

**CHANGES TO MINISTRY OF EDUCATION
STANDARD FORM CONTRACTS – AUGUST 2018**

Directory Agreement	
Change	Reason for Change
Secondary Procurement Process (clause 3.2(a)(iii))	To ensure that a Suppliers Standing in the Directory is not prejudiced in the event that it withdraws from a tender process on the grounds that the requirements of the RFT are materially different to those set out in the initial Works Notice.
Termination (clause 10.3)	To clarify that on termination of the Directory, Ministry property should be returned to the Ministry unless such property is required by the Supplier in order to perform its obligations under a continuing Underlying Contract with the Ministry.
Major Works Contract	
Change	Reason for Change
Contractor's Bond (Schedule 1 clause 3.1.1)	This point notes that a 5% bond is mandatory for Major Works Contracts over \$1m. Bonds may be required for Major Works Contracts between \$500,000 - \$1m, subject to project risk factors.
Access to adjoining property (Schedule 1 clause 5.4.3)	Guidance note added to allow for possibility that the School or Ministry may have made access arrangements with owners of adjoining properties.
Programme (Schedule 1 clause 5.10.4(e))	In response to industry feedback, the provision stating that Programme is deemed to include an allowance for time to review design and resolve any ambiguities or omissions has been deleted.
Retentions (Schedule 1 clause 12.3.1/12.3.2)	Returns the retentions regime in the Major Works contract to the standard NZS 3910:2013, but with a higher cap on the total retention figure (now \$500,000).
Weathertightness Requirements (Schedule 2 clause 5.1.7)	This amendment clarifies that the Contractor's obligation to comply with the Weathertightness Requirements is limited to situations where the Contract Works include any design responsibility on the part of the Contractor.

H&S (Schedule 2 clause 5.7)	Contractor requirements (clause 5.7.3)	Aligns health and safety provisions of the contract with Ministry policy and expectations, and legislative requirements.
	H&S – Notifiable Events (clause 5.7.5(a))	Aligns health and safety provisions of the contract Ministry Policy and legislative requirements, this allows the Ministry adequate time to assess the relevant risk and respond appropriately.
	H&S – Health and safety supervisor (clause 5.7.7)	Clause amended to clarify that any independent health and safety supervisor appointed by the Ministry would give instructions directly to the Engineer and/or Contractor, rather than directly to the subcontractors, and ensures that Contractors will require compliance with instructions from the Ministry regarding health and safety from their Subcontractors.
	H&S – Compliance standards (clause 5.7.15)	Standard changed from “best endeavours” to “all reasonably practicable endeavours” to better align with the corresponding standard in the Health and Safety at Work Act 2015.
	H&S – Subcontractors (new clause 5.7.20)	New clause to clarify that Contractors must ensure that the Ministry’s health and safety requirements are passed on to subcontractors, and that Contractors actively manage compliance by subcontractors with those requirements.
Nominal Deductibles (Schedule 2 clause 8.1.7(e))		To limit the Contractor’s liability to pay nominal deductibles that become payable due to an act or omission by the default of the Contractor or any other party for whom the Contractor is responsible (including Subcontractors).
Valuation of negative Variations (Schedule 2 clause 9.3.13)		The clause (which provided that variations negative variations should include a corresponding reduction in the Off-site Overheads and Profit) has been deleted on the basis of feedback from the Industry.
Design and Construct Contract		
Change		Reason for Change
Note: all of the above changes as for the Major Works Contract (with the exception of deleting the requirement for contractors to allow time for review of design documents in their programmes described above) will also be reflected in the template Design and Construct Contract.		

ECI Agreement	
Change	Reason for Change
Fees (clause 10.2(a))	Intended to clarify that the Ministry is responsible for any fees / charges imposed by a Council or a utilities provider.
Payment claims (clause 10.3(a) and Schedule 3)	Provides an alternative method of payment to the standard monthly payment claims (where payment is based on percentage of work completed at the end of each month) to allow for payment claims on completion of predetermined stages.
Award of Construction Contract (clauses 16.1(b) and 16.2(a))	These amendments align the ECI agreement's position on when a contract is formed between the parties with the Major Works and Design and Construct Contracts. This is in an effort to ensure a consistent position across important Ministry forms of agreement.
Securing rights (clause 18.3)	Changes the standard from an absolute obligation to obtain necessary licences to the use of "all reasonable endeavours". This recognises that that an absolute obligation is not always capable of being met where third parties are involved.
Long Lead items (clause 27.4(b))	In the event that Contractor defaults under any contracts for the procurement of Long Lead Items which it has been obliged to enter into by the terms of the ECI Agreement, the Ministry will reimburse the Contractor for its costs to the extent that the Contractor's default was caused, or contributed to, by the Ministry.