



# Subcontract agreement

SA - 2017

Project: \_\_\_\_\_

Trade: \_\_\_\_\_

Subcontractor: \_\_\_\_\_

Reference: \_\_\_\_\_



*Building Excellence For Over 100 Years*

## FOREWORD to SA-2017

SA-2009 was a historic collaboration between parties representing builders and subcontractors to produce a workable and reasonably balanced document that clearly set out each party's obligations, but was able to be tailored to suit particular requirements.

SA-2017 is an update to ensure compliance with the Construction Contracts Amendment Act 2015, to align the document with NZS 3910:2013 and to provide an option to enable use with NZS 3916: 2013.

Following consultation with various parties from each side, changes other than those noted above were minor.

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## FOREWORD to SA-2009

A good working relationship between the Contractor and Subcontractor is critical to ensuring construction projects run smoothly and are completed on time and to budget. As much as these good relationships do exist, there has also been a long history of disputes and other problems.

This Subcontract Agreement is aimed at enhancing already established practices by ensuring obligations and responsibilities are identified up front, thereby avoiding later disputes which can be costly in both time and goodwill.

The Agreement was developed by a working group of representatives from the Registered Master Builders Federation and the New Zealand Specialist Trade Contractors Federation Incorporated (formerly the New Zealand Building Subcontractors Federation).

| <b>Registered Master Builders Federation</b>   | <b>New Zealand Specialist Trade Contractors Federation</b>        |
|--|---|
| Robert Finlev - Hawkins Construction   | Ian Butturini - Electrical Contractors Association Of New Zealand |
| John Hale - Fletcher Construction  | Rod Fulford - Precast New Zealand                                 |
| Noel O'Rourke - Mainzeal Construction  | Roger O'Neil - Reinforcing New Zealand Incorporated               |
| Tim Strawbridge - Foster Construction  | Mike Sentsch - Roofing Association New Zealand Incorporated       |
| <b>Legal advice provided by:</b><br>Michael Weatherall - Simpson Grierson<br>Mary Haggie - Kensington Swan<br>Andrew Hazelton - Hazelton Law | <b>Project Managers:</b><br>Rob Steele<br>Grant Thomas            |

The document has four parts:

1. The Subcontract Agreement
2. The Subcontract Specific Conditions (which includes Special Conditions)
3. The Subcontract General Conditions
4. Appendices

The Subcontract Agreement contains basic information naming the parties, price, etc, and lists the subcontract documents.

The Subcontract General Conditions make up the bulk of the document and contain the standard contract clauses that should not be changed. Attempts to tailor the Subcontract General Conditions are likely to mislead parties and result in confusion or disputes. If any changes to these conditions are required by either party or the particular head contract, they must be covered in the Subcontract Specific Conditions or Special Conditions to be agreed between the parties. Subcontract Specific Conditions take precedence over all other documents except where there are Special Conditions whereby these take precedence over the Subcontract Specific Conditions.

Once parties are familiar with this Agreement, they will not need to refer to the Subcontract General Conditions, as the content will be well known and understood. The Subcontract Specific Conditions should contain all the contract information that parties require for pricing and signing of the contract.

The tables in the Subcontract Specific Conditions provide a basis to confirm the specific obligations of the parties referred to in the Subcontract General Conditions. Many of the tables require a simple yes or no; others contain suggested time frames and other details; while some require specific information to be inserted. Any figures within the tables are guidelines only; they can be altered as agreed between the Contractor and Subcontractor.

Clauses not relevant to particular contracts can be ignored or noted in Special Conditions as not being applicable. Situations not dealt with by the standard document should also be covered in Special Conditions.

Although reference is made to performance bonds and bonds in lieu of retentions, and example forms are provided for these, it is not intended to promote the use of bonds, but rather to provide a basis for their use if agreed to by the parties.

Pre-letting meetings are strongly encouraged and Appendix D provides an example form that may be used or adapted for this. The pre-letting meeting minutes should record what is agreed and should be included in the Subcontract Documents. This will then take precedence over other conditions, but whatever is agreed and recorded in the pre-letting meeting minutes should also be recorded in the Subcontract Specific Conditions.

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**SUBCONTRACT AGREEMENT**

**THIS AGREEMENT** is made on the [ ] day of [ ] 20 [ ]

**BETWEEN**     **“The Contractor”**  
Post Address [ ]  
Street Address [ ]  
Fax Number [ ]  
Email [ ]

**AND**           **“The Subcontractor”**  
Post Address [ ]  
Street Address [ ]  
Fax Number [ ]  
Email [ ]  
GST Number [ ]

**BACKGROUND**

- A    the Contractor has entered into a contract with [ ] (**“Principal”**)  
for [ ] (**“Head Contract”**).
- B    The Subcontractor is to complete part of the Head Contract Works, as follows  
[ ] (**“Subcontract Works”**).

**THE PARTIES AGREE:**

- 1.    They will carry out and fulfil all obligations imposed on them by this Subcontract Agreement.
- 2.    For the Subcontract Sum of \$ [ ] (GST excl.),  
or such greater or less sum as may become payable under the terms of this Subcontract, the Subcontractor will carry out and complete the Subcontract Works (and remedy all defects in the Subcontract Works) as required by this Subcontract and the conditions of the Head Contract that apply to the Subcontract Works.
- 3.    Unless otherwise stated in this Subcontract, the Subcontractor will provide all labour, materials, services, equipment and plant required for the proper completion of the Subcontract Works.
- 4.    The following items constitute the Subcontract (“Subcontract Documents”)
  - a)    This Subcontract Agreement;
  - b)    The Subcontract Specific Conditions including Additional Documents and Special Conditions;
  - c)    The Subcontract General Conditions;
  - d)    The contract documents (as defined under the Head Contract), which relate to the Subcontract Works.
- 5.    The Subcontract Documents are the entire contract between the Contractor and the Subcontractor. This Subcontract supersedes all negotiations, representations and warranties.

SIGNED for and on behalf of  
the CONTRACTOR:

SIGNED for and on behalf of  
the SUBCONTRACTOR:

(authorised representative of the Contractor)  
in the presence of:

(authorised representative of the Subcontractor)  
in the presence of:

# SUBCONTRACT SPECIFIC CONDITIONS

Clause numbers refer to Subcontract General Conditions.

## 2. THE CONTRACT

The general conditions of the Head Contract are   
as may have been modified by other documents in the Head Contract

## 3. SUBCONTRACTOR'S BONDS AND GUARANTEES

|       |  |        |
|-------|--|--------|
| 3.1.1 | Performance bond   | Yes/No |
| 3.1.1 | Value of performance bond  | \$     |
| 3.2   | Bonds in lieu of retentions                                      | Yes/No |
| 3.2.1 | Value of bond in lieu of retentions for contract period          | \$     |
| 3.2.1 | Value of bond in lieu of retentions for defects liability period | \$     |
| 3.3   | Trade guarantees or warranties required                          | Yes/No |
|       | When required  |        |
|       | Duration   | Period |
|       | Copies attached  | Yes/No |
| 3.3.1 | Continuity guarantee required                                    | Yes/No |
|       | Copy attached  | Yes/No |

## 8. INSURANCE

|               |  |   |
|---------------|--|---|
| 8.1.1         | Contract Works Insurance by:                                 | Principal/Contractor                        |
|               | Deductible for Contract Works insurance under Head Contract  | \$  |
| 8.2.2         | Insurance of Subcontract Works by Subcontractor              | Yes/No                                      |
| <b>If Yes</b> |  |   |
| 8.2.3         | Value of Subcontract Works insurance by Subcontractor        | \$  |
|               | Subcontract Value  | \$  |
|               | Plus allowances for:   |   |
|               | Demolition and removal of debris      %                      | \$  |
|               | Fees      %  | \$  |
|               | Increase in costs      %                                     | \$  |
|               | Variations      %  | \$  |
|               | Total Value to be Insured                                    | \$  |
|               | Subcontract Works insurance required by Subcontractor until: | Practical Completion of Head Contract Works |
|               | (Delete those that do not apply)                             | Completion of the Subcontract Works         |
|               |  | Other:                                      |

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|       |   |                              |
|-------|---|------------------------------|
| 8.3   | Plant and equipment – list of items to be insured for market value of each item |                              |
| 8.4.2 | Public Liability – amount not less than   | Minimum \$5,000,000 or<br>\$ |
| 8.4.4 | Use of aircraft or watercraft to be insured                                     | Yes/No<br>\$                 |
| 8.4.5 | Vibration removal of support insurance  | Yes/No<br>\$                 |
| 8.5.2 | Motor vehicle liability – amount not less than                                  | Minimum \$5,000,000 or<br>\$ |
|       | Special extension required for “airside” or other                               | Yes/No                       |
| 8.6.2 | Professional indemnity insurance required                                       | Yes/No                       |
|       | Professional indemnity insurance required                                       | \$                           |

## 9. VARIATIONS

|       |  |                             |
|-------|--|-----------------------------|
| 9.1.3 | Time for notification of intention to claim that work involves a variation | 5 Working Days              |
| 9.2.2 | Time for submission of price and details of a variation                    | 5 Working Days from request |

## 10. TIME

|        |  |  |
|--------|--|--|
| 10.1.1 | Due dates for practical completion of the Head Contract  |  |
| 10.1.1 | Due dates for practical completion of separable portions |  |
| 10.4.1 | Liquidated damages applicable under the Head Contract    | \$<br>Per calendar month/day/week<br><i>(delete all but one)</i> |
| 10.4.1 | Liquidated damages applicable under separable portions   | \$<br>Per calendar month/day/week<br><i>(delete all but one)</i> |

## 11. DEFECTS

|        |  |  |   |
|--------|--|--|---|
| 11.1.2 | Defects liability period                       |  | Weeks/months <i>(delete one)</i><br>from the date of the notice of completion of the Subcontract Works under clause 10.4.2(a) |
| 11.1.2 | Defects liability period of separable portions |  | Weeks/months <i>(delete one)</i><br>from the date of the notice of completion of the Subcontract Works under clause 10.4.2(a) |

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## 12. PAYMENTS

The due dates and details are as follows:

|        |   |   |
|--------|---|---|
| 12.1.1 | Frequency for submission of payment claims  |   |
| 12.1.1 | Due date for payment claims   | 5 Working Days before end of month for work to the end of that month  |
| 12.1.1 | Due date for variation claims   | 5 Working Days before the due date for payment claims   |
| 12.2.1 | Due date for payment schedules  | 22 Working Days after the end of the claim month  |
| 12.2.1 | Due date for payments   | 22 Working Days after the end of the claim month  |
| 12.3.1 | Due date for final account  | 20 Working Days after the date of Head Contract practical completion  |
| 12.4.1 | Percentage of total amount certified to be held as retention (only if retention bond not provided see 3.2.1)  | Up until completion of the Subcontract Works  |
|        |   | % of the first \$   |
|        |   | % of the next \$  |
|        | % of the remainder  |   |
| 12.4.2 | Percentage to be retained for defects liability period (after the initial release of retentions and only if retention bond not provided, see 3.2.1) | For defects liability period % of total retentions  |
| 12.4.2 | Due date for initial retention release  | 22 Working Days after the end of the month in which the notice of completion of the Subcontract Works under clause 10.4.2(a) is issued  |
| 12.4.2 | Due date for final retention release  | 25 Working Days after the completion of the defects liability period, or seven working days after completion of rectification of all defects in the Subcontract Works, whichever is later |

## MISCELLANEOUS

|        |  |  |
|--------|--|--|
| 5.2.2  | Subcontractor is required to obtain building consent for Subcontract Works | Yes/No   |
| 5.13.1 | Shop drawings required   | Yes/No   |
| 5.13.1 | As built drawings required   | Yes/No<br>If yes,<br>due by the month prior to the due date for practical completion |
| 5.13.1 | Operating instruction and maintenance manuals required                     | Yes/No<br>If yes,<br>due by the month prior to the due date for practical completion |
| 5.13.1 | Producer statements required: Construction (PS3)                           | Yes/No   |

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|             |   |                            |
|-------------|---|----------------------------|
| 6.1.5       | Producer statements required: Design (PS1)              | Yes/No                     |
| 6.1.5       | Producer statements required: Design review (PS2)       | Yes/No                     |
| 6.1.5       | Producer statements required: Construction review (PS4) | Yes/No                     |
| 12.5.1      | Payment for materials off-site                          | Yes/No                     |
| 12.5.1      | Conditions required for off-site payment                | Refer to Head Contract     |
| 12.8        | Cost fluctuation adjustments                            | Yes/No<br>If yes,          |
| Appendix A: | Is this a Supply Only Subcontract?                      | Yes(Appendix A applies)/No |
|             | Subcontract sum is subject to remeasure                 | Yes/No                     |
| Appendix D: | Pre-letting meeting held                                | Yes/No                     |
|             | Other:  |                            |

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## ADDITIONAL DOCUMENTS

The following documents, all of which are attached, form part of this Subcontract (check those which apply):

- a)  Invitation to tender dated [redacted] including all documents listed in the invitation to tender
- b)  Notices to tenderers numbers [redacted]
- c)  Contract Programme dated [redacted] reference [redacted]
- d)  Email dated [redacted] from [redacted]
- e)  Letter dated [redacted] from [redacted]
- f)  Fax dated [redacted] from [redacted]
- g)  Minutes of Subcontract pre-letting meeting/s dated [redacted]
- h)  Letter of award dated [redacted]
- i)  Subcontractor site specific safety plan
- j)  Schedule of quantities (if applicable)
- k)  Summary of Subcontract Sum

|                              |    |            |
|------------------------------|----|------------|
| Original tendered price      | \$ | [redacted] |
| Item [redacted]              | \$ | [redacted] |
| Item [redacted]              | \$ | [redacted] |
| Total agreed Subcontract Sum | \$ | [redacted] |

- l)  [redacted]
- m)  [redacted]
- n)  [redacted]
- o)  [redacted]
- p)  [redacted]

## SPECIAL CONDITIONS

1. In the event of conflict, the following Special Conditions take precedence over the Subcontract Specific Conditions which in turn take precedence over the Subcontract General Conditions.
2. Conditions contained in the Subcontractor's tender do not form part of this Subcontract, unless conditions are listed in the attached pre-letting meeting minutes, or as listed here:

3. Include any other Special Conditions that modify the Subcontract General Conditions here:

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# SUBCONTRACT GENERAL CONDITIONS

## SECTION 1 INTERPRETATION AND DEFINITIONS

### 1.1 Interpretation

- 1.1.1 In this Subcontract all words and expressions have the same meaning as those words or expressions (or equivalent words or expressions) in the Head Contract unless otherwise defined or required by context.
- 1.1.2 Words using the singular also include the plural and vice versa where the context requires.
- 1.1.3 Words using the masculine also include the feminine and vice versa where the context requires.
- 1.1.4 The headings in this Subcontract are for convenience only and do not affect the interpretation of this Subcontract.
- 1.1.5 All references to clauses are references to clauses numbered in the Subcontract General Conditions and not to those in any other document forming part of this Subcontract unless otherwise stated.

### 1.2 Definitions

Act of Insolvency means that any of the following events occurs in relation to a party to this Subcontract:

- a) it becomes bankrupt; or
- b) it is placed in liquidation or voluntary administration; or
- c) a receiver or statutory manager is appointed in respect of it,

and the assignee, liquidator, voluntary administrator, receiver or statutory manager fails within 10 Working Days to make arrangements satisfactory to the other party for the performance of its obligations under this Subcontract.

Additional Documents means those documents listed in the Subcontract Specific Conditions.

Engineer means the Engineer, Architect or other supervising authority who may be appointed from time to time under the Head Contract.

Head Contract means the contract between the Principal and the Contractor.

Head Contract Works means the works defined in the Head Contract.

Subcontract means the whole of the contract between the Contractor and Subcontractor.

Subcontract Works means the works the Subcontractor has agreed to complete under this Subcontract.

Subcontract Sum means the sum stated in this Subcontract Agreement to be paid for completion of the Subcontract Works, subject to any adjustments provided for in this Subcontract.

Supply Only Subcontract means a Subcontract where the Subcontractor is required to supply materials, finished goods, or other items to the site but is not required to fix, place, or install them.

Working Day, unless defined otherwise in the Head Contract, means any day other than a Saturday, a Sunday, a public holiday, or any day within the period between and including 24 December to 5 January, irrespective of the days on which work is actually carried out.

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## **SECTION 2            CONTRACTS**

### **2.1     Head Contract**

2.1.1    The Subcontractor agrees to comply with all the provisions of the Head Contract that apply to the Subcontract Works, except as specifically varied by this Subcontract. All the powers and obligations of the Principal and Engineer, under the Head Contract, extend to this Subcontract and must be exercised by the Contractor. In the event of ambiguity or conflict, the terms of this Subcontract take precedence over the terms of the Head Contract.

### **2.2     Subcontract Works**

2.2.1    The Subcontractor has the same obligations and liabilities to the Contractor for Subcontract Works, as those imposed on the Contractor by the terms of the Head Contract, except as modified in this Subcontract.

### **2.3     Subcontractor's Tender**

2.3.1    Terms or conditions contained in any tender or form of offer do not form part of this Subcontract, except where those terms or conditions are also contained in the Subcontract Specific Conditions.

### **2.4     Signing**

2.4.1    The Subcontractor must initial each page and sign both copies of this Subcontract Agreement and return them to the Contractor prior to the first progress payment being made. Each party must retain one signed copy. If this Subcontract is signed after the commencement of the Subcontract Works, the terms and conditions apply retrospectively from the date of commencement of the Subcontract Works.

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## **SECTION 3 SUBCONTRACTOR'S BONDS AND GUARANTEES**

### **3.1 Performance Bond**

3.1.1 If required by the Subcontract Specific Conditions, the Subcontractor must provide the Contractor with a performance bond for the amount stated in the Subcontract Specific Conditions. The form and surety of the bond must be approved by the Contractor. The executed bond must be returned to the Contractor with this Subcontract, and the Subcontractor is not entitled to any payment under this Subcontract until a properly executed bond is provided to the Contractor. The Performance Bond may only be called up by the Contractor with good cause, and if the Subcontractor is in default (as defined in clause 14.1). The Performance Bond must be returned to the Subcontractor when the Subcontractor's work and any required maintenance work is completed.

### **3.2 Bonds in Lieu of Retentions**

3.2.1 If required by the Subcontract Specific Conditions, the Subcontractor must provide the Contractor with a bond (or bonds) in lieu of retentions. These bonds must be for the amounts stated in the Subcontract Specific Conditions and are in addition to any performance bond required by 3.1.1. Any bond in lieu of retentions must be in a form, and issued by a surety, approved by the Contractor. Where these bonds have been accepted by the Contractor, retentions will not be held. These Bonds will be returned to the Subcontractor no later than the due dates for release of the retentions that they are given in lieu of.

### **3.3 Guarantees**

3.3.1 If required by Subcontract Specific Conditions, the Subcontractor must provide warranties, guarantees, and/or continuity guarantees in the form required by this Subcontract or the Head Contract. These documents, properly executed, must be returned with the signed Subcontract (or at another time agreed in writing with the Contractor) and the Subcontractor is not entitled to any further payment under this Subcontract until these properly executed documents are provided to the Contractor.

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## **SECTION 4            SUB-LETTING OR ASSIGNING**

- 4.1.1 The Subcontractor must not sub-let or assign the Subcontract Works, or any part of the Subcontract Works, without prior written consent from the Contractor. This consent must not be unreasonably withheld. Any change in the effective control of the Subcontractor requires written consent from the Contractor.
  
- 4.1.2 Assignment or sub-letting does not change the responsibility of the Subcontractor under this Subcontract. The Subcontractor will remain responsible for the acts, defaults or neglects of any of their subcontractors, including any subcontractor's agents or personnel, to the same extent as if they were the direct acts, defaults or neglects of the Subcontractor.

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## **SECTION 5            GENERAL OBLIGATIONS**

### **5.1      Care of Works**

- 5.1.1    The Subcontractor is responsible for the care and protection of the Subcontract Works, and must repair any Subcontract Works that have been damaged prior to practical completion (or earlier occupation by the Principal) of the Head Contract Works.
- 5.1.2    If damage has been caused by someone other than the Subcontractor, the Subcontractor is entitled to recover the cost of the repair from the party or parties who caused the damage. The Contractor will take all practicable steps to assist in recovery of the costs. Where such damage has been caused by a risk which is the responsibility of the Principal under the Head Contract, the cost of the repair will be treated as a variation.
- 5.1.3    Once the Subcontractor has completed the Subcontract Works and left the site, any work to repair damage under 5.1 will be treated as a variation.
- 5.1.4    The Subcontractor must take care not to cause any damage to the site and Head Contract Works. The Subcontractor is responsible for the cost of repairing any damage they cause to the site or Head Contract Works.
- 5.1.5    The Contractor must give written notice to the Subcontractor requiring the Subcontractor to remedy any damage the Subcontractor has caused. This remedial work to the site or Subcontract Works or Head Contract Works must be carried out within the time stated in the notice to avoid any delay or disruption to the Head Contract Works.
- 5.1.6    If the Subcontractor fails to carry out remedial work in accordance with the notice, the Contractor may, upon further written notice, and without further delay, carry out the work on the Subcontractor's behalf. The cost of carrying out this work will become a debt immediately due to the Contractor. Without prejudice to any other method of recovery, the Contractor may deduct the costs of carrying out this work from payment due to the Subcontractor.

### **5.2      Compliance with Legislation**

- 5.2.1    The Subcontractor must comply with all statutes, regulations and by-laws of Government, local government and other public authorities that may be applicable to the Subcontract Works.
- 5.2.2    The Subcontractor is responsible for making applications and obtaining any consents and approvals specified under the Subcontract Specific Conditions.
- 5.2.3    The Subcontractor must comply with all consents, approvals or other licences or authorities relating to the Subcontract Works.

### **5.3      Site Conditions and Inspection of Surfaces**

- 5.3.1    The Subcontract Sum includes allowance for the nature of the site, including ground conditions, the extent and nature of the work, and materials required for the proper execution of the Subcontract Works, and appropriate access to, from, and on the site.
- 5.3.2    Before beginning any part of the Subcontract Works, the Subcontractor must inspect any surfaces against which their materials are to be applied. The Subcontractor must notify the Contractor in writing if there are any defects or conditions which may adversely affect the quality of the Subcontractor's Works. The Contractor must immediately provide written acknowledgement of receipt of that notification. If the Subcontractor fails to provide written notification of such defects or conditions, the Subcontractor is deemed to accept existing surfaces and conditions.

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## 5.4 Services

- 5.4.1 If the Contractor provides (free of charge) services such as water, power, and lighting, the Subcontractor must only use these services for the purposes of the Subcontract Works.
- 5.4.2 The Subcontractor must (at their own expense) provide, erect, and remove all sheds, workshops, or other necessary facilities for the Subcontract Works. These facilities must only be in locations approved by the Contractor.
- 5.4.3 Regardless of the provisions of 5.4.1, any services, materials or consumables required for testing, commissioning or operation of the Subcontract Works required by this Subcontract must be provided by the Subcontractor at their own expense.

## 5.5 Scaffolding

- 5.5.1 If the Subcontractor is permitted to use scaffolding provided by the Contractor, the Subcontractor must only use it for the purpose of the Subcontract Works.
- 5.5.2 If the Subcontractor's scaffolding requirements exceed the extent or duration of that provided by the Contractor, the Subcontractor is responsible for any additional cost.
- 5.5.3 The Subcontractor must not alter any scaffolding erected by others.
- 5.5.4 No warranty or liability on the part of the Contractor or other Subcontractors is created or implied in regard to the condition or suitability of any scaffolding. The Subcontractor must be satisfied that the scaffolding is safe and suitable for the specific purpose and any special loadings required by the Subcontractor prior to using it.
- 5.5.5 Any other scaffolding required for the Subcontract Works must be provided by the Subcontractor.

## 5.6 Hoisting

- 5.6.1 If the Subcontractor requires the use of any hoisting device provided by the Contractor, the Subcontractor must give the Contractor reasonable notice. The Subcontractor must provide, at their own cost, any specialist equipment for hoisting that is not provided by the Contractor.

## 5.7 Use of Work or Facilities Provided by Others

- 5.7.1 If the Subcontractor uses any work, services, or facilities provided by the Contractor or any other Subcontractor, it is the Subcontractor's responsibility to ascertain the suitability and safety of that work, service, or facility for their intended use and they will be fully responsible for any damage or loss caused by their use of it. This applies to (but is not limited to) scaffolding, hoisting, protection or safety systems, fastenings and attachments, lifting apparatus, any services, and any permanent or temporary work.

## 5.8 Cleaning

- 5.8.1 The Subcontractor must remove any debris brought about by their operations and must keep the Subcontract Works and any part of the site or Head Contract Works affected by their operations clean and tidy.
- 5.8.2 If the Contractor provides bins for waste removal, the Subcontractor may place their waste in these bins, but otherwise the Subcontractor is responsible for their own waste removal. If the Contractor has provided separate bins for different types of waste, the Subcontractor must only use these bins for the types of waste allowed.

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- 5.8.3 If the Subcontractor does not keep the area affected by the Subcontract Works clean and tidy, the Contractor may, after written notification to the Subcontractor, carry out cleaning on the Subcontractor's behalf, and may, without prejudice to any other method of recovery, deduct the cost of cleaning from payments which would otherwise be payable to the Subcontractor under this Subcontract.
- 5.8.4 If the Subcontractor encounters any hazardous materials they must immediately notify the Contractor who will advise on the procedure to be followed. The Subcontractor is responsible for any hazardous materials they bring onto site and must remove any that are not used or required for the Subcontract Works.

## **5.9 Health and Safety**

- 5.9.1 Both the Contractor and Subcontractor acknowledge that they are PCBU's as defined by the Health & Safety at Work Act 2015 owing the duties and obligations imposed by that Act.
- 5.9.2 Where the Head Contract requires the Contractor prepare a Site-specific safety plan, the Subcontractor shall provide all reasonable assistance to the Contractor to fulfil this obligation.
- 5.9.3 The Subcontractor must maintain safe and healthy working practices and conditions. The Subcontractor must promptly comply with all reasonable health and safety requirements of the Contractor, and any safety-related instruction given by the Contractor. The Subcontractor must comply with all applicable health and safety statutes and regulations at all times. As a minimum, the Subcontractor must comply with:
- a) The Health and Safety at Work Act 2015;
  - b) The Principal's health and safety policy and procedures; and
  - c) The Contractor's health and safety policy and procedures.
- 5.9.4 Before commencing work on-site, the Subcontractor must submit a site-specific health and safety plan to the Contractor. This plan must show how the Subcontractor will comply with the requirements of 5.9.3.
- 5.9.5 If any health and safety requirement of the Principal or the Contractor is not complied with, the Contractor may take any necessary action to remedy the matter. The Subcontractor will be liable for all the Contractor's costs and losses resulting from the Subcontractor's non-compliance of health and safety requirements. Without prejudice to any other method of recovery, the amount may be deducted from any payments which would otherwise be payable to the Subcontractor under this Subcontract.

## **5.10 Hours of Work**

- 5.10.1 The Subcontractor must not carry out any work on the site outside the Contractor's working hours, unless the Contractor has given written approval.

## **5.11 Quality Assurance**

- 5.11.1 The Subcontractor agrees to comply with all reasonable requirements of the Contractor relating to quality assurance.

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**5.12 Use of Alternative Materials or Products**

- 5.12.1 Use of materials or products that differ from those specified in the Head Contract is only permitted if approved in writing by the Contractor prior to their use. Application for approval to use alternative materials or products must be made in writing and must include all information required by the Contractor to assess the suitability of the substitution. If approval is given, it may be subject to conditions such as (but not limited to) cost, warranty and programme adjustments.
- 5.12.2 If a material or product required by the Head Contract is not available, or will not be available within the time required to enable the Subcontractor to meet their obligations under this Subcontract, the Subcontractor must notify the Contractor as soon as practicable.
- 5.12.3 Approval to use materials or products differing from those in the Head Contract, and conditions that may be imposed on their use, does not relieve the Subcontractor of their responsibilities under this Subcontract.

**5.13 Shop Drawings, as Built Drawings, Operating Manuals and Construction Producer Statements**

- 5.13.1 If required for the Subcontract Works, shop drawings, as-built drawings, operating and maintenance manuals and construction producer statements will be supplied by the Subcontractor by the times specified in the Subcontract Specific Conditions.
- 5.13.2 The supply of any documents required under the Subcontract is an essential obligation for completion of the Subcontract Works.

**5.14 Communication with Principal, Engineer, Consultants and Media**

- 5.14.1 The Subcontractor must not communicate directly with the Principal, Engineer or consultants without prior approval from the Contractor.
- 5.14.2 The Subcontractor must not discuss any matters relating to the project with the media. Any media enquiries must be referred to the Contractor.
- 5.14.3 The Subcontractor must not display advertising or signs on the site without the written permission of the Contractor.

**5.15 Subcontractor Attendance at Meetings**

- 5.15.1 The Subcontractor or their representative must attend site meetings when requested by the Contractor.

**5.16 Comprehensive Programme Requirements of the Head Contract**

- 5.16.1 Where the Head Contract requires the Contractor prepare and update a Comprehensive Programme (as defined in the Head Contract), the Subcontractor shall provide all reasonable assistance to the Contractor to fulfil this obligation.

**5.17 Quality Plan Requirements of the Head Contract**

- 5.17.1 Where the Head Contract requires the Contractor prepare a quality plan, the Subcontractor shall provide all reasonable assistance to the Contractor to fulfil this obligation.

**5.18 Advance Notification**

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

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

5.18.2 If the Subcontractor does not notify a matter which it reasonably ought to have notified under clause 5.18.1, any Variation it may be entitled to arising out of the matter shall be valued under clause 9.2 as if notification had been given. Where that notification might reasonably have resulted in the impact of the matter being avoided or reduced, the amount of the Variation shall be reduced accordingly.

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## **SECTION 6            DESIGN OBLIGATIONS**

### **6.1     Design and Producer Statements**

- 6.1.1    If the Subcontractor is responsible for design of any part of the Subcontract Works or temporary works, the Subcontractor must undertake the design with the reasonable skill, care, and diligence of an experienced professional designer and must provide the required design details in accordance with the Contractor's programme.
- 6.1.2    The Subcontractor must employ a suitably qualified or experienced person to carry out any design work required for the Subcontract Works and may be required to provide evidence of the competency of the designer.
- 6.1.3    All design work must meet the requirements of the Head Contract and must comply with all relevant statutes, regulations and by-laws.
- 6.1.4    All design work undertaken by the Subcontractor must be submitted to the Contractor upon request. The Subcontractor remains responsible for the design regardless of whether the design has been reviewed or approved by the Contractor.
- 6.1.5    If required by the Subcontract Specific Conditions, the Subcontractor must supply producer statements for design, design review and construction review, of any part of the Subcontract Works.

### **6.2     Design & Construct Contracts**

- 6.2.1    The following clauses shall apply where the Head Contract conditions are NZS 3916:2013.
- 6.2.2    The Subcontractor shall comply with all obligations under the Head Contract to issue Design Documentation in order that the Engineer is allowed a reasonable opportunity for review.
- 6.2.3    All New Intellectual Property (as defined in the Head Contract) shall be jointly owned by the Principal, the Contractor and the Subcontractor.

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## SECTION 7 INDEMNITY

7.1.1 The Subcontractor agrees to indemnify the Contractor against any loss, liability, or cost suffered by the Contractor arising from, or as a consequence of, the Subcontractor carrying out the Subcontract Works, or remedial works, or their failure to:

- a) comply with statutes, regulations or by-laws;
- b) obtain consents required by this Subcontract;
- c) comply with the requirements of 5.9 Health and Safety;
- d) transfer full and unencumbered title of any materials, plant, equipment or other item supplied for the Head Contract Works and for which payment has been made in accordance with this Subcontract; or
- e) comply with this Subcontract;

other than where the loss, liability or cost is an unavoidable result of carrying out the Subcontract Works or remedial works.

7.1.2 The Subcontractor's liability to indemnify the Contractor will be reduced proportionately to the extent that the Contractor, its servants or agents, have contributed to the loss, liability or cost.

7.1.3 Without prejudice to any other method of recovery, the Contractor is entitled to retain any damages, costs, losses, or expenses arising from 7.1.1 out of any payments which would otherwise be payable to the Subcontractor under this Subcontract.

7.1.4 Notwithstanding any provision of this Subcontract, the Contractor does not seek, nor does the Subcontractor offer any indemnity for any person's liability to pay a fine or an infringement fee under the Health & Safety at Work Act 2015.

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## **SECTION 8           INSURANCE**

### **8.1       General**

- 8.1.1   Regardless of the Contract Works insurances put in place by the Principal or the Contractor under the terms of the Head Contract, the Subcontractor is required to have other insurance cover as stated in the Subcontract Specific Conditions.
- 8.1.2   Before commencing the Subcontract Works, the Subcontractor must provide the Contractor with a certificate from their insurers or broker confirming that policies are in place (and provide a copy of the policies if requested by the Contractor).
- 8.1.3   At any time during the Subcontract Works, at the Contractor's request, the Subcontractor must provide evidence that the policies are still in place.
- 8.1.4   Nothing in this Subcontract prevents the Subcontractor from arranging additional insurance of any type, for the Subcontractor's sole benefit, at the Subcontractor's expense.
- 8.1.5   If there is an insurance claim in respect of the construction and maintenance of the Head Contract Works and/or Subcontract Works, temporary works, and ancillary works, the Subcontractor must pay deductibles applicable under that claim. The Subcontractor's liability for that deductible will be reduced proportionately to the extent that the Principal, Contractor, other subcontractors, or their servants or agents have contributed to the event.
- 8.1.6   The provisions of section 8 do not in any way limit the liabilities of the Subcontractor (whether under this Subcontract or under any statute or at common law).
- 8.1.7   The policies taken out by the Subcontractor must:
- a)       be with insurers acceptable to the Contractor and in terms approved by the Contractor, and this acceptance and approval must not be unreasonably withheld; and
  - b)       be maintained in full force for the periods stated in the Subcontract General Conditions or the Subcontract Specific Conditions.
- 8.1.8   All money received by the Contractor or Subcontractor from an insurance claim relating to the Subcontract Works must be applied to reinstatement of the Subcontract Works.
- 8.1.9   Insurances required to be provided by the Subcontractor must be primary to, and respond in priority to, any policies that the Contractor or Principal may have in place.

### **8.2       Contract Works Insurance**

- 8.2.1   The Subcontractor is responsible for insuring their Subcontract Works, temporary works and materials while not on the site.
- 8.2.2   If the Contractor agrees that the Subcontractor is not required to have in place Contract Works Insurance for the Subcontract Works on site:
- a)       The Subcontract Works, materials and temporary works will be covered by insurance put in place by the Principal or the Contractor under the Head Contract; and
  - b)       The Subcontractor must be an insured party under the insurance put in place by the Principal or the Contractor under the Head Contract,
- but only for the risks and subject to the conditions stipulated in these policies.

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8.2.3 Unless otherwise provided under 8.2.2, the Subcontractor must insure their Subcontract Works, Temporary Works and materials whether fixed in position or not. The period and sum insured must be as stated in the Subcontract Specific Conditions. The Subcontractor's policy must include automatic extension of cover for variations to the Subcontract Works.

### **8.3 Plant and Equipment Insurance**

8.3.1 The Subcontractor is responsible for insurance of plant, tools, equipment or other property belonging to them, or provided by them, or in their care.

8.3.2 The Subcontractor must insure critical items of plant as required by the Subcontract Specific Conditions.

### **8.4 Public Liability Insurance**

8.4.1 The Subcontractor must have public liability policy(s) to insure for their legal liability to third parties for property damage and/or bodily injury caused by an act or omission of the Subcontractor arising out of the performance of this Subcontract.

8.4.2 The minimum amount of public liability insurance must be the amount stated in the Subcontract Specific Conditions (but not less than \$5,000,000) for any one claim or series of claims arising out of the same event.

8.4.3 The policy must include both the Principal and Contractor as jointly insured for their liability arising out of actions of the Subcontractor.

8.4.4 The insurance must include liability arising out of the use of any plant and equipment necessary to perform the Subcontract.

8.4.5 If required in the Subcontract Specific Conditions, the policy must include vibration, weakening and removal of support extensions to the full amount stated.

### **8.5 Motor Vehicle Liability Insurance**

8.5.1 The Subcontractor must have motor vehicle third party insurance for their legal liabilities arising out of the use of any motor vehicle in undertaking this Subcontract.

8.5.2 The insurance must include third party personal injury and property damage cover for a minimum amount of NZD\$2,000,000 (two million dollars) or the amount specified in the Subcontract Specific Conditions, for any one claim or series of claims arising out of the same event.

### **8.6 Professional Indemnity Insurance**

8.6.1 If the Subcontractor designs any part of the Subcontract Works and if stated in the Subcontract Specific Conditions, the Subcontractor must have professional indemnity insurance.

8.6.2 The limit of indemnity under this insurance must be at least the amount specified in the Subcontract Specific Conditions for any one claim or series of claims arising out of the same event.

8.6.3 The Subcontractor must have this insurance in place for at least six years after practical completion of the whole of the Head Contract Works and provide evidence of this to the Contractor on request.

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## SECTION 9 VARIATIONS

### 9.1 Variations

- 9.1.1 The Contractor may vary the Subcontract Works whether by way of alteration, addition or omission by instructing the Subcontractor to do so in writing.
- 9.1.2 The Subcontractor must not act upon an instruction for variation of the Subcontract Works which is directly received from the Principal or the Engineer under the Head Contract. If the Subcontractor receives any such direct instruction, they must immediately inform the Contractor. The Subcontractor must only act upon instructions made in writing by the Contractor.
- 9.1.3 If the Subcontractor considers that they are entitled to a variation for work, but has not been advised that the work will be treated as a variation, the Subcontractor must notify the Contractor in writing that they believe a variation is involved. The period between receipt of the instruction for the work and notification by the Subcontractor to the Contractor that the work may involve a variation, must not exceed the period given in the Subcontract Specific Conditions. Failure by the Subcontractor to notify the Contractor within this period may result in the work not being treated as a variation.
- 9.1.3.1 If the Principal's approval is required for the work to be considered a variation, the Contractor must seek the Principal's approval without undue delay and the Contractor must notify the Subcontractor of the Principal's decision within five Working Days of receipt of that decision. If the Contractor fails to comply with this clause, the work will be treated as a variation.
- 9.1.3.2 If the work is initiated by the Contractor, and does not require approval from the Principal for it to be treated as a variation, the work will be treated as a variation unless the Contractor notifies the Subcontractor otherwise within 5 Working Days of written notification by the Subcontractor that they believe a variation is involved.

### 9.2 Value of Variation to the Work

- 9.2.1 All variations must be valued using the rates and prices specified in this Subcontract for that or similar work, but if there are no such rates and prices, or if they are inappropriate or inapplicable, then a fair and reasonable value must be agreed.
- 9.2.2 Any supporting evidence reasonably required by the Contractor for the valuation of any variation, must be submitted by the Subcontractor within the period stated in the Subcontract Specific Conditions. The Subcontractor will not be entitled to payment for the variation if the Subcontractor's failure to provide the price and supporting evidence within the required time results in the Contractor not being entitled to payment for a variation under the Head Contract.
- 9.2.3 The Subcontract Sum must be adjusted by the value of the variations.

### 9.3 Termination of the Subcontract Due to Variation

- 9.3.1 The Contractor has the right to terminate this Subcontract if the Subcontract Works, or a substantial part of it, is deleted under the Head Contract. Termination under this clause will be treated as a variation.
- 9.3.2 The amount of any variation under 9.3.1 will be deducted from the Subcontract Sum. The Subcontractor is not entitled to claim for damages or loss of profit for termination of this Subcontract under 9.3.1 unless the Contractor is able to claim for these from the Principal.

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## **SECTION 10      TIME**

### **10.1    Times for Commencement and Completion**

10.1.1 The Subcontractor must carry out and complete the Subcontract Works within the time required by this Subcontract, whether that is

- a) a specified due date for completion (including any Extensions of Time under clause 10.2); or
- b) where there is no fixed time for completion, within a reasonable time considering all the circumstances including the Contractor's current construction programme (which has been issued to the Subcontractor)

in order to ensure no delay to the progress and completion of the Head Contract Works.

10.1.2 Revisions to the Contractor's current construction programme, or to the times when the Subcontractor is to carry out and complete any part of the Subcontract Works, must be communicated to the Subcontractor in a timely manner.

10.1.3 The Contractor and Subcontractor must discuss proposed changes to the Subcontractor's work programme with a view to ensuring the Contractor's current construction programme is maintained.

10.1.4 The Contractor must notify the Subcontractor of the date of practical completion under the Head Contract, within 10 Working Days of receiving the certificate of practical completion.

### **10.2    Extensions of Time**

10.2.1 Subject to the requirements of 10.2.2, the Subcontractor is entitled to an extension of time for:

- a) delay resulting from any of the causes described in the Head Contract as grounds for the granting of extensions of time. But if delay to the Subcontract Works causes delay to the Contractor's current construction programme, the Subcontractor is not entitled to any greater extension of time than the Contractor is entitled to under the Head Contract;
- b) delay caused by the actions or inactions of the Principal or Engineer or Contractor or other subcontractors or for any other act of prevention of the Contractor not specifically covered in this clause; and
- c) delay caused by suspension of the Head Contract Works by the Contractor under the Construction Contracts Act 2002.

10.2.2 The Subcontractor is not entitled to an extension of time unless:

- a) they have notified the Contractor in writing that they are claiming an extension of time and stated the grounds for the extension;
- b) the notice is given within 5 Working Days after the Subcontractor should reasonably have been aware of the circumstances which resulted in grounds for extension; and
- c) the notice gives details of the length of extension sought.

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10.2.3 Once the Contractor has received notice of a claim complying with the requirements of 10.2, the Contractor must, as soon as practicable, investigate the claim, and determine whether or not the Subcontractor is entitled to an extension, and notify the Subcontractor of their decision.

### **10.3 Compensation for Extension of Time**

10.3.1 If an extension of time is granted, the Subcontractor is not entitled to compensation for costs incurred in relation to the extension, unless the extension was a result of a variation under this Subcontract, or the Contractor receives a variation for this from the Principal.

### **10.4 Completion of the Subcontract Works**

10.4.1 When the Subcontract Works or any Separable Portion thereof are complete, the Subcontractor shall notify the Contractor accordingly.

10.4.2 Following receipt of such notice, the Contractor shall inspect the Subcontract Works or Separable Portion and within 15 working days of having received such notice, shall either:

- a) Issue a notice to the Subcontractor stating the date and time at which the Subcontract Works or Separable Portion were so completed; or
- b) Give the Subcontractor written notice of the work to be altered or completed in order to complete the Subcontract Works.

10.4.3 Where the Subcontractor has completed any work notified under clause 10.4.2 (b), it may serve a further notice to Contractor under clause 10.4.1.

### **10.5 Subcontractor Failure to Complete**

10.5.1 If the Subcontractor fails to complete the Subcontract Works within the time required by this Subcontract, the Subcontractor indemnifies the Contractor for any costs or losses the Contractor incurs or suffers as a result of the Subcontractor's default, which may include, but is not limited to, any liquidated damages, or an equitable proportion thereof, that the Contractor may become liable for under the Head Contract.

10.5.2 Without prejudice to any other method of recovery, the Contractor may deduct the amount of such damages, costs or losses from any payments which would otherwise be payable to the Subcontractor under this Subcontract. The Subcontractor must still meet their obligations to complete the Subcontract Works and all other obligations and liabilities under this Subcontract.

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## SECTION 11 DEFECTS

- 11.1.1 If required by the Contractor, the Subcontractor must inspect their own work and issue a list of defects in the Subcontract Works to the Contractor.
- 11.1.2 Any defects or faults which appear in the Subcontract Works prior to completion of the Subcontract Works, or during the defects liability period, must, upon notification in writing by the Contractor, be remedied by the Subcontractor at its own cost.
- 11.1.3 The remedial work must be carried out by the Subcontractor within the time stated in the notice to avoid delay to the Head Contract Works or unnecessary inconvenience to occupiers.
- 11.1.4 If the Subcontractor fails to carry out remedial work in accordance with the notice, the Contractor may, upon further written notification, carry out the work on the Subcontractor's behalf and at the Subcontractor's cost. This cost becomes a debt immediately due to the Contractor. Without prejudice to any other method of recovery, the Contractor is entitled to deduct the costs of carrying out remedial work from any payments which would otherwise be payable to the Subcontractor under this Subcontract.
- 11.1.5 The Contractor may instruct the Subcontractor not to remedy any defect or fault. The Contractor may, in consultation with the Subcontractor, agree upon an amount payable by the Subcontractor to compensate for not remedying the defect or fault. Without prejudice to any other method of recovery, this amount may be deducted from any payment due to the Subcontractor under this Subcontract.
- 11.1.6 Nothing in this Section 11 limits the Subcontractor's liability for defective works whether arising in law or equity or whether pursuant to contract, tort, or by statute.
- 11.1.7 Notwithstanding any provision of, or agreement under, the Subcontract the defects liability period shall not continue beyond the date of the Final Completion Certificate issued under the Head Contract.
- 11.1.8 The Contractor must notify the Subcontractor of the date of Final Completion under the Head Contract, within 10 Working Days of receiving the Final Completion Certificate.

### 11.2 Obligations of the Subcontractor

- 11.2.1 The Subcontractor shall not be released from its liability for the fulfilment of any obligation under the Subcontract which remains unperformed or not properly performed by:
- a) The completion of the defects liability period under the Subcontract.
  - b) The release of final retentions under the Subcontract.
  - c) The issuing of the Final Completion Certificate under the Head Contract.

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## **SECTION 12      PAYMENTS**

### **12.1    Payment Claims**

- 12.1.1 The Subcontract Specific Conditions specify when payment claims for the Subcontract Works are due.
- 12.1.2 The Subcontractor must present a detailed and substantiated payment claim for work completed during the period for which payment is being claimed. Payment claims received after the due date are deemed to have been received on the next due date.
- 12.1.3 Payment claims submitted by the Subcontractor must comply with the Construction Contracts Act 2002. Payment claims should include all the information contained in the sample payment claim in Appendix B, and must include all other information the Contractor is required to provide in the Contractor's payment claim under the Head Contract.
- 12.1.4 The Subcontractor agrees not to issue any tax invoices in respect of the Subcontract Works.

### **12.2    Payment Schedules and Payments**

- 12.2.1 The Contractor must pay the Subcontractor progress payments for work carried out on the Subcontract Works. The Subcontract Specific Conditions specify when payment schedules and payments are due for the Subcontract Works.
- 12.2.2 If the Contractor intends to pay less than the amount of the payment claim submitted by the Subcontractor, the Contractor must issue a payment schedule on or before the due date for payment schedules. The payment schedule must identify the Subcontractor's payment claim to which it relates, state the scheduled amount that will be paid for that payment claim, show how the amount to be paid has been calculated and give the reasons why part of the Subcontractor's claim is not being paid.
- 12.2.3 On or before the due date for payments, the Contractor must pay to the Subcontractor the amount shown in the payment schedule. If a payment schedule has not been issued in accordance with 12.2.2, the Contractor must pay the Subcontractor the full amount of the Subcontractor's payment claim.
- 12.2.4 Each payment to the Subcontractor must be accompanied by a buyer-created tax invoice which meets the requirements of section 24(2) of the Goods and Services Tax Act 1985 for a tax invoice (the Commissioner of Inland Revenue has approved the issue of buyer created tax invoices by Contractors using this subcontract agreement). Prior to the submission of their first payment claim, and prior to the first payment being made, the Subcontractor must advise the Contractor in writing of their registered GST number.
- 12.2.5 If part of a Subcontractor's claim is not paid, the Subcontractor may claim for that part in a future payment claim if they consider the reasons given in the payment schedule for that part not being paid are no longer applicable.
- 12.2.6 When retentions are due for release, the Subcontractor must include the amount due in a payment claim.

### **12.3    Final Account**

- 12.3.1 On or before the date stated in the Subcontract Specific Conditions, the Subcontractor must submit to the Contractor their final account covering the whole of the Subcontract Works and including, where applicable, variations, fluctuations and adjustments to provisional or prime cost sums. The Subcontractor's final account must be accompanied by full documentation to substantiate all items and amounts claimed. The Subcontractor must provide sufficient further

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information to substantiate any claims within five Working Days of being requested to do so by the Contractor.

12.3.2 If the Subcontractor fails to submit their final account within the time stated in the Subcontract Specific Conditions, or does not supply the information required by the Contractor to enable it to substantiate the claims within the specified time, the Contractor is entitled to determine the reasonable amount of the Subcontractor's final account and notify the Subcontractor of that amount.

12.3.3 The Contractor is not required to pay the Subcontractor for any matter relating to the Subcontract Works that occurred prior to the date of the Subcontractor's final account if it was not included in the Subcontractor's final account and if it was not notified in writing to the Contractor prior to the Contractor's determination under 12.3.2.

12.3.4 Claims for variations submitted with the final account and not previously claimed will be due for payment 44 Working Days after the end of the month in which they are claimed.

#### **12.4 Retentions**

12.4.1 Payments will be subject to retentions as specified in the Subcontract Specific Conditions.

12.4.2 Retentions may be released in two stages. Part of the retention amount may be held after completion of the Subcontract Works as notified under clause 10.4.2(a) to cover rectification of defects. The dates for release of retentions are given in the Subcontract Specific Conditions.

#### **12.5 Items Not Fixed in the Works and Transfer of Title**

12.5.1 The Subcontractor is only entitled to payment for any materials, plant, equipment or other items supplied but not fixed in the Head Contract Works if the Head Contract allows payment for them. The conditions in the Head Contract relating to payment for these items must have been satisfied and the Subcontractor must also satisfy the Contractor that the Subcontractor's suppliers have no claim to ownership of the items.

12.5.2 Ownership of any materials, plant, equipment or other item supplied, intended or required for the Head Contract Works transfers to the Contractor immediately upon payment to the Subcontractor.

#### **12.6 Payments Not Constituting Approval**

12.6.1 Issue of a payment schedule or payment of any amount to the Subcontractor does not constitute or imply acceptance of the work undertaken by the Subcontractor. Nor does it relieve the Subcontractor from their obligations under this Subcontract or their responsibility to remedy, and meet all costs arising from defects attributable to them.

#### **12.7 Over Payment**

12.7.1 If there is an error or over-certification by the Principal or their Engineer under the Head Contract, or any other cause resulting in the amount paid to the Subcontractor exceeding the amount properly due, the amount overpaid becomes a debt due from the Subcontractor to the Contractor payable on demand. Without prejudice to any other method of recovery, the Contractor may deduct this amount from any payments which would otherwise be payable to the Subcontractor under this Subcontract.

#### **12.8 Cost Fluctuations**

12.8.1 Cost fluctuations must be treated as a Variation where allowed for in the Subcontract Specific Conditions and must be calculated as provided for in the Head Contract.

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## **SECTION 13      DISPUTES AND REMEDIES**

### **13.1    Negotiate in Good Faith**

13.1.1 If either party notifies the other in writing of any dispute relating to the Subcontract, the parties must endeavour to resolve the dispute in good faith. The parties may agree to use a mediator.

### **13.2    Adjudication**

13.2.1 Disputes may be dealt with by adjudication as provided for in the Construction Contracts Act 2002.

### **13.3    Arbitration**

13.3.1 If any dispute cannot be resolved in accordance with 13.1 above, either party shall be entitled to refer the dispute to arbitration in accordance with the provisions of the Arbitration Act 1996.

13.3.2 The dispute must be referred to a sole arbitrator agreed to by the Contractor and Subcontractor. If the Contractor and Subcontractor cannot agree on the sole arbitrator, then either party may request the appointment of a sole arbitrator nominated by the Registrar of the Building Disputes Tribunal (NZ) Limited.

### **13.4    Consolidation of Disputes**

13.4.1 If any dispute arises between the Contractor and the Subcontractor relating to this Subcontract and the Contractor makes a claim against the Principal relating to the same matter, or a similar or related matter, then the parties agree:

- a)      to consolidate their dispute; and
- b)      to provide each other with all reasonable assistance in the resolution of the dispute and make available all relevant information within either party's possession or control to assist with resolution of the dispute; and
- c)      to attempt to resolve the dispute with due diligence.

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## **SECTION 14      DEFAULT**

### **14.1    Default by the Subcontractor and Remedies**

14.1.1 If the Subcontractor:

- a)      fails to proceed with the Subcontract Works with reasonable diligence; or
- b)      is unable to complete the amount of work reasonably required by the Contractor during any specified period to enable the Contractor to fulfil their programme of work under the Head Contract; or
- c)      does not, after notice in writing from the Contractor, remove or remedy defective work or improper material; or
- d)      is otherwise in breach of any of their obligations under this Subcontract despite previous written notice from the Contractor,

and if the default continues for three Working Days following written notice from the Contractor, the Contractor may issue a further notice to terminate this Subcontract, or limit the extent of this Subcontract to the proven capacity of the Subcontractor, without prejudice to any other rights or remedies. A default notice must not be given unreasonably and must specify the default and state that the notice is given under this clause.

14.1.2 If the Subcontractor commits an Act of Insolvency, then the Contractor may, without prejudice to any other rights or remedies, by written notice, immediately terminate this Subcontract.

14.1.3 If this Subcontract is terminated under 14.1, the Contractor is liable only for the value of any work actually and properly executed and not paid for at the date of the termination, including any variations and cost fluctuations as appropriate. The Contractor may recover from the Subcontractor any cost, damage, loss, or expense incurred as a result of the termination of this Subcontract. Without prejudice to any other method of recovery, the Contractor may deduct the amount of such damages, costs or losses from any payments which would otherwise be payable to the Subcontractor under this Subcontract.

14.1.4 If the Contractor limits the extent of this Subcontract to the proven capacity of the Subcontractor under 14.1, the Contractor may recover from this Subcontractor any cost, damage, loss or expense incurred as a result of the breach of the Subcontract. Without prejudice to any other method of recovery, the Contractor may deduct the amount of such damages, costs or losses from any payments which would otherwise be payable to the Subcontractor under this Subcontract.

### **14.2    Default by Contractor and Remedies**

14.2.1 If:

- a)      the Contractor commits an Act of Insolvency; or
- b)      the Head Contract is terminated by the Principal because of any act or default by the Contractor; or
- c)      following 10 Working Days notice in writing from the Subcontractor, the Contractor fails to remedy any substantial breach of their obligations under this Subcontract,

without prejudice to any other rights or remedies, the Subcontractor may, by written notice, terminate the Subcontract. The Contractor is liable for the value of any work actually and properly executed at the date of such termination, including any variations and cost fluctuations as appropriate. The Subcontractor may also recover from the Contractor any cost reasonably incurred by the Subcontractor in expectation of completing the Subcontract

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Works, but only if this cost is not covered by other payments and not reasonably recoverable by the Subcontractor by any other means. The Contractor must also pay to the Subcontractor any costs reasonably incurred in the removal of the Subcontractor's plant and carrying out the Contractor's instructions for making the Subcontract Works secure or safe.

### 14.3 Default by Principal and Remedies

- 14.3.1 If the Contractor suspends work under the Head Contract (under the provisions of the Construction Contracts Act 2002) the Contractor may suspend this Subcontract. The Subcontractor must resume work when the suspension has been lifted. Notice of suspension and notice of lifting of suspension must be given in writing. The Subcontractor is not entitled to recover any costs incurred solely as a consequence of a suspension under this clause, unless the Contractor is entitled to recover these costs under the Head Contract.
- 14.3.2 If the Principal defaults on a payment, or if the Contractor believes with good cause that the Principal may default on a payment, then the Contractor may suspend this Subcontract. The suspension will continue until there is no longer a default, or good cause to consider a default may occur. Notice of suspension and notice of lifting of suspension must be given in writing.
- 14.3.3 If the Contractor has directed the Subcontractor to suspend work under 14.3.1 or 14.3.2 and the suspension continues for 10 Working Days, the Subcontractor may terminate this Subcontract 15 Working Days after giving written notice of their intention to terminate. If the suspension is lifted within the notice period the Subcontractor cannot terminate the Subcontract. The Contractor is only liable for the value of any work actually and properly completed at the date of the termination, including any variations and cost fluctuations as appropriate.
- 14.3.4 If the Head Contract is terminated due to default by the Principal, the Contractor must terminate the Subcontract. The Contractor will be liable for the value of any work actually and properly undertaken prior to the termination, including any variations and cost fluctuations allowed by this Subcontract. The Subcontractor may also recover from the Contractor any cost reasonably incurred by the Subcontractor in expectation of completing the Subcontract Works, but only if this cost is not covered by other payments and not reasonably recoverable by the Subcontractor by any other means. The Contractor must also pay to the Subcontractor any costs reasonably incurred in the removal of the Subcontractor's plant, and in carrying out the Contractor's instructions for making the Subcontract Works secure or safe.

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**SECTION 15 URGENT WORK**

- 15.1.1 If it is impractical for the Subcontractor to carry out work of an urgent nature, because there is insufficient time to give them adequate notice to carry out the work, and the delays that would result from waiting for them to carry out the work would result in significant costs to the Contractor, or create a health and safety risk, the Contractor may carry out that work at the Subcontractor's expense.
- 15.1.2 In the event of the Contractor carrying out work under clause 15.1.1 the Contractor must notify the Subcontractor as soon as practicable, but not later than one working day, after commencing the work.
- 15.1.3 The Subcontractor is entitled to receive a full breakdown of costs for the work carried out at the Subcontractor's expense under 15.1.1. A full breakdown of these costs must be provided to the Subcontractor within 10 Working Days of the Subcontractor requesting them, and these costs must be fair and reasonable.

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**SECTION 16      SERVICE OF NOTICES**

16.1.1 When this Subcontract requires notices to be given they must be sent by post, facsimile, or delivered to the addresses stated in this Subcontract Agreement or new addresses subsequently advised in writing. All other communications may be sent by email, including payment claims and payment schedules. General communications may be via email.

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## APPENDIX A - SUPPLY ONLY SUBCONTRACTS

### SECTION A1 CLAUSES TO BE DELETED

The following Subcontract General Conditions clauses are deleted from this Subcontract if it is defined as a Supply Only Subcontract in the miscellaneous section of the Subcontract Specific Conditions.

#### **A1.1 Care of Works**

Clauses 5.1.1, 5.1.2 and 5.1.3 are deleted.

The Subcontractor remains responsible for care of the Subcontract Works while off-site or in transit and is responsible for supplying the specified items to site in accordance with the agreed timetable and in the condition required by this Subcontract.

#### **A1.2 Site Conditions and Inspection of Surfaces**

Clause 5.3 is deleted

#### **A1.3 Services**

Clause 5.4 is deleted

#### **A1.4 Scaffolding**

Clause 5.5 is deleted

#### **A1.5 Hoisting**

Clause 5.6 is deleted

#### **A1.6 Cleaning**

Clause 5.8 is deleted

#### **A1.7 Hours of Work**

Clause 5.10 is deleted

### SECTION A2 CLAUSES TO BE ADDED

The following clauses must be added to and become part of this Subcontract if it is defined as a Supply Only Subcontract in the miscellaneous section of the Subcontract Specific Conditions.

#### **A2.1 Deliveries to Site**

A2.1.1 A delivery schedule must be agreed for items to be provided by the Subcontractor.

A2.1.2 Changes to a previously agreed delivery schedule may be required by the Contractor, to accommodate changes to the construction programme, or for other reasons. The Subcontractor must agree to reasonable changes to the delivery schedule. If the Subcontractor believes the change to the delivery schedule should be treated as a variation, they must notify the Contractor of their intention to claim a variation within three Working Days of notification of the change to the delivery schedule. Where the change relates to a delivery scheduled to take place within one working day of the notification of the change, the Subcontractor must notify the Contractor of their intention to claim a variation within four working hours of notification of the change to the delivery schedule.

A2.1.3 Deliveries to the site must only be made at times that have been agreed with the Contractor.

## APPENDIX B1 - SUBCONTRACTOR'S PAYMENT CLAIM SUMMARY (Example only)

This is a Payment Claim under The Construction Contracts Act 2002

Due date for payment is [REDACTED] (Dependent on Subcontract Conditions)

|  |
|--|
| FROM: (Payee / Subcontractor Name and Address) |
|  |
|  |

Claim Date: [REDACTED]

Job No: [REDACTED]

Subcontractor's GST No: [REDACTED]

|   |
|---|
| TO: (Payer / Contractor's Name and Address) |
|   |
|   |

Trade: [REDACTED]

Payment Claim No: [REDACTED]

Project: [REDACTED]

Period From: [REDACTED]

Location: [REDACTED]

Period To: [REDACTED]

### Subcontract Summary

|    |  |    |            |
|----|--|----|------------|
| 1. | Original Subcontract Sum               | \$ | [REDACTED] |
| 2. | Approved variations                    | \$ | [REDACTED] |
| 3. | Revised Subcontract Sum                | \$ | [REDACTED] |
| 4. | Variations submitted awaiting approval | \$ | [REDACTED] |

### Summary of Work to Date

|     |   |    |            |
|-----|---|----|------------|
| 5.  | Value of original Subcontract Sum claimed to date (refer Appendix B2) | \$ | [REDACTED] |
| 6.  | Value of approved variations claimed to date (refer Appendix B3)      | \$ | [REDACTED] |
| 7.  | Value of variations waiting for approval (refer Appendix B3)          | \$ | [REDACTED] |
| 8.  | Value of fluctuations if applicable (refer attached details)          | \$ | [REDACTED] |
| 9.  | Value of materials on-site and off-site (refer attached details)      | \$ | [REDACTED] |
| 10. | Gross claim to date   | \$ | [REDACTED] |
| 11. | Less retentions   | \$ | [REDACTED] |
| 12. | Net claim to date   | \$ | [REDACTED] |
| 13. | Less previous payment claims (item 12 from previous claim)            | \$ | [REDACTED] |
| 14. | Net amount for this claim   | \$ | [REDACTED] |
| 15. | Plus GST  | \$ | [REDACTED] |
| 16. | Gross amount for this claim (incl. GST)                               | \$ | [REDACTED] |

## APPENDIX B2 - SUBCONTRACTOR'S PAYMENT CLAIM DETAILS (Example only)

Attach to Appendix B1

|                |  |
|----------------|--|
| Subcontractor: |  |
| Trade:         |  |
| Project:       |  |
| Location:      |  |
| Period Ending: |  |

| Schedule item numbers | Description of work<br>(Work to be broken into agreed claimable sections) | Total value<br>(excl GST) | % Claimed to date | Total value claimed to date<br>(excl GST) |
|-----------------------|---|---------------------------|-------------------|---|
|                       |   | \$0.00                    | 0.00%             | \$0.00                                    |
|                       |   |                           |                   | \$  |

## APPENDIX B3 - SUBCONTRACTOR'S VARIATION CLAIM DETAILS (Example only)

Attach to Appendix B1

|  |
|--|
| Subcontractor: <span style="background-color: #cccccc; display: inline-block; width: 400px; height: 15px;"></span> |
| Trade: <span style="background-color: #cccccc; display: inline-block; width: 400px; height: 15px;"></span>         |
| Project: <span style="background-color: #cccccc; display: inline-block; width: 400px; height: 15px;"></span>       |
| Location: <span style="background-color: #cccccc; display: inline-block; width: 400px; height: 15px;"></span>      |
| Period Ending: <span style="background-color: #cccccc; display: inline-block; width: 400px; height: 15px;"></span> |

| Instruction Number | Variation description | Variation value submitted (excl GST) | Variation value approved (excl GST) | % Claimed to date | Total value claimed to date (excl GST) |
|--------------------|-----------------------|--------------------------------------|-------------------------------------|-------------------|--|
|                    |                       | \$0.00                               | \$0.00                              | 0.00%             | \$0.00                                 |
|                    |                       |                                      |                                     |                   | \$                                     |

## APPENDIX B4 – FORM 1: CONSTRUCTION CONTRACTS REGULATIONS 2003

### *Important notice*

#### **What is this?**

This notice is attached to a claim for a payment (a **payment claim**) under the Construction Contracts Act 2002 (the **Act**).

The person who sent this payment claim (the **claimant**) is claiming to be entitled to a payment for, or in relation to, the construction work carried out to date under a construction contract.

Whether that person is entitled to a payment, and how much they are entitled to, will depend on whether you have a construction contract and what you have agreed between yourselves about payments. If you haven't agreed on payments, there are default provisions in the Act.

#### **What should I do with this payment claim?**

You can either—

- pay the amount claimed in the payment claim (in full) on or before the due date for payment; or
- if you dispute the payment claim, send the claimant a written payment schedule that complies with section 21 of the Act (a **payment schedule**) stating the amount you are prepared to pay instead (which could be nothing).

The **due date** for a payment is the date agreed between you and the claimant. That due date must be set out in the payment claim. If you haven't agreed on a due date, then the Act says that a payment is due within 20 working days after the payment claim is served on you. (For the purposes of the Act, a **working day** is any day other than a Saturday, a Sunday, a public holiday, or any day from 24 December to 5 January.)

#### **When do I have to act?**

You should act promptly. Otherwise, you may lose the right to object.

#### **What if I do nothing?**

If you don't pay the amount claimed by the due date for payment or send a payment schedule indicating what you will pay instead, the claimant can go to court to recover the unpaid amount from you as a debt owed. In addition, the court may decide that you have to pay the claimant's costs for bringing the court case.

#### **Can I say that I will not pay, or pay less than, the claimed amount?**

Yes, by sending a written payment schedule.

**Note:** If you do not send a written payment schedule, the claimant can bring court proceedings against you or refer the matter to adjudication (or both).

#### **How do I say I will not pay, or pay less than, the claimed amount?**

To say that you will pay nothing or indicate what you will pay instead, you must send the claimant a written payment schedule.

You must indicate the amount that you are prepared to pay, which could be nothing. This amount is called the **scheduled amount**.

If the scheduled amount is less than the claimed amount, you must explain in the payment schedule—

- how you calculated the scheduled amount; and
- why the scheduled amount is less than the claimed amount; and
- your reason or reasons for not paying the full amount claimed.

**Note:** The written payment schedule must also state which payment claim the payment schedule relates to.

**Note:** If you state in the payment schedule that you will pay less than the claimed amount or pay nothing at all, the claimant may refer the dispute about how much is owing for adjudication.

**How long do I have?**

You must send a payment schedule by the date agreed in the contract or, if no date was agreed, within 20 working days after the payment claim was served on you.

**If I say I will pay another amount instead, when do I have to pay it?**

You must still pay the scheduled amount by the due date for payment.

**What if I don't pay the scheduled amount when I say I will?**

If you send a payment schedule but do not pay the scheduled amount by the due date, the claimant can go to court to recover the unpaid amount from you as a debt owed or refer the matter to adjudication (or both).

**Note:** A court may also require you to pay the claimant's costs.

Advice

**Important: If there is anything in this notice that you do not understand or if you want advice about what to do, you should consult a lawyer immediately.**

## APPENDIX C - CONTRACTOR'S PAYMENT SCHEDULE (Example only)

### Buyer-created tax invoice

|  |
|--|
| TO: (Payee / Subcontractor Name and Address) |
|  |
| GST No.                                      |

|   |
|---|
| FROM: (Payer / Contractor's Name and Address) |
|   |
| GST No.                                       |

Date Issued:

Project Name:  Subcontract No:

Location:  For payment claim No.:

Trade:  Period from:

Reference No.:  Period to:

Subcontract Sum:

| Description   | Subcontractors claim (excl GST)              | Amount certified (excl GST)                  | Reason for variance |
|---|--|--|---------------------|
| <b>Subcontract work value to date</b><br>(Detail below items amended from Subcontractor's Claim)                      |  |  |                     |
| <b>Materials on-site claimed to date (not incl above)</b><br>(Detail below items amended from Subcontractor's Claim)  |  |  |                     |
| <b>Materials off-site claimed to date (not incl above)</b><br>(Detail below items amended from Subcontractor's Claim) |  |  |                     |
| <b>Variations claimed to date</b><br>(Detail below items amended from Subcontractor's Claim)                          |  |  |                     |
| <b>Fluctuations claimed to date</b><br>(Detail below items amended from Subcontractor's Claim)                        |  |  |                     |
| Total claimed (excluding GST)   | \$ <input style="width: 80px;" type="text"/> |  |                     |
| Gross amount certified to date  |  | \$ <input style="width: 80px;" type="text"/> |                     |
| Less retentions in accordance with 12.4 of this Subcontract and the Subcontract Specific Conditions                   |  | \$ <input style="width: 80px;" type="text"/> |                     |
| Net amount certified to date  |  | \$ <input style="width: 80px;" type="text"/> |                     |
| Less amount previously certified  |  | \$ <input style="width: 80px;" type="text"/> |                     |
| Net amount for this payment   |  | \$ <input style="width: 80px;" type="text"/> |                     |
| Plus GST  |  | \$ <input style="width: 80px;" type="text"/> |                     |
| This Payment scheduled amount   |  | \$ <input style="width: 80px;" type="text"/> |                     |

Due date for payment:

Certified:  Date:



## APPENDIX D – MINUTES OF SUBCONTRACT PRE-LETTING MEETING (Example only)

The purpose of the meeting is to ensure the obligations of the proposed Subcontract are clearly understood by both parties. It provides an opportunity for both parties to discuss and agree issues that are important to the delivery of a successful project.

|  |   |
|--|---|
| <b>Contractor :</b> <input style="width: 90%;" type="text"/><br>Contract Title: <input style="width: 90%;" type="text"/><br>Contract No.: <input style="width: 90%;" type="text"/><br>Site Address: <input style="width: 90%;" type="text"/><br>Phone No.: <input style="width: 90%;" type="text"/><br>Fax No. <input style="width: 90%;" type="text"/><br>Email. <input style="width: 90%;" type="text"/><br>Attending: a) <input style="width: 90%;" type="text"/><br>b) <input style="width: 90%;" type="text"/><br>c) <input style="width: 90%;" type="text"/><br>Venue: <input style="width: 90%;" type="text"/><br>Contractor Representatives:<br>Office: <input style="width: 20%;" type="text"/> Mobile: <input style="width: 20%;" type="text"/><br>Site: <input style="width: 20%;" type="text"/> Mobile: <input style="width: 20%;" type="text"/><br>Safety: <input style="width: 20%;" type="text"/> Mobile: <input style="width: 20%;" type="text"/><br>Subcontract Trade: <input style="width: 90%;" type="text"/> | <b>Subcontractor :</b> <input style="width: 90%;" type="text"/><br>Name: <input style="width: 90%;" type="text"/><br>Address: <input style="width: 90%;" type="text"/><br><br>Phone No.: <input style="width: 90%;" type="text"/><br>Fax No.: <input style="width: 90%;" type="text"/><br>Email.: <input style="width: 90%;" type="text"/><br>Attending: a) <input style="width: 90%;" type="text"/><br>b) <input style="width: 90%;" type="text"/><br>c) <input style="width: 90%;" type="text"/><br>Date: <input style="width: 90%;" type="text"/><br>Subcontractor Representatives:<br>Office: <input style="width: 20%;" type="text"/> Mobile: <input style="width: 20%;" type="text"/><br>Site: <input style="width: 20%;" type="text"/> Mobile: <input style="width: 20%;" type="text"/><br>Safety: <input style="width: 20%;" type="text"/> Mobile: <input style="width: 20%;" type="text"/> |
|--|---|

### Sub Contract Details

|   |  |
|---|--|
| <b>Submitted Tender Value:</b> \$ <input style="width: 80%;" type="text"/> (GST excl.)  | <b>Agreed Subcontract Sum:</b> \$ <input style="width: 80%;" type="text"/> (GST excl.) |
| <b>Confirmation specific conditions have been agreed (as attached):</b>   |  |
| <b>Scope of subcontract works:</b>  |  |
| <b>Subcontractor clarifications not covered in Subcontract Specific Conditions:</b><br><br>Where responsibility for an item below is assigned to the Subcontractor in "Subcontract General Conditions", any change should be clearly detailed in the "Special Conditions" section of the "Subcontract Specific Conditions".<br><br>Numbers in brackets refer to relevant clauses in "Subcontract General Conditions". |  |

| Work Items |   | Responsibility |               | Comments   |
|------------|---|----------------|---------------|--|
| No.        | Item  | Contract or    | Subcontractor |  |
| 1          | Set out grid lines and floor levels   |                |               |  |
| 2          | Set out from grid lines and provide datums  |                |               |  |
| 3          | Provide offices, workshops, storage and containers (5.4.2)  |                |               | If 5.4.2 does not apply, detail in "Special Conditions" section of "Specific Conditions" |
| 4          | Provide lunch room and toilets (5.4.2)  |                |               | If 5.4.2 does not apply, detail in "Special Conditions" section of "Specific Conditions" |
| 5          | Unloading of materials and plant  |                |               |  |
| 6          | Distribution of materials to working area   |                |               |  |
| 7          | Scaffolding (fixed or mobile) up to 3 metre platform height (5.5)<br>(extent & duration must be agreed prior to erection) |                |               |  |
| 8          | Scaffolding above a 3 metre platform height (5.5)<br>(extent & duration must be agreed prior to erection)                 |                |               |  |
| 9          | Use of personnel hoist (5.6)  |                |               |  |
| 10         | Use of tower crane (5.6)  |                |               |  |
| 11         | Crane booking system (5.6)<br>(unscheduled or late deliveries may be rejected)  |                |               |  |
| 12         | Special hoisting facilities (i.e. crane / hoist / forklift) (5.6)   |                |               |  |
| 13         | Site lighting (background, safety and task specific lighting)   |                |               |  |
| 14         | Power for hand tools only – 240V (leads by Subcontractor)   |                |               |  |
| 15         | Additional power requirements (e.g. 3 phase)  |                |               |  |
| 16         | Water supply point on each floor (hoses by Subcontractor)   |                |               |  |
| 17         | Fume extraction   |                |               |  |
| 18         | Mark out holes and chases and supply drawings of these  |                |               |  |
| 19         | Cutting holes and chases (adequate notification required)   |                |               |  |
| 20         | Clean area of work on a daily basis (5.8)   |                | Yes           | If 5.8 does not apply, detail in "Special Conditions" section of "Specific Conditions"   |
| 21         | Removal of debris, waste and packaging to designated bins (5.8)   |                | Yes           | If 5.8 does not apply, detail in "Special Conditions" section of "Specific Conditions"   |
| 22         | Final clean on completion of Subcontract Works (5.8)  |                | Yes           | If 5.8 does not apply, detail in "Special Conditions" section of "Specific Conditions"   |
| 23         | Protect work in progress (5.1)  |                | Yes           | If 5.1 does not apply, detail in "Special Conditions" section of "Specific Conditions"   |
| 24         | Protect work until practical completion (5.1)   |                |               |  |
| 25         | Establish & agree approved quality assurance check sheet (5.11.1)   |                |               |  |
| 26         | Attendance on all progress, technical and safety meetings (5.15.1)  |                |               |  |
| 27         | Work permits for all non-residents entering site  |                |               |  |
| 28         | Samples and prior material approvals  |                |               |  |

|    |  |          |
|----|--|----------|
| 29 | <b>Issues With Methodology / Quality / Design / Specification</b><br>a)<br>b)<br>c)  |          |
| 30 | <b>Technical Alternatives</b><br>Innovative suggestions for delivering the specified works, or providing a cost or performance advantage (for consideration by the Contractor or Principal)  |          |
| 31 | <b>Alternative Materials or Products (5.12)</b><br>Material or product substitution suggested by the Subcontractor because of availability or supply issues (for consideration by the Contractor or Principal)   |          |
| 32 | <b>Site Access</b><br>Will be as follows: (deliveries need to be coordinated with site team to prevent congestion and delays)  |          |
| 33 | Subcontractor to provide detailed weekly returns on labour and others? Yes / No  |          |
| 34 | Subcontractor to advise if they propose to subcontract any work? Yes / No<br>A list of proposed subcontractors to be supplied and prior approval from Contractor required  |          |
| 35 | Level of supervision to be provided  |          |
| 36 | <b>Completion of the Subcontract works:</b><br>a) Approximate Commencement Date: <input type="text"/><br>b) Programme (construction programme issued at meeting and key dates agreed)<br>c) Working Hours on Site:<br>additional hours can be worked with prior agreement, but only while a Contractor's representative is present<br>7:00am – 6:00pm Monday - Thursday<br>7:00am – 5:00pm Friday<br>7:00am – 5:00pm Saturday  |          |
| 37 | <b>Shop Drawings</b><br>Number of copies and drawing size for each submission<br>Shop drawing review and approval period: <input type="text"/>   |          |
| 38 | <b>Design Obligations</b> Yes / No   |          |
| 39 | <b>Safety</b><br>The Subcontractor must comply with the Contractor's health and safety policy and, where relevant, the Principal's health and safety policy. The Subcontractor must provide the following: <ul style="list-style-type: none"> <li>• Subcontractor's health and safety policy</li> <li>• Site specific safety plan</li> <li>• Site specific task analysis</li> <li>• How Subcontractor will conduct hazard inspections</li> <li>• Plant and equipment records (i.e. maintenance, and weekly inspections)</li> <li>• All mobile plant and equipment must be fitted with roll over protections and safety belts</li> <li>• Training and competency records of all staff</li> <li>• All personnel will be required to have a current Site Safe Passport or equivalent</li> <li>• All personnel are required to use appropriate personal protection equipment</li> <li>• Material safety data sheets of hazardous materials (where applicable)</li> </ul> Subcontractor safety meeting to review the above information must be conducted before commencement of Subcontract Works<br>Subcontractor representative to action: <input type="text"/> By when: <input type="text"/> |          |
| 40 | The Subcontractor confirms that all terms and conditions in their quotation are deleted, except those included in the Specific Conditions of Subcontract   | Yes / No |
| 41 | The Subcontractor confirms that their price includes allowance for complying with the provisions of the Head Contract including the specification and drawings   | Yes / No |

|    |  |          |
|----|--|----------|
| 42 | The Subcontractor confirms acceptance of the Subcontract conditions without modification. The signed agreement must be returned before any payment is made | Yes / No |
| 43 | The Subcontractor agrees to work within the Contractor's quality assurance procedures (5.11)   | Yes / No |
| 44 | The Subcontractor's rates and margins on variations have been submitted and agreed   | Yes / No |
| 45 | <b>Any other matters:</b><br>a)<br>b)<br>c)  |          |
| 46 | These minutes accurately record our discussion. Dated: <span style="background-color: #cccccc; display: inline-block; width: 150px; height: 1em;"></span>  |          |

SIGNED by the CONTRACTOR:

SIGNED by the SUBCONTRACTOR:

---

Position:

Position

**APPENDIX E1 - SUBCONTRACTOR'S BOND IN LIEU OF RETENTIONS -  
CONTRACT PERIOD** (Example only)

**Project :** [REDACTED]      **Trade :** [REDACTED]

This deed is made on: (date) [REDACTED] 20 [REDACTED]

By: [REDACTED] ("The Subcontractor")

And: [REDACTED] of [REDACTED]

And: [REDACTED] of [REDACTED]  
("The Sureties")

**It is made in the following circumstances**

- a) The Contractor [REDACTED] has entered into an agreement with the Principal [REDACTED] for [REDACTED] (the Head Contract).
- b) The Subcontractor has entered into an agreement with the Contractor to construct, complete, deliver and maintain certain work described in the Subcontract and to carry out and fulfil the obligations imposed on the Subcontractor by the Subcontract.
- c) The Subcontractor is to provide the Contractor with security in the form of a bond in lieu of retentions.

**By this Deed**

1. The Subcontractor and Sureties are jointly and severally liable to the Contractor for the sum of \$NZ [REDACTED] (bond sum in words) and unconditionally bind themselves, their successors and assigns jointly and severally for payment of the bond sum.
2. The Sureties will immediately pay the Contractor any sum or sums up to the full amount of the bond sum upon written demand from the Contractor which must include a statement from the Contractor that it has given the Subcontractor three working days notice of its intention to demand the bond sum from the Sureties.
3. The Sureties must unconditionally pay any amount demanded in accordance with this bond without reference to the Subcontractor, and without regard to the performance or non-performance of the Subcontractor or the Contractor under the terms of the contract.
4. The condition of this bond is null and void if the Contractor has given written notice to the Sureties that:
  - (a) the Subcontractor has fulfilled all the obligations imposed on the Subcontractor by the Subcontract prior to the completion of the Subcontract Works as notified under clause 10.4.2 (a) of the Subcontract; or
  - (b) the Subcontractor or the Sureties have rectified any damages sustained by the Contractor in respect of all defaults; or
  - (c) this bond is null and void.
5. EXCEPT as provided in paragraph 4 above, this bond must remain in full force and effect.
6. The Sureties are not released from any liability under this bond:
  - a) By any alteration in the terms of the Subcontract between the Contractor and the Subcontractor;
  - b) By any alteration in the extent or nature of the Subcontract Works to be completed, delivered and maintained;
  - c) By any allowance of time by the Contractor under the Subcontract;
  - d) By any waiver of the Subcontractor's obligations by the Contractor;
  - e) By any default on the part of the Subcontractor; or
  - f) By notice from the Sureties to the Contractor.
7. The Sureties may at any time deposit with the Contractor the bond sum, or a lesser amount agreed by the Contractor. Upon payment of this amount the liability of the Sureties will be terminated.
8. This bond must not be transferred or assigned.

IN WITNESS HEREOF the parties have executed this bond the day and year set out above.

**Signed by the Subcontractor:**

|            |                      |             |                      |
|------------|----------------------|-------------|----------------------|
| Name:      | <input type="text"/> | Witness:    | <input type="text"/> |
| Company:   | <input type="text"/> | Address:    | <input type="text"/> |
| Position:  | <input type="text"/> |             |                      |
| Signature: | <input type="text"/> | Signature:  | <input type="text"/> |
| Date:      | <input type="text"/> | Occupation: | <input type="text"/> |

**Signed by the Sureties:**

|            |                      |            |                      |
|------------|----------------------|------------|----------------------|
| Name:      | <input type="text"/> | Name:      | <input type="text"/> |
| Company:   | <input type="text"/> | Company:   | <input type="text"/> |
| Signature: | <input type="text"/> | Signature: | <input type="text"/> |
| Position:  | <input type="text"/> | Position:  | <input type="text"/> |
| Date:      | <input type="text"/> | Date:      | <input type="text"/> |

NOTE: This bond must be executed by the Subcontractor and by the Sureties in the manner required for the execution of a deed. Any of these parties that is a company or body corporate must execute the bond by having it signed, under the name of the company, by two or more directors, or, 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 must be witnessed. In the case of a party who is an individual, the signature must be witnessed and the witness must also add their occupation and address.

**APPENDIX E2 - SUBCONTRACTOR'S BOND IN LIEU OF RETENTIONS –  
DEFECTS LIABILITY PERIOD (Example only)**

**Project :** \_\_\_\_\_ **Trade :** \_\_\_\_\_

This deed is made on: (date) \_\_\_\_\_ 20 \_\_\_\_\_

By: \_\_\_\_\_ ("The Subcontractor")

And: \_\_\_\_\_ of \_\_\_\_\_

And: \_\_\_\_\_ of \_\_\_\_\_  
("The Sureties")

**It is made in the following circumstances**

- a) The Contractor \_\_\_\_\_ has entered into an agreement with the Principal \_\_\_\_\_ for \_\_\_\_\_ (the Head Contract).
- b) The Subcontractor has entered into an agreement with the Contractor to construct, complete, deliver and maintain certain work described in the Subcontract and to carry out and fulfil the obligations imposed on the Subcontractor by the Subcontract.
- c) The Subcontractor is to provide the Contractor with security in the form of a bond in lieu of retentions.

**By this Deed**

1. The Subcontractor and Sureties are jointly and severally liable to the Contractor for the sum of \$NZ \_\_\_\_\_  
(bond sum in words) and unconditionally bind themselves, their successors and assigns jointly and severally for payment of the bond sum.
2. The Sureties will immediately pay the Contractor any sum or sums up to the full amount of the bond sum upon written demand from the Contractor which must include a statement from the Contractor that it has given the Subcontractor three working days notice of its intention to demand the bond sum from the Sureties.
3. The Sureties must unconditionally pay any amount demanded in accordance with this bond without reference to the Subcontractor, and without regard to the performance or non-performance of the Subcontractor or the Contractor under the terms of the contract.
4. The condition of this bond is null and void if the Contractor has given written notice to the Sureties that:
  - (a) the Subcontractor has fulfilled all the obligations imposed on the Subcontractor by the Subcontract subsequent to the issuing of the notice under clause 10.4.2(a) of the Subcontract ; or
  - (b) the Subcontractor or the Sureties have rectified any damages sustained by the Contractor in respect of all defaults; or
  - (c) this bond is null and void.
5. EXCEPT as provided in paragraph 4 above, this bond must remain in full force and effect.
6. The Sureties are not released from any liability under this bond:
  - a) By any alteration in the terms of the Subcontract between the Contractor and the Subcontractor;
  - b) By any alteration in the extent or nature of the Subcontract Works to be completed, delivered and maintained;
  - c) By any allowance of time by the Contractor under the Subcontract;
  - d) By any waiver of the Subcontractor's obligations by the Contractor;
  - e) By any default on the part of the Subcontractor; or
  - f) By any notice from the Sureties to the Contractor.
7. The Sureties may at any time deposit with the Contractor the bond sum, or a lesser amount agreed by the Contractor. Upon payment of this amount the liability of the Sureties will be terminated.
8. This bond must not be transferred or assigned.

IN WITNESS HEREOF the parties have executed this bond the day and year set out above.

**Signed by the Subcontractor:**

|            |                      |             |                      |
|------------|----------------------|-------------|----------------------|
| Name:      | <input type="text"/> | Witness:    | <input type="text"/> |
| Company:   | <input type="text"/> | Address:    | <input type="text"/> |
| Position:  | <input type="text"/> |             |                      |
| Signature: | <input type="text"/> | Signature:  | <input type="text"/> |
| Date:      | <input type="text"/> | Occupation: | <input type="text"/> |

**Signed by the Sureties:**

|            |                      |            |                      |
|------------|----------------------|------------|----------------------|
| Name:      | <input type="text"/> | Name:      | <input type="text"/> |
| Company:   | <input type="text"/> | Company:   | <input type="text"/> |
| Signature: | <input type="text"/> | Signature: | <input type="text"/> |
| Position:  | <input type="text"/> | Position:  | <input type="text"/> |
| Date:      | <input type="text"/> | Date:      | <input type="text"/> |

NOTE: This bond must be executed by the Subcontractor and by the Sureties in the manner required for the execution of a deed. Any of these parties that is a company or body corporate must execute the bond by having it signed, under the name of the company, by two or more directors, or, 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 must be witnessed. In the case of a party who is an individual, the signature must be witnessed and the witness must also add their occupation and address.



## APPENDIX E3 - SUBCONTRACTOR'S PERFORMANCE BOND (Example only)

**Project :** \_\_\_\_\_ **Trade :** \_\_\_\_\_

This deed is made on: (date) \_\_\_\_\_ 20 \_\_\_\_\_

By: \_\_\_\_\_ ("The Subcontractor")

And: \_\_\_\_\_ of \_\_\_\_\_

And: \_\_\_\_\_ of \_\_\_\_\_  
("The Sureties")

### It is made in the following circumstances

- a) The Contractor \_\_\_\_\_ has entered into an agreement with the Principal \_\_\_\_\_ for \_\_\_\_\_ (the Head Contract).
- b) The Subcontractor has entered into an agreement with the Contractor to construct, complete, deliver and maintain certain work described in the Subcontract and to carry out and fulfil the obligations imposed on the Subcontractor by the Subcontract.
- c) The Subcontractor is to provide the Contractor with security in the form of a bond.

### By this Deed

1. The Sureties jointly and severally unconditionally agree to pay the Contractor on demand from time to time sums up to the aggregate amount of \$ \_\_\_\_\_ (bond sum in words).
2. Any demand from the Contractor must be in writing and signed for and on behalf of the Contractor.
3. The condition of this bond is that it is null and void if:
  - a) The Sureties have paid to the Contractor the aggregate amount in paragraph 1 above or such lesser amount as may be agreed in writing with the Contractor; or
  - b) The Contractor has been issued with a Practical Completion Certificate for the Contract Works under the Head Contract; or
  - c) The Subcontractor and Sureties receive written notification from the Contractor that the bond is no longer required by the Contractor.
4. EXCEPT as provided in paragraph 3 above, this bond must remain in full force and effect.
5. The Sureties are not released from any liability under this bond:
  - a) By any alteration in the terms of the Subcontract between the Contractor and the Subcontractor;
  - b) By any alteration in the extent or nature of the Subcontract Works to be completed, delivered and maintained;
  - c) By any allowance of time by the Contractor under the Subcontract;
  - d) By any waiver of the Subcontractor's obligations by the Contractor;
  - e) By any default on the part of the Subcontractor; or
  - f) By any notice from the Sureties to the Contractor.
6. The Sureties may at any time deposit with the Contractor the bond sum, or a lesser amount agreed by the Contractor. Upon payment of this amount the liability of the Sureties will be terminated.
7. This bond must not be transferred or assigned.

IN WITNESS HEREOF the parties have executed this bond the day and year set out above.

**Signed by the Subcontractor:**

Name:

Witness:

Company:

Address:

Position:

Signature:

Signature:

Date:

Occupation:

**Signed by the Sureties:**

Name:

Name:

Company:

Company:

Signature:

Signature:

Position:

Position:

Date:

Date:

**NOTE:** This bond must be executed by the Subcontractor and by the Sureties in the manner required for the execution of a deed. Any of these parties that is a company or body corporate must execute the bond by having it signed, under the name of the company, by two or more directors, or, 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 must be witnessed. In the case of a party who is an individual, the signature must be witnessed and the witness must also add their occupation and address.