

~~NZS 3910:2013~~

DZ 3910:202X

New Zealand Standard

Conditions of contract for building and civil engineering construction

Superseding ~~(in part) NZS 3910:2003~~3910:2013

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Referenced documents

Reference is made in this document to the following:

New Zealand standards

NZS 3916:2013 Conditions of contract for building and civil engineering construction – Design and construct

NZS 3917:2013 Conditions of contract for building and civil engineering construction – Fixed term

NZS 4202:1995 Standard method of measurement of building works

NZS 4224:1983 Code of practice for measurement of civil engineering quantities

New Zealand legislation

Arbitration Act 1996

Cadastral Survey Act 2002

Construction Contracts Act 2002

~~Forest and Rural Fires Act 1977~~

Goods and Services Tax Act 1985

Health and Safety ~~in Employment~~ at Work Act ~~1992~~2015

Personal Property Securities Act 1999

Property Law Act 2007

[Resource Management Act 1991](#)

Other publications

Labour Cost Index, Statistics New Zealand

Producers Price Index, Statistics New Zealand

Websites

www.rbnz.govt.nz

www.stats.govt.nz

www.legislation.govt.nz

Latest revisions

The users of this standard should ensure that their copies of the above-mentioned New Zealand standards are the latest revisions. Amendments to referenced New Zealand and joint Australian/New Zealand standards can be found on www.standards.govt.nz.

Review of standards

Suggestions for improvement of this standard will be welcomed. They should be sent to the [National](#) Manager, Standards New Zealand, PO Box 1473, Wellington 6140.

Contract ~~agreement~~ Agreement

CONTRACT ~~FOR~~ TITLE (Contract ~~name~~ Title)

CONTRACT NUMBER (Number)

FOR (insert brief description of the Contract Works)

THIS AGREEMENT is made on 20.....20.....

BETWEEN (insert company number if applicable) ('the Contractor')

AND (insert company number if applicable) ('the Principal')

IT IS AGREED as follows:

1. The Contractor shall carry out the obligations imposed on the Contractor by the Contract.
2. The Principal shall pay the Contractor the sum of \$..... or such greater or 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:

(Delete any if not applicable)

 - (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)*:

-
-
- ~~(d) The Contractor's tender;~~
 - ~~(e) Notices to tenderers (Give details with dates);~~
 - ~~(d) Schedule 2: Special Conditions of Contract – Other Conditions of Contract;~~
 - ~~(e) (f) Schedule 1: Special Conditions of Contract – Specific Conditions of Contract;~~
 - ~~(g) Schedule 2: Special Conditions of Contract – Other Conditions of Contract;~~
 - ~~(f) (h) The General Conditions of Contract NZS 3910:2013-3910:2023 (including other Schedules);~~
 - ~~(g) Drawings issued prior to the Date of Acceptance of Tender;~~
 - ~~(h) (i) Specifications issued prior to the Date of Acceptance of Tender;~~
 - ~~(j) Drawings issued prior to the Date of Acceptance of Tender;~~
 - ~~(i) (k) The Schedule of Prices;~~

☐ ~~(Select if NOT applicable)~~

- ~~(j) The Contractor's tender;~~
 - ~~(k) Notices to tenderers (Give details with dates);~~
 - ~~(l) The Schedule to the Conditions of Tendering;~~
 - ~~(m) The Conditions of Tendering; and~~
 - ~~(n) The following additional documents *(Identify any additional documents to be included)*:~~
-
-

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 listed in clause 4 above, with each document prevailing over a document lower in the list.

6. ~~5.~~ This Contract shall constitute the entire agreement between the parties. This Contract supersedes all prior negotiations, representations, and warranties, except insofar as the same are expressly incorporated herein.

7. The Contract may be executed in counterparts and by electronic signature, and provided that each party has executed a counterpart, the counterparts together shall constitute a binding and enforceable agreement between the parties. A party may transmit an electronic copy of the Contract by email (or other electronic means) to the other party.

SIGNED BYAuthorised Signatory of Contractor
.....[Name of Signatory](#)

SIGNED BYAuthorised Signatory of Principal
.....[Name of Signatory](#)

New Zealand Standard

Conditions of contract for building and civil engineering construction

General conditions of contract

1 Interpretation

1.1 Application

This section shall apply to the Contract except where inconsistent with the context.

NOTE – See 1.3.1 on singular including the plural.

1.2 Definitions

For the purposes of this standard the following definitions shall apply.

Adjudication	As defined in the Construction Contracts Act
Adjudicator's Determination Adviser	As defined in the Construction Contracts Act Any Person(s) (including but not limited to a designer, quantity surveyor or other consultant) engaged by the Principal under 6.3.6.
Base Value	The value determined in accordance with 9.3.5 , 9.3.6, 9.3.7, or 9.3.8, as the case may be
Conditions of Tendering	Any conditions of tendering included in any request for tender (or similar) for this Contract.
Comprehensive Programme	As defined in 5.10.4 5.12.4
Consent	All consents including resource consents, building consents (including project information memoranda), licences, approvals, compliance certificates, and any other such documents.
Contract	The documents referred to in the Contract Agreement as comprising the Contract, or the documents which constitute the Contract under 2.6.4 2.7.1
Contract Administrator	The one natural person not being a body corporate or firm identified in the Specific Conditions, or such other one natural person as may be subsequently appointed by the Principal under 6.1 to act as Contract Administrator
Contract Agreement	The written agreement for the fulfilment of the Contract signed by the Principal and the Contractor
Contract Price	The sum provided in the Contract as payable for the completion of the Contract Works calculated in accordance with 2.2, 2.3, or 2.4 or 2.5 as applicable, subject to such adjustments as are provided for in the Contract
Contract Works	The works including Temporary Works to be executed in accordance with the Contract

Contractor	The Person whose tender has been accepted by the Principal or the Person who has been so named in the Contract, and includes the executors, administrators, and successors of the Contractor
Contractor's Bond	The bond or any replacement bond referred to in 3.1
Contractor's Representative	The natural person appointed under 5.2.1 <u>The one natural person not being a body corporate or firm named in the Specific Conditions, or such other person who may be subsequently named in writing by the Contractor by notice to the Principal, the Contract Administrator and Independent Certifier, who is authorised to represent the Contractor and to receive any Instructions from the Contract Administrator or Decisions by the Independent Certifier on behalf of the Contractor</u>
Cost	Includes expense or loss and overhead cost whether on or off the Site
Date of Acceptance of Tender	The date on which the successful Contractor is notified in writing that its tender or other offer is accepted or, in the absence of any such written notification, the date of the Contract Agreement
Day	When used to express a period of time means Working Day
Daywork	Means work to which 9.4 applies
<u>Decision</u>	<u>Any decision, valuation or other determination made by the Independent Certifier in accordance with the Contract and shall include the determination of claims submitted by either the Principal or the Contractor. "Decide" and "Decided" shall have a corresponding meaning</u>
Defects Notification Period	As defined in 11.1
Drawings	The Drawings <u>drawings and other design deliverables including any model, model-driven deliverables, drawings and other design information systems</u> included in the Contract together with any additions to, or modification of, such Drawings approved and notified to the Contractor and such other Drawings <u>design deliverables</u> as may from time to time be supplied by the Engineer <u>Contract Administrator</u> to the Contractor for the purpose of the Contract. Drawings also include those that have been drawings and design deliverables prepared by, or on behalf of the Contractor, and which have fulfilled to fulfil any requirement in the Contract for preparation and review of such Drawings prior to their issue for construction
Due Date for Completion	As defined in 10.2.1
Engineer <u>Final Account</u>	The professional engineer, architect, surveyor, or other one natural person named or identified in the Special Conditions or such other one natural person as may be subsequently appointed by the Principal under 6.1 to act as Engineer to the Contract. The Engineer shall not be a body corporate or a firm <u>The final account of the Contract Price referred to in 9.11</u>
Engineer's Representative	The natural person appointed under 6.3.1
Fire <u>Final</u> Completion Certificate	A certificate issued under 11.3 which may be in the form of Schedule 16

Final Schedule Payment Decision	As defined in 12.5 <u>A Decision made by the Independent Certifier under 6.4.5 or as corrected under 6.4.6</u>
General Conditions	These standard 'Conditions of contract for building and civil engineering construction' comprising all of sections 1 to 15 and Appendices A and B and Schedules 3 to 16
GST Invoice Independent Certifier	A tax invoice for the purposes of the Goods and Services Tax Act <u>The one natural person not being a body corporate or firm identified in the Specific Conditions or such other one natural person as may be subsequently appointed by the Principal under 6.1 to act as Independent Certifier</u>
Materials <u>Instruction</u>	Any raw or manufactured material, goods, or things (other than Plant) required for use in the Contract Works <u>Any instruction issued to the Contractor by the Contract Administrator in accordance with the Contract. "Instruct" and "Instructed" shall have a corresponding meaning</u>
Month <u>Interim Final Account</u>	A calendar Month <u>The interim final account of the Contract Price referred to in 9.11</u>
Net Cost	The reasonable actual or assessed expense or direct cost to the Contractor, plus return on investment in Plant, after deduction of trade discounts and exclusive of the Contractor's On-site Overheads, Off-site Overheads, and Profit
Nominal Deductible	The amount of any deductible or excess to be borne by the Contractor as described in 8.1.4
Nominated Subcontractor	A Person other than the Contractor who is nominated by the Principal or the Engineer under 4.2
Off-site Overheads and Profit <u>Margin</u>	The following Contractor's off-site overheads and profit, comprising expenses or losses not incurred on the Site which are required for the general overall running of the Contractor's business, and which are not required for the carrying out of the Contract Works or for off-site manufacturing or fabrication work by the Contractor <u>including</u> : (a) General administrative, financial, and overhead expenses incurred in the Contractor's head office or other established offices; <u>and</u> (b) Executive direction and supervision by principal officers of the Contractor not assigned in the ordinary way to the Contract; <u>together with</u> (c) Profit, other than return on investment on Plant which would normally be recovered in hire rates for Plant
<u>Materials</u>	<u>Any raw or manufactured material, goods, or things (other than Plant) required for use in the Contract Works</u>
<u>Management Plans</u>	<u>The plans to be prepared by the Contractor to demonstrate how the Contractor intends to meet the management plan requirements as set out in 5.19</u>
<u>Month</u>	<u>A calendar Month</u>
<u>Net Cost</u>	<u>The reasonable actual or assessed expense or direct cost to the Contractor, plus return on investment in Plant, after deduction of trade discounts and exclusive of the Contractor's Preliminary & General and Margin</u>
<u>Nominal Deductible</u>	<u>The amount of any deductible or excess as described in 8.1.4(b)</u>

<u>Nominated Subcontractor</u>	<u>A Person other than the Contractor who is nominated by the Principal or the Contract Administrator under 4.2</u>
<u>Payment Schedule</u>	<u>Any Payment Schedule provided under the Contract including any Payment Schedule or final Payment Schedule issued under 12.2 or 12.5</u>
<u>Person</u>	<u>A natural person and a partnership, body of persons, firm, company, or organisation whether corporate or not</u>
<u>Plant</u>	<u>All appliances, temporary buildings, and equipment of whatsoever nature required for carrying out the Contract Works but not intended to be incorporated in the Contract Works</u>
<u>Practical Completion</u>	<u>As defined in 10.4.1</u>
<u>Practical Completion Certificate</u>	<u>A certificate issued under 10.4 which may be in the form of Schedule 15</u>
<u>On-site Overheads Preliminary & General (or P&G)</u>	The following Contractor's on-site overheads comprising the expenses or losses incurred by the Contractor for the general overall running of the Contract Works (excluding those normally covered by Subcontractors or suppliers) and which are not readily identified with one particular work item <u>including</u>: (a) Remuneration and expenses for management, administration, routine field engineering and surveying, procurement and supervisory staff, assigned in the ordinary way to the Contract whether on a full-time or part-time basis, excluding working foremen and leading hands. These shall include all fringe benefits and fringe benefit tax for the staff concerned, their transportation, housing, off-site and on-site accommodation, protective clothing, and surveying and office equipment; (b) Premiums for insurances; (c) Contractor's Bond; (d) The normal provision, operation, and maintenance of the Site and Temporary Works <u>temporary</u> facilities. Such facilities shall include any office and shelter buildings, office equipment and communications, on-site water supply, drainage, waste management, roads, fencing, electrical supply, and ablution facilities required for the Contract Works as originally specified
<u>Payment Schedule</u>	Any Payment Schedule provided under the Contract including a Progress Payment Schedule and the Final Payment Schedule
<u>Person</u>	A natural person and a partnership, body of persons, firm, company, or organisation whether corporate or not
<u>Plant</u>	All appliances, temporary buildings, and equipment of whatsoever nature required for carrying out the Contract Works but not intended to be incorporated in the Contract Works
<u>Practical Completion</u>	As defined in 10.4.1
<u>Practical Completion Certificate</u>	A certificate issued under 10.4 which may be in the form of Schedule 15
<u>Prime Cost Sum</u>	As defined in 12.11 <u>The sum referred to in 9.9</u>
<u>Principal</u>	The Person named as such in the Special <u>Specific</u> Conditions and includes its executors, administrators, and <u>successors and permitted</u>

	assigns
<u>Principal's Bond</u>	The bond referred to in 3.2
<u>Principal's Representative</u>	The one natural person named in the Specific Conditions, or such other person who may be subsequently named in writing by the Principal by notice to the Contractor, the Contract Administrator and the Independent Certifier, who is authorised to represent the Principal
Producer Statement	Any producer statements required by the Contract or by the relevant authority for the design or construction of the Contract Works in the form of Schedule 6 or otherwise
Progress Schedule Payment	As defined in 12.2
Provisional Item	As defined in 12.10 9.8
Provisional Sum	As defined in 12.99 7
<u>Resource Management Law</u>	Resource Management Act 1991
Schedule of Prices	Any Schedule schedule included in the Contract which shows prices payable for sections or items of the Contract Works and may also include quantities, rates, Provisional Sums, Provisional Items, Prime Cost Sums, and contingency sums. Schedule of Prices may be any trade summary or similar document included in the Contract in lieu of a full schedule of quantities.
<u>Schedule to Conditions of Tendering</u>	Any schedule to the Conditions of Tendering included in any request for tender (or similar) for this Contract.
Separable Portion	Any part of the Contract Works specified in the Special Specific Conditions or agreed between the parties as being a Separable Portion required to be completed separately from the remaining Contract Works
Separate Contractors	As defined in 5.5.1 The separate contractors referred to in 5.6.1
Site	The land and other places on or over or under which the Contract Works are to be carried out together with any other places made available to the Contractor by the Principal conditionally or unconditionally for the purposes of the Contract
Special Conditions	Schedules 1 and 2, and such other documents as are included in the Contract in a section which is described as Special Conditions and which add to, or delete from, or modify these General Conditions
<u>Specific Conditions</u>	Schedule 1: Special Conditions of Contract – Specific Conditions of Contract
Specifications	Documents included in the Contract containing descriptions of Materials and workmanship and other requirements for carrying out the Contract Works, together with any additions to, or modifications of, such documents approved in writing by the Engineer Contract Administrator and notified to the Contractor, and other additions or modifications supplied by the Engineer Contract Administrator to the Contractor for the purpose of the Contract. Specifications also include documents containing descriptions of Materials and workmanship and other details

	of the Contract Works which have been prepared by, or on behalf of, the Contractor and which have fulfilled any requirement in the Contract for preparation and review of such documents prior to their issue for construction
Subcontractor	Any Person who contracts with the Contractor to design, carry out, or supply part of the Contract Works on behalf of the Contractor and includes a Nominated Subcontractor
<u>Target Price</u>	<u>The sum stated in the Specific Conditions which shall be deemed inclusive of Preliminary & General and Margin subject to such adjustments as are provided for in the Contract.</u>
Temporary Works	Works of any kind, not being part of the Contract Works to be taken over by the Principal, but which are required for the execution of the Contract Works
Tender Documents	The documents which are issued to prospective tenderers
Variation	A Variation to the Contract Works pursuant to 9.1 and any other matter which is stated to be a Variation or to be treated as a Variation by the Contract
Working Day	A calendar day other than any Saturday, Sunday, public holiday, or any day falling within the period from 24 December to 5 January both inclusive, irrespective of the days on which work is carried out
<u>Working Day Rate</u>	<u>Any rate per Working Day nominated in the Specific Conditions or Schedule of Prices to apply under 9.3.12</u>

1.3 General

1.3.1

Where the context so requires, words importing the singular shall include the plural and vice versa, and words importing the masculine, feminine, and neuter shall include all three.

1.3.2

Cross-references to other clauses or clause subdivisions within these General Conditions quote the number only.

1.3.3

The headings to clauses are for convenience only and shall not affect their interpretation.

1.3.4

A reference to any Act or Regulation shall include all subsequent Acts or Regulations in amendment of, or substitution for, the same.

~~1.3.5~~

1.3.5

~~Except where inconsistent with the context, 'approved,' 'directed,' 'instructed', and 'required' mean respectively approved, directed, instructed, and required by the Engineer and the corresponding nouns shall be similarly construed.~~

Where the context so requires, 'constructed' includes 'carried out' and 'construction' includes 'carrying out'.

1.3.6 ~~1.3.7~~

Words and phrases that are defined in 1.2 have capital initial letters.

1.3.7 ~~1.3.8~~

For a number of clauses guidelines have been written. The guidelines are not part of the Contract between the parties. Their purpose is to help users understand the principles behind the substantive clauses, and to highlight some clauses that impose particular obligations on a party under the Contract.

1.4 Law, currency, and language**1.4.1**

The Contract shall be governed by New Zealand law.

1.4.2

All prices and payments made under the Contract shall be in New Zealand currency and payable in New Zealand. All prices and rates are stated exclusive of goods and services tax, which is to be added and paid where appropriate.

1.4.3

All communications between the Principal, the Contractor, the Contract Administrator and the ~~Engineer~~ Independent Certifier shall be in the English language.

1.5 Computation of time

Where any period of time from a given day, act, or event is prescribed or allowed for any purpose, the period shall, unless a contrary intention appears, be determined as exclusive of that day or the day of that act or event.

~~1.6 — Duties of Engineer~~**2 THE CONTRACT**

~~The duties which the parties to the Contract Agreement intend to be carried out by the Engineer are set out in this document, and the consequences of any failure by the Engineer to carry out those duties are referred to in 6.2.4.~~

~~**2 — The contract**~~**2.1 Type of ~~contract~~ Contract Price****2.1.1**

The Contract Price shall be ~~a lump sum—contract, or a measure and value—contract, or a cost reimbursement—contract, or target price (or a combination of any of those)~~ as stated in the Special Specific Conditions, and shall be governed by 2.2, 2.3, ~~or 2.4~~ or 2.5 respectively.

2.1.2

The Contractor shall carry out the work described in the Contract and fulfil its obligations ~~thereunder~~ under the Contract, and the Principal shall pay the Contract Price to the Contractor as provided in 2.2, 2.3, ~~or 2.4~~ or 2.5 as applicable.

2.2 Lump sum ~~contract~~ Contract Price**2.2.1**

~~In a~~ A lump sum ~~contract—Contract Price (or lump sum part of the Contract Price—)~~ shall be the sum stated in the Contract subject to such adjustments as are provided for in the Contract. The following provisions of 2.2 shall apply to the Contract Price and Schedule of Prices (or lump sum parts of the Contract Price and Schedule of Prices).

2.2.2~~**2.2.2 —**~~

~~Any Schedule of Prices—~~ Subject to 2.2.4, any Schedule of Prices (or lump sum parts of the Schedule of Prices) included in the Contract shall be used as a basis for computing Payment Schedules and for valuing Variations and for no other purpose. The Principal does not warrant that any quantities included in any Schedule of Prices are complete or accurate.

2.2.3

If the total of the prices in the ~~schedule—~~ Schedule of Prices differs from the ~~lump sum tendered—Contract Price—~~ then the scheduled prices shall be adjusted by the ~~Engineer—~~ Independent Certifier after

consultation with the Contractor to agree with the ~~tendered lump sum~~ Contract Price. The amended prices shall then become the Schedule of Prices referred to in 2.2.2.

2.2.4

~~If~~ Where provided in the Specific Conditions that the Schedule of Prices is a full schedule of quantities and the Schedule of Prices is included in the Contract, if any discrepancy is identified in the Schedule of Prices the ~~Engineer-Contract Administrator~~ or the Contractor shall so notify the other. The ~~Engineer-Contract Administrator~~ shall issue ~~a written direction an instruction~~ to resolve the discrepancy. For the purposes of 2.2, discrepancy shall mean:

- (a) Any inconsistency between the Drawings or Specifications on the one hand and the Schedule of Prices on the other, either as to measurement or description not being an inconsistency for which the Contractor is responsible; or
- (b) Any omission or inaccuracy in the compilation, preparation or copying of the quantities included in the Contract not being an omission or inaccuracy for which the Contractor is responsible.

~~If and if~~ a significant discrepancy has occurred it shall be treated as a Variation.

2.3 Measure and value ~~contract~~ Contract Price

2.3.1

~~In a~~ A measure and value ~~contract~~ Contract Price (or measure and value part of the Contract Price) shall be calculated according to the measured quantity, as ~~determined by the Engineer, agreed between the Contractor and Contract Administrator, or failing agreement Decided by the Independent Certifier,~~ of each item of work carried out at the rates set out in the Schedule of Prices, subject to such adjustments as are provided for in the Contract. The following provisions of 2.3 shall apply to the Contract Price and Schedule of Prices (or measure and value parts of the Contract Price and Schedule of Prices).

2.3.2

The Contractor shall be deemed to have checked the accuracy of the descriptions of the various items in the Schedule of Prices and to have allowed in its price to cover the whole range of work included within those items. Where an item of work has clearly been omitted by error from the Schedule of Prices, as where other items of a similar kind have been included, the work omitted shall be treated as a Variation.

2.3.3

The ~~Engineer-Contract Administrator~~ shall give notice to the Contractor of ~~his or her~~ the Contract Administrator's intention to measure any part or parts of the Contract Works. The Contractor shall be entitled to attend in person or be represented by an agent and to assist in such measurement. If the Contractor does not attend or neglects or omits to send an agent then the measurement made by, or on behalf of, or approved by the ~~Engineer-Contract Administrator~~, unless shown to be incorrect, shall be accepted as the correct measurement.

2.3.4

Any quantities given in the Schedule of Prices are provided for the purpose of evaluating tenders and may be taken as a reasonable assessment of the quantities involved in the Contract Works. Where the actual quantity of any single item differs from that given in the Schedule of Prices to such an extent as to make the scheduled price for that or any other item unreasonable then the change in quantity shall be treated as a Variation.

2.3.5

If the ~~tendered schedule~~ Schedule of Prices contains any errors in extension of unit rates or in summation so as to ~~vary the tendered sum~~ not correspond to the Contract Price then the unit rates shall be adjusted by ~~the Engineer after consultation with~~ agreement between the Contractor ~~to agree with the tendered sum~~ and Contract Administrator, or failing agreement Decided by the Independent Certifier. The adjusted rates shall then become the Contract rates for payment in accordance with 2.3.1.

2.4 Cost reimbursement ~~contract~~ Contract Price

2.4.1

~~In a~~ A cost reimbursement ~~contract~~ Contract Price (or cost reimbursement part of the Contract Price) shall be ~~determined~~ calculated as follows:

- (a) The Net Cost of the quantities of labour, Materials, Plant, and Subcontractors used in the execution of the Contract Works, recorded in accordance with 9.4.3, excluding any costs referred to under 2.4.2; and
- (b) Subject to (c), an allowance (if any) for ~~On-site Overheads-Preliminary & General~~ and/or ~~Off-site Overheads and Profit Margin~~ at the relevant percentages stated in the ~~Special Specific~~ Conditions; and/or
- (c) Where and to the extent that the Contract contains rates in respect of any item, those rates shall be used in lieu of the Net Cost. An allowance for ~~On-site Overheads and/or Off-site Overheads and Profit Preliminary & General and / or Margin~~ shall only be made to the extent that the relevant rate does not include allowance for such amounts.

The following provisions of 2.4 shall apply to the Contract Price (or cost reimbursement parts of the Contract Price).

2.4.2

The Contractor shall not be entitled to be reimbursed any cost which:

- (a) Is not justified by the Contractor's records or was not reasonably and actually incurred in the carrying out of the Contract Works;
- (b) Was incurred, or to the extent incurred, due to a default by the Contractor, including remedying defects caused by ~~the Contractor, or the Contractor~~ Materials or workmanship not complying with the requirements of the Contract, or the Contractor not otherwise complying with the requirements of the Contract; or
- (c) Was incurred by the Contractor in preparing a claim against the Principal under Section 13 or in any associated dispute resolution proceedings (but without prejudice to the Contractor's entitlement to the recovery of any costs pursuant to those dispute resolution proceedings).

2.4.3

The Contractor shall maintain and allow the ~~Engineer-Contract Administrator and the Independent Certifier~~ to inspect the records required under 2.4.1(a).

2.4.4

Where required by the ~~Special-Specific~~ Conditions, the Contractor shall submit an indicative estimate of the Contract Price to the ~~Engineer-Contract Administrator~~ prior to commencement of the Contract Works.

2.4.5

Each payment claim for payment for cost reimbursement work shall, in addition to the requirements of 12.1.3, include:

- (b) Full details of amounts claimed under 2.4.1;
- (c) Where an indicative estimate is required under 2.4.4, a reconciliation of the claim against estimates submitted by the Contractor in relation to the work concerned, with an explanation for any differences, and an updated estimate of the final Contract Price.

2.5 Target price Contract Price

2.5.1

Where a target price is stated in the Specific Conditions the Contract Price (or target price part of the Contract Price) shall be calculated in accordance with 2.4 then adjusted as follows:

- (a) Where and to the extent the Contract Price calculated in accordance with 2.4 (prior to adjustment under this 2.5.1(a)) is less than the Target Price, that saving shall be shared between the Contractor and the Principal in accordance with the percentages stated in the Specific Conditions. The final adjusted Contract Price shall be the Contract Price calculated in accordance with 2.4 (prior to adjustment under this 2.5.1(a)) plus the Contractor's share of the saving; and
- (b) Where and to the extent the Contract Price calculated in accordance with 2.4 (prior to adjustment under this 2.5.1(b)) exceeds the Target Price, that overrun shall be shared between the Contractor and the Principal in accordance with the percentages and up to the cap stated in the Specific Conditions. The final adjusted Contract Price shall be the Contract Price calculated in accordance with 2.4 (prior to adjustment under this 2.5.1(b)) less the Contractor's share of the overrun.

2.5.2

Except as stated in the Specific Conditions, the Target Price shall be subject to the same adjustments as are provided for in the Contract as applicable to the Contract Price. Any clause excluded in the Specific Conditions shall only be excluded from providing any entitlement to adjustment to the Target Price and shall still apply to any entitlement to adjustment to the Due Date for Completion.

2.5.3

Where an indicative estimate is required under 2.4.4, the updates required under 2.4.5(b) shall include a forecast share of Savings or Overrun and final Contract Price adjusted in accordance with 2.5.1(a) or (b).

2.5.4

The Independent Certifier may provisionally certify any forecast share of savings or overrun in any Progress Payment Schedule. The final Contract Price adjusted in accordance with 2.5.1(a) or (b) shall be certified in the Final Payment Schedule.

2.6 ~~2.5~~Local authority contracts, contracts in public places, and road contracts**2.6.1 ~~2.5.1~~**

~~provisions of 2.5.2 shall apply unless otherwise excluded.~~~~2.5.2~~

Where the Contract is stated in the ~~Special~~Specific Conditions to be a local authority contract, the Principal:

- (a) ~~The Principal~~ has certain regulatory functions in its capacity as a local authority outside the Contract. ~~The Principal~~; and
- (b) shall be deemed not to be acting in the capacity of Principal under this Contract when exercising these functions in good faith; ~~and~~

2.6.2 ~~2.5.3~~

Where the Contract is stated in the ~~Special~~Specific Conditions to be a contract in a public place, clauses B1 and B2 of Appendix B shall apply.

2.6.3 ~~2.5.4~~

Where the Contract is stated in the ~~Special~~Specific Conditions to be a road contract, Appendix B shall apply.

2.7 ~~2.6~~Evidence of Contract**2.7.1 ~~2.6.1~~**

Unless and until the Contract Agreement is executed by the parties, the tender or other offer and its acceptance between the Contractor and Principal shall, together with the other documents intended to form part of the Contract, constitute the Contract between them.

2.7.2 ~~2.6.2~~

Unless the ~~Special~~Specific Conditions require otherwise the Contract Agreement shall be executed by the Principal and the Contractor as follows:

- (a) Within 10 Working Days from the Date of Acceptance of Tender, the Principal shall have the Contract Agreement prepared ~~in triplicate~~(in quadruplicate if in hard copy), attaching to each copy correct copies of all the documents forming the Contract, and shall have all copies delivered to the Contractor;
- (b) If the Contractor considers that the documents delivered to it do not correctly describe the Contract for which its tender was accepted, it shall within 10 Working Days after delivery advise the Principal in writing of the matters in which the documents are considered to be defective. The documents shall then be amended as may be found necessary;
- (c) Within 10 Working Days of receipt of the documents or amended documents, the Contractor shall execute the Contract Agreement in ~~triplicate~~quadruplicate and shall deliver all three copies to the Principal;
- (d) Within 10 Working Days of receipt of the documents from the Contractor, the Principal shall execute the Contract Agreement ~~in triplicate~~(in quadruplicate if in hard copy);
- (e) One of the executed copies of these documents shall thereupon be returned to the Contractor and one delivered to the ~~Engineer~~Contract Administrator and Independent Certifier.

2.7.3 2.6.3

Failure by either party to execute the Contract Agreement within the time provided shall be a default under Section 14.

2.7.4

The Contract shall be provided in the electronic form stated in the Specific Conditions, together with any hard copies as provided in the Specific Conditions.

2.8 2.7 Documents prepared by the ~~Engineer~~ Contract Administrator or Principal**2.8.1 2.7.1**

The ~~Engineer~~ Contract Administrator shall on request by the Contractor supply without charge ~~sets of copies of the Contract and any~~ other Drawings and Specifications that have been prepared by or on behalf of the Principal for the carrying out of the Contract Works. All such documents shall remain the property of the Principal and shall not be copied or used for any purpose other than the Contract. ~~The Contract. Such documents~~ shall be provided in the electronic form stated in the ~~Special~~ Specific Conditions, together with

:(a) ~~A signed set;~~

(b) ~~Two hard copies; and~~

(c) ~~Two hard copies of any additional consent documents~~ any hard copies as provided in the Specific Conditions.

2.8.2 2.7.2

The Contractor shall maintain on Site at least one copy of the Drawings and Specifications and the Schedule of Prices marked to show where superseded or modified together with at least one copy of all amended Drawings, supplementary Drawings, information, or ~~directions~~ Instruction as may be issued by the ~~Engineer~~ Contract Administrator from time to time during the Contract.

2.7.3

~~The General Conditions shall not be varied or modified by the Drawings or the Specifications or the Schedule of Prices unless the change is described in, or clearly identified by reference in, the Special Conditions, or by an express provision in any correspondence which has been identified as a Contract document. The documents comprising the Contract shall in all other respects be taken as mutually explanatory. Ambiguities or omissions shall not invalidate the Contract.~~

2.8.3 2.7.4

~~If compliance with the explanations or instructions causes delay in the completion of the Contract Works or additional Cost to the Contractor which in either case the Contractor could not reasonably have foreseen, the explanation or instruction shall be treated as a Variation.~~ **2.7.5**

Where the Contract or any of the other Drawings or Specifications which have been prepared by, or on behalf of, the Principal are considered to be ambiguous or unclear, the Contractor may request and the ~~Engineer~~ Contract Administrator shall issue explanations or supplementary ~~instructions~~. ~~The Engineer Instructions. The Contract Administrator~~ shall supply the explanations or supplementary ~~instructions~~ Instructions to the Contractor within a reasonable time after the receipt of notice from the Contractor.

2.8.4

~~The Engineer~~ The Contract Administrator may clarify or further define the Contract Works by issuing to the Contractor ~~instructions~~ Instructions, documents, and Drawings in addition to those included in the Contract. The Contractor shall be bound by such additional ~~instructions~~ Instructions, documents, and Drawings.

2.8.5 2.7.6

If the Contractor reasonably requires further ~~instructions~~ Instructions, documents, and Drawings from the ~~Engineer~~ Contract Administrator at any time the Contractor shall give notice in writing of this requirement to the ~~Engineer~~. ~~The Engineer~~ Contract Administrator. ~~The Contract Administrator~~ shall supply the further ~~instructions~~ Instructions, documents, and Drawings to the Contractor within a reasonable time after the receipt of notice from the Contractor.

2.8.6 2.7.7

If the Contractor suffers delay in completion of the Contract Works or incurs additional Cost by reason of the late issue ~~by the Engineer or Principal~~ of any ~~instructions~~ Instructions, documents, or Drawings, that late issue shall be treated as a Variation. If the Contractor suffers delay in completion of the Contract

Works or incurs additional Cost by reason of the issuing to the Contractor of ~~instructions~~Instructions, documents, Drawings, or Specifications under ~~2.7.5~~2.8.4 or 2.8.5, and that delay or additional Cost could not reasonably have been foreseen by the Contractor when tendering, such issuing shall be treated as a Variation.

2.9 ~~2.8~~ Documents prepared by the Contractor

2.9.1 ~~2.8.1~~

Where required by the Contract, or where applicable to design for which the Contractor is responsible, the Contractor shall issue Drawings and Specifications. Prior to their issue for construction these Drawings and Specifications shall have fulfilled any requirement in the Contract for the preparation and review of such documents. The Contractor shall be bound by such additional Drawings and Specifications.

2.9.2 ~~2.8.2~~

The Contractor shall ~~on request by the Engineer~~ supply without charge ~~hard copy sets of~~ copies of Drawings and Specifications which have been prepared by, or on behalf of, the Contractor ~~as provided~~ in the ~~Special~~electronic form stated in the Specific Conditions. All such documents shall remain the property of the Contractor and shall not be copied or used for any purpose other than the Contract. ~~The~~Where stated in the Specific Conditions, the documents shall also be provided in ~~the electronic form stated in the Special Conditions~~hard copy.

2.9.3 ~~2.8.3~~

The Contractor shall maintain on Site at least one copy of Drawings and Specifications as may be issued by the Contractor, marked to show where superseded or modified.

2.9.4 ~~2.8.4~~

Where the ~~Engineer~~Contract Administrator considers the Drawings or Specifications issued by the Contractor are ambiguous or unclear, or do not comply with the Contract, the ~~Engineer may request and Contract Administrator may instruct~~ the Contractor ~~shall to~~ issue explanations or supplementary Drawings or Specifications. Ambiguities and discrepancies in Drawings or Specifications prepared by, or on behalf of, the Contractor shall be resolved by the Contractor and shall not be treated as a Variation. Any resolution of an ambiguity or discrepancy by the Contractor shall not alter any requirements of the Contract, or of a Variation ordered by the ~~Engineer~~Contract Administrator, except with the agreement of the ~~Engineer~~Contract Administrator.

2.10 ~~2.9~~ Assignment

2.10.1 ~~2.9.1~~

Neither party shall assign the whole or any part of the Contract without the prior written ~~consent~~approval of the other party. Such ~~consent~~approval shall not be unreasonably withheld or delayed.

2.10.2 ~~2.9.2~~

The assignment or transfer of shares in or the restructuring of the Contractor so that the effective control of the Contractor passes to Persons other than those holding it at the date of this Contract will be an assignment of this Contract for the purpose of this clause.

2.10.3 ~~2.9.3~~

Unless specifically stated to the contrary in any ~~consent~~approval to an assignment, no assignment shall release or discharge the assignor from any liability or obligation under this Contract.

2.11 ~~2.10~~ No waiver

Neither party shall be considered to have waived or released any of its rights under the Contract except by agreement in writing between the parties.

3 Bonds

3.1 Contractor's Bond

3.1.1

Clause 3.1 shall apply where a Contractor's Bond is required by the ~~Special~~Specific Conditions.

3.1.2

The Contractor shall within 2 Months of the Date of Acceptance of Tender provide the Principal with security in the form of a Contractor's Bond, to ensure performance of the Contractor's obligations under

the Contract Agreement. The Contractor's Bond shall be for the amount stated in the ~~Special~~ Specific Conditions and shall be in the form set out in Schedule 3 and shall be executed by the Contractor and by the surety named in the tender or approved by the Principal.

3.1.3

The form of the Contractor's Bond shall not include an expiry date unless agreed by the Principal. Where any Contractor's Bond contains an expiry date the Contractor shall provide a replacement bond no less than 1 Month prior to that date, unless the notice required by 3.1.7 has by then been issued by the Principal.

3.1.4

No payment otherwise due under the Contract shall become payable until the Contractor and its surety have executed and delivered the Contractor's Bond to the Principal.

3.1.5

If the Contractor's Bond is not executed and delivered to the Principal within the required time, then the Principal shall be entitled to treat such failure as a default by the Contractor under 14.2.

3.1.6 ~~3.1.7~~

The Contractor's Bond may not be called up if:

- (b) The Contractor has carried out and fulfilled all the obligations of the Contractor under the Contract up to Practical Completion;
- (c) The Contractor has paid to the Principal any damages sustained by the Principal for all defaults by the Contractor up to Practical Completion or the termination of the Contract; or
- (d) A Practical Completion Certificate has been issued for the whole of the Contract Works in accordance with 10.4.

3.1.7 ~~3.1.8~~

Within 5 Working Days after the Principal's receipt of the Practical Completion Certificate for the whole of the Contract Works, the Principal shall deliver to the Contractor and to the Contractor's surety a notice in writing stating that the Contractor and the surety are released from the Contractor's Bond and shall return the original Contractor's Bond to the Contractor.

~~Where the Principal contends that the Contractor has failed to perform its obligations under the Contract the Engineer shall make an estimate of the Cost of any remedial or other work outstanding and of any other liability on the part of the Contractor under the Contract Agreement. The Engineer shall notify the Principal and Contractor of the estimate.~~

3.1.8

~~The Contractor may provide the Principal with a replacement bond in the form set out in Schedule 3, for the amount of the estimate, to ensure performance of the Contractor's obligations under the Contract. The replacement bond shall be executed by the Contractor and by the surety to the original bond or by another surety approved by the Principal. Upon receipt of such replacement bond the Principal shall deliver to the Contractor and to the Contractor's surety a notice in writing stating that the Contractor and the surety are released from the original bond.~~

The Cost of obtaining any Contractor's Bond shall be borne by the Contractor.

3.2 Principal's Bond

3.2.1

Clause 3.2 shall apply where a Principal's Bond is required by the ~~Special~~ Specific Conditions.

3.2.2

The Principal shall on the Date of Acceptance of Tender provide the Contractor with security in the form of a Principal's Bond to secure compliance by the Principal with its obligations under the Contract. The Principal's Bond shall be for the amount stated in the ~~Special~~ Specific Conditions. It shall be in the form set out in Schedule 4 and shall be executed by the Principal and by the surety named in the ~~Special~~ Specific Conditions or approved by the Contractor.

3.2.3

If the Principal's Bond is not executed and delivered to the Contractor within the required time the ~~Engineer~~ Contract Administrator shall, on request by the Contractor in writing, suspend the Contract Works under ~~6.76.8~~. In the event that the Principal's Bond is not executed and delivered to the

Contractor within 20 Working Days after suspension of the Contract Works the Contractor shall be entitled to treat such failure as a default by the Principal under 14.3.

3.2.4

The Principal's Bond may not be called up if the Principal has paid to the Contractor the Contract Price and any other monies payable to the Contractor under the Contract.

3.2.5

Within 5 Working Days after receipt of payment in accordance with the ~~Final~~final Payment Schedule ~~under 12.5~~ or after payment in accordance with the arbitrator's award in the case of a dispute on the ~~Final~~final Payment Schedule, the Contractor shall deliver to the Principal and to the Principal's surety a notice in writing either stating that the Principal and the surety are released from the Principal's Bond or giving particulars of the respects in which the Contractor contends that the Principal has failed to perform the Principal's obligations under the Contract or has otherwise failed to satisfy the conditions of the Principal's Bond.

3.2.6

~~Where the Contractor contends that the Principal has failed to perform its obligations under the Contract Agreement, or has otherwise failed to satisfy the conditions of the Principal's Bond, the Contractor shall forthwith notify the Principal the sum which it claims to be due and owing by the Principal under the Contract, or otherwise payable as damages for breach of contract.~~

~~3.2.7~~

~~The Principal may provide the Contractor with a replacement bond for the amount of the sum so notified by the Contractor in the form set out in Schedule 4. The replacement bond shall be executed by the Principal and by the surety to the original Principal's Bond or by another surety approved by the Contractor. Upon receipt of such replacement bond the Contractor shall deliver to the Principal and to the Principal's surety a notice in writing stating that the Principal and the surety are released from the original Principal's Bond.~~

~~3.2.8~~

The Cost of obtaining any Principal's Bond shall be borne by the Principal.

4 Subcontracts

4.1 General

4.1.1

The Contractor shall not enter into a single subcontract for the whole or substantially the whole of the Contract Works without the written ~~consent~~approval of the Principal.

4.1.2

The Contractor may subcontract parts of the Contract Works to Subcontractors named in the Contractor's tender. The Contractor shall not otherwise subcontract any part of the Contract Works without the prior written ~~consent of the Engineer whose consent~~approval of the Contract Administrator whose approval shall not be unreasonably withheld.

4.1.3

The subcontracting of any of the Contract Works shall not relieve the Contractor from any liability or obligation under the Contract.

4.2 Nominated Subcontractors

4.2.1

The Principal or the ~~Engineer~~Contract Administrator may nominate a Subcontractor to carry out work included within the Contract or to supply Materials or services required under the Contract. Except where the work or supply is covered by a Provisional Sum, a Provisional Item, or a Prime Cost Sum which is included in the Contract Price, the nomination shall be made in the Tender Documents. The Contractor shall employ the Nominated Subcontractor to carry out the nominated work or supply.

4.2.2

The Contractor shall not be required to employ a Nominated Subcontractor which is not named in the Tender Documents if the Contractor has made reasonable objection to the ~~Engineer~~Contract Administrator within 10 Working Days of nomination against acceptance of the Nominated

Subcontractor as a Subcontractor. In such an event the ~~Engineer-Contract Administrator~~ shall make a fresh nomination unless it is agreed between the ~~Engineer-Contract Administrator~~ and the Contractor that the work shall be carried out by the Contractor or by some other Person under a separate contract with the Principal.

4.2.3

The Contractor shall not be required to employ a Nominated Subcontractor which declines to enter into an appropriate subcontract with the Contractor. An appropriate subcontract shall be one which imposes on the Nominated Subcontractor the obligations imposed on the Contractor towards the Principal in respect of the subcontract works, and which includes reasonable provisions for:

- (a) Indemnifying the Contractor for the liabilities in respect of subcontracted works for which the Contractor has contracted to indemnify the Principal;
- (b) Indemnifying the Contractor for claims in respect of negligence or default by the Nominated Subcontractor, its servants, and agents;
- (c) Sequence of operations and completion times;
- (d) Indemnifying the Contractor for liquidated or other damages or loss arising out of delays in the completion of the Contract Works attributable directly or indirectly to the Nominated Subcontractor; and
- (e) The submission of all disputes to arbitration.

4.2.4

~~If~~ The Contractor shall notify the Contract Administrator in writing if a Nominated Subcontractor:

- (b) Fails without reasonable grounds to enter into a subcontract with the Contractor within 10 Working Days of a written request to do so;
- (c) Repudiates its subcontract or makes default such that the Contractor is entitled to treat the subcontract as at an end; or
- (d) Refuses to complete the work by reason of breach on the part of the Contractor; ~~the Contractor shall notify the Engineer in writing.~~

4.2.5

4.2.5

Where notice is given to the ~~Engineer-Contract Administrator~~ under 4.2.4 and the matter is not resolved within a reasonable time, ~~the~~ the Principal or the ~~Engineer-Contract Administrator~~ shall make a fresh nomination. Alternatively, ~~the~~ the ~~Engineer-Contract Administrator~~ and the Contractor may agree to the work being carried out by the Contractor or by another Subcontractor or by some other Person under a separate contract with the Principal.

4.2.6

Where paragraph (a) or (b) of 4.2.4 applies and the Contractor consequently suffers delay in the completion of the Contract Works, or incurs additional Cost, the event giving rise to such delay or Cost shall be treated as a Variation. The Contractor shall, on the written request of the Principal, pursue a claim against the defaulting Subcontractor at the expense and for the benefit of the Principal.

4.2.7

Where ~~by~~ by reason of breach on the part of the Contractor, ~~a~~ a Nominated Subcontractor is entitled to treat the subcontract as at an end and elects to do so, any consequent Cost, loss, and delay incurred by the Contractor shall be borne by it and it shall indemnify the Principal against any consequent Cost, loss, and delay incurred by the Principal.

5 General obligations

5.1 General responsibilities

5.1.1

In carrying out the Contract Works the Contractor shall complete, handover to the Principal, and remedy defects in the Contract Works and provide all services, labour, Materials, Plant, Temporary Works, transport, and everything whether of a temporary or permanent nature required so far as the necessity for the same is specified in, or is to be inferred from the Contract.

The Contractor shall carry out the Contract Works with due care and diligence, in a proper and workmanlike manner with sound workmanship and materials, safely and in accordance with good industry practice.

5.1.2

The Contractor shall comply with all ~~proper instructions~~ Instructions issued by the ~~Engineer~~ Contract Administrator in relation to the Contract.

5.1.3

The Contractor shall be responsible for the adequacy, stability, and safety of all its Site operations and methods of construction, provided that the Contractor shall not be responsible for the design or specification of the Contract Works except as provided under 5.2.

5.1.4

The Principal warrants that it has made available to the Contractor before the submission of the Contractor's tender all information of which it is aware, which has been obtained by or on behalf of the Principal for the purposes of the Contract, on the nature of the physical conditions relevant to the Contract Works. The Principal makes no warranty as to the sufficiency or accuracy of such information. The Contractor shall be responsible for the interpretation of all such information for the purposes of the Contract Works.

5.2 Design responsibilities

5.2.1

Where the Contract provides that the Contractor has a responsibility for design, including the design of any parts of the Contract Work stated in the Specific Conditions, the design work shall include necessary investigation, design calculation, drawing, specification of Materials and workmanship, testing, and monitoring of the design on or off the Site, unless otherwise provided in the Contract.

5.2.2

The Contractor shall undertake the design of the Temporary Works except to the extent that the Contract provides such design or provides that it is to be undertaken by, or on behalf of, the Principal.

5.2.3 5.1.4

Where the Contractor undertakes the design of any part of the Contract Works the Contractor shall be responsible for carrying out such design with reasonable skill, care, and diligence. No comment, review, or approval by the ~~Engineer~~ Contract Administrator or Principal shall relieve the Contractor of any responsibility for that part of the Contract Works.

5.1.5

~~The Contractor shall be responsible for the adequacy, stability, and safety of all its Site operations and methods of construction, provided that the Contractor shall not be responsible for the design or specification of the Contract Works except as provided under 5.1.3 and 5.1.4.~~

5.1.6 —

~~The Principal warrants that it has made available to the Contractor before the submission of the Contractor's tender all information of which it is aware, which has been obtained by or on behalf of the Principal or the Engineer for the purposes of the Contract, on the nature of the physical conditions relevant to the Contract Works. The Principal makes no warranty as to the sufficiency or accuracy of such information. The Contractor shall be responsible for the interpretation of all such information for the purposes of the Contract Works.~~

5.3 **5.2 Contractor's Representative**

5.3.1 5.2.1

The Contractor shall:

- (a) ~~(d) The Contractor shall provide all necessary supervision during the Contract. It shall have on the Site at all working times a competent representative who shall be one natural person only not being a body corporate or firm and whose name shall be notified to the Engineer in writing and who shall be authorised to receive on behalf of the Contractor any instructions from the Engineer or the Engineer's Representative. All work shall be carried out under the supervision of the Contractor's Representative and shall ensure at all working times there is a competent supervisor on the Site; and~~
- (b) 5.2.2 have at all working times a Contractor's Representative to receive Instructions

5.3.2

~~The~~ The Contract Administrator may at any time by notice in writing to the Contractor object on reasonable grounds to the continuance of any Person as the Contractor's Representative. The notice shall state the grounds upon which the objection is based. The Contractor shall appoint another competent natural person in place of the Person about whom the objection has been made.

5.4 5.3 Control of employees

The Contract Administrator may object to and ~~direct~~ Instruct the Contractor to remove from the Contract Works any employee of the Contractor or of a Subcontractor in or about the execution of the Contract Works who by reason of serious misconduct, incompetence, or negligence in the proper performance of his or her duties is a danger to safety or welfare. An employee required to be removed shall not again be employed upon the Contract Works without the permission of the ~~Engineer~~ Contract Administrator.

5.5 5.4 Possession of the Site**5.5.1 5.4.1**

The Principal shall give the Contractor possession of the Site on the date provided in the ~~Special~~ Specific Conditions and if no such date is provided 10 Working Days after the Date of Acceptance of Tender, subject to prior compliance with the ~~Contractor's and Principal's obligations under 8.2.5 and 8.7.5~~ preconditions set out in 5.5.1 of the Specific Conditions.

5.5.2 5.4.2

If the Principal does not give possession of the Site or any portion of the Site, in accordance with the ~~Special~~ Specific Conditions, for any reason other than default of the Contractor in carrying out its obligations under the Contract, the Contract Administrator shall suspend the commencement of work on the Site or on that portion of the Site by notice in writing under ~~6.76.8~~.

5.5.3 5.4.3

The Principal shall obtain authority for the Contractor to have the reasonable right of entry upon and do any act upon any adjoining property as may be necessary for the carrying out of the Contract Works. Such access may be limited by the ~~Special~~ Specific Conditions. Any Costs involved in obtaining such right shall be borne by the Principal. The Contractor shall procure for itself, at its own Cost, the use of or appropriate rights in respect of any other property which it may choose to use for carrying out the Contract Works.

5.5.4 5.4.4

The Contractor shall respect the rights of the adjoining property owners and occupiers and shall advise such Persons when access to property is required for the purposes of carrying out the Contract Works, or where property access may be restricted during the course of the Contract Works, and shall ensure any inconvenience to occupiers is kept to a minimum as far as is reasonably practicable.

5.5.5 5.4.5

The Contract Works shall be carried out so as not to interfere unreasonably with the convenience of the public, or with the condition of or access to, or use of, public or private property, highways, roads, bridges, footpaths, or public places.

5.5.6 5.4.6

The Contractor shall make good as soon as practicable damage to any adjoining property arising out of the carrying out of the Contract Works. Such making good shall be carried out at the expense of the Contractor unless the damage arises from any of the matters referred to in 7.1.2 in which event the making good (to the extent its necessity arises from any of the matters referred to in 7.1.2) shall be treated as a Variation.

5.6 5.5 Separate Contractors**5.6.1 5.5.1**

Where provided in the ~~Special~~ Specific Conditions, the Principal may arrange for work on the Site not included in the Contract to be carried out by Persons other than the Contractor including the Principal's employees and concurrently with the carrying out of the Contract Works. The Contractor shall cooperate with the Separate Contractors and afford reasonable opportunities for the execution of their work. The Principal shall ensure that in carrying out any such work any Separate Contractor shall in all respects comply with all reasonable requests from the Contractor.

5.6.2 5.5.2

The Contractor shall afford all reasonable facilities for Separate Contractors in accordance with the ~~instructions~~ Instructions of the ~~Engineer~~ Contract Administrator provided that the requirement of such facilities has been described in the ~~Special~~ Specific Conditions. If the Contractor suffers delay in the completion of the Contract Works or incurs additional Cost arising from the activity of Separate Contractors which is not otherwise provided for in the Contract, the effect of that activity shall be treated as a Variation.

5.7 5.6 Care of the works and site**5.7.1 5.6.1**

The Contractor shall be responsible for the care of the Contract Works or any Separable Portion and all Plant from the time it obtains possession of the Site until the relevant time of Practical Completion. If the Principal takes occupancy under 10.7.2 of any portion of the Contract Works, the Contractor's responsibility for care of that portion shall cease on the date and at the time of such occupancy.

5.7.2 5.6.2

The Contractor shall be responsible for the care of all Materials which are in its care or possession awaiting incorporation in the Contract Works.

5.7.3 5.6.3

The Contractor shall be responsible for loss or damage to the Contract Works occurring after Practical Completion arising out of the execution of the Contractor's outstanding obligations under the Contract.

5.7.4 5.6.4

The Contractor shall be responsible for loss or damage to the Site arising out of the execution of the Contractor's obligations under the Contract.

5.7.5 5.6.5

Except where loss or damage has the effect of terminating the Contract by frustration, if any loss or damage occurs to the Contract Works or Materials or the Site while the Contractor is responsible under ~~5.6.1~~ 5.7.1, ~~5.6.2~~ 5.7.2, ~~5.6.3~~ 5.7.3, or ~~5.6.4~~ 5.7.4 the Contractor shall:

- (a) Attend urgently to any matters with safety or environmental impacts;
- (b) Notify the ~~Engineer~~ Contract Administrator of the loss or damage and its cause and afford the Engineer a reasonable time to inspect the loss or damage; and
- (c) Repair the loss or damage to the extent needed for completion of the Contract Works and for meeting the Contractor's obligations under Section 11. Such repair of loss or damage shall be carried out without additional payment by the Principal unless provided for under 7.1.3 or 9.5, or caused by an excepted risk as defined in ~~5.6.5~~ 5.7.5. To the extent the necessity to repair such loss or damage arises from an excepted risk, the repair shall be treated as a Variation.

5.7.6 5.6.6

The excepted risks are:

- (a) Riot (in so far as it is uninsurable), civil commotion or disorder (unless solely restricted to employees of the Contractor or its Subcontractors and arising from the Contractor's conduct of the Contract Works), war, terrorism, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection of military, or usurped power;
- (b) Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive, or other hazardous properties of any nuclear explosive, nuclear assembly, or nuclear component thereof;
- (c) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (d) The use, occupation, or taking over of any portion of the Contract Works including but not limited to any portion in respect of which a Practical Completion Certificate has been issued;
- (e) Any fault, defect, error, or omission in the design of the Contract Works for which the Contractor is not responsible under the Contract;
- (f) Subject to 8.1.6, any such operation of the forces of nature as an experienced contractor could not reasonably foresee or make provision for;
- (g) Any further risks specifically excepted in the ~~Special~~ Specific Conditions; and

- (h) Any act or omission of the Principal or of the ~~Engineer~~ Contract Administrator, Independent Certifier, Advisers or their assistants or of any other Person for whose acts or omissions the Principal is as between itself and the Contractor responsible.

5.8 ~~5.7~~ Protection of Persons and property

5.8.1 ~~5.7.1~~

~~So far as~~ The Contractor and the Principal shall comply with the Health and Safety at Work Act. To the extent that the Site and the Contract Works are under the Contractor's control, the Contractor shall take all ~~reasonable~~ reasonably practicable steps to keep them in an orderly state and in such a condition as to avoid danger to Persons and property.

5.8.2 ~~5.7.2~~

The Contractor shall take all reasonably practicable steps to:

- (a) Provide and maintain a safe working environment;
- (b) Identify ~~any significant hazards~~ and manage risks to health and safety;
- (c) Ensure that any employee ~~or~~ Subcontractor involved in carrying out the Contract Works is not unnecessarily exposed to hazards, visitor to the Site and other Persons are protected so far as reasonably practicable from risks which are under the Contractor's control; ~~and~~
- (d) Have proper procedures for dealing with emergencies that may arise.

5.8.3 ~~5.7.3~~

~~The Contractor shall:~~

The Contractor and the Principal shall each give to the other party through the Contract Administrator a copy of any report which it is required to make under the Health and Safety at Work Act.

5.8.4 ~~5.7.5~~

- ~~(a) — Maintain a register of accidents and serious harm;~~
- ~~(b) — Investigate accidents and identify their cause; and~~
- ~~(c) — Ensure that all Persons under the Contractor's control are appropriately supervised.~~

~~5.7.4~~ —

~~The Contractor shall give to the Principal through the Engineer Contract a copy of any report which the Contractor is required to make to a public authority on any accident which is associated with the carrying out of the Contract Works and results in serious harm to any Person.~~

The Principal shall notify the Contractor through the Contract Administrator of any health and safety hazards ~~risks~~ associated with the Contract Works or the Site, or special safety measures required, of which the Principal or the ~~Engineer~~ Contract Administrator are aware, and with which an experienced contractor may not reasonably be expected to be familiar.

5.8.5 ~~5.7.6~~

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

5.8.6 ~~5.7.7~~

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

5.9 Site-specific safety plan

5.9.1

The Contractor shall prepare and submit to the Contract Administrator a Site-specific safety plan for the execution of the Contract Works.

5.9.2

The Site-specific safety plan shall address the means by which the Contractor intends to meet its obligations under 5.7 and shall comply with any other requirements for health and safety set out in the Contract.

5.9.3

Within 5 Working Days of receipt of the Contractor's Site-specific safety plan, or revised Site-specific safety plan, the Contract Administrator shall notify the Contractor in writing whether or not the Contract Administrator accepts the plan. Such acceptance shall not be unreasonably withheld. Where the Contract Administrator does not accept the plan, the notice shall include the Contract Administrator's reasons, and the Contractor shall submit a revised Site-specific safety plan.

5.9.4

The Contractor shall not commence any part of the Contract Works on Site unless the Contract Administrator has accepted the Site-specific safety plan or revised Site-specific safety plan.

5.9.5

Compliance with the Site-specific safety plan shall not relieve the Contractor from any of its duties, obligations, and liabilities under the Contract.

5.10 ~~5.8~~Setting out**5.10.1 ~~5.8.1~~**

The Contractor shall be responsible for the setting out of the Contract Works in accordance with the Contract and the information and ~~instructions—~~Instructions issued by the ~~Engineer~~Contract Administrator.

5.10.2 ~~5.8.2~~

The Contract Administrator shall supply to the Contractor, on or before giving possession of the Site, the information necessary to enable the Contractor to set out the Contract Works. Such information shall include the levels and positions of sufficient survey marks on or adjacent to the Site. The Contractor shall refer to the ~~Engineer for instruction—~~Contract Administrator for Instruction any cases which come to the notice of the Contractor where dimensions or levels are inconsistent or where any portion of the Contract Works appears to encroach beyond the Site boundaries.

5.10.3 ~~5.8.3~~

The Contractor shall preserve and maintain in their true position all survey marks other than marks which are required to be covered or removed by the Contract Works. The Contractor shall arrange replacement at the Contractor's own Cost of any survey mark that is disturbed or obliterated.

5.10.4 ~~5.8.4~~

If the ~~Engineer or his or her representative—~~Contract Administrator or an Adviser wishes to check the setting out of the work, the Contractor shall provide unimpeded access. The checking by the ~~Engineer~~Contract Administrator or an Adviser of any line, level, or position set out by the Contractor shall not relieve the Contractor of responsibility for its correctness.

5.10.5 ~~5.8.5~~

If at any time prior to the issue of a Practical Completion Certificate 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—instructed~~ by the ~~Engineer—~~Contract Administrator shall rectify the error. The Cost of rectification shall be borne by the Contractor except, and to the extent, that any error arises out of incorrect information supplied by the Principal or by the ~~Engineer~~Contract Administrator, and which was not known by the Contractor to be incorrect, in which case it shall be treated as a Variation.

5.11 ~~5.9~~Materials, labour, and Plant**5.11.1 ~~5.9.1~~**

The Contractor shall, except where otherwise specified in the Contract, supply at its own Cost everything necessary for the completion of the Contract Works and the performance of its obligations under the Contract including minor items not expressly mentioned in the Contract and of a type not normally detailed but necessary for completion and performance of the Contract Works.

5.11.2 ~~5.9.2~~

All Materials and workmanship shall conform with the provisions of the Contract. Unless otherwise specified in the Contract, all Materials used other than in Temporary Works shall be new. ~~All work shall be carried out in a tradesman-like manner.~~

5.11.3 5.9.3

Where payment is made by the Principal in the form of advances or of sums for Plant or for Materials not yet incorporated in the Contract Works, the ownership of the Plant or Materials shall on payment being made vest in the Principal. Unless otherwise agreed by the Principal and the Contractor, the Principal shall permit the Contractor the use of the Plant and Materials for the purpose of the Contract. No Plant or Materials vested in the Principal shall be removed from the Site without the prior ~~consent~~ approval of the Principal, which shall not be unreasonably withheld. The ownership of any items of Plant or Materials no longer required for the Contract Works shall re-vest in the Contractor on repayment of any advances made by the Principal.

5.12 5.10 Programme**5.12.1 5.10.1**

Within 10 Working Days of the Date of Acceptance of Tender, the Contractor shall prepare a programme for the Contract Works and submit it to the ~~Engineer~~ Contract Administrator. The programme shall demonstrate how the Contractor proposes to meet the Due Date for Completion.

5.12.2 5.10.2

The Contractor shall use the programme to track and report actual progress against planned dates and to forecast the likely dates of Practical Completion of the Contract Works and any Separable Portions.

5.12.3 5.10.3

No payment otherwise due under the Contract shall become payable until the Contractor has submitted to the ~~Engineer~~ Contract Administrator the programme required by ~~5.10.1~~ 5.12.1.

5.12.4 5.10.4

Where the ~~Special~~ Specific Conditions require the programme to be a Comprehensive Programme, the period under ~~5.10.1~~ 5.12.1 shall be 20 Working Days or such further time Instructed by the Contract Administrator and the programme shall contain the following information:

- (a) The proposed sequence of works and the dates for commencement and completion of the various activities in the programme, sufficient to demonstrate how the Contractor proposes to meet the Due Dates for Completion of the Contract Works and any Separable Portions;
- (b) A critical path network analysis showing activity duration estimates and dependencies between activities;
- (c) The dates by which the Contractor reasonably requires access to specific areas of the Site;
- (d) The dates by which the Contractor reasonably requires any Materials, services, or work to be provided by the Principal, the ~~Engineer~~ Contract Administrator, or any Separate Contractors; and
- (e) Any other requirements set out in the ~~Special~~ Specific Conditions.

5.12.5 5.10.5

The Comprehensive Programme shall be submitted in both hard copy and soft copy using software specified in the ~~Special~~ Specific Conditions or, where no software is specified, commonly available software.

5.12.6 5.10.6

Where the programme is a Comprehensive Programme, the Contractor shall provide updates of the programme at the intervals stated in the ~~Special~~ Specific Conditions or as otherwise reasonably ~~required~~ Instructed by the ~~Engineer~~ Contract Administrator. The updated of the programme shall contain the information set out in 5.12.4

5.12.7**~~5.10.7~~**

The preparation and issue of further Drawings, Specifications, and ~~instructions~~ Instructions by the ~~Engineer~~ Contract Administrator and the provision of Materials, services, and work to be provided by the Principal shall be phased to comply with the Contractor's current programme, updated to reflect the actual progress of the Contract Works, or as otherwise reasonably requested by the Contractor.

5.12.8 5.10.8

From time to time the ~~Engineer~~ Contract Administrator may require the Contractor to amend its programme to take account of the actual progress of the Contract Works so as to achieve completion by the Due Date for Completion or as soon as practicable thereafter. The ~~Engineer~~ Contract

Administrator may further ~~require~~ Instruct the Contractor to indicate the means by which the programmed progress will be achieved.

~~5.10.9~~

5.12.9

Compliance with any programme required by ~~5.10~~ 5.12 shall not relieve the Contractor from any of its duties, obligations, or liabilities under the Contract.

5.12.10 ~~5.10.10~~

Work requiring inspection by the ~~Engineer~~ Contract Administrator, other than emergency work, shall be carried out on Working Days and within normal working hours unless the Contractor has given reasonable prior notice to the ~~Engineer~~ Contract Administrator.

5.13 ~~5.11~~ **Compliance with laws and Consents**

5.13.1

~~5.11.1~~

In respect of the Contract and the Contract Works the Principal and the Contractor shall comply with the provisions of all statutes, ~~regulations~~ secondary legislation, ~~and bylaws of government~~ instruments, ~~local, and other public authorities~~ bylaws and Consents that may be applicable to the Contract Works.

5.13.2 ~~5.11.2~~

~~For the purposes of 5.11 'licences' means 'licences, consents, Producer Statements, project information memoranda, building consents, approvals, compliance certificates, and any other such documents'.~~

~~5.11.3~~

Except as otherwise provided in the ~~Special~~ Specific Conditions, and subject to ~~5.11.4~~ 5.13.4, the Principal shall at the Principal's expense obtain all ~~licences~~ Consents which may be required for the construction of the Contract Works and for the use of the Contract Works when constructed. The Contractor shall at the Contractor's expense obtain any such ~~licences~~ Consents stated in the ~~Special~~ Specific Conditions under ~~5.11.3~~ 5.13.2.

5.13.3 ~~5.11.4~~

Except as otherwise provided in the ~~Special~~ Specific Conditions, the Contractor shall at the Contractor's expense give all notices and obtain all ~~licences~~ Consents for Temporary Works and for the Contractor's methods of carrying out the Contract Works (except in each case to the extent that they are specified or designed by or on behalf of the Principal) and temporary amenities and temporary services required for the construction of the Contract Works. The Principal shall at the Principal's expense obtain any such ~~licences~~ Consents stated in the ~~Special~~ Specific Conditions under ~~5.11.4~~ 5.13.3.

5.13.4 ~~5.11.5~~

The Principal shall arrange for the Contractor to be supplied with copies of any ~~necessary~~ documents and other information ~~in order~~ necessary for the Contractor to comply with ~~5.11~~ 5.13. The Contractor shall arrange for the Principal to be supplied with copies of any necessary documents and other information necessary for the Principal in order to comply with ~~5.11~~ 5.13.

5.13.5 ~~5.11.6~~

If ~~licences~~ Consents obtained by the Contractor or the Principal are issued subject to conditions affecting the design or carrying out of the Contract Works, those conditions shall be notified to the ~~Engineer~~ Contract Administrator by the Contractor or the Principal as the case may be, with a copy to the other of them. ~~The Engineer~~ After consultation with the Principal and the Contractor ~~shall consult,~~ and the ~~Engineer~~ Contract Administrator shall either:

- (a) Instruct the Contractor to carry out the Contract Works in accordance with such conditions; or
- (b) (i) Instruct a change to the design of the Contract Works or the Contractor's methods of carrying out the Contract Works and the obtaining of different or modified ~~licences~~ Consents:
 - (i) Issued with conditions affecting the design or carrying out of the Contract Works that are acceptable to the Principal, or
 - (ii) Issued with no conditions affecting the design or carrying out of the Contract Works.

5.13.6 ~~5.11.7~~

In respect of:

- (a) ~~Licences-Consents~~ for which the Principal is responsible under ~~5.11.3-5.13.2~~ and ~~5.11.45.13.2~~; or
- (b) Conditions affecting the design or Specifications provided in the Contract or in a Variation, if compliance with the ~~Engineer's instruction under 5.11.6~~ Contract Administrator's Instruction under 5.13.5 causes delay in the completion of the Contract Works or additional Cost to the Contractor which in either case the Contractor could not reasonably have foreseen when tendering, the compliance shall be treated as a Variation.

5.13.7 ~~5.11.8~~

From time to time at the request of the Contract Administrator and in any case before making application for any Practical Completion Certificate, the Contractor shall deliver to the ~~Engineer~~Contract Administrator:

- (b) All Producer Statements required to be provided by the Contractor under 10.4.5;
- (c) Any necessary documents or other information for the Principal to obtain any ~~licences~~ Consents (including compliance certificates) for which the Principal is responsible under ~~5.11.3-5.13.2~~ and ~~5.11.45.13.2~~; and
- (d) All documents necessary to prove the issue of ~~licences~~ Consents for which the Contractor is responsible under ~~5.11.3-5.13.2~~ and ~~5.11.45.13.3~~.

5.13.8 ~~5.11.9~~

Before making application for any Final Completion Certificate, the Contractor shall deliver to the ~~Engineer~~Contract Administrator:

- (a) All Producer Statements required to be provided by the Contractor under 11.3.2; and
- (b) Any compliance certificates for which the Contractor is responsible under ~~5.11.3-5.13.2~~ and ~~5.11.45.13.3~~.

5.13.9 ~~5.11.10~~

If after the date of closing of tenders ~~the making of any statute, regulation, or bylaw, or the imposition by Government or by a local authority of any royalty, fee, or toll increases or decreases the Cost to the Contractor of performing the Contract, such increase or decrease not being otherwise provided for in the Contract, the effect shall be treated as a Variation.~~ the Cost to the Contractor of performing the Contract increases or decreases by reason of:

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

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

5.14 ~~5.12~~ Intellectual property

5.14.1 ~~5.12.1~~

The Principal shall indemnify the Contractor against any action, claim, costs, or other Cost arising from any infringement of patents, registered designs, trademarks, copyright, or other protected right in respect of any design, method, or article supplied or specified by the Principal or by the ~~Engineer~~Contract Administrator. The indemnity shall not apply where the Contractor is aware of the infringement and does not notify the ~~Engineer~~Contract Administrator.

5.14.2 ~~5.12.2~~

The Contractor shall indemnify the Principal against any action, claim, costs, or other Cost arising from any infringement of patents, registered designs, trademarks, copyright, or other protected right in respect of any design, method, or article not supplied to the Contractor by the Principal or the ~~Engineer~~Contract Administrator. The indemnity shall not apply where the Principal or the ~~Engineer~~Contract Administrator is aware of the infringement and does not notify the Contractor.

5.15 ~~5.13~~ Underground and above-ground utilities

5.15.1 ~~5.13.1~~

The Principal shall arrange for the searching of records to determine the existence and position of pipes, cables, and other utilities on or about the Site, and the position of such utilities shall be indicated in the Contract as accurately as the information available permits.

For the purposes of ~~5.13~~5.15, the term 'utilities' shall include any cadastral survey mark, as defined in the Cadastral Survey Act, and which at any time has been set in or on the ground for the purposes of survey.

5.15.2 ~~5.13.2~~

The Contractor shall be responsible for physically locating the position of all such utilities and shall arrange with the controlling authorities for any necessary exploratory work, location, protection, isolation, offsetting, reinstatement, or alterations required. The Contractor shall record any alterations which it makes to such utilities.

5.15.3 ~~5.13.3~~

The Contractor shall be responsible for protecting all utilities whether indicated or not and for arranging for their reinstatement or the repair of any damage resulting from its operations.

5.15.4 ~~5.13.4~~

Where a utility is not indicated or is not substantially in the position indicated in the Contract any extra work in physically locating its position or altering or protecting or offsetting or reinstating it shall be treated as a Variation.

5.16 ~~5.14~~ **Treasure**

5.16.1 ~~5.14.1~~

All fossils, coins, articles of value or antiquity, and other remains of geological or archaeological interest discovered on the Site shall as between the Principal and the Contractor remain the property of the Principal unless provided otherwise in the Contract. The Contractor shall report to the ~~Engineer~~Contract Administrator the presence of any objects of this kind of which it has knowledge.

5.16.2 ~~5.14.2~~

The Contractor shall protect such objects undisturbed pending the ~~Engineer's directions~~Contract Administrator's Instructions. The Contractor shall keep such objects safe and dispose of them as ~~directed~~instructed by the ~~Engineer~~Contract Administrator. If this causes delay in the completion of the Contract Works or additional Cost to the Contractor which is not otherwise provided for in the Contract, then the protection and ~~directions~~Instructions shall be treated as a Variation.

5.17 ~~5.15~~ **Clearance of Site**

Upon completion, the Contractor shall remove all surplus Plant, Materials, temporary buildings, and Temporary Works and leave the whole Site and the Contract Works in a clean and tidy condition for use and occupation by the Principal.

5.18 ~~5.16~~ **Late supply** Supply by Principal

5.18.1

Where any Materials, services, or work are required to be provided by the Principal, the late supply of such Materials, services, or work shall be treated as a Variation.

~~5.17~~ ~~—~~ **Safety plan**

~~5.17.1~~ ~~—~~

~~Where required by the Special Conditions, the Contractor shall prepare and submit to the Engineer a Site-specific safety plan for the execution of the Contract Works.~~

~~5.17.2~~ ~~—~~

~~The Site-specific safety plan shall address the means by which the Contractor intends to meet its obligations under 5.7 and shall comply with any other requirements for safety set out in the Contract.~~

~~5.17.3~~ ~~—~~

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

~~5.17.4~~ ~~—~~

~~The Contractor shall not commence any part of the Contract Works on Site unless the Engineer has accepted the Site-specific safety plan or revised Site-specific safety plan.~~

5.17.5

~~Compliance with the Site-specific safety plan shall not relieve the Contractor from any of its duties, obligations, and liabilities under the Contract.~~

5.18 — Quality plan**5.18.1****5.18.2**

The Principal shall supply at no cost to the Contractor the Materials or other things necessary for the completion of the Contract Works stated in the Specific Conditions, at the times and in the manner stated in the Contract.

5.19 5.18.1 Management Plans**5.19.1****5.18.2**

~~Where required by the Special Conditions, Where required by the Specific Conditions~~ the Contractor shall prepare and submit to the ~~Engineer a quality plan~~ Contract Administrator the Management Plans for the execution of the Contract Works, such as traffic, the environment, quality, and other matters specified in the Specific Conditions.

5.19.2 5.18.3

~~The quality plan shall describe the procedures for meeting the quality requirements of the Contract for:~~

- ~~(a) Materials and workmanship;~~
- ~~(b) Monitoring and maintaining Subcontractors' performance;~~
- ~~(c) Record keeping;~~
- ~~(d) The documentation for signing-off the Contract Works as complete;~~
- ~~(e) Procedures to ensure that all Persons engaged in undertaking the Contract Works are appropriately qualified, experienced, and trained or working directly under the supervision of such Persons;~~
- ~~(f) Inspection and testing;~~
- ~~(g) Auditing the quality plan; and~~
- ~~(h) Any other requirements for quality set out in the Contract.~~

Within 5 Working Days of receipt of the ~~Contractor's quality plan~~ relevant Management Plans, or revised ~~quality plan, the Engineer~~ Management Plans, the Contract Administrator shall notify the Contractor in writing whether ~~he or she or not the Contract Administrator~~ accepts the plan. Such acceptance shall not be unreasonably withheld. Where the ~~Engineer~~ Contract Administrator does not accept the ~~plan~~ plans, the notice shall include the ~~Engineer's~~ Contract Administrator's reasons, and the Contractor shall submit a revised ~~quality plan~~ version of the relevant Management Plan.

5.19.3 5.18.4

The Contractor shall not commence any part of the Contract Works on Site unless the ~~Engineer~~ Contract Administrator has accepted the ~~quality plan~~ Management Plans, or revised ~~quality plan~~ Management Plans, relating to that part of the Contract Works.

5.19.4 5.18.5

Compliance with the ~~quality plan~~ relevant Management Plan shall not relieve the Contractor from any of its duties, obligations, and liabilities under the Contract.

5.19 — Traffic management plan**5.19.1**

~~Where required by the Special Conditions the Contractor shall prepare and submit to the Engineer a traffic management plan for the execution of the Contract Works.~~

5.19.2

~~The traffic management plan shall meet the requirements for traffic management set out in the Contract.~~

5.19.3

~~Within 5 Working Days of receipt of the Contractor's traffic management plan, or revised traffic management plan, the Engineer shall notify the Contractor in writing whether or not he or she accepts the plan. Such acceptance shall not be unreasonably withheld. Where the Engineer does not accept~~

the plan, the notice shall include the Engineer's reasons, and the Contractor shall submit a revised traffic management plan.

5.19.4

The Contractor shall not commence any part of the Contract Works on Site unless the Engineer has accepted the traffic management plan, or revised traffic management plan, relating to that part of the Contract Works.

5.19.5

Compliance with the traffic management plan shall not relieve the Contractor from any of its duties, obligations, and liabilities under the Contract.

5.20 As-built drawings and operation and maintenance manuals

5.20 5.20.1 Information to be provided on completion

5.20.1

Where required by the Special Specific Conditions, the Contractor shall prepare:

- (a) (i) As-built drawings. The as-built drawings shall make records and other asset information with clear cross-reference to the Drawings and Specifications and all subsequent documentation, instructions, and consents given by the Engineer to the Contractor from which the as-built drawings were derived incorporating all subsequent amendments thereto including through instructions and Variations; and
- (b) (i) Operation and maintenance manuals.

5.20.2

As-built drawings records, other asset information and operation and maintenance manuals shall be prepared to a standard and in a form, either:

- (a) As set out in the Contract; or
- (b) In sufficient detail to enable the Principal to operate, maintain, adjust, and reassemble the Contract Works (except for the Temporary Works).

5.20.3

As-built drawings records, other asset information and operation and maintenance manuals shall be submitted to the Engineer Contract Administrator as follows:

- (b) Prior to Practical Completion the Contractor shall submit to the Engineer Contract Administrator the draft as-built drawings records, other asset information and operation and maintenance manuals. This documentation may be prepared in draft form but shall be sufficient for the Principal to operate, maintain, adjust, and reassemble the Contract Works (except for the Temporary Works). The Contractor shall give advice and assistance to the Principal and Engineer Contract Administrator until the as-built drawings records, other asset information and operation and maintenance manuals have received the Engineer's consent been accepted by the Contract Administrator;
- (c) Prior to the end of the Defects Notification Period the Contractor shall submit to the Engineer for his or her consent Contract Administrator for approval the as-built drawings records, other asset information and operation and maintenance manuals prepared in final form sufficient for the Principal to operate, maintain, adjust, and reassemble the Contract Works (except for the Temporary Works). The Engineer's consent. The Contract Administrator's approval shall not be unreasonably withheld;
- (d) The Engineer Contract Administrator shall notify the Contractor whether or not he or she consents to the Contract Administrator approves such as-built drawings records, other asset information and operation and maintenance manuals. Where the Engineer does not consent, the The notice shall include the Engineer's Contract Administrator's reasons for not giving consent approval; and
- (d) Once the Contractor has prepared Upon receipt of the Contract Administrator's approval of the final as-built drawings records, other asset information and operation and maintenance manuals which receive the consent of the Engineer, the Contractor shall supply the Engineer with three sets of the documentation to the Contract Administrator the number of sets required by the Specific Conditions.

5.21 Protection of the environment

5.21.1

Without limiting its obligations under 5.13.1, when carrying out the Contract Works, the Contractor shall take all reasonably practicable steps to ensure that no act or omission:

- (a) Discharges a contaminant into the environment, cause the total emission of noise from the Site to exceed prescribed boundary noise levels or cause any adverse effect on the environment (as those terms are defined in the Resource Management Law);
- (b) Is a breach of any duty, obligation, rule or condition of either party under any relevant resource consent, Resource Management Law, any applicable regional plan or district plan, or any consent issued under any of them;
- (c) Does or is likely to give rise to the issue of an abatement notice, enforcement proceedings, an excessive noise direction or a prosecution under Resource Management Law against the Principal, the Independent Certifier, the Contractor or any Subcontractor;
- (d) Endangers or compromises any consent held by the Principal or any other party in relation to the Contract Works; or
- (e) Is inconsistent with the Principal or the Contractor being able to comply with any relevant resource consent.

~~5.21~~—Advance notification

~~5.21.1~~—

~~The Contractor and the Engineer shall each notify the other in writing as soon as either of them becomes aware of any matter which is likely to:~~

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

~~5.21.2~~—

~~Either the Engineer or the Contractor may require the other to meet for the purpose of exploring proposals for avoiding or reducing the impact of the notified matter.~~

5.21.2 ~~5.21.3~~

~~If the Contractor does not notify a matter which it reasonably ought to have notified under 5.21.1, any Variation arising out of the matter shall be valued under 9.3 as if notification had been given and that notification might reasonably have resulted in the impact of the matter being avoided or reduced.~~

~~6~~—Engineer's powers and responsibilities

If the Contractor becomes aware that an act or omission is, or is likely to, result in any of the consequences described in 5.21.1, the Contractor shall immediately notify the Contract Administrator and shall follow the Instructions of the Contract Administrator. The Contractor shall not be entitled to a Variation, any additional payment or to an extension of time as a result of such Instruction, unless the situation arose without fault on the part of the Contractor or any Subcontractor.

5.22 Reporting

5.22.1

The Contractor shall deliver to the Contract Administrator (with a copy to the Independent Certifier and the Principal) a status report in the time frame specified in the Specific Conditions, in the form required by the Contract Administrator and covering the matters specified in the Special Conditions.

6 CONTRACT ADMINISTRATION

6.1 Appointment of ~~Engineer~~Contract Administrator and Independent Certifier

6.1.1

The Principal shall ensure that at all times there is ~~an Engineer, a Contract Administrator and Independent Certifier~~ and that the ~~Engineer fulfils~~ relevant persons fulfil all aspects of the relevant role and functions reasonably and in good faith.

6.1.2

The ~~name and professional qualification of the Engineer~~ names of the Contract Administrator and Independent Certifier shall be set out in the ~~Special~~ Specific Conditions.

6.1.3

If ~~the Engineer~~ either the Contract Administrator or Independent Certifier is no longer authorised by the Principal or no longer available to ~~be the Engineer~~ fulfil that role, the Principal shall forthwith:

- (b) Appoint a ~~suitably qualified~~ person to act ~~as Engineer~~ in the interim;
- (c) Notify the Contractor of the person it then proposes to appoint as ~~Engineer~~ Contract Administrator and/ or Independent Certifier as applicable; and
- (d) After considering any representations made on behalf of the Contractor, notify the Contractor of the appointment of the new ~~Engineer~~ Contract Administrator and/or Independent Certifier.

6.1.4

If at any time either the Contract Administrator or Independent Certifier is temporarily unavailable the Principal shall notify the Contractor of the person authorised to act in the relevant role in the interim.

6.1.5

Every appointment under 6.1 shall be of one natural person only, not being a body corporate or firm.

6.1.6

The Contract Administrator and the Independent Certifier may be the same person.

6.2 Role of ~~Engineer~~ Contract Administrator and Independent Certifier**6.2.1**

The Contract Administrator acts for and on behalf of the Principal in giving Instructions to the Contractor and to perform the roles and functions of the Contract Administrator as required by the Contract.

6.2.2

The Independent Certifier acts fairly, impartially and independently of either contracting party in making Decisions on all matters between the parties that are entrusted to the Independent Certifier, including without limitation:

- (a) Valuing the work;
- (b) Certifying the scheduled amount in any Payment Schedule;
- (c) Deciding the Contractor's entitlement to and valuing Variations;
- (d) Considering and granting claims for extensions of time;
- (e) Issuing completion certificates;
- (f) Making any Decision; and
- (g) Otherwise Deciding the rights and obligations of the parties.

6.2.3

The Independent Certifier acts as authorised agent of the Principal only in:

- (a) Receiving Payment Claims;
- (b) Incorporating the Principal's deductions in Payment Schedules where notified by the Principal under 12.2.4 or 12.5.2; and
- (c) Issuing Payment Schedules.

6.3 ~~6.2.1~~ Instructions and Decisions**6.3.1**

The Contract Administrator and Independent Certifier shall perform their roles and functions under the Contract without delay.

6.3.2

~~The dual role of the Engineer in the administration of the Contract is:~~

- ~~(a) As expert adviser to and representative of the Principal, giving directions to the Contractor on behalf of the Principal, and acting as agent of the Principal in receiving payment claims and providing Payment Schedules on behalf of the Principal; and~~
- ~~(b) Independently of either contracting party, to fairly and impartially make the decisions entrusted to him or her under the Contract, to value the work, and to issue certificates.~~

~~6.2.2~~

~~The Engineer shall exercise the powers entrusted to him or her by the Contract without undue delay.~~ Except where the Contract otherwise provides, ~~directions or instructions~~ Instructions necessary

for the administration of the Contract shall be given only through the ~~Engineer. Directions or instructions shall where appropriate or when requested by the Contractor~~ Contract Administrator and copied to the Principal. Instructions shall be given in writing at the time of the ~~instruction~~ Instruction or as soon as practicable thereafter and shall indicate whether or not the Instruction to be a Variation.

6.3.3 ~~6.2.3~~

If the Contractor suffers delay in the completion of the Contract Works or incurs additional Cost by reason of the failure or inability of the ~~Engineer~~ Contract Administrator or Independent Certifier to carry out properly ~~his or her~~ their duties as described in the Contract, that failure shall be treated as a Variation.

6.3.4 ~~6.2.4~~

No review, inspection, acceptance, or approval by the ~~Engineer~~ Contract Administrator shall relieve the Contractor of any obligation or liability under the Contract, except in the case of a Variation instructed under 9.1.

6.3.5

~~6.3~~ — Engineer's Representative

~~6.3.1~~ —

~~The Engineer may, from time to time by notice to the Contractor in writing, appoint an Engineer's Representative who shall be one natural person only, not being a body corporate or firm.~~

~~6.3.2~~ —

~~The Contractor may at any time by notice in writing to the Engineer object on reasonable grounds to the continuance of any person as Engineer's Representative. The notice shall state the grounds upon which the objection is based. The Engineer shall thereupon appoint another competent natural person in place of the person about whom the objection has been made.~~

~~6.3.3~~ —

~~The Engineer's Representative may exercise any of the powers vested in the Engineer under the Contract except:~~

- ~~(a) The reviewing of matters in dispute;~~
- ~~(b) The valuing of Variations, the provision of Payment Schedules, the issuing of a Practical Completion Certificate or a Final Completion Certificate, the granting of extensions of time, and any changing of the Drawings or Specifications, unless expressly authorised by the Engineer by written notice to the Contractor; and~~
- ~~(c) Any other powers excluded by the Engineer by written notice to the Contractor.~~

~~6.3.4~~ —

~~Any instruction or decision given by the Engineer's Representative to the Contractor within the scope of his or her authority~~ Any Instruction given by the Contract Administrator to the Contractor shall bind the Contractor and the Principal ~~as though it had been given by the Engineer, provided that:~~ unless and until reversed or varied by the Contract Administrator, or by the Independent Certifier acting under Section 6.4.

6.3.6

~~Failure of the Engineer's Representative to inspect or disapprove any work or Materials shall not prejudice the power of the Engineer thereafter to inspect or disapprove such work or Materials and order the removal or rectification thereof if not in accordance with the Contract; and~~

~~If the Contractor is dissatisfied with any instruction or decision of the Engineer's Representative it may refer the matter to the Engineer who after investigation shall confirm, reverse, or vary the instruction or decision.~~

~~6.3.5~~ —

~~The Engineer may appoint any Persons to assist the Engineer's Representative in carrying out his or her duties. The Engineer~~ The Principal may, from time to time, engage Advisers to assist the Independent Certifier or Contract Administrator in carrying out their duties, including making submissions and recommendations to the Contract Administrator and Independent Certifier, or providing other advice, assistance and support. Advisers have no authority to issue Instructions or make Decisions. The Contract Administrator and the Independent Certifier shall give

written notification to the Contractor of Persons appointed ~~to assist the Engineer's Representative~~ as Adviser, or no longer appointed as Adviser.

6.3.7

In making Decisions, the Independent Certifier may consider:

- (a) The relevant claim in the context of the Contract;
- (b) The views of the parties and the Contract Administrator;
- (c) Any relevant recommendations by Advisers;
- (d) The result of any enquiry made by the Independent Certifier;
- (e) Any investigations carried out by the Independent Certifier; and
- (f) Any independent advice obtained by the Independent Certifier.

and each Decision shall be in writing, including reasons where it differs from the matter referred to the Independent Certifier.

6.4 Review of Instructions and Decisions

6.4.1

If a party is dissatisfied with an Instruction given under 6.3.5, 9.3.4 or 10.3.4 or any Decision other than a Final Decision, that party may request a review by the Independent Certifier. Such request shall:

- (a) Be made in writing to the Independent Certifier and copied to the other party and the Contract Administrator;
- (b) Be made within 3 Months of the date of the original Instruction or Decision;
- (c) Include reasons for challenging or objecting to the Instruction or Decision; and
- (d) State that it is given under this subclause 6.4.1.

6.4.2

The Independent Certifier shall within 20 Working Days, or as soon as practicable, after receipt of notice under subclause 6.4.1, confirm, correct or amend the original Instruction or Decision by way of a further Decision, stating it is made under this 6.4.2.

6.4.3

Where a party is dissatisfied with the Decision under 6.4.2, that party may either:

- (a) Request a further review of the Decision complying with the requirements of 6.4.1; or
- (b) Request a Final Decision complying with requirements 6.4.4.

6.4.4

A request for a Final Decision shall:

- (a) Be made in writing to the Independent Certifier and copied to the other party and the Contract Administrator;
- (b) Be made within 3 Months of the date of the Decision under 6.4.2;
- (c) Include reasons for challenging or objecting to the Instruction or Decision; and
- (d) State that it is a request for a Final Decision under this subclause 6.4.4.

6.4.5

The Independent Certifier shall within 20 Working Days after receipt of notice under 6.4.4 confirm, correct or amend the further Decision by way of a Final Decision, stating it is made under this 6.4.5. The Independent Certifier may extend the time for issuing a Final Decision under this 6.4.5 where the matter awaits a recommendation from an agreed expert under 6.4.7.

6.4.6

The Independent Certifier may not correct or modify a Final Decision other than to correct any typographical or computational errors.

6.4.7

~~6.4~~ The Contractor and the Principal may agree to refer the matter under 6.4.1 or 6.4.4 or any question arising, to an agreed expert with a request to make a recommendation to assist them to resolve the matter. The Contractor and the Principal shall each pay one half of the costs of the agreed expert.

6.5 Inspection, recording, measuring, and testing**6.5.1 6.4.1**

The ~~Engineer-Contract Administrator~~ may at any time prior to the expiry of the Defects Notification Period require that any Materials or work forming part of the Contract Works shall be inspected or tested at the place of manufacture or at the Site. The Contractor shall provide the assistance, labour, and Materials required for sampling, inspecting, or testing any Materials or work.

~~6.4.2~~**6.5.2**

The providing of samples or making and reporting tests ordered by the ~~Engineer-Contract Administrator~~ and not otherwise provided for in the Contract shall be treated as a Variation except that where the work or Materials are found to be not in accordance with the requirements of the Contract, the Cost, including any Costs incurred by the ~~Engineer-Contract Administrator~~ or the Principal, shall be borne by the Contractor.

6.5.3 6.4.3

The ~~Engineer-Contract Administrator~~ and any Person authorised in writing by ~~him or her~~ them shall have access at all reasonable times to the Site and to all places where work is being carried out for the purposes of inspection, recording, measuring, or testing. The Contractor shall afford every reasonable facility for, and assistance in, obtaining access for the purpose of inspection, recording, measuring, or testing.

~~6.4.4~~**6.5.4**

The Contractor shall notify the ~~Engineer-Contract Administrator~~ when the work is ready or about to be ready for inspection recording, measuring, or testing. The ~~Engineer-Contract Administrator~~ shall within a reasonable time examine and measure the work unless ~~he or she considers~~ they consider it unnecessary to do so. In such case the ~~Engineer-Contract Administrator~~ shall advise the Contractor accordingly. If the ~~Engineer-Contract Administrator~~ fails to carry out inspection, recording, measurement, and testing within a reasonable time and the Contractor thereby suffers delay in the completion of the Contract Works or incurs additional Cost, that failure shall be treated as a Variation.

6.5.5 6.4.5

Work specified by the Contract as requiring inspection, recording, measuring, or testing shall not be covered up or put out of view without the ~~consent~~ approval of the ~~Engineer-Contract Administrator~~. If such work has been covered up without consent, the Contractor shall open up the same when required at its own Cost.

6.5.6 6.4.6

If the Contractor acts unreasonably in notifying that the work is or will be ready for inspection, recording, measuring, or testing when clearly it is not, and the Contract Administrator attends by appointment and loses time resulting in additional Cost to the Principal, then the Principal may deduct the reasonable amount of such Cost from the Contract Price. The fact that work does not pass an inspection or test shall not of itself mean that it was not ready for inspection or testing nor shall the fact that the work is not ready at the time notified of itself mean that the Contractor has acted unreasonably. No deduction shall be made unless the ~~Engineer-Contract Administrator~~ has notified the Contractor of the circumstances and amount within 10 Working Days of the additional Cost being incurred.

6.5.7 6.4.7

The ~~Engineer-Contract Administrator~~ may at any time prior to the expiry of the Defects Notification Period ~~instruct~~ Instruct the Contractor to open up or otherwise expose for inspection, recording, measuring, or testing any part of the Contract Works. The Contractor shall comply with the ~~direction~~ Instruction and shall reconstruct or reinstate the work opened up or exposed so that it complies with the requirements of the Contract. Except as set out in 6.4.5, if the work is found to comply with the requirements of the Contract, then the opening up or pulling down, reconstructing, and reinstating of the work shall be treated as a Variation but in every other case the Cost shall be borne by the Contractor.

6.6 ~~6.5~~Removal and making good

6.6.1 ~~6.5.1~~

The ~~Engineer-Contract Administrator~~ may at any time prior to the expiry of the Defects Notification Period by notice in writing ~~instruct-Instruct~~ the Contractor to remove and re-execute or to make good any work which in respect of Materials or workmanship is not in accordance with the Contract. The Contractor shall comply with the ~~instruction-Instruction~~ at its own Cost.

6.6.2 ~~6.5.2~~

If the Contractor fails to carry out any work ~~instructed-Instructed~~ under ~~6.5.1~~ 6.6.1 within any time stated in the notice or other reasonable time, the ~~Engineer-Contract Administrator~~ may, after giving 5 Working Days' further written notice to the Contractor stating that it is an Instruction given under this clause, ~~direct-commission~~ others to undertake the work.

6.6.3 ~~6.5.3~~

The reasonable Cost of the work undertaken by others under ~~6.5.2~~ 6.6.2 shall be recoverable by the Principal from the Contractor. As soon as practicable after completion of the work, the ~~Engineer-Contract Administrator~~ shall notify the Contractor of the work undertaken and its Cost.

6.6.4 ~~6.5.4~~

The taking of any action by the ~~Engineer-Contract Administrator~~ under ~~6.5.2~~ 6.6.2 shall not relieve the Contractor of any of its obligations under the Contract.

6.6.5 ~~6.5.5~~

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-Contract Administrator may instruct that~~ such Materials ~~to may~~ be used or such work done ~~to remain and decide the prices or rates of payment to the Contractor for such Materials or work carried out~~ may remain and the matter shall be treated as a Variation.

6.7 ~~6.6~~Certification

6.7.1 ~~6.6.1~~

The ~~Engineer-Independent Certifier~~ shall issue the Practical Completion Certificate and the Final Completion Certificate ~~and the Final Completion Certificate~~, and shall provide Payment Schedules as required by the Contract. Each certificate or Payment Schedule shall be sent to the Contractor and a ~~signed~~ copy shall be sent at the same time to the Principal and the Contract Administrator.

6.7.2 ~~6.6.2~~

A certificate or Payment Schedule shall not constitute approval of any work or release the Principal or the Contractor from any obligation under the Contract except as provided in the Contract.

6.7.3 ~~6.6.3~~

The ~~Engineer-Independent Certifier~~ may by any Payment Schedule correct a sum certified ~~by the Engineer~~ in any previous Payment Schedule ~~which has been provided by him or her, or by any previous Engineer, provided he or she notifies by written notice to~~ the Contractor ~~in writing of his or her~~ including reasons ~~for so doing~~.

6.7.4 ~~6.6.4~~

If the ~~Engineer-Independent Certifier~~ fails to issue a Practical Completion Certificate or a Final Completion Certificate within the time provided under the Contract and the Contractor thereby suffers delay in the completion of the Contract Works or incurs additional Cost, that failure shall be treated as a Variation.

6.8 ~~6.7~~Suspension of work

6.8.1 ~~6.7.1~~

If the suspension of the whole or a part of the Contract Works becomes necessary, the ~~Engineer-Contract Administrator~~ shall ~~instruct-Instruct~~ the Contractor ~~in writing~~ to suspend the progress of the whole or any part of the Contract Works for such time as the ~~Engineer-Contract Administrator~~ may think fit, ~~and the Contractor shall comply with the instruction~~.

6.8.2 ~~6.7.2~~

During the suspension the Contractor shall properly secure and protect the Contract Works against damage and leave the Site in a safe and tidy condition.

6.8.3 ~~6.7.3~~

Unless the suspension is due to default on the part of the Contractor, the suspension shall be treated as a Variation.

6.8.4 ~~6.7.4~~

If the suspension remains in effect for more than 3 Months, the Contractor may request the ~~Engineer~~ Contract Administrator in writing to permit the suspended work to be continued. If the ~~Engineer~~ Contract Administrator does not grant permission to continue within 1 Month of receipt of the request, then the Contractor shall be entitled to treat the suspension as a Variation deleting the uncompleted portion of the suspended work from the Contract, or where the suspension affects the whole of the Contract Works as an abandonment of the Contract by the Principal.

6.8.5 ~~6.7.5~~

Notwithstanding the above, the Principal and the Contractor may by agreement in writing suspend the Contract Works for any period, and the provisions of ~~6.7.2~~ 6.8.2, ~~6.7.3~~ 6.8.3, and ~~6.7.4~~ 6.8.4 shall apply unless expressly excluded.

6.9 ~~6.8~~ Engineer Contract Administrator may instruct urgent work**6.9.1 ~~6.8.1~~**

In the event of:

- (a) ~~(d)~~ Any accident, emergency, or failure, or other similar event occurring to or in connection with the Contract Works; or
- (a) ~~(e)~~ Any outstanding work or other work under the Contract that the ~~Engineer~~ Contract Administrator considers to be urgent due to environmental or public safety issues, or because significant inconvenience to third parties might arise,

the ~~Engineer~~ Contract Administrator may by Instruction notify the Contractor in writing of any urgent work which ~~he or she requires~~ the Contract Administrator require and the reasons therefor.

6.9.2 ~~6.8.2~~

If the Contractor cannot be contacted or is unwilling or unable to act within a reasonable time to secure the works or to attend to any work that the ~~Engineer~~ Contract Administrator has required under 6.8.1, the ~~Engineer~~ Contract Administrator on behalf of the Principal may take such action as the ~~Engineer~~ Contract Administrator reasonably considers necessary. The Contractor shall be entitled to take control of such operations as soon as it is willing and able to do so.

6.9.3 ~~6.8.3~~

If the action taken by the ~~Engineer~~ Contract Administrator under ~~6.8.2~~ 6.9.2 involves work which the Contractor was liable to do at its own expense under the Contract, the reasonable Cost of that work shall be recoverable by the Principal from the Contractor. As soon as practicable after the taking of the action, the ~~Engineer~~ Contract Administrator shall notify the Contractor of the work undertaken and its Cost.

6.9.4 ~~6.8.4~~

The taking of any action by the ~~Engineer~~ Contract Administrator under ~~6.8.2~~ 6.9.2 shall not relieve the Contractor of any of its obligations under the Contract.

7 ~~Indemnity~~**6.10 Early Warning****6.10.1**

The Principal (via the Contract Administrator), the Contractor and the Contract Administrator shall each notify the other (copied to the Independent Certifier) in writing as soon as either of them becomes aware of any matter which is likely to:

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

6.10.2

The Principal (via the Contract Administrator), the Contractor, the Contract Administrator or the Independent Certifier may require the others to meet for the purpose of exploring proposals for avoiding, reducing or mitigating the impact of the notified matter.

6.10.3

If the Contractor does not notify a matter which it reasonably ought to have notified under 6.10.1, any Variation arising out of the matter shall be valued under 9.3 as if notification had been given and that notification might reasonably have resulted in the impact of the matter being avoided or reduced.

7 INDEMNITY AND LIABILITY LIMIT**7.1 Indemnity****7.1.1**

Except as otherwise provided in the Contract the Contractor shall indemnify the Principal against any:

- (a) ~~Any~~ loss suffered by the Principal which may arise out of, or in consequence of the construction of, or remedying of defects in, the Contract Works ~~to the extent that such loss:~~
 - (i) arises out or in the course of or by reason of the Contractor's execution of the Contract Works; and
 - (ii) is attributable to any negligence or breach of the Contract by the Contractor.
- (b) ~~Any liability~~ Liability incurred by the Principal in respect of injuries to Persons or damage to property which may arise out of, or in consequence of the construction of, or remedying of defects in the Contract Works; and
- (c) ~~Any~~ Costs the Principal may incur in respect of that loss or liability.

7.1.2

The Contractor's liability to indemnify the Principal shall not extend to any loss, liability, or Cost in respect of:

- (a) ~~(d)~~ The permanent use of or occupation of land by the Contract Works and the right of the Principal to carry out the Contract Works on the Site;
- (b) ~~(e)~~ Injuries to Persons or damage to property or interference with the rights of other Persons which is the unavoidable result of carrying out or remedying of defects in the Contract Works in accordance with the Contract; or
- (f) ~~Any act or omission of the Principal or of the Engineer, or his or her assistants, or of any other Persons for whose acts or omissions the Principal is as between it and the Contractor responsible; or~~
- (c) ~~(g)~~ Any risks specifically excepted in ~~5.6.6~~ 5.7.6.

7.1.3

The Principal shall indemnify the Contractor against any loss suffered by the Contractor or liability incurred by it in respect of any of the matters referred to in paragraphs (a), ~~(b)~~, and ~~(c)~~ of 7.1.2 and any Cost it may incur in respect of any such loss or liability.

7.1.4

The Contractor's liability to indemnify the Principal and the Principal's liability to indemnify the Contractor shall be reduced proportionately to the extent that the act or omission of the indemnified party or its servants or agents may have contributed to the loss, liability, or Cost.

7.2 Contractor's liability limit**7.2.1**

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

7.2.2

7.2.1 does not limit the Contractor's liability:

- (a) To indemnify the Principal under 5.14.1;
- (b) To indemnify the Principal under 7.1.1(b) in respect of any liability incurred by the Principal to a third party;
- (c) In the case of fraudulent conduct, illegal act or omission, wilful or reckless misconduct or wilful default by the Contractor in the performance of its obligations under the Contract;
- (d) If the Contractor has abandoned the Contract; or
- (e) In respect of any penalties applicable under any Act, secondary legislation, instrument, bylaw or Consent (as defined under 5.13.2).

7.2.3

Notwithstanding 7.2.1, where the level of any insurance policy that the Contractor is required to effect and maintain under the Contract:

- (a) is greater than the maximum aggregate liability of the Contractor recorded in 7.2.1; and
- (b) such policy responds to a loss (or would have responded but for any failure to claim and/or breach of the relevant insurance policy by the Contractor, or due to the failure by the Contractor to maintain an insurance policy).

the Contractor's liability in respect of such loss shall be the level of cover under the applicable insurance policy.

8 Insurance

8.1 General

8.1.1

The insurances required for this Contract, the parties responsible to effect the insurances, and the amounts or values of the insurances are set out in the ~~Special~~ Specific Conditions.

8.1.2

Neither the Contractor nor the Principal shall make any material alteration to the terms of any insurance required by this Contract during the currency of the insurance or its renewal, without the prior approval of the other insured parties. If any insurer makes or attempts to make any such alteration, the party first notified by the insurer shall promptly give notice to the other insured parties. Any Cost associated with a failure by one party to notify the other insured parties of any material policy change are to be the responsibility of the party that has arranged the insurances.

8.1.3

~~8.1.3~~

The Contractor and the Principal shall comply with all warranties and conditions of the policy and shall not engage in any practice or activity which could void the insurance cover.

8.1.4

Any amounts not insured or not recovered from the insurers shall be borne by the parties in accordance with their obligations, liabilities, or responsibilities set out in the Contract provided that:

- (a) ~~(h)~~ Where the insurance(s) are arranged by the Contractor, the Contractor shall bear the full amount of any insurance policy deductible or excess;
- (b) ~~(i)~~ Where the insurance(s) are arranged by the Principal, the Principal shall bear the full amount of any insurance policy deductible or excess, except where the loss, damage, or liability arises out of an act or omission of the Contractor in which event the Contractor shall bear the amount stated in the ~~Special~~ Specific Conditions as the Nominal Deductible under 8.8.1, 8.8.2, and 8.9.1 as applicable. The Nominal Deductible shall in each case be an amount which is equal to or less than the actual insurance policy deductible or excess; and
- (c) ~~(j)~~ Where and to the extent that a party has failed to effect insurance in accordance with its obligations under the Contract, that party shall be liable for the full amount of the loss.

8.1.5

Where any loss, damage or liability is covered by more than one insurance policy, the Contractor may be liable for more than one deductible or excess stated.

8.1.6

Notwithstanding ~~5.6.6(f)~~ 5.7.6(f), 8.3.5(a), and 8.7.1(a) the forces of nature stated in the ~~Special~~ Specific Conditions shall be included in the insurance arranged by the party required to effect the relevant insurance and such forces of nature shall be deemed not to be excepted risks under ~~5.6.6(f)~~ 5.7.6(f).

8.2 Contractor arranged insurances – General

8.2.1

The insurances for which the Contractor is responsible under the ~~Special~~ Specific Conditions shall be effected with insurers acceptable to the Principal and in terms approved by the Principal and shall be in effect prior to the commencement of the Contract Works. The acceptance and approval shall not be

unreasonably withheld. Any withholding of acceptance or approval shall not extend to policy form or drafting style.

8.2.2

The insurances required under 8.3, 8.4, 8.5, and 8.6 shall not include a discretionary cancellation clause unless they are annual policies.

8.2.3

The insurances required under 8.3, 8.4, and 8.5 shall provide that:

- (a) In the event of a claim being made and accepted, the amount of the cover shall be reinstated to the full cover required by the Contract; and
- (b) Where the insurances are required to be in the joint names of the Contractor and the Principal, each of them is severally insured, such that the insurance shall apply to them as separate insureds and the actions of one insured shall not affect the rights of any other insured.

8.2.4

The insurances required under 8.3, 8.4, 8.5, and 8.6 shall provide that they shall not be voided for non-payment of premiums without 5 Working Days' prior notification by the insurer in writing to the insured party which has arranged the insurances.

8.2.5

The Contractor shall, prior to the commencement of the Contract Works, deposit with the ~~Engineer~~ Contract Administrator information from insurers or insurance brokers that all the insurances required by the General Conditions and ~~Special~~ Specific Conditions, and for which the Contractor is responsible, are in force. The information shall be in the form set out in Schedules 7 to 11 as appropriate to the type of insurance.

8.2.6

The Contractor shall, no less than 15 Working Days prior to the cancellation or expiry date of any policy, deposit with the ~~Engineer~~ Contract Administrator a replacement insurance information form as set out in Schedules 7 to 11 as appropriate to the type of insurance, showing the extension of the period of insurance.

8.2.7

Whenever reasonably required by the Principal, the Contractor shall produce to the Principal ~~the policy or policies and either the receipts for payment of the current premiums or~~ certificates of currency for the policy or policies arranged by the Contractor, and where the Principal is a named insured under such policy, a copy of the policy or relevant extracts thereof.

8.2.8

If the Contractor:

- (a) Fails to arrange or keep in force any insurance to be effected by the Contractor as required by the Contract; or
- (b) Fails to supply the insurance information forms as required by 8.2.5 and 8.2.6,

the Principal may, after notifying the Contractor in writing, arrange or keep in force the required insurance, and may pay any premium or premiums and deduct the amount from the Contract Price.

8.3 Contractor arranged construction insurance

8.3.1

Where the Contractor is identified in the ~~Special~~ Specific Conditions as being the party responsible to effect construction insurance, without limiting its obligations under 5.6 and 7.1, the Contractor shall, in the names of the Principal and the Contractor, effect construction insurance of the Contract Works (including Temporary Works) and the Materials which are in the care or possession of the Contractor within New Zealand or in transit from elsewhere in New Zealand.

8.3.2

The Contractor shall ensure that the insurance policy ~~notes~~ insures the interest of any other Person whose interest the ~~Special~~ Specific Conditions require to be ~~noted in~~ insured under the policy.

8.3.3

The sum insured shall be not less than the total of the Contract Price and the sums or percentages stated in the ~~Special~~Specific Conditions in respect of:

- (a) The Cost of demolition, disposal, and preparation for replacement works;
- (b) Professional fees, including the Cost of clerks of works and inspectors;
- (c) The value of items incorporated or to be incorporated in the Contract Works the Cost of which is not included in the Contract Price;
- (d) An allowance for an increase in the Contract Price due to Variations; and
- (e) An allowance for increased construction Costs due to inflation, not already provided for in the Contract Price, for the reconstruction of the Contract Works and the unbuilt portion if they were to sustain a total loss at any time during the period of insurance.

8.3.4

The Contractor shall maintain this insurance:

- (a) Up to the date and time of Practical Completion of the Contract Works or of the relevant Separable Portion; or
- (b) In the case of any portion of the Contract Works of which the Principal takes occupancy under 10.7.2, until the date and time of such occupancy; and
- (c) For any act or omission of the Contractor arising out of the performance of the Contract Works after Practical Completion or after the Principal's occupation under 10.7.2 until the issue of the Final Completion Certificate.

8.3.5

The insurance shall cover loss or damage to the property insured but may exclude:

- (a) An excepted risk under ~~5.6-65.7.6~~;
- (b) Loss or damage for which the Contractor is not liable under 7.1.2;
- (c) The Cost of remedying loss or damage caused by defective Materials, workmanship, or design, electrical or mechanical breakdown, wear and tear, or gradual deterioration. This exclusion shall be limited to the defective items in the Contract Works or Materials, but the insurance shall extend to other insured items which are consequently lost or damaged;
- (d) Liability of the Contractor for liquidated damages; and
- (e) Any risk, or any loss or damage not covered by reason of a term or condition of insurance which is approved by the Principal under 8.2.1.

8.4 Contractor arranged Plant insurance

Where required by the ~~Special~~Specific Conditions, the Contractor shall insure:

- (a) Those items of Plant on the Site which are critical to the performance of the Contract Works and are identified in the ~~Special~~Specific Conditions; or
- (b) Each item of Plant on the Site having a current market value of more than the sum stated in the ~~Special~~Specific Conditions.

8.5 Contractor arranged public liability insurance**8.5.1**

Where the Contractor is identified in the ~~Special~~Specific Conditions as being the party responsible to effect public liability insurance, the Contractor shall, without limiting its obligations under 5.6 and 7.1, effect public liability insurance in the names of the Principal and the Contractor, for an amount not less than that stated in the ~~Special~~Specific Conditions, to indemnify the Principal and the Contractor against legal liability to third parties for damage, loss, or injury caused by any act or omission of the Contractor arising out of the performance of the Contract Works. The insurance shall also include cover for:

- (a) The Contractor's legal liability arising out of the performance of the Contract Works for damage, loss, or injury to the Principal and to the Principal's property, other than to the Contract Works and existing property to be insured under 8.3 or 8.8;
- (b) Liability arising out of vibration, weakening, or removal of support; ~~and~~
- ~~(a) Liability under the Forest and Rural Fires Act.~~
- ~~(c) Products liability insurance; and~~
- ~~(d) Liability arising from the use of construction machinery, including hired plant, except when being used as a motor vehicle as defined in the Land Transport Act 1998.~~

8.5.2

The Contractor shall effect motor vehicle third party insurance against legal liability to third parties arising from the use of any motor vehicle belonging to or under the care, custody, or control of the Contractor in connection with the execution of the Contract Works. The term 'motor vehicle' shall include

any item of Plant which is licensed or required by law to be licensed as a motor vehicle. The insurance shall be for the minimum amount stated in the ~~Special~~ Specific Conditions.

8.5.3

The Contractor shall maintain this insurance until the issue of the Final Completion Certificate.

8.5.4

The insurances under 8.5 may exclude:

- (a) An excepted risk under ~~5.6-65.7.6~~;
- (b) Damage, loss, or injury for which the Contractor is not liable under 7.1.2;
- (c) Liability of the Contractor for liquidated damages; and
- (d) Any risk, or any loss or damage not covered by reason of a term or condition of insurance which is approved by the Principal under 8.2.1.

8.6 Contractor arranged professional indemnity insurance

8.6.1

Where required by the ~~Special~~ Specific Conditions, the Contractor shall, without limiting its obligations under 5.1.3, 5.1.4, 5.1.5, 5.6, and 7.1, effect professional indemnity insurance for Contractor's design in the name of the Contractor, for an amount not less than that stated in the ~~Special~~ Specific Conditions for any one claim or series of claims arising out of the same occurrence and an amount in the aggregate.

8.6.2

Without limiting the Contractor's obligations, where the Contractor is required to provide professional indemnity insurance and engages a Subcontractor for the design of a specific part of the Contract Works, the amount of professional indemnity insurance to be provided by the Contractor for the design undertaken by that Subcontractor may be sub-limited to the amounts stated in the ~~Special~~ Specific Conditions for the design of that specific part of the Contract Works.

8.6.3

The insurance shall cover liability for damage or loss caused by the Contractor not meeting its obligations under 5.1.4. The Contractor shall maintain the insurance up to the date of Practical Completion of the whole of the Contract Works and thereafter for a further period of 6 years. This may be achieved by a single policy for the full period or by a renewable annual policy.

8.6.4

The insurance may exclude:

- (a) Loss or damage for which the Contractor is not liable under 7.1.2;
- (b) Liability of the Contractor for liquidated damages;
- (c) Risks and property damage for which cover has been provided under 8.8 and 8.9; and
- (d) Any risk, or any loss or damage not covered by reason of a term or condition of insurance which is approved by the Principal under 8.2.1.

8.7 Principal arranged insurances – General

8.7.1

The insurance under 8.8 and 8.9 shall cover loss, damage, or liability but may exclude:

- (a) An excepted risk under ~~5.6-65.7.6~~;
- (b) The Cost of remedying loss or damage caused by defective Materials, workmanship or design, electrical, mechanical breakdown, wear and tear, or gradual deterioration. This exclusion shall be limited to the defective item in the Contract Works or Materials, but the insurance shall extend to other insured items which are consequently lost or damaged; and
- (c) Liability of the Contractor for liquidated damages.

8.7.2

The insurance under 8.8 or 8.9 may, in addition to the exclusions under 8.7.1, be subject to any deductible, or extraordinary exclusions, conditions, warranties, or endorsements provided under the policy of which notice has been given in the ~~Special~~ Specific Conditions.

8.7.3

If the Principal is in default of its obligations under 8.7, 8.8, or 8.9 the ~~Engineer~~ Contract Administrator shall by ~~notice in writing~~ Instruction under 6.7 suspend the Contract Works until the default is remedied. The Contractor may, after notifying the Principal in writing, arrange or keep in force the insurances

required, and the suspension shall thereupon cease. The Contractor may pay any unpaid premiums and recover the amount from the Principal.

8.7.4

The insurances under 8.8 and 8.9 may be in the form of an annual policy, provided the policy is renewed or replaced so that the insurance cover remains in force for the periods required by 8.8.4 and 8.9.3 respectively.

8.7.5

The Principal shall, prior to the commencement of the Contract Works, deliver to the Contractor information forms confirming that all the insurances required by the ~~Special~~-Specific Conditions are in force. The information forms shall be from lead insurers or insurance brokers named in the Contract or approved by the Contractor, with such approval not to be unreasonably withheld. The information forms shall be in the form set out in Schedules 9 and 12 as appropriate.

8.7.6

Whenever required by the Contractor, the Principal shall produce to the Contractor the policy or policies and either the receipts for payment of the current premiums or certificates of currency.

8.7.7

Where any insurance policy provided by the Principal does not cover risks or liabilities to the satisfaction of the Contractor, the Contractor may arrange at its expense, and in its name only, additional or other insurance.

8.8 Principal arranged construction insurance

8.8.1

Where the Principal is identified in the ~~Special~~-Specific Conditions as being the party responsible to effect construction insurance, the Principal shall effect construction insurance in the names of the Principal, the Contractor and Subcontractors for the Contract Works (including Temporary Works) and the Materials which are in the care or possession of the Principal, the Contractor, or any Subcontractor within New Zealand or in transit from elsewhere in New Zealand, for the sums insured or percentages as stated in 8.3.3.

8.8.2

Where the Contract Works are in the nature of additions, alterations, repairs, or maintenance to an existing structure, or where the Contract Works are in the vicinity of another structure in the care of the Principal, the Principal shall effect insurance under 8.8.1 and shall include cover for the replacement values nominated in the ~~Special~~-Specific Conditions in respect of:

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

in each case as identified in the ~~Special~~-Specific Conditions.

8.8.3

In complying with its obligations under 8.8.1 and 8.8.2 the Principal may effect a separate insurance policy or a series of insurance policies giving the same level of indemnity to the Contractor and Subcontractors as if they were insured under a construction insurance policy under 8.3, plus the additional covers required under 8.8.2.

8.8.4

The Principal shall maintain this insurance to cover loss or damage to the property insured from the commencement of the Contract Works:

- (a) ~~(d)~~ Up to the date and time of Practical Completion of the Contract Works or of the relevant Separable Portion; or
- (b) ~~(e)~~ In the case of any portion of the Contract Works of which the Principal takes occupancy under 10.7.2, until the date and time of such occupancy; and
- (c) ~~(f)~~ For any act or omission of the Contractor arising out of the performance of the Contract Works after Practical Completion or after the Principal's occupation under 10.7.2 until the issue of the Final Completion Certificate.

8.8.5

The insurances arranged by the Principal under 8.8.1 may contain a provision that claims proceeds shall only be payable by the insurer to the Contractor if the Independent Certifier has certified that the reinstatement or repairs to the Contract Works, or any part thereof including loss or damage to any Materials, has been completed in accordance with the Contract. That provision may provide that:

- (a) It shall not apply to any portion of proceeds that the Contractor is entitled to receive under the relevant policy irrespective of the progress in the reinstatement of the Contract Works; and
- (b) such proceeds to be progressively paid to the Contractor on a monthly basis in respect of the reinstatement or repairs to the Contract Works that are completed.

8.9 Principal's option to insure public liability**8.9.1**

Where the Principal is identified in the ~~Special-Specific~~ Conditions as being the party responsible to effect public liability insurance, the Principal shall effect public liability insurance for an amount not less than the amount stated in the ~~Special-Specific~~ Conditions, in the names of the Principal, the Contractor, and Subcontractors, to indemnify each of them against legal liability for damage, loss, or injury (including loss of use of property whether damaged or not) caused by any act or omission by any of them in the course of carrying out the Contract Works. The insurance shall not cover legal liability for damage which is covered by the insurances under 8.3 or 8.8.

8.9.2

The insurance required under 8.9 shall also include cover for:

- (a) The Contractor's legal liability arising out of the performance of the Contract Works for damage, loss, or injury to the Principal and to the Principal's property, other than to the Contract Works and existing property to be insured under 8.3 or 8.8; and
- (b) Liability arising out of vibration, weakening, or removal of support; and
- ~~(a) Liability under the Forest and Rural Fires Act;~~
- (c) Products liability insurance; and
- (d) Liability arising from the use of construction machinery, including hired plant, except when being used as a motor vehicle as defined in the Land Transport Act 1998.

8.9.3

The Principal shall maintain this insurance from the commencement of the Contract Works until the issue of the Final Completion Certificate.

9 VARIATIONS AND CONTRACT PRICE ADJUSTMENTS**9.1 Variations permitted****9.1.1**

The ~~Engineer-Contract Administrator~~ may order any Variations to the Contract Works within the scope of the Contract that:

- (a) Increase or decrease the quantity of any work;
- (b) Omit any work;
- (c) Change the character or quality of any Material or work;
- (d) Require additional work to be done; or
- (e) Change the level, line, position, or dimensions of any part of the Contract Works.

9.1.2

The ~~Engineer may direct~~ Contract Administrator may issue an Instruction or change the order in which the work is to be carried out. Any such ~~direction-Instruction~~ shall be a Variation.

9.1.3

The ~~Engineer-Contract Administrator~~ shall not, without the ~~consent-approval~~ of the Contractor, order any Variation after the issue of the Practical Completion Certificate in respect of the Contract Works or of any Separable Portion to which the Variation relates.

9.1.4

The Contractor shall carry out and comply with any Variation ordered under 9.1.

9.1.5

The value of Variations shall be added to or deducted from the Contract Price.

~~orders~~9.2.1**9.2 Notice of Variation****9.2.1**

The Contractor shall not vary the Contract Works without an ~~order in writing~~ Instruction from the ~~Engineer~~ Contract Administrator.

9.2.2

Where an ~~instruction is~~ Instruction given by the ~~Engineer or the Engineer's Representative which is not in writing or~~ Contract Administrator and is not expressly stated to be a Variation, and the Contractor considers that the ~~instruction~~ Instruction involves a Variation, the Contractor shall within ~~1 Month~~ 20 Working Days or as soon as practicable thereafter give written notice to the ~~Engineer~~ Contract Administrator to that effect.

9.2.3

Where the Contractor considers any matter which is not described in 9.1 should be treated as a Variation, the Contractor shall within ~~1 Month~~ 20 Working Days of becoming aware of the matter or as soon as practicable thereafter give written notice to the ~~Engineer~~ Contract Administrator to that effect.

9.2.4

Within ~~1 Month~~ 20 Working Days of the receipt of notice under 9.2.2 or 9.2.3 or as soon as practicable thereafter, the ~~Engineer~~ Contract Administrator shall by notice in writing either confirm that the ~~instruction or matter~~ Instruction involves a Variation or disallow a Variation giving reasons for doing so. ~~Unless within that time the Engineer issues a notice in writing disallowing a Variation, the instruction or matter shall be treated as a Variation.~~

9.3 Valuation of Variations**9.3.1**

Wherever practicable Variations shall be valued before the work involved is commenced, but any failure to do so shall not invalidate the Variation.

9.3.2

The Contractor shall notify the ~~Engineer~~ Contract Administrator with a copy to the Independent Certifier of the proposed value of any Variation within ~~1 Month~~ 20 Working Days or as soon as practicable following receipt of any Variation ordered under 9.1 or any confirmation from the ~~Engineer~~ Contract Administrator under 9.2.4. The Contractor's notice shall include sufficient details to allow the ~~Engineer~~ Contract Administrator to assess the value of the Variation for the purposes of reaching agreement under 9.3.4.

9.3.3

Where the valuation of the Variation requires that the work be measured, the ~~Engineer~~ Contract Administrator shall measure the work and shall notify the Contractor of his or her measurement. The Contractor and the ~~Engineer~~ Contract Administrator shall each provide to the other without undue delay such evidence as may reasonably be required to establish the correctness of all relevant quantities and Costs and the effect on the programme, and shall exchange their respective calculations and estimates of the value of the Variation.

9.3.4

~~(a) The value, if any, of each Variation shall as far as possible be determined by agreement between the Contractor and the Engineer. Failing agreement, the value shall be determined by the Engineer in accordance with 9.3. The value of each Variation when determined shall be confirmed or notified to the Contractor in writing. Where the value as determined differs from any value proposed by the Contractor, the notice shall include the Engineer's reasons for his or her valuation.~~ reached by agreement in writing between the Contractor and the Contract Administrator. Where the Contractor and the Contract Administrator agree to the value of the Variation, the Contract Administrator shall record that agreement by way of an Instruction.

9.3.5

Where the Contractor and the Contract Administrator have not agreed the value of the Variation, or where the Contractor has not proposed a value within a reasonable time after the expiry of the period under 9.3.2, then:

- (a) the value shall be Decided by the Independent Certifier in accordance with 9.3; and
- (b) the Decision shall include reasons and, where applicable, the basis for the calculation for any difference between the value proposed by the Contractor and the Decision

9.3.6 ~~9.3.5~~

Where the Contract includes a Schedule of Prices which contains prices or rates applicable to the circumstances and nature of the work, or part of the work, the Base Value shall be determined by applying those prices or rates.

9.3.7 ~~9.3.6~~

Where the Schedule of Prices contains prices or rates which are not directly applicable, but which have a sufficient relationship to the Variation for it to be reasonable for new prices or rates to be derived from them, having regard to the matters referred to in ~~9.3.7~~9.3.8, the Base Value shall be determined by applying such derived prices or rates.

9.3.8 ~~9.3.7~~

Where there is no Schedule of Prices, or where there is no applicable item in the Schedule of Prices and it would not be reasonable to derive new prices or rates under ~~9.3.6~~9.3.7 by reason of the Variation:

- (a) Not being similar to the original work;
- (b) Having to be executed under conditions different from those applying to the original work;
- (c) Having to be undertaken at a time which affects the Cost of the work; or
- (d) Involving quantities increased or decreased from the original work or from the scheduled quantities,

then the Base Value shall be determined on the basis of Net Cost.

9.3.9 ~~9.3.8~~

To the extent that the Base Value has been determined under ~~9.3.5 or 9.3.6~~ or 9.3.7 it shall be deemed to include full allowance for:

- (a) All Preliminary & General except that covered under 9.3.12, 9.3.15, and 9.3.16, unless the Specific Conditions state that the prices and rates in the Schedule of Prices are exclusive of Preliminary & General, in which case 9.3.10 shall apply;
- (b) ~~(a) All On-site Overheads except those covered under 9.3.11, 9.3.14, and 9.3.15, unless the Special All Margin except that covered under 9.3.12, 9.3.15, and 9.3.16, unless the Specific Conditions state that the prices and rates in the Schedule of Prices are exclusive of On-site Overheads~~ Margin, in which case ~~9.3.9~~ 9.3.10 shall apply;

9.3.10

~~Off-site Overheads and Profit, in which case 9.3.10 shall apply.~~ ~~9.3.9~~

~~(b) All Off-site Overheads and Profit except those covered under 9.3.11~~ For Preliminary & General, 9.3.14, and 9.3.15, unless the Special where the Specific Conditions state that the prices and rates in the Schedule of Prices are exclusive of Preliminary & General or where 9.3.8 applies, there shall be added to the Base Value a percentage to cover all Preliminary & General (except that covered under 9.3.12, 9.3.15, and 9.3.16). This percentage shall be determined as follows:

~~For On-site Overheads, where the Special Conditions state that the prices and rates in the Schedule of Prices are exclusive of On-site Overheads or where 9.3.7 applies, there shall be added to the Base Value a percentage to cover all On-site Overheads (except those covered under 9.3.11, 9.3.14, and 9.3.15). This percentage shall be determined as follows:~~

- (a) Subject to ~~9.3.12~~9.3.13, where the ~~Special~~ Specific Conditions or Schedule of Prices nominate a percentage for ~~On-site Overheads~~ Preliminary & General, the percentage so nominated shall be used; or
- (b) Where no percentage is nominated, a reasonable percentage shall be used; and
- (c) To the extent the prices or rates in the Schedule of Prices include allowance for ~~On-site Overheads~~ Preliminary & General, no percentage shall be added.

~~9.3.10~~

9.3.11

For ~~Off-site Overheads and Profit~~ Margin, where the ~~Special~~ Specific Conditions state that the prices and rates in the Schedule of Prices are exclusive of ~~Off-site Overheads and Profit~~ Margin, or where ~~9.3.7~~ 9.3.8 applies, there shall be added to the Base Value as increased under 9.3.9 a percentage to cover all ~~Off-site Overheads and Profit~~ Margin (except ~~those that~~ covered under ~~9.3.11~~9.3.121, ~~9.3.14, and 9.3.15, and 9.3.16~~). This percentage shall be determined as follows:

- (a) ~~(d)~~ Subject to ~~9.3.12~~9.3.13, where the ~~Special-Specific~~ Conditions or Schedule of Prices nominate a percentage for ~~Off-site-Overheads-and-Profit~~Margin, the percentage so nominated shall be used; or
- (b) ~~(e)~~ Where no percentage is nominated, a reasonable percentage shall be used; and
- (c) ~~(f)~~ To the extent the prices or rates in the Schedule of Prices include allowance for ~~Off-site-Overheads-and-Profit~~Margin, no percentage shall be added.

9.3.12 ~~9.3.11~~

For time-related Cost, where the Contractor is entitled to an extension of time by reason of the net effect of any Variation, the Contractor shall be entitled to compensation for the time-related Cost incurred in relation to that extension together with an allowance for ~~profit~~Margin. To the extent that such Cost has not been compensated in arriving at the Base Value of the Variation it shall be determined as follows:

- (a) Where the ~~Special-Specific~~ Conditions or Schedule of Prices nominate a Working Day ~~rate~~Rate then subject to ~~9.3.12~~9.3.13 such ~~rate~~Rate shall be used and shall be deemed to provide for time-related ~~On-site-Overheads-and-Off-site-Overheads-and-Profit~~Preliminary & General and Margin; or
- (b) Where the ~~Special-Specific~~ Conditions or Schedule of Prices do not nominate such a rate, the Contractor shall be entitled to reasonable compensation for time-related ~~On-site-Overheads-and-Off-site-Overheads-and-Profit~~Preliminary & General and Margin; and
- (c) The assessment of compensation for Cost and ~~profit~~Margin under (a) or (b) shall take into account any allowance for time-related Cost and ~~profit~~Margin included in any ~~determination-amount-determined~~ under ~~9.3.5-or-9.3.6~~ or 9.3.7 or included in the evaluation of ~~overheads-and-profit-under-9.3.9-and-9.3.10~~Preliminary & General and Margin under 9.3.10 and 9.3.11. The Contractor's compensation for time-related Cost and ~~profit~~Margin shall be the greater of the allowance under those clauses and the amount determined under ~~9.3.11(a)~~9.3.12(a) and (b).

9.3.13 ~~9.3.12~~

Where a percentage has been nominated under ~~9.3.9-or-9.3.10~~ or 9.3.11, or a Working Day ~~rate~~Rate has been nominated under ~~9.3.11(a)~~9.3.12(a), and the nature or the circumstances of the Variation are such that it would be clearly inequitable to use the nominated percentages or rate, then reasonable percentages or a reasonable Working Day rate per Working Day shall be used.

9.3.14 ~~9.3.13~~

Where the Base Value is a negative figure, the amount to be deducted shall not include any allowance for ~~Off-site-Overheads-or-Profit-or-for-On-site-Overheads~~Margin or for Preliminary & General, except to the extent that the Variation reduces ~~those-On-site-Overheads~~the Cost to the Contractor of the Preliminary & General.

9.3.15 ~~9.3.14~~

Where by reason of a Variation a part of the Contract Works is delayed for a period greater than the delay, if any, to the Contract Works as a whole, and the Contractor thereby incurs time-related Cost, the Contractor shall be entitled to reasonable additional compensation for such time-related Cost and ~~profit~~Margin after taking into account any allowance for time-related Costs included in the prices and rates where the Base Value has been determined under ~~9.3.5-or-9.3.6~~ or 9.3.7 or in the evaluation of ~~overheads-and-profit-under-9.3.9-and-9.3.10~~Preliminary & General and Margin under 9.3.10 and 9.3.11.

9.3.16 ~~9.3.15~~

Where the ~~Special-Specific~~ Conditions or Schedule of Prices nominate a percentage for the processing of Variations the Contractor shall be paid that percentage of the value of the Variations, including for this purpose any Variations which do not proceed. Where no such percentage is nominated, the Contractor shall be entitled to the reasonable Cost of processing Variations, whether or not they proceed.

9.4 Daywork

9.4.1

This clause shall apply to any Variation for which applicable items do not exist in the Schedule of Prices and that:

- (b) Is of a relatively minor nature not involving significant mobilisation of additional labour or Plant, or substantial planning and supervision;

- (c) Is able to be done concurrently with other work on Site so as not to entitle the Contractor to an extension of time; and
- (d) Does not by reason of interference or disruption increase the Cost of any other part of the Contract Works.

9.4.2

The ~~Engineer~~ Contract Administrator may order in writing that any Variation to which 9.4.1 applies be carried out on a Daywork basis. The Contractor shall be paid for Daywork under the conditions and at the rates set out in the Contract. If the Contract does not provide rates for Daywork it shall be paid on the basis of Net Cost plus percentages as provided in ~~9.3.9 and 9.3.10~~ and 9.3.11.

9.4.3

For all work executed on a Daywork basis, the Contractor shall record on a daily basis during the continuation of the work, in a manner acceptable to the ~~Engineer~~ Contract Administrator, the time spent by each worker and each item of Plant, and the quantities of Materials used for the execution of the Daywork. These records shall, if agreed correct, be signed by the ~~Engineer or the Engineer's Representative if possible~~ Contract Administrator (on a daily basis, if possible) and shall be the basis of payment. If ~~neither the Engineer nor the Engineer's Representative is~~ the Contract Administrator is not available, these records shall be signed by, or on behalf of, the Contractor. One signed copy shall be submitted with the Contractor's payment claim and, in such case, shall be prima facie evidence of its content.

9.5 Unforeseen physical conditions

9.5.1

The term 'physical conditions' shall include artificial obstructions but shall not include weather conditions or conditions due to weather unless those conditions occur as a result of weather away from the Site.

9.5.2

If during the Contract the Contractor encounters on the Site physical conditions which it considers could not reasonably have been foreseen when tendering by an experienced contractor and which will in its opinion substantially increase its Costs, the Contractor shall as soon as practicable and where possible before the conditions are disturbed notify the ~~Engineer~~ Contract Administrator and confirm such notification in writing.

9.5.3

If as a result of such conditions the Contractor proposes to ~~make an~~ seek additional ~~payment claim compensation by way of a Variation in accordance with 9.5.4~~ the Contractor shall follow such notice as soon as is practicable with details of the additional Materials, Plant, labour, and programme of works proposed to be used, the anticipated delay to, or interference with, the Contract Works, and an estimate of the additional payment claim.

9.5.4

On receipt of such notice from the Contractor, the ~~Engineer~~ Contract Administrator shall forthwith investigate the conditions and after discussion with the Contractor shall ~~determine~~ confirm whether or not the conditions are such as the Contractor has notified under 9.5.2. To the extent that the conditions notified could not reasonably have been foreseen by an experienced contractor and will ~~in the Engineer's opinion~~ substantially increase the Contractor's Costs, the effect of the conditions notified shall be treated as a Variation.

9.6 Cost fluctuations

9.6.1

A Cost fluctuation adjustment shall be paid in accordance with the provisions of Appendix A unless otherwise provided in the Specific Conditions.

9.6.2

Claims for Cost fluctuation adjustments in accordance with 9.6 may be submitted by the Contractor within each payment claim and a detailed summary of all such adjustments shall be submitted with the Final Account.

9.7 Provisional Sums

9.7.1

Where Provisional Sums have been provided for work which is to be executed by the Contractor or by a Nominated Subcontractor or for any item the Cost of which is to be borne by the Contractor. Such sums shall be expended only on the Instructions of the Contract Administrator and as provided below.

9.7.2

The inclusion in the Contract of any Provisional Sum shall not:

- (a) Confer on the Contractor or its Subcontractor the right to perform the work to which the sum relates, or to have the work performed by a Nominated Subcontractor; or
- (b) Confer on the Principal the right to carry out the work or to have it carried out by others.

9.7.3

The amount payable to the Contractor in respect of work covered by a Provisional Sum shall be varied by the substitution for the Provisional Sum of the following:

- (a) Where work to which the Provisional Sum relates has been carried out by the Contractor, the value of the work so executed shall be valued as a Variation; or
- (b) Where work to which the Provisional Sum relates has been carried out by a Nominated Subcontractor, the amount payable to that Nominated Subcontractor under the terms of the subcontract approved by the Contract Administrator together with a reasonable allowance for the Contractor's Cost in relation to the work to which the Provisional Sum relates and Margin (provided that no double recovery in respect of any Cost shall occur).

9.8 Provisional Items

9.8.1

Where Provisional Items have been provided for individual elements of work, with rates against nominal quantities in the Schedule of Prices, the provisions of 9.8.2 shall apply.

9.8.2

The amount payable to the Contractor in respect of work covered by a Provisional Item shall be calculated according to the measured quantity of the work, as calculated by the Contract Administrator, at the rate set out in the Schedule of Prices. Failing agreement between the Contractor and the Contract Administrator as to the measured quantities or the amount payable, the Independent Certifier shall Decide the amount payable for a Provisional Item.

9.9 Prime Cost Sums

9.9.1

Where Prime Cost Sums have been provided for Materials to be supplied by the Contractor or by a Nominated Subcontractor for incorporation into the Contract Works, and for which freedom of selection by the Contract Administrator is reserved. Such sums shall be expended only on the Instruction of the Contract Administrator.

9.9.2

The Contract Administrator may also Instruct the Contractor to obtain quotations and samples for the Materials covered by the Prime Cost Sums and to expend the Prime Cost Sums.

9.9.3

The amount payable to the Contractor in respect of Materials covered by a Prime Cost Sum shall be varied by the substitution for the Prime Cost Sum of both of the following:

- (a) The Net Cost payable by the Contractor on the Instruction of the Contract Administrator (without deduction of any cash discount for early payment); and
- (b) A reasonable allowance for the Contractor's Cost in relation to the Materials to which the Prime Cost Sum relates and Margin.

9.10 Contingency sums

9.10.1

Contingency sums may be provided for any work which may be executed by the Contractor, but the expenditure on which is unknown at the time of calling tenders. Such sums shall be expended only on Instruction by the Contract Administrator.

9.10.2

All work carried out under a contingency sum shall be a Variation. The contingency sum shall be deducted from the Contract Price.

9.11 Final Account

9.11.1

The Contractor shall serve a final account on the Independent Certifier, copied to the Principal and the Contract Administrator, in the form of:

- (a) An Interim Final Account not later than stated in the Specific Conditions, or within such further time as the Independent Certifier may reasonably allow, setting out the proposed final Contract Price including the matters under 9.11.2, but only up to the date of Practical Completion.
- (b) A Final Account not later than 1 Month after the date of issue of the Final Completion Certificate for the whole of the Contract Works or within such further time as the Independent Certifier may reasonably allow, setting out the proposed final Contract Price which shall be limited to the interim Final Account under 9.11.1(a) together with claims for Variations or Instructions occurring after Practical Completion and other matters carried forward under 9.11.3.

9.11.2

The Interim Final Account and Final Account shall state that it is submitted under 9.11.1, setting out the proposed final Contract Price up to the date of issue of the Practical Completion Certificate and Final Completion Certificate respectively for the whole of the Contract Works and including without limitation:

- (a) The Contract Price, as stated in the Contract Agreement;
- (b) All amendments to the Contract Price as agreed between the Contractor and Contract Administrator or Decided by the Independent Certifier;
- (c) Any other claims for Variation, extension of time and time-related Cost or other adjustment to the Contract Price;
- (d) The value of Cost fluctuations under 9.6;
- (e) Adjustments for Provisional Sums, Provisional Items or Prime Cost Sums under 9.7, 9.8 and 9.9 respectively;
- (f) The amount of any bonus under 10.6;
- (g) Any other claim of any nature in relation to the Contract to which the Contractor considers itself entitled; and
- (h) Any matter that has already been referred to the Independent Certifier under section 6.4, to dispute under section 13, or to Adjudication.

9.11.3

The Independent Certifier may allow the parties to carry forward to the Final Account any Variation, Contract Price adjustment or other claim in the Interim Final Account that has not been agreed.

9.11.4

The Interim Final Account and the Final Account shall include sufficient detail in respect of each item to allow the Independent Certifier to assess and Decide the Contractor's entitlement to and the value of each item that has not been agreed between the Contractor and the Contract Administrator.

9.11.5

If the Contractor fails to submit the Final Account within the relevant time under 9.11.1 the Independent Certifier may give written notice to the Contractor stating that it is given under this clause and requiring the Contractor to submit the Final Account within a further 20 Working Days, failing which the Independent Certifier may Decide the Final Account as if the Contractor had submitted a Final Account under 9.11.1.

9.11.6

Submission of the Final Account under 9.11.1, or agreed or Decided under 9.11.7, shall be conclusive evidence that the Contractor has no outstanding claim against the Principal other than as contained therein, except for any item which has been referred to dispute under Section 13 or to Adjudication and remains unresolved at the date of issue of the Final Completion Certificate. The Principal shall not

otherwise be liable to the Contractor for any matter in connection with the Contract, but this shall not preclude the later correction of any typographical or computational error.

9.11.7

The Final Account shall as far as possible be reached by agreement in writing between the Contractor and the Principal.

- (a) Where the Contractor and Principal agree the Final Account, the Contract Administrator shall record that agreement by way of an Instruction.
- (b) Where the Contractor and Principal fail to agree the Final Account within 3 Months of its submission under 9.11.1, then the Independent Certifier shall, at the request of either party, Decide the Final Account.

9.11.8

Neither the interim Final Account or the Final Account shall be in the form of a Payment Claim or Payment Schedule for the purposes of the Construction Contracts Act.

Upon receipt of an Instruction recording the agreed Final Account under 9.11.7(a), or upon the Independent Certifier Deciding the Final Account under 9.11.7(a), the Contractor shall submit the final payment claim in accordance with 12.4.1.

10 Time for completion

10.1 Commencement

10.1.1

The Contract period shall commence on the date on which the Contractor becomes entitled to possession of the Site under ~~5.4.1-5.5.1~~ or would become entitled but for ~~non-compliance with non-compliance by~~ the Contractor's obligations under ~~8.2.5~~ with the pre-conditions set out in 5.5.1 of the Specific Conditions.

10.1.2

The Contractor shall commence the Contract Works within 10 Working Days after it becomes entitled to possession of the Site, or as soon thereafter as is reasonable, and shall then proceed with the execution of the Contract Works with due diligence except as may be ~~sanctioned or instructed by the Engineer~~ Instructed by the Contract Administrator.

10.2 Due Date for Completion

10.2.1

The Due Date for Completion of the Contract Works or any Separable Portion shall be calculated by adding to the date of commencement of the Contract period as defined in 10.1 ~~the period provided in the Specific Conditions and all extensions of time, if any, agreed or awarded under 10.3.~~

- ~~(a) The period provided in the Special Conditions; and~~
- ~~(b) All extensions of time, if any, awarded under 10.3.~~

10.2.2

The Contract Works or any Separable Portion shall be carried out to the stage of Practical Completion as defined in 10.4 by the relevant Due Date for Completion.

10.3 Extension of time

10.3.1

The ~~Engineer-Independent Certifier~~ shall in accordance with 10.3 grant an extension of the time for completion of the Contract Works or for any Separable Portion if the Contractor is fairly entitled to an extension by reason of:

- (b) The net effect of any Variation;
- (c) Weather sufficiently inclement to interfere with the progress of the works;
- (d) Any strike, lockout, or other industrial action;
- (e) Loss or damage to the Contract Works or Materials;
- (f) Flood, volcanic, or seismic events;

- (g) Any circumstances (including the consequences of a war or pandemic) not reasonably foreseeable by an experienced contractor at the time of tendering and not due to the fault of the Contractor; or
- (h) Default by the Principal, or any other Person for whose acts or omissions the Principal is responsible, which is not a Variation.

10.3.2

~~The Engineer shall not be bound to grant an extension unless:~~

~~(a) The Contractor notifies the Engineer that shall give the Contract Administrator and the Independent Certifier written notice if it claims an extension and states the grounds for the extension; as follows:~~

- ~~(a) (b) The notice is given within 20 Working Days after The Contractor shall give notice of the circumstances arise which that are relied on as the grounds for the extension, or as soon as practicable thereafter within 20 Working Days after it becomes aware of the circumstances; and~~
- ~~(b) (c) The notice either gives Contractor shall give notice of the details of the period of extension sought. Notice of the details of the period of extension sought or is followed shall either be included in the notice given under 10.3.2(a) or shall be given in a second notice within a reasonable time by a further following the notice giving such details given under 10.3.2(a).~~

10.3.3

Where the effect of any ground for an extension is of a continuing nature, the Contractor may give notice under 10.3.2 more than ~~one notice once~~, in each case claiming a specific period of extension on that ground.

10.3.4

The entitlement to any claimed extension of time and any period of extension shall, as far as possible, be determined by agreement between the Contractor and the Contract Administrator. Upon request by either the Contractor, the Contract Administrator or the Independent Certifier, they shall meet to discuss any matter relating to the claimed extension of time.

Any agreement between the Contractor and the Contract Administrator shall be notified by the Contract Administrator to the parties and the Independent Certifier as an Instruction.

10.3.5

~~and shall notify the Contractor of his or her decision. 10.3.5~~

~~Upon receipt of notice of a claim for extension of time the Engineer shall investigate the claim. The Engineer shall within 20 Working Days or as soon as practicable thereafter Failing agreement between the Contractor and the Contract Administrator, the Independent Certifier shall determine whether or not the Contractor is fairly entitled to an extension. Either party may, before reaching agreement under 10.3.4, request the Independent Certifier to make such Decision. The Independent Certifier shall make such Decision within 20 Working Days or as soon as practicable thereafter of a request from the Contractor or the Contract Administrator. The Independent Certifier shall notify the parties of their Decision including reasons.~~

10.3.6

In making their Decision under 10.3.5, the Independent Certifier shall have regard to the following:

- (a) The extent to which the delay has caused or is likely to cause delay to the Due Date for Completion of the Contract Works or any Separable Portion;
- (b) The extent to which the Contractor has taken reasonable steps to mitigate the grounds relied on for the extension;
- (c) The impact, if any, of any failure by the Contractor to give notice within the relevant timeframes identified under 6.10.1 or under 10.3.2. Such impact may include but will not be limited to:
 - (i) The period by which the Contractor was late in providing notice under 10.3.2 and any reason(s) for such lateness;
 - (ii) The impact upon the Principal and/or the Contract Works or any Separable Portion that may have arisen due to the Contractor's late notice; and
 - (iii) 10.3.5 Whether, in the case of late notification under 6.10.1 or 10.3.2(a), earlier notification might have resulted in circumstances which would have avoided or lessened the impact on the Due Date for Completion.

provided that this 10.3.6(c) shall not apply in the case of an extension of time under 10.3.1(a) for a Variation instructed under 9.1 to the extent that the Contract Administrator could reasonably have known that the Variation would have time consequences.

10.3.7

~~Upon receipt of details of the period of extension sought by the Contractor the Engineer shall, if he or she has determined that the Contractor is fairly entitled to an extension, then determine the period of the extension and notify the Contractor of his or her decision as soon as practicable.~~

~~10.3.6~~

~~In any circumstances in which the Engineer determines that~~ Where the Contractor is entitled to an extension of time the ~~Engineer~~ Contract Administrator may, subject to the agreement of the Principal and the Contractor, ~~approve~~ Instruct the taking by the Contractor of steps to accelerate the work. In such case the ~~Engineer~~ Independent Certifier shall grant either no extension of time or such lesser extension as may be agreed. The Contractor shall be entitled to be paid such sum as may be agreed or failing agreement such sum as is reasonable to compensate the Contractor for the additional Cost of the agreed steps taken to accelerate the work and of the effect of those steps on other aspects of the work ~~together with an allowance for profit. The sum payable shall be calculated in accordance with 9.3.7, 9.3.9, 9.3.10, and 9.3.15~~ valued as a Variation.

10.3.8 ~~10.3.7~~

The Contractor shall not be entitled to compensation for time-related Costs where an extension of time is granted on grounds other than those in 10.3.1(a) or (g).

10.4 Practical Completion Certificate

10.4.1

Practical Completion is that stage in the execution of the work under the Contract when the Contract Works or any Separable Portion are complete except for minor omissions and minor defects:

- (a) Which in the opinion of the ~~Engineer~~ Independent Certifier the Contractor has reasonable grounds for not promptly correcting;
- (b) Which do not prevent the Contract Works or Separable Portion from being used for their intended purpose; and
- (c) Rectification of which will not prejudice the convenient use of the Contract Works or any Separable Portion.

10.4.2

When the Contract Works or any Separable Portion are believed to qualify for the issue of a Practical Completion Certificate the Contractor shall notify the ~~Engineer~~ Independent Certifier, the Contract Administrator and Principal accordingly.

10.4.3

Within 5 Working Days of receipt of such notice or as soon as practicable thereafter the ~~Engineer shall~~ Independent Certifier shall, taking into account any recommendations or submissions of the Contract Administrator or any Advisers inspect the Contract Works or Separable Portion and shall thereupon either:

- (a) Issue a Practical Completion Certificate to the Principal and the Contractor stating the date and time at which the Contract Works or Separable Portion were so completed; or
- (b) Give the Contractor written notice of the work to be altered or completed in order to qualify for a Practical Completion Certificate.

10.4.4

On satisfactory completion of any work required under 10.4.3 the ~~Engineer~~ Independent Certifier shall issue a Practical Completion Certificate stating the date and time at which the Contract Works or Separable Portion were so completed.

10.4.5

If required by the ~~Special~~ Specific Conditions, prior to the ~~Engineer~~ Independent Certifier issuing a Practical Completion Certificate, the Contractor shall provide to the ~~Engineer~~ Contract Administrator and Independent Certifier:

- (a) Producer Statements in the form set out in Schedule 6 or other form(s) as noted in the ~~Special~~ Specific Conditions; and

- (b) As-built ~~drawings~~ records, other asset information and operation and maintenance manuals required under 5.20.1 in draft form in accordance with 5.20.3(a).

10.4.6

The Practical Completion Certificate shall be in the form set out in Schedule 15 or other appropriate form as ~~determined may be used~~ by the ~~Engineer~~ Independent Certifier.

10.5 Damages for late completion

10.5.1

The sum stated as liquidated damages in the ~~Special~~ Specific Conditions shall be paid by the Contractor to the Principal for the period between the Due Date for Completion of the Contract Works or any Separable Portion and the time of Practical Completion. The liquidated damages for any Separable Portion shall not apply in respect of any period for which liquidated damages are applied in respect of the whole of the Contract Works.

10.5.2

If, before the time of Practical Completion of the Contract Works or any Separable Portion of which notice has been given in the ~~Special~~ Specific Conditions, the Principal shall occupy or use any portion thereof under 10.7.2, the amount of any liquidated damages that would otherwise be payable in respect of the period between the Due Date for Completion and the time of Practical Completion shall be reduced by such proportion as may be equitable. The amount of such proportional reduction shall be ~~determined~~ Decided by the ~~Engineer~~ Independent Certifier.

10.5.3

The Principal may without prejudice to any other method of recovery deduct the amount of liquidated damages from any monies payable to the Contractor under the Contract and, for that purpose, give notice to the ~~Engineer~~ Independent Certifier in accordance with 12.2.4 and 12.5.2 requiring the deduction. Payment or deduction of liquidated damages for late completion shall not relieve the Contractor from any of its other liabilities or obligations under the Contract.

10.6 Bonus for early completion

10.6.1

Where provided in the ~~Special~~ Specific Conditions a bonus shall be paid by the Principal to the Contractor for the period between the time of Practical Completion and the Due Date for Completion of the Contract Works or any Separable Portion.

10.7 Occupancy by the Principal

10.7.1

The Principal shall be entitled to the occupancy or use by itself or its nominee of the Contract Works or any Separable Portion once a Practical Completion Certificate has been issued.

10.7.2

The Principal shall be entitled prior to the issue of a Practical Completion Certificate to the occupancy or use by itself or its nominee of any portion of the Contract Works which is sufficiently completed to allow such occupancy or use without undue interference with the work of the Contractor. Such occupancy or use shall be subject to the ~~consent~~ approval of the Contractor and to the agreement of the Principal and the Contractor that the portion of the Contract Works shall be a Separable Portion. The Contractor shall not unreasonably withhold its ~~consent~~ approval and its agreement to the portion of the Contract Works being a Separable Portion.

10.7.3

Occupancy or use under 10.7.1 or 10.7.2 shall not affect any of the obligations of the Contractor.

10.7.4

If by reason of occupancy or use under 10.7.1 or 10.7.2 the Contractor suffers delay in the completion of the Contract Works or incurs additional Cost, which in either case is not otherwise provided for in the Contract, then the effect of the occupancy shall be treated as a Variation.

11 Defects liability

11.1 Defects Notification Period

The Defects Notification Period for the Contract Works or any Separable Portion shall commence on the date of Practical Completion of the Contract Works or Separable Portion. The Defects Notification Period shall be 3 Months unless some other period is stated in the ~~Special~~ Specific Conditions.

11.2 Remedying of defects

11.2.1

The Contractor shall remedy defects and damage in the Contract Works resulting from defective workmanship or Materials that arise before the end of the Defects Notification Period. The ~~Engineer~~ Contract Administrator shall, during the Defects Notification Period or within 5 Working Days thereafter, give notice in writing to the Contractor of defects or damage to be remedied. The Contractor shall remedy any such defects or damage within 5 Working Days of receipt of the ~~Engineer's~~ Contract Administrator's notice or within such other reasonable time as ~~agreed~~ Instructed by the ~~Engineer~~ Contract Administrator in writing.

~~11.2.2~~

11.2.2

If the Contractor fails to carry out any work notified under 11.2.1 within the time required under 11.2.1, the ~~Engineer~~ Contract Administrator may, after giving 5 Working Days' further written notice to the Contractor stating that it is given under this clause, ~~direct~~ Instruct others to undertake the work.

11.2.3

The reasonable Cost of the work undertaken by others under 11.2.2 shall be recoverable by the Principal from the Contractor. As soon as practicable after completion of the work, the ~~Engineer~~ Contract Administrator shall notify the Contractor of the work undertaken and its Cost.

11.2.4

The taking of any action by the ~~Engineer~~ Contract Administrator under 11.2.2 shall not relieve the Contractor of any of its obligations under the Contract.

11.2.5

The Contractor shall not be liable for fair wear and tear during the Defects Notification Period.

11.2.6

The ~~Engineer may direct~~ Contract Administrator may Instruct the Contractor to search for any defect prior to the expiry of the Defects Notification Period. Unless the defect is one which the Contractor is liable to rectify, the search and any remedial work shall be treated as Variations.

11.2.7

The Contractor shall have the right of entry on to the Site at reasonable times for the purpose of searching for defects or carrying out remedial work.

11.2.8

Outstanding work under ~~5.6.3~~ 5.7.3, 5.20.3, and 10.4.1 shall be deemed to be remedial work for the purposes of 11.2.2 and 11.2.7.

11.3 Final Completion Certificate

11.3.1

The ~~Engineer shall~~ Independent Certifier shall, taking into account any recommendations or submissions of the Contract Administrator or any Advisers, issue to the Principal, ~~Contract Administrator~~ and to the Contractor a Final Completion Certificate for the Contract Works or any Separable Portion when in respect of the Contract Works or that Separable Portion:

- (a) The Defects Notification Period under 11.1 has expired; and
- (b) The Contractor has remedied all minor omissions and defects under 10.4.1 and all defects notified by the ~~Engineer~~ Contract Administrator under 11.2.

11.3.2

If required by the ~~Special~~ Specific Conditions, prior to the ~~Engineer~~ Independent Certifier issuing a Final Completion Certificate the Contractor shall provide to the ~~Engineer~~ Contract Administrator (with a copy to the Independent Certifier):

- (a) Producer Statements in the form set out in Schedule 6, or other form(s) as noted in the ~~Special~~ Specific Conditions; and
- (b) As-built ~~drawings~~ records, other asset information and operation and maintenance manuals required under 5.20.1 in final form in accordance with 5.20.

11.3.3

The Final Completion Certificate shall be in the form set out in Schedule 16 or other appropriate form as ~~determined~~ used by the ~~Engineer~~ Independent Certifier.

11.4 Effect of Final Completion Certificate**11.4.1**

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

11.5 Warranties and Guarantees**11.5.1**

~~The Contractor shall provide the Principal with written warranties where required by the Special Conditions.~~

~~11.5.2~~

~~Such warranties shall be supplied to the Engineer in writing before the Engineer issues the Practical Completion Certificate and shall be in the form set out in Schedule 13 or as otherwise acceptable to the Engineer.~~

~~11.5.3~~

~~Notwithstanding the supply of any warranty, the Contractor shall remain liable for the fulfilment of all obligations of the Contractor under the Contract.~~

~~11.6~~ — **Guarantees****~~11.6.1~~**

The Contractor shall provide the Principal with the written warranties and guarantees ~~where~~ required by the ~~Special~~ Specific Conditions.

11.5.2 ~~11.6.2~~

Such warranties and guarantees shall be supplied to the ~~Engineer~~ Independent Certifier in writing before the ~~Engineer~~ Independent Certifier issues the Practical Completion Certificate ~~and shall be or other time stated~~ in the ~~form required by the Special~~ Specific Conditions.

11.5.3

Subcontractor warranties shall be in the form set out in Schedule 13 or as otherwise acceptable to the Independent Certifier and shall be provided by the Subcontractors approved under Section 4 or the Contractor where it has undertaken the relevant trade. Guarantees shall be in the form required by the Specific Conditions.

11.5.4 ~~11.6.3~~

Notwithstanding the supply of any warranty or guarantee, the Contractor shall remain liable for the fulfilment of all obligations of the Contractor under the Contract.

12 Payments**12.1 Contractor's payment claims****12.1.1**

The Contractor may submit payment claims under the Contract. Payment claims shall be served on the ~~Engineer~~ Independent Certifier as agent of the Principal, and at the same time a copy of the payment claim shall be provided to the Principal and the Contract Administrator.

12.1.2

Unless otherwise provided in the Contract, payment claims may only be submitted for work carried out during periods of not less than 1 Month.

12.1.3

The Contractor's payment claims shall:

- (a) Identify the Contract and the relevant period to which the payment claim relates;
- (b) Identify the Contract Works to which the payment claim relates, the claimed amount in respect of those Contract Works and the manner in which the claimed amount has been calculated, in particular:
 - (i) The estimated extent and value of the Contract Works which has been carried out, excluding Variations
 - (ii) The estimated extent and value of all work done or other Cost which is claimed for Variations
 - (iii) Where provided for in the ~~Special-Specific~~ Conditions, and subject to the conditions stated in the ~~Special-Specific~~ Conditions, advances for the estimated value of Materials delivered to the Site which are intended to be incorporated in the Contract Works but have not yet been so incorporated
 - (iv) Any advances for Temporary Works or Plant or for Materials not yet on Site for which payment is provided in the ~~Special-Specific~~ Conditions, subject to the conditions stated in the ~~Special-Specific~~ Conditions. The conditions may, in the case of Materials not yet on Site, include the execution of an agreement in the form set out in Schedule 14 or other appropriate form
 - (v) The estimated value of Cost fluctuations for which payment is provided under 12.8, and
 - (vi) The estimated amount of any bonus to which the Contractor claims to be entitled under 10.6;
- (c) Indicate the due date for payment which shall be 17 Working Days after the date of service of the payment claim; and
- (d) Where the payment claim is intended to be a payment claim under the Construction Contracts Act, state that it is made under that Act and include any information required by that Act.

12.2 Progress Payment Schedules

12.2.1

The ~~Engineer~~ Independent Certifier shall assess each of the Contractor's payment claims having regard to the terms of the Contract and may amend them as necessary to comply with the terms of the Contract and with the ~~Engineer's Independent Certifier's~~ valuation of the work carried out to date. The ~~Engineer~~ Independent Certifier shall Decide the scheduled amount and, in accordance with the following process, provide a ~~Progress~~-Payment Schedule in response to each payment claim not later than 12 Working Days after the date of service of the payment claim.

12.2.2

Not later than 7 Working Days after the date of service of each payment claim, the ~~Engineer~~ Independent Certifier shall, as agent on behalf of the Principal, provide a ~~Progress~~-Payment Schedule to the Contractor and a copy to the Principal and Contract Administrator, which shall be provisional in accordance with ~~12.2.2(h)~~ 12.2.2(g) and shall:

- (a) Identify the Contractor's payment claim to which it relates;
- (a) Identify the date when the payment claim was served on the ~~Engineer~~ Independent Certifier, and the due date for payment under 12.2.8;
- (b) Identify the date when the ~~Progress~~-Payment Schedule is provided;
- (c) ~~(i) Show the sum certified by the Engineer for payment, which shall comprise the value of the Contractor's payment claim for work carried out to date, amended as necessary under 12.2.1 and 12.3, less previous sums certified by the Engineer under 12.2.2(d), and less any other deductions required by the Contract or by law;~~
 - (i) previous sums certified by the Independent Certifier under 12.2.2(d)(i) to (iii);
 - (ii) any other deductions required by the Contract or by law; and
 - (iii) the amount of any retention money to be withheld;
- (d) ~~(d) Show the manner in which the sum under 12.2.2(d) has been calculated;~~

- (e) ~~(e)~~ Set out the reason or reasons for any difference between the sum under 12.2.2(d) and the claimed amount under 12.1 and the manner in which the amounts have been calculated;
- (f) ~~(f)~~ State that the sum Decided by the Independent Certifier under 12.2.2(d) shall be the provisional scheduled amount; and
- (g) ~~(g)~~ State that the ~~Progress~~ Payment Schedule is provisional only until the expiry of 12 Working Days after the date of service in 12.2.2(b), after which time the sum under 12.2.2(d) shall become the scheduled amount unless within that time a replacement ~~Progress~~ Payment Schedule is provided under 12.2.5.

12.2.3

If any item of the Contractor's payment claim cannot be verified within the prescribed time, the ~~Engineer~~ Independent Certifier shall ~~within that time~~ certify under 12.2.2(d) a reasonable estimate of the amount due.

12.2.4

Not later than 10 Working Days after the date on which the relevant payment claim was served on the ~~Engineer~~ Independent Certifier, the Principal may notify the ~~Engineer~~ Independent Certifier in writing (with a copy to the Contractor and Contract Administrator) of any amendments or deductions that the Principal ~~intends~~ requires the Independent Certifier to make from the sum certified ~~by the Engineer~~ under 12.2.2. Such notice shall show the reasons for the amendments or deductions and the manner in which they have been calculated.

12.2.5

In the event that the Principal has ~~notified the Engineer and the Contractor of any amendments or deductions given notice~~ under 12.2.4, then not later than 12 Working Days after the date on which the relevant payment claim was served on the ~~Engineer, the Engineer~~ Independent Certifier, the Independent Certifier shall, ~~on behalf as agent~~ of the Principal, provide a replacement ~~Progress~~ Payment Schedule to the Contractor and a copy to the Principal and Contract Administrator, which shall contain:

- (a) The information stated under 12.2.2 (a) to (f);
- (b) The amendments or deductions which the Principal has notified under 12.2.4 and which are not included in the sum certified ~~by the Engineer~~ under 12.2.2(d) ~~(and which shall not be deemed to be certified by the Engineer)~~;
- (c) ~~The~~ A copy of the notice under 12.2.4 setting out the reasons for and the manner in which such amendments and deductions have been calculated;
- (d) The scheduled amount, which shall be the sum ~~certified~~ Decided by the ~~Engineer~~ Independent Certifier under 12.2.2(d) as amended by the amendments and deductions under 12.2.5 (b); and
- (e) A statement that the ~~Progress~~ Payment Schedule supersedes the ~~Progress~~ Payment Schedule provided under 12.2.2 in respect of the relevant payment claim.

12.2.6

Where no replacement ~~Progress~~ Payment Schedule is provided within the time required under 12.2.5, the provisional ~~Progress~~ Payment Schedule under 12.2.2 shall become the ~~Progress~~ Payment Schedule and the sum ~~certified by the Engineer~~ Decided under 12.2.2 (d) shall become the scheduled amount.

12.2.7

~~When including in a Progress Payment Schedule any amendments and deductions required by the Principal, the Engineer shall be acting only as the agent of the Principal under 6.2.1(a) and not under 6.2.1(b).~~

12.2.8

~~The~~ The Principal shall pay the scheduled amount under 12.2.2(d) or 12.2.5(d) as the case may be, to the Contractor together with the amount of goods and services tax payable ~~shall be paid by the Principal to the Contractor~~ within 17 Working Days after the date on which the Contractor's payment claim was served ~~on the Engineer~~ under 12.1.1.

12.2.8 12.2.9

Failure by the Principal to ~~notify the Engineer or Contractor give notice~~ under 12.2.4 ~~that it requires any amendments to or deductions from amounts payable to the Contractor~~ shall not prevent the Principal from ~~requiring any amendments or deductions from~~ giving such notice in respect of any subsequent

Payment Schedules, ~~or nor~~ prejudice any other method of recovery of such deductions or the Principal's right to dispute any sum certified by the ~~Engineer~~Independent Certifier, except as provided in the Contract.

12.3 Retention monies

12.3.1

~~monies as are required under the Special Conditions in respect of the whole of the Contract Works or any Separable Portion. The amount to be retained in respect to the Contract Works shall be reduced upon the completion of any Separable Portion under 10.7.2 by such percentage as shall be equitable. The percentage reduction shall be determined by the Engineer. 12.3.2~~

The Principal shall retain out of the amount which would otherwise be payable to the Contractor, such retention money as is provided under the Specific Conditions as security for the Contractor's remedying of defects in the performance of the Contract Works.

12.3.2

In withholding retention money, the Principal shall comply with its obligations under the Construction Contracts Act.

12.3.3

The retention money shall become payable to the Contractor on:

~~The monies retained, less any deductions which the Principal is entitled to make, shall be paid to the Contractor as follows:~~

- (a) ~~By payment, as part of the first progress payment after the issue of the Practical Completion Certificate for the whole of the Contract Works or for the Separable Portion~~The date of issue of the Practical Completion Certificate, of any amount in excess of the defects liability retention specified in the ~~Special~~Specific Conditions;
- (b) ~~By payment, as part of the first and any subsequent progress payment after the end~~The date of expiry of the Defects Notification Period ~~for the whole of the Contract Works or for the Separable Portion~~, of the defects liability retention less the ~~Engineer's assessment of the value of the Contract Works remaining to be completed in accordance with 11.2 at the time of the progress payment. The assessed value of such remaining Contract Works shall be the assessed~~Independent Certifier's assessment of the Cost to the Principal of completing any outstanding Contract Works or making good ~~those~~ omissions and defects ~~in accordance with 11.2.2 and 11.2.3; and~~
- (c) ~~By payment~~the date of issue of the Final Completion Certificate of any remaining defects liability retention ~~10 Working Days after the date of the Final Completion Certificate for the whole of the Contract Works or of the Separable Portion.~~

12.3.4

The Independent Certifier shall issue a Payment Schedule in accordance with 12.2.2 no later than 7 Working Days after each relevant date whether or not the Contractor has submitted a payment claim under 12.1, and the process under 12.2 shall apply.

12.3.5

The provisions of 12.3.3 shall apply to Separable Portions. An equivalent proportion of the total retention money shall be paid to the Contractor in accordance with 12.3.3 following the issue of the Practical Completion Certificate for each Separable Portion, or where a Separable Portion arises as a result of early occupancy under 10.7.2.

12.3.6

~~Unless otherwise provided in the Special~~Where specified in the Specific Conditions, the Contractor may provide a bond in lieu of retentions in addition to any bond required under 3.1. The bond shall be for an amount equal to the limit of the total sums required to be retained under 12.3.1. Where such a bond is provided, 12.3.1 and 12.3.2 shall not apply. The bond shall be in the form set out in Schedule 5 and shall be executed by the Contractor and by the surety named in the tender or approved by the Principal.

12.3.7

The Principal shall return or release the bond under 12.3.6 to the Contractor under the issue of the Final Completion Certificate for the whole of the Contract Works.

12.4 Final payment claim

12.4.1

Not later than 1 Month after the latest of:

- (a) receipt of an Instruction recording the agreed Final Account under 9.11.7(a), or a Decision on the Final Account under 9.11.7(b); and
- (b) the issue of the Final Completion Certificate.

~~Not later than 1 Month after the issue of the Final Completion Certificate~~ or within such further time as the ~~Engineer-Independent Certifier~~ may reasonably allow, the Contractor shall submit a final ~~account payment claim to the Independent Certifier (as agent of the Principal) with a copy to the Contract Administrator. The final payment claim shall account for~~ of all the Contractor's payment claims in relation to the Contract. ~~The final account and~~ shall be signed by the Contractor and ~~be~~ endorsed 'final payment claim', ~~and. This shall be the Contractor's final payment claim under the Contract. The final payment claim shall be served on the Engineer as agent of the Principal and at the same time a copy of the final payment claim shall be provided to the Principal.~~

12.4.2

The final payment claim shall:

- (a) Identify the Contract and that the ~~relevant period or periods~~ to which the final payment claim relates, ~~which shall cover is~~ the period up until completion of all of the Contractor's obligations under the Contract;
- (b) Identify that the work to which the final payment claim relates ~~(which shall include includes~~ all Contract Works yet to be completed by the Contractor or paid for by the Principal);
- (c) Show the claimed amount in respect of that work which shall reflect the amount agreed or Decided in respect of the Final Account under 9.11.7, ~~the amount or amounts claimed by the Contractor in respect of all outstanding claims, and the manner in which all such sums have been calculated;~~
- (d) Where the Final Account was Decided under 9.11.7, in respect of any part of that Decision that the Contractor disagrees with, detail the amount or amounts claimed by the Contractor in respect of such parts, and the manner in which all such sums have been calculated;
- (e) ~~(d)~~ Indicate the due date for payment which, ~~subject to 12.5.6,~~ shall be not later than 45 Working Days after the date of service of the final payment claim; and
- (f) ~~(e)~~ Where the final payment claim is intended to be a payment claim under the Construction Contracts Act, state that it is made under that Act and include any information required by that Act.

12.4.3

Submission of the final payment claim by the Contractor shall be conclusive evidence that the Contractor has no outstanding claim against the Principal other than as contained therein, except for any item which has been referred to arbitration under Section 13 or to Adjudication. The Principal shall not be liable to the Contractor for any matter in connection with the Contract unless contained within the final payment claim but this shall not preclude the later correction of any clerical or accounting error.

12.5 Final Payment Schedule

12.5.1

The ~~Engineer-Independent Certifier~~ 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-Independent Certifier'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 final payment claim. Not later than 20 Working Days after the date of service of the final payment claim, the Engineer shall, on behalf of the Principal, provide a Final Payment Schedule to the Contractor and a copy to the Principal, which shall be provisional in accordance with 12.5.1(h) and shall:~~

- ~~(a) Identify the final payment claim to which it relates;~~

12.5.2

The Independent Certifier shall Decide the scheduled amount and provide a final Payment Schedule in response to the final payment claim not later than 45 Working Days after the date of service of the final payment claim, and the following process under 12.2.2 to 12.2.8 shall apply adjusted as follows:

- (a) The Independent Certifier shall issue a Payment Schedule, endorsed 'provisional final Payment Schedule' not later than 20 Working Days after the date of service of the final payment claim in accordance with 12.2.2 and 12.2.3.
- (b) ~~Identify the date when~~ Not later than 25 Working Days after the date on which the final payment claim was served ~~on the Engineer, and the due date for payment under 12.5.9; the Principal may notify the Independent Certifier of any amendments or deductions that the Principal requires the Independent Certifier to make in accordance with 12.2.4.~~
- (c) ~~Identify the date when the Final Payment Schedule is provided;~~
- (d) ~~Show the sum certified by the Engineer, which shall comprise the value of the Contractor's final payment claim amended as necessary under 12.5.1, less previous sums certified by the Engineer under 12.2.2(d), and less any other deductions required by the Contract or by law;~~
- (e) ~~Show the manner in which the sum under 12.5.1(d) has been calculated;~~
- (f) ~~Set out the reason or reasons for any difference between the sum under 12.5.1(d) and the claimed amount;~~
- (g) ~~State that the sum under 12.5.1(d) shall be the provisional scheduled amount; and~~
- (h) ~~State that the Final Payment Schedule is provisional only until the expiry of 35 Working Days after the date of service in 12.5.1(b), after which time the sum under 12.5.1(d) shall become the scheduled amount unless within that time a replacement Final Payment Schedule is provided under 12.5.3.~~
- (c) Not ~~In the event that the Principal has given notice under 12.5.2(d), then not~~ later than 30 Working Days after the date on which the final payment claim was served on the ~~Engineer~~, the Principal may notify the Engineer in writing (with a copy to the Contractor) of any amendments or deductions that the Principal intends to make from the sum certified by the Engineer. Such notice shall show the reasons for the amendments or deductions and the manner in which they have been calculated. Independent Certifier, the Independent Certifier shall, as agent of the Principal, provide a replacement final Payment Schedule in accordance with 12.2.5.

~~In the event that the Principal has notified the Engineer and the Contractor of any amendments or deductions under 12.5.2, then not later than 35 Working Days after the date on which the final payment claim was served on the Engineer, the Engineer shall, on behalf of the Principal, provide a replacement Final Payment Schedule to the Contractor and a copy to the Principal, which shall contain:~~

- (a) ~~The information stated under 12.5.1(a) to (f);~~
- (b) ~~The amendments or deductions which the Principal has notified under 12.5.2 and which are not included in the sum certified by the Engineer under 12.5.1(d) (and which shall not be deemed to be certified by the Engineer);~~
- (c) ~~The reasons for and the manner in which such amendments and deductions have been calculated;~~
- (d) ~~The scheduled amount, which shall be the sum certified by the Engineer under 12.5.1(d) as amended by any amendments and deductions under 12.5.3(b); and~~
- (e) ~~A statement that the Final Payment Schedule supersedes the Final Payment Schedule provided under 12.5.1.~~
- (d) Where no replacement Final final Payment Schedule is provided within the time required under 12.5.3 12.5.2(c), the provisional ~~Final~~ Payment Schedule ~~provided under 12.5.1~~ 12.5.2(a) shall become the ~~Final final~~ Payment Schedule and the sum ~~certified by the Engineer~~ Decided under 12.5.1(d) 12.5.2(d) shall become the scheduled amount.

12.5.5

~~When including in a Final Payment Schedule any amendments and deductions required by the Principal, the Engineer shall be acting only as agent of the Principal under 6.2.1(a) and not under 6.2.1(b).~~

12.5.6

~~If the Engineer is unable to provide a Final Payment Schedule within the period of 20 Working Days referred to in 12.5.1, the Engineer shall before the expiry of that period issue a statement of the reasons why a Final Payment Schedule cannot be issued or otherwise dealt with in accordance with the Contract. The Engineer shall also issue further explanatory statements at Monthly intervals (or other periods determined by the Engineer as reasonable) until the provision of the Final Payment Schedule under 12.5.1. At the time of issuing any explanatory statement under 12.5.6, the Engineer shall issue a certificate in the form of a Progress Payment Schedule in accordance with 12.2.2 for all amounts due under the Contract which can reasonably be certified at that time, and the process under 12.2 shall~~

~~apply as if the final payment claim had been served as a progress payment claim 7 Working Days prior to the date of the Progress Payment Schedule issued under 12.5.6.~~

~~Where the Engineer issues Progress Payment Schedules under 12.5.6, the Final Payment Schedule under 12.5.1 shall be provided no later than 6 Months after the date of the Final Completion Certificate.~~

~~12.5.7~~

~~If the Contractor fails to submit its final account under 12.4.1, the Engineer may issue a certificate in the form of a Final Payment Schedule for such amount, if any, as he or she may assess as if the Contractor had submitted a final payment claim, and the process under 12.5.1 to 12.5.5 shall apply.~~

~~12.5.8~~

~~If the Engineer gives a decision under 13.2 which amends the Final Payment Schedule, then the Engineer shall forthwith issue a further certificate in the form of a Final Payment Schedule incorporating the amendment, and the process under 12.5.1 to 12.5.5 shall apply as if a final payment claim had been served under 12.4.1, 20 Working Days prior to the date of that Final Payment Schedule.~~

- ~~(e) (f) The~~ The Principal shall pay the scheduled amount under ~~12.5.1(d) 12.5.2(c) or 12.5.3(d)(d)~~ as the case may be, to the Contractor together with the amount of goods and services tax payable ~~shall be paid by the Principal to the Contractor within 10 Working Days of the date of the Final Payment Schedule or, in the case of a scheduled amount under 12.5.1(d), the date when the provisional Final Payment Schedule becomes the Final Payment Schedule~~ within 45 Working Days after the date on which the final payment claim was served under 12.2.1.

12.5.3 ~~12.5.10~~

Failure by the Principal to ~~notify the Engineer or Contractor~~ give notice under 12.5.2 ~~that it requires any amendments to or deductions from amounts payable to the Contractor (b)~~ shall not prejudice any other method of recovery of such deductions or the Principal's right to dispute any sum certified by the ~~Engineer~~ Independent Certifier, except as provided in the Contract.

12.5.4

Where a final payment claim is made under 12.4.1 prior to the Final Account being agreed or Decided under 9.11.7, and the amount certified under 12.5.2 is less than the amount claimed under 12.4.1 the Independent Certifier shall:

- (a) Issue an interim final Payment Schedule under 12.5.2 for progress payment; and
- (b) Issue further interim final Payment Schedules Monthly thereafter; and
- (c) Issue the final Payment Schedule, endorsed 'final Payment Schedule' not later than 6 Months after the issue of the Final Completion Certificate for the whole of the Contract Works.

12.6 ~~Effect of~~ Final-final Payment Schedule

12.6.1

Upon the issue of the ~~Final-final~~ Final-final Payment Schedule the Principal shall cease to be liable to the Contractor in respect of any of the Principal's obligations under the Contract, except for the Principal's obligations:

- (a) To pay the scheduled amount shown as payable in the ~~Final-final~~ Final-final Payment Schedule;
- (b) To pay any retention ~~monies~~ money under 12.3 which ~~are or become~~ is or becomes payable;
- (c) To pay any monies which are or become payable under Section 13;
- (d) To pay interest which is or becomes payable under 12.7; and
- (e) To pay any scheduled amounts shown in any Payment Schedule provided prior to the provision of the ~~Final-final~~ Final-final Payment Schedule but unpaid at that time.

12.7 Interest

12.7.1

The Principal shall pay the Contractor interest compounding Monthly on all scheduled amounts shown as payable in any Payment Schedule and remaining unpaid after the expiry of the time provided for payment.

12.7.2

In the event of unreasonable delay in the provision of a Payment Schedule for any payment claim or part of a payment claim which is later the subject of a Payment Schedule, the Contractor shall be entitled to interest compounding Monthly on the scheduled amount from the date on which it would have been payable if the delay had not occurred down to the date of payment.

12.7.3

In the event of unreasonable deduction of any amount from any Contractor's payment claim ~~or final payment claim being made in any Payment Schedule~~, and where such amount is later paid by the Principal or found by an adjudicator to be payable by the Principal, the Contractor shall be entitled to interest compounding Monthly on that amount from the date on which it would have been payable if the unreasonable deduction had not occurred down to the date of payment.

12.7.4

The rate of interest shall be equal to one and a half times the monthly small to medium-sized enterprise (SME) overdraft rate published by the Reserve Bank of New Zealand over the relevant period.

12.7.5

The right to interest shall be additional to any other remedy to which the Contractor may be entitled at law.

12.8 — Cost fluctuations**12.8.1 —**

~~A Cost fluctuation adjustment shall be paid in accordance with the provisions of Appendix A unless otherwise provided in the Special Conditions.~~

12.8.2 —

~~Payment claims for Cost fluctuation adjustments in accordance with 12.8 may be submitted by the Contractor each Month and a detailed summary of all such payment claims shall be submitted with the final payment claim.~~

12.9 — Provisional Sums**12.9.1 —**

~~Provisional Sums may be provided for work which is to be executed by the Contractor or by a Nominated Subcontractor or for any item the Cost of which is to be borne by the Contractor. Such sums shall be expended only on the instructions of the Engineer and as provided below.~~

12.9.2 —

~~The inclusion in the Contract of any Provisional Sum shall not:~~

- ~~(a) Confer on the Contractor or its Subcontractor the right to perform the work to which the sum relates, or to have the work performed by a Nominated Subcontractor; or~~
- ~~(b) Confer on the Principal the right to carry out the work or to have it carried out by others.~~

12.9.3 —

~~The amount payable to the Contractor in respect of work covered by a Provisional Sum shall be varied by the substitution for the Provisional Sum of the following:~~

- ~~• Where work to which the Provisional Sum relates has been carried out by the Contractor, the value of the work so executed shall be valued as a Variation; or~~
- ~~• Where work to which the Provisional Sum relates has been carried out by a Nominated Subcontractor, the amount payable to that Nominated Subcontractor under the terms of the subcontract approved by the Engineer together with a reasonable allowance for the Contractor's expense and profit on the work to which the Provisional Sum relates.~~

12.10 — Provisional Items**12.10.1 —**

~~Provisional Items may be provided for individual elements of work, with rates against nominal quantities in the Schedule of Prices.~~

12.10.2 —

~~The provisions of 12.9.1 and 12.9.2 shall apply to Provisional Items.~~

~~12.10.3—~~

~~The amount payable to the Contractor in respect of work covered by a Provisional Item shall be calculated according to the measured quantity of the work, as determined by the Engineer, at the rate set out in the Schedule of Prices.~~

~~12.11— Prime Cost Sums~~~~12.11.1—~~

~~Prime Cost Sums may be provided for Materials to be supplied by the Contractor or by a Nominated Subcontractor for incorporation into the Contract Works, and for which freedom of selection by the Engineer is reserved. Such sums shall be expended only on the instructions of the Engineer as provided below.~~

~~12.11.2—~~

~~The Contractor shall obtain quotations and samples for the Materials covered by the Prime Cost Sums as required by the Engineer and submit them to the Engineer for his or her instructions.~~

~~12.11.3—~~

~~The amount payable to the Contractor in respect of Materials covered by a Prime Cost Sum shall be varied by the substitution for the Prime Cost Sum of both of the following:~~

- ~~(a) The net purchase price payable by the Contractor on the instructions of the Engineer (without deduction of any cash discount for early payment); and~~
- ~~(b) A reasonable allowance for the Contractor's expense and profit on the Materials to which the Prime Cost Sum relates.~~

~~12.12— Contingency sums~~~~12.12.1—~~

~~Contingency sums may be provided for any work which may be executed by the Contractor, but the expenditure on which is unknown at the time of calling tenders. Such sums shall be expended only on the written instruction of the Engineer.~~

~~12.12.2—~~

~~All work carried out under a contingency sum shall be a Variation. The contingency sum shall be deducted from the Contract Price.~~

12.8 ~~12.13~~ **Goods and services tax**12.8.1 ~~12.13.1~~

Clause ~~12.13~~ 12.8 shall only apply where both the Principal and the Contractor are registered under the Goods and Services Tax Act.

12.8.2 ~~12.13.2~~

~~Any payment claim or final payment claim prepared by the Contractor shall not be a GST Invoice. Unless stated otherwise in the Special Conditions, when the Engineer provides Progress Payment Schedules under 12.2 or Final Payment Schedules under 12.5, he or she shall on behalf of the Principal ensure that the Payment Schedules are in the form required to constitute a GST Invoice.~~ A tax invoice shall be provided by the Independent Certifier or the Contractor, as specified in the Specific Conditions.

13 Disputes~~13.1— General~~~~13.1.1—~~

~~No decision, valuation, or certificate of the Engineer shall be questioned or challenged more than 3 Months after it has been given or more than 1 Month after the date on which any relevant Adjudicator's Determination is given to the parties, whichever is the later, unless notice has been given to the Engineer within that time. Every decision, valuation, or certificate of the Engineer shall be final and binding if neither party has referred it to the Engineer under 13.2.1 or to Adjudication within 3 Months after it has been given, unless notice has been given to the Engineer within that time. This subclause 13.1.1 shall not apply to a Progress Payment Schedule.~~

13.1 13.1.2 Resolution of disputes**13.1.1**

The parties will endeavour to promptly resolve any dispute or difference between them by negotiation in good faith between senior members of their respective organisations before referring any matter for dispute resolution under this Section 13.

~~Every dispute or difference concerning the Contract which is not precluded by the provisions of 12.4, 12.6, 13.1.1 or 13.2. shall be dealt with under the following provisions of this Section.~~

13.1.2 13.1.3

The Principal and the Contractor may at any stage ~~agree to suspend any dispute resolution under this Section 13 due to any Adjudication proceedings;~~

- (a) Agree to refer a matter for resolution by way of mediation by notice to the other party (with a copy to the Independent Certifier); and
- (b) (a) Agree in writing to suspend any dispute resolution under this Section 13, but in the absence of any such agreement the provisions of Section 13 shall continue to apply and neither party shall be entitled to suspend or delay any dispute resolution under this Section 13 ~~due to any Adjudication proceedings.~~

13.2 — Engineer's review**13.2.1 —**

~~Every dispute or difference under 13.1.2 shall be referred to the Engineer not later than 1 Month after the provision of the Final Payment Schedule under 12.5.1, 12.5.3, or 12.5.4 or more than 1 Month after the date on which any relevant Adjudicator's Determination is given to the parties, whichever is the later. The Engineer shall give his or her decision in writing. Except in the case of a decision under 13.2.4 the Engineer may correct or modify his or her decision by a subsequent decision in writing.~~

13.2.2 —

~~The Engineer or the Principal or the Contractor may, before or after the Engineer has given a decision (other than a decision under 13.2.4), ask for a meeting, and in such case the Engineer and a representative of the Contractor shall meet as soon as practicable and endeavour to resolve the dispute amicably.~~

13.2.3 —

~~The Engineer and the Contractor may, with the consent of the Principal, jointly submit the dispute or any question arising in connection with it to an agreed expert, with a request to make a recommendation to assist them to resolve the matter. The Principal and the Contractor shall each pay one half of the costs of the agreed expert.~~

13.2.4 —

~~Unless the dispute or any question arising in connection with it has been referred under 13.2.3 and is awaiting a recommendation from the agreed expert, the Engineer may, at any time, in respect of any dispute or difference under 13.2.1 give a decision (in this Section called 'a formal decision') which states expressly that it is given under this subclause 13.2.4. The Engineer shall give a formal decision on the matter within 20 Working Days of receiving notice in writing from the Principal or the Contractor requiring him or her to give a formal decision and expressly referring to this subclause 13.2.4. Upon making a formal decision the Engineer shall forthwith send copies of it to both the Principal and the Contractor. The Engineer's formal decision shall, subject to 13.3 and 13.4 or any Adjudication proceedings, be final and binding.~~

13.2 13.3 Mediation**13.2.1 13.3.1**

If either:

- (a) ~~The Principal or the Contractor is dissatisfied with the Engineer's formal decision under 13.2.4; or~~
- (b) ~~No formal decision is given by the Engineer within the time prescribed by 13.2.4;~~

~~then either the Principal or the Contractor may by notice require that the matter in dispute be referred to mediation.~~

13.3.2

~~A notice requiring mediation shall be in writing and shall be given by the Principal or the Contractor to the other of them within 1 Month after the time prescribed for the giving of the Engineer's formal decision under 13.2.4.~~

13.3.3

Where the parties agree to mediate a matter:

- ~~(a) Where a request for mediation is made and is acceded to by the other party then the Principal and the Contractor shall endeavour to agree on a mediator and shall submit the matter in dispute to him or her. The mediator shall discuss the matter with the parties and endeavour to resolve it by their agreement. All discussions in mediation shall be without prejudice, and shall not be referred to in any later proceedings.~~
- (b) The Principal and the Contractor shall bear their own Costs in the mediation, and shall each pay half the costs of the mediator.
- (c) The mediator shall not be called by either party as a witness in any other proceeding.

~~The Principal and the Contractor may at any stage agree to invite the mediator to give a decision to determine the matter. The mediator's decision shall in such case be binding on both parties unless within 10 Working Days either party notifies the other in writing that it rejects the mediator's decision.~~

13.3.5

~~If:~~

- ~~• Mediation has been requested, but has not been agreed upon within 10 Working Days of the request;~~
- ~~• The parties have agreed upon mediation but have been unable within 10 Working Days of such agreement to agree upon a mediator;~~
- ~~• No agreement has been reached in mediation and no decision has been given by the mediator within 2 Months of the request for mediation, or within such further time as the parties may agree;~~
- ~~or~~
- ~~• Either party has within the prescribed time rejected the mediator's decision,~~

~~then either the Principal or the Contractor may by notice require that the matter in dispute be referred to arbitration.~~

13.3 13.4 Arbitration**13.3.1 13.4.1**

The parties agree to refer any dispute or difference between them to arbitration, including any dispute of a Final Decision, in accordance with this subclause 13.3.

13.3.2

~~If~~ Where the dispute relates to a Final Decision, if either:

- ~~(a) The Principal or the Contractor is dissatisfied with the Engineer's formal decision under 13.2.4~~ a Final Decision; or
- ~~(b) No formal decision~~ Final Decision is given by the ~~Engineer~~ Independent Certifier within the time prescribed by ~~13.2.4~~ 6.4.5,

~~then either the Principal or the Contractor may by notice~~ in writing to the other party (copied to the Independent Certifier) require that the matter in dispute be referred to arbitration.

13.3.3 13.4.2

~~Special Conditions and the provisions of the Arbitration Act shall apply.~~ **13.4.4**

~~A notice requiring arbitration shall be in writing and shall be given by the Principal or the Contractor to the other of them:~~

- ~~(a) Within 1 Month after the Engineer's formal decision under 13.2.4 or after the time prescribed for the giving of the Engineer's formal decision, whichever shall be the earlier;~~
- ~~(b) Within 1 Month after the happening of the event described in 13.3.5 which gives rise to the right to arbitration; or~~
- ~~(c) Where the Engineer has issued a formal decision under 13.2.4, or an event has happened under 13.3.5 which gives rise to the right to arbitration, and a relevant Adjudicator's Determination is subsequently given to the parties, within 1 Month after any such determination is given.~~

13.4.3

~~The~~ Where a dispute is referred to arbitration, the dispute shall be referred to a sole arbitrator and the provisions of the Arbitration Act shall apply. If the parties cannot agree upon the arbitrator within 20 Working Days, the arbitrator shall be nominated by the Person identified in the Specific Conditions on application of either party within a further 5 Working Days.

~~The arbitrator shall have full power to open up, review, and revise any decision, opinion, instruction, direction, certificate, or valuation of the Engineer or any Payment Schedule and to award upon all questions referred to him or her. Neither party to the arbitration shall be limited to the evidence or arguments put before the Engineer for his or her review or put before a mediator or adjudicator or included in any payment claim or Payment Schedule.~~

13.4.5

~~No decision given by the Engineer in accordance with his or her duties under the Contract shall disentitle him or her from being called as a witness and giving evidence before any hearing on any matter relevant to the dispute.~~

13.4.6

~~Where the matter has been referred to mediation, the mediator shall not be called by either party as a witness. No reference shall be made to the decision, if any, given by the mediator in respect of the matter in dispute.~~

13.3.4 13.4.7

The award in the arbitration shall be final and binding on the parties.

13.4 13.5 Suspension Actions during dispute**13.4.1 13.5.1**

No dispute proceeding shall entitle the Contractor to suspend the execution of the Contract Works; ~~except in accordance with the instructions of the Engineer.~~

13.4.2 13.5.2

No Payment Schedule nor payment due or payable shall be withheld on account of dispute proceedings. Where any item is in dispute, the ~~Engineer~~ Independent Certifier shall certify such amount as is properly payable according to ~~his or her~~ the Independent Certifier's view as to the terms of the Contract and ~~his or her~~ the Independent Certifier's valuation in accordance with 12.2 and include such amount in a certificate in the form of a ~~Progress~~ Payment Schedule and the process under 12.2.1 to ~~12.2.9~~ 12.2.8 shall apply. ~~No payment due under Section 12 shall be withheld by reason of the existence of any dispute.~~

13.4.3 13.5.3

Nothing in ~~13.5 shall affect~~ 13.4 affects the Contractor's rights under the Construction Contracts Act.

13.6 Award of interest

~~The arbitrator may award interest on the whole or any part of any sum which:~~

- ~~(a) Is awarded to any party, for the whole or any part of the period up to the date of the award; or~~
- ~~(b) Is in issue in the arbitral proceedings but is paid before the date of the award, for the whole or any part of the period up to the date of payment.~~

14 Frustration and default**14.1 Frustration****14.1.1**

In the event that either the Principal or the Contractor considers that the Contract has become impossible of performance or has been otherwise frustrated, one may notify the other that it considers the Contract to be terminated. If the other party agrees, or in the event of disagreement if it is so ~~determined~~ Decided by the ~~Engineer~~ Independent Certifier or by mediation or arbitration under Section 13, then 14.1.2 shall apply.

14.1.2

The ~~Engineer~~ Independent Certifier shall Decide and certify and the Principal shall pay the Contractor:

- (a) The value of the work carried out at the date of termination less the amounts previously paid;

- (b) The Cost of Materials ordered for the Contract Works which have been delivered to the Contractor or of which the Contractor is legally obliged to accept delivery, and which the Contractor delivers to the Principal. These Materials shall become the property of the Principal upon delivery to the Principal;
- (c) Cost fluctuation adjustments due and payable up to the date of termination;
- (d) Fair compensation to the Contractor for any Cost which is included in a rate in the Schedule of Prices to the extent that the termination of the Contract causes an under-recovery of that Cost;
- (e) Any Cost reasonably incurred by the Contractor in the expectation of completing the Contract Works in so far as such Cost is not covered by other payments under 14.1.2(a) to 14.1.2(d);
- (f) The Cost of any works necessitated by the removal of Contractor's Plant and the carrying out of the ~~Engineer's instructions~~ Contract Administrator's Instructions for the making safe of the Contract Works; and
- (g) Any other Costs resulting from the termination as are reasonable to compensate the Contractor for disruption and are not otherwise provided in the Contract.

14.2 Default by the Contractor

14.2.1

The Principal may at its option after giving notice to the Contractor either terminate the Contract or resume possession of the Site in the event of:

- (a) The Contractor failing to execute the Contract Agreement under ~~2.6~~ 2.7 or provide the Contractor's Bond under 3.1 where required by the Contract;
- (b) The Contractor subletting the whole or substantially the whole of the Contract Works without the ~~consent~~ approval in writing of the Principal; or
- (c) The ~~Engineer~~ Independent Certifier certifying in writing to the Principal that ~~in his or her opinion~~ the Contractor has abandoned the Contract or is persistently, flagrantly or wilfully neglecting to carry out its obligations under the Contract,

and the Contractor's default has not been remedied within 10 Working Days of receiving the notice.

14.2.2

In the event of the Contractor:

- (a) Becoming bankrupt;
- (b) Going into liquidation; or
- (c) Having a receiver or statutory manager appointed,

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

14.2.3

If the Principal elects to resume possession of the Site under the provisions of 14.2.1 or 14.2.2 it may:

- (a) Forthwith expel the Contractor without terminating the Contract or relieving the Contractor from any of its obligations under the Contract;
- (b) Complete and remedy defects in any part of the Contract Works remaining to be completed and for that purpose may let contracts for such work or employ any Persons other than the Contractor;
- (c) Take possession of, use, and permit other Persons to use Materials, Plant, Temporary Works, and other things which are on the Site owned by the Contractor and are necessary for completing and remedying defects in the Contract Works; and
- (d) Require the Contractor to arrange within 10 Working Days the assignment to the Principal or its nominee without payment the benefit of any agreement for the supply of Materials or execution of work under the Contract.

In any such case the Contractor shall not be entitled to any further payment until the completion of the Contract Works.

14.2.4

On completion of the Contract Works, any Plant, Temporary Works, and surplus Materials of which the Principal has taken possession shall be handed back to the Contractor. The ~~Engineer~~ Independent Certifier shall ~~enquire into~~ Decide the Cost to the Principal of completing the Contract Works and certify

accordingly. If the amount certified exceeds the Cost to the Principal, had the Contract Works been completed by the Contractor, the difference between the two amounts shall be certified by the ~~Engineer~~ Independent Certifier and paid by the Contractor to the Principal. If the amount certified is less than the Cost to the Principal, had the Contract Works been completed by the Contractor, the difference between the two amounts shall be paid by the Principal to the Contractor.

14.2.5

If the Principal elects to terminate the Contract under 14.2.1 or 14.2.2 it shall give written notice to the Contractor of its election. The Contract shall thereupon be terminated. The Principal may thereupon expel the Contractor from the Site and may take all or any of the further steps in 14.2.3(b), (c), and (d), and may claim damages for the Contractor's breach of Contract. If the Principal completes the Contract Works or arranges for them to be completed then 14.2.4 shall apply, but any amount payable to the Contractor thereunder shall be subject to any damages to which the Principal shall be entitled as a result of the Contractor's breach. If the ~~Special-Specific~~ Conditions provide for liquidated damages for late completion and the completion of the Contract Works is delayed by reason of the Contractor's breach and the termination of the Contract, then the Contractor shall be liable for the liquidated damages calculated from the Due Date for Completion which would have applied if the Contract had not been terminated to the actual date of Practical Completion of the Contract Works.

14.3 Default by the Principal

14.3.1

In the event of the Principal:

- (a) Failing to execute the Contract Agreement under ~~2.6-2.7~~ or the Principal's Bond under 3.2 where required by the Contract;
- (b) Failing to pay the Contractor the amount due under any Payment Schedule;
- (c) Obstructing the issue of any Payment Schedule or any certificate;
- (d) Becoming bankrupt or going into liquidation or having a receiver or statutory manager appointed and the assignee, liquidator, receiver, or statutory manager as the case may be failing within 10 Working Days to make arrangements satisfactory to the Contractor for continued payment of amounts due under the Contract;
- (e) Abandoning the Contract; or
- (f) Persistently, flagrantly, or wilfully neglecting to carry out its obligations under the Contract,

the Contractor may notify the ~~Engineer~~ Independent Certifier with a copy to the Contract Administrator and Principal of the default.

14.3.2

If the ~~Engineer~~ Independent Certifier fails to provide a Payment Schedule within the periods provided in 12.2 or 12.5, ~~or, where 12.5.6 applies, a certificate within the time provided in 12.5.6,~~ the Contractor shall notify the Principal and the ~~Engineer~~ Independent Certifier of the failure with a copy to the Contract Administrator. If the Payment Schedule is not provided within a further 5 Working Days after the notice, the Principal shall be deemed to be in default.

14.3.3

If the Principal's default is not remedied within 10 Working Days after the giving of such notice under 14.3.1 or 14.3.2, the Contractor may require the ~~Engineer~~ Contract Administrator to suspend the progress of the whole of the Contract Works under ~~6.7-6.8~~. Following such suspension, the Contractor shall be entitled without prejudice to any other rights and remedies to terminate the Contract by giving notice in writing to the Principal.

14.3.4

In the event of such termination the Principal, and its surety if 3.2 applies, shall be under the same obligations to the Contractor in regard to payment as apply under 14.1.2 where the Contract has been frustrated and shall be liable to pay such other compensation, if any, by way of damages as the Contractor may be entitled at law to recover.

15 Service of notices

15.1 General

15.1.1

~~The Principal, Contractor, or Engineer may require that any notice or other communication~~ All notices under the Contract must be given in writing.

15.1.2

Except as provided under 15.1.3, any document which is to be served on the Principal, the Contractor, Contract Administrator or the Engineer-Independent Certifier under the Contract shall be sufficiently served (in the absence of proof to the contrary) if it is:

- (a) ~~(g)~~ Handed to that Person, or to their appointed representative, or delivered to their address as stated in the Contract or as subsequently agreed in writing, in which case such service shall take effect on the day the document is so handed or delivered; or
- (b) ~~(h)~~ Sent by email or other means of electronic communication permitted by the Special Specific Conditions to their address as stated in the Contract or as subsequently agreed in writing, in which case such service shall take effect at the time the email or communication is received at the address.

15.1.3

Any notice under Sections 13 or 14 shall be served by being handed to the Person, or to their appointed representative, or ~~delivered to their address by receipted email or by receipted courier~~ as stated in the Contract ~~or as subsequently advised in writing~~, in which case such service shall take effect on the day the notice is so handed or delivered or received.

~~**15.1.4**~~**15.1.4**

~~Every notice to the Principal shall be sufficiently given if it is given to the Engineer, except:~~

- ~~• A notice under 13.3, 13.4, or 14.3.3; or~~
- ~~• A notice (other than a payment claim) under the Construction Contracts Act.~~

~~**15.1.5**~~

~~Proof that a document has been sent by prepaid post in a correctly addressed envelope shall be prima facie evidence of delivery in the ordinary course of post.~~

Where any notice or other communication is given by email or other means of electronic communication, the sender shall retain evidence of the origin, destination, and time of sending each email or electronic communication.

15.1.5 ~~**15.1.7**~~

A copy of any notice by the Principal to the Contractor, or by the Contractor to the Principal shall at its time of issue also be delivered to the ~~Engineer~~ Contract Administrator and Independent Certifier.

15.1.6 ~~**15.1.8**~~

Any notice which has been served on a day other than a Working Day, or after 5 pm on a Working Day, shall take effect on the first Working Day after that day.

APPENDIX A – COST FLUCTUATION ADJUSTMENT BY INDEXATION

A1

The provisions of this Appendix shall apply unless otherwise specifically provided in the [Special Specific Conditions](#).

A2

The amounts payable by the Principal to the Contractor under the Contract shall be adjusted up or down by amounts calculated in accordance with Equation 1:

$$C = V \left[\frac{0.4(L - L')}{L'} \right] + \left[\frac{0.6(M - M')}{M'} \right] \dots\dots\dots (\text{Eq. 1})$$

Where

- C = Cost fluctuation adjustment for the quarter under consideration
- V = Valuation of work shown as payable in any Payment Schedule in respect of work having been completed during the quarter under consideration subject to A3, but without deduction of retentions and excluding the Cost fluctuation adjustment
- L = Labour Cost Index; Private Sector: Industry Group – Construction: All Salary and Wage Rates: published by [Statistics New Zealand Stats NZ](#), for the quarter under consideration
- L' = Index as defined under L but applying for the quarter during which tenders close
- M = Producers Price Index; Inputs: Industry Group – Construction, published by [Statistics New Zealand Stats NZ](#) applying for the quarter under consideration
- M' = Index as defined under M but applying for the quarter during which tenders close.

A3

For the purpose of calculating the Cost fluctuation adjustment, any Daywork, Prime Cost Sums, Variations, and other payment items which are based on actual Cost or current prices and any advances shall be excluded from the [Engineer's Independent Certifier's](#) valuation.

A4

No other Cost fluctuation adjustment will be made by reason of any inaccuracy in the proportions of labour and Material Costs assumed in the above formula.

A5

The Contractor shall not be entitled to claim or have deducted any Cost fluctuation adjustment for any further changes in indices which occur after the Due Date for Completion of the Contract.

A6

The indices to be used in the calculation of fluctuation shall be those first published by Statistics New Zealand for the appropriate quarter.

A7

Where indices for the quarter have not yet been published, interim payments will be made on the basis of the indices for the most recent quarter for which indices are available.

A8

If at any time either of the indices referred to in A2 are no longer published by Statistics New Zealand, or if the basis of either index is materially changed, the adjustment shall thereafter be calculated by using such other index, or in such other manner, as will fairly reflect the changes as previously measured by that index.

APPENDIX B – CONTRACTS IN PUBLIC PLACES AND ROAD CONTRACTS

B1 Interpretation

Wherever the phrase 'possession of the Site' appears in the General Conditions or ~~Special-Specific~~ Conditions, it shall mean only the non-exclusive right of occupancy of the Site. Except as provided in the Contract, the Principal, the ~~Engineer~~Independent Certifier, and members of the public may use the Site and Contract Works pursuant to their normal right of passage and, in the case of the Principal and ~~Engineer~~Independent Certifier, pursuant to the rights of access under this Contract. The rights of access by the public shall be subject only to such reasonable restriction made necessary by the conduct of the Contract Works from time to time. Running of traffic will not be deemed to be occupancy by the Principal under 10.7.

B2 ~~Engineer's~~Contract Administrator's powers and responsibilities

The ~~Engineer's~~Contract Administrator's power on behalf of the Principal to take action under 6.8.2 shall also be exercisable in the event of failure by the Contractor to comply with the provisions of the Contract in relation to traffic control or safety requirements, subject to the other provisions of 6.8.

B3 Time for completion

Subclause 10.3.1(b) shall be deleted and the following substituted:

'(b) Weather sufficiently inclement to interfere with the progress of the works beyond any allowance provided for in the ~~Special-Specific~~ Conditions;'

Schedules to general conditions of contract

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

<u>Contract Title:</u>	
<u>Contract Number:</u>	
<u>Contract for:</u>	

Contract for:		
---------------	--	--

Clause <i>In General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add a reference to further detail provided in Schedule 2.)</i>
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1. INTERPRETATION

1.2 Definitions

The Contractor's Representative is:

of:

(address)

The Principal is:

of:

(address)

The Principal's Representative is:

of:

(street address)

1.2, 10.2 Separable Portions

- Are there any Separable Portions in this Contract? *(yes or no)*

- If yes, the Separable Portions are as follows and as further defined in the Contract: *(reference)*

1.2, 2.5 Target Price

The Target Price is

\$(insert) or insert 'Not Applicable'

2. THE CONTRACT

2.1 Type of contract Price

2.1.1 This Contract ~~is a~~ Price is: *(select one or more to apply (a), (b), or (c) and/or)*

(a) ~~(e)~~ Lump sum ~~contract~~ governed by 2.2;

☐

(b) ~~(d)~~ Measure and value ~~contract~~ governed by 2.3;

☐

(c) ~~(e)~~ Cost reimbursement ~~contract~~ governed by 2.4.

☐

(d) Target price governed by 2.5

2.2.4	<u>Is this a lump sum contract in which the Schedule of Prices is a full schedule of quantities and 2.2.4 applies?</u>	<u>(yes or no)</u>
2.4	Cost reimbursement contract <u>Contract Price</u>	
2.4.1	Allowance(s) which are to be added to Net Cost in a cost reimbursement contract <u>Contract Price</u> 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 <u>Preliminary & General and Margin</u> are deemed to be included in Net Cost.)</i>	
	Allowance for On-site Overheads <u>for Preliminary & General</u>:	(%)
	Allowance for Off-site Overheads and Profit <u>for Margin</u>:	(%)
2.4.4	Indicative estimates of the Contract Price:	
	Are indicative estimates required?	<u>(yes or no)</u>
2.5	Target Price <u>Contract Price</u>	
2.5.1	<u>Where 2.5.1 applies:</u>	
	<u>The Principal and Contractor's share of any Saving shall be the following percentage of Saving (as defined in 2.5.1(b))</u>	<u>Principal's share of Savings(%)</u> <u>Contractor's share of Savings(%)</u>
	<u>The Principal and Contractor's share of any Overrun shall be the following percentage of the Overrun (as defined in 2.5.1(b))</u>	<u>Principal's share of Overrun(%)</u> <u>Contractor's share Overrun(%)</u>
	<u>The Contractor's share of any Overrun shall be capped at the following:</u>	<u>\$ (insert)</u>
2.5.2	<u>Clauses providing for Variations/adjustments to the Contract Price that will not apply to adjust/vary the Target Price:</u>	☐ <u>The following: (list clauses providing matters that will be treated as Variations, or other clauses providing for adjustments to the Contract Price, that will not apply to adjust the Target Price)</u>
2.5.2.6	Local authority contracts, contracts in public places, and road contracts	
2.5.12.6.1	Is this Contract a local authority contract to which 2.5.2 <u>2.6.2</u> applies?	<u>(yes or no)</u>
2.5.32.6.3	Is this Contract a contract in a public place to which B1 and B2 of Appendix B apply?	<u>(yes or no)</u>
2.5.42.6.4	Is this Contract a road contract to which Appendix B applies?	<u>(yes or no)</u>
	If yes, the allowance under B3 shall be:	<u>(number of Working Days)</u>
2.62.7	Evidence of Contract	
2.6.22.7.2	How is the Contract Agreement to	<u>(select one to apply, (a) or (b))</u>

	be executed?	
	(a) (c) As stated in 2.6-2.7.2 ;	☐
	(b) (d) In accordance with the following other requirements:	☐
2.7.4	Documents prepared by the Engineer or Principal <u>Electronic form or hard copy?</u>	
	<u>Is hard copy required ?</u>	<u>(yes or no)</u>
2.7.4	<u>If electronic form of Contract is acceptable, copies of the Contract shall be supplied without charge to the Contractor in the following electronic form:</u> Copies of	<u>(insert electronic form) (</u>
	<u>If hard copies of Contract are required, copies of the Contract shall be provided to the Contractor as follows:</u>	<u>(select (a), (b), and/or (c))</u> (a) <u>An original signed set;</u> (b) <u>[Insert number] hard copies;</u> (c) <u>[insert number] hard copies of any additional consent documents.</u>
2.8	Documents prepared <u>or provided</u> by the Contractor<u>Contract Administrator or Principal</u>	
2.8.2.2.8.1	Copies of <u>the</u> documents referred to in 2.8-2.2.8.1 shall be supplied without charge to the Engineer <u>Contractor in the following electronic form:</u>	<u>(insert electronic format)</u>
	• Number of <u>Are</u> hard copy sets: also required, and if 'yes' how many copies?	<u>(yes or no)</u> <u>(If yes) [insert] hard copies</u>
2.9	In the following electronic form: <u>Documents prepared by the Contractor</u>	
2.9.2	<u>Copies of documents referred to in 2.9.2 shall be supplied without charge to each of the Contract Administrator and Independent Certifier in the following electronic form:</u>	<u>(insert electronic format)</u>
	<u>Are hard copy sets also required, and if 'yes' how many copies?</u>	<u>(yes or no)</u> <u>(If yes) [insert] hard copies</u>
3.	BONDS	
3.1	Contractor's Bond	
3.1.1	Is a Contractor's Bond required?	<u>(yes or no)</u>
3.1.2	If yes, the amount of the Contractor's Bond shall be:	<u>(\$)</u>
3.2	Principal's Bond	
3.2.1	Is a Principal's Bond required?	<u>(yes or no)</u>
3.2.2	If yes:	
	• The amount of the Principal's Bond shall be:	<u>(\$)</u>

	The surety for the Principal's Bond shall be:	
5. GENERAL OBLIGATIONS		
5.2 <u>Contracor's design obligations</u>		
5.2	<u>The Contractor is responsible for the design of the following parts of the Contract Works :</u>	<i>(list or state 'Not Applicable')</i>
5.45.5 Possession of the Site		
5.4.15.5.1	The Contractor shall be given possession of the Site	Select one to apply, (a) or (b))
	(a) 10 Working Days after the Date of Acceptance of Tender:	☐
	(b) On the following date:	☐
	<u>Subject to compliance with the following preconditions:</u>	☒ <u>The Contractor's and Principal's obligations under 8.2.5 and 8.7.5</u> ☐ <u>(insert other).....</u>
5.4.35.5.3	Limits on the Contractor's right of entry to adjoining properties are:	
5.55.6 Separate Contractors		
5.5.15.6.1	Separate Contractors who may be carrying out work on the Site concurrently with the Contract Works are:	
5.5.25.6.2	Are facilities for Separate Contractors required?	<i>(yes or no)</i>
	If yes, details of facilities required are:	
5.65.7 Care of the works and Site		
5.6.6(g)5.7.6(g)	Further risks specifically expected are:	
5.105.12 Programme		
5.10.45.12.4	Is the programme required to be a Comprehensive Programme?	<i>(yes or no)</i>
5.10.4(e)5.12.4(e)	If yes, other requirements for the Comprehensive Programme are:	
5.10.55.12.5	The Comprehensive Programme shall use the following software:	
5.10.65.12.6	Updates of the Comprehensive Programme shall be provided at the following intervals:	
5.115.13 Compliance with laws <u>and Consents</u>		
5.11.35.13.2	Exceptions to the Principal's obligations to obtain licences <u>Consents</u> under 5.11.3 <u>5.13.3</u> are:	

5.11.4 <u>5.13.3</u>	Exceptions to the Contractor's obligation to give notices and obtain other licences <u>Consents</u> under 5.11.4 <u>5.13.4</u> are:	
<u>5.18</u>	<u>Supply by Principal</u>	
<u>5.18.2</u>	Principal supply items shall include:	<i>(list or refer to relevant part of Contract)</i>
5.19	Traffic management <u>Management plan</u>	
	Is a traffic management plan Management Plans are required to be prepared by the Contractor? <u>for the following:</u>	<i>Traffic management plan (yes or no)</i> <i>Environment management plan (yes or no)</i> <i>Quality plan (yes or no)</i> <i>(list other) (yes or no)</i>
5.20	As-built drawings and operation and maintenance manuals <u>Information to be provided on completion</u>	
5.20.1(a)	Are as-built drawings-records and other asset information required to be prepared by the Contractor?	<i>(yes or no)</i> <i>(list requirements)</i>
5.20.1(b)	Are operation and maintenance manuals required to be prepared by the Contractor?	<i>(yes or no)</i>
<u>5.22</u>	<u>Reporting</u>	
<u>5.22.1</u>	Are status reports required, and if so how frequently?	<i>(yes or no)</i> <i>(if yes, state frequency)</i>
<u>5.22.1</u>	If yes, what matters are to be covered in the status report? ?	<i>(list or refer to relevant part of Contract)</i>
6.	THE ENGINEER <u>THE CONTRACT ADMINISTRATOR AND INDEPENDENT CERTIFIER</u>	
6.1	Appointment of Engineer <u>Contract Administrator and Independent Certifier</u>	
6.1.2	The Engineer is: <u>The Contract Administrator is:</u>	<i>(name)</i>
	whose professional qualification is: <u>The Independent Certifier is:</u>	<i>(name)</i>
7	<u>INDEMNITY</u>	
<u>7.2</u>	<u>Contractor's liability limit</u>	
<u>7.2</u>	Is this a contract to which 7.2 applies?	<i>(yes or no)</i>
<u>7.2.1</u>	Subject to 7.2.2 and 7.2.3, the maximum aggregate liability of the Contractor to the Principal under or in connection with the Contract is:	<i>(If 7.2 is 'yes', select one to apply (i), (ii) or (iii))</i>
	(i) The percentage in the right-hand column of the Contract Price:	☐(% of the Contract Price)
	(ii) 100% of the Contract Price	☐
	(iii) The amount in the right-hand column:	☐ (\$)
8	INSURANCES	
8.1	General	

8.1.1	The party identified below shall arrange the following insurances referred to in the following clauses:	
	8.3 or 8.8 Construction	(select Contractor or Principal)
	8.8 Existing structure(s) and contents	(select Principal if insurance is required)
	8.4 Plant	(select Contractor if insurance is required)
	8.5 or 8.9 Public liability	(select Contractor or Principal)
	8.5.2 Motor vehicle liability	(select Contractor if insurance is required)
	8.6 Professional indemnity	(select Contractor if insurance is required)
8.1.6	The following forces of nature shall be specifically insured under 8.3 or 8.8 as applicable:	
	(a) (d) Landslip:	(yes or no)
	(b) (e) Earthquake:	(yes or no)
	(c) (f) Tsunami:	(yes or no)
	(d) (g) Tornado:	(yes or no)
	(e) (h) Cyclone:	(yes or no)
	(f) (i) Storm:	(yes or no)
	(g) (j) Flood:	(yes or no)
	(h) (k) Lightning strike:	(yes or no)
	(i) (l) Volcanic activity:	(yes or no)
	(j) (m) Hydrothermal activity:	(yes or no)
	(k) (n) Geothermal activity	(yes or no)
8.3, 8.8 Construction insurance <i>(These items are required to be completed whether the Contractor or the Principal is the insuring party (see 8.1 above))</i>		
8.3.2, 8.8	The following shall have their respective interests noted in <u>be insured under</u> the construction insurance policy:	
8.3.3, 8.8	Where construction insurance is required (see 8.1 above), the amount of insurance to be effected for the Contract Price, after the acceptance of the tender or other offer, plus the following allowances:	
	(a) (e) An allowance for the Cost of demolition, disposal and preparation for	(select one to apply, (i) or (ii))

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:	☐(%)
(e) (b) An allowance for professional fees including the Cost of clerks of works and inspectors, equal to:	(select one to apply, (i) or (ii))
(i) The amount in the right hand column:	☐ (\$).....
(ii) The percentage in the right hand column of the Contract Price adjusted as above:	☐(%)
(e) (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:	(select one to apply, (i) or (ii))
(i) The amount in the right hand column	☐ (\$).....
(ii) The percentage of the Contract Price adjusted as above, stated in the right hand column:	☐(%)
(f) (d) An allowance for an increase in the Contract Price due to Variation equal to:	(select one to apply, (i) or (ii))
(i) The amount in the right hand column:	☐ (\$).....
(ii) The percentage of the Contract Price adjusted as above, stated in the right hand	☐(%)

column:	
(e) (g) An allowance for increased construction Costs due to inflation equal to:	(select one to apply, (i) or (ii))
(i) The amount in the right hand column:	☐ (\$).....
(ii) The percentage of the Contract Price adjusted as above, stated in the right hand column:	☐(%)
8.4 Contractor arranged Plant insurance	
Where Plant is required to be insured (see 8.1 above):	(select one to apply, (a) or (b))
(a) The Contractor shall insure the following items of Plant on the Site for the amounts stated:	☐(list specific items)
(b) The Contractor shall insure each time of Plant on the Site having a current market value of more than:	☐ (\$).....
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:	(\$)
Such public liability insurance may include sub-limits:	
• For Such public liability insurance may include a sub-limit for liability arising out of vibration, weakening or removal of support, of not less than:	(\$) (specify (\$) as applicable or state 'not applicable')
For liability under the Forest and Rural Fires Act 1977, of not less than:	(\$)
8.5.2 Where required (see 8.1 above), motor vehicle third party liability insurance shall be effected for an amount not less than:	(\$)

8.6 Contractor arranged professional indemnity insurance	
8.6.1 Where required (see 8.1 above), professional indemnity insurance for design by the Contractor shall be effected for an amount not less than:	
• For any one claim:	(\$)
• And for an amount in the aggregate of:	(\$)
8.6.2 Sub-limits of liability for design of parts of the Contract Works by Subcontractors shall be not be less than:	<i>(list specific part(s) of Contract Works and applicable \$ sub-limits for any one claim and for an amount in the aggregate, or state if not required)</i>
8.8 Principal arranged construction insurance <i>(refer also to 8.3)</i>	
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:	
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:	
• For damage arising out of the Contract Works:	
• For other claims:	
• For natural perils:	
8.8.2(a) The existing structures are:	
• The replacement value to be insured is:	(\$)
• The lead insurer is:	
• Address of lead insurer:	
The Nominal Deductibles	

	are:	
	For damage arising out of the Contract Works:	
	For other claims:	
	For natural perils:	
8.8.2(b)	Other structures in the vicinity are:	
	The replacement value to be insured is:	(\$)
	The lead insurer is:	
	Address of lead insurer:	
	The Nominal Deductibles are:	
	For damage arising out of the Contract Works:	
	For other claims:	
	For natural perils:	
8.8.2(c)	Contents insurance:	
	The replacement value to be insured is:	(\$)
	The lead insurer is:	
	Address of lead insurer:	
	The Nominal Deductibles are:	
	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:	
	Address of lead insurer:	
	The Nominal Deductible is:	
	In accordance with 8.7.2:	

	the policy wording title is:	
	extraordinary exclusions, conditions, warranties, or endorsements to the policy are:	
8.9.2	Such public liability insurance may be include sub-limits for: (specify as applicable or state 'not applicable') a sub-limit liability arising out of vibration, weakening or removal of support of:	<u>(specify (\$) as applicable or state 'not applicable')</u>
	Liability arising out of vibration, weakening or removal of support:	(%)
	Liability under the Forest and Rural Fires Act 1977:	(%)
9. VARIATIONS		
9.3 Valuation of Variations		
9.3.10	For On-site Overheads: <u>For Preliminary & General:</u>	<i>(select one to apply, (a) or (b))</i>
	(a) The prices and rates in the Schedule of Prices are inclusive of full allowance for On-site Overheads <u>Preliminary & General (so 9.3.9(a) or 9.3.10(c) applies to the valuation of Variations);</u>	☐
	(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: <u>Preliminary & General (so 9.3.10(a) or (b) applies to the valuation of Variations).</u>	☐ ☐ <i>(select one to apply, (i), (ii), (iii), or (iv))</i>
	(i) Agreed percentage:	☐(%)
	(ii) As nominated in the Schedule of Prices;	☐

	(iii) As nominated in the Contractor's tender;	☐
	(iv) A reasonable percentage.	☐
9.3.10	For Off-site Overheads and Profit:	<i>(select one to apply, (a) or (b))</i>
	(a) The prices and rates in the Schedule of Prices are inclusive of full allowance for Off-site Overheads and Profit;	☐
	(c) <u>Where 9.3.10(a) or (b) applies to the valuation of Variations, the allowance for Preliminary & General to be added added in accordance with 9.3.10 is:</u>(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	☐ (if (b) is selected above select one to apply, (i), (ii), (iii), or (iv))
	(i) Agreed percentage:	☐(%)
	(ii) As nominated in the Schedule of Prices;	☐
	(iii) As nominated in the Contractor's tender;	☐
	(iv) A reasonable percentage.	☐
9.3.11	For Margin:	<i>(select one to apply, (a) or (b))</i>
	(a) <u>The prices and rates in the Schedule of Prices are inclusive of full allowance for Margin (and 9.3.9(b) or 9.3.11(c) applies to the valuation of Variations);:</u>	☐
	(b) <u>The prices and rates in the Schedule of Prices are exclusive of Margin (and 9.3.11(a) or (b) applies to the valuation of</u>	☐

<u>Varitaions).</u> :		
(c) <u>Where 9.3.11(a) or (b) applies to the valuation of Variations, the allowance for Margin to be added in accordance with 9.3.11 is:</u>	☐	<i>(if (b) is selected above, select one to apply, (i), (ii), (iii), or (iv))</i>
(i) <u>Agreed percentage:</u>	☐	(%)
(ii) <u>As nominated in the Schedule of Prices;</u>	☐	
(iii) <u>As nominated in the Contractor's tender;</u>	☐	
(iv) <u>A reasonable percentage.</u>	☐	
9.3.11 <u>9.3.12</u> For time-related Cost, the Working Day rate in compensation for time-related On-site Overheads and Off-site Overheads and Profit Preliminary & General and Margin in relation to an extension of time to be applied in accordance with 9.3.11 <u>9.3.12</u> is:	(select one to apply, (a), (b), (c), or (d))	
(a) <u>Agreed rate per Working Day <u>Rate</u>:</u>	☐	(\$)(per working day)
(b) <u>As nominated in the Schedule of Prices;</u>	☐	
(c) <u>As nominated in the Contractor's tender;</u>	☐	
(d) <u>Reasonable compensation</u>	☐	
9.3.15 <u>9.3.16</u> For processing of Variations, the percentage to be paid in accordance with 9.3.15 <u>9.3.16</u> is:	(select one to apply, (a), (b), (c), or (d))	
(a) <u>Agreed percentage:</u>	☐	(%)
(b) <u>As nominated in the Schedule of Prices;</u>	☐	
(c) <u>As nominated in the Contractor's tender;</u>	☐	
(d) <u>Reasonable compensation. <u>(ie no pre determined Working Day Rate is applicable).</u></u>	☐	
9.6 <u>Cost fluctuations</u>	(select one to apply, (a), (b) or (c))	

	(a) <u>Cost fluctuations shall not be paid;</u>	☐
	(b) <u>Cost fluctuations shall be paid in accordance with Appendix A;</u>	☐
	(c) <u>Cost fluctuations shall be paid in accordance with the method described in:</u>	☐(reference)
9.11.1(a)		(select one to apply)
	<u>The Contractor shall submit the Interim Final Account within the following period following the issue of the Practical Completion Certificate for the whole of the Contract Works</u>	☐ 3 Months; or ☐ The following period:
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:	(Working Days)
	(b) For any Separable Portions:	(Working Days)
10.4 Practical Completion Certificate		
10.4.5	Prior to issue of the Practical Completion Certificate:	(select one to apply, (a), (b), or (c))
	(a) Producer Statements in the form of Schedule 6 are required;	☐
	(b) Producer Statements as set out in the following parts of the Contract are required:	☐(state reference)
	(c) Producer Statements are not required.	☐
10.5 Damages for late completion		
10.5.1	Liquidated damages shall be applied as follows:	
	• In respect of the Contract Works:	(\$ per Working Day)
	• In respect of any Separable Portion(s):	(\$ per Working Day for each Separable Portion)

10.6 Bonus for early completion	
10.6.1 Is a bonus to be payable?	(yes or no)
If yes, the bonus for the Contract Works is:	(\$ per Working Day)
If yes, bonuses for any Separable Portions are:	(\$ per Working Day)
11. DEFECTS LIABILITY	
11.1 Defects Notification Period	
The Defects Notification Period shall be: (3 Months unless otherwise stated)	
For the Contract Works:	
For any Separable Portions:	
11.3 Final Completion Certificate	
11.3.2 Prior to issue of the Final Completion Certificate:	(select one to apply, (a), (b), or (c))
(a) Producer Statements in the form of Schedule 6 are required;	☐
(b) Producer Statements as set out in the following parts of the Contract are required:	☐(state reference)
(c) Producer Statements are not required.	☐
11.5 Warranties <u>and Guarantees</u>	
11.5.1 <u>Warranties</u>	(select one to apply, (a) or (b))
(a) No warranties are required;	☐
(b) The Contractor shall provide warranties as set out in the Contract for the following items of work:	☐(state the items)
11.5.2 <u>Guarantees</u> Warranties shall be provided:	(select one to apply, (a) or (b))
(a) <u>before the issue of the Practical Completion Certificate</u>	☒
(b) <u>other time</u>	☐(state the timing)

11.6.1, 11.6.2<u>11.5.1/11.5.</u> <u>3</u> Guarantees	(select one to apply, (a) or (b))
(a) No guarantees are required;	☐
(b) The Contractor shall provide <u>the following</u> guarantees in the following form(s):	☐ (state <u>nature and form of guarantee</u>)
12. PAYMENTS	
12.1 Contractor's payment claims	
12.1.3(b)(iii) Advances for Materials delivered to the Site	(select one to apply, (a) or (b))
(a) Advances for Materials delivered to the Site but which have yet to be incorporated in the Contract Works shall not be made;	☐
(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:	☐ (state any conditions)
12.1.3(b)(iv) Advances for Temporary Works or Plant	(select one to apply, (a) or (b))
(a) Advances for Temporary Works or Plant shall not be made;	☐
(b) Advances for Temporary Works or Plant shall be made, subject to the following conditions:	☐ (state any conditions)
12.1.3(b)(iv) Advances for Materials not yet on Site	(select one to apply, (a) or (b))
(a) Advances for Materials not on Site shall not be made;	☐
(b) Advances for Materials not yet on Site shall be made,	☐ (state any conditions)

subject to the following conditions:		
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:	(select one to apply, (a) or (b))
	(a) For the Contract Works, a total retention of: • 10% on the first \$200,000, and • 5% on the next \$800,000, and • 1.75% on amounts in excess of \$1,000,000, and • With a maximum total retention when aggregated of \$200,000, and • With a defects liability retention of half the total retention.	☐
	(b) The retention scale in the right hand column:	☐
12.3.3	Bond in lieu of retention	(select one to apply, (a) or (b))
	(a) The Contractor may provide a bond in lieu of retentions;	☐
	(b) The Contractor may not provide a bond in lieu of retentions.	☐
12.8	Cost fluctuations	(select one to apply, (a), (b) or (c))
	(a) Cost fluctuations shall not be paid;	☐

	(b) Cost fluctuations shall be paid in accordance with Appendix A;	☐
	(c) Cost fluctuations shall be paid in accordance with the method described in:	☐(reference)

~~12.13~~12.8 Goods and services tax

12.13.2 12.8.2	(a) Payment Schedules shall be provided by the Engineer : Shall not be Independent Certifier in the form of a tax invoice; and comply with the requirements for a buyer-created tax invoice	(select one to apply, (a) or (b)) ☐
	(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 / The Contractor shall provide a tax invoice for an amount equal to the scheduled amount	☐

13. DISPUTES

13.4 Arbitration

13.4.3	If required, the arbitrator shall be nominated by the following Person:	
--------	---	--

15. SERVICE OF NOTICES

15.1.2	For the purpose of service of written notice:	
	(a) The address of the Principal is:	
	Postal address:	
	Delivery address:	
	Mark for the attention of:	
	Email address:	
	Other agreed means of electronic communication and address detail:	

(b) The address of the Contractor is:	
Postal address:	
Delivery address:	
Mark for the attention of:	
Email address:	
Other agreed means of electronic communication and address detail:	
(c) The address of the Engineer <u>Independent Certifier</u> is:	
<u>Postal address:</u>	
<u>Delivery address:</u>	
<u>Mark for the attention of:</u>	
<u>Email address:</u>	
<u>Other agreed means of electronic communication and address detail:</u>	
(d) <u>The address of the Contract Administrator is:</u>	
Postal address:	
Delivery address:	
Mark for the attention of:	
Email address:	
Other agreed means of electronic communication and address detail:	

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

(Include here other Special Conditions that modify the General Conditions.)

Schedule 3 – Form of Contractor's performance bond

Contract for

THIS DEED is made on

BY

..... of ('the Contractor Surety')

AND

of

of ('the surety')

.....

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

IT IS MADE IN THE FOLLOWING CIRCUMSTANCES:

A

~~A~~The of ('the

Contractor') has entered into an agreement

with with

.....

of ('the Principal')

of ('the

Principal')

to carry out and fulfil the obligations imposed on the Contractor ('the Contract').

B The Contract required 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~~ Surety is held and bound to the Principal in the sum of

\$NZ.....

.....and ~~bind themselves~~ binds itself, their ~~its~~ successors and assigns ~~jointly and severally~~ for the payment of that sum.

2. ~~THE~~ conditions of this bond are that it shall be released if and when:

(a) A Practical Completion Certificate has been issued for the Contract Works in accordance with 10.4 of the General Conditions;

(b) The ~~surety~~ Surety receives a notice from the Principal releasing the Contractor and surety from this bond; or

(c) The ~~surety~~ 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.

3. ~~EXCEPT~~ as provided in clause 2 above this bond shall be and remain in full force and effect.

4. ~~THE~~ ~~surety~~ 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~~ Contract Administrator or Independent Certifier appointed by the Principal under the Contract; or

(d) By any forbearance or waiver by the Principal or by the ~~Engineer~~ Contract Administrator or Independent Certifier in respect of any of the Contractor's obligations or in respect of any default on the part of the Contractor.

5. ~~THIS~~ bond shall be governed by New Zealand law.

In witness of which this deed has been executed

SIGNED on behalf of the ~~surety~~ 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 4 – Form of Principal's bond

Contract for

THIS DEED is made on

BY

of ('the Principal')

AND

of ('the surety')

.....

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

IT IS MADE IN THE FOLLOWING CIRCUMSTANCES:

A

~~A~~The Principal of ('the Contractor') has entered into an agreement

with with

of ('the Principal')

of ('the Contractor') by which the Contractor has agreed to carry out and fulfil the obligations imposed on the Contractor ('the Contract').

B The Contract required the Principal to provide the Contractor with security in the form of a bond to ensure performance of the Principal'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~~ Principal and surety ~~are jointly and severally~~ is held and bound to the Contractor in the sum of

\$NZ

and ~~bind themselves~~ binds itself, ~~their~~ its successors and assigns ~~jointly and severally~~ for the payment of that sum.

2. **THE** conditions of this bond are that it shall be released if and when:

(a) The Principal has paid to the Contractor the Contract Price and any other monies payable to the Contractor under the Contract; or

(b) The surety receives a notice from the Contractor releasing the Principal and surety from this bond.

3. **EXCEPT** as provided in clause 2 above this bond shall be and remain in full force and effect.

4. **THE** ~~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 Contractor; or

(d) By any forbearance or waiver by the Contractor in respect of any of the Principal's obligations or in respect of any default on the part of the Principal.

5. **THIS** bond shall be governed by New Zealand law.

In witness of which this deed has been executed

SIGNED on behalf of the surety by:

.....

Director

.....

Director

SIGNED on behalf of the Principal by:

.....

Director

.....

Director

NOTE – This bond shall be executed by the Principal and by the surety in the manner required for execution of a deed. Any of these parties which are a company shall execute 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

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

~~A~~ The of ('the

Contractor-') has entered into an agreement

with with

.....

of of

..... ('the Principal')

to carry out and fulfil the obligations imposed on the Contractor ('the Contract').

B The Contractor has agreed to provide the Principal with security in the form of a bond in lieu of retentions additional to any other bond required under the Contract.

C Words and phrases with capital initial letters that are not otherwise defined in this bond shall have the meaning set out in the Contract.

BY THIS DEED

1. ~~THE Contractor and~~ surety ~~are jointly and severally~~ is held and bound to the Principal in the sum of

\$NZ

.....

and ~~bind themselves~~ binds itself, ~~their~~ its successors and assigns ~~jointly and severally~~ for the payment of that sum.

2. **THE** conditions of this bond are that it shall be released if and when:

(a) The Final Completion Certificate has been issued for the Contract Works in accordance with 11.3 of the General Conditions; or

(b) The surety receives a notice from the Principal releasing the Contractor and surety from this bond.

3. **EXCEPT** as provided in clause 2 above this bond shall be and remain in full force and effect.

4. **THE** surety shall not be released from any liability under this bond:

(a) By any alteration in the terms of the Contract;

(b) By any alteration in the extent or nature of the Contract Works to be completed, delivered, and having defects remedied;

(c) By any allowance of time by the Principal or by the ~~Engineer-Contract Administrator or Independent Certifier~~ appointed by the Principal under the Contract; or

(d) By any forbearance or waiver by the Principal or by the ~~Engineer-Contract Administrator or Independent Certifier~~ in respect of any of the Contractor's obligations or in respect or any default on the part of the Contractor.

5. **THIS** bond shall be governed by the 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 (Contractor)

TO (Principal)

IN RESPECT OF (Description of Contract Works)

AT

..... (Address)

..... (Contractor) has contracted

to..... (Principal)

to carry out and complete certain building works in accordance with a Contract titled.....

..... ('the Contract')

(Project)

I (Duly authorised Agent)

a duly authorised representative of (Contractor)

believe on reasonable grounds that (Contractor)

has carried out and completed in accordance with the Contract:

☐ All of the Contract Works

☐ Part only of the Contract Works as specified in the attached particulars of the ~~contract works in~~
~~accordance with the~~ Contract Works

.....
.....
.....

.....
.....
.....

.....
Date.....

(Signature of Authorised Agent on behalf of)

.....
(Contractor)

.....

.....
(Address)

Schedule 7 – Information on Contractor arranged construction insurance**To whom it may concern:**

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

.....(Branch)

.....(Address)

We confirm having effected construction insurance for:

.....(The Contractor)

.....(The Principal)

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

Policy wording title is.....

The following provisions apply:

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

We advise that special terms, copy attached, have been applied to this policy

Yes/No

8.1.6

The following forces of nature are insured:

☐ landslip☐ earthquake☐ tsunami☐ tornado☐ cyclone☐ storm☐ flood☐ lightning strike☐ volcanic activity☐ hydrothermal☐ activity geothermal activity**8.3.3**

The sums insured are (GST exclusive):

Contract Price

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

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

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

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

(e) An allowance for increased reconstruction costs

TOTAL SUM INSURED

\$.....

The policy deductibles are (GST inclusive):

Non-earthquake \$.....

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

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

8.2.3(a)

Construction period from.....
to.....
Insurance maintenance period
Policy expiry date

Policy cover terms included are:

8.2.2	Discretionary cancellation clause	Yes/No
8.2.3	Reinstatement provision on building and contents	Yes/No
8.2.3	Severally insured	Yes/No
	No settlement delay due to exercise of subrogation	
8.2.4	Void <i>ab initio</i> for non-payment of premium without prior notification	Yes/No

Policy extensions included are:

8.3.1	Transit (in New Zealand)	Yes/No
	\$.....	
8.3.1	Materials in storage (in New Zealand)	Yes/No
	\$.....	
	Testing and commissioning	Yes/No
	\$.....	
	Expediting expenses	Yes/No
	\$.....	
	Overseas airfreight	Yes/No
	\$.....	

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

This insurance issues 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 8 – Information on Contractor arranged Plant insurance**To whom it may concern:**

From(Name of insurance company)

Branch)(

.....

ddress)(A

We confirm having effected Plant insurance for:

.....(The Contractor)

In respect of(Project title)

Policy wording title is.....

We advise that special terms, copy attached, have been applied to this policy

Yes/No

The following provisions apply:

☐ Annual policy☐ Project specific policy

Policy expiry date

8.4

The 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)

.....(The Principal)

In respect of(Project title)

Policy wording title is.....

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

The following provisions apply:

☐ Annual policy

☐ Project specific policy

Policy expiry date

8.5, 8.9

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

Sub-limit insured for (GST exclusive)

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

~~Forest, removal, or weakening of support~~
~~\$.....~~

Underground services \$.....

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

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

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

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 *ab initio-initio* 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.

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)(

.....

ddress)(A

We confirm having effected motor fleet insurance for

.....(The Contractor)

In respect of(Project title)

Policy wording title is.....

We advise that special terms, copy attached, have been applied to this policy

Yes/No

The following provisions apply:

☐ Annual policy

☐ Project specific policy

Policy expiry date

8.5.2

The limits of liability are (GST exclusive):

Section 2 – Liability

For any one occurrence arising out of the same event

\$.....

The policy deductibles are:

Section 2 – Liability (GST inclusive)

\$.....

Plus under age penalties

8.2

Policy cover terms included are:

Section 2 Liability automatic reinstatement

Yes/No

Discretionary cancellation clause

Yes/No

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

Yes/No

No settlement delay due to exercise of subrogation

Yes/No

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 Date 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
(Name of insurance company)

Branch)

.....(Branch)

.....(A
 address)

.....(Address)

We confirm having effected professional indemnity insurance for:

.....(The Contractor)

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

Policy wording title is.....

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

The following provisions apply:

☐ Annual policy

☐ Project specific policy

Policy expiry date.....

8.6.1

The limit of indemnity (GST exclusive) \$.....any one occurrence

\$.....in the aggregate during the period of
 insurance

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

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

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

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

(Or name of insurance broking company confirming cover)

SIGNED BY

SIGNATORY TITLE.....

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

Schedule 12 – Information on Principal arranged construction insurance

To whom it may concern:

From(Name of insurance company)

Branch)

Address)

.....(Branch)

.....(Address)

We confirm having effected insurance for:

.....(The Principal)

.....(Covering property at)

.....(Class of insurance)

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

Policy wording title is.....

We advise that special terms, copy attached, have been applied to this policy

Yes/No

The following provisions apply:

☐ Material damage/construction project specific policy

☐ Annual run-off policy

☐ Annual cut-off policy

Policy expiry date.....

8.1.6

The following forces of nature are insured:

☐ landslip

☐ earthquake

☐ tsunami

☐ tornado

☐ cyclone

☐ storm

☐ flood

☐ lightning strike

☐ volcanic activity

☐ hydrothermal

☐ activity

geothermal activity

8.8.4

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

Insurance maintenance period

8.8.1

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

The Contractor..... Yes/No

Subcontractors..... Yes/No

The sums insured are (GST exclusive):

8.8.2(a) Existing structure

\$.....

8.8.2(b) Other structures in the vicinity

\$.....

8.8.2(c) Contents

\$.....

8.3.3 Contract Price

\$.....

8.3.3(a) Costs of demolition

\$.....

8.3.3(b) Professional fees

\$.....

8.3.3(c) Value of items to be incorporated

\$.....

8.3.3(d) An allowance for an increase in construction costs

\$.....

8.3.3(e) An allowance for increased reconstruction costs

\$.....

TOTAL**SUM****INSURED**

\$.....

8.1.4 The policy deductibles are (GST inclusive):

Non-earthquake

\$.....

Natural disaster.....% of.....minimum of

\$.....

Other (name).....

\$.....

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

Policy cover terms included are:

8.2.2 Discretionary cancellation clause

Yes/No

8.2.3 Reinstated provision on building and contents

Yes/No

8.2.3 Severally insured

Yes/No

No settlement delay due to exercise of subrogation

Yes/No

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

Yes/No

8.8.2 Covers damage arising out of the Contract Works

Yes/No

Policy extensions included are:

Sub-limit (if applicable)

8.3.1 Transit (in New Zealand)

Yes/No

\$.....

8.3.1 Materials in storage (in New Zealand)

Yes/No

\$.....

Testing and commissioning

Yes/No

\$.....

Expediting expenses

Yes/No

\$.....

Overseas airfreight	Yes/No
\$.....	
Partial occupation	Yes/No
\$.....	

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

This insurance issued is subject to the terms and conditions of this 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 13 – Form of ~~Contractor (or Subcontractor)~~ warranty

THIS AGREEMENT is made on (insert date)
 BETWEEN ('the Principal')
 AND ('the ~~Contractor~~ Subcontractor')
 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~~ dated [insert date] for [insert] description from contract], with [insert name of Contractor] ("the Contractor") for carrying out the Contract Works. The Contractor has entered into a subcontract with the Subcontractor for carrying out the ~~Contract~~ Warranted 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~~ **B** The Subcontractor has reviewed the Contract and 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~~ Subcontractor 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- Subcontractor's obligations

3.1 The ~~Warrantor~~ Subcontractor agrees that, if within the Warranty Period the ~~Warrantor~~ Subcontractor is advised by the Principal in writing ~~of any defect in that~~ the Warranted Works ~~for which the Warrantor is liable under the terms of this warranty, the Warrantor, are not as required in the Contract, the Subcontractor (subject to clause 5)~~ will promptly take steps to remedy the defect.

3.2 Any remedial work which the ~~Warrantor~~ Subcontractor 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~~ Subcontractor's Cost; and
- (e) Subject to reasonable access being provided to the ~~Warrantor~~ Subcontractor 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~~ Subcontractor's obligation under this warranty shall be only to repair or otherwise make good the defect;
- (b) The ~~Warrantor~~ Subcontractor may propose reasonable monetary compensation in lieu of remedying the defect; or
- (c) The ~~Warrantor~~ Subcontractor may propose a combination of both repair and compensation.

3.4

~~The~~ **3.4** Where clause 3.3 applies, the Principal shall consider the ~~Warrantor's~~ Subcontractor'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~~ Subcontractor to perform remedial work

- 4.1 If the ~~Warrantor~~ Subcontractor fails to promptly, adequately and satisfactorily carry out the remedial work ~~or (or, where clause 3.3 applies, to propose and then carry out an acceptable repair or compensation pay 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~~ Subcontractor 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~~ Subcontractor does not do so within that time, the Principal may then advise the ~~Warrantor~~ Subcontractor in writing that the work will be carried out by other Persons.
- 4.3 In such an event, the ~~Warrantor~~ Subcontractor 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~~ Subcontractor on demand.

5. Exclusions

The Principal agrees that the ~~Warrantor~~ Subcontractor 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~~ Subcontractor;
- (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~~ Subcontractor could not have reasonably foreseen;
- (d) Any neglect or unnecessary delay by the Principal in giving notice to the ~~Warrantor~~ Subcontractor of a defect in the Warranted Works becoming apparent;
- (e) Design faults, errors, or discrepancies, unless the ~~Warrantor~~ Subcontractor 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.

8. ~~6.~~ Assignment

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

9. ~~7.~~ Disputes

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

10. Consideration

The Principal agrees to pay to the Subcontractor the sum of \$1 if demanded in consideration for the Subcontractor entering into this warranty.

11. Interpretation

Capitalised terms used in this warranty shall have the meaning set out in the Contract unless otherwise defined in this warranty.

In witness of which this ~~deed~~ agreement has been executed.

SIGNED on behalf of the ~~Contractor~~ Subcontractor by:

.....
Director/Authorised Signatory

SIGNED on behalf of the Warrantor by:

.....
Director

.....
Director

SIGNED on behalf of the Principal by:

.....
Director/[Authorised Signatory](#)

.....
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

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

BETWEEN.....('the Principal')

AND.....('the Contractor')

AND.....('the Subcontractor')

INTRODUCTION:

- A** By a contract dated the.....day of.....20.....
and known as.....('the Contract')
made between the Principal and the Contractor, the Contractor agreed to carry out the work and obligations imposed on the Contractor by the Contract ('the Contract Works').
- B** The Contractor and the Subcontractor have entered into a subcontract for the performance of part of the Contract Works and/or the supply of Materials described in Schedule A to this agreement ('the Materials') and intended to be used by the Contractor and/or the Subcontractor in the Contract Works.
- C** The Contractor or the Subcontractor (as nominated in Schedule C) ('the Bailee') proposes to store the Materials at the premises of the Bailee ('the Premises') as identified in Schedule B as bailee for the Principal, for the purpose of storage, fabrication, sub-assembly, or as otherwise required for the Contract Works prior to being delivered to the Site for incorporation into the Contract Works.
- D** The Contractor has requested the Principal to authorise the ~~Engineer~~ Independent Certifier to certify payment for the Materials notwithstanding that the Materials have not been delivered to the Site.
- E** The Principal has agreed to authorise the ~~Engineer~~ Independent Certifier 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~~Independent Certifier, upon being satisfied that the Materials have been set apart and marked as required by this agreement, and upon the Contractor providing satisfactory evidence that the requirements of clauses 12 and 20 below have been fully satisfied, shall include in any Payment Schedule issued by the ~~Engineer~~Independent Certifier under the Contract a sum representing the reasonable value of such Materials calculated in accordance with the Contract.
7. **UPON** the Principal having made payment for the Materials, less any retentions or deductions prescribed in the Contract, title to such Materials shall immediately vest in the Principal free of all security interests, charges and encumbrances of any nature whatsoever.
8. **WHERE** the Contractor receives payment for Materials and the Subcontractor is entitled to some or all of the Principal's payment, the Contractor shall promptly pay the Subcontractor for such Materials.
9. **UPON** the request of the Subcontractor, the ~~Engineer~~Independent Certifier shall advise the Subcontractor whether the Contractor has received any payment from the Principal for such Materials.
10. **THE** Contractor and the Subcontractor agree that the Materials will be held by the Contractor or the Subcontractor solely as bailee for the Principal and 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
 - (e) 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 Independent Certifier'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-Independent Certifier** 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.

THE Principal agrees to pay to the Subcontractor the sum of \$1 if demanded in consideration for the Subcontractor entering into this agreement.

SIGNED BY (Authorised Signatory)
of (Principal)

SIGNED BY (Authorised Signatory)
of..... (Contractor)

SIGNED BY (Authorised Signatory)
of..... (Subcontractor)

Schedule 15 – Practical Completion Certificate

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

Contract for
 (Contract name and number if applicable)

Principal (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)

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

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

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

Working Days of the date of this certificate.

Practical Completion was achieved

on (insert date)

at (insert time).

Signed by the ~~Engineer~~ Independent Certifier

Name

Date

SCHEDULE

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

(list minor omissions and defects)

.....

Schedule 16 – Final Completion Certificate

This certificate is a Final Completion Certificate issued under 11.3.1.

Contract for
 (Contract name and number if applicable)

Principal (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)

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

on.....(insert date)

at.....(insert time).

Signed by the ~~Engineer~~ Independent Certifier

Name

Date

Conditions of Tendering

101 Interpretation

101.1

The provisions of Section 1 of NZS 3910:2013 shall apply to these Conditions of Tendering.

102 Issue of documents

102.1

Tender Documents issued to prospective tenderers except schedules of prices for use in the preparation of tenders remain the property of the Principal.

~~102.2~~

~~Any deposit charged on the Tender Documents shall be refunded as soon as practicable:~~

- ~~(a) To the successful tenderer without requiring return of the documents;~~
- ~~(b) To other tenderers, providing the documents are returned in reasonable condition not later than 10 Working Days after the date on which advice is notified that another tender has been accepted or that no tender is being accepted; and~~
- ~~(c) To others, providing the documents are returned in reasonable condition not later than the time of closing of tenders.~~

103 Tenderers to inform themselves

103.1

Each tenderer shall be deemed to have inspected the Site, examined the Tender Documents and any other information supplied in writing, and to have satisfied itself as far as is practicable for an experienced contractor before tendering as to the correctness and sufficiency of its tender for the Contract Works and of the prices stated in its tender.

103.2

The tendered price shall, except where otherwise provided, allow for all the Contractor's obligations under the Contract as set out in the Tender Documents.

104 Ambiguities in Tender Documents

104.1

Where the Tender Documents issued to prospective tenderers are ambiguous or unclear to a tenderer, the tenderer may request the issue of an explanatory notice. If an explanatory notice is issued, it shall be sent to all tenderers and shall upon issue become part of the Tender Documents.

104.2

In the absence of an explanatory notice, tenders may be submitted subject to any reasonable interpretation of any ambiguity or uncertainty in the Tender Documents, which shall be endorsed on the tender.

104.3

The Principal would prefer to receive tenders based on the Tender Documents, but reserves the right to consider any tender whether or not that tender has been submitted with endorsement.

105 Submission of tenders

105.1

Tenders will close at the time and place stated in the schedule to these conditions and each shall be enclosed in a sealed envelope or, where provided in the Schedule to Conditions of Tendering, submitted in the electronic form stated in the Schedule to the Conditions of Tendering. Each tender shall be identified as a tender for the particular Contract and addressed as required by the Schedule to Conditions of Tendering.

105.2

Tenders shall be delivered before the closing time.

105.3

Tenders shall be prepared in the form required by the Tender Documents. Where no such form is provided they shall include:

- (a) The name of the tenderer and a complete postal address within New Zealand for service of notices;
- (b) The tendered price together with any completed schedules required by the Tender Documents for submission at that time to show how the tendered price is made up;
- (c) Any supplementary information required by the Tender Documents as listed in the schedule to these conditions;
- (d) Any interpretation or other statements by the tenderer affecting the tender; and
- (e) Any rates or percentages required to be nominated in the Schedule to Conditions of Tendering.

105.4

The tender shall be signed by, or on behalf of, the tenderer.

105.5

The Cost of preparing and submitting a tender shall be borne by the tenderer.

105.6

If the tender contains any error in extension of unit rates or in summation of items so as to vary the tendered sum, and the Principal or its agent becomes aware of the error prior to acceptance of any tender, then the Principal shall draw the error to the attention of the tenderer whose tender contains the error. The Principal shall invite the tenderer to confirm that its tender remains open for acceptance at the tendered sum notwithstanding the error. Unless the tenderer so confirms its tender it shall be deemed to be withdrawn. No amended tender shall be considered if received after the closing time for tenders.

105.7

Unless otherwise provided in the Schedule to Conditions of Tendering, the rates included in the Schedule of Prices shall be deemed to be fully inclusive of all allowances for ~~On-site Overheads and for Off-site Overheads and Profit~~ Preliminary & General and Margin.

~~106~~—Acceptance of tender**~~106.1~~—**

~~The lowest priced or highest scoring or any tender will not necessarily be accepted.~~

~~106.2~~—

~~The successful tenderer shall be notified in writing by the Principal or its agent, that its tender has been accepted.~~

106 ~~107~~ Tender evaluation**106.1 ~~107.1~~**

Tenders shall be evaluated in accordance with the method, if any, stated in the Schedule to Conditions of Tendering.

106.2

Tenderers may be asked for more information or clarifications to assist with the evaluation process. The Principal need not ask all Tenderers the same clarification or request for information. The tenderer shall provide the information or clarification as soon as possible, in the format requested and may be removed from the evaluation process if they do not provide adequate information or clarification within a reasonable time.

106.3

The Principal may request more information from a third party e.g. referees where the information Tenderers may be asked for more information or clarification relating to tenders submitted to assist with the evaluation process.

107 **Post tender negotiations**

107.1

The Principal may enter in negotiations with one or more tenderer with a view to forming a contract.

108 **Acceptance of tender**

108.1

The lowest priced or highest scoring or any tender will not necessarily be accepted.

108.2

The successful tenderer shall be notified in writing by the Principal or its agent, that its tender has been accepted.

109 **108** **Notification of acceptance**

109.1 **108.1**

If no tender has been accepted within 1 Month after the closing of tenders, each tenderer shall be notified in writing by the Principal or its agent whether its tender is or is not still under consideration.

109.2 **108.2**

Unsuccessful tenderers who have submitted bona fide tenders complying with the Tender Documents shall be notified by the Principal or its agent of the name and tender price of the successful tenderer and the other tender prices within 10 Working Days of acceptance of the successful tender.

SCHEDULE TO CONDITIONS OF TENDERING

The Conditions of Tendering are those set out in NZS 3910:2013. Clause numbers refer to Conditions of Tendering clauses.

Contract for:

Clause <i>in Conditions of Tendering</i>	Title and subject matter	Specific condition data <i>(Expand cells if required)</i>
102	Issue of documents	
102.2	Is a Tender Documents deposit required?	<i>(yes or no)</i>
	If yes, the amount of the Tender Documents deposit shall be:	<i>(\$)</i>
103	Tenderers to inform themselves	
103.1	Is an appointment required to view the Site?	<i>(yes or no)</i>
	If yes, the appointment details are:	<i>(address) (date) (time)</i>
105	Submission of tenders	
105.1	Tenders shall close at:	<i>(physical or electronic address)</i>
		<i>(date)</i>
		<i>(time)</i>
	Are electronic tenders acceptable?	<i>(yes or no)</i>
	If yes, tenders will be acceptable in the following electronic form:	<i>(specify type of file for example Word, PDF)</i>
105.3(c)	Is supplementary information required to be submitted with the tender?	<i>(yes or no)</i>

Clause <i>in Conditions of Tendering</i>	Title and subject matter	Specific condition data <i>(Expand cells if required)</i>
105.3(e)	Are the percentages for On-site Overheads and for Off-site Overheads and Profit required to be nominated in the tender?	(yes or no) (See 9.3.8, 9.3.9, & 9.3.10 of the General Conditions)
	Is the Working Day rate in compensation for time-related On-site Overheads and Off-site Overheads and Profit incurred in relation to an extension of time required to be nominated in the tender?	(yes or no) (See 9.3.11 of the General Conditions)
	Is the percentage for processing of Variations required to be nominated in the tender?	(yes or no) (See 9.3.15 of the General Conditions)
	Are the percentages for On-site Overheads and for Off-site Overheads and Profit to be added to Net Cost for the Contract Works or any Separable Portion in a cost reimbursement contract required to be nominated in the tender?	(yes or no) (See 2.4.1 of the General Conditions)
	If yes, the supplementary information required to be submitted with the tender is:	
105.7	Are the rates included in the Schedule of Prices fully inclusive of all allowances for On-site Overheads and for Off-site Overheads and Profit?	(yes or no) (see 9.3.8, 9.3.9, & 9.3.10 of the General Conditions)
107 — Tender evaluation		
	107.1 The tender evaluation method shall be:	

SCHEDULE TO CONDITIONS OF TENDERING

The Conditions of Tendering are those set out in NZS 3910:2013.

Clause numbers refer to Conditions of Tendering clauses.

Contract for:

<u>Clause</u> <i>in Conditions of Tendering</i>	<u>Title and subject matter</u>	<u>Specific condition data</u> <i>(Expand cells if required)</i>
<u>103</u>	<u>Tenderers to inform themselves</u>	
<u>103.1</u>	<u>Is an appointment required to view the Site?</u>	<u>(yes or no)</u>
	<u>If yes, the appointment details are:</u>	<u>(address)</u> <u>(date)</u> <u>(time)</u>
<u>105</u>	<u>Submission of tenders</u>	
<u>105.1</u>	<u>Tenders shall close at:</u>	<u>(physical or electronic address)</u> <u>(date)</u> <u>(time)</u>
	<u>Are electronic tenders acceptable?</u>	<u>(yes or no)</u>
	<u>If yes, tenders will be acceptable in the following electronic form:</u>	<u>(specify type of file for example Word, PDF)</u>
<u>105.3(c)</u>	<u>Is supplementary information required to be submitted with the tender?</u>	<u>(yes or no)</u>

~~Is the percentage for processing of Variations
required to be nominated in the tender?~~

~~(yes or no)~~

~~(See 2.4.5 of the General Conditions)~~

~~(See 2.4.1 of the General Conditions)~~

~~If yes, the supplementary information required to be
submitted with the tender is:~~

~~(yes or no)~~

~~Page 132
(See 9.8, 9.3.9, & 9.3.10 of the
Conditions)~~

Clause <i>in Conditions of Tendering</i>	Title and subject matter	Specific condition data <i>(Expand cells if required)</i>
105.3(e)	Are the percentages for On-site Overheads <u>Preliminary & General</u> and for Off-site Overheads and Profit <u>Margin</u> required to be nominated in the tender?	(yes or no) (See 9.3.8 , 9.3.9, & 9.3.10 , & <u>9.3.11</u> of the General Conditions)
	Is the Working Day rate in compensation for time-related Preliminary & General and Margin incurred in relation to an extension of time required to be nominated in the tender?	(yes or no) (See 9.3.12 of the General Conditions)
	Are the percentages for On-site Overheads and for Off-site Overheads and Profit to be added to	(yes or no) (See 9.3.14 of the General Conditions)
	Are the percentages for Preliminary & General and for Margin to be added to Net Cost for the Contract Works or any Separable Portion in a cost reimbursement contract required to be nominated in the tender?	(yes or no) (See 2.4.1 of the General Conditions)
	If yes, the supplementary information required to be submitted with the tender is:	
105.7	Are the rates included in the Schedule of Prices fully inclusive of all allowances for On-site Overheads and for Off-site Overheads and Profit? <u>Preliminary & General and for Margin?</u>	(yes or no) (see 9.3.9, 9.3.10, & 9.3.11 of the General Conditions)
<u>107 Tender evaluation</u>		
	107.1 The tender evaluation method shall be:	