



Medium Works Contract

Relating to:

[insert name of school] **School**

[insert name of project]

The Secretary for Education

as Principal

[insert name of Contractor]

as Contractor

Note: all information required by text in blue must be entered/completed prior to providing the form of Contract to tenderers or to the Contractor, and all drafting notes deleted.

DATED

BETWEEN

Her Majesty the Queen in right of New Zealand acting by and through the Chief Executive of the Ministry of Education or his or her duly authorised representative (**Principal**)

AND

[Insert name of Contractor] (**Contractor**)

THE PARTIES AGREE AS FOLLOWS:

1. The Contractor shall construct, complete, deliver and remedy defects in the Works as described in the Contract.
2. The Principal must pay the Contractor the Contract Price as defined in and at the times and in the manner provided in the Contract.
3. Each party must carry out and fulfill all other obligations imposed on that party by the Contract.
4. The Contract comprises the following documents:
[Note: add to/delete from the below list as applicable]:
 - This Contract Agreement;
 - Part 1 – Special Conditions of Contract;
 - Part 2 – General Conditions of Contract for Medium Works;
 - Appendix 1 – The Contract Price Summary;
 - Appendix 2 – The Drawings;
 - Appendix 3 – The Specifications;
 - Appendix 4 – Health and Safety Requirements;
 - Appendix 5 – Asbestos Handling Requirements
 - Appendix 6 – Form of Weathertightness Warranty;
 - Appendix 7 – Practical Completion Certificate;
 - Appendix 8 – Final Completion Certificate;
 - Appendix 9 – Subcontractor Warranties and Form of Subcontractor Warranty;
 - Appendix 10 – The Principal’s Request for Tender
 - Appendix 11 – The Contractor's tender.

5. The documents forming the Contract are to be taken as mutually explanatory, but in the case of ambiguity or conflict the priority of documents shall be as listed in clause 4 above, with each document higher in the list prevailing over a document appearing lower in the list.

SIGNED

For and on behalf of the Contractor by:

Full name of authorised signatory

Signature of authorised signatory

For and on behalf of the Principal by:

Full name of authorised signatory

Signature of authorised signatory

SPECIAL CONDITIONS TO MEDIUM WORKS CONTRACT

PART 1: SPECIAL CONDITIONS OF CONTRACT

Clause	Subject	Special Condition
	The Principal is:	The Ministry of Education
	The School is:	<i>[insert name and street address of school]</i>
	The Contractor is: Address: Phone number: Fax Number: Email address:	<i>[insert]</i> <i>[insert]</i> <i>[insert]</i>
3.1	The Principal's Representative is: Address: Phone number: Fax number: Email address:	<i>[insert]</i> <i>[insert]</i> <i>[insert]</i>
2.1.2	Commencement Date:	<i>[insert]</i>
2.1.3	Principal Supplied Items:	<i>[list any Ministry of Education-supplied materials or items that will be incorporated in the Works]</i>
2.5	Separate Contractors:	<i>[insert]</i>
2.6.1	The Contractor is required to prepare and submit a:	
	(a) Site-specific risk assessment?	Yes
	(b) Site-specific safety plan?	Yes
2.6.2	Are monthly health and safety reports required?	<i>(Yes or No)</i> <i>[this will be determined by the nature and duration of the Works]</i>

SPECIAL CONDITIONS TO MEDIUM WORKS CONTRACT

2.9.1	Public liability insurance	<p>\$2,000,000</p> <p><i>[Note: this is the minimum limit required. There may be circumstances where this limit should be raised, particularly where there is a high degree of risk to third party property].</i></p> <p>Sub Limits:</p> <p>Not less than \$250,000 in respect of:</p> <ul style="list-style-type: none"> • liability arising out of vibration, weakening or removal of support • liability under the Forest and Rural Fires Act 1977 • liability arising out of damage to underground services
2.9.2 or 3.5	Works insurance shall be obtained by:	The Principal
2.9.2	<p>Minimum amounts of insurance cover for:</p> <p>motor vehicle third party liability:</p> <p>Contractors plant and equipment:</p>	<p>\$2,000,000</p> <p>The Contractor shall insure each item of plant and machinery having a current market value of more than \$25,000</p>
2.11	Exceptions to the Contractor's obligation to obtain consents under 2.11 are:	<i>[insert consents, producer statements or compliance certificates to be obtained by the Principal. Also refer to Note at 5.3.4]</i>
2.12	Nominated Subcontractors and Suppliers:	<i>[insert]</i>
2.14	Exceptions to Contractor owned or licenced proprietary and intellectual property rights are:	<i>[insert]</i>
2.18.1 (c)	Design – Professional Indemnity Insurance	\$1,000,000
2.21	Salvaged Materials	<i>(Insert “None” or list all salvaged materials which are to remain in the Principal’s ownership or insert reference to document in which where they are listed)</i>
3.5	Principal arranged construction insurance <i>(refer also to 2.9.2)</i>	
	In accordance with 3.5.1, the insurance policy wording title for 3.5.1 and 3.5.2(a), (b), and (c) is:	<p>3.5.1 Construction Material Damage</p> <p>3.5.2(a) and (b) – Material Damage Insurance Policy</p> <p>3.5.2(c) – N/A</p>
3.5.2	Where the Principal is required to effect construction insurance:	

SPECIAL CONDITIONS TO MEDIUM WORKS CONTRACT

	The lead insurer is:	Vero Insurance New Zealand Limited
	Address of lead insurer:	Private Bag 92 – 237, Auckland
	The Nominal Deductibles are:	
	For damage arising out of the Works:	\$5,000 or \$25,000 for loss arising from testing and commissioning
	For other claims:	\$5,000
3.5.2(a)	The existing structures are:	<p><i>[The Principal shall insure any existing structures that it owns and list these here. For the purposes of the contract, “existing structures” are defined as being those structures directly affected by construction activity e.g. where the construction involves working in, on, under, over or in connection to existing structures.</i></p> <p><i>Existing property insurance policies will need to be checked with the policy provider to ensure that the policy covers damage arising from construction activity]</i></p>
	The lead insurer is:	Vero Insurance New Zealand Limited
	Address of lead insurer:	Private Bag 92 – 237, Auckland
	The Nominal Deductibles are:	
	For damage arising out of the Works:	\$25,000
	For other claims:	\$25,000
3.5.2(b)	Other structures in the vicinity are:	<p><i>[The Principal shall insure any other structures it owns and list these here. For the purposes of the contract “other structures in the vicinity” are those structures within the defined boundary of the construction site.</i></p> <p><i>Any existing property insurance policies already in place will need to be checked with the policy provider to ensure that it covers damage arising from construction activity]</i></p>
	The lead insurer is:	Vero Insurance New Zealand Limited
	Address of lead insurer:	Private Bag 92 – 237, Auckland
	The Nominal Deductibles are:	
	For damage arising out of the Works:	\$25,000
	For other claims:	\$25,000
3.5.2(c)	Contents insurance:	N/A
5.1	Due Date for Completion	<i>[insert date]</i>

SPECIAL CONDITIONS TO MEDIUM WORKS CONTRACT

5.3.4(d) and (e)	Code Compliance Certificate or Certificate of Public Use	<p>Prior to the issue of the Practical Completion Certificate the Contractor shall provide to the Principal:</p> <p>(a) A Code Compliance Certificate (CCC) for the Works; or</p> <p>(b) A Certificate of Public Use (CPU) for the Works.</p> <p><i>[Delete provision which does not apply]</i></p> <p>[Note: as a minimum a CPU must be a pre-requisite for Practical Completion.</p> <p><i>You must check with the relevant Local Authority as to whether the issue of a CPU will be permissible before selecting option (b).</i></p> <p><i>In some instances the contractual obligation on the Contractor to achieve CCC may be preferred or a local authority may not be willing to issue a CPU ahead of CCC, in which case select option (a) (CCC).</i></p> <p><i>The selection of CCC as a completion pre-requisite will have an impact on programme and availability of the facility for use and as such close consideration should be given to this.</i></p> <p><i>If option (a) (CCC) is selected, ensure the Contractor has included an appropriate allowance in its programme for obtaining the CCC prior to the Due Date for Completion]</i></p>
5.3.4(f)	Weathertightness Warranty	<p>Is the Contractor to provide a Weathertightness Warranty?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/> <i>[tick the appropriate box]</i></p>
5.3.4(g)	Additional requirements for Practical Completion	<p>Prior to issue of the Practical Completion Certificate the Contractor must provide to the Principal the following additional documents and information:</p> <p><i>[list any additional requirements for Practical Completion – i.e. not covered under 5.3.4(a)-(f)]</i></p>
6.1	Defects Notification Period	<p><i>[see note below]</i> months</p> <p><i>[Note: 6 months is the standard period unless:</i></p> <ul style="list-style-type: none"> <i>• the Works includes work that could impact on weathertightness, or include substantial mechanical or electrical work, or include multiple sub-trades, in which case the period is “12 months”;</i> <i>• the Works are limited to demolition of an existing building, in which case a Defects Notification Period is not required, and you should insert “0 months”]</i>

SPECIAL CONDITIONS TO MEDIUM WORKS CONTRACT

7.1	Type of Contract	<p>The Contract is a:</p> <p>(a) Lump sum contract; or</p> <p>(b) Cost reimbursement contract. <i>[delete provision which does not apply]</i></p> <p><i>[Note: cost reimbursement should only be used in exceptional circumstances, for example, emergency repair work]</i></p>								
7.2.1	Lump Sum Contract Price	\$ <i>[insert]</i>								
7.2.2(b)	Allowance for Margin	<p>In a cost reimbursement contract, the allowance for Contractor's margin is:</p> <p><i>[insert]</i> %</p>								
7.4	Payment Claims	<p>The period/s for the Contractor's payment claim/s is/are:</p> <p>(a) Upon Practical Completion;</p> <p>(b) Monthly; or</p> <p>(c) Upon completion of the following milestones:</p> <table border="0" style="width: 100%;"> <thead> <tr> <th style="text-align: left;">Milestone</th> <th style="text-align: left;">% of Contract Price</th> </tr> </thead> <tbody> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> </tbody> </table> <p><i>[delete provision which does not apply]</i></p>	Milestone	% of Contract Price
Milestone	% of Contract Price									
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.....									
.....									
7.9	Retentions	<p>10%</p> <p><i>[this should not be reduced, the level has been set taking into account that there is not a performance bond required for this contract]</i></p>								

SPECIAL CONDITIONS TO MEDIUM WORKS CONTRACT

8.5	Liquidated Damages	<p>[\$<i>insert</i>] per calendar day</p> <p>Note - Where liquidated damages are provided above, the Contractor acknowledges and agrees that the amount stated is a genuine pre-estimate of the likely loss that would result from delay of completion.</p> <p>Note – amount quoted above is exclusive of GST.</p> <p><i>[Note: as indicated above, liquidated damages (“LDs”) must be a genuine pre-estimate of the likely loss that would result from a delay of completion. When calculating a figure for LDs consider the following costs:</i></p> <ul style="list-style-type: none"><i>• additional consultant costs (e.g. project manager and/or architect);</i><i>• legal costs;</i><i>• costs for alternative student classroom space;</i><i>• costs associated with hiring other facilities;</i><i>• other costs to the School (e.g. discounted supplier rates which may be missed due to delays)]</i>
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GENERAL CONDITIONS FOR MEDIUM WORKS CONTRACT

PART 2: GENERAL CONDITIONS OF CONTRACT FOR MEDIUM WORKS

1. THE CONTRACT AND DEFINITIONS

1.1 Evidence of Contract: No contract or other legal relationship shall exist between the Contractor and the Principal, and no payment otherwise due under the Contract shall become payable, until the Contract Agreement is executed by both parties.

1.2 Definitions:

"Asbestos Handling Requirements" means the requirements stated in Appendix 5 – Asbestos Handling Requirements.

"Commencement Date" means the date stated in 2.1.1 of the Special Conditions.

"Contract" means the documents referred to in the Contract Agreement as comprising the Contract.

"Contract Agreement" means the written agreement for the fulfilment of the Contract signed by the Principal and the Contractor.

"Contract Price" means the sum provided in the Contract as payable for the completion of the Works calculated in accordance with 7.2.1 or 7.2.2 as applicable, or such greater or lesser sum as may become payable under the Contract.

"Defects Notification Period" means the period stated in 6.1.

"Drawings" means the Principal's drawings of the Works as listed in Appendix 2.

"Due Date for Completion" means the date stated in 5.1 of the Special Conditions, as may be adjusted in accordance with the Contract.

"Final Completion Certificate" is the certificate issued under 5.4.

"General Conditions" means the Part 2: General Conditions of Contract for Medium Works comprising all of sections 1 to 11.

"Health and Safety Requirements" are the requirements stated at Appendix 4.

"HSWA Regulator" means the Worksafe or the relevant designated regulatory agency under the Health and Safety at Work Act 2015.

"Ministry of Education" means Her Majesty the Queen in right of New Zealand acting by and through the Chief Executive of the Ministry of Education or his or her duly authorised representative.

"Nominal Deductibles" means the amount of any deductible or excess to be paid by the Contractor as described in clause 3.5.5.

"Notifiable Events" means deaths, injuries, illnesses and incidents which are required by law to be notified to the HSWA Regulator.

GENERAL CONDITIONS TO MEDIUM WORKS CONTRACT

"**Practical Completion**" is as defined in 5.3.1.

"**Practical Completion Certificate**" is the certificate issued under 5.3.3.

"**Principal**" means either the Ministry of Education or the School whichever is nominated in the Special Conditions and includes its executors, administrators, successors and assigns.

"**Principal's Representative**" means the person named in the Special Conditions or such other person from time to time nominated by the Principal under 3.1.

"**Provisional Sum**" is as defined in 4.4.

"**Schedule of Prices**" means the schedule of Prices (if any) included in Appendix 1.

"**School**" means the board of trustees of the school named in the Special Conditions acting by and through its duly authorised representative.

"**Separate Contractors**" means persons other than the Contractor including the Principal's employees who are engaged by the Principal to carry out work on the Site not included in the Contract concurrently with the carrying out of the Works.

"**Site**" means the land and other places on or over or under which the Works are to be carried out together with any other places made available to the Contractor by the Principal conditionally or unconditionally for the purpose of the Contract.

"**Special Conditions**" means the Part 1: Special Conditions of Contract which modify these General Conditions.

"**Specifications**" means the document(s) listed in Appendix 3, containing the requirements for carrying out the Works.

"**Variation**" means a variation to the Works instructed by the Principal under 4.1.

"**Weathertightness Requirements**" mean the document entitled "Weathertightness and Durability Requirements for Schools" (Ministry of Education – August 2014) and any subsequent amendments thereto. ***Refer: <http://www.education.govt.nz/school/property/state-schools/design-standards/weather-tightness-and-durability-design/>***

"**Working Day**" means 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.

"**Works**" means the works including any temporary works to be executed in accordance with the Contract.

2. THE CONTRACTOR'S OBLIGATIONS

2.1 Programme for the Works, Commence, Complete and Remedy Defects in the Works: The Contractor must:

GENERAL CONDITIONS TO MEDIUM WORKS CONTRACT

- 2.1.1** prior to commencing the Works, the Contractor shall prepare a programme for the Works and submit it to the Principal's Representative. The Programme shall demonstrate how the Contractor proposes to meet the Due Date for Completion. The Contractor shall use the programme to track and report actual progress against planned dates and to forecast the likely dates for Practical Completion of the Works. No payment otherwise due under the Contract shall become payable until the Contractor has submitted the programme to the Principal's Representative. From time to time the Principal's Representative may require the Contractor to amend its programme to take account of the actual progress of the Works so as to achieve completion by the Due Date for Completion or as soon as reasonably practicable thereafter. The Principal's Representative may further require the Contractor to indicate the means by which the programmed progress will be achieved;
- 2.1.2** commence the Works on the Commencement Date or as soon thereafter as the Principal makes the Site available and the necessary consents are in place;
- 2.1.3** provide all services, labour, materials, plant, temporary works, transport and everything necessary to undertake and complete the Works except for any Principal supplied items as stated in the Special Conditions, and shall not be entitled to substitute any product specified in the Drawings or Specifications without the Principal's prior written approval;
- 2.1.4** proceed with the Works with due care and diligence and in a proper and workmanlike manner and must complete the Works in accordance with the Contract by the Due Date for Completion;
- 2.1.5** ensure the Works on completion are fit for the purpose for which they are intended as can reasonably be ascertained from the Contract; and
- 2.1.6** promptly remedy defects in accordance with section 6 of the Contract.
- 2.2** **Comply with Laws and Authorities:** The Contractor must comply with the requirements of all relevant authorities and with all relevant statutes, regulations and by-laws of relevant authorities. The Contractor must ensure that the Works comply with all requirements of any relevant authority having jurisdiction over the Works.
- 2.3** **Comply with Instructions:** The Contractor must comply with the Principal's instructions and any Variations issued under section 4 of the Contract including the suspension of all or part of the Works.
- 2.4** **Subcontractors:** The Contractor is fully responsible for the acts or omissions of any subcontractors. The Contractor's obligations and liability are not affected by the subcontracting of any part of the Works. The Contractor must not subcontract the entire Works or assign the Contract without the prior written approval of the Principal.

GENERAL CONDITIONS TO MEDIUM WORKS CONTRACT

2.5 Co-operate with Others: The Contractor is not entitled to exclusive possession of the Site and must co-operate with any other persons who come on to the Site, including representatives of the Principal, Separate Contractors as stated in the Special Conditions, or other third parties.

2.6 Protect People and Property:

2.6.1 Site-Specific Risk Assessment/Site-Specific Safety Plan: Where required by the Special Conditions, prior to commencing work on Site the Contractor must:

- (a) undertake a Site-specific risk assessment, including identifying:
 - (i) any hazards and risks to health and safety associated with the Works or the Site; and
 - (ii) any special health and safety measures required; and/or
- (b) prepare and submit to the Principal's Representative a Site-specific safety plan for the execution of the Works, which shall:
 - (i) address the means by which the Contractor intends to meet its obligations under this clause 2.6 and the Health and Safety Requirements;
 - (ii) address any critical risks that the Principal has identified in relation to the Site or the Works; and
 - (iii) be updated as the Works progress to incorporate hazards or other risks to health and safety not foreseen at the at the time of submitting the original Site-specific safety plan.
- (c) Acceptance by the Principal's Representative of the site specific health and safety plan shall not relieve the Contractor of any obligation or liability under the Contract or at law.

2.6.2 Monthly Health and Safety Reports: Where required by the Special Conditions, the Contractor shall upon request provide to the Principal's Representative a monthly (or more frequently if required by the Principal) health and safety report, meeting the requirements and in such form as may be required by the Principal from time to time.

2.6.3 Safe working environment: The Contractor shall ensure, so far as reasonably practicable that the Site and the Works, including the means of entering and exiting the Site are without risks to the health and safety of any persons.

2.6.4 Safety of Works and Other Persons: The Contractor shall ensure so far as is reasonably practicable that the health and safety of any:

- (a) workers involved in carrying out the Works;

GENERAL CONDITIONS TO MEDIUM WORKS CONTRACT

- (b) workers whose activities in carrying out work are influenced or directed by the Contractor; and
- (c) other person;

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

2.6.5 Processes and Procedures: The Contractor must have in place and operate throughout the carrying out of the Works:

- (a) ongoing hazard and risk identification and mitigation processes;
- (b) proper procedures for dealing with emergencies;
- (c) adequate supervision of all workers and other persons under the Contractor's control; and
- (d) an effective drug and alcohol policy that applies to its workers.

2.6.6 Notifiable Events: The Contractor must:

- (a) keep a record of all Notifiable Events for at least 5 years from the date on which notice of the relevant event is given to the HSWA Regulator;
- (b) as soon as possible after becoming aware that a Notifiable Event arising out of the carrying out of the Works has occurred, ensure that the HSWA Regulator and the Principal's Representative are notified;
- (c) so far as the Site and the Works at which any Notifiable Event has occurred are under the Contractor's management or control, take all reasonable steps to ensure that the Site or the Works is not disturbed until authorised by the HSWA Regulator;
- (d) as soon as possible and at the latest, within one week after the Notifiable Event, give to the Principal's Representative:
 - (i) a copy of any information or notice which the Contractor is required to provide or make to the HSWA Regulator; and
 - (ii) a report a report giving complete details, including results of investigations, into the cause of the Notifiable Event and any recommendations or strategies for prevention of any similar Notifiable Event in the future;
- (e) provide the Principal with such assistance as may be reasonably necessary to conduct a Notifiable Event incident or accident investigation; and
- (f) immediately notify the Principal's Representative of any proceedings and/or enforcement action it is issued with.

GENERAL CONDITIONS TO MEDIUM WORKS CONTRACT

- 2.6.7 Safety Audits:** The Contractor shall provide the Principal or its appointed representative with access to the Site and its personnel in order to review, monitor or audit the Contractor's health and safety procedures and practices, as deemed appropriate by the Principal at any time with or without notice. The Contractor shall rectify any issues raised in any such audits, reviews or monitoring.
- 2.6.8 Other Requirements:** The Contractor must comply with the Health and Safety Requirements and shall be responsible for any non-compliance by any subcontractor with the Health and Safety Requirements.
- 2.6.9 Provide and Protect:** The Contractor must provide all overseeing and provide, erect, maintain and when no longer required remove all barricades, fencing, temporary roadways and footpaths, signs and lighting necessary for the effective protection of property, for traffic and for the health and safety of others.
- 2.6.10 Engage, Coordinate, Consult and Cooperate:** The Contractor shall, so far as is reasonably practicable:
- (a) engage with workers involved in carrying out the Works in relation to health and safety matters;
 - (b) have procedures in place that provide reasonable opportunities for workers to participate effectively in improving health and safety in respect of the Site and the Works on an ongoing basis; and
 - (c) co-ordinate, consult and cooperate with all other duty-holders in relation to the Works, including the Principal.
- 2.6.11 Avoid Nuisance:** The Contractor must take all reasonable steps to avoid nuisance (including unnecessary or excessive noise, dust, fumes) and prevent damage to property.
- 2.6.12 Suspension:** If the Principal considers that the Contractor is not conducting the Works in compliance with the Site-specific safety plan, relevant legislation and regulations or any other requirements for health and safety in the Contract or is conducting the Works in such a way as to endanger the health and safety of any workers or other persons, the Principal may instruct the Contractor to suspend the Works until the Contractor has complied with its obligations to the satisfaction of the Principal.
- 2.7 Take Responsibility for Care of the Works:**
- 2.7.1 Care of the Works:** The Contractor is responsible for care of the Works and all plant or materials awaiting incorporation into the Works, from the time it obtains possession of the Site until Practical Completion.
- 2.7.2 Make Good:** The Contractor must make good at its own cost any loss or damage to the Works, materials or plant to the extent that it is responsible for those Works, materials or plant under 2.7.1.

GENERAL CONDITIONS TO MEDIUM WORKS CONTRACT

- 2.8 Indemnify the Principal:** The Contractor must indemnify and hold harmless the Principal against all claims, liabilities, costs, losses or damages arising from damage to any property, or personal injury to any person or illness or death of any person that arises from the Contractor's performance of the Works.
- 2.9 Contractor to insure:** The Contractor must:
- 2.9.1 Insure against Public Liability:** arrange and maintain public liability insurance in the joint names of the Contractor and the Principal until issue of the Final Completion Certificate. The insurance must cover both the Contractor and the Principal for any liability for loss or damage to any property, or injury or illness or death to any person that arises from the carrying out the Works. The insurance must be for at least the amount stated in the Special Conditions.

Insure the Works: where required by the Special Conditions, arrange and maintain Works insurance in the joint names of the Principal and the Contractor until Practical Completion of the Works. The insurance must be sufficient to cover the Contract Price plus any increased costs, professional fees, Principal supplied items not included in the Contract Price and the estimated cost of demolition, disposal and preparation for replacement work necessarily incurred following any loss or damage to the Works. The insurance shall also continue to cover loss or damage resulting from an act or omission of the Contractor in the performance of its obligations in the period between Practical Completion and the issue of the Final Completion Certificate.
 - 2.9.2 Other Insurance:** insure the Contractor's plant and equipment and must maintain insurance against public liability arising from the use of any motor vehicle by the Contractor. The insurance must be for at least the amount stated in the Special Conditions.
 - 2.9.3 Provide Insurance Certificate:** provide evidence (including certificates) of the Contractor's insurances to the satisfaction of the Principal.
- 2.10 Obtain and Assign Warranties:** The Contractor must obtain warranties from all suppliers and subcontractors as listed in Appendix 9 and prior to Practical Completion must assign or obtain Subcontractor Warranties in the form set out in Appendix 9.
- 2.11 Obtain Consents:** Except as stated otherwise in the Special Conditions, the Contractor must on behalf of the Principal obtain all necessary consents producer statements and compliance certificates required by relevant authorities and pay all required consent fees.
- 2.12 Nominated Subcontractors and Suppliers:** Without limiting the Contractor's obligations and liability the Contractor must (in the absence of any reasonable objection by the Contractor that the Principal has accepted at the Principal's sole discretion) employ any subcontractors or suppliers nominated in the Special Conditions.
- 2.13 Performance Obligations:** The Contractor must meet all performance criteria set out (if any) in the Specifications.

GENERAL CONDITIONS TO MEDIUM WORKS CONTRACT

- 2.14 Intellectual Property:** Unless stated otherwise in the Special Conditions, the Contractor warrants it is the sole owner of or holds a licence to use all the proprietary rights and intellectual property in the Works and it is not in breach of any intellectual property rights of any third party.
- 2.15 Weathertightness:** The Contractor shall ensure that the Works comply with the Weathertightness Requirements.
- 2.16 Asbestos:** The Contractor shall comply with the Asbestos Handling Requirements.
- 2.17 Police Vetting:** The Contractor shall comply with all Ministry of Education police vetting requirements prior to any of its personnel or subcontractors accessing any part of the Site. Details may be found on the following web site: <http://www.education.govt.nz/school/property/state-schools/project-management/boards-of-trustees-role/police-vetting/>.
- 2.18 Design:** If the Works include provision for design services, the following provisions of this clause 2.18 shall apply:
- 2.18.1** The Contractor warrants and undertakes to the Principal that the Contractor:
- (a) is experienced in the management, co-ordination and/or production of design documentation for projects containing elements similar to the elements comprising the Works;
 - (b) has examined the documents, things and requirements comprising the Contract, including but not limited to the Drawings;
 - (c) has arranged professional indemnity insurance as indicated in the Special Conditions.
- 2.18.2** The Contractor is responsible for any design and/or documentation work it carries out, and the performance and “buildability” of that design work and the Contractor must ensure that such works are designed, the design developed and the design documentation prepared with the degree of skill, care and diligence reasonably expected of a professional providing services similar to the design work, and in accordance with this Contract. The Contractor must ensure that:
- (a) to the extent that the Contractor undertakes the design work, the Contractor has the necessary experience, skills and expertise to carry out such work;
 - (b) where it subcontracts design work, such works are designed for the Contractor by appropriate consultants (approved by the Principal) in accordance with proper professional architectural or engineering practices and principles;
 - (c) such work and all services and features included in such work are professionally designed to be appropriate, adequate and fit for purpose or purposes described in or reasonably able to be inferred from this Contract;

GENERAL CONDITIONS TO MEDIUM WORKS CONTRACT

- (d) it has and will apply sufficient resources to perform the design services to meet its obligations, including to comply with the Principal's programming requirements; and
- (e) where the Contractor forms the opinion on reasonable grounds, at any time, that an element of the design or design documentation including the Drawings does not comply with the Contract or contains errors or omissions the Contractor must direct its consultants to rectify the non compliance (at no additional cost to the Principal), and inform the Principal in writing;
- (f) such work is cost effective in terms of proposed solutions;
- (g) so far as is reasonably practicable, make sure that the Works are designed to avoid any health and safety risks to those personnel engaged to carry out the Works, or those occupying the site during the Works, or those responsible for future maintenance.

2.19 Conflict of interest: the Contractor acknowledges and agrees that it:

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

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

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

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

The further information which might be requested by the Principal's Representative may, without limitation, include a certificate or warranty from a body or person nominated or described by the Principal's Representative to the effect that the technical aspects of the performance benefits of the

GENERAL CONDITIONS TO MEDIUM WORKS CONTRACT

alternative material or product which will be delivered to the Principal's Representative are no less appropriate or beneficial than those derived through the Drawings and Specifications.

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

2.21 Salvaged Materials

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

3. THE PRINCIPAL'S OBLIGATIONS

- 3.1 The Principal's Representative:** The Principal's Representative for the purposes of administration of the Contract is the person named in the Special Conditions. The Principal must notify the Contractor in writing of any replacement Principal's Representative. The Principal's Representative is authorised to perform all of the Principal's obligations and exercise all of Principal's powers under the Contract.
- 3.2 Give the Contractor Possession of the Site:** The Principal must make the Site available to the Contractor for commencement of the Works on the Commencement Date provided the Contractor's Health and Safety Plan has been approved by the Principal's Representative and any insurances required to be obtained by the Contractor under the Contract are in place. The Contractor must liaise with and comply with the reasonable directions of the Principal regarding access including method, timing and route to the Site.
- 3.3 Pay the Contractor:** The Principal must make payment to the Contractor in accordance with the requirements of the Contract.
- 3.4 Approval by the Principal:** No approval, permission or comment by the Principal will affect the Contractor's obligations under the Contract.
- 3.5 Principal's insurance:**
- 3.5.1** Where required by the Special Conditions, the Principal will arrange and maintain Works insurance until Practical Completion of the Works:
- (a) to cover loss or damage in accordance with the policies referred to in the Special Conditions; and
 - (b) in the joint names of the Principal and the Contractor and subcontractors

GENERAL CONDITIONS TO MEDIUM WORKS CONTRACT

The insurance must be sufficient to cover the Contract Price plus any increased costs, professional fees, Principal supplied items not included in the Contract Price and the estimated cost of demolition, disposal and preparation for replacement work necessarily incurred following any loss or damage to the Works.

The insurance shall also continue to cover loss or damage resulting from an act or omission of the Contractor in the performance of its obligations in the period between Practical Completion and the issue of the Final Completion Certificate.

3.5.2 Where the Works are in the nature of additions, alterations, repairs, or maintenance to an existing structure, or where the Works are in the vicinity of another structure in the care of the Principal, the Principal will effect insurance under clause 3.5.1 and will include cover for the replacement values nominated in the Special 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 Conditions.

This insurance may be arranged separately to the Works insurance under 3.5.1 at the discretion of the Principal.

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

- (a) the Principal:
 - (i) 'self insures', on a portfolio basis, a certain amount of loss, damage or liability (in relation to existing structures and other structures in the vicinity of the Works as required in the Special Conditions) as more particularly described in clause 3.5.3(b) (**Self Insurance Amount**);
 - (ii) will have in place insurance policies required under this Contract for loss, damage or liability above the Self Insurance Amount; and
 - (iii) is not in breach of its insurance obligations under this Contract notwithstanding the absence of insurance up to the Self Insurance Amount;
- (b) the Self Insurance Amount is an aggregate amount that applies across the entire property portfolio of the Principal. As such, the actual amount will vary from time to time, depending on whether the Principal has expended part, or all, of it for loss, damage or liability in respect of other properties owned by the Principal;

GENERAL CONDITIONS TO MEDIUM WORKS CONTRACT

- 3.5.4** Every reference to a policy of insurance effected by the Principal under 3.5.2 in this Contract is deemed to be read as acknowledging the self insurance described in this clause 3.5 up to the Self Insurance Amount; and
- 3.5.5** The Contractor must pay the full amount of any of the Principal's insurance policy deductibles or excesses where the loss, damage or liability arises out of an act or omission of the Contractor in which event the Contractor must pay the amount stated in the Special Conditions as the Nominal Deductibles under clauses 3.5.1 and 3.5.2 as applicable. The Nominal Deductible will be in each case an amount which is equal to the actual insurance policy deductible or excess.
- 3.5.6** The Nominal Deductibles are payable by the Contractor in accordance with clause 3.5.5 notwithstanding that the relevant loss, damage or liability is within the Self Insurance Amount (ie the Contractor must pay the relevant Nominal Deductible even if the Self Insurance Amount is applicable to all or part of the relevant loss, damage or liability, as if that Nominal Deductible was an excess amount or insurance policy deductible).

4. VARIATIONS

- 4.1 The Principal May Instruct Variations:** The Contractor must carry out any Variations to the Works instructed in writing by the Principal (provided that such variations are within the scope of the Contract). The Contractor must not vary the Works without an instruction in writing from the Principal.
- 4.2 Value of Variations:** Unless the Principal directs otherwise in writing, the value of the Variation must be agreed, or failing agreement shall be determined by the Principal by referring to the Schedule of Prices or (in the absence of a Schedule of Prices) by referring to the Contractor's prices in relation to similar work under the Contract (if any) and/or what is fair and reasonable in the circumstances. Unless directed otherwise, the value of the Variation shall be agreed or determined prior to the Contractor commencing the varied work. The value of Variations will be added to or deducted from the Contract Price.
- 4.3 Variations:** The Principal must issue a Variation where the Contractor has suffered delay or incurred additional cost caused by the following events:
- 4.3.1 The Principal's instructions:** Any instruction issued by the Principal which varies the Works;
- 4.3.2 Change in circumstances/Ground conditions:** The Contractor encountering on the Site physical conditions which substantially increase the cost to the Contractor, providing that such physical conditions:
- (a) could not have been foreseen by a contractor experienced in undertaking work of the nature of the Works; and
 - (b) are notified by the Contractor to, and inspected by, the Principal prior to the Contractor continuing with the Works;

GENERAL CONDITIONS TO MEDIUM WORKS CONTRACT

4.3.3 The Principal's default: Any default by the Principal or the Principal's Representative under the Contract,

providing as a condition precedent that the Contractor notifies the Principal in writing that the Contractor considers such conditions or event involves a Variation within 7 days of the Contractor becoming aware of the conditions or event or its effects.

4.4 Provisional Sums: Provisional Sums may be included in the Contract for work which is to be executed by the Contractor 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 Principal's Representative. The amount payable to the Contractor in respect of work covered by a Provisional Sum shall be varied by substitution for the Provisional Sum of the value of the work executed valued as a Variation.

5. TIME FOR COMPLETION

5.1 Due Date for Completion: The Contractor must achieve Practical Completion by the Due Date for Completion.

5.2 Extension of Time: The Principal must grant an extension of time to the Due Date for Completion if the Contractor is fairly entitled to an extension by reason of delays caused by:

5.2.1 any Variation; or

5.2.2 any circumstances not reasonably foreseeable by an experienced contractor and not due to any default of the Contractor,

providing as a condition precedent that the Contractor notifies the Principal in writing as soon as possible and in any event within 7 days of the Contractor becoming aware of the Variation or relevant circumstances. Where the Contractor suffers delay in completion of the Works which is caused by two or more events, at least one of which entitles the Contractor to an extension of time (Valid Event) and at least one of which does not entitle the Contractor to an extension of time (Invalid Event), the Contractor shall only be entitled to the period of extension attributable to the Valid Event(s) which exceeds any period of extension attributable to the Invalid Event(s).

5.3 Practical Completion

5.3.1 Practical Completion: Practical Completion means when:

(a) the Site is cleared and the Works and any adjacent buildings affected by the Works are cleaned to the satisfaction of the Principal; and

(b) all other Works the Works are completed except for minor omissions and minor defects which in the opinion of the Principal:

(i) the Contractor has reasonable grounds for not promptly correcting;

(ii) do not prevent the Works from being used for the intended purpose; and

GENERAL CONDITIONS TO MEDIUM WORKS CONTRACT

- (iii) rectification of which will not prejudice the convenient use of the Works.

5.3.2 The Contractor to notify Principal: The Contractor must notify the Principal in writing when it considers the Works are at the stage of Practical Completion, confirming that it has:

- (a) reinstated all areas affected by the Works;
- (b) connected, tested, balanced and certified all services as fit for operation for their intended purpose in accordance with the Contract;
- (c) removed all rubbish from the Site and the building; and
- (d) cleaned the Works properly and effectively to an acceptable standard.

5.3.3 Practical Completion Certificate: The Principal must inspect the Works within two (2) Working Days of receiving the Contractor's notice. If the Principal considers that the Works are at the stage of Practical Completion and the Contractor has complied with all of its other obligations under the Contract the Principal must issue a Practical Completion Certificate in the form at Appendix 7. The Practical Completion Certificate must state the date when Practical Completion was achieved and list any items the Principal has authorised to be completed after Practical Completion along with the date by which such items must be completed.

5.3.4 Documents and Information prior to Practical Completion: Prior to the Principal issuing the Practical Completion Certificate the Contractor must provide to the Principal:

- (a) producer statements required to be obtained by the Contractor under 2.11;
- (b) as-built drawings and operation and maintenance manuals;
- (c) warranties required to be obtained by the Contractor under 2.10;
- (d) where required to be obtained by the Contractor under 2.11 and indicated in the Special Conditions, a certificate of public use (CPU). Where the Special Condition state that the Contractor may provide a CPU (in lieu of a CCC) prior to the issue of the Practical Completion Certificate, the Contractor shall satisfy the Principal that it has done and it will do everything as may be required to facilitate the uplifting of the CCC, including lodging a complete application for the CCC for and on behalf of the Principal, and the CCC must then be obtained prior to the Principal issuing a Final Completion Certificate;
- (e) where required to be obtained by the Contractor under 2.11 and indicated in the Special Conditions, a CCC where the Works have been carried out under a building consent (the

GENERAL CONDITIONS TO MEDIUM WORKS CONTRACT

Principal may at its discretion direct that this may be provided by the Contractor within one month of issue of the Practical Completion Certificate, subject to the Contractor obtaining a CPU prior to the Principal issuing the Practical Completion Certificate);

- (f) where required to be obtained by the Contractor as indicated in 5.3.4(f) in the Special Conditions, a Weathertightness Warranty in the form at Appendix 6; and
- (g) anything else required by the Special Conditions.

5.4 Final Completion Certificate: The Principal must issue a Final Completion Certificate in the form at Appendix 8 at the end of the Defects Notification Period, or once the Contractor has remedied all defects in the Works, or obtained a CCC, whichever is the later.

5.5 Effect of Certificates: No certificate issued by the Principal constitutes approval of any work or releases the Contractor from any obligation under the Contract. The Contractor shall remain liable for the fulfilment of any obligation of the Contractor under the Contract or at law which remains unperformed or not properly performed.

6. DEFECTS LIABILITY

6.1 Defects Notification Period: The Defects Notification Period will commence on the Date of Practical Completion and will continue for six (6) months (unless some other period is stated in the Special Conditions) or until the issue of the Final Completion Certificate.

6.2 Promptly Remedy: Until the end of the Defects Notification Period the Contractor must promptly remedy all defects in the Works.

7. CONTRACT PRICE/PAYMENT

7.1 Type of contract: The Contract shall be either a lump sum contract or cost reimbursement contract as stated in the Special Conditions.

7.2 Contract Price: Where the Contract is a:

7.2.1 lump sum contract, the Contract Price shall be the sum stated in the Special Conditions, subject to such adjustments as are provided for in the Contract;

7.2.2 cost reimbursement contract, the Contract Price shall be determined as follows:

- (a) the net cost of the quantities of labour, materials, plant and subcontractors used in the execution of the Works, recorded in a manner acceptable to the Principal's Representative;
- (b) subject to (c), an allowance for Contractor's margin at the percentage stated in the Special Conditions; and/or

GENERAL CONDITIONS TO MEDIUM WORKS CONTRACT

- (c) where and to the extent the Contract contains rates (including any Schedule of Prices) in respect of any item, those rates shall be used in lieu of net cost. An allowance for Contractor's margin shall only be made to the extent that the relevant rate does not include allowance for such margin.

- 7.3 Sufficiency of Contract Price:** The Contractor is deemed to have inspected the Site and examined all other documents and information available in relation to the Works and to have satisfied itself as to the correctness and sufficiency of the Contract Price.
- 7.4 Contractor to provide the payment claim:** Prior to the issue of an invoice, and within five (5) Working Days of expiry of the relevant period stated in the Special Conditions of Contract, the Contractor must provide the Principal with a payment claim for review. The payment claim must not be in the form of a GST invoice. The payment claim must be addressed to the Principal and must detail the amounts claimed for payment and show details of any amendments to the original Contract Price.
- 7.5 The Principal to assess payment claim:** The Principal must assess the Contractor's payment claim and may amend it as necessary to comply with the terms of the contract and its valuation of the works performed.
- 7.6 The Principal to issue payment schedule:** The Principal must issue to the Contractor a payment schedule within fifteen (15) Working Days of receipt of the payment claim. The payment schedule will indicate the amount of the payment claim which the Principal proposes to pay the Contractor ("the Scheduled Amount").
- 7.7 Information re Deductions:** Where the Scheduled Amount is less than the amount claimed in the payment claim, the payment schedule must indicate:
 - 7.7.1** the manner which the Principal has calculated the Scheduled Amount; and
 - 7.7.2** the Principal's reasons for the difference between the Scheduled Amount and the amount of the payment claim; and
 - 7.7.3** where the difference is because the Principal is withholding payment on any basis, the Principal's reasons for withholding payment.
- 7.8 Contractor to issue GST invoice:** On receipt of a payment schedule, the Contractor may then issue to the Principal a GST invoice for the Scheduled Amount. The Principal must pay the invoice by the 20th day of the month following the month of issue to the Principal of the invoice for the Scheduled Amount.
- 7.9 Retention:** Unless stated otherwise in the Special Conditions, all payment claims are subject to a retention of 10% which shall be payable to the Contractor (less any deductions) as follows:
 - 7.9.1** one-half of the total retention monies upon issue of the Practical Completion Certificate; and

GENERAL CONDITIONS TO MEDIUM WORKS CONTRACT

7.9.2 the remaining one-half of the retention monies by the 20th day of the month following the month of issue of the Final Completion Certificate.

7.10 Set off: The Principal is entitled to set off against any payments otherwise due to the Contractor amounts in respect of claims the Principal has against the Contractor under the Contract or at law.

8. DEFAULT, TERMINATION AND DAMAGES

8.1 Notification of intention to terminate: If either the Contractor or the Principal fails to fulfil their respective obligations under the Contract the other is entitled to notify the defaulting party in writing of the default giving that party ten (10) Working Days to remedy the default. If after ten (10) Working Days the default has not been remedied the party that notified the default may notify in writing the termination of the Contract.

8.2 Termination for insolvency: The Contractor or the Principal may notify the other in writing that the Contract is terminated if the other becomes bankrupt, dies, compounds with creditors, makes an assignment for the benefit of creditors, goes into liquidation, or has a receiver appointed, and in the case of the Contractor only, fails within ten (10) Working Days to make arrangements to take over the Works that are satisfactory to the Principal.

8.3 Materials, plant and equipment on termination: If the Contract is terminated for a Contractor default under 8.1 or 8.2 above, the Contractor must immediately demobilise from the Site leaving behind any materials, plant and Contractor's equipment which the Principal instructs in the second notice is to be used for completing the Works.

8.4 Force Majeure: If either party is or will be prevented from performing any of its obligations by Force Majeure, the party affected must immediately notify the other party in writing. If the Force Majeure event continues to prevent performance for a period of 56 days, either party may give the other party written notice of termination of the Contract, which shall take effect 28 days after the giving of notice.

8.5 Liquidated Damages: The sum stated as liquidated damages under the Special Conditions must be paid by the Contractor to the Principal for the period between the Due Date for Completion and the actual date of Practical Completion.

8.6 Limitation of Liability: Under no circumstances whatsoever will the Principal be liable to the Contractor for any indirect or consequential loss and/or expense (including loss of profit).

9. DISPUTES

9.1 Negotiate in good faith: If either party notifies the other in writing of any dispute arising out of or in relation to the Contract, the parties must in good faith endeavour to resolve the dispute. The parties may agree to use a mediator.

9.2 Arbitration: If the dispute is not resolved within twenty (20) Working Days after the date of the notice of dispute, then unless both parties agree otherwise, the dispute must be referred to a sole arbitrator, to be agreed between the parties or appointed under the procedures of the Arbitration Act

GENERAL CONDITIONS TO MEDIUM WORKS CONTRACT

1996, for resolution in accordance with the Arbitration Act 1996. The award in the arbitration shall be final and binding on the parties.

10. CONFIDENTIALITY

- 10.1** The Contractor must use its best endeavours to keep confidential all matters relating to the Contract. The Contractor must not disclose any information except to the extent that:
- 10.1.1** the disclosure of that information is necessary for the Contractor to carry out its obligations under this Contract to enforce any of its rights under it; or
 - 10.1.2** that disclosure is required by law.
- 10.2** The Contractor must keep confidential any claim or dispute under the Contract.
- 10.3** The Contractor must not advertise its relations with the Principal or its involvement in the Works without the written permission of the Principal.
- 10.4** The Contractor must ensure that its subcontractors are bound by a similar clause in any subcontract.

11. PRIVACY OF CONTRACT

- 11.1** Where the Principal is a School, the obligations of the Contractor and any of its subcontractors under the Contract shall for the purposes of the Contracts (Privity) Act 1982 be deemed to be for the benefit of the Ministry of Education (including, its successors and assigns) and shall be enforceable by the Ministry of Education against the Contractor or any of its subcontractors but not so as to impose any greater liability on the Contractor or its subcontractors towards the Ministry of Education than the Contractor owes or owed to the Principal.
- 11.2** Where the Principal is the Ministry of Education, the obligations of the Contractor and any of its subcontractors under the Contract shall for the purposes of the Contracts (Privity) Act 1982 be deemed to be for the benefit of the School (including, its successors and assigns) and shall be enforceable by the School against the Contractor or any of its subcontractors but not so as to impose any greater liability on the Contractor or its subcontractors towards the School than the Contractor owes or owed to the Principal.

APPENDIX 1

CONTRACT PRICE SUMMARY

Note 1: The prices stated in the Contract Price Summary are fully inclusive of all allowances for on-site and off-site overhead of whatsoever nature and profit.

Note 2: All prices and rates are stated exclusive of goods and services tax, which is to be added and paid where appropriate.

	Item	Price
1	<i>[insert]</i>	
2	<i>[insert]</i>	
3	<i>[insert]</i>	
<i>etc</i>	<i>etc</i>	
<i>etc</i>	<i>etc</i>	
	Total Lump Sum Contract Price	\$

Schedule of Prices

[only include schedule of prices where appropriate for the nature of the Works]

APPENDIX 2
THE DRAWINGS

APPENDIX 3

THE SPECIFICATIONS

APPENDIX 4

HEALTH AND SAFETY REQUIREMENTS

- (a) the Health and Safety at Work Act 2015 (HSWA);
- (b) all relevant Regulations made pursuant to the HSWA;
- (c) all approved codes of practice pursuant to the HSWA, to the extent relevant to the Works;
- (d) all guideline publications issued by the HSWA Regulator, to the extent relevant to the Works;
- (e) all relevant recognised standards as issued by any relevant standard issuing body; and
- (f) the Principal's health and safety processes and procedures as revised from time to time and available on the Ministry of Education's website under the following link:
www.education.govt.nz/school/property/health-and-safety-management/

APPENDICES TO MEDIUM WORKS CONTRACT

APPENDIX 5

ASBESTOS HANDLING REQUIREMENTS

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

www.education.govt.nz/school/property/state-schools/fixing-issues/asbestos

APPENDICES TO MEDIUM WORKS CONTRACT

APPENDIX 6

FORM OF CONTRACTOR'S WEATHERTIGHTNESS WARRANTY

Contract for: *[contract name & contract number]*

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

BY (*'the Contractor'*)

IN FAVOUR OF (*'the Principal'*)

IT IS MADE IN THE FOLLOWING CIRCUMSTANCES

- A** By an agreement dated the day of20 (*'the Contract'*) made between the Principal and the Contractor, the Contractor agreed to carry out and complete the Works.
- B** The Contract requires the Contractor to provide the Principal with a weathertightness warranty on the terms set out in this warranty.
- C** Words and phrases with capital initial letters that are not otherwise defined in this warranty shall have the same meaning as set out in the Contract.

BY THIS DEED

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

APPENDICES TO MEDIUM WORKS CONTRACT

- 6. **THE** Contractor must make good any damage to buildings or structures in the vicinity of the Works caused by:
 - (a) a failure of the Works to remain weathertight in accordance with the Contract and best New Zealand industry standards; or
 - (b) any remedial works carried out by or on behalf of the Contractor under this warranty.

- 7. **THE** Contractor must remedy the defects and damage notified by the Principal under this warranty within fourteen (14) Working Days of receipt of the Principal's notice or within such other reasonable time as determined by the Principal (at its discretion) as may be stated in writing in the Principal's notice under this clause.

- 8. **IF** the Contractor fails to adequately and satisfactorily carry out any work notified by the Principal under this warranty within the time required under clause 7, the Principal may, after giving five (5) Working Days' further written notice to the Contractor, undertake the work itself or direct others to undertake the work. In such event:
 - (a) the Contractor shall not be relieved of any of its obligations under this warranty; and
 - (b) the cost of the work undertaken by the Principal or others (including without limitation labour, materials, travel and other charges or expenses related to the work) shall be recoverable by the Principal from the Contractor on demand.

- 9. **THE** Contractor shall not be liable for any defect or damage caused by:
 - (a) wilful act or negligence of the Principal; or
 - (b) any such operation of the forces of nature as an experienced contractor could not reasonably foresee or make provision for.

- 10. **NOTICES** given to the Contractor under this warranty are deemed to have been effectively served on the Contractor if given in accordance with the notice requirements in the Contract.

- 11. **THE** Principal may assign the benefits and rights under this warranty.

- 12. **THIS** warranty is governed by the laws of New Zealand.

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

SIGNED on behalf of the Contractor by:

.....
Director

.....
Director

NOTE – This warranty shall be executed by the Contractor in the manner required for execution of a deed. If the Contractor is a company it shall execute the warranty by having it signed, under the name of the company, by two or more directors. If there is only one director, it is sufficient if the warranty is signed under the name of the company by that director, but the signature shall be witnessed by another person. The witness shall not only sign

APPENDICES TO MEDIUM WORKS CONTRACT

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

APPENDICES TO MEDIUM WORKS CONTRACT

APPENDIX 7

PRACTICAL COMPLETION CERTIFICATE

This Practical Completion Certificate is issued under 5.3.3.

Contract for (Contract name)

Principal (Insert name of Principal)

Contractor (Insert name of Contractor)

This certificate relates to the whole of the Works referred to above.

Receipt of the Contractor's notice dated and issued in accordance with 5.3.2 is acknowledged.

In accordance with 5.3.3, the Principal certifies that the Works to which this certificate relates qualify for a Practical Completion Certificate under 5.3.3, notwithstanding that there may be minor omissions and/or minor defects (as listed in the attached schedule) which satisfy the criteria in 5.3.1(b).

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 Principal

Name

Date

SCHEDULE

The following omissions and/or defects have been assessed as being of a minor nature satisfying the criteria in 5.3.1(b) and were identified during an inspection carried out by the Principal or Principal's Representative on(insert date)

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

APPENDICES TO MEDIUM WORKS CONTRACT

APPENDIX 8

FINAL COMPLETION CERTIFICATE

This certificate is a Final Completion Certificate issued under 5.4.

Contract for (*Contract name*)

Principal (*Insert name of Principal*)

Contractor (*Insert name of Contractor*)

This certificate relates to the whole of the Works referred to above

In accordance with 5.4, the Principal certifies that the Works to which this certificate relates qualify for a Final Completion Certificate issued under 5.4

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

Signed by the Principal

Name

Date

APPENDICES TO MEDIUM WORKS CONTRACT

APPENDIX 9

PART A: SUBCONTRACTOR WARRANTIES

The Warranty Period runs from the date of Practical Completion (refer Part B: Form of Subcontractor Warranty).

[Note: add/ amend table below as appropriate for the specific requirements of the project]

SUBCONTRACT WORKS		WARRANTY PERIOD	
Trade	Item/Material	Material warranty period	Workmanship warranty period
Brick/block/stone veneer		15 years	5 years
Building System	Management		
	Functioning	5 years	5 years
Carpentry	Framing	15 years	5 years
Cladding	Wrap/flashing tape	15 years	5 years
	Timber weatherboards	15 years	5 years
	Fibre cement	15 years	5 years
	Solid plaster	15 years	5 years
	Acrylic plaster	15 years	5 years
	Metal	15 years	5 years
	Insulating panel	15 years	15 years
	High pressure laminate	10 years	5 years
	Plywood	15 years	5 years
	Finishing timbers	10 years	5 years
	Fixing/weathering accessories	15 years	5 years
Concrete Blockwork		15 years	5 years
Concrete	Floor slabs	15 years	5 years
	Insitu	15 years	7 years
	Precast	15 years	7 years
Drainage	Stormwater reticulation	10 years	5 years
	Sanitary sewer reticulation	10 years	5 years
	Wastewater treatm't vessel	15 years	5 years
	Wastewater treatm't active equip	2 years	2 years
Electrical			

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	In-ground services	10 years	5 years
	Above-ground reticulation	10 years	5 years
	Fixtures / fittings	1 year	1 year
	Switch/distribution boards	1 year	1 year
	Light fittings	5 years	5 years
	Lamps - Discharge	1 year	1 year
	Lamps - Fluorescent	1 year	1 year
	Lamps - LED	5 years	5 years
	Lamps - Halogen	1 year	1 year
	Emergency light fittings	5 years	5 years
	Emergency lighting batteries	1 year	1 year
Fire protection			
	In-ground reticulation/fittings	10 years	5 years
	Above ground cabling	10 years	5 years
	Above ground sprinkler reticulation	10 years	2 years
	Sprinkler heads	10 years	2 years
	Alarm control panel	2 years	2 years
	Heat/smoke detectors	5 years	2 years
	Sprinkler valves	10 years	2 years
	Sprinkler electronics	2 years	2 years
	Sprinkler pump	2 years	2 years
	Water storage tanks	20 years	2 years
Fire windows/doors/curtains			
	Doors timber	5 years	1 year
	Doors steel	5 years	1 year
	Windows steel	5 years	1 year
	Curtains	5 years	1 year
Floor coverings			
	Polyprop outdoor	3 years	2 years
	Polyprop indoor	10 years	2 years
	Soft	10 years	2 years
	Resilient	5 years	2 years
	Rubber	5 years	2 years
	Resin	5 years	5 years
	Screed	10 years	10 years
	Sports surface timber	5 years	5 years
	Sports surface synthetic	5 years	5 years
Gas fitting			
	In-ground services	10 years	5 years
	Above ground Reticulation	10 years	5 years
	Water heating	5 years	1 year
	Fittings and fixtures	3 years	1 year
Glazing			
	IGU units	10 years	5 years
	Single glazing	10 years	5 years
	Curtain wall	15 years	5 years

APPENDICES TO MEDIUM WORKS CONTRACT

	Balustrades	10 years	5 years
	Mirror	10 years	5 years
Hardware			
	Door track /operating systems	10 years	2 years
	Door furniture	10 years	2 years
	Access control systems	1 year	1 year
	Electric/electronic components	1 year	1 year
	Keys	1 year	1 year
	Miscellaneous hardware	10 years	2 years
Heat pumps split-system			
	Condensor	7 years	7 years
	Indoor unit	7 years	7 years
HVAC systems			
	Ductwork	3 years	1 year
	In-slab pipe reticulation	25 years	5 years
	Other reticulation	5 years	5 years
	Radiator functional performance	25 years	5 years
	Pumps, fans and active equipment	5 years	5 years
	Boiler	5 years	5 years
	Electric and electronic controls	1 year	1 year
ICT			
	Cable and system installation		2 years
	Cable rated performance	20 years	
	Switches and wireless router	5 years	
	Router rated performance	90 days	
	Cabinets	5 years	
	Patch leads and hardware items	5 years	
Insulation Thermal			
	Sub-floor	15 years	5 years
	Walls	10 years	3 years
	Roof	10 years	3 years
	Interior	10 years	3 years
Insulation Acoustic			
	Acoustic wall coverings	10 years	2 years
	Staple & glue acoustic overlay	30 years	2 years
Interior linings			
	Walls	5 years	2 years
	Ceilings -direct fix	5 years	2 years
Intruder detection			
	Cable reticulation	5 years	5 years
	Cameras	3 years	1 year
	Other hardware items	1 year	1 year
Joinery			
	Fixtures	2 years	2 years
	Interior doors	2 years	2 years
Laminated timber			

APPENDICES TO MEDIUM WORKS CONTRACT

	Structural frames	50 years	5 years
	Concealed members	15 years	5 years
	Accessible members	5 years	2 years
Lift			
	Equipment and operation	5 years	5 years
Mechanical services			
	Dust extraction unit/ducting	5 year	5 year
	Dust extraction active equipment	1 year	1 year
	Spray booth unit	5 years	5 years
	Spray booth active equipment	1 year	1 year
	Compressor unit	1 year	1 year
Metal windows and doors			
	Fabrication (aluminium)	5 years	5 years
	Fluoropolymer coating	15 years	5 years
	Polyester coating	10 years	5 years
	Anodising	15 years	5 years
	Weathertightness	15 years	5 years
	Glazing	10 years	5 years
	Hardware	2 years	2 years
	Window operating units	2 years	2 years
	Door auto-openers	2 years	2 years
Metalwork			
	Fabrication	15 years	7 years
Operable Walls			
		1 year	1 year
Painting			
	Protective coatings - intumescent	10 years	5 years
	Anti-Graffiti	5 years	5 years
	Exterior Hi-build waterproof	10 years	10 years
	Exterior cementitious	12 years	5 years
	Exterior metal	10 years	5 years
	Exterior timber	10 years	5 years
	Interior	10 years	5 years
Photovoltaic panels			
	PV panels	10 years	1 year
	Invertor	5 years	1 year
Plumbing			
	In-ground services	10 years	5 years
	Above ground reticulation	10 years	5 years
	Water heating	5 years	1 year
	Boiling water units	7 years	1 year
	Fittings and fixtures	3 years	1 year
	Solar water heating collector	5 years	1 year
	Solar water heating cylinder	3 years	1 year
Proprietary partitions			
	Laminate partitions	10 years	2 years

APPENDICES TO MEDIUM WORKS CONTRACT

	Hardware items	2 years	2 years
Roller/tilta/sectional doors			
	Door units	1 year	1 year
	Operating mechanism	5 years	5 years
Roofing			
	Underlay	15 years	5 years
	Netting	15 years	5 years
	Metal- material	30 years	5 years
	Metal - coating	15 years	5 years
	Translucent - rain penetration	20 years	5 years
	Translucent - clarity	15 years	5 years
	Translucent - trafficability	20 years	5 years
	Membrane and weather-tightness	20 years	20 years
	Insulating panel	15 years	15 years
	Cappings and flashings	15 years	5 years
	Rainwater systems - metal	10 years	5 years
	Rainwater systems - uPVC	15 years	5 years
	Weather-tightness	15 years	5 years
	Fixings	5 years	5 years
	Skylights and operating system	10 years	2 years
	Skylight blinds/accessories	1 year	1 year
Roof access systems			
	Walkways / platforms / stairs	25 years	5 years
	Roof hatch	10 years	5 years
Sealants			
	Exterior	10 years	10 years
	Interior	10 years	10 years
Siteworks			
	Sub-soil drainage	10 years	5 years
	Stormwater drainage	10 years	5 years
	Retaining walls	10 years	5 years
	Insitu concrete	10 years	5 years
	Paving - cobble alignment	5 years	5 years
	Asphalt paving	10 years	5 years
	Line marking	5 years	5 years
	Irrigation systems	5 years	5 years
	Synthetic sports surface	10 years	10 years
	Fencing	5 years	5 years
Structural steel			
	Fabrication	25 years	5 years
	Corrosion protection	10 years	5 years
	Intumescent coatings	10 years	5 years
Suspended ceilings			
	Grid	30 years	5 years
	Acoustic panels	30 years	5 years
Tanking			

APPENDICES TO MEDIUM WORKS CONTRACT

	Tanking membrane	20 years	20 years
	Membrane protection	20 years	5 years
Tiling			
	waterproofing	15 years	2 years
	Tiling	15 years	2 years
Timber Joinery			
	Interior units	2 years	1 year
	Hardware	2 years	1 year
	Interior doors	5 years	5 years
Weather-tightness			
	Overall envelope	15 years	5 years
Window coverings			
	Fabric	5 years	3 years
	Electric operation	3 years	3 years
	Applied film -heat/glare	12 years	12 years
	Applied film - decorative internal	7 years	7 years
	Applied film - safety	12 years	12 years
Miscellaneous			
	Signage	5 years	2 years
	Street furniture	10 years	2 years

APPENDICES TO MEDIUM WORKS CONTRACT

PART B: FORM OF SUBCONTRACTOR WARRANTY

Contract for: *[contract name & contract number]*

THIS DEED is made on day of20.....

BETWEEN ('the **Principal**')

AND ('the **Warrantor**')

DEFINITIONS

Warranted Works *[xx]*

Warranty Period *[xx]* years from the date of Practical Completion of the Works

Contractor *[xx]*

BACKGROUND

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

IT IS HEREBY AGREED

- 1** The Warrantor warrants to the Principal that the Warranted Works are as required in the Contract. If not otherwise specified the works shall be in accordance with good trade practice.
- 2** This warranty shall be in addition to and shall not derogate from any manufacturer's warranty or any warranty implied by law or the Defects Notification Period in the Contract, attaching to any part of the Warranted Works.
- 3** **Warrantor's obligations**
 - 3.1** The Warrantor agrees that, if within the Warranty Period the Warrantor is advised by the Principal in writing of any defect in the Warranted Works for which the Warrantor is liable under the terms of this warranty, the Warrantor will promptly take steps to remedy the defect.

APPENDICES TO MEDIUM WORKS CONTRACT

- 3.2** Any remedial work which the Warrantor is liable to undertake under this warranty shall be carried out:
- (a) To the standard required by the Contract;
 - (b) In a prompt and timely manner;
 - (c) Without unnecessary inconvenience to any occupants;
 - (d) At the Warrantor's Cost; and
 - (e) Subject to reasonable access being provided to the Warrantor for the purpose of carrying out the remedial work.

4 Failure by Warrantor to perform remedial work

- 4.1** If the Warrantor fails to promptly, adequately and satisfactorily carry out the remedial work or to propose acceptable repair or compensation, the Principal may then arrange for the remedial work to be carried out by others.
- 4.2** The Principal shall first give the Warrantor 10 Working Days' notice, or such other reasonable time as agreed by the Principal, to carry out and complete the remedial work. If the Warrantor does not do so within that time, the Principal may then advise the Warrantor in writing that the work will be carried out by other Persons.
- 4.3** In such an event, the Warrantor is not released from its obligations under this warranty, which continue in full force and effect, except for the defect remedied by the Principal or by another Person contracted by the Principal.
- 4.4** The reasonable Cost of remedial work carried out by such other Persons including all reasonable Costs of the Principal shall be paid to the Principal by the Warrantor on demand.

5 Exclusions

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

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

6 Assignment

APPENDICES TO MEDIUM WORKS CONTRACT

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

7 Disputes

Any dispute between the Principal and the Warrantor arising out of this warranty is to be referred to arbitration before a sole arbitrator. If, within 15 Working Days of notice of dispute, the Principal and the Warrantor cannot agree on a single arbitrator, either party may request the President of the Arbitrators' and Mediators' Institute of New Zealand to appoint an arbitrator.

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

SIGNED on behalf of the Warrantor by:

.....
Director

.....
Director

SIGNED for and on behalf of the Principal by:

.....
Authorised Signatory

.....
Authorised Signatory

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.

APPENDIX 10

THE PRINCIPAL'S REQUEST FOR TENDER

APPENDIX 11

CONTRACTOR'S TENDER