Contractor shall provide information relating to the Contract and the Contract Works to the Principal (through the Contract Administrator), as requested by the Principal from time to time. The information will be provided within a reasonable timeframe as agreed between the Contractor and the Principal.

Add a new 5.23 as follows:

5.23 Key Personnel

- 5.23.1** The Contractor acknowledges that the Principal has engaged the Contractor to undertake the Contract Works on the basis that the Key Personnel will be involved in the completion of the Contract Works, subject to events occurring outside the reasonable control of the Contractor (e.g. death, sickness or resignation).
- 5.23.2** The Contractor must obtain the prior written approval of the Principal, or where applicable, the Project Management Board, before replacing any of the Key Personnel. The replacement must have at least the same or better skills, qualifications, expertise and experience as the Key Personnel being replaced or substituted.
- 5.23.3** If any Key Personnel are not available to perform the role and responsibilities required of that Key Personnel because of an act or omission of the Contractor, and the Contractor does not within a period acceptable to the Principal, or where applicable, the Project Management Board, replace the relevant Key Personnel in accordance with 5.23.2, the Principal reserves the right to withhold 20% of the value of the next payment due until such time as a suitable replacement has been made and approved by the Principal, or where applicable, the Project Management Board. The monies withheld, shall be paid to the Contractor by payment as part of the progress payment due after the approved replacement has been made.

Add a new 5.24 as follows:

5.24 Information and Security

- 5.24.1** The Principal expects the Contractor will ensure that it and its personnel (including Subcontractors) providing the Contract Works will:
- (a) consistently demonstrate the principles and behaviours set out in the Principal's information management and security policies, processes, procedures and supporting controls (as advised to the Contractor from time to time);
 - (b) not access the Principal's information or systems except to the extent necessary to provide the Contract Works and for no other reason;

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

Add a new 5.25 as follows:

5.25 Living Wage

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

has at all times complied with the obligations to pay a Living Wage Rate in accordance with this 5.25.

SECTION 7 – INDEMNITY AND LIABILITY LIMIT

In 7.1.1(a)(ii), add the words “or any person for whom the Contractor is responsible” after the words “by the Contractor”.

In 7.2.2(a), delete the words “under 5.15.1” and replace with “under 5.15.2”.

In 7.2.2(c), add the words “(or any person for whom the Contractor is responsible)” after the words “by the Contractor”.

In 7.2.2, delete the words “The limit under 7.2.1 does not limit the Contractor’s liability:” and replace with the words “The limitations and exclusions in 7.2.1 and 7.2.4 do not take into account or limit the Contractor’s liability:”.

Add the following to the end of 7.2.2:

- (f) for any costs or expense which the Contractor is obliged to expend in order to carry out or complete the Contract Works in accordance with the Contract; or
- (g) for the amount of any insurance proceeds recovered under an insurance policy required to be effected and maintained in accordance with the Contract, including any proceeds that would have been recovered, but for any failure to claims and/or breach of the relevant insurance policy by the Contractor, or due to the failure by the Contractor to maintain the relevant insurance policy.

Add a new 7.2.4 as follows:

7.2.4 Neither party will be liable to the other party (whether based on contract, infringement, negligence, strict liability, tort or otherwise) for any loss of profit, anticipated profits, revenue, use, production or down time costs, opportunity, business, contract, goodwill, or the cost of obtaining any new financing or maintaining any existing financing nor for any indirect or consequential loss or damage in relation to the Contract Works, provided that this 7.2.4 shall not prevent, limit or exclude liability for any liquidated damages or damages for delay.

SECTION 8 – INSURANCE

Add a new 8.1.7 as follows:

8.1.7 Responsibility for pursuing any claim under any insurance policy shall rest with the party with whom the fault lies. Where the Contractor is pursuing a claim, the Contractor is required to advise the Contract Administrator of the outcome of the claim and provide the Contract Administrator with information in relation to the claim on request, except to the extent that any such disclosure would prejudice the Contractor’s right of indemnity under the relevant insurance policy.

In line 2 of 8.3.1, replace “5.6” with “5.7”.

In line 3 of 8.5.1, replace “5.6” with “5.7”.

SECTION 10 – TIME FOR COMPLETION

Add a new 10.1.3 as follows:

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

Add the following to the end of the first sentence in 10.3.4:

The Contract Administrator will have regard to the matters specified at 10.3.6.

Renumber 10.3.6(c) to 10.3.6.(d) and change the reference in the last paragraph of 10.3.6 from “10.3.6(c)” to “10.3.6(d)”.

Add a new 10.3.6(c) as follows:

- (c) the extent to which there are other events or circumstances causing concurrent delay to the Contractor, for which the Contractor will be entitled to an extension of time for only the net effect of the concurrent delay,

Add new 10.3.9 - 10.3.13 as follows:

- 10.3.9** Where an extension of time agreed between the Contract Administrator and the Contractor or Decided by the Independent Certifier necessitates surfacing and pavement construction activities to be programmed in the Winter Period, the Contract Administrator may Instruct that the Contract Works be suspended to avoid the completion of surfacing and pavement construction works in the Winter Period. In such a case the Contractor shall be entitled to only the direct Preliminary & General Costs to maintain the Site over the period of suspension. The Contract Administrator may require that the Contractor apply a temporary holding surfacing or any other works required to maintain the Site to an acceptable standard. No Margin shall be payable over this period regardless of the reason for the extension of time.
- 10.3.10** Where no extension of time is agreed between the Contractor and Contract Administrator or Decided by the Independent Certifier, the Contractor is responsible for applying a temporary holding surfacing or to complete any other works that may be necessary to maintain the Site over the Winter Period, at no additional Cost to the Principal.
- 10.3.11** Where there has been a delay to the Contract Works that does not entitle the Contractor to an extension of time pursuant to 10.3.1, or if in the Contract Administrator’s opinion it is likely that the Contractor will not achieve Practical Completion by the relevant Due Date for Completion, the Contractor shall, at its own cost, take all steps as the Contract Administrator may Instruct to expedite progress, including by applying additional resources, airfreighting items, working longer hours and/or otherwise accelerating the works, so as to ensure compliance with the schedule and programme requirements under the Contract.
- 10.3.12** The Contractor will be entitled to claim and the Principal will be entitled to grant an extension of time to the relevant Due Date for Completion whether or not the qualifying extension of time ground occurs before or after the relevant Due Date for Completion (including, for the avoidance of doubt, in relation to the net effect of any Variation).
- 10.3.13** The Principal may, at its sole and absolute discretion and notwithstanding any other provision of the Contract to the contrary, at any time and from time to time and for any reason it considers sufficient but without being under an obligation to do so, by notice to the Contractor unilaterally extend any Due Date(s) for Completion. For the avoidance of any doubt, any such extension will not require the Contractor to slow down the progress of the Contract Works and the Contractor is entitled to complete the Contract Works prior to the date of any such extended Due Date(s) for Completion. The Principal is not entitled to exercise its right under this 10.3.13 in order to defeat an entitlement of the Contractor under 10.3.8.

Add new 10.5.5 - 10.5.7 as follows:

- 10.5.5** The parties agree that the liquidated damages represent no more than a genuine pre-estimate of the loss likely to be suffered by the Principal in the event of the Contractor failing to achieve Practical Completion by the respective Due Date for Completion and/or the liquidated damages are reasonable and proportionate to the Principal’s legitimate interests in the Contractor achieving Practical Completion by the respective Due Date for Completion, and are not a penalty.
- 10.5.6** Without prejudice to the Principal’s rights and remedies under the Contract, delay liquidated damages shall be the sole remedy for delay under the Contract.
- 10.5.7** If the Contractor’s obligation to pay liquidated damages under 10.5 is void, unenforceable, invalid or otherwise inoperative for any reason (including because the liquidated damages are determined

to be a penalty), then the Principal may claim general damages for the Contractor's failure to achieve Practical Completion by the respective Due Date for Completion.

SECTION 11 – DEFECTS LIABILITY

Delete 11.2.3 and replace with the following:

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

Add a new 11.2.9 as follows:

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

SECTION 12 – PAYMENTS

Add the following at the end of 12.1.1:

Each payment claim shall include an editable electronic file of the claim.

Add new 12.3.8 - 12.3.9 as follows:

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

12.3.9 Prior to the Principal using retention monies as provided in 12.3.8, the Principal will give the Contractor at least ten (10) Working Days written notice setting out:

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

Add a new 12.9 as follows:

12.9 Set-off

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

SECTION 14 – FRUSTRATION, DEFAULT AND TERMINATION

Add a new 14.4 as follows:

14.4 Termination for convenience

14.4.1 Notwithstanding any other provision of the Contract, the Principal may, at any time and at its absolute and sole discretion, terminate the Contract for convenience by giving written notice of this to the Contractor. If the Principal exercises its right under this 14.4.1 it shall not be obliged to give the Contractor any reason or justification for doing so.

- 14.4.2** In the event the Principal exercises its right to terminate for convenience under 14.4.1, the Contract will terminate on the date given in the written notice under 14.4.1 and the Independent Certifier shall Decide and the Principal shall pay the Contractor:
- (a) the value of the Contract Works carried out at the date of termination, less the amounts previously paid;
 - (b) the Cost of Materials ordered for the Contract Works which have been delivered to the Contractor or of which the Contractor is legally obliged to accept delivery, and which the Contractor delivers to the Principal. These Materials shall become the property of the Principal upon delivery to the Principal;
 - (c) any Cost reasonably incurred by the Contractor in the expectation of completing the Contract Works in so far as such Cost is not covered by other payments under 14.4.2(a) or (b); and
 - (d) the Cost of any works necessitated by the removal of the Contractor's Plant and the carrying out of the Contract Administrator's Instructions for the making safe of the Contract Works.

Add a new Section 16 as follows:

SECTION 16 – PRIVACY OBLIGATIONS

16.1 Privacy

- 16.1.1** The Contractor must comply at all times with all NZ Privacy Laws and not do anything with the Principal's Personal Information likely to cause the Principal to breach any NZ Privacy Laws.
- 16.1.2** The Contractor must comply at all times with *Privacy at Waka Kotahi the NZ Transport Agency – A Guide for Suppliers and Service Providers* (<https://www.nzta.govt.nz/about-us/about-this-site/privacy-guide-for-suppliers-and-service-providers/>).
- 16.1.3** The Contractor must not use or disclose the Principal's Personal Information (including to any Subcontractors) except as strictly necessary to deliver the Contract Works and comply with the Contract. The Contractor must ensure that any Subcontractors to whom it discloses the Principal's Personal Information are subject to contractual restrictions on the handling, use and disclosure of that information no less strict than those in the Contract.
- 16.1.4** The Contractor must implement and maintain reasonable security safeguards to protect the Principal's Personal Information, including from unauthorised access or disclosure.
- 16.1.5** Except as agreed in writing, the Contractor must not store or process (or permit the storage or processing of) the Principal's Personal Information in any location outside New Zealand.
- 16.1.6** The Contractor must promptly return and/or irreversibly erase all the Principal's Personal Information (at the Principal's option), once it is no longer required for the purposes of the delivery of the Contract Works, and otherwise where directed by the Principal.
- 16.1.7** If the Contractor becomes aware of, or has reason to suspect the existence of, a Data Breach, the Contractor must as soon as practicable notify the Principal, take all practicable steps to mitigate the effects of the Data Breach, and co-operate with the Principal's investigation of the Data Breach as the Principal reasonably considers necessary to enable the Principal to meet its obligations under the NZ Privacy Laws.
- 16.1.8** Unless required by law, the Contractor will not notify affected individuals or the Privacy Commissioner of any Data Breach except with the Principal's prior written agreement.
- 16.1.9** The Contractor will comply with any reasonable direction from the Principal, where the Principal reasonably considers that this is necessary to enable the Principal to comply with a notice or direction given to the Principal by the Privacy Commissioner.
- 16.1.10** The Contractor will not comment publicly, including to the media, about any Data Breach or any breach of this Section 16, without the written consent of the Principal.

Add a new section 17 as follows:

SECTION 17 – JOINT AND SEVERAL LIABILITY

17.1 Joint and several

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

Add a new section 18 as follows:

SECTION 18 – CONFIDENTIALITY

18.1 Confidentiality

- 18.1.1** The Contractor and the Principal will ensure that any information identified as confidential, or which should reasonably be recognisable as confidential, acquired by it as a result (either directly or indirectly) of its entering into the Contract will be kept confidential subject to the following exceptions:
- (a) information which is in the public domain or could have been legally acquired by a party had it not entered into the Contract, will not be considered confidential;
 - (b) a party may disclose confidential information to its professional advisors and insurers;
 - (c) a party may disclose any confidential information to the extent required by law or pursuant to the requirements of any stock exchange;
 - (c) disclosure by the Principal of confidential information to any ministry or other government agency performing a monitoring, oversight, or guidance role in relation to the Principal, or at the request of an officer of parliament, a parliamentary select committee, a royal commission, or a minister of the Crown (including for the purposes of a parliamentary question);
 - (d) a party may disclose specific items of confidential information to a third party in accordance with the terms of any prior written consent between the parties; and
 - (e) a party may disclose confidential information as reasonably necessary for the purposes of the Contract Works provided that the party shall ensure that such recipient is required to maintain such information as confidential on the same terms.
- 18.1.2** The Contractor must ensure that its Subcontractors are bound by confidentiality undertakings equivalent to this Section 18.
- 18.1.3** The Contractor will not make any statements to the media or others regarding the contents of the Contract or the execution of the Contract Works without the prior written approval of the Principal. Media requests for information relating to the Contract Works or the Principal’s assets or its business will be immediately referred by the Contractor to the Principal.

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

Schedule 3 – Form of Contractor’s Performance Bond

This section is not used.

Schedule 4 – Form of Principal’s Bond

This section is not used.

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

CONTRACT FOR

THIS DEED is made on _____

BY _____

of _____ (*‘the Surety’*)

 _____ (*Address of Surety for service*)

IT IS MADE IN THE FOLLOWING CIRCUMSTANCES:

- A**of (*‘the Contractor’*) has entered into an agreement with the New Zealand Transport Agency (*‘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** Surety is held and bound to the Principal in the sum of **\$NZ**..... and binds itself and its successors and assigns for the payment of that sum.
- 2.** **THE** conditions of this bond are that it shall be released if and when:
 - (a) The Final Completion Certificate has been issued for the Contract Works in accordance with 11.3 of the General Conditions; or
 - (b) The Surety receives a notice from the Principal releasing the 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 Contract Administrator or Independent Certifier appointed by the Principal under the Contract; or
 - (d) By any forbearance or waiver by the Principal or by the Contract Administrator 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

NOTE – This bond shall be executed by the Surety in the manner required for execution of a deed. If the Surety is a company, it 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 their occupation and address. Alternatively, companies may execute under the power of attorney. If the Surety is a body corporate (other than a company), it 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. If the Surety 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 their occupation and address.

Schedule 6 – Form of Producer Statement - Construction

ISSUED BY _____ (Contractor)

TO New Zealand Transport Agency _____ (Principal)

IN RESPECT OF _____ (Description of Contract Works)

AT _____ (Address)

The Contractor has contracted to the Principal to carry out and complete certain works in accordance with a Contract titled ('the Contract').

I _____ (Duly Authorised Agent)

a duly authorised representative of the Contractor believe on reasonable grounds that the Contractor has carried out and completed in accordance with the Contract:

- All of the Contract Works
- Part only of the Contract Works as specified below

Date

(Signature of Authorised Agent on behalf of)

(Contractor)

(Address)

Schedule 7 – Information on Contractor arranged construction insurance

This section is not used.

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 _____ (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 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 3910:2023 *Conditions of contract for building and civil engineering construction*.

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

SIGNED BY _____

SIGNATORY TITLE _____

(Clause numbers refer to NZS 3910:2023 *Conditions of contract for building and civil engineering construction* and are for information only)

Schedule 9 – Information on public liability insurance

<<Guidance note: Download and insert the relevant Schedule 9 from the NZTA Principal Arranged Insurance website.>>

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

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

The insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2023 *Conditions of contract for building and civil engineering construction*.

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

SIGNED BY _____

SIGNATORY TITLE _____

(Clause numbers refer to NZS 3910:2023 *Conditions of contract for building and civil engineering construction* and are for information only)

Schedule 11 – Information on Contractor arranged professional indemnity insurance

This section is not used.

Schedule 12 – Information on Principal arranged construction insurance

<<Guidance note: Download and insert the relevant Schedule 12 from the NZTA Principal Arranged Insurance website.>>

Schedule 13 – Form of Contractor (or Subcontractor) warranty

This section is not used.

Schedule 14 – Agreement for off-site Materials

THIS AGREEMENT is dated _____

BETWEEN New Zealand Transport Agency (*the Principal*)

AND _____ (*the Contractor*)

AND _____ (*the Subcontractor*)

INTRODUCTION

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

SCHEDULE A

Description of Materials inclusive of work performed on them:

SCHEDULE B

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

SCHEDULE C

'The Bailee' shall be:

The Contractor

OR

The Subcontractor

IT IS AGREED AS FOLLOWS:

1. The Materials to which this agreement relates are those described in Schedule A to this agreement, all of which Materials are currently on the Premises identified in Schedule B.
2. The Premises identified in Schedule B are in the sole control of the party identified in Schedule C and that party shall act as Bailee of the Materials until such time as the Materials are delivered to the Site or taken possession of by the Principal.
3. The undertakings, warranties, covenants, agreements and other obligations of the Contractor or the Subcontractor shall bind and be deemed to have been given or assumed by each of them severally and by both of them jointly.
4. The Contractor and the Subcontractor agree that they will cause the Materials to be set apart at the Premises and be clearly and visibly marked individually or in sets as being the property of the Principal and their destination as being the Site. The method used to mark the Materials and the procedures by which the mark is applied to the Materials shall be as required by the Contract or as otherwise approved by the Principal.
5. Neither the Contractor nor the Subcontractor will permit, allow, or cause the Materials to be taken away from the Premises, except:
 - (a) For the purpose of being transported to the Site and used in the Contract Works; or
 - (b) That the Principal may at its sole discretion take possession of the Materials for use other than for the Contract Works, provided that:
 - (1) Where the Principal takes possession of any Materials under 5(b) above, and the Contractor thereby suffers delay of the Contractor or the Subcontractor incurs additional cost, the taking of possession shall be treated as a Variation under the Contract, unless the taking of possession is pursuant to 14.2.1, 14.2.2 or 14.4.1 of the Contract; and
 - (2) Where the Principal takes possession of any Materials under 5(b) above, and additional work has been carried out on those Materials since being paid for by the Principal, the Principal shall pay the Contractor for that additional work in accordance with the Contract before taking possession of the Materials.
6. The Independent Certifier, upon being satisfied that the Materials have been set apart and marked as required by this agreement, and upon the Contractor providing satisfactory evidence that the requirements of clauses 13 and 22 below have been fully satisfied, shall include in any Payment Schedule issued by the Independent Certifier under the Contract a sum representing the reasonable value of such Materials calculated in accordance with the Contract.
7. Upon the Principal having made payment for the Materials, less any retentions or deductions prescribed in the Contract, title to such Materials shall immediately vest in the Principal free of all security interests, charges and encumbrances of any nature whatsoever.
8. Where the Contractor receives payment for Materials and the Subcontractor is entitled to some or all of the Principal's payment, the Contractor shall promptly pay the Subcontractor for such Materials.
9. Upon the request of the Subcontractor, the Independent Certifier shall advise the Subcontractor whether the Contractor has received any payment from the Principal for such Materials.
10. The Contractor and the Subcontractor agree that the Materials will be held by the Contractor or the Subcontractor solely as Bailee for the Principal and that a fiduciary relationship in that regard exists between the Bailee and the Principal. The rights of the Principal under this agreement are in addition to and not in substitution for or reduction of its rights or remedies as a bailor at law and no provision of this agreement will be deemed to limit or restrict those rights and remedies, and such bailment will constitute a security interest in favour of the Principal for the purpose of the Personal Property Securities Act 1999 (*'the PPSA'*).

11. The Bailee acknowledges and agrees that it grants a security interest in any Materials to the Principal to secure payment or all amounts owing by the Contractor and the Subcontractor and to secure performance of all obligations of the Contractor and the Subcontractor to the Principal or Contractor (where applicable).
12. The Principal shall be entitled to (at the Contractor's reasonable cost) register a financing statement in respect of the Principal's security interest on the Personal Property Securities Register (*the PPSR*) listing the Principal as secured party and the Bailee as debtor in respect of such security interest.
13. The Bailee shall promptly do all things including executing any documents and providing all information which the Principal requires for the purposes of ensuring the Principal:
 - (a) Has a security interest in the Materials which is enforceable, perfected and otherwise effective under the PPSA;
 - (b) Receives and maintains at all times a first ranking security interest in the Materials; and
 - (c) Is able to exercise its rights in connection with the security interest, including any renewal thereof.

This shall include procuring from any third party who has registered a financing statement against the Bailee, a waiver, in a form acceptable to the Principal, of any security interest or claim which might otherwise extend to the Materials or their proceeds.

14. The Bailee shall not discharge or amend any financing statement registered under clause 12 without the prior written consent of the Principal.
15. The Contractor and the Subcontractor shall not consent to or enter into any agreement that permits any person to take or register a security interest in the Materials or sell, lease, dispose of, create a security interest or encumbrance in, mortgage, or part with possession of the Materials or permit any lien over the Materials or this agreement or assign their rights under this agreement.
16. Nothing in sections 114(1)(a), 133, and 134 of the PPSA shall apply to this agreement.
17. Any rights of the Contractor and the Subcontractor as debtors under sections 116, 120(2), 121, 125, 126, 127, 129, 131, and 148 of the PPSA shall not apply to this agreement.
18. The Bailee hereby grants to the Principal reasonable, free, and unencumbered right of access to the Premises to:
 - (a) Inspect the Materials, and verify or undertake the marking and setting apart of the Materials;
 - (b) Take possession of the Materials for the purpose of delivery to the Site and inclusion in the Contract Works;
 - (c) Remove the Materials from the Premises for the purposes of delivery to the Site and inclusion in the Contract Works; and
 - (d) Take possession of the Materials for use other than for the Contract Works,

And in each case in a manner that does not cause damage to any other property at the premises. The Bailee shall take all steps and do all things as shall be necessary to ensure that the Principal obtains access to the premises for the purposes of this agreement.

19. The Bailee shall not, except as permitted in clause 5, remove or cause or permit the Materials to be moved from the Premises. The Bailee shall nevertheless be responsible to the Principal for any loss or damage thereto and for any costs of storage and handling.
20. The Bailee shall, when required to do so by the Contractor or the Principal, arrange for the transportation of the Materials to the Site. Such transportation shall be at the costs of the Bailee in all things including loading, unloading, and freight.

- 21. Where the Materials are not insured under the construction policy provided in accordance with 8.3.1 or 8.8.1 of the Contract, the Bailee shall, at its expense:
 - (a) Effect a material damage insurance policy covering all of the Materials subject to this agreement in the name of the Principal to the satisfaction of the Principal, as provided in 8.2.1 of the Contract for the full duration of the off-site storage. Such insurance may include an exclusion for loss or damage sustained during processing;
 - (b) Effect a transit insurance policy for transit of all the Materials from the Premises to the Site in the name of the Principal to the satisfaction of the Principal, as provided in 8.2.1 of the Contract for the full duration of the off-Site storage.
- 22. Within 15 Working Days of the date of this agreement, the Bailee shall furnish the Principal and the Contractor with evidence of such insurance.
- 23. Subject to clause 7, the Bailee represents and warrants to the Principal and to the Contractor (where applicable) that:
 - (a) It has good and clear title to the Materials;
 - (b) It has the ability to assign and transfer the Materials to the Principal or the Contractor (where applicable); and
 - (c) The Materials will be transferred to the Principal or the Contractor (where applicable) free of any security interest.
- 24. The Bailee undertakes that if it charges or mortgages all or any part of its property (either real or personal), assets, or undertaking, it will obtain written confirmation from the chargee or mortgagee that the charge or the mortgage over such property, assets, or undertaking does not extend to the Materials once they have been paid for by the Principal or the Contractor (as applicable).
- 25. Nothing in this agreement shall be deemed to limit, waive, or affect the Independent Certifier's powers under the Contract to order the removal from Site or the Premises of Materials which are not in accordance with the Contract and the substitution by the Contractor at its own risk and expense of proper Materials. Nothing in this agreement shall be deemed to limit, waive, or affect any other powers conferred on the Independent Certifier and/or the Principal under the Contract.
- 26. Each party shall pay its own costs of and incidental to the negotiation, preparation, execution, and any amendment of this agreement.
- 27. Words and phrases in this agreement shall have the same meanings as are ascribed to them under the Contract except where the context or any express provision of this agreement requires otherwise.
- 28. This agreement shall be governed by, and construed in accordance with, the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
- 29. The Principal agrees to pay the Subcontractor the sum of \$1 if demanded in consideration for the Subcontractor entering into this agreement.

SIGNED BY

(Authorised Signatory)

of

(Principal)

SIGNED BY

(Authorised Signatory)

of

(Contractor)

SIGNED BY

(Authorised Signatory)

of

(Subcontractor)

Schedule 15 – Practical Completion Certificate

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

Contract for

Principal New Zealand 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*)

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

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

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

Practical Completion was achieved

On _____ (*insert date*) at _____ (*insert time*)

Signed by the Independent Certifier _____

Name _____

Date _____

SCHEDULE

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

(*list minor omissions and defects*) _____

Schedule 16 – Final Completion Certificate

This certificate is a Final Completion Certificate issued under 11.3.1.

Contract for _____

Principal New Zealand 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 11.3.1, the Independent Certifier certifies that the Contract Works or Separable Portion to which this certificate relates qualify for a Final Completion Certificate issued under 11.3

on _____ (*insert date*) at _____ (*insert time*)

Signed by the Independent Certifier _____

Name _____

Date _____

Schedule 17 – Cost fluctuations

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

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

1. The provisions of this Schedule 17 shall apply when provided for in the Specific Conditions, Schedule 1 (Part A).
2. The amounts payable by the Principal to the Contractor under the Contract shall be adjusted up or down by amounts calculated in accordance with the following two-part formula on a monthly basis:

$$C = CI + CB$$

Where

C = Cost fluctuation adjustment for the month under consideration

CI = [Value x (p / 100) (I / I' – 1)]

CB = [Volume x (Bit – Bit')]

And

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

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

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

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

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

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

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

5. Cost fluctuations are calculated on a monthly basis. 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 NZTA 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 NZTA 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 *Waka Kotahi bitumen cost adjustment series* referred to in clause 2 or later clauses are no longer published, or if the basis of the *Waka Kotahi 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 *Waka Kotahi 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 – Key Personnel

<<Guidance note: Insert list of agreed Key Personnel from tender >>

Annexure 1 – List of Drawings

<<Guidance note: Insert the final list of drawings>>

Annexure 2 – List of Specifications

<<Guidance note: Insert the final list of Specifications>>