



{ . . }

# Major Works Contract

Relating to:

{ . . }

{ . . }

[Project ID { . . }]

Contract Number { . . }

**The Secretary for Education**

as Principal

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[{ . . }][<To be completed>]

as Contractor

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{ . . }, { . . }, [Project ID { . . }, ]Contract Number { . . }

## CONTRACT AGREEMENT

Contract Agreement to NZS 3910:2013, Conditions of contract for building and civil engineering construction, is amended and replaced by the following.

**CONTRACT FOR** { . . }

**CONTRACT NUMBER** { . . }

**THIS AGREEMENT** is made on [[{ . . }]] [<To be completed>]

**BETWEEN** [<To be completed>]{{ . . }} (Contractor)

**AND** The **Sovereign in right of New Zealand** acting by and through the Secretary (Principal) for Education

**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 [<TBC>]{{ . . }} or such greater or lesser 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. [This is a remediation contract and the Accepted Tender Price (being the price accepted by the Principal as tendered by the Contractor) comprising of lump sum amounts and the specified Provisional Sums is [\$<TBC>]{{ . . }} or such greater or lesser 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. It is recognised by the Principal that in remediation contracts that after work has commenced, additional work may be required, and where such additional work is required the Contractor can apply for this additional work to be treated as a Variation.]
4. Each party agrees to the terms and conditions as set out in the Contract.
5. [The Contract comprises the following documents:
  - (a) This Contract Agreement;
  - (b) The notification of selection as preferred contractor dated { . . }
  - (c) The following post-tender documents:
    - [<TBC>]
    - [{{ . . }}[none]]
  - (d) Notices to tenderers:
    - [<TBC>]
    - [{{ . . }}[none]]
  - (e) Schedule 1: Special Conditions of Contract – Specific Conditions of Contract;
  - (f) Schedule 2: Special Conditions of Contract – Other Conditions of Contract (including Appendices);
  - (g) The General Conditions of Contract based on NZS 3910:2013 (including other Schedules);
  - (h) The following Specifications:
    - [<TBC>]
    - [{{ . . }}]
    - Any other Specifications issued prior to the Date of Acceptance of Tender;
  - (i) The following Drawings:
    - [<TBC>]
    - [{{ . . }}]

{ . . }, { . . }, [Project ID { . . }, ]Contract Number { . . }

- Any other Drawings issued prior to the Date of Acceptance of Tender;
  - (j) The Schedule of Prices[ dated { . . }];
  - (k) The following request for tender documents:
    - [<TBC>]
    - []
  - (l) The following documents comprising the Contractor's tender:
    - [<TBC>]
    - [{ . . }]
  - (m) [The following additional documents: ]  
]
6. [The Contract comprises the following documents:
- (a) This Contract Agreement;
  - (b) The notification of acceptance of tender or award of Contract identified in the Document Register;
  - (c) The post-tender documents (if any) identified in the Document Register;
  - (d) The notices to tenderers (if any) identified in the Document Register;
  - (e) Schedule 1: Special Conditions of Contract – Specific Conditions of Contract;
  - (f) Schedule 2: Special Conditions of Contract – Other Conditions of Contract (including Appendices);
  - (g) The General Conditions of Contract based on NZS 3910:2013 (including other Schedules);
  - (h) The following Specifications:
    - the Specifications identified in the Document Register; and
    - any other Specifications issued prior to the Date of Acceptance of Tender;
  - (i) The following Drawings:
    - the Drawings identified in the Document Register; and
    - any other Drawings issued prior to the Date of Acceptance of Tender;
  - (j) The Schedule of Prices identified in the Document Register;
  - (k) The request for tender documents identified in the Document Register;
  - (l) [The documents comprising the Contractor's tender identified in the Document Register.]
  - (m) [The documents comprising the Contractor's tender identified in the Document Register; and
  - (n) The additional documents (if any) identified in the Document Register.]  
]
7. 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.
8. 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.
9. This 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 shall be entitled to transmit an electronic copy of this Contract by email (or other electronic means) to the other party.

[<Signature blocks to be inserted here when contract is finalised>]

{ . . }, { . . }, [Project ID { . . }, ]Contract Number { . . }

[

**SIGNED** for and on behalf of the **Sovereign in right of New Zealand** acting by and through the Secretary for Education by his or her duly authorised signatory:

[{ . . }]

{ . . }

\_\_\_\_\_  
Signature of authorised signatory

[{ . . }]

\_\_\_\_\_  
Name of authorised signatory

[{ . . }]

\_\_\_\_\_  
Date of signing

**SIGNED** for and on behalf of { . . } by its duly authorised signatory:

[{ . . }]

{ . . }

\_\_\_\_\_  
Signature of authorised signatory

[{ . . }]

\_\_\_\_\_  
Name of authorised signatory

[{ . . }]

\_\_\_\_\_  
Date of signing

]

FOR REFERENCE ONLY

## SCHEDULES TO GENERAL CONDITIONS OF CONTRACT

The **General Conditions of Contract** applicable to this Contract are those set out in:

**NZS 3910:2013 "CONDITIONS OF CONTRACT FOR BUILDING AND CIVIL ENGINEERING CONSTRUCTION"** and as amended and scheduled herein.

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

<b>Clause</b> <i>in General</i> <i>Conditions</i>	<b>Title and subject matter</b>	<b>Specific condition data</b>
<p><b>1. INTERPRETATION</b></p> <p><b>1.2 Definitions</b> The Principal is:</p> <p>The School is:</p>	<p>Secretary for Education</p> <p>{...}</p> <p>{...}</p>	
<p><b>1.2, 10.2 Separable Portions</b></p> <ul style="list-style-type: none"> <li>Are there any Separable Portions in this Contract?</li> <li>If yes, the Separable Portions are as follows and as further defined in the Contract:</li> </ul>	<p>{...}</p> <p>[[Separable Portion # {...} (SP{...}): {...}]]</p>	
<p><b>2. THE CONTRACT</b></p> <p><b>2.1 Type of Contract</b></p> <p><b>2.1.1</b> This Contract is a:</p> <p>(a) Lump sum contract governed by 2.2.</p> <p>(b) Remediation contract comprising of lump sum elements together with Provisional Sums</p> <p>(c) Measure and value contract governed by 2.3.</p> <p>(d) Cost reimbursement contract governed by 2.4.</p>	<p><input checked="" type="checkbox"/>[N/A]</p> <p><input checked="" type="checkbox"/>[N/A]</p> <p><input checked="" type="checkbox"/>[N/A]</p> <p>N/A</p>	
<p><b>2.4 Cost reimbursement contract</b></p> <p><b>2.4.1</b> Allowance(s) which are to be added to Net Cost in a cost reimbursement contract or for parts of the Contract Works which are required to be carried out on a cost reimbursement basis: <i>(If percentages are shown as N/A, zero or nil, allowances for overheads and profit are deemed to be included in Net Cost)</i></p> <ul style="list-style-type: none"> <li>Allowance for On-site Overheads:</li> <li>Allowance for Off-site Overheads and Profit:</li> </ul> <p><b>2.4.4</b> Indicative estimates of the Contract Price: Are indicative estimates required?</p>	<p>N/A</p> <p>N/A</p> <p>N/A</p>	
<p><b>2.5 Local authority contracts, contracts in public places, and road contracts</b></p> <p><b>2.5.1</b> Is this Contract a local authority contract to which 2.5.2 applies?</p> <p><b>2.5.3</b> Is this Contract a contract in a public place to which B1 and B2 of Appendix B apply?</p>	<p>No</p> <p>No</p>	

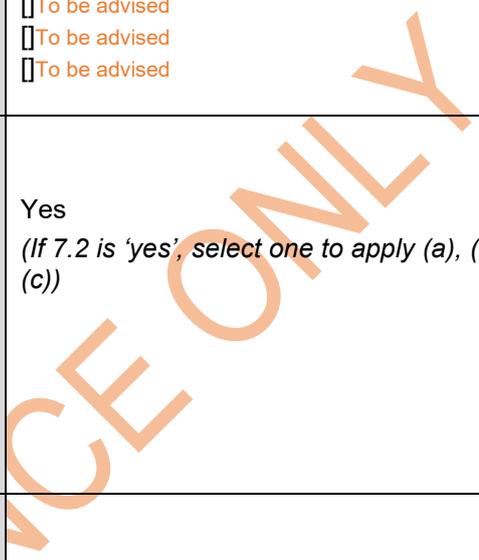
<b>Clause</b> <i>in General</i> <i>Conditions</i>	<b>Title and subject matter</b>	<b>Specific condition data</b>
<b>2.5.4</b>	Is this Contract a road contract to which Appendix B applies? If yes, the allowance under B3 shall be:	No  N/A
<b>2.6</b> <b>2.6.2</b>	<b>Evidence of Contract</b> How is the Contract Agreement to be executed? (a) As stated in 2.6 (b) In accordance with the following requirements	<input checked="" type="checkbox"/>  N/A
<b>2.7</b> <b>2.7.1</b>	<b>Documents prepared by the Engineer or Principal</b> Copies of the Contract shall be supplied without charge to the Contractor in the following electronic form:	Word/PDF by email or secure file sharing link
<b>2.8</b> <b>2.8.2</b>	<b>Documents prepared by the Contractor</b> Copies of documents referred to in 2.8.2 shall be supplied without charge to the Engineer: <ul style="list-style-type: none"> <li>• Number of hard copy sets:</li> <li>• In the following electronic form:</li> </ul>	[{ . . }][N/A] Word/PDF by email or secure file sharing link
<b>3. BONDS</b> <b>3.1 Contractor's Bond</b> <b>3.1.1</b> <b>3.1.2</b>	Is a Contractor's Bond required?  If yes, the amount of the Contractor's Bond shall be:	{ . . }  [N/A] [5% of the Contract Price  The Contractor's Bond shall be provided in the form of an unconditional bond as set out in Schedule 3 (Principal amended NZS:3910 standard form)]
<b>3.2</b> <b>3.2.1</b>	<b>Principal's Bond</b> Is a Principal's Bond required?	No
<b>4. SUBCONTRACTS</b> <b>4.1 General</b> <b>4.1.4</b>	Key Subcontractors to which 4.1.4 applies are: <ul style="list-style-type: none"> <li>(a) As stated in the Contractor's tender.</li> <li>(b) As agreed between Principal and Contractor.</li> <li>(c) As specified in the following list:</li> <li>(d) Not applicable (no Key Subcontractors).</li> </ul>	[<Contractor to propose Key Subcontractors in Tender>] N/A N/A [[ <input type="checkbox"/> <input checked="" type="checkbox"/> As follows: [({ . . }) { . . } { . . }] ]] [[ <input checked="" type="checkbox"/> ][ <input type="checkbox"/> ]

<b>Clause</b> <i>in General</i> <i>Conditions</i>	<b>Title and subject matter</b>	<b>Specific condition data</b>
<b>4.1.5</b>	A Continuity Guarantee is required in the form as set out in Schedule 17 from the following key Subcontractors:	[All key Subcontractors] [[N/A]] [[All Key Subcontractors] • { . . }] [All Key Subcontractors except for: • { . . }] ]
<b>4.2</b>	<b>Nominated Subcontractors</b>	{ . . } • [[{ . . } ({ . . })]]
<b>5.1.3</b>	<b>GENERAL OBLIGATIONS</b> <b>Contractor design responsibility</b> Does the Contractor undertake the design of any part of the Contract Works?	{ . . } • [[{ . . }]]
<b>5.3.2</b>	<b>Control of Employee</b> Key personnel to which 5.3.2 applies are: (a) As stated in the Contractor's tender. (b) The following:	[<Contractor to propose key personnel in Tender> [N/A] [X] • [[{ . . } ({ . . })]] [ ] [[X]]N/A]]
<b>5.4.1</b>	<b>Possession of the Site</b> The Contractor shall be given possession of the Site: (a) 10 Working Days after the Date of Acceptance of Tender: (b) On the following date:	N/A { . . }, subject to a directive from the Principal to proceed.[ <Indicative, to be confirmed post-tender>]
<b>5.4.3</b>	Limits on the Contractor's right of entry to adjoining properties are:	[{ . . }] [The Principal has not procured, and will not procure, the Contractor right of entry to any adjoining property.]
<b>5.5.1</b>	<b>Separate Contractors</b> Separate Contractors who may be carrying out work on the Site concurrently with the Contract Works are:	[[<To be confirmed>]] [[None]] • [[[{ . . } ({ . . })]]] [[None]] • [[[{ . . } ({ . . })]]]
<b>5.5.2</b>	Are facilities for Separate Contractors required? If yes, details of facilities required are:	



<b>Clause</b> <i>in General</i> <i>Conditions</i>	<b>Title and subject matter</b>	<b>Specific condition data</b>
	(b) Is a Site-specific safety plan required to be prepared by the Contractor? If yes, details of the requirements are set out in:	Yes  Clause 5.17 of the General Conditions of Contract (as amended by Schedule 2: Special Conditions of Contract – Other Conditions of Contract) and the relevant parts of the other applicable Contract documents (if any)
<b>5.18</b> <b>5.18.1</b>	<b>Quality plan</b> Is a quality plan required to be prepared by the Contractor? If yes, details of the requirements are set out in:	Yes  Clause 5.18 of the General Conditions of Contract and the relevant parts of the other applicable Contract documents (if any)
<b>5.19</b> <b>5.19.1</b>	<b>Traffic management plan</b> Is a traffic management plan required to be prepared by the Contractor? If yes, details of the requirements are set out in:	{ . . }  { . . }
<b>5.20</b> <b>5.20.1(a)</b>  <b>5.20.1(b)</b>  <b>5.20.4</b>	<b>As-built drawings and operation and maintenance manuals</b> Are as-built drawings required to be prepared by the Contractor? If yes, details of the requirements are set out in:  Are operation and maintenance manuals required to be prepared by the Contractor?  If yes, details of the requirements are set out in:  Are the as-built drawings required to be in adequate detail and appropriate form to allow the Principal to update its records (including GIS records):	{ . . } { . . }  { . . }  { . . }  { . . }
<b>5.22</b> <b>5.22.1</b>	<b>Environmental compliance plan:</b> Is an environmental compliance plan required to be prepared by the Contractor?  If yes, details of the requirements are set out in:	{ . . }  { . . }
<b>5.23</b> <b>5.23.1</b>	<b>Project Control Group</b> Is a Project Control Group (PCG) required to be established for this Contract?	Yes
<b>5.25</b>	<b>Salvaged Materials</b> Does the Principal retain title to any Salvaged Materials from the Site? If yes, the Salvaged Materials are:	{ . . }  [N/A] • [{{ . . }}]
<b>6. THE ENGINEER</b> <b>6.1 Appointment of Engineer</b> <b>6.1.2</b>	The Engineer is:  Address:	[{{ . . }}] { . . }To be advised [{{ . . }}]To be advised

<b>Clause</b> <i>in General</i> <b>Conditions</b>	<b>Title and subject matter</b>	<b>Specific condition data</b>
	Phone: Email address: Whose professional qualification is:	[{ . . }]To be advised [{ . . }]To be advised [{ . . }]To be advised
<b>6.3 Engineer's Representative</b> <b>6.3.1</b> The Engineer's Representative is: Address: Phone: Email address:		<input type="checkbox"/> To be advised <input type="checkbox"/> To be advised <input type="checkbox"/> To be advised <input type="checkbox"/> To be advised
<b>7. INDEMNITY AND LIABILITY LIMIT</b> <b>7.2 Contractor's liability limit</b> <b>7.2 Is this a contract to which 7.2 applies?</b> 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: (a) The percentage in the right-hand column of the Contract Price: (b) 100% of the Contract Price (c) The amount in the right-hand column:		Yes (If 7.2 is 'yes', select one to apply (a), (b) or (c))
<b>8. INSURANCES</b> <b>8.1 General</b> <b>8.1.1</b> The party identified below shall arrange the following insurances referred to in the following clauses: 8.3 or 8.8 Construction 8.8 Existing structure(s) and contents 8.4 Plant 8.5 or 8.9 Public liability 8.5.2 Motor vehicle liability 8.6 Professional indemnity  <b>8.1.6</b> The following forces of nature shall be specifically insured under 8.3 or 8.8 as applicable: (a) Landslip (b) Earthquake (c) Tsunami (d) Tornado (e) Cyclone (f) Storm (g) Flood (h) Lightning strike		Principal Principal Contractor Contractor Contractor [Contractor][N/A]  Yes Yes Yes Yes Yes Yes Yes Yes





<b>Clause</b> <i>in General</i> <b>Conditions</b>	<b>Title and subject matter</b>	<b>Specific condition data</b>
	(ii) The percentage of the Contract Price adjusted as above, stated in the right hand column:	10%, up to a maximum of \$3,000,000
<b>8.4 Contractor arranged Plant insurance</b> Where Plant is required to be insured (see 8.1 above): (a) The Contractor shall insure the following items of Plant on the Site for the amounts stated (b) The Contractor shall insure each item of Plant on the Site having a current market value of more than:	<input type="checkbox"/>  <input checked="" type="checkbox"/> \$25,000	
<b>8.5 Contractor arranged public liability insurance</b> <b>8.5.1</b> Where required (see 8.1 above), public liability insurance shall be effected by the Contractor for an amount not less than: Such public liability insurance may include sub-limits: <ul style="list-style-type: none"> <li>• For liability arising out of vibration, weakening or removal of support, of not less than:</li> <li>• For liability arising out of damage to underground services, of not less than:</li> </ul> <b>8.5.2</b> Where required (see 8.1 above), motor vehicle third party liability insurance shall be effected for an amount not less than:	{ . . }  No sublimit – total amount applies No sublimit – total amount applies \$2,000,000	
<b>8.6 Contractor arranged professional indemnity insurance</b> <b>8.6.1</b> Where required (see 8.1 above), professional indemnity insurance for design by the Contractor shall be effected for an amount not less than: <ul style="list-style-type: none"> <li>• For any one claim:</li> <li>• And for an amount in the aggregate of:</li> </ul> <b>8.6.2</b> Sub-limits of liability for design of parts of the Contract Works by Subcontractors shall not be less than:	[N/A] [N/A] None	
<b>8.8 Principal arranged construction insurance</b> (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), (b), and (c) is:  In accordance with 8.7.2, the extraordinary exclusions, conditions, warranties or endorsements to the policy for 8.8.1 and 8.8.2(a), (b), and (c) are:  <b>8.8.1</b> Where the Principal is required to effect construction insurance (see 8.1 above): The lead insurer is:	8.8.1 Construction Material Damage 8.8.2(a) and (b) – Material Damage Insurance Policy 8.8.2(c) – N/A  8.8.1 Hot work warranty as attached in Schedule 12. 8.8.2(a) and (b) – As per the Material Damage Insurance Policy 8.8.2(c) – N/A  Vero Insurance New Zealand Limited	

<b>Clause</b> <i>in General</i> <i>Conditions</i>	<b>Title and subject matter</b>	<b>Specific condition data</b>
	Address of lead insurer: The Nominal Deductibles are, (subject to 8.1.7(e) Schedule 2): <ul style="list-style-type: none"> <li>• For damage arising out of the Contract Works:</li>   <li>• For other claims:</li> </ul>	Private Bag 92 – 237, Auckland  [\$5,000 or \$25,000 for loss arising from testing and commissioning][\$10,000 or \$25,000 for loss arising from testing and commissioning][{ . . } or { . . } for loss arising from testing and commissioning]  [\$5,000][\$10,000][{ . . }]
<b>8.8.2(a)</b>	The existing structures are: <ul style="list-style-type: none"> <li>• The lead insurer is:</li> <li>• Address of lead insurer:</li> </ul> The Nominal Deductibles are, (subject to 8.1.7(e) Schedule 2): <ul style="list-style-type: none"> <li>• For damage arising out of the Contract Works:</li> <li>• For other claims:</li> </ul>	[None] <ul style="list-style-type: none"> <li>• [{ . . }]</li> </ul> [{ . . }]  [Vero Insurance New Zealand Limited][N/A] [Private Bag 92 – 237, Auckland][N/A]  [\$25,000][N/A]  [\$25,000][N/A]
<b>8.8.2(b)</b>	Other structures in the vicinity are: <ul style="list-style-type: none"> <li>• The lead insurer is:</li> <li>• Address of lead insurer:</li> </ul> The Nominal Deductibles are, (subject to 8.1.7(e) Schedule 2): <ul style="list-style-type: none"> <li>• For damage arising out of the Contract Works:</li> <li>• For other claims:</li> </ul>	[None] <ul style="list-style-type: none"> <li>• [{ . . }]</li> </ul> [{ . . }]  [Vero Insurance New Zealand Limited][N/A]  [Private Bag 92 – 237, Auckland][N/A]  [\$25,000][N/A]  [\$25,000][N/A]
<b>8.8.2(c)</b>	Contents insurance: <ul style="list-style-type: none"> <li>• The replacement value to be insured is:</li> <li>• The lead insurer is:</li> <li>• Address of lead insurer:</li> </ul> The Nominal Deductibles are: <ul style="list-style-type: none"> <li>• For damage arising out of the Contract Works:</li> <li>• For other claims:</li> </ul>	N/A N/A N/A  N/A  N/A
<b>8.9</b> <b>8.9.1</b>	<b>Principal's option to insure public liability</b> Where required (see 8.1 above), the Principal shall effect public liability insurance for an amount not less than: The lead insurer is:	N/A   N/A

<b>Clause</b> <i>in General</i> <b>Conditions</b>	<b>Title and subject matter</b>	<b>Specific condition data</b>
<p>Address of lead insurer: The Nominal Deductible is: In accordance with 8.7.2:</p> <ul style="list-style-type: none"> <li>• the policy wording title is:</li> <li>• extraordinary exclusions, conditions, warranties, or endorsements to the policy are:</li> </ul> <p><b>8.9.2</b> Such public liability insurance may include sub-limits for: <i>(specify as applicable or state 'not applicable')</i></p> <ul style="list-style-type: none"> <li>• Liability arising out of vibration, weakening or removal of support:</li> </ul>	<p>N/A N/A N/A N/A N/A</p>	
<p><b>9. VARIATIONS</b> <b>9.3 Valuation of Variations</b> <b>9.3.9</b> For On-site Overheads:</p> <p>(a) The prices and rates in the Schedule of Prices are inclusive of full allowance for On-site Overheads.</p> <p>(b) The prices and rates in the Schedule of Prices are exclusive of On-site Overheads and the allowance for On-site Overheads to be added in accordance with 9.3.9 is:</p> <p>(i) Agreed percentage:</p> <p>(ii) As nominated in the Schedule of Prices;</p> <p>(iii) As nominated in the Contractor's tender;</p> <p>(iv) A reasonable percentage.</p>	<p>[<input checked="" type="checkbox"/>] [N/A] [<input checked="" type="checkbox"/>] [N/A] [<input checked="" type="checkbox"/>] [[<input checked="" type="checkbox"/> { . . }]] [N/A] [[<input checked="" type="checkbox"/>] [N/A] [N/A] [[<input checked="" type="checkbox"/>] [N/A] [N/A] [[<input checked="" type="checkbox"/>] [N/A] [N/A]</p>	
<p><b>9.3.10</b> For Off-site Overheads and Profit:</p> <p>(a) The prices and rates in the Schedule of Prices are inclusive of full allowance for Off-site Overheads and Profit.</p> <p>(b) The prices and rates in the Schedule of Prices are exclusive of Off-site Overheads and Profit. The allowance for Off-site Overheads and Profit to be added in accordance with 9.3.10 is:</p> <p>(i) Agreed percentage:</p> <p>(ii) As nominated in the Schedule of Prices;</p> <p>(iii) As nominated in the Contractor's tender;</p>	<p>[<input checked="" type="checkbox"/>] [N/A] [<input checked="" type="checkbox"/>] [N/A] [<input checked="" type="checkbox"/>] [[<input checked="" type="checkbox"/> { . . }]] [N/A ] [[<input checked="" type="checkbox"/>] [N/A] [N/A] [[<input checked="" type="checkbox"/>] [N/A]</p>	



<b>Clause</b> <i>in General</i> <i>Conditions</i>	<b>Title and subject matter</b>	<b>Specific condition data</b>
	(iv) A reasonable percentage.	[N/A] [[ <input checked="" type="checkbox"/> ]] [N/A]] [N/A]
<b>9.3.11</b>	For time-related Cost, the Working Day rate in compensation for time-related On-site Overheads and Off-site Overheads and Profit in relation to an extension of time to be applied in accordance with 9.3.11 is: (a) Agreed rate per Working Day: (b) As nominated in the Schedule of Prices. (c) As nominated in the Contractor's tender. (d) Reasonable compensation.	[<Contractor to propose in Tender>][ <input checked="" type="checkbox"/> { . . }][N/A] N/A N/A [ <input checked="" type="checkbox"/> ][N/A]
<b>9.3.15</b>	For processing of Variations, the percentage to be paid in accordance with 9.3.15 is:	NIL – Contractor is not entitled to any amount for processing Variations.
<b>10.</b> <b>10.2</b> <b>10.2.1</b>	<b>TIME FOR COMPLETION</b> <b>Due Date for Completion</b> The Due Dates for Completion are: (a) For the Contract Works: (b) For any Separable Portions:	{ . . } [N/A] [[Separable Portion #{ . . }: { . . }]]
<b>10.4</b> <b>10.4.2(e)</b>	<b>Practical Completion Certificate</b> In addition to the items required under 10.4.2(a) to (d), the Contractor shall provide notice in writing to the Principal and the Engineer at least 48 hours prior to any inspection confirming that it has:  (i) Reinstated all areas affected by the Contract Works; (ii) Connected, tested, balanced and certified all services as fit for operation for their intended purpose in accordance with the Contract; (iii) Removed all rubbish from the Site and the building; and (iv) Cleaned the Contract Works properly and effectively to an acceptable standard.	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
<b>10.4.5(a)</b>	Prior to the issue of the Practical Completion Certificate the Contractor shall provide to the Engineer the following: (i) Producer Statements in the form of Schedule 6 are required. (ii) Producer Statements are required to be submitted in other form(s) as specified by the Contract: (iii) Submission of completed Producer Statements from the Design Consultants for the construction phase.	<input checked="" type="checkbox"/> N/A <input type="checkbox"/>

<b>Clause</b> <i>in General</i> <i>Conditions</i>	<b>Title and subject matter</b>	<b>Specific condition data</b>
<b>10.4.5(b)</b>	Prior to the issue of the Practical Completion Certificate the Contractor shall provide to the Engineer the following: (i) As-built drawings and operation and maintenance manuals required under 5.20.1 in draft form in accordance with 5.20.3(a)	Yes
<b>10.4.5(c)</b>	Prior to the issue of the Practical Completion Certificate the Contractor shall provide to the Engineer the following Council Certificates to permit use of the facility: (i) A Certificate of Public Use (CPU) in lieu of a Code Compliance Certificate. The Contractor must satisfy the Engineer that it has done and it will do everything as may be required to facilitate the uplifting of the CCC, including lodging a complete application for the CCC for and on behalf of the Principal. (ii) A Code Compliance Certificate (CCC)	[x][ ] [x][ ]
<b>10.4.5(c)</b>	Prior to the issue of the Practical Completion Certificate the Contractor shall provide to the Engineer the following information: (iii) All test, inspection and approval certificates required for the lawful use and occupation of the Contract Works from relevant authorities; (iv) All executed warranties required to be obtained by the Contractor as indicated at 11.5 including (where required) the Weathertightness Warranty in the form at Schedule 18; (v) Confirmation from each of the Principal's consultants that the Contract Works or any Separable Portion have been inspected and qualify for Practical Completion (together with a list of defects that are considered not to prevent Practical Completion); and (vi) A BMG, BUG and a communication strategy that complies with the	Yes Yes Yes No

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<b>Clause</b> <i>in General</i> <i>Conditions</i>	<b>Title and subject matter</b>	<b>Specific condition data</b>
	requirements set out in Appendix E2 – Users' Guides.	
<b>10.5 Damages for late completion</b> NOTE – Where liquidated damages are provided below, the Contractor acknowledges and agrees that the amount stated is a genuine pre-estimate of the likely loss that would result from delay of completion. NOTE – Amounts quoted below are exclusive of GST.  <b>10.5.1</b> Liquidated damages shall be applied as follows:	[N/A]  [[{ . . }][N/A]] [[N/A]] • [[Separable Portion #{ . . }]: [{ . . }][N/A]] ]]]	
<b>10.6 Bonus for early completion</b>  <b>10.6.1</b> Is a bonus to be payable?	No N/A N/A	
<b>11 DEFECTS LIABILITY</b>  <b>11.1 Defects Notification Period</b> The Defects Notification Period for the Contract Works or any Separable Portion shall be:	12 Months	
<b>11.3 Final Completion Certificate</b>  <b>11.3.2</b> Prior to the issue of the Final Completion Certificate the Contractor shall provide to the Engineer the following:	(a) As-built drawings and operation and maintenance manuals required under 5.20.1 in final form in accordance with 5.20. <input checked="" type="checkbox"/>  (b) A Code Compliance Certificate (CCC) <input checked="" type="checkbox"/> <input type="checkbox"/>	

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<b>Clause</b> <i>in General</i> <i>Conditions</i>	<b>Title and subject matter</b>	<b>Specific condition data</b>
<p><b>11.5 Warranties</b></p> <p><b>11.5.1</b> The Contractor shall provide the following warranties in the specified form:</p> <ul style="list-style-type: none"> <li>• Workmanship warranties from all Subcontractors for the relevant items and for the relevant warranty periods set out in Appendix C in the form of Schedule 13: Form of Subcontractor warranty</li> <li>• Material warranties from all Material suppliers for the relevant items and for the relevant warranty periods set out in Appendix C in a form acceptable to the Engineer</li> <li>• A weathertightness warranty in the form of Schedule 18 Form of Contractor's Weathertightness Warranty</li> </ul>	<p>[<input checked="" type="checkbox"/>][<input type="checkbox"/></p> <p>[<input checked="" type="checkbox"/>][<input type="checkbox"/></p> <p>[<input checked="" type="checkbox"/>][<input type="checkbox"/></p>	
<p><b>11.6 Guarantees</b></p> <p><b>11.6.1,</b> <b>11.6.2</b></p> <p>(a) No guarantees are required;                  (b) The Contractor shall provide the following guarantees in the following form(s):</p>	<p>[<input checked="" type="checkbox"/>][<input type="checkbox"/></p> <p>[<input type="checkbox"/></p> <p>[<input checked="" type="checkbox"/> Attached as Schedule 19                  [&lt;Not required if Contractor is a current member of a School Property-approved panel for the type of work specified in this Contract&gt;]]</p>	
<p><b>12. PAYMENTS</b></p> <p><b>12.1 Contractor's payment claims</b></p> <p><b>12.1.3 Advances for Materials delivered to the Site (b)(iii)</b></p> <p>(a) Advances for Materials delivered to the Site but which have yet to be incorporated in the Contract Works shall not be made:</p> <p>(b) Advances for Materials delivered to the Site but which have yet to be incorporated in the Contract Works may be made, subject to the following conditions:</p>	<p>N/A</p> <p><input checked="" type="checkbox"/> Advances for Materials delivered to the Site but not yet incorporated into the Contract Works may be made at the sole discretion of the Principal on condition that the Materials are:</p> <ul style="list-style-type: none"> <li>• on Site;</li> <li>• set apart from other Materials and clearly and visibly marked as being the property of the Principal;</li> <li>• protected from the weather as appropriate;</li> <li>• fully secure from theft;</li> <li>• safely placed and stored and fully comply with the Principal's Health and Safety Requirements; and</li> <li>• delivered in accordance with the timing requirements of the Programme.</li> </ul>	



<b>Clause</b> <i>in General</i> <i>Conditions</i>	<b>Title and subject matter</b>	<b>Specific condition data</b>
<b>12.1.3</b> <b>(b)(iv)</b>	<b>Advances for Temporary Works or Plant</b> (a) Advances for Temporary Works or Plant shall not be made. (b) Advances for Temporary Works or Plant shall be made, subject to the following conditions:	<input checked="" type="checkbox"/> N/A
<b>12.1.3</b> <b>(b)(iv)</b>	<b>Advances for Materials not yet on Site</b> (a) Advances for Materials not on Site shall not be made. (b) Advances for Materials not yet on Site may be made, subject to the following conditions:	N/A [<Contractor's Tender to advise if advances are required for materials not yet on site, and list relevant materials>] [Advances for Materials not yet on Site may be made at the sole discretion of the Principal on condition that the Contractor first enters into an Off Site Materials Agreement in the form attached at Schedule 14 provided that the Contractor acknowledges and agrees that it shall not be entitled to an extension of time in the event that the Principal decides not to exercise its discretion to make any such advance or advances.] [Advances for Materials not yet on Site will be made in respect of the following Materials: <ul style="list-style-type: none"> <li>• [{ . . }]</li> <li>• such other Materials as may be agreed at the sole discretion of the Principal (provided that the Contractor acknowledges and agrees that it shall not be entitled to an extension of time in the event that the Principal decides not to exercise its discretion to make any such advance or advances)</li> </ul> in each case, on condition that the Contractor first enters into an Off Site Materials Agreement in the form attached at Schedule 14. ]
<b>12.2</b> <b>12.2.8</b>	<b>Progress Payment Schedules</b> The Principal shall make payment to the Contractor: (a) Within 20 Working Days after the date on which the Contractor's payment claim was served on the Engineer under 12.1.1. (b) Within ..... Working Days of issue to the Principal of the Progress Payment Schedule under 12.2. (c) On the 20th of the Month following the Month of issue to the Principal of the Progress Payment Schedule under 12.2. (d) As specified in the right-hand column.	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>



<b>Clause</b> <i>in General</i> <i>Conditions</i>	<b>Title and subject matter</b>	<b>Specific condition data</b>
<p><b>12.13 Goods and Services Tax</b></p> <p><b>12.13.2</b> Payment Schedules provided by the Engineer:</p> <p>(a) Shall not be in the form of a GST Invoice, and the Contractor shall, upon receipt of the Engineer's Payment Schedule, issue to the Engineer and copy to the Principal, a GST Invoice for the scheduled amount.</p> <p>(b) Shall be in the form of a buyer created GST Invoice, and the parties agree not to issue any other GST Invoice for items covered by the Payment Schedule.</p>	<p><input checked="" type="checkbox"/></p> <p><input type="checkbox"/></p>	
<p><b>13. DISPUTES</b></p> <p><b>13.4 Arbitration</b></p> <p><b>13.4.3</b> If required, the arbitrator shall be nominated by the following Person:</p>		<p>The President of the Arbitrators' and Mediators' Institute (or his or her nominee)</p>
<p><b>15. SERVICE OF NOTICES</b></p> <p><b>15.1.2</b> For the purpose of service of written notice:</p> <p>(a) The address of the <b>Principal</b> is:</p> <p>Postal address: { . . }</p> <p>Delivery address: { . . }</p> <p>Mark for the attention of: { . . }</p> <p>Email address: { . . }</p> <p>Other agreed means of electronic communication and address detail: N/A</p> <p>(b) The address of the <b>Contractor</b> is:</p> <p>Postal address: {{ . . }}{ . . }</p> <p>Delivery address: {{ . . }}{ . . }</p> <p>Mark for the attention of: {{ . . }}{ . . }</p> <p>Email address: {{ . . }}{ . . }</p> <p>Other agreed means of electronic communication and address detail: N/A</p> <p>(c) The address of the <b>Engineer</b> is:</p> <p>Postal address: {{ . . }}To be advised</p> <p>Delivery address: {{ . . }}To be advised</p> <p>Mark for the attention of: {{ . . }}To be advised</p> <p>Email address: {{ . . }}To be advised</p> <p>Other agreed means of electronic communication and address detail: N/A</p>	<p>{ . . }</p> <p>{ . . }</p> <p>{ . . }</p> <p>{ . . }</p> <p>N/A</p> <p>{{ . . }}{ . . }</p> <p>N/A</p> <p>{{ . . }}To be advised</p> <p>N/A</p>	

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

The General Conditions of Contract, NZS 3910:2013 Conditions of contract for building and civil engineering construction, are amended as set out herein.

Clause numbers refer to the General Conditions, or additional clause numbers.

### 1 INTERPRETATION

#### 1.2 Definitions

##### Add the following definitions

<b>Asbestos Handling Requirements</b>	The requirements stated in Appendix F – Asbestos Handling Requirements
<b>[Document Register</b>	Means the Document Register <b>attached</b> to this Contract in Appendix H – Document Register]
<b>Design Requirements</b>	Means, where the Contract: <ul style="list-style-type: none"> <li>(a) includes a project brief applicable to the Contract Works, the Ministry's property design standards and legal requirements (as amended from time to time) as more particularly detailed in that project brief; or</li> <li>(b) does not include a project brief applicable to the Contract Works, the Ministry's property design standards and legal requirements (as amended from time to time) applicable to the Contract Works as more particularly detailed on the Ministry's website</li> </ul> <p><b>Refer:</b> <a href="https://www.education.govt.nz/education-professionals/schools-year-0-13/facilities-and-operations/designing-schools-aotearoa-new-zealand-standards">https://www.education.govt.nz/education-professionals/schools-year-0-13/facilities-and-operations/designing-schools-aotearoa-new-zealand-standards</a></p>
<b>Environmental Requirements</b>	The requirements stated in Appendix E – Environmental Requirements
<b>Health and Safety Requirements</b>	The requirements stated in Appendix D – Health and Safety Requirements
<b>HSWA Regulator</b>	Means Worksafe or the relevant designated regulatory agency under the Health and Safety at Work Act 2015
<b>Ministry of Education</b>	Means the Principal
<b>Notifiable Event</b>	Means deaths, injuries, illnesses and incidents which are required by law to be notified to the HSWA Regulator
<b>Other Documents</b>	Means any reports, manuals, programmes, software, models, data or other documents and information (whether in physical or electronic form) prepared by or on behalf of the Contractor
<b>Principal</b>	Means the Sovereign in right of New Zealand acting by and through the Secretary for Education
<b>Project Control Group or PCG</b>	As defined in 5.23

**Replacement Bond**

means a Contractor's Bond that:

- (a) is from a bank registered in New Zealand, or where the surety is not a bank registered in New Zealand, from a surety with a minimum Standard & Poor's long term unsecured credit rating of A;
- (b) is from a surety that has an office or location within New Zealand where it is possible to call on the bond;
- (c) complies with the form set out in Schedule 3;
- (d) is for an amount equal to 5% of the Contract Price; and
- (e) is properly executed by the Contractor and the named surety

**School**

Means the board of trustees of the school named in the Special Conditions acting by and through its duly authorised representative

**Weathertightness Requirements**

Means the requirements set out in the document titled "Weathertightness Design Requirements for New School Buildings" (Version 3.0, September 2020) as amended from time to time

**Refer:** [https://web-assets.education.govt.nz/s3fs-public/2024-11/Weathertightness-Design-Requirements-25-September-2020\\_1.pdf](https://web-assets.education.govt.nz/s3fs-public/2024-11/Weathertightness-Design-Requirements-25-September-2020_1.pdf)

**2 THE CONTRACT**

**[2.1.1 Delete and replace with:**

This is a remediation contract comprising of lump sum elements together with Provisional Sums. It is recognised by the Principal that in remediation contracts that after work has commenced, additional work may be required, and where such additional work is required the Contractor can apply for this additional work to be treated as a Variation.]

**2.6 Evidence of Contract**

**2.6.1 Delete and replace with:**

No contract or other legal relationship shall exist between the Contractor and the Principal until the Contract Agreement is executed by both parties.

**2.6.2 Delete and replace with**

No payment otherwise due under the Contract shall become payable until the Contract is signed by the Contractor and delivered to the Engineer.

**2.8 Documents prepared by the Contractor**

**2.8.2** Delete the second sentence in 2.8.2.

**2.8.2 Add the following to the end of 2.8.2**

The Contractor grants to the Principal (for itself and on behalf of the applicable Subcontractors) an irrevocable, perpetual, transferable, non-exclusive, royalty-free licence to use and copy the Drawings, Specifications and Other Documents prepared by or on behalf of the Contractor and

whether prepared before or after the Date of Acceptance of Tender in relation to the Contract or the Contract Works.

## **2.9 Assignment**

### **2.9.1 Delete and replace with**

The Contractor may not assign the whole or any part of the Contract without the prior written consent of the Principal.

## **3 BONDS**

### **3.1 Contractor's Bond**

#### **3.1.2 Add the following to the end of 3.1.2**

The surety must be a bank registered in New Zealand or other surety approved by the Principal. Where the surety is not a bank registered in New Zealand, the surety under the Contractor's Bond is to be and remain a financial institution with a Standard & Poor's long term unsecured credit rating of A, to be demonstrated to the Principal's satisfaction. The surety must have an office or location within New Zealand where it is possible to call on the bond.

**3.1.6** In 3.1.6(a) and (b) delete "up to Practical Completion" and replace with "up to the date of issue of the Practical Completion Certificate".

**3.1.9** Delete 3.1.9.

#### **3.1.11 Add new 3.1.11**

If the:

- (a) Contract Price increases (from the amount recorded in clause 2 of the Contract Agreement); or
- (b) surety under the Contractor's Bond is not a bank registered in New Zealand and that surety's Standard & Poor's long term unsecured credit rating falls below the required A rating,

then the Principal may (in its absolute discretion) require the Contractor to provide a Replacement Bond. The Contractor shall provide to the Principal the Replacement Bond promptly on request.

#### **3.1.12 Add new 3.1.12**

Where the Contractor is required to provide a Replacement Bond, the Principal will not be liable to make any further payments under the Contract until the Contractor has delivered the Replacement Bond to the Principal. Within 14 days of receipt of a Replacement Bond, the Principal shall release the Contractor and the surety from their liability under the previous bond.

## **4 SUBCONTRACTS**

### **4.1 General**

#### **4.1.4 Add new 4.1.4**

The Contractor must engage the key Subcontractors listed in the Special Conditions for the works stated in the Contractor's tender or in the Special Conditions. The Contractor shall not terminate any such engagement or in any other way replace the named Subcontractor without the prior written consent of the Engineer whose consent shall not be unreasonably withheld. Such key Subcontractors shall not be Nominated Subcontractors.

**4.1.5 Add new 4.1.5**

The Contractor shall, promptly upon execution of any key subcontract named in the Special Conditions, procure from the key Subcontractor a continuity guarantee in favour of the Principal in the form set out in Schedule 17. No payment otherwise due under the Contract shall become payable until the key Subcontractor has executed the continuity guarantee and the Contractor has delivered the continuity guarantee to the Principal.

**5 GENERAL OBLIGATIONS****5.1 General responsibilities****5.1.7 Add new 5.1.7**

The Contractor shall ensure that the Contract Works (insofar as they include any design responsibility on the part of the Contractor) comply with the applicable Design Requirements and the Weathertightness Requirements.

**5.3 Control of employees****5.3.2 Number the existing "5.3.1" and add new 5.3.2**

The Contractor must employ the key personnel named in the Special Conditions in the positions nominated in the Contractor's tender or in the Special Conditions, and ensure that such key personnel are dedicated to the Contract Works until they have, in the opinion of the Engineer, completed their relevant functions in relation to the Contract Works. The Contractor shall not remove any such key personnel from their stated position without the prior written consent of the Engineer whose consent shall not be unreasonably withheld. Where any key personnel named in the Special Conditions are removed (with the Engineer's prior written consent), or where any key personnel has resigned or is unable to perform their role due to sickness or death, any replacement key personnel must be approved in writing by the Engineer.

**5.3.3 Add new 5.3.3**

The Contractor shall comply with all Ministry of Education police vetting requirements prior to any of its personnel or Subcontractors accessing any part of the Site. Details may be found on the following web site: <https://www.education.govt.nz/education-professionals/schools-year-0-13/health-and-safety/police-vets-schools-and-kura>.

**5.4 Possession of the Site****5.4.1 Add the following sentence to 5.4.1**

Any representative nominated by the Principal shall have access at all reasonable times to the Site and to all places where the work is being carried out. The Contractor shall afford every reasonable facility for, and assistance in, obtaining access for any such nominated representative.

**5.7 Protection of Persons and property****Delete 5.7.1 to 5.7.7 and replace with**

**5.7.1** So far as the Site, Materials and the Contract Works are under the Contractor's management or control, the Contractor shall ensure, so far as reasonably practicable, that the Site, Materials and Contract Works, including the means of entering and exiting the Site and anything arising from the Site are without risks to the health and safety of any Persons.

**5.7.2** The Contractor shall ensure, so far as is reasonably practicable that the health and safety of any:

- (a) workers involved in carrying out the Contract Works;
- (b) workers whose activities in carrying out work are influenced or directed by the Contractor; and
- (c) any other Person,

is not put at risk from the carrying out of the Contract Works.

**5.7.3** The Contractor must have in place and operate throughout the carrying out of the Contract Works:

- (a) ongoing hazard and risk identification and mitigation processes;
- (b) processes to ensure that workers engaged in carrying out the Contract Works have the necessary information and competencies to undertake the relevant Contract Works safely and, if those workers do not, that they are adequately supervised by the Contractor;
- (c) appropriate procedures for dealing with emergencies that may arise; and
- (d) an effective drug and alcohol policy that applies to its workers.

**5.7.4** The Contractor shall:

- (a) keep a record of all Notifiable Events for at least 5 years from the date on which notice of the relevant event is given to the HSWA Regulator;
- (b) as soon as possible after becoming aware that a Notifiable Event arising out of the carrying out of the Contract Works has occurred, ensure that the HSWA Regulator and the Principal are notified of the event; and
- (c) so far as the Site and the Contract Works at which any Notifiable Event has occurred are under the Contractor's management or control, take all reasonable steps to ensure that the Site or the Contract Works where the Notifiable Event occurred is not disturbed until authorised by the HSWA Regulator.

**5.7.5** Following the Notifiable Event the Contractor shall:

- (a) give to the Principal through the Engineer a copy of any information or notice which the Contractor is required to provide or make to the HSWA Regulator relating to that Notifiable Event as soon as possible and at the latest, within 24 hours of the Notifiable Event occurring;
- (b) within one week of the Notifiable Event, provide the Principal through the Engineer a report giving complete details, including results of investigations, into the cause of the Notifiable Event and any recommendations or strategies for prevention of any similar Notifiable Event in the future; and
- (c) provide the Principal with such assistance as may be reasonably necessary to conduct a Notifiable Event incident or accident investigation.

**5.7.6** The Contractor must, as soon as possible, notify the Principal through the Engineer of any proceedings and/or enforcement action it is issued with.

**5.7.7** The Contractor shall provide the Principal or its appointed representative with access to the Site and personnel in order to review, monitor or audit the Contractor's health and safety procedures and practices, as deemed appropriate by the Principal at any time with or without notice. The Contractor shall rectify any issues raised in any health and safety audits, reviews or monitoring. If the Principal or the Engineer, acting reasonably, are not satisfied with the results of any health and safety audit, review or monitoring under this clause, the Principal may appoint (at the cost of

the Contractor) an independent health and safety supervisor on the Site. The Contractor shall ensure that any Subcontractors comply with all instructions given to the Engineer (or directly to the Contractor) by the health and safety supervisor appointed by the Principal under this clause. The Contractor warrants that all contract(s) it has with the Subcontractors in relation to the Contract Works obligate the Subcontractor(s) to comply with instructions of the Engineer in relation to health and safety matters at the Site. Where the health and safety supervisor gives instructions directly to the Contractor, the Contractor shall ensure that it immediately requires all relevant Subcontractors to comply with those instructions.

**5.7.8** The Principal shall notify the Contractor through the Engineer of any safety hazards or risks associated with the Contract Works (including any specific safety hazards or risks identified by the Contractor) or the Site, or special safety measures required, of which the Principal or the Engineer are aware, and with which an experienced contractor may not reasonably be expected to be familiar.

**5.7.9** The Contractor shall provide all over-seeing and provide, erect, maintain and when no longer required remove all barricades, fencing, temporary roadways and footpaths, signs, and lighting necessary for the effective protection of property, for traffic, and for the safety of others.

**5.7.10** The Contractor shall, so far as is reasonably practicable, engage with workers (including all workers of the Contractor and Subcontractors and any workers who are likely to be directly affected by the work) involved in carrying out the Contract Works in relation to health and safety matters concerning the Site or the Contract Works. The Contractor shall have procedures in place that provide reasonable opportunities for such workers to participate effectively in improving health and safety in respect of the Site and the Contract Works on an ongoing basis.

**5.7.11** The Contractor shall so far as is reasonably practicable co-ordinate, consult and cooperate with all other duty-holders in relation to the Contract Works, including the Principal. The Contractor shall facilitate engagement between the Contractor, the Engineer, the Principal (and where requested by the Principal, its designers) and any other relevant third parties including the relevant school(s) in relation to health and safety matters.

**5.7.12** If during the term of the Contract the Engineer considers the Contractor is:

- (a) not conducting the Contract Works in compliance with the Site-specific safety plan, relevant legislation, applicable codes of practice or standards, or any other requirements for health and safety set out in the Contract, including the Health and Safety Requirements; or
- (b) conducting the Contract Works in such a way as to endanger the health and safety of any workers of the Contractor or Subcontractors, or any other Person,

the Engineer may instruct the Contractor to suspend the Contract Works until the Contractor has rectified its failure to comply with its obligations to the satisfaction of the Engineer.

**5.7.13** The Contractor shall hold health and safety accreditations which have been approved by the Principal and which satisfy any national management system standards stated in the Special Conditions and provide written evidence of such accreditations to the Principal on request.

**5.7.14** The Contractor shall comply with the Health and Safety Requirements.

**5.7.15** The Contractor shall use all reasonably practicable endeavours to go beyond mere compliance with the Health and Safety Requirements and achieve good New Zealand industry practice with regards to health and safety in the carrying out of the Contract Works.

**5.7.16** The Principal or the Engineer may object to and direct the Contractor to immediately remove from the Site any personnel who fail to comply with the requirements for health and safety in the Contract, including the Health and Safety Requirements or who cause any act or omission likely to give rise to a breach of the requirements for health and safety in the Contract, including the Health and Safety Requirements. The Contractor shall pay any costs associated with such

removal and subsequent replacement. Any person required to be removed (or prevented access) shall not again be employed in relation to the Contract Works without the permission of the Engineer.

**5.7.17** The Contractor shall comply with the Asbestos Handling Requirements.

**5.7.18** The Contractor shall provide to the Principal through the Engineer a health and safety report, the frequency of which shall be as required by the Special Conditions, and which meets any requirements for health and safety reports set out in the Contract and is in such form as may be required by the Principal from time to time.

**5.7.19** The Contractor shall take all reasonable steps to avoid nuisance and prevent damage to property.

**5.7.20** The Contractor shall;

- (a) obtain similar undertakings as those stated in clauses 5.7.1 to 5.7.19 from all Subcontractors in relation to the subcontract works; and
- (b) actively manage and monitor each Subcontractor's compliance with those undertakings.

To the maximum extent permitted by law, the Contractor shall be responsible for any non-compliance by any Subcontractor and the Contractor shall immediately provide evidence of compliance with this clause by all relevant Subcontractors, and by the Contractor, on request by the Principal.

## **5.9 Materials, labour, plant**

### **5.9.2 Delete third sentence of 5.9.2 and replace with**

All work shall be carried out in a tradesman-like manner and in accordance with best New Zealand industry standards.

### **Add the following additional clause**

**5.9.4** The Contractor must comply with the requirements of the Drawings and Specifications. Where the Contractor wishes to propose alternative products or materials to those specified by the Drawings and Specifications, the Contractor must seek the approval of the Engineer in writing. Details of the proposed substitution must be provided to the Engineer by the Contractor to highlight the advantages that will accrue as a result of implementing the proposed change. If the Contractor submits a proposal for a substitute product the Engineer may:

- (a) decline to consider the alternative product or material any further;
- (b) accept the alternative product or material; or
- (c) request that the Contractor provide further information in relation to the alternative product or material.

The further information which might be requested by the Engineer may, without limitation, include a certificate or warranty from a body or person nominated or described by the Engineer to the effect that the technical aspects of the performance benefits of the alternative material or product which will be delivered to the Engineer are no less appropriate or beneficial than those derived through the Drawings and Specifications.

If the Engineer makes a request pursuant to paragraph (c) and the Contractor does not provide the further information the Engineer may decline to consider the alternative product or material any further.

**5.11 Compliance with laws**

**Delete 5.11.1 and replace with**

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

**Delete 5.11.10 and replace with**

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

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

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

**Add the following additional clauses**

**5.11.11** The Contractor shall comply with the Environmental Requirements.

**5.11.12** The Contractor shall indemnify and keep indemnified the Principal from all costs damages, fines, penalties, loss and expense incurred or suffered by the Principal in respect of any breach of the RMA, directly or indirectly related to a breach by the Contractor of any of its obligations set out in 5.11 except that the Contractor's liability shall be reduced proportionately to the extent that the Principal or its servants or agents or the School or its servants or agents (other than to the extent that the Contractor assumes liability for the work of such servants or agents pursuant to the Contract) contributed to that liability.

**5.11.13** If the Contractor becomes aware that it is or may be in breach, or is likely to be in breach of any of its obligations under 5.11.11 then the Contractor shall immediately notify the Engineer of such breach or anticipated breach.

**5.11.14** The Contractor shall hold the environmental accreditations which have been approved by the Principal and which satisfy any national management system standards stated in the Special Conditions.

**5.12 Intellectual property**

5.12.1 Delete 5.12.1.

**5.17 Safety plan**

**Delete 5.17.1 and 5.17.2 and replace with**

**5.17.1** The Contractor shall prior to commencement of the Contract Works on Site:

- (a) undertake a Site-specific risk assessment; and
- (b) prepare and submit to the Engineer a Site-specific safety plan for the execution of the Contract Works.

**5.17.2** The Site-specific safety plan shall:

- (a) address the means by which the Contractor intends to meet its obligations under 5.7, including meeting the Health and Safety Requirements;
- (b) address any critical risks that the Principal has identified in relation to the Site or the Contract Works; and
- (c) be updated as the Contract Works progress to incorporate hazards or other risks to health and safety not foreseen at the time of submitting the original Site-specific safety plan.

**5.17.5 Add to the beginning of 5.17.5:**

The Contractor must comply with the Site-specific safety plan accepted by the Engineer under 5.17.4.

**5.20 As-built drawings and operation and maintenance manuals****5.20.4 Add new 5.20.4**

Where required by the Special Conditions, the documents and information required to be provided by the Contractor under 5.20 shall be in sufficient detail and in a form appropriate to allow the Principal to accurately update the Principal's records, including Geographical Information System (GIS) records.

**5.21 Advance Notification****Delete 5.21.1 and 5.21.2 and replace with the following:**

**5.21.1** The Principal (via the Engineer), the Contractor and the Engineer shall each notify the others in writing as soon as they become aware of any matter which is likely to:

- (a) Materially alter the Contract Price;
- (b) Materially delay completion of the Contract Works or any Separable Portion; or
- (c) Result in a breach of a statutory duty in connection with the Contract Works.

**5.21.2** The Principal (via the Engineer), the Engineer or the Contractor may require the others to meet for the purpose of proactively exploring proposals for avoiding, reducing or mitigating the impact of the notified matter.

**Add the following additional clauses****5.22 Environmental compliance plan**

**5.22.1** Where required by the Special Conditions, the Contractor shall prepare and submit to the Engineer an environmental compliance plan for the execution of the Contract Works.

**5.22.2** The environmental compliance plan shall address the means by which the Contractor intends to meet its obligations under 5.11 and any other requirements for environmental compliance set out in the Contract or in any licences obtained or to be obtained by the Principal or the Contractor under 5.11.

**5.22.3** Within 5 Working Days of receipt of the Contractor's environmental compliance plan, or revised environmental compliance plan, the Engineer shall notify the Contractor in writing whether or not he or she accepts the plan. Such acceptance shall not be unreasonably withheld. Where the Engineer does not accept the plan, the notice shall include the Engineer's reasons, and the Contractor shall submit a revised environmental compliance plan.

**5.22.4** The Contractor shall not commence any part of the Contract Works unless the Engineer has accepted the environmental compliance plan or revised environmental compliance plan.

**5.22.5** Compliance with the environmental compliance plan shall not relieve the Contractor from any of its duties, obligations, and liabilities under the Contract.

### **5.23 Project Control Group**

**5.23.1** The Principal and the Contractor intend for the Contract to be performed within a co-operative and trusting working relationship between the parties. Where required by the Special Conditions, a Project Control Group (**PCG**) aimed at achieving this intention will be established prior to commencement of any works on Site.

**5.23.2** The PCG shall be made up of:

- (a) a representative nominated by the Principal, which may include a representative from the Ministry of Education's Schools Infrastructure Group, a School Property Advisor and/or any other agent of the Principal employed for this purpose;
- (b) the Engineer; and
- (c) one representative from the Contractor.

**5.23.3** The Engineer shall chair the meetings and take the minutes of meeting.

**5.23.4** The Principal or Engineer may request the presence of one representative from the School Board of Trustees or the School principal, the architect or the quantity surveyor at certain PCG meetings as the Principal or the Engineer (as the case may be) considers necessary.

**5.23.5** The PCG shall work for the entire project duration and be responsible for providing the project with direction on all matters in which delivery of the Contract Works can be improved in terms of quality, timeliness and cost effectiveness. No consideration or concurrence of any members of the PCG will have any effect to the Contract unless the Engineer gives the Contractor a written instruction, and no decision of the PCG shall have any effect on the Contract unless the Engineer gives the Contractor a written instruction and for the avoidance of doubt, no decision at a PCG meeting shall constitute a Variation unless it is instructed in writing by the Engineer in accordance with Section 9. The Engineer shall provide prompt decisions and approvals for the PCG. The Contractor shall provide advice to the PCG on all matters relating to the construction of the Contract Works.

**5.23.6** The Contractor must deliver to the Principal, and to the other regular PCG members, a monthly status report on the progress of the Contract Works, in a form which is acceptable to the Principal. The Engineer may, at any time, require that the Contractor provide a special status report. The Contractor must deliver that special status report to the Engineer within five Working Days of receiving the request. A status report must be provided as a requirement of Practical Completion of each Separable Portion of the Contract Works.

### **5.24 Conflict of Interest**

The Contractor acknowledges and agrees that it:

- (a) has no, and is not aware of any conflict of interest, that it has not disclosed in writing to the Principal prior to signing the Contract, including but not limited to any personal or professional relationship that the Contractor (or its directors, majority shareholders, or individual owner(s)) has with any member of the School Board of Trustees or a School staff member, and the Contractor undertakes to advise the Principal immediately if any conflict of interest should arise; and

- (b) is not the subject of any claim brought by the Ministry of Education or any School Board of Trustees for defective workmanship, and will notify the Principal immediately if any such claim is brought.

## 5.25 Salvaged Materials

The Contractor shall carefully remove the materials (if any) listed in the Special Conditions as salvage from the Site (**Salvaged Materials**). All Salvaged Materials shall remain the property of the Principal and the Contractor shall keep the Salvaged Materials safe and secure, and shall dispose of them as directed by the Engineer. Any materials not listed in the Special Conditions may be salvaged by and shall become the property of the Contractor, and must be removed from the Site by the Contractor at the Contractor's cost. The Contractor shall be deemed to have allowed at its entire cost everything necessary to comply with this clause and shall not be entitled to any Variation or Extension of Time in relation to compliance with this clause.

## 7. INDEMNITY AND LIABILITY LIMIT

### 7.1.3 Delete 7.1.3 and 7.1.4 and replace with:

The Contractor's liability to indemnify the Principal shall be reduced proportionately to the extent that the act or omission of the Principal or its servants or agents or the School or its servants or agents (other than to the extent that the Contractor assumes liability for the work of such servants or agents pursuant to the Contract) contributed to the loss, liability or Cost.

### Add the following new clause 7.2

## 7.2 Contractor's liability limit

**7.2.1** Where provided in the Special Conditions, subject to 7.2.2 and 7.2.3 and to the extent permitted by law, the maximum aggregate liability of the Contractor to the Principal and the School under or in connection with the Contract whether in contract, tort (including negligence) or otherwise is limited to the amount recorded in the Special Conditions.

**7.2.2** 7.2.1 does not limit the Contractor's liability:

- (a) to indemnify the Principal under 5.12.2;
- (b) to indemnify the Principal under 7.1.1(b) in respect of any liability incurred by the Principal to a third party;
- (c) in the case of fraudulent conduct, illegal act or omission, wilful or reckless misconduct or wilful default by the Contractor in the performance of its obligations under the Contract;
- (d) if the Contractor has abandoned the Contract; or
- (e) in respect of any penalties applicable under any statute, secondary legislation, instrument, bylaw, or licence (as defined under 5.11.2).

**7.2.3** Notwithstanding 7.2.1, where the level of any insurance policy that the Contractor is required to effect and maintain under the Contract is greater than the maximum aggregate liability of the Contractor recorded in 7.2.1 and such policy responds to a loss (or would have responded but for any failure to claim and/or breach of the relevant insurance policy by the Contractor, or due to the failure by the Contractor to maintain an insurance policy), the Contractor's liability in respect of such loss shall be the level of cover under the applicable insurance policy.

**7.2.4** This 7.2 will survive expiry or termination of the Contract for any reason.

## 8 INSURANCES

### 8.1 Insurances – General

#### 8.1.7 Add the following new clause 8.1.7

8.1.7 Notwithstanding any other clause in this Contract, the Contractor acknowledges and agrees that:

- (a) the Principal:
  - (i) provides its own funding for any losses arising out of damage to the existing structures and other structures in the vicinity of the Contract Works listed in the Special Conditions (**Losses**) up to a certain amount per annum (**Principal Liability Amount**);
  - (ii) will have in place insurance policies required under this Contract in respect of any Losses that arise in excess of the Principal Liability Amount; and
  - (iii) is not in breach of its insurance obligations under this Contract despite the absence of an insurance policy for any Losses up to the Principal Liability Amount.
- (b) the Principal Liability Amount:
  - (i) will be an amount that is determined by the Principal (in its absolute discretion) from time to time, being \$75,000,000 per annum as at the date of this Contract; and
  - (ii) is an aggregate amount that applies across the entirety of the Principal's property portfolio. As such, the actual amount available for any Losses will vary, depending on whether the Principal has expended part, or all, of it for losses in respect of other properties owned by it;
- (c) if any Losses are claimed in excess of the balance of the Principal Liability Amount at any given point in time, the Principal's insurance policies will then apply in accordance with the terms of this Contract;
- (d) every reference to a policy of insurance effected by the Principal under 8.8.2 in this Contract is to be read as being a reference to the Principal Liability Amount while any part of the Principal Liability Amount has not been expended;
- (e) Nominal Deductibles are payable by the Contractor (to the extent that any Losses arise out of an act or omission of the Contractor or any Subcontractor or any employee, agent or invitee of the Contractor or any other party for whom the Contractor is responsible) in respect of any Losses covered by the Principal Liability Amount with the effect that, if Losses arise, the Contractor must pay the relevant Nominal Deductible even if the Principal Liability Amount is applicable to all or part of the Losses, as if that Nominal Deductible was an excess amount or insurance policy deductible.

### 8.2 Contractor arranged insurances – General

#### 8.2.3 Add new sub paragraphs as follows

- (c) The insurances are primary to and will respond in priority to any policy of insurance effected by the Principal which covers the same or similar interests; and
- (d) The actions of one insured shall not affect the rights of any other insured.

**8.5 Contractor arranged public liability insurance**

**8.5.1** In the fourth line of 8.5.1 after the words ", for an amount not less than that stated in the Special Conditions," **add the words** "and in the aggregate for products liability,"

Delete 8.5.1(c) (liability under the Forest and Rural Fires Act) in its entirety.

**Add new sub paragraphs to the end of 8.5.1 as follows**

- (c) Liability for damage to underground services;
- (d) Products liability insurance;
- (e) Liability arising from the use of construction machinery, including hired Plant, except when being used as a motor vehicle as defined in the Land Transport Act 1998; and
- (f) Liability for loss or damage to any existing structures, or other structures in the vicinity and the contents of any of them, that are not specifically identified in the Special Conditions under 8.8.2 (a), (b) and (c).

**8.7 Insurances – General**

**8.7.8 Add the following new clause 8.7.8**

8.7.8 For the avoidance of doubt, the Contractor acknowledges and agrees that the Principal Liability Amount and the amendments to the scope of Nominal Deductibles set out in clause 8.1.7 applies in respect of any insurance requirements pursuant to clauses 8.7 and 8.8.2.

**8.8 Principal arranged construction insurance**

**8.8.2 Delete 8.8.2 and replace with the following:**

Where the Contract Works are in the nature of additions, alterations, repairs or maintenance to an existing structure, or where the Contract Works are in the vicinity of another structure in the care of the Principal, the Principal shall effect insurance under 8.8.1 and shall include cover in respect of:

- (a) The existing structure;
- (b) Other structures in the vicinity; and
- (c) Any contents which are owned by the Principal and contained within the existing or other structures,

in each case identified in the Special Conditions.

**8.9 Principal's option to insure public liability**

Delete 8.9.2(c) in its entirety.

**9 VARIATIONS**

**9.1 Variations permitted**

**9.1.1(b) Add to the end of 9.1.1(b)**

... whether or not any such work omitted is subsequently carried out by a Separate Contractor or by the Principal itself.

**9.2 Variation orders****9.2.1 Add the following sentence to 9.2.1**

The Contractor must give immediate notice to the Engineer of any direction received from any representative of the Principal (or, where the Principal is the Ministry of Education, any representative of the School). The Contractor shall not be obliged to comply with any such instruction unless confirmed in writing by the Engineer. The Contractor will not be entitled to any adjustment to the Contract Price or the Due Date for Completion unless and to the extent the Engineer issues an order in writing instructing a Variation.

**9.3 Valuation of Variations****9.3.15 Delete the last sentence of 9.3.15 and replace with**

Where no such percentage is nominated, the Contractor shall not be entitled to the Cost of processing Variations whether or not they proceed.

**9.4 Daywork**

**9.4.3** In the last sentence of 9.4.3 delete "in such case" and replace with "in the case of records signed by the Engineer".

**9.6 Add the following clause 9.6****9.6 Variation Price Requests (VPR)**

**9.6.1** The Engineer may instruct the Contractor to provide a quotation for the price of work involved in a proposed Variation. The instruction will be clearly identified as "VPR", or Variation Price Request. Such an instruction will be in writing and shall not be a Variation unless subsequently instructed in writing as a Variation by the Engineer. The Contractor shall not be entitled to the Costs of processing or responding to any VPR under this clause 9.6.

**9.6.2** Upon receipt of a Variation Price Request and the provision of sufficient information to comply with the requirements of this clause, the Contractor will prepare and provide a price, and any impact on the Due Date for Completion, in accordance with the following requirements (the "Contractor's Response"):

- (a) the price shall be submitted by the date (which shall be a date at least 5 Working Days after the date of the VPR) stated in the VPR, or if no such date or timeframe is stated, within 10 Working Days of receipt of the VPR by the Contractor or within such other reasonable time as may be agreed by the Engineer in writing;
- (b) the price is to be fully broken down indicating all quantities, rates, costs and fees used, including references to applicable or analogous items in the Schedule of Prices;
- (c) if the Contractor considers that works in the VPR will result in delay to completion of the Contract Works, the Contractor must state the period of any extension of time that it considers is necessary to carry out the works in the VPR;
- (d) any time-related Costs associated with the extension of time referred to in item (c) are to be included and identified in the VPR;
- (e) where requested by the Engineer, copies of any Subcontractor quotations are to be provided, and
- (f) a price for a VPR is to be a fixed lump sum price.

{ . . }, { . . }, [Project ID { . . }, ]Contract Number { . . }

**9.6.3** The Engineer shall be entitled to accept the Contractor's Response or decline the Contractor's Response, or endeavour to negotiate an agreed price and any extension of time for the works in the VPR.

9.6.4 If, pursuant to 9.6.3, the:

(a) Engineer elects to accept the Contractor's Response; or

(b) parties negotiate an agreed price and any extension of time for the works in the VPR,

and the Engineer elects to proceed with the VPR, the VPR shall be instructed in writing as a Variation.

## **10 TIME FOR COMPLETION**

### **10.2 Due Date for Completion**

#### **10.2.1 Delete 10.2.1 and replace with**

The Due Date(s) for Completion is specified in the Special Conditions, as may be adjusted for extensions of time, if any, awarded under 10.3.

### **10.3 Extension of time**

#### **10.3.1(b) Add to the end of 10.3.1(b)**

... greater than the interference for inclement weather that could reasonably be expected by an experienced contractor for the season in which the Contract Works are being carried out.

#### **10.3.1(d) Delete 10.3.1(d) and replace with**

Loss or damage to the Contract Works or Materials other than loss or damage caused by any negligent act, negligent omission or other negligent default of the Contractor or of any person for whose acts or omissions the Contractor is as between itself and the Principal responsible.

#### **10.3.6 Delete first sentence of 10.3.6 and replace with**

The Engineer may where practicable in lieu of granting an extension, taking into account the resources available to the Contractor, instruct the Contractor to accelerate the rate of working to offset in part or in total any delay in respect of which the extension would otherwise be granted under this 10.3.

#### **10.3.8 Add new 10.3.8**

Where there has been a delay to the Contract Works which does not entitle the Contractor to an extension of time pursuant to 10.3.1, the Contractor shall take all reasonable steps as the Engineer may, taking into account the resources available to the Contractor, instruct the Contractor to take to expedite progress by applying additional resources if necessary or working longer hours or in whatever other manner he or she may require. Any steps taken by the Contractor under 10.3.8 to expedite progress of the work shall not entitle the Contractor to claim a Variation.

#### **10.3.9 Add new 10.3.9**

The following rules shall apply to the Engineer's assessment of the Contractor's entitlement to an extension of time under 10.3.1:

(a) the event in respect of which the extension of time is sought must be one listed in 10.3.1;

- (b) the event in respect of which the extension of time is sought must have caused, or will cause, actual delay to Practical Completion of the Contract Works. No extension of time will be granted unless the delay has affected the critical path of the Contract Works such that Practical Completion cannot be achieved by the Due Date for Completion; and
- (c) where the Contractor suffers delay in completion of the Contract Works which is caused by two or more events, at least one of which entitles the Contractor to an extension of time ("Valid Event") and at least one of which does not entitle the Contractor to an extension of time ("Invalid Event"), the Contractor shall only be entitled to the period of extension attributable to the Valid Event(s) which exceeds any period of extension attributable to the Invalid Event(s).

#### **10.3.10 Add new 10.3.10**

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).

### **10.4 Practical Completion Certificate**

#### **10.4.2 Add to end of 10.4.2**

The Contractor shall provide notice in writing to the Principal and the Engineer at least 48 hours prior to any inspection confirming that:

- (a) a thorough inspection of the Contract Works has been made by the Contractor, with a copy of the defects list from that inspection and a copy of the relevant consultants' approval(s) attached;
- (b) all defects on the attached defects list have been remedied (or stating the reason(s) why any defects are outstanding and when these defects will be remedied);
- (c) the Contract Works are ready for inspection by the Engineer;
- (d) all necessary inspections of the Contract Works have been carried out by the relevant authority; and
- (e) any other Requirements as specified by the Special Conditions have been met.

#### **10.4.5 Add to the end of 10.4.5**

- (c) any other Requirements as specified by the Special Conditions have been met.

### **10.5 Damages for late completion**

#### **10.5.3 Add the following sentence to 10.5.3**

The Principal's entitlement to give notice to the Engineer in accordance with 12.2.4 and 12.5.2 requiring the deduction of liquidated damages shall not preclude the Engineer from including in his or her certification under 12.2.2(d) or 12.5.1(d) an assessment of liquidated damages payable in accordance with 10.5.1.

## **11 DEFECTS LIABILITY**

### **11.5 Warranties**

#### **11.5.2 Add ", Schedule 18" after "Schedule 13".**

**11.5.4 Add new 11.5.4:**

Notwithstanding any warranty provided by any Subcontractor (including suppliers) in accordance with this 11.5, and without limiting any obligation of the Contractor under the Contract or at law, the Contractor warrants to the Principal that the Contract Works listed in Appendix C shall be free from defects in materials or workmanship for the lesser of:

- (a) the Warranty Period stated in Appendix C; or
- (b) 10 years from the date of Practical Completion.

**12 PAYMENTS****12.2 Progress Payment Schedules****12.2.8 Add to the end of 12.2.8**

... or as otherwise provided in the Special Conditions.

**12.3 Retention Monies****12.3.1 Delete 12.3.1 and replace with**

The Principal shall retain out of the amount which would otherwise be payable to the Contractor, the defects liability retention. The Contractor acknowledges that the defects liability retention, recorded in 12.3.1, 12.3.2 in the Special Conditions, is 100% of the total retention. For clarity, it is agreed that the amount to be retained in respect of the Contract Works shall not be reduced upon the completion of any Separable Portion under 10.7.2.

**12.3.2 Delete 12.3.2(a)****12.3.3 Add to the end of 12.3.3 the following**

Where a bond in lieu of retentions is being provided, the Contractor:

- (a) will provide the bond to the Principal within 2 Months of the Date of Acceptance of Tender; and
- (b) acknowledges that no payment otherwise due under the Contract will become payable until the Contractor and its surety have executed and delivered the bond in lieu of retentions to the Principal.

**12.3.4 Add new 12.3.4**

The Principal has or will establish a bank account (**Retentions Account**) into which it will place all retentions from amounts payable to consultants, suppliers and contractors engaged by the Principal in connection with all construction work being undertaken by the Principal from time to time and for whom the Principal is required to hold such retentions on trust under the Construction Contracts Act 2002 (the **CCA**). Without limiting the rights and obligations of the parties under the CCA the parties agree as follows:

- (a) The Principal will hold the money in the Retentions Account on trust for all consultants, suppliers and contractors engaged by the Principal for whom:
  - (i) retentions apply under the terms of the relevant contract with such consultants, suppliers and contractors; and
  - (ii) the Principal is required to hold such retentions on trust under the CCA.

- (b) Where any monies are retained by the Principal in accordance with 12.3.1, the Principal will as soon as reasonably practicable after making such retention, pay the retained amount into Retentions Account.
- (c) The Principal may invest all or any of the retention monies in the Retentions Account and retain any returns received on such investment (including interest).
- (d) If the Principal does not pay the retention monies to the Contractor on the date that it is due to be paid to the Contractor under the Contract, the Principal will pay interest to the Contractor on the unpaid amount, at the rate specified in, and calculated in accordance with, 12.7.

**12.3.5 Add new 12.3.5**

The Contractor agrees that where it holds retentions from any Subcontractor:

- (a) it will hold such retentions on trust for the relevant Subcontractor(s) and will otherwise hold such funds in accordance with its obligations under the CCA, including using proper accounting practices to ensure that such retention moneys are easily identifiable; and
- (b) it has obligations under section 18FC of the CCA to keep proper accounting records of all retentions, and it will, upon request from the Principal, make the relevant accounting and other records available for inspection by the Principal at all reasonable times and without charge.

**12.5 Final Payment Schedule**

**12.5.9 Add to end of 12.5.9**

... or as otherwise provided in the Special Conditions.

**Add the following additional clauses**

**12.14 Set off**

The Principal shall be entitled in accordance with the process under 12.2.4 or 12.5.2, to set off against any sums that would otherwise be due to the Contractor under the Contract, whether certified by the Engineer or otherwise, amounts in respect of any claims against the Contractor, including damages for breach of contract by the Contractor.

**12.15 Right to make direct payments**

**12.15.1** Should the Principal have reasonable grounds to consider that the Contractor has defaulted in making payment to any Subcontractor in respect of any part of the Contract Works for which the Contractor has been paid by the Principal, the Principal may require that, within five Working Days of notification by the Principal to the Contractor, the Contractor:

- (a) obtains written confirmation from the Subcontractor that the Subcontractor has received all monies due and owing to it from the Contractor under the terms of the agreement between the Contractor and the Subcontractor; or
- (b) justifies to the Principal that the payment in question is the subject of a bona fide dispute; or
- (c) makes payment to the Subcontractor to the extent required by the agreement between the Contractor and the Subcontractor.

**12.15.2** If the Contractor fails to undertake one of the courses of action outlined in clause 12.15.1 within the time stipulated, the Principal shall have the right to pay that Subcontractor directly and deduct

such amount from any monies payable to the Contractor or otherwise recover the amount concerned from the Contractor.

**12.15.3** Any payment made by the Principal directly to a Subcontractor under this clause 12.15 shall be deemed to be in full satisfaction of any corresponding liability owed by the Principal to the Contractor.

12.15.4 The parties acknowledge that in the event of the Contractor:

- (a) becoming bankrupt; or
- (b) going into liquidation; or
- (c) having a receiver or statutory manager appointed; or
- (d) going into voluntary administration,

the Principal's rights under this 12.15 may be subject to, or impacted by, the receiver's, liquidator's, statutory manager's or administrator's (as applicable) rights and as such the Principal may not be able to exercise some or all of its rights under this 12.15.

## **14 FRUSTRATION AND DEFAULT**

### **14.2.1 Add sub-paragraph (d) as follows:**

The Engineer certifying in writing to the Principal that in his or her opinion the Contractor is in breach of any of its obligations under 5.7 or 5.17.

### **14.2.2 Add sub-paragraph (d) as follows:**

- (d) going into voluntary administration,

#### **Delete the fifth line and replace with:**

...and the assignee, liquidator, receiver, statutory manager or administrator fails within 10 Working Days to make arrangements satisfactory to the Principal for the execution of the Contract Works, the Principal may at its option, after giving notice to the Contractor, either terminate the Contract or resume possession of the Site.

### **Add new sections as follows**

## **16 DISCRETIONARY TERMINATION**

### **16.1 Principal's right to discretionary termination**

**16.1.1** The Principal may terminate the Contract at its discretion at any time until Practical Completion by written notice to the Contractor referring to this clause 16.1.1, and specifying the reason for the early termination.

**16.1.2** In the event of termination under 16.1.1, the provisions of 14.1.2 shall apply.

**17 CONFIDENTIALITY**

**17.1 Confidentiality**

**17.1.1** The Contractor and the Principal must use their best endeavours to keep confidential all matters relating to the Contract. The Contractor and the Principal must not disclose any information except to the extent that:

- (a) The disclosure of that information is necessary for either party to carry out its obligations under this Contract or to enforce any of its rights under it; or
- (b) That disclosure is required by law.

**17.1.2** Subject to 17.1.1(a) and (b), the Contractor and the Principal must keep confidential any claim or dispute under the Contract.

**17.1.3** The Contractor must not advertise its relations with the Principal or its involvement in the Contract Works without the written permission of the Principal.

**17.1.4** The Contractor must ensure that its Subcontractors are bound by a similar clause in any subcontract.

**18 PRIVACY OF CONTRACT**

**18.1 Privity**

**18.1.1** The obligations of the Contractor and any of its Subcontractors under the Contract shall, for the purposes of the Contracts and Commercial Law Act 2017, be deemed to be for the benefit of the School (including, its successors and assigns) and shall be enforceable by the School against the Contractor or any of its Subcontractors but not so as to impose any greater liability on the Contractor or its Subcontractors towards the School than the Contractor owes or owed to the Principal.

FOR REFERENCE ONLY

{ . . }, { . . }, [Project ID { . . }, ]Contract Number { . . }

**Add the following Appendix:**

**APPENDIX C – SUBCONTRACTOR WARRANTIES**

[NOT USED]

[The Warranty Period runs from the date of Practical Completion.

**[C.1 CHANGES/ADDITIONS TO STANDARD SUBCONTRACTOR WARRANTIES**

The standard subcontractor warranties in C.2 below are subject to the following changes/additions:

SUBCONTRACT WORKS		WARRANTY PERIOD
Trade and Item/Material	Type	New or amended warranty period
{ . . }	{ . . }	{ . . }
{ . . }		

]

**[C.2 STANDARD SUBCONTRACTOR WARRANTIES]**

SUBCONTRACT WORKS		WARRANTY PERIOD	
Trade	Item/Material	Material warranty period	Workmanship warranty period
<b>Carpentry</b>	Timber framing	15 years	5 years
	Engineered structural timber	15 years	5 years
<b>Cladding</b>	Brick veneer	15 years	5 years
	Stonework veneer	15 years	5 years
	Precast concrete	15 years	5 years
	Timber weatherboards	15 years	5 years
	Plywood	15 years	5 years
	Exterior finishing timbers	15 years	5 years
	Fibre cement	15 years	5 years
	Solid plaster	15 years	5 years
	Acrylic plaster	15 years	5 years
	Profiled Metal	15 years	5 years
	Curtain walling	15 years	5 years
	Aluminium panel	15 years	5 years
	Insulated panel system	15 years	5 years
	High pressure laminate	15 years	5 years
	Building wraps and underlays	15 years	5 years
<b>Concrete blockwork</b>		10 years	5 years
<b>Concrete</b>		10 years	5 years
<b>Drainage</b>	Stormwater reticulation	7 years	3 years
	Sanitary sewer reticulation	7 years	3 years
	Wastewater treatment vessel	15 years	5 years
	Wastewater treatment equipment	2 years	2 years
<b>Electrical</b>			

{ . . } - { . . }

	General electrical installation	2 years	2 years
	Lamps - LED	3 years	2 years
	Emergency light fittings	3 years	2 years
	PV panels	10 years	1 year
	Inverters	5 years	1 year
	Security system hardware	2 years	2 years
<b>Fire protection</b>			
	General sprinkler installation	2 years	2 years
	General fire alarm installation	2 years	2 years
	Sprinkler pump	2 years	2 years
	Fire extinguishers	5 years	N/A
	Water storage tanks	20 years	2 years
<b>Fire windows/doors/curtains</b>			
	Timber fire doors	5 years	1 year
	Steel fire doors	5 years	1 year
	Steel fire windows	5 years	1 year
	Fire and smoke curtains	5 years	1 year
<b>Floor coverings</b>			
	Carpet	10 years	2 years
	Vinyl surfacing	5 years	1 year
	Linoleum surfacing	5 years	1 year
	Rubber	3 years	1 year
	Resin	5 years	2 years
	Floor levelling	7 years	2 years
	Sports surfacing timber	5 years	2 years
	Sports surfacing synthetic	5 years	1 year
<b>Gas fitting</b>			
	Gas reticulation system	2 years	2 years
	Hot water heater	3 years	1 year
<b>Glazing</b>			
	Exterior glazing	10 years	N/A
	Interior glazing	10 years	N/A
	Glass balustrades	5 years	5 years
<b>Hardware</b>			
	Door furniture and hardware	5 years	1 year
	Window furniture and hardware	5 years	1 year
	Access control systems	1 year	1 year
<b>ICT</b>			
	Cable and system installation	2 years	2 years
	Cable rated performance	20 years	N/A
<b>Interior linings</b>			
	Plasterboard	10 years	2 years
	Fibre cement	15 years	2 years
	Plywood	10 years	2 years
	Acoustic wall panels	5 years	2 years
	Acoustic overlay	10 years	2 years
<b>Insulation</b>			
	Thermal and acoustic	15 years	5 years
	Rigid panel insulation	15 years	5 years

**Joinery**

Interior cabinetry and fixtures	3 years	1 year
Interior doors	5 years	1 year

**Lifts**

Equipment and operation	1 year	1 year
-------------------------	--------	--------

**Mechanical services**

General mechanical installation	2 years	2 years
Heat pump - indoor and outdoor units	5 years	2 years
Boiler	5 years	2 years
Pumps	5 years	2 years
Building management system	2 years	2 years
Radiators	20 years	2 years
Fans	5 years	2 years
Underfloor heating - piped	25 years	25 years
Dust extraction unit	2 years	2 years
Spray booth unit	2 years	2 years
Compressed air system unit	2 years	2 years

**Metal windows and doors**

Aluminium windows and doors	5 years	2 years
Steel windows and doors	5 years	2 years
Fluoropolymer coating	10 years	N/A
Polyester coating	10 years	N/A
Anodising	10 years	N/A

**Metalwork**

Fabrication	10 years	2 years
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**Operable Walls**

Operable Walls	1 year	1 year
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**Painting**

Exterior painting	5 years	2 years
Interior painting	5 years	2 years
Protective coatings to steelwork	6 years	3 years
Intumescent coatings to steelwork	6 years	2 years
Anti-Graffiti	5 years	2 years

**Plumbing**

General plumbing installation	2 years	2 years
Hot water cylinders	4 years	1 year
Boiling water units	3 years	1 year
Solar water heating collectors	3 years	1 year

**Proprietary partitions**

Compact laminate partitions	10 years	2 years
Hardware items	2 years	2 years

**Roller/tilt/sectional doors**

Commercial door unit	1 year	1 year
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**Roofing**

Profiled metal roofing	15 years	5 years
Metal roofing coating system	15 years	N/A
Modified bitumen membrane	15 years	5 years

	Synthetic plastic sheet membrane	15 years	5 years
	Translucent plastic roofing	15 years	5 years
	Roofing underlays	15 years	5 years
	Cappings and flashings	15 years	5 years
	Rainwater systems - metal	10 years	3 years
	Skylights and operating system	10 years	5 years
<b>Roof access systems</b>			
	Walkways / platforms / stairs	15 years	2 years
	Roof hatch	10 years	2 years
<b>Sealants</b>			
	Exterior	10 years	7 years
	Interior	10 years	7 years
<b>Signage</b>			
	Signage	5 years	1 year
<b>Siteworks</b>			
	Retaining walls - concrete, timber	10 years	5 years
	Retaining walls - proprietary	15 years	5 years
	Paving	5 years	1 year
	Asphalt paving	5 years	3 years
	Irrigation systems	5 years	3 years
	Synthetic sports surface	7 years	3 years
	Fencing	5 years	5 years
<b>Suspended ceilings</b>			
	Grid	15 years	3 years
	Acoustic panels	15 years	3 years
<b>Tanking</b>			
	Tanking membrane	20 years	5 years
<b>Tiling</b>			
	Wall and floor tiling	5 years	2 years
	Waterproofing membrane	15 years	5 years
<b>Window treatments</b>			
	Blinds	3 years	N/A
	Curtains	3 years	N/A

]

FOR

**Add the following Appendix:**

**APPENDIX D – HEALTH AND SAFETY REQUIREMENTS**

- (1) the Health and Safety at Work Act 2015 (**HSWA**);
- (2) all relevant Regulations made pursuant to the HSWA;
- (3) all approved codes of practice pursuant to the HSWA, to the extent relevant to the Contract Works;
- (4) all guideline publications issued by the HSWA Regulator, to the extent relevant to the Contract Works;
- (5) all relevant recognised standards as issued by any relevant standard issuing body;
- (6) the Principal's health and safety processes and procedures as revised from time to time and available on the Ministry of Education's website under the following link:  
<https://www.education.govt.nz/education-professionals/schools-year-0-13/health-and-safety/health-and-safety-ministry-led-property-projects>;

[[({ . . }) { . . }];]

FOR REFERENCE ONLY

**Add the following Appendix:**

**[ APPENDIX E – ENVIRONMENTAL REQUIREMENTS**

**E1** Not used]

[[{ . . }]

**[APPENDIX E – ENVIRONMENTAL REQUIREMENTS**

**E1 Waste Management Practices**

**E1.1** The Contractor shall ensure that its on-site waste management practices minimise the amount of construction and demolition waste going to disposal.

**E1.2** The Contractor shall ensure that at least 70% of construction and demolition waste by weight is reused and/or recycled. Records must be kept by the Contractor to demonstrate the actual percentage of waste reused and/or recycled by weight and these must be reported to the Principal, at quarterly intervals, throughout the construction phase of the project.

**E1.3** The Contractor shall, at a minimum and without limitation:

- (a) establish an on-site waste management area for the sorting and segregation of waste including colour-coded and clearly marked containers for various materials;
- (b) provide copies of waste disposal subcontracts for recycling including details of the costs for collection and timing of the collection service;
- (c) participate in, and shall ensure all Subcontractors (as applicable) participate in, applicable waste minimisation training as appropriate from time to time;
- (d) submit a waste minimisation plan to the Principal to identify how at least 70% of on-site construction waste by weight is to be reused and/or recycled;
- (e) keep records to demonstrate the actual percentage of waste recycled, including weight and volume of all wastes leaving the Site and the destination and/or name of recycler/waste hauler; and
- (f) provide waste skips or bins at the waste storage area for each of the following materials (some of these may be in combined skips provided evidence is provided to demonstrate that the waste contractor will separate these materials off-site):
  - (i) cardboard;
  - (ii) timber;
  - (iii) metal;
  - (iv) soft plastic;
  - (v) polystyrene;
  - (vi) insulation;
  - (vii) concrete;
  - (viii) glass; and
  - (ix) bricks.]

**[E2 Users' Guides**

**E2.1** The Contractor shall encourage and recognise information management that enables building users to optimise the school buildings' environmental performance.

{..}, {..}, [Project ID {..}, ]Contract Number {..}

- E2.2** The Contractor undertakes to develop and deliver the following information to the Principal, on or before Practical Completion, to optimise the environmental performance of the school buildings:
- (a) A Building Managers' Guide (**BMG**) which provides detailed information for building managers on the environmental features of the school buildings.
  - (b) A Building Users' Guide (**BUG**) which provides accessible information for building users on the environmental features of the school buildings.
  - (c) A communication strategy outlining how the information in the BUG will be communicated to end users of the school buildings (i.e. through the school website, building tours and staff induction programmes).]

[  
**E2** Not used]

FOR REFERENCE ONLY

**Add the following Appendix:**

**APPENDIX F – ASBESTOS HANDLING REQUIREMENTS**

Asbestos Handling Requirements as revised from time to time and available on the Ministry of Education’s website under the following link:

<https://www.education.govt.nz/education-professionals/schools-year-0-13/health-and-safety/managing-asbestos-schools>

FOR REFERENCE ONLY

**Add the following Appendix:****[APPENDIX G – COST FLUCTUATIONS**

Not used]

**[APPENDIX G – COST FLUCTUATIONS**

- 1 Cost fluctuation payments shall be calculated in accordance with the following provisions.
- 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 equation:

$$F = V \left( A + \frac{BL}{L'} + \frac{CM}{M'} + \frac{DP}{P'} \right) - V$$

where

F = Cost fluctuation adjustment for the month under consideration.

V = Valuation of work certified for payment as having been completed during the month under consideration, subject to clause 4 below, but without deduction of retentions and excluding the Cost fluctuation adjustment.

L = Labour Cost Index; Private Sector: Industry Group “Construction”: All Salary and Wage Rates: published by Statistics New Zealand for the quarter that includes the month under consideration.

L' = Index as defined under L but applying for the quarter in which the Contractor submitted its tender, quotation or proposal.

M = Producers Price Index; Inputs: Industry Group “Construction”: Published by Statistics New Zealand for the quarter that includes the month under consideration.

M' = Index as defined under M but applying for the quarter in which the Contractor submitted its tender, quotation or proposal.

P = Producers Price Index; Inputs: Industry Group “Transport, postal, and warehousing”: published by Statistics New Zealand for the quarter that includes the month under consideration.

P' = Index as defined under P but applying for the quarter in which the Contractor submitted its tender, quotation or proposal.

A = the proportion of V that is On-site Overheads and Off-site Overheads and Profit, expressed as a decimal.

B = the proportion of V that is labour Cost, expressed as a decimal.

C = the proportion of V that is Materials Cost, expressed as a decimal.

D = the proportion of V that is storage and transport Cost, expressed as a decimal.

- 3 The value of A, B, C and D shall be determined by the Engineer each time the Contractor claims a Cost fluctuation adjustment. When doing so, the Engineer shall have regard to the payment(s) to which the Cost fluctuation adjustment relates and the nature and scope of the Contract. The Contractor shall provide such information as the Engineer may reasonably require in connection with such determinations. For clarity, A + B + C + D shall equal 1.00.

- 4** For the purpose of calculating the Cost fluctuation adjustment, 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 Engineer's valuation. The Engineer shall also exclude the following from his/her calculation:

  - (a) any Cost that the parties have agreed to exclude from Cost fluctuation adjustments; and
  - (b) any Cost that the parties have agreed to adjust using a Cost fluctuations mechanism other than the one described in this Appendix.
- 5** No other Cost fluctuation adjustment will be made by reason of any inaccuracy in the A, B, C or D values.
- 6** The Contractor shall not be entitled to claim or have deducted any Cost fluctuation adjustment for any further changes in indices which occur after the Due Date for Completion.
- 7** The indices to be used in the calculation of fluctuation shall be those first published by Statistics New Zealand for the appropriate quarter.
- 8** Where indices for the quarter have not yet been published, interim payments will be made on the basis of the indices for the most recent quarter for which indices are available.
- 9** If at any time any of the indices referred to in clause 2 above are no longer published by Statistics New Zealand, or if the basis of either index is materially changed, the adjustment shall thereafter be calculated by using such other index, or in such other manner, as will fairly reflect the changes as previously measured by that index.
- 10** If V includes payment for work that was awarded to the Contractor in more than one quarter (as may occur if the works are 'staged', for example) and as a consequence the quarterly indices that apply to one part of the V value differ from those that apply to another part of the V value, the Engineer shall separately calculate the fluctuations adjustment for each part, using the quarterly indices applicable to each.]

{ . . }, { . . }, [Project ID { . . }, ]Contract Number { . . }

[Add the following Appendix:

**APPENDIX H – DOCUMENT REGISTER**

[Refer to the **attached** Document Register [[dated { . . }][Version { . . }]]]

[Refer to the **attached** Document Register <To be prepared and attached before contract signing>]]

FOR REFERENCE ONLY

{ . . }, { . . }, [Project ID { . . }, ]Contract Number { . . }

### Schedule 3 – Form of Contractor’s Performance Bond

**Contract for:** { . . }, Contract Number { . . }

**THIS DEED** is made on .....

**BY** .....

of ..... (*‘the Contractor’*)

**AND** .....

of ..... (*‘the surety’*)

..... (*Address of surety for service*)

#### IT IS MADE IN THE FOLLOWING CIRCUMSTANCES

- A** The Contractor has entered into an agreement with ..... (*‘the Principal’*) to carry out and fulfil the obligations imposed on the Contractor (*‘the Contract’*).
- B** The Contract requires the Contractor to provide the Principal with security in the form of a bond to ensure performance of the Contractor’s obligations under the Contract.
- C** Words and phrases with capital initial letters that are not otherwise defined in this bond shall have the meaning set out in the Contract.

#### BY THIS DEED

- 1.** **THE** Contractor and surety are jointly and severally held and bound to the Principal in the sum of \$NZ ..... and bind themselves, their successors and assigns jointly and severally for the payment of that sum.
- 2.** **THE** surety irrevocably and unconditionally undertakes to pay to the Principal any sum or sums which may, from time to time, be demanded in writing by the Principal, up to an aggregate amount not exceeding the sum stated in clause 1 above. The surety shall make payment forthwith upon demand by the Principal, without enquiry as to, and without having regard to, the position as between the Contractor and the Principal, or whether or not the Contractor is in default under the Contract. Payment will be made without reference to, and notwithstanding any instruction from the Contractor to the surety to the contrary.
- 3.** **ANY** notice by the Principal under this bond shall be deemed to have been properly given if signed by the Principal or on behalf of the Principal by any of its agents, directors, or employees and sent by registered mail or delivered by hand to the surety at the address stated in this bond for service.
- 4.** **THE** conditions of this bond are that it shall be released if and when:
  - (a) A Practical Completion Certificate has been issued for the Contract Works in accordance with 10.4 of the General Conditions; or
  - (b) The surety receives a notice from the Principal releasing the Contractor and surety from this bond.

{ . . }, { . . }, [Project ID { . . }, ]Contract Number { . . }

- 5. **EXCEPT** as provided in clause 4 above this bond shall be and remain in full force and effect.
- 6. **THE** surety shall not be released from any liability under this bond:
  - (a) By any alteration in the terms of the Contract;
  - (b) By any alteration in the extent or nature of the Contract Works to be completed, delivered, and having defects remedied;
  - (c) By any allowance of time by the Principal or by the Engineer appointed by the Principal under the Contract; or
  - (d) By any forbearance or waiver by the Principal or by the Engineer in respect of any of the Contractor's obligations or in respect of any default on the part of the Contractor.
- 7. **NOTWITHSTANDING** any other provision of this bond, the surety may at any time pay the Principal the bond sum less any sums it may have previously paid under the bond, or a lesser amount as may be required or specified by the Principal. When paid, the liability of the surety shall be at an end.
- 8. **THIS** bond shall be governed by New Zealand law.

In witness of which this deed has been executed and delivered.

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

Signature of director / attorney	Signature of director / attorney
Name of director / attorney	Name of director / attorney
Witnessed by:	Witnessed by:
Signature of witness	Signature of witness
Name of witness	Name of witness
City/town of residence of witness	City/town of residence of witness
Occupation of witness	Occupation of witness

{ . . }, { . . }, [Project ID { . . }, ]Contract Number { . . }

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

\_\_\_\_\_  
Signature of director / authorised signatory

\_\_\_\_\_  
Signature of director / authorised signatory

\_\_\_\_\_  
Name of director / authorised signatory

\_\_\_\_\_  
Name of director / authorised signatory

Witnessed by:

Witnessed by:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Name of witness

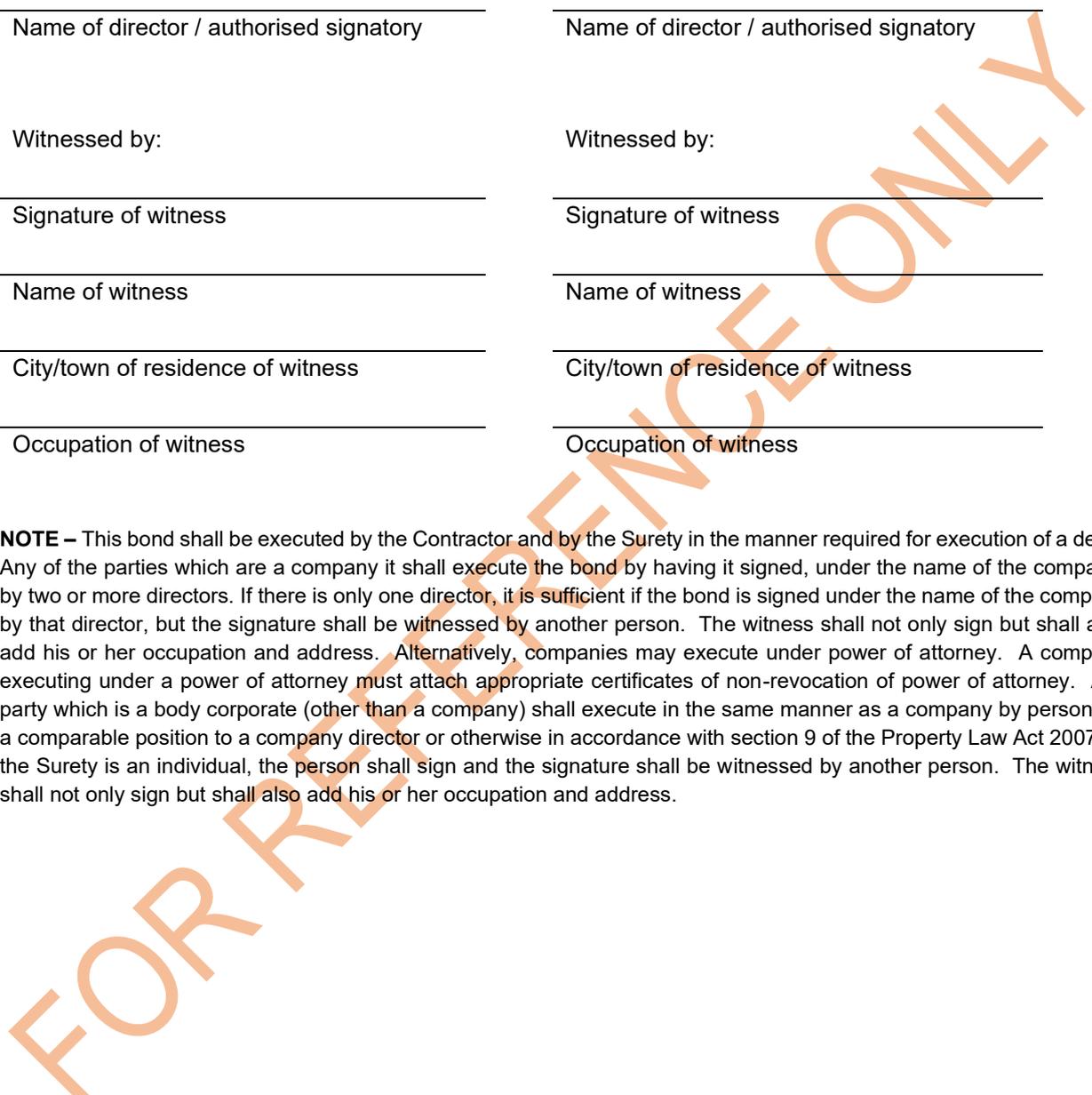
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City/town of residence of witness

\_\_\_\_\_  
City/town of residence of witness

\_\_\_\_\_  
Occupation of witness

\_\_\_\_\_  
Occupation of witness

**NOTE –** This bond shall be executed by the Contractor and by the Surety in the manner required for execution of a deed. Any of the parties which are 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 his or her occupation and address. Alternatively, companies may execute under power of attorney. A company executing under a power of attorney must attach appropriate certificates of non-revocation of power of attorney. Any party which is a body corporate (other than a company) shall execute in the same manner as a company by persons in a comparable position to a company director or otherwise in accordance with section 9 of the Property Law Act 2007. If the Surety is an individual, the person shall sign and the signature shall be witnessed by another person. The witness shall not only sign but shall also add his or her occupation and address.



## Schedule 4 – Form of Principal’s Bond

Not used

FOR REFERENCE ONLY

### Schedule 5 – Form of Contractor’s Bond in Lieu of Retentions

[Not used]

[Contract for: [Contract Name & Contract Number]

THIS DEED is made on .....

BY .....

of ..... (*'the Contractor'*)

AND .....

of ..... (*'the surety'*)

..... (*Address of surety for service*)

#### IT IS MADE IN THE FOLLOWING CIRCUMSTANCES

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

#### BY THIS DEED

- 1. **THE** Contractor and surety are jointly and severally held and bound to the Principal in the sum of \$NZ ..... and bind themselves, their successors and assigns jointly and severally for the payment of that sum.
- 2. **THE** surety irrevocably and unconditionally undertakes to pay to the Principal any sum or sums which may, from time to time, be demanded in writing by the Principal, up to an aggregate amount not exceeding the sum stated in clause 1 above. The surety shall make payment forthwith upon demand by the Principal, without enquiry as to, and without having regard to, the position as between the Contractor and the Principal, or whether or not the Contractor is in default under the Contract. Payment will be made without reference to, and notwithstanding any instruction from the Contractor to the surety to the contrary.
- 3. **ANY** notice by the Principal under this bond shall be deemed to have been properly given if signed by the Principal or on behalf of the Principal by any of its agents, directors, or employees and sent by registered mail or delivered by hand to the surety at the address stated in this bond for service.
- 4. **THE** conditions of this bond are that it shall be released if and when:
  - (a) A Final Completion Certificate has been issued for the Contract Works in accordance with 11.3 of the General Conditions; or
  - (b) The surety receives a notice from the Principal releasing the Contractor and surety from this bond.
- 5. **EXCEPT** as provided in clause 4 above this bond shall be and remain in full force and effect.

{ . . }, { . . }, [Project ID { . . }, ]Contract Number { . . }

- 6. **THE** surety shall not be released from any liability under this bond:
  - (a) By any alteration in the terms of the Contract;
  - (b) By any alteration in the extent or nature of the Contract Works to be completed, delivered, and having defects remedied;
  - (c) By any allowance of time by the Principal or by the Engineer appointed by the Principal under the Contract; or
  - (d) By any forbearance or waiver by the Principal or by the Engineer in respect of any of the Contractor's obligations or in respect of any default on the part of the Contractor.
  
- 7. **NOTWITHSTANDING** any other provision of this bond, the surety may at any time pay the Principal the bond sum less any sums it may have previously paid under the bond, or a lesser amount as may be required or specified by the Principal. Any such payment shall be deemed to have been made at the demand or request of the Principal and when paid, the liability of the surety shall be at an end.
  
- 8. **THIS** bond shall be governed by New Zealand law.

In witness of which this deed has been executed and delivered.

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

Signature of director / attorney	Signature of director / attorney
Name of director / attorney	Name of director / attorney
Witnessed by:	Witnessed by:
Signature of witness	Signature of witness
Name of witness	Name of witness
City/town of residence of witness	City/town of residence of witness
Occupation of witness	Occupation of witness

{ . . }, { . . }, [Project ID { . . }, ]Contract Number { . . }

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

\_\_\_\_\_  
Signature of director / authorised signatory

\_\_\_\_\_  
Signature of director / authorised signatory

\_\_\_\_\_  
Name of director / authorised signatory

\_\_\_\_\_  
Name of director / authorised signatory

Witnessed by:

Witnessed by:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Name of witness

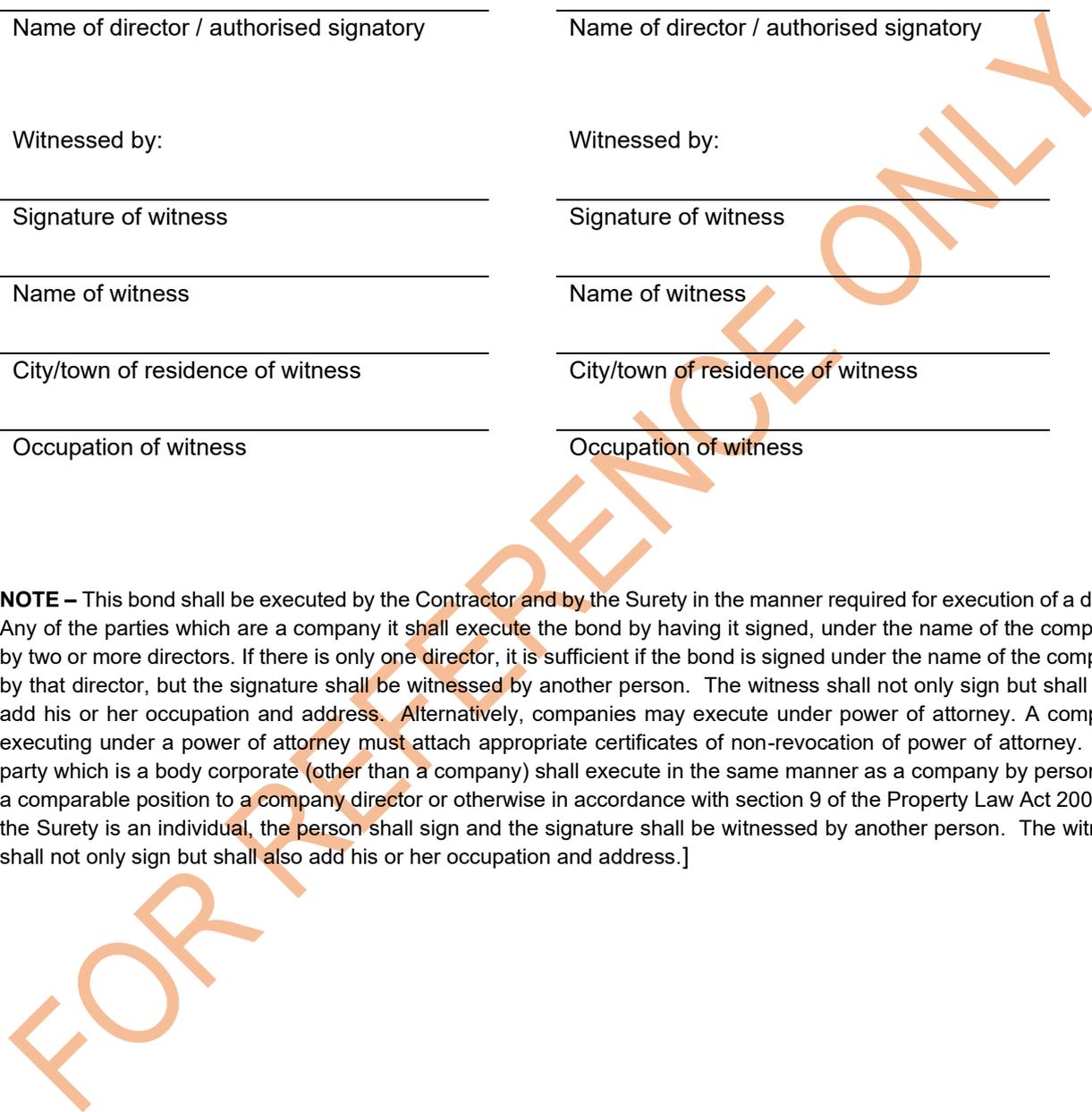
\_\_\_\_\_  
City/town of residence of witness

\_\_\_\_\_  
City/town of residence of witness

\_\_\_\_\_  
Occupation of witness

\_\_\_\_\_  
Occupation of witness

**NOTE –** This bond shall be executed by the Contractor and by the Surety in the manner required for execution of a deed. Any of the parties which are 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 his or her occupation and address. Alternatively, companies may execute under power of attorney. A company executing under a power of attorney must attach appropriate certificates of non-revocation of power of attorney. Any party which is a body corporate (other than a company) shall execute in the same manner as a company by persons in a comparable position to a company director or otherwise in accordance with section 9 of the Property Law Act 2007. If the Surety is an individual, the person shall sign and the signature shall be witnessed by another person. The witness shall not only sign but shall also add his or her occupation and address.]





## Schedule 7 – Information on Contractor arranged Construction Insurance

Not used

FOR REFERENCE ONLY

### Schedule 8 – Information on Contractor arranged Plant Insurance

**To whom it may concern:**

From ..... (Name of insurance company)

..... (Branch)

..... (Address)

We confirm having effected Plant insurance for:

..... (The Contractor)

In respect of ..... (Project title)

Policy wording title is .....

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

The following provisions apply:

Annual policy

Project specific policy

Policy expiry date .....

**8.4**

The sums insured are (GST exclusive):

All items of Plant

Sum insured

\$.....

OR

Valued schedule of construction Plant insured (copy attached)

The policy deductible (GST inclusive) is

\$.....

Policy cover terms included are:

**8.2.2**

Discretionary cancellation clause

Yes/No

**8.2.3(a)**

Reinstatement provision

Yes/No

**8.2.4**

Void *ab initio* for non-payment of premium without prior notification

Yes/No

{ . . }, { . . }, [Project ID { . . }, ]Contract Number { . . }

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.

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

**Insurance Company Stamp** .....

**Date** .....

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

**SIGNED BY** .....

**SIGNATORY TITLE** .....

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

FOR REFERENCE ONLY

### Schedule 9 – Information on Public Liability Insurance

**To whom it may concern:**

From ..... (Name of insurance company)

..... (Branch)

..... (Address)

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

..... (The Contractor)

..... (The Principal)

In respect of ..... (Project title)

Policy wording title is .....

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

The following provisions apply:

Annual policy

Project specific policy

Policy expiry date .....

**8.5, 8.9**

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

Sub-limit insured for (GST exclusive)

Vibration, removal or weakening of support \$.....

Underground services \$.....

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

Deductible for vibration, removal or weakening of support (GST inclusive) \$.....

Deductible for underground services (GST inclusive) \$.....

{ . . }, { . . }, [Project ID { . . }, ]Contract Number { . . }

The policy also covers liability arising out of:

The ownership/use of Plant not required to be registered for road use	Yes/No
The use of hired Plant	Yes/No
The ownership/use of watercraft over 8 m	Yes/No
The ownership/use of aircraft	Yes/No
The use of explosives	Yes/No

**8.2, 8.7**

Policy cover terms included are:

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

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

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

**Insurance Company Stamp** ..... **Date** .....

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

**SIGNED BY** .....

**SIGNATORY TITLE** .....

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

### 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 *ab initio* for non-payment of premium without prior notification Yes/No

No settlement delay due to exercise of subrogation Yes/No

{ . . }, { . . }, [Project ID { . . }, ]Contract Number { . . }

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.

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

**Insurance Company Stamp** ..... **Date** .....

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

**SIGNED BY** .....

**SIGNATORY TITLE** .....

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

FOR REFERENCE ONLY

{ . . }, { . . }, [Project ID { . . }, ]Contract Number { . . }

### Schedule 11 – Information of Contractor arranged Professional Indemnity Insurance

To whom it may concern:

From ..... (Name of insurance company)  
..... (Branch)  
..... (Address)

We confirm having effected professional indemnity insurance for:  
..... (The Contractor)

In respect of ..... (Project title)

Policy wording title is .....

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

The following provisions apply:

Annual policy                       Project specific policy

Policy expiry date .....

#### 8.6.1

The limit of indemnity (GST exclusive) \$..... any one occurrence  
\$..... in the aggregate during the period of insurance.  
Deductible (GST inclusive) \$.....

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

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

**Insurance Company Stamp** ..... **Date** .....

(Or name of insurance broking company confirming cover)

**SIGNED BY** .....

**SIGNATORY TITLE** .....

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

### Schedule 12 – Information on Principal arranged Construction Insurance

**To whom it may concern:**

From ..... (Name of insurance company)

..... (Branch)

..... (Address)

We confirm having effected insurance for:

..... (The Principal)

..... (Covering property at)

..... (Class of insurance)

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:

- Material damage/construction project specific policy
- Annual run-off policy
- Annual cut-off policy

Policy expiry date .....

**8.1.6**

The following forces of nature are insured:

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> landslip              | <input type="checkbox"/> earthquake          | <input type="checkbox"/> tsunami           |
| <input type="checkbox"/> tornado               | <input type="checkbox"/> cyclone             | <input type="checkbox"/> storm             |
| <input type="checkbox"/> flood                 | <input type="checkbox"/> lightning strike    | <input type="checkbox"/> volcanic activity |
| <input type="checkbox"/> hydrothermal activity | <input type="checkbox"/> geothermal activity |  |

{ . . }, { . . }, [Project ID { . . }, ]Contract Number { . . }

**8.8.4**

Construction period from ..... to.....

Insurance maintenance .....  
period

**8.8.1**

This policy has been endorsed to record as an additional insured:

The Contractor ..... Yes/No

Subcontractors ..... Yes/No

The sums insured are (GST exclusive):

**8.8.2(a)** Existing structure \$.....

**8.8.2(b)** Other structures in the vicinity \$.....

**8.8.2(c)** Contents \$.....

**8.3.3** Contract Price \$.....

**8.3.3(a)** Costs of demolition \$.....

**8.3.3(b)** Professional fees \$.....

**8.3.3(c)** Value of items to be incorporated \$.....

**8.3.3(d)** An allowance for an increase in construction costs \$.....

**8.3.3(e)** An allowance for increased reconstruction costs \$.....

**TOTAL SUM INSURED** \$.....

**8.1.4** The policy deductibles are (GST inclusive):

Non-earthquake \$.....

Natural disaster .....% of ..... minimum of \$.....

Other (name) ..... \$.....

*Where more than one policy is involved in insuring all of the above items a separate Schedule 12 shall be completed for each policy.*

{ . . }, { . . }, [Project ID { . . }, ]Contract Number { . . }

Policy cover terms included are:

- 8.2.2** Discretionary cancellation clause Yes/No
- 8.2.3** Reinstatement provision on building and contents Yes/No
- 8.2.3** Severally insured Yes/No
- No settlement delay due to exercise of subrogation Yes/No
- 8.2.4** Void *ab initio* for non-payment of premium without prior notification Yes/No
- 8.8.2** Covers damage arising out of the Contract Works Yes/No

Policy extensions included are:

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

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

**Insurance Company Stamp** ..... **Date** .....

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

**SIGNED BY** .....

**SIGNATORY TITLE** .....

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

**Special Terms:**

**HOT WORKS WARRANTY**

It is warranted that in respect of Hot Work the following precautions will be complied with on each occasion:

1. the area of the work will be cleared of combustible material for a safe distance from or beneath the place where such work is being carried out. A safe distance will be not less than six metres when welding or cutting operations are carried out. Where such precautions are impracticable such material will be covered with fireproof blankets or similar protective equipment. Combustible parts of premises will be similarly protected;
2. the work will be carried under the supervision of the site foreman, or equivalent designated person;
3. a hose reel or fire extinguisher of a type and capacity suitable for the combustible material and the premises will be kept immediately adjacent to the area of work and available for immediate use;
4. equipment will be lit or switched on for as short a time as possible before use and extinguished immediately after use;
5. lighted or heated equipment will not be left unattended;
6. a thorough examination for any signs of combustion will be made within or below the area in which work has been undertaken half an hour after the termination of each period of work;
7. before applying heat to metal built into or projecting through walls, floors or ceilings an examination will be made to ensure that the other end of the metal is not in hazardous proximity to combustible material.

'Hot Work' means work such as:

- grinding, cutting or welding operations;
- use of blow lamps and torches;
- application of hot bitumen; or
- any other heat producing operation.

{ . . }, { . . }, [Project ID { . . }, ]Contract Number { . . }

### Schedule 13 – Form of Subcontractor Warranty

**Contract for:** { . . }, Contract Number { . . }

**THIS AGREEMENT** is made on ..... (*insert date*)

**BETWEEN** The Secretary for Education (*“the Principal”*)

**AND** ..... (*“the Warrantor”*)

#### DEFINITIONS

‘Warranted Works’ .....

‘Warranty Period’ ..... years from the date of Practical Completion of the Contract Works

‘Contractor’ { . . }

#### BACKGROUND

- A** The Principal has entered into a contract (the ‘Contract’) with the Contractor for carrying out the Contract Works. The Warranted Works are part of the Contract Works.
- B** The Contractor has agreed to arrange for the provision of a warranty in respect of the Warranted Works for the Warranty Period on the terms set out in this warranty.
- C** The Warrantor has agreed to provide a warranty in respect of the Warranted Works for the Warranty Period on the terms set out in this warranty.
- D** Words and phrases with capital letters that are not otherwise defined in this warranty shall have the meaning set out in the Contract.

#### IT IS HEREBY AGREED

- 1** The Warrantor warrants to the Principal that the Warranted Works are as required in the Contract. If not otherwise specified the works shall be in accordance with good trade practice.
- 2** This warranty shall be in addition to and shall not derogate from any manufacturer’s warranty or any warranty implied by law or the Defects Notification Period in the Contract, attaching to any part of the Warranted Works.

#### **3 Warrantor’s obligations**

##### **3.1**

The Warrantor agrees that, if within the Warranty Period the Warrantor is advised by the Principal in writing of any defect in the Warranted Works for which the Warrantor is liable under the terms of this warranty, the Warrantor will promptly take steps to remedy the defect.

##### **3.2**

Any remedial work which the Warrantor is liable to undertake under this warranty shall be carried out:

- (a) To the standard required by the Contract;
- (b) In a prompt and timely manner;
- (c) Without unnecessary inconvenience to any occupants;

- (d) At the Warrantor's Cost; and
- (e) Subject to reasonable access being provided to the Warrantor for the purpose of carrying out the remedial work.

#### **4 Failure by Warrantor to perform remedial work**

##### **4.1**

If the Warrantor fails to promptly, adequately and satisfactorily carry out the remedial work, the Principal may then arrange for the remedial work to be carried out by others.

##### **4.2**

The Principal shall first give the Warrantor 10 Working Days' notice, or such other reasonable time as agreed by the Principal, to carry out and complete the remedial work. If the Warrantor does not do so within that time, the Principal may then advise the Warrantor in writing that the work will be carried out by other Persons.

##### **4.3**

In such an event, the Warrantor is not released from its obligations under this warranty, which continue in full force and effect, except for the defect remedied by the Principal or by another Person contracted by the Principal.

##### **4.4**

The reasonable Cost of remedial work carried out by such other Persons including all reasonable Costs of the Principal shall be paid to the Principal by the Warrantor on demand.

#### **5 Exclusions**

The Principal agrees that the Warrantor is not liable for any defect or damage caused by:

- (a) Wilful act or negligence of the Principal or any Person other than the Warrantor;
- (b) Fire, explosion, earthquake, war, subsidence, and land slips;
- (c) Any force of nature which the Warrantor could not have reasonably foreseen;
- (d) Any neglect or unnecessary delay by the Principal in giving notice to the Warrantor of a defect in the Warranted Works becoming apparent;
- (e) Design faults, errors, or discrepancies, unless the Warrantor undertook the design of the part of the Warranted Works that is the subject of the defect;
- (f) Use of the Warranted Works by the Principal or any other Person in any manner or for any purpose not being the intended manner of use or purpose of the Warranted Works;
- (g) Failure by the Principal or other Person to maintain the Warranted Works in accordance with good practice and any manufacturer's stated or recommended instructions or requirements; or
- (h) Fair wear and tear.

#### **6 Assignment**

The Principal may assign the benefit of this warranty to any Person.

#### **7 Disputes**

Any dispute between the Principal and the Warrantor arising out of this warranty is to be referred to arbitration before a sole arbitrator. If, within 15 Working Days of notice of dispute, the Principal and the Warrantor

{ . . }, { . . }, [Project ID { . . }, ]Contract Number { . . }

cannot agree on a single arbitrator, either party may request the President of the Arbitrators' and Mediators' Institute of New Zealand to appoint an arbitrator.

In witness of which this deed has been executed and delivered.

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

\_\_\_\_\_  
Signature of director / authorised signatory

\_\_\_\_\_  
Signature of director / authorised signatory

\_\_\_\_\_  
Name of director / authorised signatory

\_\_\_\_\_  
Name of director / authorised signatory

Witnessed by:

Witnessed by:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

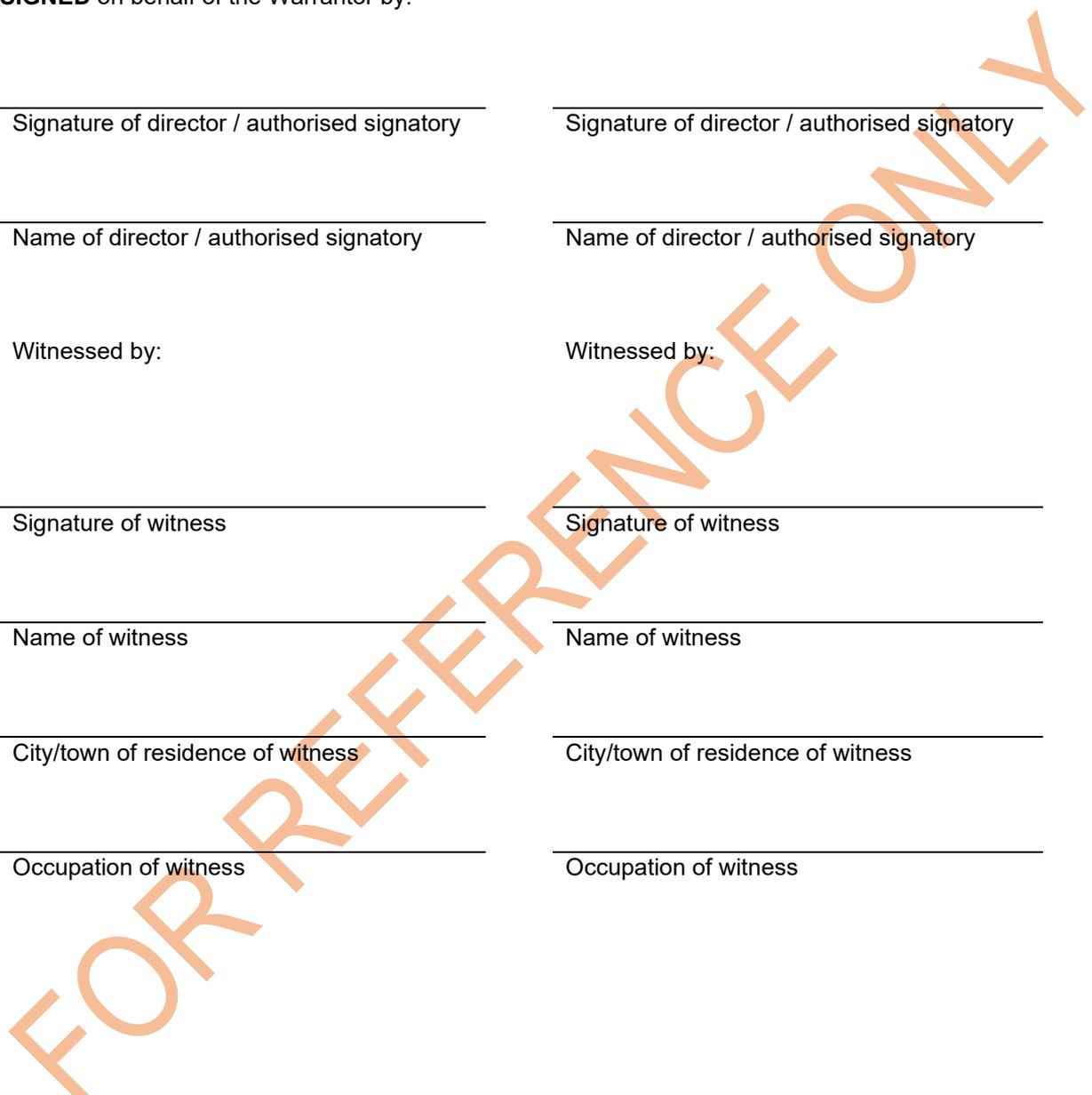
\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
City/town of residence of witness

\_\_\_\_\_  
City/town of residence of witness

\_\_\_\_\_  
Occupation of witness

\_\_\_\_\_  
Occupation of witness



{ . . }, { . . }, [Project ID { . . }, ]Contract Number { . . }

**SIGNED** for and on behalf of the Principal by:

\_\_\_\_\_  
Signature of authorised signatory

\_\_\_\_\_  
Name of authorised signatory

Witnessed by:

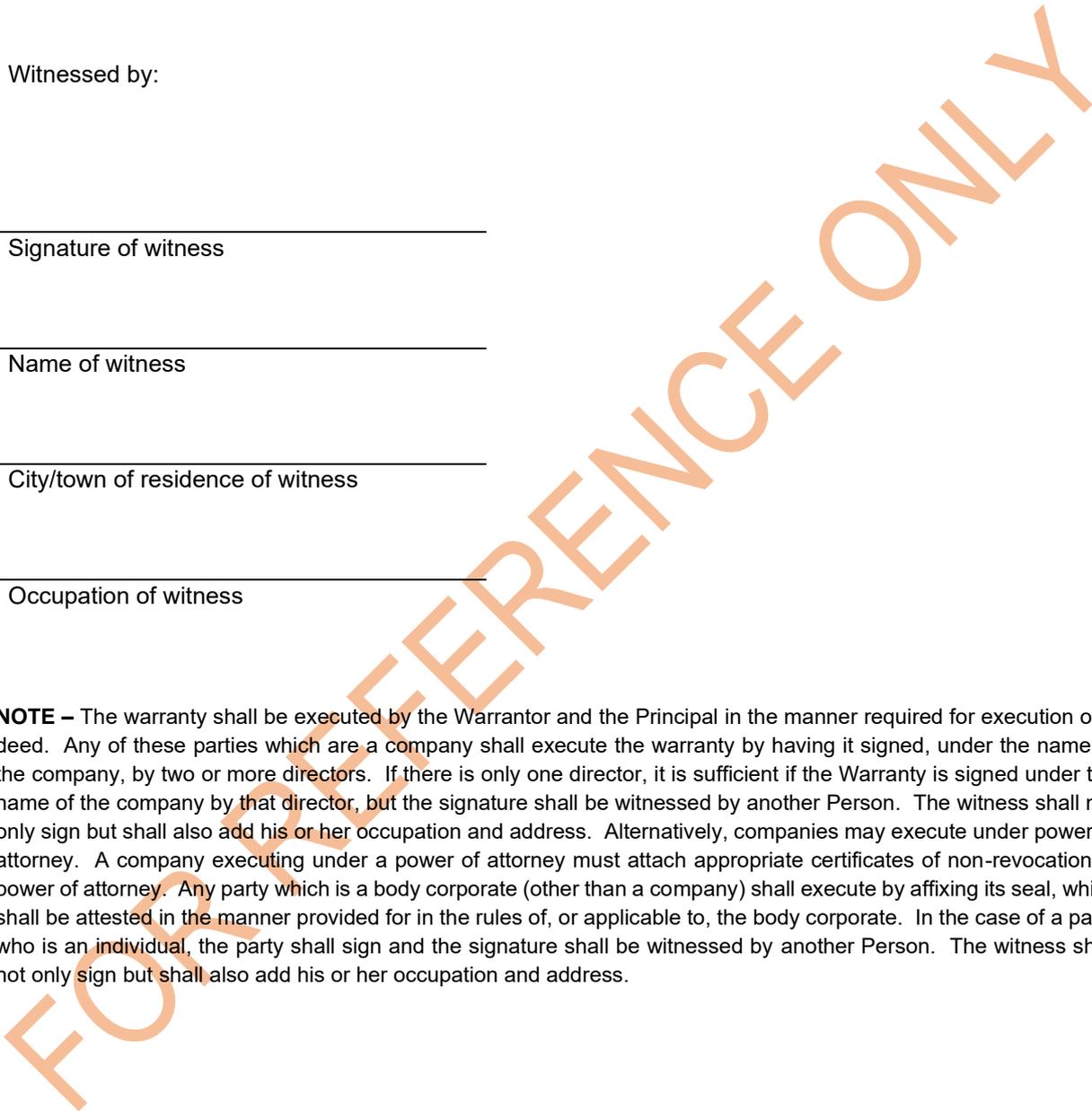
\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
City/town of residence of witness

\_\_\_\_\_  
Occupation of witness

**NOTE** – The warranty shall be executed by the Warrantor and the Principal in the manner required for execution of a deed. Any of these parties which are a company shall execute the warranty 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 Warranty is signed under the name of the company by that director, but the signature shall be witnessed by another Person. The witness shall not only sign but shall also add his or her occupation and address. Alternatively, companies may execute under power of attorney. A company executing under a power of attorney must attach appropriate certificates of non-revocation of power of attorney. Any party which is a body corporate (other than a company) shall execute by affixing its seal, which shall be attested in the manner provided for in the rules of, or applicable to, the body corporate. In the case of a party who is an individual, the party shall sign and the signature shall be witnessed by another Person. The witness shall not only sign but shall also add his or her occupation and address.



{ . . }, { . . }, [Project ID { . . }, ]Contract Number { . . }

**Schedule 14 – Agreement for Off-site Materials**

**Contract for:** { . . }, Contract Number { . . }

**THIS AGREEMENT** is dated the .....day of ..... 20.....

**BETWEEN** The Secretary for Education (*“the Principal”*)

**AND** { . . } (*“the Contractor”*)

**AND** ..... (*“the Subcontractor”*)



**INTRODUCTION**

- A** By a contract dated the .....day of .....20..... and known as ..... (*“the Contract”*) made between the Principal and the Contractor, the Contractor agreed to carry out the work and obligations imposed on the Contractor by the Contract (*“the Contract Works”*).
- B** The Contractor and the Subcontractor have entered into a subcontract for the performance of part of the Contract Works and/or the supply of Materials described in Schedule A to this agreement (*“the Materials”*) and intended to be used by the Contractor and/or the Subcontractor in the Contract Works.
- C** The Contractor or the Subcontractor (as nominated in Schedule C) (*“the Bailee”*) 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 Engineer to certify payment for the Materials notwithstanding that the Materials have not been delivered to the Site.
- E** The Principal has agreed to authorise the Engineer to certify payment for the Materials, notwithstanding that the Materials have not been delivered to the 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:

  - (c) Where the Principal takes possession of any Materials under clause 5(b) above, and the Contractor thereby suffers delay or the Contractor or the Subcontractor incurs additional cost, the taking of possession shall be treated as a Variation under the Contract, unless the taking of possession is pursuant to clauses 14.2.1 or 14.2.2 of the Contract; and
  - (d) Where the Principal takes possession of any Materials under clause 5(b) above, and additional work has been carried out on those Materials since being paid for by the Principal, the Principal shall pay the Contractor for that additional work in accordance with the Contract before taking possession of the Materials.
6. **THE** Engineer, upon being satisfied that the Materials have been set apart and marked as required by this agreement, and upon the Contractor providing satisfactory evidence that the requirements of clauses 12 and 20 below have been fully satisfied, shall include in any Payment Schedule issued by the Engineer under the Contract a sum representing the reasonable value of such Materials calculated in accordance with the Contract.
7. **UPON** the Principal having made payment for the Materials, less any retentions or deductions prescribed in the Contract, title to such Materials shall immediately vest in the Principal free of all security interests, charges and encumbrances of any nature whatsoever.

{ . . }, { . . }, [Project ID { . . }, ]Contract Number { . . }

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

{ . . } - { . . }

{ . . }, { . . }, [Project ID { . . }, ]Contract Number { . . }

- (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; and
- (b) Effect a transit insurance policy for transit of all the Materials from the Premises to the Site in the name of the Principal to the satisfaction of the Principal, as provided in 8.2.1 of the Contract for the full duration of the off-site storage.

20. **WITHIN** 15 Working Days of the date of this agreement, the Bailee shall furnish the Principal and the Contractor with evidence of such insurance.

21. **THE** Bailee represents and warrants to the Principal and to the Contractor (where applicable) that:

- (a) It has good and clear title to the Materials;
- (b) It has the ability to assign and transfer the Materials to the Principal or the Contractor; and
- (c) The Materials will be transferred to the Principal or the Contractor free of any security interest.

22. **THE** Bailee undertakes that, if it charges or mortgages all or any part of its property (either real or personal), assets, or undertaking, it will obtain written confirmation from the 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).

23. **NOTHING** in this agreement shall be deemed to limit, waive, or affect the Engineer's powers under the Contract to order the removal from the 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 Engineer and/or the Principal under the Contract.

24. **EACH** party shall pay its own costs of and incidental to the negotiation, preparation, execution, and any amendment of this agreement.

25. **WORDS** and phrases in this agreement shall have the same meanings as are ascribed to them under the Contract except where the context or any express provision of this agreement requires otherwise.

**SIGNED BY**.....(Authorised Signatory) of  
.....(Principal)

**SIGNED BY**.....(Director / Authorised Signatory)  
of .....(Contractor)

**SIGNED BY**.....(Director / Authorised Signatory)  
of .....(Subcontractor)

{ . . }, { . . }, [Project ID { . . }, ]Contract Number { . . }

### Schedule 15 – Practical Completion Certificate

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

**Contract for** { . . } (Contract Number { . . })  
**Principal** The Secretary for Education  
**Contractor** { . . }

This certificate relates to:

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

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

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

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

Practical Completion was achieved

on ..... (insert date) at ..... (insert time).

Signed by the Engineer .....

Name .....

Date .....

#### SCHEDULE

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

(list minor omissions and defects) .....  
.....  
.....  
.....

{ . . }, { . . }, [Project ID { . . }, ]Contract Number { . . }

### Schedule 16 – Final Completion Certificate

This certificate is a Final Completion Certificate issued under 11.3.1.

**Contract for** { . . } (Contract Number { . . })  
**Principal** The Secretary for Education  
**Contractor** { . . }

This certificate relates to:

(a) The whole of the Contract Works referred to above;

(b) The following Separable Portion .....  
(specify)

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

on ..... (insert date) at ..... (insert time).

Signed by the Engineer .....

Name .....

Date .....

FOR REFERENCE ONLY

{ . . . }, { . . . }, [Project ID { . . . }, ]Contract Number { . . . }

### Schedule 17 – Form of Continuity Guarantee

**Contract for:** { . . . } (Contract Number { . . . })

**THIS DEED** is made on ..... day of ..... 20.....

**BY** ..... ('the Subcontractor')

**IN FAVOUR OF The Secretary for Education ('the Principal')**

#### IT IS MADE IN THE FOLLOWING CIRCUMSTANCES

- A.** By an agreement dated the ..... day of ..... 20..... ('the Contract') made between the Principal and { . . . } ('the Contractor'), the Contractor agreed to carry out the obligations imposed upon the Contractor by the Contract.
- B.** The Contractor has with the consent of the Principal subcontracted part of the work to be carried out under the Contract to the Subcontractor ('the Subcontract Works').
- C.** The Contractor has agreed to procure a continuity guarantee in respect of the Subcontract Works on the terms set out in this guarantee.
- D.** The Subcontractor has agreed to provide a continuity guarantee in respect of the Subcontract Works on the terms set out in this guarantee.

#### BY THIS DEED

- 1.** **THE** Subcontractor agrees that in the event of the employment of the Contractor being determined under the Contract, the Subcontractor will, if required by the Principal, complete the Subcontract Works under the same conditions and for the same consideration as originally agreed between the Contractor and the Subcontractor. The Principal's obligations for payment under those conditions shall apply from the date of issue of the requirement by the Principal under this clause.
- 2.** **THE** Subcontractor acknowledges that it has read and fully understands the provisions of the Contract.
- 3.** **ANY** dispute between the Principal and the Subcontractor arising out of this guarantee, shall be referred to arbitration in accordance with the provisions of the Arbitration Act 1996 or any statutory re-enactment or modification of that Act.
- 4.** **THE** dispute shall be referred to a sole arbitrator agreed by both the Principal and the Subcontractor. If the Principal and Subcontractor cannot agree then a sole arbitrator shall be appointed pursuant to the procedures set out in the Arbitration Act 1996.

In witness of which this deed has been executed and delivered.

{ . . }, { . . }, [Project ID { . . }, ]Contract Number { . . }

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

_____ Signature of director / authorised signatory	_____ Signature of director / authorised signatory
_____ Name of director / authorised signatory	_____ Name of director / authorised signatory
Witnessed by:	Witnessed by:
_____ Signature of witness	_____ Signature of witness
_____ Name of witness	_____ Name of witness
_____ City/town of residence of witness	_____ City/town of residence of witness
_____ Occupation of witness	_____ Occupation of witness

**NOTE** – This guarantee shall be executed by the Subcontractor in the manner required for execution of a deed. If the Subcontractor is a company it shall execute the guarantee 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 guarantee is signed under the name of the company by that director, but the signature shall be witnessed by another person. The witness shall not only sign but shall also add his or her occupation and address. Alternatively, companies may execute under power of attorney. A company executing under a power of attorney must attach appropriate certificates of non-revocation of power of attorney. Any party which is a body corporate (other than a company) shall execute in the same manner as a company by persons in a comparable position to a company director or otherwise in accordance with section 9 of the Property Law Act 2007. If the Subcontractor is an individual, the person shall sign and the signature shall be witnessed by another person. The witness shall not only sign but shall also add his or her occupation and address.

{ . . }, { . . }, [Project ID { . . }, ]Contract Number { . . }

### Schedule 18 – Form of Contractor's Weathertightness Warranty

[Not used]

[Contract for: { . . } (Contract Number { . . })]

**THIS DEED** is made on ..... day of ..... 20.....

**BY** { . . } ('the Contractor')

**IN FAVOUR OF THE SECRETARY FOR EDUCATION** ('the Principal')

#### IT IS MADE IN THE FOLLOWING CIRCUMSTANCES

- A** By an agreement dated the ..... day of .....20 ..... ('the Contract') made between the Principal and the Contractor, the Contractor agreed to carry out and complete the Contract Works.
- B** The Contract requires the Contractor to provide the Principal with a weathertightness warranty on the terms set out in this warranty.
- C** Words and phrases with capital initial letters that are not otherwise defined in this warranty shall have the same meaning as set out in the Contract.

#### BY THIS DEED

- 1. THE** Contractor warrants that the Contract Works when completed shall be weathertight in accordance with the Contract and best New Zealand industry standards, and shall remain weathertight for a period of 10 years from the date of Practical Completion ('the Warranty Period').
- 2. THE** Contractor indemnifies the Principal in respect of all costs, losses and liabilities incurred by the failure of the Contract Works to remain weathertight in accordance with the Contract and best New Zealand industry standards, or by any failure by the Contractor to meet its obligations under this warranty.
- 3. THIS** warranty is in addition to and shall not derogate from any manufacturer's warranty or any warranty implied by law, attaching to any part of the Contract Works.
- 4. THE** Contractor shall promptly takes steps to remedy or procure the remedy of defects and damage in the Contract Works arising from any failure of the Contract Works to remain weathertight in accordance with the Contract and best New Zealand industry standards, and which are notified in writing by the Principal to the Contractor during the Warranty Period.
- 5. ANY** remedial work which the Contractor is required to undertake under this warranty shall be carried out:
  - (a) to the standard required by the Contract;
  - (b) to the reasonable satisfaction of the Principal;
  - (c) without unnecessary inconvenience to any occupants;
  - (d) at the Contractor's cost; and
  - (e) subject to reasonable access being provided to the Contractor for the purpose of carrying out the Remedial Works.

6. **THE** Contractor shall make good any damage to buildings or structures in the vicinity of the Contract Works caused by:
  - (a) a failure of the Contract Works to remain weathertight in accordance with the Contract and best New Zealand industry standards; or
  - (b) any remedial works carried out by or on behalf of the Contractor under this warranty.
7. **THE** Contractor shall remedy the defects and damage notified by the Principal under this warranty within 14 Working Days of receipt of the Principal's notice or within such other reasonable time as determined by the Principal (at its discretion) as may be stated in writing in the Principal's notice under this clause.
8. **IF** the Contractor fails to adequately and satisfactorily carry out any work notified by the Principal under this warranty within the time required under clause 7, the Principal may, after giving 5 Working Days' further written notice to the Contractor, undertake the work itself or direct others to undertake the work. In such event:
  - (a) the Contractor shall not be relieved of any of its obligations under this warranty; and
  - (b) the cost of the work undertaken by the Principal or others (including without limitation labour, materials, travel and other charges or expenses related to the work) shall be recoverable by the Principal from the Contractor on demand.
9. **THE** Principal agrees that the Contractor is not liable for any defect or damage caused by:
  - (a) wilful act or negligence of the Principal or any Person (other than the Contractor or any third party (including any Subcontractor) for whom the Contractor is responsible);
  - (b) fire, explosion, earthquake, war, subsidence, and land slips, except where caused by a defect in the Contract Works or otherwise by the actions of the Contractor or any Person for whom, as between the Principal and the Contractor, the Contractor is responsible;
  - (c) any force of nature which the Contractor could not have reasonably foreseen;
  - (d) any neglect or unnecessary delay by the Principal in giving notice to the Contractor of any defect or damage in the Contract Works becoming apparent;
  - (e) use of the Contract Works by the Principal or any other Person (other than the Contractor or any third party (including any Subcontractor) for whom the Contractor is responsible) in any manner or for any purpose not being the intended manner of use or purpose of the Contract Works;
  - (f) failure by the Principal or other Person to maintain the Contract Works in accordance with accepted practice (having regard to the relevant works and usual industry practice), and any manufacturer's stated or recommended instructions or requirements which have been brought to the attention of the Principal by the Contractor; or
  - (g) fair wear and tear.
10. **NOTICES** given to the Contractor under this warranty are deemed to have been effectively served on the Contractor if given in accordance with the notice requirements in the Contract.
11. **THE** Principal may assign the benefits and rights under this warranty.
12. **THIS** warranty is governed by the laws of New Zealand.
13. **THE** Contractor's maximum aggregate liability for all claims under or in connection with this warranty and the Contract (whether in contract, tort (including negligence) or otherwise) shall be limited to the amount stated in 7.2.1 of the Contract, subject to the exclusions set out in 7.2.2 of the Contract.

{ . . }, { . . }, [Project ID { . . }, ]Contract Number { . . }

In witness of which this deed has been executed and delivered.

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

\_\_\_\_\_  
Signature of director / authorised signatory

\_\_\_\_\_  
Signature of director / authorised signatory

\_\_\_\_\_  
Name of director / authorised signatory

\_\_\_\_\_  
Name of director / authorised signatory

Witnessed by:

Witnessed by:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
City/town of residence of witness

\_\_\_\_\_  
City/town of residence of witness

\_\_\_\_\_  
Occupation of witness

\_\_\_\_\_  
Occupation of witness

**NOTE** – This warranty shall be executed by the Contractor in the manner required for execution of a deed. If the Contractor is a company it shall execute the warranty 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 warranty is signed under the name of the company by that director, but the signature shall be witnessed by another person. The witness shall not only sign but shall also add his or her occupation and address. Alternatively, companies may execute under power of attorney. A company executing under a power of attorney must attach appropriate certificates of non-revocation of power of attorney. Any party which is a body corporate (other than a company) shall execute in the same manner as a company by persons in a comparable position to a company director or otherwise in accordance with section 9 of the Property Law Act 2007. If the Contractor is an individual, the person shall sign and the signature shall be witnessed by another person. The witness shall not only sign but shall also add his or her occupation and address.]

## Schedule 19 – Form of Parent Company Guarantee

[Not used]

[Contract for: { . . } (Contract Number { . . })]

THIS DEED is made on ..... day of ..... 20.....

BY [**<To be completed>**] (*‘the Guarantor’*)

of [**<To be completed>**] (*Address of Guarantor for service*)

### IT IS MADE IN THE FOLLOWING CIRCUMSTANCES

- A { . . } (*‘the Contractor’*) has entered into an agreement with the Sovereign in right of New Zealand acting by and through the Secretary for Education (*‘the Principal’*) to carry out and fulfil the obligations imposed on the Contractor (*‘the Contract’*).
- B The Contract requires the Contractor to deliver up this deed to the Principal.
- C The Guarantor wishes to enter into this deed to enable the Contractor to comply with its obligations under the Contract, and in consideration of the Principal agreeing to enter into the Contract with the Contractor.

### BY THIS DEED

1. IN this deed:
  - (a) the term **Guaranteed Obligations** means all actual or contingent indebtedness or obligations of the Contractor to the Principal arising out of or in relation to the Contract, and **Guaranteed Obligation** means any such indebtedness or obligation; and
  - (b) words and phrases that are not otherwise defined in this deed have the meanings set out in the Contract.
2. IN this deed, unless the context otherwise requires:
  - (a) paragraph headings are not to be used to construe this deed;
  - (b) words importing the singular number include the plural number and vice versa;
  - (c) words of any gender include the other gender and bodies corporate;
  - (d) a party includes its successors, permitted assigns and permitted novatees;
  - (e) except where expressly provided to the contrary all references in this deed to “including”, “includes” or “include” are to be read as if that reference is followed by the words “without limitation”;
  - (f) references to a clause or clauses will, unless otherwise specified, be a reference to the corresponding clause or clauses in this deed; and
  - (g) the rule of construction known as contra proferentem will not apply to this deed.
3. IN consideration of the Principal agreeing to enter into the Contract with the Contractor, the Guarantor:

- (a) guarantees to the Principal the payment of all Guaranteed Obligations in the same currency and at the same place and at the same time as each Guaranteed Obligation is payable by the Contractor;
  - (b) guarantees to the Principal the performance of all Guaranteed Obligations at the same time and in the same manner as each Guaranteed Obligation is to be performed by the Contractor in accordance with the Contract; and
  - (c) indemnifies the Principal for any loss suffered or incurred, directly or indirectly, by the Principal due to any failure by the Contractor to perform any Guaranteed Obligation in accordance with the Contract.
4. **IF** any Guaranteed Obligation, or any guarantee or indemnity in clause 3, is void or unenforceable for any reason, the Guarantor is liable to the Principal as a separate and independent obligation and by way of indemnity for the same amount and in the same currency as the Guarantor would be liable if the Guaranteed Obligation, or the guarantee or indemnity in clause 3, were not void or unenforceable.
5. **THE** Guarantor will make all payments due under this deed on demand.
6. **AS** between the Principal and the Guarantor, the Guarantor is a principal obligor in respect of each Guaranteed Obligation, with identical but separately enforceable Guaranteed Obligations to those of the Contractor. The Principal may demand payment from the Guarantor of any Guaranteed Obligation or the performance of any Guaranteed Obligation without first taking any steps or proceedings against the Contractor in relation to that Guaranteed Obligation or under any other security the Principal may hold from time to time.
7. **THE** rights of the Principal, and the liability of the Guarantor, under this deed are not to be affected, impaired or discharged by anything whatsoever which might otherwise affect, impair or discharge such rights or liability, nor is the Principal liable to the Guarantor in respect of any act or thing whether or not any of the Guarantor's rights of subrogation or otherwise are prejudiced.
8. **WITHOUT** any way prejudicing the provisions of clause 7, the Principal, without the Guarantor's consent, may:
- (a) vary the terms of any Guaranteed Obligations; and/or
  - (b) compound with or grant time or other indulgences to the Contractor or to or for any other person or entity; and/or
  - (c) deal with, exchange, release, modify, or not perfect or enforce, any encumbrance, security or right which the Principal now has or may in the future have against the Contractor or any other person or entity; and/or
  - (d) novate any contract(s) to the Contractor.
9. **THE** rights of the Principal under this deed are in addition to and not in substitution for or reduction of the Principal's rights under the Contract or at law or otherwise and no provision of this deed will be deemed to limit or restrict those rights.
10. **THE** Guarantor by this deed authorises the Contractor and the Principal to make any alteration, amendment or variation to the Contract and/or the Contract Works (as defined in the Contract), and agrees that any actual or contingent indebtedness or obligations of the Contractor arising out of or in relation to such matters will form part of the Guaranteed Obligations.

11. **THIS** deed is a continuing security. It cannot be discharged by payment of the whole or any part of any sums at any time owing by the Contractor to the Principal. It will only be discharged when all obligations, duties, liabilities, warranties and undertakings of the Contractor under the Contract have been satisfied and performed in full.
12. **THE** Guarantor will not exercise:
  - (a) any right to prove in the bankruptcy, insolvency, administration or liquidation of the Contractor in competition with the Principal; or
  - (b) any other right of a surety to discharge any liability; or
  - (c) any right of subrogation or indemnity which the Guarantor may have against the Contractor,for so long as any Guaranteed Obligations remain outstanding.
13. **SUBJECT** always to clause 4 above, the Guarantor's liability under this deed will be no greater than the Contractor's liability under the Contract.
14. **IN** the event that the Principal brings proceedings against the Contractor, the Guarantor will be bound by any findings of fact as well as any interim or final award, determination or judgment made by an arbitrator or the court in such proceedings.
15. **ANY** dispute or difference between the Principal and the Guarantor arising out of this deed will be referred to arbitration in accordance with the provisions of the Arbitration Act 1996 or any statutory re-enactment or modification thereof. The dispute will be referred to a sole arbitrator. If the Principal and the Guarantor fail to agree on the appointment of a sole arbitrator within 15 days after receipt of the notice of dispute, the arbitrator will be appointed by the then President of the Arbitrators' and Mediators' Institute of New Zealand (or by his or her nominee).
16. **THE** Guarantor must not assign, charge or novate, whether in part or in whole, any of its rights, benefits or obligations under this deed without the prior written consent of the Principal (which it may or may not give at its discretion).
17. **THE** Principal may assign, charge or novate all or any part of its rights and/or obligations under this deed to any assignee, chargee or novatee of the Principal under the Contract or to any other Person without the Guarantor's consent. The Guarantor must, if and when requested by the Principal, promptly do all things and execute all such documents reasonably necessary to give effect to any assignment, charge or novation by the Principal, including in the case of a novation, entering into a deed of novation with the Principal and the relevant Person nominated by the Principal in a form required by the Principal.
18. **ANY** notice or document to be given under this deed must be in writing and may be given by hand, post or email to the party's address for service of notices set out in this deed.
19. **EACH** party must do or use its reasonable endeavours to cause to be done anything necessary or desirable to give effect to this deed and the arrangements set out in this deed, and will refrain from doing anything which might prevent full effect being given to this deed.
20. **A** waiver of any provision of this deed will not be effective unless given in writing, and then it will be effective only to the extent that it is expressly stated to be given. A failure, delay or indulgence by either party in exercising any power or right will not operate as a waiver of that power or right. A

{ . . }, { . . }, [Project ID { . . }, ]Contract Number { . . }

single exercise or partial exercise of any power or right will not preclude further exercises of that power or right or the exercise of any other power or right.

- 21. **IF** any one or more of the provisions contained in this deed is invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained in this deed will not in any way be affected or impaired.
- 22. **NO** amendment or other modification of this deed will be effective unless it is in writing, is dated and is signed by a duly authorised representative of each party.
- 23. **THIS** deed may be executed in counterparts (including facsimile or electronic copies of counterparts) and provided that each party has duly executed a counterpart, the counterparts together will constitute a valid and binding deed between the parties.
- 24. **THIS** deed shall be governed by the laws of New Zealand, and without limitation or prejudice to clause 15 the parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand and any courts which have jurisdiction to hear appeals from any of those courts and waive any right to object to any proceedings being brought in those courts.

In witness of which this deed has been executed and delivered.

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

_____ Signature of director / authorised signatory	_____ Signature of director / authorised signatory
_____ Name of director / authorised signatory	_____ Name of director / authorised signatory
Witnessed by:	Witnessed by:
_____ Signature of witness	_____ Signature of witness
_____ Name of witness	_____ Name of witness
_____ City/town of residence of witness	_____ City/town of residence of witness
_____ Occupation of witness	_____ Occupation of witness

**NOTE** – This guarantee shall be executed by the Guarantor in the manner required for execution of a deed. If the Guarantor is a company it shall execute the guarantee 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 guarantee is signed under the name of the company by that director, but the signature shall be witnessed by another person. The witness shall not only sign but shall also add his or her occupation and address. Alternatively, companies may execute under power of attorney. A company executing under a power of attorney must attach appropriate certificates of non-revocation of power of attorney. Any party which is a body corporate (other than a company) shall execute in the same manner as a company by persons in a comparable position to a company director or otherwise in accordance with section 9 of the Property Law Act 2007. If

{..}, {..}, [Project ID {..}, ]Contract Number {..}

the Guarantor is an individual, the person shall sign and the signature shall be witnessed by another person. The witness shall not only sign but shall also add his or her occupation and address.]

FOR REFERENCE ONLY