



3910:2013 Conditions of Contract for building and civil engineering construction

Version 40 – 23 March 2018

Insert Contract Name

Insert Procurement Number

Between

Auckland Transport

and

Insert Contractor



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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	<i>Click to enter text</i>	(Contract name)
CONTRACT NUMBER	<i>Click to enter text</i>	(Number)
THIS AGREEMENT is made on	<i>Click to enter a date</i>	
BETWEEN	<i>Click to enter text</i>	(‘the Contractor’)
	<i>Click to enter text</i> [Drafting note: PM to insert NZ Business Number]	
AND	Auckland Transport	(‘the Principal’)

IT IS AGREED as follows:

1. The Contractor shall carry out the obligations imposed on the Contractor by the Contract.
2. The Principal shall pay the Contractor the sum of \$..... *(in Words)* **NZ\$**..... 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. Each party agrees to the terms and conditions as set out in the Contract.
4. The Contract comprises the following documents:

[Drafting note: The following order of precedence should be reviewed on a contract by contract basis and adjusted as appropriate. Best practice is to conform the relevant Contract documents to incorporate notices to respondents, proposal tags that have been agreed etc.]

 - (a) This Contract Agreement;
 - (b) The notification of acceptance of tender or award of Contract;
 - (c) The following post-tender documents *(Identify any agreed post-tender documents to be included, for example correspondence or minutes or pre-award meetings dealing with tender tags, and so on):*

Click to enter text

Click to enter text
 - (d) Notices to tenderers *(Give details with dates);*

Click to enter text
 - (e) Schedule 1: Special Conditions of Contract – Specific Conditions of Contract;
 - (f) Schedule 2: Special Conditions of Contract – Other Conditions of Contract;
 - (g) The General Conditions of Contract NZS 3910:2013 (including other Schedules);
 - (h) Specifications issued prior to the Date of Acceptance of Tender;
 - (i) Drawings issued prior to the Date of Acceptance of Tender;
 - (j) Basis of Payment **[Drafting note: Delete if not applicable]**
 - (k) The Schedule of Prices;

(Select if NOT applicable)



- (l) The Schedule to the Conditions of Tendering;
- (m) The Conditions of Tendering; and
- (n) The Contractor's tender;
- (o) The following additional documents *(Identify any additional documents to be included):*

[Click to enter text](#)

[Click to enter text](#)

5. The documents comprising the Contract shall be taken as mutually explanatory, but in the case of ambiguity or conflict the priority of documents shall be as listed in clause 4 above, with each document prevailing over a document lower in the list.
6. This Contract shall constitute the entire agreement between the parties. This Contract supersedes all prior negotiations, representations, and warranties, except insofar as the same are expressly incorporated herein.
7. The Contractor acknowledges that the Principal is subject to the provisions of the Local Government Official Information and Meetings Act 1987 ("LGOIMA") and shall facilitate the Principal's compliance with its information disclosure requirements pursuant to the LGOIMA. The Contractor shall under no circumstances respond directly to any request for information made under the LGOIM and must immediately forward any such request to the Principal.
8. The Contractor may mark any information "Commercial: In Confidence" which it reasonably believes may be exempt from disclosure under the LGOIMA, but acknowledges that such marking will be of indicative value only. The Contractor acknowledges that the Principal shall be entitled to determine in its absolute discretion what information, including information marked "Commercial: in Confidence" must be disclosed in order to comply with its obligations under the LGOIMA and may disclose such information without consulting the Contractor.
9. Any information held by the Contractor for the purpose of this Contract is treated as if held by the Principal. The Contractor must, immediately on request (or within such period as the Principal may specify), supply to the Principal any such information to enable the Principal to comply with its obligations under LGOIMA, any other relevant statute, and any other reporting or disclosure requirements, and provide all other necessary assistance as reasonably requested.
10. This Contract may be executed in any number of counterparts which taken together shall constitute the Contract.
11. If any provision in this contract is invalid or unenforceable, then the remainder of the Contract shall continue in full force and effect.

SIGNED BY _____ Authorised Signatory of Contractor

Print Name _____ **Date** _____

SIGNED BY _____ Authorised Signatory of Principal

Print Name _____ **Date** _____



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

Contract for:	<i>Contract Number and Contract Name</i>
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Clause in General Conditions	Title and subject matter	Specific condition data <i>(Expand cells if required or add a reference to further detail provided in Schedule 2.)</i>
1.	INTERPRETATION	
1.2	Definitions	
	The Principal is:	<i>Auckland Transport</i>
	of:	<i>20 Viaduct Harbour, Auckland</i>
1.2, 10.2	Separable Portions	
	• Are there any Separable Portions in this Contract?	<i>As per individual Work Package Service Order.</i>
	• If yes, the Separable Portions are as follows and as further defined in the Contract:	<i>As per individual Work Package Service Order.</i>
2.	THE CONTRACT	
2.1	Type of contract	
2.1.1	This Contract is a:	
	(a) Lump sum contract governed by 2.2;	<i>As per individual Work Package Service Order.</i>
	(b) Measure and value contract governed by 2.3;	<i>As per individual Work Package Service Order.</i>
	(c) Cost reimbursement contract governed by 2.4.	<i>As per individual Work Package Service Order.</i>
2.4	Cost reimbursement contract	
2.4.1	Allowance(s) which are to be added to Net Cost in a cost reimbursement contract or for parts of the Contract Works which are required to be carried out on a cost reimbursement basis: <i>(If percentages are shown as zero or nil, allowances for overheads and profit are deemed to be included in Net Cost.)</i>	
	• Allowance for On-site Overheads:	<i>Not applicable</i>
	• Allowance for Off-site Overheads and Profit:	<i>Not applicable</i>
2.4.4	Indicative estimates of the Contract Price:	<i>As per individual Work Package Service Order.</i>
	Are indicative estimates required?	<i>No.</i>
2.5	Local authority contracts, contracts in public places, and road contracts	
2.5.1	Is this Contract a local authority contract to which 2.5.2 applies?	<i>Yes</i>
2.5.3	Is this Contract a contract in a public place to which B1 and B2 of Appendix B apply?	<i>Yes</i>
2.5.4	Is this Contract a road contract to which Appendix B applies?	<i>Yes</i>
	If yes, the allowance for inclement weather, under B3 (Time for Completion) shall be:	<i>Nil</i>



Clause in General Conditions	Title and subject matter	Specific condition data (Expand cells if required or add a reference to further detail provided in Schedule 2.)
2.6	Evidence of Contract	
2.6.2	How is the Contract Agreement to be executed?	
	(a) As stated in 2.6.2;	<input checked="" type="checkbox"/>
	(b) In accordance with the following other requirements:	
2.7	Documents prepared by the Engineer or Principal	
2.7.1	Copies of the Contract shall be supplied without charge to the Contractor in the following electronic form:	<i>Pdf File</i>
2.8	Documents prepared by the Contractor	
2.8.2	Copies of documents referred to in 2.8.2 shall be supplied without charge to the Engineer:	
	• Number of hard copy sets:	<i>One set</i>
	• In the following electronic form:	<i>Pdf File</i>
3.	BONDS	
3.1	Contractor's Bond	
3.1.1	Is a Contractor's Bond required?	<i>No</i>
3.1.2	If yes, the amount of the Contractor's Bond shall be:	<i>Not applicable</i>
3.2	Principal's Bond	
3.2.1	Is a Principal's Bond required?	<i>No</i>
4.	SUBCONTRACTS	
4.1	General	
4.1.4	Key Subcontractors to which 4.1.4 applies are:	
	(a) As stated in the Contractor's tender;	<i>As per individual Work Package Service Order.</i>
	(b) The following:	<i>As per individual Work Package Service Order.</i>
4.1.5	A subcontractor warranty is required from the following Subcontractors ('Material Subcontractors'):	<i>As per individual Work Package Service Order.</i>
4.2	Nominated Subcontractors	
4.2.1	Are there any Nominated Subcontractors?	<i>As per individual Work Package Service Order.</i>
5.	GENERAL OBLIGATIONS	
5.1.3	Is any design covered by the Contractor?	<i>As per individual Work Package Service Order.</i>
5.3	Control of Employees	
5.3.2	Liquidated damages for failure to provide Key Personnel	<i>As per individual Work Package Service Order.</i>
5.3.2	Key personnel to which 5.3.2 applies are:	



Clause in General Conditions	Title and subject matter	Specific condition data (Expand cells if required or add a reference to further detail provided in Schedule 2.)
	(a) As stated in the Contractor's tender:	<i>As per individual Work Package Service Order.</i>
	(b) The following:	<i>As per individual Work Package Service Order.</i>
	(c) Contractor's Health and Safety Representative	<i>As per individual Work Package Service Order.</i>
5.4	Possession of the Site	
5.4.1	The Contractor shall be given possession of the Site	
	(a) 10 Working Days after the Date of Acceptance of Tender:	<i>As per individual Work Package Service Order.</i>
	(b) On the following date:	<i>As per individual Work Package Service Order.</i>
	Items to be provided by the Contractor before it can be given possession of the Site:	<i>As per individual Work Package Service Order.</i>
5.4.3	Limits on the Contractor's right of entry to adjoining properties are:	<i>As per individual Work Package Service Order.</i>
5.5	Separate Contractors	
5.5.1	Separate Contractors who may be carrying out work on the Site concurrently with the Contract Works are:	<i>As per individual Work Package Service Order.</i>
5.5.2	Are facilities for Separate Contractors required?	<i>As per individual Work Package Service Order.</i>
	If yes, details of facilities required are:	<i>As per individual Work Package Service Order.</i>
5.6	Care of the works and Site	
5.6.6(g)	Further risks specifically excepted are:	<i>There is no risk specifically excepted.</i>
5.7	Protection of Persons and property	
5.7.14	The health and safety accreditations shall include:	<i>As per Supplier Panel Agreement.</i>
5.10	Programme	
5.10.1	Programme	<i>As per individual Work Package Service Order.</i>
5.10.4	Is the programme required to be a Comprehensive Programme?	No
5.10.4(e)	If yes, other requirements for the Comprehensive Programme are:	
5.10.5	The Comprehensive Programme shall use the following software:	
5.10.6	Updates of the Comprehensive Programme shall be provided at the following intervals:	
5.11	Compliance with laws	
5.11.3	Exceptions to the Principal's obligations to obtain licences under 5.11.3 are: <i>Note: (this applies to licences that would otherwise be obtained by the Principal)</i>	Not Applicable
5.11.4	Exceptions to the Contractor's obligation to give notices and obtain other licences under 5.11.4 are:	Not Applicable
5.11.15	Environmental accreditations	



Clause in General Conditions	Title and subject matter	Specific condition data (Expand cells if required or add a reference to further detail provided in Schedule 2.)
5.11.15	The environmental accreditations to be held by the Contractor may include:	<i>As per Supplier Panel Agreement for Panel Three</i>
5.11.16	Quality accreditations	
	The Quality Management accreditations to be held by the Contractor shall include:	<i>As per Supplier Panel Agreement for Panel Three</i>
5.17	Safety plan	
	Is a Site-specific safety plan required to be prepared by the Contractor?	<i>As per individual Work Package Service Order.</i>
5.18	Quality plan	
	Is a quality plan required to be prepared by the Contractor?	<i>As per individual Work Package Service Order.</i>
5.19	Traffic management plan	
	Is a traffic management plan required to be prepared by the Contractor?	<i>As per individual Work Package Service Order.</i>
5.20	As-built drawings, Asset Data(RAMM Data) and operation and maintenance manuals	
5.20.1(a)	Are as-built drawings required to be prepared by the Contractor?	<i>As per individual Work Package Service Order.</i>
5.20.1(b)	Are operation and maintenance manuals required to be prepared by the Contractor?	<i>As per individual Work Package Service Order.</i>
5.20.1(c)	Is Asset Data (RAMM Data) required to be prepared by the Contractor?	<i>As per individual Work Package Service Order.</i>
5.22	Environmental compliance plan:	
5.22.1	Is an environmental compliance plan required to be prepared by the Contractor?	<i>As per individual Work Package Service Order.</i>
	If yes, details of the requirements are set out in:	<i>As per individual Work Package Service Order.</i>
5.23	Monthly Meetings and Reports	
5.23.1	Is a Project Control Group required?	<i>No</i>
6.	THE ENGINEER	
6.1	Appointment of Engineer	
6.1.2	The Engineer is:	<i>As per individual Work Package Service Order.</i>
	whose professional qualification is:	<i>As per individual Work Package Service Order.</i>
	Address:	<i>As per individual Work Package Service Order.</i>
6.3	Engineer's Representative	
	The Engineer's Representative is:	<i>As per individual Work Package Service Order.</i>
	whose professional qualification is:	<i>As per individual Work Package Service Order.</i>
	Address:	<i>As per individual Work Package Service Order.</i>
8.	INSURANCES	
8.1	General	
8.1.1	The party identified below shall arrange the following insurances referred to in the following clauses:	



Clause in General Conditions	Title and subject matter	Specific condition data (Expand cells if required or add a reference to further detail provided in Schedule 2.)
	8.3 or 8.8 Construction	Principal
	8.8 Existing structure(s) and contents	If specific cover is required to existing the structure, it will be insured by the Principal, for each individual Work Package Service Order.
	8.4 Plant	Contractor
	8.5 or 8.9 Public liability	Contractor
	8.5.2 Motor vehicle liability	Contractor
	8.6 Professional indemnity	As per individual Work Package Service Order.
8.1.6	The following forces of nature shall be specifically insured under 8.3 or 8.8 as applicable:	
	(a) Landslip:	Yes
	(b) Earthquake:	Yes
	(c) Tsunami:	Yes
	(d) Tornado:	Yes
	(e) Cyclone:	Yes
	(f) Storm:	Yes
	(g) Flood:	Yes
	(h) Lightning strike:	Yes
	(i) Volcanic activity:	Yes
	(j) Hydrothermal activity:	Yes
	(k) Geothermal activity:	Yes
8.3, 8.8	Construction insurance	
8.3.2, 8.8	The following shall have their respective interests noted in the construction insurance policy:	Principal, Contractor and Subcontractors of any tier.
8.3.3, 8.8	Where construction insurance is required (see 8.1 above), the amount of insurance to be effected for the Contract Works and Materials shall be for not less than the sum of the Contract Price, after the acceptance of the tender or other offer, plus the following allowances:	
	(a) An allowance for the Cost of demolition, disposal and preparation for replacement work, equal to:	
	(i) The amount in the right hand column:	
	(ii) The percentage in the right hand column of the Contract Price adjusted as above:	<input checked="" type="checkbox"/> 10 (%)
	(b) An allowance for professional fees including the Cost of clerks of works and inspectors, equal to:	
	(i) The amount in the right hand column:	<input type="checkbox"/>
	(ii) The percentage in the right hand column of the Contract Price adjusted as above:	<input checked="" type="checkbox"/> 15 %



Clause in General Conditions	Title and subject matter	Specific condition data (Expand cells if required or add a reference to further detail provided in Schedule 2.)
	(c) An allowance for items to be incorporated in the Contract Works, the Cost of which is not included in the Contract Price, equal to:	
	(i) The amount in the right hand column	<input checked="" type="checkbox"/> (\$) <i>As per individual Work Package Service Order.</i>
	(ii) The percentage of the Contract Price adjusted as above, stated in the right hand column:	<input type="checkbox"/>
	(d) An allowance for an increase in the Contract Price due to Variations equal to:	
	(i) The amount in the right hand column:	<input type="checkbox"/>
	(ii) The percentage of the Contract Price adjusted as above, stated in the right hand column:	<input checked="" type="checkbox"/> 6 %
	(e) An allowance for increased construction Costs due to inflation equal to:	
	(i) The amount in the right hand column:	<input type="checkbox"/>
	(ii) The percentage of the Contract Price adjusted as above, stated in the right hand column:	<input checked="" type="checkbox"/> 6 %
8.4	Contractor arranged Plant insurance	
	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:	<input type="checkbox"/>
	(b) The Contractor shall insure each item of Plant on the Site having a current market value of more than:	<input checked="" type="checkbox"/> \$50,000
8.5	Contractor arranged public liability insurance	
8.5.1	Where required (see 8.1 above), public liability insurance shall be effected by the Contractor for an amount not less than:	<input checked="" type="checkbox"/> \$5,000,000
	Such public liability insurance may include sub-limits:	
	• For liability arising out of vibration, weakening or removal of support, of not less than:	(\$) \$5,000,000
	• For liability under the Forest and Rural Fires Act 1977, of not less than:	(\$) \$250,000
8.5.2	Where required (see 8.1 above), motor vehicle third party liability insurance shall be effected for an amount not less than:	(\$) \$10,000,000
8.6	Contractor arranged professional indemnity insurance	
8.6.1	Where required (see 8.1 above), professional indemnity insurance for design	



Clause in General Conditions	Title and subject matter	Specific condition data (Expand cells if required or add a reference to further detail provided in Schedule 2.)
	by the Contractor shall be effected for an amount not less than: <ul style="list-style-type: none"> • For any one claim: • And for an amount in the aggregate of: 	(\$) <i>As per individual Work Package Service Order.</i>
8.6.2	Sub-limits of liability for design of parts of the Contract Works by Subcontractors shall be not be less than:	<i>As per individual Work Package Service Order</i>
8.8	Principal arranged construction insurance (refer also to 8.3) In accordance with 8.7.2, the insurance policy wording title for 8.8.1 and 8.8.2 (a), (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:	<i>Aon Auckland Council agreed wording.</i> <ul style="list-style-type: none"> • <i>Abortive Thrust bore exclusion</i> • <i>Dewatering exclusion</i> • <i>Hydrostatic pressure exclusion</i> • <i>Prototype exclusion</i> • <i>Directional drilling clause</i> • <i>Open trench condition 500m max.</i>
8.8.1	Where the Principal is required to effect construction insurance (see 8.1 above): The lead insurer is: Address of lead insurer: The Nominal Deductibles are: <ul style="list-style-type: none"> • For damage arising out of the Contract Works: • For other claims: • For natural perils: 	<i>AIG Insurance NZ Limited</i> <i>41 Shortland Street, Auckland</i> \$ 5,000 <i>\$ 50,000 for storm, tempest, flood water damage, landslip, subsidence and collapse, testing and commissioning</i> <i>1% of completed works per site at time of loss, minimum of \$2,500</i>
8.8.2(a)	The existing structures are: <ul style="list-style-type: none"> • The replacement value to be insured is: • The lead insurer is: • Address of lead insurer: The Nominal Deductibles are: <ul style="list-style-type: none"> • For damage arising out of the Contract Works: • For other claims: • For natural perils: 	
8.8.2(b)	Other structures in the vicinity are: <ul style="list-style-type: none"> • The replacement value to be insured is: • The lead insurer is: • Address of lead insurer: The Nominal Deductibles are: <ul style="list-style-type: none"> • For damage arising out of the Contract Works: 	



Clause in General Conditions	Title and subject matter	Specific condition data (Expand cells if required or add a reference to further detail provided in Schedule 2.)
	<ul style="list-style-type: none"> For other claims: For natural perils: 	
8.8.2(c)	Contents insurance:	
	<ul style="list-style-type: none"> The replacement value to be insured is: The lead insurer is: Address of lead insurer: 	
	The Nominal Deductibles are:	
	<ul style="list-style-type: none"> For damage arising out of the Contract Works: For other claims: For natural perils: 	
8.9	Principal's option to insure public liability	
8.9.1	Where required (see 8.1 above), the Principal shall effect public liability insurance for an amount not less than:	
	The lead insurer is:	<i>Not applicable</i>
	Address of lead insurer:	<i>Not applicable</i>
	The Nominal Deductible is:	<i>Not applicable</i>
	In accordance with 8.7.2:	<i>Not applicable</i>
	<ul style="list-style-type: none"> the policy wording title is: extraordinary exclusions, conditions, warranties, or endorsements to the policy are: 	<i>Not applicable</i>
8.9.2	Such public liability insurance may include sub-limits for: (<i>specify as applicable or state 'not applicable'</i>)	<i>Not applicable</i>
	<ul style="list-style-type: none"> Liability arising out of vibration, weakening or removal of support: Liability under the Forest and Rural Fires Act 1977: 	<i>Not applicable</i>
9	VARIATIONS	
9.3	Valuation of Variations	
9.3.9	For On-site Overheads:	
	(a) The prices and rates in the Schedule of Prices are inclusive of full allowance for On-site Overheads;	<input type="checkbox"/>
	(b) The prices and rates in the Schedule of Prices are exclusive of On-site Overheads and the allowance for On-site Overheads to be added in accordance with 9.3.9 is:	<i>Yes</i>
	(i) Agreed percentage:	<i>Not applicable</i>
	(ii) As nominated in the Schedule of Prices;	<i>Yes</i>
	(iii) As nominated in the Contractor's tender;	<i>Not applicable</i>
	(iv) A reasonable percentage.	<i>Not applicable</i>
9.3.10	For Off-site Overheads and Profit:	



Clause in General Conditions	Title and subject matter	Specific condition data (Expand cells if required or add a reference to further detail provided in Schedule 2.)
	(a) The prices and rates in the Schedule of Prices are inclusive of full allowance for Off-site Overheads and Profit;	<input type="checkbox"/>
	(b) The prices and rates in the Schedule of Prices are exclusive of Off-site Overheads and Profit and the allowance for Off-site Overheads and Profit to be added in accordance with 9.3.10 is:	Yes
	(i) Agreed percentage:	Not applicable
	(ii) As nominated in the Schedule of Prices;	Yes
	(iii) As nominated in the Contractor's tender;	Not applicable
	(iv) A reasonable percentage.	Not applicable
9.3.11	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:	Not applicable
	(b) As nominated in the Schedule of Prices;	Yes
	(c) As nominated in the Contractor's tender;	Not applicable
	(d) Reasonable compensation.	Not applicable
9.3.15	For processing of Variations, the percentage to be paid in accordance with 9.3.15 is:	
	(a) Agreed percentage:	Not applicable
	(b) As nominated in the Schedule of Prices;	Not applicable
	(c) As nominated in the Contractor's Tender;	Not applicable
	(d) The reasonable Cost of processing Variations.	Nil – The Contractor is not entitled to any amount for processing Variations.
10.	TIME FOR COMPLETION	
10.2	Due Date for Completion	
10.2.1	The periods to be used for calculating the Due Date for Completion are:	
	(a) For the Contract Works:	As per individual Work Package Service Order.
	(b) For any Separable Portions:	As per individual Work Package Service Order
10.4	Practical Completion Certificate	
10.4.5(a)	Prior to issue of the Practical Completion Certificate the Contractor shall provide to the Engineer:	
	(i) Producer Statements in the form of Schedule 6 NZS 3910:2013 are required.	As per individual Work Package Service Order



Clause in General Conditions	Title and subject matter	Specific condition data (Expand cells if required or add a reference to further detail provided in Schedule 2.)
	(ii) Producer Statements as set out in the following parts of the Contract are required:	<i>As per individual Work Package Service Order</i>
	(iii) Producer Statements are not required.	<i>As per individual Work Package Service Order</i>
10.4.5(b)	Prior to the issue of the Practical Completion Certificate the Contractor shall provide to the Engineer the following documents:	
	As-built drawings, Asset Data (RAMM data) and Operation and Maintenance Manuals in draft form.	<i>Yes</i>
10.4.5(c)	Prior to the issue of the Practical Completion Certificate the Contractor shall provide to the Engineer the following additional documents:	<i>As per individual Work Package Service Order</i>
10.4.7	Particular Works	<i>Particular works which the Contractor must carry out prior to the issue of the certificate of Practical Completion are: Reinstatement of areas affected by the Contract Works; and as per individual Work Package Service Order</i>
10.5	Damages for late completion	
10.5.1	Liquidated damages shall be applied as follows:	
	• In respect of the Contract Works:	<i>As per individual Work Package Service Order</i>
	• In respect of any Separable Portion(s):	<i>As per individual Work Package Service Order</i>
10.6	Bonus for early completion	
10.6.1	Is a bonus to be payable?	<i>No</i>
	• If yes, the bonus for the Contract Works is:	<i>Not applicable</i>
	• If yes, bonuses for any Separable Portions are:	<i>Not applicable</i>
11.	DEFECTS LIABILITY	
11.1	Defects Notification Period	
	The Defects Notification Period shall be: (12 Months unless otherwise stated)	
	• For the Contract Works:	<i>12 Months after each individual Work Package Service Order</i>
	• For any Separable Portions:	<i>12 Months after each individual Work Package Service Order</i>
11.3	Final Completion Certificate	
11.3.2(a)	Prior to issue of the Final Completion Certificate the Contractor shall provide to the Engineer:	
	(i) Producer Statements in the form of Schedule 6 NZS 3910:2013 are required;	<i>Not applicable</i>



Clause in General Conditions	Title and subject matter	Specific condition data (Expand cells if required or add a reference to further detail provided in Schedule 2.)
	(ii) Producer Statements as set out in the following parts of the Contract are required:	<i>Not applicable</i>
	(iii) Producer Statements are not required.	<i>Not applicable</i>
11.3.2(b)	Prior to issue of the Final Completion Certificate the Contractor shall provide to the Engineer:	
	As-built drawings, Asset Data(RAMM data) and Operation and Maintenance Manuals in final form.	<i>Yes</i>
11.3.2(c)	Prior to the issue of the Final Completion Certificate the Contractor shall provide to the Engineer the following additional documents	<i>As listed in Work Package Service Order.</i>
11.5	Warranties	
11.5.1		
	(a) No warranties are required;	<i>As per individual Work Package Service Order</i>
	(b) The Contractor shall provide warranties as set out in the Contract for the following items of work:	<i>As per individual Work Package Service Order</i>
	A Weathertightness warranty in the form of Schedule 19 is required	<i>As per individual Work Package Service Order</i>
11.6	Guarantees	
11.6.1, 11.6.2		
	(a) No guarantees are required;	<i>As per individual Work Package Service Order</i>
	(b) The Contractor shall provide guarantees in the following form:	<i>As per individual Work Package Service Order</i>
12.	PAYMENTS	
12.1	Contractor's payment claims	
12.1.3(b) (iii)	Advances for Materials delivered to the Site	
	(a) Advances for Materials delivered to the Site but which have yet to be incorporated in the Contract Works shall not be made;	<input checked="" type="checkbox"/>
	(b) Advances for Materials delivered to the Site but which have yet to be incorporated in the Contract Works shall be made, subject to the following conditions:	
12.1.3(b) (iv)	Advances for Temporary Works or Plant	
	(a) Advances for Temporary Works or Plant shall not be made;	<input checked="" type="checkbox"/>
	(b) Advances for Temporary Works or Plant shall be made, subject to the following conditions:	
12.1.3(b) (iv)	Advances for Materials not yet on Site	
	(a) Advances for Materials not on Site shall not be made;	<input checked="" type="checkbox"/>



Clause in General Conditions	Title and subject matter	Specific condition data (Expand cells if required or add a reference to further detail provided in Schedule 2.)
	(b) Advances for Materials not yet on Site shall be made, subject to the following conditions:	
12.2.8 and 12.5.9	Payment Date	<i>The Principal shall make payment to the Contractor on the 20th of the Month, or the first business day thereafter following receipt by the Principal of the Progress Payment Claim in accordance with clause 12.1.1</i>
12.3	Retention monies	
12.3.1, 12.3.2	The percentage to be retained from each progress payment and the limit of the total sums retained shall be in accordance with the following:	
	(b) The retention scale in the right hand column:	<i>Not applicable</i>
12.3.3	Bond in lieu of retention	
	(a) The Contractor may provide a bond in lieu of retentions;	<input checked="" type="checkbox"/> <i>As per individual Work Package Service Order</i>
	(b) The Contractor may not provide a bond in lieu of retentions.	
12.8	Cost fluctuations	
	(a) Cost fluctuations shall not be paid;	<input checked="" type="checkbox"/>
	(b) Cost fluctuations shall be paid in accordance with Appendix A of NZS 3910: 2013;	
	(c) Cost fluctuations shall be paid in accordance with the method described in:	
12.9.1	Provisional Sums	<i>As per individual Work Package Service Order</i>
12.11.1	Prime Cost Sums	<i>There are No Prime Cost Sums</i>
12.12.1	Contingency	<i>No contingency sum is to be included in the contract.</i>
12.13	Goods and services tax	
12.13.2	Payment Schedules provided by the Engineer:	
	(a) Shall not be in the form of a tax invoice;	
	(b) Shall be in the form of a buyer created tax invoice and the parties agree not to issue any other tax invoice for items covered by the Payment Schedule.	<input checked="" type="checkbox"/> <i>The Engineer is to issue Payment Schedules in the form required to constitute a GST Invoice;</i>
13.	DISPUTES	
13.4	Arbitration	
13.4.3	If required, the arbitrator shall be nominated by the following Person:	<i>Auckland Transport</i>



Clause in General Conditions	Title and subject matter	Specific condition data <i>(Expand cells if required or add a reference to further detail provided in Schedule 2.)</i>
15.	SERVICE OF NOTICES	
15.1.2	For the purpose of service of written notice:	
	(a) The address of the Principal is:	<i>Auckland Transport</i>
	Postal address:	<i>Private Bag 92250, Auckland 1142</i>
	Delivery address:	<i>20 Viaduct Harbour, Auckland 1010</i>
	Mark for the attention of:	<i>Greg Edmonds</i>
	Email address:	
	Other agreed means of electronic communication and address detail:	
	(b) The address of the Contractor is:	
	Postal address:	<i>As per individual Work Package Service Order</i>
	Delivery address:	
	Mark for the attention of:	<i>As per individual Work Package Service Order</i>
	Email address:	<i>As per individual Work Package Service Order</i>
	Other agreed means of electronic communication and address detail:	<i>As per individual Work Package Service Order</i>
	(c) The address of the Engineer is:	
	Postal address:	<i>Private Bag 92250, Auckland 1142</i>
	Delivery address:	<i>20 Viaduct Harbour, Auckland 1010</i>
	Mark for the attention of:	<i>As per individual Work Package Service Order.</i>
	Email address:	
	Other agreed means of electronic communication and address detail:	



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 new definitions

'Force Majeure' means an exceptional event or circumstance not attributable to the actions of either party, the effect of which:

- (a) is beyond a party's control;
- (b) could not reasonably have been provided against before entering into the Contract; and
- (c) once arising could not reasonably have been avoided or overcome.

'Probity Event' means

- (a) Where the Principal considers that an inducement or reward has been offered or provided to any employee, agent or representative of the Principal by or on behalf of the Contractor in return for showing or not showing disfavour to any person in relation to this Contract; or
- (b) Committing any offence under any laws creating offences in respect of fraudulent acts; or
- (c) Defrauding or attempting to defraud or conspiring to defraud the Principal; or
- (d) An event, matter or thing for which the Contractor is responsible that in the opinion of the Principal is or is likely to have a material adverse effect on the reputation of the Principal

2 THE CONTRACT

2.7 Documents prepared by the Engineer or Principal

2.7.1 Add at the end of 2.7.1

- (d) An electronic copy of the drawings in original PDF format AND in an industry recognised format suitable for electronic survey and setout purposes.

2.7.3 Delete the second sentence of 2.7.3 and replace with:

The Contract shall be taken as mutually explanatory. Ambiguities or omissions shall not invalidate the Contract. In the event of ambiguity or conflict between any of the documents comprising the Contract, the order of precedence of the Contract documents shall be as stated in the Contract Agreement.

2.7.4 Add to beginning of 2.7.4:

All drawings and specifications are complementary and the Contractor must read all in conjunction with each other to ascertain the full extent of the Contract Works.

2.7.8 Add the following new clause 2.7.8:

Where the Contractor regards the receipt of an instruction as urgent, it shall notify the Engineer and specify a reasonable time within which the instruction must be received.

2.7.9 Add the following new clause 2.7.9:

The Contractor must keep full records and documentation in relation to the Contract Works and this Contract. On request by the Principal the Contractor must immediately provide all



documents and records relating to the Contract Works and this Contract within the Contractor's possession or control to the Principal for inspection or audit.

2.9 Assignment

Delete clause 2.9.1 and replace as follows:

The Contractor shall not, without the Principal's prior written approval (including approval of the terms of the assignment) assign this contract or any payment or any other right, benefit or interest thereunder.

3. BONDS

3.1 Contractor's Bond

3.1.6 Delete.

3.1.8 Delete 3.1.8 and replace as follows:

Where the Principal decides to call up the Contractor's Bond it shall notify the Contractor that it intends to call the bond and shall provide the Contractor with details of the sum to be called, how that sum has been calculated, and the date that the sum will be called. To prevent the bond being called, the Contractor may, prior to the date the bond will be called, provide the Principal with the amount to be called by way of cleared funds.

3.1.9 Delete the first sentence of 3.1.9 and replace with:

The Contractor may, with the Principal's consent (such consent not to be unreasonably withheld) provide the Principal with a replacement bond in the form set out in Schedule 3, to ensure performance of the Contractor's obligations under the Contract.

3.1.11 Add the following new clause 3.1.11:

In the event that Clause 7 of Schedule 3 applies, the following shall apply:

- (a) The amount paid by the Surety shall replace the Contractor's Bond and references to the Contractor's Bond in this Contract shall be read accordingly;
- (b) The Principal is entitled to draw upon the amount paid by the Surety on the same basis that the Principal may call up the Contractor's Bond under this Contract;
- (c) The Principal shall release the amount paid by the Surety to the Contractor on the same basis that the Principal is required to release the Contractor's Bond under this Contract;
- (d) The Principal may retain the benefit of any interest earned on the amount paid by the Surety (or part thereof) on or before the date on which it is payable to the Contractor under this Contract.

4. SUBCONTRACTS

4.1 General

4.1.3 Add to the end of 4.1.3

and the Contractor shall be responsible for the acts, defaults and neglects of any Subcontractor or Subcontractor's agents, employees or consultants as fully as if they were the acts, defaults and neglects of the Contractor or the Contractor's agents, employees or consultants.

4.1.4 Add new 4.1.4

The Contractor shall not terminate the engagement of, or in any other way replace any Key Subcontractor without the prior written consent of the Engineer whose consent shall not be unreasonably withheld.

4.1.5 Add a new 4.1.5

The Contractor shall, promptly upon execution of any Material Subcontract named in the Special Conditions, procure from the Material Subcontractor a subcontractor warranty in the



form set out in Schedule 13. No payment otherwise due under the Contract shall become payable until the Material Subcontractor has executed the subcontractor warranty and the Contractor has delivered the subcontractor warranty to the Principal.

Add the following new clause:

4.3 Exercise of CCA rights

Add a new 4.3.1

Where any Subcontractor issues a notice to suspend works under the Construction Contracts Act 2002, the Contractor shall notify the Engineer of the notice and the amount which the Subcontractor claims is outstanding from the Contractor. The Principal will be entitled (at its sole discretion) to pay the particular Subcontractor debt directly to the Subcontractor in order to avert the suspension of work by that Subcontractor. Any payments made by the Principal to any Subcontractor pursuant to this clause will be deemed to be in satisfaction of the Principal's obligation to pay the Contractor amounts due under the Contract to the extent of such payments.

5 GENERAL OBLIGATIONS

5.3 Control of employees

5.3.2 Number the existing clause "5.3.1" and add new clause 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. 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, provided the Contractor replaces the relevant person with a person of equal or greater experience and ability

The sum stated as liquidated damages in the Special Conditions shall be paid by the Contractor to the Principal in the event of any breach of this clause, and the parties hereby agree that the liquidated sums stated are a genuine pre-estimate of the Principal's losses arising out of such breach

5.4 Possession of the Site

5.4.1 Add to the end of 5.4.1 "and the provision of the items listed in the Special Conditions".

5.6 Care of the works and Site

5.6.5 After the words 'has the effect of terminating the Contract by frustration' add the words 'or results in termination of the Contract under clause 5.6.5A.'

5.6.5A Add the following new clause

In the event that the loss or damage arises due to an excepted risk, the Principal may in its discretion terminate the contract immediately on notice. Such termination shall be treated as a termination for frustration under clause 14.1.1.

5.7 Protection of Persons and property

Delete and replace as follows

5.7.1 So far as the Site, the Materials and the Contract Works are under the Contractor's management or control, the Contractor shall ensure so far as is reasonably practicable that the Site 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) other person;



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

- 5.7.3** When undertaking the Contract Works, the Contactor will ensure that it and its workers at all times:
- (a) use reasonable skill and care to undertake the Contract Works in a safe manner; and
 - (b) identify and exercise all necessary precautions for the protection of the health and safety of all persons including members of the public who may be affected by the Contract Works; and
 - (c) comply with all relevant Approved Codes of Practice, New Zealand Standards and guidance material, and/or other international standards and guidance material regarding good practice requirements for providing the Contract Works; and
 - (d) comply with all safety policies and directions of the Principal as made known to the Contractor from time to time (including but not limited to Auckland Transport's Health and Safety Management Policy Statement).
- 5.7.4** The Contractor must have in place and operate throughout the carrying out of the Contract Works:
- (a) in accordance with a health and safety system that meets the requirements of all relevant health and safety legislation and Regulations including in respect of hazard identification, risk assessment, training, supervision, and monitoring; and
 - (b) proper procedures for dealing with emergencies that may arise.
- 5.7.5** The Contractor shall:
- (a) keep a record of all deaths, injuries, illnesses and notifiable incidents which are required by law to be notified (Notifiable Events) to WorkSafe New Zealand or the relevant designated regulatory agency under the Health and Safety at Work Act 2015 (HSE 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 HSE Regulator is 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 HSE Regulator.
- 5.7.6** Following any Notifiable Event the Contractor shall:
- (a) as soon as possible 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 HSE Regulator relating to that Notifiable Event;
 - (b) provide to 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 the Notifiable Event in the future; and
 - (c) provide the Principal with such assistance as may be reasonably necessary to conduct an investigation into a Notifiable Event (including, without limitation, providing any requested documents and using reasonable endeavours to procure all workers to provide any information requested by the Principal).
- 5.7.7** The Contractor must, as soon as possible, notify the Principal through the Engineer of:
- (a) any proceedings and/or enforcement action it is issued with;
 - (b) any visits or inspections by the HSE Regulator or any other regulator in relation to the activities of the Contractor, its workers, or conditions at any workplace where the Contract Works have been, are, or will be undertaken. The Contractor must provide immediately comprehensive details (and copies of any relevant documentation) to the Principal through the Engineer in respect of any engagement with the HSE Regulator as a consequence of any visit or inspection instruction and/or action
- 5.7.8** The Contractor shall provide the Principal with access to the Site in order to review, monitor or



audit the Contractor's health and safety procedures and practices as deemed appropriate by the Principal. The Contractor shall participate in any health and safety audits conducted by the Principal or any person appointed by the Principal. The Contractor shall rectify any issues raised in any such audit.

- 5.7.9** The Principal shall notify the Contractor through the Engineer of any safety hazards or risks associated with the Contract Works 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.
- 5.7.10** The Contractor shall 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 persons.
- 5.7.11** The Contractor shall so far as is reasonable practicable consult, cooperate and coordinate activities with the Principal and any other relevant party in relation to the Contract Works to ensure that all parties involved in the Contract Works understand the nature of the Contract Works, the risks arising from the Contract Works, and the controls to be implemented to mitigate those risks, and to provide ongoing verification that the risks are being controlled and the Contract Works are being performed in accordance with this Contract. The Contractor shall facilitate engagement between the Contractor, the Engineer and the Principal (and where requested by the Principal, its designees) 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, Regulations, Approved Codes of Practice, New Zealand Standards and guidance material, and/or other international standards and guidance material regarding good practice requirements for providing the Contract Works, or any other requirements for health and safety set out in the Contract; or
 - (b) conducting the Contract Works in such a way as to endanger the health and safety of the Contractor's employees or sub-contractors, 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 must have subscribed to the ISNetwork, and have completed the prequalification process through ISNetwork prior to contract award, unless otherwise waived by Auckland Transport in its sole discretion. During the term of this Contract, the Contractor shall maintain an active subscription, and provide complete and accurate information within ISNetwork. In the event the Contractor's ISNetwork rating falls below the minimum grade as stated in the Special Conditions it shall take all steps necessary to improve its rating within 30 Working Days.'
- 5.7.14** The Contractor shall complete a monthly Health and Safety report by the 5th working day of the month. This will be via the Auckland Transport on-line reporting tool and will be a true and accurate report of the preceding month's Health and Safety activities. The Contractor shall also report all incidents in accordance with the Auckland Transport incident reporting, recording and management procedure.
- 5.7.15** The Contractor shall take all reasonable steps to avoid nuisance and prevent damage to property. The Contractor has an obligation to respect the rights of adjoining land owners and occupiers, and make good as soon as practicable any damage or loss arising out of the Contractor's operations.
- 5.7.16** The Contractor shall be responsible to be registered and operating the ConstructSafe Tier 1 competency assessment framework for this contract. All Auckland Transport projects/work sites have a minimum entry requirement of ConstructSafe Tier 1 (or alternative approved independent competency assessment scheme aligned to ConstructSafe) for all workers entering the site. The Contractor's workers shall obtain Certification of, and maintain Construct Safe Tier 1 (Foundation Health and Safety Competence) competency as a minimum. Workers entering the site who have not attained ConstructSafe Tier 1 are not authorised to enter the site or must be supervised at all times while on site.

The Contractor is required to confirm they will register and operate the ConstructSafe framework



as part of the contract obligations. For more information refer to <http://www.constructionsafetycouncil.co.nz>

5.8 SETTING OUT

5.8.1 Add the following sentence to the end of 5.8.1:

The Contractor shall satisfy itself with the accuracy of all information and instructions issued by the Engineer and set out in the Contract Documents in relation to the setting out of the Contract Works.

5.8.5 Replace as follows:

- (a) If at any time prior to the issue of a certificate of Practical Completion any error shall appear in the position, levels or dimensions of any part of the Contract Works set out by the Contractor, the Contractor, unless otherwise directed by the Engineer, must rectify the error.
- (b) The Contractor must not make any claim for Costs, a Variation or on any other basis arising out of the Contractor rectifying any error in the position, levels, dimensions or other setting out information whether provided for or by the Principal or the Contractor, except an error of the Principal which a Contractor acting reasonably, and with the knowledge the Contractor has or should have had under this Contract, could not have foreseen.

5.9 Materials, labour and Plant

5.9.2 In line three, after the word 'new' include the words " , of good quality and fit for their purpose."

5.11 Compliance with laws

5.11.9 In the first line of 5.11.9 delete "Final Completion Certificate" and replace with "Practical Completion Certificate" and in 5.11.9(a) delete "11.3.2" and replace with "10.4.5"

5.11.10 **Delete** "date of closing of tenders" and replace with "Date of Acceptance of Tender" After the words "otherwise provided in the Contract". Add the words "and not reasonably foreseeable by an experienced Contractor at the Date of Acceptance of Tender."

Add the following additional clauses

5.11.11 The Contractor shall not do anything or omit to do anything, or use any Materials, substances or processes which:

- (a) would or is likely to discharge a contaminant into the environment that is not in compliance with any licences applicable to the Contract Works; or that would or is likely to cause the total emission of noise from the Site to exceed prescribed boundary noise levels; or that would or is likely to cause any adverse effect on the environment; or
- (b) is a breach of any duty or obligation of the Contractor under the Resource Management Act 1991 (RMA); or
- (c) does or is likely to give rise to the issue of an abatement notice; enforcement proceedings or an excessive noise direction under the RMA against the Principal, Contractor or Subcontractor.

5.11.12 Before a Subcontractor commences work the Contractor shall obtain similar undertakings as those stated in 5.11.11 from that Subcontractor in relation to the subcontract works.

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 or any Subcontractor is or may be in breach of or is likely to breach the matters set out in the agreement between the Contractor and Subcontractors pursuant to 5.11.12, 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.



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

5.20 As-built drawings and operation and maintenance manuals

5.20 Add "Asset Data (RAMM Data)" after "As-built drawings"

5.20.1 At the end of 5.20.1 add

(c) Asset Data (RAMM Data)

5.20.2 Add "Asset Data (RAMM Data)" after "As-built drawings"

5.20.3 Delete opening sentence and replace with;

As-built drawings, Asset Data (RAMM Data) and operation and maintenance manuals (herein called "Documentation"), shall be submitted to the Engineer as follows;

5.20.3(a) Add "Asset Data (RAMM Data)" after "as-built drawings..." in the first and last sentences in the subclause.

5.20.3(b) Add "Asset Data (RAMM Data)" after every occurrence of "As-built drawings".

Add "Any works undertaken during the Defects Notification Period that would require changes to the Documentation shall have those changes reflected in the Documentation and submitted as per the Conditions of Contract."

5.20.3(c) Add "Asset Data (RAMM Data)" after every occurrence of "As-built drawings".

5.20.3(d) Add "Asset Data (RAMM Data)" after every occurrence of "As-built drawings".

5.21 Advance notification

5.21.1(b) Add "or any Separable Portion" to the end of 5.21.1(b).

At the end of 5.21, add the words "Nothing in this clause 5.21 gives the Contractor any right to claim relief under clause 6.2.4".

Add the following additional clause

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 5.11.11 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, or revised environmental compliance, 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 Monthly Meetings and Reports

5.23.1 A project control group (**PCG**) may be constituted by the Engineer to include a representative from each of the following:

(a) The Principal;

(b) The Contractor;



(c) The Engineer;

(d) Such other persons who the Engineer considers should be involved in any PCG meeting.

- 5.23.2** The purposes of the PCG is to consider the monthly reports and updated contract programme prepared by the Contractor, review the forward programme, review any Variations or other costs and to discuss and settle ways in which delivery of the Contract Works can be improved in terms of quality, timeliness and cost effectiveness.
- 5.23.3** No consideration or concurrence of any members of the PCG will have any effect unless the Engineer gives the Contractor an instruction. The minutes of the PCG meeting will not constitute an instruction.
- 5.23.4** The PCG may meet at regular intervals at a time and place to be appointed by the Engineer from time to time. The Engineer may call special project control group meetings. The Engineer will give 48 hours' notice of a special meeting.
- 5.23.5** The Contractor shall make its personnel available to attend and participate in the activities of the PCG. The Contractor's Representative shall attend such meetings.
- 5.23.6** The PCG does not have the authority to amend the Contract.
- 5.23.7** Minutes shall be taken by the Engineer. The minutes shall be evidence of matters discussed and agreed. The Engineer shall, within 5 Working Days after each meeting, provide each party with written minutes of the business conducted at the meeting.
- 5.23.8** At least 3 Working Days prior to each meeting, the Contractor shall provide a written report to the Engineer on the matters specified in clause 5.22.2 above. The Contractor acknowledges that a copy of this report will be provided to the Principal and its nominated representative.

6 ENGINEER'S POWERS AND RESPONSIBILITIES

6.1 Appointment of Engineer

6.1.3 Delete

6.2 Role of Engineer

6.2.5 After the word "Engineer" add the words "or Engineer's Representative."

6.4 Inspection, recording, measuring and testing

6.4.8 Add new clause:

Review, inspection, approval or permission to proceed by the Engineer or the Engineer's Representative does not relieve the Contractor from full compliance with its contractual or legal obligations.

6.5 Removal and making good

6.5.5 Delete clause 6.5.5 and replace with:

If the Contractor supplies any Materials or carries out any work not in accordance with the Contract, the Engineer may at his or her discretion allow such Materials to be used or such work to remain and decide:

- The prices or rates of payment to the Contractor for such Materials or work carried out ("P");
- The Cost incurred by the Principal for assessing such Materials or work carried out ("X"); and
- The Cost to the Contractor to remove and re-execute or to make good any such Materials or work carried out ("Y").

The Engineer shall assess the amount to be paid to the Contractor for such Materials or work carried out or such Cost to be deducted from the Contract Price, by using the following formula:

$$P - [X \text{ or } 50\% \text{ of } Y, \text{ whichever is the greater}] = "Z"$$

If Z is a positive amount, that amount shall be paid to the Contractor by the Principal.



If Z is a negative amount, that amount shall be deducted from the Contract Price.

6.6 Certification

6.6.3 Delete and replace with

The Engineer may, by any Payment Schedule or any other certificate, correct an amount previously certified by the Engineer in a previous Payment Schedule, or correct any other certificate, which has been issued by him or her or by any previous Engineer, provided he or she notifies the Contractor in writing of his or her reasons for doing so.

7 INDEMNITIES

7.1 Indemnity

7.1.1(d) Add the following new clause:

To the extent permitted by law and without limiting the indemnity at 7.1.1(a)-(c), 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 Resource Management Act 1991 ("RMA"), the Building Act ("BA") or the Health and Safety at Work Act 2015 Act ("HSWA"), and any conviction or proceedings instigated against the Principal pursuant to the RMA, BA or HSWA directly or indirectly related to a breach by the Contractor of the RMA, BA or HSWA.

7.1.3 Delete

7.1.4 Delete the words "and the Principal's liability to indemnify the Contractor"

8 INSURANCE

8.1 General

8.1.3 At the end, add the words:

The Principal's obligation to comply with this clause is limited to such warranties and conditions as have been notified to the Principal by the Contractor.

8.1.4 Delete the first paragraph and replace with the words "for clarification".

8.2 Contractor arranged insurance - General

8.2.3 At the end, add the following:

- (c) The actions of one insured shall not affect the rights of any other insured; and
- (d) The policies are primary and without contribution from any policy of insurances effected by the Principal.

8.5 Contractor arranged public liability insurance

8.5.1 After the word 'Principal' in line 3, add the words ", the Subcontractors"

8.5.1A Add the following new clause:

The Contractor's 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 Schedule 1 under items 8.8.2 (a), (b) and (c) of the Principal's construction insurance, shall be covered by the Contractor's public liability insurance. "

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 At the end, add the following

Any Costs incurred by the Contractor without such written order shall be borne by the Contractor.

9.2.4 Delete last sentence of 9.2.4

9.3 Valuation of Variations

9.3.13 Delete 9.3.13 and replace with

Where the Base Value is a negative figure, the amount to be deducted shall include an allowance for Off-site Overheads and Profit. The amount to be deducted shall not include any allowance for On-site Overheads, except to the extent that the Variation reduces those On-site Overheads.

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 Delete second to last sentence of 9.4.3

9.5 Unforeseen Physical Conditions.

Add the following sentence to the 9.5.1.

'The term physical conditions shall not include underground services or other utilities to which clause 5.13 shall apply.'

10 TIME FOR COMPLETION

10.3 Extension of time

10.3.1(c) Delete 10.3.1(c) and replace with

Any strike, lockout or other industrial action except where caused or to the extent contributed to by the Contractor or its Subcontractors; or

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 act or omission of the Contractor or of any person for whose acts or omissions the Contractor is as between itself and the Principal responsible.

10.3.1(g) Delete the word 'Default' and replace with 'Act or omission'.

10.3.1 Add to the end of 10.3.1

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.

Where there are concurrent causes of critical delay, one as a result of the actions of the Principal and the other as a result of the actions of the Contractor, and either would have caused the delay then the Contractor shall be entitled to an extension of time for the period of the concurrent delay.

Concurrent delay is defined as: Where a Principal delay and Contractor delay occur at the same time irrespective of when they start or finish.

10.3.6 Delete first sentence of 10.3.6 and replace with

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

10.3.7 Delete clause 10.3.7 and replace with

The Contractor shall not be entitled to compensation for time-related Costs where:



- (a) An extension of time is granted on grounds other than those in 10.3.1 (a) or (g) to the extent that any extension of time under clause 10.3.1(g) is due to a breach of contract by the Principal; and
- (b) For any delay by reason of 10.3.1 (a) or (g) that is concurrent with another delay for which the Contractor is responsible. However, where the Contractor incurs additional Costs, the Contractor shall only recover compensation for time – related Costs if, to the satisfaction of the Engineer it is able to separate the additional Costs caused by the Principal's delay from those caused by the Contractor's delay. If it would have incurred the additional Costs in any event as a result of the Contractor's delay, the Contractor will not be entitled to recover those additional costs.

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 clause 10.3.1, the Engineer may require the Contractor to expedite progress at its own cost by applying additional resources or working longer hours or in whatever other manner he may require.

10.4 Practical Completion Certificate

10.4.5(b) Add "Asset Data (RAMM Data)" after "as-built drawings".

10.4.5(c) Add new sub paragraph (c) "Any other documents as set out in the Special Conditions "

10.4.7 Add new 10.4.7

Particular works which the Contractor must carry out prior to the issue of the Practical Completion Certificate are as stated in the Special Conditions.

11 DEFECTS LIABILITY

11.3 Final Completion Certificate

11.3.2(b) Add "Asset Data (RAMM Data)" after "as-built drawings"

11.3.2(c) Add new sub paragraph (c) "Any other documents as set out in the Special Conditions "

11.5 Warranties

11.5.2 Add "and Schedule 17 (if applicable)" after "Schedule 13"

12 PAYMENTS

12.1 Contractor's payment claims

12.1.1 Add to the end of 12.1.1 "The Contractor shall submit this claim no later than the 25th of the month in which the works are carried out. For payment purposes, any claim received after the 25th shall be deemed as though it was received in the month following the month in which the works are carried out."

12.1.3(c) Delete and replace with "Indicate the due date for payment, which shall be the date set out in 12.2.8."

12.1.4 Add the following new clause:

The Contractor must comply with the following requirements before submitting a claim for payment under the Contract:

- (c) Sign the Contract Documents
- (d) Provide evidence that the insurance policies required of it are in place to the satisfaction of the Principal
- (e) Provide the bonds required under the Contract
- (f) Provide any guarantees and/or warranties required under the Contract



12.2 Progress Payment Schedules

12.2.1 Delete “not later than 12 Working Days after the date of service of the payment claim” and replace with “on the 20th of the month following the month of the issue of the payment claim”

12.2.2 Delete the first paragraph and replace with:

Not later than the 20th of the month following the month of the issue of the payment claim, the Engineer shall, on behalf of the Principal, provide a Progress Payment Schedule to the Contractor and a copy to the Principal, with such additions or deductions as the Principal requires. The Payment Schedule shall:

Delete paragraphs (g) and (h).

12.2.4 Delete

12.2.5 Delete

12.2.6 Delete

12.2.8 Replace “within 17 Working Days after the date on which the Contractor’s payment claim was served on the Engineer under 12.1.1” with “on the 20th of the month, or the first business day thereafter if the 20th falls on a weekend, following the month of the issue of the payment claim to the Principal under 12.1.3.”

12.2.9 Delete the words “under 12.2.4”.

12.3 Retention Monies

12.3.2 Add to the end of 12.3.2(a)

... less the Engineer's assessment of the value of any Contract Works remaining to be completed other than minor omissions and minor defects under 10.4.1.

12.5 Final Payment Schedule

12.5.1 Delete the first paragraph and replace as follows:

The Engineer shall assess the final payment claim and may amend it as necessary to comply with the terms of the Contract and with the Engineer’s valuation of the work carried out. Subject to 12.5.6, the Engineer shall in accordance with the following process provide a Final Payment Schedule in response to the final payment claim not later than 35 Working Days after the date of service of the Contractor’s final payment claim, which such additions or deductions as the Principal requires. The Payment Schedule shall:

Add the following new clause:

(i) Separate the costs claimed in such manner as the Principal requires, acting reasonably

Delete paragraphs (g) and (h)

12.5.2 Delete

12.5.3 Delete

12.5.4 Delete

12.5.6 Delete “20” and replace with “35”.

12.5.9 Add to end of 12.5.9

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

12.5.10 Delete the words “under 12.5.2”

12.6 Effect of Final Payment Schedule

12.6.2 Add new 12.6.2

Notwithstanding the issue of the Final Payment Schedule the Contractor shall remain liable for fulfilment of any obligation of the Contractor under the Contract which then remains unperformed or not properly performed.



12.7 Interest

12.7.4 Delete and replace as follows:

The rate of interest shall be 2% above the Official Cash Rate for the Reserve Bank of New Zealand.

12.14 Set off

Add new clause

The Principal shall be entitled to set off against any sums that would otherwise be due to the Contractor, 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 or liquidated damages.

13 DISPUTES

13.6 Arbitration

13.4.7 Add the following words to the beginning of clause 13.4.7

“Subject to the second schedule of the Arbitration Act 1996”

14 FRUSTRATION AND DEFAULT

14.2 Default by the Contractor

14.2.1(c) Delete and replace as follows:

The Engineer certifying in writing to the Principal that in his or her opinion the Contractor is in material breach of an obligation under the Contract Documents; or

14.2.1(d) Add the following new clause:

A Probity Event (which notwithstanding the remainder of this clause entitles the Principal to terminate forthwith, without notice).

14.2.6 The following clause shall be added:

If this Contract is terminated, then the Contractor must upon request from the Principal:

- (a) Assign the benefit of:
 - (i) any subcontract nominated by the Principal; and
 - (ii) any guarantee or warranty, which the Contractor has or obtains from any subcontractor or any manufacturer or a supplier,to the Principal or the Principal's nominee and deliver to the Principal or its nominee any bank guarantees, performance bonds or securities held by the Contractor in relation to those subcontracts guarantees or warranties; or
- (b) If the benefit of any subcontract, guarantee (including any bank guarantees or performance bonds) or warranty cannot be assigned, hold that subcontract, guarantee or warranty on trust for the Principal or the Principal's nominee.

14.2.7 The following clause shall be added:

To enable the Principal to carry on and complete the Contract Works at no additional cost subsequent to the termination of the Contract, the Contractor shall seek to procure that all significant contracts with third parties in relation to the Contract Works contain provisions whereby:

- (a) the Contractor's interest in the relevant contract may be assigned to the Principal at the Principal's option upon the determination of the Contract without the necessity for further consent of the third party; and
- (b) the Principal shall not, upon such an assignment, become liable for any breach or unpaid debt of the Contractor under that Contract which occurred prior to the assignment of that contract.



16 BRANDING

16.1 Add new clause

The Contractor will not use any Auckland Transport (AT) trade mark, service mark, logo or other brand identifier (each an AT brand) without the prior written approval of AT.

16.2 Add new clause

The Contractor will, if required by the Principal, use AT brands in any signage, correspondence or other documentation relating to the contract. Any use of an AT brand will be for the purposes of this contract only, and is to be in accordance with the branding requirements notified by the Principal to the Contractor or as otherwise available on AT's website [www.at.govt.nz].

17 ADDITIONAL PERFORMANCE ASSESSMENT

17.1 Add new clause

The Contractor shall use the Principal's ATPACE system for performance reporting against the criteria as described on AT'S website under [Supplier Performance](#). The Contractor shall agree to meet with Principal's Representative on a monthly basis for the purpose of the Interim Evaluations. The Contractor shall meet with the Principal's Representative to agree the Final Evaluation once the Engineer has issued the Practical Completion Certificate.

17.2 Add new clause

Compliance with the Principal's ATPACE reporting requirements shall not relieve the Contractor from any of its duties, obligations and liabilities under the Contract

18 MISCELLANEOUS

The following clauses shall be added:

18.1 Media Releases

The Contractor shall not issue any information, publication, document or article for publication concerning the contract or the Contract Works in any media without the prior written approval of the Principal. The Contractor shall refer to the Principal any enquiries concerning the contract or the Contract Works from any media or member of the public.

18.2 Force Majeure

18.2.1 If either party is prevented from performing any or part of its obligations under the Contract by a Force Majeure, then it shall give written notice to the other party within 10 Working Days of the Force Majeure occurring.

18.2.2 A party giving notice under 18.2.1 shall:

- (a) be entitled to suspend performance of such obligations for so long as such Force Majeure prevents it from performing them; and
- (b) shall minimise any delay to the performance of such obligations under the Contract as a result of the Force Majeure.

18.2.3 Any suspension under this 18.2 shall be treated as circumstances not reasonably foreseeable to an experienced Contractor under 10.3.1(f), but not a Variation.

18.2.4 Suspension under this clause 18.2 shall not be regarded as suspension by the Engineer under 6.7. However, the Contractor shall be obliged to comply with the obligations set out in 6.7.2.

18.2.5 In the event that:

- (a) the whole of the Contractor's obligations are suspended under 18.2.2; or
 - (b) the Contract Works are materially damaged by an excepted risk or Force Majeure,
- the Principal may terminate the Contract by giving not less than five Working Days' notice in writing



to the Contractor

- 18.2.6 In the event that the whole of the Contract Works are suspended under 18.2.2 for a continuous period of 6 months, the Contractor may terminate the Contract by giving not less than 10 Working Days' notice in writing to the Principal.
- 18.2.7 In the event of termination by the Principal under 18.2.5 or termination by the Contractor under 18.2.6, the Contractor shall be entitled to be paid a sum calculated in accordance with 14.1.2.

Appendix B –CONTRACTS IN PUBLIC PLACES AND ROAD CONTRACTS

B4 Add new B4

B4 Occupancy prior to Practical Completion

Add to the end of subclause 8.3.4(b)

... save that the running of traffic under restricted conditions prior to Practical Completion shall not be deemed to be the Principal taking occupancy.

[Drafting note: Delete if not applicable.]



Schedule 3 – Form of Contractor’s performance bond

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 **AUCKLAND TRANSPORT** (“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 **(IN WORDS)**\$NZ..... (“the bond sum”) 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** condition of this bond is 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;
 - (b) The Surety receives a notice from the Principal releasing the Contractor and Surety from this bond;
 - (c) The Surety receives a notice from the Principal confirming that a replacement Contractor’s Bond has been received and accepted and releasing the Contractor and Surety from this bond; or
 - (d) The Surety has paid the amount described in clause 7 below.
- 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. **THE** Surety reserves the right to pay to the Principal the bond sum less any amount that may have already been paid, any time in full and final discharge of its liability under this bond. The Surety agrees that it shall have no claim to any amount paid to the Principal pursuant to this clause.
8. **THIS** bond shall be governed by New Zealand law.

In witness of which this deed has been executed.

SIGNED on behalf of the Surety by:

Director

Director

SIGNED on behalf of the Contractor by:

Director

Director

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



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

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 **AUCKLAND TRANSPORT** (“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 **(IN WORDS)**\$NZ..... ("the bond sum") 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** condition of this bond is 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;
 - (b) The Surety receives a notice from the Principal releasing the Contractor and Surety from this bond;
 - (c) The Surety receives a notice from the Principal confirming that a replacement Contractor's Bond has been received and accepted and releasing the Contractor and Surety from this bond; or
 - (d) The Surety has paid the amount described in clause 7 below.
- 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
 - (e) 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. **THE** Surety reserves the right to pay to the Principal the bond sum less any amount that may have already been paid, any time in full and final discharge of its liability under this bond. The Surety agrees that it shall have no claim to any amount paid to the Principal pursuant to this clause.
8. **THIS** bond shall be governed by New Zealand law.

In witness of which this deed has been executed.

SIGNED on behalf of the Surety by:

Director

Director

SIGNED on behalf of the Contractor by:

Director

Director

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



Schedule 6 – Form of Producer Statement – Construction

ISSUED BY	_____	<i>(Contractor)</i>
TO	Auckland Transport	<i>(Principal)</i>
IN RESPECT OF	[Contract Name & Contract Number]	<i>(Description of Contract Works)</i>
AT	_____	<i>(Address)</i>

..... *(Contractor)* has contracted to **Auckland Transport** *(Principal)* to carry out and complete certain building works in accordance with a Contract titled **[Contract Name & Contract Number]** ('the Contract')

I *(Duly Authorised Agent)* a duly authorised representative of *(Contractor)* believe on reasonable grounds that *(Contractor)* has carried out and completed:

- All
- Part only as specified in the attached particulars of the contract works in accordance with the Contract

_____ Date _____

(Signature of Authorised Agent on behalf of)

(Contractor)

(Address)



Schedule 7 – Information on Contractor arranged construction insurance

Deleted and replaced with Schedule 12.



Schedule 8 – Information on Contractor arranged Plant insurance

To whom it may concern:

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

We confirm having effected Plant insurance for:

_____ (The Contractor)
 In respect of [Contract Name & Contract Number] _____ (Project title)
 Policy wording title is _____

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

The following provisions apply:

- Annual policy
- Project specific policy

Policy expiry date _____

8.4

The 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**
- 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.)



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)
Auckland Transport (The Principal)
 In respect of **[Contract Name & Contract Number]** (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 \$ _____
 Forest and Rural Fires Act 1977 \$ _____
 Underground services \$ _____
 Deductible (GST inclusive) is \$ _____
 Deductible for vibration, removal, or weakening of support (GST inclusive) \$ _____
 Deductible for underground services (GST inclusive) \$ _____

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 initio</i> for non-payment of premium without prior notification	Yes/No
Severally insured	Yes/No
No settlement delay due to exercise of subrogation	Yes/No

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

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 [Contract Name & Contract Number] (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**



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 11 – Information on Contractor arranged professional indemnity insurance

To whom it may concern:

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

We confirm having effected professional indemnity insurance for:

_____ (The Contractor)
In respect of [Contract Name & Contract Number] (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
_____	_____
<i>(Or name of insurance broking company confirming cover)</i>	

SIGNED BY _____

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



Schedule 12 – Information on Principal arranged construction insurance

Attached.



Schedule 13 – Form of Contractor (or Subcontractor) warranty

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

BETWEEN **Auckland Transport** _____ *(‘the Principal’)*

AND _____ *(‘the Contractor’)*

AND _____ *(‘the Warrantor’)*

DEFINITIONS

‘Warranted Works’ _____

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

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.

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.

3.3

Where the Cost of replacement of work and/or Materials is out of all proportion to the consequences of the defect, or where the defect may not be reasonably capable of rectification without substantial expense which is out of all proportion to the Cost of the Warranted Works:

- (a) If the defect is reasonably able to be rectified by repair rather than by replacement, the Warrantor's obligation under this warranty shall be only to repair or otherwise make good the defect;
- (b) The Warrantor may propose reasonable monetary compensation in lieu of remedying the defect; or
- (c) The Warrantor may propose a combination of both repair and compensation.

3.4

The Principal shall consider the Warrantor's reasonable proposals and the parties shall endeavour in good faith to reach agreement. Where agreement cannot be reached, the dispute shall be resolved in accordance with clause 7.

4 Failure by Warrantor to perform remedial work

4.1

If the Warrantor fails to promptly, adequately and satisfactorily carry out the remedial work or to propose acceptable repair or compensation, 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, slips, faulty materials, or workmanship other than caused by the defect in the Warranted Works;
- (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 Step-In [to be used for subcontractors only]

- (a) THE Warrantor agrees that in the event of the employment of the Contractor being terminated under the Contract, the Warrantor will, if required by the Principal, complete the Warranted Works under the same conditions and for the same consideration as originally agreed between the Contractor and the Warrantor. 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.
- (b) THE Warrantor acknowledges that he has read and fully understands the provisions of the Contract.

7 Assignment

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

8 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 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.

SIGNED on behalf of the Contractor by:



Director

SIGNED on behalf of the Warrantor by:

Director

Director

SIGNED on behalf of the Principal by:

Director

Director

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. 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.



Schedule 14 – Agreement for off-site Materials

Contract for: [Contract Name & Contract Number]

THIS AGREEMENT

is dated the _____ day of _____ 20____

BETWEEN Auckland Transport (‘the Principal’)

AND _____ (‘the Contractor’)

AND _____ (‘the Warrantor’)

INTRODUCTION:

- A** By a contract dated theday of20..... 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.
8. **WHERE** the Contractor receives payment for Materials and the Subcontractor is entitled to some or all of the Principal's payment, the Contractor shall promptly pay the Subcontractor for such Materials.
9. **UPON** the request of the Subcontractor, the Engineer shall advise the Subcontractor whether the Contractor has received any payment from the Principal for such Materials.
10. **THE** Contractor and the Subcontractor agree that the Materials will be held by the Contractor or the Subcontractor solely as bailee for the Principal and such bailment will constitute a security interest in favour of the Principal for the purpose of the Personal Property Securities Act 1999 ('the PPSA').



11. **THE** Principal shall (at the Contractor's reasonable cost) register a financing statement on the Personal Property Securities Register ('the PPSR') listing the Principal as secured party and the Contractor and the Subcontractor as debtors for any security interest arising from the bailment of the Materials referred to in this agreement.
12. **THE** Bailee shall promptly do all things including executing any documents and providing all information which the Principal requires to ensure that the Principal receives and maintains at all times a first ranking security interest in the Materials. This shall include procuring from any third party who has registered a financing statement against the Bailee, a waiver, in a form acceptable to the Principal, of any security interest or claim which might otherwise extend to the Materials or their proceeds.
13. **THE** Bailee shall not discharge or amend any financing statement registered under clause 11 above without the prior written consent of the Principal.
14. **NOTHING** in sections 114(1)(a), 133, and 134 of the PPSA shall apply to this agreement.
15. **ANY** rights of the Contractor and the Subcontractor as debtors under sections 116, 120(2), 121, 125, 126, 127, 129, 131, and 148 of the PPSA shall not apply to this agreement.
16. **THE** Bailee hereby grants to the Principal reasonable, free, and unencumbered right of access to the Premises to:
 - (a) Inspect the Materials, and verify or undertake the marking and setting apart of the Materials;
 - (b) Take possession of the Materials for the purpose of delivery to the Site and inclusion in the Contract Works;
 - (c) Remove the Materials from the Premises for the 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:
 - (a) Effect a material damage insurance policy covering all of the Materials subject to this agreement in the name of the Principal to the satisfaction of the Principal, as provided in 8.2.1 of the Contract for the full duration of the off-site storage. Such insurance may include an exclusion for loss or damage sustained during processing;
 - (b) Effect a transit insurance policy for transit of all the Materials from the Premises to the Site in the name of the Principal to the satisfaction of the Principal, as provided in 8.2.1 of the Contract for the full duration of the off-site storage.
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 _____ *(Authorised Signatory)*

of _____ *(Contractor)*

SIGNED BY _____ *(Authorised Signatory)*

of _____ *(Subcontractor)*



Schedule 15 – Practical Completion Certificate

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

Contract for [Contract Name & Contract Number] (Contract name and number if applicable)
Principal Auckland Transport (Insert name of Principal)
Contractor _____ (Insert name of Contractor)

This certificate relates to:

- (a) The whole of the Contract Works referred to above;
- (b) The following Separable Portion (*Specify Separable Portion if applicable*)

Receipt of the Contractor’s notice datedand 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 at [Click to enter 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

(List minor omissions and defects)
[Click to enter text](#)



Schedule 16 – Final Completion Certificate

Contract for: [\[Contract Name & Contract Number\]](#)

This certificate is a Final Completion Certificate issued under 11.3.1.

Contract for	Click to enter text	<i>(Contract name and number if applicable)</i>
Principal	Click to enter text	<i>(Insert name of Principal)</i>
Contractor	Click to enter text	<i>(Insert name of Contractor)</i>

This certificate relates to:

- (a) The whole of the Contract Works referred to above;
- (b) The following Separable Portion
(Specify Separable Portion if applicable)

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 at [Click to enter time](#).

Signed by the Engineer _____

Name _____

Date _____



Schedule 17 – Form of Contractor's Weathertightness Warranty

Contract for: *[Contract Name & Contract Number]*

THIS DEED is made on _____ ('Date')

BY _____ ('the Contractor')

AND _____ ('the Principal')

IT IS MADE IN THE FOLLOWING CIRCUMSTANCES

- A By an agreement dated the day of20..... (**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 and watertight in accordance with the Contract and industry standards, and shall remain weathertight and watertight for a period of 10 years from the date of Practical Completion (**Warranty Period**).
2. **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.
3. **THE** Contractor shall promptly take 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 or watertight in accordance with the Contract or industry standards, and which are notified in writing by the Principal to the Contractor during the Warranty Period.
4. **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 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.
5. **THE** Contractor shall make good any damage to buildings or structures in the vicinity of the Contact Works caused by:
 - (a) a failure of the Contract Works to remain weathertight or watertight in accordance with the Contract or industry standards; or



- (b) any remedial works carried out by or on behalf of the Contractor under this warranty.
- 6. **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 agreed by the Principal in writing.
- 7. **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 6, 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.
- 8. **THE** Contractor shall not be liable for any defect or damage caused by:
 - (a) willful act or negligence of the Principal; or
 - (b) any such operation of the forces of nature as an experienced contractor could not reasonably foresee or make provision for.
- 9. **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.
- 10. **THE** Principal may assign the benefits and rights under this warranty.
- 11. **THIS** warranty is governed by the laws of New Zealand.

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

SIGNED on behalf of the Contractor by:

Director:

Name

Date

Director:

Name

Date

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. 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. If the Contractor is an individual, the Contractor 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.