



Medium Works Contract [(Transportables Relocation)]

[**RFT Draft**]

Relating to:

{ . . . }

{ . . . }

The Secretary for Education

as Principal

{ . . . }

as Contractor

[Project ID: { . . . },]Contract Number: { }

DATED

BETWEEN

The **Sovereign in right of New Zealand** acting by and through the Secretary for Education (**Principal**)

AND

{ . . } (**Contractor**)

THE PARTIES AGREE AS FOLLOWS:

1. The Contractor shall construct, complete, deliver and remedy defects in the Works as described in the Contract.
2. The Principal must pay the Contractor the Contract Price as defined in and at the times and in the manner provided in the Contract.
3. Each party must carry out and fulfill all other obligations imposed on that party by the Contract.
4. The Contract comprises the following documents:
 - This Contract Agreement;
 - [The following post tender documents: <TBC>]
 - [The following post tender documents:
 - { . . }]
 - [The following notices to tenderers: <TBC>]
 - [The following notices to tenderers:
 - { . . }]
 - Part 1 – Special Conditions of Contract;
 - Part 2 – General Conditions of Contract for Medium Works;
 - Appendix 1 – The Specifications;
 - Appendix 2 – The Drawings;
 - Appendix 3 – The Schedule of Prices;
 - Appendix 4 – [Cost fluctuations][Not used];
 - Appendix 5 – Health and Safety Requirements;
 - Appendix 6 – Asbestos Handling Requirements
 - Appendix 7 – [Form of Weathertightness Warranty][Not used];
 - Appendix 8 – Practical Completion Certificate;
 - Appendix 9 – Final Completion Certificate;
 - Appendix 10 – [Subcontractor Warranties and Form of Subcontractor Warranty][Not Used];
 - Appendix 11 – Agreement for Off-Site Materials;
 - Appendix 12 – The Principal's Request for Tender; [and]
 - Appendix 13 – The Contractor's tender
 - [Appendix 14 – Principal's Condition Report; and
 - Appendix 15 – Relocatable Building(s)]
5. The documents forming the Contract are to be taken as mutually explanatory, but in the case of ambiguity or conflict the priority of documents shall be as listed in clause 4 above, with each document higher in the list prevailing over a document appearing lower in the list.
6. This Contract may be executed in counterparts and by electronic signature, and provided that each party has executed a counterpart, the counterparts together shall constitute a binding and enforceable agreement between the parties. A party shall be entitled to transmit an electronic copy of this Contract by email (or other electronic means) to the other party.

[
SIGNED for and on behalf of the **Sovereign
in right of New Zealand** acting by and
through the Secretary for Education by his
or her duly authorised signatory:

[
{. . .}
{. . .}]

Signature of authorised signatory

[{. . .}]

Name of authorised signatory

[{. . .}]

Date of signing

SIGNED for and on behalf of { . . . } by its duly
authorised signatory:

[{. . .}
{. . .}]

Signature of authorised signatory

[{. . .}]

Name of authorised signatory

[{. . .}]

Date of signing

] [
[<Signature blocks to be inserted>]

SPECIAL CONDITIONS TO MEDIUM WORKS CONTRACT

PART 1: SPECIAL CONDITIONS OF CONTRACT

| Clause | Subject | Special Condition |
|---------|---|--|
| | The Principal is: | Secretary for Education |
| | The School is: | { . . } { . . } |
| [| The Site comprises: | Existing Site: { . . }, { . . } New Site: { . . }, { . . }] |
| | The Contractor is: Address: Mark for the attention of: Email address: Phone number: | [{ . . }] [{ . . }] [{ . . }] [{ . . }] |
| 3.1 | The Principal's Representative is: Address: Email address: | { . . } Attention: { . . } { . . } |
| 2.1.2 | Commencement Date: | { . . } |
| [2.1.1A | Principal's condition report | { . . }] |
| 2.1.3 | Principal Supplied Items: | [None] <ul style="list-style-type: none"> [The Relocatable Buildings] [[{ . . }]] |
| 2.5 | Separate Contractors: | [[<To be confirmed>]] [[None]] <ul style="list-style-type: none"> [[[{ . . } ({ . . })]]] [[None]] <ul style="list-style-type: none"> [[[{ . . } ({ . . })]]] |
| 2.6.1 | The Contractor is required to prepare and submit a: | |
| | (a) Site-specific risk assessment? | Yes |

SPECIAL CONDITIONS TO MEDIUM WORKS CONTRACT

| Clause | Subject | Special Condition |
|--------------|--|---|
| | (b) Site-specific safety plan? | Yes |
| 2.6.2 | Are monthly health and safety reports required? | { . . } |
| 2.9.1 | Public liability insurance | { . . } Sub Limits: <ul style="list-style-type: none"> For liability arising out of vibration, weakening or removal of support, of not less than No sublimit – total amount applies For liability arising out of damage to underground services, of not less than No sublimit – total amount applies |
| 2.9.2 or 3.5 | Works insurance shall be obtained by: | The Principal |
| 2.9.3 | Minimum amounts of insurance cover for: | |
| | Motor vehicle third party liability: | \$2,000,000 |
| | Contractors plant and equipment: | The Contractor shall insure each item of plant and machinery having a current market value of more than \$25,000 |
| [| Transit insurance | The Contractor shall obtain transit insurance cover of a minimum of { . . } |
| [| Bailee insurance | The Contractor shall obtain bailee insurance cover of a minimum of { . . } |
| 2.11 | Exceptions to the Contractor's obligation to obtain consents under 2.11 are: | [None] <ul style="list-style-type: none"> [[Exception #{ . . } { . . }]] |
| 2.12 | Nominated Subcontractors and Suppliers: | [None] <ul style="list-style-type: none"> [[{ . . } ({ . . })]] |
| 2.14 | Exceptions to Contractor owned or licenced proprietary and intellectual property rights are: | None |

SPECIAL CONDITIONS TO MEDIUM WORKS CONTRACT

| Clause | Subject | Special Condition |
|------------|---|--|
| 2.18 | Contractor design responsibility | <p>[None]</p> <p>[The Contractor is responsible for the design of the following parts of the Works:]</p> <ul style="list-style-type: none"> [[{ . . }]] |
| 2.18.1 (c) | Design – Professional Indemnity Insurance | [\$1,000,000][N/A] |
| 2.21 | Salvaged Materials | <p>[None]</p> <ul style="list-style-type: none"> [[Item #{ . . } { . . }]] |
| 3.5 | Principal arranged construction insurance | |
| | In accordance with 3.5.1, the insurance policy wording title for 3.5.1 and 3.5.2(a), (b), and (c) is: | <p>3.5.1 Construction Material Damage</p> <p>3.5.2(a) and (b) – Material Damage Insurance Policy</p> <p>3.5.2(c) – N/A</p> |
| 3.5.2 | Where the Principal is required to effect construction insurance: | |
| | The lead insurer is: | Vero Insurance New Zealand Limited |
| | Address of lead insurer: | Private Bag 92 – 237, Auckland |
| | The Nominal Deductibles are (subject to clause 3.5.5 of Part 2): | |
| | For damage arising out of the Works: | \$5,000 or \$25,000 for loss arising from testing and commissioning |
| | For other claims: | \$5,000 |
| 3.5.2(a) | The existing structures are: | <p>[None]</p> <ul style="list-style-type: none"> [The Relocatable Buildings] [[{ . . }]] [{ . . }] |
| | The lead insurer is: | Vero Insurance New Zealand Limited |
| | Address of lead insurer: | Private Bag 92 – 237, Auckland |
| | The Nominal Deductibles are (subject to clause 3.5.5 of Part 2): | |

SPECIAL CONDITIONS TO MEDIUM WORKS CONTRACT

| Clause | Subject | Special Condition |
|------------------|--|--|
| | For damage arising out of the Works: | \$25,000 |
| | For other claims: | \$25,000 |
| 3.5.2(b) | Other structures in the vicinity are: | [None] <ul style="list-style-type: none"> [[{. . .}]] [{. . .}] |
| | The lead insurer is: | Vero Insurance New Zealand Limited |
| | Address of lead insurer: | Private Bag 92 – 237, Auckland |
| | The Nominal Deductibles are (subject to clause 3.5.5 of Part 2): | |
| | For damage arising out of the Works: | \$25,000 |
| | For other claims: | \$25,000 |
| 3.5.2(c) | Contents insurance: | N/A |
| 5.1 | Due Date for Completion | {. . .} [<i><The above is a provisional/estimated date for the purposes of the RFT></i>] |
| 5.3.4(d) and (e) | Code Compliance Certificate or Certificate of Public Use | [Prior to the issue of the Practical Completion Certificate the Contractor shall provide to the Principal a [Code Compliance Certificate (CCC) for the Works][Certificate of Public Use (CPU) for the Works].][Not applicable] |
| 5.3.4(f) | Weathertightness Warranty | Is the Contractor to provide a Weathertightness Warranty? {. . .} |
| 5.3.4(g) | Additional requirements for Practical Completion | [Not applicable] [Prior to issue of the Practical Completion Certificate the Contractor must provide to the Principal the following additional documents and information: <ul style="list-style-type: none"> [[{. . .}]]] |
| 6.1 | Defects Notification Period | {. . .} |
| 7.1 | Type of Contract | The Contract is a {. . .} Contract{. . .}. |

SPECIAL CONDITIONS TO MEDIUM WORKS CONTRACT

| Clause | Subject | Special Condition | | | | | | | | |
|--------------------|---|---|--------------------|------------------------------|-----------|----------|-----------|------------------------------|-------------------|-----|
| [7.2.1 | Lump Sum Contract Price | [{. . .}][<To be completed>] (excluding GST)] | | | | | | | | |
| [| Provisional Sums | [N/A] [The above lump sum price includes the following Provisional Sums: <table><tr><th>Amount (excl. GST)</th><th>Description</th></tr><tr><td>[{. . .}]</td><td>{. . .}]</td></tr></table>] [<To be completed>]] | Amount (excl. GST) | Description | [{. . .}] | {. . .}] | | | | |
| Amount (excl. GST) | Description | | | | | | | | | |
| [{. . .}] | {. . .}] | | | | | | | | | |
| [7.2.2(b) | Cost Reimbursement Contract – allowance for the Contractor’s margin | [{. . .}][<To be completed>]] | | | | | | | | |
| 7.4 | Payment Claims | The period/s for the Contractor’s payment claim/s is/are: <ul style="list-style-type: none">[upon Practical Completion][monthly][upon completion of the following milestones:] <table><tr><th>Milestone</th><th>Percentage of Contract Price</th></tr><tr><td>[{. . .}]</td><td>{. . .}]</td></tr></table> <table><tr><th>Milestone</th><th>Percentage of Contract Price</th></tr><tr><td><To be completed></td><td><%></td></tr></table> | Milestone | Percentage of Contract Price | [{. . .}] | {. . .}] | Milestone | Percentage of Contract Price | <To be completed> | <%> |
| Milestone | Percentage of Contract Price | | | | | | | | | |
| [{. . .}] | {. . .}] | | | | | | | | | |
| Milestone | Percentage of Contract Price | | | | | | | | | |
| <To be completed> | <%> | | | | | | | | | |
| 7.5 | Advances for materials not yet on Site | | | | | | | | | |
| | <ul style="list-style-type: none">Advances for materials not on Site shall not be made: | N/A | | | | | | | | |
| | <ul style="list-style-type: none">Advances for materials not yet on Site may be | [<Contractor's Tender to advise if advances are required for materials not yet on site, and list relevant materials>] | | | | | | | | |

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| Clause | Subject | Special Condition |
|--------|--|--|
| | made, subject to the following conditions: | <p>[Advances for materials not yet on Site may be made at the sole discretion of the Principal on condition that the Contractor first enters into an Agreement for Off-site Materials in the form attached at Appendix 11 provided that the Contractor acknowledges and agrees that it shall not be entitled to an extension of time in the event that the Principal decides not to exercise its discretion to make any such advance or advances.]</p> <p>[Advances for materials not yet on Site will be made in respect of the following materials:</p> <ul style="list-style-type: none"> [{ . . .}] such other materials as may be agreed at the sole discretion of the Principal (provided that the Contractor acknowledges and agrees that it shall not be entitled to an extension of time in the event that the Principal decides not to exercise its discretion to make any such advance or advances), <p>in each case, on condition that the Contractor first enters into an Agreement for Off-site Materials in the form attached at Appendix 11.]</p> |
| 7.9 | Retentions | <p>The percentage to be retained from each progress payment and the limit of the total sums retained shall be in accordance with the following:</p> <ul style="list-style-type: none"> -- 5% on the first \$200,000, and -- 2.5% on the next \$800,000 -- With a maximum total retention when aggregated of \$30,000, and -- With a defects liability retention of 100% of the total retention. |
| 7.13 | Cost fluctuations | <p>[Cost fluctuations shall be paid in accordance with Appendix 4.][Cost fluctuations shall not be paid.]</p> |
| 8.5 | Liquidated Damages | <p>[Liquidated damages do not apply to this Contract]</p> <p>[{ . . .}, exclusive of GST</p> <p>Where liquidated damages are provided above, the Contractor acknowledges and agrees that the amount stated is a genuine pre-estimate of the likely loss that would result from delay of completion.]</p> |
| 8.6 | Contractor's liability limit | <p>Subject to clauses 8.6.1 and 8.6.2 in Part 2 – General Conditions of Contract for Medium Works Contract, the maximum aggregate liability of the Contractor to the Principal under or in connection with the Contract is:</p> <ul style="list-style-type: none"> 100% of the Contract Price |

APPENDICES TO MEDIUM WORKS CONTRACT

PART 2: GENERAL CONDITIONS OF CONTRACT FOR MEDIUM WORKS

1. THE CONTRACT AND DEFINITIONS

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

1.2 Definitions:

“Asbestos Handling Requirements” means the requirements stated in Appendix 6 – Asbestos Handling Requirements.

“CCA” means the Construction Contracts Act 2002.

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

“Contract” means the documents referred to in the Contract Agreement as comprising the Contract.

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

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

“Defects Notification Period” means the period stated in 6.1.

“Design Requirements” means, where the Contract:

- (a) includes a project brief applicable to the Works, the Ministry’s property design standards and legal requirements (as amended from time to time) as more particularly detailed in that project brief; or
- (b) does not include a project brief applicable to the Works, the Ministry’s property design standards and legal requirements (as amended from time to time) applicable to the Works as more particularly detailed on the Ministry’s website

Refer: <https://www.education.govt.nz/school/property-and-transport/projects-and-design/design/design-standards/>

“Drawings” means the Principal’s drawings of the Works as listed in Appendix 2.

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

“Existing Site” means that part of the Site where the Relocatable Building(s) is/are located at the commencement of the Works, as specified in the Special Conditions.
]

“Final Completion Certificate” is the certificate issued under 5.4.

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

“Health and Safety Requirements” are the requirements stated at Appendix 5.

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

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“Ministry of Education” means the Principal.

[**“New Site”** means that part of the Site where the Relocatable Building(s) is/are to be delivered in accordance with the Contract, as specified in the Special Conditions.

]

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

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

“Practical Completion” is as defined in 5.3.1.

“Practical Completion Certificate” is the certificate issued under 5.3.3.

“Principal” means the Sovereign in right of New Zealand acting by and through the Secretary for Education.

“Principal’s Representative” means the person named in the Special Conditions or such other person from time to time nominated by the Principal under 3.1.

“Provisional Sum” is as defined in 4.4.

[**“Relocatable Building(s)”** means the relocatable building(s) more particularly described in Appendix 15.

]

“Schedule of Prices” means the schedule of Prices (if any) included in Appendix 3.

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

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

“Site” means the land and other places on or over or under which the Works are to be carried out together with any other places made available to the Contractor by the Principal conditionally or unconditionally for the purpose of the Contract[, and includes, for the avoidance of doubt, both the Existing Site and the New Site].

“Special Conditions” means the Part 1: Special Conditions of Contract which modify these General Conditions.

“Specifications” means the document(s) listed in Appendix 1, containing the requirements for carrying out the Works.

“Variation” means a variation to the Works instructed by the Principal under 4.1.

“Weathertightness Requirements” means the requirements set out in the document titled “Weathertightness Design Requirements for New School Buildings” (Version 3.0, September 2020) as amended from time to time
Refer: <https://education.govt.nz/assets/Documents/Primary-Secondary/Property/Design/Weathertightness-Design-Requirements-25-September-2020.pdf>

“Working Day” means a calendar day other than any Saturday, Sunday, public holiday, or any day falling within the period from 24 December to 5 January both inclusive, irrespective of the days on which work is carried out.

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“Works” means the works including any temporary works to be executed in accordance with the Contract.

2. THE CONTRACTOR’S OBLIGATIONS

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

2.1.1 must prior to commencing the Works, the Contractor shall prepare a programme for the Works and submit it to the Principal’s Representative. The Programme shall demonstrate how the Contractor proposes to meet the Due Date for Completion. The Contractor shall use the programme to track and report actual progress against planned dates and to forecast the likely dates for Practical Completion of the Works. No payment otherwise due under the Contract shall become payable until the Contractor has submitted the programme to the Principal’s Representative. From time to time the Principal’s Representative may require the Contractor to amend its programme to take account of the actual progress of the Works so as to achieve completion by the Due Date for Completion or as soon as reasonably practicable thereafter. The Principal’s Representative may further require the Contractor to indicate the means by which the programmed progress will be achieved;

[**2.1.1A** agrees that the Principal’s condition report attached as Appendix 14 to this Contract accurately reflects the condition of the Relocatable Buildings prior to the commencement of the Works;

]

2.1.2 must commence the Works on the Commencement Date or as soon thereafter as the Principal makes the [applicable part of the]Site available and the necessary consents are in place;

2.1.3 must provide all services, labour, materials, plant, temporary works, { . . . }transport and everything necessary to undertake and complete the Works except for any Principal supplied items as stated in the Special Conditions, and shall not be entitled to substitute any product specified in the Drawings or Specifications without the Principal’s prior written approval;

2.1.4 must proceed with the Works with due care and diligence and in a proper and workmanlike manner and must complete the Works in accordance with the Contract by the Due Date for Completion;

2.1.5 must ensure the Works on completion are fit for the purpose for which they are intended as can reasonably be ascertained from the Contract; and

2.1.6 must promptly remedy defects in accordance with section 6 of the Contract.

2.2 Comply with Laws and Authorities: The Contractor must comply with the requirements of all relevant authorities and with all relevant statutes, secondary legislation, instruments, and bylaws. The Contractor must ensure that the Works comply with all requirements of any relevant authority having jurisdiction over the Works.

2.3 Comply with Instructions: The Contractor must comply with the Principal’s instructions and any Variations issued under section 4 of the Contract including the suspension of all or part of the Works.

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- 2.4 Subcontractors:** The Contractor is fully responsible for the acts or omissions of any subcontractors. The Contractor's obligations and liability are not affected by the subcontracting of any part of the Works. The Contractor must not subcontract the entire Works or assign the Contract without the prior written approval of the Principal.
- 2.5 Co-operate with Others:** The Contractor is not entitled to exclusive possession of the Site and must co-operate with any other persons who come on to the Site, including but not limited to representatives of the Principal, any Separate Contractors, and other third parties.
- 2.6 Protect People and Property:**
- 2.6.1 Site-Specific Risk Assessment/Site-Specific Safety Plan:** Where required by the Special Conditions, prior to commencing work on Site the Contractor must:
- (a) undertake a Site-specific risk assessment, including identifying:
 - (i) any hazards and risks to health and safety associated with the Works or the Site; and
 - (ii) any special health and safety measures required; and/or
 - (b) prepare and submit to the Principal's Representative a Site-specific safety plan for the execution of the Works, which shall:
 - (i) address the means by which the Contractor intends to meet its obligations under this clause 2.6 and the Health and Safety Requirements;
 - (ii) address any critical risks that the Principal has identified in relation to the Site or the Works; and
 - (iii) be updated as the Works progress to incorporate hazards or other risks to health and safety not foreseen at the at the time of submitting the original Site-specific safety plan.
 - (c) Acceptance by the Principal's Representative of the site specific health and safety plan shall not relieve the Contractor of any obligation or liability under the Contract or at law.
- 2.6.2 Monthly Health and Safety Reports:** Where required by the Special Conditions, the Contractor shall upon request provide to the Principal's Representative a monthly (or more frequently if required by the Principal) health and safety report, meeting the requirements and in such form as may be required by the Principal from time to time.
- 2.6.3 Safe working environment:** The Contractor shall ensure, so far as reasonably practicable that the Site and the Works, including the means of entering and exiting the Site are without risks to the health and safety of any persons.
- 2.6.4 Safety of Works and Other Persons:** The Contractor shall ensure so far as is reasonably practicable that the health and safety of any:
- (a) workers involved in carrying out the Works;

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

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

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

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

2.6.6 Notifiable Events: The Contractor must:

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

2.6.7 Safety Audits: The Contractor shall provide the Principal or its appointed representative with access to the Site and its personnel in order to review, monitor or audit the Contractor's health and safety procedures and practices, as deemed appropriate by the Principal at any time with or

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without notice. The Contractor shall rectify any issues raised in any such audits, reviews or monitoring.

2.6.8 Other Requirements: The Contractor must comply with the Health and Safety Requirements and shall be responsible for any non-compliance by any subcontractor with the Health and Safety Requirements.

2.6.9 Provide and Protect: The Contractor must provide all overseeing and provide, erect, maintain and when no longer required remove all barricades, fencing, temporary roadways and footpaths, signs and lighting necessary for the effective protection of property, for traffic and for the health and safety of others.

2.6.10 Engage, Coordinate, Consult and Cooperate: The Contractor shall, so far as is reasonably practicable:

- (a) engage with workers involved in carrying out the Works in relation to health and safety matters;
- (b) have procedures in place that provide reasonable opportunities for workers to participate effectively in improving health and safety in respect of the Site and the Works on an ongoing basis; and
- (c) co-ordinate, consult and cooperate with all other duty-holders in relation to the Works, including the Principal.

2.6.11 Avoid Nuisance: The Contractor must take all reasonable steps to avoid nuisance (including unnecessary or excessive noise, dust, fumes) and prevent damage to property.

2.6.12 Suspension: If the Principal considers that the Contractor is not conducting the Works in compliance with the Site-specific safety plan, relevant legislation and regulations or any other requirements for health and safety in the Contract or is conducting the Works in such a way as to endanger the health and safety of any workers or other persons, the Principal may instruct the Contractor to suspend the Works until the Contractor has complied with its obligations to the satisfaction of the Principal.

2.7 Take Responsibility for Care of the Works:

2.7.1 Care of the Works: The Contractor is responsible for care of the Works and all plant or materials awaiting incorporation into the Works, from the time it obtains possession of the Site until Practical Completion.

2.7.2 Make Good: The Contractor must make good at its own cost any loss or damage to the Works, materials or plant to the extent that it is responsible for those Works, materials or plant under 2.7.1.

2.8 Indemnify the Principal: The Contractor must indemnify and hold harmless the Principal against all claims, liabilities, costs, losses or damages arising from damage to any property, or personal injury to any person or illness or death of any person that arises from the Contractor's performance of the Works.

2.9 Contractor to insure: The Contractor must:

2.9.1 Insure against Public Liability: arrange and maintain public liability insurance until issue of the Final Completion Certificate to indemnify the Principal and the Contractor against legal liability to third parties for

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damage, loss, or injury caused by an act or omission of the Contractor arising out of the performance of the Works[(for the avoidance of doubt, at both the Existing Site and the New Site)]. The insurance must be for at least the amount stated in the Special Conditions.

- 2.9.2 Insure the Works:** where required by the Special Conditions, arrange and maintain Works insurance in the joint names of the Principal and the Contractor until Practical Completion of the Works. The insurance must be sufficient to cover the Contract Price plus any increased costs, professional fees, Principal supplied items not included in the Contract Price and the estimated cost of demolition, disposal and preparation for replacement work necessarily incurred following any loss or damage to the Works. The insurance shall also continue to cover loss or damage resulting from an act or omission of the Contractor in the performance of its obligations in the period between Practical Completion and the issue of the Final Completion Certificate.
- 2.9.3 Other Insurance:** insure the Contractor's plant and equipment and must maintain insurance against public liability arising from the use of any motor vehicle by the Contractor. [Where required by the Special Conditions, the Contractor must take out and maintain policies of bailee insurance and transit insurance with an insurer acceptable to the Principal (acting reasonably), which shall include loss or damage to the Relocatable Buildings whilst in transit between the Existing Site and the New Site and during any storage of the Relocatable Building(s).]The insurance must be for at least the amount stated in the Special Conditions.
- 2.9.4 Provide Insurance Certificate:** provide evidence (including certificates) of the Contractor's insurances to the satisfaction of the Principal.
- 2.10 Obtain and Assign Warranties:** The Contractor must obtain warranties from all suppliers and subcontractors as listed in Appendix 10 and prior to Practical Completion must assign or obtain Subcontractor Warranties in the form set out in Appendix 10.
- 2.11 Obtain Consents:** Except as stated otherwise in the Special Conditions, the Contractor must on behalf of the Principal obtain all necessary consents producer statements and compliance certificates required by relevant authorities and pay all required consent fees.
- 2.12 Nominated Subcontractors and Suppliers:** Without limiting the Contractor's obligations and liability the Contractor must (in the absence of any reasonable objection by the Contractor that the Principal has accepted at the Principal's sole discretion) employ any subcontractors or suppliers nominated in the Special Conditions.
- 2.13 Performance Obligations:** The Contractor must meet all performance criteria set out (if any) in the Specifications.
- 2.14 Intellectual Property:** Unless stated otherwise in the Special Conditions, the Contractor warrants it is the sole owner of or holds a licence to use all the proprietary rights and intellectual property in the Works and it is not in breach of any intellectual property rights of any third party.
- 2.15 Design and Weathertightness Requirements:** The Contractor shall ensure that the Works (insofar as they include any design responsibility on the part of the Contractor) comply with the applicable Design Requirements and the Weathertightness Requirements.

APPENDICES TO MEDIUM WORKS CONTRACT

- 2.16 Asbestos:** The Contractor shall comply with the Asbestos Handling Requirements.
- 2.17 Police Vetting:** The Contractor shall comply with all Ministry of Education police vetting requirements prior to any of its personnel or subcontractors accessing any part of the Site. Details may be found on the following web site: <http://www.education.govt.nz/school/property/state-schools/project-management/boards-of-trustees-role/police-vetting/>.
- 2.18 Design:** If the Works include provision for design services, the following provisions of this clause 2.18 shall apply:
- 2.18.1** The Contractor warrants and undertakes to the Principal that the Contractor:
- (a) is experienced in the management, co-ordination and/or production of design documentation for projects containing elements similar to the elements comprising the Works;
 - (b) has examined the documents, things and requirements comprising the Contract, including but not limited to the Drawings;
 - (c) has arranged professional indemnity insurance as indicated in the Special Conditions.
- 2.18.2** The Contractor is responsible for any design and/or documentation work it carries out, and the performance and “buildability” of that design work and the Contractor must ensure that such works are designed, the design developed and the design documentation prepared with the degree of skill, care and diligence reasonably expected of a professional providing services similar to the design work, and in accordance with this Contract. The Contractor must ensure that:
- (a) to the extent that the Contractor undertakes the design work, the Contractor has the necessary experience, skills and expertise to carry out such work;
 - (b) where it subcontracts design work, such works are designed for the Contractor by appropriate consultants (approved by the Principal) in accordance with proper professional architectural or engineering practices and principles;
 - (c) such work and all services and features included in such work are professionally designed to be appropriate, adequate and fit for purpose or purposes described in or reasonably able to be inferred from this Contract;
 - (d) it has and will apply sufficient resources to perform the design services to meet its obligations, including to comply with the Principal’s programming requirements; and
 - (e) where the Contractor forms the opinion on reasonable grounds, at any time, that an element of the design or design documentation including the Drawings does not comply with the Contract or contains errors or omissions the Contractor must direct its consultants to rectify the non compliance (at no additional cost to the Principal), and inform the Principal in writing;
 - (f) such work is cost effective in terms of proposed solutions;

APPENDICES TO MEDIUM WORKS CONTRACT

- (g) so far as is reasonably practicable, make sure that the Works are designed to avoid any health and safety risks to those personnel engaged to carry out the Works, or those occupying the site during the Works, or those responsible for future maintenance.

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

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

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

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

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

The further information which might be requested by the Principal's Representative may, without limitation, include a certificate or warranty from a body or person nominated or described by the Principal's Representative to the effect that the technical aspects of the performance benefits of the alternative material or product which will be delivered to the Principal's Representative are no less appropriate or beneficial than those derived through the Drawings and Specifications.

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

2.21 Salvaged Materials

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

3. THE PRINCIPAL'S OBLIGATIONS

3.1 The Principal's Representative: The Principal's Representative for the purposes of administration of the Contract is the person named in the Special Conditions. The Principal must notify the Contractor in writing of any replacement Principal's Representative. The Principal's Representative is authorised to perform all of the Principal's obligations and exercise all of Principal's powers under the Contract.

3.2 Give the Contractor Possession of the Site: The Principal must make the [Existing Site and the New]Site available to the Contractor for commencement of the Works on the Commencement Date provided the Contractor's Health and Safety Plan has been approved by the Principal's Representative and any insurances required to be obtained by the Contractor under the Contract are in place. The Contractor must liaise with and comply with the reasonable directions of the Principal regarding access including method, timing and route to the [Existing Site and the New]Site.

3.3 Pay the Contractor: The Principal must make payment to the Contractor in accordance with the requirements of the Contract.

3.4 Approval by the Principal: No approval, permission or comment by the Principal will affect the Contractor's obligations under the Contract.

3.5 Principal's insurance:

3.5.1 Where required by the Special Conditions, the Principal will arrange and maintain Works insurance until Practical Completion of the Works:

- (a) to cover loss or damage in accordance with the policies referred to in the Special Conditions; and
- (b) in the joint names of the Principal and the Contractor and subcontractors

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

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

3.5.2 Where the Works are in the nature of additions, alterations, repairs, or maintenance to an existing structure, or where the Works are in the vicinity of another structure in the care of the Principal, the Principal will effect insurance in respect of:

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

in each case as identified in the Special Conditions.

APPENDICES TO MEDIUM WORKS CONTRACT

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

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

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

3.5.4 Every reference to a policy of insurance effected by the Principal under 3.5.2 in this Contract is deemed to be read as acknowledging the self insurance described in this clause 3.5 up to the Self Insurance Amount.

3.5.5 The Contractor must pay any of the Principal's insurance policy deductibles or excesses where the loss, damage or liability arises out of an act or omission of the Contractor and where such payment obligation arises the Contractor must pay the amount stated in the Special Conditions as the Nominal Deductibles under clauses 3.5.1 and 3.5.2 as applicable. The Nominal Deductible will be in each case an amount which is equal or less than to the actual insurance policy deductible or excess.

3.5.6 The Nominal Deductibles are payable by the Contractor in accordance with clause 3.5.5 notwithstanding that the relevant loss, damage or liability is within the Self Insurance Amount (ie the Contractor must pay the relevant Nominal Deductible even if the Self Insurance Amount is applicable to all or part of the relevant loss, damage or liability, as if that Nominal Deductible was an excess amount or insurance policy deductible).

4. VARIATIONS

4.1 The Principal May Instruct Variations: The Contractor must carry out any Variations to the Works instructed in writing by the Principal (provided that such variations are within the scope of the Contract). The Contractor must not vary the Works without an instruction in writing from the Principal.

- 4.2 Value of Variations:** Unless the Principal directs otherwise in writing, the value of the Variation must be agreed, or failing agreement shall be determined by the Principal by referring to the Schedule of Prices or (in the absence of a Schedule of Prices) by referring to the Contractor's prices in relation to similar work under the Contract (if any) and/or what is fair and reasonable in the circumstances. Unless directed otherwise, the value of the Variation shall be agreed or determined prior to the Contractor commencing the varied work. The value of Variations will be added to or deducted from the Contract Price.
- 4.3 Variations:** The Principal must issue a Variation where the Contractor has suffered delay or incurred additional cost caused by the following events:
- 4.3.1 The Principal's instructions:** Any instruction issued by the Principal which varies the Works;
- 4.3.2 Change in circumstances/Ground conditions:** The Contractor encountering on the Site physical conditions which substantially increase the cost to the Contractor, providing that:
- (a) such physical conditions could not have been foreseen by a contractor experienced in undertaking work of the nature of the Works; and
 - (b) the Contractor notifies the Principal of such physical conditions as soon as practicable and where possible before the conditions are disturbed and confirms such notification in writing;
- 4.3.3 The Principal's default:** Any default by the Principal or the Principal's Representative under the Contract.
- 4.4 Provisional Sums:** Provisional Sums may be included in the Contract for work which is to be executed by the Contractor or for any item the cost of which is to be borne by the Contractor. Such sums shall be expended only on the instructions of the Principal's Representative. The amount payable to the Contractor in respect of work covered by a Provisional Sum shall be varied by substitution for the Provisional Sum of the value of the work executed valued as a Variation.

5. TIME FOR COMPLETION

- 5.1 Due Date for Completion:** The Contractor must achieve Practical Completion by the Due Date for Completion.
- 5.2 Extension of Time:** The Principal must grant an extension of time to the Due Date for Completion if the Contractor is fairly entitled to an extension by reason of delays caused by:
- 5.2.1** any Variation; or
 - 5.2.2** any circumstances not reasonably foreseeable by an experienced contractor and not due to any default of the Contractor,

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

5.3 Practical Completion

5.3.1 Practical Completion: Practical Completion means when:

- (a) the Site is cleared and the Works and any adjacent buildings affected by the Works are cleaned to the satisfaction of the Principal; and
- (b) all other Works the Works are completed except for minor omissions and minor defects which in the opinion of the Principal:
 - (i) the Contractor has reasonable grounds for not promptly correcting;
 - (ii) do not prevent the Works from being used for the intended purpose; and
 - (iii) rectification of which will not prejudice the convenient use of the Works.

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

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

5.3.3 Practical Completion Certificate: The Principal must inspect the Works within two (2) Working Days of receiving the Contractor's notice. If the Principal considers that the Works are at the stage of Practical Completion and the Contractor has complied with all of its other obligations under the Contract the Principal must issue a Practical Completion Certificate in the form at Appendix 8. The Practical Completion Certificate must state the date when Practical Completion was achieved and list any items the Principal has authorised to be completed after Practical Completion along with the date by which such items must be completed.

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

- (a) producer statements required to be obtained by the Contractor under 2.11;
- (b) as-built drawings and operation and maintenance manuals;
- (c) warranties required to be obtained by the Contractor under 2.10;
- (d) where required to be obtained by the Contractor under 2.11 and indicated in the Special Conditions, a certificate of public use

APPENDICES TO MEDIUM WORKS CONTRACT

(CPU). Where the Special Condition state that the Contractor may provide a CPU (in lieu of a CCC) prior to the issue of the Practical Completion Certificate, the Contractor shall satisfy the Principal that it has done and it will do everything as may be required to facilitate the uplifting of the CCC, including lodging a complete application for the CCC for and on behalf of the Principal, and the CCC must then be obtained prior to the Principal issuing a Final Completion Certificate;

- (e) where required to be obtained by the Contractor under 2.11 and indicated in the Special Conditions, a CCC where the Works have been carried out under a building consent (the Principal may at its discretion direct that this may be provided by the Contractor within one month of issue of the Practical Completion Certificate, subject to the Contractor obtaining a CPU prior to the Principal issuing the Practical Completion Certificate);
- (f) where required to be obtained by the Contractor as indicated in 5.3.4(f) in the Special Conditions, a Weathertightness Warranty in the form at Appendix 7; and
- (g) anything else required by the Special Conditions.

5.4 Final Completion Certificate: The Principal must issue a Final Completion Certificate in the form at Appendix 9 at the end of the Defects Notification Period, or once the Contractor has remedied all defects in the Works, or obtained a CCC, whichever is the later.

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

6. DEFECTS LIABILITY

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

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

7. CONTRACT PRICE/PAYMENT

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

7.2 Contract Price: Where the Contract is a:

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

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

- (a) the net cost of the quantities of labour, materials, plant and subcontractors used in the execution of the Works, recorded in a manner acceptable to the Principal's Representative;

APPENDICES TO MEDIUM WORKS CONTRACT

- (b) subject to (c), an allowance for Contractor's margin at the percentage stated in the Special Conditions. For clarity, the parties agree that allowance for the Contractor's margin stated in the Special Conditions is fully inclusive of all allowances for on-site overheads and off-site overheads and profit of whatsoever nature; and/or
- (c) where and to the extent the Contract contains rates (including any Schedule of Prices) in respect of any item, those rates shall be used in lieu of net cost. An allowance for Contractor's margin shall only be made to the extent that the relevant rate does not include allowance for such margin.

- 7.3 Sufficiency of Contract Price:** The Contractor is deemed to have inspected the Site and examined all other documents and information available in relation to the Works and to have satisfied itself as to the correctness and sufficiency of the Contract Price.
- 7.4 Contractor to provide the payment claim:** Prior to the issue of an invoice, and within five (5) Working Days of expiry of the relevant period stated in the Special Conditions of Contract, the Contractor must provide the Principal with a payment claim for review. The payment claim must not be in the form of a GST invoice. The payment claim must be addressed to the Principal and must detail the amounts claimed for payment (including any advances for materials not yet on site for which payment is provided for in Part 1: Special Conditions of Contract, where the Contractor has satisfied the conditions applicable to such advances stated in Part 1: Special Conditions of Contract) and show details of any amendments to the original Contract Price.
- 7.5 The Principal to assess payment claim:** The Principal must assess the Contractor's payment claim and may amend it as necessary to comply with the terms of the contract and its valuation of the works performed.
- 7.6 The Principal to issue payment schedule:** The Principal must issue to the Contractor a payment schedule within fifteen (15) Working Days of receipt of the payment claim. The payment schedule will indicate the amount of the payment claim which the Principal proposes to pay the Contractor ("the Scheduled Amount").
- 7.7 Information re Deductions:** Where the Scheduled Amount is less than the amount claimed in the payment claim, the payment schedule must indicate:
- 7.7.1** the manner in which the Principal has calculated the Scheduled Amount; and
 - 7.7.2** the Principal's reasons for the difference between the Scheduled Amount and the amount of the payment claim; and
 - 7.7.3** where the difference is because the Principal is withholding payment on any basis, the Principal's reasons for withholding payment.
- 7.8 Contractor to issue GST invoice:** On receipt of a payment schedule, the Contractor may then issue to the Principal a GST invoice for the Scheduled Amount. The Principal must pay the invoice by the 20th day of the month following the month of issue to the Principal of the invoice for the Scheduled Amount.
- 7.9 Retention:** All payment claims are subject to retentions at the percentages recorded in Part 1: Special Conditions of Contract.

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- 7.10 Release of retentions:** The Contractor acknowledges that the defects liability retention, recorded in Part 1: Special Conditions of Contract is 100% of the total retention and that the retention monies shall be released within 10 Working Days following the issue of the Final Completion Certificate.
- 7.11 Retentions held by the Contractor:** Without limiting its obligations under the CCA, the Contractor acknowledges and agrees that where it holds retentions from any of its subcontractors (including any nominated subcontractor(s)):
- 7.11.1** it will hold such retentions on trust for the relevant subcontractor(s) and shall otherwise hold such funds in accordance with its obligations under the CCA, including using proper accounting practices to ensure that such retention moneys are easily identifiable; and
 - 7.11.2** it has obligations under section 18FC of the CCA to keep proper accounting records of all retentions, and it will, upon request from the Principal, make the relevant accounting and other records available for inspection by the Principal at all reasonable times and without charge.
- 7.12 Set off:** The Principal is entitled to set off against any payments otherwise due to the Contractor amounts in respect of claims the Principal has against the Contractor under the Contract or at law.
- 7.13 Cost fluctuations:** Unless otherwise stated in the Special Conditions:
- 7.13.1** the Principal shall pay a cost fluctuation adjustment in accordance with Appendix 4; and
 - 7.13.2** the Contractor may submit monthly payment claims for such cost fluctuation adjustments. A detailed summary of all such payment claims shall be submitted with the final payment claim.

8. DEFAULT, TERMINATION AND DAMAGES

- 8.1 Notification of intention to terminate:** If either the Contractor or the Principal fails to fulfil their respective obligations under the Contract the other is entitled to notify the defaulting party in writing of the default giving that party ten (10) Working Days to remedy the default. If after ten (10) Working Days the default has not been remedied the party that notified the default may notify in writing the termination of the Contract.
- 8.2 Termination for insolvency:** The Contractor or the Principal may notify the other in writing that the Contract is terminated if the other becomes bankrupt, dies, compounds with creditors, makes an assignment for the benefit of creditors, goes into liquidation, has a receiver or statutory manager appointed or goes into voluntary administration, and in the case of the Contractor only, fails within ten (10) Working Days to make arrangements to take over the Works that are satisfactory to the Principal.
- 8.3 Materials, plant and equipment on termination:** If the Contract is terminated for a Contractor default under 8.1 or 8.2 above, the Contractor must immediately demobilise from the Site leaving behind any materials, plant and Contractor's equipment which the Principal instructs in the second notice is to be used for completing the Works.
- 8.4 Force Majeure:** If either party is or will be prevented from performing any of its obligations by Force Majeure, the party affected must immediately notify the other party in writing. If the Force Majeure event continues to prevent performance for a

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period of 56 days, either party may give the other party written notice of termination of the Contract, which shall take effect 28 days after the giving of notice.

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

8.6 Contractor's liability limit: Subject to 8.6.1 and 8.6.2 and to the extent permitted by law, the maximum aggregate liability of the Contractor to the Principal and the School under or in connection with the Contract whether in contract, tort (including negligence) or otherwise is limited to the amount recorded in Part 1 – Special Conditions of Contract.

8.6.1 8.6 does not limit the Contractor's liability:

- (a) in respect of any loss suffered by the Principal as a result of the Contractor breaching the warranty provided under clause 2.14;
- (b) to indemnify the Principal under clause 2.8 in respect of any liability incurred by the Principal to a third party;
- (c) in the case of fraudulent conduct, illegal act or omission, wilful or reckless misconduct or wilful default by the Contractor in the performance of its obligations under the Contract;
- (d) if the Contractor has abandoned the Contract; or
- (e) in respect of any penalties applicable under any statute, secondary legislation, instrument, bylaw or licence.

8.6.2 Notwithstanding clause 8.6, where the level of any insurance policy that the Contractor is required to effect and maintain under the Contract is greater than the maximum aggregate liability of the Contractor recorded in 8.6 and such policy responds to a loss (or would have responded but for any failure to claim and/or breach of the relevant insurance policy by the Contractor, or due to the failure by the Contractor to maintain an insurance policy), the Contractor's liability in respect of such loss shall be the level of cover under the applicable insurance policy.

8.6.3 This clause 8.6 will survive expiry or termination of the Contract for any reason.

9. DISPUTES

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

9.2 Arbitration: If the dispute is not resolved within twenty (20) Working Days after the date of the notice of dispute, then unless both parties agree otherwise, the dispute must be referred to a sole arbitrator, to be agreed between the parties or appointed under the procedures of the Arbitration Act 1996, for resolution in accordance with the Arbitration Act 1996. The award in the arbitration shall be final and binding on the parties.

10. CONFIDENTIALITY

10.1 The Contractor must use its best endeavours to keep confidential all matters relating to the Contract. The Contractor must not disclose any information except to the extent that:

APPENDICES TO MEDIUM WORKS CONTRACT

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

11. PRIVACY OF CONTRACT

- 11.1** The obligations of the Contractor and any of its subcontractors under the Contract shall for the purposes of the Contracts and Commercial Law Act 2017 be deemed to be for the benefit of the School (including, its successors and assigns) and shall be enforceable by the School against the Contractor or any of its subcontractors but not so as to impose any greater liability on the Contractor or its subcontractors towards the School than the Contractor owes or owed to the Principal.

APPENDICES TO MEDIUM WORKS CONTRACT

APPENDIX 1 THE SPECIFICATIONS

[<To be attached>]

[See attached:

- { . . }

]

APPENDIX 2

THE DRAWINGS

[<To be attached>]

[See attached:

- { . . }

]

APPENDIX 3

SCHEDULE OF PRICES

[Not used]

[[<To be attached>]

[See the attached Schedule of Prices dated { . . . }]]

APPENDIX 4

COST FLUCTUATIONS

[Not used]

[

- 1 Cost fluctuation payments shall be calculated in accordance with the following provisions.
- 2 The amounts payable by the Principal to the Contractor under the Contract shall be adjusted up or down by amounts calculated in accordance with the following equation:
$$C = V \left(\frac{0.4(L-L')}{L'} + \frac{0.6(M-M')}{M'} \right)$$
where
C = Cost fluctuation adjustment for the month under consideration.
V = Valuation of work shown as payable in any payment schedule in respect of work having been completed during the month under consideration, subject to clause 3 below, but without deduction of retentions and excluding the cost fluctuation adjustment.
L = Labour Cost Index; Private Sector: Industry Group – line 15, Construction: All Salary and Wage Rates: published by Statistics New Zealand for the quarter that includes the month under consideration.
L' = Index as defined under L but applying for the quarter in which the Contractor submitted its tender, quotation or proposal.
M = Producers Price Index; Inputs: Industry Group – line 15, Construction: Published by Statistics New Zealand for the quarter that includes the month under consideration.
M' = Index as defined under M but applying for the quarter in which the Contractor submitted its tender, quotation or proposal.
- 3 For the purpose of calculating the cost fluctuation adjustment, any daywork, prime cost sums, Variations, and other payment items which are based on actual cost or current prices and any advances shall be excluded from the Principal's Representative's valuation. The Principal's Representative shall also exclude the following from his/her calculation:
 - (a) any cost that the parties have agreed to exclude from cost fluctuation adjustments; and
 - (b) any cost that the parties have agreed to adjust using a cost fluctuations mechanism other than the one described in this Appendix.
- 4 No other cost fluctuation adjustment will be made by reason of any inaccuracy in the proportions of labour and materials costs assumed in the above formula.
- 5 The Contractor shall not be entitled to claim or have deducted any cost fluctuation adjustment for any further changes in indices which occur after the Due Date for Completion.
- 6 The indices to be used in the calculation of fluctuation shall be those first published by Statistics New Zealand for the appropriate quarter.
- 7 Where indices for the quarter have not yet been published, interim payments will be made on the basis of the indices for the most recent quarter for which indices are available.

APPENDICES TO MEDIUM WORKS CONTRACT

- 8** If at any time any of the indices referred to in clause 2 above are no longer published by Statistics New Zealand, or if the basis of either index is materially changed, the adjustment shall thereafter be calculated by using such other index, or in such other manner, as will fairly reflect the changes as previously measured by that index.
- 9** If V includes payment for work that was awarded to the Contractor in more than one quarter (as may occur if the works are 'staged', for example) and as a consequence the quarterly indices that apply to one part of the V value differ from those that apply to another part of the V value, the Principal's Representative shall separately calculate the fluctuations adjustment for each part, using the quarterly indices applicable to each.]

APPENDIX 5

HEALTH AND SAFETY REQUIREMENTS

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

APPENDIX 6

ASBESTOS HANDLING REQUIREMENTS

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

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

APPENDICES TO MEDIUM WORKS CONTRACT

APPENDIX 7

FORM OF CONTRACTOR'S WEATHERTIGHTNESS WARRANTY

[Not used]

[Contract for: { . . . } (Contract Number { . . . })]

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

BY { . . . } (*'the Contractor'*)

IN FAVOUR OF SECRETARY FOR EDUCATION (*'the Principal'*)

IT IS MADE IN THE FOLLOWING CIRCUMSTANCES

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

BY THIS DEED

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

APPENDICES TO MEDIUM WORKS CONTRACT

6. **THE** Contractor must make good any damage to buildings or structures in the vicinity of the Works caused by:
- (a) a failure of the Works to remain weathertight in accordance with the Contract and best New Zealand industry standards; or
 - (b) any remedial works carried out by or on behalf of the Contractor under this warranty.
7. **THE** Contractor must remedy the defects and damage notified by the Principal under this warranty within fourteen (14) Working Days of receipt of the Principal's notice or within such other reasonable time as determined by the Principal (at its discretion) as may be stated in writing in the Principal's notice under this clause.
8. **IF** the Contractor fails to adequately and satisfactorily carry out any work notified by the Principal under this warranty within the time required under clause 7, the Principal may, after giving five (5) Working Days' further written notice to the Contractor, undertake the work itself or direct others to undertake the work. In such event:
- (a) the Contractor shall not be relieved of any of its obligations under this warranty; and
 - (b) the cost of the work undertaken by the Principal or others (including without limitation labour, materials, travel and other charges or expenses related to the work) shall be recoverable by the Principal from the Contractor on demand.
9. **THE** Contractor shall not be liable for any defect or damage caused by:
- (a) wilful act or negligence of the Principal or any person (other than the Contractor or any third party (including any subcontractor) for whom the Contractor is responsible);
 - (b) fire, explosion, earthquake, war, subsidence, and land slips, except where caused by a defect in the Works or otherwise by the actions of the Contractor or any person for whom, as between the Principal and the Contractor, the Contractor is responsible;
 - (c) any force of nature which the Contractor could not have reasonably foreseen;
 - (d) any neglect or unnecessary delay by the Principal in giving notice to the Contractor of any defect or damage in the Contract Works becoming apparent;
 - (e) use of the Works by the Principal or any other person (other than the Contractor or any third party (including any subcontractor) for whom the Contractor is responsible) in any manner or for any purpose not being the intended manner of use or purpose of the Works;
 - (f) failure by the Principal or other person to maintain the Works in accordance with accepted practice (having regard to the relevant works and usual industry practice), and any manufacturer's stated or recommended instructions or requirements which have been brought to the attention of the Principal by the Contractor; or
 - (g) fair wear and tear.
10. **NOTICES** given to the Contractor under this warranty are deemed to have been effectively served on the Contractor if given in accordance with the notice requirements in the Contract.
11. **THE** Principal may assign the benefits and rights under this warranty.
12. **THIS** warranty is governed by the laws of New Zealand.
13. **THE** Contractor's maximum aggregate liability for all claims under or in connection with this warranty and the Contract (whether in contract, tort (including negligence) or otherwise) shall be limited to the amount stated in clause 8.6 of the Contract, subject to the exclusions set out in clause 8.6.1 of the Contract.

APPENDICES TO MEDIUM WORKS CONTRACT

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

SIGNED on behalf of the Contractor by:

Signature of director / authorised
signatory

Signature of director / authorised
signatory

Name of director / authorised signatory

Name of director / authorised signatory

Witnessed by:

Witnessed by:

Signature of witness

Signature of witness

Name of witness

Name of witness

City/town of residence of witness

City/town of residence of witness

Occupation of witness

Occupation of witness

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

APPENDICES TO MEDIUM WORKS CONTRACT

APPENDIX 8

PRACTICAL COMPLETION CERTIFICATE

This Practical Completion Certificate is issued under 5.3.3.

Contract for (*Contract name*)

Principal (*Insert name of Principal*)

Contractor (*Insert name of Contractor*)

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

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

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

The Contractor is required to remedy all of the listed omissions or defects within the period stated in the attached schedule against the relevant omission or defect, or at the latest within..... Working Days of the date of this certificate.

Practical Completion was achieved

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

Signed by the Principal

Name

Date

SCHEDULE

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

(*list minor omissions and defects*)

.....

.....

.....

APPENDIX 9

FINAL COMPLETION CERTIFICATE

This certificate is a Final Completion Certificate issued under 5.4.

Contract: { . . }

Principal: Secretary for Education

Contractor: { . . }

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

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

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

Signed by the Principal

Name

Date

APPENDICES TO MEDIUM WORKS CONTRACT

APPENDIX 10

[NOT USED]

[PART A: SUBCONTRACTOR WARRANTIES]

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

[A.1 CHANGES/ADDITIONS TO STANDARD SUBCONTRACTOR WARRANTIES]

The standard subcontractor warranties in A.2 below are subject to the following changes/additions:

| SUBCONTRACT WORKS | WARRANTY PERIOD | |
|-------------------------|-----------------|--------------------------------|
| Trade and Item/Material | Type | New or amended warranty period |
| { . . } | { . . } | { . . } |
| { . . } | | |

A.2 STANDARD SUBCONTRACTOR WARRANTIES]

| SUBCONTRACT WORKS | | WARRANTY PERIOD | |
|---------------------------|------------------------------|--------------------------|-----------------------------|
| Trade | Item/Material | Material warranty period | Workmanship warranty period |
| Carpentry | | | |
| | Timber framing | 15 years | 5 years |
| | Engineered structural timber | 15 years | 5 years |
| Cladding | | | |
| | Brick veneer | 15 years | 5 years |
| | Stonework veneer | 15 years | 5 years |
| | Precast concrete | 15 years | 5 years |
| | Timber weatherboards | 15 years | 5 years |
| | Plywood | 15 years | 5 years |
| | Exterior finishing timbers | 15 years | 5 years |
| | Fibre cement | 15 years | 5 years |
| | Solid plaster | 15 years | 5 years |
| | Acrylic plaster | 15 years | 5 years |
| | Profiled Metal | 15 years | 5 years |
| | Curtain walling | 15 years | 5 years |
| | Aluminium panel | 15 years | 5 years |
| | Insulated panel system | 15 years | 5 years |
| | High pressure laminate | 15 years | 5 years |
| | Building wraps and underlays | 15 years | 5 years |
| Concrete blockwork | | | |
| | | 10 years | 5 years |
| Concrete | | | |
| | | 10 years | 5 years |
| Drainage | | | |
| | Stormwater reticulation | 7 years | 3 years |
| | Sanitary sewer reticulation | 7 years | 3 years |

APPENDICES TO MEDIUM WORKS CONTRACT

| | | | |
|------------------------------------|---------------------------------|----------|---------|
| | Wastewater treatment vessel | 15 years | 5 years |
| | Wastewater treatment equipment | 2 years | 2 years |
| Electrical | | | |
| | General electrical installation | 2 years | 2 years |
| | Lamps - LED | 3 years | 2 years |
| | Emergency light fittings | 3 years | 2 years |
| | PV panels | 10 years | 1 year |
| | Inverters | 5 years | 1 year |
| | Security system hardware | 2 years | 2 years |
| Fire protection | | | |
| | General sprinkler installation | 2 years | 2 years |
| | General fire alarm installation | 2 years | 2 years |
| | Sprinkler pump | 2 years | 2 years |
| | Fire extinguishers | 5 years | N/A |
| | Water storage tanks | 20 years | 2 years |
| Fire windows/doors/curtains | | | |
| | Timber fire doors | 5 years | 1 year |
| | Steel fire doors | 5 years | 1 year |
| | Steel fire windows | 5 years | 1 year |
| | Fire and smoke curtains | 5 years | 1 year |
| Floor coverings | | | |
| | Carpet | 10 years | 2 years |
| | Vinyl surfacing | 5 years | 1 year |
| | Linoleum surfacing | 5 years | 1 year |
| | Rubber | 3 years | 1 year |
| | Resin | 5 years | 2 years |
| | Floor levelling | 7 years | 2 years |
| | Sports surfacing timber | 5 years | 2 years |
| | Sports surfacing synthetic | 5 years | 1 year |
| Gas fitting | | | |
| | Gas reticulation system | 2 years | 2 years |
| | Hot water heater | 3 years | 1 year |
| Glazing | | | |
| | Exterior glazing | 10 years | N/A |
| | Interior glazing | 10 years | N/A |
| | Glass balustrades | 5 years | 5 years |
| Hardware | | | |
| | Door furniture and hardware | 5 years | 1 year |
| | Window furniture and hardware | 5 years | 1 year |
| | Access control systems | 1 year | 1 year |
| ICT | | | |
| | Cable and system installation | 2 years | 2 years |
| | Cable rated performance | 20 years | N/A |
| Interior linings | | | |
| | Plasterboard | 10 years | 2 years |
| | Fibre cement | 15 years | 2 years |
| | Plywood | 10 years | 2 years |

APPENDICES TO MEDIUM WORKS CONTRACT

| | | | |
|--------------------------------|--------------------------------------|----------|----------|
| | Acoustic wall panels | 5 years | 2 years |
| | Acoustic overlay | 10 years | 2 years |
| Insulation | | | |
| | Thermal and acoustic | 15 years | 5 years |
| | Rigid panel insulation | 15 years | 5 years |
| Joinery | | | |
| | Interior cabinetry and fixtures | 3 years | 1 year |
| | Interior doors | 5 years | 1 year |
| Lifts | | | |
| | Equipment and operation | 1 year | 1 year |
| Mechanical services | | | |
| | General mechanical installation | 2 years | 2 years |
| | Heat pump - indoor and outdoor units | 5 years | 2 years |
| | Boiler | 5 years | 2 years |
| | Pumps | 5 years | 2 years |
| | Building management system | 2 years | 2 years |
| | Radiators | 20 years | 2 years |
| | Fans | 5 years | 2 years |
| | Underfloor heating - piped | 25 years | 25 years |
| | Dust extraction unit | 2 years | 2 years |
| | Spray booth unit | 2 years | 2 years |
| | Compressed air system unit | 2 years | 2 years |
| Metal windows and doors | | | |
| | Aluminium windows and doors | 5 years | 2 years |
| | Steel windows and doors | 5 years | 2 years |
| | Fluoropolymer coating | 10 years | N/A |
| | Polyester coating | 10 years | N/A |
| | Anodising | 10 years | N/A |
| Metalwork | | | |
| | Fabrication | 10 years | 2 years |
| Operable Walls | | | |
| | Operable Walls | 1 year | 1 year |
| Painting | | | |
| | Exterior painting | 5 years | 2 years |
| | Interior painting | 5 years | 2 years |
| | Protective coatings to steelwork | 6 years | 3 years |
| | Intumescent coatings to steelwork | 6 years | 2 years |
| | Anti-Graffiti | 5 years | 2 years |
| Plumbing | | | |
| | General plumbing installation | 2 years | 2 years |
| | Hot water cylinders | 4 years | 1 year |
| | Boiling water units | 3 years | 1 year |
| | Solar water heating collectors | 3 years | 1 year |
| Proprietary partitions | | | |
| | Compact laminate partitions | 10 years | 2 years |

APPENDICES TO MEDIUM WORKS CONTRACT

| | | | |
|------------------------------------|------------------------------------|----------|---------|
| | Hardware items | 2 years | 2 years |
| Roller/tilt/sectional doors | | | |
| | Commercial door unit | 1 year | 1 year |
| Roofing | | | |
| | Profiled metal roofing | 15 years | 5 years |
| | Metal roofing coating system | 15 years | N/A |
| | Modified bitumen membrane | 15 years | 5 years |
| | Synthetic plastic sheet membrane | 15 years | 5 years |
| | Translucent plastic roofing | 15 years | 5 years |
| | Roofing underlays | 15 years | 5 years |
| | Cappings and flashings | 15 years | 5 years |
| | Rainwater systems - metal | 10 years | 3 years |
| | Skylights and operating system | 10 years | 5 years |
| Roof access systems | | | |
| | Walkways / platforms / stairs | 15 years | 2 years |
| | Roof hatch | 10 years | 2 years |
| Sealants | | | |
| | Exterior | 10 years | 7 years |
| | Interior | 10 years | 7 years |
| Signage | | | |
| | Signage | 5 years | 1 year |
| Siteworks | | | |
| | Retaining walls - concrete, timber | 10 years | 5 years |
| | Retaining walls - proprietary | 15 years | 5 years |
| | Paving | 5 years | 1 year |
| | Asphalt paving | 5 years | 3 years |
| | Irrigation systems | 5 years | 3 years |
| | Synthetic sports surface | 7 years | 3 years |
| | Fencing | 5 years | 5 years |
| Suspended ceilings | | | |
| | Grid | 15 years | 3 years |
| | Acoustic panels | 15 years | 3 years |
| Tanking | | | |
| | Tanking membrane | 20 years | 5 years |
| Tiling | | | |
| | Wall and floor tiling | 5 years | 2 years |
| | Waterproofing membrane | 15 years | 5 years |
| Window treatments | | | |
| | Blinds | 3 years | N/A |
| | Curtains | 3 years | N/A |

APPENDICES TO MEDIUM WORKS CONTRACT

PART B: FORM OF SUBCONTRACTOR WARRANTY

Contract: { . . } (Contract Number: { . . })

THIS AGREEMENT is made on(insert date)

BETWEEN SECRETARY FOR EDUCATION (*'the Principal'*)

AND(*'the Warrantor'*)

DEFINITIONS

Warranted Works:

Warranty Period: years from the date of Practical Completion of the Works

Contractor: { . . }

BACKGROUND

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

IT IS HEREBY AGREED

- 1** The Warrantor warrants to the Principal that the Warranted Works are as required in the Contract. If not otherwise specified the works shall be in accordance with good trade practice.
- 2** This warranty shall be in addition to and shall not derogate from any manufacturer's warranty or any warranty implied by law or the Defects Notification Period in the Contract, attaching to any part of the Warranted Works.
- 3 Warrantor's obligations**
 - 3.1** The Warrantor agrees that, if within the Warranty Period the Warrantor is advised by the Principal in writing of any defect in the Warranted Works for which the Warrantor is liable under the terms of this warranty, the Warrantor will promptly take steps to remedy the defect.
 - 3.2** Any remedial work which the Warrantor is liable to undertake under this warranty shall be carried out:
 - (a) To the standard required by the Contract;
 - (b) In a prompt and timely manner;
 - (c) Without unnecessary inconvenience to any occupants;
 - (d) At the Warrantor's Cost; and

APPENDICES TO MEDIUM WORKS CONTRACT

- (e) Subject to reasonable access being provided to the Warrantor for the purpose of carrying out the remedial work.

4 Failure by Warrantor to perform remedial work

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

5 Exclusions

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

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

6 Assignment

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

7 Disputes

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

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

SIGNED on behalf of the Warrantor by:

Signature of director / authorised signatory

Signature of director / authorised signatory

APPENDICES TO MEDIUM WORKS CONTRACT

Name of director / authorised signatory

Name of director / authorised signatory

Witnessed by:

Witnessed by:

Signature of witness

Signature of witness

Name of witness

Name of witness

City/town of residence of witness

City/town of residence of witness

Occupation of witness

Occupation of witness

SIGNED for and on behalf of the Principal by:

Signature of authorised signatory

Name of authorised signatory

Witnessed by:

Signature of witness

Name of witness

City/town of residence of witness

Occupation of witness

NOTE – The warranty shall be executed by the Warrantor and the Principal in the manner required for execution of a deed. Any of these parties which are a company shall execute the warranty by having it signed, under the name of the company, by two or more directors. If there is only one director, it is sufficient if the Warranty is signed under the name of the company by that director, but the signature shall be witnessed by another Person. The witness shall not only sign but shall also add his or her occupation and address. Alternatively, companies may execute under power of attorney. A company executing under a power of attorney must attach appropriate certificates of non-revocation of power of attorney. Any party which is a body corporate (other than a company) shall execute by affixing its seal, which shall be attested in the manner provided for in the rules of, or applicable to, the body corporate. In the case of a party who is an individual, the party shall sign and the signature shall be witnessed by another Person. The witness shall not only sign but shall also add his or her occupation and address.

]

APPENDICES TO MEDIUM WORKS CONTRACT

APPENDIX 11

Agreement for Off-site Materials

Contract for: Medium Works Contract relating to { . . . }, Contract Number { }

THIS AGREEMENT is dated theday of 20.....

BETWEEN The Secretary for Education ('the Principal')

AND { . . . } ('the Contractor')

AND ('the Subcontractor')

INTRODUCTION

- A. By a contract dated theday of20..... and known as ('the Contract') made between the Principal and the Contractor, the Contractor agreed to carry out the work and obligations imposed on the Contractor by the Contract ('the Works').
- B. The Contractor and the Subcontractor have entered into a subcontract for the performance of part of the Works and/or the supply of Materials described in Schedule A to this agreement ('the Materials') and intended to be used by the Contractor and/or the Subcontractor in the Works.
- C. The Contractor or the Subcontractor (as nominated in Schedule C) ('the Bailee') proposes to store the Materials at the premises of the Bailee ('the Premises') as identified in Schedule B as bailee for the Principal, for the purpose of storage, fabrication, sub-assembly, or as otherwise required for the Works prior to being delivered to the Site for incorporation into the Works.
- D. The Contractor has requested the Principal to certify payment for the Materials notwithstanding that the Materials have not been delivered to the Site.
- E. The Principal has agreed to certify payment for the Materials, notwithstanding that the Materials have not been delivered to the Site, subject to all the provisions of this agreement having been fulfilled.

SCHEDULE A

Description of Materials inclusive of work performed on them:

.....

SCHEDULE B

The location in New Zealand at which the Materials will be stored is:

.....

SCHEDULE C

'The Bailee' shall be:

☐

The Contractor OR

☐

The Subcontractor

APPENDICES TO MEDIUM WORKS CONTRACT

IT IS AGREED as follows:

1. **THE** Materials to which this agreement relates are those described in Schedule A to this agreement, all of which Materials are currently on the Premises identified in Schedule B.
2. **THE** Premises identified in Schedule B are in the sole control of the party identified in Schedule C and that party shall act as bailee of the Materials until such time as the Materials are delivered to the Site or taken possession of by the Principal.
3. **THE** undertakings, warranties, covenants, agreements and other obligations of the Contractor or the Subcontractor shall bind and be deemed to have been given or assumed by each of them severally and by both of them jointly.
4. **THE** Contractor and the Subcontractor agree that they will cause the Materials to be set apart at the Premises and be clearly and visibly marked individually or in sets as being the property of the Principal and their destination as being the Site. The method used to mark the Materials and the procedures by which the mark is applied to the Materials shall be as required by the Contract or as otherwise approved by the Principal.
5. **NEITHER** the Contractor nor the Subcontractor will permit, allow, or cause the Materials to be taken away from the Premises, except:
 - (a) for the purpose of being transported to the Site and used in the Works; or
 - (b) that the Principal may at its sole discretion take possession of the Materials for use other than for the Works;provided that:
 - (c) where the Principal takes possession of any Materials under clause 5(b) above, and the Contractor thereby suffers delay or the Contractor or the Subcontractor incurs additional cost, the taking of possession shall be treated as a Variation under the Contract, unless the taking of possession follows termination of the Contract pursuant to clauses 8.1 or 8.2 of the Contract; and
 - (d) where the Principal takes possession of any Materials under clause 5(b) above, and additional work has been carried out on those Materials since being paid for by the Principal, the Principal shall pay the Contractor for that additional work in accordance with the Contract before taking possession of the Materials.
6. **THE** Principal, upon being satisfied that the Materials have been set apart and marked as required by this agreement, and upon the Contractor providing satisfactory evidence that the requirements of clauses 12 and 20 below have been fully satisfied, shall include in any Payment Schedule issued by the Principal under the Contract a sum representing the reasonable value of such Materials calculated in accordance with the Contract.
7. **UPON** the Principal having made payment for the Materials, less any retentions or deductions prescribed in the Contract, title to such Materials shall immediately vest in the Principal free of all security interests, charges and encumbrances of any nature whatsoever.
8. **WHERE** the Contractor receives payment for Materials and the Subcontractor is entitled to some or all of the Principal's payment, the Contractor shall promptly pay the Subcontractor for such Materials.
9. **UPON** the request of the Subcontractor, the Principal shall advise the Subcontractor whether the Contractor has received any payment from the Principal for such Materials.
10. **THE** Contractor and the Subcontractor agree that the Materials will be held by the Contractor or the Subcontractor solely as bailee for the Principal and (without prejudice to whether the Contractor or Subcontractor have sufficient rights to do so) each grant the Principal a security interest over any rights or interest of the Contractor or the Subcontractor in the Materials.

APPENDICES TO MEDIUM WORKS CONTRACT

11. **THE** Principal shall (at the Contractor's reasonable cost) register a financing statement on the Personal Property Securities Register listing the Principal as secured party and the Contractor and the Subcontractor as debtors for any security interest arising from the bailment of the Materials referred to in this agreement.
12. **THE** Bailee shall promptly do all things including executing any documents and providing all information which the Principal requires to ensure that the Principal receives and maintains at all times a first ranking security interest in the Materials. This shall include procuring from any third party who has registered a financing statement against the Bailee, a waiver, in a form acceptable to the Principal, of any security interest or claim which might otherwise extend to the Materials or their proceeds.
13. **THE** Bailee shall not discharge or amend any financing statement registered under clause 11 above without the prior written consent of the Principal.
14. **NOTHING** in sections 114(1)(a), 133, and 134 of the Personal Property Securities Act 1999 ('the PPSA') shall apply to this agreement.
15. **ANY** rights of the Contractor and the Subcontractor as debtors under sections 116, 120(2), 121, 125, 126, 127, 129, 131, and 148 of the PPSA shall not apply to this agreement.
16. **THE** Bailee hereby grants to the Principal reasonable, free, and unencumbered right of access to the Premises to:
 - (a) inspect the Materials, and verify or undertake the marking and setting apart of the Materials;
 - (b) take possession of the Materials for the purpose of delivery to the Site and inclusion in the Works;
 - (c) remove the Materials from the Premises for the purpose of delivery to the Site and inclusion in the Works; and
 - (d) take possession of the Materials for use other than for the Works,and in each case in a manner that does not cause damage to any other property at the Premises. The Bailee shall take all steps and do all things as shall be necessary to ensure that the Principal obtains access to the Premises for the purposes of this agreement.
17. **THE** Bailee shall not, except as permitted in clause 5, remove or cause or permit the Materials to be moved from the Premises. The Bailee shall nevertheless be responsible to the Principal for any loss or damage thereto and for any costs of storage or handling.
18. **THE** Bailee shall, when required to do so by the Contractor or the Principal, arrange for the transportation of the Materials to the Site. Such transportation shall be at the cost of the Bailee in all things including loading, unloading, and freight.
19. **WHERE** the Materials are not insured under the construction policy provided in accordance with 2.9.2 or 3.5.1 of the Contract, the Bailee shall, at its expense:
 - (a) effect a material damage insurance policy covering all of the Materials subject to this agreement in the name of the Principal to the satisfaction of the Principal, for the full duration of the off-site storage. Such insurance may include an exclusion for loss or damage sustained during processing; and
 - (b) effect a transit insurance policy for transit of all the Materials from the Premises to the Site in the name of the Principal to the satisfaction of the Principal, for the full duration of the off-site storage.
20. **WITHIN** 15 Working Days of the date of this agreement, the Bailee shall furnish the Principal and the Contractor with evidence of such insurance.

APPENDICES TO MEDIUM WORKS CONTRACT

21. **THE** Bailee represents and warrants to the Principal and to the Contractor (where applicable) that:
- (a) it has good and clear title to the Materials;
 - (b) it has the ability to assign and transfer the Materials to the Principal or the Contractor; and
 - (c) the Materials will be transferred to the Principal or the Contractor free of any security interest.
22. **THE** Bailee undertakes that, if it charges or mortgages all or any part of its property (either real or personal), assets, or undertaking, it will obtain written confirmation from the chargee or mortgagee that the charge or the mortgage over such property, assets, or undertaking does not extend to the Materials once they have been paid for by the Principal or the Contractor (as applicable).
23. **NOTHING** in this agreement shall be deemed to limit, waive, or affect the Principal's powers under the Contract to order the removal from the Site or the Premises of Materials which are not in accordance with the Contract and the substitution by the Contractor at its own risk and expense of proper Materials. Nothing in this agreement shall be deemed to limit, waive or affect any other powers conferred on the Principal under the Contract.
24. **EACH** party shall pay its own costs of and incidental to the negotiation, preparation, execution, and any amendment of this agreement.
25. **WORDS** and phrases in this agreement shall have the same meanings as are ascribed to them under the Contract except where the context or any express provision of this agreement requires otherwise.

SIGNED BY (Authorised Signatory) of
..... (Principal)

SIGNED BY (Director/ Authorised Signatory) of
..... (Contractor)

SIGNED BY (Director/ Authorised Signatory) of
.....(Subcontractor)

APPENDIX 12

THE PRINCIPAL'S REQUEST FOR TENDER

[<To be attached>]

[See attached:

- {. . .}]

APPENDIX 13

CONTRACTOR'S TENDER

[<To be attached>]

[See attached:

- { . . }

]

[APPENDIX 14

PRINCIPAL'S CONDITION REPORT

[<To be attached>]

[See attached Principal's Condition Report dated {. . .}]

[Not applicable]

]

[APPENDIX 15

RELOCATABLE BUILDINGS

- [{. .}]
-]